



## Appeal Decision

Site visit made on 27 February 2025

by **M Cryan BA(Hons) DipTP MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 21<sup>st</sup> May 2025

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**Appeal Ref: APP/N5660/W/24/3354948**

**44 Lambert Road, London SW2 5BE**

- 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 Goldjo 10 Ltd against the decision of the Council of the London Borough of Lambeth.
  - The application reference is 24/02724/FUL.
  - The development proposed is the use of the premises as a large HMO with 11 units.
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### Decision

1. The appeal is dismissed.

### Preliminary and Procedural Matters

2. The appeal development was described on the planning application form as “retrospective permission for using the premises as a large HMO with 11 units”. I have used a slightly amended wording based on this in the banner heading above as the phrase “retrospective permission” is not in itself a description of development.
3. The scheme was subsequently described on the Council’s decision notice as “the change of use of the premise from a single dwellinghouse (Use Class C3) to a large house in multiple occupation (HMO) with 11 rooms (sui generis), including the provision of refuse and cycling facilities”. The appellant asserts that the property has been in use as an HMO since 2013, and has therefore objected to the use of that description.
4. Within the context of an appeal made under section 78 of the Town and Country Planning Act 1990 it is not within my remit to formally determine whether a particular use has already been established as claimed by the appellant (though I also note the appellant’s comment during the appeal that the planning application was not intended to retrospectively establish as lawful the use of the property as a large HMO). It is open to the appellant to apply to have that matter determined under section 191 of the Act, and any such application would be unaffected by my determination of this appeal. I have considered the appellant’s evidence relating to the previous use of the property so far as it is material to this appeal at relevant points of my reasons below.
5. It is also of relevance that the appeal property is not subject to a Direction under Article 4 of the GPDO<sup>1</sup> which would restrict changes of use from Use Class C3 to Use Class C4, nor has the Council indicated that it has any plans to introduce such a Direction. If such a change has not already taken place, the evidence before me is that under the provisions of Part 3, Class L of the GPDO the property could

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<sup>1</sup> The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

lawfully be used as a Class C4 “smaller” HMO. This is a significant material consideration in this appeal, to which I also return below.

6. Notwithstanding the appellant’s objection, the different wording used by the Council reflects the full scope of the scheme which, as well as the use of the property as a large HMO, includes the provision of refuse and cycle storage facilities at the front of the building. The Council dealt with the proposal on that basis, and so shall I.

### **Main Issues**

7. The decision notice issued by the Council gave four reasons for which it had refused planning permission. The third and fourth of these related to the provision of cycle parking, matters related to car parking permits, and support for sustainable travel. I have dealt with those matters as a single issue in my analysis below, as there is a considerable degree of crossover. The main issues in this appeal are therefore:
  - Whether the use of the appeal property as a larger HMO would be acceptable in terms of its effect on housing supply and the housing mix in the borough;
  - Whether the development would provide acceptable living conditions for all occupiers, with particular regard to the adequacy of kitchen, toilet and bathroom facilities; and
  - Whether the development would adequately promote sustainable means of travel, and mitigate its effects on the surrounding highway and transport networks.

### **Reasons**

#### *Housing supply and mix*

8. The appeal relates to a large semi-detached property, on the north side of Lambert Road in a predominantly residential area, which has living accommodation on three floors. It was evidently built as a single dwellinghouse, but permission is now sought for its use as a “larger HMO” with eleven bedrooms.

