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## Appeal Decision

Site visit made on 17 July 2025

by **S Burch BSc MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27<sup>th</sup> August 2025

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**Appeal Ref: APP/N5660/W/25/3364700**

**139 Sherwood Avenue, Lambeth, London, SW16 5EE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mr Asher Frankel against the decision of the Council of the London Borough of Lambeth.
- The application Ref is 25/00344/FUL.
- The development proposed is for the change of use of existing property from a small HMO (Use Class C4) to a large house in multiple occupation (HMO) with 10 rooms (sui generis) involving the erection of a single storey ground floor rear extension. Erection of a rear dormer roof extension and installation of two rooflight to the front roof slope.

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### Decision

1. The appeal is dismissed.

### Applications for costs

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

### Preliminary Matters

3. For reasons of clarity, I have used the description of development noted on the decision notice in the heading above. This also matches the description listed on the appeal form and the appellant's statement of case.
4. The description of development refers to the existing property as a small HMO (Use Class C4). The Council however indicate that no evidence to demonstrate this existing use has been provided. In any case, within the context of an appeal made under section 78 of the Town and Country Planning Act 1990 (the Act) it is not within my remit to formally determine whether a particular use has already been established as claimed by the appellant. 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 any evidence relating to the existing use of the property so far as is material to this appeal.
5. The Council have no objection to the proposed ground floor extension, rear dormer and rooflights. I see no reason to disagree with this. My assessment therefore largely focusses on the effect of the proposed change of use.

## Main Issues

6. The main issues are:
  - whether the use of the appeal property as a larger HMO would be acceptable in terms of its effect on the housing mix in the borough; and
  - whether the proposal would adequately promote sustainable modes of transport and mitigate the transport impacts of the development.

## Reasons

### *Housing mix*

7. The appeal property relates to a two-storey end of terrace property situated at the junction of Sherwood Avenue and Glencairn Road. The property has a small area to the front which appears to be available for parking, and a private garden to the rear. The surrounding area is predominately residential in nature.
8. The appeal scheme seeks permission for the erection of a single storey ground floor rear extension and rear dormer roof extension and for the change of use to a 10 bed HMO (sui generis use).
9. The appellant contends that the appeal property was in lawful use as a small HMO at the time of the planning application. The Council however query this, stipulating that no evidence to confirm this use was provided by the appellant. At appeal stage, the Council have provided tenancy agreements, an HMO management plan and an HMO license application which were submitted alongside a subsequent application at the site. All of these documents are dated after 6<sup>th</sup> February 2025, when the application this appeal relates to was refused.
10. Whilst there may be no statutory requirement for the appellant to confirm the existing use, this evidence does somewhat suggest that prior to this, the property may not have been in HMO use. Although the existing floor plans show six bedrooms, each with an ensuite, this would not be an overly unusual layout for a family dwelling and therefore I am not satisfied that this would prove the existing use as a small HMO. Notwithstanding the above, as previously outlined, it is not within my remit to formally determine whether the use has already been established as claimed by the appellant.
11. Policy H9 of the Lambeth Local Plan 2020-2035 (2021) (LP) 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 as defined in Local Plan Policy H6”, 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. Paragraph 5.39 of Policy H6 outlines how “dwellings suitable for occupation by families means houses, purpose-built maisonettes and duplex dwellings with ground-floor access to a rear garden, with three or more bedrooms.”
12. As mentioned, the submitted existing plans show six bedrooms, each with an ensuite. There is a large kitchen/diner/living room on the ground floor, small second kitchen on the first floor and garden with communal access to the rear. The

layout does somewhat lend itself to a C4 smaller HMO, however it would not be overly unusual for a single-family dwelling to have two kitchens, and bedrooms with en-suites. The layout would not, on the face of things, rule out the property providing suitable living accommodation for a single family, and I am also not satisfied that the existing layout proves its use as an existing HMO. On this basis, I consider that the existing dwelling would be considered suitable for occupation by a family. The existing dwelling would also meet the definition of “family sized housing” as set out in the glossary of the LP. Therefore, if the scheme was allowed, it would result in the loss of a dwelling suitable for occupation by a family.

