



Appeal Decision

Site visit made on 8 August 2022

by **F Wilkinson BSc (Hons), MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 31 August 2022

Appeal Ref: APP/D1780/W/22/3297140

1 Blenheim Gardens, Southampton SO17 3RN

- 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 Balbir Punia against the decision of Southampton City Council.
 - The application Ref 22/00062/FUL, dated 19 January 2022, was refused by notice dated 5 April 2022.
 - The development proposed is existing 6 Bedroom HMO (C4) to be converted to 2 No separate 3 Bedroom HMO's (C4) ground floor and first floor.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - the effect of the proposed development on the character of the surrounding area including the balance and mix of housing;
 - the effect of the proposed development on the integrity of the Solent Special Protection Areas;
 - the effect of the proposed development on the living conditions of nearby residents with regard to noise and disturbance; and
 - whether the proposed development would provide acceptable living conditions for future occupiers with regard to outdoor amenity space.

Reasons

Character and Balance and Mix of Housing

3. The appeal site is a semi-detached, two-storey property located in an area comprising a mix of family dwellings and Houses in Multiple Occupation (HMOs). The properties are predominantly semi-detached and detached two storey dwellings. The proposed development would comprise the conversion of the property into two three bedroom Class C4 HMOs.
4. No changes are proposed to the exterior of the property, although I note the discrepancy within the plans which show a gable window at first floor level which is not present. However, there is nothing to suggest that this has affected the assessment of the proposal and I was able to observe the site and surrounding area at my visit.

5. The property is currently in use as a C4 HMO for up to six people, with the submitted plans indicating that at present it is configured as a six bedroom dwelling. The appellant states that there would be no increase in the number of occupants that would live at the property. While noting the concern that the two properties together would be capable of accommodating more occupants, a condition could be imposed in the event of a successful appeal that would limit the number of occupants within each residential unit.
6. I appreciate the Council's concerns about the enforcement burden that such a condition may place on it. However, in my experience it is not an uncommon condition to impose on HMOs where it is necessary to ensure the number of occupants is appropriate for the surrounding area, and it would be reasonably enforceable.
7. Due to the concentration of HMOs in certain areas, the Council's 2016 Houses in Multiple Occupation Supplementary Planning Document (the SPD) was prepared to help manage HMO development and reduce its impact on established communities. The SPD acknowledges that HMOs provide much needed housing accommodation, but a large number in one area can change the physical character of that residential area and this can lead to conflict with the existing community. It therefore seeks to prevent excessive concentrations of HMOs and encourages a more even distribution across the city.
8. To achieve this, the SPD sets out that planning permission will not be granted where the proportion of HMO dwellings would exceed 10% of the total number of dwellings within a 40 metre radius, unless exceptional circumstances apply. The exceptional circumstances are where 80% of existing properties surrounding the application site within the defined area of impact are HMO dwellings, on the basis that the introduction of further HMOs wouldn't necessarily change the character of an area in such circumstances.
9. The Council conducted an assessment exercise and found that of the 21 properties within a 40 metre radius of the property, 10 are in HMO use, equating to 48%. The Council's calculations show that adding the additional HMO that would be created by the appeal scheme would increase this to 50%.
10. There is already a relatively large exceedance of the SPD's 10% threshold, demonstrating that the concentration of HMOs within the area is high. When compared to the standards applied by the Council, the proposed development, through introducing an additional HMO, would increase the concentration of such uses in the area. It would therefore exacerbate the existing imbalance in the mix of housing within the immediate area in the way the SPD seeks to avoid, and would adversely affect community balance, which would, in turn, harm the character of the area.
11. The appellant has highlighted a number of similar properties in the area which have been converted to two C4 HMOs. However, there is no information before me on the planning history associated with these properties, including the policy context that may have been in place or the proportion of HMOs in the immediate vicinity. As such, I cannot draw any direct comparisons with the appeal scheme that would weigh in its favour.
12. While the proposed development would not necessarily increase the number of occupants, there would be an increase in the number of HMOs and a change to the range of housing types in the area. I therefore conclude that the proposed

development would have a harmful effect on the mix and balance of housing in the local community, which would cause subsequent harm to the character of the surrounding area. Consequently, it would be contrary to Policy CS16 of the Core Strategy¹ and Policy H4 of the Local Plan² which collectively seek to provide a mix of housing types, more sustainable and balanced communities and measures aimed at controlling HMOs, including their effect on the character of the surrounding area. It would also be contrary to the objectives of the National Planning Policy Framework (the Framework) regarding creating mixed and balanced communities, and the guidance in the SPD.

Solent Special Protection Areas

13. The Solent Special Protection Areas (SPAs) comprise a coastline that provides essential winter feeding and roosting grounds for birds including waders and wildfowl. The SPAs are European sites afforded protection under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations). The Habitats Regulations require the decision maker to undertake an Appropriate Assessment where there are likely significant effects from a proposal, either alone or in combination with other plans or projects.
14. The submitted evidence demonstrates that the waders and wildfowl are at risk of disturbance from recreational activities. Research into the potential impacts concluded that mitigation measures are required to ensure that additional recreational activities from new residential development do not result in harm to the SPAs.
15. A Solent Recreation Mitigation Strategy, 2017 (SRMS) has been prepared to provide a strategic solution to ensure the requirements of the Habitats Regulations are met with regard to the in-combination effects of increased recreational pressure on the SPAs arising from new residential development. The SRMS appears to have been prepared with the support of Natural England. The strategy is to require a developer contribution for every net additional dwelling within 5.6 kilometres of the boundaries of the SPAs unless the developer can demonstrate that alternative suitable bespoke mitigation will be provided.
16. The SRMS defines dwellings as including 'net new dwellings created through the sub-division of existing dwellings'. While acknowledging the appellant's point that the current usage of the property would not change, nevertheless, an additional residential unit would be created. The proposed development would accordingly fall within the SRMS definition of net new dwellings.
17. The proposed development therefore has potential to increase recreational disturbance on the SPAs as it would involve an additional residential unit within the 5.6 kilometres zone of impact. As such, there would be a likely significant effect on the qualifying features of the SPAs, particularly when the impacts are considered in combination with other residential developments.
18. Considering the conservation objectives, there would be adverse effects on the integrity of the SPAs from the proposed development through increased disturbance to the qualifying features from recreational activity. The proposed development does not contain the mitigation measure identified in the SRMS to

