



Appeal Decision

Site visit made on 16 February 2021

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 February 2021

Appeal Ref: APP/J4423/W/20/3263438

7 Nile Street, Sheffield, South Yorkshire S10 2PN

- 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 Mrs Carol Tyson against the decision of Sheffield City Council.
 - The application Ref 19/03389/COU, dated 28 August 2019, was refused by notice dated 10 November 2020.
 - The application sought planning permission for the use of a dwellinghouse (Use Class C3) as a house in multiple occupation (HIMO)(Use Class C4) for 5 people, without complying with a condition attached to planning permission Ref 10/01518/CHU, dated 3 August 2010.
 - The condition in dispute is No3 which states that: The basement room shall not at any time be used for main living accommodation (i.e. bedroom or living room).
 - The reason given for the condition is: In the interests of amenities of future occupiers.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council's Decision Notice indicates that the application made under s73 of the Act was inappropriate as it would lead to a level of occupation of the dwelling that would exceed that referred to in the description of development of the original permission. However, there is nothing implicit in the proposal or the evidence before me to suggest that it would lead to a conflict with the occupation limit allowed under permission Ref 10/01518/COU. Whilst, I acknowledge that the lifting of the restriction imposed by Condition 3 could result in an opportunity to provide an additional living room or bedroom, it is equally plausible that those uses could be swapped with existing provision. This would be consistent with the appellant's advice dated 10 November 2020 which confirmed that there was no intention to increase the number of occupiers. I find there is no firm ground to conclude that a s73 application was not valid in the circumstances of the case.
3. The site lies within Broomhill Conservation Area (BCA). There is no dispute between the main parties that the development would not preserve or enhance the character and appearance of the BCA. Having considered the proposal and visited the site, I concur with that view.

Background and Main Issue

4. Planning permission was granted for the change of use of the dwelling to a house in multiple occupation for 5 people in 2010 and, according to the

appellant, has been used for that purpose since November 2011. A condition preventing the use of the basement as a habitable room within the HIMO, including its use as an additional bedroom or living room, was imposed. The application for planning permission sought to remove that restriction.

5. The main issue is whether, or not, the basement would provide a suitable standard of living accommodation as a habitable room with particular regard to daylight, outlook, privacy and ventilation.

Reasons

6. At the time of my site inspection, I observed that the basement was served by a single opening window set within a projecting bay to the front of the dwelling. The bay lies a short distance from a stone wall marking the property boundary against the back of the pavement on Nile Street. The area between the window and the boundary wall has been excavated to form a small 'light-well' between adjacent frontage planting areas. Internally, the upper frame of the window opening is set at a similar height to the ceiling and it is located behind a deep sill splaying back inside the bay towards the interior.
7. The orientation of the property is such that little, if any, direct sunlight would reach the basement window. The glazing is significantly smaller in area than suggested by the Council and, when taken with the position close behind the boundary wall, provides for only a low level of natural daylight illumination within the room. Furthermore, the deep internal aperture limits light reaching the floor and the other internal surfaces such that light dispersal within is poor. Although the flanking walls of the lightwell could be angled to splay outwards behind the front wall, as indicated on the submitted plan, this would provide only a limited enhancement to the amount of light reaching the external surface of the window.
8. Although I am not referred to any prescribed lighting limits by the Council, the observed level of natural light was significantly limited to the extent that occupiers would be substantially reliant on artificial lighting throughout the day. I find that the low level of natural lighting would fail to provide a suitable standard of living conditions for habitable room accommodation.
9. I acknowledge that Paragraph 123 of the National Planning Policy Framework (the Framework) seeks to make efficient use of land and advocates that 'a flexible approach should be taken in applying policies or guidance relating to daylight and sunlight which would otherwise inhibit the efficient use of a site as long as the resulting scheme would provide acceptable living standards'. As the use of the site is established, and the appellant has highlighted that it is not intended to increase occupancy within the terms of the development proposal, there is little before me to suggest the efficient use of the site is not being achieved. Furthermore, the limitation within Condition 3 does not restrict the use of the room for purposes other than as main habitable rooms and could therefore contribute to the standard of accommodation in alternative ways.
10. The top of the front boundary wall is shown to be at a similar level to the top of the window opening. The limited area of glazing and close siting behind the wall, results in a restricted outlook that is substantially dominated by the rear of the stone wall and the flanking walls of the light well. Although some views to the upper parts of the buildings across the street and a limited amount of sky can be afforded from parts of the basement room, the outlook is highly

restricted. This would not provide a high standard of living conditions habitable room accommodation.

11. The height of the front wall and position adjacent to the pavement are such that downward views into the room can be readily achieved. However, due to the size of the opening and deep sill, views by passers-by would be limited and fleeting. If so required, this could be mitigated through curtains or blinds to prevent inward views in a similar way to the ground floor bay windows.
12. However, in conjunction with my findings above, any requirement for window covering to protect privacy, even those of limited opaqueness, would inevitably exacerbate the poor level of natural daylight and reduce outlook further. This would contrast with the front ground floor room where the larger windows and ability to screen only the lower part of the windows would retain suitable levels of light and a much broader outlook.
13. The installed window can be opened to provide fresh air ventilation within the room. I note the concerns in relation to the potential quality of the air given the low position and proximity of the window to the nearby roadway, however, there is little evidence before me to demonstrate that this would cause adverse impacts on occupiers of the room. Even if this were the case, it is highly likely that alternative mechanical ventilation could be provided to ensure the applicable standard of ventilation.
14. For the above reasons, I find that the poor level of natural daylight and outlook provided by the basement window would not deliver an appropriate standard of habitable room living accommodation. It would thereby conflict with Policy H5 of the Sheffield Unitary Development Plan [1998] which seeks satisfactory standards of living accommodation.

Other Matters

15. I acknowledge extensive works were undertaken to improve the property to facilitate the HIMO use, and that the appellant is not seeking to change the licence to increase the occupancy of the building; however, these are matters of neutral weight in the circumstances of the case.
16. I also note the frustrations expressed by the appellant in relation to the delays and advice provided by the Council in respect of the appropriate type of application required to allow the use of the basement as a habitable room leading up to this appeal. However, this is not a matter for this appeal, a case I have determined on its own planning merits.

Conclusion

17. Whilst I have found in favour of the appellant in regard to the matters of ventilation and privacy these do not outweigh the harm I have identified in relation to the effects of poor levels of natural daylight and outlook on the living standards of prospective occupiers. I therefore conclude that the removal of Condition 3, which seeks to protect the amenities of intended occupiers living standards, is not justified in the particular circumstances of the case and the appeal should be dismissed.

R Hitchcock

INSPECTOR