



Appeal Decision

Site visit made on 19 June 2024

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 September 2024

Appeal Ref: APP/C5690/W/23/3332197

1 Ardgowan Road, Lewisham, London SE6 1AJ

- 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 1ARDG Ltd against the decision of the Council of the London Borough of Lewisham.
- The application reference is DC/23/132261.
- The development proposed is a change of use from a House in Multiple Occupation ("HMO") for use by no more than 6 persons (Use Class C4) to a seven-bedroom HMO (Sui Generis).

Decision

1. The appeal is allowed and planning permission is granted for a change of use from a House in Multiple Occupation ("HMO") for use by no more than 6 persons (Use Class C4) to a seven-bedroom HMO (Sui Generis) at 1 Ardgowan Road, Lewisham, London SE6 1AJ in accordance with the terms of the application, reference DC/23/132261, 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 and drawings:
 - 1 AR -PL -00 Site & Block Plan
 - 1 AR -PL -01 Existing & Proposed Ground Floor
 - 1 AR -PL -02 Existing & Proposed First Floor
 - 1 AR -PL -03 Existing & Proposed Loft Plan
 - 1 AR -PL -03.1 Existing Roof Plan
 - 1 AR -PL -04 Existing & Proposed Front Elevation
 - 1 AR -PL -05 Existing & Proposed Rear Elevation
 - 1 AR -PL -06 Existing & Proposed Left Elevation
 - 1 AR -PL -07 Existing & Proposed Right Elevation
 - 1 AR -PL -08 Existing & Proposed Section A-A
 - 3) Prior to the first occupation of the development hereby approved, details of proposals for the storage of refuse and recycling facilities shall be submitted to and approved in writing by the local planning authority.

The facilities as approved shall be provided in full prior to occupation of the development, and shall thereafter be permanently retained and maintained in accordance with the approved details.
 - 4) Prior to the first occupation of the development hereby approved, full details of the cycle parking facilities shall be submitted to and approved in writing by the local planning authority.

The facilities as approved shall be provided and made available for use prior to occupation of the development; they shall thereafter be permanently retained and maintained in accordance with the approved details.

- 5) Prior to the first occupation of the development hereby approved, an HMO Management Plan shall be submitted to and agreed in writing by the Local Planning Authority. The HMO Management Plan shall include, but not be solely restricted to, details of the how the following issues will be addressed:
- Code of conduct for residents of the HMO.
 - Site management, including refuse storage and collection, and maintenance of amenity areas within the site.
 - Complaint and resolution procedure.

The use hereby approved will be operated in accordance with the approved HMO Management Plan thereafter.

Preliminary Matter

2. 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 application was determined, and again on 19 December 2023. In July 2024 consultation began on further proposed amendments to the Framework. None of the changes made or proposed have a significant bearing on the main issues in this appeal, and it has therefore not been necessary for me to seek comments on them from the main parties.

Main Issues

3. The main issues are:
- Whether the use of the appeal property as a larger HMO would be acceptable in terms of its effect on housing supply, with particular regard to the provision of family housing in the area; and
 - The effect of the proposed development on parking stress in the area.

Reasons

4. The appeal relates to an end terrace property within a predominantly residential area. A lawful development certificate was granted in 2023 for the change of use of the property from a dwellinghouse (Use Class C3) to a small HMO for up to six people (Use Class C4)¹. Permission is now sought for the use of the property as a "larger HMO" with seven bedrooms, a *sui generis* use.

Housing Supply

5. No 1 Ardgowan Road is a double-fronted, two-storey property which was evidently originally built as a generously-sized family dwelling. It has subsequently been enlarged by the addition of front and rear roof dormers, and its use changed to a small HMO. The submitted drawings show its layout in that use as having six bedrooms (one on the ground floor, three on the first floor, and two on the second floor), shared lounge and kitchen/dining rooms on the ground floor, and shared bathroom and WC on the first floor.

