



Appeal Decision

Site visit made on 18 December 2017

by Geoff Underwood BA(Hons) PGDip(Urb Cons) MRTPI IHBC

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

Decision date: 6 February 2018

Appeal Ref: APP/W0910/W/17/3179882

4 Park Avenue, Barrow-in-Furness, LA13 9BH

- 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 Mathew Johnston against the decision of Barrow-In-Furness Borough Council.
 - The application Ref B20/2016/0882, dated 2 December 2016, was refused by notice dated 7 March 2017.
 - The development proposed is the change of use of existing dwelling to House in Multiple Occupation (HMO) including conversion of loft and comprising 7 No. en-suite bedrooms with shared kitchen and 1No. self-contained studio bedroom with en-suite shower and kitchenette.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue raised by this appeal is the effect the proposed development would have on the living conditions of occupiers of neighbouring residential properties.

Reasons

3. The appeal site is a four bedroom terraced house with a basement set between two similar properties. Park Avenue is lined by dwellings on one side facing the park on the opposite side of the road. I have not been presented with any evidence to suggest that other properties within the terrace, or farther along Park Avenue, are occupied as Houses in Multiple Occupation (HMO) or have been subdivided into flats.
4. The proposal would provide eight bedrooms over four floors with a shared kitchen and living area in the basement. One of the bedrooms would be in the attic and although described by the appellant as a self-contained studio bedroom could in effect be capable of being occupied as a separate flat with its own cooking facilities, albeit that occupiers may well have access to use shared facilities as well. The appellant advises that it is intended that the development would be occupied by eight persons.
5. The site is set between two adjoining houses and this close proximity means that it has a sensitive relationship to its immediate neighbours at 2 and 6 Park Avenue. The front door is immediately adjacent to that of No 2 and the rear

French doors would be next to the party boundary with the outdoor space to the rear of No 6.

6. Taking account of the size of the appeal property, the activity generated by eight persons living independent lives, along with their visitors, and their coming and goings would lead to an level of activity that would be more marked and intensive than that which could reasonably be expected to be associated with a single house, even one occupied by a large family. This would give rise to a level of general noise and disturbance at an intensity that would be disruptive, particularly to the occupiers of Nos 2 and 6. The overall effect would be one which would lead to material harm to the living conditions of those neighbours, a consideration which carries considerable weight against the proposal.
7. On street parking immediately outside the site is designated for permit holders only for certain hours, with unrestricted parking on the other side of the road. There is no substantive evidence to suggest that there would be any severe adverse impact on highway safety, and I note that the Highway Authority reached a similar conclusion in that respect.
8. However, accepting that it cannot be certain what level of car ownership future occupiers may have and this may fluctuate over time, there is the potential for each occupier to have access to a car and this could lead to a considerable number of additional vehicles coming and going. Whilst such an activity would not on its own necessarily be disruptive, considered cumulatively and focused on a single property would lead to significant disturbance as a result of the intensity of use, compounding other effects.
9. These circumstances would also lead to increased competition for spaces in an area which it is reported is presently heavily parked. This would result in increased inconvenience and frustration to occupiers of less densely occupied neighbouring residential properties, adversely affecting their enjoyment. Whilst such effects are unlikely in themselves be so harmful to neighbours' living conditions to warrant dismissing the appeal, they would nevertheless further compound the harm caused by noise and disturbance and this too weighs against the proposal.
10. As the proposal includes the subdivision of part of the property to a flat, the development would not accord with saved Local Plan¹ Policy B6 which only permits such subdivision where there is no detriment to residential amenity, amongst other criteria. I note that this policy does not have any requirements particular to the HMO component of the scheme. The development would not accord with the National Planning Policy Framework's core planning principle of always seeking a good standard of amenity for all existing and future occupants of land and buildings.
11. Emerging Local Plan² Policy H26 sets criteria for the acceptability of proposals for HMOs with over six occupiers and the subdivision of dwellings. The development would not accord with its requirement that there should be no unacceptable impact on the residential amenity of neighbouring properties, especially with respect to noise and other disturbance. However I can only give this emerging policy limited weight having regard to its stage of

¹ Barrow-in-Furness Borough Council Local Plan Review, 2001.

² Barrow Borough local plan – Pre-Submission draft, 2017.

- preparation. The terms of emerging Local Plan Policy H26 would appear to be less pertinent to the consideration of the main issue of this appeal.
12. The appellant advises that he is in the process of converting the property into a six bedroom HMO, with the benefit of permitted development rights, and I noted that internal works were underway when I visited the site. There is therefore a greater than theoretical possibility that such a 'fallback' development would take place and it is one which carries some weight in support of the proposal.
 13. However, as a proportion an additional two rooms is a material and significant increase upon the six rooms in the fallback scheme, including that a separate flat would effectively be created. Even considerate occupiers would generate a degree of noise and disturbance through every day comings and goings. Having regard to the size, situation and configuration of the appeal property, the cumulative effects of those associated with occupiers of eight separate rooms would be clearly perceptible, and obviously and evidently greater than those compared to the occupation of the dwelling as a six person HMO or indeed as a large family home.
 14. I have been referred to a number of appeals and I am conscious that the circumstances, character and likely occupants of each were particular to those cases and these were in different authority areas, with a different development plan policies in force. However, I noted that in an appeal³ in Southampton relating to a terraced house the Inspector found that in respect of a proposed eight bedroom HMO, the effect of two additional occupiers would be perceptible and result in material harm to neighbours' living conditions compared to occupation as a family dwelling or a 'small HMO' (i.e. six persons) and result in the over-intensive use of that site.
 15. The Inspector in appeals⁴ in Liverpool found that a six person HMO in a semi-detached property would be materially less densely occupied than an eight person one and would be likely to give rise to less disturbance than the proposed configuration. Conversely, whilst an appeal⁵ in Nottinghamshire was allowed for accommodation for up to eighteen persons where the Inspector found that increased movement and people would not have a materially adverse effect on living conditions, that related to a much larger twelve bedroom detached property set within a spacious plot.
 16. My decision does not turn on consideration of these other appeals, although I have noted that in their particular circumstances Inspectors have found material differences between an eight room HMO and a six room fallback development, circumstances which concur with my findings. I have also been referred to a number of other appeals by interested parties objecting to the proposal, however I have only been provided with very limited details of these and consequently they have not been considerations I have been able to take into account.
 17. I recognise that the matter is finely balanced but whilst a genuine fallback of a six person HMO exists, this does not provide sufficient justification for the proposal which would result in materially more dense and intensive occupation

³ APP/D1780/C/11/2156569

⁴ APP/M4320/A/11/2147504, etc.

⁵ APP/P3040/W/16/3158449

of the building and lead to material harm to neighbouring occupiers' living conditions.

18. The development would have the benefit of providing additional homes and contribute to the variety of accommodation available, in a location which the appellant advises is relatively close to the town centre and public transport. However, these benefits would be limited in scale and weighing them against the material harm to neighbours' living conditions they would not amount to the convincing justification necessary to warrant allowing the appeal. Given the harm to neighbours' living conditions the proposal would not perform the social or environmental roles the Framework considers development should demonstrate to be considered as sustainable.
19. I am conscious that the Council's decision was different to that which officers' recommended, however elected members are not duty bound to accept their officers' recommendations and this has not led me to an alternative conclusion.

Conclusion

20. For the above reasons, and having had regard to all other matters raised, the development would harm the living conditions of occupiers of neighbouring residential properties, contrary to the development plan and the Framework. The appeal is therefore dismissed.

Geoff Underwood

INSPECTOR