The Planning Inspectorate

Appeal Decisions

Inquiry held 22-23 June and 2 July 2021
Site visit made on 30 June 2021

by P H Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd August 2021

Appeal A: APP/D1590/X/18/3219061
Suffolk House, 5-9 Grosvenor Road, Westcliff-on Sea, Essex SS0 8EP

- 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 Sarenity Limited against the decision of Southend-on-sea Borough Council.
- The application Ref 17/02224/CLE, dated 14 December 2017, was refused by notice dated 26 June 2018.
- The application was made under section 191(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 'Use of Parts of Building as Fourteen Self-Contained Flats (Class C3)'.

Appeal B: APP/D1590/C/18/3219062
Suffolk House, 5-9 Grosvenor Road, Westcliff-on Sea, Essex SS0 8EP

- 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 Sarenity Limited against an enforcement notice issued by Southend-on-sea Borough Council.
- The enforcement notice was issued on 22 November 2018.
- The breach of planning control as alleged in the notice is, without planning permission, the unauthorised Change of Use from a care home (Use Class C2) to 21 self-contained flats (Use Class C3).
- The requirement of the notice is to cease the unauthorised use of the building as 21 self-contained flats.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (d) and (g) of the Town and Country Planning Act 1990 as amended.

Decisions

Appeal A

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

Appeal B

2. It is directed that the enforcement notice be corrected by the deletion of the words 'from a care home (Use Class C2)' from section 3 'The Breach of Planning Control Alleged'. Subject to that correction, the appeal is allowed, the

enforcement notice is quashed, and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the change of use of Suffolk House, 5-9 Grosvenor Road, Westcliff-on Sea, Essex SS0 8EP to 21 self-contained flats (Use Class C3), subject to the conditions set out in the attached schedule.

Procedural matter

3. On 20 July the Government issued a revised version of the National Planning Policy Framework (the Framework). I sought the views of the parties regarding this but neither considered that there were any changes that were significant to the appeals.

Appeal A (the LDC Appeal)

Main issue

4. The main issue is whether the Council's decision to refuse to issue an LDC was well founded. This turns on whether at the time of the application, and on the balance of probability, the property had been in use for 14 flats for a continuous 4 year period and the use had not subsequently changed or been abandoned.

Background

5. Suffolk House (originally known as Cecil House), is a large, detached building located on Grosvenor Road between Whitefriars Crescent and Grosvenor Mews. The property appears to have originally been constructed as a terrace of three houses but was combined and used as five flats and later as an old person's home/care home.

6. The property is of two-storeys but has a further floor of accommodation within the roof space. A parking area and a detached single garage are accessed off Whitefriars Crescent. A small private amenity area is situated at the rear. The building currently contains a total of 21 self-contained flats, with shared entrances, access corridors and staircases.

7. The property was in use as five flats in the period up until 1982. In that year planning permission was sought and granted for the 'use of flats as old persons rest home'. A very similar permission was granted following an application by the Springboard Housing Association, who by that time leased the building from the owner. Springboard made a further planning application, approved in November 1991, to 'Use elderly persons home for additional purposes in connection with the care and rehabilitation of frail elderly people and people of mixed abilities'.

8. The appellant bought and refurbished the property in 2015 and started letting the flats from August 2015.

The requirements for establishing lawfulness

9. Section 191(2) of the Act states that:

'For the purposes of this Act uses and operations are lawful at any time if—

a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and

b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force'.

10. It does not appear that any notice was in force at the date when the application for the LDC was made. Accordingly, my decision hinges solely on s191(2)(a).

11. The time periods for taking enforcement action (as referred to in s191(2)(a)) are set out in Section 171B of the Act. In this case the parties agree that the relevant period is 4 years. This 4 year period may have taken place at any time prior to the LDC application, provided the use did not subsequently change or become abandoned. To succeed, the appellant must demonstrate this, on the balance of probability.

The point at issue

12. The appellant's claim of lawfulness only relates to 14 of the flats. It is argued that the 14 units were self-contained flats on 1 April 2003, and thus became lawful 4 years later.

13. It is agreed that the way the building was used did not change materially between April 2003 and when the building was decanted in 2014 prior to selling it to the appellant. There is no doubt either that the building has been used as 21 flats since the appellant refurbished and relet it. Thus, if the appellant is correct in asserting that the 14 units were flats on 1 April 2003, they would have become and remained lawful by the time the appellant acquired the building in 2015, and would have subsequently remained so.

14. The Council's position is that the building as a whole remained a single planning unit within Class C2 of *The Town and Country Planning (Use Classes) Order 1987* (as amended), until its closure in 2014. Class C2 ('Residential Institutions') includes 'Use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses)'. Alternatively, the Council considers that the building, while remaining a single planning unit, might have been in a mixed use rather than falling within any use class.

The physical characteristics of the 14 units

15. It is clear that most of the current flats at Suffolk House have had an element of self-containment for many years. In February 1991 a Council memorandum indicated that, 'Minor internal alterations have been made to create 16 lettings for individual tenants'. The majority of the flats were said to have bathrooms and limited cooking facilities, with others having shared bathrooms and kitchens.

16. On acquiring the building in 2015 the appellant commissioned a survey, carried out by Mr Mullen. This identified 17 flats, each with sanitary facilities and kitchen areas with sinks and cupboards. Photographs illustrating the survey show that there were no cookers or fridges at that time. However, since the building had been vacated before acquisition, that is not surprising. The layouts of the kitchen areas include gaps which, it appears to me, were once likely to

have accommodated kitchen appliances. It is a point of agreement that the units each had a lockable door.

