
Appeal Decisions

Site visit made on 11 January 2017

by **Jean Russell MA MRTPI**

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

Decision date: 10 March 2017

Appeal A: APP/L1765/C/16/3155184

Appeal B: APP/L1765/C/16/3157249

Appeal C: APP/L1765/C/16/3155183

Appeal D: APP/L1765/C/16/3157250

86 Cromwell Road, Winchester, Hampshire, SO22 4AE

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr G Sohal (Appeals A and C) and Mrs G Sohal (Appeals B and D) against two enforcement notices issued by Winchester City Council.
- The enforcement notices were issued on 22 June 2016.

Appeals A and B – Notice A

- The breach of planning control as alleged in the notice is: without planning permission, the change of use of a dwelling house and ancillary annex building to a 10 bed House in Multiple Occupation ("HMO"); a Sui Generis use.
- The requirements of the notice are to: **A.** Cease the use of the Land (including the annex building) as a HMO. **B.** Remove from the Land all partitions, doors, facilities and means of separation, fixtures, fittings and linking arrangements facilitating the use of the dwelling house and annex building as a HMO.
- The period for compliance with the requirements is three months.
- Appeals A and B are proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.

Appeals C and D – Notice B

- The breach of planning control as alleged in the notice is: without planning permission:
(a) The creation of boundary fence fronting the highway and exceeding 1 metre in height shown in the approximate location marked green on the [plan attached to the notice] by placing wooden fencing on top of the original brick wall. **(b)** The raising of the ground level and paving of the front garden area shown hatched blue on the attached plan. **(c)** The erection of a wooden cabin (shown coloured blue on the attached plan) in the back garden of no. 86 Cromwell Road, adjacent to and linked [sic] to the annex building (which is shown coloured green on the attached plan with the linking areas coloured in orange).
- The requirements of the notice are to: **(a)** Reduce the height of the fence on the front boundary of the Land adjacent to the highway so that the top of the fence or wall is no more than one metre above ground level. **(b)** Reinstate the front garden area to its former condition prior to the raising of the level of and paving of the front garden area. **(c)** Remove from the land the single storey detached wooden cabin which is located within the rear garden along with the linking arrangements to the annex building.
- The period for compliance with the requirements is three months.
- Appeals C and D are proceeding on the grounds set out in section 174(2)(b), (c) and (d) of the Town and Country Planning Act 1990 as amended.

Summary of Decisions: Appeals A and B are dismissed and Enforcement Notice A is upheld with corrections and variations. Appeals C and D are dismissed and Enforcement Notice B is upheld with corrections.

Appeal E: APP/L1765/W/16/3149326
86 Cromwell Road, Winchester, SO22 4AE

- 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 and Mrs Sohal against the decision of Winchester City Council.
- The application ref: 15/01968/FUL, dated 1 September 2015, was refused by notice dated 28 October 2015.
- The development proposed is described as 'retrospective change of use of the existing dwellinghouse (C3) to 10 bed House in Multiple Occupancy (sui-generis) and retention of front boundary wall (resubmission of application 14/01565/FUL).

Summary of Decision: Appeal E is dismissed.

PRELIMINARY MATTERS

The Appellants

1. As noted above, Appeals A-D are made by 'Mr and Mrs **G** Sohal'. The planning application was made by 'Mr and Mrs Sohal' – but Appeal E was made by 'Mr and Mrs **R** Sohal'. Mr Ranjit Sohal made a statutory declaration in support of Appeals A-D and he is described as an appellant in the enforcement appeals statement.
2. I am concerned that the appellants have used different names but it seems that they are the same couple. The Certificate of Service shows that Notices A and B were served upon M S Sohal and G Sohal at a particular address. The Appeal E form indicates that Mr and Mrs R Sohal reside at that place and are the only relevant landowners except for the Council, whose interest is described below.

