



SOUTHAMPTON CITY COUNCIL - STATEMENT OF CASE

Town and Country Planning Act 1990 (As Amended)

Section 78 Appeals – Written Representations

An appeal by **Mr H Singh** against the decision of Southampton City Council to Council to refuse planning permission for the conversion of existing building into 5 flats (2 x 3-bed, 2 x 2-bed and 1 x 1-bed) with associated parking and cycle/refuse storage.

INSPECTORATE REF	APP/D/1780/C/15/3008850
LOCAL PLANNING AUTHORITY REF:	14/00999/FUL
APPEAL SITE ADDRESS	13 Grosvenor Road, Southampton

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1.0 INTRODUCTION

1. The planning application subject of this appeal, was received by the Local Planning Authority on 12.06.2014 and given the following description:-

Conversion of existing building into 5 flats (2 x 3-bed, 2 x 2-bed and 1 x 1-bed) with associated parking and cycle/refuse storage.

2. Following public consultation, which resulted in 24 objections from local residents (copies forwarded with the appeal questionnaire), the application was refused by Members at Planning Panel on 28.10.2014 despite a favourable recommendation for the following reasons: -

1. *Reason for Refusal - Harm to the amenity of neighbours and character of the area*

The proposed creation of five flats would result in a level and intensity of occupation, combined with a pattern of activity to and from the property that would be likely to harm the amenity of neighbours through noise and general disturbance and also be likely to exacerbate on street parking difficulties. This in turn would have an adverse impact on the character of this immediate part of the street, which is predominantly comprised of single family occupied dwellings, contrary to the government's objectives to create stable attractive communities under paragraphs 7 (2nd bullet point), 58 (1st bullet point) and 69 of the National Planning Policy Framework. As such, the proposed conversion of the property to one which would be multiply occupied by 5 dwellings with shared integral cycle store and common refuse facilities, with inconvenient access to a relatively remote common garden space for 3 flats would be contrary to the following policies of the Development Plan for Southampton:-

Local Plan Review (March 2006) - 'saved' policies SDP1 (i), SDP7 (v), SDP16 (i), H1 (iv), H2 (iii) and H4 (i)/(ii).

Local Development Framework Core Strategy (January 2010) - policies CS5 (1) and CS13 (11).

02. *Reason for Refusal - Parking Permit Restriction*

In the absence of a satisfactory legal agreement to ensure that these flats will not seek access to parking permits to park in the neighbouring controlled parking zones, the Local Planning Authority considers that the scheme fails to mitigate against its direct impact and could result in overspill car parking taking place from the development which would give rise to an unacceptable risk of serious inconvenience and danger arising from increased parking demand in Grosvenor Road. As such the proposals conflict with the guidance contained in s. 4.2 of the Parking Supplementary Planning Document (2011) and with the aims of Policy CS19 of the adopted LDF Core Strategy Policy (2012).

2. PROPOSAL

- 2.1. The scheme seeks again to provide five Class C3 flats with an integral bicycle store at ground floor. No external changes are proposed. On the ground floor of the building 2 three-bed units are proposed. Access to the front flats can be via the side elevation or the front. At first floor a further two flats are proposed which are both two-bed. Within the roofslope a two-bed unit is provided. All the units are accessed via the front door with direct access provided access to the rear garden area. The rear-most flat on the ground floor would have 3 bedrooms and access to a dedicated area of garden with the remainder of the garden given over to serve the four other flats. The amenity space provided for all the units complies with policy. Refuse storage is proposed to the rear and will be secured via a condition. Three car parking spaces are proposed within the existing driveway.

3.0 DESCRIPTION OF SITE AND SURROUNDING AREA

- 3.1 The building is a substantial detached property on the west side of the street between the junctions of Welbeck Avenue, to the north, and Grosvenor Gardens to the south. Dwellings have off-street parking, but few have on-site turning. There is very large garden to the rear and to the front is a hard surfaced forecourt sloping down from the front door to the street. This is capable of accommodating 3 cars safely.
- 3.2 Either side of the site are single family detached houses. A great part of the street is comprised of detached character properties, in use as single family houses, but elsewhere in the street there are semi-detached properties and some purpose built flats, such as Richmond Gardens, Grosvenor Court, Dawtrey Court, Richmond Hall and Grosvenor Lodge all south of the application site. The site lies within a residents' parking permit zone.
- 3.3 A copy of the site location plan is attached as **Appendix 1**.

4.0 RELEVANT PLANNING POLICIES

- 4.1 The National Planning Policy Framework (NPPF) came into force on 27th March 2012 and replaces the previous set of national planning policy guidance notes and statements. The Council has reviewed the Core Strategy to ensure that it is in compliance with the NPPF and accords with its presumption in favour of sustainable development. It is satisfied that the vast majority of policies accord with the aims of the NPPF and therefore retain their full material weight for decision making purposes, unless otherwise indicated. The Adopted Core Strategy (2010) was subsequently amended by the Adopted Core Strategy Partial Review in March 2015 to incorporate this change along with a reduction in development targets for new office and retail floorspace.

4.2 For the purposes of Section 38 (6) of the Planning and Compulsory Purchase Act 2004 which re-enacts the requirements of Section 54 (a) of the 1990 Act the following adopted plans, policies and guidance are relevant.

4.3 **Local Development Framework Core Strategy Development Plan Document – March 2015**

The Core Strategy was first adopted as the Statutory Development Plan for the city on the 20th January 2010. Since the refusal of the application the Core Strategy has been updated (March 2015) but the previous 'saved' policies have not changed. The policies within this plan should be afforded significant weight in the determination of this appeal. The following policies are relevant to the consideration of this appeal:

CS5	Housing Density
CS13	Fundamentals of Design
CS18	Transport
CS20	Tackling and adapting to climate change
CS25	Infrastructure Delivery and Developer Contributions

4.4 **City of Southampton Local Plan Review (Adopted) - March 2006**

The local plan review was first adopted as the Statutory Development Plan in 2006. Since the refusal of the application the Local Plan Review has been updated and the saved policies adopted for development management purposes (March 2015). The previous 'saved' policies have not changed. The following saved policies of the Local Plan should be accorded due weight in the determination of this appeal:

SDP1	Quality of Development
SDP7	Context
SDP16	Noise
H1	Housing Supply
H2	Previously Developed Land
H4	Houses in Multiple Occupation

5. **RELEVANT PLANNING HISTORY**

5.1 **SITE HISTORY**

The full planning history can be found in **Appendix 2** including the reasons for refusal associated with refusal 12/01449/FUL. The most recent and relevant applications are set out below;

5.2 The authorised use of the site is a single dwelling as approved under permission 02/00482/FUL. This allowed for No. 11 and No.13 to be separate single dwelling houses, having previously been operating as a residential care home. An enforcement appeal was dismissed

on 11th July 2012 as the property was being unlawfully used as an HMO. **Inspector's Decision is attached at Appendix 3.**

5.3 An identical case planning application no 12/01449/FUL was refused under delegated powers for the same reasons. This decision was appealed and dismissed 15.08.2013. **The Inspector's Decision is attached at Appendix 3.**