17. The appellant excluded 3 of the 17 units from the LDC application for various reasons. It appears to me, on the balance of probability, that the remaining 14 units each had the facilities needed for day to day living. Although the building was subsequently refurbished by the appellant, the layout of the 14 units is fundamentally the same now as in the 2015 survey. Thus, the same 14 units that the appellant identified in the LDC application existed when the building was surveyed in 2015.

18. It does not appear that the facilities were recent additions in 2015; it is common ground that the use of the building did not change during the period from 2003 until the appellant acquired the building and Mr Mullen's evidence, supported by the photographs in the survey, indicate that there had not been recent changes. I conclude, therefore, that the units would have afforded their occupants the facilities required for day-to-day private domestic existence during the period 2003-2014.

The permitted use of the building from 1991

19. Condition 2 of the 1991 planning permission states:

'The premises shall be used as a residential care home and for the care and rehabilitation of frail elderly people and people of mixed ability and for no other purpose, including any other purpose within Class C2 of the Schedule to the Town and Country Planning Use Classes Order 1987, and in particular shall not be used wholly as a nursing home'.

20. It is clear from this that the planning permission was for a C2 use. I have not been referred to any subsequent planning permissions to change the use of the whole or any part of the building. However, it appears from correspondence around that time that the Council's eventual view that the building as a whole was in a C2 use was something of a marginal decision. In a memorandum dated 23 April 1991, the Borough Solicitor described it as a 'difficult case' and considered 3 possible options regarding the use of the building, eventually concluding that, 'the current use of the property appears to be as self-contained sheltered flats'. Subsequently, however, the planning permission granted was to 'Use elderly persons home for additional purposes in connection with the care and rehabilitation of frail elderly people and people of mixed abilities'. It appears to me that categorising the use of the building had been a fact-sensitive exercise and it might not have needed a very great subsequent change in circumstances to alter the categorisation of the use and/or the planning unit.

21. On 1 April 2003 The Government launched the 'Supporting People' regime for funding vulnerable people. It is at this point, the appellant claims, that the use of the building changed.

The planning unit(s) and actual use 2003-2014

22. It is common ground that self-contained flats would each comprise an individual planning unit in their own right. The leading case relating to planning units is *Burdle & Williams v SSE & New Forest DC [1972] 1 WLR 1207*. The case of *Johnston v Secretary of State for the Environment (1974) 28P & CR*

424 (CA) endorses the approach taken in *Burdle*, in which Bridge J suggested three broad categories of distinction:

a) A single planning unit where the unit of occupation has one primary use and any other activities are incidental or ancillary;

b) A single planning unit that is in a mixed use because the land is put to two or more activities and it is not possible to say that one is incidental to another; and

c) The unit of occupation comprises two or more physically separate areas which are occupied for different and unrelated purposes. Each area that has a different primary use ought to be considered as a separate planning unit.

23. He added that, 'It may be a useful working rule to assume that the unit of occupation is the appropriate planning unit, unless and until some smaller unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally.'

24. What was the unit of occupation in this case? Suffolk House was in a single ownership. However, the relevant 14 units were physically separate, with locking doors, cooking and sanitary facilities. They also had their own individual tenants, each of whom, it appears, had a tenancy agreement. I have not been given a copy of any such agreement. However, the statutory declaration of Ann Hayes, a service manager employed by Genesis Housing Association, (formerly Springboard Housing Association) states that, *'Each tenant has a tenancy agreement and is eligible for Housing Benefit and Supporting People allocation of hours'*. This statutory declaration is not contested, and I attach substantial weight to it.

25. It is clear that there were functional links between the units, arising from the services and shared facilities provided. The building contained a communal lounge and kitchen (where staff helped some people with their cooking). Residents also received help with 'life skills' - shopping, cleaning and budgeting, for example, as outlined in the statutory declaration of Ann Hayes. Much of this support would have taken place at the property. To that extent Suffolk House was distinguishable from most typical blocks of flats.

26. Yet the extent of support appears limited. While the units were occupied by vulnerable people, referred by the Council, it is clear that the purpose of the Supporting People programme was to help people to live more independently. This is explained in the Council's *Supporting People Local Services Directory* of April 2011. I have no reason to suppose that the support provided within Suffolk House went beyond that anticipated in the Directory. Rather, the statutory declaration of Ann Hayes is consistent with the Directory, saying, 'the nature of support provided to tenants included shopping, cleaning, general support, budgeting and signposting'. This strikes me as being very much the kind of help people may need in order to live independently. Consequently, it appears to me that the residents were living fundamentally independent lives, as opposed to being cared for in a residential institution. The fact that a warden was permanently on the site does not change my view, being comparable to the concierge services associated with many flatted developments.

27. For these reasons, I consider that each of the 14 units under consideration here were 'units of occupation'. Applying Bridge's 'working rule', these units of occupation are each a single planning unit, unless some smaller unit can be recognised (which it plainly cannot be). I can see no reason to depart from that approach in this case, and conclude that each of the 14 units is a single planning unit in its own right.

