



## Appeal Decision

Site Visit made on 26 October 2021

**by K Savage BA(Hons) MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22 November 2021

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### **Appeal Ref: APP/X5210/W/21/3276548**

#### **9 Hargrave Place, London N7 0BP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
  - The appeal is made by Mr Gul Agha (MG Holdings Ltd) against the Council of the London Borough of Camden.
  - The application, Ref 2020/4462/P, is dated 29 September 2020.
  - The development proposed is temporary change of use for the period of 3 years from Sui Generis - Public house (formerly A4) to Sui Generis - Large House in Multiple Occupation (HMO) and associated minor alterations.
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### **Decision**

1. The appeal is dismissed and planning permission for temporary change of use for the period of 3 years from Sui Generis - Public house (formerly A4) to Sui Generis - Large House in Multiple Occupation (HMO) and associated minor alterations is refused.

### **Preliminary Matters**

2. The appeal is made against the Council's failure to give notice of its decision within the prescribed period. The Council's case and its putative reason for refusal are set out in its appeal statement. I consider the appeal on this basis.
3. Since the application was submitted to the Council, the new London Plan was adopted on 2 March 2021 and the revised National Planning Policy Framework (the Framework) was published on 20 July 2021. The main parties have been provided with the opportunity to comment on the relevance to their respective cases of these revisions to local and national policy during the appeal process.

### **Main Issues**

4. The main issues are:
  - whether the proposed change of use would result in the unacceptable loss of a local community facility;
  - whether the proposed HMO accommodation would provide satisfactory living conditions for future occupants;
  - whether the proposal would affect the living conditions of neighbouring occupants, and if so, whether suitable measures exist to mitigate any harm which may be caused;
  - whether, to address parking stress and congestion, the proposed change of use should be car-free.

## Reasons

### *Loss of Community Facility*

5. The appeal relates to a closed public house on Hargrave Place, a short, L-shaped cul-de-sac leading from the commercial parades on Brecknock Road. The public house has not operated since 2014, and the building is now in a state of considerable disrepair, made worse by recent squatting. Much of the front bar area has been removed, though the rear bar remains relatively intact. Other facilities such as the toilets and beer cellar also still exist.
6. I understand the owners of the building have pursued applications since 2014 for its redevelopment. Most recently, permission was granted at appeal in June 2018 for redevelopment of the site with extensions to create three residential flats to the upper floors with a retained public house use to the ground and basement levels. I have no evidence to confirm that this permission was implemented before the time limit lapsed in June 2021, though it would appear not as the appellant states that the change of use is sought on a temporary basis whilst other proposals are pursued via planning application to the Council.
7. Policy C4 of the Camden Local Plan (July 2017) (the CLP) seeks to protect public houses of community, heritage or townscape value. It states that permission for changes of use or redevelopment will not be granted unless it is satisfactorily demonstrated that either:
  - a. the proposal would not result in the loss of pubs which are valued by the community (including protected groups) unless there are equivalent premises available capable of meeting the community's needs served by the public house; or
  - b. there is no interest in the continued use of the property or site as a public house and no reasonable prospect of a public house being able to trade from the premises over the medium term.
8. The appellant's position is that the temporary change of use would be preference to a further three years of vacancy whilst other redevelopment proposals are pursued through the planning system, and the loss of a community facility would only be temporary. In response, the Council argues that no evidence has been submitted to demonstrate compliance with either criteria of Policy C4, and that the works required to create an HMO in the building would result in the loss of surviving facilities that would undermine a return to use as a public house in the future.
9. In terms of the first criterion, the supporting text of Policy C4 sets out that the information provided should include information on the location, size, range and quality of facilities, taking account of any unimplemented planning permissions for the addition or loss of public houses. It adds that loss of a pub cannot be overcome by the availability of other public houses if it would lead to the loss of pub facilities or services of particular value to the community.
10. The appellant has provided no details of alternative public house provision in the area that would demonstrate compliance with the first criterion of Policy C4. Conversely, representations submitted point to the locally listed status of the public house, a recent period of designation as an Asset of Community Value, its long history of serving the community and that it was a thriving local amenity prior to its closure. It is also indicated that another public house

nearby, the Unicorn, has closed. Whilst these representations may be anecdotal, there is nothing before me from the appellant to demonstrate that the public house was either not valued by the community prior to its closure, or that the community's needs would be met by other facilities in the area. Therefore, I find the proposal conflicts with Policy C4(a).

