



Appeal Decisions

Site visit made on 30 October 2023

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 January 2024

Appeal A

Appeal Ref: APP/M4320/W/23/3321797

101 South Road, Waterloo, Liverpool L22 0LS

- 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 Harold Jones Ltd against the decision of Sefton Metropolitan Borough Council.
 - The application Ref DC/2023/00401, dated 14 March 2023, was refused by notice dated 4 May 2023.
 - The development proposed is the change of use of the first and second floors only from a Bank (E) to an 8-bedroomed House in Multiple Occupation (HMO) (Sui Generis), a single storey extension to the rear and external alterations including the reinstatement of the existing entrance door onto Neville Road.
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Appeal B

Appeal Ref: APP/M4320/W/23/3326424

101 South Road, Waterloo, Liverpool L22 0LS

- 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 Harold Jones Ltd against the decision of Sefton Metropolitan Borough Council.
 - The application Ref DC/2023/00828, dated 5 June 2023, was refused by notice dated 17 July 2023.
 - The development proposed is the change of use of the first and second floors only from a Bank (E) to an 8-bedroomed House in Multiple Occupation (HMO) (Sui Generis), a single storey extension to the rear and external alterations including the reinstatement of the existing entrance door onto Neville Road.
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Decision – Appeal A

1. The appeal is dismissed.

Decision – Appeal B

2. The appeal is dismissed.

Application for costs – Appeal B

3. An application for costs was made by Harold Jones Ltd against Sefton Metropolitan Borough Council in respect of Appeal B. This application is the subject of a separate Decision.

Preliminary and Procedural Matters

4. I have been appointed to determine two appeals relating to the same property. It is a three-storey (plus basement) former bank building on the corner of South Road and Neville Road which, until its closure in March 2021, was the Waterloo branch of the TSB. Details of the proposals are set out in the banner

heading above; the descriptions are identical, but although the proposed first- and second-floor layouts are the same there would be differences to the ground floor. While I have considered each proposal on its own merits, in order to avoid duplication I have dealt with the two schemes together except where otherwise indicated.

5. For both appeals, the appellant drew my attention to an appeal allowed in March 2023¹ which granted planning permission for the change of use of the first and second floors of the building to a five-bedroom House in Multiple Occupation ("HMO") and associated works. The same decision letter also dealt with two further proposals for a change of use of the building to an HMO (one scheme with eight bedrooms, the other with five)², though these appeals were dismissed. Both main parties referred extensively to these earlier decisions (together "the 2023 appeals"), which I address at relevant points of my reasons below.
6. The decision notice issued by the Council in respect of the Appeal A scheme referred to guidance its 2018 *Flats and Houses in Multiple Occupation* Supplementary Planning Document ("the 2018 SPD"). This was superseded on 25 May 2023 when the Council adopted the *Conversions to Flats and Houses in Multiple Occupation* Supplementary Planning Document ("the 2023 SPD"). In determining the appeals I have had regard to the more recent guidance as a material consideration carrying significant weight.
7. The Government published revised versions of the National Planning Policy Framework ("the Framework") on 5 September 2023, replacing the July 2021 version extant at the time the applications were determined, and again on 19 December 2023. The amendments made did not have any bearing on the main issues in these appeals, and it was not therefore necessary to seek comments from the main parties on the updated Framework. Where I have referred to specific paragraphs of the Framework, the numbering used is that of the December 2023 version.
8. As part of the appeal documentation for Appeal A, the appellant submitted a revised drawing³. This changed the ground floor dining kitchen so that instead it would be designated "just" a kitchen, and added a rooflight to the same room; it also relocated the bin store for the retained Class E part of the building to the ground floor, with other consequential changes to the ground floor layout. The appellant described the amendments as "minute" and "a small internal change that impacts on nothing and nobody"; however, not only were the refuse storage arrangements at the heart of one of the reasons for refusal, they were also commented on by interested parties at planning application stage.
9. The *Procedural Guide – Planning Appeals – England* advises at paragraph 16.1 that "the appeal process should not be used to evolve a scheme [and] it is important that what is considered by the Inspector at appeal is essentially the same scheme that was considered by the LPA and by interested parties at the application stage". As the revised proposal has not been fully considered by the Council or subject to consultation, having regard to the advice in the Procedural

¹ PINS Ref: APP/M4320/W/22/3307322

² PINS Refs: APP/M4320/W/22/3307024 and APP/M4320/W/22/3307028

³ Drawing No 131 PLN P 22 Revision C, dated 8 May 2023

Guide as well as the judgment in *Holborn Studios Ltd*⁴ (which refined the well-known “Wheatcroft Principle”⁵), I have not taken the revised drawing into account in my decision, as to do so may prejudice other parties.

