



Appeal Decision

Hearing held and site visit made on 10 December 2019

by Tim Belcher FCII, LLB(Hons), Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 29 January 2020

Appeal Ref: APP/D1780/C/19/3224465

8 Westridge Road, Southampton, SO17 2HQ

- The appeal is made under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the 1990 Act").
- The appeal is made by Manjit Rai ("the Appellant") against an Enforcement Notice issued by Southampton City Council ("the Council").
- The Enforcement Notice was issued on 11 February 2019.
- The breach of planning control as alleged in the Enforcement Notice is without planning permission, change of use of the Land from a single family dwelling (C3 Use) to a C4 (HMO) house in multiple occupation.
- The requirements of the Enforcement Notice are to cease occupation of the dwellinghouse situated on the Land by unrelated persons not forming a single household within the meaning of section 258 of the Housing Act 2004.
- The period for compliance with the requirements is five months.
- The appeal is proceeding on the grounds set out in Section 174(2)(a), (b), (c), (e) & (g) of the 1990 Act.

Summary of Decision: The appeal is dismissed, and the Enforcement Notice is upheld with variations.

Application for costs

1. At the Hearing an application for costs was made by the Council against the Appellant. This application is the subject of a separate Decision.

Procedural Matters

2. The Appellant withdrew his appeal on grounds (b) and (c) at the Hearing. As a consequence of this it is not necessary to explain the complicated factual background that relates to this case in any significant detail.
3. At the Hearing it was agreed by the Council and the Appellant that the requirements of the Enforcement Notice should be amended to more accurately reflect the breach of planning control alleged in the Enforcement Notice. The requirement will therefore be altered to read, "Cease the C4 use (as defined in the Town and Country Planning (Use Classes) Order 1987 (as amended)) of the dwelling-house on the Land."

Relevant History

4. In March 2011 the Council made an Article 4 Direction that removed permitted development rights to change the use of a C3 dwelling-house to a C4 "House in Multiple Occupation" ("HMO"). The Article 4 Direction did not come into effect immediately.
5. In November 2011 the Appellant:

- a) Completed the purchase of No. 8.
 - b) Made an application for planning permission to build a single-storey rear extension at No. 8 ("the Extension").
 - c) Entered into a Tenancy Agreement whereby students were to occupy No. 8 from 1 July 2012 to 30 June 2013.
6. In February 2012 planning permission was granted for the Extension.
 7. In March 2012 the Article 4 Direction became effective.
 8. Works on the Extension were carried out in the spring and early summer of 2012.
 9. In July 2012 seven students moved into No. 8 pursuant to the November 2011 Tenancy Agreement.
 10. In January 2016 a planning application was submitted to use No. 8 as a seven-person HMO.
 11. In March 2016 the planning application to use No. 8 as a seven-person HMO was refused.
 12. In May 2016 an application was made for a Lawful Development Certificate to use No. 8 as a six person HMO.
 13. In August 2016 the Council granted the LDC ("the 2016 LDC").
 14. In September 2016 an application was made to increase the number of persons that could occupy No. 8 as an HMO from six to seven. During the course of considering this application representations were made to the Council that the 2016 LDC had been determined incorrectly.
 15. In May 2018 the Council revoked the 2016 LDC. That decision was not formally challenged by the Appellant.

Reasons - Ground (e) that the Notice was not properly served on everyone with an interest in the land.

16. The Appellant's appeal on this ground is that when the Enforcement Notice was issued copies of it were not served in a correct fashion on the residents of No. 8 because they were not specifically named. The Council left about 8 copies of appeal documentation addressed to "The Occupiers" at No. 8.
17. The Appellant confirmed at the Hearing that none of the students that were resident at No. 8 on the date that the Enforcement Notice was issued currently reside at No. 8.
18. Section 176(5) of the 1990 Act explains that where it would otherwise be a ground for determining an appeal under Section 174 in favour of an appellant that a person required to be served with a copy of the Enforcement Notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve them.
19. The Appellant confirmed at the Hearing that neither he nor any of the student occupiers at the time the Enforcement Notice was issued have suffered

substantial prejudice by reason of the Council failing to name the students in occupation at the time the Enforcement Notice was issued.

