



Appeal Decisions

Site visit made on 10 December 2019

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 22 April 2020

Appeal A: APP/L1765/C/19/3232342

140 Stanmore Lane, Winchester, Hampshire SO22 4DP

- 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 Paul Airey against an enforcement notice issued by Winchester City Council.
 - The enforcement notice was issued on 3 June 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the Land from a dwelling house to a house in multiple occupation (HMO).
 - The requirements of the notice are: Cease the use of the Land as a house in multiple occupation (HMO).
 - The period for compliance with the requirements is stated as 6 months after this notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.
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Appeal B: APP/L1765/W/19/3232300

140 Stanmore Lane, Winchester, Hampshire SO22 4DP

- 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 Paul Airey against the decision of Winchester City Council.
 - The application Ref 19/00425/FUL, dated 26 February 2019, was refused by notice dated 23 April 2019.
 - The development proposed is described as '*Retrospective change of use from a 3 bed dwellinghouse (C3 use) to a 7 bed HMO (sui generis use)*'.
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Formal Decisions

1. Appeal A is dismissed and the enforcement notice is upheld.
2. Appeal B is dismissed.

Background

3. It is understood that No 140 Stanmore Lane commenced use as a House in Multiple Occupation (HMO) in September 2018. The Council subsequently served a Planning Contravention Notice (PCN) on the joint owner, Paul Airey (the appellant). Information requested by the Council was supplied, and following receipt of the information requested, the Council saw it expedient to issue the enforcement notice now at appeal.
4. A copy of the completed PCN has been provided for my purposes, and I have had regard to its contents.

5. Given that the appeals are essentially concerned with the appellant's considered view that planning permission should be granted for the change of use the main issues stated below apply equally to both appeals.

Appeal A – s174 Appeal on Ground (a) and the deemed planning application (DPA), and Appeal B – s78 Appeal

6. The main issues in these appeals are:
- 1) the effect of the development on the character of the Stanmore area, with particular regard to the balance of housing in the area; and
 - 2) the effect of the development on the living conditions of neighbouring occupiers, with particular regard to any resultant noise and disturbance.

Character

7. The Winchester District Local Plan Part 1 – Joint Core Strategy (LP1), adopted in 2013, sets out the Council's key housing priorities which includes maintaining the supply of housing so that it meets a wide range of community needs and sustains the vibrancy of the local economy. However, another such priority is to increase the supply of family housing, of which small family homes are in the greatest demand. Accordingly, policy CP2 'Housing Provision and Mix' requires that development should provide a range of dwelling types, tenures and size, appropriate to the site size, location and characteristics.
8. The Winchester District Local Plan Part 2 (LP2), also part of the Winchester District Development Framework, was adopted in April 2017. LP2 policy WIN9 indicates, in its first limb, that the conversion of dwellings to HMOs will be permitted where, amongst other things, it would not create an over concentration of such, with no more than 20% of all properties in the total area being HMOs, or no more than 25% of the properties on any one street in HMO use.
9. The policy's explanatory text indicates that a major issue facing the community at Stanmore is the number of HMOs which, at the time of the LP's adoption, was in excess of 20%. This concentration mainly involves student housing with Stanmore being within walking distance of the University of Winchester. The appellant stresses that the appeal property does not cater for students. Nonetheless, although that is the appellant's current choice it is not to say that the tenant profile would not change in the future with the possibility of a change in ownership. Further, were I minded to allow the appeals and grant planning permission, it would be unreasonable to impose a condition prohibiting students as this would represent unfair and unjustified discrimination.
10. Although it is acknowledged the contribution that students make to the local economy, in order to balance matters and retain a mixed housing stock in various neighbourhoods, the Council, in 2016, imposed an Article 4 Direction restricting permitted development rights on single family dwellings (Class C3) changing to small HMO's (Class C4) covering Stanmore. A Class C4, or small HMO, limits occupation to a maximum of six residents so, the current development which involves a 7-bed HMO would not have been a permitted change, regardless. Nonetheless, it is a pointer as to the Council's concerns regarding the incidence of HMOs.

