
Appeal Decision

Site visit made on 11 January 2023

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th November 2023

Appeal Ref: APP/F5540/W/21/3288952

108 Hibernia Road, Hounslow TW3 3RN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr D Reeve of Link-Estates Limited against the Council of the London Borough of Hounslow.
 - The application Ref: 00603/108/P8, is dated 23 July 2021.
 - The development proposed is described as: Erection of a single storey rear extension. Change of use of rear of ground floor from a doctor's surgery to an administrative office and assessment centre. Change of use of front of ground floor from a doctor's surgery to large house in multiple occupation. Change of use of first and second floors from self-contained flats to a large house of multiple occupation.
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Decision

1. The appeal is dismissed, and planning permission is refused.

Preliminary Matters

2. When the planning application was submitted the proposal was described as 'Retrospective retention and extension of rear half of ground floor as D1 use together with change of use of front half of ground floor from D1 to Sui Generis HMO, and change of use of 1st and attic floor from C3 to Sui Generis HMO'. The appellant and the Council subsequently agreed an amended description reading: 'Erection of a single storey rear extension. Change of use of rear of ground floor from a doctor's surgery to an administrative office and assessment centre. Change of use of front of ground floor from a doctor's surgery to large house in multiple occupation. Change of use of first and second floors from self-contained flats to a large house of multiple occupation'. I have therefore used that description for the purposes of the appeal.
3. The appeal has been made against the failure of the Council to give notice of its decision within the prescribed time period. The Council's statement of case sets out that, had it been in a position to make a decision on the application, it would have refused permission on grounds relating to the loss of a community facility, the suitability of the proposed accommodation for the proposed occupiers in terms of internal floorspace and external amenity space, and the effect of the proposal on on-street parking in the area.

Main Issues

4. The main issues in this appeal are:

- Whether the proposed development would provide suitable living conditions for the future occupiers in terms of internal living space and outdoor amenity space;
- The effect of the proposed development on the safe operation of the highway in the vicinity of the appeal site with particular regard to car parking; and
- The effect of the proposed development on the provision of community facilities in the area.

Reasons

Living conditions of the future occupiers

5. The evidence sets out that the proposed house in multiple occupation (HMO) would be occupied by a maximum of 13 persons across the 8 rooms to be provided. It is not in dispute between the parties that most of the rooms meet the space standards set out in the Council's document Standards for Houses in Multiple Occupation 2018. Where there is disagreement is in respect of the two rooms on the ground floor which are annotated on the submitted drawings as 'self-contained studios' and shown as being provided with an ensuite bathroom/shower room. The Council contend that these are separate, self-contained, studio dwellings within the building and as such are subject to the standards set out in Policy D3 of the London Plan 2021 (the London Plan) and the Technical housing standards – nationally described space standard (the Standard). These floorspace requirements apply to new dwellings, including flats, but are not applicable to rooms within an HMO.
6. There is nothing in the evidence before me which sets out, or defines, what constitutes a self-contained flat, or dwelling, for the purposes of determining this appeal. Section 254 of the Housing Act 2004, which addresses the meaning of a house in multiple occupation, defines a self-contained flat as a separate set of premises which forms part of a building, which either in whole or in part lies above or below some other part of the building, and in which all three basic amenities are available for the exclusive use of its occupants. The basic amenities referred to are a toilet, personal washing facilities, and cooking facilities.
7. Although the two self-contained studios shown on the submitted drawings would meet this definition, within the context of Section 254 of the Housing Act this is in relation to the test of whether a self-contained flat is also an HMO and is not a definition of whether something is a separate, self-contained, dwelling for the purposes of the Standard or London Plan Policy D3.
8. Consideration of what constitutes a dwelling was also given in Gravesham Borough Council v Secretary of State for the Environment (1984) 47 P&CR 142 where it was held that a distinctive characteristic of a dwelling-house was its ability to afford to those who used it the facilities required for day-to-day private domestic existence. The self-contained studios would arguably meet this test as they contain a kitchen area and an ensuite in addition to the main living area. However, an HMO would also meet that test regardless of whether some of the rooms had these facilities. Whilst the Town and Country Planning (General

Permitted Development) (England) Order 2015 defines both a dwellinghouse and a flat, these definitions are for the purposes of interpreting that Order and there is nothing that would indicate that these definitions are binding outside of that.