11. Turning to the second criterion, the supporting text states that the Council will require applicants to fund a marketing exercise to demonstrate whether there is a demand for the pub at a realistic rent or freehold value which is 'free of tie', and will expect a mounted sales/letting board to be provided throughout the marketing period to draw the community's attention to the marketing exercise. The appellant indicates briefly that the site has and still is being marketed for pub use. However, I have no evidence of the type or extent of marketing which has been undertaken. No sales/letting board was visible on the building. The site changed hands in 2019, but it is unclear on what basis the site was marketed up to that point.
12. The appellant claims no interest has been forthcoming. However, the poor state of the building, which is within the appellant's gift to improve, is likely to be a factor in any lack of interest. I also acknowledge that the effects of the Covid-19 pandemic on the wider hospitality industry will have been a factor in any recent lack of interest. However, this is not a permanent constraint and as the country moves towards an eventual return to normality, it is reasonable to think that interest in the property may renew. However, I have no evidence either way of the outcome of marketing. Therefore, I am unable to conclude that there is no interest in the site or no reasonable prospect of a public house being able to trade from the premises over the medium term, and so the proposal would conflict with Policy C4(b).
13. I recognise that the change of use is sought for a temporary period of three years. However, this would still involve significant internal alterations which would require the removal of much of the surviving fabric and facilities of the public house, including the rear bar area and the toilets, and erection of multiple partition walls to create new bedrooms and bathrooms, with significant associated plumbing and electric work. Although the existing internal walls and stairs would be retained, there would be little evidence otherwise of the site's history as a public house, and little upon which to market the building as a public house in future.
14. Moreover, use as an HMO for a period of three years would effectively preclude any marketing exercise in that time, lengthening the time before a public house could again operate from the site to serve the community. Notwithstanding that the lawful use would revert to a public house after the temporary use period expired, the prospects for the building's future as a public house would be significantly diminished, contrary to the overall aims of Policy C4. Therefore, I am not persuaded that the temporary use would be conducive to the retention of a community use in the medium term, and this is not a consideration which outweighs the identified conflicts with Policy C4.
15. Overall, therefore, I find that the proposal would result in the unjustified loss of a local community facility, contrary to Policy C4 of the CLP.
16. Moreover, whilst not indicating it would have formed a reason for refusal, the Council's Statement of Case argues that the loss of internal fabric would be harmful to the significance of the non-designated heritage asset (NDHA). The

building is indicated to have been listed primarily for its social significance, and the Council argues that the loss of the pub fabric would permanently undermine the property's ability to function as a public house.

17. The NDHA has lost a considerable amount of internal fabric already during the period of closure. However, as set out above, the further loss of surviving internal features of public house would place its future as a public house in considerable doubt, and would thus harm its heritage significance.
18. Paragraph 203 of the Framework states that in weighing applications that directly or indirectly affect NDHAs, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset. The evidence before me indicates that the building, though of local significance, does not possess wider importance in heritage terms. In light of this, I find that the harm arising from the adverse effect of the proposal should be afforded limited weight in the overall planning balance.

