



Appeal Decision

Site visit made on 12 September 2022

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 September 2022

Appeal Ref: APP/N5090/W/22/3290207

5 St. Mary's Avenue, Finchley, LONDON N3 1SN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Chris Miller, on behalf of M Dream Property Ltd, against the decision of the London Borough of Barnet.
 - The application Ref 21/3822/RCU, dated 9 July 2021, was refused by notice dated 17 September 2021.
 - The development proposed is the use of the existing property as a 9 bedroom House in Multiple Occupation (HMO) (Sui Generis) (Retrospective Application).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. An Enforcement Notice (EN) was served against the property owner for the unlawful change of use to a nine-bedroom House in Multiple Occupation (HMO) in 2021. This required the number of occupants to be reduced to 'six persons only', to enable it to be used as a lawful small HMO (Class C4). The EN had a six-month compliance period, which took effect from 9 July 2021. As such, the owner is either now complying with the Notice or the use is now operating in breach of it. I have no evidence either way to confirm the position. Nevertheless, whilst noting that the proposal has been made 'retrospectively', its use as a nine bed HMO has not been established and does not weigh in favour of the proposal.
3. The Appellant demonstrates (appendix 3) that the property could accommodate 11 people in the 9 bedrooms. This capacity aligns with the granted HMO Licence (Appellant's appendix 5). I have considered the merits of the proposal on this understanding of capacity.

Main Issues

4. The main issues are;
 - The effect of the proposed use on the character of the area,
 - The effect of the proposed development on the living conditions of neighbouring occupiers, with particular respect to noise and disturbance, and
 - The effect of the proposed parking provision on the local area.

Reasons

Character and appearance

5. St Mary's Avenue is a residential street consisting of two-storey traditional housing. Most properties have on-plot parking for one or two vehicles and include landscaped front gardens behind low walls or hedges. The appeal site is similar to the local pattern of development being a two-storey detached property with a landscaped front garden and one parking space. The area includes some sub-divided properties that contribute to its character, and which therefore does not solely consist of single-family dwellings. The appeal property is in keeping with the surrounding residential vernacular and as such makes a positive contribution to the character and appearance of the area.
6. The Development Plan for the district includes the Barnet Development Management Policies Development Plan (2012) (DMP). Policy DM09 of the DMP supports the location of HMOs where they would meet an identified need and would not have a harmful impact on an area's character and appearance.
7. The appeal building is a large dwelling within a generous plot. It includes six first-floor bedrooms that could accommodate a large family that could generate significant associated activity. The proposed HMO would introduce a different type of accommodation into the area, however its use would remain residential in character and the property would not be used in a manner dissimilar to existing large dwellings within the area. Furthermore, the resultant change of activity would be comparatively limited and only marginally larger than a lawful use of the property as a six person HMO. As such, these factors would not render the use as incompatible with the established residential character of the area. Furthermore, it is also recognised that whilst DMP policy DM01 seeks to resist the loss of houses to flats it does not seek to prevent a change of use to a HMO.
8. DMP Policy DM09 supports proposals for a HMO provided it would meet an identified need. However, the Council has not adequately explained how such need should be demonstrated. Moreover, it has also not clearly illustrated where such a need exists in the district or whether it is being suitably met. The proposal would address the need for specialist accommodation within the district and therefore addresses objectives of the National Planning Policy Framework (the Framework). The Framework requires development to provide for the housing needs of different groups in the community and to not discourage change, such as through increased densities. Accordingly, the absence of proven need is of limited weight against the proposal.
9. The site's frontage offers limited space for the storage of refuse bins when not in use on collection days. The proposed HMO would be likely to generate a substantial requirement for waste management. A dedicated and appropriate location, that would meet the full requirements of a large HMO, are not disclosed in evidence. Nevertheless, such a facility would be likely to be large and could fundamentally alter the appearance of the front of the site. On this basis, and without evidence to the contrary, the visual impact of a large bin storage area would be likely to result in material visual harm to the site and its surroundings.
10. As such, taking the above points together, the activity associated with the proposed HMO would not be divergent with the character of the area, nor

would the scheme need to address an identified need in this case. Nonetheless, the provision of suitable and required refuse and recycling bin storage, would be harmful to the character and appearance of the site and its surroundings.

11. Consequently, the proposal would result in material harm to the character and appearance of the area. As a result, the proposal would conflict with policies CSNPPF, CS1 and CS5 of the Barnet Core Strategy (2012)(CS), DMP policies DM01, DM08 and DM09 and the Council's Residential Design Guide with respect to character and appearance. These policies seek, inter alia, for development to preserve and enhance local character and not have a harmful impact on the character of the surrounding area.