9. The appellant maintains that whilst these two rooms have their own en-suite and small kitchen facility, the occupiers would also have access to the shared kitchen and common room, other bathrooms, and the laundry facilities in the building. The appellant's position is that these rooms would be part of the HMO and not separate dwellings. I have also noted that the submitted floorplan drawings for the proposed scheme also annotate a kitchen area within most, but not all, of the other rooms within the HMO.
10. Neither the description of the development originally used on the planning application form, nor the amended description agreed with the Council makes mention of self-contained flats. Both refer solely to the change of the relevant parts of the appeal building to a large HMO. The description of the proposed development sets out what it is that planning permission is being sought for. Whilst the Council may argue that these rooms constitute separate dwellings, quite simply, that is not what the appellant has applied for.
11. The Council's Standards for Houses in Multiple Occupation document recognises that rooms within HMOs may have both kitchen and bathroom facilities which are exclusive to the occupier of a room. Although I am aware that the Inspector who determined the previous appeal considered that the self-contained studio rooms in that proposal were independent forms of accommodation, I have not been provided with the plans or any of the other evidence in relation to that scheme. As a result, I cannot be certain that this is directly comparable to the present scheme. Nonetheless, the previous decision also refers to, and was based on, space standards for buildings converted to self-contained flats which may be an HMO under the terms of Section 257 of the Housing Act. The Council's Standards for Houses in Multiple Occupation document contains separate tables of floorspace requirements for Section 257 HMOs and for rooms with their own kitchen facilities. It also refers to exclusive washing/toilet facilities in a separate part.
12. Consequently, under the terms of the Council's standards, the presence of such facilities does not automatically make these rooms separate, self-contained, dwellings as the standards clearly contemplate that a room within an HMO which is not necessarily a Section 257 HMO may have exclusive facilities. Both of the disputed rooms, excluding the floor area of the en-suite, have sufficient floorspace for rooms that could be occupied by up to two persons and which have their own kitchen facility when the Council's standards are applied.
13. I have also had regard to the fact that the Council has separately granted an HMO licence for the premises for a maximum of 12 households comprising of no more than 21 people, which sets out that in the opinion of the licensing authority the premises are reasonably suitable for occupation as an HMO. This licence is still extant. Whilst I recognise that the licencing and planning regimes are separate entities, it is nevertheless relevant that in issuing a licence the Council did not consider that the internal accommodation which could be provided was substandard.
14. Within the above context, I find that the appeal proposal would provide suitable internal floorspace for the proposed occupiers.

15. Turning to external amenity space, both the London Plan and London Borough of Hounslow Local Plan 2015 (the Local Plan) set out external space standards for new dwellings. The Council's Standards for Houses in Multiple Occupation document is silent in respect of any specific external space standard applicable to HMOs. The appellant has not submitted any specific evidence in respect of external amenity space.
16. Applying the London Plan minimum standard of 5m² for a 1-2 person dwelling, plus an additional 1m² for each additional occupant, would result in a minimum requirement of 17m². However, the London Plan standard only applies where there are no higher local standards in the borough Development Plan Documents.
17. Local Plan policy SC5 expects a property with five or more habitable rooms to have 75m² of useable amenity space. The appeal building has a small front garden area that would potentially meet the London Plan minimum standard but would fall short by some way of the requirement of the Local Plan.
18. Although the Council's HMO standards do not mention amenity space requirements, an HMO is a dwelling house and, consequently, the Council's standards for amenity space for new dwellings would be applicable. I am mindful that the appeal building was built and used as a dwellinghouse although the evidence indicates that it was converted to a mixed use doctor's surgery and residential flat in the 1980s. Since that time the building has been extended and parking areas provided to the rear which have reduced the amenity space available at the building. The previous use of the building as a doctor's surgery also included residential occupation which would have experienced this reduced level of amenity space.
19. The proposed new use is not wholly residential as it would also include an element of Use Class E floorspace. Nonetheless, the level of residential occupation would be increased and unlike the previous use would not be directly associated with the other use within the building. There is nothing in the evidence which would indicate that residents of an HMO require a lesser degree of amenity space than other residential occupiers. It would not, therefore, be unreasonable to apply the Council's amenity space standards for a new dwelling to the appeal proposal.
20. As I have found that the rooms annotated as self-contained studios are not independent dwellings, these would not require additional external amenity space as suggested by the Council. This notwithstanding, the appeal proposal would not provide the level of amenity space required by Local Plan Policy SC5. Nor has my attention been drawn to any conveniently located public open space nearby that would be available for use by the future residents which might compensate to some extent for the lack of private amenity space.
21. Taking the proposal as a whole, although it would provide suitable internal space for the future occupiers, it would not provide adequate external amenity space for the proposed level of occupancy. Consequently, overall, the proposal would not meet the requirements of the London Plan or the Local Plan.
22. I therefore conclude that the proposed development would not provide suitable living conditions for the future occupiers in terms of internal living space and outdoor amenity space. It would conflict with the relevant requirements of Policy D6 of the London Plan and Local Plan Policy SC5 which expect, amongst

other matters, that new dwellings provide a suitable level of outdoor amenity space for the occupiers.

