

# Report to the Planning Committee

**6 October 2021**

<b>Subject:</b>	Decisions of the Planning Inspectorate
<b>Director:</b>	Director of Regeneration and Growth Tony McGovern
<b>Contact Officer:</b>	John Baker Service Manager – Development Planning and Building Consultancy <a href="mailto:John_Baker@sandwell.gov.uk">John_Baker@sandwell.gov.uk</a>  Alison Bishop Development Planning Manager <a href="mailto:Alison_Bishop@sandwell.gov.uk">Alison_Bishop@sandwell.gov.uk</a>

## 1 Recommendations

- 1.1 That Planning Committee notes the decisions of the Planning Inspectorate as detailed in the attached appendices.

## 2 Reasons for Recommendations

- 2.1 This report is submitted to inform the Committee of the outcomes of appeals that have been made to the Planning Inspectorate by applicants who were unhappy with the Committee's decision on their application.



### 3 How does this deliver objectives of the Corporate Plan?

		We now have many new homes to meet a full range of housing needs in attractive neighbourhoods and close to key transport routes.
		Our distinctive towns and neighbourhoods are successful centres of community life, leisure and entertainment where people increasingly choose to bring up their families.
		Sandwell now has a national reputation for getting things done, where all local partners are focused on what really matters in people's lives and communities.

### 4 Context and Key Issues

- 4.1 Applicants who disagree with the local authority's decision on their planning application may submit an appeal to the Planning Inspectorate. An appeal may also be made where the local authority has failed to determine the application within the statutory timeframe.
- 4.2 Appeals must be submitted within six months of the date of the local authority's decision notice.
- 4.3 Decisions on the following appeals are reported, with further detailed set out in the attached decision notice:-

Application Ref No.	Site Address	Inspectorate Decision
DC/20/64463	113 Dudley Road Tipton DY4 8DJ	Allowed with conditions Cost application refused



## 5 Alternative Options

There are no alternative options.

## 6 Implications

<b>Resources:</b>	There are no direct implications in terms of the Council's strategic resources. If the Planning Inspectorate overturns the Committee's decision and grants consent, the Council may be required to pay the costs of such an appeal, for which there is no designated budget.
<b>Legal and Governance:</b>	The Planning Committee has delegated powers to determine planning applications within current Council policy. Section 78 of the Town and Country Planning Act 1990 gives applicants a right to appeal when they disagree with the local authority's decision on their application, or where the local authority has failed to determine the application within the statutory timeframe
<b>Risk:</b>	There are no risks associated with this report.
<b>Equality:</b>	There are no equality implications associated with this report.
<b>Health and Wellbeing:</b>	There are no health and wellbeing implications associated with this report.
<b>Social Value</b>	There are no implications linked to social value with this report.

## 7 Appendices

Appendix 1 – Decisions of the Planning Inspectorate

## 8 Background Papers

There are no background papers





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# Appeal Decision

Site Visit made on 10 August 2021

**by Rachel Hall BSc MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 20 September 2021**

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**Appeal Ref: APP/G4620/W/21/3272067**

**113 Dudley Road, Tipton DY4 8DJ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Harmohan Singh against the decision of Sandwell Metropolitan Borough Council.
  - The application Ref DC/20/64463, dated 8 July 2020, was refused by notice dated 12 February 2021.
  - The development proposed is the change of use from a single dwelling to a Large Scale HMO (Sui Generis).
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## Decision

1. The appeal is allowed and planning permission is granted for the change of use from a single dwelling to a Large Scale HMO (Sui Generis) at 113 Dudley Road, Tipton DY4 8DJ in accordance with the terms of the application, Ref DC/20/64463, dated 8 July 2020, subject to the conditions in the attached schedule.

## Applications for costs

2. An application for an award of costs was made by Mr Harmohan Singh against Sandwell Metropolitan Borough Council. This application is the subject of a separate Decision.

## Main Issues

3. The main issues are the effect of the proposed development on
  - the character and appearance of the area, including with regard to the effect of the proposed parking area to the rear of the appeal site; and
  - the living conditions of occupants of nearby properties, with particular regard to noise and disturbance.

