



Appeal Decision

Site visit made on 26 June 2024

by **S Lo LLB M.SRA**

an Inspector appointed by the Secretary of State

Decision date: **16 October 2024**

Appeal Ref: APP/N5090/W/23/3334885

24 Babington Road, Hendon, Barnet, London NW4 4LD

- 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 N Khimani against the decision of the Council of the London Borough of Barnet.
 - The application Ref is 22/3574/FUL.
 - The development is the conversion of single residential dwelling (use class c3) into house of multiple occupation (use class c4) - for maximum 5 persons only
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Decision

1. The appeal is allowed, and planning permission is granted for the conversion of single residential dwelling (use class c3) into house of multiple occupation (use class c4) - for maximum 5 persons only at 24 Babington Road, Hendon, Barnet, London NW4 4LD in accordance with the terms of the application, Ref 22/3574/FUL and the plans submitted with it, subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by the appellant against the Council. This is the subject of a separate Decision.

Procedural matters

3. Based on the evidence and my observations during the site visit, the appeal site appears to be in use as a house of multiple occupation (HMO). It is not contested between the parties that this change of use occurred in December 2022. As such, I have determined the appeal on the basis that planning permission is being sought retrospectively.
4. The main parties have been invited to submit comments in relation to:
 - The Westminster City case¹.
 - The emerging Local Plan and representations made for policy HOU04.
5. The Westminster City case is relevant as it pertains to parking permits and planning obligations. Further information was requested regarding the emerging Local Plan, as it affects the weight of the policies contained within it. Having sought their views, I do not consider that any party has been prejudiced by the inclusion of this information in the determination of this appeal.

¹ Westminster City Council v SSCLG & Mrs Marilyn Acons [2013] EWHC 690 (Admin)

6. The appellant submitted a parking survey with the appeal, which was unavailable during the application stage. Following the Holborn Studios case², regarding the substantive test, I find that the parking survey does not fundamentally change the application; it merely provides further information on general parking conditions. Regarding the procedural test, the Council has had the opportunity to make representations on the survey's findings in their statement. While it is unclear whether consultees and third parties were consulted on the survey, it serves to expand on the planning report's conclusion that there is a slight under-subscription of resident parking bays. Based on the evidence before me, I consider it fair to accept the parking survey. Thus, mindful of the guidance set out in the Inspectorate's 'Procedural Guide: Planning appeals – England' published guidance, I will take the parking survey into account.

Main Issues

7. The main issues are:

- the effect of the development upon the character of the surrounding area;
- the effect of the development on the living conditions of neighbouring occupiers, with regard to noise and disturbance; and
- the effect of the development on car parking and highway safety

Reasons

Character of the area

8. The appeal site is a two-storey mid-terraced property, with an additional room in the roof space. The property includes non-original additions. The street mainly features similar terraced homes, each with small front gardens or driveways and private rear spaces.
9. A large university building providing student accommodation is located across the road. I am advised that there are currently nine licensed HMOs in the local vicinity. The surrounding area is diverse, predominantly consisting of homes, flats, student rooms and HMOs. Therefore, I consider that the area is characterised by mixed residential uses, creating a vibrant and busy mixed residential street.
10. Policy DM09 of the DMP³ encourages proposals for new HMOs, provided they meet specific criteria, including that they will not result in a harmful impact on the character of the surrounding area. The character of the area is already diverse, such that an additional HMO would not be an unusual addition. Given the limited evidence before me of any harm, I do not consider that the development would result in any significant detriment.
11. In conclusion, the development would not have a harmful effect upon the character and appearance of the surrounding area. It would respond to

² Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823

³ Barnet's Local Plan (Development Management Policies) Development Plan Document September 2012

positively to the existing character and amenity of the locality, in accordance with Policies CS5 of the CS⁴ and DM01 and DM09 of the DMP.

12. The Council also cites conflict with Policies CS1 of the CS, DM08 of the DMP and the RDGSPD⁵ and SDCSPD⁶. However, these are not relevant to this main issue as they relate to high level place shaping, new homes or it is otherwise unclear how they are relevant to this main issue. Moreover, I have not been drawn to any wording in these documents that relate to this main issue. Accordingly, they have not been determinative in relation to this main issue.