#### Loss of self-contained C3 housing

9. Policy H3 of the 2021 Lambeth Local Plan (“the LLP”) states that “existing self-contained C3 housing will be safeguarded in accordance with London Plan policy”, but that “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 [LLP] Policy H8”.
10. It is the appellant’s position that the property has been in use as an HMO for some time, first as a small HMO within Use Class C4, then as a larger sui generis HMO, and that the change of use would not therefore lead to the loss of self-contained housing within Use Class C3. The Council’s contention is that the property should still be treated as a C3 dwellinghouse, as there has been no formalisation, in planning terms, of any change of use of the property from a single dwellinghouse.
11. The appellant submitted declarations in the names of three tenants, each of whom stated that they had lived in the property since 1 May 2013, and that it has been used as an 11-unit HMO since that date. The Council commented in its appeal

statement that it had been advised by one of the tenants that they had “not signed the statutory declaration form, nor [had] they ever met the Solicitor stated on the form”; in response to this the appellant suggested that it is “procedurally unfair” to introduce this claim during the appeal, and that it would be unreasonable to dismiss a statutory declaration on the basis of an unsubstantiated conversation. It is not open to me to interrogate this matter further when determining this appeal by written representations, so although the point was not substantively rebutted by the appellant, I cannot give the Council’s observation in respect of the declarations significant weight.

12. At the same time, however, the certainty of the declarations both in terms of the date and scale of the use is at odds with the significant vagueness introduced by the appellant<sup>2</sup> that “the property has been operating as an HMO for over 11 years, first as a small HMO (C4) and later as a large HMO (Sui Generis)” (my emphasis both times); that comment suggests that any change which may have occurred could have taken place rather later than May 2013. I therefore give limited weight to the declarations themselves, though in doing so I cast no aspersions on the signatories.
13. An “Additional HMO Licence” for the property was issued by the Council on 24 July 2024, covering the period until 25 January 2026. This is under a borough-wide scheme applying to any property occupied by three or more individuals that is not captured by mandatory HMO licensing. No further information about that licence – including the number of bedrooms or bedspaces it provides for – has been put before me but, as the Council pointed out, the granting of an HMO licence would not negate the need to obtain planning permission for a larger HMO.
14. In the light of the uncertainty described in paragraphs 11 and 12 above, as well as the background I have set out in paragraph 4, I am not persuaded that the appeal property should be treated as already being in lawful use as a larger sui generis HMO, insofar as it is necessary for me to consider that matter to determine this appeal. There is, however, a body of evidence indicating that it is reasonable that it should, again at least as far as this appeal is concerned, be treated as being a Class C4 “smaller” HMO. The appeal development would not therefore lead to the loss of self-contained C3 housing, and there would be no conflict with Policy H3 of the LLP on this matter.

#### Provision of new HMO accommodation

15. Policy H9 of the LLP states that proposals for new HMOs will be supported where it is demonstrated that, among other things, it would “not result in the loss of housing suitable for occupation by families”, and where it “would meet an identified local need”. On my reading, the supporting text to that policy implies that it should be applied where changes between “smaller” C4 and larger sui generis HMO uses are proposed. Given the impacts which may arise from an intensification of an existing HMO use, it seems to me reasonable that it should be applied in this case.
16. The submitted “pre-existing” plans show the property with a bedroom, two (linked) kitchens, two living rooms and a bathroom on the ground floor; three bedrooms, a living room, and a bathroom on the first floor<sup>3</sup>; and two bedrooms, and a living room on the second floor. The phrase “suitable for occupation by families” is

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<sup>2</sup> At final comments stage during the appeal; those comments are dated December 2024.

<sup>3</sup> As well as a further small space simply labelled as a “room”.

distinct from the “self-contained C3 housing” wording used in Policy H3. The “pre-existing” layout, with lounges on all three floors, is more in keeping with what I would expect to find in a C4 smaller HMO than in a single family dwelling. However, the lounges on the first and second floors could presumably also serve reasonably easily as bedrooms (as indeed they would in this appeal scheme); the layout would not, on the face of things, rule out the property providing suitable living accommodation for a single family, albeit that would be a family with very significant space requirements. The property in its “pre-existing” condition would also comply with the definition of a “family-sized” home set out in the LLP4.

