The Planning Inspectorate

Appeal Decision

Site visit made on 12 February 2018

by Thomas Shields MA DURP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 30 April 2018

Appeal Ref: APP/D1780/C/17/3180925
350 Shirley Road, Southampton, SO15 3HY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act).
- The appeal is made by Mr Paul Finnegan against an enforcement notice issued by Southampton City Council.
- The enforcement notice was issued on 28 June 2017.
- The breach of planning control as alleged in the notice is without planning permission, change of use of the land to a mixed use of storage, display and sale of motor vehicles and residential use.
- The requirements of the notice are:
  1. Cease the use of the land for the storage, display and sale of motor vehicles;
  2. Remove from the land [sic] all vehicles from the land for the purposes of storage, display and sales;
  3. Remove all signage in relation to the vehicle sales;
  4. Cease the residential use of the land;
  5. Remove all fixtures and fittings facilitating the residential use;
- The period for compliance with the requirements is 28 days.
- The appeal proceeds on the grounds set out in section 174(2)(a) (f) and (g) of the Act.

Decision

1. It is directed that the enforcement notice be corrected by:

   (i) in Section 3 deleting the words "residential use" and substituting instead the words "six flats";

   (ii) in Section 5.2 between the words "Remove" and "all", deleting the words "from the land";

2. It is directed that the enforcement notice be varied by:

   (i) in Section 5.5 deleting all of the words after the word "Remove" and substituting instead the words "from each of the six flats the fridges, microwave ovens and the kitchenette, to include the kitchen cupboard storage units, worktops and sinks";

   (ii) in Section 6, deleting 28 days and substituting instead the following time limits. For requirements 5.1 to 5.4 a period of 6 months. For requirement 5.5 a period of 7 months.

3. Subject to the corrections and 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 Act.

Procedural Matters

4. For the sake of clarity, and ease of reference, I have substituted the five bullet points in Section 6 of the enforcement notice for numerals 1 to 5 as set out in the banner heading of this decision.

5. The phrase "from the land" is erroneously repeated in Section 5.2 of the notice. I have therefore corrected the notice by deleting one of the phrases.

6. A ground (a) appeal and deemed planning application can only seek planning permission for the development constituting the alleged breach of planning control. In this regard the land is used in part for residential purposes. However, the parties dispute whether the residential use is as six individual flats or as a house in multiple occupation (HMO).

7. These two uses have different planning consequences and considerations when considering whether planning permission should be granted. It is therefore necessary to define the alleged breach of planning control (the development for which planning permission is sought) more precisely. Both parties made representations on this matter and to which I have had full regard. In these circumstances I am satisfied I can correct the without injustice to either party.

8. Consequently, for reasons set out in more detail below, I have corrected the notice to refer to six flats using powers available to me in section 176(1) of the Act.

The alleged breach of planning control

9. Section 254(1) of the Housing Act 2004 sets out in law the primary definition of a HMO, and to which the Council's SPD[1] refers. It sets out that a building, or part of a building, is a HMO provided that it meets specific conditions. The conditions include that two or more of the households occupying the living accommodation must share one or more basic amenities, or the living accommodation is lacking in one or more basic amenities. "Basic amenities" are defined in the Housing Act as a toilet, personal washing facilities, or cooking facilities.

10. However, another condition at section 254(2)(a) is that the building, or part of a building, must *consist of one or more units of living accommodation* ***not*** (my emphasis) *consisting of a self-contained flat or flats*. Section 254(8) of the Housing Act 2004 defines a self-contained flat as a separate set of premises (whether or not on the same floor) which forms part of a building; either the whole or a material part of which lies above or below some other part of the building; and in which *all three basic amenities are available for the* ***exclusive*** (my emphasis) *use of its occupants.*

11. There are no shared showers/bathrooms or toilet facilities in the residential part of the appeal building. Hence, the key issue in this matter relates to the provision of cooking facilities.

12. In this regard a very small first floor room contained a sink, worktop with cupboard under, and a free standing cooker. This is the only shared means of cooking I saw during my visit to the appeal property. It seems to me, in comparison to the kitchenette facilities in each separate unit, to be a very

[1] Houses in Multiple Occupation Supplementary Planning Document (2016), Appendix 2

restricted and limited kitchen provision for sharing between six units of accommodation.

