

WRITTEN REPRESENTATIONS APPEAL STATEMENT

APPEAL MADE UNDER SECTION 78 OF THE TOWN AND COUNTRY PLANNING ACT 1990

APPELLANT : MR SANJAY KUMAR

SITE ADDRESS : 14 DEVON WAY, HILLINGDON, UB10 0JS

PROPOSAL : CHANGE OF USE FROM C4 HOUSE IN MULTIPLE OCCUPANCY (HMO) TO SUI GENERIS HMO FOR 7 BED AND 7 PERSONS WITH NO EXTERNAL ALTERATIONS.

APPLICATION REF : 27994/APP/2021/3581

DECISION DATE : 8 FEBRUARY 2023

Date: March 2023 (Rev.1.0)

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1.0 The Appeal Site and Surroundings

- 1.1 The appeal site comprises a detached property located at the southern end of Devon Way. It has been in use as C4 HMO for more than 10 years, occupied by up to 6 tenants. The surrounding area is residential in character, comprising a mix of detached and semi-detached dwellings. The site lies within the Developed Area as identified within the Hillingdon Local Plan Development Management Policies (2020).
- 1.2 The appeal property is not listed or within a conservation area.
- 1.3 The parking provision would remain unaffected by the proposal. The site is within a controlled parking zone (CPZ), with single yellow line and permit holders only bays near the property. The site is well connected to public transport, with regular bus services to Uxbridge - the nearest town. A Tube station is within walking distance.

2.0 Relevant Planning History

- 2.1 14 Devon Way, Hillingdon, UB10 0JS

Application Number: 27994/APP/2018/3264

Proposal: Use of existing outbuilding as a separate granny annexe (Application for a Certificate of Lawful Development for an Existing Development)

Decision: Approved on 14 December 2018

3.0 Planning Policies

3.1 National Planning Policy Framework (2021)

3.2 The London Plan (2021)

D3 - Optimising site capacity through the design-led approach

D4 - Delivering good design

D6 – Housing quality and standards

D14 – Noise

T4 - Assessing and mitigating transport impacts

T6 – Car parking

T6.1 - Residential parking

3.3 The Hillingdon Local Plan: Part 1 (2012) and Part 2 (2020)

Part 1

BE1 – Built Environment

Part 2

DMHD 2 - Outbuildings

DMH 6 - Garden and Backland Development

DMHB 11 – Design of New Development

DMHB 12 - Streets and Public Realm

DMHB 16 - Housing Standards

DMHB 18 - Private Outdoor Amenity Space

DMT 1 - Managing Transport Impacts

DMT 2 - Highways Impacts

DMT 6 - Vehicle Parking

4.0 Comments on Refusal Reasons

4.1 The council refused the planning application for the following reasons:

1. The existing outbuilding, by reason of its provision of facilities required for day-to-day private domestic existence and the availability of independent access to it, has resulted in the creation of a self-contained residential unit in a backland position where such a dwelling is unacceptable, due to the requirements of internal and external amenity space for occupiers, detrimental impact on the character and appearance of the area, harmful to the living conditions of neighbouring occupiers and harmful effect to the character of the area. The proposal therefore conflicts with Policies DMH 6, DMHD 2, DMHB 11, DMHB 12, DMHB 16, DMHB 18, DMT 6 of the Hillingdon Local Plan: Part Two - Development Management Policies (2020), Policies D3, D4, D6, D8, T6 and T6.1 of the London Plan (2021) and the National Planning Policy Framework (2021).

2. By virtue of the use of the existing outbuilding as a self-contained residential unit and the physical subdivision of the application site, the development represents an inappropriate and alien form of backland development that fails to reflect the established pattern of development in the local area. The proposal has therefore caused harm to the character and appearance of the area, contrary to Policies DMHB 11 and DMHB 12 of the Hillingdon Local Plan: Part 2 - Development Management Policies (2020), Policies D3 and D4 of the London Plan (2021) and the National Planning Policy Framework (2021).