The Land and the Surrounding Area

3. 86 Cromwell Road includes an extended semi-detached house and associated land and buildings – which include an annex and a wooden cabin in the back garden. There are structures which link the house to the annex and annex to the cabin.
4. The appeal property is used as a '*sui generis*' House in Multiple Occupation (HMO): it is occupied by more than six residents and the use does not fall within any class set out in the *Town and Country Planning (Use Classes) Order 1987* (the UCO). The house and annex contain ten bedrooms plus communal living, toilet and washing, kitchen and utility rooms. There is a communal lounge in the cabin.
5. No. 86 stands in a semi-circular row of buildings around a small green space, with nearby properties including shops, dwellinghouses and other HMOs. The appeal HMO adjoins 88 Cromwell Road which is occupied by not more than six residents and used as a 'Class C4' HMO as defined by the UCO.
6. The appeal building also adjoins a convenience store at 86A Cromwell Road, which in turn adjoins a drive between the street and a yard at the side and rear of both no. 86A and a vacant post office at no. 84. Nos. 86A and 84 are owned by the appellants but the drive and part of the yard are owned by the local authority.
7. Notices A and B relate to land at the rear of no. 86A as well as the whole of no. 86. The site subject to Appeal E includes the same land plus the drive to the rear of no. 86A. I shall refer to the 'enforcement' and 'planning' sites where appropriate.

Appeal E

8. The application subject to Appeal E was refused and appealed before Notices A or B were issued. Permission is sought for the alleged HMO use and fence, but not the

cabin or works to the front garden. The application was determined on the basis of the proposed layout plan no. 1770/04_01. The appellants submitted a revised plan with Appeal E, no. 1770/04_01_A, which adds details of car parking spaces. I have taken account of the revised plan and the Council's representations.

The Enforcement Notices

9. The appellants objected that Notices A and B were null or at least defective. An enforcement notice is null if missing some vital element; it is invalid if it includes an error, defect or misdescription which could not be corrected under s176(1) of the *Town and Country Planning Act 1990* as amended (the 1990 Act) without causing injustice to the appellants or the Council. I wrote to the parties suggesting corrections to Notices A and B. The appellants did not respond and the Council stated that it would not object to the amendments.

Notice A – the Alleged Breach of Planning Control

10. The appellants object that Notice A is wrong to allege a change of use from a dwellinghouse; the change was from use as a Class C4 HMO. However, it is not necessary for an enforcement notice alleging a material change of use to recite the previous use¹. The appellant does not dispute that there has been a material change of use **to** a *sui generis* HMO. Notice A could be corrected to delete any reference to the previous use and this would cause no injustice.

Notice B – the Requirements

11. The requirements of Notice B are not so imprecise as to render the notice null. Step 5(a) is to 'reduce the height of the fence...so that the top of the fence or wall is no more than one metre above ground level'. As the appellants suggest, the wall is not part of the allegation, but it follows that the reference to it could be deleted from step 5(a) without making the notice more onerous or causing injustice.
12. Step 5(b) is to 'reinstate the front garden area to its former condition prior to the raising of the level of and paving of the front garden area'. The notices describes the works alleged to have been undertaken. It has been held that the landowner will often be the person with the best knowledge of the 'previous condition' of the site. Step 5(b) tells the appellants what they have to do with sufficient clarity.

Notices A and B – the Plans

13. Regulation 4c of the *Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002* requires that an enforcement notice must specify the precise boundaries of the land by reference to a plan or otherwise. Notices A and B are not null because both specify the precise site boundaries.
14. In paragraph 2 of Notice A, the land is described as including an annex coloured green on the plan, wooden cabin coloured blue and covered areas coloured orange. These structures are described in the same way in paragraph 3 of Notice B, which also refers to the fence marked green and paved garden area hatched blue.
15. It is undesirable for any enforcement notice to refer to different coloured areas on plans because colour printing is not always feasible, or accessible to persons with visual impairments. Notice B is particularly confusing because it shows two structures coloured green. The plans are also erroneous because the annex is larger than depicted, and so the link structures and cabin are incorrectly plotted.

