
Appeal Decision

Site visit made on 25 August 2020

by S A Schinaia MSc EngD FGS

an Inspector appointed by the Secretary of State

Decision date: 30th November 2020

Appeal Ref: APP/G2625/W/20/3246507
12A Old Palace Road, Norwich NR2 4JF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Fiona Dawe against the decision of Norwich City Council.
 - The application Ref 19/01455/VC, dated 8 October 2019, was refused by notice dated 5 December 2019.
 - The application sought planning permission for a development described as 'A 2 storey rear extension of 4 bedrooms, comprising change of use from class C3 dwelling house to a large house in multiple occupation (HMO) (Sui generis use class) at 12a Old Palace Road Norwich NR2 4JF in accordance with the terms of the application ref 16/01927/F' without complying with a condition attached to planning permission ref 16/01927/F, dated 1 June 2018.
 - The condition in dispute is No 3 which states that: 'the development hereby permitted shall be occupied by not more than 7 residents at any one time'.
 - The reason given for the condition is: "safeguarding the living conditions of neighbouring occupiers and future occupiers of the proposed development".
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Decision

1. The appeal is dismissed.

Procedural Matters and Background

2. The appellant is seeking a variation to condition 3 to increase the occupancy of the appeal property (a house in multiple occupation (HMO)) (Sui Generis use class) from 7 to 8 people.
3. A revised plan¹ has been submitted with the application that proposes to use the front room on the ground floor, marked on the previously approved plans as 'sitting room', as an additional bedroom. I observed that the room is currently being used as a bedroom, with a vacant bedroom located on the first floor due to the existing restriction on the permitted number of residents.

Application for costs

4. An application for costs was made by Fiona Dawe against Norwich City Council. This application is the subject of a separate Decision.

¹ Reference: 16-061 104 F

Main Issue

5. The main issue of the appeal is whether condition 3 meets the tests for planning conditions set out in the National Planning Policy Framework, having particular regard to the effect of the proposal on the living conditions of the existing and future residents of the House in Multiple Occupation (HMO).

Reasons

6. The appeal site is a large semi-detached two-storey house in the centre of Norwich, currently used as a Sui Generis House in Multiple Occupancy (HMO) (Sui Generis HMO). The house has recently undergone works for a large extension at its rear, following the grant of planning permission at appeal². This included a condition to restrict the number of residents of the appeal property to 7 at any one time.
7. The previous Inspector explained that since a Sui Generis HMO has no limit on the number of residents, unlike a Class C4 HMO which is restricted to 6 residents, the condition would be necessary and reasonable in the interests of safeguarding the living conditions of neighbouring occupiers and future occupiers of the proposed development.
8. The appeal property is sited between a building used for religious congregations and a pedestrian pathway. Therefore, in such a context, I am not of the view that there would be any unacceptable impacts on the living conditions of the occupants of neighbouring properties generated by an additional resident in terms of increased noise and activity.
9. With regards to the living conditions of the occupiers of the HMO, Policy DM13 of the Norwich LP states that HMOs should achieve a high standard of amenity and living conditions for existing and future residents, and that the provision of shared amenity space should be satisfactory for use by residents and visitors. Policy DM2 requires, amongst other things, that: developments provide for a high standard of amenity and satisfactory living conditions; residential dwellings are designed to meet the demands of everyday life; provide adequate internal space; and would normally be expected to exceed the City Council's indicative minimum guidelines for internal space standards, as set out in the Internal Space Standards Information that supports Policy DM2.
10. The appellant contends that the house had an original 4 bedrooms and that the approved planning permission at appeal should have been for a total of 8 bedrooms. However, the plans³ approved on appeal show that, the ground floor was designed to function as a communal area, including communal living space and the kitchen room, while the three bedrooms would have been on the first floor. It was on this basis that the previous Inspector found the development acceptable.
11. The appellant has suggested that the previous Inspector would have been aware that the ground floor room was being used as a bedroom from their site visit. However, the approved plans clearly showed that room as being used as a sitting room and, therefore, it is entirely reasonable to assume that the previous Inspector determined the appeal on the basis that the use of the room

² APP/G2625/W/17/3190273

³ 16-061 104B

as a bedroom would no longer continue. I consider that the scheme subject to this appeal is materially different, due to the significant decrease in communal space from that previously permitted and the addition of a further occupant. Furthermore, the previous Inspector provided clear reasoning for imposing the condition, which included the need to safeguard the living conditions of the occupants of the HMO.