¹ Local Development Framework Core Strategy Development Plan Document Amended Version incorporating the Core Strategy Partial Review March 2015

² City of Southampton Local Plan Review – Adopted Version 2nd Revision 2015

avoid or mitigate the impacts. I cannot therefore conclude that the proposed development would not have an adverse effect on the integrity of the SPAs. No other alternative solutions have been put to me and there are no imperative reasons of overriding public interest given the modest scale of the development.

19. I note the appellant's statement that there would be no net gain in nitrate levels, although no further information has been submitted regarding this. However, notwithstanding my role as the competent authority, as I have found the proposal to be unacceptable in respect of recreational impacts on the SPAs, there is no need for me to consider further the effects of nitrates, since any findings on this matter would not change the appeal outcome.
20. The proposed development would be contrary to the Habitats Regulations and Policy CS22 of the Core Strategy which seeks to ensure that development does not adversely affect the integrity of international designations, and the necessary mitigation measures are provided; or the development otherwise meets the Habitats Directive.

Living Conditions of Neighbouring Residents

21. The Council highlights two previous appeal decisions at the property for a change of use to an eight bedroom HMO³. Both Inspectors found harm to the living conditions of neighbouring residents due to noise and disturbance. However, these cases involved an increase in the number of occupiers. This would not be the case here subject to the imposition of a condition to restrict the number of occupants to six. The previous appeal schemes are not therefore directly comparable to the current proposal in this regard.
22. The use of the property as two individual HMOs may result in an increase in the levels of comings and goings and therefore general noise and disturbance in the surrounding area compared to its use as a single HMO. However, while I understand the basis for the concerns on this matter, I am not persuaded that the noise and disturbance in the surrounding area generated by a general increase in comings and goings would be materially greater than that generated by residents occupying the property as it currently exists.
23. However, as a semi-detached property, no. 1 has a particularly close physical relationship with the adjoining property at no. 3. The proposal would result in a reconfiguration of the property which would create a living room at first floor level beside the party wall with no. 3. The upper floor would therefore be used in a different way to the current situation. In addition, while there may not be an increase in the number of occupants, the property would be used as two separate units each with their own communal areas. There would therefore be a more intensive use of the property than would be the case with its current configuration. These factors would significantly increase the risk of noise and disturbance to the residents of no. 3.
24. I therefore conclude that the proposed development would harm the living conditions of neighbouring residents with regard to noise and disturbance. Accordingly, it would conflict with the residential amenity requirements of Policies H4 and SDP1(i) of the Local Plan and the Framework.

³ Appeal references APP/D1780/C/11/2156569 and APP/D1780/A/12/2188924

Living Conditions of Future Occupiers

25. Occupiers of the upper flat would have direct access to the front garden. However, I am not persuaded that this area would provide a functional and usable outdoor area for future occupiers given its small size and lack of privacy.
26. The rear garden is shown on the submitted plans as a shared amenity space. Occupiers of the ground floor flat would have direct access to this area. However, occupiers of the first floor flat would have to walk past the proposed ground floor front bedroom in close proximity. I am not therefore satisfied that such an arrangement would afford an acceptable level of privacy to future occupiers of the ground floor flat.
27. Alternatively, occupiers of the first floor flat would be able to access the rear garden from one of the side gates that fronts onto Upper Shaftesbury Avenue. This would involve occupiers having to use the public highway to gain access. While not an ideal arrangement, it would nevertheless provide future occupiers with access to an outdoor amenity space, and would not on its own, warrant dismissal of the appeal.
28. The rear outdoor amenity space is of sufficient size such that it could be subdivided to provide a private area for each flat and still provide adequate space that would allow occupiers to carry out the domestic activities one would normally expect for HMOs. Such provision could be controlled by a condition.
29. I therefore conclude that the proposed development would provide suitable living conditions for future occupiers with regard to outdoor amenity space. Accordingly, it would comply with the residential amenity requirements of Policy SDP1(i) of the Local Plan, the space requirements of Policy CS5 of the Core Strategy and the guidance in the Residential Design Guide, 2006, regarding the creation of a high quality environment.

Conclusion

30. The proposed development would harm the character of the surrounding area including the balance and mix of housing, and the living conditions of neighbouring residents. In addition, I cannot conclude that the proposed development would not have an adverse effect on the integrity of the SPAs.
31. I have found that the proposed development would provide acceptable living conditions for future occupiers with regard to outdoor amenity space. This is a neutral factor and does not outweigh the harm that I have identified.
32. The proposed development would conflict with the development plan taken as a whole as well as the Framework. There are no material considerations worthy of sufficient weight that would indicate a decision otherwise than in accordance with it. The appeal should therefore be dismissed.

F Wilkinson

INSPECTOR