
Appeal Decisions

Site visit made on 19 May 2021

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 09 June 2021

Appeal A: APP/D1780/W/20/3264983

66 Alma Road, Southampton SO14 6UX

- 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 Ranjit Singh of Smart Homes (Southampton) Ltd against the decision of Southampton City Council.
 - The application Ref 20/00471/FUL, dated 31 March 2020, was refused by notice dated 15 June 2020.
 - The development proposed is described as change of use from 8-bed to 10-bed house in multiple occupation (HMO, class sui generis) with associated bicycle storage.
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Appeal B: APP/D1780/W/20/3264985

66 Alma Road, Southampton SO14 6UX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Ranjit Singh of Smart Homes (Southampton) Ltd against the decision of Southampton City Council.
 - The application Ref 20/01108/FUL, dated 19 August 2020, was approved on 9 November 2020 and planning permission was granted subject to conditions.
 - The development permitted is change of use from 8-bed to 9-bed house in multiple occupation (HMO, class sui generis), installation of ground floor window to west elevation and associated bicycle storage. (Resubmission).
 - The conditions in dispute are No 2 which states that: The development hereby permitted shall be carried out in accordance with the approved plans listed in the schedule attached below, unless otherwise agreed in writing with the Local Planning Authority. For the avoidance of doubt the existing en-suite bathroom shall be removed from the approved lounge room within 3 months of the date of this decision; and No 3 which states that: the window in the rear elevation at ground floor level serving bedroom 2 (as identified on plan 20.SINGH.05) hereby approved development, shall be obscurely glazed and fixed shut up to a height of 1.7 metres from the internal floor level before the development is first occupied. The window shall be thereafter retained in this manner.
 - The reasons given for the conditions is: No 2: For the avoidance of doubt and in the interests of proper planning; and No 3: To protect the amenity and privacy of the occupier of the bedroom.
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Decisions

Appeal A

1. The appeal is allowed and planning permission is granted for change of use from 8-bed to 10-bed house in multiple occupation (HMO, class sui generis) with associated bicycle storage, at 66 Alma Road, Southampton SO14 6UX, in accordance with the terms of the application, Ref 20/00471/FUL, dated

31 March 2020, and plans 20.SINGH.01, 20.SINGH.04, subject to the following condition:

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

Appeal B

2. The appeal is allowed and the planning permission Ref 20/01108/FUL for change of use from 8-bed to 9-bed house in multiple occupation (HMO, class sui generis), installation of ground floor window to west elevation and associated bicycle storage. (Resubmission), at 66 Alma Road, Southampton SO14 6UX, granted on 9 November 2020 by Southampton City Council, is varied by deleting conditions 2 and 3, and substituting condition 2 for the following condition:
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 20.SINGH.04 Rev B; 20.SINGH.05 Rev A.

Procedural Matters

3. As set out above, there are 2 appeals on this site. Appeal A is made against a refusal of planning permission. Appeal B is made against a grant of planning permission with conditions. Both schemes involve the change of use of 66 Alma Road to a larger house in multiple occupation (HMO); that subject of Appeal A, a 10-bed HMO, and that subject of Appeal B, a 9-bed HMO. Whilst I have dealt with each appeal on its merits, the issues are closely interrelated. For this reason, and in order to avoid duplication, I have therefore dealt with the appeals together.
4. I have used the Council's description of development in the banner heading relating to Appeal A as it is clearer than that provided in the application form.
5. Applications for costs in respect of both Appeal A and Appeal B were made by Mr Ranjit Singh of Smart Homes (Southampton) Ltd against Southampton City Council. These applications are the subject of a separate Decision.

Main Issues

6. The main issues are:
 - whether the development subject of Appeal A would provide (a) sufficient communal space, and (b) acceptable living conditions for the occupants of bedroom 3 in relation to privacy and noise and disturbance; and
 - in relation to Appeal B, whether the disputed conditions 2 and 3 are necessary and reasonable, having regard to communal space provision and privacy.

Reasons

Background

7. The lawful use of No 66 as an 8-bed HMO was established in February 2020. Works had however already been undertaken to enable No 66 to be used as a 10-bed HMO. This was then the subject of the application submitted and refused in relation to Appeal A. An alternative scheme to enable No 66 to be used as a 9-bed HMO instead then followed. This was approved. The main

difference between the 2 schemes is the level of occupancy, and the use to which the ground floor room adjacent to the kitchen would be put: a bedroom in relation to Appeal A, and a lounge in relation to Appeal B.

