



Appeal Decisions

Site visit made on 25 August 2020

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 September 2020

Appeal A Ref: APP/A5270/C/20/3248637 7 Strelley Way, Acton, London W3 7AR

- 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 R Moore against an enforcement notice issued by the Council of the London Borough of Ealing.
- The enforcement notice was issued on 5 February 2020.
- The breach of planning control as alleged in the notice is without planning permission: the material change of use of the premises to use as a large House in Multiple Occupation with ten bedrooms (Sui Generis).
- The requirements of the notice are to cease the use of the premises as a large House in Multiple Occupation.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld.

Appeal B Ref: APP/A5270/C/20/3248644 8 Strelley Way, Acton, London W3 7AR

- 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 R Moore against an enforcement notice issued by the Council of the London Borough of Ealing.
- The enforcement notice was issued on 5 February 2020.
- The breach of planning control as alleged in the notice is without planning permission: the material change of use of the premises to use as a large House in Multiple Occupation with ten bedrooms (Sui Generis).
- The requirements of the notice are to cease the use of the premises as a large House in Multiple Occupation.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld.

Appeal A

1. The appeal property contains a semi-detached residential building, located in a small cul-de-sac. The accommodation is arranged over three floors, providing a total of ten bedrooms. There are four bedrooms, each with an ensuite WC/shower room, on the ground floor. There is also a communal fitted kitchen. The kitchen contains multiple domestic appliances including ovens, hobs and extractors as well as fridges, freezers and washing machines. A

dining/living area with furnishings including tables and chairs is adjacent to the kitchen, whilst elsewhere on the ground floor is a communal WC/shower room. On the first floor, there are four ensuite bedrooms as well as another communal kitchen. There are two further ensuite bedrooms on the top floor.

Main Issues

2. The main issues in this ground (a) appeal are:

- The effect of the use as a large House in Multiple Occupation (HMO) on the living conditions of occupiers of adjoining residential property, having regard to noise and disturbance.
- Whether suitable living conditions have been provided for current and future occupiers of the property, having regard to noise and disturbance and the provision of private amenity space.
- The effect on the character and appearance of the surrounding area.
- The effect on highway safety, having regard to car parking.
- Whether there is suitable provision for cycle parking.

Reasons

Living conditions of adjoining residential occupiers

3. Residential properties in the cul-de-sac and those in the surrounding streets generally tend to be of similar size and are largely in single family occupancy. Pedestrian and vehicle movements are quite limited with relatively little through traffic. This gives the cul-de-sac in particular an otherwise secluded and peaceful feel. Having regard to this quiet suburban residential context, occupiers of the adjacent properties could reasonably expect to enjoy a significant degree of peace and tranquillity in their homes.
4. Some of the bedrooms were clearly unoccupied when I visited. Even so, the appellant did not dispute that based on the bedroom sizes, the property is capable of accommodating a total of eighteen occupiers. This represents around a threefold increase over the number of occupiers that might otherwise reasonably have been expected, had the property been in use as a large family dwelling within Class C3¹ or a small HMO within Class C4.
5. Additionally, as the property is used as a large HMO the occupiers are likely to lead separate daily lives. It is unlikely for example that the occupiers share common connections or relationships or have similar work patterns or leisure interests. Consequently, the occupiers are likely to be undertaking activities such as cooking food and washing clothes, using the amenity space or travelling for the purposes of work, leisure or to meet day-to-day shopping needs, separately and at different times throughout the day. It is also likely that due to the number of occupiers, there are considerable extra pedestrian and vehicle-borne visitors to the property including deliveries, compared with Class C3 or C4 uses.
6. Given the above factors, the large HMO has involved an appreciably more intensive use of the property, with a corresponding substantial increase in the

¹ The Town and Country Planning (Use Classes) Order 1987 (as amended).

scale and range of activity as well as the number and frequency of pedestrian and vehicular comings and goings. There has been a significant increase in incidences of noise and disturbance associated with such activity and the comings and goings, which in turn is experienced by the occupiers of adjoining residential properties. The intensity of the use and the associated extra incidences of noise and disturbance is typical of a more urban setting and is therefore at odds with the otherwise reasonably quiet residential context. Consequently, the large HMO has had a significant adverse effect on the living conditions previously enjoyed by the adjoining occupiers.

