



Appeal Decision

Site visit made on 9 June 2023

by H Jones BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 June 2023

Appeal Ref: APP/N5090/W/22/3310638

Flat 1, 15 Dartmouth Road, Hendon, Barnet, London NW4 3JA

- 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 Harishchandra Ratna (Melior Elements Ltd) against the decision of the Council of the London Borough of Barnet.
- The application Ref 22/3219/FUL, dated 19 June 2022, was refused by notice dated 24 August 2022.
- The development proposed is change of use from C3 to C4 use.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. In Part E of the appeal form it is stated that the description of development has not changed but, nevertheless, a different wording has been entered from that on the planning application form. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the description given on the original application albeit I have omitted superfluous elements that are not acts of development.

Main Issues

3. The main issues are:
 - Whether the proposed development would comply with relevant development plan policies relating to the change of use of properties to Houses in Multiple Occupation (HMO) and, the effects that would be wrought upon the character of the area;
 - The effects of the proposed development upon parking provision with particular regard to whether future occupiers of the development should be restricted from obtaining street parking permits and, if so, whether this has been secured via a suitable mechanism; and
 - The effects of the proposed development upon the living conditions of neighbouring occupiers with particular reference to the nature and levels of activity and, noise that would take place;

Reasons

The change of use and the development plan and, effects upon character

4. 15 Dartmouth Road is a mid-terraced property. The property contains flats with accommodation across 3 floors. Flat 1, the subject of the appeal, is 3

- bedroomed and located on the ground floor. The local area is predominantly residential in character with streets lined by traditionally designed terraced and semi-detached properties.
5. The evidence before me indicates that the area the appeal site is within is the subject of an Article 4 Direction which has removed the permitted development right to convert a dwellinghouse into a small HMO. Furthermore, there is no dispute between the main parties that the local area contains a high proportion of family dwellings.
 6. Policy DM09 of Barnet's Local Plan Development Management Policies Development Plan Document, September 2012 (DMPD) sets out, amongst other matters, that proposals for new HMOs will be encouraged provided that they meet an identified need and can demonstrate that they would not be harmful to the character of the surrounding area.
 7. Given the proportion of family housing in the area, and the number of planning applications that have sought or are seeking a change in their use, it may be that the local area is not the subject of significant pressure for conversion to alternative uses and that presently, the number of HMO licensed properties is low. However, this does not itself amount to a demonstration of need.
 8. The appellant submits that the need for HMO accommodation is universal and has drawn my attention to the Council's Strategic Housing Market Assessment. However, no further details of this assessment are before me. It is also put to me that the change of use would appeal to a wider market and that the property was unlet at the time of the application to the Council. However, the submissions do not amount to substantive or compelling evidence of any particular need for the accommodation proposed nor that the appeal site is located within an area where it should be delivered.
 9. I also note that Policy DM08, which seeks to ensure that development delivers the appropriate mix of housing types, identifies 3 bedroomed housing amongst its priorities. Therefore, as a 3 bedroomed flat, it is reasonable to conclude that Flat 1, in its existing form, is meeting a housing need within the borough. This flat in its existing form would be lost to the development proposed and it has not been shown to me that the need for the HMO would override this nor that the proposal would enhance consumer choice.
 10. Therefore, the evidence before me does not demonstrate that the proposed development would meet an identified need for HMO accommodation.
 11. Furthermore, given that the prevailing character of the area is partly derived from its proportion of family dwellings that, in the proposal, a 3 bedroomed flat would be converted to an HMO would result in some erosion of this character. Given only a single flat would be converted and given the evidence before indicates that the number of HMOs in the area remains low, the extent of this erosion of character would be limited. However, some erosion would result and, no adequate demonstration has been made that harm to the character of the area would not take place as required by Policy DM09.
 12. For these reasons, the proposed development would conflict with Policies DM01, DM08 and DM09 of the DMPD and Policy CS5 of Barnet's Local Plan Core Strategy Development Plan Document, September 2012 (CS). In summary, and amongst other matters, these policies encourage HMOs where they meet

an identified need and can demonstrate that they would not be harmful to the character of the area, seek to ensure the appropriate mix of dwellings and seek to preserve or enhance local character.

