



Appeal Decision

Site visit made on 30 April 2024

by K Jones BA (Hons) DipLA CMLI

an Inspector appointed by the Secretary of State

Decision date: 10 June 2024

Appeal Ref: APP/V1260/W/23/3328317

38 Cyril Road, Bournemouth BH8 8QD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) (the Act) against a grant of planning permission subject to conditions.
- The appeal is made by Mr Ralph Wood against the decision of Bournemouth Christchurch and Poole Council.
- The application Ref 7-2023-28914-A was approved on 18 August 2023 and planning permission was granted subject to conditions.
- The development permitted is retrospective change of use from a residential dwelling (Class C3) to an HMO (Class C4).
- The conditions in dispute are Nos a, 1, 2, 3, and 4 which state that:
 - a) The development to which this permission relates must be begun not later than the expiration of three years beginning with the date of this permission.
 - 1. The development hereby permitted shall be carried out in accordance with the following approved plans:
Existing & proposed floor plans scale 1:00 & location plan ref:
TQRQM23166101829979
 - 2. Within two months of the date of this consent, unless agreed in writing by the Local Planning Authority, details of a cycle store providing 1 cycle stand (in accordance with the provisions of the Council's adopted Parking standards (2021) showing the site location, elevations and materials to be used in the construction shall be submitted to and approved in writing by the Local Planning Authority. The approved cycle store shall be completed within 4 months of the approval of details and shall be retained and maintained thereafter unless otherwise agreed in writing by the Local Planning Authority.
 - 3. Within two months of the date of this consent, details of a screened refuse bin store suitable for the housing of [4 wheelie bins comprising 2x240 litre recyclable waste & 2x180 litre domestic waste & 2x24 litre food caddies) showing the location within the rear of the site, elevations and materials to be used in the construction of the bin store shall be submitted to and approved in writing by the Local Planning Authority. The approved store shall be completed within 3 months of the approval of details and shall be retained and maintained thereafter unless otherwise agreed in writing by the Local Planning Authority.
 - 4. Any new or replacement hard surfaced area(s) shall either be made of porous materials, or provision shall be made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the property.
- The reasons given for the conditions are:
 - a) This condition is required to be imposed by Section 91 of the Town and Country Planning Act, 1990.
 - 1. For the avoidance of doubt and in the interests of proper planning.
 - 2. To promote alternative modes of transport and in the interests of amenity in accordance with Policies CS18 and CS41 of the Bournemouth Local Plan: Core Strategy (October 2012).
 - 3. To safeguard the amenities of occupiers of adjoining and nearby residential properties and in accordance with Policy CS41 of the Bournemouth Local Plan: Core Strategy (October 2012).

4. To provide satisfactory drainage for the development in accordance with Policy CS4 of the Bournemouth Local Plan: Core Strategy (October 2012) and in order to achieve the objectives set out in the Local Planning Authority's Planning Guidance Note on Sustainable Urban Drainage Systems.
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Decision

1. The appeal is allowed and the planning permission Ref 7-2023-28914-A for retrospective change of use from a residential dwelling (Class C3) to an HMO (Class C4) at 38 Cyril Road, Bournemouth, BH8 8QD granted on 18 August 2023 by Bournemouth Christchurch and Poole Council, is varied by the deletion of Condition a), and the deletion of Conditions 1, 2, and 3 and their substitution with revised Conditions 1, 2, and 3 in the attached schedule. The appeal is dismissed as far as it relates to Condition 4, which is retained as originally set out.

Preliminary Matters

2. There is a minor typographical error in the list of plans in condition 1, with reference to the scale of the drawing. It is clear from the evidence that this is a drafting error, and does not alter the meaning or interpretation of the condition. I have corrected the error in the schedule of conditions.

Background and Main Issue

3. Planning permission was granted in 2023 for the retrospective change of use from a residential dwelling (Class C3) to a House in Multiple Occupation (HMO) (Class C4). This consent was subject to a number of conditions including those imposing the standard time limit and a list of approved plans for the avoidance of doubt and in the interests of proper planning. Further conditions were imposed in relation to cycle storage, refuse storage, and hard surfacing, with reasons given relating to transport, neighbour amenities, and drainage. The appellant now seeks to remove all of the conditions on the basis that they are not necessary.
4. I therefore consider the main issue to be whether the conditions are necessary in the interests of certainty and proper planning, in the interests of promoting alternative means of transport, in the interests of the amenities of neighbouring occupiers, and in order to provide satisfactory drainage.