Living conditions of neighbouring occupiers

13. As the occupiers of the development site are likely to be students, the Council is concerned that the levels of activity and noise will be much more intensive than a single family dwellinghouse. Accordingly, some residents and the Council are concerned that the development would adversely affect the living conditions of neighbouring occupiers, particularly due to an increase in comings and goings, especially late at night.
14. Nonetheless, there is no evidence of any noise complaints being made to the Council regarding the appeal site since the change of use occurred in December 2022. Given the duration of time that has since passed, it is reasonable to expect that any issues would have been reported by now.
15. The high density of existing HMOs and student accommodation indicates that the neighbourhood is already accustomed to the dynamic lifestyle associated with such dwellings. This includes a background level of frequent comings and goings, varied tenant turnover, and a general vibrancy that accompanies a diverse and transient population. Given the underlying level of activity, a new HMO is unlikely to cause a significant change in noise levels or stand out as a source of disturbance.
16. Nevertheless, to address potential noise increases, I shall impose a suitable condition to restrict the occupancy of the appeal site to a maximum of 5 persons to minimise any effect on living conditions. Such a condition would be precise, reasonable in all other respects, and in compliance with the relevant tests in paragraph 56 of the National Planning Policy Framework (Framework)
17. In conclusion, the development would not have a harmful effect upon the living conditions of neighbouring occupiers, with regard to noise and disturbance. It would not have a harmful impact on the amenity of the surrounding area, in accordance with Policy DM09 of the DMP.
18. The Council also cites conflict with Policies CS1, CS5 of the CS, DM01, DM08 of the DMP and the RDGSPD and SDCSPD. However, these are not relevant to this main issue as they relate to high level place shaping, character, new homes or it is otherwise unclear how they are relevant to this main issue. Moreover, I have not been drawn to any wording in these documents that relate to this main issue. Accordingly, they have not been determinative in relation to this main issue.

⁴ Barnet's Local Plan (Core Strategy) Development Plan Document September 2012

⁵ Residential Design Guidance SPD (2016)

⁶ Sustainable Design and Construction SPD (2016)

Planning Obligation – car parking and highway safety

19. The appeal site is located within a controlled parking zone, where vehicles are required to display valid permits under the permit parking regulations. The area also has yellow line parking controls, and there is a large car park nearby. The Council is concerned that the development increase on-street parking levels, leading to conditions detrimental to the free flow of traffic and highway and pedestrian safety. However, they have not provided any detailed evidence regarding local parking deficiencies.
20. The appellant's parking survey found that on the survey date, parking stress in designated bays was 47%, with 31 available spaces. A repeat survey conducted on a later date showed similar results. Even under a worst-case scenario, where the development generates three overspill vehicles, parking stress would only increase to 51%, leaving 28 spaces available. The survey also suggests that HMOs tend to have lower car ownership due to the transient nature of the tenure, making it likely that the actual overspill parking generated will be significantly less. Given the ample parking capacity and the likely low number of additional parked vehicles, the development is unlikely to have any significant negative impact on highway safety or its users.
21. While I acknowledge the Council's concerns about the public transport accessibility of the appeal site, it remains relatively close to transport hubs, and it is not in an isolated location.
22. There are concerns from one of the interested parties that the development could increase pressure on designated disabled parking bays, potentially rendering them unavailable. This indicates that they have protected characteristics for the purposes of the Public Sector Equality Duty (PSED). In determining this appeal, I have had due regard to the PSED contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment, and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. The interested party considers that their use of a disabled parking bay may be prejudiced by the development. However, the enforcement of parking restrictions is a matter for the Council and other authorities and there is limited evidence before me that the development would significantly alter the availability of disabled parking bays. It has been demonstrated that there are sufficient parking spaces available in the locality. Consequently, allowing the appeal would not undermine the aims of the PSED in this case.
23. Following the Westminster City Council case, I acknowledge that a Section 106 agreement could potentially restrict access to parking permits. Nonetheless, as no harmful effect has been demonstrated, the parking restrictions sought by the Council through a s106 agreement would not be necessary to make the development acceptable. Thus, the absence of a planning obligation does not weigh against the development.
24. In conclusion, a planning obligation is not necessary to make the development acceptable, with regard to car parking and highway safety. It would not be appropriate to use planning obligations, in compliance with Policy CS15 of the CS and the Planning Obligations Supplementary Planning Document. Residents will continue to own and travel by car, in compliance with Policy CS9 of the CS.

