



Appeal Decisions

Site visit made on 3 December 2019

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 19 December 2019

Appeal A - Ref: APP/D1780/C/19/3223231

Land at 350 Shirley Road, Southampton SO15 3HY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Paul Finnegan against an enforcement notice (EN) issued by Southampton City Council (the LPA).
 - The enforcement notice was issued on 21 January 2019.
 - The breach of planning control as alleged in the notice is '*the change of use of the land to a (C4) house in multiple occupation*'.
 - The requirements of the notice are as follows:
 - Cease occupation of the land as a C4 HMO by unrelated persons not forming a single household within the meaning of section 258 of the Housing Act 2004.
 - Remove all fixtures and fittings facilitating the HMO use.
 - Remove all resultant materials from the land.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on grounds (a) and (g), as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.
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Appeal B - Ref: APP/D1780/W/19/3215732

Land at 350 Shirley Road, Southampton SO15 3HY

- 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 Paul Finnegan against the decision of Southampton City Council (the LPA).
 - The application Ref 18/01465/FUL, dated 24 August 2018, was refused by notice dated 12 October 2018.
 - The development proposed is the '*Change of use of part of the ground floor, first floor and second floor of the building to a 5 bedroom House in Multiple Occupation (HMO) (C4 use)*'.
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Decisions

1. **Appeal A:** The appeal succeeds to a limited degree on ground (g) only. Otherwise the appeal is dismissed.
2. **Appeal B:** The appeal is dismissed. See formal decisions below.

Matters of clarification

2. The breach of planning control as alleged in Appeal A is the '*change of use of the land (at No 350) to a (C4) house in multiple occupation*' (my underlining). The development as proposed in Appeal B is more specific and identifies which parts of the building on the land (the listed building at No 250) are subject to the proposed change of use (COU). To be precise, what has occurred (the alleged breach in Appeal A) and what was applied for (the application in Appeal B), is a change of use of parts of the

building at ground floor level, first floor level and upper first floor level to a 5 bedroom House in Multiple Occupation (HMO) (C4 use). The lawful use of the whole of the listed building at No 350 is office use.

3. I consider that the allegation in the notice should be corrected to align more accurately with how the building is laid out as a HMO. I shall alter the allegation to read *'Without planning permission, change of use of part of the building at ground floor, the whole of the first floor and one room at the upper first floor level of the building to a 5 bedroom House in Multiple Occupation (HMO) in Class C4 use, as shown on the proposed drawing No P17-1299_07 REV D'*.

4. Although the application (18/01465/FUL) which is now the subject of Appeal B, was refused planning permission (PP), a listed building consent (LBC) for alteration works was approved on 28 May 2019 ((18/01866/LBC). This followed a period of negotiation with the Council and additional details being submitted. Thus the works carried out to the building now have LBC.

5. From my site visit I noted that the unauthorised C4 use comprises 1 ground floor en-suite bedroom (bedroom 1), a communal entrance hall, a WC and a bike store. The first floor comprises 3 bedrooms (2, 3 and 4), a shared utility room and a communal area (kitchen). Bedroom 5 is on the upper first floor. There are 3 office spaces/rooms shown on the ground floor plan.

6. The first floor communal area room is labelled on the drawing as *'Communal Living Area'*. However, it is basically a large communal kitchen containing 5 separate fridges; several microwave ovens and two traditional ovens. There was seating and tabling but no living or lounge type space as shown on the plan. In fact the lounge or living room area was taken up by the kitchen area and some of the appliances.

Background information, planning history and relevant policy and guidance

Introduction and background information

7. The appeals property is a Grade II listed detached, two-storey building (with attic space or upper first floor) set within a large area of hardstanding on the western side of Shirley Road (the A3057), approximately 2 miles north-west of the City Centre. The building was added to the National List on 8 October 1981 and the list description, amongst other things, indicates that it was constructed around 1840 in the Gothic Revival Style. Despite many physical changes over the years many of its original features are still recognisable from the list description which is attached, as Appendix 2, to the appellant's statement.

8. Changes to the building over the years have included the addition of a single storey extension to the south (1960s); partial demolition (approved in 1985); the rebuilding of the rear elevation and various internal alterations (approved in 1992). The use of the building has also changed. Previous uses have included use as a petrol station; as a Doctor's Surgery; and, most recently, as offices. It is not disputed that this is the last lawful use of the listed building.