¹ LPA Ref: DC/23/131675

6. The change of use to a larger HMO would be achieved by reconfiguring the property internally. There would be four bedrooms on the ground floor, two on the first, and one on the second, each with an ensuite shower room and WC, as well as a communal kitchen and living area on the first floor. The property had, by the time of my site visit, been altered internally in line with the “proposed” drawings in the submitted plans. Six of the seven proposed bedrooms appeared to be in use, with only the room at the rear of the ground floor (shown on the submitted drawings as Bedroom 3) not furnished for use as a bedroom.
7. DM Policy 6 of the 2014 Lewisham Development Management Local Plan (“the DMLP”) states that, among other things, the provision of HMOs will only be considered acceptable where it does not result in the loss of existing larger housing suitable for family occupation. Further criteria within DM Policy 6 relate to public transport accessibility, impacts on amenity in the surrounding neighbourhood, and compliance with the space standards as set out in DM Policy 32.
8. The Council explained that its 2022 Strategic Housing Market Assessment Update identified an ongoing need for large family housing in the borough and recommended that a quarter of new housing should be provided as dwellings with four or more bedrooms. During the appeal, the appellant submitted additional information including letters from estate and letting agents setting out the limited demand for large family homes with five or more bedrooms in the local area. In response, the Council accepted that the need for additional HMO accommodation would outweigh the conflict with that aspect of DM Policy 6. None of the evidence before me leads me to disagree on this particular point. It is also relevant that the property is already in use as a smaller HMO, and that, notwithstanding that some similar properties in the area do remain in use as single family dwellings (and sometimes therefore come up for sale as such), there appears to be no realistic prospect of the appeal property coming forward for re-use as a single family home in the foreseeable future.
9. The appellant argued that, as the site is already within Use Class C4, the development would not create a new HMO and the part of DM Policy 6 relating to public transport accessibility should not be applied. However, while the policy refers to HMOs generally, the supporting text is clear that it will be applied to all proposals for larger *sui generis* HMOs, such as this scheme.
10. The policy requires a Public Transport Accessibility Level (“PTAL”) of 3 or higher for a new larger HMO. The appeal site has a PTAL of 2, which the Council describes as representing “relatively poor access” to public transport, and which means that the property falls short of compliance with the policy standard. However, it is very close indeed to an area with a PTAL of 3, and there are bus stops serving different routes a short walk away on Brownhill Road and Torridon Road. It is also only around 10 to 15 minutes’ walk from Hither Green railway station, as I found during my site visit when I arrived in the area by train. In this light, notwithstanding the site’s PTAL rating, I found the property to have reasonable accessibility to public transport. While the proposal would not comply with this criterion of the policy, I therefore give limited weight to this particular conflict.
11. The Council did not consider that the development would have a significant adverse effect on neighbours’ living conditions. However, a number of interested parties – mainly residents of other properties on Ardgowan Road –

submitted objections to the scheme. Some objected to the loss of potential family housing in principle, which I have addressed above. Some respondents described the immediate area as having something of a cluster of HMOs and similar properties, though this appears also to include houses which have been subdivided into self-contained flats. The evidence before me is that there is only one other registered HMO on Ardgowan Road, which does not in my view amount to an intrinsically harmful or unacceptable concentration of such uses.

