



Appeal Decision

Site visit made on 29 April 2025

by **Stephen Hawkins MA, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 9 May 2025

Appeal Ref: APP/V1260/C/23/3334080

19 Stourwood Avenue, Bournemouth BH6 3PW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Golden Crown Limited against an enforcement notice issued by Bournemouth Christchurch and Poole Council.
 - The notice was issued on 23 October 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised material change in the use of a residential care home (C2) to a large house in multiple occupation (sui generis).
 - The requirements of the notice are: (i) Cease to use the premises as a sui generis large HMO.
(ii) Cease to allow any person to reside in the premises as their sole or main residence.
(iii) Remove from the premises the additional shared kitchen set aside for HMO residents.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) 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 is varied by deleting step (ii) in paragraph 5. Subject to this variation 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 Matter

2. My decision takes into account the revised National Planning Policy Framework (the Framework), which came into force during the course of the appeal.

Ground (a) appeal

Main Issues

3. The main issues in this ground of appeal are:
 - Whether suitable living conditions are provided for the existing and future occupiers of the appeal premises, having regard to the use as a large House in Multiple Occupation (HMO) and the provision of shared facilities including kitchens, bathrooms and living rooms.
 - The effect on the living conditions of occupiers of neighbouring residential property, having regard to noise and disturbance.
 - The effect on the character and appearance of the surrounding area.

Reasons

Living conditions-existing and future occupiers of the premises

4. The premises contains a substantial 2½ storey detached residential building, formerly used as a care home. The building has previously been extended considerably at single storey level to the rear, as well as at the side. The enforcement notice attacks the use of the premises as a large HMO. There are a total of 33 bedrooms at the premises, most being fitted with a WC and wash basin. Some bedrooms are fitted with a wash basin only or have no WC or wash basin. 1 bedroom has an ensuite shower. 21 bedrooms, along with shared facilities including 3 WC/bathrooms and 2 kitchens, 2 utility rooms, a lounge/dining room and a laundry room, are on the ground floor. There is also an office on the ground floor, adjacent to the main entrance. A further 12 bedrooms and 2 shared WC/bathrooms are on the upper floors. When I visited, all the bedrooms were in occupation.
5. The kitchen facilities are reasonably basic, having regard to the substantial number of occupiers. The few larger cooking appliances provided, including ovens and hobs, make it likely that many of the occupiers tend to rely on small appliances such as microwaves for cooking meals on a day-to-day basis. The relatively limited areas of work surface mean it is unlikely that more than a few people at a time can prepare food with ease. There is little space for much more than a small worktop along with a sink and drainer in the utility rooms, the restricted circulation space making it awkward for more than one person at a time to use those facilities. Given that the laundry room is very small and contains only a few washing machines, some of the occupiers are also likely to have difficulty in accessing facilities to wash clothing and bed linen on occasion. Furthermore, being limited to the ground floor the cooking and laundry facilities are relatively inconvenient to access from a number of the bedrooms, particularly those on the upper floors. As a result, a number of the occupiers are likely to have experienced difficulties in accessing the cooking and laundry facilities at convenient times as well as congestion when using those facilities, on occasion.
6. There are a limited number of shared bathroom facilities, compared to the total number of bedrooms at the premises. This has resulted in most occupiers having to share at least some of the facilities required for personal washing with several other people. In turn, this is likely to have led to a significant proportion of the occupiers experiencing difficulties in accessing personal washing facilities at convenient times. The shared lounge/dining room is reasonably spacious and furnished with easy chairs, tables and other household items. However, this space is unlikely to be of sufficient size to accommodate much more than perhaps around a third of the occupiers at any one time, without feeling crowded. Additionally, the location on the ground floor towards the front of the building makes the lounge/dining room relatively inconvenient to access from a number of the bedrooms. As a result, a number of the occupiers are likely to find it awkward to either consume food, relax, socialise or receive visits from family and friends, other than in their bedrooms.
7. The grounds provide the occupiers with ample-sized outdoor space in which to undertake the types of activities normally associated with an outdoor amenity area at the premises such as informal recreation, relaxation, or drying washing. There is direct access to the grounds from several ground floor bedrooms. There are further outdoor recreational opportunities available at the coast, not far from the premises.

However, this is limited compensation for the substantial shortcomings in the shared facilities at the premises, identified above, which have all led to the occupiers experiencing a restrictive and inconvenient living environment.

8. Therefore, suitable living conditions are not provided for the existing and future occupiers of the premises, having regard to its use as a large HMO. This is in conflict with Policy CS41 of the Bournemouth Local Plan: Core Strategy (CS), which requires developments to provide a high standard of amenity to meet the day-to-day requirements of future occupants. It is also in conflict with criterion in Policy 6.17 of the Bournemouth District Wide Local Plan (LP), which requires the provision of adequate bathroom and toilet facilities for HMOs.