12. As set out above, the appellant has utilised the ground floor room as a bedroom rather than a communal sitting room as previously approved. In the revised plan⁴, it is proposed to keep the front ground floor room as a bedroom and to allow the currently vacant first floor bedroom to be used as an 8th bedroom. The use of the front ground floor communal sitting room as a bedroom significantly reduces the communal areas available in the property. I agree with the Council that this increases the strain on the kitchen and dining room. The dining room would have insufficient space to accommodate 8 occupants for eating and recreational purposes when not in their rooms. The appellant has pointed out that the occupants could choose to eat in their rooms. However, I am not of the view that reliance on this provides appropriate living conditions, particularly as some bedrooms are constrained by opening doors.
13. The area marked communal area on the plan includes a fire exit door and, consequently, the adjacent internal area within the stairwell of the extension should be kept clear for fire safety issues and not used as a communal area.
14. Turning to the kitchen, this connects the original building with the extension at the rear of the property and two opposite doors allow both internal access to the extension from the front door and access to the kitchen for the residents living in both the extension and the original building. It therefore, in my view, acts as a thoroughfare.
15. The available space within the kitchen is reduced by the fact that the kitchen is not only the only place in the house to prepare food but also the only internal access between the original house and the bedrooms in the rear extension. Specifically, the space available is constrained by the presence of the two doors, the storage areas, the kitchen facilities, such as the fridges and the necessary space to allow residents to access the room. The available cooking hobs are confined to the northern side of the kitchen, close to a store room located under a stairwell of the front building and, therefore, in my view, would not enable more than one person at a time to cook and store hot food on the available surfaces safely.
16. Whilst I accept each occupant is likely to have a different daily routine, there is still likely to be a pressure to prepare food during particular times such as in the morning and evenings by multiple occupants.
17. Given all of the above, I conclude that the scheme as set out on the revised plan would provide unacceptable living conditions to the existing and future occupants of the appeal property and would not allow a safe use of the kitchen facilities and safe preparation of food. The proposal would therefore be contrary to Policies DM2 and DM13 of the LP. The Council's reason for refusal includes

⁴ 16-061 104 F

reference to Policy DM12 of the LP, but this appears to be of limited relevance to this case.

18. Condition 3 therefore remains necessary in the interests of safeguarding the living conditions of the occupiers of the appeal property. In terms of the other tests for a planning condition, I consider that condition 3 is also relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
19. I accept that the appeal property benefits from a HMO licence granted by the Council for 8 occupants under the Housing Act (2004) and I have had regard to this in coming to the above findings. However, the HMO licence is based on parameters pertaining to the size of rooms and other facilities within houses, as outlined in the Council's Private Sector Housing Amenity Standards (PSHA Standards). Whilst acknowledging the appellant's frustration, these are different considerations to those required by the development plan policies of relevance in this case, as set out above. Rather than being based on factual sizes and the presence of necessary facilities, planning policies require a professional judgement to be made in relation how the layout of the property functions in practice, its usability and whether suitable living conditions would be provided when the accommodation is considered as a whole. The presence of the HMO licence for 8 people does not therefore alter my above findings.
20. The appellant maintains that future occupiers will be aware of the layout of the house prior to signing a lease and is of the view that future residents would choose to have extra communal space rather than kitchen facilities. The appellant also sets out that the provision of one additional bedroom for an occupant would reflect the policy intentions of paragraph 61 of the Framework on delivering a sufficient supply of homes for people with different needs. Whilst this may be the case, such matters do not outweigh the identified conflict with the development plan or provide any justification for providing unacceptable living conditions.
21. Particular concern has been raised that the Council's reason for refusal in terms of the amenity space being inadequate for 8 people, is a different reason than that given when the condition was originally imposed. However, the reason provided by the previous Inspector for imposing condition 3 was in the interests of safeguarding the living conditions of neighbouring occupiers and future occupiers of the proposed development. It is therefore clear that part of the reason for the condition was to safeguard the living conditions of the occupants of the appeal property.

Conclusion

22. For the reasons set out above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

S A Schinaia

INSPECTOR