Planning Inspectorate

Appeal Decision

Site visit made on 6 March 2025

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th April 2025

Appeal Ref: APP/X5210/W/24/3354215
20 Busby Place, Camden, London NW5 2SR

- 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 Euston Properties Ltd against the decision of the Council of the London Borough of Camden.
- The application Ref is 2022/1143/P.
- The development proposed is the change of use from a 6-bedroom single family dwelling house (Class C3) to a large 11-bedroom house in multiple occupation (Sui Generis) with minor external alterations including the erection of a bike store.

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Euston Properties Ltd against the Council of the London Borough of Camden. This application is the subject of a separate Decision.

Preliminary Matters

3. The development has been undertaken. I am therefore considering the appeal retrospectively.

4. The description of development was amended during the consideration of the planning application. I have determined the appeal based on the amended description as set out above.

5. The Council's third reason for refusal relates to the effect of the proposed bike store on the character and appearance of the area. The Council have accepted the appellant's suggestion that this could be conditioned should the appeal be allowed. I have no reason to form a different view and will consider the appeal on the remaining reasons for refusal.

Main Issues

6. The main issues are 1) whether or not the development has made provision for an appropriate amount of low-cost or affordable housing, 2) whether or not acceptable living conditions are provided for occupants, and 3) the effect of the development on sustainable travel with specific regard to the requirement of making the development car free.

Reasons

Low-cost or affordable housing

7. The appeal property is a large end of terrace property with accommodation over six floors. The development subject to the appeal has converted what was previously a 6-bedroom dwellinghouse into an 11-bedroom house in multiple occupation (HMO).

8. Policy H10 of the Camden Local Plan (2017) relates to housing with shared facilities, in other words HMOs. The policy outlines that such developments will be supported where, amongst other things, the development is secured as a long-term addition to the supply of low-cost housing, or otherwise provides an appropriate amount of affordable housing, having regard to Policy H4 - Maximising the supply of affordable housing.

9. Policy H4 is aimed at maximising the supply of affordable housing. The policy states that the Council will expect a contribution to affordable housing from all developments that provide one or more additional homes and involve a total addition to residential floorspace of 100sqm GIA or more.

10. Neither party claim that the previous 6-bedroom dwelling constituted a low-cost or an affordable property. There is therefore no net loss in this regard. In the appeal development, there has not been an additional home created, nor has there been any additional residential floorspace created. Although the appeal development has resulted in the creation of a large HMO, it is nevertheless one unit of residential accommodation, and I observed on my site visit the shared facilities throughout the property which maintain the property as one unit. There is therefore no net increase in additional homes or residential floorspace. The development is therefore not of the type referred to under Policy H4 for which the Council would expect a contribution to affordable housing.

11. It follows that focussing on criterion (f) of Policy H10 as outlined above, that having regard to Policy H4, as is required, the development not being of the type that the Council would expect a contribution to affordable housing, the ‘appropriate amount’ of affordable housing is therefore nil. The Council have commented that Policy H10 makes no requirement for Policy H4 to be applied, and that the reference is only in order to calculate the appropriate amount of affordable housing. My consideration has indeed used Policy H4 to calculate the appropriate amount of affordable housing. The Council also set out that ‘having regard to’ does not mean ‘apply directly’. There is, however, no other mechanism that is referred to and I note that the supporting text states ‘in accordance with’.

12. It is suggested by the Council that such a finding can not be correct, as the intention of Policy H4 is to ensure that a contribution is made to affordable housing in the absence of a long-term addition to the supply of low-cost housing. As outlined above, however, the policy makes an exception as contributions are only expected from developments that provide one or more additional homes and involve a total addition to residential floorspace of 100sqm GIA or more. It is therefore not the intention of the policy to secure affordable housing in all cases.

13. The Council go on to suggest that such a finding would mean that criterion (f) serves no purpose in the absence of securing long-term low-cost housing. It would, however, be applicable to all developments that provide one or more

additional homes and involve a total addition to residential floorspace of 100sqm GIA or more.

14. Having regard to such a requirement, it is also notable that the Planning Practice Guidance outlines that planning obligations for affordable housing should only be sought for residential developments that are major developments. This is echoed in the National Planning Policy Framework (the Framework) which outlines that the provision of affordable housing should not be sought for residential developments that are not major developments. The appeal development is not a major development[1].

15. Therefore, having regard to the above policies, the development does not trigger an affordable housing requirement. It does not result in an additional home or additional residential floorspace. Having regard to Policy H4, it complies with the requirement of Policy H10 (f) insofar as it provides an appropriate amount of affordable housing, that being nil.

Living conditions

16. In terms of whether or not the development provides acceptable living conditions, the Council's concerns relate to two bedrooms that are situated in the sub-basement level. Along with much of the internal aspects of the property, I was able on my site visit to observe the situation for these bedrooms which are identified on the submitted plans as bedrooms 1 and 11.

17. Both bedrooms are situated at the sub-basement level. Each has a small window located relatively high in the corner of each room. Both windows are set behind a security grill. Bedroom 1 has the smaller of the two windows and was fitted with an obscure film. The window is positioned in part of the room where the en-suite protrudes into the room leaving a small area before the main part of the room. In bedroom 2 the window is slightly larger but has a similar high-level position in the corner of the room. Both windows look onto a stepped lightwell with retaining walls and railings to either side.

