



## Appeal Decision

Site Visit made on 13 April 2021 with a further site visit made on 23 April 2021 by G Sibley MPLAN MRTPI

### Decision by L McKay MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 June 2021

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### Appeal Ref: APP/P4605/W/20/3259996

#### 191 Sheldon Heath Road, Sheldon, Birmingham B26 2DR

- 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 Peter Kumar against the decision of Birmingham City Council.
  - The application Ref 2020/03492/PA, dated 25 April 2020, was refused by notice dated 10 July 2020.
  - The development proposed is change of use from former police station class Sui Generis to residential HMO class use Sui Generis.
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### Decision

1. The appeal is allowed and planning permission is granted for change of use from former police station class Sui Generis to residential HMO class use Sui Generis at 191 Sheldon Heath Road, Sheldon, Birmingham B26 2DR in accordance with the terms of the application, Ref 2020/03492/PA, dated 25 April 2020, subject to the conditions contained in Schedule 1 of this decision.

### Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

### Preliminary Matter

3. The proposed elevations drawing (DWG No SAP.SPS.20.02.EL.02) shows two external staircases accessing the proposed tech hubs on the first floor of the building. The proposed first floor plan (DWG No SAP.SPS.20.02.PGA.02 Rev A) shows the stairwell and the door from one of these external staircases but not the other. Notwithstanding this, the two external staircases and the associated doors are already in place, therefore this drawing error would not affect the appellant's ability to deliver the proposed development in accordance with the proposed plans.

### Main Issues

4. The main issues are:
  - The effect of the proposed development on the character of the area including the fear of crime and anti-social behaviour; and upon the living conditions of the occupiers of 132 Hengham Road and 189 Sheldon Heath Road in terms of noise disturbance.

## Reasons for the Recommendation

### *Character and appearance including fear of crime*

5. The proposal would create a 19-bedroom House in Multiple Occupation (HMO), and therefore differs from the supported living schemes previously proposed on this site. Some bedrooms could be occupied by two people, meaning the proposed development could be occupied by up to 26 individuals. The appellant has suggested a condition that would limit these rooms to single occupation. However, they have not provided any wording to demonstrate how such a condition could be made reasonable or enforceable, therefore I have considered the proposal based on full occupation of the proposed HMO.
6. Paragraph 8.24 of the Birmingham Unitary Development Plan 2005 (UDP) (adopted 1993) sets out a number of criteria that proposed HMO's will be assessed against. This includes the effect of the proposal on the amenities of the surrounding area, and on adjoining premises; size and character of the property; the floor space standards of the property, the facilities available for car parking and the amount of provision in the locality. Policy PG3 of the Birmingham Development Plan 2031 (BDP) (adopted 2017) relates to placemaking, and amongst other things, requires development to create safe environments that design out crime.
7. The Council's Specific Needs Residential Uses Supplementary Planning Guidance (SPG) (approved 1992) advises that the amenity of the surrounding area and adjoining premises should be taken into consideration in the assessment of any proposal for an HMO. Paragraph 127f) of the National Planning Policy Framework (the Framework) states that development should create places that are safe, inclusive and accessible and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.
8. The Council's Houses in Multiple Occupation Topic Paper (2020) states that the profile of HMO occupiers tend to be young, single households, students and those on low income; and that they are typically transient, insofar as they live in the premises for a short period. As such, the future occupants are likely to be more independent than in the previous schemes which proposed supported living on the site. The nature and pattern of their activities and movements to and from the site would therefore be similar to other residential uses. As such, although the site would be intensively used, the nature of that use would not be significantly different in character to the surrounding residential area.
9. The site is on a relatively busy roundabout with community and commercial uses either side, and as such is somewhat different to the residential area behind. The former use as a police station would have generated activity day and night which would have been very different to the typical movements associated with the surrounding residential development. Due to the number of occupants, the activity from the proposed HMO would be more intensive than a typical residential dwelling, however compared to the police station the number of comings and goings is likely to be significantly lower. Therefore, a more intensive residential use would not be out of place in this context.
10. The Topic Paper notes that Birmingham's population profile would support the growth of this type of accommodation. While it acknowledges that an over concentration of HMO's in one area can cause harm to community cohesion,

the Council's HMO Licensing Officer confirms that there are currently no HMO's in this area of Sheldon. Consequently, the proposal would not lead to an over concentration of HMO's in the area and as such would not change the character of the area in this respect. Furthermore, it would provide accommodation for a specific demographic in Birmingham in an area where there is limited such accommodation available. As such, it would add to housing choice in the area and addressing the housing needs of the whole community.