¹ *Westminster CC v SSE & Aboro* [1983] JPL 602

16. However, the appellants are aware as to which buildings on the ground correspond to the 'annex', 'wooden cabin' and 'covered' or 'linking areas'. They are aware as to which fence and paved garden area are subject to Notice B. I can correct Notices A and B without causing injustice by describing the structures in terms and attaching new plans which only plot the enforcement site boundaries.

APPEALS C AND D ON GROUND (B)

17. Ground (b) is that the matters stated in the notice have not occurred. As with (c) and (d), (b) is a legal ground of appeal. The onus of proof is on the appellants and the standard of proof is the balance of probabilities.
18. Mr R Sohal has submitted a statutory declaration in support of the appeals which was signed in the presence of a commissioner for oaths. The Council does not argue that the declaration was not properly made and so, notwithstanding that Mr Sohal has given different names, his sworn statement and the appellants' other evidence carries significant weight where it is not contradicted or unambiguous.

Front Garden

19. The notice alleges that the ground level has been raised and the land has been paved in the front garden at no. 86. The appellants claim that the land has always been higher than street level, as shown by the front doors to nos. 86 and 88.
20. It is true that buildings along Cromwell Road are elevated, but they mainly stand behind sloping front gardens or drives; this is the case at nos. 86A and 88. At no. 86, however, the front garden is now largely flat, with a terrace extending from the house to the boundary, save for where there are steps and a ramp to the road. Mr Sohal declared that the patio was constructed 'at the same original level which is confirmed in the invoice attached from Miral Dominic Ltd on 15/4/12' – but the invoice does not describe land levels.
21. That the height of the land by the front door to the HMO has not changed is not enough to show that the ground level of the front garden has not been raised as alleged. The appellants do not dispute that the front garden has been paved – and I saw that the terrace is surfaced in flagstones. On the balance of probabilities, the works alleged in the front garden have occurred as a matter of fact.

The Fence

22. The original boundary wall to the front of no. 86 is still in place. The appellants argue that the fence erected on top of the wall does not exceed 1m in height 'when measured from the highest part of the original, internal land position'. However, it is clear that the fence has been erected on land which adjoins the highway. The appellants do not dispute that, if measured from the highway, the fence exceeds 1m in height – and I saw that to be the case.

Conclusions

23. Appeals C and D fail on ground (b).

APPEALS C AND D ON GROUND (C)

24. Ground (c) is that the matters stated in the notice do not constitute a breach of planning control. The appellants' case is that the fence does not exceed 1m in height when measured from the enforcement site, at the highest original adjacent point, and so it is 'permitted development'.

25. Article 3, Schedule 2, Part 2, Class A of the *Town and Country Planning (General Permitted Development) Order 2015* (the GPDO) grants planning permission for the erection of a fence or other means of enclosure, subject to conditions and limitations. Paragraph A.1(a)(ii) states that development is not permitted by Class A if 'the height of any fence...erected or constructed adjacent to a highway used by vehicular traffic would...exceed...1 metre above ground level'.
26. Given the precise wording of paragraph A.1(a)(ii), it is plain that the height of any fence adjacent to a highway used by vehicular traffic must be measured from the highway. If paragraph A.1(a)(ii) is read otherwise, the limitation to the planning permission conferred by Class A would have no sensible meaning. The height of the appeal fence in relation to land within the enforcement site is not relevant².
27. Since the original boundary wall at no. 86 is some 1m above the highway, I am satisfied that the fence exceeds 1m and does not comply with A.1(a)(ii). I conclude that Appeals C and D must fail on ground (c).

APPEALS C AND D ON GROUND (D)

28. Ground (d) is that, at the date when the notice was issued, no enforcement action could be taken in respect of the matters stated in the notice. The appellants initially pleaded ground (d) only in relation to the cabin, but they later submitted evidence, which the Council addressed, regarding the paving in the front garden.
29. Under s171B(1) of the 1990 Act, no enforcement action may be taken in respect of building operations after the end of the period of four years beginning with the date on which the operations were substantially completed. Notice B was issued on 22 June 2016 and so the four year or material date is 22 June 2012.

