
Appeal Decision

Site visit made on 10 October 2016

by Thomas Bristow BA MSc MRTPI

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

Decision date: 01 November 2016

Appeal Ref: APP/D1780/W/16/3154189

124 Gordon Avenue, Southampton, Hampshire SO14 6WG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with a condition subject to which a previous planning permission was granted.
 - The appeal is made by Daniel and Sarah McKimm against the decision of Southampton City Council.
 - The application Ref 15/02281/FUL, dated 23 October 2015, was refused by notice dated 15 January 2016.
 - The application sought planning permission for the use of No 124 Gordon Avenue as a house in multiple occupation with 8 occupants.
 - The condition in dispute is No 3 of application Ref 15/00019/FUL, dated 26 March 2015, which states that:
'The number of occupiers within the property, in connection with the change of use hereby permitted, shall not exceed 7 persons'.
 - The reasons given for that condition are:
'In the interests of protecting the residential amenity of local residents from intensification of use and define the consent for avoidance of doubt'.
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Decision

1. The appeal is allowed and planning permission is granted for the use of No 124 Gordon Avenue as a house in multiple occupation with 8 occupants at No 124 Gordon Avenue, Southampton, Hampshire SO14 6WG in accordance with the terms of the application, Ref 15/02281/FUL, dated 23 October 2015. This new permission is subject to an amended version of condition No 3 and to the other conditions set out in the schedule below.

Procedural Matters

2. I have used the description of development in the banner heading above in place of that used in the application form (which appears to relate to the existing lawful use of the property rather than to the proposed use as illustrated on the relevant plans).¹ This description is also preferable, by virtue of being more succinct, to that used by the Council in their decision notice.
3. For the avoidance of doubt it has been confirmed at appeal that the original application was, and the appeal is, made by Daniel and Sarah McKimm; the

¹ The relevant plans being entitled '7514 105 A', '7514 103' and '7514 104'.

name of the appellant given in the application form supporting the proposal to which this appeal relates is incorrect.

4. This appeal follows a now closed enforcement investigation, Ref 12/00396/ENCOU, as to whether No 124 was, in contravention to condition 3 of application Ref 15/00019/FUL, occupied by 8 individuals as a house in multiple occupation (HMO). Various parties have expressed concern that such an unauthorised use has persisted. I also note the concern expressed by nearby residents regarding the original justification for the change of use of the property from a dwellinghouse to an HMO.
5. Nevertheless the property is lawfully in use as a *sui generis* HMO, and the appellant has confirmed that it is presently let to 7 individuals.² I must determine the proposal on the evidence before me in respect of its particular merits, and, as a consequence, the planning background here is of limited significance.
6. I further note that within the Council's officer report associated with the application reference is made to the license from which No 124 benefits under the provisions of Schedule 5 of the *Housing Act 2004*. However licensing and planning are separate legal regimes, and this decision relates solely to the planning matters relevant to the development proposed.

Main Issues

7. On the basis of the Council's reasons for refusal and the information before me the main issues are:
 - 1) the effect of the proposal on the character of the area,
 - 2) whether or not the proposal would be appropriate in respect of parking provision,
 - 3) whether or not the proposal would provide for acceptable living conditions for the occupants of adjacent properties, and
 - 4) whether or not the proposal would provide for acceptable living conditions for any future occupant of the additional accommodation created.

Reasons

Character of the area

8. No 124 Gordon Avenue is a fine classical semi-detached property adjoining No 122 along its eastern boundary which falls within a predominantly residential area of Southampton. The character of any area results not only from its appearance but also from less readily apparent factors such as the type and intensity of uses present, and the lifestyles and values of the local community.
9. This is relevant here as the proposal to which this appeal relates entails no physical changes amounting to development, and as the Council and appellants

² At paragraph 2.6 of their appeal statement.

have addressed matters of character in this vein. Inherent in this, however, is that whether a proposal is acceptable is reliant upon planning judgement rather than a matter which can be settled with reference to definitive metrics.

