

**IN A MATTER UNDER THE TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)**

**Land at Grosvenor Rest Home, 13 Grosvenor Road, Southampton**

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**OPINION**

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**Introduction**

1. I am asked to advise Highfields Residents Association (“**HRA**”) with regards to planning application reference 14/00999/FUL (“**the Application**”) that has been made to develop land at Grosvenor Rest Home, 13 Grosvenor Road, Southampton (“**the Land**”).
  
2. The Application proposal is for the “...*Conversion of existing building into 5 flats (2 x 3-bed and 1 x 1-bed) with associated parking and cycle/refuse storage...*”. The application is subsequent to an earlier refusal and dismissal of appeal against the refusal. In preparing this Opinion I have fully considered the appeal decision of Planning Inspector Sukie Tamplin dated 15<sup>th</sup> August 2013 (“**the Appeal Decision**”). I have considered a number of other documents all of which have informed my opinion.

**The Appeal Decision**

3. The appeal against the previous refusal of Southampton City Council (“**the Council**”) was dismissed by the Inspector. She identified four main issues and addressed them as follows;
  - i. *Noise and disturbance* – concludes that the development is not a noise-generating development within the terms of the saved policy. The Inspector arrives at this conclusion by way of what can only be described as a somewhat contrived and speculative approach [**DL3-9**];

- ii. *Parking effects* – the absence of a parking survey and contrary evidence, the greatly increased parking permit provision which would arise from permission for the proposed conversion would give rise to an unacceptable risk of serious inconvenience and danger arising from increased parking demand in Grosvenor Road [DL17];
  - iii. *Living conditions of future occupiers* – the living conditions of future occupiers would not be seriously harmed by the appeal proposals [DL21];
  - iv. *The character of Grosvenor Road* – the character of the area would not be substantially affected as a whole [DL25].
4. The Inspector found against the Development only on the issue of parking effects. In response to this finding the applicant has now included a “parking survey” with the Application.
5. It should be noted that the Appeal Decision is not binding on future decision makers in the same sense as a Court of Appeal judgement. In a planning context it is merely another material consideration which should be taken into account. If a decision maker, whether the Council or an Inspector does not agree with the previous Inspector he or she is perfectly entitled to arrive at a different conclusion. It is however advisable, to provide adequate reasons for any disagreement.

### **The Application**

6. The application includes, presumably with the intention of addressing the concerns of the Inspector, a Parking Survey. It should be noted that the conclusions of the Inspector with regards to the impact of parking were not based solely on the lack of a parking survey and it does not therefore follow that the provision of a parking survey, assuming it is adequate will address the Inspector’s concerns.
7. The Inspector’s conclusions were as follows;

*“...the absence of a parking survey and contrary evidence, the greatly increased parking permit provision which would arise from permission*

*for the proposed conversion would give rise to an unacceptable risk of serious inconvenience and danger arising from increased parking demand in Grosvenor Road...” [DL17]*

8. The Inspector concludes that the **unacceptable** risk of serious inconvenience and **danger** arising from the increased parking demand was sufficient in its own right to refuse permission. Unless any parking survey relied upon demonstrated to a high degree of certainty that the unacceptable risk resulting in danger is not created then any decision maker on subsequent applications would be acting reasonably in refusing the application for that reason alone.
9. It would appear to me that the parking survey submitted by the application is inadequate. Given the impact in the wider area of students attending the University it is surprising that the parking survey has not taken account of the student population. The student use of the application locale can only increase the demand for parking, an issue identified by the Inspector and for a parking survey to be considered adequate it must incorporate the student element of parking.
10. However, even an adequate survey may not demonstrate that the concerns of the Inspector have been addressed and in this case it is clear that the survey relied upon is inadequate. In such circumstances the Council would be acted entirely reasonable in refusing the application. Indeed, I am of the opinion that the Council must, given the nature of the Inspector’s conclusions with regards to increased danger, refuse the application. The parking matter is not an issue of impact upon character and appearance but perhaps the more significant issue of increase in danger and risk to members of the public.
11. A further issue with which I have concerns is the approach of the Inspector to the issue of noise and disturbance. I consider her conclusions to be wholly unsustainable. I understand that the time for challenging the Inspector’s decision has passed but had I been instructed at an earlier date I would have advised that the Appeal Decision is materially flawed and any challenge commenced would have high prospects of success.

