



Appeal Decision

Site visit made on 9 February 2021

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 March 2021

Appeal Ref: APP/M4510/C/20/3263830

Land at 64 Clayton Park Square, Newcastle upon Tyne NE2 4DP

- 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 appeal is made by Mr Simon Thorp against an enforcement notice issued by Newcastle-upon-Tyne City Council.
- The enforcement notice was issued on 21 October 2020.
- The breach of planning control as alleged in the notice is Without planning permission, the material change of use of the Property from use as a dwelling house by a single person or by people regarded as forming a single household (Use Class C3) to House in Multiple Occupation with 3-6 unrelated people (Use Class C4).
- The requirements of the notice are (i) Cease the use of the Property as a dwelling house in multiple occupation (Use Class C4).
- The period for compliance with the requirements is Seven Months.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

The appeal on ground (a)

Main Issues

1. The appeal on ground (a) is that planning permission should be granted for the development alleged in the notice. The main issues are the effect of the development on i) the supply of dwellings suitable for single person or family occupation and the character and mix of housing in the area and ii) the living conditions of neighbouring and nearby residents with particular regard to noise disturbance.

Reasons

Background

2. The change of use from a single dwelling (Use Class C3) to a House in Multiple Occupation (HMO) for up to six residents (Use Class C4) is normally permitted development under the terms of Schedule 2 Part 3 Class L of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). This permitted development right was first introduced

through an amendment to the previous version of the GPDO¹, which came into effect on 1 October 2010².

3. It is undisputed that the Council made an Article 4 Direction which came into force on 25 November 2011, the effect of which was to remove this permitted development right in relation to residential properties concentrated within the Jesmond and Heaton areas of the City.
4. The Council's relevant development plan policies are Policy DM23 of the Newcastle upon Tyne Development and Allocations Plan 2015 – 2030 (DAP) and Policies CS9 and CS14 of the Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne 2015 (CSUCP). Collectively these policies seek to maintain a range of house types and sizes; prevent the loss of family housing and the over-concentration of shared accommodation and protect the living conditions of residents including as a result of noise disturbance.
5. Also of relevance is the Council's Supplementary Planning Document: Maintaining Sustainable Communities 2011 (SPD). Policy SC1 states that conversion of properties to HMOs (Use Class C4) will be granted unless, amongst other things, within the Article 4 area it would result in the loss of good quality, spacious, convenient dwellings, suitable for family occupation by reason of amenity and location; there would be harm to the amenity of neighbouring residents; it would lead to an over-concentration of such uses, such that it would damage the character of the area or there would be insufficient provision for refuse and cycle storage.

Family Housing

6. Clayton Park Square is for the most part comprised of linear terraces of two storey dwellings, running in an east-west direction. At its eastern end, the street turns northwards, for a relatively short distance, before meeting the junction with Clayton Road. The appeal site is located within this short, terraced section of the street, a little to the south of Clayton Road.
7. The appellant has provided a plan indicating the current use of properties in nearby parts of Clayton Park Square. This document is broadly consistent with a plan of HMO licensed properties provided by the Council. From this it is undisputed that the neighbouring properties to the appeal site are licensed for HMO use. The Council's licensing records also indicate that HMOs are the dominant use along this same section of the terrace. From my visit it was apparent that the properties forming the nearest parts of the terrace to Clayton Road were in use as a cafe and office respectively. The Council do not suggest that any of the aforementioned licensed HMO properties could potentially be subject to planning enforcement action, which might otherwise cast doubt as to their lawful use status. Beyond the turn in the street, towards the west, there would appear to be more of a mixture of HMOs and owner-occupied property.
8. It is important to consider, in the circumstances, whether the appeal property would remain attractive as a family dwelling. With the neighbouring and nearby properties in the terrace, like the appeal site itself, being HMOs probably targeted at student accommodation, and therefore for occupation by residents independently of one another, this would be likely to give rise to greater overall variation in movement patterns and fewer linked trips, than if

¹ The Town and Country Planning (General Permitted Development) Order 1995.

² The Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2010.

occupation by single persons or families was more prevalent. Similarly HMO use is likely to result in a greater number of visitors associated with the unrelated identities of the occupiers. I conclude that the overall effect would be a relative increase in the numbers of comings and goings, and potentially noise disturbance arising from conversations and vehicle movements, compared to if the properties remained occupied by single households.

9. It seems to me that HMO accommodation strongly characterises the immediate surroundings of the appeal site, such that, for the above reasons, the appeal site would no longer be attractive as family accommodation, nor necessarily to a homeowner / lodger arrangement.
10. It was also evident from my visit that private outdoor amenity space at the appeal site is virtually non-existent, there being no front garden and only a very small patch within the confines of the yard wall to the rear. This compromises the usability of the property for outdoor play and relaxation and is a further reason why I consider that the property would not be an attractive proposition to a family with children. Whilst I note that public open space would be accessible relatively nearby, I am not persuaded that this would be viewed as able to compensate entirely for the convenience of usable outdoor space at the property itself.
11. Whilst the Council has suggested that the property may be of interest to other forms of household within the C3 Use Class, such as a small religious group or a care arrangement for residents with a learning disability, I am not provided with evidence indicating a shortage of such accommodation.
12. The interior of the property is spacious, with each of the bedrooms having en-suite toilet and washing accommodation. It is for this reason unlikely to be attractive for occupation by a single person, though the amount of accommodation would not necessarily be excessive for a single family. From what I experienced during my visit, I do not agree that the position of the adjacent terrace to the east is of such scale and proximity that, together with other extensions, it results in unduly poor natural lighting within the rooms at the rear of the appeal dwelling, or that the property is adversely effected by the noise of traffic using the nearby Central motorway.
13. These considerations do not however overcome the concerns that I have raised above, regarding site specific circumstances, and to which I attach significant weight. I consider, on balance, that the development has not resulted in the loss of a dwelling that would be attractive for occupation by a single person or family.
14. From the evidence before me, including the licensing and Council tax records referred to in the Council's statement of case, it does not seem that the development would result in an over-concentration of similar properties, when considering the wider street as a whole. Indeed the Council states that Clayton Park Square contains a balance of family dwellings and HMO uses.
15. Drawing the above considerations together I conclude that the development does not result in harm to the supply of dwellings suitable for single person or family occupation or to the character and mix of housing in the area. Accordingly I do not find conflict with Policies CS9 and CS14 of the CSUCP or with Policy SC1 of the SPD, insofar as they are concerned with these

