
Appeal Decisions

Site visits made on 13 July 2020 and 10 August 2020

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 August 2020

Appeal A Ref: APP/C5690/W/20/3244672

48 Davenport Road, London SE6 2AZ

- 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 M Hussain against the decision of the Council of the London Borough of Lewisham.
 - The application Ref DC/19/112763, dated 19 June 2019, was refused by notice dated 15 August 2019.
 - The development proposed is the change of use from existing C4 6 bedroom HMO for 6 occupants to sui generis 7 bedroom HMO for 10 occupants, installation of vehicle crossover for the provision of 1 off street parking space and the provision of secure sheltered bike storage for 10 cycles.
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Appeal B Ref: APP/C5690/C/19/3241060

48 Davenport Road, London SE6 2AZ

- 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 M Hussain on behalf of Kamry Properties Ltd against an enforcement notice issued by the Council of the London Borough of Lewisham.
 - The enforcement notice was issued on 2 October 2019.
 - The breach of planning control as alleged in the notice is without planning permission the material change of use from C3 dwellinghouse to a 7 bedroom, 10 person HMO (Sui Generis) at 48 Davenport Road, London SE6 2AZ.
 - The requirements of the notice are:
 - 1) Cease the use of the Property as Sui Generis House of Multiple Occupancy.
 - 2) Remove all kitchen fixtures and fittings from the first and second floor in their entirety including kitchen worktops, cupboards, sinks, cooker, cooker hood from the rooms.
 - 3) Remove all materials, debris, waste and equipment resulting from the compliance with the above requirements of this notice from the Property.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decisions

Appeal A:

1. The appeal is dismissed.

Appeal B:

2. It is directed that the enforcement notice is varied by:
 - deleting the words "Six (6) months" within section 6 (Time for Compliance) and its replacement with "Twelve (12) months".
3. Subject to the variation, the appeal is dismissed, and the enforcement notice is upheld.

Procedural Matter

4. Following the accompanied site visit carried out with both parties present for Appeal B on 13 July 2020, the appeal was linked with Appeal A. As a result, a further unaccompanied site visit was carried out from public land for Appeal A on 10 August 2020, and this decision notice shall cover both appeals.

Application for costs for Appeal A

5. An application for costs was made by Mr M Hussain against the London Borough of Lewisham. This application is the subject of a separate Decision.

Appeal A:

Main Issues

6. The main issues are:
 - whether the proposal is acceptable, having regard to the effect on the supply of single family dwelling houses;
 - the effect of the use of the property as a Sui Generis HMO on the living conditions of neighbouring occupiers, with particular regard to noise and disturbance;
 - the effect of the crossover on highway safety;
 - whether the proposal would provide satisfactory facilities for parking of cycles in order to encourage more sustainable forms of transport; and
 - the effect of the development upon the living conditions for future occupiers of Sui Generis HMO with particular regard to the provision of amenity space.

Reasons

Preliminary

7. The development plan comprises the London Plan, 2016 (LP), the Lewisham Local Development Framework – Core Strategy Development Plan Document, 2011 (CS) and the Lewisham Local Development Framework – Development Management Local Plan, 2014(DMLP).

Supply of single family dwelling houses

8. Part 1 c) of DM Policy 6 of the DMLP states that the Council will only consider the provision of new Houses in Multiple Occupation where they do not result in the loss of existing larger housing suitable for family occupation. Part 1 of DM Policy 3 of the DMLP also states that the Council will refuse planning permission

for the conversion of a single family house into flats except where specified environmental conditions mean that the house is not suitable for family accommodation, which includes:

