

Appeal Decision

Site visit made on 13 November 2023

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th December 2023

Appeal Ref: APP/D1780/W/23/3322892

9 Castle Street, Southampton SO14 6GZ

- 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 Massoud Yeganegy against the decision of Southampton City Council.
 - The application Ref 23/00249/FUL, dated 25 February 2023, was refused by notice dated 5 May 2023.
 - The development proposed was described as 'retention of 4 serviced apartments'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The development, by material change of use of the appeal property (No.9 Castle Street), has been carried out but it was not occupied.
3. During the appeal the appellant submitted a s106 Unilateral Undertaking dated 30 November 2023 and a s111 Habitats Mitigation Contribution Agreement dated 30 October 2023. These relate to proposed mitigation in respect of European sites.
4. At my request, the Council provided an explanation of what it considers to be its current 5-year housing land supply position. I have also taken account of the appellant's comments in response in determining the appeal.

Main Issues

5. The main issues in this appeal are:
 - whether there has been a loss of a 3-bedroom family dwelling and, if so, is it justified;
 - the effect of the development on the living conditions of the existing occupiers of nearby residential properties, having regard to noise, disturbance and social cohesion; and
 - whether there would be satisfactory provision of storage for waste and recycling, with particular regard to pedestrian convenience and safety.

Reasons

3-bed family dwelling

6. The property was originally a two-storey, 3-bedroom turn of the last century terraced house with a back garden. Despite licensed as a house in multiple

occupation (HMO), for planning purposes this was an unlawful use, as is currently the four serviced apartments, so neither use is a fallback.

7. The property has been internally sub-divided into the apartments, including it seems with recent refurbishment and new fixtures and fittings. Despite some partitioning the main structure and fabric of the building has not been substantially or irreversibly altered. The original layout is essentially intact. There is therefore no apparent reason why it could not easily be re-instated as a 3-bedroom house for family occupation with suitable requisite adjustment.
8. It is in a dense residential area with other houses in Castle Street and nearby similar in type, age, layout and plot size. It is therefore unsurprising that the back garden is about half the area sought in new¹ housing development by Policy CS16 of the Core Strategy March 2015 (the CS). Although modest in size it is characteristic of this local area and in shape and orientation suitable and practical for most family domestic use and activity. As such, this back garden would not infringe the Council's relevant guidance which acknowledges that in some parts of the city gardens are typically smaller².
9. Each 1-bed apartment is self-contained and fully fitted out and furnished as a living, sleeping and kitchen space (including a microwave oven, built in hob and fridge with freezer compartment) and en suite shower and toilet. Services or facilities, such as cleaning, bedding, toiletries and domestic appliances are provided by the appellant. There is no internal communal living space and the rear garden is accessible to one apartment. This short stay temporary accommodation (typically up to 90 days) is for transient 'guests' who do not form a single household. Most stay between a week and a month to work or attend conferences or educational courses in the city. Others may stay for shorter periods or overnight as a stop gap between living elsewhere.
10. The accommodation is high quality and the property may be described as a residential premises occupied by people for a relatively short time. However, it is no longer a dwellinghouse (house or conventional flats) and does not provide permanent living accommodation or a permanent place of residence. There is no objective evidence that it is residential units, housing or new homes for planning purposes, including saved Policy H6(v) of the City of Southampton Local Plan Review 2nd Revision March 2015 (the LP) and CS Policies CS4 and CS16(2). While it may establish this form of accommodation in the area, I have not been referred to any development plan policy that specifically aims to provide serviced apartments.
11. The Council has suggested there 'remains a high demand' for family housing across the city; its housing strategy confirms a general demand³. The evidence base underpinning the Council's relevant development plan policies for housing, including that seek to avoid a loss of dwellings and family homes, is some years old as are the policies. However, there is no suggestion that the evidence or policies were not found sound by an Inspector.
12. The appellant's email on 'lettings at 9 Castle Street' is undated. It is not clear if it is contemporary or if occupancy and vacancies relate to use of the appeal property as serviced apartments or an HMO. Even if it did, as may be

¹ CS paragraph 5.2.7

² Residential Design Guide Making Better Places for Living, September 2006 - paragraph 2.3.14

³ Southampton City Council Housing Strategy 2016-2025 'New and better homes for all'

suggested by the appellant's 29 and 30 October 2023 emails, this snapshot does not establish a sustained need for serviced apartments at the appeal property, in the local area or in the city, such as over a development plan period. Nor do these emails explain an 'enormous demand for self-contained studio flats' with any specific objective evidence, such as a property market report by a competent person (suitably qualified professional).

