
Appeal Decision

Site visit made on 24 July 2018

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 20 September 2018

Appeal Ref: APP/G1250/W/18/3199165
65 Talbot Road, Bournemouth BH9 2JD.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant planning permission.
 - The appeal is made by Hi Tech Home Improvements against the decision of Bournemouth Borough Council.
 - The application Ref 7-2017-15324-D, dated 12 September 2017, was refused by notice dated 19 December 2017.
 - The development proposed is alterations, change of use from C4 to House in Multiple Occupation (Sui Generis Use), single storey rear extension, formation of a second floor and dormer window.
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Decision

1. The appeal is allowed and planning permission is granted for alterations, change of use from C4 to House in Multiple Occupation (Sui Generis Use), single storey rear extension, formation of a second floor and dormer windows at 65 Talbot Road, Bournemouth BH9 2JD in accordance with the terms of the application, Ref 7-2017-15324-D, dated 12 September 2017, and the plans numbered 1118.100b, 1118.101, 1118.105c, 1118.106b, 1118.107c and 1118.108a subject to the conditions set out in the schedule at the end of this decision.

Application for Costs

2. An application for costs was made by Hi Tech Home Improvements against Bournemouth Borough Council. This application is the subject of a separate Decision.

Procedural Matters

3. The description in the heading above is that used by the Council as it is clearer than that used on the planning application form. Nonetheless, it is apparent that the development includes 2 dormer windows. As the Council considered the development on this basis so shall I. Consequently I have made reference to 'dormer' in the plural in my decision above.
4. The physical alterations forming part of the development have already been carried out. It is apparent however that when compared to the plans discrepancies exist. These include the use of synthetic timber boarding to clad the dormers, and a different glazing and door arrangement within the rear elevation of the extension to the rear. Insofar as these discrepancies have a bearing on the main issues I have addressed them in my reasons below, and made my decision with reference to the details submitted with the application.

5. There is disagreement between the parties over whether the change of use has yet occurred. Notwithstanding the fact that modification of the building to enable the change of use has taken place, I have no definitive evidence that the change of use has also taken place. I have therefore made my decision on the basis that the change of use has yet to occur.
6. The revised National Planning Policy Framework (Framework) came into force during the course of the appeal. The parties were given the opportunity to comment on the implications of the guidance on the appeal, and I have also taken it into account in determining the appeal.

Main Issues

7. The main issues in this appeal are:
 - the effect the development has or would have on the character and appearance of the area, including whether the development does or would preserve or enhance the character or appearance of Meyrick Park and Talbot Woods Conservation Area; and,
 - the effect the development has and would have on the living conditions of neighbours with regard to noise and disturbance.

Reasons

Policy Background

8. In its decision notice the Council references saved Policy 6.17 of the District Wide local Plan 2002 (DWLP), which is concerned with control of Houses in Multiple Occupation (HMOs). Whilst the appellants dispute its relevance, and have submitted a legal opinion to this effect, the supporting text of the policy makes reference to 'HMO and hostel uses' in the plural – a C4 HMO being one such use, and a Sui Generis HMO being another. As such I am satisfied that its wording is flexible enough to be relevant to the appeal scheme.
9. The Council has sought to interpret saved Policy 6.17 with reference to the terms set out in Policy CS24 of the Bournemouth Local Plan: Core Strategy 2012 (LPCS). This seeks to restrict changes of use between classes C3 and C4 where 10% or more of properties within a defined area are already in use as HMOs. Both parties agree that the policy itself is not directly applicable to the scheme, but the Council nevertheless argues that it provides a means of assessing the character of an area as required by saved Policy 6.17. This is partly on the basis of the weight it was given by an Inspector in a previous appeal (reference APP/G1250/A/13/2195229), despite the change of use involved similarly falling outside the scope of the policy wording.
10. In my opinion the methodology and accompanying rationale within Policy CS24 is not directly transferable to saved Policy 6.17. This is because saved Policy 6.17 does not incorporate the assumption underpinning Policy CS24 that adverse effects on character and appearance, including the composition of the community, arise once a 10% threshold of HMO uses is passed, and it does not seek to place a set limit on HMO uses. In my view interpretation of saved Policy 6.17 requires assessment of the effect and compatibility of HMO uses against 'existing' or actual character, and provides scope for changes of use where there would be no demonstrable harm. This includes where, as explained in the

supporting text, areas “have a similar density and type of development”, and implies the need for detailed evidence.