- a. adjacent to noise generating or other environmentally unfriendly uses;
 - b. lack of external amenity space suitable for family use.
9. The Justification for DM Policy 3 states that “the evidence in the Lewisham SHMA shows that the main need for housing in Lewisham is for family housing which is defined in the London Plan as houses having three or more bedrooms, and that the further conversion of houses into flats should be limited.”¹ The appeal property is a semi-detached property which would have contained three bedrooms as originally built. It has since been extended and contains more than three bedrooms. As such, whether as originally built or extended it is, in any event, covered by DM Policy 3.
10. With regards to exception 1a of DM Policy 3, the appellant states that the appeal site is located directly next to a UK Power Networks Electromagnetic Substation and considers that this represents an obvious ‘environmental unfriendly use’. It is further states that living next to such a sub-station is a source of concern for families.
11. Whilst I empathise with the appellant, none of the reports and circulars submitted provide any conclusive evidence on the actual risks to human health. In any case I note the appellant is seeking an alternative residential use, as an HMO for 10 individuals, which is likely to have more occupiers living in the building than a dwellinghouse or a Use Class C4 HMO. Although the appellant states that an HMO is more likely to house adults, I witnessed during my site visit that the existing property, in use as an HMO currently houses mothers with young children. This was further evidenced by the presence of cots within bedrooms and children’s play equipment and paddling pools in the rear garden. I also note that the substation appears to have existed for some time in this residential area which comprises a large number of family dwellings. As such, it has not been demonstrated that the presence of the substation constitutes an ‘environmentally unfriendly use’, which would justify the loss of a property which could be used as a family dwelling.
12. With regards to exception 1b of DM Policy 3, the appellant states that the rear garden is only 8sq.m, which is too small for a family dwelling and that paragraph 3.10 of the Council’s Residential Standards SPD states that ‘Gardens for dwellings houses should be a minimum of 9m in depth’. However, no further details of this Council’s Residential Standards SPD have been submitted, and therefore I am unaware of its status and can only give it limited weight.
13. I also note that the London Plan Housing Supplementary Planning Guidance, 2016 (Housing SPG), require a minimum amount of 5sq.m per 1-2-person unit and an extra 1sq.m per extra occupant thereafter. Therefore, a family dwelling of up to 6 persons would require 9 sq.m of amenity space. Whilst the appellant’s appeal statement states that the rear garden is only 8sq.m, this differs from their original calculation of approximately 18.sqm stated within the Design and Access Statement submitted with the planning application. In my

¹ Paragraph 2.22 of the DMLP

opinion, taking into consideration the areas of outdoor space both to the side and rear of the back addition of the appeal property I consider the latter calculation is more likely to be accurate. In addition, Mountsfield Park is situated nearby, within a short walk of the appeal site.

14. On balance, I therefore agree with the Council that the existing property provides sufficient amenity space for a family. In reaching this conclusion I observed during my site visit that a children's slide and paddling pool existed in the rear garden and that there was also sufficient space for people to sit outside, relax and dry clothes.
15. Accordingly, I conclude on the first main issue that the proposal has an unacceptably harmful impact on the supply of single family dwelling houses, contrary to DM Policies 3 and 6 of the DMLP, which amongst other things seeks to resist the loss of family dwellings.

Living Conditions of Neighbouring Occupiers - Noise and Disturbance

16. This appeal seeks the change of use of the property to a Sui Generis HMO, for 10 individuals. The appellant states that the existing building is small HMO comprising 6 individuals. Having regard also to the likely transient nature of the occupation of the this could be expected to result in an increased number of comings and goings.
17. During my site visit I observed that the appeal site has a fairly quiet residential character, with predominantly single family dwellings which are spaced fairly close together. I consider that the introduction of a Sui Generis HMO with 10 individuals within the existing building, would be likely to lead to levels of noise and disturbance which would adversely affect the living conditions of neighbouring occupiers. This would derive from noise generated from 'comings and goings' outside of the building, increased vehicular and pedestrian movements and the use of the part of the garden for communal use.
18. I conclude that a Sui Generis HMO with 10 individuals would be likely to lead to levels of noise and disturbance which would adversely affect the living conditions of neighbouring occupiers. In reaching this conclusion, I note that objections have been raised by neighbouring occupiers on noise and disturbance grounds specifically referring to existing noise and disturbance issues resulting from the existing use of the property as an HMO.
19. I therefore find the change of use of the property to a Sui Generis HMO for 10 individuals would have a harmful effect on the living conditions of neighbouring occupiers, with regards to noise and disturbance, in conflict with DM Policies 6 and 32 of the DMLP. Amongst other things, these state that the Council will only consider the provision of new Houses in Multiple Occupation where they do not give rise to any significant amenity impact(s) on the surrounding neighbourhood, and requires that new residential development to be attractive and neighbourly.

