
Appeal Decision

Site visit made on 19 November 2019

by Janet Wilson BA (Hons) BTP MRTPI DMS

an Inspector appointed by the Secretary of State

Decision date: 5th December 2019

Appeal Ref: APP/B0230/W/19/3236024

University Hall, University of Luton, 71 Park Street, Luton LU1 3HW

- 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 J O'Grady on behalf of I-Occupy Ltd against the decision of Luton Council.
 - The application Ref 18/01751/COU, dated 16 November 2018, was refused by notice dated 28 February 2019.
 - The development proposed is described as Change of use from student accommodation to 80-bedroom house in multiple occupation (Sui Generis).
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by I-Occupy Ltd against Luton Council. This application is the subject of a separate Decision.

Preliminary Matters

3. Like the parties, I shall refer to a 'house in multiple occupation' by the acronym 'HMO'.
4. Whilst the building was described as currently vacant this is no longer the case with the appellants confirming its use for student accommodation from September 2019. I have therefore removed the term 'currently vacant' from the heading above as it more accurately reflects the current circumstances.

Main Issues

5. The main issues are:
 - a) whether the development would accord with local and national policy with regard to housing mix;
 - b) the effect of the development on the character of the area with regard to noise, crime and anti-social behaviour;
 - c) the effect on the living conditions of future occupiers of the appeal site with regard to outdoor amenity space.

Reasons

Development Plan

6. The starting point for any planning decision is Section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires decisions to be made in accordance with the development plan unless material considerations indicate otherwise. Policy LLP15 of the Luton Local Plan¹ (2017) (Local Plan) requires new housing development to achieve a mix of different sizes, types and tenures in order to meet the housing needs of the Luton Housing Market Area informed by the latest Strategic Housing Market Assessment (SMHA) (2015).
7. The most recent Strategic Housing Land Availability Assessment (SHLAA) (2018) indicates the profile of homes required according to local need. The mix and size of homes required indicates that the need for single bedroom accommodation is low (420 units) whereas the greatest need is for three bedroomed accommodation (10,910 units). Data also demonstrates that there has been historic over delivery of small units (2,039) compared to only 294 three bed units in the same period².
8. The conversion of the building from student accommodation to an 80 bed HMO would not address the area of greatest need in the area and would result in an even greater imbalance of provision. Consequently, the proposal would compromise the delivery of units which would address the identified need in the area.
9. The appellants argue that the scheme facilitates the re-use of an existing building suggesting that the new use is better suited. Additionally, they say that the building would not be suitable for family apartments as the site is constrained by the lack of garden space for families. However, the building is now in use for its intended purpose and there is extensive investment ongoing in the area around the site involving the University.
10. The proposal would result in the loss of student accommodation within an area designated as part of the University Campus. Whilst I do not have any evidence to suggest that the provision of student accommodation within this area is critically over or under provided for; equally I have no evidence that the appeal site would be unable or unlikely to continue to serve the authorised use. Even so, Policy LLP15 seeks to ensure a mix of different housing sizes, types and tenures in order to achieve balanced communities and this proposal would not contribute to that aim when considering the profile of the established local need.
11. As a result, the provision of 80 HMO rooms on a single site would conflict with Policy LLP15 of the Local Plan and to the aims of the Framework; These policies seek to ensure that the mix of housing units is informed by local need as identified in the SHMA.

Character

12. Legislation restricts the creation of HMO properties above a specified size (currently not more than six). This does not rule out larger HMOs which must

¹ The Local Luton Plan 2011 – 2031 Planning and Economic Growth Place and Infrastructure (2017) (Local Plan)

² Between 2011/12 and 2017/18

be considered on their individual merits. Nonetheless this appeal proposal is of a significantly greater scale (80 bedrooms) and the concentration of such a use inevitably has an impact on the character of the site. Policy LLP17 of the Local Plan sets criteria for the subdivision of existing buildings to HMOs with reference to the cumulative impact of the proposal. Such impacts include operational and management requirements and their effect on the character of the area.

13. The building is on an edge of town centre site with offices, a Salvation Army building, and car park flyover to three of the four sides. On the fourth, separated by the main road, is a row of commercial buildings including retail units, a sandwich shop and a public house. These appear to have flat accommodation above.
14. The change from the occupation of shared student flats to the same accommodation occupied by unrelated individuals with different lifestyles, occupations and work patterns is, in my view, a material one. Any commonality associated with student living would be removed; the management of the accommodation would differ; and permanent residence rather than temporary occupation would be involved. All these factors would contribute to a different functional use of this building.
15. The Councils' concern is that there would be a greater risk of crime, noise and anti-social behaviour than with student accommodation. Whilst there is no evidence from either party with regard to noise levels it is difficult to see how 80 individuals occupying an HMO would necessarily generate a different noise level to that of 80 students. I have no basis, on the evidence before me, that the level of noise generated would be so substantively different that refusal of permission on the basis of noise levels alone would be justified.
16. In relation to crime and anti-social behaviour, there is no specific evidence relating to the appeal building. Evidence of incidents relating to a 40 bed HMO located around half a mile away is submitted by the Council to support this concern. The information provided is an extract from the police log of incidents at an HMO of around half the size of the appeal proposal and indicates the nature of issues which might arise. In contrast the appellants argue that the alternative site is a unit providing hostel accommodation which caters for the homeless and is completely different in nature to the appeal scheme. Whilst there is no proven link to demonstrate that this appeal site would suffer from the same issues there is equally no evidence that it would not.
17. The appellants' make reference to the provisions of the Framework which support the appeal proposal however no particular aspects on which they seek to rely have been identified. They also highlight the submitted management plan to evidence how the property would function and suggest that the occupiers would be professional individuals utilising this as their primary address they draw the conclusion which would result in a safer living environment. The appellants say that a reputable and experienced team accredited by the Council will manage the HMO, vet prospective residents and manage antisocial behaviour. Even so, whilst they may be regarded by the appellants as laudable goals, they cannot reasonably be the subject of planning conditions which the Council could monitor and enforce if a breach were to occur. Moreover, the management plan does not give any clear steer as to how any planning issues would be secured and there is no evidence of where this

type of management plan has been successfully operated in relation to an HMO of the magnitude proposed here. In any event legitimate planning issues relate to the use rather than the nature of the user/occupier. As such I give the submitted management plan very limited weight in support of the scheme.

