



Appeal Decision

Site visit made on 7 June 2023

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 June 2023

Appeal Ref: APP/N5660/W/22/3309711

17 Melbourne Mews, London SW9 6PY

- 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 Yasser Noeman against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 21/04916/FUL, dated 19 December 2021, was refused by notice dated 17 May 2022.
 - The development proposed is 'change of use of existing residential dwelling house (Use Class C3) into 5 HMO units (Use Class C4)'.
-

Decision

1. The appeal is allowed and planning permission is granted for change of use of existing residential dwelling house (Use Class C3) into 5 HMO units (Use Class C4) at 17 Melbourne Mews, London SW9 6PY in accordance with the terms of the application ref 21/04916/FUL dated 19 December 2021 subject to the following conditions:
 - 1) The development hereby permitted shall begin not 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 plans: OS Map, FV-2021-01, FV-2021-02 and FV-2021-03.

Main Issues

2. The main issues are:
 - i) The effect of the proposal on the supply of housing suitable for families;
 - ii) whether or not living conditions for occupiers of the development would be acceptable with particular regard to the quality of the accommodation and the provision of amenity space;
 - iii) whether or not the proposal would make adequate provision for cycle storage and refuse storage; and
 - iv) whether or not the proposal would make adequate provision for parking and to support use of sustainable transport modes.

Reasons

Housing Mix

3. The appeal proposes the change of use of a three-storey end of terrace dwelling to a 5 bedroom House in Multiple Occupation ('HMO'). Policy H9 of the Lambeth Local Plan 2021 ('the LLP') sets out that proposals for new HMOs will

be supported subject to criteria which include where it is demonstrated that the accommodation does not result in the loss of housing suitable for occupation by families as defined in policy H6. In this regard, Policy H6 of the LLP states that the Council will protect dwellings suitable for occupation by families of less than 130sqm (as originally constructed) from conversion to flats.

4. The appellant has not disputed that the dwelling as originally constructed had an area of less than 130sqm. It has access to a ground-floor rear garden, and from the information before me, it would lend itself to family occupation. The change of use to an HMO would therefore result in the loss of housing suitable for occupation by families contrary to one of the criteria specified by LLP Policy H9.
5. The appellant suggests that HMOs contribute to overall housing choice and provision, particularly for single people who cannot afford self-contained housing. However, I have not been provided with substantive evidence to demonstrate a specific identified need for HMOs in this area. Even if I were satisfied that the proposal would meet an identified local need which is another of the criteria within LLP Policy H9, the policy requires that all of the specified criteria are met.
6. While the development may not result in a concentration of HMOs that would adversely affect environmental quality or local amenity, I conclude that the loss of housing suitable for occupation by families means that the proposal would be contrary to Policy H9 of the LLP. The Council has also alleged conflict with Policy H6 of the LLP, but since the appeal does not propose flats or self-contained units which are the focus of this policy, it seems to me to be of lesser relevance here.

Living Conditions

7. The Council indicates that the kitchen to the ground floor level of the HMO would be of sufficient size to serve 5 people, but that it would be more than one floor distant from the second floor bedrooms, contrary to guideline standards for HMOs. Furthermore, the appellant has not disputed the Council's evidence that the development would be served by a garden of around 23.5sqm which would be substantially short of the 50sqm that would be required under Policy H5 of the LLP.
8. I conclude that these factors would be detrimental to the living conditions of occupiers of the development, and the proposal would conflict with Policy H5 of the LLP, as well as with Policy H9 of the LLP which includes a requirement for a standard of facilities suitable for the intended occupiers.

Cycle and Refuse Storage

9. No provision for cycle storage or the storage of refuse and recycling to serve the development is shown on the submitted plans. The appellant suggests that conditions could be imposed to seek further details and require that facilities were provided. However, land to the front of the appeal building is not within the boundary of the site, and there is little before me to show that there would be adequate space within the rear garden to accommodate sufficient storage, including to meet cycle storage standards specified by Policy T5 of the London Plan 2021 ('the LP'). Moreover, storage within the garden would diminish the area of already limited amenity space that would be available to occupiers, and

it is further unclear that there would be practical access routes between this space and the highway.