13. In coming to this view, I acknowledge that Policy CS5 does not specifically reference the need to retain family housing, whilst criterion (h) and (i) of Policy DM01 do state that the conversion of dwellings into flats and, the loss of houses, in roads characterised by houses will not “normally” be appropriate as opposed stating, for example, that such conversions would certainly be inappropriate. However, due to the harm I have identified by reason of the erosion of the character of the area, conflict would nevertheless arise with those policies.
14. Much of the content of the Residential Design Guidance Supplementary Planning Document, October 2016 (Residential Design SPD) provides guidance on matters of detailed design, largely irrelevant to this main issue. Nevertheless, the SPD reiterates content within some of the development plan policies referenced above and, seeks to ensure that conversions would be appropriate to their location and the character of the area. For the reasons set out above, I have identified that this would not be the case and, therefore, the proposed development would be in conflict with guidance within the Residential Design SPD.
15. Within their first reason for refusal the Council also cite Policy CSNPPF of the CS. However, this policy, which relates to the operation of the presumption in favour of sustainable development set out within the National Planning Policy Framework (the Framework), is not very relevant to the specific harm I have identified. Therefore, I find no conflict with this policy.

Parking

16. In the vicinity of the appeal site Dartmouth Road is lined on both sides by terraced properties which are served by small front yards and no off-street parking. Cars park on-street with parking spaces demarcated by white lines. A controlled parking zone is in operation. Similar conditions prevail on many neighbouring streets, although on some streets more properties are served by driveways.
17. Amongst other matters, Policy DM17 of the DMPD, sets out that where limited or no parking is proposed within a controlled parking zone that a legal agreement to restrict future occupiers from obtaining on street parking permits would be necessary where insufficient on-street parking is available.
18. The plans and evidence before me indicates that the proposed HMO would be served by no dedicated parking. Therefore, it is reasonable to conclude that should any occupiers of the proposed development have access to a car, parking on-street would likely be sought.
19. With so many properties of Dartmouth Road being without driveways and, owing to the controlled parking zone that is in place, I have no reason to conclude that on-street parking demands on the street are not high. Furthermore, no parking capacity survey is before me to indicate that there are sufficient parking spaces in the area.
20. I have no evidence before me that the future occupiers of the property would not be able to apply for a parking permit. Therefore, and so as to comply with

Policy DM17, a suitable mechanism is required to ensure that occupiers of the proposed development would not be eligible to apply for a parking permit within the controlled parking zone operating within the area, unless there was an exceptional reason, such as they were a Blue Badge holder.

21. Without ensuring the parking permit ineligibility, it has not been shown to me that, through the acquisition of parking permits, consequential increases in demand for on-street parking would not result within a controlled parking zone the subject of high demand. Such increases in demand and increases in parking pressures in the area would be harmful.
22. Although the appellant has acknowledged the applicable development plan policies in relation to parking and indicated a willingness to enter into a legal agreement under section 106 of the Town and Country Planning Act 1990 (as amended) (the Planning Act), I do not have an agreement before me. It would be required, so that the proposed development complied with the development plan and so as to mitigate the harmful effects I have identified above. Furthermore, it would be directly related to the development and would be fairly and reasonably related in scale and kind to the development. Such an obligation would therefore accord with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the tests for planning obligations set out at paragraph 57 of the Framework.
23. Consequently, the development would be contrary to Policies DM17 of the DMPD and Policies T4 and T6 of the London Plan, 2021 (LP). In summary, and amongst other matters, these policies seek car-free development, require legal agreements to restrict future occupiers from obtaining on street parking permits where necessary and, require that developments mitigate any adverse transport related impacts.
24. Although, of relevance to new development and parking provision, I find that the specific harm I have identified would not conflict with content or criteria within Policy T6.1 of the LP. Furthermore, Policy CS9 of the CS principally focuses upon the delivery of appropriate transport infrastructure so as to provide safe, effective and efficient travel. I find that the content of this policy is largely irrelevant to the specific harm I have identified and therefore, I find no conflict with it.