Character and Appearance

11. No 65 is a 2 storey detached dwelling located roughly equidistant between, and within a short walking distance of Bournemouth University and the main shopping street serving Winton. Based on the Council’s data, HMOs represent the majority use within the area it defines for the purposes of assessment. I consider therefore that HMOs including No 65 play a significant and important role in defining the established residential character of the immediate area.
12. Against this background the Council’s officer report notes that the area, “does not display the typical signs of an area that is becoming more congested in terms of population and parking due to HMO conversions”. When I undertook my site visit there was indeed little evidence other than to-let boards advertising student accommodation to differentiate the use of one property from another along roads in the immediate vicinity. As such, and as acknowledged by the Council, HMO uses including that of No 65, do not currently have a noticeably adverse effect on the appearance of the area.
13. The Council’s principal concern appears to be that the occupancy of No 65 by 8 rather than 6 people would result in harm arising from ‘more intensive use’ of the property. The Council however acknowledges that the property benefits from appropriate level of off-street parking for the level of occupation proposed, and that provision of appropriate waste facilities can be secured by condition. I agree, and as such conclude that the change of use would not therefore have an adverse effect on the existing appearance of the area.
14. The change of use would not affect the overall percentage of HMO uses in the area as No 65 is, and would remain an HMO. There is no evidence before me, including with regard to the current composition of the community, to suggest that any ‘imbalance’ in the local population would, or indeed could result either individually or cumulatively, from the addition of 2 further residents.
15. The Council nonetheless variously states that the area contains ‘traditional family sized houses’, ‘three bedroom dwellings and flats’ and ‘three-four bed detached and semi-detached dwellings’ supporting smaller households than the 8 person occupancy of No 65 proposed. I observed that many houses along streets to the north of Talbot Road do indeed appear to be generally smaller in size than the more substantial properties lining Talbot Road. However no evidence concerning actual levels of occupancy and patterns of distribution within the surrounding area has been set before me. Consequently the extent to which the occupancy of No 65 by 8 persons rather than 6 would be significantly and noticeably at odds with the pattern of occupancy within the broader area, and especially of Talbot Road, has not been demonstrated. In my opinion the addition of 2 persons to a dwelling containing 6 would have little noticeable effect on the character of the area in itself.
16. Talbot Road is a classified A road, and though I have been provided with no detailed information regarding its use, its location within a built up urban area would suggest that significant levels of pedestrian and vehicular traffic can be reasonably anticipated. I am conscious that in visiting the site during off-peak hours in the university summer vacation the locality was likely to have been less busy than at other times. I did however note a reasonable number of

passing vehicles, and background noise from traffic was constant. In this context the small number of additional deliveries and visitors to the main road frontage of No 65 likely to be generated by 2 additional occupants would seem unlikely to generate a level of noise or disturbance that would either be unusual, significant in itself, or cumulatively harmful to the area at large.

17. The Council has provided records of noise complaints received within the locality over a period of 3 years, but they lack any supporting interpretation, analysis or explanation. It is unclear to what extent and how they reflect the character of the area, how the results compare with other areas of the Borough or indeed how they relate to HMO use. Given that their meaning is unclear I can afford the records little weight. Whilst more specific reports of noise generated by No 65 are also included the source of complaint is not given and therefore the area of effect is unclear. In the absence of evidence to the contrary it seems likely that any additional noise generated within the dwelling by 2 additional occupants would have such a localised effect that its impact on the area would, in my opinion, be limited. I will however consider the matter further with regard to the more immediate living conditions of neighbours below.
18. The Council makes reference to a number of appeal decisions. However the circumstances of the developments involved appear to differ from those of that proposed, as do the specific locations and Council areas, and therefore so too the character and appearance of the localities concerned. Furthermore, despite the opinion of the Inspector in appeal APP/G1250/A/13/2195229, I have concluded, for the reasons set out above, that Policy CS24 is not relevant to the proposed development. These appeals have not therefore affected my findings in this decision.
19. No 65 also lies at the northern edge of the Meyrick Park and Talbot Woods Conservation Area (the conservation area), the boundary of which partly follows properties on the north side of Talbot Road. The significance of the conservation area appears to principally reside in the layout, and architectural style of development dating between the late nineteenth century and inter-war period, as too the period related differences expressed between individual component parts. In this context the site forms part of a ribbon of late nineteenth century development built along Talbot Road. This consists of reasonably large houses whose density and urban character contrasts with the more spacious, predominantly later suburban housing set along less well trafficked roads that characterises much of the conservation area to the south.
20. Whilst the Council concludes that the change of use would fail to preserve or enhance the conservation area, the 'area' upon which the Council's assessment is based is not that of the conservation area itself but one defined with reference to criteria in Policy CS24. Much of the latter lies outside and to the north of the conservation area boundary. The particular considerations applied by the Council in its assessment also appear to be entirely unrelated to the conservation area. In light of my findings above, I consider that the proposed change of use would not be incompatible with the character or appearance of Talbot Road or the contribution that it currently makes to that of the conservation area. The significance of the conservation area would therefore be unaffected, and thus its character and appearance preserved.

