The Planning Inspectorate

Appeal Decision

Site visit made on 1 October 2019

by JP Tudor BA (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 31 October 2019

Appeal Ref: APP/D0121/W/19/3234284
21 Walliscote Road, Weston-super-Mare BS23 1EB

- 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 Ah Lek Ser against the decision of North Somerset Council.
- The application Ref: 18/P/4548/FUL, dated 10 October 2018, was refused by notice dated 17 April 2019.
- The development proposed is change of use of a residential institution (C2) to a 14 bedroom HMO (House in Multiple Occupation) (Sui Generis).

Decision

1. The appeal is dismissed.

Procedural Matter

2. The change of use from a former care home (C2 use) to a 14-bedroom House in Multiple Occupation (HMO) (sui generis use) has already taken place. Therefore, the application is retrospective and intended to regularise the position. I have considered the appeal on that basis.

Main Issues

3. The main issues are:

   - the effect of the change of use on the character of the area and the mix of housing;
   - whether the property provides acceptable living conditions for occupiers, with particular regard to outlook, privacy, noise and access to daylight and sunlight; and,
   - the effect of the parking arrangements on highway safety.

Reasons

Character and housing mix

4. The appeal property is a two-storey detached Victorian seaside villa. It appears to have undergone some modernisation with a new roof, windows and a sizeable, unsympathetic extension to the rear. Nevertheless, its gabled façade, bay window and materials reflect similarly designed 19th century houses which stretch out along Walliscote Road, just one street back from the seafront. While it would originally have been built as a family home, it was

previously used as a care home. The site lies within the Great Weston Conservation Area (GWCA).

5. According to the appellant the property was vacant when acquired and it is now in use as an HMO with 14 bedrooms and shared facilities including a kitchen, dining room and lounge. The proposal is to formally change its planning use from a care home (C2) to an HMO (sui generis).

6. As confirmed in the National Planning Policy Framework[1], planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise.[2]

7. Policy CS15 of the North Somerset Council Core Strategy (CS)[3], which forms part of the development plan, seeks to ensure a genuine mix of housing types and tenures within existing communities to support a range of household sizes, ages and incomes and to reduce an existing proliferation of one housing type within an area. The supporting text to the policy explains that creating balanced communities with a range of housing types can help to achieve a sustainable community by, amongst other things, reducing the transient population and fostering community spirit by an increased sense of belonging, identity and pride of place.

8. The appeal property is within an area identified by the Council as having a high proportion of sub-divided properties and flats which, according to the supporting text of CS policy CS15, can be associated with high levels of deprivation and transient populations. Therefore, the area has been designated by the Council as an Area of Restricted Subdivision. Policy DM39 of the Council's Development Management Policies: Sites and Policies Plan Part 1 (SPPP1)[4] states that: *'Within Areas of Restricted Subdivision shown on the Policies Map no further conversions from houses to self-contained flats or Houses in Multiple Occupation will be allowed.'* That is intended to meet the policy aim to: *'Reduce the concentrations of one bed flats in areas where there are increasing social problems and restore more mixed and balanced communities in these areas.'*

9. Furthermore, in the 'justification' supporting text to policy DM39, it is recognised that while the creation of self-contained flats and the subdivision of large properties into HMOs can help meet housing need, in some instances their provision can be detrimental to residential areas. The supporting text indicates that the approach is intended to address the practical issues that such conversions can cause, related to street parking, noise, waste storage, and to prevent environmental decline, as lower levels of owner occupation can, in some instances, also lead to lower standards of maintenance.

10. Therefore, the policy context for resisting a proliferation or over-concentration of flats or HMOs in specific areas is explained and established within the development plan.

11. SPPP1 policy DM39 refers to conversions from 'houses' to self-contained flats or HMOs. The dictionary definition of a 'house' is 'a building for human habitation' which the appeal property is. Therefore, it falls into that category. The

[1] February 2019
[2] s.38(6) Planning and Compulsory Purchase Act 2004 and s.70(2) Town and Country Planning Act 1990
[3] Adopted January 2017
[4] Adopted July 2016

appellant submits that as the proposal does not involve external or internal changes to the building, it is not being subdivided. However, its use is being changed to an HMO which policy DM39 precludes in specified areas.

12. The Council also notes that the appeal building was a care home and, therefore, falls within use class C2, but it also maintains that the change of use is still covered by policy DM39. It cites an appeal decision relating to a nearby property at 49 Walliscote Road[5], which involved the proposed change of use from a guesthouse (Class C1) to an HMO (sui generis) within the same Area of Restricted Subdivision.