28. The next question concerns the use of the units. The Council's case of a C2 use is predicated on the view that the whole building was a single planning unit. Use Class C2, is concerned with 'Residential institutions', which clearly implies something larger than these small units. Use Class C3 is headed 'Dwellinghouses' and includes use as a dwellinghouse (whether or not as a sole or main residence) by a single person or by people to be regarded as forming a single household. That appears to me to be a satisfactory way of describing these 14 units, which were laid out as individual units designed for living. Each had all the facilities needed for day to day living and were let out to tenants to use as living accommodation.

29. The Council argues that the support provided at Suffolk House amounted to 'care' for the purposes of the Use Classes Order. Article 2 of the Order defines 'care' and refers specifically to 'personal care for people in need of care'. There is no definition of 'personal care' in the Order but, in my judgement, the matters drawn to my attention by Ann Hayes and in the Supporting People documentation, are better described as 'support', and are not of such a personal nature as to amount to 'personal care'. Indeed, Ann Hayes states that personal care was not provided. Thus, I am not persuaded that the support provided for the residents of Suffolk House amounted to 'care' for the purposes of the Use Classes Order. Such services and shared facilities as were available to the occupiers of the units were not sufficient to place the units outside Class C3 in my view.

30. I conclude, on the balance of probability, that those parts of Suffolk House identified in the application (as amended) and shown on the plans submitted during the appeal were in use as 14 self-contained flats (Class C3) in the period 1 April 2003 until the building was vacated for sale at some point in 2014. Since there is agreement that the pause in the building's use during its refurbishment is not significant, and that it was subsequently used as flats, it follows that the use of the 14 units as C3 flats was lawful when the application was made.

31. In deciding this matter I have had regard to the appeal decisions and judicial authorities cited by both parties. In the *Portishead* appeal decision[1] the Inspector found that the proposed development would amount to a single Class C2 use rather than individual C3 dwelling houses. However, it is plain from reading that decision that the Inspector's findings were very dependant on the particular facts of the case. In particular, the Inspector emphasised the high degree of care available in that development, together with the range of other services and facilities available. This distinguishes that development from the case before me.

[1] APP/D0121/A/12/2168918

32. In contrast, in the *Faraday Road*[2] case to which I have also been referred, it was concluded that some assisted living units were C3 dwellings. This is a further indication of the fact-sensitive nature of these matters.

33. For similar reasons, the case of *Manchester City Council v SSCLG [2021] EWHC 858 (Admin),* which hinged on the specific circumstances relating to 4 commercial units, is of limited relevance, other than to endorse the approach in *Burdle* and make clear that the question of the planning unit, in any given case, is a matter of fact and degree.

34. There are gaps in the information available to me. I do not have any of the tenancy agreements for the relevant period and there are no details either of the residents or the use they made of the support available at Suffolk House. However, the evidence that is available is sufficient to persuade me, on the balance of probability, that the 14 units are individual planning units, each a C3 dwellinghouse.

35. 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 use of parts of the building as fourteen self-contained flats (Class C3) 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 and issue a certificate accordingly.

Appeal B, ground (d)

36. Appeals on ground (d) are made on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. The notice was issued on 22 November 2018, but the precise date is not critical in this instance and there is agreement that, if the LDC appeal succeeds, the ground (d) appeal must succeed also. Therefore, for the reasons discussed in relation to Appeal A, I will allow the appeal on ground (d). As with the LDC appeal, the appeal on ground (d) relates only to 14 of the 21 units.

37. There was much discussion at the Inquiry regarding the practical implications of allowing a ground (d) appeal relating to only part of the breach of planning control alleged in the notice. Should the allegation change to refer only to the remaining 7 units or is the allegation correct (since there were, when the notice was issued, 21 flats at the property)? It seems to me that the allegation is correct except insofar as it refers to change of use 'from a care home (Use Class C2)', since I have concluded that the whole of the building was not in use as a C2 care home when the notice was issued. In the event of my upholding the notice, the practical implications of the appellant's success on ground (d) would have been to change the requirements of the notice, rather than to change the use that is alleged.

38. I do not have agreement regarding how the pre-existing uses of the building as a whole should be described in the event of success on ground (d). I will therefore correct the notice by removing the reference to the previous use of the building. I am satisfied that no practical difficulties will arise from this course of action. Indeed, by the close of the Inquiry, both parties considered it preferable for the allegation relating to 21 units to remain, since cutting down

[2] APP/W1850/A/06/2022861

the scope of the notice would have implications for the deemed planning application (DPA).

Appeal B, ground (a)

The basis of the ground (a) appeal

39. The deemed planning application arising from the appeal of ground (a) is defined by the allegation in the notice, which relates to 21 flats. Section 177 of the Act establishes that, on appeal, planning permission may be granted in relation to 'the whole or any part of' the matters stated in the notice. Thus it is open to me to consider granting permission for all 21 flats or any smaller number of them. Following some discussion at the Inquiry, the appellant confirmed a wish to pursue all 21 units, even in the event of success on ground (d). I have considered the appeal on that basis, albeit against the background that I have found 14 of the units to be lawful.

Main issues

40. The main issues are:

- Whether the flats provide satisfactory living accommodation for their occupiers, having regard to local and national policies relating to residential space standards and amenity space provision; and
- Whether any harm arising from the development is outweighed by other considerations, including any need for the housing it provides.

Planning obligation

41. The appellant submitted a draft unilateral undertaking before the Inquiry opened. This was discussed at the Inquiry and I accepted a completed, signed version of the document after the close of the Inquiry. The Council has seen the finalised document and is content with its drafting.

