

5 Crofton Close Southampton

Enforcement Appeal Ref: APP/D1780/C/2013/2203830

Statement of Facts

The appeal premises are a large detached house built as part of a redevelopment of the site of a private school. It has been used as an HMO for at least 6 years continuously from 2007 and has been occupied by 7 or 8 mature students since 2008 usually on an Assured Shorthold Tenancy Agreement for a 12 month period. There are currently 8 tenants who are parties to the Agreement.

The proposal does not introduce an additional HMO into the neighbourhood.

The property has been the subject of previous planning applications, enforcement notices and appeals. The current Enforcement Notice requires the use of the house as an HMO to cease within 28 days of the notice becoming effective.

Appeal under Ground (a) that planning permission should be granted for what is alleged in the Notice.

The council accepted during an appeal Hearing in October 2008 i.e. prior to the Council's Article 4 Direction dated 12th March 2012, the house was a C3 dwelling used as an HMO with 7 tenants. The direction disapplies the GPDO relating to changes of use from C3 dwellings to C4 HMO's.

The house is large enough for 8 tenants to share. No external extensions have been made to the property to accommodate the 8 tenants.

In 2008-2009 it was let on a single tenancy agreement for 7 mature students, in the year 2009-2010 for 7 tenants, in 2010-2011 for 8 tenants, in 2011-2013 (a two year agreement) for 7 tenants and currently from July 1st 2013 until 30th June 2014 for 8 mature trainee nurses.

The house is in an area which is more expensive to rent than most student houses which are concentrated in specific areas of the City in Victorian terraces or large Edwardian semi-detached houses. This area of Highfield (within the constituency of Portswood) is seen as safer by the female tenants when returning home after they work late shifts at local hospitals.

It is conveniently close to the University of Southampton School of Medicine.

Only one tenant owns a car and visitors with cars are no more frequent than to nearby family housing. There are several bus routes from Portswood District Centre

and nearby Winn Road serving the Hospitals, University Highfield campus and City Centre.

There are four parking spaces available, two in the double garage and two on the driveway whereas the City's Parking Standards SPD requires a maximum of three spaces for dwellings with 4 bedrooms or more.

The City's adopted Core Strategy Policy CS16 promotes housing areas of mixed types and tenures to provide a mix of housing types and more sustainable and balanced communities.

Policy H4 of the Local Plan Review allows for the conversion of dwellings into HMO's after assessing the balance between the contribution they could make to meeting housing demand, against the harm to the character and amenity of the area which might occur. The use of the appeal premises causes no harm to the character and amenity of the surrounding area.

No precedent will be set by granting planning permission as the new Use Classes Order, the Town and Country Planning (General Permitted Development) Order 1995 (as amended) legislation and the Council's Article 4 direction relating to Class C4, will be controlled by the LPA as requiring specific planning permission.

Appeal under Ground (c) that there has not been a breach of planning control.

Planning permission is required when development takes place. A change of use is development under s.55 of the Town and Country Planning Act 1990. However, a material change of use must be made for it to be development which requires planning permission.

"A material change of use will occur only where the total number of residents has increased to the point where it can be said that the use has intensified so as to become of a different character or the residents in relation to C3 no longer constitute a single household" (Circular 08/2010)

The appeal premises have been used as an HMO, prior to a change in legislation, as a C3 Dwelling house occupied by 5 or 7 people living together and sharing amenities. The change of use from Class C3(c) to the Sui generis use of a Large House in Multiple Occupation is not development because the character of the use has not changed. The character of the appeal premises and its use is not distinguishable from any neighbouring family house of similar size.

The character will only change when signs of multi-occupation are shown through such things as poor refuse management, on street parking issues, noise/anti-social behaviour, high property turnover; neglected gardens and lack of maintenance to housing stock.

None of these criteria apply to the use of the appeal premises.

Although the wider area of Portswood and Bassett have a little over 10% of HMO's the local area has not generally suffered from an increase in concentration of HMO's (and such increase is very unlikely in the future), which might result in a change in the demography of the area. To all intents and purposes, the house appears to be a family home in an area of similar properties.

Appeal under Ground (e) that the notice was not properly served on everyone with an interest in the land.

A Planning Contravention Notice was not served on the owner prior to the notice dated 19th July 2013 being served. It is understood that the names of the current tenants were elicited when the notice was served by hand to the appeal premises. The notice was served on only seven of the occupiers instead of eight as one was absent due to illness at the time but who is a signatory to the tenancy agreement and is paying rent and therefore has an interest which should have been recognised.

This would have been discovered if a PCN had been served on the owner/Appellant. However, although this omission will probably not prejudice the outcome of the Appeal, the council should follow correct procedures in future even if they believe they have the correct information, as legal interests in property can change without the council knowing.

Appeal under Ground (g) that the time given to comply is too short.

If the Enforcement Notice is upheld then the use of the house for eight tenants must cease within 28 days.

That means that one, two or all eight tenants must vacate the house and find suitable and convenient alternative accommodation.

Assuming a decision is made by the end of the year then accommodation is required for a period of six months until their academic year and their tenancy agreement comes to an end.

To find alternative accommodation at such short notice would be very difficult in the middle of the academic year and very disruptive to the trainee nurses' studies which could affect their future careers.

The Time for Compliance should at least be long enough for the current tenancy to expire on 30th June 2013.