9. However, for at least 2 years the building has been in a mixed use for commercial and residential purposes (unauthorised). The commercial use (offices) comprises part of the ground floor as referred to above. This was used by the appellant's vehicle sales business known as 'Vans Direct' and which continues to operate from the adjoining site at No 348 Shirley Road. There is a portacabin structure on the site of No 348 which currently provides office space for the vehicle sales business. The offices within No 350 did not appear to be in use at the time of my visit and I only viewed them through the external windows and the entrance. The residential use is now the use as enforced against in appeal A and as refused in appeal B.

10. The appeal building abuts the edge of the defined Shirley Town Centre (STC) which provides a wide range of shops, services and other facilities. The site is in a sustainable location with regard to access to the City Centre and the main railway station. The surrounding areas off Shirley Road are residential with some flatted developments and a mix of commercial uses. I noted that some dwellings are located above the ground floor retail units along this section of the road.

The most relevant and recent planning history

11. An enforcement notice was issued on 28 June 2017 relating to the use of the building for residential purposes and for the storage and display of vehicles on the hardstanding area fronting onto the highway. An appeal (APP/D1780/C/3180925) on ground (a) was dismissed. Although the appellant contended that the residential use was in Class C4 HMO use, the Inspector found that the property was laid out and occupied as six self-contained flats (C3 use) and that the living conditions were inadequate having regard to the relevant standards for flats. However, it was also found that the associated amenity space could be flexible; that adequate refuse and cycle facilities could be provided; that the site was sustainably located and that the fact that there was no on-site parking added to its overall sustainable location.

12. In response to the previous Inspector's concerns a planning application (18/01465/FUL) was made on 24 August 2018 proposing a 5 bedroom HMO (Class C4) with the sixth bedroom being used as a communal room (see above). Despite liaison with officers on various matters relating to the listed building and its continued viable use, the application was refused on 9 October 2018. As indicated above, however, LBC was granted for the internal works carried out.

13. With regard to the storage and display of vehicles to the frontage of the listed building the previous Inspector also found this use to be unacceptable due to its effect on the building's character as one of special architectural and historic interest. A LBC application (17/01863/LBC) and an advertisement consent application for fascia boards and signage were submitted and refused (17/01862/ADV). These were both appealed but the LBC appeal was withdrawn. The remaining appeal only relates to No 348 and not to No 350.

14. The van sales are now solely restricted to the area of land at No 348 Shirley Road and all vehicle sales from the frontage of No 350 have ceased. This is now an open hardstanding area between the listed building and the highway. The LPA declined to determine an application (under section 70 of the Act) for the use of the ground floor of No 350 (except those areas the subject of the HMO use) to be used for the sale of motor vehicles. This was challenged by the appellant and the High Court has granted permission for a Judicial Review.

Relevant Policy and guidance

15. In considering whether or not planning permission should be granted on the ground (a) appeal for Appeal A and in Appeal B, I have had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004, which requires that planning applications should be determined in accordance with the development plan, unless material considerations indicate otherwise.

16. The most relevant policies are contained within the City of Southampton Local Plan Review, March 2015 (SLPR) and the Local Development Framework Core Strategy Development Plan Document Partial Review, March 2015 (CSDPD). The relevant policies of the SLPR are SDP1 (Quality of Development); SDP4 (Development Access); SDP5 (Parking); SDP7 (Context); HE3 (Listed Buildings); H4 (Houses in Multiple Occupation) and H1 (Housing Supply). The relevant policies of the CSDPD are CS3

(Town District and Local Centres, Community Hubs and Community Facilities); CS5 (Housing Density); CS13 (Fundamentals of Design); CS14 (Historic Environment); CS15 (Housing Type and Mix); CS19 (Car and Cycle Parking) and CS22 (Promoting Biodiversity and Protecting Habitats).

17. The National Planning Policy Framework (NPPF) is a major material consideration and the most relevant sections are 2 (Achieving sustainable development); 5 (Delivering a sufficient supply of homes); 12 (Achieving well designed places); and 16 (Conserving and enhancing the historic environment). In reaching my decision I have also had regard to the relevant national Planning Policy Guidance (PPG). The local policies generally accord with those of the NPPF and guidance within PPG.

