
Appeal Decision

Site visit made on 10 February 2022

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 01 April 2022

Appeal Ref: APP/J4525/C/21/3285767
8 Westbourne Road, Sunderland SR1 3SQ

- 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 John Potts against an enforcement notice issued by Sunderland City Council.
 - The enforcement notice is dated 28 September 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use from a dwelling to use as a house in multiple occupation.
 - The requirements of the notice are: Cease the use as a house in multiple occupation.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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Decision

1. The appeal is dismissed, the deemed planning application is refused, and the enforcement notice is upheld.

The appeal on ground (a) and the deemed planning application

Main Issues

2. The main issues are the effect of the development on:
 - the living conditions of existing and future occupiers; and
 - the provision of House in Multiple Occupation (HMO) accommodation in the surrounding area.

Reasons

Background

3. In 2021, planning permission ref: 21/01358/FUL was sought retrospectively for the change of use of No 8 from a dwelling to an HMO for up to four residents. The application was refused. The enforcement notice that is the subject of the appeal was issued for the same reasons as those given on the decision notice.
4. For the purposes of the discussion below, I note that the numbering of the properties in the vicinity has changed over the years due to previous conversions. As a result, Nos 5, 8 and 9 Westbourne Road run adjacent to

each other in the row, and the previous addresses of No 6 and No 7 Westbourne Road no longer exist.

Living conditions

5. The Council's concerns relate to a first floor bedroom at the appeal site, located at the front of the house. There is no dispute between the parties that the bedroom is served by a single rooflight, with no other windows.
6. In terms of its size, the floor area of the bedroom was taken to be approximately 6.6m² at the time of the planning officer's report on the refused application. The appellant says that subsequently, an error came to light with the measurements. On remeasuring the room, he states that the room actually has a floor area of around 11.3m². An annotated photograph of the room with the dimensions shown is provided at Appendix 7. The Council does not dispute this revised size.
7. Amongst other things, Policy BH1 of the Sunderland City Council Core Strategy and Development Plan 2015-2033 (CS) requires that development should, 'from 1 April 2021, meet national spaces standards as a minimum (for residential)'. The 'Technical housing standards – nationally described space standard' document was produced by the Department for Communities and Local Government in March 2015, and specifically deals with new dwellings.
8. However, because the building was previously a dwelling, the scheme cannot be classed as development for a new dwelling or dwellings. In any event, as the property is leased as furnished accommodation, the nationally described space standards do not apply to the development.
9. For HMOs, the Council's 'Guidance for Landlords on HMO Standards in Sunderland' (Guidance for Landlords) document states that, for a bedroom for one person in a property with a communal lounge, the minimum room size is 6.51sqm. Therefore, the bedroom exceeds this standard, even if it is taken at the smaller measurement cited by the Council.
10. However, as noted above, the bedroom is served by one rooflight. The Guidance for Landlords stipulates that all rooms used for sleeping accommodation must have natural ventilation, natural lighting and an unobstructed outlook. There is no other specific guidance on the nature of the outlook. However, it is necessary to consider the overall quality of the outlook and the experience of the individual occupying that room.
11. The bottom of the window sits at more than 1.5m above the floor level of the room. Therefore, an adult would need to be of at least average height or more in order for the bottom of the window to be at eye level. For anybody sitting down in the room, their view out of the bedroom is significantly restricted, leading to a sense of confinement.
12. The submitted floorplans show that there is a communal lounge on the ground floor. However, this room also has limited outlook, with a single window set right into the corner of the space, looking into the yard. As a result, the occupant of the bedroom in question would not have any living space in the building where they could enjoy a good level of outlook.
13. I accept that the bedroom exceeds the minimum floor area, but it is still relatively small and somewhat cramped with the furniture in place. The lack of

a window therefore leads to an oppressive living environment. If there was sufficiently good outlook from the living area or other parts of the house accessible to that occupant, this might mitigate the restricted outlook from the bedroom.

