



Appeal Decision

Site visit made on 25 June 2019

by K Savage BA MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th August 2019

Appeal Ref: APP/B5480/W/19/3220624

113 Abbs Cross Lane, Hornchurch RM12 4XP

- 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 D Darby (Darby Property Ltd) against the decision of the Council of the London Borough of Havering.
 - The application Ref P1083.18, dated 10 July 2018, was refused by notice dated 20 December 2018.
 - The development proposed was originally described as 'change of use of existing HMO (Planning use class C4) to a larger house in multiple occupation (Planning use class Sui Generis).'
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Decision

1. The appeal is allowed and planning permission is granted for change of use to a 9 bedroom house in multiple occupation (Planning use Sui Generis) at 113 Abbs Cross Lane, Hornchurch RM12 4XP in accordance with the terms of the application Ref P1083.18, dated 10 July 2018, and subject to the conditions set out in the attached Schedule.

Preliminary Matters

2. The appeal is described in the appellant's statement of case as being in part retrospective, in that the building is already laid out as proposed, with the exception of a self-contained flat at second floor level which would become a non-self-contained unit and communal area under the proposal. I saw this to be the case at my site visit and have considered the appeal on this basis.
3. The description of development in the heading above has been taken from the planning application form. However, in Part E of the appeal form it is stated that the description of development has changed, reflecting that given on the Council's decision notice. The appellant references this change in his statement of case without raising objection to it. Accordingly, I have used this revised description in the formal decision above.
4. On 19 February 2019, the Government published an update to the National Planning Policy Framework (the Framework). This update does not materially alter the national policy approach in respect of the issues raised in this appeal and therefore the main parties have not been prejudiced by its publication.

Main Issues

5. The main issues in this case are:

- i) The effect of the proposal on the living conditions of neighbouring occupants, and;
- ii) The effect of the proposal on highway safety, with particular regard to on-street parking.

Reasons

Background

- 6. The appeal property is a semi-detached building standing on the corner of Abbs Cross Lane and Stanley Road. At my site visit, I saw that the building was laid out, for the most part, as a house in multiple occupation (HMO), with each of the bedrooms having en-suite facilities and communal kitchen/dining room and laundry facilities, the latter located within a shed in the rear garden.
- 7. The appellant submits that the lawful existing use of the property is as an HMO falling within the C4 use class¹, following the Council's issuing of a certificate of lawful proposed use or development on 7 April 2016 which certified that the proposed change of use from a dwellinghouse (Class C3) to an HMO of no more than 6 residents (Class C4) was lawful on the date of application of 24 September 2015.
- 8. The appellant acknowledges that, as now laid out, parts of the building do not accord with the plans upon which the lawful development certificate was considered by the Council. Specifically, those areas are Units 8 and 9 on the ground floor and the second floor flat.
- 9. The Council disputes the appellant's claim that a C4 HMO was lawfully implemented. It refers to the fact that the property has been rated by the Valuation Office Agency as a '7 bedroom HMO' since at least 20 January 2016, prior to the Council's issuing of the certificate. The Council also refers to visits by its planning enforcement officer in November 2018 which indicated that Units 8 and 9 had been created, as had the second floor flat.
- 10. On 13 July 2016, the Council introduced an Article 4 Direction which removed the permitted development right to change the use of a dwellinghouse (C3) to an HMO (C4).

Living conditions of neighbouring occupants

- 11. The Council's reason for refusal refers to the poor layout and the intensification of the use of the site from the additional occupants.
- 12. I note that the lawful development certificate was issued on the basis of no more than 6 people occupying the property, which is the same number of residents who could live together as a single household under the C3 use class. A single family could have potentially more occupants within a C3 dwellinghouse. The plans submitted with the certificate application show the property was previously laid out as a five bedroom dwelling, which could reasonably have accommodated a family of up to 6 or possibly more. Whether

¹ As defined by the Town and Country Planning (Use Classes) Order 1987 (UCO), as amended.

the lawful use of the property is a C3 dwellinghouse or a C4 HMO, it is the degree of intensification from five or six bedrooms to nine that is the relevant consideration.