13. The Council's Appendix 1 includes copies of an estate agency's website advertising material for the accommodation which I note it describes as "flats", rather than as shared accommodation. It goes on to list the facilities in each unit to include *a kitchenette* and a *microwave and grill oven*.

14. Additionally, the Council's Appendix 3 provides an undisputed summary of officers' inspections of the property following the issue of the notice. During the unannounced inspection of 22 September 2017 the officer recorded a microwave oven and a two ring electric hob in one of the accommodation units. In a subsequent inspection on 27 September 2017 the officer recorded a microwave oven in the kitchenette areas of all six units and additionally a toaster in units 2 and 4. During a third inspection on 3 October 2017 the officer recorded a two ring hob in one of the flats. All of these observations are consistent with my own observations during my visit to the appeal property.

15. The Council's evidence also refers to email correspondence dated 4 October 2017 with one of the occupiers, stating that all six units had two ring hobs which were removed prior to the officer's inspection on 27 September 2017 and returned afterwards. I have not been provided with a copy of the relevant correspondence. However, the Council's evidence on this point is not disputed.

16. Even without two ring hobs, and irrespective of the limited single cooker facility on the first floor, each accommodation unit clearly has its own facilities for the cooking of food. Consequently, each unit has all three of the "basic amenities" available for the exclusive use of its occupants; consistent with the definition of a self-contained flat within section 254(8) of the Housing Act 2004.

17. Taking account of all the evidence before me, I conclude as a matter of fact and degree that the six units of accommodation are self-contained flats. Furthermore, my view that each unit is occupied as a separate dwelling house (self-contained flat) is reinforced by the Court's judgment in *Gravesham*[2] where it was held that the distinctive characteristic of a dwelling house was its ability to afford to those who used it the facilities required for day to day private domestic existence. I consider that to be the case here.

Appeal on ground (a)/deemed application for planning permission

18. The ground of appeal is that planning permission should be granted for the breach of planning control in the (corrected) notice. That is a mixed use of storage, display and sale of motor vehicles and six flats.

Main Issues

19. The main issues are:

(i) the effect on the living conditions of the occupiers of the flats with particular regard to whether there is adequate internal living space, external amenity space, and refuse storage facilities;

(ii) whether there would be adequate provision for vehicle parking and cycle storage facilities; and

[2] *Gravesham BC v SSE & O'Brien* [1982] 47 P&CR 142; [1983] JPL 307

(iii) whether the setting of the listed building would be preserved or enhanced.

Reasons

(i) Living conditions

20. The Council has no adopted local policy or guidance for internal living space standards for flats. They refer instead to those set out in *Technical Housing Standards – Nationally Described Space Standard* (DCLG 2015) ("the Standards").

21. With reference to the submitted drawings the gross internal floor area (GIA) for Flats 3 and 6 are approximately 20m^2, and for Flats 1, 2, 4, and 5 approximately 25m^2. These GIAs fall well short of the 37m^2 minimum requirement for a one bedroom/one person unit set out in the Standards by 46% and 32.5% respectively.

22. However, given that the proposal relates to a conversion of an existing building within a built up area with good links to shops, public transport and services, together with a need to take account of the local population's range of varied economic needs, I agree with the appellant that the Standards should not be strictly applied. Nonetheless, they do provide an established benchmark against which to assess proposals, and I have therefore taken a more flexible approach in assessing whether the internal living space provided in the flats provides adequate living conditions for occupiers.

23. From my observations during my visit to the appeal site I found that all the flats had noticeably restricted movement and circulation space allowing for only a limited range of furniture and storage space for personal belongings. Overall, they felt distinctly cramped.

24. Given that there is no additional private or shared internal or external amenity space available to occupiers, I find that the space available in each flat falls below a level that could reasonably be considered as adequate for permanent residential occupation. The shortfalls in internal living space in this context, and also within the context of the national minimum standard, are substantial and result in significant harm to the living conditions of the occupiers.

25. I accept that the internal fixtures and fittings and refurbishment of the property are relatively recent and of overall good quality, but that does not mitigate the harm to living conditions resulting from inadequate internal living space. As such, the development conflicts with Policies SDP1 and H7 of the City of Southampton Local Plan Review (2015) (LP).

26. In the context of this busy urban area I accept that provision of external amenity space for flatted developments should be considered flexibly, taking account of each site's constraints. However, given that in this particular case I have found the flats to have poor levels of internal living space, the absence of any external amenity space for occupiers further conflicts with LP Policies SDP1 and H7, adding further weight against allowing the appeal.