14. However, given that this is not the case, I conclude that the development unacceptably fails to provide adequate living conditions for the occupant of the bedroom served only by the rooflight. In the absence of any compelling need for HMO accommodation on this site, I find that the development conflicts with CS Policy BH1, insofar as it requires a good standard of amenity for all existing and future occupiers of land and buildings.
15. I have taken into account the circumstances at the neighbouring property at 9 Westbourne Road, where a Certificate of Lawful Development (LDC) was issued in February 2021 for the use of a five bedroom HMO. The appellant contends that the rooflight at the appeal site is larger than that serving the equivalent bedroom at No 9. Be that as it may, an LDC only confirms that a development was lawful on the date of the application. It is not a planning permission, and the planning merits of the case, for example, effect on living conditions, do not fall to be considered. It is therefore not the case that the smaller rooflight was 'approved', as such.
16. I accept that the layout of the property is the same as when it was previously a dwelling. However, the way a single dwelling is occupied is significantly different to the pattern of occupation of an HMO. For example, the room with the rooflight might not have been used as a bedroom at all, and might instead have been a study or a spare room. I also note that Environmental Health have not objected to the development. However, none of these circumstances have led me to a different conclusion on this main issue.
17. I note that the appellant is willing to accept a condition to alter or increase the size of the windows serving the bedroom in question. However, no such scheme has been drawn up, and in any event, any proposed scheme might be materially different to the existing. That being the case, it could not reasonably be regarded as part of the scheme that constitutes the breach of planning control.

Provision of HMO accommodation

18. CS Policy H6 states that development for HMOs should ensure that the proposal would not result in an over concentration of HMOs in the locality.
19. The Council's document entitled 'Homes in Multiple Occupation Supplementary Planning Document' (SPD, December 2020) amplifies the relevant development plan policies and sets out guidance for HMO proposals. In section 5, the SPD states that HMOs will not normally be permitted 'i. Where it would result in any residential property (C3 use) being 'sandwiched' between two HMOs or ii. Where the number of HMO dwellings exceeds 10% of the total number of residential properties, within a radius of 100 metres from the application site.
20. As noted above, No 9 is a five bedroom HMO. No 5 was previously managed by the appellant as an HMO. However, he states that it no longer operates as an HMO and has been let as a family residence since June 2020. This is confirmed in an email of 10 September 2021 from the Council's Environmental

Health team, which also indicates that the HMO licence for that property will be revoked.

21. In these circumstances, if both Nos 5 and 9 were taken to be HMOs, then No 8 would not be subject to the sandwiching effect, were I to allow the appeal, because it would not be a residence in C3 use. Instead, it would be an HMO between two HMOs, which would not be contrary to the policy. If it is taken that No 5 has become a residence in C3 use, then it could only be subject to the sandwich effect if both No 4 and No 8 were in HMO use. However, the Council does not argue that that is the case.
22. I turn then to the second criterion, which is whether the appeal scheme results in more than 10% of the residential properties within 100m of the site being in HMO use. Step 2 of the SPD sets out a methodology for identifying HMOs within a 100m radius and for calculating the concentration. However, the Council have not directly provided the details of the information or the calculations by which they concluded that the unauthorised development would lead to the figure of more than 10% of residential properties in HMO use.
23. The appellant disputes the Council's evidence. In support of his case, he sought further information on the number of HMOs in the area in question. He identified three properties that have planning permission in place for HMO usage from the planning register. He also consulted the Council's HMO public register and found a further five properties licensed as HMOs within the 100m radius. A Freedom of Information (FOI) identified twenty properties within 100m. Although the appellant highlights three addresses that he says are no longer trading as HMOs, he does not offer any independent evidence to corroborate their status.
24. Crucially, however, neither party has disclosed the total number of residential properties they have found within the 100m radius of No 8. In the absence of this key information, it has not been possible for me to assess whether or not the appeal site at No 8 would bring the HMO number to over 10%, were I to allow the appeal.
25. I therefore cannot be certain of the effect of the development on HMO provision in the area with reference to the parameters of CS Policy H6 and the SPD, and am unable to reach a conclusion on this main issue. However, this is not determinative, in view of my conclusion on the first main issue above.

Conclusion

26. For the reasons above, the appeal is dismissed, the deemed planning application is refused, and the enforcement notice is upheld.

Elaine Gray

INSPECTOR