Main Issues

10. The main issue in both appeals is whether the proposed development would provide acceptable living conditions for future occupiers, with particular regard to the provision of external amenity space and, in Appeal A only, the provision (including the form and arrangement) of internal communal space, and private bedrooms.
11. An additional main issue in Appeal A only is whether the proposal would make adequate provision for the storage of bins and refuse.

Reasons

12. In both appeals, the proposed development is the conversion of the first and second floors of the building to provide an eight-bedroom HMO. There would be four bedrooms on each of those floors, each with an ensuite shower room/toilet. The front part of the ground floor and the basement would remain in Class E use.
13. The building has an existing single storey rear extension. This would be enlarged by incorporating the space of an existing small external yard into the building. The proposed internal layouts differ between the two appeals, but in both the extended rear part of the ground floor would include a communal kitchen/dining room⁶, along with cycle and refuse storage for the HMO; there would also be a further kitchen on the first floor.
14. The Appeal A scheme shows bin storage for the ground floor Class E unit in the basement; for Appeal B an altered proposed ground floor layout shows a shared bin storage area at the rear of the building.

Living conditions

External amenity space

15. The 2023 SPD recognises that HMOs are an important part of the housing market in Sefton; it provides guidance intended to ensure that such development is of a high standard, and the problems which can result from large numbers of people living in relatively small places are averted. In respect of outdoor amenity space, it seeks a minimum provision for HMOs of 10m² per occupier, which it says can be provided as a shared garden or terrace, private spaces such as balconies, or a combination. It advises that development falling short of the desired standard will not be permitted “if *all* opportunities to maximise the amount of space have not been taken” (including, for example, the removal of existing extensions or outbuildings), that “extensions to properties to increase accommodation will not be permitted if this would result in an inadequate amount of amenity space”, and that “if the required amount of amenity space cannot be met the Council would expect the applicant to reduce the number of occupants expected to be accommodated”.

⁴ *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823 (Admin)

⁵ *Bernard Wheatcroft Ltd v SSE* [JPL 1982 P37]

⁶ In the Appeal B scheme this is described on the submitted drawings as “Kitchen/Dining/Lounge”.

16. The 2023 SPD goes on to state that in “exceptional circumstances” lower amounts of outdoor amenity space may be accepted, and includes (at Appendix B) a flow diagram setting out how these exceptional circumstances will be assessed. The 2023 SPD is clear that the onus is on developers to demonstrate why a lower provision of private amenity space should be accepted on a case-by-case basis while still achieving a high-quality and sustainable development.
17. With eight single-occupancy bedrooms, meeting the 2023 SPD standard would mean the provision of at least 80m² of outdoor amenity space. None is proposed, and occupiers of the rooms within the HMO would therefore be dependent either on communal spaces within the building or public spaces outside for relaxation or socialising. The proposed developments retain existing extensions on the ground floor at the rear of the building, and increase them by extending the building further to include an existing (very small) external rear yard.
18. In terms of communal spaces, in both appeal schemes there would be a 14.1m² kitchen/dining room on the ground floor, and a 7.5m² kitchen on the first floor. The 2023 SPD states that a separate kitchen should have a minimum size of 7m², while a “multi-use communal area” (such as a kitchen/dining room) should be at least 14m². The proposed communal rooms would meet the minimum space standard set out in the 2023 SPD, but they would not exceed it by much and in my view could hardly be described as generous; they are unlikely to be places where future occupiers would wish to spend much of their leisure time (I return to the specific concern raised by the Council in respect of Appeal A in a moment). The appellant has stated that the HMO would be provided with washing machines and dryers for laundry, but the guidance is clear that, in part because of fuel poverty issues, the provision of tumble dryers is not a substitute for providing at least some outdoor amenity space.
19. In terms of public outdoor space, I was told that there are three areas for formal and informal outdoor leisure and recreation between 400m and 850m from the appeal property. It is therefore reasonably well-served by such facilities, although the guidance in the 2023 SPD indicates that a shortfall in private amenity space may be considered acceptable only within 200m of a “main park”, and then only when a proportionate financial contribution towards the improvement of that park is secured (which is not the case in these appeals).
20. The appeal property is within the Waterloo local centre, with a range of shops and services, and public transport connections, so in these respects I agree that it is in a sustainable location. However, the zero provision of outdoor amenity space in both appeal schemes means that the proposed HMO accommodation would fall well short of the standard sought by the 2023 SPD. None of the evidence which has been put before me demonstrates either that “all opportunities” to maximise external space have been taken, or that the developments would represent “exceptional circumstances” in the terms set out in the 2023 SPD.