21. The development also includes addition of dormers and an extension, none of which the Council has identified as being objectionable. Whilst I generally agree, the application of synthetic timber cladding to the sides of the dormers is at odds with the appearance of the roof finish. Use of the cladding is not indicated on the plans or attached particulars which instead suggest use of tiles to match the roof. The shiny, plastic-like appearance of the cladding visually detracts from the historic architectural appearance of the building, and the effect is noticeable within and causes harm to the street scene. Consequently the building alterations as carried out do not preserve or enhance the character or appearance of the conservation area. The less than substantial harm caused to the significance of the conservation area is not obviously outweighed by provision of any broad public benefit. Harm could however be neutralised by remedial works secured by a condition.
22. For the reasons above I conclude that the effect of the development on the character and appearance of the area would be consistent with saved Policy 6.17 of the DWLP which seeks amongst other things to ensure that HMO uses are compatible with the existing character of the area. Subject to a condition requiring remedial works the effect of the development on the character and appearance of the conservation area would also be consistent with Policy CS41 of the LPCS which seeks to secure quality design, and Policy 4.4 of the DWLP that requires development to preserve or enhance the character or appearance of conservation areas.

Living Conditions

23. Given the density and layout of development within the immediate setting of the site, the dwellings to either side of No 65, and to the rear on Stansfield Road, stand in reasonably close proximity to one another. Whilst to the rear, 63 Talbot Road has been extended along the full length of the rear boundary with No 65 and appears to feature no windows to habitable rooms within its side elevation, the rear elevation of 67 Talbot Road remains open, and that of 1 Stansfield Road stands diagonally adjacent to the rear boundary of no 65. Construction of the rear extension has inevitably closed the gap between No 65 and No 1.
24. Whilst both parties agree that the rear extension could be constructed under permitted development rights, the lawfulness of the extension is not a matter for me to determine within the context of an appeal under Section 78 of the Act. It is however open to the appellants to seek a determination under Section 192 of the Act in relation to this matter if required. As the extension and change of use are each included within the development for which planning permission was sought, I have considered the extension on its planning merits.
25. The Council's concern regarding the neighbour impact of the change of use chiefly relates to the likely difference in levels of noise and disturbance created by 8 versus 6 occupants within the 'social space' partly contained within the extension. Within a close-knit urban environment such as that within which the appeal site is located there is an intrinsically high potential for noise generated within adjacent properties or gardens to be heard by neighbours, and the elimination of all such noise would be impossible. Whilst it is reasonable to consider therefore that some degree of noise and disturbance between neighbouring dwellings is both inevitable and acceptable, sensitivity to noise is

nonetheless increased. This may or may not be reflected in the Council's record of noise complaints referred to above.