6. REPRESENTATIONS

6.1 Publicity was undertaken in accordance with the Council's adopted publicity procedures as a result of which 24 representations were received, including a Barrister's Opinion to support the objection raised by the Highfield Residents' Association. The representations can be summarised as follows:

- The layout of the flats are not ideal family units as the linkages internally with each room and with the external space is not convenient. Amenity space would be insufficient to cater for stated intensity of occupation.
- The proposal would result in a mini-student hall and the proposal results in an HMO
- Over intensive use of the site, contrary to council policy and NPPF, likely to harm amenities of neighbours through noise and general disturbance (alleged from previous occupiers and other properties in the street) and harm character of this part of the street predominantly made up of single family dwellings.
- The lack of a car parking survey carried out during term time.
- Highway safety issues due to the number of proposed cars. Overspill parking likely from intensity of use which would inconvenience nearby residents.
- Refuse storage would be unsightly.
- Precedent, which has been witnessed in nearby streets to have adversely eroded the family character of those streets and it is alleged affecting the viability of the Portswood primary school.
- The planning statements are misleading (rest home use having ended over 10 years ago) and that 15 bedrooms were created/ through sub-division by owner in property that formerly only had 6 bedrooms. It is considered that such sub-division works should be undone, which would then again make the property attractive to a large extended family/home working.
- If to be consented, wish to see a condition restricting the use of the flat roof in order to prevent overlooking
- The forecourt is untidy and unsightly.
- The flats are small.

7. COUNCIL'S STATEMENT OF CASE

The applicants have continued to push a scheme that the Council have issues with and look for a chink in the appeal decisions upon which to build the foundations of their case. This does not result in good sustainable planning. In this latest case the Council's Planning & Rights of Way Panel refused the application for 2 reasons and, in doing so, attached weight to the barrister's opinion submitted in opposition to the proposal, in addition to the development plan as listed above. The barrister's opinion and addendum should be read alongside the Council's reasons for refusal and this Statement Case and forms a material consideration in the case.

7.1 Reason for refusal 1 – Harm to the amenity of neighbours and character of the area

7.1.1 The Council's case with respect to reason for refusal one is as set out in the reason for refusal as expanded below.

7.1.2 There is a difference between a large single dwelling and 5 smaller flats – it represents a material change of use for which planning permission is required and an assessment as to the impact then follows. Five separate households function differently to one larger one. For instance, there would be 5 sets of deliveries and servicing requirements instead of the single trip required for the single dwelling. It is the Council's case that the creation of five flats within a property with the authorised use as a C3 family dwelling would result in harm due to the level and intensity of occupation. In addition, combined with a pattern of activity to and from the property an approval would be likely to harm the amenity of neighbours through noise and general disturbance. It is also likely to result in on-street parking difficulties as the demand for a finite number of on-street parking spaces is increased. This proposal will result in 5 separate planning units instead of the lawful use as a single family dwelling. If a family unit were to occupy the property (even a large extended family) it is more likely to be a fairly settled form of occupation, under parental control, with reasonably predictable comings and goings from the property, usually at sociable hours. Furthermore one pair of bins would serve a family and depending on who was of an age to hold a driving licence, and income levels, the level of car ownership could be relatively low and more likely to be accommodated on the property forecourt.

7.1.3 Five separate units of differing sizes (with together 11 bedrooms) would result in occupiers of various ages and occupations using the units in an unpredictable manner which could be outside sociable hours. The Planning Inspector in the 2013 appeal for the same proposal felt that the level of occupation would not be akin to that seen when the site was in use as an HMO. The previous Inspector felt only 11 occupiers would occupy the unit which the Council finds hard to guarantee due to the size of the rooms and units proposed. The previous Inspector also commented that future occupiers could have lodgers and that they would use the same control that parents would use in terms of controlling the noise and disturbance. Little or no evidence is given for these conclusions. If occupiers have lodgers then a two-bed

unit could have three people in it i.e. a lodger and a couple and the same is true for the other units. Regardless of the control that the previous Inspector relies on, and the proposed number of occupiers, the Council and the barrister in their opinion (**Appendix 4**) believe that the comings and goings of the five separate units would have an impact on the noise and disturbance in the area, especially at night, and that these impacts would be significantly worse than if the dwelling was retained as a single planning unit.

- 7.1.4 No other property in the street is this large - a legacy of it having been extended whilst in care home use. Five flats would contribute to the housing supply and create a mix of dwelling choice. The physical alteration of the property to create 5 Class C3 dwellings is possible and achievable and the accommodation would generally be of a good size and layout with plenty of access to natural light and adequate amenity space. This is not a ground for a refusal – however, access for the 3 flats on the first and second floors would not be through the building, but rather via the side alleyway adjoining 11 Grosvenor Road, contrary to the requirements of Policy H4 of the Local Plan Review as the policy requires a ‘*safe and convenient access from all units’ to the amenity space*’.
- 7.1.5 The Planning Inspectorate in the 2012 appeal for the unlawful use of the property as an HMO agreed that access to the rear of the site via the side access would lead to problems. This conclusion still holds good. The Inspector stated that ‘*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*’. The Council agrees with the above statement and adds that two of the units are capable of housing families (needed to satisfy the Council’s no net loss of family housing as set out in LDF Core Strategy Policy CS16), but the remote nature of the rear garden and the shared access to it would prevent the occupiers utilising the site in the manner proposed. Parents will not want to use a remote garden area if a safe and convenient access for children is not provided. This element will put off occupiers from using the rear area and will affect future occupier’s residential amenities regardless of the Inspectors previous comments that ‘*natural surveillance*’ will occur.
- 7.1.6 The Council concludes that regardless of the previous appeal decision, which it notes is a material consideration, the Council believes the use of the site for the number of units proposed would lead to an adverse impact on the levels of noise and disturbance felt by the adjacent occupiers as supported by the 2012 Inspector’s decision.
- 7.1.7 In terms of the impact on the character of the area, the introduction of five units within an area of predominately family dwellings would have an adverse impact in terms of character of the area especially having regard to the car parking to the front of the property and the location of the refuse storage. In these circumstances it is more likely the bins would be left on the front

forecourt, where despite their screening, they would seem unusual in the context of other residents' smaller wheeled bins. The previous Inspector states that this one site would not alter the character of the area, but the Council disagrees as the area will be altered as it is a large site with a large front garden area which with the bins and parking would detrimentally alter the character of the area. It only takes one site to change an established pattern of development and future schemes could come forward with a further incremental change.

7.1.8 Leading on from noise/disturbance and character, the proposal is deemed to exacerbate parking issues, whilst the Council operates maximum car parking standards and 3 off-street parking spaces could comfortably be provided, potential patterns of occupation described above could lead to a demand for car parking that would overspill onto the street. The site is located within an area known to have parking issues for the residents that has led to the introduction of a parking permit scheme.

