Appeal Decision

Hearing held on 21 May 2019

Site visit made on 21 May 2019

by Simon Warder MA BSc(Hons) DipUD(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 May 2019

Appeal Ref: APP/X5210/W/18/3219208
38 Pandora Road, London NW6 1TR

- 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 Mr N Patel against the decision of the Council of the London Borough of Camden.
- The application Ref 2018/1841/P, dated 6 April 2018, was refused by notice dated 17 October 2018.
- The development proposed is described as '(i) change of use from abandoned property to single dwelling and (ii) formation of access for disabled persons.'

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effects of the proposal on:

   - the stock of housing with shared facilities;
   - parking stress and highway congestion in the surrounding area.

Reasons

Stock of Housing with Shared Facilities

3. Policy H10 of the Camden Local Plan 2017 (LP) seeks to resist the loss of housing with shared facilities (houses in multiple occupation (HMOs)) in order to meet the needs of small households with limited incomes and modest space requirements.

4. It is common ground that the property has been in HMO use in the past, although there is no planning permission for that use. The appellant contends that the property is no longer in that use, having been abandoned. It is not for me to reach a definitive conclusion on the lawfulness of the HMO use. It is open to the appellant to make a Certificate application to establish the lawfulness or otherwise of the HMO use. However, the existing use of the property is relevant to my consideration of whether LP Policy H10 is applicable to the appeal proposal.

5. Both parties have drawn my attention to case law on the question of abandonment, including the four tests to be applied[1]. The appellant advises that lettings ceased in early 2017 and showers, hand basins, WCs and kitchens were removed by 1 June 2017. These dates are not disputed by the Council. Nor is there anything to suggest that the property has been used for another purpose since then. The period of non-use is, therefore, in the order of two years. Whilst this is longer than the nine months considered by the Council when it determined the application, it is still a short period of time compared to other cases where abandonment has been demonstrated.

6. This point was noted in the Counsel's advice quoted in the appellants' Planning, Design and Access Statement (PDAS) (albeit when the period was around nine months). At the hearing the Council referred to cases involving periods of more than a decade where abandonment was not established. This was not challenged by the appellant. Consequently, I find that the current period of non-use is not long enough to conclusively demonstrate abandonment.

7. The property is in fairly good physical condition externally and internally. I have no reason that the works identified in the appellant's statement are required. However, they are not particularly extensive and there is no substantive evidence to suggest that undertaking them would be impractical or uneconomic or that the property has fallen into a state of irretrievable disrepair. As such, I consider that the physical condition of the property does not point compellingly towards its abandonment.

8. It is plain from the property owner's action in removing fittings from the lettable rooms and in the correspondence at Annex A of the PDAS that the owner's intention was to cease the use of the property as an HMO. Nor is there any intention to resume the use. However, the appellant was also unambiguous at the hearing that the underlying reason for ceasing the use is to demonstrate abandonment of the HMO. This would avoid the proposal to use the property as a single dwelling conflicting with LP Policy H10. There is nothing to suggest that the use of the property as an HMO is no longer viable and I have already found that its physical condition is not an impediment to that use. The Council is clear that it sees no planning barriers to the resumption of the HMO use and I have not been made aware of any local opposition to the use.

9. Having regard to these considerations, the owner's aim of seeking simply to circumvent a development plan policy would run counter to the plan-led system, particularly given the short period of non-use. Moreover, case law has established that the owner's intentions should be viewed objectively and not elevated above the other relevant considerations. Taking the four tests together therefore, I consider that limited weight can be given to the claim that the HMO use has been abandoned.

10. The appellant also contends that the property was in use as an HMO for less than the 10 years necessary to render it immune from enforcement action. It argues that the use commenced in September 2007. This is based on the officer's report for planning application 2012/5162/P which states that 'the property had been a licenced HMO for the past five years.'

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[1] In particular, Trustees of Castell-y-Mynach Estate v SSW [1985] JPL 40, Hartley v MHLG [1970] 2 WLR 1 and Hughes v SSETR & South Holland DC [2000] JPL 826

11. Although the Council has not provided specific evidence to refute the date advanced by the appellant, it considers that the date that the use commenced is not clear. The date of commencement of the use put forward by the appellant is based on a brief reference in a report whose purpose was not to ascertain the lawful use of the property. The reference does not definitively establish that the use was not in existence for more than 5 years before the report was written. The period of HMO use claimed by the appellant falls only slightly short of 10 years. Therefore, in view of the uncertainty over when the HMO use commenced, I can give limited weight to the contention that the use is not immune from enforcement action.