## Reasons

### *Character and Appearance*

4. The historic appearance of the appeal building, whilst not a listed property, makes a positive contribution to the area, comprising a semi-detached Victorian house at the end of a small row of similar style properties which appear to be from the same era. The fabric of the existing building would remain largely unchanged by the proposal, with detailing such as crenulation to the rear elevation being retained. The front bay window would be sensitively altered with an additional mullion to enable the subdivision of this room. As

- such its positive contribution to local distinctiveness of the area would be retained.
5. Beyond the appeal site is a dental surgery, residential care home and grade II listed St Matthews Church. Adjacent on the other side of the appeal site is a row of three semi-detached pairs of houses which appear to date from circa 1930s. These lead on to an area with a mix of uses including a jewellery repair shop, car garage, newsagents, hairdressers and takeaway. Properties on the opposite side of the road include a relatively modern detached house and a number of flats.
  6. This part of Dudley Road is therefore relatively high density with a character that is defined by the variety of building types and styles, ranging from traditional Victorian style buildings and St Matthews Church, to much more modern housing and flats. This variation is a positive feature in itself, the area clearly providing for a broad range of the community, including family homes, sheltered housing and a residential care home, in a location that is close to a range of local facilities.
  7. An existing road provides vehicular access to the rear gardens of Nos 113 – 119 from Dudley Road, the access being adjacent to No 119. There is an existing area of hardstanding inside the garden of No 113, accessible by car via the large access gate. From the rear access road I observed that many of the houses have space for a vehicle to park within their rear garden, some of which were in use at the time of my visit. As such the principle of vehicle parking in rear gardens is an established pattern of development here.
  8. The proposed rear garden parking layout is configured with spaces either side of the vehicle access point. The two spaces proposed closest to the appeal house would be positioned broadly in line with those in other gardens (Nos 114 – 119), and as such would not be at odds with that pattern of development. Moreover, due to the garden at No 113 being wider than those of Nos 114 – 119, the positioning of two spaces side by side would not occupy the full width of the garden.
  9. The garden at No 113 is also longer than those of Nos 114 – 119, extending further back from Dudley Road. The three additional spaces are proposed to be located just inside this extended area, retaining a reasonable area of garden behind. Existing landscaping in this area, comprising substantial boundary trees, is shown as retained. Consequently these parking spaces would be some distance from surrounding properties, and heavily screened to the sides and rear.
  10. As such, due to the sensitive configuration of the proposed parking spaces and retention of existing landscaping around the rear of the garden, the extent to which the parking would be perceived in the context of the character and appearance of the area would be highly limited. In any event, the principle of some rear garden parking is established here. Provision of additional landscaping could be conditioned to further limit the extent to which parking would be visible from neighbouring houses and gardens. In addition, given the very limited changes proposed to the fabric of the building and within its garden, and screening from intervening garden boundaries, I find no harm to the setting of the grade II listed St Matthews Church.

11. Concluding on this main issue, the proposal would not harm the character and appearance of the area. It would therefore accord with Policy CSP4 of the Black Country Core Strategy (2011) which, amongst other matters, seeks to enhance unique attributes of the area, including local character, whilst responding to current day needs, changes in society and cultural diversity. It would not conflict with Policy SAD H2 of the Site Allocations and Delivery Development Plan Document (2012) which sets the criteria to be met for housing proposals on sites not specifically allocated for residential use, including that it is previously developed land suitable for residential use, would not unacceptably reduce employment land, and is compatible with other development plan policies.

#### *Living Conditions*

12. At the time of my weekday site visit at around 09:30 there was a steady flow of traffic on Dudley Road, including cars and buses, consistent with its status as a main road (the A4037). The site is a short distance from the junction between Dudley Road and Sedgley Road West, another main road (the A457). Such ambient traffic noise was appreciable from the appeal site, creating a relatively high baseline level of noise for neighbouring occupants.
13. The existing floorplans show that the house provides four bedrooms albeit the Council accept that it could be converted to a six person House in Multiple Occupation (HMO) without the need for planning permission. The proposal would provide ten bedrooms within the house and the garage would be converted to provide a further four. This would inevitably comprise a more intensive use of the appeal site, with more comings and goings. However the extent to which this would be perceived by neighbouring occupants would be limited for a number of reasons.
14. The site has its own private drive and its front door is positioned on the side elevation, set back within the site and not immediately adjacent to neighbouring frontages. Parking arrangements at the front of the house, providing space for two cars, would remain as existing, in line with the other Victorian houses here. Given the width and bend in the access road, vehicles accessing the rear parking spaces would, out of necessity, be expected to travel at low speeds, thus limiting noise and disturbance from vehicle movements.
15. Given the length of the garden at the appeal site, there would remain a good degree of separation between the proposed rear parking spaces and neighbouring houses and gardens on Dudley Road, and from rear gardens for houses on Menin Road. This would minimise any noise or disturbance from the use of the proposed parking spaces in that area. Given the small number of spaces proposed, any associated increase in vehicle emissions would not be so great as to materially affect the living conditions of neighbours. Such effects would be minimal in circumstances where the future occupants would be unlikely to have access to a car as is suggested would be the case here (accepting that visitors may still arrive by car).
16. The presence of the appeal site garage forms a partial barrier between the garden at No 113 and its neighbour at No 114, considerably limiting the potential for disturbance to the occupants of No 114 or harm from loss of privacy from future use of the appeal garden. Existing boundary fencing would

remain in place to maintain suitable levels of security within neighbouring properties.