The Cabin

30. The appellants have submitted an invoice from 'Stable Structures', for an order raised on 9 March 2012, for a cabin, fitting and roof and floor insulation at no. 86, with the costs adding up to £5803.08. The email address on the invoice indicates that 'Stable Structures' also used the trading name 'Fencing Centre'. A credit card receipt and a bank statement in the name of Mrs G Sohal show that a payment of £5303.08 to Fencing Centre was processed on 15 June 2012. The site manager at Fencing Centre has confirmed that the cabin was installed on 12 June 2012 before payment was made on the 15th.
31. The cabin was not in place when the appellants made a planning application or a Council officer visited no. 86 in March 2012 but this is irrelevant. The cabin was not acoustically insulated until 2016 – but I still find it probable the building was substantially completed prior to 22 June 2012. The appellants have made no case that the link between the cabin and annex is immune from enforcement action.

The Paving

32. As noted above, Mr Sohal states that 'the patio at the front was constructed in April 2012 and at the same original level which is confirmed in the invoice attached from Miral Dominic Ltd on 15/4/12'. This assertion is precise but unreliable because the

² Article 2(2) provides that, unless the context otherwise requires, any reference in the GPDO to the height of a building is to be construed as a reference to its height when measured from ground level, meaning the level of the surface of the ground immediately adjacent to the building in question or, where the level of the surface of the ground on which it is situated is not uniform, the level of the highest part of the surface of the ground adjacent to it. For the avoidance of doubt, this definition is not relevant to the appeals, because Article 2(1) excludes fences or other means of enclosure from the definition of 'building' in Schedule 2, Part 2, Class A.

invoice makes no mention of land levels. It fails to confirm whether the 'patio' was laid in the front garden at no. 86; it only states that the area was '6.2m by 7.5m'.

33. I saw that there are paved as well as soft landscaped areas at the rear of no. 86. The appellants have not shown that the 'patio' to the front is approximately 6.2m by 7.5m, so the invoice does not show that the alleged paving was substantially completed by 22 June 2012. The appellants' evidence is not sufficiently precise or unambiguous for me to find the development immune from enforcement action.

Conclusions

34. I find that, on the balance of probabilities, that it was too late for the Council to take enforcement action against the alleged cabin – but not the paving in the front garden – when Notice B was issued. It follows that ground (d) should succeed in part. I shall correct the allegation and requirements of the notice so as to delete all references to the cabin, but retain references to the paving and link structures.
35. For the avoidance of doubt, my finding is only that the cabin is a lawful building. It is not for me to speculate as to the lawful use of the cabin.

APPEAL E

Main Issues

36. The main issues are:

- the effect of the HMO use on the living conditions of nearby occupiers;
- whether adequate provision is or could be made for car parking;
- the effect of the fence on the character and appearance of the local area;
- whether allowing Appeal E would result in an 'over-concentration' of HMOs in this area – or, by contrast, meet a local need for HMOs; and
- whether, if the case is not made for a grant of permanent permission, personal permission ought to be granted.

Reasons

Living Conditions

37. As noted above, the appeal building adjoins a Class C4 HMO at 88 Cromwell Road. Even if no. 88 is occupied by students who may quickly move on, a HMO is a residential use and their living conditions ought to be protected in the public interest. I also note that there are dwellinghouses three and four doors down from no. 86 on each side, although there are retail units on the intervening land.
38. Whether occupiers of the appeal HMO are or would be students, professionals and/or others, they could all be expected to make several trips to and from their home each day. The appellants propose to provide four car parking spaces to the rear of no. 86A, and occupiers of the HMO would likely have access to car parking spaces on-street³. They could use cycle parking spaces provided at the back of no. 86, and frequent bus services in the area, as well as make journeys on foot.
39. I find that the comings and goings of occupiers of the appeal HMO will generate noise from the manoeuvring and braking of vehicles, slamming of car doors, footsteps and conversation in the street. Such sounds are heard in every

³ There are two hour parking restrictions on Cromwell Road, Monday to Saturday, except for permit holders.

residential area – but here ten households are accommodated on what was originally a modest single family plot. I consider that the scale of the use would lead to a concentration of activity around no. 86, such as to cause unacceptable disturbance at no. 88, if not also nearby dwellings.