Planning policy

42. The development plan is comprised of the Borough Council's Core Strategy, which was adopted in 2007, and the Development Management DPD (DMDPD), adopted in 2015.

43. In 2015 the Council issued a Policy Transition Statement to address the Government's Nationally Described Space Standards. The Council also relies on its Design and Townscape Guide Supplementary Planning Document (SPD), which dates from 2009.

44. The Council is in the early stages of preparing a new local plan, and it is common ground that it has no bearing on this appeal.

Issue 1 - Whether the living accommodation is satisfactory

Internal space standards

45. Policy DM8 of the DMDPD deals with residential standards. It requires that all new dwellings must be high quality and flexible. Amongst other things it requires that all new dwellings should meet or exceed the residential space

standards set out in Table 4 of the policy. Table 4 indicates that a studio flat should be a minimum of 30m^2 gross internal floor area, while a 1 bedroom flat with 2 bed spaces should be 45m^2.

46. In March 2015 the Government introduced the new national space standards. A written ministerial statement advised that, from 1 October 2015, existing Local Plan, neighbourhood plan, and supplementary planning document policies relating to internal space should be interpreted by reference to the nearest equivalent new national technical standard. The Government's Planning Practice Guidance (PPG) was revised at that time to state (as it still does), that, 'Where a local planning authority (or qualifying body) wishes to require an internal space standard, they should only do so by reference in their Local Plan to the nationally described space standard'.

47. In response, the Council produced its Policy Transition Statement for housing standards. This indicates that the Government's new space standards should be used in place of those set out in DM8.

48. Given that background, I attach substantial weight to the Policy Transition Statement. The new national space standards and accompanying guidance were clearly important material considerations, relevant to the way in which Policy DM8 was to be applied. The Council's decision to apply the policy with regard to the new national standards closely follows the approach advocated by the Government.

49. Moreover, the introduction of the new standards was known about prior to the adoption of the DMDPD and is referred to in the supporting text for DM8, indicating that it may change the way the policy is applied. Thus, the approach the Council has taken is recognised by the development plan and is consistent with it. While the requirements of the national standards are higher than those in DM8, they are not, in my judgement, so different as to be unjustified in this instance. Consequently, while the standards themselves are not part of the development plan, they are an important and relevant material consideration, to be taken into account in deciding whether the development meets the requirements of DM8 as a whole, including the requirement for new dwellings to be 'high quality'.

50. Given my finding that 14 of the flats are lawful, I have focused on the other 7. These are numbers 1, 2, 3, 7, 8, 18 and 21, all of which are 1 bed/1 person units. The national space standards require a 1 bedroom flat to have a gross internal area of at least 37m^2 or 39m^2 (depending on whether it has a bathroom or a shower room)

51. Six of the 7 flats fail to meet that standard. The most significant failing is Flat 21 which, at just 18.6m^2, has only about half the required internal area. The other shortfalls are significant too, Flat 18 having just 26 m^2 and others being little over 30m^2. Moreover, only two of the flats have adequate internal storage provision, as required by the standards. The failings are more than minor technical breaches and, in the case of the smallest flats in particular, compromise the quality of the accommodation. Accordingly, there is conflict with DM8.

Amenity space

52. Policy DM8 requires new dwellings to make provision for usable private outdoor amenity space. For flatted schemes this could take the form of a balcony or semi-private communal amenity space. The Council's *Design and Townscape Guide* SPD outlines the overall approach, taking account of the amount, quality and usability of the amenity space and setting out a range of criteria. It establishes that there is no fixed quantitative requirement for the amount of amenity space but that some usable space will normally be required. Core Strategy Policy CP4 and DMDMP Policy DM1 both refer to the SPD, either directly or in the supporting text.

53. Suffolk House has lawns to the front. These are not private but might be used for sitting out on occasion. However, the windows of a number of flats overlook the area. Consequently, significant use of this area could prove intrusive for the occupiers of the ground floor flats in particular, especially when windows are open and conversations might be overheard. The scope for making active use of this area is therefore very limited, and its primary purpose is to provide a setting for the building and a degree of separation from the road.

54. A small amenity area, with a patio and small grassed area, is provided at the rear of the building. The area is relatively private and has potential for sitting out or hanging out washing. It is only a modest area to serve 21 flats however.

55. Some of the units have their own provision. Flat 7, which is on the ground floor, has a terrace. The area is not very private, and is also next to a narrow road and an area used for parking and bin storage, all of which diminishes its quality. Nevertheless, it is likely to be of some value to the occupiers of the unit in my view. A few of the units have balconies. That at Flat 12 currently overlooks the window of Flat 13 and is likely to need modification to address that, which might well reduce its usability. Overall, however, the balconies provide useful, if limited, additional amenity space.

56. In considering the adequacy of amenity space provision at Suffolk House, I have borne in mind that it primarily consists of units for single person occupation and is plainly not suitable for families with children. It is appropriate for the amenity space provision to reflect this, and areas for children's play are not needed. Furthermore, the site is only a very short distance from the sea front, which provides extensive opportunities for exercise and socialising. With that in mind, even allowing for the small size of the flats, the combined mix of amenity space at Suffolk House is adequate to serve the development in my view. Consequently, the requirements of the policies and SPD highlighted above, insofar as they relate to amenity space, are met.

