
Appeal Decision

Site visit made on 10 July 2017

by Gareth Wildgoose BSc (Hons) MSc MRTPI

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

Decision date: 24 July 2017

Appeal Ref: APP/P2365/W/17/3174397
65 Carroll Crescent, Ormskirk L39 1PY

- 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 Ms Ward against the decision of West Lancashire Borough Council.
 - The application Ref 2017/0033/COU, dated 10 January 2017, was refused by notice dated 27 February 2017.
 - The development proposed is retention of 4 bedroom student HMO.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect on the character and appearance of the area and the living conditions of occupiers of neighbouring properties, with particular regard to noise and disturbance.

Reasons

3. No 65 Carroll Crescent is a two storey end terraced property located on the northern side of the road and close to the junction with Tyrer Road, within an established residential area with a mix of predominantly semi-detached and terraced properties. Pedestrian access to No 65 is via a front entrance door, with an enclosed rear garden accessed via an existing rear conservatory.
4. Based upon the evidence before me, the property has been used as a house in multiple occupation (HMO) since 2012 and currently consists of 4-bedroom student accommodation with shared amenities. The Council made an Article 4 Direction in 2011 which removed permitted development rights to change the use of a single dwelling house to a HMO in specific areas, including those in Carroll Crescent. The Article 4 Direction was made so that the Council could retain control over the number of HMOs in those specific areas of Ormskirk in order to prevent harm arising from over-concentrations. Consequently, the change of use of the property to a HMO in 2012 required planning permission.
5. With regard to the above, Policy RS3 of the West Lancashire Local Plan 2012-2027 (LP), adopted October 2013, relates to the provision of student accommodation. The policy, amongst other things, states that the Council will have regard to the proportion of existing residential properties in use as, or with permission to become, a HMO, either in the street as a whole, or within

the nearest 60 residential properties¹ in the same street, whichever is the smaller. The policy also includes categories with maximum percentages for listed streets. Where proposals for a HMO would result in the percentages specified being exceeded, the policy indicates that they will not be permitted unless there are compelling reasons specific to an individual application why it would be appropriate to allow the limit to be exceeded. The policy indicates that when assessing proposals for changes of use to HMOs, amongst other things, regard will be had towards potential clustering of HMOs, and the effects on nearby properties.

6. Carroll Crescent is not identified specifically by Policy RS3 of the LP as a Category A or B street and therefore, falls under Category C, which includes all other streets in the Ormskirk area covered by the Article 4 Direction on HMOs. Category C streets are restricted to a maximum of 5% of the street to be used as a HMO. The Council's evidence that the proposal would result in 4 of the 76 recorded dwellings (5.26%) having planning permission to be used as a HMO is not in dispute. Consequently, the proposal would conflict with Policy RS3 given that Nos. 35, 38 and 50, which have planning permission for use as HMOs, are within the 60 nearest properties to the site in Carroll Crescent. Nevertheless, taking account of the flexibility afforded by Policy RS3 in terms of 'compelling reasons specific to an individual application' I must assess whether or not exceeding the policy threshold in this particular location and as proposed would result in an unacceptable change to the character of the area or adversely affect the living conditions of nearby residents having regard to Policy GN3 of the LP.
7. I am satisfied, based on the evidence before me, that the use of the premises as a HMO since 2012 was not a wilful breach of planning control, although it remains the responsibility of the owner of the property to ensure that all planning regulations are met. The house has been occupied by 3 or 4 students for periods since 2012 with no evidence that complaints in terms of noise and disturbance have been received during that period. In that regard, the Council also granted planning permission for other HMOs within Carroll Crescent whilst the use of No 65 as a HMO was taking place. Consequently, there is no evidence that the character of the area has been harmfully altered or the living conditions of nearby residents have been adversely affected by the activities associated to the use of the property as a HMO to date.
8. Notwithstanding the above, the current layout of the property as shown on the submitted plans includes 3 bedrooms which would appear to be of sufficient size to accommodate a double bed and, therefore, would be suitable for occupation by more than a single person. On that basis, the potential number of residents in the future of the 4 bedroom HMO accommodation as proposed could be for up to 7 persons at any one time. Although, no extensions to the property are proposed, the existing size of the property could facilitate such an increase in occupation from present levels. The associated increase in activity in terms of comings and goings would reasonably exceed the level associated with the occupation of a single family dwelling as a household with up to 6 related persons resulting in the potential for harmful noise and disturbance for occupiers of neighbouring properties.