7.1.9 The Planning Inspector in 2013 decision stated that *'in 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...'*. It is noted a parking survey was submitted as part of the application but the parking only shows a snapshot of the parking pressure on that road in the area at that time and not the wider area. Notwithstanding parking spaces being shown it is important to note that parking permits are only restricting during the day time. There is the ability for residents to park till 10am in the morning and from 4pm in the evening as it is a two hour allowance each day within the 8am - 6pm restriction time. Parking can be achieved without permits and visitors can park at night without requiring a permit. Therefore, it is likely that a development of this scale will result in some level of on-street parking, be it occupiers or visitors, and as such the proposal would exacerbate parking issues in the area, particularly after the typical working day when demand for parking will be at its greatest.

7.1.10 The merits of housing delivery are not considered to outweigh the aforementioned concerns and the Council has a 5 year land supply to demonstrate that it is working with the development industry, wherever it can, to secure housing for the City's needs. As such, due to the intensification of the site which would result from the development it is the Council's submission that the proposal is thereby contrary to 'saved' policies *SDP1 (i), SDP7 (v), SDP16 (i), H1 (iv), H2 (iii) and H4 (i)/(ii)* of the adopted City of Southampton Local Plan Review (March 2006) and policies *CS5 (1) and CS13 (11)* of the adopted Local Development Framework Core Strategy (January 2010) – *albeit the Policy documents have been readopted in 2015*.

7.2 Reason for refusal 02 – Parking Permit Restriction

7.2.1 The Local Planning Authority will not be offering any evidence to support the second reason for refusal and have advised the appellant accordingly. The offer of a parking permit

restriction was originally given by the applicant and later objected to by their team following the planning refusal.

8. Response to the Appellant's Grounds of Appeal

8.2 The statement of case above addresses many of the points raised in the appellant's statement and Grounds of Appeal. However, the Council seeks to address a number of specific points raised.

8.3 At paragraphs 9.5 -9.8 within their case the appellant suggests that the Inspector's decision on the previously identical scheme should hold weight. The Planning Committee who made the decision are within their rights to disagree with Officers recommendation and the Planning Inspectorate if their reasoning is sound and other material considerations dictate. As set out above it is clear that the use as a lawful dwelling in comparison to the conversion to flats would be different. Whilst the appellant's suggest that this change would be acceptable the Council feels that an adverse impact on the character of the area and neighbouring occupiers would arise due to the notable differences between how five households would occupy the site when compared to a large single family. The Officer recommendation and the Inspectors decision are indeed material planning considerations, but the Council assessed the development against all the relevant planning considerations and concluded the proposal did not address the previous reasons for refusal. Weight has been attached to the objection from the Highfield Residents Association, and their barrister's opinion, in reaching this conclusion and the Planning Panel gave due consideration to the the weaknesses of the earlier appeal decisions and the need for more evidence before a conclusion of zero harm can be reached.

8.4 The comments relating to car parking are addressed above in section 7 of this Statement. It is noted that the Council has decided not to defend the reason for refusal relating to permit parkings.

9.0 CONCLUSION

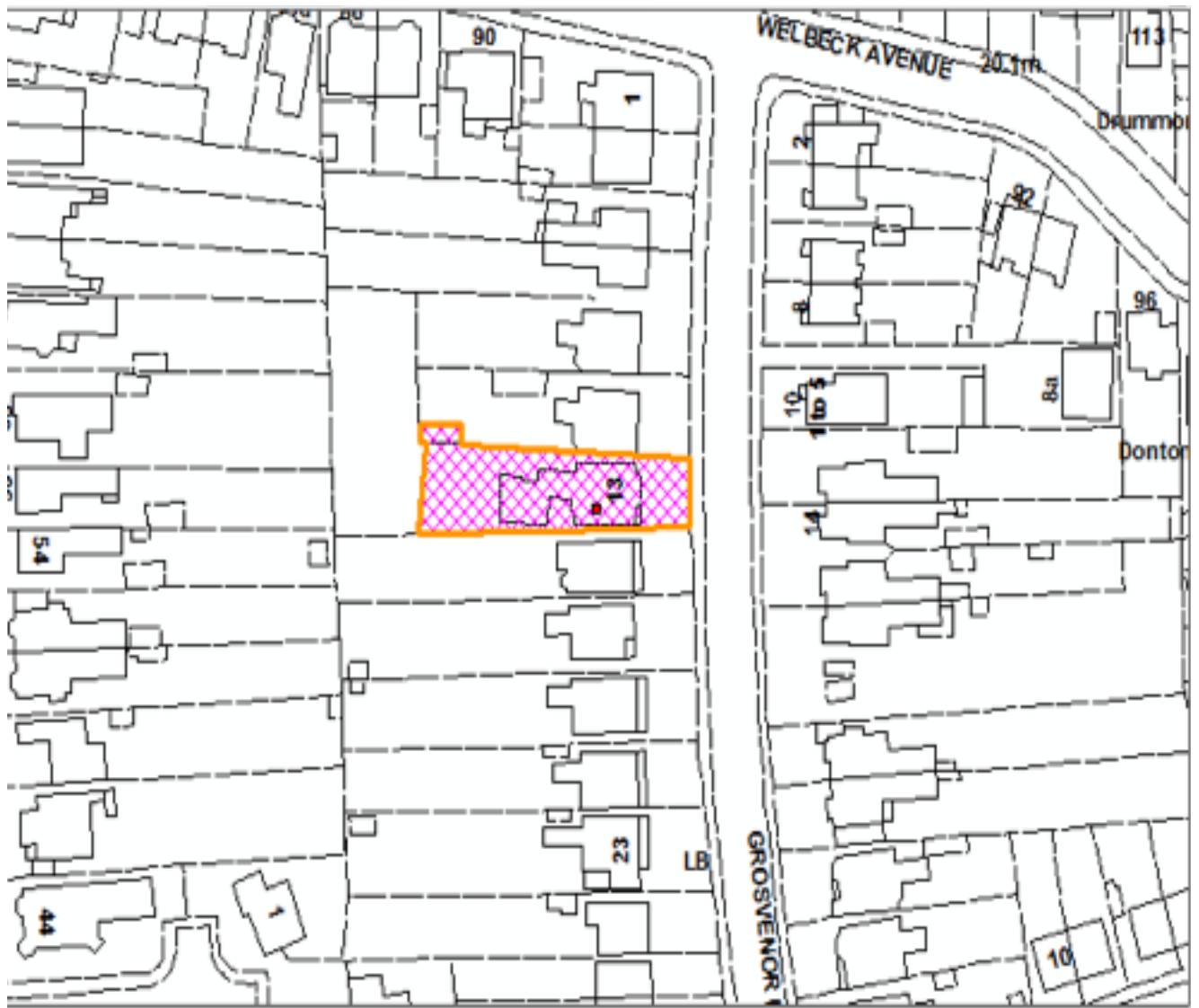
9.1 It is the opinion of the Local Planning Authority that the appeal should be assessed as contrary to the provisions of policies and guidance contained in the City of Southampton Core Strategy Development Plan Document (2015), the City of Southampton Local Plan Review (2015) and relevant planning policy and design guidance.

9.2 The conflict with local planning policies is clearly set out in the reason for refusal specified in the Decision Notice.

9.3 For the reasons given in this statement, the Local Planning Authority respectfully requests that the appointed Inspector dismisses this appeal.

