



Appeal Decision

Site visit made on 28 May 2012

by R J Perrins MA MCI ND Arbor

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 11 July 2012

Appeal Ref: APP/D1780/C/11/2167641
13 Grosvenor Road, Southampton SO17 1RU.

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr H Singh against an enforcement notice issued by Southampton City Council.
 - The Council's reference is EP05/05/0331.
 - The notice was issued on 28 November 2011.
 - The breach of planning control as alleged in the notice is without planning permission, the change of use of the land from a single dwelling house to two separate dwelling houses each occupied as a house in multiple occupation by 7 persons and 8 persons respectively.
 - The requirements of the notice are:
 - (i) Cease to use the land as two separate dwelling houses in multiple occupation and
 - (ii) Return the use of the land to its authorised planning use as a single dwelling house (C3 Use).
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Application for costs

2. An application for costs was made by the appellant against the Council and by the Council against the appellant. These applications will be the subject of separate Decisions.

Preliminary matters

3. On 27 March 2012, the Government issued the National Planning Policy Framework (the Framework), which sets out planning policies for England and how these are to be applied. At the heart of the Framework is a presumption in favour of sustainable development. As the Framework is a material consideration and was issued after the submission of evidence, both main parties were invited to submit further representations in the light of its publication, to which I have had regard.
4. The internal layout of the premises, as considered below, is reflected in the allegation and forms the basis of the ground (a) appeal which seeks permission

for the matters alleged. I say that given the appellant has referred to the deemed planning application as being that which could be considered alongside drawings which have been submitted with the appeal. Those drawings show a revised internal layout which, amongst other things, would subdivide the ground floor of the original part of the dwellinghouse, close a side access, and introduce a combined access for two reconfigured units to the front of the property. They also show a proposed refuse store. These changes would not be minor and I am unable to consider them as they have not been subject to the usual planning consultation process. The deemed planning application is for the matters alleged in the notice; it cannot be used to gain planning permission for something materially different.

The appeal on ground (a)

5. I consider the main issues in this case to be the impact of the use upon; the living conditions of occupiers of the premises and surrounding dwellings; and upon the character of the area.

Living Conditions

6. Policy H4 of the Southampton Local Plan Review (LP) states that permission will only be given for conversions to Houses in Multiple Occupation (HMOs) where there is no detriment to the residents of nearby properties and the character and amenity of the surrounding area. Policy SDP7 seeks developments which, amongst other things, integrate into the local community. Policy SDP16 states that noise generating development will not be permitted where it would cause an unacceptable level of noise impact.
7. The main entrance facing Grosvenor Road serves the front part of the premises; that which covers three floors and consists of a kitchen/dining room and lounge on the ground floor and eight bedrooms and two bathrooms over the first and second floors. An internal door between the front and rear of the property was locked at the time of my site visit and a key had to be sought to open it. Access to the rear of the property was via a side entrance. Given that lack of readily available access and the configuration of kitchens, lounges, bathrooms and bedrooms, it was evident that the two parts of the property were being used separately and as reflected by the enforcement notice. The rear part, which includes three bedrooms on the ground floor of the original house and a large single storey rear extension, consists of a kitchen, lounge/dining room, seven bedrooms a bathroom and separate toilet.
8. The appellant argues that the primary access point would be moved and the side access point would be blocked up and any 'unsocial hours' use would be to the front only. However, as explained in my preliminary matters I am unable to consider such alterations. The current side access, effectively serving a seven-bedroomed HMO, has introduced an unacceptable level of use to that side of the property. The comings and goings would exceed that which should be reasonably expected for a side, or secondary entrance. Moreover, given the lack of access to the rear garden for occupiers of the front of the property that use would be further exacerbated by those wishing to gain access to the rear garden. That would be unlike the use as a single family dwellinghouse where the main access would have been to the front. The noise and disturbance from increased comings and goings and late night activity would result in

unacceptable harm to the living conditions of occupiers of the adjacent property No 11.

9. Furthermore, the general noise levels associated with normal living activities, from fifteen occupiers, would be beyond that experienced from a single family unit or the previous use as a care home where it would be reasonable to expect life to be more sedentary. In addition, there would be additional noise generated by the comings and goings of visitors to those occupying the premises. That is borne out by third party representations which point to students returning to the premises late at night and causing disturbance. Whilst there is nothing to prevent such late night activity occurring in any residential setting, the opportunity for that to happen is increased where 15 individuals live together as opposed to a single family. It also goes beyond the disturbance that would reasonably be expected, for deliveries, visitors and staff attending a care home.
10. In coming to that view I have also considered the appellant's representations that more than one family lived at the property for a number of years. However, evidence in support of that has not been tested and I must temper the weight I give to it. In any event, the same argument applies; 15 individuals are more likely to create more disturbance than two or more family units living together.
11. For these reasons I find the current use of the property has resulted in an over intensive use of the site and has led to unacceptable harm to the living conditions of occupiers of nearby properties. That is at conflict with the aforementioned planning policies. In addition the current configuration of the property does not allow ready access to the rear garden by occupiers of the front of the property. Whilst that has not resulted in unacceptable harm to those individuals it is nevertheless contrary to Policy H4 which seeks amenity space with safe and convenient access for all. It is therefore a factor weighing against the development and adds weight to my conclusions on this issue.