40. Moreover, I saw that the cabin and a living room in the HMO open onto the back garden at no. 86. As the Council suggests, occupiers would be liable to congregate in the shared outside area and adjoining rooms – where doors and windows may be opened – particularly at night. Noise would be likely to carry so as to cause unacceptable disturbance at nearby properties. The cabin and another lounge have been acoustically insulated, but this and further sound-proofing would not prevent the use from causing unacceptable disruption to the lives of neighbours.
41. At the time of my visit, six refuse and recycling wheelie bins were stored in the front garden of no. 86, probably for the convenience of the residents and refuse operatives. Even if there could be fewer bins, I consider that occupiers of a ten bedroom HMO would generate sufficient waste that it would be taken out relatively frequently – and/or in highly concentrated movements – so as to exacerbate the disturbance caused by other activities around the land.
42. The appellants suggest that, if the wheelie bins at the front would not suffice to serve the HMO, the occupiers could use commercial bins in the yard at no. 86A. In my view, residents would struggle to carry refuse bags or recycling boxes to the adjacent land. The appellants have not described any alternative area where bins could be stored without adverse impacts, and so the harm described could not be redressed by condition.
43. Occupiers of houses and shops on Cromwell Road have written in support of the appeals, and they indicate that the HMO is well-managed by the appellants. Letters of objection from other local residents do not describe an existing problem of noise arising from the use of no. 86⁴. However, there are no representations from occupiers of no. 88 and it is necessary in any event for me to look at the impact of the use of the appeal property as a ten bedroom HMO if it was allowed in posterity.
44. I conclude that the appeal HMO, by reason of its scale, would be liable to cause unacceptable harm to the living conditions of nearby occupiers through noise and disturbance. The use conflicts with LP Policy DP3 of the *Winchester District Local Plan Review* (LP), which only permits development that does not have an unacceptable adverse impact on adjoining land uses. It conflicts with the *National Planning Policy Framework* (the Framework), which seeks to secure a good standard of amenity for existing and future occupants of land and buildings.
45. In reaching this conclusion, I have had regard to the appellants' claim – and supporting evidence – that no. 86 could be occupied by up to six residents if the lawful use is a Class C4 HMO. I cannot determine the lawful use under Appeal E, and the matter is in dispute because the Council argues that no. 86 was last used as a C3 dwellinghouse. However, that is of little consequence because a C3 or C4 use would be likely to generate fewer comings and goings than a ten bedroom HMO. I am satisfied that, whatever the 'fallback position', the alleged use would have an unacceptably harmful impact on the living conditions of nearby occupiers.

Car Parking

46. LP Policy T4 expects development to provide parking for cars and pedal cycles, and turning facilities, as appropriate, in accordance with relevant standards. The Council's *Residential Parking Standards Supplementary Planning Document* (SPD)

⁴ Woodland to the north separates no. 86 from dwellings to the rear.