12. Other matters raised included the behaviour of tenants or their visitors (including allegations of, or concerns about the potential for, criminal behaviour), noise disturbance, the storage and removal of waste, all relating to the property in its current use as a smaller HMO. I have considerable sympathy with neighbours who have already had negative experiences in respect of the appeal property and who, perhaps understandably, fear that the use of the property as a larger HMO would exacerbate such problems.
13. While I would not wish to downplay such concerns, most appear to me to relate to the management of the property, rather than to stem from its use as an HMO *per se*. In response to the concerns raised, the appellant suggested that a condition could be imposed requiring the submission and approval of an HMO management plan, to address matters including the storage and collection of waste and a code of conduct for residents of the property.
14. The “comings and goings” and the associated risk of disturbance which might be expected would be unlikely to be substantially greater for a seven-bedroom large HMO than for a six-bedroom small HMO. In the light of the comments (and other evidence, including photographs) submitted by local residents, I agree that such a condition would be necessary to manage the increased potential for harm to neighbours’ living conditions arising from the use of the property as a larger HMO. However, subject to such a condition being imposed I agree with the Council’s view that the development would be unlikely to lead to a significant adverse effect on amenity in the neighbourhood.
15. The Council concluded that the bedroom sizes, provision of storage space for residents, and ceiling heights would be acceptable. It found the scheme would comply with the requirements of DM Policy 32 of the DMLP which, among other things, seeks to ensure that new housing development provides an appropriate level of residential quality and amenity in respect of living space and standards. Again, none of the evidence before me leads me to a different view and I find no conflict with the space standard criterion of DM Policy 6.
16. The Council and interested parties expressed concern about whether the property provided, or would provide under this appeal proposal, “genuine” HMO accommodation. This relates particularly to the provision of independent cooking facilities in the bedrooms, and whether the scheme should therefore be considered as a proposal for self-contained flats. However, I must determine the proposal as it has been put to me, which is for a larger HMO. I return to this point in the “other matters” section below.
17. Both main parties drew my attention to appeal decisions elsewhere in the borough which they considered relevant; the Council referred to a 2018 appeal decision at Beckenham Hill Road², while the appellant referred to a 2022

² PINS Ref: APP/C5690/W/17/3185456

decision at Florence Terrace³. The two decisions illustrate the differences in evidence available; at Beckenham Hill Road, there was no substantive evidence before the Inspector to indicate that there was a shortage of HMO accommodation which would outweigh conflict with the development plan, and the appeal was dismissed. At Florence Terrace, the Inspector was satisfied both that there was limited demand for single family houses of the size of the appeal property, and that there was "continued demand for good quality larger HMOs in [the] area". That appeal was therefore allowed.

18. The Florence Terrace decision appears to me to be closer to the circumstances in this appeal, and indeed this is reflected in the part of the Council's appeal statement which I have summarised in paragraph 8 above. The two appeal decisions put to me pull in different directions; neither is "wrong", but together they illustrate the overriding need to take the facts of each case into account. I have reached my conclusion in this appeal based on the planning merits of the proposal before me.
19. I find that the proposed use of the appeal property as a larger HMO would be acceptable in terms of its effect on housing supply, as it would not lead to the loss of existing larger housing suitable for family occupation. In this respect, as well as in respect of amenity in the neighbourhood (subject to a management plan condition), and the size of accommodation, it would comply with the requirements of DM Policies 6 and 32, the principal relevant provisions of which I have summarised at paragraphs 7 and 15 above. However, the appeal site's PTAL rating means that the proposal would not comply with that part of Policy DM 6 relating to public transport accessibility, and the proposal would therefore conflict with that policy taken as a whole.
20. There would be no conflict with Policy 1 of the 2011 Lewisham Core Strategy ("the LCS"), which seeks to ensure that an appropriate housing mix is provided in the borough. There would also be no conflict with DM Policy 3 of the DMLP; although that policy was referred to in the Council's decision notice it relates to the conversion of a single-family house to two or more dwellings, which is not the situation in this appeal.

Parking Stress

21. The appeal property is not within a controlled parking zone ("CPZ"), nor have I been made aware of any proposal to introduce a CPZ within the area. The appeal scheme would not include any off-street parking provision; it is described by the appellant as being car free, though in the absence of a CPZ there would be no means of securing that status.
22. Policy 14 of the LCS states that the car parking standards contained within the London Plan will be used as a basis for assessing proposals. Policies T6 and T6.1 of the London Plan 2021 apply maximum car parking standards to residential developments; these could not, of course, be exceeded by a scheme with no parking spaces. Policy T4 of the London Plan 2021 seeks to ensure that development proposals do not increase road danger. DM Policy 29 of the DMLP refers back to Policy 14 of the LCS; beyond this it also sets out requirements in respect of car-limited major residential development, but the appeal scheme would not be a major development.

