The Planning Inspectorate

# Appeal Decision

Site visit made on 18 July 2023

**by K Stephens BSc (Hons) MTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 29th September 2023**

**Appeal Ref: APP/P4605/W/23/3316786**
**24 Holly Road, Edgbaston, Birmingham B16 9NH**

- 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 Genius Property Assets against the decision of Birmingham City Council.
- The application Ref 2022/04997/PA, dated 21 June 2022, was refused by notice dated 16 August 2022.
  The development proposed is Change of use from C3 dwellinghouse to a proposed sui generis 9-bedroom HMO (C4).

## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The description of development above is taken from the application form. However, the Council's description on the decision notice, namely "Change of use from residential dwelling (Use Class C3) to 9-bed HMO (Sui Generis) and erection of dormer window to rear", is more accurate as it includes the rear dormer window and removes reference to Class C4, which the proposal would not be. Furthermore, the appellant uses the Council's description on the appeal form. The Council determined the application on this basis and so shall I.

3. Notwithstanding the above, the Council raises no issue with the rear dormer window. From the evidence before me I have no reason to take a different view. I have therefore confined my consideration of the case to the change of use.

4. During the course of the appeal, a revised National Planning Policy Framework (the 'Framework') was published on 5 September 2023 and replaces the previous version published in July 2021. However, as any policies that are material to this decision have not fundamentally changed in the Framework, I am satisfied that this has not prejudiced any party and I have had regard to the latest version in reaching my decision.

5. Since the application was refused the Council has adopted[1] the Birmingham Design Guide Supplementary Planning Document (the 'Design Guide'). It replaces a number of Supplementary Planning Documents and Guidance, namely Places for Living, Specific Needs Residential Uses, and Extending Your Home.

[1] in September 2022

6. The Council has also confirmed that its appeal statement refers to the most recently adopted "Houses in Multiple Occupation" Supplementary Planning Document dated April 2022 (hereafter referred to as the 'HMO-SPD'), whereas the officer delegated report had referred to the 2019 "Houses in Multiple Occupation Property and Management Standards". The appellant has had the opportunity to comment.

**Main Issues**

7. The main issues in this appeal are:

- The effect of the loss of a family size dwelling on the provision of housing,
- Whether the proposal would exceed the policy threshold of Houses in Multiple Occupation (HMOs) in the area, and
- The effect on the living conditions of occupiers of neighbouring properties with regard to noise and disturbance.

**Reasons**

*Loss of a family dwelling*

8. The appeal property is a sizeable 2-storey semi-detached period property, described by the appellant as Edwardian, with accommodation over 2 floors and in the roof. There is also a basement. The property is located within a predominantly residential area of similar period properties, as well as some blocks of purpose-built flats. From the submitted evidence, and from my observations walking around the area, there is a substantial number of properties in multiple occupation of various types either as flats, bedsits, or other HMOs. I saw agent's boards outside some properties advertising flats or bedsits for rent.

9. According to the appellant, the property has been used as an 8-bedroom HMO since at least September 2013, but is currently empty. The appellant encloses the latest HMO licence granted by the Council in August 2022 allowing a maximum permitted occupation by 8 persons. Nonetheless, the 8-bedroom HMO does not benefit from planning permission.

10. A city-wide Article 4 Direction[2] has been made, which took effect in June 2020, removing permitted development rights for a Class C3 dwellinghouse to change to a Class C4 HMO (for occupation for between 3-6 people). This was made in response to a proliferation of HMOs and in order to safeguard housing for the increasing number of families in the city.

11. The submitted floor plans show the layout of the property before previous alterations were made to enlarge the kitchen and living room, and the existing layout. These show the two front ground floor rooms annotated as bedrooms, with 4 more bedrooms on the first floor and 2 more in the roof space. The proposal would involve making internal and external changes to make all the bedrooms en-suite and create a ninth bedroom in the roof space by installing a dormer window. There would also be a communal open-plan kitchen/living room at the rear of the ground floor.

[2] Direction made under Article 4(1) of the Town and Country Planning (General Permitted Development) Order 2015

12. It is widely accepted that HMOs have a role to play in providing low cost and flexible housing. Policy DM11 of Development Management in Birmingham Plan[3] (the DMB) recognises that HMOs provide an important contribution to people's housing choice and meeting the wide-ranging housing needs of people in the city. It also acknowledges there has been an increasing trend for HMOs, due in part to the city's substantial student and transient populations, but to also address a general need for low-cost accommodation for young professionals unable to afford home ownership.

13. Policy DM11 is therefore broadly consistent with the Framework which states that the needs of groups with specific housing requirements should be addressed and that the size, type and tenure of housing for different groups, should be assessed and reflected in policy (paragraph 62).

