
Appeal Decision

Site visit made on 20 April 2022

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 April 2022

Appeal Ref: APP/D1780/W/21/3284588
26 Stafford Road, Southampton SO15 5EA

- 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 P Watmough against the decision of Southampton City Council.
 - The application Ref 21/00988/FUL, dated 24 June 2021, was refused by notice dated 20 August 2021.
 - The development proposed is change of use from dwelling house (Class C3) to a House in Multiple Occupation (HMO, Class C4).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appellant states that the change of use of the property to an HMO took place in May 2015, and the Council has confirmed that the property has been licenced as an HMO since 2016. On my site visit, I observed that the rooms are laid out in accordance with the proposed ground and first floor plans shown on the application drawing titled "Existing and Proposed Floorplans". I have dealt with the appeal accordingly. The outcome of my decision is not influenced by the retrospective nature of the appeal.
3. I have omitted reference to 'retrospective' from the description of development, since this is not descriptive of the actual development proposed.

Main Issue

4. The main issue is the effect of an increase in the number of Houses in Multiple Occupation (HMOs) in the area on the character of the area and the living conditions of local residents.

Reasons

5. The property is a two storey, end-of-terrace residential property sited on the west side of Stafford Road, within an established residential area. This stretch of the road, between Arthur Road and Howard Road, has a quiet, residential nature. There are terraced residential properties along the west side and mainly rear gardens and garages of properties in other streets on its east side. On-street parking is available and unrestricted.
6. Based on my observations during my site visit, having regard to factors including the appearance of the terraced properties and their front gardens, the

number of bins on property frontages, and the on-site and on-street parking situation, I find that this part of the road has an outward character that is predominantly akin to that of an area of family housing.

7. The appeal scheme is for the use of the property as a 5-bedroom HMO. Class C4 of the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO) provides for the use of a dwelling house as a HMO by not more than 6 residents; that is, up to 6 unrelated individuals who share basic amenities.
8. The Town and Country Planning (General Permitted Development) Order 2015 (GPDO) grants planning permission, under Part 3 Class L, for a change of use from Use Class C3 (use as a dwelling house for up to 6 people living as a single household) to Use Class C4. However, the Council has, from 23 March 2012, put in force a city-wide Direction under Article 4 of the Town and Country Planning Act 1990 (as amended) (TCPA), that removes this permitted development right.
9. At the same time, the Council also adopted a Supplementary Planning Document titled '*Houses in Multiple Occupation*' (HMO SPD), which has since been updated in 2016. This was done to establish a tool which would assist the Council in addressing high concentrations of HMOs across the city. The SPD was adopted following detailed public consultation, and I therefore give it significant weight.
10. Saved Policy H4 of the *City of Southampton Local Plan Review (2015)* (LP) and the HMO SPD recognise that a large number of HMOs in one area have the potential to harm the physical character of a residential area and the balance of a local community, and can lead to conflict within the existing community, as a result of the intensification of use of a home by the greater number of comings and goings associated with the occupiers living independently of each other and increased pressure on parking provision.
11. Therefore, notwithstanding that the HMO SPD recognises that HMOs provide much-needed housing accommodation, it seeks to prevent excessive concentrations of HMOs, and encourages a more even distribution across the city. To do this, it provides a definitive threshold, stating that planning permission will not be granted for new HMOs where the proportion of HMOs would exceed 10% of the residential properties within a 40 metre radius of the site, measured from the front door of the application site, unless exceptional circumstances apply (where 80% of existing properties surrounding the site within the 40 metre radius are HMOs, and the applicant has demonstrated that there is no reasonable demand for the residential property as a continued Class C3 dwelling house). The revised HMO SPD also introduced a policy preventing the 'sandwiching' of Class C3 dwelling houses between two HMOs, having regard to the identified conflicts arising from a concentration of HMOs in an area.
12. The locations of the other existing HMOs within the vicinity of the appeal site is such that the scheme does not result in the sandwiching of any neighbouring C3 residential dwellings. However, the Council states that within the defined radius, 10% (2/21) of the eligible residential properties are in use as an HMO, and that, consequently, the appeal scheme increases the percentage of HMOs to 14%. These figures are such that the appeal scheme does not meet the 'exceptional circumstances' allowed for under the HMO SPD.