12. The Inspector speculates in a manner which is unlawful. An Inspector can only determine an appeal on the basis of the facts and arguments before her in the context of the prevailing law. In this case she has speculated as to the nature of the future use of the proposed building particularly with regards to the over-intensification of the use, as has been found to be an issue by Inspectors in previous appeals relating to the Land.
13. At **DL5** the Inspector concludes that the use of the building by 15 or more people is unlikely but she does not appear to have evidence to support such a finding. The simple fact is that the configuration of the proposed development will allow 15 or more people to occupy the Land and given that the Inspector accepts the unacceptable noise and disturbance that was caused when the building was previously occupied in such a manner the Inspector must provide adequate reasons (*South Buckinghamshire CC v Porter (No.2)*[2004] 1 WLR 1953) as to why that would not be the case now. I do not believe that she has provided reasons of the required adequacy, if at all.
14. Similarly, the findings at **DL6-7** are somewhat baffling. I understand that the Inspector had no evidence as to who would or might occupy any development on the Land. Further, it would appear that there is a valid argument that the 3 bed flats are unsuited to family occupation by virtue of either a lack of amenity space or an unsuitable layout, to which the Inspector gives no consideration. Her conclusions with regards to 5 households as opposed to one household and the disturbance and “parental controls” issue would appear to be pure speculation. They are conclusions not derived from evidence but from a speculative “*frolic*” of the Inspector. They are entirely unsustainable.
15. Finally, in the context of “*living conditions*” but not wholly unrelated to the noise and disturbance issue I consider the Inspector to have fallen into error in **DL20**. The Inspector is not entitled to place reliance on “...*good natural surveillance*...” when considering the adequacy and safety of amenity space. She has no knowledge of the occupiers of adjoining buildings, no evidence of the proposed occupiers of the proposed building. In any event all are subject to change and an Inspector would be

wrong in law to find that an amenity space is adequate and safe because unknown and unspecified neighbouring occupiers would probably provide an adequate level of informal surveillance. Such a consideration is entirely irrelevant and not founded in any evidence what so ever and contrary to the principles set down in *Seddon Properties v Secretary of State for the Environment* [1978] J.P.L. 835; 248 E.G. 950.

16. Given the identified failings of the Inspector I am firmly of the opinion that the Council, or indeed an Inspector on a further appeal would be entirely justified in taking a contrary position to the previous Inspector. Her conclusions are bordering on the irrational and wholly unsustainable. Additionally, the application has not satisfied the parking concerns.
17. I am of the opinion that the Council have no real option other than to refuse the Application.
18. I understand that the Council might be naturally concerned about the prospect of costs being awarded against them in any subsequent appeal but costs are only awarded where there is unreasonable behaviour resulting in unnecessary expenditure. The parking survey is inadequate and does not ameliorate the previous Inspector's concerns. A refusal is justified on that reason alone and it could not be asserted by the applicant that such a reason for refusal was unreasonable.
19. Given that a refusal is justified on that basis alone any subsequent appeal could not be said to be unnecessary. The applicant might asset that any refusal on reasons for which the previous Inspector had found there were no concerns was unreasonable but for the reasons set out above I do not believe that to be the case. Subsequent decision makers are entitled to arrive at different conclusions provided adequate and suitable reasons are provided. I consider that the Inspector has not addressed the issue of intensification in a lawful or adequate manner and I believe that any subsequent Inspector would find the reasoning of the previous Inspector to be somewhat surprising.

### **Conclusions**

20. I am of the firm opinion that the Council would be entirely justified in refusing the Application, for the reasons set out above. I do not believe such a refusal would be unreasonable and provided adequate reasons are provided I do not believe that the Council will be particularly exposed to an award of costs in any subsequent appeal.
  
21. I hope the above is of assistance and if there is anything further upon which I can advise or any questions arising from the above advice please do not hesitate to contact me.

**Michael Rudd**

**7<sup>th</sup> July 2014**

**Kings Chambers**

**Manchester-Birmingham-Leeds**