9.4 However, if the Inspector is minded to allow the appeal, the Local Planning Authority requests that the conditions set out in **Appendix 5** be attached.

APPENDIX 1- LOCATION PLAN



APPENDIX 2- RELEVANT PLANNING HISTORY

1368/6 Conditionally Approved 25.3.1969
Extension to existing house at 13 Grosvenor Road.

1512/M2 Conditionally Approved 9.9.1976
Rooms in roof and dormer windows at 13 Grosvenor Road.

1601/M19 Conditionally Approved 16.6.1981
Use of premises as a rest home at No. 13 Grosvenor Road.

M27/1639 Conditionally Approved 20.12.83
Use of 11 Grosvenor Road as rest home and erection of a single storey link between 11 and 13 Grosvenor Road. (Implemented).

M03/1661 Conditionally Approved 14.05.1985
Erection of a single storey rear extension to provide 1 x 1 bed self-contained flat at 13 Grosvenor Road.

02/00482/FUL Conditionally Approved 17.05.2002
11-13 Grosvenor Road - Change of use to form two dwellings (Implemented).

11/00038/ENUDEV
Investigation into unauthorised works at the property. Complaint received 24.1.2011. At site visit 25.1.11 owner (H Singh) stated refurbishment of property (which was not occupied) being carried out and construction of brick built outbuilding being undertaken as permitted development. Case closed at that time but owner advised that planning permission required to covert building into flats or occupy as sui generis house in multiple occupation.

11/00196/ENCOU
Investigation into unauthorised change of use into house in multiple occupation. Complaint received 13.6.2011. Rights of Entry used to access property. Established that two separate tenancy agreements had been drawn up to commence 1.7.2011; one for 7 persons, other for 8 persons. Officers seek to obtain prospective tenants' contact details to pre-warn them that council seeking to take out an injunction to prevent the unauthorised use commencing. Interim injunction allowed by High Court, but not confirmed at second Hearing on basis that harm to tenants being made homeless outweighed potential harm to neighbourhood, which could be remedied by planning enforcement notice.

11/01025/FUL Refused 13.09.2011
Change of use from Class C3 to a Sui Generis 15 bedroom student house.

Reason for Refusal - Harm to the character of the area

The local planning authority considers that the intensification of residential occupation of the property from either family occupation within class C3, or from a C4 occupation by up to 6 unrelated persons, to occupation as Sui Generis House in Multiple Occupation by 15 persons would cause serious harm, contrary to policies of the Development Plan for Southampton (SDP7 (v), H4 and SDP16) Local Plan Review (March 2006) and CS16 (3) Core Strategy (January 2010). The proposed use is also considered contrary to relevant advice set out in Planning Policy Statement 3 (Housing) and the consultation draft of the Draft National Planning Policy Framework. The harm from this over intensive use of the property would manifest itself in the following ways:-

(i) Disturbance to neighbouring occupiers from comings and goings to and from the site by 15

- separate students at various times of the day and night and their use of the garden at the property, potentially more likely to be at unsocial hours (being that the tenants are to be students with more active lifestyles), which would not be compatible with the surrounding family housing;
- (ii) Adversely affect the character and nature of occupation of this immediate part of the street, by causing the loss of a single family house, in a street predominantly comprised of family houses and making it more difficult for the local planning authority to resist similar proposals in this street in the future;
 - (iii) Be likely to cause overspill parking difficulties in the street, prejudicial to highway safety with people having to park tight to others' driveways and access points, detrimentally interfering with driver visibility when emerging into the street, whilst also not demonstrating adequate secure cycle storage as an alternative to the private car;
 - (iv) Not demonstrating adequate refuse storage facilities, where the visual impact of the quantum of such storage would be likely to be visually intrusive in the street scene, given that the open forecourt of the property is the only realistic place to store refuse; and,
 - (v) Not demonstrating convenient access through the building by occupiers of the separate tenancy agreement for 8 persons in the front of the property, sought through 'saved' Policy H4 of the City of Southampton Local Plan Review (March 2006) as supported by Section 4.4 of the Residential Design Guide (September 2006).

11/01026/FUL

Refused 13.09.2011

Conversion of existing dwelling to 2 sui generis houses in multiple occupation (1 x 7 bedroom dwelling and 1 x 8 bedroom dwelling) with associated bin and cycle storage.

Reason for Refusal - Harm to the character of the area

The local planning authority considers that the intensification of residential occupation of the property from either family occupation within class C3, or from a C4 occupation by up to 6 unrelated persons, to occupation as Sui Generis House in Multiple Occupation by 15 persons would cause serious harm, contrary to policies of the Development Plan for Southampton (SDP7 (v), H4 and SDP16) Local Plan Review (March 2006) and CS16 (3) Core Strategy (January 2010). The proposed use is also considered contrary to relevant advice set out in Planning Policy Statement 3 (Housing) and the consultation draft of the Draft National Planning Policy Framework. The harm from this over intensive use of the property would manifest itself in the following ways:-

- (i) Disturbance to neighbouring occupiers from comings and goings to and from the site by 15 separate students at various times of the day and night and their use of the garden at the property, potentially more likely to be at unsocial hours (being that the tenants are to be students with more active lifestyles), which would not be compatible with the surrounding family housing;
- (ii) Adversely affect the character and nature of occupation of this immediate part of the street, by causing the loss of a single family house, in a street predominantly comprised of family houses and making it more difficult for the local planning authority to resist similar proposals in this street in the future;
- (iii) Be likely to cause overspill parking difficulties in the street, prejudicial to highway safety with people having to park tight to others' driveways and access points, detrimentally interfering with driver visibility when emerging into the street, whilst also not demonstrating adequate secure cycle storage as an alternative to the private car;
- (iv) Not demonstrating adequate refuse storage facilities, where the visual impact of the quantum of such storage would be likely to be visually intrusive in the street scene, given that the open forecourt of the property is the only realistic place to store refuse; and,
- (v) Not demonstrating convenient access through the building by occupiers of the separate tenancy agreement for 8 persons in the front of the property, sought through 'saved' Policy H4 of the City of Southampton Local Plan Review (March 2006) as supported by Section 4.4 of the Residential Design Guide (September 2006).

11/02001/FUL

Refused 27.03.2012

Conversion of existing dwelling to 2x 5 person dwellings in multiple occupation (Class C4) with associated bin and cycle storage.

Reason for Refusal - Harm to the character of the area

1. The local planning authority considers that the intensification of residential occupation of the property from either family occupation within class C3, or from a C4 occupation by up to 6 unrelated persons, to occupation as 2 No. Class C4 Houses in Multiple Occupation, by 5 persons in each dwelling, would be an overdevelopment of the site and cause serious environmental harm. This would be contrary to policies of the Development Plan for Southampton (SDP7 (v), H4 and SDP16 of the Local Plan Review (March 2006) and CS16 (3) Core Strategy (January 2010). If granted permission, the proposals would prove contrary to the emerging Supplementary Planning Document on Houses in Multiple Occupation, approved by cabinet on 12 March 2012. The proposed use is also considered contrary to relevant advice set out in Planning Policy Statement 3 (Housing) – particularly paragraphs 9,13 and 49. It is also though contrary to paragraphs 19 (final bullet point) and 116 (first and fourth bullet points) of the consultation draft of the Draft National Planning Policy Framework. The harm from this over intensive use of the property would manifest itself in the following ways:-

- (i) Disturbance to neighbouring occupiers from comings and goings to and from the site by 10 separate persons at various times of the day and night and their use of the garden at the property would not be compatible with the surrounding family housing; and,
- (ii) Adversely affect the character and nature of occupation of this immediate part of the street, by causing the loss of a single family house, in a street predominantly comprised of family houses and making it more difficult for the local planning authority to resist similar proposals in this street in the future.

