



Appeal Decision

Site visit made on 14 June 2022

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 July 2022

Appeal Ref: APP/D1780/W/21/3283493

285 Portswood Road, Southampton SO17 2LD

- 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 Homelife against the decision of Southampton City Council.
 - The application Ref 21/00118/FUL, dated 22 January 2021, was refused by notice dated 24 March 2021.
 - The development proposed is conversion of existing 7 bed HMO to form 3 self contained flats.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - whether future occupiers would be likely to experience acceptable living conditions in terms of external amenity space provision; and
 - the effect of the proposed development on the provision of family housing.

Reasons

External amenity space

3. The appeal property is an end of terrace dwelling currently in use as a 7-bed House in Multiple Occupation (HMO). Residents currently have access to a communal garden which in terms of its size appears to provide sufficient functional and qualitative space for occupiers.
4. The Council's Residential Design Guide (2006) (the RDG) states that a block of apartments should have access to some private communal space, which could include a balcony able to accommodate a table and chairs and suitable locations for sitting outside and the placing of domestic paraphernalia¹ (e.g. for clothes drying). This space will be assessed for its quality and usability. It further advises that each flat should have 20m² of garden area².
5. The proposal seeks to maintain that external space and occupiers of the ground floor flat would have direct access to it via a set of double doors leading off its lounge and kitchen areas. The two upper floor flats would be accessed via the property's front entrance door yet would not have an area of external amenity space. During my site visit I observed no external route, through which occupiers of the upper floor flats could access the rear amenity space. Obtaining entry

¹ Paragraph 4.4.4, Residential Design Guide (2006)

² Page 28 of Part 2, Residential Design Guide (2006)

- internally via the ground floor flat would be unlikely given that occupiers of the upper floors would have to enter the private living space associated with that unit.
6. Therefore, with two of the flats having no external amenity space, occupiers would be deprived of a private area used for quiet enjoyment or domestic functions. This would harmfully diminish the wellbeing and quality of life of occupiers of those flats, and I am not satisfied that the proposal would offer an acceptable quality of accommodation in this respect.
 7. The RDG does acknowledge that in some instances smaller gardens may be acceptable especially in parts of the city where these are a characteristic of the local area³. However, my reading of this does not advocate new residential dwellings having no external amenity space at all, which would be the case in respect of the two proposed upper floor flats.
 8. The appellant refers to the appeal decision at Tenyson Road⁴, where the Inspector accepted some relaxation of the external space requirements advised in the SPD. Yet, in that case future occupiers would have at least had access to a communal area at the rear of the property. A further appeal decision at Bell Vue Terrace⁵ is also cited, where permission was granted for apartments without any amenity space. However, the provision of amenity space was not a main issue in dispute in that case. Moreover, the planning history of the site refers to an earlier sub-division of that property, granted by the Council in 2002, before the publication of the RDG and the associated guidance on external amenity space provision for flats. Therefore, this appeal can be distinguished from those cases referred to.
 9. I note the appellant's comments in respect of the RDG being guidance, nevertheless, both the development plan and the Framework emphasise the importance of high-quality design in maintaining the health and amenity of residents. The provision of external amenity space is, in my view, a component in achieving this.
 10. There are recreation spaces and sport facilities a short walk from the appeal site. Whilst these would satisfy occupiers requiring nearby recreation and sport facilities, they would not have the immediacy or privacy of an external private seating area, nor would they be suitable for other domestic activities generally requiring an external space (e.g. clothes drying). Therefore, the proximity of those recreational areas does not overcome the lack of private amenity provision in this instance.
 11. The appellant considers that the provision of garden space for all residential conversions would undermine the desire to make better use of sites and maximise housing provision, particularly in highly accessible areas such as the appeal site. I acknowledge there could likely be greater challenges in respect to flat conversion schemes, however, this should not be used as a reason to diminish the quality of the accommodation and the future space needs of residents.
 12. Therefore, in view of the above, future occupiers, particularly those residing in the proposed upper floor flats, would likely experience unacceptable living conditions in terms of external amenity space provision. The proposal would fail to accord with Policy CS13 of the Local Development Framework Core Strategy Development Plan Document (2010) (Core Strategy), Policy SDP1(i) of the City of Southampton Local Plan Review (2006) (Local Plan), and the RDG. These require, amongst other things that proposals impact positively on the health and amenity of residents, while complying to external space requirements.

