



Appeal Decision

Site visit made on 4 September 2017

by Daniel Hartley BA Hons MTP MBA MRTPI

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

Decision date: 11 September 2017

Appeal Ref: APP/M2515/W/17/3175319

26 Yarborough Road, Lincoln LN1 1HS

- 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 Mr Richard Ramage against the decision of Lincoln City Council.
 - The application Ref 2016/0985/FUL, dated 9 September 2016, was refused by notice dated 17 November 2016.
 - The development proposed is the change of use of a basement and ground floor to a 5 No bed HMO and first floor to a 3 No bed HMO.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Central Lincolnshire Local Plan (CLLP) was adopted in April 2017 and this post-dates the Council's refusal of planning permission. The Council has provided me with copies of relevant CLLP policies relating to the appeal proposal which includes Policies LP 25 (The Historic Environment), LP 26 (Design and Amenity) and LP 37 (Sub-division and multi occupation of dwellings within Lincoln) and I have taken them into account as part of the determination of this appeal. The Council has confirmed that the CLLP supersedes the City of Lincoln Local Plan 1998 (LP). Therefore, the LP policies have no weight in terms of the determination of this appeal.
3. According to the Council, the appeal property is already being used as a five bedroom house in multiple occupation (HMO) and a 3 bedroom HMO.

Main Issue

4. The main issue is the effect the proposal would have on the increase in the number of students living in the area and whether or not this would cause an imbalance in the community.

Reasons

5. The appeal site comprises a two storey semi-detached property positioned on the south west side of Yarborough Road. There is private outside amenity space to the rear of the property.
6. The site is located within the West Parade and Brayford Conservation Area (CA) and according to the appellant was bought in 2006 when it was used as three separate flats. However, the appellant says that in 2011 the property was

altered internally so that the then first floor flat was changed to a 3 bedroom HMO and the rest of the building was used as a 5 bedroom HMO. The appellant says that students rented the property from June 2011 and that the above changes were carried out utilising permitted development rights.

7. The proper means of conclusively establishing the lawful use of the property is through the consideration of an application for a Certificate of Lawful Existing Use or Development (LDC). There appears to have been no application submitted for a LDC and this is what the appellant would need to do in order to have the evidence on the lawful use of the property properly considered. I am not therefore in a position to come to a conclusion on the lawful use of the property. It is therefore necessary for me to determine the planning application on the basis of a proposal to use the building as one five bedroom HMO and one three bedroom HMO.
8. Policy LP37 of the CLLP requires that in the case of an existing dwelling the conversion or change of use to flats or HMOs will be supported where there is an established lack of demand for the single household use of the property concerned. In this case, the Council consider that as the property has not been used as a single family dwelling for some time and as there is no on-site car parking, there is reasonable evidence to suggest that there is a lack of demand for it to be used for such a purpose. I have no reason to disagree with the view reached by the Council on this matter and such matters outweigh the technical conflict (i.e. no marketing of the property for a single dwelling house) with the aforementioned policies.
9. In respect of internal and external spaces, car parking and the effect of the proposal upon the occupiers of neighbouring residential properties (i.e. properties which are also used as flats/HMOs) the Council raises no objection to the proposal. Again, I have no reason to disagree with the views expressed by the Council about these matters and in these respects the proposal would be in accordance with Policy LP37 of the CLLP.
10. Notwithstanding the above, the proposal needs to be also assessed against the City of Lincoln Council Houses in Multiple Occupation Supplementary Planning Document 2017 (SPD). In particular, the SPD supplements policies LP26 (Design and Amenity) and LP37 of the CLLP. It states that it is necessary to manage HMOs as *"for communities in those areas where HMO growth has been most marked, there are increasing concerns about the changing nature of their communities and the impacts of increasing numbers of HMOs. Such concerns include the loss of or imbalance in the community arising from HMO residents often being more transient in nature, loss of services and facilities (schools may be less used, local shops only used at certain times of the year), problems with noise and anti-social behaviour, properties falling into disrepair, the almost permanent presence of 'To Let' boards etc."*
11. In considering whether any HMO proposal would result in an imbalance in the community, the SPD applies a 10% maximum concentration to a defined 100 metre radius and in addition states that three or more HMOs should not be located next to one another. I have not been provided with detailed information in order to fully establish whether the 10% maximum threshold has been breached, but, in any event, the proposal would not accord with the SPD as it would result in three adjacent HMOs (i.e. Nos 26, 28 and 30). However, the SPD indicates that in *"exceptional circumstances"* it may be

acceptable to allow three or more HMOs to be positioned next to one another including circumstances where there is *"an established lack of demand for the single family use of the property concerned"*. Taking into account the current use of the property (albeit I remain uncertain about the actual lawful use of the building), the lack of on-site car parking and the overall size of the building, I agree with the Council that it is unlikely that the property would be sold/rented as a single family dwelling. I consider that there are some exceptional circumstances and in this respect the HMO proposal would accord with the SPD.

