
Appeal Decision

Site visit made on 2 August 2022

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 August 2022

Appeal Ref: APP/D1780/W/22/3294060

61 Highfield Crescent, Southampton SO17 1SG

- 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 Dr Andy Evason against the decision of Southampton City Council.
 - The application Ref 21/01329/FUL, dated 6 September 2021, was refused by notice dated 27 January 2022.
 - The development proposed is roof alterations including installation of side dormer and roof lights to facilitate a loft conversion and change of use from 5-bed HMO (Class C4) to large 7-bed HMO (Sui Generis use).
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The description of development in the banner heading above is taken from the appeal form and decision notice, since this more accurately describes the proposal than the description on the application form.

Main Issue

3. The main issue is the effect of the proposal on the character of the area and the living conditions of neighbouring residents, with particular regard to the intensification in occupation and associated noise and disturbance impacts.

Reasons

4. The appeal site is occupied by a two-storey, semi-detached, residential property, which is sited on the west side of Highfield Crescent, within an established residential area in the Portswood area of the City.
5. 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.
6. 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.

7. 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.
8. The information before me is that the property benefits from a Lawful Development Certificate (LDC) granted in 2020¹ for use as a Class C4 HMO. I saw, during my site visit, that the premises are currently occupied as a 5-bedroom HMO, with the ground and first floors laid out in accordance with the floor plans submitted with the planning application. The Council has confirmed that the LDC permits the occupation of the premises by up to 6 residents, and I have dealt with the appeal accordingly.
9. The proposal would be achieved by providing two additional bedrooms and a shower-room within an extended roof space, forming a new second floor of living accommodation, which would be served by two dormer windows.
10. The Council is of the opinion that the proposed roof extensions and alterations would comprise Permitted Development under Schedule 2, Part 1 of the GPDO, if carried out in association with the existing use of the premises. I have no evidence before me that a formal application for a certificate of lawfulness with respect to the roof alterations has been determined by the Council, and the determination of what could potentially be built under permitted development rights is not a matter for me to decide within the context of an appeal made under Section 78 of the Act.
11. Moreover, such permitted development would not encompass the proposed use of the premises as a Sui Generis HMO, which is the element of the scheme to which the Council has objected. Accordingly, since I am required to determine the appeal on the basis of the scheme before me, which includes the roof extensions and alterations and increase in bedrooms to 7 in total, I afford the potential permitted development fallback consideration minimal weight in my decision.
12. The appeal property is already occupied in a manner that is materially different from the use of the building as a single household dwelling house, due to the fact that the permitted 6 households, typical of the existing HMO use of the site, are highly likely to be unrelated. As such, the number of individual households associated with the existing 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.
13. This is acknowledged by Saved Policy H4 of the *City of Southampton Local Plan Review (2015)* (LPR) and the HMO SPD, which 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

¹ Ref 20/00180/ELDC

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.

14. 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 provided that, in addition, the applicant has demonstrated that there is no reasonable demand for the residential property as a continued Class C3 dwelling house). A revision to the 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.
15. In this instance, the Council has confirmed that the 10% threshold test as set out in the HMO SPD is not relevant, since the property already benefits from a LDC for HMO use, so that the local concentration of properties occupied as HMOs would not be altered.
16. Moreover, third party representations suggest that the HMO SPD 10% threshold has already been exceeded within Highfield Crescent, and several neighbouring roads, on the basis of known registered HMOs. I have not been provided with substantive evidence in respect of the planning status of these existing HMOs, by either the main parties or third parties, and there is no evidence before me to indicate that the existing HMOs exceed the occupancy levels of a Class C4 HMO.
17. Whilst the proposal would only result in an increase of one resident above that allowed under the current use of the premises, Class C4 HMOs are distinguished from Sui Generis large HMOs in that, unless subject to an Article 4 Direction preventing it, they are allowed to take place under Permitted Development, as a change of use from a Class C3 dwellinghouse, with reversion back to a C3 dwellinghouse also being permitted. This indicates general acceptance that small HMOs are compatible with family dwellings in terms of their use and their impact on neighbouring living conditions.
18. Large Sui Generis HMOs do not benefit from this permitted development change of use, and whilst this does not automatically preclude such development in principle, such proposals should be assessed on their own individual merits depending on the particular circumstances of each proposal.
19. During my site inspection, I found Highfield Crescent and its neighbouring roads to comprise a quiet residential area, encompassing local primary schools and a recreation ground, and with a preponderance of traditionally designed, two-storey, period, family-sized dwellings, incorporating well-presented street frontages.
20. This is evident in Highfield Crescent, where the modest, semi-detached appeal property is typical of the built form that characterises the northern part of the

road. Whilst I do not doubt that there are a mix of family occupied houses, flats and HMOs within the street, I have not been provided with substantive evidence of the proportion of properties which are lawfully used as each within the street.

