



Appeal Decision

Site Visit made on 1 November 2021

by Mr R Walker BA HONS DIPTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 November 2021

Appeal Ref: APP/M4510/W/21/3277714

18 Portland Terrace, Newcastle Upon Tyne NE2 1QQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Rajeev Sagar (SSPS NE Ltd) against the decision of Newcastle Upon Tyne City Council.
 - The application Ref 2020/1721/01DET, dated 3 November 2020, was refused by notice dated 19 March 2021.
 - The development proposed is change of use from Office Use (Class E) to 10 Bedroom HMO (Sui Generis), erection of stone pillars, boundary wall and railings, roof light to front, erection of single storey extension including 3 rooflights to rear and installation of 2 rooflights to rear offshoot, 1.8 metre high boundary wall and gates adjoining the back lane, dormer extension and roof light to rear and 5 bicycle racks to rear with associated canopy.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Rajeev Sagar (SSPS NE Ltd) against Newcastle Upon Tyne City Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The description in the banner heading above is taken from the decision notice which accurately reflects the description of development as amended during the course of the planning application.
4. At the time of my site visit, I saw that some works had been undertaken and the property was occupied. However, not all works had begun, including, amongst other things the proposed rear extension. For clarity, I have assessed the proposals based on the plans submitted with the application.

Main Issues

5. The main issues are the effect of the proposals on:
 - the living conditions of the occupiers of neighbouring properties with particular reference to noise and disturbance; and
 - the character of the street and surrounding area, with particular reference to the balance and mix of housing.

Reasons

Living conditions

6. The appeal property is located along a busy road containing a mix of residential, large Houses in Multiple Occupation (HMO's) and commercial premises. The attached properties either side of the host building are split into flats.
7. The potential for noise and disturbance exists from both occupiers of HMO's and from C3 housing. However, the appeal proposal would involve up to 10 occupiers from different households sharing communal areas. This would result in periods of time during which these areas would be subject to intense use. As such there would be significantly greater potential for noise associated with high levels of activity regularly in those communal spaces than, for example, noise levels associated with separate flats in which the main living areas would be dispersed.
8. This would be particularly the case within the first-floor kitchen/living room where, due to its size and combined cooking facilities and living space, is likely to lead to a high level of congregation of occupiers and any guests. At the proposed level of occupation there would be the potential for regular noise travelling through the party walls which would be disturbing to neighbouring occupiers.
9. There are several windows at No 19 Portland Terrace (No 19) that are near to the external yard area at the appeal site, facing either directly or angled toward it. In general terms, the background noise levels to the rear of these properties are lower than the front. This means that the noise effects of external activity within the rear yard area would be more apparent.
10. Given the more enclosed setting of the rear yard and its position away from the busy road to the front, the rear yard area is, in my view, more likely to be the focus of any external amenity space for socialising between the 10 occupiers. At the level of occupation proposed, such activity in such close proximity to the windows at No 19 would be disturbing to neighbouring occupiers.
11. Most objectors to the proposal are not immediate neighbouring residents and I have no details of noise complaints from other HMO's in the street. However, the other HMO's have fewer bedrooms than the proposal before me, with only one other being similar with nine bedrooms.
12. Moreover, the appellant does acknowledge that a noise complaint was received from an occupier of the neighbouring building and concerns have been raised more generally by Northumbria Police. Although not determinative in my assessment, and I do not have substantive details they do, nonetheless, indicate the potential for noise and disturbance effects from such HMO's.
13. Although a Noise Impact Assessment was submitted as part of the application, this focusses on the effects of the existing noise climate on the future occupiers of the HMO rather than the effects of the proposal on neighbouring properties.
14. The appellant is an experienced HMO landlord and whilst I do not doubt the appellant's approach to managing the property and tenants, such management would not be enforceable as part of any planning permission. Moreover, my concerns relate, not to the principle of HMO accommodation, but the number of

occupiers proposed in this particular property and the more general noise and disturbance from 10 occupants which would be difficult to control.

15. In the context of a busy area close to the city, the general day to day activity of the proposed accommodation would be dispersed and not harmful to the living conditions of occupiers elsewhere. However, the absence of harm in this respect does not outweigh my concerns on the effects on the occupiers of immediate neighbouring properties.
16. Drawing the above together, I find that the proposal would have a significantly harmful effect on the occupiers of neighbouring properties with particular reference to noise and disturbance. I therefore find that the proposal would conflict with the requirements of criterion D of Policy SC1 of the Council's Maintaining Sustainable Communities Supplementary Planning Document (SPD).
17. This stipulates, amongst other things, that planning permission for the conversion of properties to HMO's will be granted, unless there would be harm to the amenity of neighbouring residents through the introduction of additional activity at the property which would cause an unacceptable increase in noise and disturbance.

Character and appearance

18. The street has a mixed commercial and residential character and is in an area covered by an Article 4 Direction in respect of HMO's. I'm told that 11 properties in the terrace have been converted to flats, three properties have permission and been converted to HMO's and the remainder are still in office use and I have no reason to dispute these findings. The appellant also refers to several flats which have been let as HMO's at No 16 Portland Terrace. However, I have no firm evidence of any planning consent for such occupation.
19. Although the Council's SPD indicates a high level of HMO's within the ward, I have no substantive evidence of the existing level of HMO's elsewhere in the vicinity. Moreover, I have not been referred to any defined threshold for when a local over concentration occurs in this document or elsewhere.
20. From my observations and the evidence provided, the existing level of HMO's in the street represents a small proportion of the overall buildings. The addition of a further HMO would incrementally increase the number within the street and surrounding area. However, there would still be a small amount of HMO's in the street and it would continue to have a mixed character which would be heavily influenced by the number of offices, the bus depot and C3 housing.
21. I therefore find that the proposal would not harm the character of the street and surrounding area, with particular regard to the balance and mix of housing. I therefore find no conflict with the requirements of criteria H of Policy SC1 of the SPD. This stipulates, amongst other things, that planning permission for the conversion of properties to HMO's will be granted unless the proposal would lead to a level of concentration of such uses that would be damaging to the character of the area.

Other Matters

22. The proposed accommodation would be spacious with large bedrooms and good facilities and the noise mitigation would ensure that future occupiers would

- have acceptable living conditions. Moreover, it is in an accessible location reducing the need for car parking.
23. The design of the proposal, including amongst other things, the dormer window and extension would be of a form, design and material finish that would be compatible with other properties along the street. As such, and having regard to my statutory duties, the proposal would not harm the character and appearance of the South Jesmond Conservation Area.
24. However, the absence of harm in relation to these, and other considerations including highway safety, are neutral matters that weigh neither for nor against the proposal.
25. The proposal would bring the property back into use, retaining the attractive internal staircase and restoring boundary treatments. However, I have no firm details as to any alternative options, including less occupiers, having been considered which may also achieve such objectives and limits the weight I afford these matters.
26. Concerns regarding the determination of the appeal including, amongst other things, matters relating to politics and the motives of objectors, are not issues that I can assess as part of this appeal.

Conclusion

26. I have taken account of all the other matters raised. However, none changes the balance of these findings and the harm I have identified to the living conditions of neighbouring properties with particular reference to noise and disturbance. The development conflicts with the development plan and there are no material considerations that outweigh that conflict. Accordingly, the appeal is dismissed.

Mr R Walker

INSPECTOR