Living conditions

25. The submitted plans show that no internal nor external alterations to the accommodation within Flat 1 are proposed. No extensions are proposed that would enlarge the property nor is it shown on the plans that the ground floor accommodation comprising the flat would change or be sub-divided. Therefore, in the proposal, the existing flat would remain as it is now, 3 bedroomed, albeit its use would change to become an HMO.
26. In some circumstances the change of use of a house or flat to an HMO may result in the provision of more bedrooms and demonstrable increases in occupancy and associated activity and noise. However, in this particular case and, given that no physical alterations to the property are proposed, I have no reason to conclude that the occupancy levels of the property would rise significantly as a result of the proposal. Neither do I have any compelling evidence before me which indicates that the nature or range of activities that

would take place within the flat would differ from existing to any significant degree nor that they would be more intensive.

27. I acknowledge that the appeal site is located within an area the subject of an Article 4 Direction which has removed the permitted development right to convert a dwellinghouse into a small HMO. I have limited details before me on the Article 4 Direction but, it may be the case that it is, at least partly, in place so as to exercise greater control in the interests of the prevention of harmful effects arising from the more intensive use of properties. Despite this, I must consider this case on its own merits and, as set out above, I have no reason to conclude that the change of use proposed would result in a more intensive use nor harmful effects associated with it.
28. Therefore, the effects of the proposed development upon the living conditions of neighbouring occupiers with particular reference to the nature and levels of activity and, noise that would take place would be acceptable. In coming to this view, I acknowledge that the site is not located within a town centre and I have had regard to its access to public transport but this does not provide me with any reason to conclude that the effects of the proposed development upon living conditions would be harmful.
29. Consequently and, in relation to these living conditions, the proposed development would be in accordance with Policies D3 and D14 of the LP, Policies CS1 and CS5 of the CS and Policies DM01, DM04 and DM09 of the DMPD. These policies state that development proposals should deliver appropriate amenity, manage noise, create places of high quality which provide an attractive environment for people to live in. Furthermore, I find no conflict with the guidance contained within the Residential Design SPD nor the Sustainable Design and Construction Supplementary Planning Document, October 2016 which state that conversions should not have adverse effects upon residential amenity and that development should assess and, as necessary, address noise impacts.
30. The Council's second reason for refusal also cites conflict with Policy DM02 of the DMPD. This policy requires that development complies with a series of specific design guidance documents. It has not been shown to me which of these documents the proposed development would not comply with and, therefore, I find that there is no conflict with the policy.

Other Matters

31. The proposed development may be acceptably served by public transport options including buses and train services, may provide acceptable bin and cycle storage provision and may meet relevant space and HMO standards. However, this lack of harm is a neutral factor in my determination and weighs neither in favour nor against the proposal.
32. I have no reason to conclude that the existing flat is not let in accordance with relevant guidelines nor otherwise in an appropriate manner. However, this is largely irrelevant to the planning merits of the case.

Conclusion

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

34. In the third main issue I have concluded that the effects of the proposed development upon the living conditions of neighbouring occupiers would be acceptable. However, this does not outweigh the harm that would be brought about by the lack of demonstration that the proposed development would meet an identified need for HMO accommodation, the effects that would be wrought upon the character of the area and, the effects of the proposed development upon parking provision in the absence of a completed planning obligation.
35. Therefore, and although the proposed development would accord with some development plan policies, the development would conflict with the development plan as a whole. I have had regard to other considerations material to the appeal including having regard to the content of the Framework but conclude that there are no such considerations of sufficient weight to indicate a decision other than one in accordance with the development plan. The appeal is therefore dismissed.

H Jones

INSPECTOR