The effect of the crossover on highway safety

20. The application documents contain only limited information regarding the proposed crossover, in so far as no precise drawings have been submitted showing the exact dimensions/width of the crossover. Whilst the appellant considers that this could be dealt with by condition, and that the crossover would be located away from junctions and crossings, it would be located close

to the high close boarded fence which surrounds the sub-station adjoining the appeal site. Given the position of this fence, in close proximity to the proposed off-street parking space, it would block drivers' visibility from the parking space towards the Davenport Road. The overall height and scale of the fence makes it very difficult for anyone leaving the drive in either a forward or reverse gear to have a full view of the pavement until after the bonnet of the car has left the drive and manoeuvred onto the pavement. I therefore consider that this is an unacceptable risk to the safety of pedestrians, especially small children and the elderly, and no detailed evidence has been submitted to demonstrate that adequate sightlines of the pavement and road would be maintained.

21. I appreciate the appellant's frustration that there are a number of other crossovers in the area and that consent is also required from the Highways department separately. However, the existence of these other crossovers and that Highways approval is required does not justify further risk to the pedestrian and highway safety.
22. I therefore conclude that the proposed crossover results in significant harm to highway safety and the development conflicts with Policy 14 of the CS, which states that the access and safety of pedestrians and cyclists throughout the borough will be promoted and prioritised. The crossover would also be contrary to paragraph 109 of the National Planning Policy Framework, 2019 (Framework), which states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety.

Cycle parking

23. Policy 6.9 of the LP states that developments should provide secure, integrated, convenient and accessible cycle parking facilities in line with the minimum standards set out in Table 6.3 and the guidance set out in the London Cycle Design Standards. Table 6.3 requires 1 space per studio/1 bedroom unit and therefore 10 cycle parking spaces are required. The appellant states that 10 cycle parking spaces are shown within the rear garden on the proposed ground floor plan.
24. However, the Council have raised an objection that 10 cycle parking spaces would not be able to fit within the space shown on the appellant's plan. However, I note that additional cycle parking spaces could be provided elsewhere within the rear garden, should this be required, and that further details of safe and secure cycle parking spaces could be secured by condition.
25. Subject to this condition, I conclude that the proposal would provide satisfactory facilities for parking of cycles in order to encourage more sustainable forms of transport. In this respect the proposal complies with Policy 6.9 of the LP, which seek the aforementioned aims, and Policy 14 of the CS, which states that cycle parking will be required for new development and that design will need to incorporate safe and secure cycle storage.

Living conditions for future occupiers of the Sui Generis HMO with regard to private amenity space

26. With regard to private amenity space, the LP and the Mayor's Housing SPG require a 10 person dwelling to provide 13sq.m of outdoor amenity space. Whilst the rear garden would be able to accommodate this, the Council

consider that the storage for 10 cycles would occupy a significant area of the rear garden, which would reduce the area available for private amenity space. While I appreciate these concerns, there are various cycle stands available on the market, many of which are designed so that cycles can be placed relatively close together. The appellant would need to explore such space saving measures to ensure that satisfactory garden area would remain, and further detail of such cycle parking facilities could be secured by condition, if the development were considered acceptable in all other respects. This would ensure that a sufficient area of space would remain for future occupiers to sit outside, relax, dry clothes etc. Furthermore, Mountsfield Park is situated nearby, within a short walk of the appeal site.

27. Therefore, subject to this condition, I find that the living conditions for future occupiers of the Sui Generis HMO would be satisfactory, with regards to private amenity space in accordance with Policies 6 and 32 of the DMLP and Policy 3.5 of the LP. Amongst other things, these require that all new residential development to meet the functional requirements of future residents, and that all new housing developments should enhance the quality of local places, taking into account physical context; local character; density; tenure and land use mix; and relationships with, and provision of, public, communal and open spaces.

