
Appeal Decision

Site visit made on 26 November 2019

by Roy Curnow MA BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th February 2020

Appeal Ref: APP/G1250/C/19/3226959

36-40 Southwood Avenue, Bournemouth BH6 3QB

- 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 appeal is made by Mr D White against an enforcement notice issued by Bournemouth Borough Council ('the Notice').
 - The enforcement notice, numbered ENF/2019/7176A, was issued on 22 March 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the change of use from a Class C2 care home to a sui generis house in multiple occupation with shared facilities.
 - The requirement of the notice is cease the use of the property as a house in multiple occupation.
 - The period for compliance with the requirements is 3 months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Background

2. The appeal site, which I shall describe as 'the building', was originally three dwellinghouses, Nos 36, 38 and 40 Southwood Avenue, for which planning permission was granted for their change of use and conversion to a residential care home. This care home had 37 bed spaces.
3. The building is in use as a House in Multiple Occupancy, with a large number of bedsit-style units having been formed within it. Evidence provided by the Council¹, relating to the licensing of the property, indicates that there are 50 habitable rooms. I was not informed as to which licence this related to, and the evidence was not countered by the appellant. However, I was told at the site visit, by a representative of the appellant, that there were 40 of these bedsits within the property.
4. The number of people living at the property could fluctuate, depending on how intensively a room is used. However, the same evidence put forward by the Council suggests that the building could accommodate up to 72 people. This has not been contested by the appellant.

¹ Appendices C and D attached to its statement

5. The building has accommodation over three floors. There are lifts within the building, but the appellant's representative told me that these were not in use. There is access between Nos 38 and 40 on all three floors; however, access to No 36 from these parts of the building is only available at ground floor level.
6. The majority of rooms have en-suite toilet facilities, with many having a shower or bath as well. Communal toilet and bathing facilities are provided for the occupants of those units that lacked them.

Ground (a) Appeal

Main Issues

7. The main issues in the appeal are:
 - The effects of the development on the character of the area, and on neighbours' living conditions by reasons of noise and disturbance; and
 - Whether the development provides suitable living conditions for the occupants of the appeal site, having regard to the nature of accommodation, cycle storage provision, and refuse and recycling storage provision.

Reasons

Character and Appearance and effects on neighbours' living conditions

8. Given the degree of overlap between these two matters, I will assess them as a single issue. The appeal site lies in a quiet street, in an area that is overwhelmingly residential. Therefore, the use to which the building is being used is acceptable in principle. However, properties in the area appeared to be single dwellinghouses, buildings converted to flats or purpose-built flats. Whilst there might be other HMOs in the area, none were specifically drawn to my attention and I did not see any buildings overtly used for this purpose.
9. The development has little effect on the appearance of the area. There are more refuse bins at the front of the property than is the case with other properties nearby. However, its use as a care home would have been likely to have required more than one bin. As such, if used appropriately, the bins at the front do not cause significant harm.
10. The area is quiet and provides a good quality residential environment. There is a small degree of similarity between the HMO use of the appeal site and that of flats in the area. However, the number of bedsits and potential occupants of the building is such that the nature of its use is substantially different from properties that I saw nearby.
11. There is a consequently high number of comings and goings from the property and a level of associated general disturbance that is at odds with the area's prevailing residential character.
12. Although the Council might have given relatively little evidence on this issue, I am aware of the volume of correspondence from local residents that substantiates its position with regards to how the use of the property adversely affects neighbours' living conditions. I give this evidence considerable weight in my deliberations. I do, however, agree that the development does not result in harm to the privacy or outlook to the occupants of neighbouring properties.

13. My finding, here, is that the use of the building as a HMO is not compatible with, and has a harmful effect on, the character of the area. In this regard, it is contrary to the terms of 'saved' Policy 6.17 of the Bournemouth District-Wide Local Plan, 2002, (DWLP) and Policy CS41 of the Bournemouth Local Plan: Core Strategy, 2012, (CS). It also has an adverse effect on the living conditions of neighbours contrary to the terms of those policies that seek to protect and enhance the amenities of neighbouring residents.

Living Conditions – Occupants of the Building

14. A single kitchen is provided on the ground floor of No 36, at one end of the building. The route to it from bedsits in No 40, in particular, and from some of those in No 38 was long, convoluted and could involve the use of more than one staircase. This does not make its use attractive to their occupants. Its facilities were, in any event, fairly basic, with 4 cookers, 4 sinks and a number of fridges and does not provide an attractive environment for food preparation.
15. The inadequacies of the kitchen, in terms of its position and facilities, was further evidenced through the storage of food and the presence of microwaves in a number of the bedsits. There is a lack of evidence to suggest that the size of the bedsits is inadequate, although many were not generously spacious. However, none of those that I saw appeared large enough to provide for cooking and food storage in an acceptable manner. Where this happens is to the significant detriment of their occupants' living conditions.
16. Between the kitchen and the front door to No 36 is a room described as a communal living area at the site visit. For the same reasoning given with regards to the kitchen, this room is not well-related to a large number of rooms in the building. It had little furniture in it and did not appear well used for any purpose other than storage when I visited, when I saw, amongst other things, bicycles in it. Its use in this manner added little to the living conditions of the building's occupants, especially those with smaller rooms that would benefit from additional living space.
17. Although of fairly limited depth, the rear garden runs the length of the building. It provides sufficient garden space for its occupants. However, bedsits on the ground floor have windows that look directly onto the garden. Residents using the garden are immediately outside these rooms and have a significantly adverse effect on the living conditions of their occupants through noise disturbance and loss of privacy.
18. My finding, here, is that the nature of the accommodation provided for the residents of the building is inadequate and provides them with poor living conditions, contrary to the terms of CS Policy CS41 and saved Policy 6.17 of the DWLP.
19. The Council's policy aims to increase opportunities for cycling are set out amongst the terms of Policy CS18 of the (CS) and section of the 'Parking Supplementary Planning Document, 2014, (SPD). The evidence suggests that the use would require 23 cycle parking spaces.
20. A cycle stand to the front of the building accommodates about 5 bicycles. This stand was, however, a fairly lightweight structure and lacked the permanence and security of the 'Sheffield' cycle stands advocated in the SPD. The small detached garage to the rear of No 40 would accommodate a further small