³ PINS Ref: APP/C5690/W/21/3278457

23. Car parking stress in the area was raised by several interested parties both in response to the original planning application consultation and during the appeal. I note the particular concern expressed by some residents that the absence of a CPZ meant that the area was often used by people parking cars and walking to catch trains from Hither Green station. The Council noted that when one of its officers visited the site at an off-peak time on a Wednesday in August 2023 “nearly no on-street car parks were available”. When I visited, in mid-afternoon on a June Wednesday, however, I saw that there were several on-street spaces within Ardgowan Road itself where a car could be parked legally, safely and courteously, along with further spaces around the corner in Hither Green Road.
24. Clearly what I observed represents only a brief snapshot in time; no parking surveys have been made available which would present a more rigorous view of the situation. It might normally be expected that demand for on-street parking on and around Ardgowan Road might be higher in the evenings and weekends when more residents were at home. However, the reported use of the area as unofficial parking for the nearby railway station would also mean that there was high demand during the working day, so the streets around the appeal site may see less fluctuation in demand than might be found in other mainly residential areas.
25. The Council was concerned that the use of the property as a large HMO “could generate up to 7 cars for the 7 occupants”. However, there would be an increase of only one bedroom over and above the current position and there would be likely to at most be one additional vehicle requiring a parking space in the area. Although a point can clearly be reached where even a small increase in parking demand might cause unacceptable disruption to an area, based on everything I have seen I am satisfied that situation would not come about because of the appeal scheme.
26. I therefore find that the proposal would not have an unacceptable effect on parking stress in the area. In this respect there would be no conflict with Policy 14 of the LCS, DM Policy 29 of the DMLP, or Policies T4 and T6 of the London Plan 2021, the principal relevant provisions of which I have summarised in paragraph 22 above. However, as I have set out in assessing the previous main issue, because of the appeal site’s PTAL rating the proposal would not comply with that part of Policy DM 6 relating to public transport accessibility, and it would therefore conflict with that policy taken as a whole.

Other Matters

27. As I have described, several interested parties expressed concerns about the appeal scheme, though many of the matters raised have already been addressed in my assessment of the main issues above. Some respondents stated that the appellant was not operating the property in accordance with its extant permission as a small HMO; I note that, at the time the Council’s officer report was produced it was taking enforcement action in respect of the property. I have not been made aware of the outcome of that case, but it does not have a direct bearing on my determination of this appeal and is not a matter for me to pronounce on here.
28. Fears that the appellant might not comply with the requirements of the planning permission in the event of my allowing this appeal are also not relevant. My role is to determine the appeal on the basis of the scheme which

was applied for. It would again be for the Council to take enforcement action were it to consider it appropriate to do so in the future.

