



Appeal Decision

Site visit made on 18 July 2011

by Megan Thomas BA Hons in Law, Barrister

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

Decision date: 23 August 2011

Appeal Ref: APP/D1780/A/11/2143903
67 Arthur Road, Southampton SO15 5DW

- 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 Martin Clegg against the decision of Southampton City Council.
 - The application Ref 10/00826/FUL/32751, dated 28 June 2010, was refused by notice dated 28 September 2010.
 - The development proposed is change of use from a single dwelling house (Class C3) to a house in multiple occupation comprising seven bedrooms for up to nine persons (sui generis).
-

Application for Costs

1. An application for costs was made by Mr Martin Clegg against Southampton City Council. This application is the subject of a separate decision.

Decision

2. The appeal is allowed and planning permission is granted for change of use from a single dwelling house (Class C3) to a house in multiple occupation comprising seven bedrooms for up to nine persons (sui generis) at 67 Arthur Road, Southampton SO15 5DW in accordance with the terms of the application, Ref. 10/00826/FUL/32751, dated 28 June 2010, subject to the following conditions:
 - (1) Subject to the provisions of Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), the premises shall only be used as a house in multiple occupation for a maximum of 9 residents.
 - (2) Within one month from the date of this decision, secure enclosed bicycle storage for a minimum of 7 bicycles shall be provided in the position shown on Drawing no.2 (Site Layout Plan) and shall be retained for the lifetime of the development hereby permitted.
 - (3) Within one month from the date of this decision, a maximum of 2 x 360 litre Euro refuse bins shall be provided to serve the development hereby permitted.
-

(4) The refuse bins shall be stored in the location shown on drawing no.2 (Site Layout Plan) and shall only be moved to the front of the site on the day of/evening before refuse collection. The bins shall be returned to the rear storage area on the day of collection and shall not be left on the site frontage for the remainder of the week.

(5) The front boundary hedge and gated accesses enclosing the front of the site shall be retained for the lifetime of the development hereby permitted.

(6) The rear garden shall be available for use by all residents of 67 Arthur Road at all times.

(7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no development falling within Class A or Class E of Schedule 2 Part 1 of that Order shall take place, other than development expressly authorised by this permission.

Background and Procedural Issues

3. The Town and Country Planning (Use Classes) Order 1987 (as amended) contains Class C4 which is use of a dwellinghouse by not more than 6 residents as a "house in multiple occupation" (HMO). Other legislation makes it permitted development to change the use of a dwellinghouse in Class C3 (in short, where occupants live as a single household) to an HMO falling in Class C4. The Council have promulgated a city-wide Article 4 direction to remove that permitted change from C3 to C4 but that direction is at public consultation stage and is not yet in force.
4. It is currently therefore possible for the appellant to lawfully use the appeal premises as an HMO for not more than 6 residents. Given the real prospect of the appellant doing so, I have taken that use to be the fallback position in planning terms for this appeal. Indeed at my site visit I noted that the house was already being used as an HMO and six out of the seven available bedrooms appeared to be occupied. As the HMO use has begun, I have treated the appeal accordingly.

Main Issues

5. The main issues in the appeal are:
 - the effect of the proposal, whether on its own or in combination with other nearby HMOs and flats, on the living conditions of neighbours with particular regard to noise, disturbance and parking;
 - the effect, individually or cumulatively with other nearby HMOs and flats, on the character and appearance of the area;
 - the loss of a family dwelling in the light of development plan policy.
6. In respect of the first issue, I have borne in mind that the focus is on the impact of seven, eight or nine persons living at the premises in comparison to the impact of the lawful use (six persons) and I have also borne in mind that a large or extended family could lawfully live at the premises.

Reasons

Living conditions of surrounding residents including parking

7. The appeal site is located in the suburb of Shirley. It is a residential property with a private rear garden and a front garden. The area is residential and, in and around Suffolk Avenue and Arthur Road, the houses are predominantly semi-detached. Some are converted into flats and some to HMOs. 28 Suffolk Avenue is next to the appeal site and is converted to flats. 65 Arthur Road was used as an HMO at the time of my site visit. 59 Arthur Road has permission to be used as an HMO and also appeared to be being used for that purpose.
8. The appeal site is semi-detached and its semi-pair is 65 Arthur Road. The rear garden of the appeal site also has a common boundary with 26 Suffolk Avenue. There are seven bedrooms at the site and two of these could readily be used to accommodate couples, therefore, permission is sought for up to nine persons to occupy the property. The appellant seeks to let out to professionals rather than students, however there is no guarantee that this would be the nature of the future occupiers and I have not assumed that to be the likely profile of occupant.
9. The intensification of the use from six people to up to nine people, would not in my view have a materially detrimental effect on the living conditions of either the next door neighbours or residents living in the wider vicinity. There would be, at worst, an increase of three residents over and above the lawful use. Whilst there would be more comings and goings from the property, including a greater propensity for visitors, I do not judge the increased noise and disturbance to be significant. In coming to this view, I have borne in mind the fact that nearby properties include flats and HMOs but even on a cumulative basis, I am not persuaded that noise arising from daytime or night time living activity would result in sufficient harm over and above the lawful use to warrant refusal of planning permission.
10. I note that the appellant has offered to be bound by a condition limiting the number of occupants of the HMO to either 7 or 8 persons. However, I do not think it is necessary to impose that condition in order to prevent unacceptable harm to the living conditions of surrounding residents.
11. Turning to the question of on-street parking, the Council have argued that the appeal proposal would give rise to an increase in on-street parking with the knock-on effect of making parking for future residents more difficult and further from their dwellings. However, the fallback position may give rise to some on-street parking in any event, and the focus here is on the likely increase of on-street parking from up to 3 additional occupants. The site has very good sustainability credentials for cycling and public transport, and car ownership of residents of HMOs does not tend to be high. For those reasons I am not persuaded that an HMO of nine persons compared to an HMO of six persons in this location would render the ability to park on-street perceptibly more difficult. Taking into account all these factors, I conclude that the proposal would not be likely to give rise to on-street parking problems and would not detrimentally affect the ability of nearby residents and visitors to park on the local road network close to their houses.