18. Taking all the above into account, the concentration of an 80-bedroom HMO would represent an overconcentration of the same type of residential accommodation which would, for the above reasons, have a significant and adverse effect on the character of the area. This would conflict with the aims of Policies LLP1, LLP17 and LLP25 of the Local Plan and the aims of the Framework, in so far as they relate to: ensuring high quality design; promoting a high standard of amenity; local distinctiveness and promoting opportunities for reducing crime and anti-social behaviour.

Living Conditions

19. Policy 3.5 of the Local Plan seeks to ensure new housing is of high-quality design that (amongst other things) has adequately sized rooms and efficient room layouts which are functional and fit for purpose. The Framework seeks high quality design including adequate amenity space.
20. There would be a total of 80 bed spaces comprised from single rooms within 16 separate flats. Each group of five bed sitting rooms would share a kitchen and two shower rooms. The existing configuration of internal accommodation would be unchanged, and the units would be occupied by 80 individuals. There would be no useable space within the flats for relaxation other than the shared kitchens. In my view the significant factor here is the number of separate individuals occupying the building and the nature of that use being on a permanent and ongoing basis. This coupled with the extent and intensity of the use and the availability of space in the building, would contrast starkly with the temporary and transitory nature of the movement of students into and out of a building on a termly (or academic yearly) basis. I consider that this would represent a materially different use.
21. The lack of recreational living space, given the only shared space is the kitchen area, would undermine the suitability of occupation on a permanent basis particularly given the compact nature of the individual bedrooms which amount to around 10 square metres each. The concentration of 80 such units in the same building would further demonstrate the lack of suitability of this configuration of accommodation for residential use of a permanent nature.
22. The quality of internal accommodation would not be mitigated by any useable external amenity space. Whilst there is no specific standard in the Local Plan for amenity space relating to HMOs, that which would be provided amounts to a limited area of gravel with minimal planting adjacent to the roadway and which lacks any degree of privacy or effective separation from adjacent public roads. Even in the absence of a specific standard this would not provide adequate or private amenity space. I found it would be an unpleasant space for occupiers as they would experience an overwhelming sense of being observed whilst using this space immediately adjacent to the road which would not encourage its use and it would also be woefully inadequate to serve the needs of 80 occupiers.
23. The appellants argue that there are a number of recreational areas between 300m to 2.2km of the site and these would provide ample provision within

close proximity to the building. The closeness of these facilities is noted however they are not sufficiently close to mitigate the poor provision on the site particularly when combined with the restricted accommodation within the building.

24. Consequently, the proposal would conflict with Policies LLP1, LLP17 and LLP25 of the Local Plan and the aims of the Framework in so far as they relate to the provision of high quality, locally distinctive healthy places to live. Nor would the scheme provide adequate amenity space for accommodation intended for permanent occupation on the scale proposed.

Other Matters

25. The site is in a central location and is accessible to transport links; there is no dispute between the parties that the minimal provision of parking spaces provided coupled with no provision for cycle parking is a basis on which to resist the scheme. I have no evidence before me which would lead me to disagree.
26. The appellants advise that the building was vacant between 2015 and 2019 due to the age and poor upkeep of the building and had re-opened in September 2019. However, I saw no evidence on my visit that the building was in poor condition albeit this relied on an inspection of the exterior of the building and I noted that maintenance staff were working on site at the time of my visit. There is no suggestion that the HMO use is the only use to which the structure could be put and the fact that the building has been vacant in the past does not diminish my findings in relation to the main issues.
27. The appellants suggest that the case officer and planning committee assessed the application as 80 one bedroomed apartments. The officer report makes clear that the proposal related to 80 single occupancy HMO bedrooms and I have no evidence to demonstrate that 80 one bedroomed flats were referred to during the Committee meeting. Whilst the appellants statement to the planning committee is provided in evidence there is no committee minute or record of the discussion and it does not therefore alter my conclusion on the main issues.
28. The appellants point to an inconsistency in that the housing mix reason for refusal quoted was not used in a similar application for conversion³ at a time when the figures now relied upon by the Council would also have been available to them. In contrast the Council say that the housing mix issue began to be used around the time of the decision on the first application. The policy situation may not have changed, and the precise chronology of the detail is unclear and may point to a measure of inconsistency. However, the interpretation of such policies evolves over time as differing sets of data emerge and decisions need to be taken based on the most up to date information. Taking the issues as a whole and including the more up to date SHLLA data from 2018 it was appropriate for the Council to focus on the housing mix issue.

Planning Balance

29. Notwithstanding my findings on the matter of noise, I find that the development would be harmful to the interests of providing for an appropriate

³ 18/00469/COU dated February 2019

housing mix that meets local needs and that the use would have a material impact on the character of the site. Those harms are not outweighed by the limited benefits of providing for additional low-cost HMO accommodation and there is insufficient justification to reach a decision other than in accordance with the development plan policies.

Conclusion

30. In the light of the above and having considered all other matters the appeal is dismissed.

Janet Wilson

INSPECTOR