



Appeal Decision

Site visit made on 10 December 2024

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 January 2025

Appeal Ref: APP/J0350/C/23/3327630

Land at 41 & 41a Shaggy Calf Lane, Slough SL2 5HN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Ismart Property Solutions Ltd against an enforcement notice issued by Slough Borough Council.
 - The notice was issued on 6 July 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of the dwelling house to a large house in multiple occupation (*sui generis* use) ('the unauthorised material change of use').
 - The requirements of the notice are to cease the use of the dwelling house as a large house in multiple occupation (*sui generis* use).
 - The period for compliance with the requirements is five 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 is varied by substituting '*five (5) calendar months*' with '*six months*' as the period for compliance. Subject to this variation, the appeal is dismissed, 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.

Preliminary Matters

2. This decision takes into account the revised National Planning Policy Framework (the Framework), which came into force during the course of the appeal.
3. The description in the allegation of the previous use as a 'dwelling house' does not result in uncertainty. Use by not more than six residents as a small House in Multiple Occupation (HMO) within Class C4¹ is still a dwelling house for planning purposes. Therefore, the description is sufficiently accurate.

Ground (a) appeal

Main Issues

4. The main issues in this ground of appeal are:
 - The effect of the use as a large HMO on the living conditions of the existing and future occupiers of Nos 39 and 43 Shaggy Calf Lane, having regard to noise and disturbance.
 - The effect on the supply of family housing in the Borough.

¹ In the Town and Country Planning (Use Classes) Order 1987 (as amended)

- The effect on highway safety, having regard to vehicle parking.
- Whether suitable living conditions are provided for the existing and future occupiers of the property, having regard to outdoor amenity space.
- The effect on the character and appearance of the surrounding area.
- Whether the use would create an undesirable precedent for similar development.

Reasons

5. The appeal property contains an enlarged detached residential building with living accommodation arranged over three floor levels. On the ground floor is a communal dining/storage room, a communal kitchen and two bedrooms along with a shared WC/bathroom. There are four more bedrooms on the first floor, two of which have ensuite WCs/bathrooms whilst the other two share a WC/bathroom. Three further bedrooms are at loft level, with access to a shared WC/bathroom. There is an area for vehicle parking on a hard surface at the front of the property and a private outdoor amenity space at the rear, along with a driveway leading to a freestanding outbuilding.
6. The enforcement notice attacks the use of the property as a large HMO. Planning permission was refused and a subsequent appeal dismissed in December 2018 for change of use of the property from Class C4 to a nine-person HMO².

Living conditions-occupiers of Nos 39 & 43

7. The building and the neighbouring dwellings occupy a suburban, largely residential setting in which the properties are generally of a similar size and are mostly in single family occupation. The properties front towards Shaggy Calf Lane, a residential street which forms part of the local suburban road network. A one-way loop from the street provides vehicular and pedestrian access to the property and neighbouring dwellings, as well as providing the principal vehicular and pedestrian access to a secondary school located at the rear.
8. The proximity to the school means that there are likely to be increased levels of noise and disturbance from vehicular traffic and pedestrian comings and goings in the vicinity at times, for example at the beginning and end of the school day. Additionally, there are likely to be higher levels of noise and disturbance, including from other passing vehicle traffic, during some periods. Even so, given the context described above the occupiers of Nos 39 and 43 might reasonably expect to enjoy significant levels of peace and tranquillity in their homes and private gardens, particularly during the evenings and at weekends.
9. With nine bedrooms in total, the use as a large HMO has involved a substantial increase in the number of occupiers at the property, compared to a use within Class C4. The overall number of additional daily vehicle movements at the property associated with the use is likely to be substantially greater than the total of six estimated in the appellant's acoustic report. Each occupier of the property is likely to attract their own visitors, including friends and family members as well as deliveries. A number of those visitors are likely to be using a private vehicle to travel to the property. As a result, the report significantly underestimates the probable total number of vehicle movements arising from the use and the likely additional noise and disturbance experienced by neighbouring occupiers.