14. The Council adopted its HMO-SPD to provide further guidance to support its adopted policies and to ensure that new HMO development contributes to sustainable and balanced neighbourhoods. Both Policy DM11 and the HMO-SPD acknowledge that high concentrations of HMOs in an area can present challenges to creating mixed, balanced and sustainable communities and can have negative impacts on local communities, including the loss of family housing.

15. The appellant says the 8-bedroom property would not be attractive for family occupation due to its size and location. The appeal property forms the other half of a pair of a semi-detached dwelling with 26 Holly Road, which is in use as a family dwelling. Whilst I saw a high number of properties in other multiple occupancies as already described, there were a sizeable number of large single dwellings in the area and opposite.

16. Whilst the submitted plans show 8 bedrooms, I find it unlikely that a period property of this type would have been originally designed as an 8-bedroom dwelling with bedrooms on the ground floor. It would likely have had a traditional floor plan with reception rooms on the ground floor such as a living room and dining room, and 3-4 bedrooms on the first floor, with possibly space in the loft. A new family moving into the property would likely use the whole ground floor for living/reception rooms and this would still leave potentially 4 bedrooms on the first floor and possibly another 2 in the roof space. Rooms could be reconfigured to provide a home office or study, or additional bathrooms or ensuites. Therefore, although the property is currently 8-bedrooms it has potential to be used as a family dwelling with fewer bedrooms.

17. To change a dwelling into an HMO, both Policy DM11 and the HMO-SPD require, amongst other things, demonstration that there is an established lack of demand for single family use of the property, based on local housing market circumstances.

18. The Council's Strategic Housing Market Assessment (SHMA) identifies the greatest housing need in the city is for 2-bedroom properties, closely followed by 4 or more-bedroom properties, then 3-bedroom properties. However, over a 10-year period up to 2020/21, most housing completions have been for 1 and 2-bedroom properties, leaving a shortfall in the provision of 4-plus bedroom properties across the city.

[3] Adopted December 2021

19. Whilst the SHMA may be over 10 years old, the more recent Birmingham Housing and Economic Development Needs Assessment[4] (the HEDNA) identifies that the current housing need is mainly for 2-3 bed properties and family accommodation. The HMO-SPD reiterates the higher demand for 2 and 3-bedroom dwellings. It goes on to state that Birmingham has a higher than the regional and national average of families with dependent children who need family-sized accommodation, and that there is a continued need for 3 or more-bedroom properties for family households. Areas outside the city centre, such as the appeal location, have greater access to infrastructure such as schools and other community facilities, making them better locations for families.

20. The HMO-SPD states that evidence will also be required to demonstrate that the property has been openly marketed at a city-wide level at a reasonable purchase or rental price for a period of at least six months and that this information is to be submitted with the application.

21. The appellant submitted limited marketing evidence with the application. There was correspondence from an estate agent saying they marketed the property, but no further details were presented, apart from the viewers were investors. Other estate agent correspondence made comments that in their professional opinion, based on sales of other properties, the property would not be suitable for family occupation. Various information was also provided on demographics of the area, house prices, housing tenure, occupancy and employment, concluding the area contained a higher-than-average proportion of social housing, most of which was rented, and that demand for 8-bedroom family properties would be low. The appellant also submitted research evidence[5] containing similar information. With a localised view of marketing evidence looking at historical sales/rent and local demographics, the appellant's evidence also suggests there has been a growth in smaller households, in part due to student demand, and that there is a weak demand for 4 or more-bedroom dwellings, based on what has been on the market. The majority of submitted examples of past properties for sale were for existing HMOs or properties already converted into flats, but there were a number of 5-bedroom dwellings for sale which were sold subject to contract or under offer at the time.

22. The contributors to the appellant's evidence suggest that the existing 8-bedroom property would not be attractive to families due to the lack of off-street parking and crime in the area, which the Police do attest to. However, as already stated, the property would not realistically be an 8-bedroom dwelling. The lack of on-site parking may deter some families, as might the number of HMOs in the area. However, this does not show the property is unsuitable for family occupation. The site is well located for public transport, the city centre and I saw there were a number of primary and secondary schools within a 2-mile radius of the site.

23. As part of their Final Comments, the appellant submitted more details of the marketing that had been undertaken, but which had not been fully disclosed at the application stage. The property was marketed for a total period of 16 months by two estate agents, with later efforts focusing marketing to family home buyers. Apparently five offers were received, all from investors. However, there are no actual sales particulars or internet extracts or screen shots, for example, provided to show how the property was described and

[4] Dated April 2022
[5] Prepared by Connells Group Research

being marketed – for example as a 5-bed dwelling, as an 8-bed dwelling or as an HMO-type property.