13. I note that the Council separately issued an HMO licence on 28 December 2018 increasing the permitted number of occupants to 12. The Council indicates that up to 18 occupants could live in the property if every room was rented to a couple. This is disputed by the appellant, who indicates that the trend has been for single occupancy since the HMO use began.
14. I saw that the internal layout was generally to a good standard, with modern bathroom facilities in each room and spacious and well-appointed kitchen/dining areas. The Council has not raised specific concern with the quality of the internal layout, and I saw nothing at my visit to conclude differently.
15. Externally, there was a dedicated laundry room within a large shed with several washing machines, tumble dryer and space for airing clothes. The Council's concern relates to the potential for noise and disturbance associated with occupants coming and going to do laundry, which would increase as a result of the proposal.
16. Whilst a family occupying a C3 dwellinghouse would be more likely to have laundry facilities within the building, existing occupants have been using the external laundry room without record of complaint, so far as I am aware, being made to the Council's Environmental Health department. I saw that windows of the neighbouring property were screened by planting when viewed from the entrance to the laundry room. The use of the laundry room would doubtless increase with more occupants; however, even with this, the use of the area would continue to be intermittent and for relatively short periods. The distance from the laundry room to the neighbouring doors and windows would also reduce the intensity of noise from machines in use.
17. The Council's concern with use of the communal garden area appears to be similarly based on the increased number of occupants. However, I saw the garden to have limited furniture or other items indicative of regular outdoor use. The appellant points to the tendency for occupants of HMO properties to socialise less than a family would, and so would be less likely to make use of the garden in a manner that would cause noise and disturbance to neighbouring occupants. The evidence before me, including the comments of interested parties and the Environmental Health department, does not suggest to me a pattern of excessive noise or disturbance.
18. However, were the occupancy to increase to 18 as suggested by the Council, the level of activity could become significantly greater than has been the case to this point, with potentially unforeseen adverse effects in terms of noise and disturbance. Both main parties have suggested that the occupancy of the HMO could be restricted by condition, in the same manner as the C4 HMO use is limited to a maximum of 6 occupants. The parties did not suggest a maximum figure to me. On site, I observed the rooms to be relatively well laid out, with good light and ventilation, but in my view they were moderately-sized bedrooms at best. This makes them unsuitable, in my view, for double occupancy, particularly as within an HMO, they are not simply places to sleep, but also areas to store all of an occupant's belongings and spaces to relax, study or work in the absence of a living room. As such, occupancy of the rooms

- by two people would result in cramped and unsuitable living conditions, and would increase the potential for noise and disturbance within the building.
19. Notwithstanding that the HMO licence allows for up to 12 occupants, for these reasons and based on the pattern of occupancy put forward by the appellant, I conclude that a condition limiting the maximum number of occupants to nine would be necessary to ensure that the layout of the building provides suitable living conditions for the occupants, and that the level of occupancy does not give rise to harm to neighbours' living conditions.
20. I note comments from neighbours living opposite the appeal building on Abbs Cross Lane relating to loss of privacy and disturbance from light. However, given the intervening distances across a main road where street lighting and car headlights are existing factors during hours of darkness, there would not be harm to neighbouring residents from the proposed use of the property by more occupants.
21. Therefore, subject to a condition limiting the number of occupants, I am satisfied that the proposal would not have an adverse effect on neighbours' living conditions, and so would not conflict with Policies DC4, DC5 and DC61 of the LDF Core Strategy and Development Control Policies Development Plan Document (August 2008) (the CS&DCP). Together, these policies support proposals for conversions where the nature of the new use does not have an adverse impact on the surrounding area and will not be likely to give rise to significantly greater levels of noise and disturbance to occupiers of nearby residential properties than would an ordinary single family dwelling.

Effect on highway safety

22. The appeal building benefits from two parking spaces to the rear of the site, accessed from Stanley Road, which stand in front of two garages also within the appellant's control. I was unable to access the garages at my site visit. The Council criticises this 'tandem' arrangement, which would require additional and co-ordinated car movements between residents to make effective use of the garages as parking spaces.
23. I note that the majority of comments from interested parties raise concern at the prospect of more cars seeking to park on Stanley Road due to past incidences of cars blocking driveways and being left parked for extended periods of time.
24. Policy DC33 of the CS&DCP states that developments should not exceed the maximum parking standards at Annex 5. I am not provided with Annex 5, though the main parties both refer to the maximum standard for HMOs being 1 parking space per 2 bedspaces. Policies DC4 and DC5 both require that HMO developments should enable residents/visitors to park without detriment to highway safety, taking into account the availability of on- and off-street parking and the standards of Policy DC33.
25. The appellant points out that the Council's parking standards are expressed as maxima, and therefore the proposal cannot be in conflict with Policy DC33. Moreover, the appellant argues that the Council has provided no evidence, such as parking surveys, showing excess parking demand. Nonetheless, Policies DC4 and DC5 require an assessment of the effect of increased demand for parking in the area.