11. I have taken into account interested parties' concerns about fear of crime and existing activity in the vicinity of the site. However, occupation of the currently vacant building would add surveillance to the area as people would be present day and night, as encouraged by the Council's Places for Living Supplementary Planning Guidance. It is proposed that the HMO would have staff on site, including a concierge service, twenty-four hours a day, seven days a week to manage the building, supported by an external CCTV system. This would act as a deterrent to anti-social behaviour from the residents and in the local area. Details of management and security arrangements could be secured by a suitably worded planning condition to ensure that appropriate measures were in place irrespective of who operated the HMO.
12. I note interested parties' concerns about the type of people who might live in an HMO, however as this proposal is not for supported accommodation there is no substantive evidence that it would be occupied by vulnerable people or those with specific support needs. I am also mindful that the Designing Out Crime Officer from West Midlands Police did not object to the proposed use. Therefore, although the proposal would result in more people living in the area, there is no compelling evidence before me that the future occupiers would bring additional crime or anti-social behaviour to the area.
13. The buildings around the roundabout generally provide, or provided, community services and are of significantly larger scale than the residential development to the rear. The proposal would make efficient use of the existing building and as few external changes are proposed, would retain the character of this substantial former community building. As such, it would reinforce the sense of place and the contribution of the building to the distinctive character around the roundabout. The proposal would create an external garden area to the rear of the building to replace the concrete courtyard, and include landscape improvements around the building which would create attractive external space and improve the appearance of the site.
14. The proposal would provide sufficient internal floorspace for the number of residents proposed, having regard to the standards set out in the SPG. Each room would have an en-suite shower room and sleeping and sitting areas, with communal kitchens and other facilities also proposed. As such, it would provide suitable quality accommodation for future occupiers.
15. The proposal would also provide external amenity space but would fall short of the amount recommended in the SPG if the two-bedroom units were used by two occupants. The outside space would be split into a small private courtyard accessed from the dining and seating areas and a larger communal garden at the rear. In contrast to the previous schemes the proposed car parking would be provided separately, enabling a larger garden area to be created at the rear. The shape and size of the resulting outside space would allow for planting and sitting out, and for a range of activities to provide for the day-to-day needs of

occupiers such as a dedicated space for drying laundry. A separate gym would also be provided. Consequently, despite the shortfall in overall provision, the proposal would provide a satisfactory living environment for future residents in terms of outside space.

16. Some parking is proposed on site and some would be available on Sheldon Heath Road and the surrounding roads if needed, although I note that there is some parking stress close to the site. However, given the availability of alternative, sustainable transport options near the site and the location of the site within Birmingham, the future occupiers would not be reliant on private car use to meet their day-to-day needs. Therefore, the number of additional vehicles parked locally is likely to be low, and not of a level that would lead to adverse impacts on the local highway. Given the number of car parking spaces proposed, there would be limited vehicular movements on and off the site which would not be significantly different from the surrounding residential uses, and which would not significantly alter the character of the area.
17. Consequently, the proposed development would result in a more intensive residential use of the site, however the nature of the use and the level of occupancy proposed would not significantly or harmfully alter the character of the area. Nor is there substantive evidence before me that the proposed use would lead to a fear of crime or anti-social behaviour sufficient to undermine the quality of life in the local community. Consequently, the proposal would accord with BDP Policy PG3, UDP paragraph 8.24, the SPG, and Framework paragraph 127 f) in these respects.