12/01449/FUL

Appealed and dismissed 15.08.2013

Conversion of existing building into 5 flats within Class C3 (2x3x- bed, 2x2 - bed, 1x1 - bed), with associated cycle and refuse facilities and 3 car parking spaces.

Reason for refusal - Harm to the amenity of neighbours and character of the area

The proposed creation of five flats would result in a level and intensity of occupation, combined with a pattern of activity to and from the property that would be likely to harm the amenity of neighbours through noise and general disturbance and also be likely to exacerbate on street parking difficulties. This in turn would have an adverse impact on the character of this immediate part of the street, which is predominantly comprised of single family occupied dwellings, contrary to the government's objectives to create stable attractive communities under paragraphs 7 (2nd bullet point), 58 (1st bullet point) and 69 of the National Planning Policy Framework. As such, the proposed conversion of the property to one which would be multiply occupied by 5 dwellings with shared integral cycle store and common refuse facilities, with inconvenient access to a relatively remote common garden space for 3 flats would be contrary to the following policies of the Development Plan for Southampton:-

Local Plan Review (March 2006) - 'saved' policies SDP1 (i), SDP7 (v), SDP16 (i), H1 (iv), H2 (iii) and H4 (i)/(ii).

Local Development Framework Core Strategy (January 2010) - policies CS5 (1) and CS13 (11)

APPENDIX 3- APPEAL DECISIONS – 13 GROSVENOR ROAD



The Planning
Inspectorate

Appeal Decision

Site visit made on 16 July 2013

by Sukie Tamplin Dip TP Pg Dip Arch Cons IHBC MRTPI

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

Decision date: 15 August 2013

Appeal Ref: APP/D1780/A/13/2190531

Grosvenor Rest Home, 13 Grosvenor Road, Southampton, SO17 1RU

- 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 H Singh against the decision of Southampton City Council.
 - The application Ref 12/01449/FUL, dated 20 September 2012, was refused by notice dated 22 November 2012.
 - The development proposed is conversion of existing building into 5 flats with associated parking, cycle and refuse stores.
-

Decision

1. I dismiss the appeal.

Main issues

2. The main issues in this appeal are:
 - noise and disturbance
 - parking effects
 - living conditions of future occupiers
 - the character of Grosvenor Road

Reasons

Noise and disturbance

3. The appeal site is located on the west side of Grosvenor Road, and is flanked by substantial detached and semi-detached houses. Nos 13 and 11 were previously linked in connection with their joint use as a nursing home, but in recent years the two properties have been separated and planning permission has been granted for their use as two houses. During the years as a nursing home a large single storey extension was added at the rear of no 13.
4. In recent years no 13 has been used as a House in Multiple Occupation (HMO) and it appears that many of the rooms may have been subdivided at that stage to facilitate that unauthorised use. At one point an interim injunction was granted to prevent occupation by up to 15 students but was not renewed. Following the issue of an enforcement notice, a subsequent appeal was dismissed on three grounds, including because the use of the property was over-intensive and resulted in harm and disturbance to neighbouring occupiers.

5. The development before me is for a different configuration of accommodation, namely 5 self-contained flats, 2 being 3 bed units, 2 of 2 bed size and one a 1 bed flat. But I do not consider it probable that these 11 bedrooms would result in the building being occupied by up to 22 people, as suggested by the Council and local residents. Firstly, the submitted plans show a total of 16 bed spaces and the size of several of the proposed single bedrooms is such that it would be almost impossible for them to accommodate a double bed and other furniture. Secondly, the Council's *Planning Obligations Supplementary Planning Document* (PO-SPD) indicative occupancy levels referred to by the appellant suggest that units of the size and mix proposed would be likely to result in only around 10 or 11 persons in the converted house. Therefore, despite its proximity to the University, which no doubt makes this road attractive to students seeking accommodation in the vicinity, it seems to me that the fears of this building being occupied by as many or more people than the 15 when it was in use as an HMO are unlikely to be realised.
 6. Nevertheless, the proposed conversion would probably attract young professional couples such as first time buyers, and it maybe that some of the units would also contain one or two lodgers. But no evidence has been produced to indicate that occupiers of the 5 proposed flats would be likely to be especially noisy or be likely to cause more noise and disturbance than if the building were used for its authorised purpose as a single family dwelling. A building of the size of no 13, with some 18 rooms, could provide for occupation by an extended family with perhaps several teenage or grown-up children living at home, many with noisy sound systems or similar. The parental controls and pressures referred to by the Council in the case of single family use are in my view just as likely to be employed by couples to manage the behaviour of their lodgers in order to avoid trouble with neighbours, while on the other hand extended families may be as likely as young couples to hold large and noisy parties for friends and relations.
 7. Therefore, whilst I accept that in the former HMO use with around 15 occupiers the building was the source of much noise and disturbance, that was a very different arrangement where each individual could be characterised as constituting a separate household with a differing lifestyle and subject to little or no overall restraint. By contrast, the arrangement now proposed is, as the Council acknowledge, spacious internally and externally, with a good layout and plenty of access to natural light. Hence it is likely, by reason of its larger unit size and better living conditions, to be able to command higher prices and be more attractive to those who seek to avoid the problems associated with the less favourable living arrangements of an HMO occupied by students.
 8. It also seems to me that the layout of the proposed flats and their points of access are less likely to give rise to noise and disturbance to neighbours and to one another by comparison to that which I understand was the case when the building was in use as an HMO. Though the side entrance would remain facing no 11, it would be used solely by the occupiers of the proposed Flat G.02, and the occupiers of the other four flats would all use the front door as their only point of access to the building. Although access to the shared rear garden would result in the occupiers of those 4 flats passing close to the side of no 11, it seems to me this access would largely be used in the daytime. Hence it would be improbable that occupiers accessing the communal rear garden to put out washing, enjoy the space or carry out other garden activities would create any significant noise or disturbance to occupiers of no 11.
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9. I thus, conclude on the first main issue that the proposals would not cause unacceptable noise and disturbance to adjacent occupiers and hence cannot be considered a noise-generating development within the terms of saved Policy SDP16(i) of the adopted *City of Southampton Local Plan Review 2006* (LPR). For similar reasons the development would not conflict with the aims of saved LPR Policy SDP 1(i) which seeks to ensure that development does not unacceptably affect the amenity of the city and its citizens. Neither do I find conflict with a core aim of the *National Planning Policy Framework* (the Framework) which seeks development providing a good standard of amenity for existing and future occupiers of the building¹. Though referred to by the Council in the decision notice, I do not find saved LPR Policies H2 and H4, which deal with, on the one hand, vacant, derelict and underused land, and on the other hand with HMOs, to be material to my conclusions on this issue.

