



Appeal Decision

Site visit made on 13 November 2023

by A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 January 2024

Appeal Ref: APP/D1590/W/23/3316668

171 West Road, Southend-on-Sea, Essex SS0 9DH

- 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 Kudlip Virk against the decision of Southend-on-Sea Borough Council.
 - The application Ref 22/01199/FUL, dated 7 June 2022, was refused by notice dated 2 December 2022.
 - The development proposed is the change of use from C3 dwelling to Sui Generis HMO (7 rooms).
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from C3 dwelling to Sui Generis HMO (7 rooms) at 171 West Road, Southend-on-Sea, Essex SS0 9DH in accordance with the terms of the application, Ref 22/01199/FUL, dated 7 June 2022, and subject to the conditions in the schedule to this decision below.

Application for costs

2. An application for costs was made by Mr Kudlip Virk against Southend-on-Sea Borough Council. This application will be the subject of a separate decision.

Procedural Matter

3. The information before me suggests that the change of use has already occurred. Therefore, I have considered the appeal retrospectively.

Main Issue

4. The main issue is the effect of the development on the living conditions of existing and future occupiers, with particular reference to the amount of external garden space.

Reasons

5. The appeal site comprises a two-storey mid-terraced property fronting West Road. The rear of the appeal site abuts the pavement of Westborough Road. The property was previously a dwelling falling under Class C3 of the Use Classes Order¹, however, since October 2018 it has been used as a seven-bedroom House of Multiple Occupation ('HMO'). This is supported by a License of HMO for 7 persons under the Housing Act 2004 issued by Southend-on-Sea

¹ The Town and Country Planning (Use Classes) Order 1987 (as amended)

Council ('the licence'). Planning permission is therefore sought to retain the use of the property as a seven-bedroom HMO.

6. The area surrounding the appeal site is predominantly a high-density residential area whereby private gardens vary in size. The property has an irregular-shaped rear garden. However, it is of a useable size and shape, is relatively flat and is larger than some rear gardens in the surrounding area. It is mainly laid to gravel but includes a small area of grass. At the time of my site visit, the rear garden was bound by a close boarded timber fence and close boarded timber gates that provided effective screening from the adjacent road.
7. The appellant has directed me to a recent planning approval² at the appeal site for a parking area and vehicle access from Westborough Road, although limited information has been provided in respect of this planning approval. However, the Council has provided photographs that demonstrate that two vehicles can park within the rear garden without reducing the amount of useable space to an unacceptable degree.
8. The seven bedrooms are restricted to single occupancy by the licence and therefore the property would not be occupied by families who would require space for children to play. Nevertheless, the property could lawfully be occupied without planning permission as a Class C3 dwelling by a large family or a Class C4 HMO for up to six individuals, who would utilise the same sized rear garden. An additional resident above the six permitted as a Class C4 HMO would increase the demand for garden space. However, the increase in persons utilising the space would be marginal and the garden's size would be sufficient to allow for normal domestic use for seven occupants such as the siting of tables and chairs and the drying of clothes, whether or not the approved off-street parking area is utilised.
9. The Council has suggested conditions that would require the provision of cycle storage facilities and a bin storage area. The Council's photographs indicate that the existing bins are adequately stored within the rear garden without reducing the useable garden space to an unacceptable degree. I accept that the provision of cycle storage facilities could reduce the useable space. However, in my opinion, it would not be to a level that would prevent the normal domestic use of the garden area or adversely harm occupiers' living conditions.
10. In reference to the main issue, the development would accord with Policy DM8 of the Southend-on-Sea Development Management Document, adopted 2015 ('the DMD') that, amongst other things, require all new dwellings to make provision for usable private outdoor amenity space for the enjoyment of intended occupiers. It would also comply with the National Planning Policy Framework ('the Framework') that seeks to ensure that developments create places with a high standard of amenity for existing and future users, and the Council's Supplementary Planning Document 1: Design and Townscape Guide, adopted 2009.
11. The reason for refusal also references Policies KP2 and CP4 of the Southend-on-Sea Core Strategy Development Plan Document One, adopted 2007 ('the CS') and DMD Policy DM1. However, these policies are not directly applicable to the main issue.

