



Appeal Decision

Site visit made on 21 January 2025

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 February 2025

Appeal Ref: APP/D1780/C/24/3341456

79 Westridge Road, Southampton SO17 2HN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Denzil Properties (Singh and Kaur) Limited against an enforcement notice issued by Southampton City Council.
 - The notice was issued on 21 February 2024.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land to five self-contained flats ('the unauthorised development').
 - The requirements of the notice are: (i) Cease the use of the land as five self-contained flats; and (ii) Remove the fixtures and fittings that facilitate the use of the land as five self-contained flats; and (iii) Remove all resulting materials from the land.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice be varied by deleting 'five' in steps (i) and (ii) and substituting 'six months' as the period for compliance. Subject to these variations, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

2. The revised National Planning Policy Framework (the Framework) came into force during the course of the appeal and has been taken into account in my decision.
3. Step (i) of the enforcement notice requires the alleged use as five self-contained flats to cease. Step (ii) also makes reference to the use as five flats. As the number of flats is already specified in the allegation however, also making further references to a specific number in the requirements is unnecessary. In addition, this may lead to uncertainty-for example whether the notice requires the cessation of any future unauthorised use of the land for a lesser or greater number of flats. Consequently, I shall vary the notice to delete references to the number of flats in the requirements. In doing so, I am satisfied there would be no injustice to the Council or the appellant.

Ground (a) appeal

Main Issues

4. The main issues in this ground of appeal are:

- Whether there are suitable living conditions for the existing and future occupiers of the flats, having regard to provision of outdoor amenity space and provision of facilities for storing refuse/recycling and bicycles.
- Whether the flats contribute to a mixed and balanced community, having regard to the effect on the supply of family homes.
- The effect on the character of the locality.

Reasons

Living conditions

5. The appeal property contains a substantial semi-detached residential building. There are a total of five self-contained flats at the property. There are two, two-bedroom flats on the ground floor, a two-bedroom flat and a one-bedroom flat on the first floor and another one-bedroom flat on the second floor. External space at the front and side of the property is hard surfaced, whilst the rear garden is largely laid to grass.
6. The Council's Residential Design Guide advises that flat developments should be provided with a minimum 20m² of garden per unit, reflecting the similar requirement set out in Policy CS16 of the Council's Core Strategy (CS). A drawing supplied showed how the rear garden could be subdivided to provide a private garden for the rear ground floor flat (flat 2), with a communal garden behind for the other four flats.
7. At around 21m², the flat 2 garden would meet the minimum size requirement set out above. However, at around 55m² the size of the communal garden would be considerably below the 80m² minimum required for an outdoor amenity space to serve the remaining flats. The significant shortfall in size compared to the minimum requirement means that the communal garden is unlikely to be able to provide a useable and comfortable area in which occupiers of the flats might undertake the range of activities normally associated with an outdoor amenity space, such as drying washing or informal recreation. Furthermore, on account of its relatively restricted size the communal garden would probably have a cramped or congested feel, particularly if used by more than a couple of people at the same time.
8. Although landscape planting might initially give the communal garden a more attractive appearance, that would not adequately compensate for the significant size deficiency. Moreover, being of insufficient size to meet the needs of the occupiers means it is entirely possible that the communal garden would become under-used and neglected, leading to any planting not being effectively maintained and managed in the longer term.
9. Public open spaces in the wider surrounding area do not offer an adequate alternative to providing a useable, attractive outdoor amenity space at the property. Around a kilometre away, these spaces are beyond what would generally be considered a convenient walking distance, nor do they facilitate the range of activities usually associated with on-site provision. The lack of outdoor amenity space of suitable size has led to the occupiers of the flats experiencing a restrictive living environment which would continue in future.
10. Also supplied was a drawing depicting a storage facility for refuse/recycling bins along with a secure bike store, the latter being to accord with CS Policy

CS19. However, these would be reasonably tall and lengthy structures. Located almost directly in front of and in proximity to windows serving habitable rooms, they would substantially erode the level of outlook currently enjoyed by the occupiers of flat 2. The physical presence of the structures would lead to the occupiers experiencing a greater sense of enclosure and a more oppressive feel in flat 2, the outlook from which is already affected to some extent by the looming side elevation of a neighbouring property. Additionally, the occupiers of flat 2 are likely to experience a significant increase in noise and disturbance from comings and goings and activity associated with use of the refuse/recycling and bike store facilities. No alternative location for these facilities was suggested.