Appeal B:

The appeal on ground (b)

28. To succeed on this ground, the onus is upon the appellant to demonstrate on the balance of probabilities that the allegation has not occurred as a matter of fact.
29. The appellant states that the property has been lawfully in use as an HMO under Use Class C4² of the UCO³ by up to 6 persons for a number of years, without the need for a grant of planning permission. In an attempt to support this claim, the appellant has provided a copy of the HMO licence, dated 15 April 2016 which states that "the Council has decided that the property is reasonably suited for occupation by not more than 6 households: consisting of no more than 6 persons". However, the licence does no more than confirm the suitability of the house for the number of occupants and that the manager of the house is considered to be fit and proper. In itself, it does not demonstrate what the property has been used for, and no further evidence has been submitted.
30. Furthermore, I note that Appeal A, seeks planning permission for the change of use of the appeal property to a 7 bedroom, 10 person HMO (Sui Generis). The existing layout of the property broadly corresponds with the proposed floor plans for this application, and I have no reason to believe that the property was not laid out in a similar manner when the notice was issued. Indeed, the property is clearly capable of being used in the layouts shown on the proposed plans submitted with Appeal A, and the Council's evidence shows it to have been used in this layout, which resulted in the submission of the planning application for a Sui Generis HMO for ten people.

² Use of a dwellinghouse by not more than six residents as a "house in multiple occupation"

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

31. Whilst the appellant considers that the property is not occupied by more than 6 people, very limited evidence that has been provided to satisfy me of this. Given the size and capacity of the building, particularly in terms of the number of bedrooms and bed spaces, on the balance of probabilities, and based on all the evidence before me, I conclude that the appellant has not shown that the alleged change of use has not occurred. The very limited evidence put forward in support of the contention that the breach has not occurred falls well short of discharging the burden of proof.
32. Accordingly, the appeal on ground (b) fails.

The appeal on ground (f)

33. The appeal on this ground is "that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters (i.e. the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach".
34. The enforcement notice requires the use of the property as a Sui Generis HMO to cease and to removal all kitchen fixtures and fittings from the rooms at first and second floor levels. Therefore, the purpose of the notice is to remedy the breach of planning control rather than only remedy any injury to amenity.
35. The appellant states that the kitchen at first and second floor level existed when the premises was in use as lawful Use Class C4 HMO prior to the current use of the premises. If these kitchens existed as part of the lawful use of the property prior to the breach it would be reasonable to find that the requirements are excessive.
36. However, I have found under the ground (b) appeal above, that very limited evidence has been submitted to demonstrate that the lawful use of the site was a Use Class C4 HMO, and the appellant has not provided any further justification as to why more than one kitchen is required to serve a single dwellinghouse or a Use Class C4 HMO. It appears that the installation of the first and second floor kitchen fixtures and fittings was an integral part of the material change of use of the property to a Sui Generis HMO, and no substantive evidence has been submitted to demonstrate otherwise.
37. In this respect, requiring the removal of all kitchen fixtures and fittings at first and second floor level is proportionate to remedy the breach, and it is not excessive to require these to be removed. There are no lesser steps drawn to my attention or any obvious alternative that would remedy the breach of planning control which is the purpose of the notice.
38. Therefore, the appeal on ground (f) fails

Appeal on ground (g)

39. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The appellant asks that the time for compliance is extended from 6 to 12 months, in order to allow sufficient time for Appeal A, for the 10 person Sui Generis HMO to be determined. However, both appeals A and B have been decided together within this decision letter.

40. Notwithstanding this, the property currently provides a home for up to 10 persons and they might find it difficult under current housing market conditions to find suitable accommodation, in light of Government policy regarding Covid-19 and restricting social contact. I also acknowledge that all tenants need to vacate the premises in order to carry out the other requirements of the notice. I therefore consider that in the particular circumstances of this case, a 12 month compliance period is proportionate and reasonable. This would also give the appellant sufficient time to liaise with the Council on any acceptable alternative proposal. I shall therefore vary the period for compliance prior to upholding the notice to 12 months.
41. To this extent, the ground (g) appeal succeeds and I will vary the notice accordingly.

Conclusions

42. **Appeal A:** For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.
43. **Appeal B:** For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation.

R Satheesan

INSPECTOR