13. Even if the apartments have or would be used by contractors, the Council for its tenants or for homeless people or by hospital workers this is not quantified or explained in any detail. There is no evidence that the property is located in the 'identified area' for hospital development for the purposes of saved LP Policy H6(viii) or that the development meets any other relevant exception in this policy or CS Policy CS16 or any other relevant development plan policy.
14. The housing strategy also confirms a need and intention to deliver a mix of types of living accommodation, including family homes and private rented. It does not give any specific level of need or suggest any policy response, such as priorities for delivery of different types of accommodation or specifically refer to serviced apartments. The Government's consultation on a registration scheme for short term rental properties refers to the expansion that has taken place in this type of accommodation and a need to regulate quality or standards⁴. It does not set out a specific need or policies for provision.
15. The appellant's assertions are, therefore, largely anecdotal, speculative or unfounded. As such, I am not satisfied it has been demonstrated that the serviced apartments should replace a family house. Nor is it, in these circumstances, conducive to a plan-led system for individual development management decisions to 'respond to the market' in an overly short term or unduly ad hoc way without sufficient reason. Once a family home is lost from the housing stock there is no guarantee it would ever be recovered.
16. I find that the development has resulted in the unjustified loss of a 3-bedroom family dwelling. Consequently, it is contrary to saved LP Policy H6 and to CS Policies CS4 and CS16. These policies include that development should not result in the loss of dwellings or family homes unless, amongst other things, there is a net gain in residential units, it would contribute to housing delivery and provide a mix of housing types.

Living conditions

17. As a 3-bedroom family home, the property could typically and for most of the time be occupied by 2 adults and 2 children, so 4 people. Even eventually as four adults this single household would inherently result in a high degree of communal or mutual internal and external living activity, including mainly in downstairs habitable rooms and shared comings and goings to and from the property for a common purpose. The frequency or intensity of such use would be commensurate with such occupation and would usually be more settled or established for the longer term. There are some HMOs in the local area but there is no survey or other evidence about precise location or number or about any other serviced apartments in relation to the property. In the absence of evidence to the contrary, buildings nearby in Castle Street, including either side of the property, appeared to be conventional houses. It is a largely tranquil

⁴ Consultation on a registration scheme for short-term lets in England, 12 April 2023

residential area and this part is enclosed by the terraced houses lining either side of this relatively narrow side street.

18. In contrast, the apartments could be occupied by at least 4 adults, or as many as 7 or 8 adults⁵ (so potentially significantly more people anyway than occupied the property as an unlawful HMO). They would individually or as couples each live independently of each other and separately enter or leave the property (such as for work, socialising or to meet shopping needs) with an appreciably higher turnover of occupancy due to shorter stays. They would have no real affinity to the property or the local area (even than to usually more sustained occupation of an HMO) other than largely as a means to meet their immediate short term personal requirements. This concentrated use is fully dispersed throughout the property, including the upper floor so likely next to bedrooms in the adjoining family sized houses. The apartments would be serviced by staff or a contractor during or between stays depending on length of stay. These could be frequent or overlapping visits to and from the property including because apartments would not likely be vacated at the same time.
19. In the absence of any objective evidence to the contrary, such as a noise report prepared by a competent person, there is therefore a real prospect of significant actual increased noise or disturbance as a result of the appreciable intensification of internal use of the property by adults as serviced apartments including transmission through party walls at anti-social hours, for example when children may need to sleep, and activity to and from it as serviced apartments. This would be most obvious to the occupiers of the houses either side. But even if it is the only property used as serviced apartments in Castle Street, also be noticed or perceived by other local residents as something distinctly innately different in nature to family occupation of the property. This would be at odds with, and detract from, the prevailing experience of living in this street and an enduring sense of community.
20. A planning condition could secure a management plan to control booking the apartments to avoid group use and reduce the prospect of further increased intensity of outdoor use of the rear garden or internal use, such as for partying. However, that would not mitigate normal occupation or use of the apartments no matter how short or long the stay was and there is anyway no guarantee all apartments would be occupied at the same time for the same length of stay. A condition could approve details of measures to suppress internal noise transmission but there is no evidence that such mitigation could reasonably be implemented given the refurbishment that has already taken place. It would not, anyway, address noise and disturbance from external activity or integrate occupiers into the local community.
21. While it may have been a Government direction of travel, I have not been informed of any actual permitted development right (PDR) to change from Class C3 to Class C5 use or serviced apartments. Nor whether any such PDR is subject to prior approval having regard to limitations or restrictions. In any event there is no evidence that a relevant PDR has in fact been established so there is no apparent actual fallback in this respect.
22. The Council has powers to control statutory noise nuisance and there has been no objection by the Council's Environmental Health Officer. However, the intrusive effect of noise and disturbance as a planning consideration can be

⁵ Three apartments had double beds, the other a small double bed or a large single bed

experienced at significantly lower levels. There is no noise survey or other objective evidence to suggest otherwise in this case. That existing occupiers of nearby properties have not complained or objected to the development, or to the application or appeal, does not mean absence of intrinsic harm for planning purposes in the wider public interest, not any individual's private tolerance.

