



Appeal Decision

Site visit made on 8 September 2021

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 October 2021

Appeal Ref: APP/R5510/C/20/3263116 15B Station Road, Hayes UB3 4BD

- 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 Tarsem Singh Dhillon against an enforcement notice issued by the Council of the London Borough of Hillingdon.
- The enforcement notice was issued on 8 October 2020.
- The breach of planning control as alleged in the notice is without planning permission the material change of use of the first floor of an ancillary storage building to a House in Multiple Occupation (Sui Generis).
- The requirements of the notice are: (i) Cease the use of the first floor of the ancillary storage building as a House in Multiple Occupation. (ii) Remove the kitchen to include the oven, hob, sink, work surfaces, kitchen style cupboards and stop up all plumbing, electricity and gas connections within the kitchen. (iii) Dismantle and remove the two shower rooms comprising the shower and associated plumbing, the sink unit and associated plumbing and the toilet pan and cistern. (iv) Remove from the land all debris, waste, building materials, plant, equipment and machinery resulting from the remedial works.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

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

Preliminary Matters

1. The revised National Planning Policy Framework (the Framework) came into force during the course of the appeal. The main parties have been given the opportunity to comment on the implications for the appeal of the revised Framework and I have taken it into account in my decision.
2. The London Plan 2021 (LP) was published in March this year. The LP comprises the spatial development strategy for London and is now part of the Development Plan. LP Policy D6 and Table 3.1 have replaced Policy 3.5 and Table 3.3 in the previous version of the London Plan, referred to in the Council's reasons for issuing the enforcement notice. I have determined this appeal in accordance with the LP.

Ground (a) appeal

Main Issues

3. The main issues in this ground of appeal are:

- Whether suitable living conditions for existing and future occupiers of the House in Multiple Occupation (HMO) have been provided, having regard to internal floorspace and private outdoor amenity space.
- The effect on highway safety, having regard to vehicle parking.

Reasons

Living conditions

4. The appeal site contains a detached two storey building. The building is located at the rear of a row of properties with town centre uses at ground floor level and residential accommodation above. Access to the building is via a service road leading to an arched alleyway between retail premises. The HMO is on the first floor. During my site visit, I observed that the living accommodation consisted of eight bedrooms, together with a shared kitchen and shared WC/shower facilities, arranged around a communal access corridor. Five of the bedrooms were in residential occupation when I visited.
5. All of the bedrooms are of very modest size. After the provision of a double bed, a wardrobe and a small fridge/freezer there is very limited circulation space available as well as little room for other items of furniture, for everyday electrical appliances such as a television, or for storage of the occupiers' personal effects. As a result, in my judgment the bedrooms all have an uncomfortably cramped and restrictive feel.
6. According to the Council, the five bedrooms they measured in June 2020 each have a floor area of about 6 m², the HMO having a gross internal floor area (GIA) of around 96 m². The appellant did not dispute the Council's measurements and I found no reason to think that they were inaccurate. From what I observed, it is likely that all eight bedrooms have a similar floor area. LP Policy D6 incorporates the Nationally Described Space Standard¹ (the national standard) which requires a one bedspace single bedroom to have a minimum floor area of 7.5m², whilst a double bedroom with two bedspaces should have a floor area of at least 11.5 m². None of the bedrooms meet the national standard for a single person bedroom. In any event, it is entirely possible that the bedrooms could be used for sleeping by two people at times as most contain a double bed. Moreover, the LP Table 3.1 incorporates the national standard of providing in excess of 125 m² GIA for residential accommodation with more than eight bed spaces on a single floor level. The Hillingdon Local Plan: Part 2-Development Management Policies (DMP) at Table 5.1 and Policy DMHB 16 has similar minimum size requirements. The HMO therefore has a GIA substantially below the minimum required. The deficiencies in the HMO internal floorspace compared with the minimum size standards set out above reinforces my findings regarding the restrictiveness of the accommodation provided.