11. Therefore, suitable living conditions are not provided for the existing and future occupiers of the flats. This conflicts with criterion in Policy SDP1 of the City of Southampton Local Plan Review (LP), which requires development to not unacceptably affect the amenity of citizens, also conflicting with criterion in CS Policy CS13 which sets out similar requirements. Also, by failing to provide outdoor amenity space which is fit for purpose and of sufficient size, the flats are in conflict with CS Policy CS16. Furthermore, by not providing a high standard of amenity for existing and future users the flats are inconsistent with the Framework.

Mixed and balanced community

12. CS Policy CS16 also requires the provision of a mix of housing types and more sustainable and balanced communities, including by resisting the net loss of family homes on sites capable of accommodating a mix of residential units, unless there are overriding policy considerations. 'Family homes' are defined as dwellings of three or more bedrooms with direct access to useable private amenity space or garden for the sole use of the household. For semi-detached homes, the private garden should be a minimum size of 70m².
13. According to the available evidence, the property was previously used as a large HMO. As so used, the property is unlikely to have accommodated families. Nevertheless, having regard to its characteristics and size, the property is capable of accommodating a mix of residential units, including one or more which could provide three-bedroomed living accommodation. Furthermore, there is direct access to a useable private garden of a size suitable for a semi-detached home. As a result, the property is capable of accommodating families.
14. The use as five flats on the other hand prevents the provision of at least one unit of three or more bedroomed living accommodation at the property and so has led to loss of a family home in that sense. With no more than two bedrooms, the flats are less likely to accommodate families. No overriding policy considerations that might have justified the loss identified were drawn to my attention. Although each case ultimately falls to be determined on its individual merits, recent appeal decisions¹ in which the application of CS Policy CS16 was examined serve to reinforce my findings on this matter.
15. Therefore, the use as five flats adversely affects the supply of family homes in the city and does not contribute to a mix of housing types and more sustainable and balanced communities, in conflict with CS Policy CS16.

Local character

16. The property is located in an established residential area. There are various types of residential accommodation in the vicinity, including buildings subdivided into flats and others used as HMOs, along with family dwellings.

¹ Appeal Refs: APP/D1780/W/19/3238305; APP/D1780/W/21/3274411 & APP/D1780/W/21/3283202

17. In the context of the previous use, the use as five flats is unlikely to have involved any significant increase in levels of activity at the property or comings and goings thereto. Whilst having shared facilities is a characteristic of an HMO, in general the occupiers of such properties do not share common connections or relationships, nor do they have similar work patterns or leisure interests. Also, in many instances occupiers of HMOs are no less capable of accessing private cars than people living in other forms of housing. Accordingly, in the above respects there is little difference between the use of the property as five flats and the previous use. The density is higher than that set out in CS Policy CS5 for areas with a comparable Public Transport Accessibility Level. However, the Council accepted that this does not necessarily equate to harm and there is no sound reason why I should find otherwise.
18. Therefore, the use as five flats has had no discernible adverse effect on the character of the locality. There is no conflict with LP Policies SDP7, SDP9 and H7, which all seek to ensure that new residential development safeguards the character of its surroundings.

Other matters

19. The property is located in proximity to the Solent Maritime Special Area of Conservation, the Solent and Southampton Water Special Protection Area/Ramsar site, the Solent and Dorset Coast SPA and the New Forest SAC/SPA/Ramsar site. Nitrogen budget calculations supplied showed that having regard to the previous use, the use as five flats is nutrient neutral and so has no adverse impact on the areas of nature conservation in that regard. There is no firm evidence which might have led to an alternative conclusion.
20. The Solent Recreation Mitigation Strategy seeks to mitigate the effects of new residential development on the coastal areas of nature conservation within the 5.6km 'zone of influence' through making financial contributions to fund appropriate mitigation measures. A Unilateral Undertaking (UU) was submitted to provide such a contribution. However, making reference to 'four flats' it is unclear whether the UU relates to the development in the notice. Further doubt is created by the contribution sum, which does not match that required for the number and size of flats at the property. As I cannot reasonably be certain of its effect and enforceability, the UU is afforded no weight.
21. In the absence of a properly completed UU which provides the necessary mitigation, the flats adversely impact on the areas of nature conservation. This is in conflict with CS Policy CS22 which promotes biodiversity by, amongst other things, ensuring that development does not adversely affect the integrity of international designations and the provision of necessary mitigation measures. Furthermore, it contravenes the Conservation of Habitats and Species Regulations 2017 and is inconsistent with the Framework.

