



Appeal Decision

Site Visit made on 4 May 2021

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th October 2021

Appeal Ref: APP/A4520/W/20/3265859

61 Ocean Road, South Shields NE33 2JJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Whittaker Mills Investments Limited against South Tyneside Council.
 - The application Ref: ST/0840/20/FUL, is dated 6 October 2020.
 - The development proposed is described as: Change of use of former guest house (use class C1) to 9 bedroom house in multiple occupation (HMO) (sui generis).
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Decision

1. The appeal is allowed, and planning permission is granted for the change of use of former guest house (use class C1) to 9 bedroom house in multiple occupation (HMO) (sui generis) at 61 Ocean Road, South Shields NE33 2JJ in accordance with the terms of the application, Ref ST/0840/20/FUL, dated 6 October 2020, subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by Whittaker Mills Investments Limited against South Tyneside Council. This application is the subject of a separate decision.

Preliminary Matters

3. On 20 July 2021 the Government published a revised version of the National Planning Policy Framework (the Framework). None of the revisions to the Framework are of direct relevance to the principal disputed matters in this appeal. I have determined the appeal with reference to the revised Framework.
4. Although the appeal is made against the failure of the Council to issue a decision on the planning application, in its appeal submissions the Council has set out that, had it been in a position to determine the application, planning permission would have been refused on grounds relating to increased parking demand and the effect of the proposal on fear of crime in the locality. It is also evident from the Council's submissions that the appeal site is within a zone of influence of several European protected sites.

Main Issues

5. The main issues in this appeal are:

- The effect of the proposed development on the safe operation of the highway in the vicinity of the appeal site, with particular regard to car parking;
- The effect of the proposal on the living conditions of nearby residents through fear of crime; and
- The effect of the proposed development on the integrity and relevant features of the Durham Coast Special Area of Conservation, the Northumbria Coast Special Protection Area, and the Northumbria Coast Ramsar Site.

Reasons

Highway safety

6. The appeal building is located on Ocean Road, a main thoroughfare adjacent to South Shields town centre. In the vicinity of the appeal site, Ocean Road is comprised largely of guest houses interspersed with private houses to the north side, where the appeal building is located. To the south side are buildings with commercial premises on the ground floor with some residential accommodation above. The south side of Ocean Road is subject to a no waiting restriction, but on-street parking is provided on the north side of the road in parking bays set obliquely to the main carriageway. To the rear of the appeal building, within the yard area, there is a single garage that is accessed from the rear lane.
7. In the residential streets to the north of Ocean Road, car parking takes place primarily on-street. Off-street public parking is available just to the south of Ocean Road accessed from Dale Street. I observed when I visited the site that whilst the available on-street parking on Ocean Road and the streets to the north was well used, there were spaces available. However, I recognise that this is just a snapshot of the conditions at the time of my visit. No detailed information has been submitted by either party in respect of parking demand in the area. I accept that parking demand will vary at different times of day and at different times of the week. Nonetheless, I am satisfied that what I saw would be reasonably representative of the prevailing parking demand in the surrounding area.
8. The appeal scheme proposes converting the existing building to a nine bedroom house in multiple occupation (HMO). The Council's car parking standards set out in the Council's SPD6 - Parking Standards Supplementary Planning Document 2010 (SPD6), state that for an HMO of the size proposed 2 resident and 2 visitor parking spaces would be required, although as the site is within the identified South Shields town centre this can be reduced by 50%. The standards in SPD6 are expressed as maximum standards rather than minimum standards and paragraph 3.5 recognises that town centre locations demonstrate better accessibility by public transport (especially in South Shields), walking and cycling, than other more peripheral locations. It goes on to say that within South Shields town centre and along the foreshore, developments will normally be permitted to provide only operational parking spaces.

