
Appeal Decisions

Site visit made on 10 July 2017

by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17 July 2017

Appeal A: Appeal Ref: APP/F5540/X/17/3168812 112 Hogarth Gardens, Hounslow, TW5 0QT

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mrs Mauli Arora against the decision of the Council of the London Borough of Hounslow.
- The application Ref 00613/112/LAW1, dated 16 October 2016, was refused by notice dated 29 November 2016.
- The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is a material change of use from Class C3 to Class C4 HMO with 8 unrelated persons.

Summary of Decision: The appeal is dismissed.

Appeal B: Appeal Ref: APP/F5540/W/17/3168826 112 Hogarth Gardens, Hounslow, TW5 0QT

- 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 Nischal Arora against the decision of the Council of the London Borough of Hounslow.
- The application Ref 00613/112/P9, dated 18 October 2016, was refused by notice dated 5 December 2016.
- The development proposed is the change of use from C3 to an HMO (Sui Generis) housing 8 unrelated individuals.

Summary of Decision: The appeal is allowed and planning permission granted subject to conditions set out below in the Formal Decision.

Procedural Matters

1. The appeals concern the same property and are, in effect, for the same proposed development. Therefore, although the Appellants are different the appeals have been linked together.
2. As at 16 October 2016 the property was a Class C3 single family dwelling, albeit with extensions comprising a single storey rear, two storey side and a rear dormer. I have been advised by the Appellant that since 4 December 2016 the property has been in use as a six person Class C4 HMO pursuant to permitted development rights¹. I will take this into account in my determination of the s.78 appeal.

¹ See below

Appeal A: The LDC appeal

3. The main issue in this appeal is whether the material change of use from Class C3 to a Class C4 HMO with eight unrelated persons would have been lawful on the date that the application was made, that is, on 16 October 2016.
4. The Appellant's case is that there would be no material change of use from a Class C3 dwelling to a large HMO whereas the Council's reason for refusal is that 'the use as a large HMO, up to eight unrelated people, would constitute a material change of use as it would result in intensification that would alter the character of the locality and affect neighbours' living conditions in a manner not likely to be experienced if the property were in use as a single family dwelling'.
5. The meaning of development in s.55 of the 1990 Act includes the making of any material change in the use of any buildings or other land and, subject to a number of specified exceptions, planning permission is required for the carrying out of any development of land². One of the specified exceptions is provided for by Article 3 of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO) pursuant to which planning permission is granted for the classes of development described as permitted development in Schedule 2. One of the classes of development is Class L of Part 3 of Schedule 2 which permits the change of use of a building from Class C3 of the Schedule to the Use Classes Order³ to a use falling within Class C4 of that Schedule.
6. Pursuant to the Use Classes Order, Class C3 is the use of a dwellinghouse by a single household and Class C4 is the use of a dwellinghouse by not more than six residents as a house in multiple occupation. Therefore as a matter of fact a HMO for eight unrelated people as sought by the Appellant cannot be a Class C4 use because a Class C4 use is limited to six residents.
7. The manner in which the Appellant has put her case, that is, that there would be no material change of use from a Class C3 dwelling to a Class C4 HMO with eight persons goes to the planning merits which do not fall to be considered in a LDC appeal. There is no power in an appeal under s.192 such as this to amend or vary the description of the LDC sought therefore the change of use as described by the Appellant is not permitted development and the appeal fails.

Appeal A: Conclusions

8. Although the reasons given above are different from those of the Council, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a material change of use from Class C3 to Class C4 HMO with 8 unrelated persons was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Appeal B: The s.78 appeal

9. From the notice of refusal I consider that the main issues are whether the property is suitable for conversion to a HMO; the effect of a HMO use on the number of small family homes; the effect of a HMO on neighbours' living

² S.57 of the 1990 Act

³ The Town and Country Planning (Use Classes) Order 1987 as amended

conditions with regard to noise and disturbance and pedestrian and vehicular activity; and the impact of a HMO on highway safety and parking in the area.

