The Planning Inspectorate

Appeal Decisions

Site visits made on 21 and 22 August 2023

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 3 October 2023

Appeal Ref: APP/N5090/C/22/3305115 ('Appeal B')
33 Wenlock Road, Edgware HA8 9JG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mrs U Shah against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice, numbered ENF/1450/21, was issued on 19 July 2022.
- The breach of planning control as alleged in the notice is *Without planning permission, the making of a material change of use of the building to use as a House in Multiple Occupation (Use Class C4)*.
- The requirements of the notice are to cease the use of the property as a House in Multiple Occupation.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.

Summary Decision: the appeal is dismissed and the enforcement notice upheld.

Appeal Ref: APP/N5090/W/22/3305114 ('Appeal B')
33 Wenlock Road, Edgware HA8 9JG

- 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 Mrs U Shah against the decision of the Council of the London Borough of Barnet.
- The application Ref 22/2476/RCU, dated 6 May 2022, was refused by notice dated 4 July 2022.
- The development proposed is the change of use of the property from a single family dwelling (Class C3) to 6 bed House in Multiple Occupation (HMO) (Retrospective Application).

Summary Decision: the appeal is dismissed.

Preliminary Matters

1. Although the description of the development in Appeal B does not refer to a Use Class, it is clear from the parties' statements that the property is in use as a HMO consisting of six bedrooms and a maximum of six occupants. Therefore the appeals are essentially the same, seeking permission for the continued use of the property as a Class C4 HMO.

2. The main issues arising in the case, resulting from the Council's reasons for issuing the notice and refusing planning permission, do not concern the living conditions of the occupiers of the property itself. Thus an internal inspection was unnecessary. I observed the site and its surroundings on the evening of 21 August and again the following lunchtime.

Main Issues

3. Although characterised somewhat differently by the Council's reasons given for issuing the notice and refusing planning permission, there appear to me four main issues in the appeal. The first three arise from the separate strands of Local Plan Policy DM09 (of the Development Management Policies document), with the fourth concerning traffic safety and parking.

4. Policy DM09 is supportive of HMO proposals where they meet an identified need, can demonstrate that they will not have a harmful impact on the character and amenities of the surrounding area, are easily accessible by public transport, cycling and walking and meet the relevant housing standards for HMOs. I do not understand that latter point to be in dispute here.

5. Thus the first main issue concerns the provision of family dwellinghouses in the area and the need for an additional HMO in the area.

6. The second main issue comprises the effects of the development on the Watling Estate Conservation Area, as well as the effects on the character of the area more generally. This issue also comprises the effects of the development on the living conditions of neighbouring residents, considering matters of noise, disturbance and disruption.

7. The third and final matter for consideration in deciding whether the development is supported by policy DM09 is whether the location is suitable for the use in terms of transport accessibility.

8. The final main issue in the appeals concerns the availability of off-street parking and whether there is sufficient on-street capacity so as to avoid adverse effects on highway and pedestrian safety and the free flow of traffic in the area. The principal applicable policy to this issue is DM17 of the Local Plan Development Management Policies document, ensuring that road safety is taken into account and refusing development proposals that unacceptably increase conflicting movements on the road network or increase risks to vulnerable users. The policy also expects development to provide parking in accordance with London Plan standards, except in the case of residential development where local maximum standards apply.

Reasons

Family dwellinghouses and the need for HMOs

9. Policy DM09 seeks to resist the loss of HMOs and is supportive of their provision where certain criteria are met, including that there is an identified need. Here, the Council say that the application was not supported with a statement demonstrating the identified need for the HMO and therefore that it contravenes this aspect of the policy. However, unlike the subsequent requirement concerning the impacts on the character and amenities of the surrounding area, where the burden of demonstrating the lack of harm falls on any applicant for planning permission, the policy itself is silent as to how need is to be identified.