12. Therefore on the living conditions issue, I conclude that the proposal, whether by itself or in combination with other HMOs and flatted developments in the vicinity, would not cause unacceptable harm to the living conditions of surrounding residents by reason of increased noise and disturbance or difficulty in parking. The proposal would not be in conflict with policies SDP1(i), SDP7(v) and H4(i) of the City of Southampton Local Plan Review (2006).

Effect on character and appearance

13. There would be likely to be little change in the appearance of the property or the character of the area if it was used as an HMO for between seven and nine persons as opposed to six persons. Whilst there might be the need for additional refuse bins which might be visible for some part of the week, that would not in my opinion change the appearance or character of the area to anything more than a negligible degree.
14. Furthermore, even on a cumulative basis taken with other HMOs and flats in Arthur Road and Suffolk Avenue, I do not consider that there would be undue harm to the character of the area.
15. On this issue, I conclude that the effect of the proposal, either individually or cumulatively, on the character and appearance of the area would not be unduly harmful. There would be no conflict with policies SDP1(i), SDP7(v) or H4(i) & (ii) of the City of Southampton Local Plan Review (2006).

Loss of an existing family dwellinghouse

16. The Local Development Framework Core Strategy Development Plan Document 'CS' policy CS16 aims to ensure there is a mix of housing types and more sustainable balanced communities through, amongst other things, no net loss of family homes on sites capable of accommodating a mix of residential units unless there are overriding policy considerations justifying this loss. Policy CS16 was adopted prior to the change in the law making it permitted development to change from a single family dwellinghouse to an HMO limited to six persons and to that extent it is dated and does not attract full weight. In any event, it essentially seeks to prevent proposals which change the physical layout of family dwelling houses so they no longer have the potential to be used as a family dwelling without further physical alterations. The Council indicate that the policy would restrict the conversion of a 3 bedroom (or larger) C3 dwelling to smaller flats but it would not prevent a change of use to an HMO. I agree with that interpretation and therefore I do not consider that there would be a breach of the policy in this case. Even if I am wrong about that, the objective of the policy is to provide more sustainable and balanced communities and on the evidence available to me I consider that if this proposal was granted permission it would not materially affect the balance or sustainability of the residential community in this area.
17. Consequently, I conclude that the proposal would not give rise to harm from the loss of a family unit and there would be no conflict with policy CS16(2) or (3) of the Local Development Framework Core Strategy Development Plan Document (adopted 2010).

Other Matters

18. I have assessed the private amenity space available to the occupants of the development at both the front and the rear of the property and I consider that it would be adequate for their needs.

Conditions

19. I have considered the imposition of conditions in the light of Circular 11/95 *The Use of Conditions in Planning Permissions*. I have attached a condition limiting the number of residents to a maximum of nine in order to avoid undue intensification of the use and to safeguard the living conditions of surrounding residents. For the same reason and also to safeguard living conditions for the residents of the HMO, I have removed permitted development rights to enlarge the dwellinghouse or erect outbuildings in the garden areas. I have also imposed a condition which seeks to ensure that the rear garden is available as amenity space for residents so that their living conditions are preserved in this respect.
20. In the interests of the character and appearance of the area, it is important that refuse bins are limited to a maximum number and that they are kept at the rear of the appeal site when the refuse is not due for collection. In addition to this, the retention of the front hedge and gated accesses would help to preserve the character and appearance of the area and so condition 5 is necessary in my view.
21. In order to encourage the use of non-car modes of transport, to protect the area's appearance and to deter crime, I have imposed a condition requiring the provision of secure enclosed bicycle storage on the appeal site.

Conclusion

22. Having taken into account all representations made, including the views of local residents and other interested parties, I conclude that the appeal should be allowed.

Megan Thomas

INSPECTOR