12. Based on the available evidence therefore, I find that the property should be regarded as housing with shared facilities for the purposes of this appeal. As such, the appeal proposal falls to be determined in accordance with LP Policy H10. Clause (g) of the policy provides an exception to the aim of resisting the loss of HMOs where it can be demonstrated that the accommodation is incapable of meeting the relevant standards (LBC Minimum HMO Standards, May 2016). The property has been licensed for HMO use in the past, although, as the appellant points out, the standards have been updated since the license was last granted. The appellant has identified deficiencies in the property which mean that it would not comply with the current standards. The Council does not dispute that works would be required to allow the property to be used as an HMO. However, it points out that since the property had a license in the relatively recent past, it would be reasonable to expect a licence would be granted again.

13. It is likely that the property would not meet the relevant standards in its current condition. However, the test in clause (g) is whether the accommodation is 'incapable' of meeting those standards. To my mind, this requires consideration to be given to whether it would be capable of being brought up to the relevant standards. There is no firm evidence to demonstrate that, subject to carrying out reasonable works, it would not be capable of meeting those standards. Therefore, I find that the exception in clause (g) does not apply to the appeal proposal.

14. The need to protect HMO's is set out in the supporting text to Policy H10 by reference to, amongst other things, data from the 2011 Census and a Private Sector Housing Condition Survey. The Council also points to continued losses of HMOs through changes of use. The appellant does not dispute the aims of the policy and I consider that they are soundly based. Overall therefore, I find that the proposal would result in the loss of housing with shared facilities for which there is a demonstrable need. Consequently, the proposal would conflict with LP Policy H10.

Parking Stress and Highway Congestion

15. Policy T2 of the LP requires all new development to be car-free and states that the Council will not issue on-street or on-site parking permits for new development. Further, it will use legal agreements to ensure that future occupiers are aware that they are not entitled to permits. No legal agreement has been submitted with the appeal proposal. The second reason for refusal alleges that, in the absence of an agreement, the proposal would be likely to lead to unacceptable parking stress and congestion in the surrounding area.

16. Limited evidence has been provided on levels of parking stress and congestion. The Council's evidence is that, in the relevant controlled parking zone, 9.2 permits have been issued per 10 on-street spaces and I saw on the site visit that spaces in the vicinity of the appeal site are well used. Few, if any properties in the area have off-street parking. Whilst the Borough as a whole may experience high levels of congestion and associated air pollution, no evidence of problems in the area around the appeal site has been presented.

17. In view of my conclusion on the first main issue, it is also appropriate to consider the effects of the property when used as an HMO alongside the proposed use as a single dwelling. The Council confirmed that there is nothing to prevent HMO occupiers of the property from applying for parking permits. I recognise that HMO occupiers are more likely to have lower incomes and less likely to own cars. However, the property is laid out to provide seven lettable rooms and this would be a considerably more intensive form of occupation than its use as a single dwelling. As such, I consider that there would be little difference in the aggregate parking demand and traffic generation whether the property was in HMO or single dwelling use. Consequently, the proposal would not have a greater impact on parking stress and congestion than the HMO use.

18. Nevertheless, in the absence of a legal agreement, the proposal would conflict with the underlying aim of LP Policy T2 to make all new development car-free through the use of agreements. The appellant considers that a condition could be used to secure car-free development. It points to the support for the use of conditions in preference to planning obligations in the National Planning Policy Framework (the Framework) and the Planning Practice Guidance. The Framework also advises that consideration should be given to whether conditions could be used to make otherwise unacceptable development acceptable.

19. Nevertheless, even if I found that a condition could be used to secure car-free housing, it would not overcome my concerns regarding the first main issue. In the overall planning balance, the development would still be unacceptable.

Other Matters

20. The Council has expressed concern that insufficient details have been provided of the proposed front boundary treatment and ramp. However, had I been minded to allow the appeal, this matter could have been dealt with by condition.

Conclusion

21. For the reasons set out above, the appeal should be dismissed.

Simon Warder

INSPECTOR

Appearances

FOR THE APPELLANT

Roger Pidgeon	Lamont Planning Associates

FOR THE COUNCIL

David Fowler	Principal Planner, London Borough of Camden
William Bartlett	Solicitor, London Borough of Camden