13. In that appeal decision, the Inspector found that SPPP1 policy DM39 *'does not distinguish between dwelling houses or guesthouses. It is the conversion into single dwelling units which the policy seeks to restrict rather than the conversion from specific types of dwelling. In doing so, it aims to limit the amount of this type of housing and the negative impacts on the local area which result from their overconcentration. I am therefore satisfied that the proposal would be caught by the restriction in LP Policy DM39. Although I note the points made by the appellant in relation to the number of other HMO's located nearby, Policy DM39 is clear that where an area is designated as one of Restricted Sub Division, no further conversions to self-contained flats or HMO's will be permitted.'* [6]

14. Therefore, the Inspector considered that it is the creation of further HMOs which the policy intends to restrict. Given the similarity in the proposed change of use in that appeal and in the appeal before me, I see no reason to take a different view regarding the relevance and application of SPPP1 policy DM39. Consequently, the proposal to create another HMO within an Area of Restricted Subdivision would conflict with development plan policy DM39.

15. The appellant questions whether there is an over-concentration of HMOs in the area and says that he has a waiting list of people seeking such accommodation. However, the Council advises that the Areas of Restricted Subdivision were identified as areas of proliferation of small, rented accommodation with resulting environmental, social and deprivation issues in a survey that was undertaken by the Council in April 2010. Paragraph 3.210 of the CS, which dates from 2017, also says that: *'In Central and South Ward areas of Weston-super-Mare there are a higher proportion of sub-divided properties than in the remainder of Weston or North Somerset. In Central ward in Weston, the proportion of housing stock given over to flats is 70% compared to a Weston average of 30%.'* According to the Council, the appeal site falls within that area, where the development plan seeks to encourage more family housing. Therefore, it appears that concerns about an over-concentration of sub-divided properties in the area is well-founded and based on relevant surveys and data. I give them greater weight than the limited anecdotal evidence given by the appellant, which appears to be based on one property in the area.

16. It is acknowledged that there are benefits associated with bringing vacant buildings back into use. The appellant argues that the building had 14 bedrooms when it was used as a care home and that no internal or external alterations to the building are proposed. Whilst that may be, the above policies are clearly intended to prevent the creation of further HMOs in Areas of

[5] APP/D0121/W/16/3152680
[6] Paragraph 6

Restricted Subdivision, in which the appeal site is located. The effect of the proposed change of use would be to create a further HMO which would be contrary to the development plan, as established above.

17. The appellant suggests there are similarities between the former use as a care home and as an HMO, as the layout and rooms are unchanged. However, the particular adverse impacts which can be associated with an over-concentration of HMOs in an area are explained in the supporting text to policy DM39 referred to above. They are also detailed in several appeal decisions referred to by the Council, including those relating to 26 St Pauls Road, Northampton[7] and 147 Headley Way, Oxford.[8] Amongst the adverse effects on character referred to, associated with an over-concentration of HMOs, are those arising through possible increases, in noise, disturbance and litter. Although the appellant thinks that appeals relating to properties in other cities and towns are not relevant, it is clear those appeals dealt with similar issues relating to the effects of increasing concentrations of HMOs. Therefore, they are relevant.

18. The increase in density of occupation typically associated with HMOs can, according to the Inspector in the 147 Headley Way appeal decision, *'have an effect on the activity generated by both people and vehicles, as well as the likelihood of requiring additional refuse facilities and additional stresses on local infrastructure.'*[9]

19. The Inspector in that appeal further observes that: *'The occupiers of an HMO are also made up of independent tenants (as opposed to a lodger or friend renting a room from a larger household) who each may bring friends or have a different lifestyle, resulting in movements, noise and disturbance at different times of the day and night in stark comparison with that typically associated with a single family dwelling. Whilst I appreciate that the use of an HMO is already in existence and no formal noise complaints have been received, this is to a large extent dependent upon the tenants at any point in time and which are generally subject to frequent change. It also follows that if the majority of dwellings within Headley Way were to be converted to a HMO, their presence, whilst not necessarily changing the physical appearance of the buildings, would be significantly detrimental to the local character, housing mix, living conditions and experience of this street scene which goes beyond a purely visual perception.'*

20. It seems to me that the types of adverse effects referred to above, which can be associated with the proliferation or over-concentration of HMOs in an area, are less likely to result from the use of a building as a care home, where residents are generally older, being looked after, are unlikely to use their own vehicles and are more likely to remain inside for much of the time in contrast to independent people of a range of ages renting rooms, often for short periods. Consequently, I disagree with the appellant that there is little difference between the former and current use of the building. Moreover, the local development plan has specifically identified the proliferation of flats and HMOs as having negative effects in some areas due to an over-concentration.