27. There is sufficient space within the site to provide a suitable refuse storage facility. Such provision could be secured by a planning condition on the grant of planning permission. Consequently, this matter does not weigh against allowing the appeal.

(ii) Parking and cycle storage facilities

28. A room for cycle storage is indicated on the submitted drawings. I am satisfied that this and/or alternative cycle storage could be provided within the site and secured by a planning condition. Consequently, I find no policy conflict with regard to this matter and it does not weigh against allowing the appeal.

29. The Council contest the methodology, and hence reliability, of the appellant's submitted parking stress survey which indicates that no on-site parking provision would be appropriate.

30. However, there is no contrary evidence before me. While it may have some limitations, I find the appellant's survey does provide some useful information in respect of local parking conditions and I attach due weight to it accordingly. That notwithstanding, the site is located in a busy urban district centre having a level 4 PTAL rating, with shops, services and public transport links within close walking and cycling distance. In such a tight knit urban area I consider that the provision of cycle storage provision, with reduced car parking spaces, would make the flats far more attractive to non-car owning occupiers, thereby encouraging walking, cycling and public transport as more sustainable forms of transport.

31. I find on balance therefore that that no on-site provision of car parking spaces would be a sustainable form of development, consistent with the objectives of LP Policy SDP 5, Policy CS 19 of the Local Development Framework Core Strategy (2015) (CS) and the core planning principles of the National Planning Policy Framework (2012)[3] (the Framework).

(iii) Whether the setting of the listed building would be preserved or enhanced

32. 350 Shirley Road is identified as a Grade II listed building (Ref: 1340002) constructed early to mid-19th century. As set out in the listing description it was constructed in yellow brick with three windows on each floor. The centre breaks forward slightly with a shallow gable. There are ornamental barge boards to the gable and eaves, windows are sashes with Gothic style glazing and with dripmoulds to the side windows. There is a four centred head to the centre and the central closed porch has a four centred outer opening. Overall, it is an attractive Gothic style villa in terms of its architecture and detailing and evidences the historic residential expansion of Shirley Road in the 19th century. All of these factors without doubt contribute to the building's special architectural and historic interest (its significance).

33. Also part of the building's significance is its setting; that being the surroundings in which the building may be seen and experienced.

34. The appellant's assessment of the significance of the listed building and its setting is comprehensive, detailing changes and alterations to the building and its surroundings over a long period of time. Some of these changes have not always been sensitive or sympathetic to the building or its setting, and I agree that the surroundings, in particular the open land subject of the enforcement notice, have changed in more recent years to a more modern and commercial character. Noting that it has evolved over time, I consider that the setting of the listed building has also evolved and includes views and appreciation of it from Shirley Road.

[3] Paragraph 17, 11th bullet point

35. There is no dispute that the last lawful use of the building was for offices, with the open hard-surfaced land within the site being used for car parking associated with the office use. It is against this last lawful use that the effect of the appeal development on the setting of the listed building must be assessed.

36. During my visit to the appeal site I saw that vans were stored and displayed for sale by being positioned very tightly together, covering the Shirley Road forecourt area, and abutting the whole of the eastern elevation of the appeal building. As such, the lower part of this elevation of the building, including the lower parts of the ground floor windows, were obscured from view from along Shirley Road. Also, given the nature of the business, the blocking of views of the lower part of the building's eastern elevation would be a permanent feature, since any vans, once sold, would be replaced with others.

37. The size of the former parking area, relative to the internal office space that would have been available, indicates to me that the physical appearance of vehicles on the site would have been relatively low key. There is no convincing evidence before me that it was not so. Moreover, the ancillary parking of vehicles and related movements in association with the former primary office use would not have been a permanently blocking feature in the way that vans are currently stored on site.

38. Taking account of these factors, and on the balance of all other evidence before me, I find that the current use of the land is permanently intrusive, blocking views and appreciation of the listed building from Shirley Road. It is thereby harmful to the setting of the listed building, eroding its significance in conflict with LP Policies SDP 7 and HE3, and CS Policies 13 and 14.

39. The suggested condition to segregate small vans to one part of the site, and larger vans to the other, would not overcome this harm given that the smaller vans, as seen during my visit to the appeal site, result in the harm I have identified. The harm would be less than substantial in terms of paragraph 134 of the Framework.

