



Appeal Decision

Site visit made on 5 September 2022

by C Harding BA(Hons) PGDipTRP PGCert MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd December 2022

Appeal Ref: APP/T5150/W/21/3274930

51 Nutfield Road, London NW2 7EA

- 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 Y Rothschild of IYH Investments LTD against the decision of London Borough of Brent.
 - The application Ref 20/3936, dated 30 November 2020, was refused by notice dated 23 February 2021.
 - The development proposed is change of use of the premises to a 5 room house in multiple occupation for 5 individuals with the provision of a communal kitchen and communal lounge area; and retention of a modified existing ground floor rear extension.
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Decision

1. The appeal is allowed and planning permission is granted for proposed change of use of the premises to a 5 room house in multiple occupation for 5 individuals with the provision of a communal kitchen and communal lounge area; and retention of a modified existing ground floor rear extension at 51 Nutfield Road, London NW2 7EA in accordance with the terms of the application, Ref 20/3936, dated 30 November 2020, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin no later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved drawings and documents:

Location Plan;

NR.51.EX.01 EXISTING FLOOR AND ROOF PLANS

NR.51.EX.02 EXISTING SECTION AND ELEVATIONS

NR.51.PR.01 PROPOSED FLOOR AND ROOF PLANS REV D

NR.51.PR.02 PROPOSED SECTION AND ELEVATIONS

NR.51.PRE-EX.01 PRE EXISTING FLOOR AND ROOF PLANS

NR.51.PRE-EX.02 PRE EXISTING SECTION AND ELEVATIONS

NR.51.SP PRE EXISTING, EXISTING AND PROPOSED SITE PLANS REV A
 - 3) Notwithstanding the provisions of Class L of Part 3 Schedule 2 of the Town & Country Planning (General Permitted Development) Order 2015, as amended

the premises hereby approved should not be used for any other purpose except as a 5-room house in multiple occupation by a maximum of 5 persons.

- 4) No kitchens, kitchen worktops, kitchen sinks, cooking facilities or other kitchen facilities, with the exception of a fridge, shall be provided in the bedrooms of the house in multiple occupation hereby approved.

Procedural Matters

2. The description of development states that it would include the change of use of the premises to a five room HMO. In the interests of clarity, I have amended the description to refer to a 'house in multiple occupation' in place of the acronym.
3. At the time of my visit, it was evident to me that the change of use had already occurred, and the property appeared to be occupied on this basis, however the physical changes proposed had not yet been carried out. I have therefore considered the appeal on the basis that it remains proposed.
4. I am aware that an enforcement notice was previously issued in relation to the use of the premises as an HMO and flats, along with a single storey rear extension, and that this was subsequently quashed on appeal¹. I am also aware that permission to appeal this decision under Section 289 of the Town and Country Planning Act 1990 was granted by the High Court in December 2021, however I have not been made aware of any outcome to any subsequent appeal. For purposes of this appeal therefore, the previous enforcement notice remains quashed and is not a material consideration.

Main Issue

5. The main issue is whether the proposal would provide acceptable living conditions for future occupiers, with reference to internal space.

Reasons

6. The appeal site comprises a terraced house with accommodation for five occupants. At the time of my visit, it comprised five bedrooms, with the room labelled 'Bedroom 3' on the Existing Ground Floor Plan instead being utilised as communal space. I was also able to see that the occupants of the property currently have access to a kitchen, and front and rear gardens.
7. Brent Local Plan² (BLP) Policy DMP20 requires shared accommodation to provide acceptable quality accommodation meeting the appropriate standards for the needs of the occupants. BLP Policy DMP18 states that the size of dwellings should be consistent with London Plan (2016) (LP) Policy 2.5 Table 3.3. Although LP Policy 2.5 Table 3.3 has been superseded following the adoption of the London Plan (2021), these standards reflect the Nationally Described Space Standards (NDSS).
8. NDSS requires single occupancy rooms to have a floor area of 7.5 square metres (sq.m) and be at least 2.15m in width. Neither NDSS nor BLP Policies DMP18 or DM20 differentiate between types of accommodation nor provide specific guidance on bedroom sizes for HMOs.