Sufficient on street parking capacity has been demonstrated, in compliance with Policy DM17 of the DMP.

Other Matters

25. I have been referred to Policy HOU04 in the emerging Local Plan. While I acknowledge the advanced progress of its adoption process and can give this policy significant weight, it does not outweigh the weight I am obliged to give the current adopted plan.
26. The policy introduces an additional requirement that differs from the current Local Plan: the need to demonstrate that the HMO would not create a harmful concentration of such use in the local area. The policy defines a harmful concentration as occurring when three or more of the ten nearest properties are HMOs. It is not disputed between the parties that there are nine licenced HMOs⁷ along Babington Road, with a further one likely to be approved at no 30.
27. Of the ten nearest properties, only one at no 22 is currently an HMO. Even if no 30 had been approved, this would not reach the requisite threshold. This indicates that a harmful concentration has not occurred, and as a result, there is no conflict with Policy HOU04 of the emerging Local Plan.
28. I have considered representations regarding sewers and related infrastructure and illegal substances. However, there is limited evidence before me to substantiate these points. As such, they do not override the conclusions I have reached on the main issues.

Conditions

29. As the change of use has already taken place, a condition relating to the time limit for implementation is not necessary. For the reasons stated above, a condition which requires a planning obligation to prevent future occupants from obtaining parking permits is not necessary.
30. Condition 1 is imposed to specify the approved plans to provide certainty.
31. Conditions 2 and 3 are imposed to ensure that schemes for the storage of refuse and bicycle parking, respectively, are submitted, approved, and implemented to maintain visual amenity and promote cycling. Both conditions have strict timetables for compliance because permission is being granted retrospectively, making it impossible to use negatively worded conditions to secure the approval and implementation of these schemes before the development takes place. These conditions also ensure that enforcement action can be taken if the requirements are not met.
32. Condition 4 is imposed to limit the number of people occupying the appeal site HMO to five. This is necessary to ensure that there are a reasonable number of occupiers, thereby limiting any potential harmful effects on the neighbouring community.

⁷ Nos 12, 22, 32, 38, 42, 48, 52, 60, 64

Conclusion

33. For the reasons given above, the appeal should be allowed.

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INSPECTOR

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be carried out in accordance with the following approved plans: 24BABINGTONRD-201, 24BABINGTONRD 202, Site Location Plan.
2. Unless within 3 months of the date of this decision, a scheme for refuse (which includes the details of enclosures and screened facilities for the storage of recycling containers and wheeled refuse bins or other refuse storage containers where applicable, together with a satisfactory point of collection), is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 1 month of the local planning authority's approval, the use of the site shall cease. Thereafter, all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.
 - If no scheme in accordance with this condition is approved within 3 months of the date of this decision, the use of the site as an HMO shall cease, and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.
 - Upon implementation of the approved refuse scheme specified in this condition, that scheme shall thereafter retained.
 - In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.
3. Unless within 3 months of the date of this decision, a scheme for bicycle parking (which includes the details of 5 cycle parking spaces including the type of stands, gaps between stands, location and type of cycle store facilities), is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 1 month of the local planning authority's approval, the use of the site shall cease. Thereafter, all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.
 - If no scheme in accordance with this condition is approved within 3 months of the date of this decision, the use of the site as an HMO shall cease, and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.
 - Upon implementation of the approved bicycle parking scheme specified in this condition, that scheme shall thereafter retained.
 - In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the

operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

4. The house in multiple occupation hereby approved shall be occupied by no more than 5 persons at any one time.