



Appeal Decision

Site visit made on 11 June 2024

By Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 1st July 2024

Appeal Ref: APP/D1590/W/23/3335877

35 Lancaster Gardens, Southend-on-Sea, SS1 2NS

- 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 Jonathan Warwick against the decision of Southend-on-Sea City Council.
 - The application Ref 23/00058/FUL, dated 11 January 2023, was refused by notice dated 6 July 2023.
 - The development proposed is a change of use from residential dwellinghouse (Class C3) to House in Multiple Occupation (HMO) (Sui Generis Use Class) and alterations to elevations including first floor oriel window (Retrospective).
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Decision

1. The appeal is allowed and planning permission is granted for a change of use from residential dwellinghouse (Class C3) to House in Multiple Occupation (HMO) (Sui Generis Use Class) and alterations to elevations including first floor oriel window (Retrospective) at 53 Lancaster Gardens, Southend-on-Sea, SS1 2NS in accordance with the terms of the application, Ref 23/00058/FUL, dated 11 January 2024, subject to the conditions set out in the schedule at the end of this decision.

Preliminary matters

2. The application form described the proposed development as "Change of use from residential dwellinghouse (Use Class C3) to Large House in Multiple Occupation (HMO) (Sui Generis Use Class)". The council changed this to the description used in the heading above, as did the appeal form. I have adopted it as it more clearly identifies the development proposed.

Main Issue

3. The appeal dwelling has had an HMO license for a maximum of 9 persons, and it is not argued on behalf of the council that the building is incapable of providing accommodation for up to 9 persons with the required standards. Therefore the only issue, as set out in the refusal reason, is the adequacy of the proposal in terms of cycle, refuse and recycling storage facilities that can be accommodated at the site in a manner which is appropriate and usable by occupiers of the property.

Reasons

4. The appeal site is on the southern side of Lancaster Gardens and is occupied by an extended two-storey terraced dwelling with a rear dormer and rooms in the

roof. The C2C railway line is to the rear of the property. The surrounding area is residential in character and is comprised largely of two storey terraced dwellings. The front curtilage of the property is hard surfaced and accessed by an existing crossover.

Cycle storage

5. The rear garden of the appeal property, beyond the back of a long outrigger, is 17.35 long and about 5.6m wide. Within this open amenity area, the application plans show a location for a storage shed with a capacity for 9 cycles. This is shown at the rear of the garden area, where the application indicates there is access to an alleyway providing access to the highway. However, it is now accepted that the entrance to this alley is gated and locked, and the proposal is that the storage facility would remain in the back garden, but cycles would be taken through the ground floor of the building.
6. This provision was not found acceptable by the council on the basis that the route through the main building would be convoluted and awkward and involves the residents taking cycles from the front door internally through the ground floor of the property, some 20m deep and then through habitable rooms. It was contended that this route would require users to pass through a number of self-closing fire doors as well as up steps to the rear of the property. This arrangement was considered to be inconvenient for the safe and convenient transport of cycles to and from the public domain, and would not achieve appropriate or reasonably useable facilities, thus deterring cycle use for occupiers.
7. However, I saw at my site visit that there is a passageway through the ground floor that is wide enough for a cycle to be carried without undue inconvenience. It is true that as well as traversing a hall, a cycle would have to be carried through a kitchen and sitting room, where there was adequate space. This route would pass through a single self-closing fire door. Whilst this is not as convenient as taking a cycle onto the road from a front garden, it is not unreasonable, and does not justify refusal. As is said on behalf of the appellant, the nature of a degree of communal living is that occupants accept that it involves a measure of cooperation and tolerance of comings and goings by other residents.
8. In addition, it may be possible to propose a suitable scheme to house cycles at the front of the house. A suitable condition could be imposed on a permission that would require a scheme to be submitted and approved by the local planning authority, either at the rear or the front of the house.

Waste and recycling storage

9. The council does not apply set standards for bin storage in relation to HMOs, with each case being assessed on its own merits. The council does not accept the appellant's claim that storage will be to the front of the building because it has not been reasonably demonstrated how this would be achieved and with what visual impact on the building's frontage and the character and appearance of the streetscene.
10. It is certainly the case that the application plans did not indicate how bin storage would be provided, but with the appeal documents there is a Plan (revision E) provided that shows a possible solution in the vicinity of the front

bay window. This plan does not amount to the necessary detailed scheme that would be required to be submitted if a condition were to be imposed, but it does show that a reasonably discrete provision could be made. Without suggesting that what is shown on the revision E plan would be acceptable, the size of the forecourt is such that I consider that a satisfactory arrangement could be proposed, such that a condition could deal with the matter.

Conclusions

11. I have taken account of all matters raised, including those made in representations by interested persons. The planning officer's report dealt adequately with these, and the Committee did not accept them as warranting a refusal.
12. In coming to my conclusion, I have noted that paragraph 123 of the National Planning Policy Framework (December 2023) (the Framework) states that "Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions"¹. I have also noted that the Council's Five-Year Housing Land Supply (5YHLS) figure shows that there is a deficit in housing land supply in the City. The Housing Delivery Test figures and 5YHLS weigh in favour of the principle of the development, particularly in light of the presumption in favour of sustainable residential development as required by paragraph 11 of the Framework. In addition, the location of the appeal site close to the centre of Southend-on-Sea and within walking distance of a wide range of amenities and public transport links makes it a highly sustainable location.
13. With these factors in mind, which are highly favourable to the appeal proposal, I consider that the cycle storage provision can be achieved by requiring a fully worked-up scheme to be submitted by way of a condition. This is also true of the necessary waste and recycling storage. On this basis, for the reasons that I have set out above, the appeal will be allowed.