13. Turning to whether there is an identified need for the larger HMO, 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” and various other documents and strategies.
14. The appellant has not referred to any of the listed documents or strategies. They do outline how the scheme addresses housing need and provides well managed, high quality, affordable accommodation which contributes to housing choice in the area. However, I am not satisfied based on the evidence before me that the scheme would meet an identified local need.
15. The appellant has drawn my attention to an appeal (Ref: APP/N5660/W/24/3337243, dated 15<sup>th</sup> July 2024). They outline how the appellant in this appeal did not provide formal evidence of an identified local need. It is however evident that the property which this appeal related to was previously an eight-bedroom dwellinghouse, and the scheme sought to utilise two additional rooms. I am therefore not satisfied that it is directly comparable to the scheme before me, which seeks to extend and intensify the use of the property, creating a 10 person HMO.
16. Given the above, the scheme would be contrary to Policy H9 of the LP. This policy seeks to safeguard housing that is suitable for occupation by single families and ensure development meets an identified local need.
17. 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 LP, which seeks to safeguard existing self-contained C3 housing. However, as outlined previously, it is not within my remit to formally determine whether a particular use has already been established as claimed by the appellant.
18. I do not find any conflict with Policy H8 of the London Plan (2021) which relates to replacing existing housing with new housing at existing or higher densities, loss of hostels, staff accommodation, shared and support accommodation and the demolition and replacement of affordable housing.

#### *Sustainable modes of transport and transport impacts*

19. The Council’s second refusal reason relates to the failure of the appellant to secure via legal agreement, a Controlled Parking Zone (CPZ) contribution, restrictions on occupants obtaining a car parking permit, and the provision of car club and cycle hire membership. At final comments stage the appellant has contested whether the obligations are required.

20. Regarding car parking permits, the site is not situated within a CPZ and there is no evidence before me to demonstrate that parking stress in the area is at an unsustainable level or there are plans to make the area surrounding the site a CPZ. The absence of a CPZ means there is no effective means of control in respect of parking, as occupants would not require a permit in the first place to park within the immediate streets. As such, I am not satisfied that that permit-free development is necessary on this basis.
21. Turning to the provision of car club and cycle hire membership, I have doubts as to how these requirements, and indeed any permit-free restrictions, would be fairly stipulated, particularly in terms of identifying the occupants to whom they would apply, given they would all reside in the same building, and how they would be managed in practice given that HMO occupancy can be more short-term in nature. Therefore, I am not persuaded that car club and cycle hire membership for four additional occupants would meet the tests for planning obligations set out in the National Planning Policy Framework (the Framework) or Regulation 122(2) of the Community Infrastructure Levy Regulations 2010. Furthermore, although not demonstrated on the plans, the Council accept that there is ample space at the site to accommodate ten cycle spaces and two visitor cycle spaces.
22. Regarding the CPZ contribution, the site would appear to provide two parking spaces to the front of the dwelling. Given there would be four extra bedrooms, this could potentially result in an additional four cars, on top of potentially six cars, if the current use is as a six bed HMO. The demand for parking would therefore not be met within the site and a contribution is reasonable.
23. I note the appellant has submitted a draft Unilateral Undertaking (UU) seeking to address the matters identified by the Council in terms of adequately promoting sustainable modes of transport and mitigating the transport impacts of the development. However, Government guidance is clear *"If the appeal is following the written representations procedure... the appellant must ensure that we receive an executed and certified copy of the planning obligation at the time of making their appeal."* (Paragraph 18.2.2.12 of Written Representation Appeals the Procedural Guide: Planning Appeals - England).
24. For the reason given in the previous paragraph, I am not satisfied the draft UU submitted, which is unsigned and undated secures the CPZ contribution to mitigate the increased demand for parking, in accordance with Policy T6 of the LP. As such I afford it no weight.
25. Given the above, the scheme fails to accord with Policies D4 and T6 of the LP and Policies T4 and T6 of the London Plan (2021) in the absence of a completed agreement to ensure a CPZ contribution. Collectively, amongst other things, these policies seek to prevent development from adding to parking stress and maintain the safe and efficient use of roads. I however find no conflict with Policy T3 of the LP and Policy T5 of the London Plan, which seek to promote sustainable modes of transport including cycling.

### **Other Matters**

26. If it was the case that the dwellinghouse was not in use as a C4 smaller HMO at the time of the application, I am mindful of the fallback position under Schedule 2, Part 3, Class L of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GDPO), which would allow

change between C3 and C4, and vice versa, without planning permission. This position is not disputed by either party. However, the Council's refusal reason notes that the proposal would result in the loss of a property "capable" of providing a single dwellinghouse. I highlight the word capable as this reinforces that the crux of the issue is that the proposed change of use to a larger sui generis HMO would remove the flexibility provided by Schedule 2, Part 3, Class L of the GDPO. I therefore do not agree that given the fallback position, any harm relating to the loss of a family house is reduced or neutralised.