3. By virtue of its proximity, siting and self-contained residential use and access arrangements, the outbuilding has caused harm to the living conditions of the existing occupiers of the main property at number 14 Devon Way and the neighbouring occupiers at number 12 Devon Way and their respective private amenity space, in terms of noise and disturbance. The timber fencing that has been erected to subdivide the outbuilding from the main property has not mitigate[d] this identified harm. The proposal is therefore contrary to Policy DMHB 11 of the Hillingdon Local Plan: Part 2 - Development Management Policies (2020) and the National Planning Policy Framework (2021).

4. *By reason of its poor levels of outlook, the existing outbuilding (which is being used as self-contained residential unit), has resulted in a substandard form of internal living accommodation to the detriment of the amenity of its occupiers. The proposal, therefore, conflicts, with Policy DMHB 16 of the Hillingdon Local Plan: Part 2 - Development Management Policies (2020), Policy D6 of the London Plan (2021) and the National Planning Policy Framework (2021).*

5. *The existing outbuilding (which is being used as a self-contained residential unit) has no private useable amenity space provision, and has therefore resulted in a substandard form of external living accommodation to the detriment of the amenity of its occupiers. The proposal, therefore, conflicts, with Policy DMHB 18 of the Hillingdon Local Plan: Part 2 - Development Management Policies (2020), Policy D6 of the London Plan (2021) and the National Planning Policy Framework (2021).*

6. *In the absence of a legal agreement to prohibit the issuing of parking permits to the occupiers of the site which is located within a permit-controlled area, the occupiers of the House in Multiple Occupation and occupiers of the outbuilding which is being used as a self-contained residential unit, is likely to lead to an increase in pressure for on-street parking and have a consequent adverse effect on highway safety, through inconsiderate and potential hazardous parking and a risk to road users. The proposal would therefore be contrary to Policy DMT 1, DMT 2 and DMT 6 of the Hillingdon Local Plan: Part 2 - Development Management Policies (2020), Policies T4, T6 and T6.1 of the London Plan (2021) and paragraph 111 of the National Planning Policy Framework (2021).'*

Outbuilding and refusal reasons 1- 5

- 4.2 The Council erroneously took it upon itself to include the outbuilding adjacent to the rear of the appeal site as part of the proposed development. The following extract from the officer's report sheds some light on why the outbuilding was assessed as part of the application:

'...it is considered prudent to assess the implications of the outbuilding as a self-contained residential unit, especially given that it is included within the red line boundary of the site. This is despite the application form not referring to it in the proposal description.'

- 4.3 The amended plans (drawings reference 2020-14DV-BC-1 Rev.1.0B), received by the Council on 13.09.22, confirm that the outbuilding lies outside the appeal site because it is not included within the land edged red. Instead, it sits within the area edged blue, which is to the rear of the appeal site. The purpose of the blue line is to indicate that the adjacent land is owned by the appellant and that it is not part of the application site. The Council should have known this because it is a basic planning principle. If for some reason the Council did not know this, the fact that 'NOTE: THIS ANNEX STRCUTRE DOES NOT FORM PART OF THE APPLICATION' is clearly written on the plans in capital red letters should have put it beyond any doubt that the outbuilding was not part of the proposed development. Thus, the Council's view that the outbuilding *'is included within the red line boundary of the site'* is simply incorrect. Admittedly, the initial plans submitted with the application showed the outbuilding within the application site. However, they were superseded by the amended plans in September 2022. The amended plans were the only plans assessed to determine the application because they are the only plans listed under the schedule of plans on the decision letter. Finally, the outbuilding was not included in the description of the proposal. Taking account of the above, the outbuilding should not have been assessed as part of the application. The amended plans can be seen at Appendix A.
- 4.4 Planning decisions are taken on the merits of the particular application which means that the decision-maker must take account of material considerations and omit anything that is immaterial. This is a well-established principle of public

law, as confirmed by Lord Slynn's summary of *Alconbury Developments Ltd v Secretary of State for the Environment, Transport and the Regions* [2001]:

'It has long been estimated that if the Secretary of State misinterprets the legislation under which he purports to act, or if he takes into account matters irrelevant to his decision or refuses or fails to take account of matters relevant to his decision, or reaches a perverse decision, the court may set his decision aside.'