18. Because the building is listed in Grade II, in considering whether PP should be granted, I have had special regard to the requirements of section 66(1) of the PLBCAA. I have also taken into account all other material considerations and particularly the City of Southampton Supplementary Planning Documents and guidance: *Houses in Multiple Occupation SPD* and the *Residential Design Guide*.

Appeal A on ground (a) and Appeal B

Introduction

19. The application, now the subject of Appeal B, was refused by the Council on three grounds. The first was that the COU would result in an unsustainable mix and balance of households in that the HMO use would result in an adverse impact on the overall character and amenity; that the layout was poor; that there was limited external space and that outlook was not acceptable. The second related to the impact on protected habitats and that there was no Section 106 or unilateral agreement in place to mitigate against the impact. The third was that the application lacked information relating to bicycle storage and refuse.

20. Since that application was refused and following the issue of the enforcement notice, further details have been submitted to outline how the various facilities for bicycle storage and refuse would be provided. With regard to the protection of habitats, a signed and completed unilateral undertaking (UU) has been submitted in relation to a financial contribution to the Solent Disturbance Management Project (SDMP) and in accordance with Policy CS22 of the Core Strategy. I consider that this mitigates any impact on the SDMP and in effect overcomes the second reason for refusal. The Council acknowledges that this is the case.

21. With regard to the facilities to be provided for bicycle storage and refuse, having seen the submitted proposals I am satisfied that that these facilities would be acceptable. The previous Inspector had also concluded that adequate refuse and cycle facilities could be provided. Whilst acknowledging that it would not be ideal to bring a bicycle into the HMO front entrance which would include two doors and steps, I consider that this route would still be acceptable. In any case it is a situation which may well be the norm for many householders with bicycles.

22. It has also been suggested that the rear door could be used for access to the bicycle store and, having seen the access and the route to it, again I consider that physically this would be feasible. However, this access would involve a sharing of the space and hardstanding, to the front and side of the property, with the lawful commercial office use. I deal with this point in more detail below. However, as far as bicycle storage is concerned, I am satisfied that this can be provided. I noted the room and the fact that racks were to be provided. In effect, therefore, I consider that the only remaining reason for refusal is reason No 1 and I have considered this in detail in the main issues below.

The main issues

23. From all of the submissions and from my inspection of the site and the surrounding area, I consider that the main issues are as follows:

- The effect of the HMO use on the character and amenity of the area in terms of sustainability; the mix and balance of households and the SPD requirements relating to the application of the HMO threshold.
- Whether or not the quality and layout of the proposed HMO is acceptable and appropriate, with particular reference to the room layouts and overall provision of accommodation; the lack of external amenity space; the general outlook from the rooms and the shared use of the hardstanding area with the office use.

HMO Policy (H4) and the Council's HMO SPD

24. Section 254(1) of the Housing Act 2004 sets out the primary definition of a HMO as being a building or part of a building needing to meet specific conditions. These include that a HMO must consist of *'two or more households, occupying the living accommodation, must share one or more basic amenities or the living accommodation is lacking in one or more basic amenities'*. 'Basic amenities' are defined in the Act as a toilet, personal washing facilities or cooking facilities. In this case the living accommodation does form part of a building (the rest of which is in office use) and comprises 5 separate households which clearly share cooking facilities. The proposal, therefore, although not the use of a typical dwellinghouse as a HMO, accords with the conditions and can be defined as such.

25. Policy H4 (Houses in Multiple Occupation) of the SLPR states that:

'Proposals for the conversion of dwellings or other buildings into shared houses will be assessed on the balance between the contribution the development could make to meeting housing demand, against the harm to the character and amenity of the area which might occur.'

