The Planning Inspectorate

Appeal Decision

Site visit made on 24 June 2019

by T A Wheeler BSc (Hons) T&RP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 July 2019

Appeal Ref: APP/M2515/W/19/3226226
9 St Catherine's Grove, Lincoln LN5 8NA

- 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 Justin Leckie against the decision of Lincoln City Council.
- The application Ref 2018/1106/FUL, dated 6 September 2018, was refused by notice dated 16 October 2018.
- The development proposed is: *Article 4 Change of Use from C3 to HMO C4 (retrospective)*.

Decision

1. The appeal is dismissed.

Procedural Matter

2. The description of development in the banner is taken from the application form. The Council amended the description to: change of use from C3 (Dwelling) to C4 (HMO) (Retrospective) which provides clarity, although the reference to the retrospective nature of the proposal is unnecessary.

Main Issues

3. The Central Lincolnshire Local Plan[1] contains Policy LP37 which seeks to manage changes of use from C3 dwellings to C4 houses in multiple occupation (HMOs). In summary, only property which is physically suitable for conversion should be permitted, and only where it will not lead to, or increase, an overconcentration of HMO use in an area.

4. The policy is supported by a supplementary planning document[2] (the SPD) which expands on the issues where such development is proposed. Amongst other things, the threshold above which overconcentration is considered to have occurred is defined as 10% of the properties within a 100m radius of the application site. Above that level problems can arise through an overconcentration of such uses. There is also a criterion which relates to avoiding smaller concentrations which would result in 3 HMOs adjacent to each other in a street.

5. The SPD says that applications may be supported where there is evidence of lack of demand for single family use of the property concerned. This provides a possible exception to the 10% threshold for proposals which would lead to or

[1] Adopted April 2017
[2] City of Lincoln Council – Houses in Multiple Occupation Supplementary Panning Document - Updated January 2018

increase overconcentration, where the owner of the property is simply unable to sell to a buyer who wishes to occupy the dwelling as a family residence.

6. In light of the above, the main issues are:

   - the effect of the use of the property as a HMO on the character of the area and the living conditions of residents in the locality; and

   - whether the proposal should engage any exception to the limitations in the development plan and associated supplementary guidance to HMO use, and if so what weight that should be given in determining the appeal.

Reasons

The character of the area and living conditions

7. The appeal property is located in a street comprised of a mix of two storey and three storey terrace housing, around 2km south of the City centre. The properties are traditional in form, brick built with slate roofs, and part of a designated conservation area. St Catherine's Grove links with the busy Newark Road, and is not subject to a residents parking scheme.

8. The Council does not argue that the property is physically unsuitable for use as a HMO. Based on the information provided, the property is currently not fully occupied but is let to between 3 and 4 tenants and is therefore a functioning, if not registered, HMO. The proposal would result in the 10% figure being exceeded, but not the creation of 3 HMOs adjacent to one another. The planning officer report states that at the time of the application, nos 2,4, 7, 13,16 and 19 St Catherine's Grove were registered as HMOs, in relatively close proximity to no 9.

9. In response to the planning application, a number of representations were received opposing the proposal. Many of these commented on the general disruption to the area caused by occupiers of the existing HMOs, parking problems, and the resultant loss of community cohesion. In response to the appeal, I have received 2 further representations raising similar points. One of these is from the occupiers of no 11 who say that if the appeal is allowed their property will be bounded on both sides by HMOs, which they consider is likely to have a severe effect on their living standards.

10. It is not inevitable that all HMOs will give rise to problems of anti-social behaviour, and from my reading of the representations I cannot see specific complaints resulting from the current occupancy of no 9. However, there will inevitably be some cumulative effects from the addition of an approved HMO within an area where there is some existing concentration, which will detract from both the character of the area and the living conditions of settled residents. Such effects could include increased levels of noise and disturbance, different patterns of comings and goings from properties, and loss of community identity from the more transient nature of the HMO residents. Whilst the current level of activity at the property does not seem to be causing such problems, I have no good reason to find that this would not be the case in the future.

11. Therefore, on the first main issue, the effect on the character of the area and the living conditions of residents in the locality, I conclude that it is likely that there would be some harmful effects, were the property to be used as a

registered HMO. There would be conflict with Policy LP37 of the local plan, the SPD and the Framework which seek protect local character and ensure that development does not harm the living standards of existing or future users.

The development plan and supplementary guidance

12. The parties dispute whether there is a lack of demand for single family use of the property. The planning officer report states that the attempts to market the property indicate only a lack of demand to convert an existing HMO back to a single family dwelling, rather than lack of demand for the latter. There is some evidence that other properties nearby have relatively recently been sold as single dwellings.

13. Conversely, the appellant says they have done what has been asked under the SPD and have been unable to sell the property when marketed as a single family dwelling, at a realistic asking price, for a period well in excess of 6 months.

14. Part of the reason why attempts to market the property as a single family dwelling over 15 months have failed may relate to the existing state of the property, which is that of a HMO. Were the property to be purchased as a single family dwelling, significant work would be required to bring it back into that use, for example removing the en suite from the living room and the kitchen at second floor.

15. However, that is the current position and I give weight to the fact that the appellant has been unable to sell the property over a marketing period well in excess of 6 months as suggested in the SPD.

16. The Council does not argue that the marketing exercise was flawed in terms of the original and revised asking prices, or the fact that the property was offered as a single family dwelling. The SPD acknowledges that in some cases applications may be accompanied by evidence both of marketing and that the property has previously been used as a HMO, as is the case here.

17. I therefore find that the proposal should engage the potential exemption provided by the SPD and that is a material consideration in favour of the proposal.

Planning Balance and Conclusion

18. The Framework is clear that the development plan is the starting point for decision taking and if there is conflict with an up to date development plan, permission should usually not be granted.

19. The Council's local plan policy and supplementary guidance aim to manage the extent of HMO uses and reduce the overall effect on communities. It is likely that where concentrations of such uses occur there will be some potential effect on living conditions, and an increase in the number of such uses will, to some extent, add to the level of impact on the more settled community.

20. In this case, the proposal does not comply with Policy LP37 of the development plan due to its location within an area of overconcentration and the potential for cumulative adverse effects on the character of the area and living conditions of residents near the property.

21. However, the guidance in the SPD has been met in that the property has been subject to appropriate marketing, and little if any demand found for the use of the property as a single family dwelling.

22. I have therefore balanced the potential exception to policy provided by the SPD as a material consideration against the terms of Policy LP37. I give the conflict with the development plan very significant weight in my decision and therefore, for the reasons given, find that the appeal should not be allowed.

23. The appeal is therefore dismissed.

Tim Wheeler

INSPECTOR