10. Saved policy SDP7 '*Context*' of the *City of Southampton Local Plan Review* adopted originally in 2006 and as amended in 2015 (the 'Local Plan') requires that all development integrates appropriately '*into the local community*'. Similarly policy CS16 '*Housing Mix and Type*' of the *Southampton Local Development Framework Core Strategy* adopted originally in 2010 and as amended in March 2015 (the 'Core Strategy') establishes the Council's approach to providing a mix of housing types with the aim of achieving more balanced communities, including through controlling the prevalence of HMOs. Likewise *The National Planning Policy Framework* (the 'Framework') seeks to ensure that planning creates sustainable, inclusive and mixed communities.
11. Saved policy H4 '*Houses in Multiple Occupation*' of the Local Plan relates to '*proposals for the conversion of dwellings or other buildings into shared houses*'. Whilst criterion (ii) thereof sets out that such conversions will only be granted where this would not be detrimental to the overall character of the surrounding area, the use of No 124 Gordon Avenue as an HMO is established. Consequently policy H4 cannot be said to directly apply to the development before me given that the proposal is not for the conversion of a dwelling into a shared house but rather the intensification of an established HMO use by virtue of enabling its occupation by 8 individuals rather than the 7 occupants permitted.
12. The Council further cited in their decision notice, dated 15 January 2016, that the proposal would conflict with the approach within their *Houses in Multiple Occupation Supplementary Planning Document* adopted in March 2012 (the 'former SPD'). However in May 2016 the Council adopted a new document of the same title (the 'current SPD'). I am satisfied that it is appropriate to consider the proposal in relation to the current SPD as the appellants have commented on this changing context in comments made at appeal and as, in most respects, it appears to me that the current SPD is broadly similar to its predecessor.
13. The central approach within the current SPD is to prevent development that would entail the proportion of HMOs exceeding 10 per cent of the residential properties falling within 40 metres of the location of the development proposed. This 'threshold limit' has been reduced from 20 per cent in the former SPD, which the Council explains results from their aim of '*taking further pressure off areas of the city which experience a high proportion of HMOs at present*'. Clearly a concentration of HMOs leads to a certain character of that area: HMOs may be more intensive residential uses than single dwellinghouses and as the occupants thereof tend to lead comparatively independent lives from one another and may be more transitory members of the community.
14. However paragraph 4.6.2 of the current SPD, which broadly replicates the approach in paragraph 6.11.1 of its predecessor, merits particular attention. It sets out that where planning permission is required to intensify the use of an established lawful HMO, as is the case here, '*the threshold limit will not be triggered as the HMO has already been established in the street and, therefore, has no further effect on the concentration of HMOs and balance and mix of*

households in the local community' (my emphasis). Consequently the Council's stated reason for refusal, that the proposal would '*contribute towards the continued erosion of a mixed and balanced community*', is somewhat contradictory to the approach in the current SPD in this respect. This carries some weight in favour of the proposal as, strategically, the Council have clearly arrived at the position that matters of community balance are not significant where the intensification of an established HMO use is proposed.

15. Whilst it is not disputed that the proposal would result in an additional intensity of use, the matter to resolve is, however, whether this would be appropriate. The Council's officer report sets out that 32 per cent of properties within 40 metres of the appeal property are within HMO use. The appellants have further indicated on plan 105 A supporting the application the established use of various properties nearby, which appears not to be disputed by the Council. This plan further illustrates that there is a significant concentration of HMOs nearby alongside other comparatively intense residential uses including buildings comprising flats and care homes.
16. Given the dense residential nature of the surrounding area and the comparatively large prevailing scale of properties, this strongly indicates that a substantial number of individuals nearby reside within HMOs. In this context a change from 7 to 8 individuals occupying No 124 would in my view have little discernible effect on the character of the area by virtue of altering the number or type of residents present.
17. I note the concerns raised by the Council and nearby residents in respect of the cumulative erosion of the character of the area resulting from the intensification of HMOs, and the pressure that may arise in the future for the intensification of HMOs elsewhere. However the Council's officer report further indicates that it is '*unusual to have as many as 8 occupants*' in HMOs in Southampton, not all properties are physically capable of accommodating 8 occupants, and there is limited evidence before me to indicate that similar development as is proposed via this appeal has also been proposed elsewhere.
18. For the reasons given above there is no robust evidence before me to indicate that the development proposed would be significant or detrimental to the existing character of the area in the terms that it has been addressed by the Council or appellants. I therefore conclude that the proposal would not result in an unacceptable effect on the character of the area, and consequently that the proposal complies with the relevant provisions of saved policy SDP7 of the Local Plan and policy CS16 of the Core Strategy, and with relevant elements of the current SPD and the Framework.