- sets out parking standards and indicates that these need not be achieved only in exceptional circumstances.
47. Paragraph 39 of the Framework was amended by a Written Ministerial Statement of 25 March 2015 so as to discourage the imposition of local parking standards unless there is clear and compelling justification that these are necessary to manage the local road network. The Framework also advises that, if local parking standards are set, account should be taken of factors such as the accessibility and type of the development; availability and opportunities for public transport; and local car ownership levels.
48. I find that the SPD is inconsistent with the Framework and carries little weight as a material consideration. However, the development plan is still the starting point – and it is not unreasonable for Policy T4 to require parking and turning facilities ‘as appropriate’. The Framework expects development to be designed where practical to create safe and secure layouts – and I interpret this to mean that development should include adequate and safe parking facilities, if necessary and with regard to the criteria set out in the Framework.
49. As the appellants suggest, 86 Cromwell Road is within walking or at least cycling distance to Winchester City Centre. There are cycle parking facilities on the land and bus stops nearby. Future occupiers should not need to rely on the private car for all of their day-to-day domestic trips. However, it would be unrealistic to expect every occupier of a ten bedroom HMO to manage on this basis, and that would be true whether or not the residents are students.
50. I cannot assume that future occupiers would or could car share, and I could not require the use of tenancy agreements that proscribe car ownership. From my observation of parking restrictions and levels, there seem to be moderate levels of car ownership and use in this area. I find that adequate off-street parking would be required to serve the HMO, in order to avoid creating an unacceptable risk to highway safety through competition for on-street parking spaces and congestion.
51. The appellants have laid out four spaces on the yard behind no. 86A, in accordance with the revised plan no. 1770/04_01_A. I consider that the four spaces should suffice but, as the appellants concede, there is inadequate turning space and drivers would need to reverse out of the yard. They would back out onto a highway used by shop workers and customers as well as residents – and they might need to manoeuvre close to vehicles which are parked on-street, on the forecourt at no. 86A, and behind no. 84. In my view, the number and layout of the parking spaces would lead to reversing liable to cause an unacceptable risk of traffic accident.
52. The appellants have offered to reduce the number of parking spaces to three, so there would be room for drivers to turn on the planning site. The SPD indicates that ‘dwellings’ with four or more bedrooms and communal parking areas should be served by three private parking spaces, but I am not persuaded that this advice assists in considering the parking needs for *sui generis* HMOs where there can be many more than four bedrooms and the occupiers are normally unrelated. I am not satisfied that three parking spaces would be adequate to serve the appeal use.
53. Even if that finding is contested, the retention of any parking spaces and turning area could only be secured by condition – and yet the drive to the yard is Council-owned. ‘Grampian’ type conditions, which specify requirements for land not controlled by appellants, should not be used in cases where development has already begun. It would be unreasonable in this instance to require the appellants to provide parking and turning facilities that they could not ensure access to.

54. The *Planning Practice Guidance* (PPG) also advises that a condition placing a disproportionate financial burden on an applicant will be unreasonable. The appeal parking spaces are outside of the curtilage of no. 86 and yet, so far as I am aware, there is nothing to prevent the appellants from selling the HMO, convenience store and/or former post office off separately. The appellants have not described their commercial parking or servicing space needs, but I am still concerned that any requirement to retain residential facilities on the yard could make it unreasonably difficult for them to dispose of nos. 86A or 84 in the future.
55. I conclude that the appeal HMO use would not be served by adequate car private parking facilities; thus, it would cause an unacceptable loss of highway safety through risk of collision and/or congestion on the highway. The use conflicts with LP Policies T4 and DP3 which requires that development should not have an unacceptable impact on adjoining land. It also conflicts with the Framework.

Character and Appearance

56. I have found that the fence brings the height of the enclosure at the front of no. 86 to more than 1m above the highway. I saw that the fence appears unduly high and utilitarian in a street where other properties are open at the front, or enclosed by hedging or lower rise structures. I find that the fence is unacceptably obtrusive and harmful to the character and appearance of the area. It conflicts with LP Policy DP3 and the Framework, which expect development to respond positively in terms of design and scale to the character and appearance of the local environment.