17. The supporting text to Policy H9 says that “to demonstrate that a proposal is meeting an identified local need, reference should be made to the Lambeth Strategic Housing Market Assessment 2017 (“the SHMA”), 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 notes that the SHMA identifies HMOs as a crucial source of housing for single-person households within the private rented sector”, and that the property has “consistently provided suitable accommodation for single tenants”, though in my professional experience the fact that people have been willing or able to rent any particular accommodation is not necessarily going to be a reliable indicator of it being suitable or acceptable in planning terms. In any event, none of these arguments demonstrates that the appeal scheme would meet an “identified local need”.
18. My attention was drawn to a 2021 appeal relating to a “smaller” C4 HMO in Barnet<sup>5</sup>, in which the Inspector considered that the provision of evidence of signed tenancy agreements, and its use by students “for some time”, was an acceptable demonstration that it would meet local need. However, other than the three declarations referred to above, there is little similar documentary evidence before me in this case. Furthermore, this other appeal is in a different borough on the other side of London, with different development plan policies and different local need; my colleague found the Barnet scheme would meet a particular identified need for student housing, while there is nothing to indicate that the proposal before me would meet any specific needs in Lambeth. Given these considerations, the Barnet appeal decision carries only limited weight in favour of this appeal scheme.
19. The appeal development would lead to the loss of a property suitable for occupation by a family, and it has not been demonstrated that it would meet an identified local need in the terms required by Policy H9 of the LLP. There would therefore be conflict with provisions A.i. and ii. of that policy.

#### Findings on this main issue

20. For the reasons I have set out above, I conclude that the development would not lead to the loss of a self-contained C3 dwelling, so there would be no conflict with Policy H3 of the LLP. At the same time however, the loss of a property suitable for family occupation, and the failure to demonstrate that the proposed sui generis HMO would meet an identified local housing need, means that there would be conflict with Policy H9 of the LLP.

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<sup>4</sup> The supporting text to Policy H6 of the LLP says that this means “houses, purpose-built maisonettes and duplex dwellings with ground-floor access to a rear garden, with three or more bedrooms”.

<sup>5</sup> PINS Ref: APP/N5090/W/20/3261065

21. If the Council's view that the property should be treated as still being a Class C3 dwellinghouse is correct, there would also be conflict with Policy H3 of the LLP. However, the fact that the property could lawfully be used as a C4 HMO without needing planning permission is a fallback position for the appellant, and a material consideration which in my view would overcome and outweigh any conflict with Policy H3 on this matter.
22. The present or potential lawful use of the property as a C4 HMO is also relevant to the conflict with parts A.i. and ii. of Policy H9 which are, effectively, dealing with matters relating to the principles of establishing or enlarging HMOs. While I have found conflict with those provisions, the actual practical implications of the appeal scheme in those respects would be modest. The appeal property may be suitable for use as family housing, but it is not used as family housing, and there is nothing before me to indicate that in the event of my dismissing this appeal there is any realistic prospect of it actually being returned to use as a single family dwelling. Similarly, while it has not been demonstrated that the housing which would be provided would meet a specific local need, it would still contribute to meeting general housing need in the area. There is also nothing before me to suggest that the development would lead to a harmful overconcentration of HMO accommodation in the area, or that it would cause harm to neighbours' living conditions, or to the character of the area. I conclude that these considerations would be sufficient to overcome and outweigh the conflict with parts A.i. and ii. of Policy H9 of the LLP.
23. Part A.iii. of Policy H9 requires that HMO accommodation is suitable for the intended occupiers in terms of the standard of facilities. Parts A.v. and vi. relate to an HMO development's provision of car and cycle parking, and its effects on traffic congestion and transport. In the light of my findings on this main issue, my overall conclusion in this appeal is dependent on my assessment of these matters, which I address in the following sections.
24. I find no conflict with Policy H8 of the London Plan 2021, which seeks to ensure that any housing lost is replaced by new housing at existing or higher densities with at least the equivalent level of overall floorspace. Although that policy was referred to in the Council's decision notice, nothing was put before me to explain where any such conflict might arise in this case.