20. I therefore conclude that the ground of appeal on Ground (e) must fail.

Reasons - Ground (a) - and the deemed planning application – that planning permission should be granted for what is alleged in the Enforcement Notice.

21. At the Hearing I handed out a document entitled "Policy Referred to During the Appeal" ("the Policy Handout"). The Policy Handout listed the relevant:

- a) Development Plan Policies,
- b) Supplementary Planning Document entitled "Houses in Multiple Occupation Supplementary Planning Document (March 2016)" ("the SPD"),
- c) Paragraphs from the National Planning Policy Framework.

I have had regard to all these policy matters.

22. In particular, the Development Plan explains, amongst other things, that:

- a) In order to meet the projected supply of housing residential development will be permitted through, amongst other ways, the conversion, where appropriate of existing dwellings.
- b) Planning permission will only be granted for conversions to HMOs where the criterion in Policy H4 are met.
- c) The Council is well aware that in some areas a concentration of houses which are shared has led to social and environmental problems as balanced residential communities have been eroded.
- d) The Council will provide a mix of housing types and more sustainable and balanced communities through the control of HMOs, particularly those properties which provide accommodation for students.
- e) In response to concerns about the concentration of student accommodation within parts of the city, the Council will work in partnership with universities and developers, to assist in the provision of suitable, affordable accommodation for students to relieve the pressure on local housing markets. The Council will also consider other forms of control such as areas of restraint and setting thresholds for HMOs where appropriate. This might include action in areas of the city where there are concentrations of HMOs and where further sub-division of family homes could badly affect the character and balance of the neighbourhood.

23. The SPD explains, amongst other things:

- a) That HMOs provide much-needed housing accommodation. However, a large number of HMOs in one area can change the physical character of that residential area and this can lead to conflict with the existing community.
- b) The Council formally consulted on the SPD. The main changes in the SPD from the earlier version adopted in March 2012 are:
 - (i) to apply a consistent 10% threshold throughout the city,

- (ii) to address the issue of 'sandwiching' where a residential property is sandwiched between two HMOs, and
 - (iii) to clarify the policy on exceptional circumstances.
- c) The exceptional circumstances explain that where 80% of existing properties surrounding a site where planning permission is sought to change the use from C3 to an HMO, the applicant should submit a supporting statement with the planning application to demonstrate that there is no reasonable demand for the existing residential property to continue as a C3 use. No reasonable demand would be demonstrated by a period of at least six months on the property market offered at a reasonable price (based on an assessment of the property market in the local area) or rental level to be verified in writing by a qualified person in a relevant profession such as estate agent.
- d) Planning permission will not be granted to change the use of a C3 dwelling-house to an HMO where:
 - i) The proportion of dwellings in an HMO use (within a specified radius of the application site) would exceed 10% of the total number of dwellings, or
 - ii) The change of use would result in any C3 residential property being 'sandwiched' between two HMOs.
- e) Where the 10% threshold has already been breached, planning permission will only be granted in the exceptional circumstances explained above.
- f) One of the aims of the SPG is to reduce the impact of HMOs on established communities. The SPD's aims were supported by over 90% of persons responding to the consultation exercise carried out before the SPD was adopted.

Does the use of No. 8 as an HMO comply with the Development Plan and the SPD?

24. At the Hearing it was agreed that:

- a) There are currently 9 HMOs within a 40 metre radius of No. 8 ("the Catchment Area").
- b) This equates to 69% of the dwellings in the Catchment Area being in an HMO use.
- c) If planning permission was granted for the current HMO use at No. 8 to continue this would equate to 76% of the dwellings in the Catchment Area being in an HMO use.

25. It is also clear that the exceptional circumstances catered for in the SPD do not apply in this case.

26. I have explained in paragraph 24 above what the current concentration of HMO uses is in this part of Westridge Road and the extent to which it would increase if the Ground (a) appeal was allowed. In my view the level of HMO uses in this part of Westridge Road has reached a level whereby the balance of uses has resulted in a significant loss of C3 dwelling-houses to HMO uses. As explained above it is the Council's policy to seek to protect a proper balance of C3 residential uses within this residential area. The current balance breaches the

proportion of HMO uses to C3 uses and this adversely impacts on achieving a balanced community in this part of Westridge Road.