Living conditions – existing

12. As a large dwelling with many bedrooms, the property could currently accommodate a large family. I am unconvinced that it would be occupied by 12 people, as advanced by the appellant. However, I am cognisant that the proposed number of occupiers would not be markedly different to the potential occupancy level of a large dwelling as a single-family unit. Accordingly, whilst the attendant activity of independent occupiers would be different to users of a single-family dwelling, I am unconvinced this would manifest as inherently anti-social or disruptive to neighbouring occupiers.
13. Comments from some interested parties in representations demonstrate that the use, which has been operating in several forms for the previous few years, has caused noise and disturbance for neighbours in the past. This includes the sound of people coming and going, deliveries and attending visitors. I therefore do not concur with the Appellant that the use has operated without causing noise and disturbance to neighbouring occupiers. However, despite the problems reported by local occupiers the type of activities described would not be out of place within a residential area and do not appear to be particular to an HMO, as such these activities could just as readily be associated with a large single-family dwelling.
14. Furthermore, the site has a single pedestrian access in the middle of the boundary wall leading to the front door, in the centre of the building's frontage. Consequently, People leaving or arriving at the front door would be away from neighbouring dwellings. Consequently, general activity associated with the use, even if more frequent than those attending a family dwelling, would be unlikely to result in material harm to the living conditions of neighbouring occupiers in terms of noise and disturbance.
15. The proposal would therefore comply with CS policies CS1 and CS5, DMP policies DM01 and DM09, the Council's Residential Design Guide and its Sustainable Design and Construction SPD (2016) with respect to the effect on neighbour's living conditions. These policies seek, among other matters, for development to not have a harmful impact on amenities of the surrounding area and to contribute toward people's sense of safety and security.

Parking issues

16. Policy DM09 of the DMP supports the location of HMOs where they would be in accessible locations. The site is a Public Transport Accessible Level (PTAL) 2 area, thereby scoring a poor rating for access to public transport. Although Hendon Lane is nearby, offering access to various bus routes, this has a limited

bearing on the accessibility merits of the site itself or its PTAL rating which takes into account the proximity of public transport nodes. The poor connectivity of the site weighs against the proposal. It would not be easily accessible and future occupiers would have to place a greater reliance on the private car to access goods, services and employment.

17. DMP policy DM17 states that residential development, with limited or no parking, may be acceptable within a Controlled Parking Zone (CPZ). In such circumstances the applicant must demonstrate that there is capacity on-street to accommodate the demand and if shown to be insufficient enter into a legal agreement to prevent future occupiers from obtaining a parking permit.
18. St Mary's Avenue is subject to a CPZ that allows for resident only parking between 2-3pm on weekdays. Due to the number of on-plot parking spaces, and the frequency of vehicle cross overs, on-street parking is limited. The Highway Authority identify that the proposal would generate a requirement for around seven parking spaces, with a maximum of six vehicles therefore seeking on-street parking.
19. The appellant has not produced a parking survey. During my visit, whilst offering only a snap-shot in time, I noted that on street parking seemed to be relatively high with limited capacity available. I would expect on-street parking demand to be higher in the evenings and weekends putting greater pressure on parking capacity. I am therefore unconvinced that there is adequate on-street parking available to accommodate the anticipated demand for parking associated with the proposed use. The insufficient supply of parking would result in harmful highway safety effects due to anti-social parking and would prevent the use from functioning well.
20. As a result, the proposal would conflict with DMP policies DM09 and DM17 and policy H9 of the London Plan with respect to accessibility and parking matters. These policies seek, among other matters, for development to demonstrate sufficient on street parking exists to accommodate anticipated demand and for HMOs to be easily accessible by public transport.

Other Matters

21. The proposal would provide accommodation that would meet a specialist housing need as sought by the Framework. Furthermore, the proposed use would broadly comply with the Council's HMO space standards and requirements, apart from with respect to wash hand basins. These merits weigh moderately in favour of the proposal.

Conclusion

22. The proposal would harm the character and appearance of the area and would not be in accessible location or function well. Accordingly, the proposed use would conflict with the development plan when taken as a whole. The merits associated with the proposal would be limited and would not outweigh the identified conflict. Therefore, for the reasons given, I conclude that the appeal should not succeed.

Ben Plenty

INSPECTOR