



Appeal Decision

Site visit made on 1 December 2020

by Roy Curnow MA BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 January 2021

Appeal Ref: APP/D1780/C/20/3259878

Land at 21 John Street, Southampton SO14 3DR

- 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 Vincent against an enforcement notice issued by Southampton City Council ('the notice').
 - The enforcement notice, numbered 20/00041/APENF - 19/00106/ENCOU, was issued on 20 August 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the change of use of the Land from a single dwellinghouse (Use Class C3) to a house in multiple occupation for up to six persons (Use Class C4).
 - The requirements of the notice are Cease occupation of the dwellinghouse situated on the and by unrelated persons not forming a single household within the meaning of section 258 of the Housing Act 2004.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed, 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.

Application for costs

2. An application for costs was made by Southampton City Council against Mr Paul Vincent. This application is the subject of a separate Decision.

Main Issues

3. The main issues are:
 - i) the effect of the proposal on the mix and balance of the households in the local community; and
 - ii) whether the proposal provides adequate vehicular parking and adequate provision for secure, covered bicycle storage.

Reasons

Mix and balance of households

4. 21 St John Street is a 3-storey mid-terraced property that is in use as a House in Multiple Occupation (HMO). It has a small space to its front, fronting John Street, and to its rear a fairly small garden, garage and parking space. The

- latter are accessed via a private lane that serves other properties in John Street and a medical centre.
5. Under the terms of the GPDO¹, the change of use of a dwellinghouse to a HMO is classed as permitted development. However, under the terms of an Article 4 Direction ('the Direction'), the Council withdrew these permitted development rights in March 2012. Thus, the change of use that has occurred requires planning permission.
 6. In terms of its development plan framework, the Council's Policy CS16 of the City of Southampton Local Development Framework Core Strategy Development Plan Document adopted January 2010 (CS) seeks to provide a mix of house types and more sustainable and balanced communities. Amongst the measures to achieve this is the control of HMOs. Amongst their terms, Policy SDP1 of the City of Southampton Local Plan Review – Adopted Version 2nd Revision (2015) (LP) seeks to improve the quality of life for citizens, and LP Policy H4 states that HMOs would only be allowed where they would not be detrimental to the amenities of nearby residents.
 7. To assist in the determination of proposals regarding the establishment of HMOs, the Council has produced its 'Houses in Multiple Occupation' Supplementary Planning Document, adopted May 2016 (HMOSPD). Whilst this document is not part of the development plan, as: it is a relatively recent document; it has been consulted on; and it has general conformity with the National Planning Policy Framework, it is a material consideration that can be afforded significant weight.
 8. It was within this policy framework that an application was made to retain the use of 21 John Street as a HMO. The application was refused by the Council for reasons similar to those given for the issuing of the notice. That decision was taken to appeal, which was dismissed in a decision letter dated 7 February 2020 (Planning Inspectorate reference APP/D1780/W/19/3236033). As this is a recent decision, and I have not been made aware of any changes to the policy framework under which it was determined, I give this significant weight in my decision.
 9. The HMOSPD sets out that where the proportion of HMOs exceeds 10% of properties within a defined area of the application site, planning permission will be refused. Its section 4.2 sets out a 3-stage process for calculating the 10% threshold. The appellant's suggestion that the appropriate way of assessing the numbers of local HMOs through the use of the planning register is correct to a degree, as this is included in the approach advocated in the HMOSPD. However, this also refers to the use of the Electoral Roll, Council Tax Records and HMO Licensing Register to identify HMOs. This list is not to be considered to be exhaustive. Thus, the result of using the planning register alone would be likely to be unreliable.
 10. In the previous appeal, following an assessment based on the HMOSPD approach, the Council concluded that there were ten existing HMOs within the defined area, representing circa 18%. This led to the Inspector finding that he had "no significant doubt that the proposal would breach the 10% threshold".

