The Planning Inspectorate

Appeal Decision

Site visit made on 28 May 2012

by R J Perrins MA MCMI ND Arbor

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

Decision date: 27 June 2012

Appeal Ref: APP/B1740/C/12/2168468
Highlands, Salisbury Road, Ower, Southampton, Hampshire SO40 2RQ.

- 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 David Kay against an enforcement notice issued by New Forest District Council.
- The Council's reference is EN/06/0567.
- The notice was issued on 7 December 2011.
- The breach of planning control as alleged in the notice is without planning permission the material change of use of the land and premises from a dwellinghouse (class C3) to a mixed use of a dwellinghouse (class C3) and a club (a use falling within Use Class D2 of the Town and Country Planning (Use Classes) Order 1987).
- The requirements of the notice are:
  (i) Cease the use of the land outlined in red on the attached plan as a club.
  (ii) Remove from the site all items and equipment used to facilitate the unauthorised use.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) (b) and (e) of the Town and Country Planning Act 1990 as amended.

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.

The appeal on ground (e)

2. The appellant states that he only received a copy of the enforcement notice when it was given to him by the tenant of the property on 6 January 2012. Therefore the minimum 28 day notice period has not been provided to him. The Council aver that, following a Land Register search and their own investigations, copies of the notice were served on the appellant at the address cited on the appeal property's title absolute; the tenant of Highlands; and the Mortgage Company.

3. S172(2) of the Act provides that a copy of the notice shall be served on the owner and occupier of the land to which it relates, and on any other person having an interest in the land, including mortgagees, tenants and sub-tenants, being an interest which, in the opinion of the Local Planning Authority, is materially affected. It appears to me all reasonable attempts were made to serve the notice in accordance with S172. In any event, S176(5) provides for non-service to be disregarded if no substantial

prejudice has arisen. The appellant has been able to lodge an appeal against the notice. In addition he has had the opportunity to add to his appeal, by way of an appeal statement, in accordance with the timetable as set out in the letter from the Planning Inspectorate dated 20 January 2012. For these reasons I am unable to identify any substantial prejudice in this instance.

4. In light of the foregoing, the appeal on ground (e) fails.

The appeal on ground (b)

5. This ground of appeal is that the matters alleged in the notice have not occurred. To that end the appellant avers that the property has been used as a private residence since July 2007; the occupiers of the property have held parties for Couples and Singles interested in the 'Swinging' lifestyle. Those parties also took place under the previous ownership. The parties are a lifestyle choice, constitute a small amount of time, and do not amount to a commercial venture or business; thus the property is being used as a dwelling and no change of use has occurred.

6. In brief, the Council maintain the premises are being used predominantly as a club for members and private members (depending on the party organisers). Fees for events and one-off fees are charged to those using the premises and any residential use is minimal. For these reasons a material change of use has occurred to a use falling within Class D2.

7. There is no dispute that the premises are used for parties as described above. I was able to see that the premises have all the facilities that one would imagine would be required to facilitate such events. These included a large lounge area with central dancing pole, kitchen with bar area and office. First floor bedrooms were clear of the majority of domestic items one normally associates with a dwellinghouse. All bedrooms have beds of different sizes and shapes. In some cases the beds fill the majority of the available space, there are dark rooms and another with large circular bed to the centre, which has 'windows' in a side wall with views through from the adjacent corridor.

8. The ground floor includes a 'dungeon' and, along with the converted garage, contains a number of pieces of large equipment which I understand are associated with bondage and other activities. A cage with high level winch could be found in the garden along with a tall thin shed-like structure rather like a sentry box with a number of lockable doors. The garden also contains a large Jacuzzi, outdoor seating area and a caravan with large bed. Throughout the premises there is a proliferation of mirrors, cameras, audio speakers, drapes, wall and ceiling hook eyes, floor to ceiling poles, unconventional interior design and lack of domestic paraphernalia. All of these factors lead the viewer to question the premises use as a dwellinghouse.