Parking

19. Policy SDP1 '*Quality of Development*' of the Local Plan sets out that planning permission will only be granted for development which does not unacceptably affect the '*amenity of the city and its citizens*'. Relatedly, the Council's *Parking Standards Supplementary Planning Document* adopted in 2011 (the '*parking SPD*') seeks to ensure that all new development is supported by a suitable level of associated parking.

20. I appreciate that an increase in car usage may result from the proposal in what is a dense residential area with limited off-road parking provision and parking restrictions nearby, and that no dedicated parking associated with No 124 is proposed. Nevertheless as set out in paragraphs 15 and 16 of this decision above, the effect of this proposal must be qualified by the marginal increase in parking pressure that would be likely to arise from one new occupant in this area compared with the existing baseline intensity of use.
21. I appreciate that a specific parking study has not accompanied the proposal. Nevertheless the property is likely to be let to students, and the appellants have provided evidence indicating that car ownership within a student demographic is significantly lower than in other elements of the population.³ The University of Southampton and St Denys train station appeared to me to be within a reasonably convenient walking distance of No 124, and nearby Portswood Road hosts many services and facilities catering for day-to-day needs which are easily accessible on foot. The likely occupants of the property and its location therefore limit the extent to which additional car usage may result.
22. In this context I therefore find that the proposal would not be likely to give rise to unacceptable adverse effects in respect of parking provision, and therefore that the proposal complies with the relevant requirements of policy SDP1 of the Local Plan and with the overarching approach within the parking SPD.

Living conditions of adjacent occupiers

23. Whilst the council's opposition to the proposal in respect of this matter is generally stated in their decision notice as '*impact on the amenities*' of nearby residents, it appears to relate to '*general noise nuisance*' as explained within their officer report, and I have consequently addressed the effects of the proposal in this regard. The Framework sets out that planning should always seek to secure a good standard of amenity for all existing and future occupants of land and buildings, and that decisions should avoid noise from giving rise to significant adverse impacts on quality of life.⁴
24. I acknowledge given the proximity of No 124 to the University of Southampton that the property is likely to be occupied by students (as indeed is apparently the case of many properties in the area nearby). I further accept that occupants of HMOs, including students, tend to hold separate schedules and live relatively independently from one another, meaning that noise including comings and goings to and from the property may occur over a longer period than would be generated by the use of single dwellinghouses.
25. However it is important to note that the noise resulting from one additional occupant to a property currently occupied by 7 individuals is likely to be marginal. Moreover such an increase in this particular instance would in my

³ Evidence drawn from the Government's *National Travel Survey 2014*.

⁴ For the reasons given above in paragraph 11 it is unnecessary to conclude against the provisions of policy H4 in this context, criterion (i) of which sets out that conversions to HMOs should not be '*detrimental to the amenities of the residents of adjacent or nearby properties*'. Nevertheless this does not obviate the requirement to consider whether the proposal is acceptable in this respect, including whether or not it complies with the approach in the Framework.

view be qualified by the baseline level of noise in the area presently resulting from its comparatively dense residential nature.

26. Furthermore, whilst the proposal would result in the occupation of an additional bedroom within the property it would not alter the number of bedrooms which adjoin the party wall shared with No 122 by virtue of subdividing a room which formerly spanned the width of the property. Relevant building works must comply with the requirements of Building Regulations in relation to the level of noise resistance achieved,⁵ and in any event *The Environmental Protection Act 1990* as amended requires local authorities to investigate and seek to remedy noise amounting to a statutory nuisance independently of planning.
27. For the above reasons I cannot reasonably conclude that the proposal would result in unacceptable effects in respect of the living conditions of those nearby, certainly not to a degree that could be described as significantly adverse. Consequently I therefore find that in this respect the proposal complies with the relevant provisions of the Framework.