23. I am not, therefore, satisfied the appellant has demonstrated that there would be no unacceptable harm to the living conditions of the existing occupiers of nearby residential properties having regard to noise, disturbance and social cohesion. In these circumstances the development is contrary to saved LP Policies SDP(i) and SDP7(v). These policies include that development should not unacceptably affect the amenity of citizens so as to integrate into the local community.

Storage for waste and recycling

24. In use as a house, two wheelie bins (waste and recycling) or refuse sacks could be stored outside in the back garden and brought through the property on collection days. That is not possible for three of the four serviced apartments. There is no evidence that the occupier of the rear ground floor apartment would have exclusive use of a wheelie bin so would have to carry refuse sacks to shared wheelie bins at the front of the property.
25. Many properties in Castle Street, as well as at the property, had wheelie bins on the pavement and this may have been a collection day. The appellant suggests keeping them permanently on the pavement is currently the norm but even if it is, then the situation at the property as a house would be no different if the rear garden was not used to store wheelie bins.
26. There is no objective evidence about the capacity of two wheelie bins or whether these would be adequate for use of the property as four serviced apartments for up to 7 or 8 adults as opposed to a 3-bedroom dwelling or about collection frequency. Nor if the Council would provide additional wheelie bins or if private bins would be collected by the Council or its contractor. Clearly the occupier(s) of each apartment would food shop and cook independently of each other so generate significantly increased food or recycling waste than a single family household.
27. As a result, there is a tangible increased risk of wheelie bins or refuse sacks on the pavement in front of the property and of them overflowing or spilling. This would cause obstruction to pedestrians, including elderly persons, parents with buggies or children and wheelchair or mobility scooter users. There would also be increased risk of such users having to purposefully, or inadvertently, enter the carriageway in potential conflict with cyclists and vehicles.
28. According to the application form the change of use of the property to serviced apartments had occurred in February 2022. Albeit a snapshot, the Council's October 2022 photographs showing overflowing wheelie bins and discarded refuse sacks and other rubbish on the pavement in front of the property demonstrate this risk. The appellant's October 2023 photographs of wheelie bins on the pavement outside the property were about two weeks before my site visit. There is no evidence that the recent refurbishment was started and completed between these dates. In other words, it is not clear if these photos, which do not show overflowing wheelie bins or refuse sacks, were taken when

the property was in use as serviced apartments so may not be representative, including because the property may not have been fully occupied.

29. The Council (or the highway authority, if not one in the same in this case) has powers to prevent obstruction of the public highway. In that event, used as a house the occupiers of the property would still be able to store wheelie bins or refuse sacks in the back garden. But as serviced apartments there would be no other apparent option but to use the narrow front courtyard to store wheelie bins. This would be next to the windows of the ground floor front apartment.
30. I am not, therefore, satisfied the appellant has demonstrated that there would be satisfactory provision of storage for waste and recycling, having particular regard to pedestrian convenience and safety. In these circumstances the development is contrary to saved LP Policy SDP4 which is concerned with easy and safe access to development, in this case past it.

Other Matters

Housing land supply

31. The Council meets the most recent Housing Delivery Test and it had a 6-year housing land supply before the Government's standard methodology for calculating local housing need with a 35% uplift. I have also been informed about a Local Plan review, a full Strategic Land Availability Assessment update said to identify a significant increase in housing supply and that the Council is working with other Council's across south Hampshire about how to reconcile unmet housing need. However, as of April 2023, the Council agrees that it cannot currently demonstrate a 5-year supply of deliverable housing sites, with a 4.19 year supply. This is not disputed by the appellant.