9. The Framework states that maximum car parking standards for residential development can be applied where there is a clear and compelling justification in terms of managing the local road network, or for optimising the density of development in city and town centres that are well served by public transport.
10. The appeal building has historically operated as a guest house offering five bedrooms and there is no evidence that dedicated car parking provision was available at that time. It was also clear that other nearby guest houses also operate without dedicated off street parking provision.
11. I also saw when I visited the site that there are bus stops in the near vicinity on Ocean Road and that the appeal building is within easy walking distance of South Shields town centre and South Shields station on the Tyne and Wear Metro system. Within this context, future occupants of the proposed HMO would not necessarily be dependent on the use of a private vehicle to meet their day to day transport requirements for access to shops, services, leisure, and employment opportunities.
12. That said, occupiers of the proposed development may wish to own a vehicle and keep it near the premises for those trips which are not practical or convenient to make on public transport. I have not been provided with any evidence in respect of car ownership for occupiers of this type of accommodation, however, the Council's car parking standards recognise that this is likely to be low.
13. Notwithstanding that the car parking standards in SPD6 are maximum rather than minimum requirements, there is no compelling evidence before me which would indicate that any additional parking demand that may result from the proposed development could not be accommodated within the existing on-street or public car parking provision.
14. I have noted that the highway Authority have commented that proposal may increase parking stress in the area and that further restriction may be required should the proposal go ahead. However, the Highway Authority have not raised a formal objection to the proposal.
15. The Framework is clear that development should only be prevented on highways grounds if there would be an unacceptable impact on highway safety or the residual cumulative impacts on the road network would be severe. Increased demand for parking can result in highway safety issues through matters such as illegal or careless parking, from vehicles attempting to manoeuvre into or out of spaces of restricted size, and from parked vehicles restricting the available width of carriageway. From what I have read and from my observations when I visited the site, there is nothing that would indicate that there is not sufficient capacity on the local road network to accommodate any additional vehicle movements and trips that would be generated by the development, or that additional parking demand could not be accommodated.
16. SPD6 requires that cycle parking be provided in connection with residential developments and expects that 6 cycle spaces would be required for the size of development proposed. The submitted drawings do not show any cycle parking provision. This notwithstanding, there is a rear yard, a garage, and a shed to the rear yard the property which could be utilised for this purpose and I am satisfied that an appropriate level of cycle parking could be provided. The

precise details of how this could be configured is a matter that could be addressed by a suitably worded condition.

17. I therefore conclude that the proposed development would not cause harm to highway safety in the vicinity of the appeal site having particular regard to car parking provision. It would comply with the relevant requirements of Policy A1 of the South Tyneside Local Development Framework Core Strategy 2007 (the Core Strategy), Policies DM1 and DM4 of the South Tyneside Local Development Framework Development Management Policies 2011 (the DMP), SPD6, and the Framework which, when read together, expect new development to make appropriate provision for car and cycle parking, prioritise public transport use, and provide safe and suitable access for all users.

Fear of crime

18. Core Strategy Policy ST2 expects, amongst other matters, that the need to design out crime and eliminate the fear of crime has been addressed in new developments. DMP Policy DM4 expects proposals for larger HMOs to not adversely impact of residential amenity and the character and nature of the locality, particularly in area of predominantly single household family housing. The framework also seeks to ensure that fear of crime does not undermine the quality of life or community cohesion.
19. The representations received from interested parties indicate that there is a perception of crime and anti-social behaviour in the area, which is attributed the presence of other HMOs nearby and large numbers of HMOs in the surrounding area. I have, however, noted the comments of Northumbria Police which set out that total reported crime in the area is quite low.
20. I have also noted the comments in the Commission on Houses of Multiple Occupation – Final Report 2020, submitted by the Council as part of its evidence, which state that no crime patterns could be associated directly with HMOs as any incident in a street would be recorded to the nearest property address. Whilst I recognise that this is not a planning policy document it, nonetheless, provides evidence in respect of HMO uses in this respect.
21. Although the fear of crime can be a factor in determining a planning application, there must, however, be some reasonable evidential basis for that fear¹.
22. Whilst there is evidence that there is a certain, albeit low, level of reported crime in the area, from the evidence that I have, there is little in the way of a directly identifiable link between the instances of reported crimes and the presence of HMOs.
23. The representations from Northumbria Police refer to incidents from an HMO with no on-site management located on Seafeld Terrace generating more crime and disorder than the guesthouse that it replaced. The appellant has also drawn my attention to two recent enforcement notice appeals at the same property². The Inspector in those cases found that there were a significant number of incidents associated with the previous lawful use of the premises and that it was more than likely that any fear of crime would have existed

¹ West Midlands Probation Committee v Secretary of State for the Environment (1998) 76 P. & C.R. 589

² Appeal references: APP/A4520/C/19/3236273 & APP/A4520/C/19/3236274

before the unauthorised use that formed the subject of the enforcement notices occurred.