Living conditions-occupiers of neighbouring residential property

9. The premises front onto a suburban street in a largely residential area, other properties in the immediate and wider surroundings generally being a mix of detached dwellings and apartments. Accordingly, the occupiers of residential property in the vicinity of the premises might reasonably expect to enjoy relatively good levels of peace and quiet, particularly during the late evening and early morning, at weekends and on public holidays.
10. As a care home, it is likely that the use of the premises was consistent with its relatively quiet, largely suburban residential surroundings. There would probably have been a settled, peaceful living environment at the premises, with a good deal of coordination in day-to-day activity, including set mealtimes for example. Much of the routine activity, including indoor and outdoor recreation as well as visits by family and friends and deliveries of items such as food supplies, is likely to have taken place during the daytime. Also, as the majority of the residents' personal care needs would have been provided for and with staffing levels probably a modest proportion of the total number of residents, there would have been limited daily travel movements to and from the premises.
11. There are a broadly similar number of people occupying the premises compared to when it was in use as a care home. Nevertheless, use as a large HMO is fundamentally different in character to the former use. In general, the occupiers of an HMO are fairly transient. They are unlikely to share common connections or relationships or have similar work patterns and leisure interests and will be leading daily lives which are largely separate from one another. Such occupiers will generally undertake their day-to-day activities, including preparing and cooking food, doing laundry, socialising and relaxing, as well as travelling for the purposes of work, leisure or to meet shopping needs, separately from one another and often at different times of day. Additionally, HMO occupiers are likely to attract their own visitors, including friends and family, as well as deliveries. The occupiers and visitors can be using indoor facilities at the premises and the grounds at various times throughout the day, including well into the evening and early morning, on occasion. Furthermore, notwithstanding the proximity of the premises to public transport links, a significant number of the occupiers are likely to have access to private vehicles including cars and motorcycles.
12. Given the above factors, it is highly likely that the use as a large HMO has involved a significant and appreciable increase in activity at the premises, along with a substantial and noticeable increase in the number and frequency of pedestrian and vehicular comings and goings, compared to the former use. The level of noise and

disturbance arising from such activity would generally be associated with a more built-up setting, being entirely at odds with the otherwise relatively quiet, largely suburban residential context. This has led to the occupiers of neighbouring residential property experiencing a considerable increase in the noise and disturbance associated with the use of the premises. A planning condition could have been imposed to require the submission, approval and implementation of a management plan. Even so, this is unlikely to offset the adverse impacts on the neighbouring residential occupiers through the increased noise and disturbance arising from the use to any significant degree.

13. Therefore, the use as a large HMO has caused unacceptable harm to the living conditions of occupiers of neighbouring residential property. This is in conflict with CS Policy CS41, which requires development to enhance the amenities of neighbouring residents. It is also in conflict with criterion in CS Policy CS21, which expects new residential development to respect residents' amenities. Also, there is conflict with criterion in LP Policy 6.17, which requires HMOs to not adversely affect the amenities of neighbouring residents through noise and general disturbance.

Character and appearance

14. Residential properties in the vicinity of the premises are for the most part substantial buildings set in spacious plots, often with extensive areas of well-tended maturing planting in the grounds. At the time of my visit, the building appeared to be reasonably well-maintained and in good order. There were few obvious differences between the external appearance of the building in use as a large HMO compared to the former use. Also, although it possibly has not always been the case, routine maintenance of the grounds was for the most part being kept up, with few obvious signs of neglect.
15. Nevertheless, the use as a large HMO has necessitated the stationing of a collection of substantial waste and recycling receptacles at the front of the premises, close to the main entrance to the building. The size, functional appearance and prominent stationing of these receptacles does not sit comfortably with the generally modest proportions and more discreet siting of such facilities at neighbouring residential property or with the pattern of local development generally. As a result, the waste and recycling receptacles appear as alien and obtrusive features in the street scene.
16. A condition could have been imposed to require the submission, approval and implementation of a waste and recycling management scheme. However, in practice the siting of waste and recycling facilities is likely to be significantly influenced by factors including ease of use for the occupiers as well as ease of collection by refuse contractors. That being so and in the absence of any detail, I cannot be confident that such a scheme would not have similar harmful visual consequences to those identified above.
17. Consequently, the use of the premises as a large HMO has caused unacceptable harm to the character and appearance of the surrounding area. This is in conflict with CS Policy CS41, which also requires development to respect the site and its surroundings and to contribute positively to the appearance of the public realm. Additionally, there is conflict with criterion in LP Policy 6.17, which requires development to be compatible with the existing character of the area. Furthermore, there is conflict with criteria in CS Policy CS21, which expects new residential

development to contribute positively to the character and function of the neighbourhood and to maintain and enhance the quality of the street scene.

