



Appeal Decision

Site visit made on 11 April 2023

by A Hunter LLB (Hons) PG Dip MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 July 2023

Appeal Ref: APP/Y1945/W/22/3306245

31 St Johns Road, Watford, Hertfordshire WD17 1QB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Gary Moore on behalf of NEBS Property Services against the decision of Watford Borough Council.
 - The application Ref 22/00246/VAR, dated 22 February 2022, was refused by notice dated 11 April 2022.
 - The application sought planning permission for alterations to internal layout to create a 3 bedroom House in Multiple Occupation (HMO) without complying with conditions attached to planning permission Ref 20/01373/FUL, dated 2 February 2021.
 - The conditions in dispute are Nos 2 and 3, which state that:
 - (2) *The development shall be carried out in accordance with the following drawings, unless otherwise approved in writing by the Local Planning Authority. The following drawings are hereby approved: 216104-25-A1, 216104-26-A1, 216104-27-A1, 216104-28-A1, 216104-29-A1, 216104-30-A1; and*
 - (3) *The 3 HMO rooms shall not be used as self-contained dwellings. The communal kitchen and living space in the basement shall be installed in accordance with approved drawing 216104-29-A1 and shall be retained at all times. The HMO rooms shall not contain kitchens or facilities for the storage or cooking of food at any time.*
 - The reasons given for the conditions are:
 - (2) *For the avoidance of doubt and in the interests of proper planning; and*
 - (3) *To ensure the development is installed and retained as an HMO as detailed in the application and to ensure that the premises are not subdivided into inadequate self-contained dwellings.*
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Decision

1. The appeal is allowed and planning permission is granted for alterations to internal layout to create a 3 bedroom House in Multiple Occupation (HMO) at 31 St Johns Road, Watford, Hertfordshire WD17 1QB in accordance with the application Ref 22/00246/VAR, made on the 22 February 2022 without complying with conditions Nos 2 and 3 set out in planning permission Ref 20/01373/FUL granted on 2 February 2021 by Watford Borough Council, but otherwise subject to the following conditions:
 - 1) The development shall be carried out in accordance with the following drawings:
 - 216104-25-A1
 - 216104-26-A1
 - 216104-27-A1
 - 216104-28-A1
 - 216104-29-A1 Rev. A

216104-30-A1

- 2) The 3 HMO rooms shall not be used as self contained dwellings. The communal kitchen areas and living space in the basement shall be installed in accordance with approved drawing 216104-29-A1 Rev. A and shall be retained at all times. The HMO rooms shall not contain kitchens or facilities for the storage or cooking of food at any time.

Preliminary Matters

2. Since the planning application was determined, the Council adopted the new Watford Local Plan 2021-2038 on 17 October 2022 (WLP), and they have advised of the new relevant policies to the proposal, which replace the policies cited on the original decision notice. The appellant has had the opportunity to respond to the new Local Plan policies in their final comments. Therefore, I have determined the appeal on this basis.
3. On my site inspection I saw that the property was in use as a House in Multiple Occupancy (HMO) and the additional kitchenette had been installed. The appeal has been determined on this basis.
4. Notwithstanding the application form and description above, the appellant has confirmed in their Appeal Statement that the proposal relates to plan changes for the additional kitchenette only, and that they do not seek to remove condition 3 of planning permission 20/01373/FUL. The appeal has also been determined on this basis.

Background and Main Issue

5. Planning permission was granted for alterations and changes to the layout of the appeal property to create 3 no. HMO bedrooms, on 2nd February 2021. The appellant seeks to vary planning conditions 2 relating to the approved plans and alter the plan reference within condition 3 imposed on that permission, by amending the basement floor plan to include an additional kitchenette in a communal living room.
6. Accordingly, the main issue with this appeal is the effect of the proposed change upon the use of the property as a HMO, with particular regard to whether any of the 3 no. HMO rooms could be occupied as self-contained units of accommodation.

Reasons

7. The appeal property is used as a HMO and is arranged over the ground and basement floors. It contains 3 no. HMO rooms, each having a private bathroom, sleeping and living area on the ground floor. At basement level there is a shared kitchen and living room, along with a shared bathroom.
8. The addition of a kitchenette into the basement level living area will provide secondary cooking facilities for the occupiers of the HMO, and given the limited space it will take up, it will not prejudice the use of the communal living room which also includes a sofa, dining table and television. This additional kitchenette will improve the cooking facilities for occupiers of the HMO.
9. I note the Council's concern about the basement being used as an additional HMO room, in that it could provide a self-contained unit of accommodation including the proposed kitchenette and adjoining bathroom. I have also been

made aware of an earlier appeal decision (Ref: APP/Y1945/W/20/3248413) that related to both the appeal property and No. 31A St Johns Road. That appeal sought permission for a 5-no. room HMO and one of the reasons for dismissing that appeal related to insufficient natural light and poor outlook for a bedroom in this same basement area. However, in this case, no bedroom is proposed at basement level. Based on the proposed plan and the evidence before me, it is clear that the proposed use of the basement level is for communal living space only. The current proposal is not comparable to the earlier appeal.

10. Furthermore, condition 3 on the extant planning permission, restricts the use of the appeal property to a 3-no. room HMO, and prevents the creation of self-contained units of accommodation within the appeal property. As stated above, the appellant is not asking for condition 3 to be removed.
11. I conclude the proposed change will not alter the use of the property as a 3 room HMO; increase the number of HMO rooms; or result in any self-contained units of accommodation. The amended basement floor plan would provide a kitchenette to improve the cooking facilities for occupiers of the HMO and be consistent with Policy SS1.1, Policy QD6.2 and Policy QD6.4 of the WLP, which amongst other things seeks to ensure high quality and sustainable development, with internal spaces that support the health and well-being of those who experience them.
12. In terms of this minor re-configuration of the existing communal room, I did not find Watford Borough Council's Residential Design Guide, adopted July 2014, and amended August 2016, to be relevant in this case, as it was concerned with broader residential design issues, and not communal areas within HMOs.

Other Matters

13. The Council's comment about the kitchenette having been installed prior to the 2020 planning permission and that the design and access statement accompanying that application stated that the cooking facilities were to be removed are noted. However, this proposal to retain the secondary cooking facilities in the communal room must be considered on its individual merits, against the development plan and all other relevant considerations.

Conditions

14. By allowing this appeal, a new planning permission is created. The Planning Practice Guidance advises that, for clarity; decision notices for such grants of planning permission should restate the conditions imposed on earlier permissions that continue to have effect, unless they have already been discharged.
15. As the development has already started it is not necessary for me to attach the commencement of development condition. To ensure certainty, I have re-imposed a condition relating to the approved plans to include the amended basement floor plan, although I have amended the wording to exclude reference to any agreement in writing for any changes, as this is not necessary. I have also updated the previously imposed condition 3 with the amended plan reference, and to reflect that there is more than one kitchen area in the basement.

Conclusion

16. The development accords with the development plan taken as a whole. Therefore, for the reasons given above, and taking all other material considerations into account, the appeal is allowed.

A Hunter

INSPECTOR