29. The Council and interested parties stated that the existing small HMO was not "genuine", and that this could continue to be the case for the larger HMO if this appeal were to be allowed. This was on the basis that, as well as a private shower room, each bedroom had (and would continue to have) private cooking facilities, and they would therefore fall within the definition of self-contained flats set out in section 254(8) of the Housing Act 2004⁴.
30. Evidence was submitted that rooms had previously been provided with mini ovens, and advertised as studio flats. The appellant stated that the description of the rooms as "studios" had been inaccurate. They also described the mini ovens as having been "delivered to the units in error in August 2023 by the managing agent for the property" and immediately removed, though interested parties provided evidence that ovens were in place in at least some of the bedrooms in the property during March 2024.
31. The property has a large communal kitchen and dining area on the first floor, but due to an apparent door malfunction on the day of my site visit I was not able to gain access to that room. Photographs taken later the same day by the appellant (at my request) after the door had been repaired showed a room that was in most respects well fitted out for its purpose (though there was only a single chair at the large dining table) but with very little sign of the active use which I would normally expect to see in an HMO.
32. I was able to access all of the bedrooms in the property, including the room which would become the seventh bedroom. All had an ensuite shower room and WC. The six existing bedrooms were furnished with a double bed. They had also been fitted with storage cabinets and worktops, and washing up sinks of a type which in my experience would more normally be expected to be found in kitchens than an HMO bedroom. It appeared to me that most current residents were storing their food in their bedroom, and all six occupied rooms had at least some signs of being used to some degree for food preparation, eating, or washing up.
33. Five of the six bedrooms had a kettle, and in some cases other small kitchen appliances were on display. On the worktops in two of the bedrooms were objects which in my view were very similar in size and shape to the mini ovens previously referred to, though as they were wrapped in sheets I could not be certain what they were. Notwithstanding the appellant's statement that "no cooking facilities would be provided within any HMO units, and these would rely on the communal kitchen for cooking facilities", it is therefore understandable that there is some doubt on the matter at present.
34. In spite of this doubt, it is not necessary for me to definitively resolve the question in the context of this appeal. I reiterate that my role is to determine the appeal on the basis of the development which has been applied for; that is a larger HMO with seven bedrooms, not seven (or any other number of) self-contained flats. If the Council considers that the property is not operating in accordance with the planning permission or HMO licence (or, at present, that it is not compliant with the 2023 lawful development certificate) it is open to it to

⁴ This states that a self-contained flat is one where, among other things, "all three basic amenities" – toilet, personal washing facilities, and cooking facilities – are available for the exclusive use of its occupants.

take action against the appellant, either via the HMO licencing route or via planning enforcement. For the reasons I have set out in determining the main issues, I consider that the proposed use of the property as a larger HMO with seven bedrooms would be acceptable.

35. I note allegations that work may have been carried out at the appeal property without compliance with building regulations. However, this is an issue which sits outside of the planning system and can, if necessary, be resolved by other means; it has not had a significant bearing on my decision.

Conditions

36. I have considered the conditions suggested by the main parties having regard to the tests in the Framework and the advice in the Planning Practice Guidance. Where necessary I have made alterations to the wording in the interests of clarity and effectiveness.
37. In addition to the standard time limit condition (1), I have specified the approved plans so as to provide certainty (2). A condition relating to the provision of refuse and recycling storage facilities (3) is necessary to ensure that facilities are of an acceptable standard, and to safeguard living conditions for occupiers of the appeal property, neighbouring dwellings, and the wider area, in accordance with Policy 13 of the LCS and DM Policy 30 of the DMLP. A condition relating to cycle storage facilities (4) is necessary to ensure that adequate provision is made for cycle parking in line with Policy 14 of the LCS and Policy T5 of the London Plan 2021.
38. I have adapted the suggested condition in respect of an HMO management plan suggested by the appellant so that it makes provision for a complaint and resolution procedure (5), to ensure that the condition will be effective. This condition is necessary to safeguard living conditions for neighbouring residents. Conditions 3 to 5 all take effect before the property can be occupied as a larger HMO.

Conclusion

39. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that applications for planning permission, and therefore appeals, must be determined in accordance with the development plan, unless material considerations indicate otherwise.
40. I have found that the proposed development would not comply with the provisions of DM Policy 6 of the DMLP in respect of public transport accessibility for larger HMOs. However, the material considerations I have identified, namely that the property is already a small HMO, that its capacity would be increased by only a single bedroom, and that the appeal site is only very slightly outside an area with a PTAL of 3 or more as required by the policy, indicate that a decision other than in accordance with the development plan is appropriate. I therefore conclude that the appeal should be allowed and planning permission granted.

M Cryan

Inspector