9. In addition to this I was able to see a number of cupboards within the property. These include; built in wardrobes, as one would normally expect to see in a dwellinghouse; a series of lockers in one of the upstairs rooms typical of that found in gymnasiums and swimming pools; downstairs a walk in cupboard containing a large volume of assorted drinks; and in the garage room a wall cupboard containing an assortment of equipment and 'toys'

associated with the activities that take place, and commensurate with the pieces of equipment found, within the room.

10. Whilst all of those cupboards and their contents could be found within a domestic dwelling, the majority were lockable or locked during my site visit. To my mind that is at odds with the appellant's argument that the premises are only used for parties involving friends who may bring new friends. If that were the case, I am not convinced such security measures would be required.

11. Furthermore the Council and residents have submitted a large number of pages from websites. This evidence is undisputed and relates to 'Swingers Junction' and includes a photograph and the address of the premises subject of the enforcement notice; it is clear that 'Swingers Junction' is the advertised name of the Club that is run from the premises. The pages also set out that the property was 'specially purchased' to host adult minded parties and the house may be rented in full or part or hired for an hour, a full weekend, or anything in between. Rates are advertised for hire of the 'Dungeon' during the day and on non-party nights.

12. It is also clear that advanced booking and registration is required, a membership fee or 'entry contribution' is collected from attendees, and some of the events are 'ticket only'. Entry contributions are advertised and vary from £10 to £45 and a loyalty scheme, whereby anyone attending between certain dates four times will be entitled to a 'free party', has also been advertised. The Council's evidence includes copies of comments from visitors, posted on line, which refer to various matters including; "friendliness of staff"; "one very happy customer"; "people grabbing your money on the door"; "£75.00 down the plug hole"; "we were pounced upon by the owners for money again inside"; and "SJ is a little more expensive than some other swingers clubs".

13. In addition to this, undisputed evidence by way of web pages have been submitted by third parties which indicates parties have not been restricted to weekends, entry contribution is payable on arrival, and soft drinks and tea/coffee are sold. Whilst the evidence has not been tested it goes unchallenged and as such I give it significant weight.

14. Furthermore the activities as described do not go hand-in-hand with the appellant's assertions that the premises are only used for parties involving friends. It is apparent that the club is well advertised, well used and has all the characteristics of a business and, as websites extracts show, is marketed as 'The South *(sic)* Premier Adult Party Venue'. Any reasonable person viewing the website, associated advertising, and forums would be left in no doubt that payment is required to gain access to the club and being invited by a 'friend' is not a general requirement. Moreover, the events are not restricted to weekends and the premises, or parts of it, can be hired.

15. All of these matters do not lend any weight to the premises being used as a dwellinghouse and no evidence save for the appellant's statement has been submitted to support that case. The appellant avers that the premises are used 82% of the time as a dwellinghouse when comparing the ratio of parties to such a use. Further the contributions collected amount to a fraction of the rent or mortgage. The figures used for those calculations are not evidenced in any way and the statement remains untested and

uncorroborated by any further evidence, I give it little weight. There is nothing before me to indicate that all of the premises are used as a dwellinghouse, in any event, when no parties are being held.

16. Thus having considered all other matters raised I find, on the balance of probability, and as a matter of fact and degree, that there has been a change of use from a dwellinghouse to a use falling within Class D2. In the absence of any permission for such a use the appeal on ground (b) should fail.

The appeal on ground (a)

Main Issues

17. I consider the main issues in this case to be; the effect of the use upon the character of the countryside location; and whether the current use is consistent with sustainable principles.

Reasons

18. The property sits to the south of Salisbury Road a main road into Southampton. The premises are well-screened with spacious front and rear gardens. The front garden has the ability to accommodate a relatively large number of cars for a property of its size. The character of the area is predominantly rural. To the north on the opposite side of the road is a lay-by which runs in front of residential and agricultural properties. To the east , across an open field, are two residential properties sitting next to what appears to be a large area of commercial greenhouses. The A326 can be found to the west beyond another agricultural field and the M27 is a short distance to the north.

19. There is no dispute that the premises are some distance from the nearest neighbours. I also accept that there are many parties for those interested in the 'Swinging' lifestyle held throughout the country in residential properties. Such parties may have some stigma attached to them by some individuals and engender some prejudice. However, arguments regarding the 'suitability' of the particular activities carried out at the premises have not formed part of my deliberations.

