
Appeal Decision

Site visit made on 13 December 2022

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 December 2022

Appeal Ref: APP/V1260/W/22/3303418
104 Markham Road, Bournemouth BH9 1JE

- 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 Avanti Services against the decision of BCP Council.
 - The application Ref 7-2021-9995-A, dated 28 April 2021, was refused by notice dated 18 May 2022.
 - The development proposed is alterations, single storey extension, conversion of dwellinghouse into a House in Multiple Occupation (Sui Generis) and formation of Juliet balconies.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The planning application was submitted retrospectively, and, whilst I have dealt with the appeal accordingly, this does not affect my decision, which is based on the merits of the appeal scheme before me.

Main Issues

3. The main issues are:
 - The effect of the development on the living conditions of the occupiers of neighbouring properties, with particular regard to noise and disturbance impacts; and
 - The effect of the development on the character and appearance of the area.

Reasons

Background

4. The appeal site is occupied by a two-storey semi-detached residential property, which is located on the north side of Markham Road, close to its junction with Brownen Road. It lies within an established residential area in the Winton/Charminster part of Bournemouth.
5. I saw, during my site visit, that the original hipped roof has been extended by means of side dormers, and that the roof space provides a second floor of living accommodation. Also, a single storey flat roofed extension has been added to the rear of the building, which provides a lounge and laundry in connection with the existing HMO use of the building.

6. Juliet balconies have been installed on the first floor of the rear elevation, providing principal glazed openings to two of the first-floor bedrooms. These extensions and alterations comprise part of the appeal scheme before me, and I have taken account of them in my reasoning.
7. External undeveloped space around the building is limited to a hardstanding to the front of the building, which is currently used for parking and open storage of bins, together with an access path to the side of the building.
8. 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.
9. 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 16 December 2011, put in force a Direction under Article 4 of the Town and Country Planning Act 1990 (as amended) (TCPA), that removes this permitted development right. As such, based on the information before me, and notwithstanding the current use of the building as a HMO, the starting point for the determination of the appeal is that of the lawful use of the property as a Use Class C3 dwellinghouse.
10. Saved Policy 6.17 of the *Bournemouth District Wide Local Plan* (2002) (the Local Plan) and Policy CS24 of the *Bournemouth Local Plan: Core Strategy* (2012) (the Core Strategy) set out the Council's development plan policies for determination of HMO proposals. Local Plan Policy 6.17 recognises that there is a need for HMOs within the Borough to accommodate residents, such as students and young professionals, who do not wish, or cannot afford, to rent or buy a house or self-contained flat. This policy seeks to ensure reasonable levels of amenity, and that the building and locality are appropriate for HMO use, having regard to matters including the number of residents to be housed and the proximity and nature of neighbouring properties.
11. Whilst recognising the contribution that HMOs make to the Borough's housing stock, Core Strategy Policy CS24 also seeks to ensure that communities do not become unbalanced through the overprovision of this type of housing, and to avoid negative impacts associated with high concentrations of HMOs. To do this, in order to enable a mixed and balanced community, it provides a definitive threshold, stating that planning permission will not be granted for the change of use from a Use Class C3 dwellinghouse to a HMO where the proportion of dwellings within HMO use in the area adjacent to the application property would exceed 10%.

Living conditions

12. The appeal property is surrounded by residential properties to both sides, to the rear and on the opposite side of Markham Road. It is physically attached to 5 Brownen Road, the other property in the semi-detached pair, which is divided into ground and first floor flats. Moreover, it also lies within close proximity of the adjacent building at 106 Markham Road, which is also occupied as two flats, and has windows near the boundary with the appeal site, and to 5a

Brownen Road to the rear, which contains a flat at first floor level, with principal windows and its entrance door facing the appeal site.

13. As such, the appeal property has a sensitive relationship to the adjacent residential properties, which is not diminished by their occupation as flats rather than as single dwellinghouses.
14. The appeal scheme would cause the property to be occupied in a manner that is materially different from the use of the property as a single household dwellinghouse, due to the fact that 7 households would be highly likely to be unrelated, and the occupiers of a HMO are likely to lead independent lives from one another. Occupants living together as a single household, even a large one, are more likely to carry out day to day activities together as a household. However, the activity generated by seven persons living independent lives, with separate routines, and their attendant comings and goings, along with those of their visitors and associated services and deliveries, would lead to a level of activity that would be more marked and intensive than that which could reasonably be expected to be associated with a single house, even one occupied by a large family.
15. I have noted the appellant's intention that the property be occupied by professionals and post-graduates, to avoid anti-social behaviour or unnecessary noise. However, notwithstanding the proposed use of a letting agency, there is no mechanism before me which would ensure this type of tenancy. Also, even if the occupiers of the HMO were to be out at work for long periods, the appeal scheme would still reasonably potentially give rise to a level of general noise and disturbance at an intensity that would be disruptive to the occupiers of the adjacent dwellings.
16. In the case of the impact upon 5 Brownen Road, I saw during my site visit, that this property has principal windows on its Markham Road-facing elevation and an enclosed area of private garden to the front of this part of the property. These features are within close proximity of the front entrance door of the HMO, where they would be particularly susceptible to increased comings and goings associated with the HMO use.
17. Moreover, the internal layout of the appeal scheme is such that the entrance hall, internal staircase, kitchen and lounge, which, as communal areas where occupants would gather, would be likely to be significant noise-generating areas of the HMO, would be positioned adjacent to the central dividing wall with No.5. The appellant has not put forward any specific measures to address the potential for noise transmission and associated disturbance to neighbouring occupiers, such as noise insulation measures.
18. In addition, a lack of formal external amenity space within the appeal scheme would reasonably result in an increased likelihood that occupiers of the property would use the side passageway for external amenity purposes, including during communal social gatherings, particularly during dry/warm weather, having regard to direct access to it from the communal lounge.
19. The failure to provide an outside seating area could also be expected to lead to some HMO occupiers spending more time in their rooms at certain times when they may otherwise be likely to use on-site external amenity space, such as during the summer months. This would increase the potential for noise transmission from the property when the first-floor rear elevation Juliet balcony