² Appeal Ref: APP/J0350/W/18/3212272

10. Parking spaces and cycle storage previously proposed at the rear of the property do not form part of the current appeal. Even so, the report also fails to address the effect on neighbouring occupiers of increased noise and disturbance associated with the more intensive use of the outdoor amenity space, identified by the Inspector in the previous appeal.
11. Besides, occupiers of an HMO will for the most part lead separate daily lives. It is unlikely for example that occupiers of the property share common connections or relationships or have similar work patterns and leisure interests. As a result, it is entirely possible that the occupiers will generally be undertaking activities separately and at different times throughout the day. This could include cooking food, doing laundry and using the outdoor amenity space for recreation, as well as travelling to and from the property for the purposes of work, leisure or to meet day-to-day shopping needs. Along with the increase in vehicular traffic and the more intensive use of the outdoor amenity area, the substantial increase in the scale and range of activity at the property arising from the use has resulted in the occupiers of Nos 39 and 43 experiencing significantly increased levels of noise and disturbance compared with what they might otherwise reasonably expect to enjoy in a suburban, largely residential environment.
12. Whether reducing the number of occupiers to either seven or eight would overcome the above objections raises planning merits considerations. As a result, this is a matter for the ground (a) appeal, even though it is part of the appellant's case in respect of ground (f). A seven or eight person HMO would constitute a part of the development described in the notice, for which permission has been sought under the deemed planning application made pursuant to ground (a). However, no details—for example, the internal layout proposed—were provided in respect of the slightly smaller scale of the HMO use envisaged. Moreover, making a modest reduction over the current number of occupiers is unlikely to make any significant difference in terms of the levels of noise and disturbance experienced by neighbours.
13. Therefore, the use has a significant adverse effect on the living conditions of the occupiers of Nos 39 and 43. This is in conflict with Policy H20 of the Local Plan for Slough (LP), which requires HMOs to not result in loss of amenity for adjoining occupiers. It is also in conflict with Core Policy 8 of the Slough Local Development Framework Core Strategy (CS), which requires development in residential areas to respect the amenities of adjoining occupiers.

Supply of family housing

14. CS Core Policy 4, which concerns the type of housing provision in the Borough, requires there to be no net loss of family houses as a result of flat conversions, changes of use or redevelopment. This stems from the existence of a shortage of family housing in the Borough, which has led to overcrowding.
15. The property was not in use as family accommodation, i.e., as a Class C3 dwelling, prior to the use commencing. Be that as it may, due to the size and arrangement of the accommodation, along with the direct access to a generously portioned private outdoor amenity space, the property is capable of accommodating a family. Moreover, planning permission is granted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) at Article 2, Part 3 Class L for change of use from Class C4 to a Class C3 dwelling and vice-versa. To permit the use as a large HMO on the other hand would preclude the property from being used flexibly for purposes in Class C3 or C4 in future and so would lead to a loss of family housing in that sense. Similar considerations would apply in the event of a reduction in the number of occupiers by one or two, as the property would still be in use as a large HMO.

16. Therefore, the use adversely affects the supply of family housing in the Borough, being in conflict with CS Core Policy 4 in that respect.

