



Appeal Decision

Site visit made on 15 July 2024

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 August 2024

Appeal Ref: APP/N5660/W/24/3337243

41 Valley Road, Lambeth, London SW16 2XL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr C Harvey against the decision of the Council of the London Borough of Lambeth.
 - The application reference is 23/03046/FUL.
 - The development proposed is change of use from a small house in multiple occupation (Use Class C4) to a larger house in multiple occupation (Sui generis).
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Decision

1. The appeal is allowed and planning permission is granted for change of use from a small house in multiple occupation (Use Class C4) to a larger house in multiple occupation (sui generis) at 41 Valley Road, Lambeth, London SW16 2XL, in accordance with the terms of the application, Ref 23/03046/FUL, and subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan; 14201-100-01 (Existing Ground Floor Plan); 14201-100-02 (Existing First Floor Plan); 14191-100-P01 Rev C (Proposed Ground Floor Plan); 14191-100-P02 Rev B (Proposed First Floor Plan); 14141-400-P01 (Proposed Bin Store Details).
 - 3) All new external work and finishes and work of making good shall match the existing adjacent original work in respect of the materials, colour, texture, profile, and finished appearance, except where indicated otherwise on the drawings hereby approved.
 - 4) Prior to the first occupation of the development hereby permitted, details of the provision to be made for cycle parking shall be submitted to and approved in writing by the Local Planning Authority. The cycle parking shall thereafter be implemented in full accordance with the approved details before the use hereby permitted commences and shall thereafter be retained solely for its designated use.
 - 5) The premises shall only be used as a house in multiple occupation for a maximum of 8 occupants at any time, with no more than one occupant per bedroom.

Application for costs

2. An application for an award of costs has been made by Mr C Harvey against the Council of the London Borough of Lambeth. This is the subject of a separate decision.

Background and Main Issues

3. The application as made proposes a change of use from a small house in multiple occupation (HMO) of six occupants within the C4 use class to a large HMO of eight occupants within the *sui generis* class.
4. The appellant states that the property was used as a children's care home since the 1990s, although an application in 1995 for a lawful development certificate for this use determined it fell within the C3 use class as a dwellinghouse. It is indicated that the property was licenced as a 7-room, 10-person HMO between 2017 and 2021. However, the Council assessed the proposal on the basis that the use of the property as an HMO has not been confirmed as lawful and the lawful existing use of the property is as a single eight-bedroom dwellinghouse.
5. In May 2023, a lawful development certificate¹ was issued confirming that a proposed change of use from a single dwelling (Use Class C3) to a small HMO for 6 people (Use Class C4) would not require planning permission. The appellant states that the change of use has taken place, with evidence provided including tenancy agreements dating from 2023. The appellant has also provided a copy of a new HMO licence applied for in March 2023 and issued in January 2024 for a maximum of 8 people living as eight households.
6. My site visit revealed that the property was being occupied by individuals within their own rooms, many of which had kitchenettes within them. There was a communal kitchen to the rear of the ground floor, with a further kitchen to the front, albeit this was without any appliances at the time. The layout included bathrooms which appeared to be linked to individual bedrooms, but were accessed from the communal hallways rather than the bedrooms themselves. Two rooms were unoccupied at the time of my visit.
7. It is not within the scope of this appeal to formally determine the lawful existing use of the property. However, my observations on the ground and the evidence provided by the appellant indicate that the current use of the property is consistent with the description of development on the application form. Even if the lawfulness of the current use is not so proven by way of a lawful development certificate, it is a significant material consideration that the property can lawfully be used as a Class C4 HMO for up to six residents.
8. Against that background, the main issues are i) the effect of the proposal on the housing mix of the borough and ii) whether the proposal would adequately promote sustainable modes of transport.

Reasons

Housing Mix

9. Policy H3 of the Lambeth Local Plan (September 2021) (the LLP) states that existing self-contained C3 housing will be safeguarded in accordance with London Plan policy. Exceptionally, the net loss of self-contained residential accommodation may be acceptable where the proposal is for specialist non-self-contained accommodation (Use Class C2) to meet an identified local need in accordance with the requirements of Policy H8 of the London Plan (March 2021) (the LP21). Policy H8 sets out that loss of existing housing should be