Highway Safety

23. The appeal building is located on a residential street within a largely residential area just outside Hounslow town centre. A controlled parking zone (CPZ) operates on Hibernia Road and the other streets leading from it in the vicinity of the appeal site. This restricts on-street parking to permit holders only between 09:30 and 18:00, Monday to Friday, and 09:30 to 12:30 on Saturdays. From the evidence, the appeal site has a Public Transport Accessibility Level (PTAL) of 5, which indicates very good connections to, and availability of, public transport.
24. The appeal proposal would provide one off-street car parking space in connection with the Use Class E element of the scheme and would make no off-street car parking provision for residents of the HMO.
25. I saw when I visited the site that the available on-street parking was well used although there were a limited number of spaces available. I also observed that on the section of Hibernia Road where the appeal building is located opportunities for on-street parking are very restricted by many of the properties having converted the front garden areas to car parking, resulting in multiple accesses onto the highway. Similar circumstances are present on the section of Grove Road adjacent to the side of the appeal site.
26. Neither party has submitted any substantive evidence in respect of car parking demand or car ownership in the area. The implementation of a CPZ is, however, indicative that there is a certain level of parking stress in the area. I do recognise that my observations are only a snapshot of the conditions at the time of my visit, mid-morning on a typical weekday, but given the built up residential nature of the area and its proximity to the town centre, I have no reason to believe that what I saw is not representative. It is also likely that there will be an increased parking demand in the evenings and at weekends at times when the CPZ is not in operation.
27. The appeal proposal would increase the number of residents in the area. I accept that due to the high PTAL rating and proximity to the town centre with its shops, services, and facilities, occupiers of the proposed development would not necessarily be dependent on use of a vehicle to meet their day to day transportation needs. Nevertheless, there is no evidence in the submissions which would indicate that occupiers of an HMO are less likely to own or operate a vehicle than occupiers of other types of residential accommodation. Increased parking demand in an area which is already subject to parking stress can lead to illegal or inconsiderate parking which would be prejudicial to road safety.
28. London Plan Policy T6 sets out that car free development should be the starting point for all development proposals in places that are well-connected by public transport. It is not in dispute that the appeal site is in such a place. This policy is broadly echoed by Local Plan Policy EC2. Policy T6 also sets out that the car parking standards on Policy T6.1 should be applied to development proposals. Policy T6.1 set out that all new development in areas with a PTAL of 5 or more should be car free.
29. I have noted that the Inspector who determined the previous appeal concluded that there would no harm to highway safety. However, this was predicated on

the assumption that a planning condition could be used to restrict parking permits. In this case the Council have suggested the wording of a condition should the appeal be allowed. From its wording, this suggested condition would be *ultra vires* as it seeks to control the occupiers of the building rather than the use of the land or buildings. As such it would not satisfy the tests in the Planning Practice Guidance (PPG) and the National Planning Policy Framework. No other mechanism has been put to me which would ensure that the proposed development would be car free.

30. The PPG sets out that a positively worded condition which requires the applicant to enter into a planning obligation under section 106 of the Town and Country Planning Act 1990 or an agreement under other powers, is unlikely to pass the test of enforceability. It also goes on to say that a negatively worded condition limiting the development that can take place until a planning obligation, or other agreement, has been entered into is unlikely to be appropriate in the majority of cases.
31. The PPG does recognise that in exceptional circumstances a negatively worded condition requiring a planning obligation, or other agreement, to be entered into before certain development can commence may be appropriate, where there is clear evidence that the delivery of the development would otherwise be at serious risk. It also states that this may apply in the case of particularly complex development schemes. No evidence has been submitted that would indicate that this case is a particularly complex development scheme, or that there are exceptional circumstances which would make it appropriate to address this through a condition. Indeed, the appellant has not made any substantive submissions in respect of car parking or highway safety. Had the proposal been acceptable in all other respects, the delivery of the development would potentially have been at risk. However, as I am dismissing the appeal on other grounds, this is not a factor for consideration.
32. I am satisfied that, although the scheme as presently proposed does not meet the Council's requirements in terms of cycle parking, an appropriate level of secure cycle parking could be accommodated within the site. Whilst this would help facilitate the use of alternative means of transport, in the absence of mechanism to prevent the building from being occupied by persons holding a parking permit, I cannot be confident that the proposal would be car free as required by the development plan.
33. I therefore conclude that the proposed development would cause harm to the safe operation of the highway in the vicinity of the appeal site, with particular regard to car parking. It would not comply with the relevant requirements of London Plan Policies T2, T4, T6, and T6.1 and Local Plan Policy EC2 which, when read together, seek to promote car free development in appropriate locations, encourage the use of alternative means of transport, reduce the dominance of vehicles on London's streets, and expect new development to avoid adverse impacts on the transport network and not prejudice highway safety.

