
Appeal Decision

Site visit made on 12 August 2024

by L Clark BA(HONS) DIPTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th October 2024

Appeal Ref: APP/T5150/W/24/3339435

23 Chestnut Grove, Wembley, Brent HA0 2LX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr G Bose against the decision of the Council of the London Borough of Brent.
 - The application Ref is 23/3401.
 - The development proposed is single storey rear extension and change of use from a single dwellinghouse to a HMO for six persons.
-

Decision

1. The appeal is dismissed.

Background and Main Issues

2. The proposal is for a single-storey rear extension and a change of use from a single dwellinghouse to a HMO for six persons. The Council has indicated that it has no objection to the single-storey rear extension and, based on the evidence I have no reason to take a different view. The dispute between the parties relates to the change of use from a single dwellinghouse to a HMO for six persons.
3. There are discrepancies within the evidence with regard to the existing use of the appeal property. The application and appeal forms clearly state that the current use of 23 Chestnut Grove is a single-family dwelling (Class C3). However, the appellant's statement refers to the existing use as a dwelling (Class C4), with the proposed development seeking approval to extend and reconfigure to provide 5 bedrooms, and a 6-person House of Multiple Occupation (HMO) (Class C4).
4. I note that No 23 has had a Lawful Development Certificate¹ (LDC) issued on appeal² for a proposed change of use from a dwelling (Class C3) to a small HMO for six persons (Class C4). The Inspector was satisfied that at the time of the application, the proposed use as a Class C4 HMO would have been lawful.
5. S192(4) of the Town and Country Planning Act states that the lawfulness of any use or operations for which a certificate is in force under this section shall be conclusively presumed unless there is a material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness.

¹ Ref 21/4198

² APP/T5150/X/22/3296123

6. Since the time of that application, the Council has introduced an Article 4 direction which removes permitted development rights for change of use from Class C3 to Class C4. Given the evidence and observations on site, I have not been satisfied that the proposed use has begun. As such, I made my determination on the basis of the application form, and the existing/ proposed plans that were submitted with the application and both considered and consulted upon by the Council.
7. The Council contends that the submitted plans include 3 x single and 2 x double bedrooms with a potential occupancy of 7. Despite No 23 having an HMO Licence for occupancy for not more than 7 persons, the planning application is clear that permission is being sought for up to 6 occupants within, Use Class C4. Given that an HMO with 7 occupants would be *Sui Generis*, I have determined the appeal on the basis of a maximum of 6 occupants, which is the development sought on the application form.
8. The main issues in this appeal are:
 - whether or not the appeal site would be an appropriate location for an HMO having regard to development plan policy;
 - whether the development would provide its occupants with acceptable living conditions with particular regard to: a) internal room layouts, floor-to-ceiling height and communal facilities; b) fire safety; and c) cycle and refuse facilities;
 - whether the off-street parking arrangements are adequate having regard to their appearance, drainage and soft landscaping; and
 - whether the development would make adequate provision for urban greening in accordance with development plan policy.

Reasons

Suitability of Location

9. Policy BH7 of the Brent Local Plan 2019-2041 (Local Plan) sets out the Council's approach to proposals for accommodation with shared facilities or additional support. It states amongst other matters, that proposals for self-contained residential accommodation with shared facilities should meet Criteria a) to e).
10. There is no dispute that No 23 is located within an area of good Public Transport Accessibility Level, with good access to amenities, and that the proposed HMO would not lead to an over-concentration of HMOs in the area. As such, there would be no conflict with either Criterion a) or e) of Policy BH7 of the Local Plan.
11. There is however dispute with regards to criteria b), c) and d). Criterion b) will be addressed later in my decision but I shall now turn to criteria d) and c).
12. Criterion d) of Policy BH7 specifically relates to need. The supporting text to Policy BH7 states that whilst the majority of the Borough's housing needs will be met through self-contained accommodation, some will be met through non-self-contained accommodation with shared facilities. The Council's Houses in

Multiple Occupation Supplementary Planning Document 2022 (SPD) reinforces this by acknowledging that HMOs perform an important part in housing people within the Borough.