The appeal property

10. The appeal property comprises a triangular corner plot facing onto Hogarth Gardens not far from the junction with Heston Road with a two storey semi-detached building that has been extended to the side, rear and in the roof⁴. The properties in Hogarth Gardens are residential and on Heston Road there are a variety of different uses such as a school and a church. Although No 112 is described in the application as Class C3 use (single household) at the time of my visit it was in use as a Class C4 use (small HMO for six people).
11. I note that there is a HMO licence dated 1 February 2017 valid from 6 January 2017 for the period 1/5 years for eight people but the licence 'does not guarantee that the property has been inspected and approved as being of an acceptable standard'.

Whether the property is suitable for conversion to a HMO

12. With the various extensions the property is a large one and in its current layout it comprises eight bedrooms of varying sizes each with its own bathroom/ensuite; a living room; a kitchen; a small dining room; and a shared bathroom. One of the bedrooms in the loft was small and with the sloping roof, particularly in the ensuite, it could be an awkward space in which to live but otherwise I considered the bedrooms provided satisfactory accommodation. The communal areas likewise provided satisfactory space and accommodation.
13. The amenity space was accessible from the dining room and from Room 1 on the ground floor for the occupier of that room. The amenity space was a rather awkward shape being a corner plot but the space provided was to my mind adequate for the proposed eight residents.
14. Hounslow Local Plan Policy SC10 requires a minimum original floor area greater than 130sq m for a property to be suitable for conversion to a HMO and the original floor area of No 112 was 94sqm. However, since the various extensions it now comprises over 200sq m of floor area. Whilst the extent of the floor area is not original I consider that, given the current layout, the property is suitable for conversion from a single household use to a HMO and that there is no breach of Policy SC10 in this respect.

The effect of a HMO use on the number of small family homes

15. Hogarth Gardens appears to comprise single household dwelling and property at No 112, although large, could be suitable for family use. However, the proposed HMO use would be a residential one and it would not, to my mind, significantly affect the character of the area or have any significant effect on the number of small homes in the area given the recognition in Policy SC10 that HMOs are a responsive and flexible part of the range of housing provision necessary to meet the needs of individuals.

⁴ The Council sets out the various planning permissions that have been granted for the extensions to the property in the documents submitted in the appeals

The effect of a HMO on neighbours' living conditions with regard to noise and disturbance and pedestrian and vehicular activity

16. I appreciate that eight individuals may come and go at different times of the day and night and that there would be a significant number of people coming and going, particularly if the residents had visitors. In addition, in living separate lives with different social and other activities their way of life would be different from a single family use but given the size of the property it would be likely that a large family would generate a similar amount of activity.
17. I do not consider that the level of activity generated by an eight person HMO would be so significantly different from a large family so as to cause harm by way of noise and disturbance and I note that No 112 is the first property in Hogarth Gardens from Heston Road and there would be no need for residents to walk past other residential properties as they come and go.
18. Although the application is for a change of use from a single family dwellinghouse to a large HMO as a matter of fact the property is now a small HMO for six people by virtue of permitted development rights. I have not been advised of any complaints about this current use which has been subsisting for some months. The use of the property by two more people would, in my mind, be unlikely to result in any significant additional activity that could lead to noise and disturbance resulting in harm to neighbours' living conditions.
19. Heston Road is a busy road and noise from traffic was noticeable in Hogarth Gardens. In addition the noise of aircraft approaching Heathrow was overwhelming at times during my visit. I therefore do not consider that this part of Hogarth Gardens could be properly described as a quiet residential area and the impact of noise and disturbance generated by eight residents would not be likely to be significant.