#### *Living conditions*

25. The Council's concerns in respect of living conditions, as set out on the decision notice, related to the provision of kitchen space, bathrooms, and WCs, as well as the absence of a management plan for the property. My attention was drawn to its July 2024 HMO Standards document ("the SD"). While the SD is not part of the development plan it provides useful advice as to the facilities required in an HMO, and therefore as to how Part A.iii. of Policy H9 of the LLP should be interpreted. In referring to the SD, I have concentrated on its requirements for "bedsit type accommodation", as they reflect the appellant's stated intentions in respect of this development.
26. The submitted plans show only one room in the property specifically identified as a kitchen, a 5.8m<sup>2</sup> space with units including a sink and a four-ring hob, accessed from Bedroom 3 on the ground floor. The Council considered both the size of the kitchen and its access to be inadequate to serve as a communal facility, having

regard to the “shared houses and flats” requirements of the SD. The appellant in turn describes this as a clear misinterpretation of the plans, stating that all 11 units would be self-contained with private kitchenettes, and that the separate kitchen off Bedroom 3 would be exclusive to that unit.

27. The submitted drawings and other evidence do not make it clear that residents would have adequate cooking facilities. The minimum requirement set out in the SD for a single-person room is a cooker with two burners, an oven and a grill. While each bedroom<sup>6</sup> is shown having an area of units and worktops with what appears to be a sink, those areas are not labelled as “kitchenettes”. The only hob shown on the drawings is the one in the separate kitchen off Bedroom 3, so the Council’s interpretation is understandable. It is not clear where or how occupiers of the other rooms would be expected to cook or heat food. The area of units and worktops in some of the rooms (notably Bedrooms 4, 5 and 9) appears to be so small that it is doubtful if they would be able to accommodate some form of cooker while still leaving adequate space for even a single person to prepare food and so on. Based on the application plans, I consider the Council’s concerns about the adequacy of kitchen facilities to be well-founded.
28. Turning to personal washing facilities and sanitary provision, the SD requires that HMOs for 11 to 15 residents should provide at least three bathrooms or shower rooms, and at least three WCs (two of which should be separate from the bathrooms). The appeal scheme includes two bathrooms with toilets, and only one self-contained WC. This level of provision would be inadequate to meet the needs of the occupiers of an 11-room HMO.
29. The appellant has suggested that the shortfall in bathroom and WC provision could have been addressed through minor amendments or conditions. No amended plans are before me, though it is of course open to the appellant to submit a revised scheme following my decision if they wish. I am not persuaded that it would be appropriate to seek the provision of additional bathroom and WC space by use of a condition – this would of necessity lead to a reconfiguration of the internal space within the property, with some attendant risk that the letting bedrooms would be adversely affected. The provision of living accommodation to a high standard, and with a high standard of cooking and washing facilities, is fundamental to whether or not an HMO scheme would be acceptable in planning terms; in my view it is not therefore a matter to deal with through a condition following a grant of planning permission.
30. On the other hand, I have not been directed to any development plan document, supplementary planning document, or other guidance which indicates that the submission of an HMO management plan is a fundamental planning consideration for all HMO developments. While it is important that HMOs are well-managed, it is notable in this case that the Council’s concern about the absence of a management plan was expressed in general terms, rather than because of any specific matter which it considered needed to be addressed. This is therefore a matter which, were the proposal acceptable in all other respects, could have been dealt with by a condition requiring the submission and approval of a management plan. However, this would not address my other concerns.

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<sup>6</sup> Other than Bedroom 3, which has the self-contained kitchen already described.

31. I conclude that, because of shortcomings in respect of kitchen, toilet and bathroom facilities, it has not been demonstrated that the development would provide acceptable living conditions for all occupiers. The scheme therefore conflicts with Policy H9 of the LLP, which requires that HMOs are suitable for the intended occupiers in terms of the standard of facilities, and with Policy D6 of the London Plan 2021, which (among other things) requires housing development to be of high quality design with comfortable and functional layouts which are fit for purpose.

