



Appeal Decision

Site Visit made on 27 July 2021

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 August 2021

Appeal Ref: APP/J0350/W/21/3273875

100B Waterbeach Road, Slough SL1 3JY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Talwinder Singh against the decision of Slough Borough Council.
 - The application Ref P/10430/011, dated 27 October 2020, was approved on 14 January 2021 and planning permission was granted subject to conditions.
 - The development permitted is conversion of 1no dwelling house to form 2no 3 bedroom semi detached dwellings and external alterations.
 - The condition in dispute is No 6 which states that: 'The dwellings hereby permitted shall not be sub-divided or used in multiple occupation without the prior written approval of the Local Planning Authority.'
 - The reason given for the condition is: 'To ensure that the site is developed in accordance with the submitted application and to ensure that the proposed development does not prejudice the amenity of the area, which may occur if the property is sub-divided or used in multiple occupation in accordance with the provisions of Policy H20 of the adopted Local Plan for Slough 2004.'
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Decision

1. The appeal is allowed and the planning permission Ref P/10430/11 for conversion of 1no dwelling house to form 2no 3 bedroom semi detached dwellings and external alterations granted on 14 January 2021 by Slough Borough Council is varied by deleting condition 6 and substituting the following condition:
 - 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order amending, revoking and re-enacting that Order with or without modification), the dwellings hereby permitted shall not be used in multiple occupation, including any use within Class C4 of The Town and Country Planning (Use Classes) Order 1987 (as amended) or such other legislation as may subsequently supersede it.

Procedural Matter

2. In the period since the appeal was submitted, the Government published a revised National Planning Policy Framework 2021 (the Framework). The main parties were given the opportunity to comment on any implications for the appeal of this change, and I have had regard to the representations made.

Background and Main Issue

3. Paragraph 56 of the Framework outlines that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to

planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

4. The appeal has been made pursuant to section 78 of the Town and Country Planning Act 1990 ('the Act') which provides the right to appeal where an application for planning permission is granted subject to conditions. It relates to the appellant's objection to Condition 6 which outlines that the dwellings should not be sub-divided or used in multiple occupation. Section 79 of the Act provides that I may allow or dismiss such an appeal, or reverse or vary any part of the decision of the Local Planning Authority, and I have considered the appeal on that basis.
5. With regard to the above background and the evidence before me, the main issue is whether or not Condition 6 is necessary and reasonable in the interests of the character and appearance of the area and the living conditions of neighbouring occupiers.

Reasons

6. The first part of Condition 6 refers to the sub-division of the permitted dwellings. Such development would normally constitute a material change of use for which an application for planning permission is required. Accordingly, I find that this element of the condition serves no useful planning purpose and is not necessary.
7. The condition also seeks to restrict use of the dwellings in multiple occupation. Under the Town and Country Planning (Use Classes) Order 1987 (as amended), a dwellinghouse falls within Class C3, while a House in Multiple Occupation ('HMO') for between 3 and 6 unrelated individuals falls within Class C4. The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the GPDO') provides that the change of use between these classes would typically be permitted development not requiring planning permission.
8. If not restricted, the exercise of these permitted development rights could allow for change of both dwellings to HMOs and the occupation of the appeal site by up to 12 unrelated individuals. The Council's evidence and representations by an interested party refer to past unauthorised use of the appeal site as flats which resulted in reports of parking issues, noise and disturbance. The unauthorised use is not a matter that is before me to consider as part of this appeal, but it is nevertheless clear against this background that the occupation of the site by multiple households could give rise to effects that would be noticeable to neighbouring occupiers.
9. Moreover, a previous proposal to change the use of 100B Waterbeach Road to a large HMO for up to 9 people was dismissed at appeal¹ where it was concluded that the development would harm the character and appearance of the area and the living conditions of surrounding residents. In support of these conclusions, the appeal Inspector found that:

'The introduction of a large HMO, with the associated intensification of activity this would bring, into what is essentially a suburban location, would represent a form of development that would be uncharacteristic of the surrounding area.'