¹ Town and Country Planning (General Permitted Development) Order (England) 2015 (as amended)

11. The appellant's use of the Planning Register suggests that the figure in the vicinity of No 21 would be 4%; however, for reasons given above, this does not accord with the approach in the HMOSPD. The Council's aim is to help maintain an appropriate mix and balance of households by avoiding an excessive concentration of HMOs in an area. This can lead to a conflict with the established community. Ignoring those HMOs that are present in an area, irrespective as to whether they have planning permission or not, will lead to a skewed result that would in turn be likely to result in a harmful imbalance of households.
12. That some of these HMOs appear not to benefit from planning permission is immaterial in the calculation. If they are within the defined area, they should be taken into account.
13. The Council has explained the magnitude of the work involved in enforcing against unauthorised HMOs. The case before me has arisen from a complaint to the Council which it has acted upon. Those cases where similar action has not been taken cannot be taken to mean that the Council considers the issues raised to be insignificant.
14. Whilst the current use of No 21 may not have resulted in any obvious physical effects that would harm the appearance of the area, this is only part of the assessment to be undertaken. A major facet of the Council's policy approach is, as the previous Inspector noted, to protect the coherency of the community in which a development is proposed. Controlling the number of HMOs, whose occupants are likely to be more transient, for example, will protect this coherency.
15. Although the site is close to the city centre and provides easy access to a range of facilities, this would also be the case for a dwellinghouse on the site. Therefore, this reason does not provide reason to override the Council's adopted policy stance. Similarly, that the HMO provides a good standard of accommodation, which is not disputed by the Council, does not outweigh the harm caused by the change of use.
16. Overall, on the basis of the evidence before me, I find that the use of 21 John Street as a HMO leads to a harmful imbalance to the mix of households in the local community that is contrary to the terms of CS Policy CS16, 'saved' Policies SDP1 and H4 of the LP and the HMOSPD.

Vehicle and cycle parking

17. Amongst its terms, the 'Parking Standards' Supplementary Planning Document, Adopted May 2016, ('the Parking Standards SPD'), contains parking standards for HMOs. For the HMO at No 21 it sets out a maximum provision of two car spaces.
18. The previous Inspector found that, on the basis of the evidence before him, the proposal would not provide adequate vehicle parking or secure cycle parking. For reasons that are unclear to me, the garage and an adjacent parking space were not included within the site area for that proposal. The appellant's statement unambiguously sets out that both would be available for use in respect of this appeal. This being the case there would be an appropriate level of parking on site. Given this, I need not look into the use of the nearby car park by occupants of No 21.

19. An appropriately worded condition would ensure the availability of the parking spaces to the occupants of the HMO, thus addressing the lack of car parking identified in the recent appeal and that reason for issuing the notice. However, as I am dismissing the appeal for other reasoning, this cannot be done.
20. In his assessment of cycle parking provision, the previous Inspector could only look at the rear garden for this purpose as the garage was not within the application site. Here, the garage is within the land covered by the notice, and the appellant states that this could be used for cycle parking. It appears that the previous Inspector did not address the question of the number of cycle parking spaces that were required. He found that the garden would not be an appropriate location for cycle parking, given its size and uncovered nature, and I have no reason to find otherwise on that point. He did, however, note the potential role for the garage in the provision of cycle parking.
21. Amongst other things, the Parking Standards SPD sets out cycle parking requirements. Its Table 12 requires that dwellinghouses in Use Class C3 should supply a minimum of 1 space. It does not provide a standard for HMOs. The Council states that there is a minimum requirement of 5 spaces, based on 5 unrelated people living in the property. However, a single family living at No 21 might also have 5, if not more, people, and it would be possible that each family member might have a bicycle. The Parking Standards SPD only requires 1 space in that scenario, where the need for cycle parking would be little different to that arising from the use of No 21 as a HMO. Given this, I do not find that the evidence put forward in support of the requirement for 5 cycle spaces to be convincing. Given the lack of formal specific guidance on cycle provision for a HMO, I find that a single space would suffice.
22. I was able to see inside the garage at my site visit. Whilst not large, it appeared that it would be able to securely accommodate a single cycle space and a car parking space. Thus, adequate secure, covered bicycle storage could be provided in accordance with CS Policy CS19, 'saved' Policies SDP1 and SDP5 of the LP, the HMOSPD and the Parking SPD that seek to ensure that development proposals provide adequate cycle parking provision. Again, had I been allowing the appeal, it would have been possible to have conditioned the provision of a cycle space at the property. However, as the appeal fails for other reasoning, this cannot be done.
23. My finding on this main issue is that the HMO at No 21 would be provided with adequate off-street vehicular parking and adequate and secure cycle parking, in accordance with the development plan policies and supplementary planning documents referred to, above.

Conclusion

24. I find that the HMO at No 21 could, subject to conditions, be provided with adequate car and cycle parking provision. However, notwithstanding this, the proposal results in an imbalance in the mix of households in the area to the detriment of the local community.
25. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Roy Curnow
Inspector