European sites

32. The property is within a zone of influence of European sites designated to protect important species and habitat, including water quality⁶. Alone or in-combination with other development a net increase in people at the property would have a likely significant effect on the integrity of these features of the European sites, including because of increased recreational visits causing disturbance or damage and increased wastewater containing nitrogen causing excessive eutrophication.
33. The Council has adopted a tariff based per number of bedrooms financial contribution approach towards implementing strategic recreation mitigation measures⁷. It uses some of the Community Infrastructure Levy receipt generated from development for footpath improvements at semi-natural sites in the city and to manage visitors to the New Forest National Park⁸. It also requires that after calculating a nitrogen budget for development, mitigation should achieve 'nitrogen neutrality'⁹. This includes by way of a s33 legal agreement between the Council and Eastleigh Borough Council to enable use of land outside the Council's area to off-set the effect of

⁶ The Solent and Dorset Coast Special Protection Area (SPA), the Solent and Southampton Water SPA and Ramsar site, the Solent Maritime Special Area of Conservation (SAC), the River Itchen SAC and the New Forest SPA, SAC and Ramsar site

⁷ Solent Recreational Mitigation Strategy, December 2017

⁸ New Forest National Park Authority Revised Habitat Mitigation Scheme Supplementary Planning Document, July 2020 and joint Memorandum of Understanding

⁹ Council's Nitrogen Mitigation Position Statement

development. Purchase of 'nitrate credits' should be made by way of a suitable planning obligation which the Council considers can be secured by a Grampian planning condition.

34. On this basis the Council's Habitats Regulation Assessment (HRA)¹⁰ considers that the development in this appeal would have no adverse effect on the integrity of the European sites. The appellant's Unilateral Undertaking is intended to secure the requisite recreation contribution but the Council considers it has not been correctly executed in respect of signatures and contains some drafting errors, therefore, that it does not overcome its reason for refusal 4. As I understand it, alternatively or as well, the appellant intends its Habitats Mitigation Contribution Agreement would provide this contribution by direct payment 'when the development commences'. The appellant agrees to a Grampian condition in respect of nitrogen neutrality.

Planning Balance

35. Given the housing land supply position, by virtue of footnote 8 Framework paragraph 11(d) is therefore engaged. The starting point is that planning permission should be granted.
36. The serviced apartments give increased choice and flexibility for people seeking this sort of short stay temporary accommodation or for whom there is no other immediate option. It makes effective and efficient use of some previously developed land in a settlement and supports the local and visitor economy through increased guest spend, employment (including directly or indirectly in connection with the apartments) or in other sectors such as health or education. This is aligned with aims of the Framework to meet people's accommodation needs in a broad sense, ensure health or well-being and support the economy. These are notable outcomes and commensurate with its small scale, are limited social and economic benefits so in my view have modest weight in support of the development.
37. However, there has been no net gain in a form of residential development that provides permanent living accommodation or contributes towards meeting the Council's housing requirement, so does not help to remedy the deficit in its housing land supply position. Albeit in a small way, the loss of the 3-bedroom family house has reduced the supply of this type of dwelling and has made the Council's housing land supply position worse. The development would also cause moderate harm to the living conditions or experience of existing residents in Castle Street and at least unduly inconvenience these residents, other people walking along the pavement or road users. This would undermine the Council's development plan objectives in these respects. In light of the housing land supply position, reduced weight applies to these policies most important for determining the appeal.
38. However, they are nevertheless consistent with aims of the Framework to deliver a sufficient supply of homes, in size and type meet the needs of families with children and achieve well-designed places with development that functions well, is sympathetic to local character, the surrounding built environment, maintains a strong sense of place in building type and a distinctive place to live. In addition, to ensure a high standard of amenity for existing users, minimise the scope for conflicts between all road users and avoid unnecessary

¹⁰ The Conservation of Habitats and Species Regulations 2017 (as amended)

street clutter. Consequently, in my view, the support in the Framework for the development is not at the expense of these other considerations. These individually important and cumulatively compelling adverse social and environmental impacts have significant weight against the development.

39. In this appeal, policies in the Framework protect an area or asset of particular importance (the European sites). As the competent authority it would ordinarily be necessary for me to undertake Appropriate Assessment. However, I consider that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole. Consequently, the presumption in favour of sustainable development does not apply in this case. Since I intend to dismiss the appeal, even if the development did not adversely affect the integrity of the European sites, so not provide a clear reason for refusing the development, there is no need for me to consider the European sites any further. This is because it would not affect my decision or alter the outcome of the appeal.

Conclusion

40. The development conflicts with the development plan overall and with relevant provisions of the Framework. There are no other material considerations to indicate that the decision should be taken other than in accordance with the development plan¹¹. Consequently, for the reasons given above the proposal is unacceptable and the appeal does not therefore succeed.

Robin Buchanan

INSPECTOR

¹¹ Section 38(6) Planning and Compulsory Purchase Act 2004 (as amended) and Framework paragraph 12