7. As the large HMO does not contribute to a sense of place, safety and security, it fails to accord with criterion in Policy 7.1 of the London Plan (MALP). There is no conflict with criterion in MALP Policy 7.6, as there has not been unacceptable harm to privacy, overshadowing, wind or microclimate. Nevertheless, erosion of the amenity of surrounding uses fails to accord with criterion in Policy 7A of the Ealing Development Management Development Plan Document (DPD). Furthermore, there is failure to accord with criterion in DPD Policy 7B, as a high standard of amenity for adjacent uses has not been achieved, having regard to the level of development. The Council also referred to policies in the emerging London Plan (LP). Whilst the LP does not currently form part of the Development Plan, having regard to the relatively advanced progress towards publication I shall afford those policies some weight. The large HMO does not deliver appropriate amenity or help to mitigate the impacts of noise, thereby conflicting with criteria in LP Policy D1. For similar reasons, there is also conflict with criterion in LP Policy D13.

Living conditions of current and future occupiers

8. Having regard to the scale of activity in communal spaces at the property such as the kitchens, dining/living area and the amenity space, together with the frequency of comings and goings, it is highly probable that the occupiers of the large HMO also experience significant incidences of noise and disturbance. This is particularly the case in respect of the occupiers of bedrooms alongside the communal spaces. There was little evidence to indicate that any sound insulation had been provided between private rooms and communal spaces, or that any substantive management measures had been put in place, a combination of which might have assisted in mitigating the effects of such noise and disturbance on the occupiers.
9. The rear amenity space exceeds the size required by DPD Table 7D.2. Provision of suitable screen fencing on the common boundary with the Appeal B property would provide occupiers of the large HMO with adequate privacy. Had I been minded to allow the appeal and grant planning permission, this could have been secured by a planning condition. However, the above does not overcome the unsuitable living conditions for the current and future occupiers on account of the significant incidences of noise and disturbance they experience.
10. By eroding the amenity of the property, the large HMO fails to accord with criterion in DPD Policy 7A. Moreover, by not achieving a high standard of amenity for users having regard to the level of development, there is failure to accord with criterion in DPD Policy 7B. There is no conflict in this matter with criteria in MALP Policy 7.6 or DPD Policy 7D and no inconsistency with the Council's Planning New Garden Space Supplementary Planning Document

(SPD). Even so, by not delivering appropriate amenity or helping to mitigate the impacts of noise, the large HMO fails to accord with criteria in LP Policy D1 and for similar reasons, criterion in LP Policy D13.