Concentration of and Need for HMOs

57. The reasons for issuing Notice A included that the change of use to a ten bedroom HMO has caused material harm to the character of the area which is comprised of two or three bedroom single family dwellings. The Council has since suggested that there is an over-concentration of HMOs to the detriment of the housing stock.
58. Policy WIN9 of the *Draft Local Plan Part 2 – Development Management and Allocations* (LPP2) indicates that the Council will retain a balanced housing stock and designate 'Article 4 Directions' in areas where it is necessary to restrict permitted development rights for the creation of HMOs⁵. In these areas, the conversion of dwellings to HMOs will only be permitted where, amongst other matters, this would not create an over-concentration of HMOs, defined as being more than 20% of all properties in the area or 25% of properties in one street.
59. No. 86 is within an area where such an Article 4 Direction came into force on 11 April 2016. Planning permission would have been required for the use of the building as a ten bedroom HMO even if the Direction had not been passed, but Draft Policy WIN9 is relevant because, as the appellants concede, the thresholds set out in the policy have been exceeded due to the number of HMOs developed since LPP2 was drafted – and that would still be true even if this unauthorised development is discounted.
60. LPP2 has been subject to examination; it is at a late stage of preparation and due to be adopted by May 2017. It appears that outstanding objections to WIN9 are not relevant to Appeal E and so the draft policy carries moderate weight. It has not been shown that the appeal HMO is harmful to the character of the area, but the development does conflict with WIN9 and it will therefore exacerbate an existing imbalance in housing provision. These findings must count against Appeal E.

⁵ A change of use from a C3 dwellinghouse to a C4 HMO is normally permitted development, but Article 4 of the GPDO sets out provisions for local authorities to withdraw PD rights.

61. The appellants suggest that there is a need for single person and shared household accommodation in Winchester, particularly within inner urban areas, given local demographics and rental prices. In support of their argument, the appellants refer to text within LPP2 and the Council's 2012 *Strategic Housing Market Assessment* – but they have not shown, even with the restrictions set out in WIN9, LPP2 would fail to make adequate provision for any type of housing. The appellants have not demonstrated that there is such a need for a ten bedroom HMO at no. 86 as to justify the conflict with Draft Policy WIN9.

Personal Permission

62. It has been requested that, if permission cannot be granted on a permanent basis, the HMO is permitted subject to a condition which restricts the use so that it may only be operated the appellants, who have a 'proven track record' of running the property without causing harm to local amenity.
63. The PPG states that planning permission runs with the land; it is rarely appropriate to provide otherwise – but there may be exceptional occasions where granting permission for development that would not normally be permitted could be justified because of who would benefit.
64. The appellants would benefit from the permission as a business interest, but not because they live at the site; the HMO is not their home. The PPG does not provide for a grant of personal permission for uses simply on the basis of the operator's experience – and I have already found both that the use is harmful, and there is no overriding need for it. A grant of personal permission would not be justified.

Other Matters and Conclusion

65. I accept that the internal layout of the appeal building meets HMO standards for the purposes of the local housing authority. The development also makes efficient use of an existing property in an established urban area and accessible location, in accordance with Policies DS1 and CP14 of the *Winchester District Local Plan Part 1 – Joint Core Strategy* (CS) and LP Policy DP3.
66. However, CS Policy CP14 indicates that maximising the development potential of sites should be balanced against the need to promote high quality design. Policy DS1 seeks to secure sustainable development which improves the economic, social and environmental conditions in the area. These policies are consistent with the Framework, which sets out a presumption in favour of sustainable development as described by the policies set out in the Framework taken as a whole.
67. I consider that the harm caused by the appeal HMO in respect of living conditions and car parking are overriding concerns. The appeal fence causes unacceptable harm to the character and appearance of the area and that permitting the HMO would exacerbate an imbalance in the housing stock is a further objection. For the reasons given above and with regard to all other matters raised, including by all interested parties, I conclude that Appeal E should be dismissed.

APPEALS A AND B ON GROUND (F)

68. Ground (f) is that the requirements of the notices are excessive to remedy the breach of planning control or injury to amenity.
69. Notice A alleges that there has been a change of use to a HMO and it requires that the use must cease; the purpose of the notice is thus to remedy the breach of planning control. I have found through Appeal E that the HMO causes harm which could not be remedied by a grant of conditional permission. Arguments relating to

amenity cannot be re-run under ground (f). The appellants' case here must be that the requirements of Notice A are excessive to remedy the breach.