26. There is no parking available outside the site on Abbs Cross Lane itself due to the presence of double yellow lines and a bus stop. Therefore, parking is directed to side streets, including Stanley Road. On site, I saw that on-street parking on Stanley Road near the junction with Abbs Cross Lane was quite busy even during my mid-morning site visit, with cars on both sides of the street, narrowing the road to a single car width. However, I noted that this concentration of vehicles was due to an absence of driveways to this section of the street. Further up and for much of the street, I saw that the dwellings had driveways with varying amounts of off-street parking, some as little as one car, but others with room for three and possibly more. As a result, the street was more open, with intermittent on-street parking between the driveways. It did not appear that the parking was subject to any restrictions.
27. Although the garages present a potential off-street parking capacity of four, in line with the Council's maximum standards, in practice they are unlikely to be used to full effect given that occupants of HMOs live more independently and co-ordinating a tandem parking arrangement would be impractical. The more likely outcome, in my view, is that occupants would park on the street if unable to access the garages.
28. Whilst vehicles from additional occupants of the HMO would add to the competition for on-street parking, I did not see that demand for parking on Stanley Road was so high that this would lead to a shortfall in spaces or force other drivers to park indiscriminately, particularly in light of the amount of off-street parking available to other residents.
29. Moreover, despite the site having a poor PTAL rating of 2, there are bus stops immediately outside the site on Abbs Cross Lane with services to Rainham, Lakeside, Hornchurch and Romford, whilst also connecting with the Underground at Elm Park Station. This would provide a viable alternative means of transport to travel to work, shopping and leisure, and would reduce the likelihood that all occupants of the HMO would require their own car.
30. For these reasons, I conclude that the proposal would not have an unacceptable effect on highway safety, and would not conflict with Policies DC4, DC5 and DC33 of the CS&DCP.

Other Matters

31. The Council did not refuse permission in respect of any other matter. I have had regard to the other concerns raised by interested parties beyond those encapsulated by the main issues; however, none are of sufficient weight to alter my overall views on the proposal.
32. The appellant asserts that the Council is unable to demonstrate a five year supply of deliverable housing land, pointing to its Housing Position Statement of March 2018 which indicates a shortfall in supply over five years and sets out a ten-year strategy for meeting its housing targets. The Council has not responded to the appellant's points in this respect. However, as I have found the proposal would not cause harm in respect of the main issues, whether or not the Council can demonstrate a five year supply of deliverable housing land is not decisive in this case.

Conditions

33. The development would create a 9 bedroom HMO and I have found no planning harm would arise on the basis that these bedrooms are limited to single occupancy. To ensure this, I have imposed a condition limiting occupation of the building to no more than nine persons. I sought the comments of the main parties on this prospective condition and have taken into account the response received.
34. To provide certainty, and as all work has not yet been carried out, I have imposed a condition requiring compliance with the application drawings. A condition is also necessary to ensure the parking spaces on site are retained for parking by occupants, in the interest of highway safety.
35. The Council has suggested conditions requiring the submission, approval and implementation of a refuse and recycling scheme and cycle storage on site. I consider these are necessary to ensure the appearance of the site and occupants' and neighbours' health and safety is maintained and in the interest of encouraging sustainable transport.

Conclusion

36. For the reasons given above and having taken into consideration all matters raised, I conclude that the appeal should be allowed.

K Savage

INSPECTOR

Schedule – Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 1592/01, 1592/02 Revision A, 1592/03 Revision A and 1592/04 Revision A.
- 2) The double garage and two car parking spaces shown on Drawings 1592/01, 1592/02 Revision A and 1592/04 Revision A kept available at all times for the parking of motor vehicles by the occupants of the house in multiple occupation and their visitors and for no other purpose.
- 3) The use hereby permitted shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed within 6 months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:-
 - (i) within 3 months of the date of this decision a scheme for cycle storage shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation. The cycle storage shall be permanently retained thereafter.
 - (ii) if within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - (iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - (iv) the approved scheme shall have been carried out and completed in accordance with the approved timetable.
- 4) The use hereby permitted shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed within 6 months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:-
 - (i) within 3 months of the date of this decision a scheme for refuse and recycling facilities shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation. The refuse and recycling facilities shall be permanently retained thereafter.
 - (ii) if within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - (iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - (iv) the approved scheme shall have been carried out and completed in accordance with the approved timetable.
- 5) The premises shall only be used as a house in multiple occupation for a maximum of 9 residents.

END OF SCHEDULE