



Appeal Decision

Site visit made on 26 August 2020

by Nick Fagan BSc (Hons) DipTP MRTPI

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

Decision date: 01 October 2020

Appeal Ref: APP/D1780/X/19/3241496

23 Bullar Road, Southampton SO18 1GT

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr S Krupowicz against the decision of Southampton City Council.
 - The application Ref 19/00241/PLDC, dated 14 February 2019, was refused by notice dated 30 July 2019.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is for a House in Multiple Occupation (HMO) for 11 persons.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the extent of the proposed use which is considered to be lawful.

Main Issue

2. The main issue is whether the Council's refusal to issue a certificate of lawful use for the use of this sui generis HMO for 11 persons was well founded.
3. A previous certificate of lawful use granted in 2017 has established the existing use of this two-storey detached building as an HMO for 9 persons. The issue here is whether the HMO's use for 11 persons would be a material change of use as set out in Section 55(1) of the Act.

Reasons

4. As acknowledged by the main parties, Planning Practice Guidance and caselaw holds that identifying a material change of use in such cases is a matter of fact and degree dependent on the specific circumstances of the case. The Council's case hinges on the previous recent Section 78 (S78) appeal decision.¹ The appellant had applied for planning permission to change the use of a 9 letting room HMO to an 11 letting room HMO.
5. The appeal decision identified two main issues: whether the proposal would provide satisfactory living conditions for future occupiers, having regard to

¹ APP/D1780/W/18/3206534 – Dismissed 24 October 2018

- communal facilities and outlook; and whether it would give rise to inconvenience to neighbours arising from additional demand for on-street parking. The Inspector concluded that it would not be harmful to neighbours or give rise to additional demand for on-street parking in the road, but that communal areas within the property would be inadequate for 11 people and that one of the bedrooms had inadequate outlook.
6. The Council's argument is two pronged. First, that the appellant presumably thought that planning permission was required for such a change of use at the time. Secondly, that determination of whether there would be a material change of use is not confined to simply assessing the external impact of increasing the property's occupation to 11 persons but also to the effect of its internal layout and the impact this has on the HMO's occupiers.
 7. Whilst the appellant may have thought that he needed planning permission when he applied for such in 2018, his case now is that he does not consider there would be a material change of use. This is the issue before me now. The Inspector in the previous S78 appeal did not need to assess whether or not there would be a material change of use; rather, she had to assess whether the proposal complied with the development plan.
 8. I agree with the Council that the impact of any internal changes to the building and their impact on the HMO's occupiers should be taken into account in assessing whether there will be a material change of use, because they go to the heart of whether there would be a change in character of the HMO use. Caselaw holds that I must consider the planning consequences of any relevant change in character.
 9. The S78 appeal was dismissed because the Inspector concluded there would be harm resulting in unsatisfactory living conditions for future occupiers. I acknowledge that physical alterations to the property to create 11 bedrooms had been largely completed when the previous Inspector visited the site and that this is the same layout of 11 bedrooms that I saw during my site visit, albeit the two rear rooms on the ground floor are still unoccupied and currently used to store surplus furniture and bedding.
 10. However, the tests to be applied to that application for planning permission and this application/appeal for an LDC are different. Whilst planning consequences may be relevant, there is no requirement for this LDC application to comply with policies in the development plan.
 11. The appellant points out that the Council has, since the previous appeal decision, issued a new HMO License to the appellant for an 11 persons establishment.² I note that the specific condition of this License in regard to space standards lists the current 11 bedroom layout and specifies that only 1 person shall occupy each of these 11 rooms.
 12. Licensing law and planning law are by definition different and different caselaw necessarily applies to each. The fact that the Council has granted an HMO License for 11 occupiers does not mean that it is duty bound as Local Planning Authority to grant an LDC or planning permission for such.

² HMO License Certificate dated 15 July 2019

13. But both planning and licensing are concerned with living standards for HMO tenants/occupiers. The overall living standards for the HMO's residents are obviously an important albeit not the sole element of its character, which may give rise to planning consequences. The previous appeal decision concluded that the "ground floor middle left bedroom" (as it is described in Specific Condition 1 of the current License) would have a poor outlook because its only window faced directly onto the neighbouring block of flats, whose facing side wall is close to No 23's side wall.
14. I concede that this is less than ideal, but I was able to internally inspect most of the 11 bedrooms in the HMO. Although none of them can be said to be particularly spacious, the ones I saw all had a reasonable amount of floorspace. All were well decorated with high quality furniture and fittings including within their en-suite bathrooms, all were clean and well maintained, and all benefited from a reasonable outlook, natural daylight and windows providing adequate ventilation.
15. I acknowledge that the previous Inspector also concluded that the communal areas – the kitchen/living room downstairs and the study/kitchen on the first floor – would be insufficient for the 11 people living in the property. However, the ground floor kitchen had a double sink, two new ovens and hobs and there were two washing machines for the use of occupiers. Both floors' communal kitchen/living areas were adequately naturally lit, ventilated, well decorated and clean with good quality fairly new furniture.
16. I concede that 11 rather than 9 people using the property would give rise to a more intensive use of these communal areas and that the subdivision of the front left ground floor bedroom to create two bedrooms has restricted the outlook for the new rear room. But these changes cannot be said to be material. They do not substantially or fundamentally affect the nature or character of the HMO use such that a material change of use could be said to arise. They do not give rise to any significant external impacts on neighbours or the character or appearance of the area. They do not create living conditions that are so deficient or bad such that occupiers' facilities are severely degraded or overcrowded. If that was the case it is unlikely that an HMO License for 11 persons would have been granted by the Council. Consequentially, these changes do not significantly alter the overall character of the HMO use.
17. For these reasons, and taking into account the parties' submissions on caselaw and reference to other local HMO appeal decisions, I conclude that use of the property as an 11-person 11-bedroom HMO, as specified in the current HMO License, would not result in a material change of use under Section 55(1) of the Act that would require planning permission.
18. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the property as an HMO for 11 persons was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Nick Fagan

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 14 February 2019 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed use of the HMO by 11 persons would not give rise to a material change of use of the property and consequently planning permission is not required to increase the occupancy of the HMO from 9 to 11 persons.

Signed

Nick Fagan

Inspector

Date: 01 October 2020

Reference: APP/D1780/X/19/3241496

First Schedule

House in Multiple Occupation (HMO) for 11 persons.

Second Schedule

Land at 23 Bullar Road, Southampton SO18 1GT

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 01 October 2020

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Scale: 1:1250