26. More particularly the Council draws attention to 2 incidents involving night-time noise at No 65 over a single weekend in November 2017. Limited details are supplied with regard to the first incident, but the second involved a social gathering of 40 people within the social area. The second incident is clearly not representative of the levels of noise that could be reasonably expected to arise during normal day-to-day use of the property by either 6 or 8 people. Furthermore there is no necessary correlation between large social gatherings, visitor numbers and the level of occupancy of any given property. No further evidence of disturbance as a result of noise generated by No 65 has been presented beyond this single weekend. As such no persistent pattern of anti-social behaviour or noise nuisance has been shown to exist that would, within reason, be exacerbated by addition of 2 further residents.
27. The Council draws attention to the design of the extension, and in particular the bi-fold doors and the side windows. I noted during my visit that the side windows are double glazed units of limited size which are fixed shut. As such noise leakage would be limited. I agree with the Council however that the bi-fold doors shown on plans would, if left fully open, do little to contain noise, and that given the nature of the setting this could cause a nuisance to neighbours with No 1 likely to be more affected than No 67. Nonetheless I noted during my visit that the bi-fold doors have in fact not been installed, and a glazed screen featuring a pair of centralised sliding doors has been installed instead. It is clear that the much reduced opening area this provides would contain noise more effectively than fully opening bi-fold doors. The doors installed are therefore a more appropriate and sensitive response to context, and subject to this arrangement being retained, or one very similar being installed, the development is or would be acceptable in planning terms without its nature being significantly changed. This could be secured by an appropriately worded condition.
28. In light of my findings above regarding the character and use of Talbot Road, the small number of additional deliveries and comings and goings to the frontage of No 65 likely to be generated by 2 additional occupants, would be unlikely to cause any unacceptable degree of noise and disturbance to neighbouring residents.
29. As such I find that subject to a condition relating to the glazing and doors installed in the rear elevation of the extension, the development would not unacceptably affect the living conditions of residents in neighbouring properties. It would therefore be consistent with saved Policy 6.17 of the DWLP, which amongst other things seeks to ensure that the amenities of neighbouring residents will not be adversely affected by noise generated by HMO uses. It would also be consistent with Policy CS38 of the LPCS which seeks to minimise noise pollution.

Conditions

30. The Council has recommended a number of planning conditions. I have considered these in the light of the advice contained within the Framework and Planning Practice Guidance (PPG). In allowing the appeal I shall impose conditions accordingly, improving precision where necessary in accordance with the advice in the PPG.

31. As physical works to the building have already been carried out and the development has as such already commenced I have not applied standard conditions detailing a time limit for commencement or listing the plans. I have however noted the relevant plans in my decision.
32. The Council have requested a condition requiring use of matching materials on the extension, but this is unnecessary on account of the fact that extension has already been constructed and harmonises with the host building. I have however applied a condition requiring agreement of the dormer cladding to ensure that it too harmonises and has no adverse effect on the character and appearance of the conservation area. I have also applied a condition requiring agreement of the glazing and sliding door design in the extension, in order to secure a more sensitive treatment than that shown on the plans with regard to containment of noise.
33. On account of the fact that I have considered that the effects of the proposed use based on occupancy by 8 persons would be acceptable, I agree with the Council's suggestion that a condition limiting occupancy to 8 persons is necessary. The Council however also makes reference to an appeal (reference APP/H2265/W/16/3165882) in which the Inspector viewed that such a condition would not be practically enforceable. The concern appears to have partly related to monitoring and definition. Be that as it may, I am satisfied that the condition below is suitably precise, and that it would be possible for the Council to undertake enforcement action in the event that a contravention became apparent.
34. To ensure the provision of appropriate waste storage facilities a condition requiring provision is necessary, and would amongst other things help to reduce the potential for adverse impacts related to bins being stored in public view.
35. Whilst the Council have requested a condition restricting occupation until provision of a cycle store shown on the application plans is made, I have been unable to identify a cycle store on the plans. The restriction would in any case be unreasonable on account of the fact that the building is currently inhabited.

Conclusion

36. For the reasons set out above I allow the appeal.

Benjamin Webb

INSPECTOR

Schedule of Conditions

- 1) The occupation of the house in multiple occupation hereby permitted shall be limited to a maximum of 8 persons.
- 2) Notwithstanding any information in the submissions, within 2 calendar months of this decision, details of cladding to be installed to the sides of the dormers hereby permitted, shall be submitted to and approved in writing by the Council. The cladding approved shall be installed within 2 calendar months of the Council's approval and thereafter retained.

- 3) Notwithstanding any information in the submissions, within 2 calendar months of this decision, details of glazing and doors to be installed to the rear elevation of the extension hereby permitted shall be submitted to and approved in writing by the Council. The glazing and doors approved shall be installed within 2 calendar months of the Council's approval, and thereafter retained.
- 4) Within 2 calendar months of the date of this decision, details of the provision and siting of a bin store shall be submitted to and approved in writing by the Council. The bin store will then be installed within 2 calendar months of the Council's approval, and will thereafter be retained and kept available for the storage of bins.