It goes on to indicate that PP will only be granted where:

- (i) *it would not be detrimental to the amenities of residents of adjacent or nearby properties;*
- (ii) *would not be detrimental to the overall character and amenity of the surrounding area;*
- (iii) *adequate amenity space is provided which:*
 - a) provides safe and convenient access from all units;*
 - b) is not overshadowed or overlooked, especially from public areas; and*
 - c) enables sitting out, waste storage and clothes drying.*

26. The Council's adopted HMO SPD provides more detailed guidance in order to positively manage amenity and character impacts associated with HMOs, including their concentration and to maintain balanced communities within the city. The SPD Policy text indicates that:

'Planning permission will not be granted;

- (i) where the proportion of HMO dwellings will exceed 10% of the residential Properties*

where their curtilage of the residential property lies wholly or partly within a circle of radius 40 metres from the application site.

Where the circle does not include a minimum of 10 residential properties, the threshold will apply to the 10 residential properties nearest to the application site located on all frontages of the street (with the same street address).

27. The policy and methodology for determining applications is set out in section 4 of the HMO SPD and this includes three stages. The first stage is identifying residential properties. All sub-divided properties including flatted blocks are counted as one whole property at the first stage. Stage 2 involves investigating to check if the identified residential properties (from the Planning Register, the Electoral Register, Council Tax Records and the HMO Licensing Register) are in HMO use or have HMO consent. The third stage is to calculate the concentration which is a percentage of the total estimated number of existing HMOs, against the total number of residential properties. The latter do not include all 1 and 2 bed flats identified at stage 1.

*Effect on character, amenity, sustainability and a mix and balance of households
The gist of the Council's case*

28. The gist of the Council's case is that the use of this part of the listed building, as a Class C4 HMO, will result in an excessive concentration of HMOs within the immediate area and that this will have an adverse impact on the character and amenity of this part of Southampton. It is contended that the use would have a detrimental impact on the balance of households within the local community. It is also contended that the HMO use would result in poor quality accommodation; that there is no external amenity space for the occupants of the building and their outlook would be unacceptable due to the fact that they would only be able to view the extensive hardstanding area across parking which was associated with the separate commercial authorised office use. I deal with these latter points in the second issue below.

29. With regard to the HMO SPD threshold, it is contended that the proposal fails to meet the 10% figure. It is indicated that the 40m radius would include 1 HMO if this COU is allowed (25%). Whilst accepting that the proposal represents an unusual set of circumstances, the Council considered the potential to have similar knock-on impacts as a HMOs and that it specifically laid out the methodology to take account of this in terms of how flatted units would be considered. The Panel Report for the application for the HMO use concluded that, on balance, the proposal '*is triggered by the HMO SPD*' and that it was considered appropriate to refuse the application on the basis of this assessment.

30. With regard to the unauthorised Class C4 HMO use, the Council also refers to the fact that the appellant had been advised that a Class C4 HMO use would not be supported and that LBC would need to be applied for before any works were carried out in relation to that use. It is considered that the appellant knowingly and unlawfully converted and allowed part of the listed building to be occupied as a HMO, as opposed to the earlier enforced use as 6 separate flats. It is stated that the appellant took this course of action to avoid complying with the requirements of the previous enforcement notice. In summary the Council considers that the appeal should be assessed as being contrary to the policies and guidance contained in the CSDPD and the SLPR.

The gist of the appellant's case

31. On behalf of the appellant it is not accepted that the COU will result in an excessive concentration of HMOs. It is stressed that the HMO would only represent a single HMO, amongst 173 properties within a 40m radius and a single HMO of 477 properties within a 72m radius. The 72m range is the distance the Council uses to identify the 10 nearest properties for the purposes of the '*Threshold Assessment*' set out in section 4 of the HMO SPD.

32. It is accepted that the '*Threshold Assessment*' can be helpful in assessing the concentration and impact that HMOs might have in an area. However, it is contended that it cannot be applicable in all instances where a proposal is deemed unacceptable,

simply due to there being a lack of family sized properties (3 bedrooms or more) in order for the calculation to be used correctly. In this case it is argued that the presence of only 3 family sized dwellings out of 476 properties leads to the proposed HMO equating to a false figure of 25% of properties being HMOs, whereas the true percentage is just 0.2%. It is contended, therefore that it is incorrect to conclude that the provision of one HMO in the area would result in an '*excessive concentration of HMOs within the immediate area*'.

