
Appeal Decision

Site visit made on 27 September 2021

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 October 2021

Appeal Ref: APP/B1415/W/20/3271440

5 Carisbrooke Road, St Leonards-on-Sea, East Sussex TN38 0JS

- 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 Ms Sarah Lloyd against Hastings Borough Council.
 - The application Ref HS/FA/19/00765, is dated 4 October 2019.
 - The development is change of use of single family dwelling house (C3) to house in multiple occupation (HMO)(C4).
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Ms Sarah Lloyd against Hastings Borough Council. This application is the subject of a separate decision.

Procedural Matters

3. The property is already in use as a House in Multiple Occupation (HMO) with 8 bedrooms and therefore I have dealt with the appeal on the basis that planning permission is being sought retrospectively for the change of use.
4. The Council did not issue a decision on the application. However, the officer report indicates that the Council would have refused planning permission had it been in a position to do so. The submitted appeal statement sets out the local planning authority's objections.
5. Subsequent to the appeal being lodged, a revised National Planning Policy Framework was published. The parties have had an opportunity to comment on the implications for the appeal.

Main Issue

6. The main issue in this case is whether the change of use has resulted in the loss of accommodation suitable for single family occupation.

Reasons

7. No 5 Carisbrooke Road is a four-storey Victorian terraced house fronting onto the street behind a shallow yard serving the basement. Carisbrooke Road contains many similar properties, a high proportion of which have been divided into flats.

8. The appeal property is currently in use as an HMO, and has been licensed as such since 2013. The appellant advises that on purchasing the building it was sub-divided into two flats and prior to that was used as a boarding house. However, there is no planning permission for these uses and no Certificate of Lawfulness to demonstrate that the present HMO use is lawful.
9. Policy H2 of the Hastings Planning Strategy (2014) (HPS) seeks to promote an appropriate mix of dwellings types and sizes in the Borough, with an emphasis on increasing the supply of larger and family sized units (3 or more bedrooms). One of the policy objectives is to address local tenure mix and circumstances whether there is a concentration of a particular tenure of housing that would benefit from diversification or greater choice.
10. Policy FA4 of the HPS sets out the Strategy for Central St Leonards. It seeks to achieve a better mix of housing by encouraging the provision of larger dwellings (2 or more bedrooms). The supporting text explains that Central St Leonards has a large proportion of privately rented dwellings and HMOs. The Council wishes to encourage larger family units in this area to ensure a better mix of dwelling sizes and tenure, and help to encourage a more permanent, less transient local population in Central St Leonards.
11. Policy HC1 of the Hastings Local Plan Development Management Plan (2015) (HDMP) states that to support the provision of quality homes and dwelling mix, planning permission will be granted for the conversion of all or part of a dwelling to another use or into multiple dwellings where, amongst other things, the building can no longer be retained in its entirety for single family housing occupancy.
12. The Council states that, as of 8 March 2020, just 8.9% of the properties in Carisbrooke Road were large single family dwellings, with similarly low figures for surrounding roads. This is almost certainly indicative of the fact that many properties have been sub-divided into flats.
13. The appeal building is presently laid out with a bed-sitting room and small kitchen in the basement, together with 7 further bedrooms on the floors above and a shared kitchen and living room at first floor. The property has one main bathroom, with separate toilets and showers on other floors. There is a small rear garden which is accessed directly from the basement and ground floor.
14. The 'existing' plans were drawn up from the appellant's memory but illustrate how the property could be laid out as a single C3 dwellinghouse. These plans show two well-proportioned reception rooms at ground floor, a guest suite in the basement and 5 good sized bedrooms spread across the upper floors. The extensive accommodation would only be suitable for a small number of large families and the limited amenity space is not ideal for households with young children. However, there is no reason why the layout could not function.
15. The appellant refers to an appeal decision for 127 Queens Road¹ where the Inspector concluded that the proposed change of use to an HMO would not result in the loss of accommodation suitable for single family occupation. However, in that particular case unsuccessful attempts had been made to let the property to a single family and letters were supplied from local letting agents setting out

¹ APP/B1415/W/16/3163046

reasons why they would struggle to let the property. Comparable evidence has not been provided in the current appeal. Furthermore, there are differences between the cases in that the Queens Road property fronts onto a busy main road within a mixed commercial/residential area close to the town centre, whereas Carisbrooke Road is a residential street with parking. It is not clear from the information presented whether the Queens Road property lies within the Central St Leonards strategy area where the development plan places a particular focus upon encouraging larger family units. As such, the appeals can be distinguished from one another.

16. It is contended that the appeal property is subjected to high levels of vehicle noise and air pollution, making it unsuitable for occupation by families with children. There is no substantive evidence to support either of these assertions. I have therefore given the arguments limited weight.
17. To conclude, I have given careful consideration to the appellant's submissions but there is no firm evidence to demonstrate that 5 Carisbrooke Road cannot be used as a single family dwelling. The property has not been marketed for sale or rent as a dwellinghouse and there is no information to convince me that such an exercise would be futile. The development plan sets out a clear strategy which seeks to retain buildings in single family occupancy with a particular emphasis on larger dwellings. A decision to retrospectively authorise the change of use of the appeal property to an HMO would conflict with Policies H2 and FA4 of the HPS and Policy HC1 of the HDMP.

Other Matters

18. There is no dispute that the property is capable of functioning as an HMO. The bedrooms are of an adequate size and benefit from good levels of natural light. The communal accommodation is satisfactory and I note that the premises meet the relevant licensing requirements. Moreover, from what I have seen and read, the appellant takes a compassionate approach towards her tenants and works hard to maintain cohesion within the household. This is laudable and refreshing, but it does not persuade me that the appeal should be allowed.
19. I have taken account of the history of the property and the fact that it has not been in single family occupancy for some time. It is unclear why the HMO has been licensed for so long without the breach of planning control coming to light. Be that as it may, there is no dispute that the property has the planning status of a C3 dwellinghouse and my determination of this appeal must take this as the starting point.
20. I note that Policy H4 of the HPS seeks to avoid an over concentration of HMOs in a particular location. The Council has carried out the relevant calculation which indicates that less than 1% of the properties in 100 m radius of the site are HMOs. This is well below the 10% threshold in the policy.

Conclusion

21. Although not an issue raised by the parties, I have considered the rights of the existing tenants under Article 8 of the European Convention on Human Rights. Article 8 affords the right to respect for private and family life. This is a qualified right, whereby interference may be justified in the public interest, but the concept of proportionality is crucial. Dismissing the appeal would interfere with

the tenants' rights under Article 8, since the consequence would be that they would be rendered homeless at some point. However, the interference would be in accordance with the law and in pursuance of a legitimate aim which is the regulation of the use of land in the public interest through the development management process. Given the circumstances overall, I find that dismissal of the appeal is both proportionate and necessary. The protection of the public interest cannot be achieved by means that are less interfering of their rights.

22. The proposal conflicts with the development plan taken as a whole and there are no material considerations of sufficient strength or significance to justify a decision otherwise than in accordance with the development plan.
23. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Robert Parker

INSPECTOR