The impact of a HMO on highway safety and parking in the area

20. There would be space for two cars in the front of No 112. There are no parking restrictions on Hogarth Gardens and most properties have off-street parking, some for two cars. The number of cross-overs reduces the number of on-street spaces but a Parking Stress survey from Alpha Parking⁵ carried out in the early hours of Monday and Tuesday mornings in January showed 76% spaces full in Hogarth Gardens⁶; and as 85% is the level for a cause for concern the conclusion was that parking levels were not high for a London Borough.
21. The appeal site has a PTAL⁷ of 1b which means that it has very poor accessibility to public transport links. It is over 1.5 km from the closest town centre but within 150m of a large neighbourhood centre. Whether this would result in each of the proposed eight occupiers having their own cars is a matter for speculation and I noted, despite the PTAL rating, that there were several bus routes along Heston Road and the walk to the nearest underground station was not excessively long.
22. So far as car ownership is concerned, whilst I have no evidence about the current position I note from the tenancy agreements supplied by the Appellant

⁵ Submitted by the Appellant dated 24 January 2017

⁶ Slightly less on the second day

⁷ Public transport accessibility level

that only two of the occupiers have the right to park on the front of the property. Other residents would have to park on-street if they had vehicles.

23. In the circumstances I conclude that, even though it would not fully accord with Local Plan Policy EC2 in that the site has a low accessibility rating, the HMO use would not result in harm to highway safety and parking in the area.

Local Plan Policy

24. The Council assessed the application against a number of Local Plan Policies including Policy SC10, however, this Policy was not cited on the decision notice. The error was brought to my attention in the Council's documents. Whilst I appreciate the Appellant's concerns about this, I have to take into account the development plan policies that are relevant and Policy SC10 is applicable in this appeal.
25. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise⁸. Policy SC10 supports the conversion of larger houses to HMO use subject to the proposal satisfying a number of criteria. From the reasons set out above with regard to the main issues I conclude that although the change of use proposed would not fully accord with the development plan there are sufficient material considerations that allow planning permission to be granted.

Conditions

26. As well as the usual time limit, the Council has suggested a number of conditions. The proposed floor plan dated 16 October 2016 is different from what I saw on my visit, therefore a condition that the layout for eight unrelated persons shall be submitted to the Council and that it be adhered to in future would ensure a proper layout of the premises. Similarly a condition limiting the number of residents would be necessary to ensure that there was no additional noise and disturbance. I noted that there appeared to be adequate facilities for refuse and recycling storage at the front to the property but that cycle storage was at the rear; in order that the former is maintained and the latter be made more accessible I will impose a suitably worded condition.

Other Matters

27. Circular 8/10 quoted by both the Appellant and the Council has been repealed and can no longer be taken into account.
28. The Appellant has referred to an approval for a change of use to a HMO at a property in St Paul's Close⁹, however, this is a different application in a different location and it is not comparable with the application in this appeal.

Appeal B: Conclusions

29. For the reasons given above, and taking all other matters into account, I conclude that the property is suitable for conversion to a HMO; the HMO use would not have a harmful effect on the number of small family homes; the HMO use would not have a harmful effect on neighbours' living conditions with regard to noise and disturbance and pedestrian and vehicular activity; and the

⁸ S.38(6) of the Planning and Compulsory Purchase Act 2004 and s.70(2) of the 1990 Act

⁹ Ref: 00989/43/LAW3

HMO use would not have a harmful impact on highway safety and parking in the area. I therefore conclude that the appeal should be allowed.

Decisions

Appeal A: Appeal Ref: APP/F5540/X/17/3168812

30. The appeal is dismissed.

Appeal B: Appeal Ref: APP/F5540/W/17/3168826

31. The appeal is allowed and planning permission is granted for the change of use from C3 to an HMO (Sui Generis) housing 8 unrelated individuals at 112 Hogarth Gardens, Hounslow, TW5 0QT in accordance with the terms of the application, Ref 00613/112/P9 dated 18 October 2016 subject to the following conditions:

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall not commence until details of the layout of the premises to accommodate 8 unrelated persons has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and retained thereafter.
- 3) No more than 8 persons shall occupy the property 112 Hogarth Gardens, Hounslow, TW5 0QY at any one time.
- 4) The development hereby permitted shall not commence until details for the provision of refuse and recycling storage and cycle storage at the front of the premises have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and retained thereafter.

Gloria McFarlane

Inspector