



Appeal Decision

Site visit made on 8 November 2022

by B Pattison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 AUGUST 2023

Appeal Ref: APP/D1590/W/22/3292272

76 Park Road, Westcliff-On-Sea SS0 7PQ

- 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 Mark Higgins, H4 Property Limited against the decision of Southend-on-Sea Borough Council.
 - The application Ref 21/01199/FUL, dated 1 June 2021, was refused by notice dated 1 September 2021.
 - The development proposed was originally described as Retain Use of Parts of Building as Four Self-Contained Flats (Class C3).
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. From my visit and on the basis of the evidence before me, including the submitted drawings, the change of use has commenced, and the associated internal works have been completed. Therefore, the development is retrospective.

Main Issue

3. The main issue is whether or not the development provides a satisfactory standard of accommodation for the occupiers, with particular regard to the size of the self-contained flats.

Reasons

4. The appeal property is a three-storey building. Planning permission for its use as a House in Multiple Occupation (HMO), was approved in 1991 under application reference SOS/91/0026. However, a recent Certificate of Lawfulness application (Ref: 20/00558/CLE) in relation to the use of the property as a large HMO (Sui Generis) was refused in 2020.
5. It is understood that three rooms (annotated as Rooms 3, 4, and 7 on Drawing PDB/200/04) were converted to self-contained units (Class C3) circa 2015, albeit I have not been provided with a Certificate of Lawfulness in relation to these units. The appellant has stated that these units do not form part of the appeal and issues in those respects have not been raised by the Council. As a result, I have not considered those units further.
6. The appellant states that those remaining four rooms (annotated as Rooms 1, 2, 5 and 6 on drawing PBD/200/04) formed part of an HMO prior to the

development and shared a single first floor bathroom. They did not have a shared kitchen, living or dining room.

7. The appellant indicates that three of those rooms were converted to self-contained units through internal alterations in 2018/2019 as shown on submitted drawing PDB/200/02 (and identified as units 2, 3, and 4). The works created new bathrooms accessible from within each of the units. Additionally, unit 1 has also been converted and is self-contained, albeit with exclusive use of a bathroom accessible from the common hallway. This appeal relates to the retention of these four self-contained units.
8. Policy DM8 of the Development Management DPD (2015) (DMDPD) deals with residential standards and requires that all new dwellings must be high quality and flexible. It states 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 unit should have a minimum floor area of 30 square metres.
9. Shortly after the adoption of the DMDPD, the Government introduced the new Nationally Described Space Standards (2015) (NDSS). The Government's Planning Practice Guidance states 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 NDSS'¹. In response, the Council produced its Policy Transition Statement for housing standards. This indicates that the NDSS should be used in place of those standards set out in Policy DM8. Both parties agree that the NDSS are the relevant standards to apply for this appeal. Consequently, I attach substantial weight to the Policy Transition Statement.
10. The NDSS indicates that a one-bedroom flat should have a gross internal area of at least 37 square metres or 39 square metres (depending on whether it has a bath or a shower). The appellant indicates that the 37 square metre standard is relevant for this appeal. Even based on the appellant's measurements, each of the units have a substantial shortfall against the standards set out by Table 4 of the DMDPD and the NDSS. Furthermore, none of the units have the required square metres of built-in storage space. The very significant shortfalls against the standards indicate that the units provide wholly unsatisfactory self-contained accommodation. Whilst the units are in satisfactory condition with adequate décor and facilities, these considerations do not address the harm arising from the small size of the units and the shortfall against DMDPD Policy DM8 and the NDSS.
11. For the above reasons, I conclude that the development does not provide a satisfactory standard of accommodation for the occupiers. Therefore, in this respect, it is contrary to Policies KP2 and CP4 of the Southend Core Strategy (2007) (SCS), and Policies DM1, DM3 and DM8 of the DMDPD. These policies, amongst other aspects, require that new development protects the living conditions of future and existing residents. The development is also contrary to those principles of the National Planning Policy Framework (2021) (the Framework) that promote health, well-being, and a high standard of amenity for existing and future users.

