



Appeal Decision

Site visit made on 25 February 2020

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

an Inspector appointed by the Secretary of State

Decision date: 15 April 2020

Appeal Ref: APP/D1780/W/19/3241594

36 Lodge Road, Southampton SO14 6RJ

- 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 Philip Cornwel-Smith against the decision of Southampton City Council.
 - The application Ref 19/01343/FUL, dated 5 August 2019, was refused by notice dated 9 October 2019.
 - The development proposed is described as change of use (from 5 person HMO) to 2 flats and 1 maisonette, each providing 1 bedroom, including the re-insertion of a window in the rear elevation.
-

Decision

1. The appeal is allowed and planning permission is granted for change of use (from 5 person HMO) to 2 flats and 1 maisonette, each providing 1 bedroom, including the re-insertion of a window in the rear elevation, at 36 Lodge Road, Southampton SO14 6RJ, in accordance with the terms of the application ref 19/01343/FUL, dated 5 August 2019, and the condition below:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: LAD05AEX; KAD02AFP Rev.F; KAD04AEX Rev.A.

Procedural Matters

2. The most recent lawful use of 36 Lodge Road was as a 5 person, or 'small' house in multiple occupation (HMO). No 36 has however been subdivided, and currently contains 2 1-bed flats, and 2 1-bed studios. The subdivision was carried out without planning permission, and a retrospective planning application covering the works was refused. A resulting appeal, reference APP/D1780W/18/3210190 (the previous appeal), was subsequently dismissed. The current scheme differs from that subject of the previous appeal insofar as it proposes a 1-bed maisonette where the 2 studios are currently located. The application is therefore again partly retrospective. In this case however, whilst the effect of allowing the appeal would be to regularise the status of the 2 1-bed flats, the status of the 2 studios would remain unchanged.
3. As the development has already partially taken place, the works so far undertaken have helped to inform my assessment. My decision is however based on the submitted plans.

Main Issue

4. The main issue is the effect of the development on the provision of family housing.

Reasons

5. Policy CS16 of the Southampton City Council, Core Strategy – Adopted Version January 2010 (the CS) sets as a headline objective that the Council will provide a mix of housing types and more sustainable and balanced communities. To achieve this the policy outlines 5 measures in 5 bullets. Bullet (2) states that there will be no net loss of family homes on sites capable of accommodating a mix of residential units unless there are overriding policy considerations justifying this loss. The site can clearly accommodate a mix of residential units, and this is indeed proposed. Whether or not No 36 is a 'family home' is however disputed.
6. Policy CS16 defines 'family homes' as dwellings of three or more bedrooms with direct access to useable private amenity space or garden for the sole use of the household. This is a layout-based definition, making no reference to the type of occupancy or use. 'Household' is however clearly applied in the singular, whilst use of the word 'family' further denotes a focus on dwellings occupied by single households formed by persons bound by a familial relationship. HMOs on the other hand provide accommodation for unrelated persons who do not form a single household. The distinction between the two is commonly understood. It is also reflected in the different use classes defined within the Town and Country Planning (Use Classes) Order 1987 (as amended), and further explained within the Housing Act 2004 (as amended). Whilst simple use of language thus clearly implies the recognition of a difference between an HMO and family home, this is further apparent in reading the definition within the context of Policy CS16 as a whole.
7. Here bullet (3) of Policy CS16 states that the headline objective will be met by controlling HMOs where planning permission is required. The latter would be the case where a dwelling house was to be converted to a large HMO, but also where the permitted change between dwelling house to small HMO was restricted, for example by Article 4 Direction. In this regard paragraph 5.2.13 of the supporting text of Policy CS16 explains that the formation of smaller HMOs results in loss of family homes. This could clearly not be the case however if smaller HMOs and family homes were to be considered as one and the same thing.
8. Bullet (1) of Policy CS16 further sets out that the headline objective will be met by provision of 30% family homes with 3 plus bedrooms on schemes involving 10 or more dwellings. Here it is apparent the identified need for such housing would not be met if the dwellings in question were built to be used as HMOs, as Policy CS16 would otherwise contradict itself. It is thus clear that type of occupancy and use are critical considerations in both the interpretation of the definition of a family home set out in Policy CS16, and its application.
9. Consequently, given that No 36 was occupied and in use as an HMO prior to its subdivision, and had been for some time, I find that it was not a family home; either for the purposes of Policy CS16, or as commonly understood. It follows that conversion of No 36 to flats would not result in the loss of a family home, or, as termed in the decision notice, a 'family dwelling unit'.

