The Planning Inspectorate

Appeal Decisions

Site visit made on 2 December 2020

by Thomas Shields DipURP MA MRTPI

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

Decision date: 04 January 2021

Appeal A: APP/U2615/C/20/3245492
78 York Road, Great Yarmouth, NR30 2NA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the Act").
- The appeal is made by Mr Olumuyiwa Lateefat Ogunjimi against an enforcement notice issued by the Great Yarmouth Borough Council.
- The enforcement notice was issued on 22 November 2019.
- The breach of planning control as alleged in the notice is without planning permission and within the last 10 years; the material change of use of the property from a C3 Single Dwelling to a C4 House in Multiple Occupation despite the removal of the permitted development rights which would have permitted this change by an Article 4 Direction in 2013 prior to the unauthorised material change of use occurring in 2017.
- The requirements of the notice are to cease the use of the property as a house in multiple occupation.
- The period for compliance with the notice is 12 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) of the Act.

Summary of Decision: The appeal succeeds. Planning permission is granted in the terms set out in the Formal Decision and the enforcement notice is quashed.

Appeal B: APP/U2615/W/20/3245481
78 York Road, Great Yarmouth, NR30 2NA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 ("the Act") against a refusal to grant planning permission.
- The appeal is made by Mr Olumuyiwa Lateefat Ogunjimi against the decision of the Great Yarmouth Borough Council.
- The application Ref. 06/19/0305/CU, dated 20 May 2019, was refused by notice dated 25 October 2019.
- The development proposed is change of use from dwelling to House in Multiple Occupation.

Summary of Decision: The appeal succeeds and planning permission is granted in the terms set out in the Formal Decision.

Preliminary Matters

1. With regard to Appeal B the description of proposed development on the application form submitted to the Council is as described in the banner heading above. It does not refer to a maximum number of residents or bedrooms. Different to that the description used by the Council on the application refusal notice refers to a change of use "from dwelling to 5 bedroom HMO". However, the internal layout plans on which the planning application was made and determined shows 6 bedrooms within the property, one of them being accessible only from within an adjoining bedroom. The supporting statement

submitted with the application refers to the HMO[1] proposal as being for "5 units" for up to 6 residents.

2. Taking account of these descriptions and the parties' evidence as a whole, I shall treat the application proposal as being for a HMO for up to 6 residents. That is also consistent with the description of development in the alleged breach of planning control in Appeal A for which there is a deemed planning application. The use of planning conditions could in any event control the number of bedrooms and residents. As such, neither party are prejudiced by determination of both appeals A and B together on this basis.

Appeal A - ground (a), and Appeal B

Main Issues

3. The main issues in this appeal are firstly; whether the property provides a satisfactory standard of accommodation for its occupiers, and secondly; the effect of the HMO use on the living conditions of occupiers of nearby properties with particular regard to noise and disturbance.

Reasons

Policy background

4. Policy HOU23 of the Great Yarmouth Borough Wide Local Plan (2001) (LP) is relevant to the use of properties as HMOs. Amongst other matters its criteria seek to ensure: (B) that the amenities of the locality would not be significantly adversely affected; (E) that there is no property used as a single unit of family accommodation directly adjoining the proposed development; (F) that there would be no significant detriment to the occupiers of adjoining or neighbouring properties; and (H) that the building is 3 or more storeys high or more than 95sqm floor area.

5. Draft Policy H12 of the emerging Great Yarmouth Local Plan Part 2 would replace LP Policy HOU23. It requires, amongst other matters, that HMO uses support the well-being of their occupants and neighbours and maintain and where practicable enhance the character and amenity of the locality; that the use must not unacceptably harm the amenity of adjoining and nearby residents through visual and/or noise intrusion and/or loss of privacy; and adequate practical bin storage is provided.

6. The general tenets of Policy HOU23, in terms of providing suitable standards of HMO accommodation in appropriate locations and protecting the living conditions of residents and neighbours, also underpins draft Policy H12. However, the requirements of criteria (E) and (H) of Policy HOU23 are not carried though to Policy H12.