13. The number and location of HMOs is not disputed by the appellant, but the appellant considers that No.45 should not be included within the calculation, since only a small part of its garden is sited within the 40m threshold, and that property, and others nearby, comprise large properties with generous gardens, rather than terraced or cul-de-sac properties. On the basis of the evidence before me, including the methodology of the worked examples in the HMO SPD, I am satisfied that the inclusion of No.45 accords with the established methodology within the HMO SPD.
14. The appeal scheme does not involve changes to the external appearance of the building, and it relates to a small HMO which does not result in a number of occupants which exceeds that which is permitted by the existing Class C3 Use. However, the appeal scheme results in an intensification of activity at the site. This is evidenced by the use of the original ground floor reception room as a bedroom, whereas the use of the appeal property as a dwelling house would typically include a reception room in addition to the kitchen/dining room, so that 4 bedrooms would remain available to be used as such.
15. Moreover, the occupation of the building as a single household is materially different from 5, highly likely to be unrelated, households typical of the HMO accommodation use of the site. The number of individual households associated with the HMO use is very likely to cumulatively result in a much greater level of comings and goings, including visitors, social activities, vehicles and deliveries associated with each separate household, with associated noise and disturbance impacts, than would occur if the property were occupied as a C3 dwelling house by a single household. Such impacts would be noticeable to neighbouring occupiers, particularly given the close proximity of the appeal property to the nearest residential properties within the tightly-knit terraced built environment on this side of the road.
16. In addition, by potentially affecting matters such as bin storage and car parking, and increasing the transience of the population within the site vicinity, an additional HMO within the immediate residential area adds to the built-up residential environment in which the appeal site is located, and has the effect of causing further imbalance to the existing community in the manner which the HMO SPD seeks to restrict.
17. For the above reasons, on the basis of the evidence before me, and having regard to the methodology in the HMO SPD, I therefore conclude that the appeal scheme has a harmful effect on the mix and balance of households in the local community which causes subsequent harm to the character of the surrounding area and the living conditions of local residents. The appeal scheme is therefore contrary to LP Saved Policies SDP1, SDP7 and H4, Policy CS16 of the *Local Development Framework Core Strategy (2015)* (CS), and the HMO SPD. Taken together, these policies and guidance seek to restrict the concentration of HMOs, so as not to be detrimental to the overall character and amenity of surrounding areas and to achieve more sustainable and balanced communities.
18. This is generally consistent with advice in Chapter 5 of the *National Planning Policy Framework 2021* (the Framework), which encourages the provision of a mix of housing types to satisfy the needs of various community groups.
19. The appellant has drawn my attention to a change of wording in the current Framework compared to that of the 2012 Framework in respect of the objective

of achieving mixed and balanced communities. The current Framework includes specific reference to the housing needs of different community groups including students and people who rent their homes. However, this does not undermine the objectives of the aforementioned development plan policies and SPD, which comprise a policy framework which recognises the importance of HMOs.

Moreover, I have no substantive evidence before me in respect of the extent of the need for HMO accommodation in this location, or that it cannot be met elsewhere other than the appeal site.

Other Matters

20. I acknowledge the appellant's view that circumstances have altered since the refusal of two previous applications in 2015¹, the latter of which was the subject of a dismissed appeal. In particular, my attention has been drawn to the fact that the property has been operating as a licenced HMO since 2015. However, the standards that apply to Licensing and Planning are the subject of separate regulations, and my decision must be based solely upon the planning merits of the scheme that is before me.
21. Whilst the Council has not received any formal complaints in respect of the existing HMO use of the property, I am not persuaded that this comprises conclusive evidence of no harmful impacts on neighbouring living conditions, having regard to the Council's approach of encouraging residents to attempt to settle any issues harmoniously directly with the originators of the problem, prior to making a formal complaint to the Council. Moreover, LP Policy H4 aims to protect against impacts on the overall character and amenity of the area as well as the specific living conditions of adjacent property occupiers.
22. The appellants have drawn my attention to the lack of public comments in response to the planning application. Several letters of objection have been received in response to the appeal. Notwithstanding this, this matter does not justify or outweigh the harm I have identified in respect of the main issue.
23. The appellant has drawn my attention to examples of case law which consider the matter of intensification of use in respect of whether this comprises a material change of use. I have no evidence before me that a formal application for a certificate of lawfulness with respect to the HMO use of the building has been determined by the Council prior to the planning application. Whilst I have determined the appeal on the basis that the change of use has already occurred, it is not for me, under a section 78 appeal, to determine whether or not the existing HMO use of the property is lawful. To that end, it is open to the appellant to apply for a determination under sections 191/192 of the Act, and my determination of this appeal under section 78 does not affect the issuing of a determination under section 191/192 regardless of the outcome of this appeal. I must determine the appeal on the basis of the aforementioned Article 4 Direction and relevant Council policies.
24. Notwithstanding that the Framework encourages Local Planning Authorities to approach decisions in a positive and creative way, this is not unqualified, and would not address, or outweigh, the aforementioned harm that I have identified in respect of the main issue.

¹ Refs 15/01083/FUL and 15/0032/FUL

25. The Council has not objected to the appeal scheme in respect of matters including parking, highway safety and the living conditions of future occupants of the HMO. However, these are requirements of the development plan in any case, and do not outweigh my conclusion on the main issue.

Conclusion

26. For the reasons given above, I conclude that the appeal should be dismissed.

S Leonard

INSPECTOR