¹ APP/T5150/C/20/3245160

² London Borough of Brent Local Plan – Development Management Policies, November 2016

9. There is no dispute between the parties with regards to the size or suitability of Bedrooms 1, 3 and 4 as indicated on the proposed floor plan, and it is acknowledged by the Council that Bedrooms 2 and 5 would also meet the required space standards set out in BLP Policy DM18.
10. Bedrooms 2 and 5 would be of irregular configuration, and do not appear to greatly exceed the minimum width of room expected by the standards. However, they would provide total floorspace exceeding the minimum required, and also exceed Bedrooms 1, 3 and 4 in terms of overall space. Furthermore, the configuration of both rooms would be able to accommodate all the necessary furniture to facilitate use.
11. In addition, the proposed plans indicate that shared communal space would be made available to occupants of the property, including the provision of an adequately sized kitchen in which to prepare and eat meals, and a living area which provides an alternative space in which to spend time, in addition to the bedroom. As acknowledged by the Council, this space appears usable and sufficiently sized for the number of occupants of the property.
12. The Council state that occupants of the HMO would be likely to spend a greater amount of time in a bedroom in comparison to occupants of a single household home. However, even if this were the case, Bedrooms 2 and 5 cannot reasonably be considered to be unacceptably small and cramped and would provide sufficient space for a single bed, other normally expected furniture, and adequate circulation space.
13. With regards to the main issue therefore, the proposal would provide acceptable living conditions for future occupiers, with regard to internal space. It would therefore be in accordance with BLP Policies DMP1, DMP18 and DMP20, as well as Brent Draft Local Plan 2020 Policy BH7 which together require residential accommodation and shared accommodation to be of an acceptable quality and meet internal space standards. It would also comply with the National Planning Policy Framework ('the Framework'), which has similar aims.

Conditions

14. In addition to the standard implementation condition, it is necessary in the interests of precision to define the plans with which the proposal should accord. As I have given weight to the provision of communal living space within the property, I have attached a condition in relation to restricting permitted development rights for changes of use of the property in order to ensure that the property could not become a six-bedroom HMO without adequate consideration. Furthermore, I have also attached a condition relating to restricting the occupancy of the premises to 5 residents, as the suitability of the proposed bedrooms has been considered on the basis of single occupancy only.
15. A condition is also attached with regards to the provision of cooking facilities in bedrooms in the interests of the living conditions of occupiers by having access to a shared kitchen.
16. The Council suggested a condition requiring adherence with the submitted Planning and Management Statement, however this document includes the provision of a loft-level kitchen which is not indicated on other submitted plans,

and also contains loose, and in some cases, unreasonable and unnecessary commitments. Consequently, a condition requiring adherence with this document would fail the tests set out in the Framework and Planning Practice Guidance as it would be unenforceable, unreasonable and imprecise. I have therefore not attached this condition.

17. I have also not attached the council's suggested condition in relation to the removal of permitted development rights for further extensions to the property. The Framework, at Paragraph 54, advises that planning conditions to restrict national permitted development rights should not be used unless there is clear justification for doing so. The reason provided by the Council for the suggested imposition of such a condition highlights concerns relating to the potential overdevelopment of the property, and potential impact upon the living conditions of neighbouring occupiers.
18. In my view there is no clear justification for removing permitted development rights in this instance on such a basis in relation to the development proposed. In establishing permitted development rights in secondary legislation, consideration has been given to potential issues of overdevelopment and effect on living conditions, and restrictions imposed within legislation with regards to this. There is no evidence before me that would justify extending these restrictions further in this case.

Conclusion

19. For the reasons given above, I conclude that the appeal should be allowed, subject to conditions.

C Harding

INSPECTOR