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# Appeal Decision

Site visit made on 11 June 2019

**by G Powys Jones MSc FRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 11<sup>th</sup> July 2019**

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**Appeal Ref: APP/E5900/W/19/3225065**  
**27 Jamestown Way, London, E14 2DE**

- 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 Jason Zhou against the decision of the Council of the London Borough of Tower Hamlets.
  - The application Ref PA/18/01648, dated 12 June 2018, was refused by notice dated 19 September 2018.
  - The development is retrospective change of use from 6 person HMO (use class c4) to 9 person HMO (sui generis).
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## Decision

1. The appeal is allowed and planning permission is granted for the retrospective change of use from 6 person HMO (use class c4) to 9 person HMO (sui generis) at 27 Jamestown Way, London, E14 2DE in accordance with the terms of the application Ref PA/18/01648, dated 12 June 2018, subject to the conditions identified in the attached Schedule to this decision.

## Preliminary matters

2. In the interests of accuracy the description of the development used by the Council in its decision has been adopted in preference to that contained in the application form.
3. As the description implies, the change of use has already taken place, and the appellant wishes to retain the use of the premises as a 9-person House in Multiple Occupation (HMO). I shall proceed on this basis.

## Main issues

4. The main issue are the effect of the change of use on: (a) the living conditions of existing and future occupants of the property with particular reference to the adequacy of living space and facilities; and (b) on neighbouring living conditions with reference to noise, activity levels and local character.

## Reasons

### *Living conditions*

5. The Council says that the 'approved' use of the appeal property is a HMO for up to 6 persons (class C4). Thus it is the ability of the property to satisfactorily absorb three additional persons that is at issue. In this regard the Council acknowledges that it does not have planning policies specifically directed to

- HMOs in terms of quality of accommodation. It refers, however, its own general housing policies, the London Plan and the London Plan Housing Supplementary Planning Guidance (SPG), but does not refer to any HMO specific space standards.
6. Instead, the Council's representations are based on what appear to me to be qualitative judgments as to the nature of the internal accommodation and facilities, including the adequacy of kitchen, living and dining space.
  7. Reference is made to a passage in the SPG, which provides that schemes for large HMOs should be of good quality, and meet all relevant Housing Act and HMO standards and requirements.
  8. In this regard, in 2017, the appellant successfully applied to the Council for a variation to the original HMO licence issued under the Housing Acts. The reason given by the Council for varying the licence was that *'additional works have been completed to increase room sizes and the number of facilities and amenities at the property. This will allow the maximum number of occupiers to be increased'*.
  9. The varied licence permits a maximum of 9 households or 11 individuals to occupy the house. In my experience, before issuing HMO licences, Councils normally need to be satisfied that their minimum room size standards are met, and that the range of facilities provided in respect of living accommodation, kitchens and bathrooms meet the required published standards.
  10. Accordingly, whilst I note the officers' qualitative judgments on the quality of the accommodation, the varied licence demonstrates to me that the standards normally applied by the Council under the Housing Acts are met, as advised in the SPG's guidance, and this attracts significant weight.
  11. Moreover, the Council has failed to acknowledge that this 3-storey townhouse is located in a striking location overlooking the Thames with open views to the front towards the O2 arena on the opposite bank. A hard landscaped stepped open space with sitting areas is available to residents at the front, on the banks of the Thames. The property also has a well maintained rear garden available for sitting out.
  12. In terms of its location and standard of internal accommodation the property appears to me to be suitable to meet the needs of 3 additional persons and 9 persons in total. I saw that space is available at the front of the property to accommodate the additional refuse and cycle storage area generated by the additional 3 persons.
  13. I therefore conclude that the change of use has not compromised the living conditions of the property's residents, and that it is compliant with the SPG's requirement to meet all relevant Housing Act and HMO standards and requirements, as evidenced by the recently issued varied HMO licence. There is no conflict with development plan policy, since as the Council acknowledges, none specifically relate to HMOs, and the Council has no adopted planning standards in this regard.

#### *Neighbouring living conditions and character*

14. The Council's stance on this issue is based on its concerns that the increased level of occupancy would lead to increased comings and goings, noise and

disturbance, harmful to neighbours, adversely affecting the quiet residential local character.

15. The use however has subsisted for a reasonable period of time, enough to be noticed had the change of use generated the levels of nuisance alleged by the Council. The Council has expressed its concerns, but has not provided any concrete evidence in support of its contentions. Neighbours, who were consulted on the original application and subsequent appeal, have not made a single objection to the proposal, and I have not been made aware of any complaint made to the Council's enforcement section. I regard the absence of local objection as significant, adding weight to my deduction that the Council's concerns are based on assertion rather than on substantial evidence.
16. I conclude that there is no convincing evidence that the change of use has caused harm, or that it is likely to in future, and that neighbouring living conditions and local character have not been harmed. Accordingly, I find no conflict with those provisions of Policy DM25 of the Council's Managing Development Document directed to protecting neighbouring amenity.

### **Conditions**

17. The Council has suggested the imposition of four conditions. The first is directed to the statutory time limit normally placed on the commencement of development, whilst the second requires the proposal to be carried out in accordance with the approved plans. Since the development has already commenced, both conditions are unnecessary.
18. The third and fourth conditions are directed to the provision of cycle, refuse and recycling storage. Conditions directed to these topics are necessary but need rewording since the Council's suggestions are termed as pre-commencement conditions and are imprecise. The requirement for storage, given the 'approved' use of the property should reasonably relate to the additional number of residents generated as a consequence of the change of use.
19. In the interests of certainty and for the absence of doubt a condition to limit the number of persons occupying the property is necessary.
20. I saw no evidence, as suggested by the Council, that the loft was being used as sleeping accommodation. It was independently accessed, and was laid out with desks and seats, with screens on the desks. Given that the loft has no openings providing outlook, I share the Council's view that it is unsuitable as a sleeping space, but nevertheless suitable for the ancillary activity that I saw. A condition shall therefore be imposed directed to preventing the loft space being used in future for sleeping accommodation.

### **Other matters**

21. I have taken into account all other matters raised in the representations, but no other matter raised is of such strength or significance as to outweigh the considerations that led me to my conclusions.

*G Powys Jones*

INSPECTOR

### **Schedule of Conditions**

1. Within 3 months of this decision details for the provision of secure cycle, recycling and refuse storage sufficient for 3 additional persons shall be submitted to the Council for its written approval. The facilities shall be provided in accordance with the approved details within 3 months of the receipt of the Council's written approval.
2. The number of residents occupying the property shall not exceed 9 persons.
3. The loft shall not be used as sleeping accommodation.