13. The appellant contends that No 23 has not reverted back to a family dwelling Class C3 use and therefore the proposal would not result in the loss of a family-sized dwelling. Given the contradictions in their evidence, I cannot be certain that a use as a HMO within Use Class C4 commenced prior to the implementation of the Article 4. There is the option for the appellant to apply for a Certificate of Lawfulness of Existing Use or Development under s191 of the Act, should they wish to seek a formal determination on lawfulness. However, that is not my remit under a s78 appeal.
14. I have no evidence before me to demonstrate that there is a specific need for the proposed HMO. Furthermore, there is nothing within the evidence submitted by the appellant that indicates that there is a deficiency of available HMO accommodation that would equate to an identified need. That being the case, the Council's priority, in accordance with Policy BH7, is to retain family-sized dwellings (+3 beds).
15. Criterion c) of Policy BH7 is concerned with ensuring suitable management arrangements to avoid unacceptable impacts on neighbouring amenity. The appellant has not provided any specific details with regard to its management, however given that No 23 has an extant HMO Licence and the management of an HMO is governed by the Housing Act 2004, as reflected in the Council's licensing conditions provided to me by the appellant. I am satisfied that the matter could be addressed by a suitably worded condition if I were minded to allow the appeal. Subject to the imposition of such a condition, I am satisfied that the proposed management of the HMO would not be harmful to the living conditions of the existing neighbours.
16. Notwithstanding this, I conclude that there has not been sufficient evidence to demonstrate that there is a need for the HMO to outweigh the loss of the family dwelling. As such, the development fails to accord with Policies BH7 criterion d) and DMP1 of the Local Plan, which collectively seek to ensure there is a specific need for the particular use within the Borough; and the location, use and type of development complements the locality.

Living Conditions

a) Internal room layouts, floor-to-ceiling height and communal facilities

17. Criterion b) of Policy BH7 of the Local Plan seeks to ensure proposed developments provide occupants with, amongst other matters, an acceptable quality of accommodation appropriate for the needs of its occupants, including communal facilities.
18. The appellant has clarified that the front ground floor bedroom would be utilised as a double. Based on my observations at the site visit, I am satisfied that this room is large enough to accommodate the furniture stipulated in the SPD and would provide the future occupants with good quality accommodation.
19. With regard to the proposed front loft room, I saw that a significant portion of the floor area was compromised by the sloping roof. The appellant does not dispute that a floor-to-ceiling height of 2.14 metres could not be provided over

75% of the floor area and suggests, as mitigation, that the largest bedroom on the first floor be used as a second double and the front loft room as a study. Whilst this suggestion has been noted, I have no plans to show the revised arrangements.

20. Given that the Procedural Guide – Planning Appeals – England is clear that the appeal process should not be used to evolve a scheme, my assessment has therefore been made on the plans submitted to and considered by the Council. Based on my observations and the evidence before me, I am not satisfied that the floor-to-ceiling height of the front loft room would provide future occupants with good-quality sleeping accommodation.
21. The Council contends that the provision of a kitchen to the first floor would constitute an over-provision of kitchens within the property contrary to its SPD, and that the ground floor open plan kitchen/lounge/dining room would measure approximately 36 sqm resulting in an over-provision of communal space. Even if the total amount of communal area exceeds the 30 sqm outlined in the SPD, this is a minimum requirement and not a maximum. Given that the maximum number of occupants would be capped by the C4 Use Classification, I am satisfied the communal areas would provide future occupants with good quality accommodation.

b) Fire safety

22. Policy D12 criterion A) of the London Plan 2021 sets out that all development proposals must achieve the highest standards of fire safety, taking into account factors which include fire risk reduction, fire escape and evacuation and provision for firefighting.
23. The appellant has provided a Fire Risk Assessment dated 21 December 2020. This forms one page and contains limited information regarding the proposed development. It also has a suggested date for review of 21 December 2021. Given that the planning application subject to this appeal was received by the Council on 25 October 2023, and based on the suggested date of the review and the limited information, I have nothing satisfactorily to demonstrate that the proposed development would meet fire safety standards.
24. I have considered the appellant's suggestion of a condition to secure fire safety measures. However, given the sensitivity of the end use, I am not satisfied that the use of a condition would be reasonable in this case.

c) Cycle & refuse facilities

25. No details of cycle or refuse facilities have been provided. I have nevertheless considered the appellant's suggestion of conditions to secure such measures. Given that No 23 has ancillary space in the form of a rear garden, I am satisfied given its size that this could accommodate cycle stands and refuse facilities. As such, these matters could be addressed by a suitably worded condition if I were minded to allow the appeal.
26. In light of my findings above, I conclude that the proposed development would provide future occupants with acceptable living conditions with regard to communal space. It would also provide appropriate cycle and refuse facilities and it would be possible to prevent harm to the living conditions of nearby neighbours with suitably worded conditions. However, this would not be the case with regards to floor-to-ceiling height, the need to demonstrate that

there is a specific need for this type of accommodation, or fire safety. As such, the proposal is contrary to Policies BH7 and DMP1 of the Local Plan, which collectively seek to ensure the location and use of development provide high levels of internal and external amenity and complements the locality. It would also be contrary to Policy D12 of the London Plan which seeks, amongst other matters, to ensure the highest standards of fire safety.