Highway safety

17. It is proposed to allocate four off-street vehicle parking spaces and a turning area on the hard surface at the front of the property. This would fall well short of the one off-street parking space per bedroom sought by the Borough Council. Nevertheless, the origin and status of this parking standard is unclear. No published document setting out a parking standard for HMOs was referred to. Also, such an approach to on-site parking is inconsistent with paragraph 112 of the Framework, which advises that if setting local parking standards, factors including the accessibility of the development and the availability of and opportunities for public transport should be taken into account.
18. The property is a convenient walking distance from links to frequent bus services travelling to and from other parts of the town as well as destinations further afield, while advisory cycle lanes on both sides of the street promote bike travel. Given the reasonably good level of accessibility by sustainable modes of transport, occupiers of the property do not have to rely on private motor vehicles to meet their day-to-day travel needs, including for accessing services, facilities and employment opportunities. Furthermore, although perhaps not universally the case, HMOs can often provide accommodation for persons from lower income groups who are less able to afford the significant costs normally involved in accessing a private vehicle.
19. Moreover, even if more than four of the occupiers were to have access to a private vehicle, there is space for on-street parking within a convenient walking distance of the property. The appellant's parking survey shows that there is sufficient capacity on this and nearby local streets to absorb any overspill parking arising from the use. Since the survey was undertaken in the early hours of the morning, i.e., when demand for on-street parking is at its highest, it is likely to be fairly representative of the availability of parking spaces. The Council did not question the accuracy of the appellant's parking survey data. Although there might be greater incidences of on-street parking during other periods, i.e. at school pick-up and drop-off times and at evenings and weekends, the opportunities for such parking available in the vicinity when I visited also supports the survey findings.
20. As a result, sufficient off-street parking could be provided and there would be no harm to highway safety arising from the use. There is no conflict with criterion in LP Policy H20, which requires appropriate levels of on-site parking spaces to be provided for HMOs. There is also no conflict with LP Policy T2, which seeks to restrict on-site parking provision for the private car to a maximum level and requires residential development to, amongst other things, provide a level of parking appropriate to its location and overcome road safety problems.

Living conditions-existing and future occupiers of the property

21. As all vehicle parking would be at the front of the property, the outdoor amenity space would remain as one open area. Vehicles would not be parked at the rear of the property nor would vehicle movements be taking place in proximity to the outdoor amenity space. Therefore, unlike in the previous appeal this space would provide a useful and attractive outdoor area for occupiers of the property. Moreover, the relationship between the outdoor amenity space and the vehicle access and parking area would be consistent with that at neighbouring residential property. A suitable planning condition could be imposed to restrict parking at the rear, were I minded to allow the ground (a) appeal and grant planning permission for the use.

22. Therefore, the use would provide suitable living conditions for the existing and future occupiers of the property. There is no conflict with LP Policy H14, which requires the provision of an appropriate level of amenity space including in relation to its quality in terms of area, depth, orientation, privacy, attractiveness, usefulness and accessibility. Nor is there conflict with LP Policy H20, which requires HMOs to have an appropriate amount of amenity space. Further, there is no conflict with CS Core Policy 8 which, amongst other things, requires development to provide appropriate amenity space and landscaping.

Character and appearance

23. It is not in dispute that no external alterations were made to the property to facilitate the use. In the previous appeal, the Inspector found that the increase in occupancy would not have led to the use being detrimental to the character of the area, nor did they identify any other factors which would have done so. Similar to in that appeal, the overall range of housing stock provision would be unchanged as would the number and proportion of HMOs in the area.
24. I have taken account of the mostly suburban residential setting and the likely increase in comings and goings to the property, along with an increase in the number of waste and recycling bins that could arise from the use. Nevertheless, in identifying harm to the character and appearance of the area the previous Inspector largely focussed on the proposed parking and cycle storage arrangements, which do not form part of the current appeal. There is no sound reason why I should depart from the previous Inspector's other findings on this matter.
25. Accordingly, the use has not caused harm to the character and appearance of the surrounding area. There is no conflict with LP Policies H14 and EN1 or CS Core Policy 8 which, amongst other things, require development to be of high-quality design, to be compatible with the character of their surroundings and to improve the quality of the environment.

Precedent

26. There is little firm evidence to suggest that similar developments would be repeated in the surrounding area resulting in cumulative harm if permission were to be granted for the use. Moreover, it is a well-established principle that each case falls to be determined on its individual planning merits. Therefore, this matter carries little weight.

