



Appeal Decision

Site visit made on 14 January 2020

by J E Jolly BA (Hons) MA MSc CIH MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 February 2020

Appeal Ref: APP/D1590/W/19/3238804

49 Warrior Square East, Southend-On-Sea SS1 2JJ

- 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 Niall Underdown against the decision of Southend-on-Sea Borough Council.
 - The application Ref 19/00885/FUL, dated 14 May 2019, was refused by notice dated 12 September 2019.
 - The development proposed is described as a change of use from a Dwelling-house (Class C3) to a House in Multiple Occupation (HMO) Sui Generis.
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Decision

1. The appeal is allowed and planning permission is granted for a change of use from a dwelling house (Class C3) to a House in Multiple Occupation (HMO) Sui Generis, at 49 Warrior Square East, Southend-On-Sea SS1 2JJ, in accordance with the terms of the application Ref 19/00885/FUL, dated 14 May 2019, and the plans submitted with it, subject to the conditions set out in Annex A.

Application for costs

2. An application for costs was made by Mr Niall Underdown against Southend-on-sea Borough Council. This application will be the subject of a separate Decision.

Procedural Matters

3. The established use of the property is disputed by the main parties and is described as both a 6 person HMO (C4) under permitted development, and a residential dwelling (C3). However, the applicant is seeking to convert the property to an HMO Sui Generis. For the avoidance of doubt, I have used the description of the proposed development provided on the appellants appeal form, which is also replicated on the Councils' Decision Notice. Therefore, the development proposed is the change of use from a dwelling house (Class 3) to a house in multiple occupation (HMO) Sui Generis.

Main Issues

4. The main issues are:
 - whether the proposal would result in the loss of a single-family dwelling with respect to planning policy, and;
 - the effect of the proposal on the living conditions of neighbouring occupiers with particular reference to noise and disturbance.

Reasons

Single family dwelling

5. Warrior Square is a dense residential area set behind shops and other commercial premises near Southend town-centre. It is typified by two-storey brick and tile dwellings that are set around a car-park, open recreation/seating area, and a skate-park. No 49 Warrior Square is a two-storey terraced property located next to a temple, near to a doctors' surgery and a range of other residential properties, some of which appear to be in multiple occupation.
6. The proposal is to change the use of the property from a dwelling house to an HMO for 10 occupiers. At my site visit I noticed that the dwelling already has an up to date licence from the Council to operate as an HMO (C4) for 6 occupiers. This is confirmed in the evidence before me. Moreover, on inspection of the property it was clear from the use and occupation of the 6 rooms that it is being used for that purpose under permitted development rights and is likely to be used in this way for some time. The property has 4 en-suite rooms, two single rooms, two-kitchens (ground and first-floor) as well as one shared bathroom on the ground floor. There is also a communal garden which looks onto the properties to the side and rear. As such the property is already being used as an HMO, hence the proposal would not result in the loss of a single-family dwelling.
7. Therefore, the proposal does not conflict with Policy CP8 of the Southend-on-Sea Core Strategy 2007 (SOSCS) which says the Council will resist development proposals that involve the loss of existing valuable residential resources, having regard to the need to safeguard an adequate stock of single-family dwelling-houses, and Paragraph 127 of the National Planning Policy Framework which indicates that development should create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.

Living Conditions

8. As set out above, the proposal is to change the occupancy levels of the appeal property with up to 10 residents sharing the existing rooms and facilities in the property. I have limited evidence before me that points to the fact that 10 occupiers of an HMO would create more noise and disturbance than 10 occupiers of a single-family dwelling, which a property of this size could readily accommodate. I acknowledge the Council's concerns related to the potential for more than 10 residents to occupy this relatively spacious property in line with their adopted Essex Approved Code of Practice 2018. However, there is no technical evidence before me to suggest that the property does not meet suitable acoustic requirements for property of this size and type.
9. Moreover, from 'the evidence on the ground' the ambient noise levels created by a range of activities in the nearby area including, but not limited to, skateboarding, public seating and open space that is likely to be enjoyed by other houses nearby, including family dwellings and those in multiple occupation, means that a proposal of this size is likely to have a limited effect on the living conditions of neighbouring occupiers in respect of noise and disturbance.

10. Therefore, the proposal accords with Policies KP2 and CP4 of the SOSCS and Policies DM1 and DM3 of the Southend on Sea Development Management Document 2015 and is supported by the Southend-on-Sea Design and Townscape Guide 2009, which together seek to ensure that proposals are well designed and protect residential amenity. For similar reasons the proposal meets the aims of Paragraph 117 of the Framework which says that planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions.

Conditions

11. I have considered the suggested conditions against Paragraph 55 of the National Planning Policy Framework and the national Planning Practice Guidance and imposed the following conditions; a commencement condition, a condition requiring that the development is carried out in accordance with the approved plans. These are imposed in the interest of certainty. Conditions for cycle storage, refuse and recycling, to meet local development plan policies are also imposed. A condition is also required for waste management in the interests of highway safety and visual amenity, and a condition that restricts future alterations or extensions.

Conclusion

12. For the reasons given above I conclude that the appeal should be allowed subject to the conditions set out in Annex A.

J E JOLLY

INSPECTOR

Annex A – Conditions

1. The development hereby permitted shall begin not later than 3 years from the date of this decision.
2. The development shall be carried out in accordance with the approved plans: Site Plans, Legend, Floor Plans (sizes), Floor Plans (fixtures), Floor Plans (Revision 1 01.11.18) and the Design and Access Statement.
3. The building shall not be first occupied until space has been laid out within the site for 10 bicycles to be parked, and that space shall thereafter be kept for cycle parking.
4. The building shall not be first occupied until space has been laid out within the site for refuse and recycling storage, and that space shall thereafter be kept refuse and recycling storage.
5. The building shall not be first occupied until a waste management plan has been submitted to, approved in writing by the local planning authority and implemented at the site. The waste management and servicing of the development shall thereafter be carried out solely in accordance with the approved details in perpetuity.
6. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), the building shall not be adapted or altered to form more than 6 bedrooms at any time other than in accordance with a planning permission granted by the Local Planning Authority.

*****End of Conditions*****