*Quality of proposed accommodation*

19. The HMO would provide eight double bedrooms and two single bedrooms, providing accommodation for up to 18 people. Four bathrooms would be provided, along with two kitchens and internal cycle storage. All bedrooms would have windows for light and ventilation.
20. Policy H10 of the CLP requires HMO proposals to comply with relevant standards for such accommodation. Policy H6 requires provision of high quality accessible homes in all developments that provide functional, adaptable and accessible spaces.
21. The Council makes reference to various requirements for HMOs, including in relation to the size of rooms, stacking of rooms and fitting of washbasins in bedrooms. The suggestion is that the standards referred to are those used in assessing whether to issue a licence for an HMO; however, no documents containing the actual standards have been provided to me. The licensing regime is separate to the planning system, and standards applying to one are not automatically applicable to the other. Therefore, whilst I have had regard to the standards quoted by the Council, I have not based my judgement solely by reference to them, but on the overall quality of accommodation.
22. The Council does not raise concern with the ratio of communal facilities to bedrooms, and I agree that the provision of kitchen and bathroom facilities, and their size, appears satisfactory. The purpose of requiring wash basins in every room is unclear given the provision of four bathrooms in the building, with at least one at each floor level. Requiring these would reduce the available space in rooms, and would add to the required plumbing works throughout the building. I am satisfied that, in planning terms, a lack of washbasins in individual rooms would not contribute to sub-standard accommodation.
23. However, the two single rooms at second floor level would only measure 7 sqm in area. This would fall short of the Council's stated minimum of 9 sqm. The appellant recognises this but seeks an exception on the basis of the short-term nature of the proposal. However, even if temporary, the proposal would result in particularly small accommodation for the duration of occupants' time in the rooms. The plans show no communal dining or living areas in the building, meaning that beyond cooking meals in the kitchen, occupants would most

likely be required to eat, sleep, relax and store all of their belongings in their rooms. In a room of just 7 sqm, this would result in cramped, oppressive conditions for future occupants. This would be unacceptable for any length of time, and therefore the temporary nature of the proposal does not justify the substandard accommodation that would be provided.

24. The appellant has submitted a plan at final comments stage showing an alternative layout with the two single rooms combined to form a single person two-room let. However, this represents a change to the plans which has not been subject to public consultation and the Council has not had the opportunity to comment on it. Therefore, I have not had regard to this plan, and have considered the layout as shown on the plans originally submitted.
25. The Council further refers to the stacking of rooms, with the first floor kitchen located directly above and below bedrooms. In the absence of details of noise insulation between floors there would be a risk of noise and vibration from use of the kitchen transferring to the bedrooms above and below, causing disturbance to occupants. In particular, this would compound the harm for occupants of the single rooms at second floor level.
26. I have also had regard to the comments of the Police Design Out Crime Officer (PDOCO), who raises the propensity for conflict within large, shared accommodation, where occupants do not know one another and clashes of personality can occur or disputes arise over household matters such as cleaning, noise and use of personal items. The appellant indicates agreement to conditions that would secure measures recommended by the police to improve the safety and security of the HMO. These measures would go some way to improving the experience for occupants, but they would not overcome the substandard accommodation provided in several rooms.
27. For these reasons, I conclude that the proposal would fail to provide a satisfactory standard of accommodation for future occupants, contrary to the aforementioned requirements of Policies H6 and H10 of the CLP.

#### *Neighbours' Living Conditions*

28. The proposed use would result in up to 18 individuals occupying the building. The Council points to the concerns raised by the police in terms of the potential for conflict between unfamiliar residents, and raises concern that in the absence of a suitable HMO Management Plan, the use would lead to adverse effects for neighbouring residents in terms of noise and disturbance.
29. The former use as a public house would have generated a certain level of noise and activity, but this would have been the case only at certain busier times of the week. Any noise would have been managed by staff and would generally have ceased at closing time, with little disturbance during the daytime.
30. Impacts associated with an HMO use will naturally depend on the particular lifestyles of the occupants. However, HMOs are generally occupied by individuals on a more transient basis than those residing in dwellings. Those individuals are likely to live independently and, as a result, there are likely to be more comings and goings, particularly later in the evening. The number of occupants also increases the likelihood of visitors and deliveries to the property.