¹ Technical housing standards-nationally described space standard MHCLG March 2015.

7. Furthermore, there is no private outdoor amenity space provided for occupiers of the HMO, notwithstanding the requirement at Table 5.3 of the DMP for at least 100 m² of such space in respect of residential accommodation providing four or more bedrooms. As the area of flat roof between the building and the back of the properties fronting Station Road is adjacent to as well as accessible from a communal access and is also overlooked by residential property at close quarters, this cannot reasonably be regarded as suitable for use as private outdoor amenity space. As a result, the occupiers of the HMO have little opportunity to undertake the range of activities that would normally be associated with an outdoor amenity space-for example drying washing and informal recreation, or for external domestic storage-with any meaningful sense of privacy. This reinforces the sense of the restrictive living environment experienced by occupiers of the HMO. Whilst public open space might be available for informal recreation in the wider area, that is not a suitable alternative to convenient, private on-site provision.
8. For the reasons set out above I find that suitable living conditions have not been provided for existing and future occupiers of the HMO, having regard to the restrictive internal floorspace and the lack of private outdoor amenity space. The failure of the HMO to provide satisfactory living conditions for the intended occupiers does not accord with criterion in DMP Policy DMH 5, whilst not providing adequate internal space for an appropriate living environment meeting the internal space standards in Table 5.1 does not accord with DMP Policy DMHB 16. For similar reasons, the HMO does not accord with criteria in LP Policy D6. In addition, the failure to provide good quality and useable private outdoor amenity space does not accord with DMP Policy DMHB 18. Furthermore, the failure to provide a high standard of amenity for existing and future users is inconsistent with the revised Framework.

Highway safety

9. The site is a short level walk from local shops and services. Although neither main party provided an assessment of the site's Public Transport Accessibility Level (PTAL), in my view it is likely that the location scores towards the better end of the scale having regard to the proximity to frequent public transport services, including local buses and rail. Consequently, the site affords good levels of accessibility by modes of transport other than the private car. The existence of good access in relation to public transport, shops, services and community infrastructure accords with criterion in DMP Policy DMH 5 and is consistent with advice in the Hillingdon Design and Accessibility Statement Supplementary Planning Document: Residential Layouts as well as the revised Framework.
10. Nevertheless, in practice it is likely that some occupiers of the HMO will require access to a private vehicle, for example to travel for work purposes, or for accessing shopping and leisure opportunities. For reasons including the probable cost, it is unlikely that residential occupiers would routinely make use of communal car parks nearby. Whilst restrictions apply to vehicle parking on Station Road, in the absence of any parking provision dedicated to the occupiers, the HMO is therefore likely to have resulted in a significant upturn in demand for on-street parking in the wider area. As parking in nearby unrestricted streets is probably approaching its maximum capacity at times, this is likely to have led to reduction in the carriageway width available for vehicles to pass freely, as well as reduction in the forward visibility available to

drivers, cyclists and pedestrians; I was not given any reason to think otherwise. The DMP at Appendix C, Table 1 requires an assessment of the vehicle parking necessary in the case of an HMO providing accommodation for more than six persons to involve submission of a transport appraisal and travel plan. The absence of any detailed submissions in this respect adds to my misgivings regarding the effects on highway safety of not making any provision for vehicle parking in respect of the HMO.

11. In any event, if provision for additional off-street parking were to be made at the site, it is likely to significantly increase the potential for conflict between vehicles and pedestrians using the service road as well as the considerable numbers of pedestrians and cyclists using the footway and cycle lane in front to access the shops and other commercial uses along Station Road.
12. Therefore, in my view use of the building as an HMO has led to a significant and harmful erosion of highway safety conditions, which is not outweighed by the accessible location of the site. The failure to ensure safe and efficient vehicular access to the highway network in accordance with the Council's standards does not accord with criterion in DMP Policy DMT 2, whilst the failure to comply with the Council's parking standards does not accord with DMP Policy DMT 6. I found no conflict with DMP Policy DMH 5 in this respect, however the failure to achieve safe and suitable access to the site for all users is inconsistent with the revised Framework.