#### *Living conditions*

18. The gardens of the two dwellings to the north of the site would be side on to the outdoor amenity space proposed. The outbuilding between 132 Hengham Road and the proposed garden would be converted into a gym and storage area, and there is also an outbuilding within No 132's garden. Measures to mitigate noise from the use of the gym, such as controlling the hours of use and playing of music, could be secured by a suitable condition. The outbuildings would also provide a physical buffer between No 132 and any noise generated by those using the proposed outside space. As a result, the living conditions of the occupiers of No 132 would not be significantly affected by use of the proposed gym or garden.
19. The site is situated at a lower ground level than 189 Sheldon Heath Road. Noise generated by future occupiers using the proposed garden could reverberate off the existing brick wall between it and the neighbouring property, causing a disturbance to the occupiers of No 189. This could however be mitigated by use of appropriate hard and soft landscaping to soften the noise reverberation off this wall, which could be secured by condition. Furthermore, the proposal includes a larger garden area than the previous dismissed appeal, as well as the internal communal area which would disperse the residents throughout the site, who would also have their own private spaces. Therefore, the occupiers would be less likely to congregate adjacent to No 189's garden than under the previous scheme.
20. The previous appeal included two rooftop gardens, which are not proposed here. A condition could be imposed to prevent residents accessing the existing flat roofed areas to prevent their use as amenity space, in order to safeguard against noise and overlooking of neighbours from an elevated position.

Moreover, in the previous scheme the outbuilding was to be for a different purpose, which could have led to greater noise disturbance than the proposal before me. Therefore, the proposal before me is significantly and materially different to the previous schemes. Consequently, although it would result in the building being occupied by more people, it would result in lesser effects on neighbours in terms of noise disturbance from use of the outside spaces.

21. I am also mindful that the previous use as a police station would have generated noise and other disturbances at any time of the day or night. The proposed HMO, while quite intensive in terms of occupancy, would generate the type of activity typical of residential properties and as such would be more compatible with the surrounding development. The occupiers would likely have no connection with each other prior to moving into the building and could have jobs working at different hours of the day and night, and a variety of communal spaces are proposed. As such, it would be very unlikely that all the residents would use the proposed garden at the same time. Even if they did, the proposed management arrangements would reduce the potential for un-neighbourly use of the outside areas.
22. Therefore, subject to appropriate conditions, the proposed change of use would not significantly adversely affect the living conditions of the occupiers of 132 Hengham Road and 189 Sheldon Heath Road in terms of noise disturbance. As a result, the proposal would comply with BDP Policy PG3, UDP paragraph 8.24 and Framework paragraph 127f) insofar as they require proposals to be of high design quality, respond to site conditions and provide for the amenity of existing and future users.

### **Other Matters**

23. The proposed development would reuse a vacant building in a sustainable location for residential development and would deliver 19 additional residential units which would make a modest contribution to the Council's 5-year housing land supply. Moreover, the proposal could provide long-term employment for 8 people locally as well as short term employment during the development of the site. These matters further weigh in favour of the proposal.
24. Concerns have been raised that the building could be used as a supported living centre (C2 use class) in the future, as was previously applied for, or would provide exempt accommodation, which is a type of supported accommodation. Such uses are however different to an HMO, which has its own definition in legislation, and are therefore likely to be a material change of use which would require planning permission, and would be considered on its own merits. Consequently, a condition restricting the future use of the building would not be reasonable or necessary.
25. Planning permission would run with the land rather than the appellant and the HMO could be run by another operator rather than the landowner. Therefore, the appellant's experience of running an HMO is not material to the planning merits of the proposal. Any future owner/operator would need to comply with the terms of any planning permission, the Council's own policies for such housing and all other rules and regulations for HMOs.
26. Comments were received regarding the loss of services and facilities in the community, which is an understandable concern. However, the police station use has ceased and the site is unlikely to return to that use even if the appeal

were dismissed. The principle of re-use of buildings is supported by local policy and additional residents would be likely to help support other local facilities.

27. If alterations are required for the building to be suitable for those with disabilities those works may require planning permission in their own right. As no such works are shown on the proposed plans I cannot consider them in this appeal and a further planning application may therefore be required.
28. Comments were submitted in relation to the current anti-social behaviour that is occurring in the area. There is however no substantive evidence before me that the proposal would exacerbate this issue. Likewise, there is no compelling evidence that the proposed occupants would be a risk to children or any policy to prevent HMOs being located close to schools. Therefore, refusal is not warranted on this basis.
29. The existing street lighting in the area already provides ambient lighting during the evening and overnight. If external lighting was installed around the proposed outside space any lights facing neighbouring dwellings would face the flank wall of those houses and the boundary wall, so would have a limited impact on the living conditions of neighbours. As a result, it is not considered necessary to include a condition controlling external lighting.