12. Taking into account a study completed by Fordham Research Ltd (FR Study) into 'The Impact of student housing on parts of the City of Lincoln' the SPD states that *"in cases where planning permission is required for the development of HMOs, section 106 agreements may be used to prevent properties being occupied by students. To date, these agreements have only been used in Carholme ward to prevent new households being occupied by students in the interests of maintaining a balance and mix of tenure types within that ward, which has previously been identified as having a large proportion of a certain type of property"*. At planning application stage, the appellant was invited to enter into a Section 106 agreement which would prohibit use of the HMO accommodation by students. However, the appellant declined to enter into such an agreement and in essence this forms the basis of the Council's refusal of planning permission.
13. The appeal site falls within the Carholme ward. The Council's evidence suggests a consistent approach to requiring the completion of Section 106 agreements which restrict student occupancy of HMO properties in the ward. Indeed, the Council has referred me to the completion of Section 106 agreements for Nos 24, 28, 73, 75 Yarborough Road and for new development approved between Nos 63 and 73 Yarborough Road.
14. I acknowledge that the appellant has indicated that the property has already been used for some time as a student HMO. However, I have not been provided with a LDC or any planning permission which would indicate that any such use was lawful. I have also taken into account appeal reference APP/M215/W/16/3150573 relating to No 36 Yarborough Road which was for the change of use of a dwelling to a 7 bedroom HMO. Whilst this appeal was allowed, it does not appear that the SPD was a relevant material planning consideration at this time. Furthermore, and, in any event, in allowing this appeal the Inspector took into account a number of *"unique locational circumstances"* including the fact that the neighbouring properties were used by students and as the terrace block was *"relatively isolated from more traditional streets"*.
15. The appeal building would be positioned in an area where student use of properties is restricted by means of Section 106 agreements. In this sense, the appeal proposal is not directly comparable with the development at 36 Yarborough Road. It is clear from reading the aforementioned appeal decision that there are some properties in the immediate area that are used by students. If the subject appeal were to be allowed it would undermine the Council's efforts to seek to address the identified imbalance in the ward/area where there is a high concentration of HMOs in student use. Indeed, the evidence from the FR Study has shown that the increasing density of students in the locality has caused a serious imbalance in both the composition of the local community and the housing market.

16. I accept that the FR Study is now of some age, but it has nonetheless been used to inform the very recently updated SPD. I have not been provided with any evidence to indicate that matters have changed significantly in respect of the identified imbalance and on this basis I afford it substantial weight.
17. On the evidence that is before me, I conclude that the proposal does accord with the requirements of Policy 59 of the LP and Policy LP37 of the CLLP in so far that material harm would not be caused to the living conditions of the occupiers of surrounding residential properties (or the host property) and as car parking and internal/external spaces are adequate for the proposed use. Cycle storage is a matter which would be capable of being addressed by planning condition.
18. Notwithstanding the above, the proposal would conflict with the requirements of the SPD in so far that it would result in three HMOs being positioned in a row and hence this would amount to an over concentration of such uses. Nonetheless, for the reasons outlined above there are some exceptional circumstances which would justify allowing a HMO use in this location. However, without the completion of a planning obligation, which would restrict the use of the property by students, the evidence before me indicates that the proposal would unacceptably exacerbate an imbalance in both the composition of the local community and the housing market. In this regard, the proposal would not accord with the housing and sustainable community aims of the SPD; Policy LP37 of the CLLP and paragraphs 17 and 50 of the National Planning Policy Framework (the Framework). This is a matter of overriding concern.

Other matters

19. The proposal would not cause harm to the character or appearance of the CA. Hence, there would be no conflict with the conservation aims of Policy LP 25 of the CLLP or the Framework. However, this does not alter my overall conclusion on the main issue.
20. I have taken into account the comments made by the occupier of No 28 Ashlin Grove which have been partly addressed in the reasoning above. I do not have any specific evidence to substantiate the claim that there is a direct correlation between the multi-occupancy of buildings in the area and littering.
21. None of the other matters raised alter or outweigh my conclusion on the main issue.

Conclusion

22. For the reasons outlined above, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

Daniel Hartley

INSPECTOR