21. Therefore, I conclude that the change of use to a 14-bedroom HMO is, taking account of the relevant considerations described above and the identified over-

[7] APP/V2825/W/17/3190506
[8] APP/G3110/W/18/3219520
[9] Paragraph 11

concentration in the area, likely to lead to an adverse effect on the character of the area and fail to improve its housing mix.

22. It follows that the proposal conflicts with policy CS15 of the CS and policies DM34 and DM39 of the SPPP1 which, amongst other things, seek to ensure a genuine mix of housing types and tenures to create balanced communities and prevent further conversions to HMOs in Areas of Restricted Subdivision.

Living conditions of occupiers

23. The Council is concerned that the position of windows and the internal layout of the 14-bedroom HMO does not provide acceptable living conditions for current of future occupiers. It has raised particular concerns about bedrooms 9, 10, 13, 16, and 17, as shown on the submitted plans. I was able to see those rooms and the shared lounge, dining and kitchen facilities during my site visit.

24. Bedrooms 9 and 10 are at the front of the building, with windows immediately adjacent to the open parking forecourt area. Although the parking area is relatively small, it appears that it could accommodate 2 or 3 vehicles. Therefore, occupiers could be subject to noise and disturbance from vehicles manoeuvring, including at night with headlights shining into bedrooms. Moreover, the proximity to the parking area also has an adverse effect on privacy as people would be likely to pass close to bedroom windows to access vehicles. While curtains or blinds could be closed or net curtains used, that could contribute to an enclosing effect and, in any case, would not sufficiently mitigate noise.

25. The appellant submits that HMO tenants do not normally have cars and refers to another nearby HMO at 35 Lower Church Road, with 10 tenants where there is no off-road car parking. Even if it is acknowledged that car ownership or use amongst HMO tenants is generally lower than for one-bedroom self-contained flats, which the Council appears to accept, there is no guarantee that the limited number of parking spaces to the front would not be used. Even if current tenants do not own cars, the often transient nature of occupancy at HMOs could mean that future tenants do. Moreover, the availability of off-road parking at the appeal property, albeit limited, would be likely to attract such tenants.

26. Bedroom 13, towards the rear of the house, has one window adjacent to an internal hallway. Although the window is obscure glazed, the room has an oppressive, enclosed feel and limited natural light. The proximity to a shared space, where fridges are situated and which also leads to an exit, would be likely to mean that other occupants would stand in that area or pass by the window. That could lead to noise or disturbance. Although the obscure glazing is necessary to protect privacy, it would more usually be expected in bathroom rather than bedroom windows, which indicates the inadequacy of this bedroom as a main living space.

27. The only external window in bedroom 16 is also mostly obscure glazed and close to a sizeable bike shed in the rear garden. Consequently, outlook is poor, and the quality of natural light limited. The only window to bedroom 17 is immediately adjacent to a side entrance which gives access to 5 rear bedrooms. Given that position, it is likely the curtains would need to be kept closed for privacy, which would limit access to light. Moreover, the use of the access by other occupants could also lead to noise or disturbance.

28. While there are some reasonably sized communal areas and a paved garden, given that there are 14 bedrooms and the HMO licence authorises occupation by up to 15 persons, it seems likely that when at home occupiers would spend a significant amount of time in their rooms. That is also indicated by the presence of televisions, small fridges and sinks in some bedrooms. The shared living room and kitchen also lack external windows. Although there are internal windows onto a shared hallway with a glazed or Perspex roof which provides some indirect light, the lack of natural light was apparent. The shared dining area does benefit from two external windows but because of their proximity to the next house, it also has a dark, somewhat gloomy atmosphere.

29. According to the appellant the internal configuration has not changed since the house was used as a care home. The appellant cannot see why it would have been considered acceptable as a care home but is not acceptable as an HMO. While I can understand the appellant's position, the Council advises that the permission for use as a care home was granted in 1983 but that, given subsequent changes in development plan policies, it is unlikely that a similar decision would be made now. Moreover, the Council says that any changes that may have been made to its internal layout over time were not subject to planning applications. In any event, my role is to consider the acceptability of the living conditions for occupiers with regard to current local and national planning policy.

