



Appeal Decision

Site visit made on 22 October 2024

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 November 2024

Appeal Ref: APP/M5450/C/22/3311105

1A Mount Drive, Harrow HA2 7RW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Sajid Siddiqui against an enforcement notice issued by the Council of the London Borough of Harrow.
 - The enforcement notice was issued on 13 October 2022.
 - The breach of planning control as alleged in the notice is:
Without planning permission, the construction of a single-storey front porch ("Unauthorised Development"); and
Without planning permission, the material change of use of the property from C3 dwelling house to HMO (house in multiple occupation) in excess of six persons "Sui Generis" ("Unauthorised use")
 - The requirements of the notice are:
 - a) Cease the Unauthorised Use of the property as a HMO and return the property to its authorised use as a C3 dwelling house;
 - b) Remove the Unauthorised Development and build in accordance with the approved plans shown in P/1295/ 17.
 - c) Make good any damage caused to the building as a result of the above actions; and
 - d) Remove from the Land all materials, rubbish, and debris arising from the compliance with the above requirements and restore the Land to its condition prior to the breach taking place.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice be:
 - Varied by deletion of step (a) under section 5 (What you are required to do) of the enforcement notice and its replacement with:
"a) Cease the unauthorised use of the property as house in multiple occupation (HMO) in excess of six persons."
 - Varied by deleting the words "Six (6) months" within section 6 (Time for compliance) and its replacement with "ten months".
2. Subject to these variations, the appeal is dismissed, and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The Appeal on Ground (a) and the Deemed Planning Application

Main Issues

3. The main issues are:

- The effect of the front porch on the character and appearance of the host building and the area;
- The effect of the use of the property as a HMO on the living conditions of current and future occupiers of the HMO, with particular regard to floor space, layout, daylight and outlook; and
- The effect of the use of the property as an HMO on the living conditions of neighbouring occupiers with particular regard to noise and disturbance.

Reasons

Character and appearance

4. The site relates to a detached two storey dwelling located in a residential area characterised predominantly by other detached and semi-detached properties, with double storey bay windows and modest sized front porches which generally respect the consistent front building lines and front bay window projection along the street.
5. The Harrow Supplementary Planning Document Residential Design Guide, 2010 (Design SPD) highlights that "Front extensions have the greatest potential impact on the character and visual amenity of the street scene. Residential buildings in Harrow generally follow a clear building line, with building facades sited on the same plane and often enriched with architectural features reflecting the period of building construction. Modern front extensions beyond the established building line can disrupt the harmony and architectural coherence of the streetscape."
6. Given its excessive size, scale, depth, and forward projection, beyond the existing front bay windows, the front porch forms a bulky, obtrusive, and incongruous feature in the street scene which is at odds with the prevailing character. Therefore, the front porch harms the character and appearance of the building and area generally.
7. The appellant considers that permitted development would allow a smaller front porch at this address. Be that as it may, in my view, such a porch would not be as substantial as the development before me. Therefore, I give the permitted development fall-back argument little weight.
8. I have had regard to the content of the appellant's statement and reference to other porches of varying sizes and materials. The front porches at Nos 3, 5 and 11 Mount Drive do not project as far forward as the appeal development and are made from red brick which compliments the original materials of those properties. Furthermore, the porches at Nos 51 and 53 also are made from more traditional red brick materials and fenestration that complement the suburban character of these properties. The same could not be said of the current appeal development, which is made from large obscure glass panels, with a dark cladding on the front elevation. Therefore, the existence of these other porches in the locality does not justify the harm I have identified.

9. Therefore, the front porch harms the character and appearance of the host building and area in conflict with Core Policy CS1 of the Harrow Core Strategy, 2012 (CS), Policy DM1 of the Harrow Development Management Policies Local Plan, 2013 (DMP), Policy D3 of the London Plan, 2021 (London Plan), the Design SPD, and the Development Plan as a whole. Amongst other things, these policies seek to deliver a high standard of design and layout and state that development proposals should be of high quality, with architecture that pays attention to details.
10. The development also conflicts with the National Planning Policy Framework, 2023 (the Framework) which seeks to ensure that developments are visually attractive as a result of good architecture, and are sympathetic to local character and history, including the surrounding built environment.