The effect on the provision of community facilities in the area

34. The evidence indicates that until 2015 the ground floor of the appeal building was used as a doctor's surgery with the first floor and attic of the building used as a residential flat accessed from a common hallway with the surgery. The use as a doctor's surgery ceased on the retirement of the general practitioner based there. The evidence also indicates that a new, purpose built, health centre on

Bath Road, approximately 400m to the north of the appeal site, was opened in October 2016.

35. Policy CI1 of the Local Plan seeks to protect existing community facilities that continue to serve the community. The Policy also sets out a number of criteria to be met if a proposal will result in the loss of a community use and is not re-providing that use elsewhere at equivalent capacity. These are: that the facility has been vacant or significantly underused for a continuous period of 18 months and is not appropriate for any other community uses; the facility is no longer required by the body that operates it; and robust evidence has shown that the use is no longer required to serve its catchment area.
36. Whilst in planning terms the lawful use as a doctor's surgery (formerly Use Class D1, now Use Class E) persists until it is replaced by another permitted use, in practical terms the use of the building ceased with the retirement of the doctor and the closure of the medical practice. The wording of Policy CI1 is explicit in that it seeks to protect existing community facilities which continue to serve the community. At the time that the planning application was submitted, whilst the lawful use as a community facility still existed, this was not active, and had not been for some five and a half years. In this context it could not be said to be continuing to serve the community and the appeal proposal would not be displacing an extant and ongoing use of the premises.
37. There is some limited evidence that the appeal building was advertised for sale on the market in August 2018 as being suitable for a community use, specifically a dentist or day nursery. However, there are no details of interest in the premises or whether options such as leasing/renting the property were considered. Community uses are not limited to medical facilities and the supporting text to Policy CI1 also identifies educational or social services, cultural and leisure facilities, places of worship, and meeting places as possible community uses.
38. The appellant points out that a large NHS health centre (the Heart of Hounslow Centre for Health) was opened in 2016 a short distance from the appeal site. I was able to see this following my visit to the appeal site. I observed that there was also a further modern medical centre (Hounslow Medical Centre) nearby on Bath Road. Although there is no evidence that the NHS no longer require the appeal building, given the presence of these modern purpose built facilities nearby, I consider it unlikely that the NHS would particularly require or favour premises within a converted domestic property for service delivery. Neither party has identified the catchment area of the former medical practice, but I am also mindful that it is not incumbent on an individual general practitioner, who is not part of a larger practice, to make alternative arrangements for patients on their list when they retire.
39. Although Policy CI1 does place the onus on the developer to provide relevant evidence, the Council have not identified a shortfall of community facilities of any type in the area, or indicated that there is a latent, unmet, demand for premises of this nature.
40. I have noted the decision made by the Inspector in respect of appeal reference APP/F5540/W/20/3255558 for a change of use of the whole building to a house in multiple occupation which concluded that there was no substantive evidence that the facility is no longer required. However, I do not know what evidence was available to the Inspector in that case and so cannot be certain that it is

comparable to the proposal before me. In any event the current appeal relates to a proposal which is different in nature to that in the previous appeal.

41. The appeal proposal includes on the ground floor a separate self-contained space which, although described as an administrative office and assessment centre, at approximately 82m² floor area would be suitable for some of the community uses identified in Policy CI1. Although a potential end user had been identified for the premises for a use which was not considered by the Council to be a community use, the appellant's evidence states that this interest has now fallen away and that the space is available.
42. Within this context, the proposal would not result in the displacement of an extant and functioning community facility, nor would it result in a total loss of floorspace available for such a use. Whilst the evidence of marketing the property is scant, equally, I have no evidence before me that there is a latent demand for premises of this nature for community use. Given the above, although the application may not meet some of the criteria set out in paragraph (d) of Policy CI1, I am satisfied that it does not conflict with the policy when read as a whole.
43. I therefore find that the proposed development would not adversely affect the provision of community facilities in the area. It would comply with the relevant requirements of Local Plan Policy CI1 and the National Planning Policy Framework (the Framework) which seek to ensure that existing valued community services and facilities are retained.

Other Matters

44. The Council has not raised concerns about any other aspects of the development proposed. From what I have read and from what I saw when I visited the site, I have no reason to find otherwise. However, this does not alter my overall conclusion on the proposal.

Conclusion

45. I have found that the proposed development would not provide suitable living conditions for the future occupiers and would be harmful to the safe operation of the highway in the vicinity of the appeal site. As such it would not comply with the relevant policies in both the London Plan and the Local Plan. These are to my mind important matters and, consequently, the proposal is contrary to the development plan taken as a whole, notwithstanding that I have found it would not adversely affect the provision of community facilities in the area and that it may comply with other policies in the development plan. No material considerations have been identified which would indicate that planning permission could be granted for a development that does not comply with the provisions of the development plan.
46. For the above reasons, I conclude that the appeal should be dismissed, and that planning permission should be refused.

John Dowsett

INSPECTOR