Planning Balance & Conclusion-Ground (a) appeal

22. The use as five flats supports significantly boosting the supply of housing where the Council currently has no five-year land supply. Furthermore, the flats are in an accessible location and there have been improvements to fire safety at the property. Given the relatively limited scale of the development, these factors carry moderate weight. There is also likely to have been a small and time-limited economic benefit during the conversion works, which generated some additional short-term employment.
23. On the other hand, the flats do not provide suitable living conditions for the occupiers, they do not contribute to a mixed and balanced community and the adverse impacts on the areas of nature conservation have not been mitigated. These matters attract significant weight and outweigh the benefits associated

with the development. The Framework presumption in favour of sustainable development does not apply where there is an adverse effect on the integrity of habitats sites. Consequently, the flats conflict with the Development Plan and there are no other considerations, including the Framework, that outweigh this conflict.

Ground (f) appeal

24. The ground of appeal is that the notice requirements are excessive.
25. An enforcement notice can have the purpose of remedying the breach of planning control, including by restoring the land to its condition before the breach took place, or its purpose can be to remedy any injury to amenity caused by the breach. In this case, the primary purpose of the notice must be to remedy the breach. The notice requires cessation of the unauthorised use and removal of the fixtures and fittings which facilitate that use, along with the resulting materials, from the property. By doing so, the property would then be restored to its condition before the breach took place.
26. The lack of reference in the notice to the previous use as an HMO has little bearing on whether the steps are excessive. There is no need for the notice to recite the previous use in the allegation. Imposing a positive requirement to restore the property to its previous use would exceed what is necessary for the purposes of remedying the breach.
27. Step (ii) provides sufficient certainty. The appellant can have little real doubt as to what they have to do to remove 'the fixtures and fittings.' These terms are commonly understood as including separate kitchens and bathrooms. As the landowner, it is not unreasonable to expect the appellant to be the person with the best knowledge of exactly which fixtures and fittings facilitated the unauthorised use and those that were already present at the property in connection with the previous use.
28. I acknowledge relevant case law, which confirms that a property can be capable of containing a mix of self-contained and shared residential accommodation whilst remaining in use as an HMO². However, in the absence of a detailed scheme of works, I cannot reasonably be assured that the notice could be varied to require lesser steps whilst also having the necessary degree of precision to prevent the unauthorised use. Accordingly, I am not persuaded there is a lesser requirement that represents an obvious alternative to step (ii) and which, together with the other requirements, would remedy the breach and so achieve the purpose of the notice.
29. For the reasons set out above, in my view the notice requirements are not excessive; they are a proportionate remedy involving the minimum steps necessary to restore the property to its condition before the breach took place.
30. The ground (f) appeal fails.

Ground (g) appeal

31. The ground of appeal is that the time allowed for complying with the notice requirements is too short.
32. The two-month period specified gives little time for the tenants to search for and secure suitable alternative living accommodation. In practice, the time available for the tenants to do this would be shorter, as the appellant also has to undertake the remedial works. Given the pressures on the rented property market generally, there is little assurance that the tenants could all find suitable living accommodation within such a limited time. This raises the

² *Welwyn Hatfield BC v DLUHC* [2022] EWHC 3175 (Admin)

prospect of the appellant being forced to take possession proceedings and places the tenants at an increased risk of homelessness. Additionally, although the remedial works would be relatively modest in scale, not particularly complex and limited in duration, the appellant will need to secure the services of suitable contractors to undertake them. Even if the tenants vacate the flats reasonably promptly, this is likely to leave limited time for the works to be undertaken.

33. Given the circumstances, a compliance period of six months would be reasonable. This would give the tenants a much longer spell in which to seek and secure suitable alternative accommodation and once the flats are vacant, for the remedial works to be carried out. Although less than the twelve-month period sought, the risk of tenants not vacating the property at the end of their tenancies would nevertheless be considerably reduced. In turn, there would be a corresponding reduction in the likelihood of possession proceedings being needed. A six-month compliance period would therefore strike an appropriate balance between not perpetuating the breach unduly whilst also avoiding, so far as is possible, imposing a disproportionate burden on the appellant and the tenants. There would be no injustice to the Council in varying the notice to extend the period for compliance as set out above.

34. The ground (g) appeal succeeds to this extent.

Conclusion

35. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice as varied and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

Stephen Hawkins

INSPECTOR