objectives. Nor do I find conflict with the objective set out in the National Planning Policy Framework of creating mixed and balanced communities.

Living Conditions

16. As set out above, the neighbouring properties to the appeal site, along with others in the same terrace, are in use or licensed as HMOs. I have concluded above that the appeal property is unlikely to still be an attractive family residence, partly because of concerns about disturbance from lifestyle related activity.
17. I acknowledge the concerns that have been raised by some local residents, who are not living in an HMO arrangement, regarding their experiences of various anti-social behaviour which they attribute to the presence of HMOs in the street. However, the specific location of the appeal site in the street is a key consideration in this case. I consider that because of its grouping with several other HMOs in the immediate vicinity, its position being somewhat removed from where there is a greater concentration of single households, and because those with similar lifestyle traits are more likely to be mutually tolerant of those traits, material harm to living conditions resulting from noise related disturbance attributable to this single additional HMO, would be unlikely.
18. By comparison, the likely difficulty in securing the continued use of the property in the C3 Use Class, and the potential planning consequences that might flow from this, for example by the property being left vacant for a lengthy period, is a more significant factor and one which provides a compelling reason to allow the development.
19. Concerns have been raised about increased parking demand, and therefore inconvenience to residents, as a result of the increased level of occupancy of the property. However I note that the level of and entitlement to on-street parking is controlled by the Council through its residential permitting scheme. I am not therefore persuaded that the development would result in increased levels of disturbance or inconvenience due to increased parking demand.
20. I acknowledge concerns raised with regard to both the fear of and actual criminal behaviour associated with HMO occupiers, and the potential for such properties to be poorly maintained. However it seems to me that these concerns are unsubstantiated with respect to Clayton Park Square in particular. I also acknowledge the potential for change in the make-up of the local population to influence the type of shops and services on offer in the locality. However, as set out above, I do not find that the development in this case would exacerbate any significant imbalance in the local population, so as to risk prejudicing the interests of single household residents in this regard.
21. I conclude that the development would not result in harm to the living conditions of neighbouring and nearby residents with particular regard to noise disturbance. Accordingly there would be compliance with Policies CS14 of the CSUCP, Policy DM23 of the DAP and Policy SC1 of the SPD insofar as they are concerned with safeguarding against such impacts.

Other Matters

22. The appeal site lies within the Brandling Village Conservation Area (CA). The CA, which covers an extensive area, is characterised by verdant terraced residential streets, with buildings that vary in design.

23. In accordance with the Planning (Listed Buildings and Conservation Areas) Act 1990 I have a statutory duty under section 72(1) to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA. The alleged breach of planning control does not include reference to any physical alterations to the external parts of the building, nor is harm to the CA, specifically as a result of the change of use, cited as a reason for the notice being issued. I conclude that the development preserves the character and appearance of the CA.
24. The Council has referred to confirmation being given by the appellant's partner several years ago, at the time of a previous planning application to extend the property, that the use of the property was to continue as a family dwelling. However any such expression of intent at the time cannot in itself be reasonably interpreted as permanently binding on a property owner. It has also been suggested that the appellant is attempting to secure planning permission for change of use through stealth. However the guiding principle is that each planning application must be considered on its own individual merits.

Conditions

25. I have considered the conditions suggested by the Council requiring storage of refuse within the site and the provision of secure cycle parking. In terms of refuse storage, despite the limited availability of external space at the rear of the property, it would appear to be possible to accommodate bin storage there, and I note that the appellant has raised no objection to the imposition of such a condition. I consider the condition would be reasonable in the interests of residential amenity.
26. However the identification of dedicated space within the curtilage of the site for cycle parking is unlikely to be a realistic possibility. Notwithstanding this, the property is relatively close to a range of services and facilities that would be accessible by means other than a private car. The availability of cycle parking provision would not therefore be critical in this case and I consider that it would be unreasonable to refuse planning permission on this basis.

Conclusion

27. For the reasons given above I conclude that the appeal should succeed on ground (a). I shall grant planning permission for the use as described in the notice.

Formal Decision

28. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the material change of use of the Property from use as a dwelling house by a single person or by people regarded as forming a single household (Use Class C3) to House in Multiple Occupation with 3 - 6 unrelated people (Use Class C4) at 64 Clayton Park Square, Newcastle upon Tyne NE2 4DP, as shown on the plan attached to the notice, and subject to the following condition:

- 1) All refuse shall be stored within the site except on the day of refuse collection.

Roy Merrett

INSPECTOR