40. The appellant refers to employment and supply chain opportunities. However, these have not been quantified or explained in any detail and hence there is no convincing evidence before me that the use has directly resulted in such benefits. That said, I acknowledge that the expansion of the business would contribute towards its economic success and hence the general vitality and viability of the district centre as a whole, thereby comprising a public benefit.

41. On balance, I conclude that the public benefits advanced by the appellant do not outweigh the harm I have identified. In such circumstances paragraph 133 of the Framework indicates that proposed developments should be refused consent.

Other Matters

42. One of the Council's reasons for issuing the enforcement notice relates to the absence of a mechanism to secure mitigation for wider direct impacts on protected birds and habitats resulting from residential pressure upon the Special Protection Areas of the Solent Coastline.

43. During the appeal process a section 106 Obligation in the form of a Unilateral Undertaking (UU) was submitted by the appellant in order to secure such mitigation. However, the outcome of any assessment of the UU I might make

would make no difference to my decision on the appeal on ground (a) which I dismiss in any event for other reasons.

Conclusion on ground (a)

44. While I have found in support of the appeal with regard to parking provision and refuse and cycle storage facilities, these matters are outweighed by the significant harm I have found to the living conditions of occupiers with regard to inadequate internal living space and external amenity space. Added to this harm is the resulting harm to the setting (and significance) of the listed building.

45. For all the above reasons the appeal on ground (a) fails.

Appeal on ground (f)

46. An appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve the purpose of the notice. The appellant argues that requirements 5.3 and 5.5 are excessive.

47. The purposes of an enforcement notice are set out in section 173 of the Act. They are either to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). Since the notice requires the mixed use of the land to completely cease and all vehicles, signage, and fixtures and fittings associated with the residential use to be removed, the purpose is clearly to remedy the breach.

48. Long established case law sets out that an enforcement notice directed at a material change of use may require the removal of works which were integral to and solely for the purpose of facilitating the unauthorised use, even if such works on their own might not constitute development within section 55 of the Act, or might be permitted development, or might be immune from enforcement, so that the land is restored to its condition before the change of use took place.

49. The signage referred to in Section 5.3 does not form part of the alleged breach of planning control at Section 3, which relates only to a material change of use. Thus, the notice was not issued for the purpose of seeking to control a breach of the Advertisement Regulations. Since the signage installed on the site was integral to and solely for the purpose of facilitating the unauthorised use, the requirement to remove it is not excessive.

50. Similarly, notwithstanding that internal "fixtures and fittings" are not development within section 55 of the Act, they were integral to and facilitated the unauthorised residential use. Hence, it is not an excessive requirement to require the removal of such internal works.

51. However, I consider the phrase "fixtures and fittings" in Section 5.5 of the notice is somewhat imprecise. If particular elements are required to be removed it would have been clearer and more reasonable to the appellant if the notice had specified them more precisely. I am also concerned what effect the generality of such a requirement might have on the listed building. However, at the same time, I cannot vary the notice in such a way as to impose more onerous requirements on the appellant.

52. I will therefore vary requirement 5.5 so that it requires within each flat only the removal of the fridges, microwave ovens and the kitchenette, to include the kitchen cupboard storage units, worktops and sinks. That would be more precise. Also, in conjunction with the requirement at Section 5.4, I am satisfied that the breach would be remedied.

53. Therefore the appeal succeeds to the limited extent I have set out above with regard to requirements, and I have varied the notice accordingly.

Appeal on ground (g)

54. The ground of appeal is that the period of time for compliance with the notice falls short of what should reasonably be allowed.

55. The Council seeks compliance with all of the notice requirements within 28 days. The appellant seeks a period of 7 months for the residential use of the building but does not specify a different period for the storage, display and sale of vehicles.

56. I have not been provided with copies of tenancy agreements and so cannot be sure what periods of tenancy are still left to run for existing occupiers. However, I consider that six months is a more reasonable period of time for tenants to find and secure alternative accommodation. One month in which to carry out the (as varied) requirement 5.5 is also reasonable. Such works, and any necessary contractors for their completion, can be arranged in advance of tenants leaving the property.

57. I agree that the notice should not unduly affect the viability of the business. A reasonable period of time should therefore be allowed in order to secure alternative arrangements. In this regard one month is too short a period of time. I consider that six months would be more reasonable in all the circumstances.

58. Therefore, the appeal on ground (g) succeeds to the extent set out above and I have varied the notice accordingly.

Thomas Shields

INSPECTOR