windows and second floor side dormer windows, which play a principal part in providing light and air to the bedrooms they serve, are opened. The elevated position of these windows combined with their proximity to neighbouring properties, means that there would be a realistic potential for noise disturbance to neighbours as a result.

20. My above concerns are reinforced by third party representations from nearby residents regarding noise disturbance impacts that have arisen since the occupation of the appeal premises as a HMO. I have no reason to question these comments, which have not been refuted by the appellant.
21. For the above reasons, I therefore conclude that the appeal scheme would materially harm the living conditions of neighbouring residents, having regard to the intensification of use and associated noise and disturbance impacts. As such, the development would be contrary to Core Strategy Policy CS41 and Local Plan Saved Policy 6.17, in so much as these policies require proposals for HMOs to protect the living conditions of neighbouring residents, including in respect of noise and general disturbance impacts.
22. This is generally consistent with paragraph 130 of the *National Planning Policy Framework 2021* (the Framework), 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.

Character and appearance

23. The Council's view is that the appeal scheme would increase the intensity of use of the property to the extent that it would harm the character and appearance of the area, taking into account a cumulative impact in association with an existing overconcentration of HMOs within the locality, which is the 'area' referred to by Policy CS24.
24. This area is strictly defined in accordance with criteria within this policy, based on a 100 metre radius of the site. In this instance, the Council states that of 103 properties within the area in question, which comprises properties in Markham, Brownen and Acland Roads, 12 have been identified as being in current HMO use, which equates to 11.6% of properties within the 100 metre radius. On the basis of these figures, the proposal would increase this to 12.6%.
25. The Council has not provided detailed information in respect of the location of its identified HMOs, and the appellant contests the Council's figure, citing insufficient evidence on the part of the Council, and having carried out a visual assessment of the Policy CS24 area and an examination of the Council's online HMO register, which found only 4 existing HMOs within the area.
26. I have no reason to doubt the Council's figure, noting that, in addition to a visual assessment of the area and data from the Council's HMO register, it also relies upon additional sources of evidence that may not be readily available to the appellant, such as Council Tax and Electoral Register records.
27. However, in not specifically providing information about the precise location of the existing HMOs, I find that the Council has failed to specifically identify, or provide evidence of, any existing harm related to their presence within the area, and how an additional HMO use on the appeal site would result in further harm.

28. During my site inspection, I saw no obvious indication of other properties within the locality of the appeal site being occupied as HMOs, and the 4 properties listed by the appellant did not stand out as particularly different within the townscape in terms of their appearance or how they are used.
29. The site locality is characterised by residential development set in linear arrangements along similar front building lines, and facing onto the streets. The properties predominantly comprise detached and semi-detached, two storey, traditionally designed buildings, which are set back from the road frontage behind either front gardens or frontage parking hardsurfaced parking, and with private rear gardens. The majority of the properties are single dwellinghouses, but there are also a number that have been converted into self-contained flats, and HMOs as noted above.
30. At the time of my site visit, I saw no obvious indication from the public realm outside the site, that the appeal site is occupied as a HMO, and it did not stand out from neighbouring properties in terms of its general outward appearance, which, although altered and enlarged, has retained the overall scale and appearance of a semi-detached house.
31. Moreover, the Council has not specified what elements of the appeal scheme would be harmful to the townscape. In this respect, the Council has raised no objection to the design, scale and siting of the single storey rear extension and the side dormer additions, and on the basis of the information before and my site visit, neither do I.
32. The frontage hardstanding and parking on the appeal site are common features found elsewhere within the locality, and the Council has confirmed that its parking requirement for the appeal scheme is the same as that for a single dwellinghouse, so that there would be no need for additional car parking in association with the scheme.
33. I saw during my site visit, that the existing open storage of bins in front of the building appears to be a characteristic feature of other properties within the locality, including single dwellinghouses. Moreover, the Council has not referred to any specific HMO bin storage requirements that would necessarily harm the character and appearance of the site.
34. Whilst the appeal site, and other existing HMO properties within the Policy CS24 area are reasonably likely to be used more intensively than single dwellinghouses or converted flats, having regard to the layout of the appeal scheme and the existing site parking and building entrance arrangements, which would not be altered, I find that any noise and activity impacts associated with the additional comings and goings of residents and their visitors and deliveries in connection with the appeal scheme, are unlikely to materially impact on the character of the area. This is because the locality already experiences a certain amount of background noise due to its location within a built-up urban area with established vehicle and pedestrian activity, where roads are well-trafficked by motor vehicles, and noise associated with on-street and frontage parking is also prevalent.
35. For the above reasons, and notwithstanding that the scheme may result in a breach of the 10% limit on HMO uses set by Core Strategy Policy CS24, I find that there is insufficient cogent evidence before me that the development would materially harm the character and appearance of the area. As such, in so