Other matters

13. The general pressures on the availability of residential accommodation in London are likely to have been exacerbated by the COVID-19 pandemic. As a result, there is likely to be considerable market demand for accommodation similar to that offered by this HMO. However, that is not a good measure of the acceptability of such accommodation. Residential occupiers will often accept restricted living conditions due to factors including their economic circumstances, affordability of the accommodation and the relative ease of access to employment, services and facilities. As a result, such an argument could be repeated. These factors therefore carry limited weight when set against the planning harm described above. As the use as an HMO has involved limited external change to the appearance of the building, DMP Policy DMHB 11 concerning the design of new development has limited relevance.

Conclusion on ground (a)

14. The HMO does not provide suitable living conditions for the existing and future occupiers, having regard to its restrictive internal floorspace and the absence of private outdoor amenity space. In addition, there is unacceptable harm to highway safety, given the absence of suitable off-street parking provision. Therefore, when taken as a whole the HMO does not accord with the Development Plan, it is inconsistent with the revised Framework and the ground (a) appeal does not succeed.

Ground (f) appeal

15. The ground of appeal is that the requirements of the notice are excessive.
16. At s173(4), the Act provides that an enforcement notice can have the purpose of remedying the breach of planning control, including by restoring the land to its condition before the breach took place, or the purpose of remedying any

injury to amenity caused by the breach. Although the notice does not state as such, its purpose must be to remedy the breach. The notice requires nothing less than cessation of the use as an HMO and removal of the internal works which facilitate and are integral to the material change of use, including removal of the kitchen and the shower rooms, by which the building would be restored to its condition before the breach took place.

17. No firm evidence was provided to show that the kitchen was not installed as an integral part of the material change of use. Accordingly, leaving the kitchen in place would mean that part of the works that had sustained the unlawful use as an HMO would remain. If that were the case, the site would not be restored to its condition before the breach took place. Therefore, the notice requirements are not excessive for the purpose of remedying the breach.
18. For the above reasons, the ground (f) appeal fails.

Ground (g) appeal

19. The ground of appeal is that the time specified for complying with the notice requirements falls short of what should reasonably be allowed.
20. Extending the compliance period to twelve months would unduly perpetuate the breach and the planning harm identified above. However, three months provides the tenants with limited time in which to search for and secure suitable alternative living accommodation. In practice, the time given to tenants to vacate their accommodation is likely to be much shorter, given that the notice also requires significant remedial works to the building to be undertaken within the same period. The continuing effects of the COVID-19 pandemic and the general pressures on the availability and affordability of housing in London already referred to are also relevant in this regard.
21. In my view, extending the compliance period to six months would take sufficient account of the factors identified above and would strike an appropriate balance between remedying the planning harm identified as soon as is practicable, whilst also affording the tenants a more reasonable amount of time to find suitable alternative accommodation. As so extended, the compliance period would not impose a disproportionate burden on the appellant and their tenants. Furthermore, extending the period for compliance as set out above would provide some scope for absorbing any hitherto unforeseen delays or disruption caused by the continuing effects of the pandemic. I am given to understand that fire safety issues, which had led to the serving by the London Fire Commissioner of a prohibition notice pursuant to the Regulatory Reform (Fire Safety) Order 2005, have since been resolved.
22. Therefore, I conclude that a reasonable period for compliance would be six months and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (g) succeeds to that extent.

Conclusion

23. For the reasons given above I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the deemed application.

Formal Decision

24. It is directed that the enforcement notice be varied by the deletion of "*three months*" in the paragraph numbered 5 ("*Time for compliance*") and the substitution of "*six months*" as the period for compliance. Subject to this variation the appeal is dismissed, the enforcement notice is upheld and 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