33. Furthermore it is also contended that the Council has attached a disproportionate amount of weight to the SPD and has failed to consider other material considerations including the provision of a viable use for the listed building without requiring any structural alterations. This point is supported by the Council's Conservation Officer who has acknowledged that the residential use of the listed building could be more sympathetic than the commercial office use. It is also stressed that the appeal site is in a most sustainable location for the HMO use and that its sustainable location was referred to by the previous Inspector.

My assessment

The 10% threshold

34. I acknowledge that the Council's strict interpretation of the '*Threshold*' criteria for assessing whether or not the proposal exceeds the 10% figure for HMOs can be argued as being technically correct. However, I also accept the appellant's argument that, on the ground, the material circumstances clearly indicate that there would only be one HMO amongst 173 properties within a 40m radius and a single HMO of 477 properties within a 72m radius. As a matter of fact and degree, therefore, I find it difficult to conclude that the provision of one HMO in the area, along this particular section of Shirley Road would result in an '*excessive concentration of HMOs within the immediate area*'. I find in the appellant's favour on this point.

35. Policy H4 (Houses in Multiple Occupation) of the SLPR states that proposals for the conversion of dwellings or other buildings into HMOs will be assessed on the balance between the contribution the development could make to meeting housing demand, against the harm to the character and amenity of the area which might occur. Clearly this proposal would contribute to the provision of housing and the development plan is the starting point for such decisions. The HMO SPD is a major material consideration and it is the requirements of this supplementary planning document which, amongst other things, must be balanced against housing provision in this particular part of the city.

Effect on the residential amenity (living conditions) and character and appearance

36. The policy goes on to indicate that PP will only be granted where it would not be detrimental to the amenities of residents of adjacent or nearby properties and would not be detrimental to the overall character and amenity of the surrounding area. On the first point, having noted the adjacent and nearest properties, I do not consider that the amenities or living conditions of the residents would be significantly affected by a HMO use in this particular location.

37. As referred to above I do not consider that there is an excessive concentration of HMOs in the '*immediate area*' and the comings and goings of 5 residents to this large detached property would be unlikely, in my view, to cause high levels of noise and disturbance for the nearest residents. Nor, in my view, would the HMO use result in any undue loss of privacy or overlooking for the occupants of nearest dwellings. On the second point, due to the fact that the HMO use in the immediate locality of the property would not be excessive, I find that there would be little, if any, impact on the character and appearance of this part of Shirley Road. There are retail and

commercial uses, as well as residential uses along the road and I do not consider that the introduction of a single HMO use would alter the general character or appearance of the streetscene. The HMO use would simply add to the mix of uses without upsetting the overall balance of uses, or how they are perceived, in this mixed use part of the city.

38. The HMO use would not result in a loss of a family home since the lawful use of the building is for offices. It would only fractionally alter the mix and balance of households in the locality and I have already referred to the fact that this is a sustainable location. The previous Inspector's views in this respect reinforce my own conclusion that the proximity to local facilities and transport in the locality are positive elements in favour of the proposed change of use. In conclusion on this first issue I also find in the appellant's favour.

Quality of accommodation, outlook, amenity space and the shared use of land
The accommodation

39. Having inspected the building, I accept that the 4 of the 5 rooms, in themselves, have been detailed to provide good quality, attractive, en-suite bedrooms for the residents. These 4 rooms generally provide light and airy accommodation which one might expect to find in any house. There is adequate storage in each room and the finishes and decoration are of a high standard. However, bedroom 5 on the upper first floor is located within the roof space with no clear outlook and with daylight only provided by a rooflight. The use of the floor space is also affected by the roof slope. In my view this has resulted in a cramped and oppressive space. In addition it contravenes general HMO guidance in that it is more than one floor from the communal kitchen. This is due to the latter being accessed from the half-landing. Normally rooms should be a minimum of one floor away from a kitchen.

40. However, I did not find the property to be typical of a small Class C4 HMO. I found that, despite not being used anymore as 6 self-contained studio flats, in effect it was still perceived as 5 separate lockable units of accommodation which simply happened to share the communal kitchen and a small utility room. I accept that technically this layout of accommodation meets the definition of a HMO, as set out in the 2004 Housing Act. However, it does so without having the feel and character of a house that is being shared by 5 separate households. Instead it is a bedsit type HMO whereby the occupants lead completely separate lives and only share the kitchen facilities.

