



Appeal Decision

Site visit made on 15 September 2020

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 October 2020

Appeal Ref: APP/G1250/C/19/3242584

Land at 1-3 Watkin Road, Bournemouth

- 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 McKenna against an enforcement notice issued by Bournemouth Borough Council.
 - The enforcement notice was issued on 14 November 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 requirements of the notice are: Cease the use of the property as a House in Multiple Occupation.
 - The period for compliance with the requirements is 3 months.
 - 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. Since the appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Summary of Decision

1. The appeal is dismissed and the enforcement notice is upheld with a variation.

The ground (a) appeal

Main Issues

2. The main issues are the effects of the use enforced against on the:
 - i. living conditions of occupants and neighbouring occupants, having particular regard to the adequacy of inside space and facilities as well as resultant noise and disturbance; and,
 - ii. character and appearance of the area.

Reasons

3. The site is located within the Boscombe area of Bournemouth and occupies a corner plot. The area is mixed-use in character, partly owing to its proximity to the district centre, and partly owing to guest houses, care homes and a place of worship within close proximity of the site.
4. The use enforced against relates to the use of a former care home as a large HMO for which the evidence before me demonstrates, on the balance of probabilities, is for up to 42 occupants within 38 bedrooms/households along

with associated communal spaces. There has been no change to the scale or mass of the buildings at the site. This is therefore the basis of the deemed planning application.

Living conditions

5. The building consists of a single ground-floor kitchen area, albeit across two rooms, and provides for basic cooking facilities, including fridges, as well as some locked cupboards, amongst other things. However, even though there are various cookers and multiples of certain kitchen items, there is very little evidence before me that it would be adequate in terms of size, circulation space or facilities to be able to cater for the needs of 42 occupants, whom are likely to need to use the area together at peak meal times.
6. Similarly, the laundry facilities, given the individual nature of the occupancy concerned, do not adequately cater for the needs of 42 occupants. I also have little evidence as to how the comparatively limited inside communal spaces would provide adequate living conditions for occupants, given the floor-plans before me of the bedrooms demonstrate that many are of comparatively limited size and thus other adequate space and facilities would likely be required.
7. Whilst the former use of the site as a care home would have generated external noise and potentially disturbance, there is a material difference between sedentary occupants and the current use of the site as a large HMO. Many of the occupants are likely to have active and independent lifestyles, thereby leading to an increase in noise and disturbance to neighbouring residents. This adds to my concerns that the number of occupants at the site cannot be adequately accommodated without harm.
8. The bin store facilities and recycling area for the site is located in close proximity of the road frontage. There are only very limited details before me as to how waste is managed at the site and given the number of occupants there is little to demonstrate whether this is adequate or how waste is disposed of. Whilst such matters could be controlled by a suitably worded planning condition, the absence of such evidence before me would make it inappropriate to do so, as I have no certainty that any additional measures could be suitably accommodated at the site.
9. For the same reasons, it would not be appropriate to condition the provision of cycle parking facilities. The Local Highway Authority have provided evidence that a cycle store capable of accommodating 21 cycles for occupants would be required, and there is no evidence before me as to why a lesser requirement should be accepted or even that such a facility can be suitably accommodated at the site.
10. The absence of facilities again adds to my concerns about the adequacy of the overall living conditions for occupants at the site and the acceptability of the use in planning terms.
11. In respect of outdoor communal space, whilst it is situated outside some ground floor windows, the area, which is to the rear of the building, provides a reasonably pleasant and large environment for occupants, with a mix of hard surfaced treatments and potential for further foliage. Whilst it would not be adequate for all the occupants simultaneously, unlike the inside communal

space, such as the kitchen, an outside communal space is unlikely generate a similar peak demand.

12. I conclude that the use enforced against, given the number of occupants, is harmful to the living conditions of occupants and neighbouring occupants in contravention of Policies CS16, CS18 and CS41 of the Bournemouth Local Plan Core Strategy, October 2012 (the CS) and Policy 6.17 of the Bournemouth District Wide Local Plan, February 2002 (the LP). These policies, amongst other things, require for parking provision in accordance with adopted standards, to increase opportunities for cycling and walking and provide a high standard of amenity to meet the day to day needs of occupants. For the same reasons it contravenes Policy BAP8 of the Boscombe & Pokesdown Neighbourhood Plan, August 2019 (the NP), and the Parking Supplementary Planning Document, July 2014.