- number of bicycles but, given the space requirements for cycle parking in the SPD, is too small to make up the shortfall.
21. The appellant suggests that bicycles might be stored within the building, but has not provided any evidence as to where and how this might be suitably provided. In addition to the bicycles I saw in the communal living area, they were also being kept within bedrooms. This exemplifies the lack of safe, secure cycle storage at the property. Although I saw no evidence of this at my visit, I agree that bringing wet and or dirty bicycles into the building would be likely to lead to the soiling of carpets in communal areas.
 22. A building might be erected in the rear garden to address the shortfall. However, I have no details of such a building before me, but, given the terms of the SPD, this would be a substantial building. Given the limited depth of the rear garden, such a building would be likely to be in close proximity to the ground floor bedsits at the rear of the building. This would be likely to have an adverse effect on the outlook from these rooms. Furthermore, its use, which might occur day and night, would be likely to result in further noise and disturbance to their occupants.
 23. My finding, here, is that the building provides inadequate cycle storage provision to serve its occupants. I have not been provided with evidence to allow me to find that the means of addressing this shortfall could be conditioned and, therefore, I find the scheme to be contrary to the terms of CS Policy CS18 and the SPD.
 24. The Council has produced a Planning Guidance Note (PGN) with regards to the provision of waste and recycling facilities. Its section 3.5 refers to HMOs and sets out that each one qualifies for the standard allowance of collection. However, where a HMO generates more than the standard allowance of waste a landlord must either remove the waste themselves or arrange for this to be done.
 25. The PGN further sets out that the provision of waste and storage recycling facilities for HMOs should be based on the calculations for flats and apartments. This, in turn, relates to the number of households. Given that the majority of the bedsits that I saw would have two people at most within them, rather than families that might occupy flats, it would be unfair to use the number of bedsits in this regard.
 26. In his submissions, the appellant states that three large communal bins are provided. However, when I visited there were a number of smaller wheeled bins on the site. I saw that some of these were full to the point where their lids would not properly close and photographic evidence put forward by the Council shows similar bins with rubbish overflowing from them, with further rubbish left on the ground around them.
 27. I have been told that there are arrangements for the bins on site to be collected. However, I have not been provided with specific details of the frequency of this. The evidence before me, including what I saw on site, suggests that there is either too little storage provision, or its collection is too infrequent. Notwithstanding this, however, there is adequate space at the front of the property for the provision of suitable waste and recycling facilities, subject to an appropriate collection regime.

28. Were I allowing the appeal, the provision of appropriate waste and recycling provision is a matter that could be controlled through condition. For this reason, I find that the use would accord with those terms of 'saved' Policy 6.17 of the DWLP that require the provision of adequate waste storage facilities, as well as the PGN.

Other Matters

29. The evidence indicates that the Council is unable to demonstrate a 5-year supply of deliverable housing land. The appellant suggests that the shortfall would be at least 1,343 dwellings or as high as 4,375 dwellings over the next 5 years, depending on the methodology used. The Council has not disputed the figures and agrees that it is unlikely that it would be able to demonstrate a 5-year housing land supply. As such, the presumption in favour of sustainable development paragraph 11 of the National Planning Policy Framework (the Framework) should apply.
30. Although the appellant states that there is an especial need for 1 and 2-bedroomed accommodation, the benefit arising from the development to housing supply is limited. Indeed, the appellant agrees that it would only provide a small percentage of the need.
31. Although not referred to in the reasons for issuing the notice, the Council's statement makes reference to the need for a financial contribution to mitigate the effects of the development on the Dorset Heathlands Special Protection Area Dorset Heathlands Special Area of Conservation. These are European Sites of Nature Importance and are subject to protection under the Conservation of Habitats and Species Regulations 2010.
32. Although the Council's statement refers to the Dorset Heathlands Planning Framework, I have not been provided with a copy of this or a development plan policy relating to the matter. As such, I have insufficient information on which to reach a finding on the matter. Notwithstanding this, as I am dismissing the appeal for other reasons, no harm can arise from my taking this position.
33. I have also taken note of the site's accessible location, close to a local centre and public transport opportunities, which, the appellant reports, results in support for the development from CS Policy CS21. I also note the assertion that DWLP Policy 6.9 provides support for development such as this that makes use of previously developed land. However, I have not been provided with copies of these policies. In any event, neither these nor the constraints to development that exist around the town outweigh the harm that I have identified.

Conclusion on the Ground (a) appeal

34. There is a need for housing in the area and the appeal development would make a limited contribution to supply. However, there is clearly harm to character and appearance and living conditions. I therefore give the need argument moderate weight in favour of the development. As such, it does not outweigh the harm that I have identified above, to which I give significant weight.

35. The development does not, therefore, represent sustainable development that would be supported by the National Planning Policy Framework or, reportedly, by CS Policy CS1.

Ground (g) Appeal

36. I have been supplied with little evidence to support the assertion that 3 months is too short to comply with the terms of the notice. This seems to me to be a reasonable time frame for residents of the building to find alternative accommodation.

37. Therefore, the period of compliance is reasonable given the nature of the steps required by the notice. Therefore, the appeals on ground (g) fails.

Roy Curnow

INSPECTOR