Parking

10. The Council's parking policy is contained in its Parking Standards Supplementary Planning Document PD (P-SPD) adopted in October 2011 and is part of the adopted Local Development Framework Core Strategy (LDF-CS); it thus attracts substantial weight. Although not referred to in the reason for refusal, I have been provided with this as part of the appeal documentation and because the appellant and the third parties are aware of its content no disadvantage would result if it is taken into account in my decision.
11. For residential development the P-SPD sets out maximum parking standards for Class C3 development which in this case seeks a maximum of 9 spaces for the proposed 5 units. The P-SPD says that this may be provided by both on- and off-street parking but that the latter should make up the majority of parking provision for larger developments. Whether the appeal proposals fall into this latter category is unclear but in any event two further considerations have to be taken into account.
12. Firstly, for schemes providing more than five bedrooms across all developments, some off-street parking is expected, and secondly, developers must demonstrate that the amount of parking provided will be sufficient, whether they provide the maximum or a lower figure. In this case the submitted plans show 3 parking spaces on the forecourt to the building, which would satisfy the first provision, but the appellant has produced no evidence to show that this would be sufficient to cater for the vehicular traffic likely to be generated by the 5 flats.
13. Therefore, although the Council may have made assumptions about the probable occupiers of the flats and the P-SPD may not provide typical traffic generation figures to be applied to planning proposals, the onus is plainly on the appellant to demonstrate adequacy of parking provision. This is supported by the response of the Highways Officer who, when consulted on the appeal proposals, would not give a formal reply until a parking survey had been undertaken to assess the situation in Grosvenor Road. The absence of such a survey thus weighs against the proposals.
14. Furthermore, in November 2012 a Residents Parking Zone (RPZ) was designated for Grosvenor Road and the surrounding area and, according to the Highfield Residents Association, this grants two on-street parking permits to

¹ National Planning Policy Framework paragraph 17

each household in the Zone. This would result in the issue of 10 parking permits to the occupiers of the proposed conversion which means that, together with the on-site spaces, up to 13 vehicles could be lawfully parked on and around the appeal premises. By way of comparison, if the building were used for its lawful use as a single dwellinghouse, no more than 5 vehicles could be parked lawfully on- and off-site.

15. Whether or not either of these figures would be realised depends on the nature and wishes of the presently unknown occupiers and it would be difficult to forecast accurately, especially in the absence of a parking survey. The imposition of the RPZ thus reinforces the need for such a survey and adds weight to my conclusion on this matter in paragraph 13 above. I have also taken into account my observations of parking in Grosvenor Road at the time of the site inspection (around 1130 hrs) when there were many on-street parking spaces available. However, a single observation in the middle of the day does not seem to me a reliable basis on which to assess maximum or even typical parking stress in this road. That is supported by the observations of the Inspector who dealt with the enforcement appeal on this property in 2012 and also noted that spaces for on-street parking were readily available but added that this is likely to be subject to periods of fluctuating demand.
16. The best evidence on this issue is that of the Highfield Residents Association who say that on-street parking in the road is already greatly in demand due in part to its proximity to the University and the Portswood local centre. They report that cars are habitually parked close to dropped kerbs causing obstruction to vision for those drivers who, as I saw, are in many cases accessing properties with no turning facility and who must either reverse onto or from their forecourt parking spaces. Hence, by being unsighted due to on-street parking, reversing vehicles pose a potentially serious danger both to other vehicles travelling along the road and to pedestrians, and especially children, using the footway.
17. On this second main issue I therefore conclude that in 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. This adds further weight to my earlier conclusion and I find that the proposals conflict with the guidance in Section 4.2 of the P-SPD and thus with the aims of Policy CS19, "Car and Cycle Parking"² of the Southampton LDF-CS. Such guidance and policy is consistent with the Framework which supports locally appropriate parking standards and the minimisation of conflicts between traffic and pedestrians³. Accordingly, this issue weighs heavily against permission.

Living conditions

18. I have already noted that the Council concedes the proposed flats would be of a good size and layout with plenty of access to natural light and an adequate quantum of amenity space, and I have no reason to disagree with that analysis. Accordingly it appears to me that the proposed density of the development would not be excessive or inappropriate in this area and therefore not conflict with LDF-CS Policies CS 5 and CS 13. I have also concluded that

² Parking Standards Supplementary Planning Document paragraph 2.1.1.1 refers

³ National Planning Policy Framework paragraphs 35 and 39

the access to that part of the rear garden shared by 4 of the flats, though it would pass the bedrooms of the fifth flat, would not cause unacceptable noise and disturbance. Such an arrangement is not ideal, but in the case of conversions of existing property is often unavoidable due to the layout of the building.

19. In this case, the large rear extension, built when the property was in use as a nursing home, occupies most of the back of the original main building making access for any unit in the main building to the rear garden all but impossible without either passing through the flat in the rear extension or using the side access. To my mind the proposed arrangement using the side access is preferable to splitting the rear flat and would enable residents of the other 4 flats to share a separate access to a good-sized private garden. Though this access would be lengthy it is not unreasonably so and the proposed layout does not suggest that access problems would arise such that the conversion would be unacceptable.
20. Nor do I consider this arrangement would be unsafe for children playing in the shared rear garden. An occupier of any of the proposed flats who had young children would almost certainly be aware of the occupiers of the other flats and in a position to make a judgment as to the safety of his or her children in that context. Moreover, the close proximity of other occupiers in this and adjacent buildings makes it likely that there would be good natural surveillance so that any untoward event would be likely to be seen, with a high probability of intervention by an observer. In the case of very young children it is also not unreasonable to expect a close level of parental supervision, with one or both parents playing or being in the shared space at the same time, albeit engaged in other tasks.
21. Hence I conclude that the living conditions of future occupiers would not be seriously harmed by the appeal proposals, which comply with the aims of LPR Policy SDP 1(i) in that they would not unacceptably affect the health, safety and amenity of the city and its citizens. I also find that the quality of the development would comply with guidance in the Framework that seeks development that would function well in the long term⁴.

Character of the area

22. The appellant does not accept that Grosvenor Road is one of the few roads in this area which has managed to retain its family home character, and points to no 11 as an example of a nearby HMO, and he believes the area to be a mix of HMOs, flats and family houses. On the basis of what I saw during my site inspection, and in the absence of more precise evidence, it appears to me that the character of Grosvenor Road remains, as the Inspector in the 2012 enforcement appeal found, predominantly residential with a high proportion of family-occupied dwellings.
23. That being so, the changes which would be introduced by conversion to 5 flats would seem to be limited to some additional activity as a result of there being 5 separate households, plus the presence on the forecourt of a multiple bin store. The use of the left hand front room as a shared entrance and cycle store may also result in some change in appearance compared to use as for example, a lounge or dining room in family occupation. But though these

⁴ National Planning Policy Framework paragraph 58

changes would affect the character of no 13 as a building, they are not so substantial as to radically alter the character of the entire street. No 13 is only one of many dwellings in Grosvenor Road, and no cogent evidence has been produced to show why a change to the proposed use should significantly affect the character of the street as a whole.

