The Planning Inspectorate

Appeal Decision

Site visit made on 20 July 2023

by Martin Andrews MA(Planning) BSc(Econ) DipTP & DipTP(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th August 2023

Appeal Ref: APP/P5870/W/23/3317459
10 The Crescent, Sutton, London SM1 4HU

- 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 An Li against the decision of the Council of the London Borough of Sutton.
- The application, Ref. DM2022/00406, dated 2 March 2022 was refused by notice dated 14 November 2022.
- The development proposed is a change of use from C4 for use as a larger house of multiple occupation.

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the proposed increase in the number of occupiers in the existing HMO to a *Sui Generis* larger HMO with 7 bedrooms is acceptable in this building and location, having regard to the Council's policies and all other material considerations.

Reasons

3. The Council's Notice of Refusal refers to criteria i) and ii) of section c of Policy 10 of the Sutton Local Plan 2018 ('the Local Plan'). Both criteria preclude the change of use sought in the appeal application unless their respective provisos are met: namely in (i) that the property is detached and the additional unit will share facilities and have a joint access, and in (ii) that the site is within one of the Areas of Potential Intensification ('API').

4. In this case the property type and its location would clearly not meet the criteria. Although the facilities and access would be shared, the property is semi-detached rather than detached and it is located outside, as opposed to inside, an API. I also note that section c of the policy sets out six criteria in total and that all of them have to be met if a larger HMO is to be permitted.

5. Having regard to the fact that Policy 10 section c sets out two pre-conditions which are clear and precise and would not be met by the appeal application, I consider that although each case must be determined on its individual merits there is the potential for the Council's HMO policies and strategy to be harmfully undermined in the event of my allowing the appeal.

6. For the appellant, the grounds of appeal and final comments argue that the relevant part of Policy 10 is section d and not section c. It is suggested that section c relates to existing larger HMOs (those that already house at least 7 persons) increasing in size, whereas as the appeal scheme falls within section d as a proposal for a new large house in multiple occupation (HMO, seven people or more'). In short, it is claimed that the appeal is for a 'new' large HMO under section d.

7. However, I am entirely satisfied that section c of Policy 10 is the relevant consideration and that it addresses proposals which, either by extensions or through the intensification of use of the existing floorspace, seek to cross the legal threshold that separates a small existing HMO (3 to 6 persons) and is permitted development from a larger HMO of 7 or more persons which requires a grant of permission. Indeed, the preamble to Policy 10 in paragraph P10.3 makes a specific reference to this. Section d of Policy 10 is in my view clearly intended for proposals to convert existing large Class C4 dwellinghouses to first time HMOs.

8. Furthermore, in this case the appellant acknowledged in the Planning Statement dated February 2022 and forming part of the application that the property is a small HMO by virtue of a Certificate of Lawfulness granted in 2021 for the conversion from a single family dwelling under reference DM2020/02056. The Statement goes on to address all of the criteria of section c of Policy 10, with arguments in respect of section d not appearing until the submission of the appeal. The earlier references are all to 'a change of use' and not a 'new' HMO.

9. Because the proposal fails to satisfy the principles of section c of Policy 10 as regards the property being detached and within an API, there must be other considerations that demonstrably outweigh the breach of policy if permission is to be granted without the harm I refer to in paragraph 5 above. Neither the appellant nor the Council considered it was necessary for me to carry out an internal inspection, but it is clear from the submitted photographs that the accommodation is of a high standard. There is also no evidence that the property is not effectively managed.

10. However, although the Refusal Notice does not refer to a conflict with Policy 10's criteria (iii) and (vi) (an adverse effect on neighbour amenity and on-street parking respectively), I nonetheless concluded from my visit that The Crescent does not stand out as an especially suitable location for a larger HMO. The road is a cul-de-sac with semi-detached and terraced houses positioned closely together, indicating an already fairly high density living environment. And with most of the properties having had their front gardens hard surfaced for car parking and needing access thereto, there is only limited street parking.

11. For these reasons, I consider that other considerations are not such as to outweigh the harmful conflict with section c of Local Plan Policy 10. Nor have I found that Government policy in the National Planning Policy Framework 2021 when taken as a whole indicates that the Council was wrong to refuse the application. The appeal does not therefore succeed.

Martin Andrews

INSPECTOR