³ Paragraph 2.3.14, Residential Design Guide (2006)

⁴ APP/D1780/A/13/2205485

⁵ APP/D1780/W/17/3188921

Family housing

13. Policy CS16 of the Core Strategy Development states that the Council will provide a mix of housing types and more sustainable and balanced communities. To help achieve this the policy states that, amongst other things, there should be no net loss of family homes on sites capable of accommodating a mix of residential units unless there are overriding policy considerations justifying this loss. A family home is defined as a dwelling with three or more bedrooms with direct access to useable private amenity space or garden for the sole use of the household.
14. From the submitted drawings and my site visit observations, the HMO would meet those terms insofar as it would have more than 3 bedrooms while access to a shared garden would be obtained through what appears to be a communal kitchen and dining room. However, the scale and character of the property as it currently operates as an HMO would differ to a conventional family home functioning as a single household. For instance, the property could have a transient composition of residents, occupiers might not necessarily know one another, may have moved in separately or are renting rooms on an individual tenancy basis. It was also not clear whether individual rooms, at the appeal property, were lockable against other tenants. Therefore, the way in which occupiers reside and co-habit a large HMO of this nature is somewhat different to a conventional family home.
15. Moreover, a HMO of this scale capable of accommodating 7 persons does not belong to a Use Class unlike other dwellings⁶ and smaller HMOs of up to 6 people⁷. Accordingly, this highlights there are differences in the nature of the uses and any change of use from a large HMO (sui generis) to a dwelling house (Class C3) would require planning permission. This also implies a distinction between the two forms of accommodation that necessitates some form of assessment of the effects when there are changes of use between them.
16. The Council has directed me to the supporting text to Policy C16 (paragraph 5.2.11) and further adds that it's not a question of the property being in use as a family dwelling but rather the policy seeks to safeguard properties suitable for families. Reverting to a Class C3 dwellinghouse from the current use would require planning permission and it is not certain whether this would be granted. As such there are no guarantees that the appeal property would be available as a family home in the future, even if permission were sought.
17. The appeal decisions referred to by the Council⁸ relate to schemes which were dismissed, in part, because there would be a loss of family housing. But those schemes relate to smaller HMOs which belong to Use Class C4, and planning permission would not be required, in those instances, to revert to a dwellinghouse (Class C3)⁹. On this basis, the examples cited by the Council are not directly comparable to the appeal scheme.
18. For the reasons set out above I conclude that the development would not have an adverse effect on the provision of family housing. It would accord with Policy CS16 (2) of the Core Strategy given that the development would not entail the loss of a unit of family housing.

⁶ Class C3 of Part A of The Town and Country Planning (Use Classes) Order 1987 (as amended)

⁷ Class C4 of Part A of The Town and Country Planning (Use Classes) Order 1987 (as amended)

⁸ APP/D1780/W/21/3274411 and APP/D1780/A/14/2214083

⁹ Permitted development under Class L of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015

19. My conclusion on this main issue has not referred to Policy SDP1 (i) of the Local Plan, as its requirements do not specifically relate to the provision of family housing.

Other Matters

20. The Solent and Southampton Water Special Area of Conservation and Special Protection Area (SAC and SPA), form part of several designated habitat sites in the Solent. The appeal site is within the 5.6 km zone of influence of the SPA and the future occupiers of the proposed flats would be likely to use the coast for recreation. Therefore, in combination with other plans and projects there would be a likely significant effect on the SPA/SAC from additional recreational activity.
21. However, as one of the main issues provide clear reasons for dismissing the appeal, there is no need for me to consider the implications of the development on the integrity of the SPA/SAC or the provisions of the Conservation and Habitats and Species Regulations 2017 (as amended), since my findings on that issue would not change the appeal outcome. In any case, the appellant's financial contribution towards the Solent Recreation Mitigation Strategy (2017) (SRMS), has not been accompanied by a unilateral undertaking which would secure the payment legally towards the management and monitoring of the designated sites. Therefore, the mechanism to secure the mitigation is not binding.
22. The appellant indicates that the creation of three self-contained flats would add to the supply and mix of housing in a locality that is accessible to services and sustainable transport connections. Those benefits are acknowledged, however, there would be significant harm incurred upon the living conditions of future occupiers. As well as failing to accord with the development plan, the social objectives of sustainable development, referred to in the Framework of fostering well-designed and beautiful places and providing a good standard of residential amenity, would not be achieved.

Conclusion

23. I have found that there would be no loss of family housing provision. However, the proposal would not accord with the development plan in other respects and there are no other considerations, including the provisions of the Framework, to indicate that the appeal should be determined otherwise. Therefore, for the reasons given above, I conclude that this appeal should be dismissed.

RE Jones

INSPECTOR