24. Moreover, the considerable size of no 13 compared to other houses nearby suggests that any use, including as a single family dwelling, would create a character which would not necessarily reflect the levels of activity and appearance of the other houses. Thus an extended family occupying the house would be as likely to generate comings and goings throughout the day and late at night as 5 separate households in the 5 proposed flats. Similarly, in single family use many vehicles would probably occupy the forecourt and multiple refuse bins would be required, perhaps housed for convenience on the forecourt.
25. Accordingly, whilst I agree that the proposals would result in the character of no 13 being different to that of most of the other dwellings in Grosvenor Road, it seems to me that those differences would not be so substantial as to affect the character of the road as a whole, nor would they be significantly different to what the character of this building would otherwise be, even if it were in single family occupation. Hence I conclude that no serious harm would be caused to the character of Grosvenor Road and the proposals do not conflict with the aims of LDF Policy C5(1) or LPR Policy SDP7(5) which respectively seek to protect and enhance the character of existing neighbourhoods and prevent material harm to the character and appearance of an area. I also find that the development would encourage a strong, vibrant and mixed community as supported by the Framework⁵.

Conclusions

26. In reaching my conclusions I have borne in mind that, despite assertions that the proposals amount to the formation of an HMO, what is before me is a proposal for conversion to 5 self-contained flats within Class C3, and that the change of use to an HMO in Class C4 within the Southampton City Council area constitutes development requiring planning permission. Given this context and the understandable close interest of local residents in this site, it would be highly improbable that any attempt to use the premises as an HMO, which in any case the appellant strongly denies, could succeed even in the short term. I also note that the Council say that the officers would be likely to recommend for approval the subdivision of this building into two Class C3 dwellings, so that at some point subdivision of no 13 may well occur.
27. Furthermore, as accepted by the Council, the provision of 4 additional units would contribute towards fulfilling housing needs in Southampton through the conversion of an existing building. It would thus be in accordance with LPR Policy H1 (iv).
28. I have found the proposals acceptable in terms of noise and disturbance, the living conditions of future occupiers and their effect on the character of the area. However, they pose an unacceptable risk of causing inconvenience and danger to drivers and pedestrians in Grosvenor Road due to the increased traffic which would be likely to be generated by the occupiers of the flats, given

⁵ National Planning Policy Framework paragraphs 7 and 69

the absence of evidence to the contrary in the form of a parking survey as required by the SPD in support of LDF-CS Policy CS19 and the recent designation of the RPZ in this area.

29. Therefore, for the reasons I have given and in the light of all other matters raised including the appeal decisions submitted as evidence, I dismiss the appeal.

Sukie Tamplin

APPENDIX 5- SUGGESTED PLANNING CONDITIONS

1. APPROVAL CONDITION - Full Permission Timing Condition - Change of use

The use hereby permitted shall begin not later than three years from the date on which this planning permission was granted.

Reason:

To comply with Section 91 of the Town and Country Planning Act 1990(as amended).

2. APPROVAL CONDITION - Storage / Removal of Refuse Material

Before the building is first occupied full details of facilities to be provided for the storage and removal of refuse from the premises together with the provision of suitable bins accessible with a level approach shall be submitted to and approved in writing by the Local Planning Authority. The facilities shall include accommodation and the provision of separate bins for the separation of waste to enable recycling. The approved refuse and recycling storage shall be retained whilst the building is used for residential / commercial purposes.

Reason:

In the interests of visual amenity, the amenities of future occupiers of the development and the amenities of occupiers of nearby properties.

3. APPROVAL CONDITION - Cycle storage facilities [Pre-Commencement Condition]

Adequate cycle storage facilities to conform to the Local Planning Authorities standards shall be submitted to and be approved in writing by the Local Planning Authority and be provided within the site before the development hereby permitted commences and such storage shall be permanently maintained for that purpose.

Reason:

To prevent obstruction to traffic in neighbouring roads and to encourage cycling as an alternative form of transport.

4. APPROVAL CONDITION Parking and Access [pre-occupation condition]

Prior to the occupation of the development hereby approved the three parking spaces shown on the approved plan to a size of 5m by 2.4m for the development shall be clearly marked out and allocated on 1:1 basis. The parking spaces shall be retained in perpetuity for that purpose and not used for any commercial activity unless agreed otherwise in writing by the Local Planning Authority.

Reason:

To ensure a satisfactory form of development

5. APPROVAL CONDITION - Retention of three bed unit [Performance Condition]

Notwithstanding the approved plans, the ground floor rear flat with access to a private rear garden shall unless agreed in writing by the Local Planning Authority remain a three bed unit with communal living areas to support the bedroom as shown on the approved plans

Reason:

To prevent the loss of a family dwelling as secured by policy CS16.

6. APPROVAL CONDITION - Restricted use of flat roof area [Performance Condition]

The roof area which incorporates a flat roof surface shall not be used as a balcony, terrace, roof garden or similar amenity area without the grant of further specific permission from the Local Planning authority.

Reason:

In order to protect the privacy of adjoining occupiers.

7. APPROVAL CONDITION Energy (Pre-Occupation Condition)

Written documentary evidence demonstrating that the development will at minimum achieve a reduction in CO2 emissions of 20% over part L of the Building Regulations shall be submitted to the

Local Planning Authority and verified in writing prior to the first occupation of the development hereby granted. Technologies that meet the agreed specifications must be installed and rendered fully operational prior to the first occupation of the development hereby granted consent and retained thereafter.

Reason:

To reduce the impact of the development on climate change and finite energy resources and to comply with adopted policy CS20 of the Local Development Framework Core Strategy Development Plan Document Adopted Version (January 2010).

8. APPROVAL CONDITION - Amenity Space Access [Pre-Occupation Condition]

The external amenity space serving the development hereby approved, and pedestrian access to it, shall be made available as a communal area prior to the first occupation of the development hereby permitted and shall be retained with access to it at all times for the use of the flat units.

Reason:

To ensure the provision of adequate amenity space in association with the approved flats.

9. APPROVAL CONDITION - Hours of work for Demolition / Clearance / Construction [Performance Condition]

All works relating to the demolition, clearance and construction of the development hereby granted shall only take place between the hours of;

Monday to Friday 08:00 hours to 18:00 hours (8.00am to 6.00pm)

Saturdays 09:00 hours to 13:00 hours (9.00am to 1.00pm)

And at no time on Sundays and recognised public holidays.

Any works outside the permitted hours shall be confined to the internal preparations of the buildings without audible noise from outside the building, unless otherwise agreed in writing by the Local Planning Authority.

Reason:

To protect the amenities of the occupiers of existing nearby residential properties.

10. APPROVAL CONDITION - Public Sewer protection [Performance Condition]

The developer must advise the Local Planning Authority (in consultation with Southern Water) of the measures which will be undertaken to protect the public sewers, prior to the commencement of the development.

