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Date: December 2024
Our reference: 0680

Appeal Statement of Case

Site address:

1 Hurstfield Crescent
Hayes
UB4 8DN

**The Appeal is made under section 78 of the Town and Country Planning Act 1990
(as amended) In Accordance with the Town & Country Planning (Written
Representations Procedure) (England) Rules 2009**

The Appellant's Grounds of Appeal ("grounds") has been prepared by J Clark ("Agent") against the decision of the London Borough of Hillingdon refusal of the "Change of use from a 6-bedroom small House in Multiple Occupation (HMO) (Use Class C4) to a 7-bedroom HMO (Use Class Sui Generis) for up to 7 people, including new cycle store (part-retrospective)".



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1.0 Introduction:

- 1.1 The Planning Application (“Application”) was submitted by Excel Planning Ltd (Mr Heshy Friedman) C/O Mildmay High Ltd and was formally received and validated (Registered) by LB of Hillingdon on the 6th of March 2024. The Application was provided with reference number 61118/APP/2024/595.
- 1.2 This appeal statement should be read alongside the submitted Planning Statement, supporting transport reports, application form and the suite of plans. This statement (grounds) will set out the policy compliance of the proposed development having regard to the National Planning Policy Framework and the relevant adopted Development Plan Policies.



- 1.3 The applicant was open to discussions with planning officers to resolve all material planning matters, but a resolution could not be achieved pertaining primarily to the councils perceived belief the second floor room was tantamount to a self-contained unit. The Decision Notice, dated 22nd of October 2024, cites the following single reason for refusal:
1. The proposal is tantamount to the subdivision of the property into a six-bedroom House in Multiple Occupation (HMO) with a substandard sized one-bedroom self-contained flat. The proposal, as submitted, does not include satisfactory supporting information in relation to the need for additional parking and amenity space and issues relating to the impact on the existing and adjoining dwellings. The proposal is, therefore, contrary to Paragraph 135 of the National Planning Policy Framework (2023), Policies D6 and T6 of The London Plan (2021) and Policies DMH 5, DMHB 11, DMHB 16, DMHB 18, DMHD 1, DMT1, DMT 2, and DMT 6 of the Hillingdon Local Plan: Part Two – Development Management Policies (2020).
- 1.4 For the avoidance of doubt no other matters beyond the perceived establishment of a self-contained unit and its effects within the lawful HMO property and the subsequent view by planning officers, the development would provide a poor standard of accommodation, with “issues” relating to the impact on the existing and adjoining dwellings and associated parking requirements are in dispute. The officer’s delegated report provides commentary to support the single reason for refusal and clarified in the summary section the principle of a 7 Bed sui generis HMO was not acceptable in principle.



“Whilst no objection is raised to the change of use from Use Class C4 to a seven-bed sui generis HMO, officers consider that the submitted plans would result in a development that is tantamount to the subdivision of the property into a six-bedroom HMO with one substandard one-bedroom self-contained flat in the loft space.

1.5 The LPAs reason for refusal is based on officers views the proposed development is “tantamount to the subdivision of the property into a six bedroom house of multiple Occupation (HMO) with substandard sized one bedroom self-contained flat”. If officers held concerns at the impact on the existing and adjoining dwellings alongside the need for additional parking, its unclear why these material planning matters do not constitute separate reasons for refusal? Nevertheless, the full wording of the reason for refusal will be considered.

1.6 The Appeal statement (grounds) will challenge the Council’s decision to refuse the planning application, by refuting the reason for refusal and demonstrate the proposal would not result in a self-contained unit nor result in harmful impacts to existing and adjoining neighbouring amenity or unreasonable parking need and demand.

2.0 The site and surroundings:

2.1 The appeal site is formed of a two-storey semi-detached building located on the eastern side of Hurstfield Crescent. The application site is currently in use as a six-bedroom HMO, formalised via planning application reference 1118/APP/2024/1654, granted on the 19th August 2024. The site benefits from an granted HMO licence which is submitted in support of the appeal, and thereby proves the building use is a



lawful and operational HMO currently. The application site is not located within a conservation area or an area of Special Character, nor is the site statutory or locally listed. Furthermore, the application site does not lie within the area of the borough that is subject to a direction made under Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (Article 4 Direction) (GPDO) which came into force on 24th March 2013 to remove permitted development rights relating to making a change of use of a dwelling house (Use Class C3) into an HMO (Use Class C4). The surrounding area is characterised by semi-detached residential properties.