Character and appearance

11. The cul-de-sac contains a mix of detached and semi-detached dwellings. A modern replacement dwelling aside, the properties are mostly similar in terms of their age and architectural style, as are properties in neighbouring streets. Later alterations and extensions to the built forms have not appreciably affected the visual qualities of the environs. As noted above, the locality has quiet residential attributes. Therefore, whilst there is also higher density development nearby, the property surroundings generally possess a pleasantly peaceful, well-ordered suburban character and appearance.
12. Given the significant incidences of noise and disturbance arising from the intensity of the use, the large HMO is at odds with the qualities of the surroundings identified above, leading to a noticeable and harmful erosion of the area's inherent character. Moreover, although external alterations to the built form are not directly attributable, the use as a large HMO has nevertheless had adverse consequences for the appearance of the property and its surroundings. This is primarily because several extra waste and recycling bins are stored at the front of the property. The scale of the waste and recycling storage far exceeds that which might normally be associated with single family occupancy and takes up a considerable part of the modest front garden. The accumulation of such storage has given the property frontage a utilitarian appearance typically associated with a more urban setting and is therefore seen as an alien feature in the otherwise suburban street scene. As a result, the large HMO has led to a harmful erosion of the visual qualities of the surrounding area as well as its inherent character.
13. The appellant intends to provide a facility for storing waste and recycling bins in the rear amenity space. However, there is no external access from the street to the rear of the property. As a result, the bins would have to be taken through the kitchen and hallway before and after they are emptied. Such an arrangement would in all probability prove inconvenient and in practice would mean that the bins are likely to continue to be stored at the front of the property. Therefore, the visual harm identified would not be overcome.
14. For the above reasons, the large HMO has caused unacceptable harm to the character and appearance of the surrounding area. Whilst the Council previously reached a differing conclusion in a planning application for a large HMO at the property², I give that limited weight, my findings on this matter being based on all the available evidence.
15. As a result, the large HMO fails to accord with criterion in MALP Policy 7.4B, as a high quality design response that has regard to the pattern and grain of the existing spaces and streets in terms of its scale is not provided. Also, there is failure to accord with criteria in DPD Policy 7.4 as the building pattern, scale and details of the existing built area have not been complemented. Furthermore, there is conflict with criterion in LP Policy D2, as the response to the identity and character of the locality has not been successful.

² Council Ref: 190713FUL.

Highway safety

16. According to the Council the property has a Public Transport Accessibility Level (PTAL) of 2, reflecting relatively restricted access to bus and rail services. Accordingly, it is not unreasonable to assume that several occupiers of the property require access to private cars to meet their day-to-day travel needs. There is limited off-street parking available at the property, as the hard surfaced area at the front is unlikely to be capable of accommodating more than one car. Given the significant number of occupiers that could be accommodated, the requirement for car parking generated by the large HMO therefore considerably exceeds the off-street parking available, in turn leading to increased pressure to park on the street.
17. The cul-de-sac is of limited width, with on-street parking restricted by double yellow lines. Parking in the surrounding streets is restricted by a Controlled Parking Zone (CPZ), operating between 0930-1730 Monday to Friday. I understand that occupiers of the property are eligible to apply for a permit to park on surrounding streets within the CPZ. The ability to obtain permits and the off-street parking space available at the property means that the large HMO cannot practically be regarded as a car-free development. The pressure for additional car parking in the surrounding streets, where spare capacity is in all probability quite limited, is likely to have exacerbated parking congestion and led to further incidences of obstruction to the free flow of traffic.
18. For the above reasons, the large HMO has caused unacceptable harm to highway safety. The adverse effect to safety on the transport network fails to accord with criterion in MALP Policy 6.3. There is also failure to accord with MALP Policy 6.13, as the maximum parking standards set out in Table 6.2, applied to an area with a low PTAL, have not been met. Moreover, for similar reasons there is conflict with criterion in LP Policy T6.1.

Cycle parking

19. There is currently no suitable cycle parking at the property. The appellant intends to provide eleven cycle parking stands in the rear amenity space. This means that access to the stands would be in a similar fashion to that proposed for the bins. Such an arrangement would be inconvenient for the users and is also likely to be disruptive to other occupiers' use and enjoyment of internal communal space. Moreover, the siting of the stands is inconsistent with guidance in the London Cycle Design Standards (CDS), as they would not be well located close to the entrance of the property, obstacles are not avoided and the stands would not be covered or fully accessible for all types of cycle. Consequently, in practice the proposed stands are likely to be little-used and they would not facilitate the promotion of cycling.
20. Therefore, the large HMO fails to accord with criterion in MALP Policy 6.9, as secure, integrated, convenient and accessible cycle parking facilities in line with the minimum standards set out in Table 6.3 and the CDS have not been provided. There is also failure to accord with criterion in MALP Policy 6.3, as safety on the transport network has been adversely affected by the lack of suitable cycle parking. The failure to help remove barriers to cycling by securing the provision of appropriate cycle parking which is fit for purpose, secure, well-located and in accordance with the minimum standards in Table 10.2 and the CDS also conflicts with LP Policy T5.