² Planning Ref 22/01276/FULH

Conditions

12. The Council has provided a list of conditions which I have had regard to with respect to the tests for conditions set out within the Framework. Where necessary, I have made amendments to these in the interests of clarity and precision. I have amended the wording of some of the Council's suggested conditions to remove reference to the property reverting back to Use Class C3 or C4 if the timetable is not met, as this is unreasonable and subject to separate planning enforcement procedures.
13. I have specified the approved plan for the avoidance of doubt and in the interests of proper planning. A condition restricting the property to not more than seven bedrooms and seven occupants is necessary to ensure the development complies with the relevant residential space standards and to provide an acceptable living environment for occupiers.
14. The provision of secure cycle parking is necessary to promote the use of more sustainable modes of transport. The agreement of details for a bin storage area is reasonable to ensure the appearance of the development is acceptable and to ensure the bins are contained so as not to affect the useable areas of the garden. A condition requiring energy efficiency and other sustainability measures to be included in the scheme is a requirement for all new developments under CS Policy KP2. Although the use is existing, it is unlawful. Accordingly, the policy's requirements are applicable to the development as it requires planning permission.
15. The Council has suggested a condition in respect of limiting internal water consumption. The requirement for this condition is detailed within Policy DM2(1) of the DMD, however, this is in respect of new development that creates additional residential units, which is not applicable to the development. Instead, conversions, alterations and extensions are covered by part (2) of the policy. Therefore, I have amended the condition to reflect the requirements of DMD Policy DM2(2). The main parties have been given the opportunity to comment upon this change and therefore have not been prejudiced. While the appellant does not agree with the inclusion of this condition, as detailed previously, the policy's requirements are applicable to the development as it requires planning permission.

Conclusion

16. For the reasons outlined above, having had regard to the development plan as a whole and all other matters raised, the appeal should be allowed.

A Berry

INSPECTOR

Schedule of Conditions

1. The development hereby approved shall be retained in accordance with the approved plan: 1574/OS, 1574/SP, 1574/01
2. The development hereby approved shall not be adapted to enable formation of more than seven bedrooms and the property shall not be occupied by more than seven residents at any one time.
3. Within three months from the date of this decision, details shall be submitted to and approved by the local planning authority for at least seven on site, secured and covered cycle parking spaces. Within two months of the date of the approval of the details, the cycle parking shall be completed in accordance with the agreed details and available for use. The approved cycle parking shall be retained for the lifetime of the development.
4. Within three months from the date of this decision, details of a secure, screened and covered refuse and recycling storage facility shall be submitted to and approved in writing by the local planning authority. Within two months of the date of the approval of the details, the secure and covered refuse and recycling storage facility shall be implemented and made available for use in accordance with the agreed details. The approved refuse and recycling storage facility shall be retained for the lifetime of the development.
5. Within 3 months from the date of this decision, details of energy efficiency and other sustainability measures to be included in the scheme, including the provision of at least 10% of the energy needs of the development hereby approved being provided from onsite renewable sources, shall be submitted to and agreed in writing by the local planning authority. Within two months of the date of the approval of the details, the energy efficiency and other sustainability measures shall be implemented in accordance with the agreed details. The energy efficiency and other sustainability measures shall be retained for the lifetime of the development.
6. Within 3 months from the date of this decision, details of measures to ensure the development would meet BREEAM Domestic Refurbishment 'very good' shall be submitted to and approved in writing by the local planning authority, unless it can be demonstrated that it is not technically feasible or viable. Within two months of the date of the approval of the details, the measures shall be implemented in accordance with the agreed details. The agreed measures shall be retained for the lifetime of the development.

*****End of Conditions*****