11. The appellant says that, in preparing the planning application for submission to the Council, extensive research was undertaken in an attempt to update the position as to HMOs in Stanmore. He mentions that, at the time the Article 4 Direction was put in place, the proportion of HMOs stood at 20.6%; only slightly in excess of the maximum stipulated in policy WIN9. The appellant goes on to say that, from discussions with the Council's New Homes Delivery team, due to a number of dwellings given planning permission and "ready for occupation by Spring 2021", the figure would then fall to 19.7%.
12. Although the appellant has provided some figures and statistics in an attempt to support the appeal there is a lack of documented detail to illustrate this. A mere scattering of such does not provide a complete picture of the situation given the various factors involved. Indeed, it strikes me from the evidence provided, there is nothing to suggest that the Council's Housing priorities, as set out in LP1, have changed to any significant degree since LP1's adoption. In this context the loss of family-sized housing, as has occurred from the development at issue, along with the clear concentration of HMOs in the Stanmore Area, is at odds with the Council's strategic objectives.
13. Winchester City Council's development plan is made up of both its Local Plan Parts 1 and 2 and, to my mind, the appellant's comment that, as the Council does not have up to date information on the number of HMOs in Stanmore, it is not possible to know whether or not a proposal would conflict with policy WIN9, indicates that too narrow a view is being taken here. In the wider policy context, whether or not the incidence of HMO use might have slipped slightly below the percentages mentioned in policy WIN9, this individual factor is not the absolute yardstick here. There has seemingly been a proliferation of single family dwellings given over to HMO use in recent times and it seems to me - and, moreover, it is confirmed by the actual wording of the said policy - that the proposal needs to conform with the development plan, as a whole, and obviously this includes its housing objectives.
14. The second limb of policy WIN9 requires that a change of use to a HMO would not result in a dwelling being bounded by HMOs on both sides or a continuous line of 3 or more HMOs. The Council indicates that both Nos 138 and 142 Stanmore Lane are in use as HMOs. The appellant, for his part, indicates that, in April 2019, planning permission was granted for the erection of a single 3-bed dwelling in the curtilage of the appeal property. Accordingly, he makes the point that, if implemented, No 140 would no longer be bounded by HMOs on both sides. That might be the case but, as matters stand, the HMOs at both Nos 138 and 142 are indicative of what appears to be a proliferation of such.
15. In summary, having weighed up the evidence, whilst I have given due consideration to the appellant's representations, I do not find the heavy reliance on the proviso percentages in policy WIN9 nor the presentation of certain statistics to this end as representing a full assessment of the issues. Although the Council chose not to respond to the appellant's case it is important to take account of its general planning strategy, and the key aim of protecting the existing stock of family sized housing
16. On this first main issue I conclude that the development would add to the concentration of HMO uses in the Stanmore area, aggravating the apparent housing imbalance in the locality, and thereby conflicting with the objectives of LP policy WIN9.

Living conditions

17. The Council has raised concerns that an increase in the number of adult occupants at the property would result in an increased loss of amenity due to noise and disturbance. There tends to be a difference in residents' routines from that which is often the case with the occupiers of single-family dwellings. With the latter there are likely to be less comings and goings with family members often leaving and returning together, especially where young children are concerned. In contrast it is usually the case that the residents do not know each other and have more independent lifestyles.
18. An additional HMO, therefore, has the propensity to cause increased noise levels which, given the near proximity of other HMO uses, can compound to impact upon the living conditions of neighbouring residential occupiers. Indeed, HMO residents can themselves be vulnerable to noise disturbance. I am also mindful of the extant planning permission for the new dwelling within the appeal property's curtilage which, if built, could be subject to degrees of such adverse impact.
19. I therefore conclude that the development is likely to be harmful to the living conditions of neighbouring occupiers, contrary to the objectives of LP2 policy DM17.

Other considerations

20. The Council has provided two appeal decisions where, although being issued prior to the LP's adoption, the respective Inspectors gave significant weight to policy WIN9 in reaching their decisions. In the first appeal, from January 2017, against a retrospective change of use from a dwellinghouse (Class C3) to a 10-bed HMO, along with an appeal against an enforcement notice issued against this continuing use (*APP/L1765/W/16/3149326* and *APP/L1765/C/16/3155184*) the Inspector acknowledged the policy's relevance because its percentage thresholds had already been exceeded. In this instance the Inspector remarked that the conflict with policy WIN9 meant that the proposal would exacerbate an existing imbalance in housing provision.
21. In the second appeal (*APP/L1765/W/16/3163587*) relating to a change of use of a C3 dwelling to a 8-bed HMO the Inspector afforded "considerable weight" to Policy WIN9 of the then emerging LP2.
22. The appellant in the current case makes the point that the site is well served by public transport and has local amenities nearby. However, such accessibility is equally applicable to the preferred location of family housing.
23. The appellant has also indicated that he would be prepared to accept the imposition of a planning condition to limit the number of occupants to six, rather than those occupying the seven bedrooms present. However, no floorplans showing such an amendment are before me and, in the absence of any obvious fall-back scheme, I must assess the development as is currently the case.
24. No appeal on ground g has been lodged and, as such, I am unable to make an assessment on the compliance period stipulated by the Council.

Conclusion (Appeals A and B)

25. I acknowledge that HMOs represent a particular element of the housing market and satisfy a demand to this end. However, I have found harm on both main issues, which is compelling. Accordingly, for the reasons given, and having had regard to all matters raised, Appeal A on Ground (a) fails and planning permission, by way of the DPA, is refused. Appeal B, which is subject to the same issues, is similarly dismissed.

Timothy C King

INSPECTOR