Figure 1 – Location plan





3.0 Site planning history:

3.1 Reference – 61118/APP/2023/1151

Development description – Change of use from a 6 unit small HMO (Use Class C4) to a 7 unit HMO (Sui Generis) for up to 7 people, including new cycle store.

Decision – Withdrawn 21st June 2023

3.2 Reference - 61118/APP/2024/1654

Development description - Confirmation of existing use as 6-bed 6-person HMO (Class C4) (Application for a Certificate of Lawful Development for an Existing Development)

Decision – Granted, 19th August 2024

4.0 Proposal:

4.1 The planning application sought to change the use of the 6 bed HMO (Use Class C4) to a 7 unit HMO (Sui Generis) for up to 7 people. No external changes to the building were sought, beyond the increase in the cycle storage unit to seven (7) cycles opposed to the current six (6). The additional seventh bedroom would be provided via the refurbishment of the loft storage space to habitable accommodation.

4.2 The officers delegated report noted “the internal layout is such that the second-floor layout has been implemented. A recent site visit on 08.10.2024 confirmed that the second-floor kitchen and partition wall had been implemented and was in use as a kitchen. The proposed seventh bedroom was implemented but was not in use, and the en-suite bathroom was already installed”.



5.0 Policy Context:

5.1 1. National Planning Policy Framework (NPPF) (December 2023)

2. London Plan (2021)

3. The Local Plan: Part 1 - Strategic Policies (2012)

The Local Plan: Part 2 - Development Management Policies (2020)

The Local Plan: Part 2 - Site Allocations and Designations (2020)

5.2 The determination of planning applications is made mindful of Central Government advice and the Regional and Local Plan framework for the area. It is recognised that Local Planning Authorities must determine applications in accordance with the statutory Development Plan, unless material considerations indicate otherwise, and that the planning system does not exist to protect the private interests of one person against another.

5.3 The National Planning Policy Framework (NPPF) was recently updated and published in December 2023. This is a key part of the Governments reforms to make the planning system less complex and more accessible, and to promote sustainable growth. The NPPF is currently in a period of re-consultation since the new government was elected. In refusal reason a broad range of policies have been referenced including those relating to the perceived or tantamount self-contained residential unit.

5.4 Para 135 of the NPPF states, planning policies and decisions should ensure that developments:

a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;



b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;

c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);

d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;

e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and

f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users⁵²; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

- 5.5 Policy D6 of The London Plan (2021) relates to Housing quality and standards, Housing development should be of high-quality design and provide adequately sized rooms (see [Table 3.1](#)) with comfortable and functional layouts which are fit for purpose and meet the needs of Londoners without differentiating between tenures.



5.6 Policy T6 of The London Plan (2021) states Car-free development should be the starting point for all development proposals in places that are (or are planned to be) well-connected by public transport, with developments elsewhere designed to provide the minimum necessary parking ('car-lite'). Car-free development has no general parking but should still provide disabled persons parking in line with Part E of this policy.

C An absence of local on-street parking controls should not be a barrier to new development, and boroughs should look to implement these controls wherever necessary to allow existing residents to maintain safe and efficient use of their streets

5.5 The decision notice references a suite of LB of Hillingdon adopted Local Plan Part 2, Development Management (January 2020) policies as set out below,

- DMH 5 (Houses in Multiple Occupation)
- DMHB 11 (Design of New Development
- DMHB 16 (Housing standards
- DMHB 18 (private outdoor space)
- DMHD 1 (alternations and extensions to residential dwellings
- DMT1 (Managing transport impacts
- DMT 2 (Highway impacts)
- and DMT 6 (Vehicle parking)

5.6 Many of the referenced policies have seemingly been applied on account of officer's consideration the seventh bed HMO in the loft space is a self-contained unit.