17. The proposed rear parking area would be sufficiently discreet, combined with additional landscaping which could be secured by condition, to avoid any undue disturbance to neighbouring occupants either in views from neighbouring properties or from associated vehicle noise or fumes. Whilst the proposed use would result in the appeal garden providing communal outdoor space for its future occupants, it is unlikely to be regularly in use by all future occupants at the same time. As such, an increase in intensity of its use and any associated noise would not be so severe as to unacceptably harm the privacy of neighbouring occupants in their respective gardens or houses, nor would the nature of its use be out of keeping with that of a private house. I also note a lack of objection from the Council's Public Health Directorate in this regard.
18. In light of the above, and taking into account the existing background road noise and its relatively high density context, I do not find that the increase in intensity of use at the appeal site would unacceptably harm the living conditions of neighbouring occupants with respect to noise or disturbance. It would therefore accord with paragraph 185 of the Framework<sup>1</sup> which seeks to ensure that proposals are appropriate for their location, taking into account likely effects on living conditions, minimising potential adverse effects and avoiding significant adverse impacts on health or quality of life.

### **Other Matters**

19. I accept that turnover of occupants in such accommodation may be higher than that of a traditional family house. However it is equally possible that some future occupants may reside there on a longer term basis. The extent to which future occupants integrate with, and are accepted by, the local community will vary considerably depending on a range of factors including the individual circumstances of the future occupants and the response of the community.
20. I note the range of concerns expressed by the local community about a potential increase in antisocial behaviour and crime carried out by future occupants of the appeal scheme, as well as the impact on existing vulnerable residents in the locality and the safety of staff at the residential care home. Nevertheless, since the future occupants of the proposal are unknown, it would be conjecture and unreasonable to withhold planning permission on the basis of preconceptions about their propensity to commit crime. Recent instances of crime in the locality, each one highly regrettable, do not alter my assessment of the scheme before me. I note that West Midlands Police was consulted and did not object to the proposal.
21. Whilst there may be a good range of social housing already present in the area, the proposal would add to that mix. I have not been made aware of a particular concentration of HMOs in the vicinity or of any nearby accommodation for asylum seekers here. Moreover, the Council has not imposed any Article 4 direction to remove permitted development rights for change of use of housing to small scale HMOs, which they can choose to do in areas where a high concentration of HMO properties is a concern. Extracts from planning guidance on HMOs prepared by Wolverhampton City Council are before me, although the guidance in its entirety is not. In any event, it appears to have been prepared

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<sup>1</sup> National Planning Policy Framework (2021)

- in circumstances where there is a concern over a proliferation of HMOs, which has not been demonstrated here.
22. Whilst the Covid 19 pandemic continues, I am satisfied that the proposal would provide sufficient bathroom and kitchen areas – there are facilities on both the ground and first floors - so that it would be possible for an individual requiring to self-isolate to remain reasonably self-contained, and the accommodation as a whole to be sufficiently well ventilated, accepting that total self-isolation would not be feasible in any form of living accommodation with shared communal facilities. The scheme would also provide access to a reasonable area of garden space, even accounting for the area proposed for car parking.
  23. I find that the proposed accommodation would be in a suitable location, within walking distance of a range of facilities. Whilst local services such as healthcare are said to be stretched, no robust evidence is before me to suggest that the proposal would result in unacceptable strain on such services, or that any services that may currently be at capacity would be required to offer space for the future occupants. Future residents accommodated would be able to contact their landlord regarding issues at the property in the same way as for other rented properties. Whether or not additional support is provided for the future occupants who may themselves be vulnerable, is a matter of wider policy and not for resolution within this appeal.
  24. As an HMO its use would require a separate HMO licence and would be regulated as such, ensuring certain minimum standards are met and maintained, including in respect of the number of occupants to avoid overcrowding. This is extraneous to planning legislation. I am satisfied that a suitable bin storage area could also be provided within the appeal site, details of which could be approved by way of a condition, thereby avoiding adverse effects on neighbouring occupiers living conditions in that respect.
  25. I am satisfied that the proposal provides sufficient parking, in line with adopted parking standards, such that it would not exacerbate existing parking stress on Dudley Road or harm highway safety. Given the nature of the accommodation proposed it is likely that not all occupants would have access to a car and as such any effects on traffic in the locality would be highly limited. Rights over the vehicular access road are not a matter for resolution in this appeal, albeit the Council is satisfied that the appellant has demonstrated their right of access for parking of vehicles associated with the property. No robust evidence is before me to the contrary.
  26. Nothing in the evidence before me leads me to conclude that fly tipping and litter would be an inevitable consequence of the proposal. In respect of drainage, no substantive evidence has been submitted to suggest that the existing system could not accommodate the proposed use. In respect of fire safety, the relevant Building Regulations, which will need to be complied with in any event, make suitable provision in that regard.
  27. The concerns of local residents with regard to property values are purely private interests and not considerations I have given weight to. As I have found the proposal would not harm the character and appearance of the area and living conditions of neighbouring residents, it would not create a precedent for other developments that would cause harmful effects in these regards. In any event, each proposal is to be considered on its own merits and/or impacts, and the particular circumstances involved.