Reasons

5. Condition 1 secures the details of the development as shown on the approved plans; a location plan and floor plans. This condition provides certainty over the location and site boundary of the development, and without the condition, there may be ambiguity as to the future internal configuration of the HMO. This condition therefore remains necessary for the avoidance of doubt and in the interests of proper planning.
6. Condition 2 seeks to secure cycle parking provision in accordance with the Council's adopted Parking Standards Supplementary Planning Document. The standards identify that the change of use to an HMO would generate an additional demand for cycle facilities, and the condition would secure the detail, implementation, and retention of the facilities. Without the condition, the development may fail to provide adequate cycle storage for the consented use,

- or to meet the day-to-day requirements of occupants in conflict with Policies CS18 and CS41 of the Bournemouth Local Plan: Core Strategy (October 2012) (the Core Strategy). The condition therefore remains necessary in order to promote alternative modes of transport and in the interests of amenity.
7. Condition 3 seeks to secure appropriate refuse bin storage for the site, based on the increase in unrelated occupiers living at the property resulting from the change of use. During my site visit I observed that some of the bins associated with the appeal property were located on the pavement, with no indication at the neighbouring properties that it was a refuse collection day. This issue is also reflected in a representation made by an interested party. The Council's Planning Guidance note on Waste and Recycling Services identifies an expected level of refuse storage provision, and the condition would secure the detail, implementation, and retention of a suitable storage area. Without the condition, the development may fail to appropriately manage refuse storage at the site, in conflict with Policy CS41 of the Core Strategy which seeks to enhance the amenities of occupiers and neighbouring residents. Condition 3 therefore remains necessary in order to safeguard the amenities of occupiers of adjoining and nearby residential properties.
 8. Both Conditions 2 and 3 require submission of information within two months of the date of the decision, and implementation of the relevant feature within four months and three months of approval of the details respectively. Given the scale of the development and the level of detail required, these time limits are reasonable and proportionate.
 9. Condition 4 seeks to ensure that any new hard surfacing does not cause displacement of surface water, and instead is able to percolate within the area of the application site. Without this provision, any new hard surfacing associated with the site would conflict with Policy CS4 of the Core Strategy, which seeks to ensure that ensuring that the level of surface water leaving the site is no greater than that prior to the development. Condition 4 therefore remains necessary in order to provide satisfactory drainage for the development.
 10. I have not been presented with any substantive evidence to indicate that the policies and guidance referred to by the Council in support of the conditions are not relevant to the appeal site, or that the development would accord with them without the conditions. The conditions therefore remain relevant to the development, and, when considered against the policies of the development plan, the development would not be acceptable without them. In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004, my decision must be taken in accordance with the development plan unless material considerations indicate otherwise.
 11. An Article 4 direction came into force in December 2011 meaning that in the Bournemouth area, planning permission would be required for the change of use from a residential dwelling to an HMO. The appellant is seeking to remove all of the conditions imposed on the planning permission on the basis that the property has been in operational use as an HMO since the year 2000/2001 and is therefore lawful in its current form.
 12. I have been provided with some limited evidence of this historical use, and in its officer report, the Council appears to be satisfied that the use has operated for at least four years. However, it is not for me, under a section 78 appeal, to

determine whether the HMO use of the property is lawful. In the absence of a lawful development certificate or other confirmation from the Council that the HMO use is lawful, I can only attribute this matter limited weight.

13. As the development to which this application relates has commenced, the standard implementation condition is no longer necessary. However, it follows from the above that I conclude that Conditions 1, 2, 3, and 4 are necessary in the interests of certainty and proper planning, in the interests of promoting alternative means of transport, in the interests of the amenities of neighbouring occupiers, and in order to provide satisfactory drainage.
14. As the date for the submission of details required by Conditions 2 and 3 has passed, it would not be possible for the appellant to comply with them. It has therefore been necessary to restate these conditions based upon the date of this decision.

Other Matters

15. I acknowledge concerns raised by the appellant regarding the way in which advice has been provided by the Council. However, in considering this appeal I have limited my considerations to the planning matters before me.
16. Notwithstanding the outcome of this appeal, it is open to the appellant to apply for a determination under sections 191/192 of the Town and Country Planning Act 1990 (as amended), and my determination of this appeal under section 78 does not affect the issuing of a determination under section 191/192.

Conclusion

17. For the reasons given above I conclude that the appeal should succeed in relation to Conditions a), 1, 2, and 3. I will vary the planning permission as set out in the formal decision.

K Jones

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Existing & proposed floor plans scale 1:100, and location plan ref: TQRQM23166101829979.
- 2) Within two months of the date of this decision, unless agreed in writing by the Local Planning Authority, details of a cycle store providing 1 cycle stand (in accordance with the provisions of the Council's adopted Parking standards (2021) showing the site location, elevations and materials to be used in the construction shall be submitted to and approved in writing by the Local Planning Authority. The approved cycle store shall be completed within 4 months of the approval of details and shall be retained and maintained thereafter unless otherwise agreed in writing by the Local Planning Authority.
- 3) Within two months of the date of this decision, details of a screened refuse bin store suitable for the housing of [4 wheelie bins comprising 2x240 litre recyclable waste & 2x180 litre domestic waste & 2x24 litre food caddies) showing the location within the rear of the site, elevations and materials to be used in the construction of the bin store shall be submitted to and approved in writing by the Local Planning Authority. The approved store shall be completed within 3 months of the approval of details and shall be retained and maintained thereafter unless otherwise agreed in writing by the Local Planning Authority.

End of Schedule