¹ Council Ref 23/01095/LDCP

- replaced by new housing at existing or higher densities with at least the equivalent level of overall floorspace.
10. Policy H9 of the LLP supports the provision of new HMOs where certain criteria are met, including that it does not result in the loss of housing suitable for occupation by families, as defined in Policy H6², and would meet an identified local need.
 11. Taking the appellant's position that the property is already a Class C4 HMO, the proposal would accord with Policy H9(i) as no loss of housing suitable for families would result. The appellant points to Lambeth Strategic Housing Market Assessment (SHMA) stating that HMOs play a vital role in providing affordable housing to a wide range of households including young people, students, low and middle income households as well as new migrants moving to the borough, and in meeting growing trends for 'other' households, including shared accommodation and single-person households.
 12. The supporting text to Policy H9 states that, to demonstrate a local need, reference should be made to sources including the SHMA 2017, the Lambeth Housing Strategy and associated Lambeth strategies for individual client groups; and to Lambeth's strategy for commissioning accommodation to meet the needs of specific client groups in the borough. The appellant's evidence does not include any reference to these sources, and whilst the SHMA sets out a general level of support for HMOs, I am not persuaded that this demonstrates a specific local need as required by Policy H9(ii). As such, there would be conflict with Policy H9 in this respect.
 13. However, it is relevant that the property appeared to be operating as a 6-person HMO and, given it appeared to be fully occupied, it is meeting a demand in practical terms. Moreover, the building contains additional rooms not occupied at the time of my visit and is capable of accommodating two further occupants through the proposed change of use. A change from a 6-person HMO to an 8-person HMO would not result in the loss of a family-sized dwellinghouse. The degree of intensification would also be modest, and no adverse effects have been alleged by the Council in respect of neighbours' living conditions or the general character of the area. Nor does the Council argue that there is, or would be, an overconcentration of HMOs in the area.
 14. Consequently, whilst there would be conflict with Policy H9 through a failure to clearly demonstrate a local need for HMOs, the practical implications of the change of use would be very modest, with no tangible effect on the overall housing mix of the area, and no loss of an existing family-sized dwelling, whilst providing a small, but nonetheless positive increase in single-person accommodation for which there is a general recognition of value in the LLP.
 15. In the alternative position of the Council that the property is still a Class C3 dwellinghouse, there would be conflict with Policies H3 and H8 as a family-sized dwellinghouse would be lost and not replaced with either equivalent Class C3 floorspace or specialist non-self-contained accommodation (Class C2). However, the Council, through issuing the LDC in May 2023, accepts that the loss of the dwellinghouse could be lawfully effected without planning permission through the change of use to a Class C4 HMO for up to six

² 'Housing suitable for occupation by families' is defined as houses, purpose-built maisonettes and duplex dwellings with ground-floor access to the rear garden, with three or more bedrooms.

occupants. This fall-back position is a material consideration in this regard which overcomes the objection in policy terms to the appeal scheme.

16. Therefore, a C4 HMO either has been, or could be, created lawfully and the further change to an 8-person HMO would have negligible effect on the housing mix of the area and a small positive increase in HMO provision for single-person households in the borough. These are significant material considerations weighing against the identified policy conflicts.

Sustainable Transport

17. The Council's reason for refusal relates to the failure of the appellant to secure, via legal agreement, restrictions on occupants obtaining residents' parking permits and provision of car club and cycle hire membership for occupants. Conflict is cited with Policy T1 of the LLP, which in general terms promotes sustainable patterns of development through minimising the need to travel and maximising trips by sustainable modes, and Policy T3 which promotes cycling and provision of infrastructure to improve uptake. However, neither of these policies set out any specific requirements for development to be permit-free. Rather, the relevant policy is T6 which requires that development should be permit-free where the site has a PTAL³ of 4-6 and/or where the development falls within an existing or planned controlled parking zone (CPZ).
18. Although the site has a low PTAL rating of 1a, indicating poor access to public transport, it would not be subject to permit-free parking on this basis. The Council otherwise concedes that the site is not within a CPZ and that parking cannot therefore be controlled. However, it points to a consultation and potential introduction of a CPZ in 2023-24, but I have no evidence before me to confirm that any such consultation has taken place, that a CPZ has been introduced for the area or even that planning has reached a stage where the date of the CPZ's introduction is known. As such, I am not satisfied that the proposal conflicts with Policy T6(D)(i) or that permit-free development is necessary on this basis.
19. This aside, there is no detail as to where a permit-free restriction on occupants would presently have effect, as the location of the nearest CPZ has not been provided in evidence. Neither is there evidence to demonstrate that parking stress in the area is at an unsustainable level. Ultimately, the absence of a CPZ means there is no effective means of control in respect of parking, as occupants would not require a permit in the first place to park within the immediate streets. Notably, the Council concedes that the economic circumstances of occupants of shared accommodation are such that they tend to be less likely to own or operate a private car, and it accepts that the impact on localised parking stress would be 'negligible.' I concur with this assessment, noting also that the Council's argument that the lawful use of the property is as an 8-person dwelling means that the proposed use would result in little if any intensification in the overall occupation of the property and, by extension, levels of car ownership and use.
20. Notwithstanding the low PTAL rating, the site is located on a bus route which provides convenient access to the wide range of shops and other facilities on Streatham High Road, an area also walkable within 15 minutes, or around 5 minutes by bicycle. As such, I find that the site is accessible to local facilities by

³ Public Transport Accessibility Level

sustainable modes of transport, and there is little in evidence to suggest occupants would require high levels of car ownership that would create significant additional parking pressure in the area.

