The Planning Inspectorate

Appeal Decision

Site visit made on 12 March 2024

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 March 2024

Appeal Ref: APP/H5960/W/23/3331954
7 Leacroft Avenue, Wandsworth, London SW12 8NF

- 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 Dr Mark Deakin against the decision of the Council of the London Borough of Wandsworth.
- The application Ref is 2023/2907.
- The development proposed is change of use of small HMO for up to 6 people (Use Class C4) to an HMO for 8 tenants and the landlord (Use Class Sui Generis).

Decision

1. The appeal is dismissed.

Background and Preliminary Matters

2. The description of development refers to HMO, which stands for house in multiple occupation. The appeal property was initially a dwelling occupied by a single family but it has been used as a small HMO for up to 6 residents. I have treated the small HMO use as a legitimate fallback position in the event of the appeal being dismissed.

3. The appellant's submissions indicate the property is already used as a HMO for 9 residents and so it would appear the development has commenced. For clarity, I confirm my assessment is based on the submitted plans and information, although it is also informed by my observations at the site visit.

4. On 19 December 2023, a revised version of the National Planning Policy Framework was published (the Framework). The parts of the Framework relevant to this appeal remain unchanged and so I do not consider it necessary to invite further comments from the main parties.

Main Issues

5. The main issues are (i) whether the development provides occupiers with acceptable access to public transport, and (ii) whether it provides satisfactory living conditions for all residents having regard to the internal floorspace of bedrooms as well as light and outlook.

Reasons

Planning policy

6. The development plan for the appeal site consists of the Wandsworth Local Plan 2023 (LP). The Council refers to LP policies LP27 and LP29 in its refusal reasons. Part A of LP policy LP29 offers support for new HMOs provided various

clauses are complied with. Paragraph 17.41 in the supporting text to the policy states that part A covers large HMOs, meaning those with more than 6 residents. As such, it is clearly relevant to the assessment of this appeal.

7. LP policy LP27 relates to housing standards for all residential development including conversions and change-of-use schemes. The appellant contends this policy is not relevant as no new dwelling has been created. However, part A.5 of LP policy LP29 requires HMOs to provide a good quality of accommodation in line with LP policy LP27. Therefore, it is appropriate to have regard to LP policy LP27 in my assessment.

Access to public transport

8. Part A.4 of LP policy LP29 requires new HMOs to have access to good levels of public transport. This is defined within the policy as areas with a public transport accessibility level (PTAL) of 4 or higher. It is common ground that the appeal property lies in an area with a PTAL level of 3 and so, on the face of it, the development does not accord with LP policy LP29 in these regards. The appellant suggests that the PTAL system is a blunt tool for measuring public transport accessibility but in light of LP policy LP29 it cannot be ignored.

9. The appeal property is close to other areas that are rated as having a PTAL of 4. It is also a short walk from the HMO to Wandsworth Common railway station with train links to bigger stations within London. I also note the bus stops on Nightingale Lane and Bolingbroke Grove that provide nearby access to buses. The appellant advises that underground stations are within a 15 minute walk from the site. However, despite these services, the PTAL rating for the appeal property indicates it is not in a location with the highest levels of public transport accessibility compared to other parts of Wandsworth Borough.

10. A HMO licence has been granted for the property to be occupied by up to 11 people. However, the evidence fails to show whether accessibility to public transport is a factor considered in applications for a HMO licence. In any event, the issuing the licence fails to address the conflict with LP policy LP29.

11. Residents of a small HMO at the appeal property would live in an area with a PTAL of less than 4, contrary to the provisions of LP policy LP29. However, the appeal development allows more residents than the fallback position and so it would have a worse effect in overall terms on residents' accessibility to public transport. As such, the fallback position fails to address or override the identified policy conflict.

12. The Council has not sought to dispute the claim that the residents of the HMO have access to shops and other services that are appropriate to their needs. Even so, for the reasons given above, I conclude the development does not provide residents with an acceptable level of accessibility to public transport links. In these regards, it would not accord with part A.4 of LP policy LP29.

Living conditions

13. LP policy LP27 requires new residential development to comply with the Nationally Described Space Standard (NDSS). It is the Council's contention that 2 of the bedrooms would not meet the minimum floor space requirement of 7.5m^2. It is clear from the NDSS that any area with a headroom of less than 1.5m should not be counted within the gross internal area unless used for storage.

14. The appellant's final comments state the middle front bedroom at first floor measures 7.28m^2 or 6.49m^2 if a bay window ledge is excluded. Also, it is acknowledged that the middle front bedroom at second floor level has a floor area of 7.02m^2 where the headroom is of at least 1.5m. The overall floor area of this bedroom measures some 9.89m^2 but part of the floorspace is under a low, sloped ceiling. Therefore, the appellant's own floor area figures demonstrate the referred to bedrooms do not meet the minimum stipulations as set out in the NDSS. I am advised that the bedrooms are of a sufficient size to meet HMO licencing requirements but I am obliged to assess the scheme against the provisions of LP policy LP27 and so the NDSS.