Other matters

21. Details were provided of recent examples in the Borough of planning permission being granted for large HMOs and of a recent planning appeal decision where permission was also granted for such use³. I was able to view some of those properties following my visit. However, the large HMOs in question involved significantly fewer occupiers than in this appeal. Further, although the properties were in residential surroundings, in general they were located on roads with appreciably higher levels of passing traffic or close to other sources of noise and disturbance. Living conditions and transport issues also appear to have been addressed satisfactorily. As a result, the circumstances in this appeal are not comparable. I have to consider this large HMO on the basis of its individual planning merits. Therefore, the above decisions carry limited weight.
22. The large HMO has increased the quantity of affordable housing stock available in the Borough. All bedrooms exceed the minimum size requirements, have ensuite facilities and there is suitable access to communal kitchen and washing facilities. However, these matters also carry limited weight.

Conclusion

23. The large HMO unacceptably affects the adjoining residential occupiers' living conditions, suitable living conditions for current and future occupiers of the property have not been provided and there is unacceptable harm to the character and appearance of the surrounding area. Also, there is unacceptable harm to highway safety and there is no suitable provision for cycle parking. The above fails to accord with the Development Plan and conflicts with the LP. Therefore, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Appeal B

24. The appeal property contains a semi-detached residential building, forming a pair with that in Appeal A. The accommodation is arranged over three floors in a similar fashion to Appeal A providing ten ensuite bedrooms, two communal kitchens, a dining/living area and a utility room.

Main Issues

25. In this ground (a) appeal I have reached substantially similar conclusions to those in Appeal A, in terms of the effects of the use as a large HMO on the living conditions of adjoining residential occupiers, the character and appearance of the surrounding area, highway safety, whether there is suitable provision for cycle parking and the consequent failure to accord with the Development Plan and conflict with the LP.
26. The outstanding main issue in this appeal is therefore whether suitable living conditions have been provided for current and future occupiers of the property, having regard to internal communal space, provision of private amenity space and noise and disturbance.

³ Appeal Ref: APP/A5270/W/19/3234079.

Reasons

27. The ground floor communal kitchen is reasonably spacious after being fitted out and equipped with multiple domestic appliances. Although smaller than that on the ground floor, the first floor kitchen still has adequate room to manoeuvre after a range of appliances have been provided. The dining/living area is also of a reasonable size and can comfortably accommodate several people after some items of furniture have been provided. This and the other internal communal spaces therefore have ample circulation space, they do not have the feeling of being particularly cramped and they are unlikely to become congested when used by several persons at the same time. As a result, the internal communal space provided is not unreasonably restrictive for occupiers of the property. Such space is also not dissimilar in terms of its arrangement, size and the number and range of facilities to that provided in Appeal A.
28. For substantially similar reasons to Appeal A, the amenity space is of an appropriate size and suitable screen fencing on the common boundary with that property would provide occupiers of the large HMO with adequate privacy. Nevertheless, also for substantially similar reasons to that appeal, occupiers of the property do not enjoy suitable living conditions on account of the significant incidences of noise and disturbance they experience.
29. Therefore, by eroding the amenity of the property the large HMO fails to accord with criterion in DPD Policy 7A. Also, by not achieving a high standard of amenity for users having regard to the level of development, there is failure to accord with criterion in DPD Policy 7B. Further, by not delivering appropriate amenity or helping to mitigate the impacts of noise, there is conflict with criteria in LP Policy D1 as well as for similar reasons, criterion in LP Policy D13. However, in this matter there is no conflict with MALP Policy 3.5, as the provision of communal space has been considered. Nor is there conflict with MALP Policy 7.6, DPD Policy 7.4, DPD Policy 7D or inconsistency with the SPD. Moreover, there is also no conflict in this matter with LP Policies D2 and D4 or variance from the standards in the Mayor of London's Housing Supplementary Planning Guidance.

Conclusion

30. For the reasons set out above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Formal Decisions

31. Appeal A is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.
32. Appeal B is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Stephen Hawkins

INSPECTOR