Appeal A

(a) Space

8. The supporting text of saved Policy H4 of the City of Southampton Local Plan Review 2015 (LPR) states that the Council will assess proposed HMOs using its own internal space standards. This is repeated within the Houses in Multiple Occupation Supplementary Planning Document (HMO SPD). The Council does not however appear to have any adopted internal space standards for use in planning, and nor did it, or has it, sought to apply the Nationally Described Space Standard, insofar as it is relevant. Though the HMO SPD does additionally reference control of standards through licensing, this occurs outside the planning system.
9. The scheme was not ultimately assessed against any particular standard. Here the Council's fundamental concern was nonetheless that some rooms were small, awkwardly shaped, and that some have a limited outlook. This is indeed the case. It would however also be true were the same rooms to be used within the context of the lawful 8-bed HMO, or within the context of the subsequently approved 9-bed HMO. Here the Council's rationale in approving the latter rested on its view that perceived shortcomings in the size, shape and outlook from some of the rooms, including an assumed lack of space to accommodate a chair, could be balanced by provision of 'sufficient' communal space.
10. The 10 occupants of the scheme subject of Appeal A would have access to the kitchen/diner. This is an airy space of reasonable size, which, at least at the time of my visit, was well lit by a roof window. It accommodates a casual seating area that is not compromised in any significant way by access to and from the rest of the house. Its outlook is limited, but as it is a kitchen/diner, this is not critical. It is not otherwise apparent how or why a more extensive outlook could compensate in any direct or meaningful way for a limited outlook from some of the bedrooms.
11. In view of the above, it appears unlikely that the useability and functionality of the kitchen/diner would differ significantly were it to be used by 10 occupants rather than 9. In relation to the scheme subject of Appeal B, the Council indeed accepted that it was unrealistic to expect that all the occupants would use the kitchen at the same time. The same would be similarly true in relation to the scheme subject of Appeal A. There is therefore no reason to assume that any occupant would be required to eat in their room due to lack of space in the kitchen/diner, or that occupants of rooms on the second floor would thus need to carry their meals upstairs.
12. The Council further states that space should be available to enable all the occupants to socialise in the same room together. Whilst the necessity for this is unclear, it is also unclear how such a requirement should be measured. That being so, and given that the kitchen/diner is large enough to enable 10 persons to casually mingle if they so wish, no additional space would be required solely for the purposes of socialising.

13. The 9 occupants of the scheme subject of Appeal B would also have access to a living room. Both the slightly smaller number of occupants and the additional availability of this space would provide relatively improved living conditions. That is not to say however that the living conditions of occupants in relation to the 10-bed scheme would therefore be unacceptable. Indeed, in view of my findings above, they would not.
14. When assessing the scheme the Council additionally identified that the garden would fall below the 90m² area required in relation to a detached dwelling, as set out in the Residential Design Guide Supplementary Planning Document (the DG SPD). Be that as it may, the garden is already in existence and long pre-dates use of No 66 as an HMO. It would therefore be impossible to comply with this standard whatever the nature of residential use. Local variation in garden sizes is otherwise acknowledged by the DG SPD, and there would again be little material difference in the functionality of the garden were it to be used by 10 occupants rather than 9.
15. For the reasons outlined above I conclude that development would provide sufficient communal space in respect of Appeal A. In this regard it would therefore comply with saved Policy SDP1 of the LPR which amongst other things states that planning permission will only be granted for development which does not unacceptably affect the health and amenity of the city and its citizens, and supporting guidance in the HMO SPD and DG SPD. Whilst the Council also referenced Policy CS13 of the Core Strategy, this contains no relevant provisions in relation to residential amenity.

(b) Privacy

16. Bedroom 3 would occupy the ground floor room adjacent to the kitchen. At the time of the application the room had one rear facing window. This is located close to the back door, which is itself set within the adjacent side wall of the kitchen/diner. People entering and leaving the kitchen/diner would thus pass this window.
17. HMOs generally feature bedrooms on the ground floor. Consequently, rooms on the ground floor are typically less private than those on floors above, and occupants are more prone to disturbance. Indeed, as is the case in relation to all the ground floor rooms at No 66, ground floor accommodation is inevitably located closer to external doors, circulation and/or other communal spaces. Privacy at least can generally be secured by fitting a blind, window hanging or similar.
18. In this regard the proximity of the back door to the window would not give rise to a loss of privacy, or levels of disturbance that would be unusual or therefore unacceptable when considered within the context of the proposed use, or the accommodation as a whole.
19. A second window has been installed in the side wall of the room since the application was refused. This now provides scope to permanently screen the window in the rear wall if desired. The existence of this option is not however a determinative factor in view of my findings above.
20. For the reasons outlined above I conclude that development would provide acceptable living conditions for the occupant of bedroom 3 in relation to privacy and noise and disturbance. In this regard it would therefore again comply with

saved Policy SDP1 of the LPR, as outlined above, and supporting guidance in the HMO SPD and DG SPD.