Internal communal space – Appeal A only

21. As I have described in paragraph 18 above, the proposed ground floor kitchen/dining room and first floor kitchen would comply with the space standard which the 2023 SPD sets for communal rooms. No other communal

space would be provided. The rear window of the proposed ground floor kitchen/dining room in the Appeal A scheme would face the blank side wall of No 3 Neville Road at a distance of some 2.3m or so, and I agree with the Council that a view out of the window across the back lane to a blank brick wall is unlikely to provide occupiers of the HMO with an attractive or pleasing outlook.

22. The 2023 SPD advises that "at least one window in communal habitable rooms should have a reasonable outlook and prospect". It describes a habitable room as one where "residents will spend a lot of time" and includes in that a kitchen, although that is in the context of advice relating to self-contained flats rather than HMOs. In my experience, while a kitchen/dining room in an HMO would be considered a habitable room, a kitchen in an HMO more usually would not.
23. The room is shown in the submitted drawings with a table and chairs for only four people, but as the only room with communal seating (the first-floor kitchen would have none) it would be expected to serve as a dining room for all eight residents, and it seems very unlikely that it would be large enough to perform that role. To this extent therefore, the proposed kitchen/dining room would not very well-suited to its stated purpose but, even though I declined to accept the amended drawing submitted at appeal stage it would be, as the appellant has indicated, a simple matter to redesignate the room so that it would be "just" a kitchen rather than a combined kitchen/dining room.
24. With that in mind, I consider that a poor outlook from that room would be unlikely in itself to amount to providing unacceptable living conditions for future occupiers of the HMO. My overall conclusion on this matter would be dependent on whether the communal space and private rooms together would be suitable (in size, form and all other respects) for the various tasks to which they would be put, and I turn to consider the private rooms in a moment.
25. The 2023 SPD advises that "no resident will be expected to go outside or into another building, in order to access a bathroom or kitchen". The Council's officer report also indicated that the proposed layout would be unacceptable in respect of the ground floor kitchen/dining room, as residents would "have to leave the main building to access it...". That is not borne out by my reading of the submitted plans; the ground floor kitchen/dining room would be in an existing, albeit modified, extension, directly and internally connected to the rest of the building. I do not find the proposal unacceptable in this respect.
26. The 2023 SPD also states that "shared kitchens should be no more than one floor up or down from bedsit units they are intended for unless they include a dining area". Notwithstanding my concern about the suitability of the kitchen/dining room on the ground floor to serve all eight residents of the HMO, because of its size, the provision of two kitchens within the building would mean that no bedroom would be more than one floor away from a kitchen. I also therefore do not find the proposal unacceptable in this respect.

Private bedrooms – Appeal A only

27. The eight single bedrooms would have floor areas ranging from 15.1m² to 17m² (by the appellant's measurements as shown on the submitted drawings). Each would also have an ensuite shower room/toilet, which is additional to the stated floor area measurement. The 2023 SPD requires a single bedroom (without integral kitchen facilities) that does not have access to a communal

dining room or lounge to have a minimum size of 15m². A footnote explains that the measured area “can include ensuite bathrooms, toilets or shower rooms as long as the bedroom/living space does not fall more than 3m² below the standards above and the main room size is no less than 8.5m² in any case⁷.”