24. Furthermore, the property was being marketed during periods of lockdown during the Covid pandemic, although the estate agents refer to the property boom that followed and the Stamp-Duty 'holiday'. The marketing was therefore undertaken against a backdrop of unusual national and indeed international circumstances, which I do not regard as being a typical or a true reflection of the housing market for such properties.

25. I have not been presented with any substantive evidence or data to demonstrate an acute shortage of, or need for, 9-bedroom HMOs in the area to outweigh the loss of a family dwelling, which could be occupied by a large, extended, or multigenerational family.

26. I therefore find the appeal proposal would result in the loss of a family-sized dwelling for which there is a demand in the city and whose loss the Council seeks to resist. Accordingly, the proposal would be contrary to Birmingham Development Plan (BDP) Policies, PG3, TP27 and TP30 and DMB Policy DM11. Collectively these seek, amongst other things, to deliver a range of dwellings to meet local needs and support the creation of mixed, balanced and sustainable neighbourhoods, and control the number of HMOs in areas and resist the loss of family dwellings.

*HMO threshold*

27. In order to avoid an over-concentration of HMOs in any particular part of the city and to protect residential amenity and character of an area, DMB Policy DM11 seeks to ensure that the proposed change of use of a dwelling to an HMO would not result in HMOs forming over 10% of the number of residential properties within a 100-metre radius of the site, measured from the centre point of the property.

28. The starting point is to calculate the number of existing residential properties within the 100m radius. The Council calculates that there are 65 relevant properties, of which 10 are currently listed as HMOs. This represents 15.38% of properties in use as HMOs, which exceeds the 10% Policy threshold.

29. The appellant, however, calculates there are 74 relevant properties within a 100m radius, of which 6 are HMOs. They calculate the resulting HMO concentration to be 8.10%, or if using the Council's 65 properties this would rise to 9.23%. Either way, the appellant calculates the proposal would fall below the 10% threshold set out in Policy DM11.

30. Counting the number of existing residential properties should be a straightforward exercise based on facts that the parties could have verified and agreed between them. The appellant has submitted a map showing the 100m radius centred on the appeal property and properties identified within the demarcated area. The appellant has also listed all the properties in the area by house number and road name. In contrast, the Council mentioned 65 existing properties in its officer delegated report but has not provided any map showing how it came to the figure. Nor has the Council disputed any of the properties on the appellant's map or address list. It is therefore unclear why there is such discrepancy with the starting figure. Nonetheless, based on the level of

evidence before me I am more persuaded that the appellant's figure of 74 existing residential properties is a more accurate representation.

31. The next stage is to calculate the number of HMOs within the 100m radius. Both Policy DM11 and the HMO-SPD include information on how to identify HMOs such as properties licensed as an HMO; properties with C4 or sui generis HMO planning permission or issued with a Certificate of Lawful Development; proposed declared C4 HMOs in the 12-month notice period for the city-wide Article 4 Direction, and Council tax records - student exemptions for council tax excluding purpose-built student accommodation and private flats.

32. On this basis the Council originally stated that 10 properties were HMO's in the 100m radius. However, the appellant casts doubt on 4 of these, which they believe to be in use as flats and thereby only 6 are in HMO use, thus creating a percentage of 8.1%.  From my observations on site I am inclined to accept the appellant's case on this matter on the four specific properties.

33. However, in its appeal statement, the Council adds a further two properties (including the appeal site) and states that there are six exempt properties in use as HMOs within 100m. The appeal site should not be included as the assessment is against the existing concentration. The appellant considers it unfair that addresses are not available for exempt properties and therefore, need to be taken at face value. I appreciate the Council may not be able to disclose certain properties for safeguarding reasons regarding vulnerable people. The appellant also does not challenge the inclusion of the other additional property.

34. Therefore, the inclusion of the exempt properties, which I find to be valid in accordance with paragraph 4.10 of the HMO-SPD puts the percentage of HMOs between 15–26% within a 100m radius. This would indicate that the number of HMOs in the area already exceeds the 10% threshold. Clause 2 of Policy DM11 states that where the 10% threshold is already breached, and where there would not be a continuous frontage of 3 or more HMOs, planning permission will be granted in exceptional circumstances where the introduction of a new HMO would not change the character of the area.

35. Even if there is already a high concentration of HMOs in the area, that is not a reason to allow one more property to become an HMO. It would worsen the existing situation and undermine the purpose of the Article 4 Direction, which would have had to have a strong evidence base, when balanced against the shortfall of family dwellings in the area and a clear policy direction to restrict the loss of such dwellings. From my observations of the area an additional HMO, especially next door to and in close proximity to other family dwellings, would further dilute the number of family dwellings, and distort the mix and balance of communities and change the area. Furthermore, I have not been presented with any substantive evidence to demonstrate the proposed 9-bedroom HMO would be an exceptional circumstance.