Living conditions of current/future occupiers of the HMO – floorspace, layout, light and outlook

11. The property is a detached HMO, which has an HMO Licence for no more than 9 households and 10 occupants. I observed that the internal layout of the property was as shown on the plan attached to the Licence. However, bedroom 3 was not occupied, although a double bed was stored within this room. On the ground floor there is a communal kitchen/diner with a small dining table with 4 dining chairs. The kitchen area with two sinks, cookers, two ovens, fridge freezer, two washing machines and tumble dryers, a dishwasher and a small dining area is contained within a narrow side extension to the property.
12. All of the bedrooms have ensuite shower/wc. Whilst the bedroom sizes range from 11.47sq.m to 19.85sq, this gross internal area (GIA) appears to include the ensuite shower/wc for each room. Indeed, a full breakdown of the room sizes with and without ensembles have not been provided. Therefore, the actual overall sizes of the habitable areas would be less than those stated in the appellant's statement. Nevertheless, I observed that the overall internal floor space within the individual bedrooms is reasonable for the intended occupiers of the building, and each of the bedrooms (with the exception of room 3) have acceptable levels of daylight, outlook and ventilation.
13. Whilst the bedrooms could also provide an element of living space, this does not remove the need for communal areas, particularly since some of bedrooms, had limited circulation space, owing to the location of furniture and personal belongings. There is also space needed to prepare, cook and eat food and for socialising. As a result, there is a significant reliance on the communal kitchen/diner to provide day to day living space.
14. The overall floorspace of the kitchen area is satisfactory, for preparing and cooking food. However, only a relatively small dining area with a round table, with 4 chairs is provided within the kitchen/diner. Therefore, the dining area, is insufficient as a 'break out' space for accommodating/seating many of the 10 occupiers at any one time. I also observed there was currently no other lounge or sitting area provided for occupiers of the HMO, which would result in occupiers spending considerable time in their own bedrooms to relax, socialise, work and eat.
15. Two bedrooms at ground floor are situated close to the communal kitchen which is used by up to 10 occupiers at any one time. In this respect occupants of these bedrooms are most susceptible from the more intensive and regular use

of this communal space by other occupants of the HMO. I therefore find that that the current layout of the HMO with up to ten occupiers results in substandard level of accommodation for current/future occupiers of these ground floor bedrooms with particular regard to noise and disturbance.

16. Both parties have referred to bedroom 3 as a TV/Cinema room for occupiers of the HMO, although this is not currently laid out as a TV/cinema room, since it appeared to be locked and used for the storage of a double bed. Nevertheless, since both parties are suggesting that that is the purpose of this room, I will consider it as such.
17. However, given that this room does not contain any windows, there would be no outlook, natural light or ventilation for future occupiers. As such, the TV/cinema room would fail to provide acceptable living conditions for future occupiers and would result in a sense of enclosure that would feel oppressive and claustrophobic for occupiers. Whilst I appreciate that a cinema room may not need any natural light, on this occasion, given the insufficient lounge/breakout space provided elsewhere within this HMO any additional communal space should provide an acceptable space with good levels of light and outlook for socialising and relaxing.
18. A revised plan has been submitted which shows that this room could be used as a utility room. However, it is unclear what actual purpose this will serve as the kitchen is already fitted with modern appliances including washing machines and tumble dryers, sinks and a dishwasher. Furthermore, a utility room, where one could iron would not provide an area for occupiers to relax and socialise away from their bedrooms, and therefore would not overcome the harms identified above.
19. As a result, the existing kitchen/dining area can only provide a seating and lounge area for only a small number of the 10 occupants at any one time. The use of the TV/cinema room also fails not provide the occupiers with satisfactory living conditions, due to the unacceptably low levels of natural light and outlook.
20. I therefore find that that the HMO use results in substandard level of accommodation for current/future occupiers with particular regard to floorspace, layout, light and outlook, contrary to policies DM1, DM26 and DM30 of the DMP, policy D3 of the London Plan, and the Design SPD. Amongst other things these seeks to achieve a high standard of layout and amenity for future occupiers of Large HMOs, and that all habitable rooms in a conversion, such as living rooms and bedrooms, must benefit from an external window providing natural light and a means of outlook.
21. Furthermore, the change of use is contrary to the Framework which seeks to ensure all developments creates places with a high standard of amenity for existing and future user.

Living Conditions of Neighbouring Occupiers - Noise and Disturbance

22. The property is in a residential area characterised predominantly by two storey detached and semi-detached properties. As such, the area has a quiet, residential character, where noise levels are expected to be relatively low and there is a susceptibility for the living conditions of neighbouring occupiers to be affected by the introduction of a more intensive use.