Other considerations

18. The premises are more than 400 metres away but within 5 kilometres of the Dorset Heathlands Special Protection Area (SPA) and Ramsar site and the Dorset Heaths Special Area of Conservation (SAC). The Dorset Heathlands Planning Framework 2020-2025 Supplementary Planning Document (SPD) sets out a strategy for mitigating the adverse effects of new residential and tourism development on the protected habitats and species within the 400 metre-5 kilometres heathlands area, which includes securing financial contributions towards Strategic Access, Management and Monitoring Measures (SAMM).
19. A Unilateral Undertaking under s106 of the Act (UU) relating to the making of a SAMM contribution at the amount required by the SPD was supplied with the appeal. However, the UU is incomplete-being neither signed, dated or witnessed. In the absence of a properly completed UU which makes the required SAMM contribution, the use as a large HMO adversely affects the integrity of the designated areas of nature conservation. This is in conflict with CS Policy CS33, which requires development to not have an adverse effect upon the integrity, directly or indirectly, of the Dorset Heaths international designations. Furthermore, it contravenes the Conservation of Habitats and Species Regulations 2017 and is inconsistent with the Framework.

Planning Balance & Conclusion-Ground (a) appeal

20. There is no dispute that Bournemouth has a substantial deficit in terms of a 5-year supply of housing land. Furthermore, according to the 2021 Housing Delivery Test the number of homes built in Bournemouth from 2017-2020 fell well short of that required. The use as a large HMO makes a substantial contribution towards ensuring local people have access to a range of housing types and tenures that meet their needs and to a mixed and balanced community, as well as to making efficient use of land. The premises is in an accessible location, Southbourne district centre and frequent public transport services being in a convenient walking and cycling distance. The above reflects some CS objectives, along with the Framework approach to significantly boosting the supply of homes, promoting sustainable transport and making effective use of land. These factors weigh significantly in favour of granting permission.
21. On the other hand, suitable living conditions are not provided for the existing and future occupiers of the premises, the use as a large HMO having also caused unacceptable harm to the living conditions of the occupiers of neighbouring residential property and to the character and appearance of the surrounding area. These harmful planning consequences carry substantial weight and outweigh the benefits of the development. The Framework presumption in favour of sustainable development is not engaged where, as in this case, there is an adverse effect on the integrity of habitats sites. Therefore, the use conflicts with the Development Plan, taken as a whole, and there are no other considerations, including the Framework, outweighing that conflict. It follows that the ground (a) appeal does not succeed.

Ground (f) appeal

22. The ground of appeal is that the notice requirements are excessive.
23. An enforcement notice can have the purpose of remedying the breach, including by restoring land to its condition before the breach took place, or it can have the purpose of remedying any injury to amenity caused by the breach. Although the notice does not state as such, its purpose must be to remedy the breach. Step (i) of the requirements is that the use as a large HMO must cease. This is clearly aimed at restoring the premises to its condition before the breach took place.
24. At step (iii), the notice requires removal of the additional kitchen. This kitchen is integral to and part and parcel of the unauthorised use, having been installed to meet HMO licencing requirements. It is well established that an enforcement notice directed at a material change of use may require the removal of works integral to and solely for the purposes of facilitating the unauthorised use, even if such works on their own might not constitute development or be permitted development, or be immune from enforcement action, so that the land is restored to its condition before the change of use took place. Accordingly, along with step (i) step (iii) is a proportionate requirement, these steps representing the minimum actions needed to restore the premises to its condition before the breach took place.
25. However, step (ii) requires that no person should reside in the premises as their sole or main residence. This does not clearly only relate to the unauthorised use; it could equally be read as preventing people from residing at the premises as part of the lawful use as a care home. Care homes are often the sole or main place of abode of their residents. It is well established that the requirements of an enforcement notice must not purport to prevent an appellant from doing something they can do without planning permission, relying on lawful use rights or rights of reverter, or any of the exceptions to the definition of development set out in the Act.
26. Consequently, I shall exercise the power in s176(b) of the Act to vary the terms of the notice to delete step (ii). Steps (i) and (iii) would be sufficient to restore the premises to its condition before the breach took place and so remedy the breach. There would be no injustice in varying the notice as set out above. The appeal on ground (f) succeeds to that extent.

Conclusion

27. For the reasons given above, I shall uphold the enforcement notice with a variation 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