10. I acknowledge that the option to exercise a permitted change from HMO to dwelling house was, and presumably remains available, and that this change could previously have been carried out without need for modification of the building. Thus the potential both existed and exists for No 36 to function as a family home. I further accept that this was a key consideration in the previous appeal. However, whilst I am not in possession of the particular arguments advanced or the evidence considered, the definition of a family home and the related interpretation of bullet (2) of Policy CS16 do not appear to have been subject to the same level of dispute or necessary analysis as in the current appeal. In this context, for the reasons set out above, I am not convinced that the definition of a family home set out in Policy CS16 can be logically understood or applied on the basis of potential, or that the policy itself provides any indication that this was intended.
11. Even were I to have found otherwise, I see no reason to believe that No 36 would revert to anything other than an HMO were the appeal to be dismissed. As such there would be little or no likelihood that No 36 would make a positive contribution to the identified need for family housing, or therefore that the development would cause any harm to the provision or supply of such housing.
12. Moreover, no clear case has been advanced that provision of the proposed flats would cause any harm to the mix of housing types and more sustainable and balanced communities. Indeed, I have been provided with no information regarding the mix of housing types or balance of the community in the surrounding area, or any indication of why the proposed development would cause this to be less mixed, or the community less balanced or sustainable.
13. To this end, the buildings to either side of the site already contain flats. Lodge Road itself is more generally characterised by a mix of uses in which flats and HMOs clearly have an obviously strong presence, alongside frequent ground floor commercial uses. In short Lodge Road is not a location within which the proposed development would be obviously at odds with its context. Thus I see no reason why the development would result in any harm to the mix of housing types, or balance and sustainability of the community.
14. The Council has drawn my attention to a second appeal, reference APP/D1780/A/14/2214083 (Osborne Road appeal). I have been provided with little background information, however it appears that there are some similarities with the circumstances of the current appeal. As in the previous appeal, the Inspector in the Osborne Road appeal found the building in question was a family home despite having been previously used as an HMO. Unlike the current appeal however, the decision in question contains no detailed consideration of the definition of a family home set out within Policy CS16. In this regard I have clearly set out above why I consider that No 36 does meet with the definition. The Osborne Road appeal does not therefore alter my opinion of the merits of the current appeal scheme.
15. For the reasons set out above I conclude that the development would not have an adverse effect on the provision of family housing, and that no conflict would arise with bullet (2) of Policy CS16 of the CS, given that the development would not entail the loss of a unit of family housing. The development would also not conflict with bullet (1) of saved Policy SDP 1 of the City of Southampton Local Plan Review (March 2006) given that no identified harm to the health, safety and amenity of the city and its citizens would arise.

Other Matters

16. In accordance with the Conservation of Habitats and Species Regulations 2017, an Appropriate Assessment (AA) of the proposed development was carried out by the Council. This identified likely significant effects on the integrity of Solent and Southampton Water Special Protection Area (SPA) and Ramsar, and the Solent Special Area of Conservation (SAC) (collectively 'the Solent sites'), and the New Forest SAC, SPA and Ramsar sites (the New Forest sites), alone, and in combination with other plans and projects. In each regard this would be due to increased recreational pressure resulting from an increase in the number of dwellings, and leading to disturbance of the bird species, and degradation of related habitats, for which the New Forest and Solent sites are designated. This would clearly be contrary to the conservation objectives for these sites which generally seek to maintain and/or restore integrity, including that of qualifying features. I note that Natural England has endorsed the Council's general approach in undertaking AAs.
17. Mitigation for the New Forest sites is covered by payment of Community Infrastructure Levy (CIL). This is used to fund improvement works in other green spaces which effectively function as alternative recreational spaces. The development would generate a CIL payment and thus mitigate its likely significant effect.
18. Mitigation for the Solent sites is collected by financial contribution, and spent on a package of avoidance and mitigation measures set out within the Solent Recreation Mitigation Strategy. The failure to provide the required payment was a reason for refusal of planning permission. Since then the Council has confirmed that it has received the required payment from the appellant. This has been covered by a Section 111 agreement. The development would thus again mitigate its likely significant effect. For this and the above reason, I am therefore able to conclude that the development would not have an adverse effect on the integrity of habitats sites.

Conditions

19. I have not imposed a condition setting out the period within which the development must be commenced given that the development has already partly taken place. I have however imposed a condition identifying the approved plans for sake of certainty.
20. The Council has requested a further condition requiring the approval of surfacing, boundary treatments, cycle storage, and bin storage and collection. There is however no necessity for details of surfacing to be approved, as no such works are proposed. Details of the boundary treatment for the maisonette, bin storage and collection arrangements are otherwise shown on the plans, and the cycle store already exists on site. As such there is also no need for a condition in relation to these matters.

Conclusion

21. For the reasons set out above I conclude that the appeal should be allowed.

Benjamin Webb

INSPECTOR