70. Whether or not no. 86 was lawfully used as a Class C4 HMO, an enforcement notice cannot require the reinstatement of a lawful use; that would go beyond what is necessary to remedy the breach. It is only appropriate for a notice to require that the unauthorised use must cease. Step 5A of Notice A is not excessive, but I shall vary the requirement so that it only seeks cessation of use as a *sui generis* HMO – in line with the allegation and to give the parties scope to discuss the lawful use.
71. It is well-established that an enforcement notice concerned with a material change of use can require not only the cessation of the unauthorised use, but also the removal of works that are integral to the use, even if such works would not require permission otherwise. The appellants do not refute that partitions, doors and other fittings described in step 5B were installed as part and parcel of the alleged change of use. It is not excessive but necessary for Notice A to require the removal of these items, in order to ensure that the land is restored to its previous condition and thus to remedy the breach.
72. Save for the variation to Step 5A, Appeals A and B fail on ground (f).

APPEALS A AND B ON GROUND (G)

73. Ground (g) is that the period specified in the notice for compliance with the steps falls short of what is reasonable. Notice A gives three months for compliance; the appellants request that the students who occupy the HMO ought to be allowed to remain until the end of the academic year so as not to disrupt their studies. The Council does not object to this request, but it suggests that the period should be described 'on a term...rather than annual basis.' The time for compliance should in fact be more precise than that.
74. I accept that the HMO is currently occupied by students who should be reasonably allowed to stay in their existing residence until the end of the normal study year. I would also observe that any resident who is not a student ought to be given time to look for alternative accommodation, given that Notice A would render them homeless. It would be reasonable and proportionate to extend the period for compliance to six months. Appeals A and B succeed on ground (g).

DECISIONS

Appeals A & B: APP/L1765/C/16/3155184 & APP/L1765/C/16/3157249

75. Enforcement Notice A is corrected and varied by:
- Deleting the text of paragraph 2 in its entirety and substituting '*86 Cromwell Road, Winchester, Hampshire, SO22 4AE ("the Land") shown edged red on the attached plan and comprising the original dwellinghouse and annex linked to the original dwellinghouse and a wooden cabin by way of covered areas*'.
 - Deleting the words 'of a dwellinghouse and ancillary annex building' in paragraph 3;
 - Inserting the words '*sui generis*' between 'a' and 'HMO' in sub-paragraph 5A;
 - Deleting 3 months and substituting 6 months as the time for compliance; and
 - Substituting the plan attached to this decision for the plan attached to the enforcement notice.

76. Subject to the corrections and variation, Appeals A and B are dismissed and Enforcement Notice A is upheld.

Appeals C & D: APP/L1765/C/16/3155183 & APP/L1765/C/16/3157250

77. Enforcement Notice B is corrected by:

- Deleting the words 'shown in the approximate location marked green on the attached plan' in sub-paragraph 3(a);
- Deleting the words 'shown hatched blue on the attached plan' in sub-paragraph 3(b)
- Deleting sub-paragraph 3(c) in its entirety and substituting '(c) the erection of a structure linking the annex building to the wooden cabin';
- Deleting the words 'or wall' from sub-paragraph 5(a);
- Deleting sub-paragraph 5(c) in its entirety and substituting '(c) remove the structure linking the annex building to the wooden cabin'; and
- Substituting the plan attached to this decision for the plan attached to the enforcement notice.

78. Subject to these corrections, Appeals C and D are dismissed and Enforcement Notice B is upheld.

Appeal E: APP/L1765/W/16/3149326

79. Appeal E is dismissed.

Jean Russell

INSPECTOR

Plan

This is the plan referred to in my decisions dated:10 March 2017

by Jean Russell MA MRTPI

Land at: 86 Cromwell Road, Winchester, SO22 4AE

Appeal A: APP/L1765/C/16/3155184

Appeal B: APP/L1765/C/16/3157249

Appeal C: APP/L1765/C/16/3155183

Appeal D: APP/L1765/C/16/3157250

NOT TO SCALE