However, is it important to note the council have not changed the development description to reflect officer's stance the 7th HMO bedroom is capable of being used as a self-contained unit. For the avoidance of doubt the planning application does not seek to have a self-contained unit in the loft space. Such as unit would invalidate



the lawful use of the existing HMO (C4) due to the nature of the access and internal layout, which will be expanded on more in statement.

- 5.7 Policy DMH 5 (Housing in Multiple Occupation) is considered to be the main pertinent policy and is set out below,
Policy DMH 5: Housing in Multiple Occupation (HMOs) and student accommodation.

A) In all parts of the Borough

Proposals for the provision of large HMOs, residential hostels, student accommodation and secure accommodation will be required to demonstrate that:

- i) there is good accessibility to local amenities and public transport;
- ii) they accord with the Accessible Homes standards and provide satisfactory living conditions for the intended occupiers; and
- iii) there will be no adverse impact on the amenity of neighbouring properties or the character of the area.

B) In wards covered by an Article 4 Direction for HMOs Planning applications for the change of use from dwelling house (Use Class C3) to HMO (Use Class C4 and Sui Generis) will only be permitted:

- i) where it is in a neighbourhood area where less than 20% of properties are or would be exempt from paying council tax (or in the case of Conservation Areas 10%) because they are entirely occupied by full time students, recorded on the Council's database as a licensed HMO, benefit from C4/Sui Generis HMO planning consent and are known to the Council to be HMOs;
- ii) in Conservation Areas where less than 10% of properties are exempt from paying council tax because they are entirely occupied by full time students, recorded on the Council's database as a licensed HMO, benefit from C4/Sui Generis HMO planning



consent and are known to the Council to be HMOs and the change of use does not form a consecutive HMO use in a street frontage;

iii) where less than 15% of properties within 100 metres of a street length either side of an application property are exempt from paying council tax because they are entirely occupied by full time students, recorded on the Council's database as a licensed HMO, benefit from C4/Sui Generis HMO planning consent and are known to the Council to be HMOs; and

iv) where the accommodation complies with all other planning standards relating to car parking, waste storage, retention of amenity space and garages and will not have a detrimental impact upon the residential amenity of adjoining properties.

6.0 Grounds for Appeal:

Principle of Sui Generis HMO

- 6.1 As set out para 1.4 of the statement the council has no objection raised to the change of use from Use Class C4 to a seven (7) bed sui generis HMO. The pertinent question is the validity of the council's position a self-contained unit is possible or remotely liable to be developed. At this point it is important to note, at no point has a self-contained unit been sought and nor has the development description on the decision notice been changed to reflect the material change advanced by the council in their determination. In addition, the reason for refusal uses the word "Tantamount" which equates to, virtually the same as, or equivalent in seriousness to. This is not the same as "will" and "is" reflecting the somewhat weak conclusions. The definition of a self-contained unit is set out below,



“It’s essentially a property (be it a house, flat or something else) which comes complete with its own private kitchen, bathroom and/or toilet, and living area (s). In short, it has everything needed for the tenant in one place, and with no need to leave the accommodation to access necessary facilities”.

- 6.2 The proposed second floor plan is shown below for context and it's clear the kitchen is accessible by all the occupiers of the HMO and is not within the sole demise of the individual residing in the second floor HMO room. While acknowledged the individual residing in the second room would likely utilise the kitchen to a greater extent than other occupiers in the HMO property, there is no restriction on other occupiers using the kitchen, which is communal. Equally the future HMO occupier of the second floor room would have free rein and unhindered access of the ground and first floor levels (see figure 3), characteristic of the 7 bed HMO sought.
- 6.3 The delegated report states, “whilst it is understood that the application proposes using the kitchen for communal purposes and the addition of a seventh HMO bedroom, its independent use would be difficult to enforce. Officers have made attempts to seek an amendment to remove the second-floor kitchen, but the applicants have chosen to retain these facilities in the proposal”. For clarity, it is reiterated the kitchen would be for communal use and NOT independent as per the submitted layout of the second floor (see figure 2). In addition, enforcement is possible by the nature of the HMO licence and planning conditional use as a sui generis 7 bed HMO.