Character and appearance

13. The Council has provided evidence about the concentration of HMO's in the immediate area as well as the density of residential use that results as a consequence of the use enforced against, when compared against other residential uses in the area. The Boscombe Commitment and Action Plan 2015-2020 also seeks to encourage more private ownership.
14. The site was not designed to accommodate the proposed use, and this is to some extent highlighted by the appellant when he states that there has been no change to the scale or mass of the building at the site or pattern of development. The use has therefore simply been transposed into the existing building and the resultant residential density of the HMO use is significantly out of character with the area. Despite the area being of mixed-use character, the residential character of the area can be identified as being comparatively restrained with a more modest concentration of occupancy, which results in a more mixed and balance community.
15. This is accordingly a further factor that adds to my concerns that the number of occupants at the site cannot be adequately accommodated without harm.
16. I conclude that the use enforced against is harmful to the character and appearance of the area in contravention of Policies CS6 and CS24 of the CS and 6.17 of the LP. These policies, amongst other things, require for development to result in mixed and balanced communities. For the same reasons it contravenes Policy BAP8 of the NP.

Other considerations

17. The appellant says that the housing shortage is at its highest and that the use of the site provides accommodation for 42 occupants who otherwise would be homeless or on the Council's waiting list for housing. The Council also indicates that it is unable to demonstrate a 5-year supply of deliverable housing land and acknowledges this triggers the presumption in favour of sustainable development, as set in paragraph 11 of the National Planning Policy Framework (the Framework).
18. However, the adverse impacts of granting planning permission, in respect of the harm I have already identified, would significantly and demonstrably outweigh the benefits, in terms of making a relatively small contribution to this particular housing need, when assessed against the policies in the Framework

taken as a whole. I also have little specific evidence from the appellant to convince me about the overriding need for this particular type of residential accommodation or to demonstrate that the occupants would indeed otherwise become homeless, which could only likely arise from a complete absence of any alternatives.

19. The site is also located within the 400m to 5km buffer of the Dorset Heathlands Special Protection Area, amongst others, which is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 (as amended). Policy CS33 of the CS identifies that residential development will be required to take all necessary steps to make provision for mitigation measures designed to avoid adverse effects. I am in no doubt that the use of the site as a large HMO is likely to give rise to significant adverse effects on protected heathlands arising from the type and patterns of occupancy associated with such a use.
20. Planning permission should not be granted where there is a risk that a development may have a significant effect on internationally designated sites either individually or in combination with other plans or projects. However, had I been minded to allow the appeal, in light of a Court judgement¹, as the competent authority I would have been required to undertake an Appropriate Assessment. However, as I am dismissing the appeal on other grounds, I need not consider this matter further.
21. I appreciate that some local residents are concerned about the parking pressures arising from the use of the site. Whilst I have sympathy for those concerns, the Local Highway Authority do not raise an objection in this regard given the previous use of the site, and I have little evidence to demonstrate that there is acute parking saturation in the area. Issues of an increase in crime have also been raised, but this is not a planning matter directly in dispute between the main parties.

Planning balance

22. The Government is seeking to significantly boost the supply of housing and the use enforced against makes a contribution, albeit relatively small, to the supply of a particular type of residential accommodation.
23. I have however found that the use does not provide for adequate living conditions and is harmful to the character and appearance of the area. There are no other considerations before me that outweighs these harms.

Conclusion

24. For these reasons and having regard to all other relevant matters raised, I conclude that the appeal on ground (a) should fail.

The ground (g) appeal

25. The appellant contends that the time given to comply with the requirement of the enforcement notice is too short as the tenants are subject to an assured shorthold tenancy.
26. Whilst I have limited evidence concerning the terms of tenancies or situation of occupants, given the number of occupants a period of 3 months is unlikely to

¹ Court of Justice of the European Union (CJEU) 12 April 2018: *People over Wind & Sweetman v Coillte Teoranta*

be adequate for them to find alternative accommodation. A period of 6 months, as suggested by the appellant, would allow more adequate time and would not unnecessarily perpetuate the breach of planning control.

27. The appeal on ground (g) therefore succeeds.

Overall Conclusion

28. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission.

Formal Decision

29. It is directed that the enforcement notice be varied by:

- substituting '6 months' as the period for compliance.

30. Subject to this variation the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Paul T Hocking

INSPECTOR