The quality of the internal space

57. Aside from the question of floor area, the quality of the units is satisfactory in my view. I did not view all the flats internally but inspected an agreed selection of them. While some units had noticeably dark areas, many of the units benefitted from large bay windows, creating a very light interior and good outlook. Some variation between the units is perhaps to be expected in a converted building and, overall, daylight and outlook was satisfactory. All of the flats I inspected, together with the corridors, appeared in good condition, with satisfactory décor and facilities.

Conclusion – Issue 1

58. I have found the amenity space provision to be adequate to serve this development. In many ways, the flats themselves provide comfortable accommodation. However, the shortfalls in terms of the size of the units are significant and detract materially from the quality of the accommodation in the case of many of the flats. Overall, therefore, the living conditions afforded by the development as a whole are not satisfactory, in conflict with Policy DM8.

59. As discussed below, it is agreed that relevant policies in this case are out of date as a result of the shortfall in the housing land supply. However, that does not alter the need for adequate residential standards and DM8 does not appear to me to be inconsistent with the Framework. Accordingly, I attach significant weight to the conflict with DM8.

Issue 2 - Other considerations

60. My decision on the LDC and ground (d) appeals means that the use of 14 of the 21 units is lawful, regardless of whether planning permission is granted for them or not. The only effect of granting permission in relation to those units would be to make them subject to any planning conditions and the obligations in the Unilateral Undertaking – a beneficial outcome in planning terms. There is therefore no good planning reason to withhold planning permission for those 14 units.

61. It is plainly desirable that the building is put to some appropriate and viable use. Both parties considered that the most likely alternative to use as flats would be use as a house in multiple occupation (HMO). I have no reason to come to any contrary view.

62. I do not have a specific scheme to show how the building could be converted to HMO use, but it would necessitate using some of the internal space to create shared rooms and facilities such as kitchens and bathrooms. Given the appellant's success on Appeal A, it seems likely that it would seek to incorporate some or all of the lawful units into the revised building, so that it would contain a mix of flats and HMO units.

63. It is common ground that the Council is unable to demonstrate a five year supply of housing land. The Housing Delivery Test for 2020 indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years. The Council can demonstrate a housing land supply of 2.55 years. The Housing Delivery Test states that delivery of housing was at 36% of the housing requirement of the previous three years. The Council accepts that there is a need for all types of housing in the area, including single bedroom flats.

64. Even if there was an adequate supply of housing, I would regard the accommodation provided as a benefit of the scheme, albeit limited by my findings regarding the quality of the accommodation. Against a background of such a significant shortfall of housing land, the need for the accommodation weighs more heavily in favour of the development. Although an HMO scheme would also provide much-needed accommodation, there is less certainty regarding precisely what would be provided.

65. Clearly, the 7 additional units that would be provided by allowing the scheme would only be a modest contribution compared to the scale of need, but it is a

contribution nonetheless and thus weighs in favour of the scheme. The fact that a modest contribution to the supply of housing did not lead to the granting of planning permission in the *Old Vienna* appeal decision cited by the Council[3] is of little relevance to this case, where a different range of matters have to be considered in the planning balance.

66. There was much discussion at the inquiry about the extent of need for particular types of accommodation. However, there is no dispute that accommodation for single people is needed. While the Council advises that family housing is a strategic priority and prefers a mix of dwelling types, in accordance with Policy DM7, I have no reason to suppose that there is any prospect of family housing being provided here, given my decision that 14 of the existing flats are lawful. While the Council appears to be making progress in bringing new housing developments forward, there is no suggestion that the issue of housing need will be resolved in the near future.

The Planning Obligation

67. The unilateral undertaking would commit the owner to:

- Not dispose of any of the flats individually without the consent of the Council (paragraph 5.1.1)
- Give the Council details of any disposal of the site (5.1.2)
- Limit the tenancies to 12 months (5.1.3); and
- Only rely on the planning permission (and not the LDC) in respect of the lawful use of the site (5.1.4).

68. Regulation 122(2) of the *Community Infrastructure Levy Regulations 2010* states that a planning obligation may only constitute a reason for granting planning permission for a development if the obligation is: (a) necessary to make the development acceptable in planning terms; (b) directly related to the development; and (c) fairly and reasonably related in scale and kind to the development. The same tests are set out in the Framework. Do these obligations meet the tests?

69. It seems to me that it is desirable in planning terms that the building is not disposed of in separate units without proper consideration. The flats have been created from an existing building, which itself appears to have been an amalgamation of buildings. While short of ideal, the arrangement that has been created is a reflection of the limitations of the pre-existing structure and makes appropriate use of the communal space available, under the control of a common owner. Selling off individual units could compromise this, resulting in a less satisfactory arrangement overall for the occupiers.

70. The effect of the fourth obligation would be to bring the whole development within the control of the planning permission, rather than allowing the owner to rely on the LDC. It seems to me that there are clear planning advantages of this in terms of simplifying the control of the site and ensuring that the effect of the conditions and planning obligation apply throughout it.

71. For these reasons I consider that the first, second and fourth obligations are necessary to make the development acceptable in planning terms and are

[3] APP/D1590/W/18/3215929

directly related to the development. Each is fairly and reasonably related in scale and kind to the development. Accordingly, they meet the requirements of Regulation 122(2) and may constitute a reason for granting planning permission in this instance.

