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# Appeal Decision

Site visit made on 29 November 2011

**by David Richards BSocSci DipTP MRTPI**

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

**Decision date: 9 January 2012**

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**Appeal Ref: APP/D1780/C/11/2156569**

**1 Blenheim Gardens, Southampton, SO17 3RN**

- 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 B Punia against an enforcement notice issued by Southampton City Council.
- The Council's references are BL/EP05/05/0329 & 10/00431/ENCOU.
- The notice was issued on 30 June 2011.
- The breach of planning control as alleged in the notice is: without planning permission, change of use of the property from a single dwelling house to an 8 bedroom house in multiple occupation (HMO).
- The requirements of the notice are: a) Cease the use of the property as an 8 bedroom house in multiple occupation (HMO); and b). Return the property to its authorised planning use as a single dwelling house (C3 Use) or as a property in multiple occupation (HMO) for up to but no more than 6 occupants (C4 use).
- The period for compliance with the requirements is 28 days.
- The appeal is proceeding on the ground set out in section 174 (a) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal is dismissed and the enforcement notice is corrected and upheld.**

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## Procedural matter

1. In section 4 of the Notice, the Council states that "it appears to the Council that the above breach of planning control has occurred within the last four years." Where a change of use from a single dwelling-house to a large house in multiple occupation (i.e. those with more than six people sharing) is alleged to have occurred, the appropriate period for immunity from enforcement is ten years. The Council and Appellant were advised of this by letter. The Council had no objection to the notice being amended in this way. The Appellant was asked whether he wished to add an appeal on ground (d), and to confirm this, with supporting facts, if so. Following this correspondence, no indication was given that the Appellant wished to pursue an appeal on ground (d). In the circumstances I can correct the notice accordingly without injustice.

## Main Issues

2. The appeal is made on ground (a), i.e. that planning permission should be granted for what is alleged in the notice.
3. Planning permission is not required for the change of use from a dwelling house to a house in multiple occupation which falls within Class C4, (i.e. a small shared house or flat occupied by between three and six unrelated individuals

who share basic amenities). However it is not disputed that the property is currently occupied by 8 people, and that planning permission is required.

4. The main issues are the effects of granting planning permission for a change of use to a large (sui generis) HMO on the living conditions of neighbours, and on the character of the surrounding area.

## **Reasons**

### *Living conditions*

5. Policy CS 16 of the Southampton Core Strategy (CS) provides the most up-to-date adopted policy context for the appeal. It states that the Council will provide a mix of housing types and more sustainable and balanced communities through control of HMOs, amongst other things, particularly those properties which provide accommodation for students. Policy H4 of the City of Southampton Local Plan Review (LP) states that planning permission will only be granted for conversions to housing in multiple occupation where it would not be detrimental to the residents of nearby properties, nor to the overall character and amenity of the surrounding area, and where adequate amenity space is provided. Policy SDP 1 resists development which would unacceptably affect the health, safety and amenity of the city and its citizens.
6. Whilst it has been argued that occupancy by two additional people has no effect on the living conditions of neighbours, I consider that the effect would be perceptible, and would result in additional material harm to the living conditions of neighbours when compared to occupation as a family dwelling or a small HMO. Occupiers of neighbouring properties have recorded problems of noise and disturbance late at night, and while this may represent no more than high-spirits, it is nevertheless harmful to their living conditions. Two extra people returning late at night would only increase the potential for unreasonable disturbance to be experienced by neighbours. The problem would be particularly acute for the occupiers of the property immediately adjoining (No 3 Blenheim Gardens), but other nearby properties could also be adversely affected. I accept that the additional bedrooms are on the eastern side of the property, away from the attached house in the terrace, but nevertheless the residents would use the same entrance from Blenheim Gardens, with the potential to increase the intensity of problems experienced by neighbours. The availability of these rooms away from the common boundary for communal purposes could also reduce the potential for noise to be transmitted through the walls.
7. To my mind the occupancy of the property by eight people represents an over intensive use of the site, which gives rise to material harm to the living conditions of immediate neighbours. I therefore conclude on this issue that granting planning permission would conflict with Policies SDP 1 and H4 of the LP, and CS Policy 16.

### *Character of the surrounding area*

8. The surrounding area is predominantly residential, the immediate area consisting of a mix of detached and semi-detached two-storey properties. The property itself has previously been extended, though no change of use was sought. While objectors consider that the extensions are out of character with the neighbourhood, they are authorised, and the change of use to a 'large'

HMO now under consideration would involve no further change in the appearance of the dwelling.

9. The plan attached to the Council's statement indicates that a high proportion of dwellings in the area remain in family occupation, though there has already been some change in the character of this end of Blenheim Gardens, and the western side of Upper Shaftesbury Avenue, with a substantial number of HMOs present. However the Council's evidence shows that these are 'small' HMOs, occupied by no more than 6 people. While I accept that 'small' HMOs and even family housing can, if occupied unreasonably, give rise to similar issues for the neighbourhood, I conclude on balance that, in view of the effect on living conditions of neighbours, granting planning permission for a 'large' HMO in this context would also result in an unacceptable change in the character of the surrounding area, with associated potential to increase problems of public and private amenity.
10. I have considered whether granting permission for occupancy by more than 6 people would increase pressure on on-street parking. I note that the property is close to the university and to bus routes, so that public and other non-car means of transport are viable options. I also note that parking in the area is controlled during the daytime. While there were spaces available at the time of my site visit, I recognise the potential for pressures that are reported to be evident at other times. While many of the current occupiers may not own cars, there would be nothing to stop the nature of occupancy changing in future, with the potential for increased pressure on parking in comparison to occupancy by 6 individuals, or by a single household.
11. The Council also raised concerns about the adequacy of provision for refuse. If I were to conclude that the change of use was otherwise acceptable I consider this matter could be addressed by a condition. However, this does not alter my conclusion that granting permission would have an unacceptable effect on the character of the area, in conflict with LP Policy H4
12. I acknowledge that there are a number of properties in the area which are in use as HMOs, and there is nothing to prevent other existing family dwellings being used as HMOs within Class C4. The Council states that it intends to apply an Article 4 direction across the City to make it necessary to apply for planning permission for conversions from Class C3 to Class C4. As there is no direction currently in place I cannot give this any weight in considering the planning issues. However planning permission is required for a change of use to a large (sui generis) HMO, and for the reasons given I consider that planning permission should not be granted in this instance.

## **Conclusions**

13. Policy CS 26 of the Core Strategy provides that proposals to convert a building to an HMO will be assessed by balancing the contribution that such a conversion will make to meeting housing demand against the potential harm to the character and amenity of an area and the suitability of the property concerned. I accept that the property as currently occupied meets a demand for student accommodation in the area. However, this does not outweigh the harm to the living conditions of neighbours and the character of the area that I have identified.

14. For the reasons given above I conclude that the appeal should not succeed. I uphold the enforcement notice as corrected, and refuse to grant planning permission on the deemed application.

**Decision**

15. The enforcement notice is corrected by: the deletion of the words 'last four years' and replacement by 'last ten years' in the second line of Section 4 (The reasons for issuing the notice). Subject to this correction the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*David Richards*

INSPECTOR