28. I am satisfied that the Council followed their statutory requirements in respect of requisite consultation and notification on the proposal. I have given careful consideration to the matters of concern raised in response, including future prospects of inward investment in the area, as well as the petitions that are before me. However these do not lead me to a different overall conclusion on the main issues nor do they amount to a degree of harm which would justify withholding planning permission.
29. I am satisfied that the proposal would contribute to the Council's ambitions in the Corporate Plan 2020, providing housing of a type that does not appear prevalent in the locality, increasing the diversity of its residents and providing for those in particular need. In the case of asylum seekers, that it is indicated would be located here, the proposal would address a need for shelter that is particularly pressing. The proposal exceeds minimum HMO standards for internal floorspace in a sustainable location, without unduly harming the living conditions of neighbouring occupiers.

### **Conclusion and Conditions**

30. For the above reasons, having considered the development plan as a whole, the approach in the Framework and all other relevant material considerations, I conclude that the appeal should be allowed subject to the conditions below.
31. The Council suggested conditions in the event the appeal is successful, and I have considered these and amended them as necessary, without altering their meaning, in light of the Framework and Planning Practice Guidance. In addition to the standard time limit condition, it is necessary to specify the approved plans as this provides certainty.
32. I note the appellant's comments in respect of the timing and requirements of the Council's suggested construction method statement condition. Nevertheless, given the site's location on a main road and the potential requirement for the parking of larger vehicles during the construction period, for reasons of highway safety and to minimise disruption to neighbouring residents, I consider it necessary for details of parking of site operatives to be submitted for approval prior to commencement of the development. I have included a pre-commencement condition on this basis. Similarly, I have included in this condition a requirement for approval of measures to control dust and dirt and hours of construction, which are necessary to minimise disruption to adjacent residents.
33. I have also included a condition requiring details of sustainable drainage measures for the rear parking area, in order to ensure provision of an adequate system for draining that part of the site. A condition requiring approval of details of landscaping is required to protect living conditions of neighbouring occupants. A condition requiring approval of details of acoustic glazing is required to protect the living conditions of future occupants. I attach a condition requiring details of external lighting and CCTV (to ensure security), bin stores (to avoid adverse effects on neighbouring living conditions), and car charging and cycle parking provision (to maximise the sustainability of travel choices for the development).
34. I attach a condition requiring details of alterations to the front bay window to be approved in order to retain its positive contribution to the character and appearance of the area. Finally, it is necessary for the number of occupants of

the HMO to be limited by condition to protect the living conditions of neighbouring occupants with respect to noise and disturbance. The appellant was given the opportunity to consider this condition and did not object to it.

*Rachel Hall*

INSPECTOR

### **SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: HS/DR/PP05B; HS/DR/PP04A; HS/DR/PP03A.
- 3) No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
  - i. the parking of vehicles of site operatives and visitors;
  - ii. measures to control the emission of dust and dirt during construction; and
  - iii. construction working hours.The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
- 4) No development of the rear parking area shall take place until details of a sustainable drainage system for that area shall have been submitted to and approved in writing by the local planning authority. Those details shall include arrangements to secure the effective operation of the sustainable drainage system for the lifetime of the development. The rear parking area shall be surfaced and laid out and the approved sustainable drainage details implemented prior to first occupation of the development hereby permitted, and retained thereafter for the lifetime of the development.
- 5) The development hereby permitted shall not be occupied until a detailed landscaping scheme shall have been submitted to and approved in writing by the local planning authority. The landscaping scheme shall include details of additional planting in the rear garden and shall confirm the retention of existing trees. The approved scheme shall be carried out in the first planting season following first occupation of the development. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 6) The development hereby permitted shall not be occupied until rooms with windows on the front elevation of the building have been fitted with acoustic glazing. Details of the type of acoustic glazing shall be submitted to and approved in writing by the local planning authority before the windows are installed and once installed in accordance with the details approved, the acoustic glazing shall be retained thereafter.