20. So, turning to the first issue; it is evident from third party representations that parking in the lay-by opposite is a regular occurrence; that would be commensurate with the fact that it is advertised as 'overflow parking'. In addition the change of use has led to an increase in traffic movements to and from the premises. It is reasonable to assume, from the evidence before me, that those movements occur throughout the night into the early hours of the morning, that is borne out by the appellant's statement regarding parking and vehicle movements. The Council aver that at such times the locality is quiet and traffic is considerably less than that experienced during the day. That view is not disputed and given the rural location I see no reason to disagree.

21. The pattern of use associated with the D2 use is materially different to that of a dwellinghouse; the increased number of vehicle movements, number of cars parked in the front garden and lay-by, along with the comings and goings and discourse of visitors and the banging of car doors is at conflict with the rural location where it would be reasonable to expect a degree of

peace and tranquillity particularly during the early hours of the morning. It is the combination of these factors that leads me to find the use has resulted in unacceptable harm to the character of the countryside. I come to that view having considered the businesses and theme park brought to my attention by the appellant but there is nothing before me to suggest that these ventures operate late into the night or the early hours of the morning. In any event each case must be decided upon its own merits.

22. Turning to the second issue, I accept that people travel from all over the country to the venue and that those who attend such events may not wish to attend parties in their local neighbourhoods. There can be no dispute that the premises are in an ideal location for travel by car and I see no reason to disagree with the view that a town centre location may be unsuitable for guests wearing clothing that maybe considered 'lewd' in a public place. Also, I accept that similar parties are held in residential neighbourhoods where there may be no parking.

23. However, there is nothing before me to indicate that sustainable modes of transport are available in the locality. The premises' location and the availability of parking would encourage transport by car. That is unlike the examples cited by the appellant; for example one would expect a degree of sustainable transport to be available in residential areas and people visiting theatres in London are actively encouraged not to use the car. The issue of walking through a public place, I give no weight; a person can choose to cover up whatever they are wearing if required and this argument would effectively drive all such establishments into remote locations, which is clearly not the case. For these reason I find the use has had a negative impact upon the existing transport infrastructure and places unjustifiable reliance upon the private car.

Other matters

24. Whilst I accept there are no records of police complaints before me, it seems to me that third party assertions, that music from the events and the discourse of people when leaving the lay-by are activities that lead to broken sleep, should be given moderate weight. They remain unchallenged and I find that activities at the premises including parking in the lay-by would unacceptably harm the living conditions of occupiers of the nearby residential properties, particularly in the early hours of the morning. Whilst that has not formed part of the Council's case it adds further weight to my decision to dismiss the appeal.

25. I have also considered the appellant's unsuccessful attempts to contact and negotiate the matter with the Council. Whilst this is laudable, the issue of the contact not being returned by the Council is a matter for them as is the issue regarding the amount of Council tax being paid.

26. Finally, the appellant avers that interruption of the activities at the premises could interfere with individual's rights under Article 8 of Protocol 1 of the Human Rights Act, which provides for individuals to carry out whatever activities in the privacy of their own home. Given I have found, under the ground(b) appeal, that a change of use has occurred from a dwellinghouse such rights do not fall to be considered.

Conclusions

27. For the reasons given above and having considered all other matters raised I find the use is at conflict with Policy CS1 of the of the New Forest District (outside the National Park) Core Strategy (2009) (CS) which expects all new development to make a positive contribution to the sustainability of communities and to protecting, and where possible, enhancing, the environment. It is also at odds with Policies CS10 & CS24 of the CS which set out, amongst other things, that development is accessible by both car based and other transport modes, whilst ensuring that reliance upon the private car, and any adverse impacts of traffic and parking, and the existing transport infrastructure, are minimised.

28. Finally, in reaching my conclusions I have taken into account the recently published National Planning Policy Framework. However, I have not been provided with any substantive evidence which would lead me to conclude that the CS policies referred to above are inconsistent with the Framework. Accordingly, the Framework has not led me to reach any different overall decision.

Richard Perrins

Inspector