Character of the area

12. The appeal property is a substantial detached property arranged over three floors and situated in a predominantly residential road made up of dwelling houses and flats. The property is served by a generous rear garden. To the front there is space to park three or four cars. Nearby are the Portswood District Shopping Centre and Southampton University Campus. The property has the appearance of a single dwelling when viewed from the street; it does not appear out of context and does not have a negative impact upon the street scene.
13. Policy CS16 of the Southampton Core Strategy (CS) sets out that the Council will seek to provide a mix of housing types along with more sustainable and balanced communities. That will be achieved through control of HMOs amongst other things and particularly those properties which provide accommodation for students. Addressing the latter point first; I accept the property would be advertised on the open market but, given its proximity to the university campus, it is reasonable to expect students to be attracted to the premises and the appellant's appeal indicates the property is currently let to students.
14. The appellant avers that there is no demand for this non-typical dwelling of 15-16 bedrooms in Southampton and that it was not a single-family house in any

- event. I accept that demand for such a property may be low in comparison to other forms of households, nevertheless there is, as evidenced by the Council, a demand for dwellings of four or more bedrooms. Moreover, the appellant has made no appeal on legal grounds regarding any previous use and I must consider the impact of the current use upon the character of the area and in particular the street in which it is situated. That character is predominantly residential with a high proportion of dwellings remaining in family occupation.
15. Furthermore, since the appeal, the Council has adopted *Houses in Multiple Occupation* Supplementary Planning Document (SPD), which defines a tipping point where the concentration of HMOs starts to adversely impact upon the balance and character of a community. I accept the SPD sets out that each application site will be considered upon its own merits and the appellant points to that part of the SPD which addresses when exceptional circumstances will be a material consideration. However that part of the SPD is specific in that it applies to sites "where the vast majority of existing properties surrounding the application site within the defined area of impact are HMO dwellings"; that is clearly not the case here so is not applicable in this instance regardless of the views of local agents or the fact that the property was on sale for over a year.
 16. Moreover, the SPD sets out that planning permission will not be granted in the appeal location where the proportion of HMO dwellings will exceed 10% of the residential properties. The Council aver that in excess of 22% of dwellings would be in HMO use in this case were this appeal to succeed. That figure is borne out by third party representations and my observations during my site visit. I must find therefore that the development would be contrary to the SPD to which I give significant weight.
 17. In addition to that the current use would inevitably have an impact upon on-street parking in the locality. At the time of my visit, mid-morning, there were a number of cars parked in the street and spaces for on-street parking were readily available. However, that is likely to be subject to fluctuating periods of demand and I am unable to consider the plans submitted by the appellant showing parking provision. Furthermore whilst the close proximity to the University would reduce the need for car ownership by students living in the premises, as at present, that situation, on the appellant's own submissions, could change were it not to be rented to students. Such a change in the nature of occupancy would lead to pressure for on-street parking beyond what would be expected for a single family household.
 18. In the same way I am unable to consider the appellant's plans for refuse storage. From what I could see on site there is currently a lack of adequate refuse storage facilities at the site. It is likely, given the number of people living at the premises that without such a facility the storage of refuse would be haphazard and detrimental to the street scene and character of the area.
 19. I have also considered and accept that a HMO Licence has been issued by the Council however, as stated on the notice, it does not imply the property has the necessary planning consent and a licence is not granted on the planning merits of the case. Also, the recent high court judgement (ref:HQ11X02365) found the practical impact that an injunction would have had, upon the students living at the premises, fell decisively against the continuation of the injunction. I have dealt with this matter under the ground (g) appeal and the judgement does not alter my findings upon the planning merits of the case in any event; I have considered this appeal in light of the information that is

before me. Finally, whilst there is some merit in the argument that there is market led demand for the current use in this locality when compared to a 15-bedroom house, I have no detail of how the premises were marketed or what question was asked of the agents that have submitted their views and it does not outweigh the harm I have found.

20. In coming to my conclusions I have taken into account the Framework which sets out that local planning authorities should deliver a wide choice of high quality homes and create sustainable, inclusive and mixed communities; amongst other things they should identify the size, type, tenure and range of housing that is required in particular locations. The appellant suggests the SPD is at conflict with the Framework in that it does not address local market demand. However, the SPD is clear and sets out one of its aims is to redress the 'imbalance' of the city's 'communities' and its evidence base includes the Council's Housing Strategy 2011-2015. It seems to me, and without evidence to the contrary, that approach is not at conflict with the Framework. Moreover, and in any event, the Framework also sets out that that sustainable development would bring positive improvements to the built environment and the quality of peoples' lives; that is not so in this case where harm has been shown.
21. Therefore, when assessed against the aforementioned planning policies and the Framework as a whole, I find the use has resulted in unacceptable harm to the character of the area contrary to Policy H4 of the CS and Policy 16 of the CS. That significantly outweighs any benefits put forward by the appellant.
22. For these reasons and having considered all matters raised the appeal on ground (a) fails.

The appeal on ground (f)

23. Section 173 of the 1990 Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach. The requirements of the notice in this case seek the cessation of the use and a return to use as a single dwellinghouse. That covers everything in the alleged breach of planning control.
24. An appeal on ground (f) is that the steps required by the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity. Given the purpose of the notice is to remedy the breach of planning control, it falls within s173(4)(a). Therefore, any lesser requirements, such as reducing the number of bed spaces, would simply not meet the requirements of the notice and thus would not remedy the breach of planning control.
25. Thus the appeal on ground (f) fails.

The appeal on ground (g)

26. The appellant opines that the time given to comply should be extended to accommodate the end of the academic year to allow tenants to remain until

July 2012. Given the date of this decision that is now achievable and I see no reason to extend the compliance period further.

27. Thus, the appeal on ground (g) also fails.

Other matters

28. I have taken full and careful account of the views of local residents and other interested parties in reaching this decision. However, the appellant and Highfield Residents' Association have referred to a number of matters not related to the planning merits of the case; these include who is represented by the Association and the appellant's business interests. These matters have not formed part of my deliberations.

Richard Perrins

Inspector