72. I am not persuaded that there is an adequate justification to limit the tenancies to 12 months. While I appreciate that the units serve a particular sector of the housing market (and that this forms part of the appellant's case in favour of the development), I have insufficient evidence to show that that would be undermined, or that the units would fail to serve as useful accommodation, if longer tenancies were permitted. Thus, I am not persuaded that it is necessary, and the requirements of Regulation 122(2) are therefore not met. Accordingly, Paragraph 5.1.3 of the Unilateral Undertaking cannot constitute a reason to grant planning permission.

Planning balance

73. Paragraph 11(d) of the Framework establishes that, where the policies which are most important for determining an application are out-of-date, permission should be granted unless:

    i) the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or

    ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

74. In view of the shortfall in the housing land supply, it is agreed that the 'tilted balance' under Paragraph 11(d)(ii) applies in this case. The Framework is an important material consideration.

75. The failure to meet the space standards results in conflict with Policy DM8 and, in my judgement, with the development plan as a whole. However, other points weigh in favour of the development. These are:

- 14 of the 21 units can lawfully be used as flats and are likely to continue to be so used;
- There is a pressing need for housing, including single bedroom flats, in the Borough. Although there is a need for HMO units as well, it is not clear, from the information before me, how many HMO units could be provided, given prospect of up to 14 flats remaining.
- The proposed planning conditions would bring about worthwhile safeguards and improvements to the development. It is significant that the Unilateral Undertaking would bring the 14 lawful units within the control of the planning permission, ensuring that the planning conditions would apply across the development. The proposed conditions include measures to limit occupancy of the units and otherwise improve living conditions, thereby, to some extent, addressing the Council's concerns, if not resolving them.

76. These matters weigh heavily in favour of the scheme. Looking at the case as a whole, I am not persuaded that the adverse impacts of the development significantly and demonstrably outweigh the benefits, when assessed against

the policies in the Framework taken as a whole. With that in mind, I conclude that there are material considerations that outweigh the conflict with the development plan and, accordingly, the development should be permitted.

Conditions

77. Conditions 1 and 2 will limit the occupancy of the building in order to protect the living conditions of the residents. Conditions 3 and 4 will ensure that adequate parking provision is retained on the site and that appropriate provision is made for cycle parking. Condition 5 is imposed to ensure that good use is made of the amenity space available within the development and condition 6 is needed to ensure that appropriate provision is made for waste and recycling facilities. Condition 7 is needed to ensure adequate privacy for the occupiers of flats 12 and 13.

Overall Conclusion – Appeal A

78. For the reasons given above I conclude that the appeal should succeed on grounds (d) and (a). Accordingly, I will:

- Amend the allegation in the notice to remove reference to the pre-existing use of the property; and
- grant planning permission in accordance with the application deemed to have been made under section 177(5) of the 1990 Act as amended, which will now relate to the corrected allegation.

79. In view of my decisions on grounds (d) and (a), the appeal on ground (g) does not fall to be considered.

Peter Willows

INSPECTOR

APPEARANCES

FOR THE APPELLANT: Kevin Leigh, Barrister

He called:

Matthew Spry B.Sc. (Hons) Dip TIP (Dist.) MRTPI MIED FRSA	Lichfields
Stewart Rowe Dip TP MRTPI	The Planning and Design Bureau

FOR THE LOCAL PLANNING AUTHORITY: Dr Alex Williams, Barrister

He called:

Spyridon Mouratidis	Senior Planner, Southend-on-Sea Borough Council

DOCUMENTS SUBMITTED DURING OR AFTER THE INQUIRY

1 Johnston and Another v Secretary of State for the Environment and Another
2 Note for Examination in Chief – Matthew Spry
3 Manchester City Council v Secretary of State for Housing, Communities and Local Government v Saif Chaudry Dr Prem Pathak
4 Amended draft Unilateral Undertaking submitted 23 June 2021
5 Closing submissions - Local Planning Authority
6 Closing submissions – appellant
7 Revised drawing nos. EX-01; EX-02 and EX-03, dated June 2021 and attached to email dated 23 June 2021
8 Revised drawing nos. EX-01A; EX-02A and EX-03A, dated June 2021 and attached to email dated 7 July 2021
9 Agreed planning Conditions 4-7, attached to email dated 28 June 2021
10 Unilateral undertaking dated 6 July 2021

The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(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 December 2017 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the location plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

On the date of the application, no enforcement action could have been taken against the use of the units as flats because, on the balance of probability, they had been used as flats for a period in excess of 4 years and the use had not subsequently materially changed or been abandoned.

Signed

Peter Willows

Inspector

Date 3rd August 2021

Reference: APP/D1590/X/18/3219061

First Schedule

Use of Parts of Building as Fourteen Self-Contained Flats (Class C3) (being the 14 units within Suffolk House edged in red on Drawing Numbers EX-01A; EX-02A and EX-03A, attached to this Certificate).