Figure 2 – Proposed second floor plans

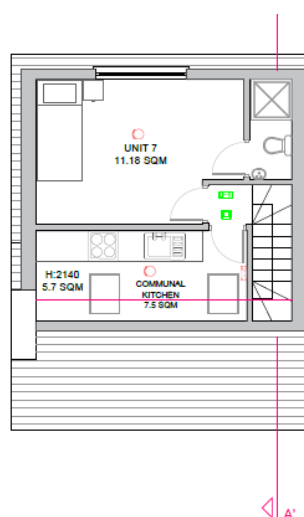
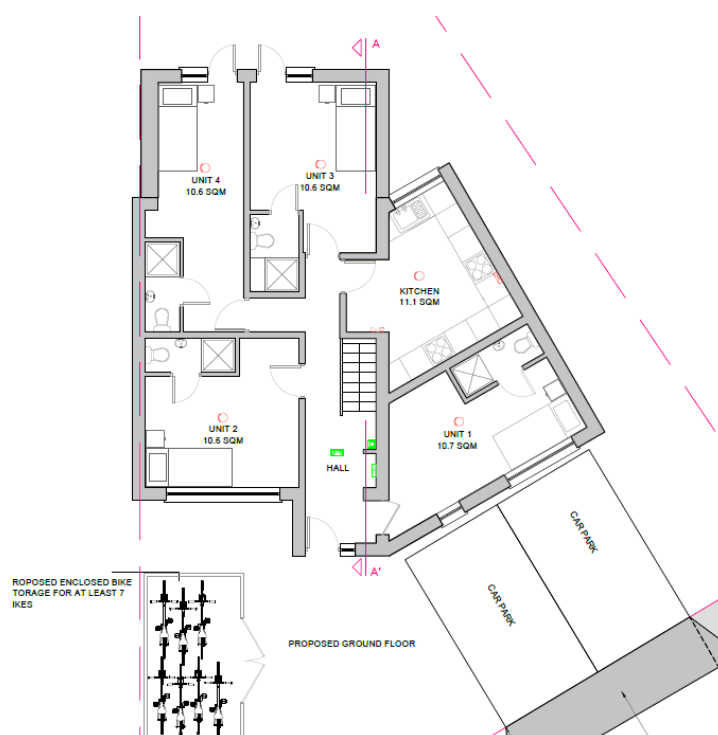


Figure 3 – Proposed ground floor and site frontage





- 6.4 The perception by officers the second floor HMO room would be a sperate planning unit on its own is difficult to substantiate based on the proposed and existing layout of the building, and nature of segregation required for such a self-contained unit to materially function as such. The two kitchens and garden are clearly shared facilities and are available to all the residential HMO occupiers. The proposed plans do not show or evidence separate entrances to the building and there is no change to the overall character of the use and site. The building also has a single hot-water and central heating system, and a single wi-fi capability. While these last points are somewhat secondary aspects to what defines a single planning unit, they do denote evidence of a lack of current or future subdivision to separate planning units.
- 6.5 Fundamentally the council have assessed the development inaccurately and by viewing the second-floor HMO room as “self-contained unit” have ignored the functional arrangement present on site and the material impact on the lawful six bed C4 HMO. If the second floor room is “self-contained” as the council contend, and has full access to the facilities of the other HMO occupiers, then the HMO rooms would fail to function as lawfully intended. However, this consideration has not been directly addressed in the decision notice nor the delegated report.
- 6.6 In conclusion, the second floor accommodation is not independent due to the freely accessible kitchen located on the second floor and does not trigger a material change from the sought even (7) bed HMO sought. The forementioned are subject to a matter of fact and degree but the building as a whole building would be an HMO for seven (7) individuals, one more than current, and considered insufficient to trigger a material change of use to a separate planning unit as advanced by the council.



- 6.7 Notwithstanding the arguments raised, planning conditions are a full back if required to ensure there is no self-contained unit which would invalidate the HMO licence. The creation of a new residential planning unit requires planning permission and is thereby fully enforceable. Appropriate application of conditions in this regard would accord with paragraph 55 of the NPPF (2023), meeting the six (6) criteria of necessary, relevant to planning, relevant to the development permitted, enforceable, precise and reasonable in all other respects.