15. On my visit I saw each of the 2 rooms are capable of accommodating beds, other furniture and some storage space. Even so, the rooms felt confined. As well as the bedrooms, the residents would have access to the communal kitchen, dining and sitting room areas of the building. However, it cannot be assumed that residents would always want to mix with each other. As the bedrooms are residents' sole private living space, it is important they provide an acceptable living environment that is not unduly cramped. Accordingly, the failure to meet the NDSS counts against the scheme.

16. Even if this appeal is dismissed, the 2 rooms below the NDSS size standards could still be used as bedrooms as part of the small HMO fallback position. However, in such circumstances, less residents would be living at the property with more communal rooms compared to the appeal development. As such, it would be more likely that residents in a small HMO could rely on communal areas to provide private space. Therefore, in overall terms the living environment of a small HMO use of the property would be better for residents compared to that for occupiers of a larger HMO. It follows that the fallback position attracts little weight in support of the scheme in these respects.

17. As an alternative to the submitted details, the appellant has suggested that the 2 bedrooms of substandard size could be used as communal rooms with the ground floor reception and sitting room used as bedrooms. However, that is not the development as shown on the plans before me. I cannot be certain that such a room layout would be acceptable in all other respects or that it would accord with HMO licensing requirements. Consequently, it would be unreasonable to impose a planning condition as suggested that would allow rooms shown as communal spaces to be used as bedrooms.

18. The first floor middle bedroom is served by a bay window that provides the room with daylight and an outlook onto the street. The second floor middle bedroom is served by a rooflight that is quite large and allows a sufficient level of light into the room. Also, the window provides views towards the roofs of houses opposite and of the sky. I find that both rooms benefit from adequate daylight and outlook. Acceptability in these respects does not address nor override the failure to fully accord with NDSS.

19. I note the comments from residents of the property praising its condition and quality. However, none of these address the particular concern over the size of the identified bedrooms. For the above reasons, I conclude 2 of the bedrooms would fail to accord with NDSS and so the development overall does not provide satisfactory living conditions. In these regards, it is contrary to part A.1 of LP policy LP27 and so it does not accord with part A.5 of LP policy LP29.

Other Considerations and Planning Balance

20. My conclusions in respect of the main issues means the change of use to a HMO for 8 tenants and landlord does not accord with the development plan when read as a whole. It follows to consider whether other factors justify granting planning permission.

21. A number of other concerns have been raised by interested parties. However, the Council's objections relate solely to the main issues and it finds the appeal scheme complies with LP policies LP27 and LP29 in all other respects. I agree with the Council and I consider the larger HMO use is not bound to cause unacceptable effects to the character of the area or living conditions of nearby residents, particularly when compared to the fallback position of the small HMO use. Acceptability in these regards is a neutral factor in my assessment.

22. The appellant refers me to Wandsworth Local Housing Needs Assessment 2020 but the summary provided fails to demonstrate a particular need for HMOs. A submitted report[1] explores the reasons for a fall in the numbers of private rented sector properties in London but this fails to identify any specific need for HMOs in the Borough of Wandsworth. The justification for LP policy LP29 explains that HMOs can make an important contribution to local housing provision. Even so, compared to the small HMO fallback position the appeal development only provides accommodation for 3 extra tenants. Accordingly, it makes a modest contribution to the residential stock.

23. Dismissing the appeal may put at risk the occupation of the appeal property by the 3 extra tenants over and above the 6 residents of the small HMO. The appellant suggests the tenants would be made homeless. This would represent an interference with their rights under Article 8 of the European Convention on Human Rights (right to respect for private and family life) as incorporated by the Human Rights Act 1998. These rights are not unfettered and can be interfered with by a public authority in accordance with law in a number of circumstances.

24. There is a legitimate and established planning policy aim to ensure users of property have good accessibility to public transport and acceptable living conditions. No case has been made that the personal circumstances of the existing occupants require them to remain at the property and the evidence fails to show that there is no suitable alternative accommodation. As such, I attach greater weight to the public interest. Dismissal of the appeal is proportionate and so it does not violate the residents' human rights.

25. Overall, the development conflicts with LP policies. Other factors are of insufficient weight to justify allowing the appeal contrary to the development plan.

Conclusion

26. For the reasons given, I conclude the appeal should be dismissed.

Jonathan Edwards

INSPECTOR

[1] Supply of Private Rented Sector Accommodation in London Summary Report July 2023, LSE Consulting and Savills.