27. I therefore conclude, for the reasons explained above, that the continued use of No. 8 as an HMO conflicts with the relevant parts of the Development Plan and the SPD.

Other Material Considerations

28. The Council accept that:

- a) There is still a need for HMO accommodation in the city but nonetheless it was very important to protect areas of the City from an overconcentration of HMO accommodation.
- b) Students wish to live in areas close to their friends and to the University that they attend.
- c) If the Enforcement Notice is upheld and No. 8 is used as a C3 dwelling-house it will be 'sandwiched' between two HMOs. As explained above this is a situation that the Council seek to avoid. However, No. 8 is a detached property and I do not consider, having regard to the proximity of the properties on either side of No. 8, that the amenities of the occupiers of a C3 dwelling-house at No. 8 would be harmed by having HMOs on either side.
- d) No harm has been identified to the character or appearance of this part of Westridge Road as a result of No. 8 being in an HMO use. However, this is likely to be a result of the good management of No. 8 by the Appellant. If the Appellant were to sell No. 8 its use as an HMO by another landlord may result in such harm arising. Further still, the policy is also aimed at maintaining a balanced community through the enforcement of the SPD and, as explained above, the current imbalance would be exacerbated if planning permission for the HMO use at No. 8 was granted.

29. The Council were not provided with evidence that the use of No. 8 as an HMO had improved its appearance. In any event any improvement in the appearance of No. 8 is simply a matter of good management of the property by the Appellant and this would be the case if No. 8 was used as a C3 dwelling-house. If it appeared to the Council that the amenity of this part of their area was adversely affected by the condition of No. 8, they would have had powers available to take action to remedy the harm caused.

30. I do not accept that there is no difference between an HMO use of No. 8 and its use by a large family. Families are likely to occupy premises for longer periods than students not least because families are likely to set down long term roots in an area especially if children attend local schools or parents are places of work are within a convenient distance of No. 8. Further, families are more likely to eat together, to be at home together and the comings and goings of their children are likely to be under the control of their parents.

31. I was also advised that a significant amount of student accommodation had been built in the city and that as a result of this dwelling-houses used as HMOs were reverting back to C3 uses. There is no empirical evidence to suggest that this is a significant trend within the city but in any event the area within which

No. 8 is situated is currently suffering from an imbalance between C3 uses and HMO uses.

32. Finally, I am aware that in many parts of the country it is permitted to change use from C3 to C4 without the need to obtain planning permission from the Local Planning Authority. However, it is clear to me that the Council have properly identified the harm which can arise from such changes of use and have used the Article 4 Direction to control the harm arising from imbalances in uses.
33. I therefore conclude that the material considerations explained above do not outweigh the material harm that would result from allowing the HMO use of No. 8 to continue.

Reasons - Ground (g) - that the time given to comply with the Enforcement Notice is too short.

34. I was informed that the tenancy of the students currently residing at No. 8 finishes on 30 June 2020. It was agreed by the Council that the current occupiers should be allowed to stay until their tenancy expires thus allowing them to complete this academic year's studies.
35. I believe that this course of action is in the best interests of the students and I therefore intend to amend the period for compliance to 6-months so that this can be achieved. Accordingly, the appeal on Ground (g) succeeds to this limited extent.

Overall Conclusions

36. For the reasons given above I conclude that the appeal should not succeed other than to the limited extent explained above. I shall uphold the Enforcement Notice with variations and refuse to grant planning permission on the deemed application.

Formal Decision

37. It is directed that the Enforcement Notice be varied by:

- a) The deletion of paragraph 5 and the substitution of the words, "Cease the C4 use (as defined in the Town and Country Planning (Use Classes) Order 1987 (as amended)) of the dwelling-house on the Land."
- b) The deletion of the figure "5" in paragraph 6 and the substitution of the figure "6".

Subject to these variations the appeal is dismissed, and the Enforcement Notice is upheld, and planning permission is refused on the application deemed to have been made under Section 177(5) of the 1990 Act.

Tim Belcher

Inspector

