
Appeal Decision

Site visit made on 4 August 2020

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 September 2020

Appeal Ref: APP/D1780/W/20/3250902
268 Burgess Road, Southampton SO16 3BE

- 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 and Mrs Hammond against the decision of Southampton City Council.
 - The application Ref 20/00022/FUL, dated 5 January 2020, was refused by notice dated 6 March 2020.
 - The development proposed is change of use from a dwelling house (Class C3) to a house in multiple occupation (HMO, Class C4).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development in the banner heading above is taken from the decision notice and appeal form. This is a more precise description of the development involved than that used on the application form.
3. The appellants state that the change of use of the property to an HMO took place in 2012. On my site inspection I observed that the rooms are laid out in accordance with the '*proposed details*' shown on application drawing Ref 06145 00.02. I have dealt with the appeal accordingly.

Main Issues

4. The main issues are:
 - The effect of the development on the mix and balance of households in the local community and the resulting effect on the character of the surrounding area; and
 - The effect of the development on the living conditions of occupiers of the appeal scheme, with particular reference to outlook.

Reasons

Mix and balance of households

5. The property is a detached two storey building located within a stretch of detached and semi-detached residential properties on a wide, busy main road which has elements of residential and commercial uses along its length. The appeal scheme is for the use of the property as a 4-bedroom HMO.

6. Class C4 of the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO) provides for the use of a dwelling house as a HMO by not more than 6 residents; that is, up to 6 unrelated individuals who share basic amenities.
7. The Town and Country Planning (General Permitted Development) Order 2015 (GPDO) grants planning permission, under Part 3 Class L, for a change of use from Use Class C3 (use as a dwelling house for up to 6 people living as a single household) to Use Class C4. However, the Council has, from 23 March 2012, put in force a city-wide Direction under Article 4 of the Town and Country Planning Act 1990 (as amended) (TCPA), that removes this permitted development right.
8. At the same time, the Council also adopted a Supplementary Planning Document titled '*Houses in Multiple Occupation*' (HMO SPD), which has since been updated in 2016. This was done to establish a tool which would assist the Council in addressing high concentrations of HMOs across the city. The SPD was adopted following detailed public consultation and I therefore give it significant weight.
9. The HMO SPD states that a large number of HMOs in one area can change the physical character of a residential area and the balance of a local community, and can lead to conflict within the existing community as a result of the intensification of use of a home by the greater number of comings and goings associated with the occupiers living independently of each other and increased pressure on parking provision.
10. The HMO SPD therefore seeks to prevent excessive concentrations of HMOs and encourages a more even distribution across the city. To do this, it provides a definitive threshold, stating that planning permission will not be granted for new HMOs where the proportion of HMOs would exceed 10% of the residential properties within a 40 metre radius of the site, unless exceptional circumstances apply (where 80% of existing properties surrounding the site within the 40 metre radius are HMOs, and the applicant has demonstrated that there is no reasonable demand for the residential property as a continued Class C3 dwelling house. The revised HMO SPD also introduced a policy preventing the 'sandwiching' of Class C3 dwelling houses between two HMOs, having regard to the identified conflicts arising from a concentration of HMOs in an area.
11. In this instance, the Council states that the within the defined radius, 33% (6/18) of the residential properties are in use as an HMO, and that, consequently, the appeal scheme increases the percentage of HMOs to 39%. Furthermore, the scheme results in the dwelling houses at 266 and 270 Burgess Road becoming 'sandwiched' between HMOs to both sides, contrary to the objectives of the HMO SPD. The conversion of the appeal building to an HMO results in an intensification of activity at the site. This is because the occupation of the building as a single household is materially different from 4, probably unrelated, households typical of the HMO accommodation use of the site. The HMO is therefore be very likely to result in a much greater level of comings and goings. An additional HMO within the immediate residential area adds to the built-up residential environment in which the appeal site is located and has the effect of causing further imbalance to the existing community in the manner which the HMO SPD seeks to restrict.

12. The appellants' appeal statement includes a survey of the uses of the 'nearest 10 dwellings to no.268', finding 3 to be licensed HMOs, and the appellants question how the Council arrived at its percentage figure, stating that none of the existing HMOs within the threshold radius have planning permission, and that the Council has not demonstrated that these properties were in use as HMOs prior to the introduction of the Article 4 Direction. The Council's statement of case confirms the Council's sources of information in respect of the use of each property within the threshold radius. These accord with those listed in the HMO SPD, and the Council has excluded properties from the list of HMOs where there is insufficient evidence to clarify their use.
13. The HMO SPD sets out a clear and robust system for considering proposals for new HMOs. I am satisfied that the Council's methodology accords with it. The threshold in the HMO SPD is clear, and the appellants' methodology, by limiting the survey to the nearest 10 dwellings and suggesting that identified HMOs must have planning permission or have been in use as such before March 2012, does not accord with the requirements of the HMO SPD. On the basis of the information before me, and no cogent evidence from the appellants to the contrary, I have no reason to doubt the Council's findings. Whilst the HMO SPD allows for exceptional circumstances, the appeal scheme does not meet them.
14. Furthermore, I note that both main parties are agreed that 264 and 272 Burgess Road are in HMO use, and that the Council has confirmed that its records indicate that no.270 is not currently used as an HMO. With this in mind, I am satisfied that the appeal scheme results in a 'sandwiching' of the houses at Nos.266 and 270 by HMOs. Therefore, having applied the threshold, I conclude that the appeal scheme has a harmful effect on the mix and balance of households in the local community which causes subsequent harm to the character of the surrounding area.
15. For the above reasons, on the basis of the evidence before me, and having regard to the methodology in the HMO SPD, I therefore conclude that the appeal scheme has a harmful effect on the mix and balance of households in the local community which causes subsequent harm to the character of the surrounding area. The appeal scheme is therefore contrary to Saved Policies SDP1 and H4 of the *City of Southampton Local Plan Review (2015)* (LP), Policy CS16 of the *Local Development Framework Core Strategy (2015)* (CS), and the HMO SPD, which taken together, seek to restrict the concentration of HMOs, so as not to be detrimental to the overall character and amenity of surrounding areas and to achieve more sustainable and balanced communities. This is generally consistent with advice in Chapter 5 of the *National Planning Policy Framework 2019* (the Framework), which encourages the provision of a mix of housing types to satisfy the needs of various community groups.