24. The representations from the Police in this case set out that there were only 6 recorded crimes over the three years from 2018 to 2020 relating to the block that contains the appeal building. Whilst I accept that the association of crime and antisocial behaviour with an HMO use would undoubtedly add to the perception of nearby residents that further HMO uses would result in further increases, I am also mindful that the Council's Commission on Houses of Multiple Occupation Report identifies that HMOs are occupied by a range of tenants from vulnerable persons in need of support, to those that simply require lower cost accommodation.
25. From the information provided, the appellant is not seeking to provide accommodation to people in need of support. However, I recognise that this could change and that the characteristics of the future occupiers is not a matter that could be readily controlled by way of a condition on a planning permission.
26. The appeal building is located within an area covered by an Article 4 Direction made in 2015 preventing the change of use of dwelling houses to small HMOs. Although not of direct relevance to the appeal proposal, which is for a large HMO as defined by the Town and Country Planning (Use Classes) 1987 (as amended), this is indicative of increasing numbers of HMOs being a cause for concern for the Council. However, what is not clear is the reason behind why the Article 4 Direction was made. From the policy context, and the Council's evidence, the potential loss of single family dwellings houses, which can alter the character and demographic makeup of an area, was the principal driver for this, rather than to specifically address anti-social behaviour or the fear of crime.
27. There is no substantive evidence before me of the number of HMOs in the surrounding area. During my site visit, I walked around the surrounding area, however, it was not possible to accurately discern whether properties were in use as an HMO, nor whether there was a particular concentration of HMOs in the vicinity of the appeal building.
28. Drawing these various strands together, whilst there is evidence of an existing concern in respect of fear of crime in the area, there is little evidence that directly links reported crime to HMO's or that a properly managed HMO results in increased crime. Nor is there any evidence that would indicate that the appeal proposal would result in an excessive concentration of HMOs in the vicinity. Although the appellant has suggested that a management plan for the building is not necessary, such a plan would ensure that the facility would be operated in a manner that minimises the potential for disruption for other nearby residents. A management plan could be secured by way of a planning condition.
29. I therefore conclude that the proposed development would not cause harm to the living conditions of nearby residents through fear of crime. It would not conflict with the relevant requirements of Core Strategy Policy ST2, DMP Policy DM4, or the Framework.

The effect on European Protected sites

30. The proposal is a form of residential development within the 6km zone of influence of the Durham Coast Special Area of Conservation (SAC) and the Northumbria Coast Special Protection Area (SPA) and Ramsar Site. Consequently, consideration must be given under the Habitats Regulations to the potential indirect effects on these sites as a result of additional recreational pressure from new residents.
31. The boundaries of the Durham Coast SAC and the Northumbria Coast SPA/Ramsar overlap at this point. The Durham Coast SAC protects the only example of vegetated sea cliffs on magnesian limestone exposures in the UK. The habitat types supported are highly sensitive to impacts that change the conditions of the site, including nutrient enrichment and direct habitat damage. The SPA/Ramsar Site was designated as the coastal area regularly supports internationally important numbers of purple sandpiper and turnstone. Seabirds are vulnerable to disturbance from human activity and recreational use of the coastline, and their range is not restricted to within the boundaries of the designated areas.
32. As part of the preparation of South Tyneside Council's new local plan, a Habitats Regulations Assessment (HRA) was carried out which identified a potential increased risk to these sites as a result of increased use of the coastal area by occupiers of new housing development close to the coast. Following this a mitigation strategy was established through the South Tyneside Interim Supplementary Planning Document 23: Mitigation Strategy for European Sites (Recreational Pressure from Residential Development) 2018 (SPD23).
33. I have been provided with a copy of the advice issued by Natural England in respect of SPD23. The standing advice sets out that Natural England do not consider it necessary to be consulted individually on each Appropriate Assessment where the agreed strategic solution set out in the SPD is applied.
34. I have also been provided with a copy of an Appropriate Assessment that was carried out by the Council for the proposal, as required by the Habitats Regulations. The Guidance on Habitats Regulations Assessments: Protecting a European Site, issued by the Department for Environment, Food, and Rural Affairs sets out that, in certain circumstances, decision makers can use an HRA carried out by another competent authority. These are: if the decision maker is satisfied that since that HRA was carried out there has been no new information in respect of the designated sites; that the assessment carried out by the Council is relevant, thorough, and correct; that the conclusions are rigorous and robust; and that there is no new case law that changes the way an assessment should be carried out or interpreted. I am satisfied that this is the case in respect of this proposal and have, therefore, used the evidence and conclusions from the Appropriate Assessment carried out by the Council.
35. Taken in isolation, due to its small scale, the appeal proposal would be unlikely to cause any significant effects on the protected sites. However, in combination with other residential development in the area, it would result in increased levels of recreational disturbance in the Durham Coast SAC and the Northumbria Coast SPA and Ramsar Site.
36. Disturbance reduces foraging time for birds and increases energy expenditure because the birds have to spend more time engaging in vigilance and escape

activities. Reduced food intake combined with increased energy expenditure decreases fitness, which in turn increases mortality at the wintering grounds or during migration, or results in birds arriving at their breeding grounds in poorer condition.