*Sustainable travel and transport*

32. Policy T3 of the LLP requires the provision of appropriate secure and covered cycle parking facilities in accordance with the standards set out in Policy Q13 of the LLP and Policy T5 of the London Plan 2021. Policy T5 requires the provision of a long-term bicycle space for each one-bedroom unit, plus two short-stay spaces for visitors. The appeal scheme includes a proposed storage enclosure, which would accommodate up to four standard bicycles – this provision would fall short of the requirement whether considered in absolute (i.e. as an 11 unit scheme) or relative (i.e. an increase of five units from an assumed six room C4 HMO) terms. Policy Q13 goes on to say that, where intensification is proposed, the Council will consider the removal of on-street car parking in favour of a shared cycle store (such as a “cycle hangar”), the cost of such provision to be borne by the developer.

33. The appeal property has a Public Transport Accessibility Level (“PTAL”) of 4, which represents good public transport connectivity. It is within the Brixton Hill (E) Controlled Parking Zone (“the CPZ”). The combined effect of Policy T6 of the LLP and Policies T6 and T6.1 of the London Plan 2021 is that development in areas of Lambeth with a PTAL of 4 or higher should be car-free, with no general access to parking permits for CPZs. Policy T6 of the LLP also seeks car club membership for three years for occupiers of new residential development, so as to discourage reliance on the private car. Policy T3 of the LLP requires the provision of three years membership of the London Cycle Hire Scheme for occupiers of new residential development, in order to encourage and support the use of sustainable means of travel.

34. The appellant has not disputed the need to make more cycle storage provision, whether through additional spaces on-site or by making a financial contribution to the provision of an on-street cycle hangar. They also acknowledge that measures to prevent CPZ parking permits being allocated, and to provide car club and cycle hire scheme memberships are required by the development plan. Having regard to the relevant policies, I am satisfied that the measures are required to mitigate the impact of the development, and the appellant has indicated a willingness to provide an obligation under Section 106 of the Act to secure them. However, no obligation is before me.

35. The appellant has suggested that “it is standard practice to secure these obligations post-approval”. However, the Planning Practice Guidance (“the PPG”) is clear that no payment of money or other consideration can be required when granting planning permission<sup>7</sup>. The PPG also advises that a negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases, not least because ensuring that a planning obligation is entered into

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<sup>7</sup> Paragraph: 005 Reference ID: 21a-005-20190723

ahead of any grant of planning permission provides certainty for all parties about what is being agreed. It suggests that “in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate, where there is clear evidence that the delivery of the development would otherwise be at serious risk”<sup>8</sup>, but there is nothing before me to suggest that such “exceptional circumstances” apply in this case.

36. In the absence of a mechanism to secure the provision of adequate cycle parking, car-free development, car club membership and cycle scheme membership, the development would not adequately promote sustainable means of travel, or mitigate its effects on the surrounding highway and transport networks. It would therefore conflict with Policies T3, T6 and Q13 of the LLP, and Policies T4, T5 and T6 of the London Plan 2021, the principal relevant requirements of which I have summarised in paragraphs 32 and 33 above. There would also be some conflict with Policy D4 of the LLP, which sets out examples of the types of facilities and improvements for which planning obligations will be sought.

### **Planning Balance and Conclusion**

37. The proposal would result in conflict with Policy H9 of the LLP in terms of its impact on housing “suitable for occupation by families”, and in relation to meeting an identified local need for HMOs. For the reasons I have set out above I consider that the extent and impact of this conflict on its own (and any similar conflict with Policy H3 which might arise) would be very limited. However, I have also found that there would be significant shortcomings in terms of living conditions within the development, and that it would not make adequate provision to promote sustainable means of travel, or mitigate its effects on the surrounding highway and transport networks.
38. The proposal therefore conflicts with the development plan taken as a whole. There are no material considerations, including those of the National Planning Policy Framework, that indicate the proposal should be determined other than in accordance with the development plan.
39. I therefore conclude that the appeal should be dismissed.

*M Cryan*

Inspector

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<sup>8</sup> Paragraph: 010 Reference ID: 21a-010-20190723