27. Notwithstanding the above, the appellant suggests that the modest increase from a 6 people HMO (which could be done without planning permission) to a 10 person HMO does not fundamentally alter the land use character or materially worsen any impact. I do accept that the fallback position has a greater than theoretical possibility of being implemented, as the existing plans indicate that the dwelling could be suitable for use as a C4 smaller HMO. However, in my view, there is a significant difference between a 6 person and a 10 person HMO, and I do not consider the impacts to be directly comparable due to the intensified use. Whilst the occupants may share the same communal and outdoor facilities, with similar management and licensing controls, the scheme seeks permission for extensions and four additional bedrooms. I have afforded the fallback position limited weight as it is a different scale of development in my view.
28. In any case, as outlined above, the issue is that the proposed development would remove the flexibility provided by Schedule 2, Part 3, Class L of the GDPO in that it would prevent the HMO being reverted back to a family dwellinghouse without planning permission.
29. Notably, the appellants own evidence outlines how the grant of planning permission for sui generis large HMO use does not permanently remove the lawful ability to revert to C3 or C4 and goes onto explain that planning law confirms the fallback status continues unless the development becomes physically incapable of reversion. In my view, it would be problematic to revert a 10 person HMO back to a C3 single family dwellinghouse and in any case, planning permission would be required.
30. The appellant has drawn my attention to an appeal (Ref: APP/U5360/W/24/3352804, dated 28<sup>th</sup> January 2025) whereby an Inspector outlined how the existence of permitted development rights to change the use of the property from a dwellinghouse to an HMO means that the loss of a family home would occur either way. They concluded that this fallback position therefore outweighed the harm identified. However, this appeal was against a decision by the London Borough of Hackney and was for a 7 bed HMO. I am not aware of the precise considerations and policy context on which the decision was based on, and I am not satisfied that the two schemes are directly comparable.
31. My attention has also been drawn, by the applicant, to an allowed appeal at Valley Road, Lambeth (Ref: APP/N5660/W/24/3337243, dated 27<sup>th</sup> August 2024), whereby the Inspector concluded that the fall-back position was a material consideration which overcame the objection in policy terms. Again, I am not satisfied, based on the evidence before me, these appeals are directly comparable. The Valley Road appeal benefited from a lawful development certificate relating to a change of use from a single-family dwelling to a small HMO. Furthermore, that development sought to utilise two existing rooms as bedrooms,

whereas the appeal before me seeks permission for extensions to create four additional bedrooms, thereby significantly intensifying the use of the property. In any case, each decision is based on its own merits. I have afforded reference to both appeals limited weight.

32. The Council have raised several other concerns at appeal stage including the effect of the change of use on neighbouring amenity, character of the area, increased anti-social behaviour, the size of a number of bedrooms, the lack of an HMO management plan and a pending Article 4 Direction. These issues were however not raised in its case officer report or referenced in refusal reasons. The appellant has objected to the introduction of these issues; however, they have provided an HMO management plan at appeal stage. Notwithstanding this, given my findings on the main issues, these concerns would not be determinative. I have therefore not considered these issues further.
33. London Plan Policy H9 largely relates to the protection of HMO's which are of a reasonable standard. Therefore, whilst I do not find any conflict with this policy, it is not overly relevant in this decision. I have afforded this point limited weight in favour of the decision. Whilst I find no conflict with London Plan Policy H11, I also do not find it to be overly relevant given it relates to build to rent.
34. I note the appellant's concerns over the Council's handling of the application. However, this is not a matter that I can consider under a Section 78 planning appeal and does not alter my findings, in which I have had regard solely to the planning merits of the proposal.

### **Planning Balance**

35. Bringing together my conclusions on the main issues, I have found that the proposed development would harm the housing mix in the area and would not mitigate against any additional parking demand. This would be contrary to the LP and the aims and objectives of the Framework.
36. However, these issues must be balanced with other factors. The scheme may meet Lambeth's HMO Standards and National Minimum Space Standards, although the Council suggest that a number of bedrooms may not meet HMO standards. Adequate facilities, suitable outlook, daylight and privacy for future occupiers may also be provided. The scheme may not harm neighbouring amenity, infrastructure capacity or the character of the area, however again I note that the Council have raised concerns regarding the over proliferation of HMO's in the area at appeal stage. The HMO Management Plan submitted may ensure the day-to-day management of the HMO, including fire safety and waste management amongst other things. It would make efficient use of an existing building in a relatively accessible area and may provide sustainable, well-managed and affordable housing, contributing to housing need. Whilst these are important benefits, given the overall scale of development I have afforded them limited weight.
37. The adverse impact on the housing mix in the area and the increased parking demand which would not be accommodated for on site would significantly and demonstrably outweigh the benefits when assessed against the Framework as a whole. I find that the conflict with the relevant part of the development plan, which is consistent with the Framework, is not outweighed by other factors and therefore the appeal should not be allowed.

**Conclusion**

38. For the reasons given above I conclude that the appeal should be dismissed.

*S Burch* - INSPECTOR