Parking capacity and soft landscaping

27. The area to the front of No 23 is currently laid out in block paving with a drainage channel running parallel to the pavement and an 'L' shaped raised area with planting, which is set along the boundary with the adjoining property and in front of the bay window.
28. There are discrepancies within the appellant's evidence with regard to the existing and proposed levels of parking associated with No 23. The application form and Site Plan state the appeal premises currently has two parking spaces, and that these would be retained as part of the proposed development, however, the appellant's statement refers to only one parking space.
29. There is no dispute between the main parties that only one vehicle parking space can be accessed using the dropped kerb without cars driving over the footway. The Council's Domestic Vehicle Footway Crossover Policy is clear that it is illegal to drive a vehicle across a public footpath without using a properly constructed footway crossing. Despite this, the Council still contends that the provision of two off-street car parking spaces would exceed the maximum allowances and by doing so, would damage the public footway.
30. Policy BT2 of the Local Plan states, amongst other matters, that development should provide parking consistent with parking standards in Appendix 4, which identifies that a maximum parking standard for HMOs is one space per 10 beds.
31. One car could be comfortably accommodated on the existing hard standing by utilising the existing vehicle cross-over. Given that there is no dispute that one accessible car parking space is provided, and that this would be retained, the proposed development accords with parking standards in Appendix 4 of the Local Plan.
32. Criteria e) of Policy BT2 goes on to state, amongst other matters, that development should provide adequate soft landscaping, in the case of front gardens 50% coverage. This coverage is required to offset adverse visual impacts and increases in surface water run-off.
33. Dimensions of the existing planted area have not been provided; however, it was clear from my observations that this was significantly less than 50% of the front area. I also have no evidence that the drainage channel is connected to any soakaway. I have nevertheless considered the appellant's suggestion of a condition to secure such measures. Given the positioning of the existing cross-over point in relation to the front door to No 23, I cannot be certain that 50% of the frontage could be landscaped alongside one vehicle space whilst permitting a clear route for pedestrians to the front door. As such, I am not satisfied that the use of a condition would be reasonable in this case.

34. I conclude that even though one car parking space can be retained to comply with parking standards in Appendix 4 of the Local Plan, it has not been demonstrated that adequate provision for 50% soft landscaping can be achieved. As such, the proposed development would fail to comply with criterion e) of Policy BT2.

Urban greening

35. Policy BH4 of the Local Plan requires all minor developments of less than 10 dwellings to deliver an Urban Greening Factor (UGF) of 0.4. It also refers to Policy G5 of the London Plan, which states that the UGF should be based on specific factors set out in the policy but tailored to local circumstances.
36. There is no evidence before me to demonstrate that a UGF of 0.4 would, or could, be delivered on-site. I have considered the appellant's suggestion that this detail could be conditioned as part of any approval, however, it is not possible to determine from the limited plans if the proposal would make an appropriate contribution to the open, green quality which the Local Plan notes would add to the distinctiveness of the area.
37. Consequently, the proposal would be contrary to Policy BH4 of the Local Plan, the aims of which have been previously set out.

Planning Balance and Conclusion

38. HMO provision forms an important part of the housing supply in the Borough. However, even if there are no harmful effects with particular regard to the parking provision, the amount of communal space, cycle and refuse storage and the future management of the accommodation, I have found that there has not been sufficient evidence to demonstrate the need for an HMO or compliance with other policy requirements relating to fire safety, soft landscaping and urban greening. The quality of internal accommodation would also be compromised due to the floor-to-ceiling height in one of the bedrooms.
39. Overall, I find that the proposal conflicts with the development plan taken as a whole, and the material considerations do not indicate that the decision should be made other than in accordance with it.
40. For the reasons given above, the appeal is dismissed.

L Clark

INSPECTOR