18. The arrangement outlined above results in an extremely poor outlook from these bedrooms, with the outlook mainly being confined to the stepped lightwell and its side walls. This results in an oppressive and overbearing sense of suppression when in these rooms. My site visit was undertaken around midday on a clear day in springtime. At the time of my visit each room was receiving an adequate level of light, with reasonable levels of sunlight, particularly in bedroom 2. Whilst this is no doubt aided by the southern orientation of the windows, given the sunken nature of the windows it is unlikely to be the case for much of the day, particularly during late autumn and winter and when combined with the scale of surrounding buildings. Nevertheless, I find that the levels of daylight and sunlight are secondary to the unacceptable levels of outlook.

19. The Council set out how the pre-existing arrangement has never been granted planning permission to be used as habitable floorspace. The appellant however outlines that the space is lawful as part of the former dwellinghouse. The pre-existing plans show that these bedrooms were formed from a space identified as a Media Room. Such a space would generally not be used for sleeping, cooking, living or eating and could therefore be reasonably deemed not to be a habitable

[1] The Town and Country Planning (Development Management Procedure) (England) Order 2015

room. I also note that the pre-existing plans show that all six bedrooms of the previous property were located at the ground, first, second and third floor level. This is in addition to the other main habitable rooms namely the reception room, kitchen and breakfast room being located on the basement and ground floor levels.

20. Either way, the planning background does not justify allowing unacceptable living conditions for occupants. I acknowledge that other rooms in the property, including the communal space and other bedrooms experience acceptable levels of outlook and light, however bedrooms in HMOs are typically more frequently used for longer periods of time given the unrelated nature of the occupants. Therefore, the impact on living conditions as it relates to bedrooms arguably has greater significance.

21. I acknowledge that the Council has granted an HMO licence, and this includes for the use of bedrooms 1 and 11. The processes and procedures for considering and obtaining an HMO licence are separate from the planning process. It therefore has limited weight in favour of the appeal and does not justify the harm I have identified.

22. I therefore find that due to the outlook from bedrooms 1 and 11, there are unacceptable living conditions for occupants. The development is therefore contrary to Policy A1 of the Camden Local Plan (2017) in terms of ensuring acceptable levels of amenity, which includes outlook.

Sustainable travel

23. Policy T2 of the local plan requires that all new developments in the borough will be car-free. This is in order to limit the opportunities for parking to reduce car ownership and to reduce air pollution and congestion and increase the attractiveness of travel by non-car modes.

24. The policy outlines how the Council will use legal agreements to ensure that future occupants are aware that they are not entitled to on-street parking permits.

25. The Council refused planning permission for, amongst other things, the absence of a legal agreement to secure measures to ensure the development was ‘car-free’. The appellant has submitted a completed Unilateral Undertaking (UU) that includes a commitment that the development shall constitute car-free development.

26. The Council have outlined how the appellant has not paid their requested legal fee and as such has chosen not to review the agreement. It is necessary, however, as part of the appeal that I consider this obligation against the three tests set out in the Framework and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.

27. I am satisfied that the commitment that the development constitutes a car free development would be necessary to make the development acceptable in planning terms. Furthermore, it would be directly related, and fairly and reasonably related in scale and kind, to the development. The obligation therefore meets the relevant tests.

28. I note, as highlighted by the Council, that the UU does not include any payments to the Council of legal fees. While LPAs have powers to secure compliance with

planning controls, there is no specific statutory requirement that they do so – the powers are discretionary. The provision to charge for them is not explicitly included in the CIL Regulations so, as a result, any requirement for funding to meet the legal costs of LPAs in securing compliance with a planning obligation would still need to satisfy the three tests. As I have considered the agreement and found it to comply with the tests, a payment of a legal fee to the Council is not warranted for this appeal in order to overcome the reason for refusal of planning permission. In other words, the failure to pay the Council's legal fee would not be a reason to dismiss the appeal in this instance, even though it is accepted practice for developers to pay the reasonable legal costs of the Council in dealing with an obligation.

29. I therefore consider that the UU would secure the requirement that the development is car-free and thus would contribute to ensuring the attractiveness of sustainable travel modes. The development therefore complies with Policy T2 of the Camden Local Plan (2017) in terms of ensuring developments are car-free.

Other Matters

30. I acknowledge that the members' briefing pack did not set out that it was considered that the development failed to provide acceptable living conditions for occupants, which subsequently formed the Council's second reason for refusal. Whilst this would have no doubt been subsequently frustrating for the appellant, the briefing pack was not the Council's formal decision on the application and the Council are not bound by its contents. I therefore give this matter limited weight in the appeal.

Conclusion

31. Although I have found that the development is not contrary to policies designed to deliver low-cost or affordable housing, or those policies designed to ensure that developments are car-free, the development fails to provide acceptable living conditions for occupants in terms of the outlook from habitable rooms within the development. It is contrary to the relevant policy in this regard.

32. I therefore conclude that the development conflicts with the development plan for the area when considered as a whole and there are no identified other considerations that outweigh this conflict.

33. For the reasons set out above, and having had regard to all other matters raised, I therefore conclude that the appeal should be dismissed.

A M Nilsson

INSPECTOR