Appeal B

(a) Condition 2

21. Condition 2 is a plans condition. Its second part sets out a requirement for the removal of the 'en-suite' from the proposed lounge. Provision of a lounge space minus the en-suite is what was proposed, and it was therefore an aspect of the scheme for which permission was sought. In the absence of the requirement set out within the condition the appellant would not be obliged to remove the en-suite at all. The condition thus functions to ensure that this element of the scheme takes place. The imposition of a requirement to carry out works for which permission has been sought would not generally be considered contentious.
22. In this case the Council's reasoning for imposing the requirement is not clearly set out within the officer report or decision notice. The officer report in fact appears to indicate that the 'slightly unusual' arrangement would be acceptable. This is not the view otherwise expressed and understood within correspondence between the parties, which was that retention of the en-suite would unacceptably compromise the size and functionality of the lounge. This is indeed an obvious and logical explanation for the requirement to remove it. In view of the above, the condition was therefore necessary in order to secure the provision of a lounge of the size proposed, and in all other regards reasonable.
23. The appellant states that the Council should have considered the merits of retaining the en-suite for use by the occupants. This was covered within the correspondence noted above. It was not however what was shown on the proposed plans, either as originally submitted or subsequently amended during the process of determination. As such, and given that the occupants would each have use of their own private facilities. I see no reason why the Council should have attached any weight to retention.
24. The Council has additionally stated at appeal that removal of the en-suite would be necessary in order to ensure that the room did not causally become used as a bedroom. Such change would however be reasonably easy to detect and enforce against.
25. I have found above that Condition 2 was necessary and reasonable within the context of the Council's decision. Within the context of this decision however, my findings in relation to Appeal A above have a direct and separate bearing on whether Condition 2 can now be considered necessary. Indeed, insofar as I have found that communal space provision at No 66 would be acceptable for 10 occupants in the absence of a lounge, the removal of the en-suite in order to make the lounge larger in relation for 9 occupants would clearly not be essential. In other words, set within the context of these appeals, the scheme would be acceptable whether or not this element of the proposal was implemented. The requirement set out within Condition 2 is therefore now unnecessary.
26. For the reasons set out above, I conclude that the requirement set out within Condition 2 to remove the en-suite is unnecessary, and that Condition 2 should therefore be deleted and reimposed without this requirement.

(b) Condition 3

27. Condition 3 makes reference to 'Bedroom 2' as shown on plan 20.SINGH.05. However, 20.SINGH. is not an approved plan, and does not show the approved layout. Bedroom 2 on plan 20.SINGH.05 is shown as the lounge on approved plan 20.SINGH.05 Rev A.
28. Plan 20.SINGH.05 Rev A shows bedroom 2 as a room featuring a bay window. The Council itself makes reference to the bay window in its rebuttal of the appellant's cost claim. However, Condition 3 identifies the location of the relevant window as the rear elevation, whereas the bay window is located within the side elevation. Having regard to plan 20.SINGH.05, the window subject of the condition is quite obviously that subject of dispute in Appeal A.
29. As such, Condition 3 is irrelevant given that the room in question would not function as a bedroom but as a lounge. As a communal space, there is no obvious reason why views into it from another communal space should be obscured, whether or not this is shown on the plans.
30. Even if proceeding on the basis that the requirement set out in Condition 3 should be interpreted as applicable to the bay window serving Bedroom 2 shown on plan 20.SINGH.05 Rev A, no assessment of the privacy of its occupants features within the officer report. There is also no clear explanation, and nor is it obvious, why the addition of one occupant over and above the lawful 8 would give rise to unacceptable loss of privacy to occupants of an existing bedroom.
31. Furthermore, the specified requirement to obscure glaze and fix a window shut would itself be more usually and logically imposed where overlooking was of concern, and where the restriction of views out of a window rather than views in was necessary. Indeed, the measures specified would diminish rather than safeguard the quality of the internal environment for the occupants.
32. In any case, at the time of my visit it was not possible to see into approved Bedroom 2 as this was prevented by a voile. Reflecting my findings in relation to Appeal A above therefore, there is no need to make any modification to the fabric of the ground floor windows in order to secure privacy.
33. For the reasons set out above I conclude that Condition 3 is fundamentally flawed given its lack of direct relevance to the permitted scheme, and that it would otherwise be both unnecessary and unreasonable if interpreted in the way suggested by the Council. It should therefore be deleted.

Conditions

34. In relation to Appeal A, I have imposed a condition setting out the time period for commencement for sake of certainty. I have made reference to the approved plans within my decision rather than within a separate plans condition given that, whereas the change of use has yet to occur, the necessary physical works have already been undertaken.
35. In view of the above, I have not imposed a suggested condition requiring provision of storage for refuse and recycling in accordance with the plans, as the plans do not show this. It is additionally unclear how the suggested restriction of bin placement on the pavement would be enforced.

36. I have also not imposed a condition requiring the kitchen and garden to be made available as communal areas, as this is their established function. In the absence of any other explanation, there is therefore no need for such a condition.
37. Finally, I have not imposed a condition requiring provision of the cycle store. This is because a cycle store currently exists at the site. It is of a similar size to that shown on the plans, but its location and design differs. It would not therefore be essential for the store shown on the plans to be provided.
38. In relation to Appeal B, the effect of allowing the appeal is to modify the original decision. Those conditions not subject of dispute remain unaltered. In this regard, and as set out above, Conditions 2 and 3 are both deleted, and Condition 2 is substituted for a new condition which solely lists the approved plans for sake of certainty.

Conclusion

39. For the reasons set out above I conclude that Appeal A and Appeal B should be allowed.

Benjamin Webb

INSPECTOR