

Appeal Decision

Site visit made on 5 April 2017

by Kay Sheffield BA(Hons) DipTP MRTPI

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

Decision date: 05.05.2017

Appeal Ref: APP/B4215/Q/16/3165485

36 Ladybarn Crescent, Withington, Manchester, M14 6UU

- The appeal is made under Section 106B of the Town and Country Planning Act 1990 against a refusal to discharge a planning obligation.
 - The appeal is made by Ms Christine Byrne against the decision of Manchester City Council.
 - The development to which the planning obligation relates is a single storey side and rear extension in connection with the use of the house as a single family dwelling.
 - The planning obligation, dated 2 March 2010, was made between the Council of the City of Manchester and Manchester Rent A Home Limited.
 - The application Ref 112279/S106A/2016/S1, dated 27 April 2016, was refused by notice dated 1 July 2016.
 - The application sought to have the planning obligation discharged.
-

Decision

1. The appeal is allowed. The planning obligation, dated 2 March 2010, made between the Council of the City of Manchester and Manchester Rent A Home Limited, no longer serves a useful purpose and is discharged.

Main Issue

2. The main issue is whether or not the planning obligation continues to serve a useful purpose.

Reasons

3. The appeal site is located on Ladybarn Crescent, an unmade and unadopted cul-de-sac in a predominantly residential area which is popular with students. The appeal property is a relatively modern three storey end of terrace which was originally built as a four bedroom house.
4. In 2009 the Council refused retrospective planning permission for the addition of a single storey side and rear extension and the change of use of the property to an eight bed house in multiple occupation (HMO) on the grounds that the additional noise and general activity would be detrimental to the character of the area and the general residential amenity of surrounding properties.
5. However in 2010 the Council granted retrospective planning permission¹ for the extension in connection with the use of the house as a single family dwelling. In order to address the Council's concerns regarding the effect the use of the dwelling as a HMO would have on the character of the area and residential amenity the approved plans indicated a reduction in the number of bedrooms

¹ Application ref: 091212/FH/2009/S1

to six by the removal of internal walls. The permission was also subject to a planning obligation which limited the occupancy of the dwelling to six unrelated persons or a single family living as a single household. It is the discharge of this obligation which is the subject of the appeal.

6. At the time the obligation was entered into the use of a dwelling as a HMO for up to six persons fell within Class C3 of the Town and Country Planning (Use Classes) Order 1987. The purpose of the obligation was to keep the dwelling at all times within the restriction on individual residents living together as a single household contained in the definition of Class C3. The Council considered that the obligation was the most appropriate means of controlling the number of residents and it was necessary, relevant to the development and fair and reasonable.
7. Since the obligation was entered into changes in legislation have restricted Class C3 to dwellings and introduced Class C4 which specifically addresses HMO and allows the use of a dwelling by not more than six residents. The Appellant has confirmed that the property has been occupied as a HMO for many years and it is the intention to continue to rent the property to students.
8. The property was in use as a HMO by six people at the time of the change to the Use Classes Order and that use was in accord with the provisions of the obligation. The use of the property falls within Class C4 as defined in the Use Classes Order, as amended.
9. It is clear from the evidence that the concerns expressed by the Council at the time of the obligation with regard to the effect of the occupation of the dwelling as a HMO by more than six people remain. It is understood that internally the property is configured as an eight bedroom house and the Appellant contends that the property would satisfy HMO licensing regulations for eight persons.
10. However, a HMO with more than six occupants is sui generis and therefore planning permission would be required to increase the number of unrelated persons living at the appeal property from six to eight. Any such application would be determined in accordance with the development plan which contains policies in relation to HMO and the management of areas where they predominate. In the circumstances the obligation serves no useful purpose.
11. It is therefore concluded that the obligation is not necessary to make the development acceptable in planning terms. On this basis the tests in the National Planning Policy Framework are not met.
12. For the reasons given above, and having had regard to all other matters raised, I conclude that the obligation does not serve a useful purpose and the appeal is allowed.

Kay Sheffield

Inspector