Living conditions of intended future occupant

28. Criterion (i) of saved policy SDP1 '*Quality of Development*' of the Local Plan sets out that planning permission will only be granted for development which '*does not unacceptably affect the health, safety and amenity of the city and its citizens*'. As cited in paragraph 23 above the Framework likewise seeks to ensure that a good standard of amenity is provided for occupants of properties.⁶ The Council's *Residential Design Guide* adopted in 2006 (the 'Design Guide') further sets out how development can be designed to afford appropriate living conditions to intended occupants, including in respect of natural light and outlook.
29. At the time of my site visit the eighth room of the property, which is intended to accommodate an additional individual and is the room in respect of which the Council's concerns here relate, hosted a single bed, wardrobe, desk and a chest of drawers whilst maintaining a reasonable level of circulation space. Although some of the head height of the room is reduced owing to the ceiling following the pitch of the roof, this did not in my view unacceptably compromise the comfortable use of the room. Whilst the room is comparatively modest, it is only marginally smaller than several others within the property, and it is reasonable to assume that occupants of HMOs accept a room size commensurate with this type of accommodation.
30. The room is served by a single roof light and no other windows. However the roof light was of sufficient size to enable a reasonable level of natural light to enter room, particularly as it faces broadly south east. Being set at a comparatively low level within a relatively steeply pitched roof profile, there was a relatively open view through the roof light at eye level towards nearby

⁵ With reference to *Building Regulations Approved Document E: Resistance to the passage of sound*.

⁶ As set out in paragraph 6 of this decision HMO licensing and planning are separate regimes. Therefore although paragraph 4.6.3 of the current SPD sets out that in considering relevant planning applications the Council will take account of the approach within their *Guidance on Standards for Houses in Multiple Occupation*, which relates to the provisions of the *Housing Act 2004*, I have consciously not drawn a link between the two regimes in this decision as to do so would be *ultra vires* and procedurally inappropriate.

properties and above the roofscape of the area (as corroborated by the pictures shown on page 12 of the appellants' appeal statement).

31. For these reasons the proposal would, in my view, provide for adequate living conditions for any future occupant in compliance with the relevant provisions of policy SDP1 of the Local Plan and with the approach in the Design Guide and the Framework.

Other Matters

32. The appellants have brought a number of cases to my attention where permission has been granted elsewhere for an increased number of occupants of established HMOs. However there is limited information before me in respect of the planning circumstances that applied in these instances, and in any event each proposal must be determined on its particular merits. I have consequently reached a decision on this appeal independently of these cases.
33. I acknowledge the concerns raised by several residents nearby in respect of the effects that may arise from HMOs in relation to the neglect of properties, the presence of refuse, and incidences of anti-social behaviour. However these are largely matters that relate to the conduct of individuals rather than effects that are inherent to HMO uses in planning terms. Indeed remedies where such issues arise are typically outwith planning, such as relating to the management of properties. There is consequently nothing in the evidence before me to indicate that the proposal would lead to unacceptable effects in these respects.

Conclusion

34. For the above reasons, and taking all other matters into account including the representations made by nearby residents, the proposal accords with the development plan taken as a whole and with the approach in the Framework. I therefore conclude that the appeal should be allowed subject to the schedule of conditions below.

Conditions

35. For the avoidance of doubt and in the interests of proper planning it is necessary to require compliance with the relevant plan and to specify that No 124 shall not be occupied by more than 8 persons. As no buildings works are proposed, however, it is unnecessary to re-impose condition 2 of permission Ref 15/00019/FUL, which relates to hours of work.

Thomas Bristow

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with plan No 7514 104 supporting application Ref 15/02281/FUL.
- 3) The number of occupiers within No 124 Gordon Avenue shall not exceed 8 persons.