41. Although I find the 4 bedrooms acceptable. I do not consider that the communal facilities are adequate. Again, whilst accepting that a HMO only needs to have one shared facility, such as a kitchen, to meet the definition, any reasonable shared house or part of a building would be expected to provide adequate lounge or living room facilities, as well as a kitchen. The proposed drawing (P17-1299_07) shows one room as a 'Communal Living Area'. It shows the kitchen, or cooking facilities, along the south-west wall of the room; a soft seating area, or lounge in the northern-most corner, and seating and tabling close to the entrance door from the staircase. The room overall is slightly smaller than bedroom 4 on the first floor.

42. During my inspection I noted that the whole of this room appeared to have been taken over by the kitchen use. There were fridges, worktops, ovens and kitchen storage units along the south-west wall, as well as along the northern-most wall. The soft seating area was not as shown on the drawing and it seems to me that due to the number of persons requiring to use the kitchen facilities it would not have been possible to provide an adequate lounge area. Overall, therefore I find that the 'Communal Living Area' to be cramped and inadequate. The fact that this space was

formerly a single bedroom reinforces my view that this part of the building is cramped and poorly laid out.

43. In conclusion on the overall quality of the accommodation I find that the poor quality of bedroom 5 and the cramped communal facilities have resulted in poor internal facilities. Whilst technically the layout accords with normal HMO requirements, I consider that there are issues relating to the living conditions of the residents of the building in terms of the overall spaces provided. I find, therefore that the design and layout of this particular HMO to be of poor quality and contrary to some of the guidance in the Council's Residential Design Guide (RDG).

Outlook

44. Having inspected each room and having looked out of each window, I share the Council's concerns regarding the outlook from some of the rooms. I have already referred to the fact that bedroom 5 only has a rooflight. Considering that this is a separate individual room, akin to a bedsit, I consider that it does not provide a suitable outlook and that this detracts from the amenity or living conditions of anyone occupying this cramped attic space. The RDG seeks to ensure that any development provides adequate natural light and outlook. In my view this requirement has not been met in the case of this particular room.

45. The outlook for bedroom 1 is reasonable but the two front bedrooms on the first floor (bedrooms 2 and 3) currently look out onto a great expanse of hardstanding without any sign of soft landscaping. In addition the office use has in the past used the hardstanding for car parking and there is uncertainty about how exactly the front hardstanding is to be used in conjunction with the office use. Although this poor outlook cannot, in itself, be a justification for not allowing the HMO use, it is a negative factor, which combined with other matters adds weight to the overall negative impacts of the proposed HMO use.

External amenity space

46. Policy H4 of the SLPR states categorically that PP will only be granted where:

(iii) adequate amenity space is provided which:

- a) provides safe and convenient access from all units;*
- b) is not overshadowed or overlooked, especially from public areas; and*
- c) enables sitting out, waste storage and clothes drying.*

47. In this case there is no external amenity space provided for the occupants of the proposed HMO. Instead there is an expanse of hardstanding which is associated with the other use of the building; the office use. If specific defined external amenity space were to be provided it would have to be demonstrated that it provided safe and convenient access from all of the HMO units. Clearly there is a safe access to and from the main side entrance, but it has been proposed that, in order to avoid a tortuous route with bicycles to the store, the rear door be used. This would involve crossing the car park and having to share the frontage land with the office use.

48. There are no details of how the car parking might be laid out and no details relating to safe access for residents accessing the building from the rear. I have noted the proposed location of the waste storage area and consider that this would be acceptable. However, it is far from clear what is intended with regard to the use of the office car park in the future. The uncertainty around the office use situation adds to my concerns. Also there is nothing to indicate how any amenity space could be provided and which would not be affected by overlooking from the adjacent sales area/office area. Finally there are no sitting out or clothes drying areas which are two further specific requirements of the policy.

49. With regard to the sharing of the forecourt land, this is far from clear. The application relates to the land and building at No 350 and yet there would be two separate uses. I have already referred to the need for residents to cross the parking area access in order to access the rear door to the bicycle store. There is nothing to indicate how the two uses would be separated or how there could be safe and convenient access for all residents of the HMO. I find, therefore that in terms of amenity space, the proposal is contrary to policy H4 and find in the Council's favour on this issue.