- 7) The development hereby permitted shall not be occupied until
- i. external lighting of the forecourt and rear car park;
  - ii. bin stores to the front elevation;
  - iii. a Closed Circuit Television (CCTV) monitoring equipment system;
  - iv. one electric vehicle charging point to the front forecourt; and
  - v. secure cycle parking within the site

has been installed in accordance with details that shall have been submitted to and approved in writing by the local planning authority. Upon implementation, the details specified in this condition shall thereafter be retained.

- 8) Before alterations to the bay window on the front elevation are commenced, a detailed specification shall have been submitted to and approved in writing by the local planning authority (including details of materials and method of construction). The approved alterations shall be implemented before the development hereby permitted is first brought into use.
- 9) The HMO hereby permitted shall not be occupied by more than 14 individuals at any one time.



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## Costs Decision

Site visit made on 10 August 2021

**by Rachel Hall BSc MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 20 September 2021**

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### **Costs application in relation to Appeal Ref: APP/G4620/W/21/3272067 113 Dudley Road, Tipton DY4 8DJ**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Mr Harmohan Singh for a full award of costs against Sandwell Metropolitan Borough Council.
  - The appeal was against a refusal to grant planning permission for change of use from a single dwelling to a Large Scale HMO (Sui Generis).
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### **Decision**

1. The application for an award of costs is refused.

### **Reasons**

2. Parties in planning appeals normally meet their own expenses. However the Planning Practice Guidance ('PPG') explains how costs may be awarded against a party who has behaved unreasonably, and thereby directly caused another party to incur unnecessary expense at appeal.<sup>1</sup> Costs applications may relate to events, if not expenses incurred, before an appeal was brought.<sup>2</sup>
3. The Planning Practice Guidance states that examples of unreasonable behaviour by local planning authorities include failure to produce evidence to substantiate each reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.<sup>3</sup>
4. The appellant's case for an award of costs is on substantive grounds. It relies on the fact that the Council Officers recommended that planning permission be granted but that Council Members took a different course of action without adequate reason to do so, and unnecessarily delayed the proposed development.
5. The Council's first reason expressed concern over harmful effects of the development on local character, with reference to specific development plan policies. Council Members are not duty bound to follow the advice of their professional officers, where planning grounds are identified to substantiate their reasons for reaching a different view. Whilst external changes to the

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<sup>1</sup> PPG Reference ID: 16-028-20140306

<sup>2</sup> PPG Reference ID: 16-032-20140306

<sup>3</sup> PPG Reference ID: 16-049-20140306

building would be limited, the Council's Statement of Case elaborates on this first reason for refusal, with particular reference to concerns about the provision of parking spaces in the rear garden of the property, which they consider would erode the historic character of the area. Although I concluded that the proposal would not have a harmful effect on local character and the extent to which its effects would be perceived outside of the site would be limited, it is not unreasonable that the Council concluded otherwise.

6. The second reason for refusal relates to an adverse effect on amenity by virtue of increased noise and disturbance associated with more intensive use of the building. In my decision I acknowledge that the proposal, by its very nature, would result in a more intensive use of the site, with more comings and goings. However in the particular circumstances of this case, I found that any increase in noise and disturbance would not unacceptably harm the living conditions of nearby residents with respect to noise and disturbance. This is due to factors such as the appeal site having its own driveway, separating the front access to the building from its neighbours. Nevertheless, given the greater intensity of use proposed, and whilst there was an absence of objections from statutory consultees in this regard, I do not consider that the Council having reached a different conclusion on this matter renders the reason for refusal as unfounded or amounts to unreasonable behaviour.
7. I am aware of the costs decision relating to twelve schemes for various HMO developments within Sandwell Metropolitan Borough, although the full details of those proposals are not before me. Nevertheless, in the circumstances of this appeal, I am satisfied that the Council's reasons for refusal were sufficiently clear and justified. Notwithstanding that I have reached a different conclusion to Council Members in allowing the appeal, for the reasons set out above, I conclude that unreasonable behaviour by the Council, resulting in unnecessary expense during the appeal process, has not been demonstrated. Accordingly, and having regard to all other matters raised, an award for costs is therefore not justified.