23. The premises comprises 10 separate bedrooms¹. However, at the time of my site visit bedroom 3, was not currently being used as a bedroom. There is also a communal kitchen with a small dining table on the ground floor, and a modest sized communal rear garden for occupiers of the HMO, positioned close to adjoining residential gardens on Mount Drive and Grove Road.
24. The appellant considers that the HMO ('sui generis' use), occupied by no more than 9 households and 10 people, as per the HMO Licence, has no greater impact on the living conditions of neighbouring occupiers than if the house was occupied by an extended family with children. Nevertheless, the current HMO occupiers consist of up to 9 unrelated households, all of whom would have separate work/domestic regimes and would attract their own visitors and deliveries at different times during the day and evening. In this respect, the HMO use is more likely to increase the volume of movements to and from the property, than a single-family dwelling, and the range of times when these activities take place.
25. I have already found that the use fails to provide satisfactory living conditions for occupiers due to insufficient communal lounge and sitting areas. Therefore, occupiers are more likely to use the small rear garden for recreation, socialising and for entertaining visitors. As this use comprises 9 separate households it is likely to result in a more intensive use of the rear garden than would be the case with family occupation.
26. Given the proximity of this HMO to neighbouring residential dwellings and gardens, and the number of occupiers within the building, I consider that the introduction of the HMO has resulted in levels of noise and disturbance which adversely affect the living conditions of neighbouring occupiers. This derives from noise generated from 'comings and goings' outside of the building, increased vehicular and pedestrian movements. In reaching this conclusion, I note that objections have been raised by neighbouring occupiers specifically referring to issues resulting from the over intensive use of the existing property as an HMO.
27. I therefore conclude that the change of use of the property to HMO has resulted in a harmful effect on the living conditions of neighbouring occupiers, with regard to noise and disturbance, contrary to policies DM1 and DM30 of the DMP and Policy D3 of the London Plan. Amongst other things these state proposals for the provision of Large HMOs, will be required to demonstrate that there will be no adverse impact on the amenity of occupiers of neighbouring properties and that change of use proposals must achieve a high standard of amenity.
28. Furthermore, the change of use is contrary to the Framework which seeks to ensure all developments creates places with a high standard of amenity for existing and future user.

Other Matters

29. The demand and benefits for providing affordable HMO accommodation, the absence of other nearby HMOs, and compliance with the space standards for all bedrooms are noted. However, these do not outweigh the harmful effects of the development outlined above, and therefore do not alter my decision.

¹ As shown on the plan attached with the HMO licence.

Conclusion on Ground (a) and the Deemed Planning Application

30. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning decisions to be made in accordance with the development plan unless material considerations indicate otherwise. The development results in the harm to the character and appearance of the area and provides unacceptable living conditions for occupiers of the HMO and for nearby occupiers, in conflict with the development plan taken as a whole. Therefore, there are no material considerations that would lead me to a decision other than in accordance with the development plan in this case.
31. For the reasons given and with regard to all other matters raised, I conclude that the appeal on ground (a) should fail, and the deemed planning application should be refused.

The appeal on Ground (f)

32. The appeal on this ground is "that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters (i.e., the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach".
33. The enforcement notice requires a) the unauthorised HMO use to cease and the returning the property to a Use Class C3 dwelling house; and b) the removal of the porch and the restoration of the land to the condition prior to the breach. Therefore, the purpose of the notice is to remedy the breach of planning control rather than only remedy any injury to amenity.
34. However, with regard to the unauthorised HMO use, step a) goes too far in requiring a use (Class C3 dwelling house) to take place. Whilst it is generally acceptable for a notice to require that the land be returned to its condition prior to the breach, it should not require a previous use to be reinstated, which goes beyond remedying the breach.
35. The alleged breach of planning control could be addressed through compliance with an alternative step (a):
- "Cease the unauthorised use of the property as house in multiple occupation (HMO) in excess of six persons."*
36. This would achieve the purpose of the notice which is to remedy the breach. I will therefore substitute requirement a) with the above text. Varying the notice on this basis would cause no injustice to either party, as it would not make it more onerous. As such I will correct the Notice to remove this excessive requirement.
37. With regard to porch, the appellant considers the porch could be modified and reduced in size to comply with Class D of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO). However, the retention of a modified porch would not remedy the breach of planning control alleged. It has been held that the prescribed tolerances in the GPDO should not be regarded as limitations but as part of the definition of the permitted development. A building which exceeds the tolerances under this Part is entirely outside permitted development rights. It is not therefore possible to vary the notice in the ways suggested by the

appellant whilst achieving the purpose of the notice. Therefore, this part of the appeal on ground (f) must fail.

38. However, the appeal on ground (f) succeeds in part, and I will vary the notice to insert this alternative requirement.

The appeal on Ground (g)

39. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The appellant asks that the time for compliance is extended from 6 to 12 months, in order to allow sufficient time for existing occupiers to find alternative accommodation and carry out the necessary building works.

40. The time for completing the requirements should be what is reasonably considered necessary to complete the requirements. In my view 10 months would strike a more reasonable and proportionate balance in this instance. I shall therefore amend the period to 10 months for compliance with the notice. I also note that the Council have powers under s173A(1)(b) to extend any period for compliance, a matter entirely at their discretion, without prejudicing their right to take further action.

41. The appeal succeeds on ground (g), and I shall vary the notice accordingly.

Conclusion

42. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

R Satheesan

INSPECTOR