Living conditions

16. One bedroom in the property, ground floor Bedroom 4, whilst of a similar size to the other three bedrooms, has a restricted outlook in comparison to the other bedrooms. There is a single, small, rear-facing window which looks directly towards the rear wall of the conservatory communal living area. Furthermore, there is a roofed area between the window and the conservatory wall and panel fencing along the side boundary, both of which further restrict views out from the bedroom window.

17. As such, I find that this room does not enjoy a satisfactory outlook due to the small size and position of the window and its juxtaposition in relation to the remainder of the building. This results in an oppressive environment for the occupiers of this room. When bearing in mind that the room is used as living space as well as for sleeping, I do not consider that it provides for acceptable living conditions for the occupants. In making this judgement, I have had regard to the Council's adopted HMO SPD and the *Residential Design Guide SPD (2006)*, which seek to ensure that HMO residential development provides access to outlook for the intended occupants.
18. Even though there are communal kitchen and living areas and a rear garden, it is reasonable to expect that occupiers of an HMO, living independently of one another, may choose to spend more time in their private space. The consequence of this is that the occupier of Bedroom 4 would partly live in unacceptably oppressive accommodation, adversely affecting their living conditions. Although other occupiers would not be affected in the same way, one future occupier would be disproportionately affected.
19. Such a room has a materially different effect on occupiers' living conditions as part of a family house where occupiers would be reasonably expected to spend more time living communally and the use of rooms is likely to be more flexible throughout the house.
20. The appellants have provided a revised drawing demonstrating how the window to Bedroom 4 could be increased in size, and the conservatory altered, in order to improve the outlook to the room. I have only been provided with a floor plan and have no elevations before me detailing the appellants proposed changes. As such, I have insufficient information before me to persuade me that such an approach would overcome my concerns.
21. Notwithstanding this, the planning appeals procedural guidance¹ (Annexe M) advises that, if an applicant thinks that amending their application proposals will overcome the local planning authority's reasons for refusal, they should normally make a fresh planning application. Moreover, if an appeal is made, the appeal process should not be used to evolve a scheme, and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought. Accordingly, I have determined the appeal on the basis of the scheme which was refused by the council and the plans listed on the decision notice.
22. For the above reasons, I conclude that the appeal scheme does not provide adequate living conditions for the future occupants in respect of outlook. The development is therefore contrary to LP Saved Policies SDP1 and H4, in so far as these policies seek to ensure that new development, including HMO conversions, does not unacceptably affect the amenity of the city's residents. This is generally consistent with paragraph 127 of the Framework, which seeks to ensure that developments will function well and promote a high standard of amenity, health and well-being for existing and future users.
23. The Council also included CS Policy CS13 in its reason for refusal on the decision notice in relation to this main issue. However, this is concerned with fundamental of design and is not directly relevant in this instance.

¹ Procedural Guide. Planning Appeals – England. The Planning Inspectorate August 2019.

Other Matters

24. The appellants believe that the property was used as a HMO by the previous owner prior to the implementation of the Article 4 (1) Direction removing permitted development rights for the change of use from Class C3 dwellings to Class C4 HMOs, and questions why this matter was not addressed as part of the planning application process.
25. I have no evidence before me that a formal application for a certificate of lawfulness with respect to the HMO use of the building has been determined by the Council prior to the appeal planning application. The Council points out that the information provided by the appellant on the planning application form confirms that the HMO use commenced in June 2012 which is after the March 2012 implementation of the Article 4 direction.
26. Notwithstanding this, whilst I have determined the appeal on the basis that the change of use has already occurred, it is not for me, under a section 78 appeal, to determine whether or not the existing HMO use of the property is lawful. To that end, it is open to the appellants to apply for a determination under sections 191/192 of the Act, and my determination of this appeal under section 78 does not affect the issuing of a determination under section 191/192 regardless of the outcome of this appeal.
27. I have noted the appellants frustration that guidance had been sought from various Council departments, and that conversion works were carried out to meet the Council's HMO licensing requirements. However, the issue of the perceived internal inconsistency of the Council between its different functions is not one I can resolve. The standards that apply to Licensing and Planning are the subject of separate regulations, and my decision must be based solely upon the planning merits of the scheme that is before me.
28. I acknowledge that the property has been finished to a good standard of decor, its accessible location with respect to the university, and the ease with which the appellants have been able to rent it out to students. However, these matters do not alter my conclusions on the main issues.
29. The appellants have drawn my attention to a large block of student accommodation elsewhere in Burgess Road, which the appellants consider would have a greater impact on neighbouring living conditions than the appeal scheme. I have not been provided with the precise details and planning history of that development. In any case, I must determine the appeal on the basis of the merits of the appeal scheme before me and the relevant Development Plan policies related thereto.

Conclusion

30. For the reasons given above, I conclude that the appeal should be dismissed.

S Leonard

INSPECTOR