Reason:

In order to safeguard the public sewer.

11. APPROVAL CONDITION - Approved Plans

The development hereby permitted shall be carried out in accordance with the approved plans listed in the schedule attached below, unless otherwise agreed in writing with the Local Planning Authority.

Reason:

For the avoidance of doubt and in the interests of proper planning



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

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

Land at Grosvenor Rest Home, 13 Grosvenor Road, Southampton

ADDENDUM OPINION

Introduction

1. I am asked to further 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**”). My previous advice was dated 7th July 2014 and I understand that the HRA have recently had a meeting with Simon Rowberry, the Head of Planning at Southampton City Council (“**the Council**”).

2. I understand that Mr Rowberry had two primary concerns arising out of my previous Opinion;
 - i. That I have not made reference to the Court of Appeal’s judgement in **Tesco Stores Ltd v Secretary of State for the Environment** [1995] 1 W.L.R. 759 when criticising the findings of the Inspector in the previous appeal decision dated 15th August 2013 (“**the Appeal Decision**”)
 - ii. That I do not address the manner in which the Planning Committee should consider the previous appeal decision of Planning Inspector Sukie Tamplin dated 15th August 2013 (“**the Appeal Decision**”).

The Law

3. The Planning and Compulsory Purchase Act 2004 provides at s.38(6);

(6) If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the

determination must be made in accordance with the plan unless material considerations indicate otherwise.

4. Further, the Court of Appeal in the case of **Tesco Stores Ltd v Secretary of State for the Environment** [1995] 1 W.L.R. 759 held that *it was entirely for the decision-maker to attribute to the relevant considerations such weight as he thought fit, and the court would not interfere unless the decision-maker had acted unreasonably in the Wednesbury sense.*

Further Opinion.

5. No reference is made in my original Opinion to the judgement in *Tesco Stores* as it is trite law and need not be referred to.
6. It is necessary to consider the criticisms that I made of the Inspector which I consider would have made her decision amenable to challenge.
7. I set out those criticisms at paragraphs 11 to 15 of my original opinion. For the avoidance of doubt I summarise them as follows;
 - i. The Inspector speculates with regards to what she considers to be material matters, particularly the nature of the future use of the proposed building in the context of over-intensification;
 - ii. She considers without any evidential basis that the use of the building by 15 people or more is unlikely;
 - iii. She fails to give adequate reasons as to why she considers it unlikely 15 people of more would or could occupy the building;
 - iv. Her conclusions with regards to “*...parental controls...*” and “*...good natural surveillance...*” are entirely illogical and potentially irrational.
8. My advice with regards to the soundness of the Appeal Decision was not based on the weight the Inspector gave to various matters or whether those matters were indeed material but rather that she speculates in a manner which is unlawful, she fails to give

adequate reasons for her findings as required by the Court of Appeal in *South Buckinghamshire CC v Porter (No.2)*[2004] 1 WLR 1953 and in speculating she takes into account matters which were not addressed in evidence and she therefore falls foul of the basis planning principles espoused in *Seddon Properties v Secretary of State for the Environment* [1978] J.P.L. 835; 248 E.G. 950. I have no hesitation in stating that the Appeal Decision is unsound for reasons relating to the Inspector's consideration of matters not based on evidence and for reasons relating to her failure to give adequate reasons. I do not consider that such criticism relates to materiality and weight.

9. The judgement of the Court of Appeal in *Tesco Stores* has little bearing on my criticism. I do not seek to attack the weight that the Inspector gave to the various issues set out above, but more specifically that those issues were inadequately reasoned or unlawfully included in her considerations. *Tesco Stores* is authority for the proposition that the Courts will not interfere with the weight a decision maker gives to RELEVANT material considerations unless the decision maker has acted unreasonably. It is not authority for the proposition that the decision maker can fail to adequately reason her findings, speculate, extrapolate evidence to an irrational degree or indeed seek evidence of their own. A RELEVANT consideration is one that is supported by the evidence advanced by the parties. Nor is *Tesco Stores* authority for the proposition that every matter that is raised or speculated upon by the Inspector is material. In fact it is quite the opposite.
10. In response to the criticism by Mr Rowberry I hope that the comments above make it absolutely clear that my previous Opinion did take account of the trite law set down by the Court of Appeal in *Tesco Stores*, to the extent that it is relevant.
11. On the second matter, the Planning Committee or indeed a future Planning Inspector is absolutely **NOT** bound by the findings of the first Inspector. To consider themselves so would be to fall into error and to act unlawfully. The application must be determined in the context of s.38(6) of the Planning and Compulsory Purchase Act 2004 which requires the Development Plan to be addressed first, the Appeal Decision amounting to a material consideration to which the decision maker can give whatever

weight they consider appropriate, such weight not being open to challenge provided it is not unreasonable (*Tesco Stores*).

12. Should a decision maker chose to disagree with a previous decision and thus give it little or lesser weight then it is always advisable to give reasons as to why they have chosen to take that approach. The criticisms of the Appeal Decision set out above are sufficient in themselves to allow the Planning Committee to consider the matter afresh.
13. Should advice be given to the Planning Committee to the effect that they must follow the Appeal Decision, that they are in some way bound by it I would advise that a very careful written record is kept of the same. Such advice would be unlawful and would mislead the Planning Committee to the extent that any subsequent decision based on such advice would be *ultra vires*. I am aware from experience that some committees are recorded, webcast or both. If this is the case such recordings may prove very useful. If not then a written record should be kept.

Costs

14. Further, I understand that the Council maybe concerned about their exposure to costs in the event that a refusal is appealed by the applicant.
15. The award of costs in planning appeals is entirely discretionary and governed by the Planning Practice Guidance at section 16 paragraphs 27 to 56. Paragraphs 30 and 31 state as follows;

30 - In what circumstances may costs be awarded?

Costs may be awarded where:

- *a party has behaved unreasonably; and*
- *the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.*

31 - What does “unreasonable” mean?

*The word “unreasonable” is used in its ordinary meaning, as established by the courts in **Manchester City Council v SSE & Mercury Communications Limited [1988] JPL 774.***

Unreasonable behaviour in the context of an application for an award of costs may be either:

- *procedural – relating to the process; or*
- *substantive – relating to the issues arising from the merits of the appeal.*

16. The Council will have to behaved in an unreasonable manner in order for there to be an award of costs against them. It would not be considered unreasonable to arrive at a different conclusion to the Inspector in the previous appeal provided that the Appeal Decision has been properly considered and any decision not to follow the same approach adequately reasoned. I have set out why I consider the approach of the Inspector to be fundamentally flawed and it would not be unreasonable for the Planning Committee to adopt this approach should they have the same concerns. In such circumstances I consider that the exposure of the Council to costs in any subsequent appeal would be minimal.
17. I hope this Addendum Advice clarifies my earlier advice. I hope it 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

29th September 2014

Kings Chambers

Manchester-Birmingham-Leeds

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

Land at Grosvenor Rest Home, 13 Grosvenor Road, Southampton

OPINION

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 15th 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

7th July 2014

Kings Chambers

Manchester-Birmingham-Leeds