¹ Excluding those used for purposes within Use Class C2

9. In reaching the above view, it is reasonable that student accommodation and HMOs would also likely have more adults residing at the property and encourage independent living, with a resultant increase in comings and goings particularly later in evenings when a quieter living environment in residential areas would be expected. Furthermore, there would be a clustering effect with the activity associated with a HMO at No 50 granted planning permission in close proximity on the opposite side of the road. Consequently, the particular circumstances of the proposal would have the potential to harmfully change the character of the area with an adverse effect on the living conditions of occupiers of neighbouring properties through associated noise and disturbance.
10. I have considered whether occupation of the HMO could be controlled by condition to ensure that it would not be increased in the future above a single person for each bedroom (i.e. not more than 4 residents), as to alternatively limit it to Use Class C4² (not more than 6 residents) would not overcome the harm identified. In that regard, a recent appeal decision in another part of the country³ has been drawn to my attention where an Inspector found that a condition restricting the number of occupants would fail the tests of precision and enforceability set out in paragraph 206 of the National Planning Policy Framework (the Framework). The circumstances of that appeal are similar to the proposal before me, in so far as the size and layout of the property had the potential to accommodate a larger number of occupants than the level at which such a restriction would necessarily need to be imposed to mitigate the harm identified. Taking that appeal decision into account, in the particular circumstances of this case, a condition to limit the existing bedrooms to single person occupancy cannot reasonably be imposed and would be too difficult to enforce, based upon the nature of comings and goings in a HMO, to prevent the harm that I have identified.
11. A number of appeal decisions in West Lancashire relating to other HMO proposals have been brought to my attention⁴ with some proposals allowed with planning permission granted subject to conditions and other appeals being dismissed. However, those decisions relate to specific circumstances in terms of location, proportion and percentage of nearby HMOs or relationship to surrounding HMOs and other uses, which were materially different to the proposal before me. Whilst I note that the decisions include examples where conditions have been imposed to limit the number of residents where planning permission is granted, in the absence of full details of those cases I cannot be certain that the circumstances were directly comparable to the proposal. I, therefore, necessarily consider this appeal on its own individual merits.
12. The appellant has indicated that should the appeal be unsuccessful, the property may not be returned to a single family dwelling and could alternatively be used as student accommodation for two persons. That form of accommodation would appear to fall outside of the definition of a HMO to which Policy RS3 of the LP applies based upon its footnote, and therefore, could constitute a fallback position. Nevertheless, such a fallback position is afforded little weight as it would not replicate the potential harm I have identified and

² The Town and Country Planning (Use Classes) Order 1987 (as amended)

³ APP/H2265/W/16/3165882 – 24 May 2017

⁴ APP/P2365/C/16/3155356 – 5 January 2017, APP/P2365/W/16/3162636 – 20 March 2017, APP/P2365/A/14/2216512 – 25 June 2014, APP/P2365/A/14/2225409 – 15 December 2014, APP/P2365/W/15/3132306 – 27 November 2015, APP/ P2365/W/16/3146255 – 7 July 2016

the alternative of under-occupancy of the property in that context would not be a matter which outweighs my concerns.

13. I conclude that the development would have an unacceptable impact upon the character and appearance of the area and the living conditions of occupiers of neighbouring properties, with particular regard to noise and disturbance. The proposal would, therefore, conflict with Policies RS3 and GN3 of the LP, as reasonable levels of amenity for occupiers of neighbouring properties could not be secured. The policies are consistent with the core principle of the Framework which seeks a good standard of amenity for all existing and future occupants of land and buildings, to which there would also be conflict.

Other Matters

14. The appeal site is some distance from the University on the other side of the town. Despite the availability of bus services nearby, it is likely that some students would have cars and use them as a matter of convenience. Off street parking and bin storage areas are currently provided on hardstanding to the front of the property, with the submitted plans indicating the intention to widen the existing vehicular crossing and reduce the height of an existing front hedge. Paving of the majority of the front gardens is not out of character in the street scene and a number of properties nearby have widened vehicular accesses in a similar manner. Whilst, potential intensification of the occupation of the property could increase the demand for on-street parking, I observed little parking pressure along unrestricted sections of Carroll Crescent and surrounding streets where additional on-street parking could be safely accommodated. Consequently, I find no harm to highway safety or local highway conditions. However, such matters are a neutral factor.
15. I have taken into account that benefits would arise from the provision of student accommodation for the nearby University and to local services through expenditure in the area. Furthermore, the appellant affirmed the amount of personal investment in the property and its affordability for students. However, in that respect, although the appellant has indicated that existing demand for student accommodation has had to be recently turned away, there is no substantiated evidence that there is currently a shortage of such accommodation. Furthermore, the proposal would lead to the loss of a property which could otherwise be used as a family dwelling. Consequently, the weight that I can give to the use of the premises as student accommodation is limited. The benefits would not, therefore, outweigh the harm that I have identified in relation to the main issue.

Conclusion

16. For the reasons given above and taking all other matters into consideration, I conclude that this appeal should be dismissed.

Gareth Wildgoose

INSPECTOR