30. The appellant raises alleged inconsistency between the HMO licensing regime and planning considerations. The HMO has a licence for occupation by not more than a maximum of 14 households and 15 persons. Again, the appellant does not understand why the HMO, with its current layout can be considered acceptable under the criteria for HMO licencing, derived from the Housing Act 2004, but that the living conditions are considered unacceptable when assessed against the development plan.

31. I also have some sympathy with the appellant regarding that aspect. However, HMO licensing is a separate regime under a different statute. The Council points out that whilst licensing does consider some aspects of living conditions relating to communal areas, facilities, room sizes and fire risk regulations, it does not concern itself with wider planning issues relating to living conditions, such as outlook or privacy. That is confirmed by the copy of the licensing criteria supplied by the Council.[10]

32. Overall therefore, I conclude that the property does not provide acceptable living conditions for occupiers, with particular regard to outlook, privacy, noise and access to daylight and sunlight. Of the policies referred to by the Council, the clearest conflict would be with SPPP1 policy DM32, which seeks to ensure that the design and layout of development does not prejudice the living conditions of occupiers.

Parking and highway safety

33. The Council alleges that the parking provision offered by the proposal is inadequate and would result in adverse effects on highway safety. As already referred to, there is a small parking area to the front of the property, which the Council suggests could provide 2 parking spaces, taking account of its parking

[10] The West of England (WoE) local authorities' standards for licensed Houses in Multiple Occupation (HMOs) under Part 2 of the Housing Act 2004 (3rd October 2017).

standards. The Council concedes that the North Somerset Parking Standards Supplementary Planning Document (SPD)[11] does not refer to HMOs. Nevertheless, the Council extrapolates from the requirement for one-bedroom flats in the SPD (1.5 spaces per flat), on the basis that it is *'a largely similar use.'* At the same time, it appears to accept that *'due to the type of occupiers usually associated with HMOs the provision of 1.5 spaces is usually considered excessive'*. The Council does not specifically quantify what an appropriate provision might be for this HMO but simply says that 2 spaces would be below it. I find that overall line of reasoning unpersuasive.

34. There is some off-road parking provision which I understand is the same as that which was available when the house was used as a 14-bed care home. That use is also likely to have generated parking requirements for visitors and deliveries. I note that some local residents have also expressed concern about parking in the area, which is said to be limited, and vehicles overhanging the off-road parking spaces onto the footway. However, illegal parking obstructing the highway (which includes the footway) would be subject to separate control.

35. Although the existing on-site parking is likely to require drivers to reverse out on to the highway, the Council has not expressed concern on that issue. Given that approaching pedestrians and drivers would be likely to see and hear reversing vehicles, I am also satisfied with that aspect.

36. The Council appears to accept that HMO users generally have lower car ownership or use levels and the evidence of particular parking stress in the area is relatively limited. Given those factors and the previous use, I am not convinced that available parking on nearby side streets, which appears to be largely unrestricted, could not safely accommodate the levels of parking that may be associated with the HMO, beyond the existing off-street provision.

37. I conclude, therefore, that the parking arrangements are unlikely to lead to an adverse effect on highway safety. It follows that the proposal would comply with CS policy CS10 and SPPP1 policies DM24 and DM28, insofar as they require that car parking arrangements for development should not prejudice highway safety.

Other Matters

38. Although the appeal site is within the GWCA, the Council has found that given that the proposal does not involve external changes to the building, it would not materially affect aspects which contribute to the significance of the conservation area. I see no clear reason to take a different view.

39. The Council did not find significant adverse impacts on the living conditions of individual neighbouring occupiers, in terms of, for example, privacy, mainly because there are no physical changes to the building. However, that does not indicate, as implied by the appellant, that as a result there can be no adverse effect from an over-concentration of HMOs on the general character of the area, which is considered above.

40. In addition to the matters already dealt with, local residents have also expressed concerns about other issues, including noise allegedly emanating from the property. However, noise complaints can be dealt with by the Council under other legislation. As I have dismissed the appeal on other substantive

[11] November 2013

grounds, there would be little purpose in me considering any other matters further.

Planning Balance and Conclusion

41. There are some economic and social benefits associated with bringing a previously vacant property back into use. I also understand that the HMO generates some employment. The sub-division of properties can provide lower cost accommodation for which the appellant says there is a demand.

42. Even so, whilst I have not found an adverse effect on highway safety, the harm identified to the character and mix of housing in the area and to the living conditions of occupiers is decisive and outweighs the relatively limited benefits of the proposal. There is also conflict with development plan policies.

43. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

JP Tudor

INSPECTOR