far as it relates to character and appearance impacts, the development would not demonstrably fail to meet the underlying objective of Policy CS24 of avoiding negative impacts associated with high concentrations of HMOs.

36. The development would accord with Core Strategy Policy CS41 and Local Plan Saved Policy 6.17, in so far as these policies seek to ensure that new developments, including changes of use and HMOs are compatible with the existing character of the area.
37. This is consistent with Chapter 12 of the Framework, which seeks to ensure high quality design.

Other Matters

38. The appellant has drawn my attention to an allowed appeal¹ in relation to the use of a property within the locality of the appeal site as a 6-bedroom HMO. Whilst this appeal was determined under the same Core Strategy policies, and the concentration of HMOs in the area had already exceeded the Policy CS24 threshold, I do not consider the appeal proposal and site circumstances in the case of that appeal, to be directly comparable with those of the current appeal.
39. In particular, that scheme related to a less intensively occupied Use Class C4 HMO, which is distinguishable from the currently proposed Sui Generis large HMO in that, unless subject to an Article 4 Direction preventing it, it would be allowed to take place under Permitted Development, as a change of use from a Class C3 dwellinghouse, indicating a general acceptance that small HMOs are compatible with family dwellings in terms of their use and their impact on neighbouring living conditions.
40. Moreover, that appeal related to a detached dwelling with a long back garden, having a different and more spacious relationship with its neighbours, so that the potential for harmful noise impacts upon nearby residential occupiers was notably less in that case than with the current appeal.
41. The appellant has referred to the Council's procedures during the determination of the planning application, including in respect of communication with the appellant during the application process, and the length of time taken to reach a decision. These are not matters for my consideration as this appeal, which I have determined on the merits of the appeal scheme before me.

Planning Balance

42. The Council has confirmed that it cannot demonstrate a 5-year supply of deliverable housing sites as required by the Framework. The information before me is that the undersupply is acute, comprising 2.3 years of deliverable housing land supply. Moreover, the results of the 2021 Housing Delivery Test, which were published on 14 January 2022, show that the Council delivered 67% of its housing requirement over the preceding 3 years.
43. As such, Paragraph 11 of the Framework applies, which states that relevant policies for the supply of housing should not be considered up to date where a 5-year housing land supply cannot be demonstrated, or the Housing Delivery Test indicates that the delivery of housing was substantially below the housing requirement over the previous three years. Paragraph 11 sets out that, where

¹ APP/G1250/W/17/3190653

relevant policies are out of date, permission should be granted unless 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 the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole, or specific policies in the Framework indicate that development should be restricted.

44. Paragraph 8 of the Framework defines the three dimensions of sustainable development as performing economic, social and environmental objectives. When judged against some of the core planning principles of the Framework, the appeal proposal would perform well in that it would be in an urban area within a designated settlement boundary, where access to facilities and services and public transport connections is likely to be greatest.
45. The appeal scheme would result in the loss of a family-sized dwelling house. However, the loss constitutes only a single unit, and, in the absence of evidence to suggest that the impact of this loss on the overall stock would be significant, this harm would be at the lower end of the scale. Moreover, the development would provide 7 HMO rooms, which would contribute towards the provision of housing in the Borough and would accord with the aims of Paragraph 60 of the Framework of boosting significantly the supply of homes and addressing the needs of groups with specific housing requirements.
46. There would also be economic and social benefits as a result of the future occupation of the appeal scheme. These considerations weigh in favour of the development, and I afford them moderate weight, having regard to the modest size of the proposed development.
47. I have found no harm in respect of the impact upon the character and appearance of the area. In terms of the planning balance, the lack of identified harm is a neutral factor that does not diminish the harm that would arise from the proposal in respect of the impact on upon neighbour living conditions, which would be significant.
48. As a result, the social objective of sustainable development of providing a good standard of residential amenity, would not be achieved. When assessed against the policies in the Framework taken as a whole, the adverse impacts would significantly and demonstrably outweigh the benefits. Therefore, the proposal would not be a sustainable form of development. The conflict with the development plan is not outweighed by other considerations including the Framework.

Conclusion

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

S Leonard

INSPECTOR