### **Conditions**

30. I have reworded the Council's suggested conditions where appropriate for clarity, to avoid duplication and to ensure that they meet the Framework tests. Where I have identified that additional conditions are necessary, parties have had the opportunity to comment on these and I have taken into account their responses.
31. Further to the statutory commencement condition, in the interest of the interests of certainty it is also necessary to ensure that the development is completed in accordance with the approved plans.
32. For the reasons set out above, a condition is necessary to secure a management and security strategy. The condition would be enforceable as the strategy is likely to include a combination of administrative controls, for which procedures and documentation could be put in place, or physical works and staff presence, which could be seen on site. The condition would also include provision for monitoring and review in association with the Council, which would ensure that the strategy could adapt to any changing circumstances and would be effective in managing anti-social behaviour and un-neighbourly activities. Therefore, the condition would also be reasonable, precise, related to the development and to planning.
33. It would not however be necessary to require the strategy to include details of support and management of vulnerable people, referrals, risk assessments or the expertise of the operators as the proposal is not for supported or exempt accommodation, and there are other policies and legislation in place to deal with the operation of HMOs, which a planning condition should not duplicate. Separate conditions requiring employees to be SIA Registered and DBS checked or for internal door specifications, as suggested by the Police, would not be necessary as such details could be included in the management strategy.

34. A condition requiring the noise insulation and management scheme between the gym and No 132 is necessary in the interests of the living conditions of the neighbouring occupiers. This would need to be in place before the gym was used, so does not need to be a pre-commencement condition. A condition requiring the submission of noise insulation for the police station building and its windows is necessary in the interests of the living conditions of the future occupants of the development. This would include architectural details of the windows, so a separate condition in this regard is not needed.
35. Conditions requiring the submission of details of landscaping and boundary treatments and subsequent maintenance and management are necessary in the interests of the character and appearance of the area as well as the living conditions of the neighbouring occupiers. Given the scale of the proposed development and the limited details provided of refuse storage and collection arrangements, a waste management strategy is necessary in the interests of the living conditions of the occupiers and the character and appearance of the area.
36. A condition requiring the provision of electric vehicle charging points is reasonable having regard to the aims of Policy TP5 of the BDP. Conditions to secure car and cycle parking would also be necessary in the interests of highway safety.
37. A condition restricting the use of the flat roofs is necessary in the interest of the living conditions of the neighbouring occupiers in terms of noise and privacy. The condition would allow staff to access the roof for maintenance while preventing any use of the roofs as external amenity space.

### **Conclusion and Recommendation**

38. For the reasons given above and having had regard to all other matters raised, there are no material considerations that indicate that the application should be determined other than in accordance with the development plan. I therefore recommend that the appeal should be allowed.

*G Sibley*

APPEAL PLANNING OFFICER

### **Inspector's Decision**

39. I have considered all the submitted evidence and the Appeal Planning Officer's report and, on that basis, I agree, and the appeal is allowed subject to the conditions set out in Schedule 1.