Other Matters

27. Single person households account for just under a third of the total number of households in the Borough in the 2016 Berkshire (including South Bucks) Strategic Housing Market Assessment (SHMA). This is broadly similar to the proportion of single person households in other Councils in the Eastern Berks and South Bucks Housing Market Area (HMA), as well as the overall proportion of such households in the HMA. Nor is this significantly in excess of the proportion of single person households in the study area as a whole and is slightly below the proportion of such households in the southeast.
28. The SHMA also points to market demand for one-bedroom accommodation in the Borough being considerably higher compared to elsewhere in the HMA and other parts of the study area. Even so, most demand in the Borough and throughout the study area is for homes with between two and four bedrooms. Whilst the proportion of rented dwellings is higher in the Borough than in most other parts of the study area, the overall figure is not markedly different to that in Reading, a similarly built-up area. The property might well have consistently been fully occupied. However, that in itself is not a reliable indicator of demand; occupancy rates could be influenced by a number of

factors, including the location, the quality of the accommodation and/or competitive rent pricing. Accordingly, I am not persuaded that any comparatively higher demand for HMO accommodation in the Borough warrants being afforded more than modest weight.

Planning Balance & Conclusion-Ground (a) appeal

29. It is not in dispute that, at between 2.1 and 2.5 years, there is a substantial deficiency in the Borough Council's 5-year supply of housing land. The contribution to meeting the needs of groups with specific housing requirements and to a mix of housing types for the local community, along with making an effective use of land and the accessibility of the location, all weigh in favour of granting permission for the use. Given the relatively limited scale of the development, these factors carry modest weight.
30. On the other hand, the use has an adverse effect on the living conditions of occupiers of neighbouring residential property, as well as on the supply of family housing in the Borough. These are matters which attract significant weight and outweigh the benefits associated with the development. Therefore, the use conflicts with the Development Plan taken as a whole and there are no other considerations, including the Framework, outweighing that conflict. It follows that the ground (a) appeal does not succeed.

Ground (f) appeal

31. The ground of appeal is that the requirements of the notice are excessive.
32. An enforcement notice can have the purpose of remedying the breach of planning control, including by requiring land to be restored to its condition before the breach took place. It can also have the purpose of remedying any injury to amenity caused by the breach. Although the notice does not state as such, its sole purpose must be to remedy the breach. The notice requires the use as a large HMO to cease. By discontinuing that use, the property would be restored to its condition before the breach took place.
33. The requirement to cease the use is sufficiently clear. The appellant can have little real doubt about what they are required to do. The requirement does not purport to prevent the property from reverting to the previous use within Class C4. Imposing a positive requirement to that effect would go beyond the scope of remedying the breach and so would be excessive.
34. Whether the objections to the use could be overcome by reducing the number of occupiers was considered in the ground (a) appeal. In the context of ground (f), the property would continue to be used as a large HMO if there were more than six occupiers. A continuation of the use would mean that the property would not be restored to its condition prior to the breach taking place, thus failing to achieve the purpose of the notice. The appellant did not advance any alternative requirement that would also remedy the breach and to my mind, nothing short of what is set out in the notice would do so.
35. Therefore, what the notice requires is proportionate, being the minimum necessary action required to remedy the breach. The ground (f) appeal fails.

Ground (g) appeal

36. The ground of appeal is that the time allowed for complying with the notice requirements is too short.
37. The notice does not require the appellant to undertake any remedial works following cessation of the use. Therefore, the occupiers would have the best part of five months in which to search for and secure suitable alternative living

accommodation. There is little firm evidence pointing to a shortage of similar accommodation in the Borough.

38. Be that as it may, extending the time for compliance by a further month is a reasonable course of action in this instance. The slightly longer period available to the occupiers to vacate the property would further reduce the risk of anyone facing the prospect of being made homeless, without unduly perpetuating the breach. There would still be an appropriate balance struck between remedying the breach as soon as is practicable, whilst not imposing a disproportionate burden on the appellant and the occupiers.
39. Therefore, I conclude that six months would be a reasonable period for compliance and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (g) succeeds to that extent.

Conclusion

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

Stephen Hawkins

INSPECTOR