¹ Reference ID: 56-018-20150327

Other Matters

12. The appellant indicates that there is a 'fallback' position that follows the 1991 permission for HMO use. Were this appeal to be unsuccessful, the appellant states that the next most viable use would be to convert the four units concerned to HMO bedsitting rooms by undertaking the minor internal works shown indicatively on drawing PDB/200/03.
13. Implementation of the fallback position would involve internal alterations to the building to remove the private W/Cs from the rooms. Shared W/Cs would be provided in two communal bathrooms rooms, one at ground floor and one at first floor.
14. The fallback position relates to the creation of HMO rooms and is therefore a different form of accommodation to the self-contained units which this appeal relates to. The Essex HMO Amenity Standards (2018) indicate that a single person HMO room without shared facilities should be 11 square metres. The appellant's measurement indicate that the units exceed the minimum standards for HMO rooms.
15. Overall, it seems to me that the HMO rooms which form the fallback position would likely meet the space standards which are relevant to that type of accommodation. Conversely, I have found that the units within the scope of this appeal would be significantly undersized against the space standards which are relevant for self-contained accommodation. Consequently, I do not conclude that the fallback would result in worse quality accommodation for the occupiers than the existing undersized self-contained accommodation. While the fallback works are likely to go ahead, this would be for a different type of accommodation assessed against different space standards. This therefore limits the weight that the fallback can be afforded.
16. The appellant has referred to appeals APP/D1590/X/18/3219061 and APP/D1590/C/18/3219062 at Suffolk House which relate to self-contained units which were undersized when assessed against the NDSS. However, I note that in determining the appeals, the Inspector confirmed that, of the flats that did not meet the NDSS, one had a floor area of 18.6 square metres and one was 26 square metres, whilst the other flats were a little over 30 square metres. All of the units were therefore larger, and the majority were considerably larger, than any of the units under consideration in this appeal. For this reason, I do not find the development at Suffolk House directly comparable. Therefore, this factor is afforded limited weight.
17. The appellant refers to the potential for a Section 106 agreement that would obligate the owner and any successors in title to retain all 7 units within the property within a single ownership such that the individual units cannot be separately sold. An additional obligation could also limit the maximum length of any tenancy to a 12-month period to ensure that the units do not become market flats available for sale in the traditional sense. However, these factors would not overcome the significant shortfalls against the space standards which I have identified. In any event, a legal agreement has not been submitted, and accordingly I do not ascribe this any weight.
18. The main parties dispute whether the development affects one or more 'habitats sites' as defined in the glossary to the Framework. If I were minded to allow the appeal, I would need to be satisfied that the development is not

adversely affecting the integrity of any habitats sites. However, even if there are no effects, this would constitute a neutral consideration rather than a benefit in favour of the development.

19. The site is within the Milton Conservation Area (CA). However, the development is limited to internal alterations which do not have prominence outside the site. Therefore, the development preserves the character and appearance of the CA as a whole.
20. I have no reason to doubt that residential development in this location is acceptable in principle. The development may be compliant with various other provisions of the development plan, for instance providing suitable refuse and recycling storage. However, the absence of harm or conflict with other relevant development plan policies is a neutral factor and does not weigh in favour of the development.

Planning Balance and Conclusion

21. The self-contained units are significantly undersized when measured against DMDPD Policy DM8 and the NDSS and do not provide sufficient storage space. As a result, I have found that they do not provide a satisfactory standard of accommodation.
22. The appellant and Council agree that the Council is unable to demonstrate a five year housing land supply. Furthermore, housing delivery is also low and has been significantly less than 75% of the housing requirements over the previous three years. As a consequence of the housing supply and delivery positions, paragraph 11(d) of the Framework is triggered as the policies most important for determining the scheme are out of date. Paragraph 11(d)(i) is not relevant as there are no policies in the Framework that protect areas or assets of particular importance which provide a clear reason for refusing the development. Instead, paragraph 11(d)(ii) states that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
23. Set against the harm identified there would be limited benefits associated with the development. The development makes an efficient use of a brownfield site in an accessible location. The appellant also indicates that there is a specific need in the local housing market for small dwellings, suitable for young professionals who are financially unable to access traditional self-contained one-bedroom flats. As a result, the development could make a very specific contribution to local housing supply which could help the local area attract and retain young professionals in skilled jobs. This weighs in the development's favour.
24. The Framework expects development to safeguard and improve the environment and ensure safe and healthy living conditions for occupiers. Policies KP2 and CP4 of the SCS and Policies DM1, DM3 and DM8 of the DMDPD are therefore consistent with the Framework. Even taking into account the Council's failure to deliver sufficient housing, the conflict between the development and the development plan should be afforded significant weight.
25. In my view, as the development does not provide a satisfactory standard of accommodation for the occupiers, the harm would significantly and

demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply.

26. The harm that I have found leads me to conclude that the development would conflict with the development plan as a whole. The other considerations in relation to the scheme do not clearly outweigh the harm that I have identified and there are no other considerations, including the provisions of the Framework, to indicate that the appeal should be determined otherwise. For the reasons given above, I conclude that the appeal should be dismissed. I have not therefore considered the effect of the development on habitats sites since this would have no effect on my decision.

B Pattison

INSPECTOR