- 4.5 Having regard to the above, refusal reasons 1- 5 should be given no weight because they do not relate to the proposed development. Thus, they should be considered as immaterial comments. Further, and notwithstanding the fact that the outbuilding benefits from a lawful development certificate, this appeal does not provide the Council with the opportunity to review the planning merits of the outbuilding.

Parking Permits

- 4.6 The Council claims that the absence of a legal agreement to prohibit the issuing of parking permits to the occupiers of the appeal property will likely lead to an increase in pressure for on-street parking.
- 4.7 It has to be said that an additional occupant would not increase the demand for on-street parking to a significant degree.
- 4.8 During the one of the LPA pre-application responses for 33 Dellfield Crescent, the council confirmed that a written confirmation that the S106 Agreement will be entered into should be sufficient as the S106 Agreement will normally be prepared after the Council has determined to approve the application, subject to the S106 Agreement. That said, in the spirit of compromise the appellant is prepared to sign a legal agreement which prohibits occupants from being granted a residents parking permit.
- 4.9 Should the written confirmation be considered insufficient, the appellant has prepared a draft S106 Agreement to be entered with the Council for the purpose of this appeal process.

Effects on neighbouring land and amenity

- 4.10 It is common ground that the use of the appeal property as a 7 bedroom, 7 person HMO would not cause unacceptable disturbance to neighbouring properties, with the Council stating:

'It is considered that the noise and disturbance resulting from the 7 bedroom, 7 person HMO is not significantly different to its former use as a small HMO accommodating up to 6 persons.'

Amenity effects on the occupants

- 4.11 The Council contends that the use of the outbuilding as a separate unit of occupation would harm the living conditions of the occupiers of the proposed development.
- 4.12 The appellant does not agree. The appeal property has been used as 6 person HMO for more than 10 years and there has never been a complaint made from any of the occupants (past and current) of being disturbed by the occupants of the outbuilding. Given this, it is extremely unlikely that the proposal would harm the living conditions of the occupants. Therefore, the Council's contention concerning the impact on the living conditions of the occupants is wholly without merit.

Other matters

- 4.12 To avoid any doubt, the Council did not raise any objection to the proposed change of use from C3 to SG HMO within the main dwellinghouse. In view of that, the appellant interprets there will be no negative impact on the neighbourhood or character of the area through the proposed change of use which would prevent the application to be successful.

- 4.13 Similarly the council approved 75488/APP/2020/4271 (19 Peachy Lane) with no existing parking facility and an additional room for 1 person on top of the existing C4 HMO use, where the council stated *“On balance given that the existing property operates with 4 occupants it is considered that the increase to 7 occupants would not be such a significant increase or result in any material impact on the neighbouring properties to merit a refusal on that basis alone.”* A copy of the Decision and Officer report is attached with this appeal as APPENDEX D.
- 4.14 In addition to the above, under the Appeal Decision APP/R5510/W/17/3178166 for 49 Central Avenue Hayes, the inspector has established that as long as there are sufficient control against the maximum number of occupants such as planning conditions & HMO management plan, whilst there is no evidence of any increase in anti-social behaviour, crime-rates or that there has been a steady decline in the environment, the proposed 7 beds SG HMO would not result in unacceptable harm to the living conditions of neighbouring residents and would not be contrary to the Council’s local planning policies at the time. A copy of the appeal decision notice is enclosed with this statement as APPENDIX E.

5.0 Conclusion

- 5.1 The Council’s refusal reasons 1-5 concern an immaterial matter, namely the outbuilding, and therefore should be given no weight for the reasons given.
- 5.2 The appellant is prepared to sign a legal agreement to prohibit occupants from obtaining a residents parking permit in order to address the Council’s parking concern.
- 5.3 The Design and Access Statement submitted with the application clearly explains why the proposal complies with the Local Plan, the London Plan and the NPPF. Taking account of the above, the appeal should succeed. (A copy of the Design and Access Statement has been enclosed with this appeal as part of the original planning submission.)