*L McKay*

INSPECTOR

## **SCHEDULE 1**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the approved plans: Location Plan DWG No. SAP.SPS.20.02.LP.01; Proposed Ground Floor Plan DWG No. SAP.SPS.20.02.PGA.01 Rev A; Proposed First Floor Plan DWG No. SAP.SPS.20.02.PGA.02 Rev A; and Proposed Elevations DWG No. SAP.SPS.20.02.EL.02.
- 3) No development shall take place to the outbuilding referred to as the 'gym facility' on plan ref: SAP.SPS.20.02.PGA.01 Rev A, and that building shall not be used for any purpose associated with the development hereby permitted, until a scheme for noise insulation and a noise management scheme between the gym and No 132 Hengham Road has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of the hours of use and measures to control noise from playing of music. The development shall be implemented in accordance with the approved details prior to the first use of the outbuilding for the purpose hereby permitted and thereafter maintained and operated in accordance with the approved scheme.
- 4) Prior to the occupation of the building for the use hereby permitted, a scheme of noise insulation shall be submitted to and agreed in writing by the Local Planning Authority. The scheme shall include details of all external windows and ensure that all windows, any other glazed areas and external doors to habitable rooms on the Sheldon Heath Road and Hengham Road elevations provide a weighted sound reduction index ( $R_w + C_{tr}$ ) of at least 25dB. Any ventilation on this elevation to habitable rooms shall be provided by means of acoustic vents achieving weighted element normalised level difference ( $D_{ne, w+C_{tr}}$ ) of at least 31dB. The approved scheme shall be implemented prior to first occupation of the building as a House in Multiple Occupation and shall thereafter be retained and maintained in accordance with the approved details.
- 5) The building shall not be occupied for the use hereby permitted unless a management strategy has first been submitted to and agreed in writing by the local planning authority. The strategy shall include details of the management and staffing arrangements for the development; details of security measures to be installed, including CCTV; and shall make provision for periodic monitoring and review with any subsequent changes to be agreed with the local planning authority. The approved measures shall be installed and operational before first occupation of the building as a House in Multiple Occupation, and the development shall thereafter be operated in accordance with the approved strategy at all times.
- 6) Details of hard and soft landscape works shall be submitted to and approved in writing by the Local Planning Authority prior to the first occupation of the building for the use hereby permitted. These details shall include proposed finished levels or contours, materials to be used for hard and paved surfacing and annotated planting plans to a scale of 1:50, showing, where used, locations of individually planted trees, shrubs, hedges and areas of grass. Within ornamental planting areas, plans shall be sufficiently detailed to show the locations of any individual specimen shrubs. All hard and soft landscape works shall be implemented in accordance with the approved details prior to the first occupation of the building for the use hereby permitted. Any trees or shrubs

which, within a period of two years from the completion of the development, die, are removed or become seriously diseased or damaged, shall be replaced in the next planting season with others of similar size and species.

- 7) Details of the proposed boundary treatments for the site, including areas of infill, shall be submitted to and approved in writing by the Local Planning Authority prior to their installation. These details shall include plans showing the locations of existing, retained and proposed new boundary treatments and scaled drawings indicating the positions, height, design, materials, type and colour of proposed new boundary treatments. The approved scheme shall be implemented prior to the first occupation of the building for the use hereby permitted and those boundary treatments shall be retained thereafter.
- 8) A landscape management and maintenance plan, including details of management responsibilities and maintenance operations for all communal outside spaces and landscaped areas of the site, shall be submitted to and approved by the Local Planning Authority prior to the first occupation of the development for its permitted use. Those areas shall thereafter be managed and maintained in accordance with the approved plan at all times.
- 9) The development hereby approved shall not be occupied for the permitted use until vehicle parking has been marked and laid out in accordance with the approved details as shown on plan ref: SAP.SPS.20.02.PGA.01 Rev A. Those areas shall not thereafter be used for any purpose other than parking, loading and unloading of vehicles.
- 10) No fewer than 10% of the parking spaces shall be provided with electric vehicle charging points. The charging points shall be available for use prior to first occupation of the use hereby permitted and shall thereafter be retained and maintained available for use.
- 11) The secure cycle hub as shown on SAP.SPS.20.02.PGA.01 Rev A shall be completed and made available for use prior to the occupation of the building for the use hereby permitted and thereafter retained for the storage of bicycles and/or motorcycles of staff and residents of the development.
- 12) The building shall not be occupied for the permitted use until a waste management strategy has been submitted to, and approved in writing, by the local planning authority. The strategy shall include details of provision of storage for refuse and recycling; temporary holding arrangements on collection day(s); and details of collection arrangements. The development shall not be occupied or used for the permitted use until all measures in the strategy for storage, disposal and collection of refuse and recycling are in place and they shall thereafter be retained and maintained at all times.
- 13) The areas noted on DWG No. SAP.SPS.20.02.PGA.02 Rev A as the 'existing flat roof' and the 'proposed flat roof above ground floor area' shall remain inaccessible to residents of the development, and shall not be used for sitting out or as external amenity space at any time.