Conditions

14. The statutory condition that provides a time limit on the start of development is not appropriate since the development has already started. However, the council has suggested a number of conditions in the event that the appeal is upheld. I have considered these in the light of Planning Practice Guidance and have amended some of the text for clarity and concision.
15. I consider that the conditions should be imposed for the following reasons: condition 1 is required for certainty and avoidance of doubt as to the development permitted; condition 2 is to ensure acceptable living conditions for the occupiers having regard to the need for commensurately sized shared kitchen facilities and sufficient external amenity facilities and to protect the amenities of neighbouring occupiers; condition 3 is to ensure the provision of adequate cycle parking and in the interest of visual amenity; condition 4 is to ensure the provision of adequate waste, recycling and food waste storage and in the interest of visual amenity; conditions 5 and 6 are to minimise the environmental impact of the development through efficient use of resources and better use of sustainable and renewable resources; and condition 7 is to

¹ In the officer's report this is quoted as coming from paragraph 119. This was the paragraph number in the Framework that was current at the time the report was written.

protect the privacy and environment of people in neighbouring residential properties.

Terrence Kemmann-Lane

INSPECTOR

Schedule of Conditions

- 1) The development hereby approved shall be retained in accordance with the approved plan: LG/NAK/01 Rev C – 22/06/23, LG/NAK/02 Rev C – 22/06/23, LG/NAK/03 and Location Plan.
- 2) Notwithstanding the provisions of the Town and Country Planning Act 1990 (as amended) the development hereby approved shall not at any time be adapted to enable formation of more than nine (9) bedrooms and the property shall not be occupied by more than nine (9) residents at any one time.
- 3) Within three months of the date of this permission, the development hereby approved shall be provided with at least 9 on site, secured and covered cycle parking spaces which shall be made available for use by the occupiers of the development and their visitors in accordance with details which have previously been submitted to and approved in writing by the Local Planning Authority pursuant to this condition. The cycle spaces shall be retained thereafter for the lifetime of the development. If the details of the cycle parking are not approved in writing by the Local Planning Authority within 3 months of the date of this permission or the secure covered cycle parking is not implemented and/or made available for use in full accordance with the details as approved, the use as a 9-bedroom HMO shall cease and revert either to use as a six bed HMO (Use Class C4) or as a single family dwellinghouse (Use Class C3) until such time as cycle parking spaces are implemented and/or made available for use.
- 4) Within three months of the date of this permission, the development hereby approved shall be provided with secure, screened and covered refuse and recycling storage which shall be made available for use by the occupiers of the development and their visitors in accordance with details which have previously been submitted to and approved in writing by the Local Planning Authority pursuant to this condition. The secure, screened and covered refuse and recycling storage shall be retained thereafter for the lifetime of the development. If the details of the secure, screened and covered refuse and recycling storage are not approved in writing by the Local Planning Authority within 3 months of the date of this permission or the secure, screened and covered refuse and recycling storage is not implemented and/or made available for use in full accordance with the details as approved within 2 months of the date of the approval of the details by the Local Planning Authority, the use as a 9-bedroom HMO shall cease and revert either to use as a six bed HMO (Use Class C4) or as a single family dwellinghouse (Use Class C3) until such time as the refuse and recycling storage is implemented and/or made available for use.
- 5) Within three months of the date of this permission, 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, agreed in writing by the Local Planning Authority and implemented on site within 2 months of the date of the

approval in accordance with the agreed details and retained for the lifetime of the development. If the energy efficiency and other sustainability measures are not implemented and/or made available for use in full accordance with the details approved under this condition within 2 months of the date of the approval of the details by the Local Planning Authority, the use as a 9-bedroom HMO shall cease and revert either to use as a six bed HMO (Use Class C4) or as a single family dwellinghouse (Use Class C3) until such time as they are.

- 6) Within three months of the date of this permission, the development hereby approved shall incorporate water efficient design measures set out in Policy DM2 (iv) of the Development Management Document to limit internal water consumption to 105 litres per person per day (lpd) (110 lpd when including external water consumption), including measures of water efficient fittings, appliances and water recycling systems such as grey water and rainwater harvesting. The water efficient design measures shall be implemented for the lifetime of the development. If such details are not incorporated within 3 months of the date of this permission the use as a 9-bedroom HMO shall cease and revert either to use as a six bed HMO (Use Class C4) or as a single family dwellinghouse (Use Class C3) until such time as they are.
- 7) Within 3 months from the date of this permission, the development hereby approved shall be provided with a first floor oriel window in the west elevation that shall be glazed in obscure glass to the side and rear facing panels (the glass to be obscure to at least Level 4 on the Pilkington Levels of Privacy) and fixed shut, except for any top hung fan light which shall be a minimum of 1.7 metres above internal finished floor level and retained as such thereafter. In the case of multiple or double-glazed units at least one layer of glass in the relevant units shall be glazed in obscure glass to at least Level 4 on the Pilkington scale. The oriel window shall be implemented for the lifetime of the development. If the oriel window is not implemented and/or made available for use as shown on the Proposed First Floor Layout on drawing No.LG/NAK/02, Rev.C, with the obscure glazing, within 3 months from the date of this permission the use as a 9-bedroom HMO shall cease and revert either to use as a six bed HMO (Use Class C4) or as a single family dwellinghouse (use Class C3) until such time as it is implemented.

End of Schedule