21. During my site visit, whilst noting the presence of multiple bins at some properties, I found that, in general, any existing HMOs have not resulted in an overtly obvious change to the prevailing residential character of the road. Front boundary walls have generally remained intact, bin storage was not unduly visually prominent within the street scene, and there was no obvious signs of property neglect or general site untidiness. There were also no obvious signs of on-street parking or traffic congestion problems at the time of my visit, with ample on-street parking being available.
22. In addition, the majority of properties in the street appear, when viewed from the public realm of the road, to have maintained their original two-storey height and roof form, with roof level accommodation, which is often an indicator of a small HMO having been converted into a larger Sui Generis HMO, not being a defining characteristic of the street-facing townscape. As such, based on my site visit and the lack of cogent documentary evidence to the contrary, I find that large Sui Generis HMOs are not a characteristic of the appeal site locality.
23. The current 6-person occupancy restriction of the premises is such that, whilst comings and goings and noise and disturbance associated with the appeal premises is likely to be greater than that associated with a typical family house, the impact of the separate household occupancy of the premises is not so intensive that it has a disproportionate impact on the character and neighbouring living conditions of the surrounding residential area.
24. The proposal would result in one or two additional residents above the permitted/existing number of occupants, thereby resulting in a further intensification of the use of the building, with increased comings and goings associated with the independent lifestyle pattern of occupiers living separately to one another.
25. The proposed level of activity associated with the use of the property as a large HMO would be significantly in excess of that which would result from a smaller HMO and much greater than that arising from a family occupied dwelling, due to the number of independently living occupants. Within the context of the appeal site, which comprises a semi-detached property, where the Council has confirmed that the immediate neighbouring properties to the appeal site are family dwellings, and where there is no substantive evidence before me that large HMOs are characteristic of the area, I find that the proposed intensification of use of the site would be out of keeping with the area and unduly detrimental to the living conditions of neighbouring occupants.
26. Whilst internal noise impacts arising from the appeal scheme could potentially be addressed through planning conditions and/or Building Regulations requirements regarding noise insulation measures, this would not address the potential impacts on neighbours arising from an increase in outdoor noise and activity associated with an additional independent household occupying the premises, particularly since the property benefits from a generously sized rear garden which is available for outdoor recreational activity and social congregation.

27. Also, the proposed increase in occupants would be evident within the townscape through the necessary extensions to the roof form of the property to facilitate the use of the roof space as an additional floor of accommodation. The adjacent attached property does not have a third floor of accommodation, and three storey properties are not a typical feature of the street.
28. Consequently, the proposal would be out of character with the less intensively used residential surroundings typically associated with the modest two-storey family dwellings, flats or small HMOs which characterise the street.
29. For the reasons above, and on the basis of the information before me, I therefore conclude that the proposal would materially harm the character of the area and the living conditions of neighbouring residents having regard to the intensification of use and associated noise and disturbance impacts. As such, the appeal scheme would be contrary to LPR Saved Policies SDP1 and H4 and the HMO SPD, in so much as these policies and guidance seek to ensure that HMO proposals integrate into the local community, are not detrimental to the overall character of the surrounding area, and do not unacceptably affect the amenity of the city and its citizens.
30. This is generally consistent with Paragraph 130 of the *National Planning Policy Framework 2021*, which seeks to ensure that developments will function well and promote a high standard of amenity, health and well-being for existing and future users.

Other Matters

31. I am aware, as a result of dealing with other appeals for residential development within the Council's area, that the site may potentially lie within the 'Zones of Influence' of the Solent and New Forest European Sites (the EPS), where new residential development has the potential to harm the integrity of the EPS as a result of increased levels of nutrients from wastewater entering into the Solent water environment and increased recreational usage associated with new residential developments, with such impacts requiring the inclusion of a package of avoidance/mitigation measures to address these effects.
32. These matters do not constitute reasons for refusal, and are not referred to by either of the main parties. Within the context of this appeal, the responsibility for assessing the effects of the proposal on the EPS falls to me as the competent authority. Were I minded to allow the appeal, I would need to explore this matter further with the main parties and, if necessary, consult with Natural England, as the relevant Nature Conservation Body and carry out an Appropriate Assessment (AA) under the *Conservation of Habitats and Species Regulations 2017* (the Habitats Regulations 2017).
33. However, since the main issue provides clear reasons for dismissing the appeal, I have not had cause to pursue these matters further, since any findings on these issues would not change the appeal outcome.
34. I acknowledge that the proposal is an amended scheme from that which was withdrawn in 2021², including changes to the design of the roof enlargements and layout of the proposed second floor accommodation. However, this does not justify or alter my conclusions in respect of the current scheme.

² Ref 21/00741/FUL

35. Neither are my conclusions altered by the fact that the Officer Planning Application Report recommended approval, since the Council's decision is one which is a matter of judgement. The Council Members of the Planning and Rights of Way Panel in this case were entitled not to accept the professional advice of Officers, so long as a case could be made for the contrary view.
36. Moreover, the Council has drawn my attention to a dismissed appeal³, which although relating to a different scheme and location within the City, raised a similar issue to that of the current appeal in respect of comparing the intensification of occupancy between existing Class C4 HMOs and proposed large Sui Generis HMOs. I have taken account of this decision, in so much as the policies and issues are relevant to the current appeal.
37. I acknowledge third party concerns in respect of parking provision. Whilst there is no on-site parking, there is restricted parking available on the street. Moreover, I find that the parking requirements associated with the existing 5 or 6-bedroom C4 use would not differ significantly from those associated with the proposed 7-bedroom Sui Generis Use. As such, and having regard to the availability of off-site parking within the site vicinity, and the accessible location of the site in relation to facilities and services and public transport connections, I am satisfied that this matter does not constitute a reason for dismissing the appeal.
38. In response to third party concerns about bin and cycle storage, I am satisfied that there is adequate and readily accessible space to the rear of the building to provide the required facilities.
39. I have noted concerns in respect of increased anti-social behaviour. I have no compelling evidence before me that such issues are likely to occur as a result of the appeal scheme. Neither is potential neighbouring property devaluation a matter for determination under this appeal.

Conclusion

40. For the above reasons, I therefore conclude that the appeal should be dismissed.

S Leonard

INSPECTOR

³ APP/D1780/W/20/3265009