37. Disturbance effects on the Durham Coast SAC could lead to the trampling of vegetation. Trampling leads to physical damage to plants, reducing their ability to flower, and also soil compaction and nutrient loss, which can affect the area's ability to support species richness. Nutrient enrichment caused by dog fouling can also affect the natural fauna of the area by changing the mineral content of soils with a naturally low nutrient content and can promote the introduction of invasive species.
38. While no mitigation measures are included as part of the application proposal itself, adverse effects would be avoided due to mitigation secured through South Tyneside Council's Mitigation Strategy for European Sites.
39. The Mitigation Strategy document sets out the Council's strategic approach to mitigating effects due to development pressure arising from residential pressure within 6 kilometres of the site. The SPD does not seek contributions toward implementing the mitigation strategy from small scale developments, such as the appeal proposal, but rather seeks contributions on a tariff basis from larger scale residential developments at a level which is designed to also provide sufficient mitigation to address effects associated with minor residential development proposals.
40. The Appropriate Assessment carried out by the Council concluded that the proposal, in-combination with other plans and projects, will not have an adverse effect on the integrity of the Durham Coast SAC and the Northumbria Coast SPA & Ramsar Site. There is no evidence or information that would cause me to reach a different finding and I, likewise, conclude that the proposal would have no adverse effects.

Other Matters

41. I have had regard to the comments raised by Northumbria Police regarding the room sizes and standard of accommodation that would be provided as well as the size of the shared kitchen and dining room areas. Whilst I share some of these concerns, as it was evident from my internal inspection of the building that some of the proposed bedrooms have very small floor areas or restricted ceiling eights, or both, and the kitchen is a narrow galley type configuration with a constrained floor area, the Council has not raised this point as an issue. I have also not been made aware of any particular space standards that the Council apply to HMOs.
42. This notwithstanding, due to the size of the building and the proposed number of bedrooms, the building would be required to obtain a mandatory licence under the provisions of the Housing Act 2004. In these circumstances it is for the council to determine in deciding whether, or not, to grant a licence if the building is reasonably suitable for occupation by a particular maximum number of households or persons. Although it is separate from the planning process, I am satisfied that the mandatory licencing requirements will secure suitable living conditions for the future occupiers and are the appropriate method to limit the future occupation of the premises if this is required.

43. Whilst some concerns have been raised in connection with storage of refuse bins, from what I saw when I visited the site adequate provision for the storage of bins could be made within the rear yard area.

Conditions

44. I have had regard to the list of conditions suggested by the Council. In order to provide suitable storage for bicycles and to encourage and facilitate the use of alternative modes of transport other than the private car it is necessary to include a condition requiring cycle storage to be accommodated within the curtilage of the building.
45. In order to prevent obstruction of rear lanes and in the interests of the visual appearance of the area it is also necessary to impose a condition requiring refuse bins to be stored within the curtilage of the premises apart from when being presented for collection.
46. In order to ensure that the premises are run and managed in a manner that minimises the potential for disturbance or other adverse effects on existing residents in the area, it is necessary to include a condition that requires a management plan for the premises be submitted for approval and implemented thereafter.
47. The Council has suggested a condition restricting the occupancy of the building. Such a condition would not be practical to enforce under the planning legislation as it would be difficult to determine whether a breach had occurred. The proposal as submitted would require a mandatory licence under the terms of the Housing Act 2004 which would set out the maximum number of households or persons that the building could suitably accommodate. A planning condition that duplicates the requirements of a different regulatory regime does not meet the test of necessity set out in the Framework and the Planning Practice Guidance. Consequently, I have not included this suggested condition.

Conclusion

48. For the above reasons, I conclude that the appeal should be allowed.

John Dowsett

INSPECTOR

Schedule of conditions

1. The development to which this permission relates must be commenced not later than 3 years from the date of this decision.
2. Prior the first use of the development hereby permitted, details shall be submitted to and approved in writing by the Local Planning Authority for the provision of 6 in-curtilage cycle storage spaces for use by both residents and visitors. The approved cycle storage details shall then be provided on site to coincide with the commencement of the hereby approved use and shall be maintained and retained as such thereafter.
3. The development hereby permitted shall not be occupied until a management plan for the operation of the house in multiple occupation has been submitted to, and approved in writing by, the local planning authority. Thereafter the house in multiple occupation shall be operated in accordance with the approved management plan.
4. No refuse and returnable storage containers shall be stored outside the curtilage of the premises at any time other than within 24 hours of its collection.