7. In comparing the two policies and their objectives towards achieving sustainable development I find that draft Policy H12 is more consistent with the relevant policies of the Framework[2]. Additionally, the draft Local Plan Part 2 is at an advanced stage towards adoption with no unresolved objections to draft Policy H12. Taking account of these factors I attach substantial weight to draft Policy H12 in reaching my decision in accordance with paragraph 48 of the Framework.

[1] House in Multiple Occupation
[2] National Planning Policy Framework (2019)

Whether the property provides a satisfactory standard of accommodation

8. 78 York Road is a 2 storey mid-terraced house with modest front and rear courtyard areas; similar in design to the majority of other properties nearby. It lies within close walking distance to the town centre amenities and public transport routes.

9. During my visit to the appeal site I saw that the layout at ground floor was as shown on the submitted layout plan comprising kitchen, separate living room, hallway, and 2 ensuite bedrooms. At first floor the partition wall and door separating the front middle bedroom from its adjoining bedroom had been completely removed so that both are now amalgamated into one, resulting in 3 ensuite bedrooms to the first floor.

10. The previously enclosed cramped small bedroom at first floor would not provide an acceptable level of privacy or be free from disturbance resulting from movement of people between rooms. However, the since re-worked layout as a 5 bedroom house provides adequate private living space in each bedroom, a generous living room, kitchen, and rear external private space. There is also good access to natural light in all rooms. Having regard to all these factors I find that the property provides a good standard of shared accommodation for 5 residents.

Living conditions

11. The Council is concerned that an intensified residential use of shared facilities and of more time spent in bedrooms would result in noise and disturbance to occupiers of nearby properties including the adjoining dwellinghouse.

12. However, given the size of this house and its ability to accommodate a large single family, I consider in comparison that its use as a HMO for 5 residents would not result in a greatly significant intensification of use within the property, or associated increase in noise levels resulting from normal domestic use of the property, or from comings and goings by occupiers and visitors. Moreover, there is no evidence in the form of complaints or objections from neighbouring properties concerning the HMO use which has operated for some time. Overall, therefore, I find there would be no harmful noise or disturbance to the living conditions of HMO residents or to occupiers of nearby properties.

Conclusion

13. Taking account of all the above matters I find that the development complies with the criteria requirements of LP Policy HOU23, except for Criterion (E) due to its location adjoining a single unit of family accommodation. However, for reasons set out earlier there would be no significant harm to the living conditions of occupiers of nearby properties arising from this factor. Furthermore, there is no similar policy requirement in draft Policy H12 with which I conclude there is no conflict. On balance I conclude there is no reason to withhold planning permission.

Conditions

14. Conditions are required to ensure that the use is operated in accordance with the approved layout plans, subject to there being no more than 5 bedrooms and residents, and that there is adequate provision for bin storage.

Formal Decisions

Appeal A:

15. The appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the material change of use of the property from a C3 Single Dwelling to a C4 House in Multiple Occupation, subject to the conditions set out in Annex A to this Decision.

Appeal B:

16. The appeal is allowed and planning permission is granted for the change of use to a house in multiple occupation in accordance with the terms of the application Ref. 06/19/0305/CU, dated 20 May 2019, and the plans submitted with it, and subject to the same conditions set out at Annex A to this Decision.

Thomas Shields

INSPECTOR

Annex A

Conditions

1) The HMO use hereby permitted shall not operate other than in accordance with layout plan 430-1 Rev A.

2) Notwithstanding the approved layout as shown on layout plan 430-1 Rev A, the partition wall and door separating the first floor front middle bedroom from the adjoining bedroom shall be permanently removed.

3) The HMO shall not be occupied by more than 5 residents.

4) The bin storage area shall be provided and retained in the rear yard of the property unless alternative arrangements are first submitted to and approved in writing by the local planning authority.

End of Conditions.