Overall Conclusions

50. I agree with the Council that the principle of a residential use of the building is acceptable. I have also concluded that, in terms of the HMO threshold, the HMO use is also acceptable in principle in that it would not be detrimental to the character and amenity of the immediate area or to the living conditions of nearby residents. Other than the question of safe access to the rear being demonstrated, the bicycle storage is acceptable in my view, as is the proposal for refuse disposal. Like the previous Inspector I also find that the building is sustainably located. The use would also provide housing in this part of the City. These are all factors in favour of the appellant's case.

51. However, in terms of the overall quality and layout of the accommodation; the outlook for some residents; the lack of amenity space and the uncertainty of the shared use of the hardstanding forecourt, I have concluded that the proposed HMO is not acceptable. I find that it would be contrary to policy SDP1 (Quality of Development) of the SLPR, as well as to policies H4 (Houses in Multiple Occupation) and CS13 (Fundamentals of Design) of the CSDPD. I also find that the poor overall design of the proposal is in conflict with relevant design policies set out in the NPPF. These negative factors all dictate against a granting of planning permission.

52. In terms of the overall planning balance I consider that the negative factors outweigh the positive factors which I have identified. In this case, I consider that there are too many detrimental factors relating to this proposal and that it would not provide an acceptable Class 4 HMO dwelling. In my view, it is far from clear how the two uses would operate together so that good quality residential conditions could be guaranteed for the occupants of the HMO. It follows that I do not consider that PP should be granted for this particular scheme. The appeal on ground (a) in Appeal A and Appeal B, therefore, both fail.

Appeal A on ground (g)

53. Having considered the respective submissions relating to this ground of appeal and having taken into account the complex planning history; the current legal situation regarding the van sales/office use and the negotiations between the Council and the appellant, I consider that a 3 month period for compliance with the notice falls short of what should be reasonably be allowed. I agree with the appellant that a 6 month period is both appropriate and necessary. I shall, therefore, vary the notice under the powers transferred to me by extending the compliance period to 6 months. The appeal succeeds to this limited degree on ground (g). In varying the notice I am satisfied that this will not cause any injustice.

Other Matters

54. With regard to the impact of the HMO use on the character of the listed building, I acknowledge that LBC has been granted for the internal alterations carried out. I do not consider that the character and integrity of the listed building, or any of its special features of architectural or historic would be harmed by an acceptable HMO use. However, due to the uncertainties relating to how the overall frontage forecourt is to

be used, as well as the potential conflict between the residential and commercial uses, I consider that the setting of the listed building could still be harmed if the current proposal is allowed to proceed as proposed. This potential harm to the setting of the building reinforces my view that the appeals should both fail.

55. In reaching my conclusions I have taken into account all of the submissions made on behalf of the appellant and by the Council. These include the initial appeal documents submitted; the detailed statements and appendices relating to both appeals; the Council's panel report relating to the planning refusal; the delegated enforcement notice report; the full planning and enforcement history of the building and the land; all of the submitted plans; all references to local and national policies; the final submissions and the detailed comments (dated 28 November 2019) made on behalf of the appellant, on the LPA's statement of case.

56. However, none of these carries sufficient weight to alter my conclusions on the main issues and nor is any other factor of such significance so as to change my decisions in relation to the two appeals.

Formal Decisions

Appeal A

57. I direct that the enforcement notice be corrected by deleting in full the allegation as set out in section 3 of the notice (THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL) and by substituting therefor the following: *'Without planning permission, change of use of part of the building at ground floor, the whole of the first floor and one room at the upper first floor level to a 5 bedroom House in Multiple Occupation (HMO) in Class C4 use, as shown on the proposed drawing No P17-1299_07 REV D'.*

58. I direct that the enforcement notice be varied by deleting the figure '3' in section 6 of the notice (THE TIME FOR COMPLIANCE) and by substituting therefor the figure '6'.

59. Otherwise the appeal is dismissed and the enforcement notice is upheld as corrected and varied. Planning Permission is refused on the application deemed to have been made under section 177(5) of the Act.

Appeal B

60. The appeal is dismissed.

Anthony J Wharton

Inspector