31. Having regard to the comments of the PDOCO in respect of the risks associated with shared living arrangements, and considering the considerable number of occupants proposed, I find that there would be a risk of noise and disturbance arising from the large HMO use that would be detrimental to nearby occupants of what is a quiet cul-de-sac. A management plan would therefore be required to set out measures to address potential sources of noise and disturbance.
32. No management plan has been provided by the appellant, and little evidence has been provided in respect of the future management of the HMO, beyond agreement to provide the largely physical security measures specified by the PDOCO. No details are provided in respect of site monitoring by management, house rules, expected tenant behaviour, or what processes would be followed by management to deal with issues arising with tenants or where complaints are received from neighbours. In the absence of such information, the proposal would pose a significant risk to the living conditions of neighbouring occupants from noise and disturbance.
33. The appellant indicates willingness to accept a planning condition requiring submission and approval of an HMO management plan. The Council, on the other hand, seeks a management plan through a planning obligation. The Framework sets out that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition. The Council does not explain why it would be necessary for the management plan to be secured through a planning obligation. In any event, no obligation is before me to consider.
34. Even so, given the extent of information which is unknown about the future management of the HMO, and the likely public interest in the contents of any management plan produced, I am not satisfied that the matter should be left to be resolved by condition either.
35. For these reasons, I conclude that the proposal would cause harm to the living conditions of neighbouring occupants, due to noise and disturbance, contrary to the requirements of Policies A1 and C5 of the CLP, which together require development to protect the quality of life for occupiers and neighbours, and to demonstrate that they have incorporated design principles which contribute to community safety and security.

#### *Car-Free Development*

36. Policy T1 of the CLP promotes sustainable transport by prioritising walking, cycling and public transport. Policy T2 requires all new developments in the Borough to be car-free. The Council's Transport Planning Guidance (January 2021) sets out that car-free developments are secured by Section 106 agreements combined with Section 16 of the Greater London Council (General Powers) Act 1974, Section 111 of the Local Government Act 1972 and Section 1(1) of the Localism Act 2011. These legal agreements ensure that future occupants are aware that they are not entitled to parking permits.
37. The supporting text to Policy T2 sets out that the purpose of the policy is to reduce air pollution, improve the area's attractiveness for walking and cycling, and use the Borough's limited land more efficiently. From the evidence before me, additional development would cause parking stress and congestion in the vicinity of the appeal site. Therefore, parking restrictions are necessary to make the proposal acceptable and to accord with local policy, and I am

satisfied that this requirement meets the relevant tests for planning obligations set out in the Framework.

38. Although the appellant indicates agreement with the Council in this matter, there is no completed planning obligation before me which would secure restrictions on parking permit eligibility, nor is any evidence proffered by the appellant to justify an exception to the policy. The site is located close to bus stops on Brecknock Road and Camden Road, and nothing I have seen or read indicates that the policy requirement for the development to be car-free should be set aside in this instance.
39. The absence of a legal agreement to restrict parking permit eligibility means that the development could lead to increased vehicular movements and parking stress around the site and surrounding streets. This would conflict with the aforementioned aims of Policies T1 and T2 of the CLP.

### **Other Matters**

40. I have had regard to the comments of interested parties both in respect of the main issues and in terms of other matters raised. However, none of these other matters alter my findings on the main issues and, taking account of the evidence before me, none are of such significance as to result in further material benefits or harms to be factored into the planning balance.

### **Conclusion**

41. For the reasons set out, I conclude that the appeal scheme would cause significant harm through the unjustified loss of a public house and community facility, an unacceptable standard of accommodation, noise and disturbance to neighbouring occupants and increased parking congestion. There would also be minor harm to the significance of the NDHA. This results in conflict with the development plan taken as a whole, to which I afford significant weight.
42. The provision of a larger HMO would deliver a social benefit in providing lower cost accommodation for more occupants in an accessible location. This benefit would however carry only limited weight given the scale of the proposal and the quality of the accommodation. Economic benefits from additional residents would be similarly limited in scale. The proposed temporary period of the permission would not overcome the harm identified.
43. The material considerations in this case do not indicate that permission should be forthcoming in spite of the conflicts with the development plan. Therefore, the appeal should be dismissed.

*K Savage*

INSPECTOR