21. Separately, the Council seeks to secure car club membership and cycle hire membership for occupants. Policy T6, criterion D(iii) states that development should make car club membership available to all residents in new residential development, whilst Policy T3(H) states that a minimum of three years' free membership of the Cycle Hire Scheme should be made available for all residents, regardless of tenure, in new residential developments.
22. New residential development is not clearly defined in the policies and supporting text put to me, but in this case the building would still be a single planning unit, involving no new residential units but rather a change in the type of residential accommodation provided within the building. There would be no physical extension and occupation is proposed at a level that is no greater than that argued by the Council to be the lawful use of the building, i.e. an eight person dwellinghouse.
23. Moreover, the evidence before me does not demonstrate any material harm would be caused were such requirements not delivered. Whilst car club and cycle hire membership may provide modest benefits to occupants in terms of a cost saving, there is nothing before me to indicate that this would lead to a tangible reduction in private car ownership or usage, particularly given the Council's acceptance that this is generally less for occupants of HMOs and my findings regarding the accessibility of the site to Streatham High Road.
24. It is also relevant that the Council accepts that the property can lawfully be converted to a six person HMO, which may already have occurred and to which none of these requirements would apply. As such, it would be onerous to require the appellant to provide these memberships to all occupants of the HMO, and I am sceptical as to whether such a planning obligation would be fairly and reasonably related in scale and kind to the development. Even if these requirements were sought only in respect of the two additional occupants, I have doubts as to how these requirements, and indeed any permit-free restrictions, would be fairly stipulated, particularly in terms of identifying the occupants to whom they would apply, given they would all reside in the same building, and how they would be managed in practice given that HMO occupancy can be more short-term in nature. Therefore, the particular circumstances of this case are such that I am not persuaded that car club and cycle hire membership for two additional occupants within the existing building meet the tests for planning obligations set out in the National Planning Policy Framework (the Framework).
25. Finally, I saw that there is ample space within the rear garden area to provide secure cycle parking spaces to LP21 requirements, and a side gate onto Curtis Field Road to allow for convenient access and egress with bicycles. Details of the cycle storage could be secured by planning condition, in accordance with Policy T3 of the LLP.
26. Overall, I am not satisfied that the permit-free restriction sought by the Council is justified to address a specific planning harm. The absence of a completed legal agreement to secure car club and cycle hire membership would result in a degree of conflict with Policies T3 and T6, though the very limited number of occupants to which these obligations would apply in practical terms, and the

uncertainty as to how they would be legally secured, limits the weight I afford this harm. Otherwise, I have found that the proposal, through the absence of off-street parking, the availability of public transport and the site's proximity to local facilities, would encourage sustainable modes of transport in accordance with LPP Policy T1.

Other Matters

27. The Council did not refuse permission in any other respect. The only external alterations proposed are the provision of a bin store which has not been opposed. I am satisfied that there would be no adverse effect on the character and appearance of the area. Nor has the Council found harm in respect of neighbours' living conditions, the standard of accommodation to be provided, fire safety, waste and recycling. On the evidence before me, I have no clear reasons to conclude differently to the Council in these matters.

Planning Balance

28. The proposal would result in limited conflict with Policies H9 of the LLP in terms of meeting an identified local need for HMOs and Policies T3 and T6 in terms of failure to secure car club and cycle hire membership.

29. However, there are several material considerations to weigh against this conflict. These include the lawfulness of the change of use to a six-person HMO and the recognised important role of HMOs in providing accommodation for single people who cannot afford self-contained housing. The additional occupants would make use of existing rooms in the building and would have negligible difference in impact on the area's character, neighbours' living conditions and parking pressure. In these respects, the proposal would accord with the aims of the Framework that developments meet the housing needs of different groups, make effective use of land and function well and add to the overall quality of the area. Moreover, notwithstanding its low PTAL rating, I have found the site to be reasonably accessible to local facilities and public transport options and the proposal would be in general conformity with the sustainable travel approach of Policy T1 and the related aims of the Framework.

30. Overall, I find that the material considerations in this case, taken cumulatively, would outweigh the identified conflicts with the development plan. Therefore, they justify a decision being taken other than in accordance with the development plan.

Conclusion

31. For the reasons set out, the appeal should be allowed, subject to a condition setting out the approved plans, to provide certainty. A condition requiring materials to match, in relation to the bin store, is required for a satisfactory appearance. Details and implementation of cycle storage are required to support sustainable travel. Finally, it is necessary to specify maximum bedroom and overall occupancy levels within the HMO to ensure a suitable standard of accommodation.

K. Savage

INSPECTOR