



Town and Country Planning Act 1990
Section 78 Planning Appeal

London Borough of Hillingdon Appeal Statement

Appeal By:

Mr Nathan Eriemo

Proposal:

Proposed change of use from C3 (Residential Family Dwelling) to C4 for 6 persons max (Small HMO) (Application for a Certificate of Lawful Development for a Proposed Development)

Appeal Site:

84 Tolcarne Drive, Pinner, HA5 2DG

Our Ref: 35338/APP/2024/1664

Your Ref: APP/R5510/X/24/3353860

1. Introduction

- 1.1 This appeal statement is submitted by the London Borough of Hillingdon, as the Local Planning Authority (LPA), in respect of the appeal against its refusal to grant planning permission for application reference 35338/APP/2024/1664.
- 1.2 The LPA refused planning permission on 12th August 2024 for the following reason (as stated on the decision notice):

1. Certificate of Lawfulness - Refused

Due to the internal size of the bedrooms, the HMO would have an occupancy level of above 6 persons and would be classed as a large HMO (Sui Generis) use that would require the submission of a full planning application. As such it would fail to meet Class L, Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) Order 2015.

- 1.3 The LPA's case is set out in the Planning Officer's report, which should be read in conjunction with this statement. A copy of the Planning Officer's report is provided at Appendix 1. Copies of relevant planning policies are included at Appendix 2.
- 1.4 This statement will not repeat the Planning Officer's report and will focus on providing additional weight to the refusal reasons noted above and addressing matters raised in the Appellant's statement of case.

2. LPA Comments on Appellant's Statement of Case

2.1 The Appellant's Case – Not Development

- 2.2 In relation to the refusal of the Certificate of Lawfulness the Appellant's Statement of Case makes several points within paragraphs 5.2 to 5.18 relating to the proposal not being considered development. These points have been summarised for ease of reference below:

- No external alterations to the property to facilitate the change of use.
- The appeal property is located in an area residential in character and would be a suitable size to accommodate six individuals, if not more.
- The proposed change of use would not result in notable or appreciable intensification of this site in terms of additional comings and goings or in terms of noise and disturbance.
- There would be no change to the character of the land meaning this would not be a material change of use.
- There is no Article 4 Direction in place preventing a change of use from single dwelling to a HMO.
- There would be no loss of dwelling from the Councils housing stock.
- The change of use would provide high quality internal living conditions.

2.4 The Appellant's Case – Permitted Development

2.5 In relation to the refusal of the Certificate of Lawfulness the Appellant's Statement of Case makes several points within paragraphs 5.19 to 5.27 relating to the proposal being permitted development. These points have been summarised for ease of reference below:

- There is no Article 4 Direction restricting change of use from a C3 Dwellinghouse to a C4 HMO.
- Regardless of bedroom sizes, the applicant has applied for Certificate of Lawfulness for a C4 HMO to accommodate 6 people under the provisions of the GDPO and the necessary HMO license obtained from the Council.
- Any further occupation beyond 6 persons may constitute a material change of use however it is not for the Council to pre-empt a breach of planning control.
- On the balance of probabilities, the inspector can be satisfied that the change of use from C3 to C4 does not represent a material change of use and would be considered permitted development as per Schedule 2, Part 3, Class L (B) of the GDPO.

2.6 In response to the points set out above in the Appellant's Statement of Case, it is important to note that the consideration of the Certificate of Lawfulness is based solely on whether or not the change of use of the dwelling from C3 to C4 represents permitted development, as set out within Schedule 2, Part 3, Class L (B) of the GDPO.

As set out within the Planning Officer's Report, the conversion would result in a 6 bedroomed HMO with internal accommodation as follows:

Bedroom 1 - 14.68 sqm + en-suite (3.3 sqm) = total of 17.98 sqm
Bedroom 2 - 11.10 sqm + en-suite (3.13 sqm) = total of 14.23 sqm
Bedroom 3 - 10.20 sqm + en-suite (3.17 sqm) = total of 13.37 sqm
Bedroom 4 - 12.66 sqm + en-suite (3.07 sqm) = total of 15.73 sqm
Bedroom 5 - 10.14 sqm + en-suite (3.02 sqm) = total of 13.16 sqm
Bedroom 6 - 10.20 sqm + en-suite (2.03 sqm) = total of 12.23 sqm
Hallway: 12.08 sqm
Shared Kitchen / Dining Area: 17.62 sqm

Taking into account only the bedroom size, at least two of the bedrooms would be considered sufficient for double occupancy. If the en-suites are included into the room size, all of the proposed six bedrooms would be sufficient for double occupancy.

In this case, it is important to note application 72026/APP/2017/1064 that was refused and dismissed at appeal under reference APP/R5510/W/17/3179484. Within section 7 of this appeal, the inspector stated:

"The proposal is for the conversion of the property to a six bedroom HMO. The appellant states that the property would be occupied by no more than six persons. However, no control on the occupancy of the property is proposed. The Council argues that five of the proposed bedrooms could be occupied by two persons. The floor area of these bedrooms exceeds 10sqm which is the minimum size for two person occupancy set out in Table 3 of the SPG. Moreover I saw on the site visit that at least two of the bedrooms contained two single beds. It seems to me therefore, that the property could be occupied by up to 11 persons."

A further appealed and dismissed application at the same site under reference 72026/APP/2018/2672 (appeal reference APP/R5510/W/18/3218579) for similar reasons. Within section 5, the inspector stated:

"The description of the application referred to a maximum occupancy of six people, however no means of controlling the number of residents has been proposed. The Council's Supplementary Planning Guidance on Houses in Multiple Occupation (2004) (the SPG) sets out in Table 3 the maximum capacity of rooms in converted dwellings, which will be used to assist in the assessment of the maximum occupancy of converted dwellings. Four of the bedrooms would have a floor area of 10 - 15 sqm and would therefore be suitable for 2-person occupancy. The remaining bedroom, at 6.5 sqm, would be suitable for single person occupancy based on the SPG table. It therefore seems to me that the layout proposed would allow the property to accommodate up to nine people."

It is concluded that within this appeal site, due to the size of the bedrooms within the property, the dwelling could be occupied by at least 8 occupants, if not more, and therefore would not be considered as a small scale HMO, rather it would be considered a large scale HMO Sui Generis use that would require planning permission.

Officers would also argue that restricting the number of occupants through conditioning so that it cannot be occupied by more than 6 persons would be extremely difficult to enforce. No operational management plan has accompanied the application to demonstrate how the applicant could ensure 6 persons occupy the property.

Taking into consideration the above, it is considered that the change of use does not constitutes permitted development by virtue of the provisions of Schedule 2, Part 3, Class L of the Town and Country Planning (General Permitted Development) (England) Order 2015.

3. Conclusion

- 3.1 For the reasons set out in the Planning Officer's report and this statement, the proposed development, by reason of the size of the bedrooms, it is considered that the HMO would be capable of occupation by more than 6 persons and would therefore be classed as a Sui Generis Large HMO, subject to a full planning application. As such it would fail to meet Class L, Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) Order 2015.

- 3.2 The Inspector is therefore respectfully requested to dismiss the appeal.
- 3.3 In the event that the Inspector considers that the appeal should be allowed, and without prejudice to the Council's case, a list of recommended conditions is included in Appendix 3.

Appendices

Appendix 1 – Planning Officer's Report

Appendix 2 – The LPA's Recommended Conditions