Impact on the existing and adjoining dwellings

- 6.8 Part of the refusal reason states the development “does not include satisfactory supporting information ...issues relating to the impact on the existing and adjoining dwellings”. The delegated report address the amenity concern as follows, “Whilst Officers consider that the uplift in one additional occupant at the site and use of the site as a seven-bedroom, seven-person HMO would not give rise to harmful levels of noise and disturbance at the site”.
- 6.9 The council’s position in regard to the impact of development on neighbouring and existing amenity, including external space provision, is erroneous. While acknowledged the council view the second floor area as tantamount to a self-contained, albeit as forementioned, has not been formally applied for nor has the development description been changed to reflect this. The appellant is of the view, the council are superimposing a view on the material change of the building that is not evident as set out in the principle section of this statement. The supporting delegated report gives no actual or rationale assessment of the identified impacts that would constitute harm, nor outline what satisfactory information is required?



- 6.10 The council's position is considered to be flawed and erroneous and lacks strong arguments as to the perceived harm based on amenity grounds as a result of the development.

Impact Car parking and layout

- 6.11 Part of the refusal reason states the development “does not include satisfactory supporting information in relation to the need for additional parking”. The LBH adopted highway consultation feedback in the delegated report is provided below.

The proposal would not discernibly exacerbate congestion or parking stress and would not Raise any measurable highway safety concerns subject to conditions, in accordance with Local Plan: Part 2 Development Plan (2020) Policies DMT1, DMT2, and DMT6 and Policies T4, T5, and T6 of The OREPDEL (ODB 2022) 4 of 12 London Plan (2021), subject to details regarding Parking Design and Management Plan.

Officer's note: These Highways comments were provided on the basis of the advertised Description of development - 'Change of use from a 6-bedroom small House in Multiple Occupation (HMO) (Use Class C4) to a 7-bedroom HMO (Use Class Sui Generis) for up to 7 people, including new cycle store (part-retrospective).' Notwithstanding Highways Officer Comments, following a site visit, Planning Officers consider that the proposal is tantamount to the subdivision of the property into a six-bedroom HMO with a one-bedroom self-contained flat within the loft space. The proposal, as submitted, does not include satisfactory supporting information concerning the need for additional parking to enable the Council to make a fully informed decision.



- 6.12 Fundamentally, the core consideration is the impact of another individual occupier of a portion of the building. Whether the individual is housed via a self-contained unit, or an additional HMO bedroom is somewhat academic, as the impact on transport needs is the same. As such, why would there be an objection between a self-contained unit capable of one additional individual versus an additional individual within the envelope of a Seven bed HMO on parking grounds? The position of the council appears entirely undefendable and without merit and contrary to the LBH position.
- 6.13 Two off-street parking spaces are proposed, alongside seven, secure, covered and accessible cycle parking storage unit. The submission was supported by a Transport appraisal and a Travel welcome Pack. The future occupiers of the 7 Bed HMO would benefit from suitable and appropriate transport options as confirmed by the LBH consultation response.

7.0 Conclusion

- 7.1 The Council decision amounts to a unilateral re-classification of the development sought. The view by officers the development is tantamount to the creation of a self-contained dwelling within a lawful C4 HMO is not reflective of the proposed plans nor the characteristics of what is proposed. Para's 6.1 to 6.7 (inclusive) set out the core arguments in principle terms against the councils assessment and their conclusion of a self-contained unit.
- 7.2 In the view of the appellant the council have effectively overreached their assessment and superimposed a material change that is not evident or sought. The



delegated report is vague in its approach to identifying the precise harm to neighbouring amenity, parking and the underlying rationale for the material change to facilitate the perceived self-contained unit.

- 7.3 The Appeal statement outlines and demonstrates the council's decision is erroneous and has failed to apply proportionate policy considerations. The application meets all policy requirements and is an appropriate form of sustainable development. Planning balance has not been appropriately applied in favour of development in this regard. The application accords and is compliant with National Planning Policy Framework (NPPF 2023) and does not conflict with relevant policies contained within the adopted Hillingdon Local Plan: Part 2, Development Management Policies (2020). For the reasons noted in this statement the inspector is respectfully requested to allow the appeal and to grant planning permission.