28. The Council’s officer report expressed concern that two of the rooms would have “a significant amount of floorspace arranged as a corridor due to the contrived arrangement of the rooms, as such the actual usable floor space is unacceptably reduced”. As individual bedrooms were not numbered on the submitted drawings the rooms were identified only by their floor areas of 15.1m² and 15.5m², though it is evident from all the evidence before me (including the appellant’s deductions, set out in their appeal statement) that this refers to the second room from the front of the building on both the first and second floors.
29. Based on the submitted drawings, neither of the two rooms seems to me to be a particularly awkward or convoluted shape, notwithstanding that their shape is clearly at least in part a function of the proposed subdivision of the space within the building to accommodate the maximum number of bedrooms. Both bedrooms would have a relatively narrow entrance way, but again this does not strike me as being an unusual arrangement, especially where an existing building is being converted to flats or HMOs.
30. The “corridor” area would measure around 2.7m² for the affected first-floor room, and 2.2m² for the second-floor room. The external and ensuite doors would open into the spaces, and they would be unlikely to be able to accommodate any furniture. However, the spaces are not excessively long, and the submitted drawings suggest that while the effective space in the rooms would be reduced they would be unlikely to be unacceptably cramped. Furthermore, while I have not been provided with precise measurements, it is evident by a visual comparison that in both affected rooms the ensuite room would be at least as large (and probably larger) than the “corridor” area. Having regard to the standard in the 2023 SPD, I find that the bedrooms would provide acceptable living space for future occupiers.

Overall findings on this main issue

31. For both appeals I have found that the lack of any private outdoor amenity space means that the proposed developments would not comply with the guidance set out in the 2023 SPD, and so would not provide acceptable living conditions for future occupiers.
32. In Appeal A, I have found that the private bedrooms would be acceptable in terms of both their size and layout. I have concern as to whether the kitchen/dining room in that scheme would be of an adequate size to serve its intended purpose for the eight residents of the HMO. However, by reference to the standards set out in the 2023 SPD, I have found that the private rooms would be of an acceptable size even for an HMO without any communal dining space. In these circumstances therefore I do not consider that the possible shortcomings of the ground floor kitchen/dining room would on their own amount to a justification for refusing the scheme. However, this does not mitigate or outweigh the other harm I have found.

⁷ This is a markedly different situation to that under the 2018 SPD, which explicitly stated that the minimum areas excluded bathrooms, toilets or shower rooms.

33. The appellant's evidence in both appeals referred extensively to the allowed 2023 appeal, particularly in respect of the amenity space issue. They summarised the Inspector's findings as being "in the circumstances of the case, location and context [...] there is no need to provide [outdoor amenity] space". However in that appeal, my colleague was considering a situation where the shortfall in outdoor amenity space was only 40m² (half of that in these appeals), where only five bedrooms would be provided in the building (rather than the eight here) and they would generally be larger than in these appeals, and where there would be a shared lounge/dining room providing what the Council describes as "substantial communal space". While the appeal site's location (and in particular the access to recreation spaces described in paragraph 19 above) was clearly an important consideration in the allowed 2023 appeal, it was not the only relevant factor; the circumstances and context, which includes the number of HMO rooms proposed and the provision of other space for residents within the property, are not the same.
34. Furthermore, the Inspector determining the 2023 appeals was doing so with reference to the guidance in the 2018 SPD, rather than the 2023 SPD. The appellant suggests that the "test" as to whether an under-provision of outdoor amenity space may be acceptable is identical between the two editions of the SPD, but that is not borne out by my reading of both documents. The 2023 SPD sets a higher requirement for outdoor amenity space in HMOs than was previously the case, specifically addresses the question of whether the provision of clothes dryers is an adequate substitute for outdoor amenity space, and generally provides much more detailed advice as to what might be considered exceptional circumstances (including defining an appropriate proximity to, and securing a financial contribution towards improving, alternative public outdoor space). The guidance before me now is therefore very different to that in the 2023 appeals, and that Inspector's decision to allow a five-bedroom HMO does not carry significant weight in favour of the eight-bedroom proposals before me.
35. I therefore conclude, for both appeals, that the proposed developments would not provide acceptable living conditions for future occupiers. The proposals would conflict with Policy HC4 of the 2017 Sefton Local Plan ("the SLP") which, among other things, seeks to ensure that the development of HMOs does not result in unacceptable living conditions for occupiers of the property. There would also be conflict with the requirements of Paragraph 135 (f) of the Framework, which seek to create places with a high standard of amenity for existing and future users.

Refuse storage – Appeal A only

36. The proposed development provides for refuse from the retained ground floor Class E unit to be stored in the basement. Bins would have to be taken for collection through two single doors, up an internal staircase with a U-turn manoeuvre at the top landing, through a further single door into the main business unit, and out of the front door onto the street. This would be unlikely to be a convenient or easy operation for most individuals to carry out. It may not be unheard of for bin stores to be located in basements, but in my experience this is more usually where there is some form of ramp access rather than just an internal staircase.