¹ Appeal ref APP/J0350/W/20/3246017

10. The decision further records that:

'The occupiers of an HMO are likely to lead independent lives from one another. Families occupying a single dwelling, even a large one, are more likely to carry out day to day activities together as a single household. Taking account of the size of the appeal property, the activity generated by nine persons living independent lives, with separate routines, and their attendant comings and goings along with those of their visitors, would be likely to lead to a level of activity that would be more marked and intensive than that which could reasonably be expected to be associated with a single house, even one occupied by a large family. The resulting additional noise from vehicles entering and exiting and manoeuvring into the rear parking spaces would be very noticeable to the occupants of No 100. While the number of occupants could be limited to 9, the disturbance from additional vehicle and pedestrian activities would be likely to be detrimental to the living conditions of the occupiers of No 100.'

11. I accept that the development subject of that appeal does not offer a direct comparison. Be that as it may, the potential use of the site now for 2 Class C4 HMOs could in my view result in a similar, if not greater, level of overall intensification of activity to the large HMO previously considered even when assessed against the higher baseline of 2 single family dwellings. From the evidence before me and my observations at my visit, I find no compelling reason to disagree with the previous Inspector that this activity would be uncharacteristic of the surrounding area. I also have no firm cause to disagree that the activity and consequent noise and disturbance would be detrimental to the quality of life of neighbouring occupiers.
12. The main parties indicate that planning permission previously granted for a pair of semi-detached dwellings on the site² did not include a condition restricting use of the dwellings in multiple occupation. However, that permission was granted some time ago, and I must consider the appeal before me on its own merits and in the context of the development plan and circumstances that apply at the current time.
13. The Framework states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. The Planning Practice Guidance (PPG) further states that conditions restricting the future use of permitted development rights or changes of use may not pass the test of reasonableness or necessity. Nevertheless, given the above and that occupation of the site by up to 9 unrelated individuals has been previously found unacceptable, I find that a restriction on rights to occupy the dwellings as HMOs would in this case be justified and necessary to enable proper consideration of effects on the character and appearance of the area and the living conditions of neighbouring occupiers in order to avoid unacceptable harm being caused.
14. I accept that levels of activity would vary according to the number of individuals, and it is possible that small HMOs could have similar or lesser impacts to 2 single-family dwellings, or use of the existing dwelling as one HMO for 6 people. However, if the appeal were to succeed it would also potentially allow for far greater occupation by up to 12 people. The condition does not prevent use of the dwellings in multiple occupation outright. Instead, it requires

² Application reference P/10430/00

an application for planning permission to be made, at which point any proposal would be assessed according to its merits, taking into account factors such as levels of occupation. The condition does not prevent use of the site as 2 single dwellings, and in light of the above I do not consider the condition to be unreasonable.

15. The condition is clearly relevant to planning and relevant to the development permitted, and I see no reason that it would not be enforceable. The intention that the dwellings may not be used in multiple occupation is plain. However, I am mindful that the PPG advises that the scope of conditions restricting the future use of permitted development rights or changes of use needs to be precisely defined, by reference to the relevant provisions of the GPDO so that it is clear exactly what rights have been limited or withdrawn. I consider that reference to the GPDO should be made within the condition to ensure it is adequately precise. The inclusion of 'without the prior written approval of the Local Planning Authority' within the condition is also ambiguous and insufficiently precise as to what is required, and I have therefore omitted it.
16. Drawing matters together, I am satisfied that the circumstances of this case mean that a condition to restrict use of the dwellings in multiple occupation is reasonable and necessary in the interests of the character and appearance of the area and the living conditions of neighbouring occupiers. These objectives are supported by Policy H20 of The Local Plan for Slough 2004 which includes a requirement that use of properties as HMOs does not result in loss of amenity for adjoining occupiers. However, it is not necessary to specify that the dwellings may not be sub-divided, and I find that the condition should also be amended in the interests of precision in accordance with the tests set out in the Framework and PPG.

Conclusion

17. For the reasons given above, I find that a condition to restrict permitted development rights for use of the dwellings as HMOs is necessary and reasonable, but that the permission should be varied as set out in the formal decision.

J Bowyer

INSPECTOR