10. Documents referred to as 'useful references' by policies DM08 and DM09 include annual monitoring reports, a strategic housing market assessment, and a housing needs survey. No such documents have been provided.

11. The Council refer to the emerging plan as identifying three-bedroomed dwellings as the highest priority within the borough, but have not identified any policy context by which the loss of C3 dwellings are to be resisted. The Council acknowledge HMOs to be an important source of low cost, private sector housing. The appellant refers to the Council's Housing Strategy for 2015 – 2025 that identifies a need for accommodation that is suitable for sharing. Whilst this document is not supplied, the appellant's statement about it is not contradicted by the Council.

12. The Council suggest that the existence of an Article 4 Direction across the borough concerning the change of use of C3 dwellinghouses 'implies a need for family housing which could be exacerbated by the loss of dwellings to HMOs', but this rather contradicts their officer's report saying that the supporting case for introducing the Article 4 Direction was concerned with environmental health and anti-social behaviour. I have not been supplied with a copy of the reasons for the Direction, or even with a copy of the Direction, and in the light of these apparently contradictory statements can derive no enlightenment about whether the Article 4 Direction has a bearing on the identification of HMO need.

13. The appellant draws to my attention correspondence from local estate agents confirming a high demand for the property, but I accept the Council's case that demand does not necessarily equate to need. In the round, however, in view of the appellant's unchallenged statement about the Housing Strategy identifying a need for accommodation suitable for sharing and the Council's acknowledgement of HMOs as an important housing resource, I find there to be an identified need for this type of accommodation and hence the first policy strand of DM09 to be met.

Character and amenities of the surrounding area

14. The Watling Estate Conservation Area was built on Garden City principles in the 1920s for families leaving the overcrowded slums of Central London. At the date of the Conservation Area appraisal in 2007, it comprised some 4,000 dwellings of which 3,600 were houses and 400 flats. Nearly half were owner-occupied. The Estate is described as having a very diverse cultural mix and large numbers of young families and older people.

15. The Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of the Estate. National planning policy, in the form of the Framework, enjoins me to consider the desirability of sustaining and enhancing the significance of heritage assets, the positive contribution that conservation can make to sustainable communities, and the desirability of new development making a positive contribution to local character and distinctiveness. Local Plan Policy DM06 requires development proposals to preserve or enhance the character and appearance of Conservation Areas.

16. The Council's Residential Design Guidance notes that conversions of single family homes into flats or HMOs are likely to be resisted in areas of low density housing where predominantly there are single family occupation houses, although this is where external alterations would impact on the appearance of the local area. Here, the front garden has been laid to hardstanding and any former boundary treatment lost (described as an 'issue' in section 7.4 of the Conservation Area appraisal) although it is unclear whether or not this has been connected to the change of use.

17. Notwithstanding the existence of some 400 flats in the Conservation Area as a whole (and whether or not many of them are unauthorised, as the Council suggest) Wenlock Road itself is characterised by family dwellinghouses, with likely patterns of family life including parents working and children going to school and playing in the evenings and weekends. Here I do not find that the introduction of an HMO use would make a positive contribution to local character and distinctiveness, or to sustain or enhance the significance of the heritage asset. The likely patterns of HMO use are acknowledged to be different from those of a family dwellinghouse (and there is no contention here that the change of use has been immaterial) with a larger number of adult residents and fewer or no children. No information is supplied about the existing occupants of the property, although tenants are described by the estate agents' letter as 'students or interns and other professionals/students' and thus their occupation is likely to be transient compared with a family occupying the property and participating in the community in different ways. Whilst affecting only one property, this change would be a small one, but I accept the Council's case that it would detrimentally affect the character, and thus the historic significance, of the Estate as a family housing estate.