37. I accept that there are some uses to which a Class E unit could be put which would be likely not to generate much waste, or which would largely generate "clean" waste such as cardboard and paper. This neglects the fact that there would be other uses within Class E which could produce a wider range of more unpleasant refuse. It would also be dependent on a convenient and accessible place to store the waste having been identified. The same is true of the question of ventilation identified in the 2018 Stanley Road appeal decision⁸ to which the appellant drew my attention, so that decision does not weigh in favour of the proposed arrangement in this case.
38. The appellant suggested that it may be possible to attach a condition requiring bin storage to be provided in accordance with the revised drawing submitted in Appeal A but, for the reasons I have given above, I have not accepted the amended plan.
39. The appeal scheme before me does not provide for a convenient and accessible place for business waste to be stored, and so would not make adequate provision for the storage of bins and refuse. It would therefore conflict with Policy IN3 of the SLP which, among other things, seeks to ensure that good design in new development facilitates the storage, collection and recycling of waste.

Other Matters

40. The appeal property can be used as an HMO under the planning permission granted by that the allowed 2023 appeal. That is in effect a fallback position for the appellant, though they did not use the word in their submissions. However, the considerations in the current proposals to use the appeal property as an eight-bedroom HMO are not necessarily the same as those which arose in a five-bedroom scheme. The appeal schemes before me would see more occupiers in the same building, leading to the greater shortfall in outdoor amenity space being felt more acutely, along with a correspondingly greater pressure on private bedrooms and communal rooms within the HMO. Furthermore, as I have already explained above, the adoption of the 2023 SPD means that, although the development plan policy is not changed, the associated guidance setting out the standards sought from HMO development has shifted significantly. For these reasons, and again as I have set out above, the 2023 appeal does not justify my allowing either of these appeals.
41. As well as the previous appeals relating to the appeal site, and the Stanley Road decision mentioned in the preceding section, the appellant drew my attention to other appeal decisions in respect of 35 King Street, Southport⁹ for a six-bedroom HMO, and the Former Central Buildings, Crosby¹⁰ which included 39 one- and two-bedroom apartments. These decisions were made in the light of the 2018 SPD, which set out quite different criteria for assessing whether exceptional circumstances would justify a shortfall in outdoor amenity space compared to the 2023 SPD. Again, these decisions do not therefore weigh significantly in favour of the two schemes before me.
42. The appellant referred to the Council's grant of planning permission for the conversion of the first and second floors of "The Coronation" public house in

⁸ PINS Ref: APP/M4320/W/17/3187815

⁹ PINS Ref: APP/M4320/W/19/3241168

¹⁰ PINS Ref: APP/M4320/W/20/3266042

Southport to 10 flats¹¹. That scheme included only 25m² of outdoor amenity space, rather than the 200m² required, but the Council officer report noted that the absence of any space for the outdoor drying of clothes would be “apparent to any future occupier”. I accept that the same would be apparent to occupiers of the proposed HMO in these appeals, but that does not in itself justify the shortfall in outdoor amenity space. In that case, the Council weighed the housing and economic development benefits arising from ten additional self-contained flats in the balance, and found that they outweighed the harm to living conditions. That is not the case in this appeal. That decision was also made in the light of advice in the 2018 SPD, which was considerably less definitive and more permissive about when a shortfall in outdoor amenity space might be acceptable than the 2023 SPD.

43. The appellant referred to the development of “tens of thousands of city centre flats” having been developed in Liverpool without “meaningful” outdoor amenity space. There is nothing before me to indicate that this broad brush example is comparable to the details of the schemes before me, nor why the decisions of a different local planning authority (with different policies and guidance) are directly relevant. This argument does not weigh in favour of the appeal schemes.
44. Interested parties commented about refuse being left in the alleyway at the rear of the appeal site. However, there is nothing before me which demonstrates that that problem is related to the appeal site, nor that it might be exacerbated by the proposed developments. These comments have not therefore had a significant bearing on my decisions in these appeals, including my consideration of the storage of refuse in Appeal A.
45. Finally, the appellant expressed dissatisfaction about the Council’s handling of the two planning applications. To some extent this related to the planning merits of the proposed developments, which are dealt with in my reasons above. Other issues raised on this matter are addressed in my Costs Decision in respect of Appeal B.

Conclusion

46. The proposed developments conflict with the development plan taken as a whole. There are no material considerations, including those of the Framework, that indicate the proposals should be determined other than in accordance with the development plan.
47. I therefore conclude that both appeals should be dismissed.

M Cryan

Inspector

¹¹ LPA Ref: DC/2019/01602