Second Schedule

Suffolk House, 5-9 Grosvenor Road, Westcliff-on Sea, Essex SS0 8EP

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was 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 described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plans. Any use 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 Planning Inspectorate

Plans

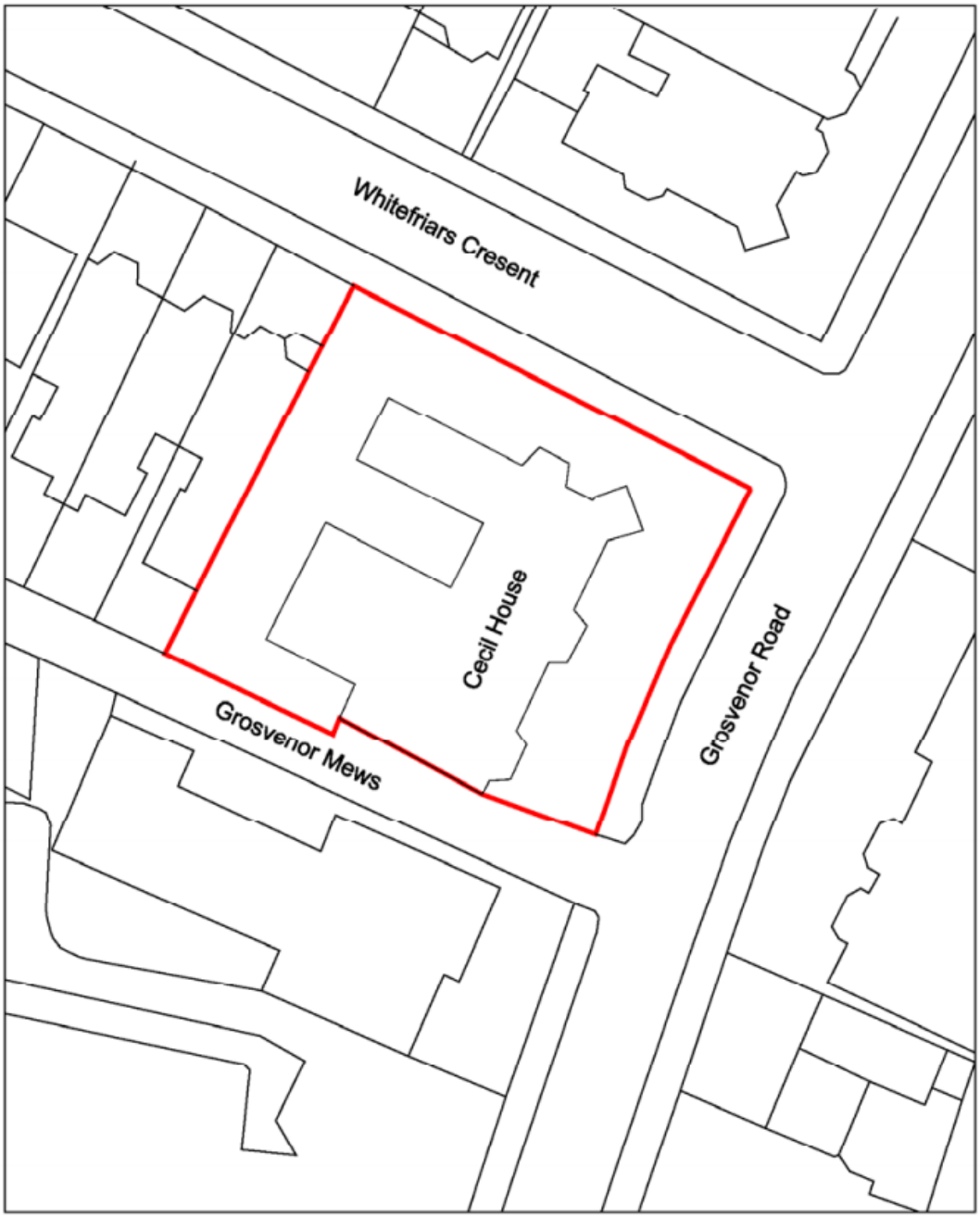
These are the plans referred to in the Lawful Development Certificate dated:

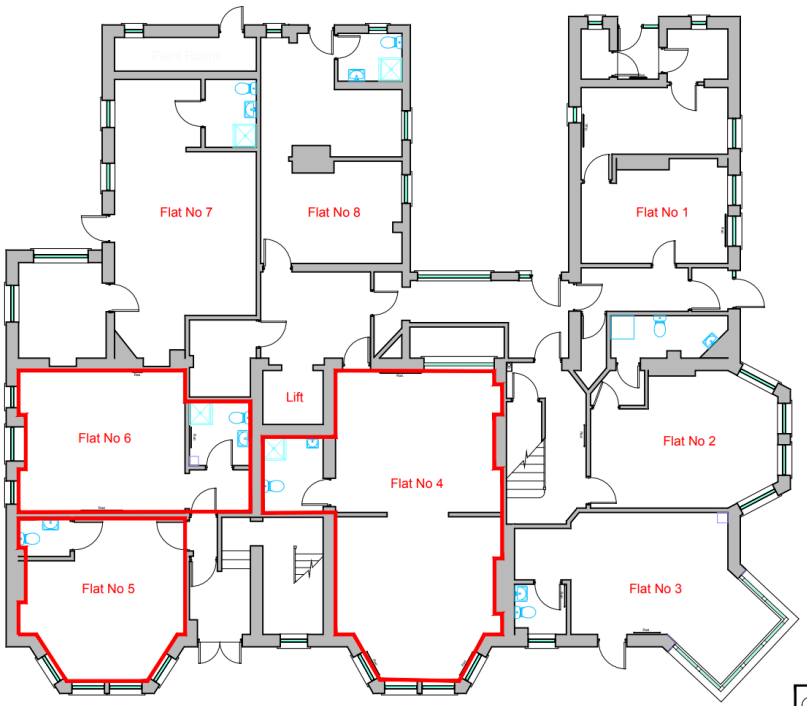
by P Willows BA MRTPI

Land at: Suffolk House, 5-9 Grosvenor Road, Westcliff-on Sea, Essex SS0 8EP

Reference: APP/D1590/X/18/3219061

Scale: Not To Scale



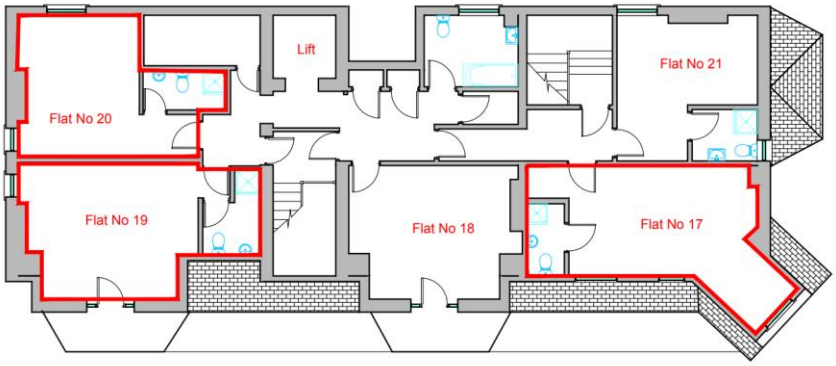


Ground Floor Plan 1:100

PROJECT: Suffolk House 5-9, Grosvenor Road, Westcliff-On-Sea SS0 8EP	DRAWING TITLE: Ground Floor Plan		
DRAWING No.: EX-01A	SCALE: 1:100	DATE: June 21	DRAWN: BNM

First Floor Plan 1:100

PROJECT: Suffolk House 5-9, Grosvenor Road, Westcliff-On-Sea SS0 8EP	DRAWING TITLE: First Floor Plan		
DRAWING No.: EX-02A	SCALE: 1:100	DATE: June 21	DRAWN: BNM



Second Floor Plan 1:100

PROJECT: Suffolk House 5-9, Grosvenor Road, Westcliff-On-Sea SS0 8EP	DRAWING TITLE: Second Floor Plan		
DRAWING No.: EX-03A	SCALE: 1:100	DATE: June 21	DRAWN: BNM

Conditions

1) Notwithstanding the provisions of the Town and Country Planning Act 1990 (as amended) the building shall not at any time be adapted to enable formation of more than twenty one (21) bedrooms and the property shall not be occupied by more than twenty one (21) people at any one time.

2) A register of tenants of the flats hereby permitted shall be permanently maintained by the owner and/or operator of the premises, and shall be made available to officers of the Borough Council at all reasonable times.

3) The six existing vehicle parking spaces shall be retained for the lifetime of the development for the purposes of vehicle parking solely for residents of the approved use and their visitors and shall not be used for any other purposes.

4) Unless within one month of the date of this decision a scheme to provide covered cycle parking facilities for at least 21 bicycles is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within two months of the local planning authority's approval, the use of the site for 21 flats hereby approved shall cease until such time as a scheme is approved and implemented. If no scheme in accordance with this condition is approved within twelve months of the date of this decision, the use of the 21 flats hereby approved shall cease until such time as a scheme approved by the local planning authority or the Secretary of State on appeal is implemented. Upon implementation of the approved covered cycle parking facilities specified in this condition, those facilities shall thereafter be maintained for the duration of the use hereby permitted. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

5) Unless within one month of the date of this decision details of a scheme of hard and soft landscaping to improve external amenity areas is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented: a. In relation to the hard landscaping, within two months of the local planning authority's approval, and b. In relation to the soft landscaping, within the first two months of the first planting season (October to March inclusive) following the local planning authority's approval, the use of the site for 21 flats hereby approved shall cease until such time as a scheme is approved and implemented. If no scheme in accordance with this condition is approved within twelve months of the date of this decision, the use of the 21 flats hereby approved shall cease until such time as a scheme approved by the local planning authority or the Secretary of State on appeal is implemented. Any trees or plants which within a period of 5 years from the implementation of the planting scheme die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits

specified in this condition will be suspended until that legal challenge has been finally determined.

6) Unless within one month of the date of this decision details of a scheme for the storage of waste, recycling and compost in accordance with the requirements of the Waste Storage, Collection and Management Guide for New Development (2019) is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within two months of the local planning authority's approval, the use of the site for 21 flats hereby approved shall cease until such time as a scheme is approved and implemented. If no scheme in accordance with this condition is approved within twelve months of the date of this decision, the use of the 21 flats hereby approved shall cease until such time as a scheme approved by the local planning authority or the Secretary of State on appeal is implemented. Upon implementation of the approved scheme specified in this condition, the facilities set out in the scheme shall thereafter be maintained for the duration of the use hereby permitted. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

7) Unless within one month of the date of this decision details of a scheme which specifies the size, design, level of obscurity, materials and location of a privacy screen to be fixed on the balcony between approved Flats 12 and 13 is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within two months of the local planning authority's approval, the use of Flat 12 shall cease until such time as a scheme is approved and implemented. If no scheme in accordance with this condition is approved within twelve months of the date of this decision, the use of Flat 12 shall cease until such time as a scheme approved by the local planning authority or the Secretary of State on appeal is implemented. Upon implementation of the approved privacy screen scheme specified in this condition, the approved privacy screen shall thereafter be maintained for the duration of the use hereby permitted. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.