10. Because I cannot therefore be sure that suitable storage for cycles, refuse and recycling could be accommodated within the site, I am not satisfied that the development could appropriately be made acceptable through the use of conditions.
11. I therefore conclude on this main issue that it has not been demonstrated that the proposal would make adequate provision for cycle storage and refuse storage. As a consequence, there would be conflict with Policies T3, Q12 and Q13 of the LLP and Policy T5 of the LP which require, amongst other things, that minimum standards for cycle parking are met, and that cycling, refuse and recycling storage is integrated into designs from the outset.

Parking and Sustainable Transport

12. There is no provision for parking within the appeal site boundary, but the site is within a Controlled Parking Zone ('CPZ'), and Policy H9 of the LLP indicates that HMO proposals in such areas should not provide additional off-street parking.
13. Be that as it may, I saw at my visit that scope for parking on Melbourne Mews is very limited. There is no mechanism before me that would restrict the eligibility of occupiers of the development to parking permits in the CPZ, and I consider that additional demand for on-street parking would be likely to exacerbate existing pressure in the vicinity of the site. In addition, the development makes no provision for car club or cycle hire memberships to help manage demand for parking and to support sustainable use of travel modes by occupiers in accordance with the requirements of Policies T3 and T6 of the LLP.
14. The Planning Practice Guidance outlines that a negatively worded condition requiring a planning obligation or other agreement to be entered into may be appropriate in exceptional circumstances. However, the evidence before me does not demonstrate that there are exceptional circumstances in this case to justify such a condition.
15. In the absence of a suitable mechanism to address demand for on-street parking and secure cycle hire and car club membership, I conclude that the proposal would fail to make adequate provision for parking and to support use of sustainable transport modes. It would conflict with Policies D4, H9, T1 and T6 of the LLP and Policy T6 of the LP which include requirements broadly seeking to maximise trips made by sustainable modes, to ensure that development does not have an unacceptable impact on parking conditions, and to ensure that impacts of development are mitigated.

Other Matters

16. The Council indicates that the development plan does not require details of management of an HMO of the scale proposed, and I have no firm reason to find that it would otherwise be necessary to secure such details here.

Planning Balance

17. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications should be determined in accordance with the development plan unless material considerations indicate otherwise.

18. I have identified that the proposal would be contrary to Policies D4, H5, H9, Q12, Q13, T1, T3 and T6 of the LLP and Policies T5 and T6 of the LP, and I find that it would conflict with the development plan when it is read as a whole.
19. However, the Council indicates that following its determination of the application, a Certificate of Lawfulness (Proposed) with respect to the change of use from a single dwelling (Use Class C3) to HMO (Use Class C4) was granted at the appeal site under application ref 22/03183/LDCP ('the CLP').
20. The details before me show that the CLP development comprised a 5 bedroom HMO of the same form as the appeal development. The effects of the CLP scheme on the supply of housing suitable for families would be equivalent to the appeal proposal. In addition, both the CLP and the appeal scheme propose a small HMO under Use Class C4 which may be occupied by between 3 and 6 individuals. Since the number of potential residents would be the same under the CLP and the appeal scheme, effects on living conditions for occupiers, provision for cycle storage and refuse storage, and provision for parking and to support use of sustainable transport modes would also remain the same.
21. There is no firm evidence before me to suggest that the CLP could not be implemented, and given its similarity to the appeal scheme, I consider there is every likelihood that it would be implemented should the appeal be dismissed. I have therefore taken it into account as a fallback position, and I give substantial weight to the fact that the appeal development would be no more harmful than the CLP scheme fallback. While the proposal would conflict with the development plan when it is read as a whole, I find that the CLP fallback is a material consideration which would in this case justify making a decision which is not in accordance with the development plan.

Conditions

22. In addition to the standard time limit, I have imposed a condition specifying the approved plans for the avoidance of doubt and in the interest of certainty. The Council has suggested conditions to require provision of cycle parking and waste and recycling storage. Notwithstanding my findings above in respect of the appropriateness of such conditions, provision for cycle parking and waste and recycling storage would not be required under the CLP fallback scheme, and I find in the circumstances of this appeal that the suggested conditions would therefore be unreasonable. As a consequence, they would not meet the tests for conditions set out in the National Planning Policy Framework, and I have not imposed them.

Conclusion

23. For the reasons given above, I find that the proposal would conflict with the development plan when it is read as a whole, but that material considerations indicate that a decision contrary to the development plan should be reached. I therefore conclude that the appeal should be allowed.

J Bowyer

INSPECTOR