36. For the reasons above, I conclude that the proposal would exceed the policy threshold of Houses in Multiple Occupation (HMOs) in the area. Accordingly, the proposal would conflict with DMB Policy DM11.

*Noise and disturbance*

37. Apart from the loss of family housing, Policy DM11 and the HMO-SPD state that over-concentrations of HMOs in an area can have a number of adverse effects including excessive noise and disturbance to existing residents. An HMO can increase the density of occupation, which can in turn have an effect on the activity generated by occupants of the property.

38. The proposal would introduce 9 unrelated adults to the property who may all have different lifestyles, each with their own work/social routines and with their own family and friends visiting. This would result in more people movement, and hence noise and disturbance at different times of the day and night in comparison to a single-family dwelling. I appreciate that a property of this size could house a large or extended family and there would be some degree of noise and disturbance. However, in a single-family residence, daily activity is generally shared with other family members and is also likely to be limited to particular parts of the house at any particular time.

39. With 9 separate unconnected households there would be increased use of the front door being opened/shut/slammed, voices, cars coming and going with doors shutting, voices, car radios, particularly late at night. Residents could play music, televisions, musical instruments or other similar equipment that would be audible between the properties and even outside that would cause nuisance and annoy neighbours. There would also be comings and goings from servicing and general activity, such as from regular landlord inspections. All of this would go beyond what would normally be associated with a single large family dwelling, even if occupied by an extended family or with multigenerational members.

40. Moreover, the appeal property is a part of a pair of semi-detached properties. They are largely symmetrical in design such that the front doors and porches are side by side in the centre of the overall elevation. Hence, noise and disturbance from the comings and goings of the future HMO occupants would be particularly marked for residents of the adjoining semi-detached property 26 Holly Road, which is a family dwelling.

41. Whilst measures could be undertaken to improve sound insulation between the adjoining property No.26, this would not reduce general comings and goings of 9 individuals or reduce noise and disturbance outside the property or at the front door. The property may have an HMO license for 8 persons, but third-party accounts would seem to suggest that 8 people have not been living there all of the time, and nearby residents have recounted instances of noise and disturbance from fewer residents, such that the full extent of living next to a large HMO has not been fully experienced.

42. A Management Plan would be put in place for running the HMO and the appellant has submitted images of other properties he has converted and operates. The accommodation is aimed at young professionals with a thorough vetting process and regular property inspections. This is laudable and I have no reason to doubt the premises would not be well managed, or that the appellant would not choose his tenants carefully. However, planning permission runs with the land and different landlords in the future may choose to operate the premises differently, such that the appellant’s tenancy restrictions and behaviour of its tenants could not be relied upon.

43. I understand for a previously refused application at the property for a 10-bedroom HMO the Council gave weight to a fallback position that the property could be a 6-bedroom HMO without the need for planning permission, taking account of the 2004 Housing Act. This might well be a theoretical possibility. However, a 6-bedroom HMO is significantly smaller than a 9-bedroom HMO with fewer occupants, fewer comings and goings and less noise and disturbance. Hence the fallback scheme would be less harmful than the scheme for which planning permission is being sought and consequently the fallback scheme cannot be afforded significant weight.

44. To conclude, the proposed 9-bedroom HMO would result in an over-intensive use that would cause unacceptable noise and disturbance that would have an adverse effect on the living conditions of nearby residents, particularly those living in the adjoining semi-detached property 26 Holly Road. Accordingly, the proposal would be contrary to BDP Policy PG3 and DMB Policy DM2. Collectively they seek, amongst other things, to ensure that development is appropriate for its location and would not result in unacceptable adverse impacts on the amenity of neighbours.

45. I acknowledge that some residents are concerned about additional parking. However, there is no evidence, or traffic, parking or highway reasons for refusal to indicate there would be severe effects on transport grounds. The site is well located to public transport and the Highway Authority raised no objections. Therefore, BDP Policy TP44 is not directly relevant to this main issue.

**Conclusion**

46. I have found that the proposal would exceed the Council's percentage threshold for the number of HMOs within a 100m radius of the site. Even if I had not included the exempt properties and the proposal fell beneath the 10% figure it would still result in the loss of a family dwelling and would adversely affect the living conditions of occupiers of neighbouring properties.

47. For these reasons, the proposal would not accord with the development plan and there are no other considerations which outweigh this finding. Accordingly, the appeal should be dismissed.

*K Stephens*

INSPECTOR