18. As to the impacts on the amenities of the surrounding area, the objections received from nearby residents do not appear specific to this property but to an increase in HMOs generally. The appellant complains that the Council do not substantiate their assertion that six residents in separate households will necessarily harm neighbours, and asserts that the comings and goings of six individuals will not represent a harmful intensification of use relative to the use of the building as a family home. However, no information is supplied about how the property is occupied or managed, whereas the relevant aspect of policy DM09 requires an applicant to demonstrate that a change of use to an HMO will not have a harmful impact on the character or amenities of the surrounding area. The appellant's bare assertion, without any information provided as to these matters, that the comings and goings of six individuals will not represent a harmful intensification of use is insufficient to demonstrate that no harm will arise.

19. Thus on this issue I find that the requirement of policy DM09 for the appellant to demonstrate that no harmful impacts will arise to the area's character or amenities is not satisfied. The change of use also fails to preserve or enhance the Conservation Area, contrary to policy DM06.

Accessibility by public transport, cycling and walking

20. The property lies in an area with a PTAL rating of 1b which is towards the lower end, meaning least sustainable, of the scale. It is around 5 minutes' walk to a bus stop and nearly 20 minutes' walk to the nearest Underground station. I do not consider the PTAL rating to understate the accessibility of the site, as suggested by the appellant.

21. The appellant also draws to my attention the proximity of the property to Edgware Hospital, which is said to create demand for affordable shared accommodation in the area. Whilst the estate agents' letter also refers to the nearby hospital, no information is given about whether the tenants of the property are interned or employed at the hospital, or what their travel patterns actually are. In the absence of any such information I find that the PTAL rating

reflects my conclusion that the property is not so readily accessible by public transport, cycling and walking as to comply with this strand of policy DM09.

Traffic safety and parking

22. On observing the site on both occasions I was able to park relatively close to the appeal site, although the roads were relatively congested both times. My visits took place during the holiday period, however, and hence I accept the veracity of the two residents writing from the adjoining road of the general parking shortage in the area. The property's front garden has been laid to hardstanding, but it does not benefit from a dropped kerb and no cars were present on the forecourt at the time of my visit. A consultation response from the local highway authority indicates a requirement for off-street car parking for six spaces, but with a proposal to provide only two.

23. The highway authority's response further recommended that justification for the under-provision of off-street car parking, in the form of a survey conducted in line with the 'Lambeth Methodology', should be provided in order to ascertain whether there is sufficient availability of on-street parking to accommodate the potential overspill. No survey has been provided, however, and in its absence I agree with the Council that the HMO use is likely to increase parking pressures in the area, potentially to the detriment of users and to the free flow of traffic, contrary to the provisions of the development plan including policy DM17.

Conclusions on the planning appeal and deemed planning application

24. For the above reasons, although finding that the HMO meets an identified need for such accommodation, I find the proposal to be at variance with the requirements of the development plan to preserve and enhance heritage assets, to demonstrate the avoidance of harm to the character and amenities of the surrounding area, to be accessible by public transport, cycling and walking, and to avoid harm to highway safety and the free flow of traffic. For these reasons the development does not comply with the development plan for the area. No material considerations have been brought to my attention that would justify a decision otherwise than in accordance with the development plan, and accordingly the Appeal A appeal on ground (a) and Appeal B will be dismissed, and I shall uphold the enforcement notice and refuse to grant planning permission.

The Appeal A appeal on ground (g)

25. The appellant points out that the Housing Act protects tenants from being evicted from their homes prior to the end of their tenancies and without sufficient notice being given. It is only once the tenants have all left that the landlord can comply with the notice. It is likely that this would take longer than six months and a period of 12 months is requested.

26. No information is provided as to the period of the relevant tenancy agreements, or what notice periods those tenancy agreements might provide for. In the absence of such information I am unable to conclude that a period of longer than the six months presently stipulated is necessary in order to bring the tenancies to an end. Accordingly, the appeal on ground (g) does not succeed.

Formal Decisions

Appeal A

27. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

28. The appeal is dismissed.

Laura Renaudon

INSPECTOR