



Appeal Decision

Site visit made on 22 September 2022

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 September 2022

Appeal Ref: APP/J3015/W/22/3299767

44 High Road, Beeston NG9 2JP

- 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 Hallam against the decision of Broxtowe Borough Council.
 - The application Ref 21/00856/FUL, dated 7 October 2021, was approved on 15 December 2021 and planning permission was granted subject to conditions.
 - The development permitted is to construct single storey extension and replace shelter over external stair and change of use from Commercial (Class E) to Class C4 (HMO) for first and second floors.
 - The condition in dispute is No 2 which states that: The hereby permitted development shall provide residential accommodation for a maximum of three people.
 - The reason given for the condition is: To define approved development shall provide residential accommodation for a maximum of three people.
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Decision

1. The appeal is allowed and the planning permission Ref 21/00856/FUL to construct single storey extension and replace shelter over external stair and change of use from Commercial (Class E) to Class C4 (HMO) for first and second floors at 44 High Road, Beeston, NG9 2JP granted on 15 December 2021 by Broxtowe Borough Council, is varied by deleting condition No 2.

Background and Main Issue

2. The appeal property is the first and second floors of a three storey building. There is a commercial use at ground floor, and the first and second floors are used as ancillary space. Planning permission was granted for the change of use of the appeal property from commercial to a Class C4 House in Multiple Occupation (HMO), subject to a number of conditions, including the disputed condition which restricts the number of occupants to three.
3. The reason given for condition 2 is 'to define approved development shall provide residential accommodation for a maximum of three people'. In addition, the Council's appeal statement sets out that the condition is necessary to limit the intensification of the building used as an HMO to ensure that the living conditions of future occupiers and those of nearby properties is protected.
4. Taking the above background into account, the main issue is whether the condition is necessary to protect the living conditions of nearby occupiers and future occupiers.

Reasons

5. The Council has not specifically identified the aspects of living conditions of nearby occupiers that it is concerned with. However, an intensification in the use of the property through its occupation by additional people would have the potential to increase noise and disturbance for occupiers of nearby properties.
6. The property is on one of the main shopping streets in the town centre. In the vicinity of the property, it is pedestrianised and has a range of shops, cafes, restaurants and bars. From the evidence before me and my site visit observations, the properties at 42 and 46 High Road have commercial uses on the ground floor and residential accommodation on the first and second floors. No. 40 appears to be in commercial use. To the immediate rear, where access to the HMO would be gained, is a small parking area for the commercial uses. Further to the rear is a fairly large brick-built building that appears to be a British Telecommunications premise and a supermarket car park beyond. On the opposite side of Acacia Walk where the rear access is taken from is the gable elevation of a commercial building.
7. At the time of my site visit, which I accept is only a snapshot in time, there was regular pedestrian movements along High Road and vehicle movements accessing the supermarket car park to the rear. This resulted in some background noise being experienced.
8. Based on the submitted plans, the Council's HMO property standards¹ and the consultation response of the Council's Private Sector Housing Officer², one of the three bedrooms would be suitable for a co-habiting couple, being larger than 12 square metres. I note that the appellant identifies that bedroom 3 would also exceed the required 12 square metres if the ensuite facility is excluded.
9. I understand the basis for the concerns on this matter. However, I am not persuaded that in relative terms, the proposal would lead to a significant change in the amount of activity from pedestrian comings and goings to/from the property or indeed use of the building, so as to lead to a material increase in noise and disturbance issues for the occupiers of nearby properties. Due to the locational context of the property, and on the evidence before me, the proposal would not lead to any material noise or disturbance effects when considered against the permitted use of the property for up to three persons.
10. The submitted plans illustrate that one of the bedrooms would exceed the minimum bedroom size requirement for two persons and I note the appellant's point about bedroom 3 as set out above. The Council's HMO property standards set out that five people can share one full set of kitchen facilities, which would be provided. The submitted plans indicate that the communal space would be able to accommodate the required facilities and would meet the size requirements in the Council's HMO property standards. The size of the rooms and their layout would therefore be sufficient to accommodate more than three people. Accordingly, I am satisfied that the removal of the disputed condition would not unacceptably reduce the quality of space available for future occupiers.

¹ Broxtowe Borough Council House in Multiple Occupation (HMO) Property Standards, Housing Committee 19 September 2018

² Email dated 27 April 2022

11. A C4 HMO use is limited to a maximum of six occupants. The size of the space available within the property would also restrict the number of occupants through the licensing system operated by the Council. I accept that, depending on the nature of the development and its locational context, there will be cases where it is necessary to limit the maximum number of occupants in an HMO through a planning condition to ensure that suitable living conditions for occupants are provided and/or that the level of occupancy does not cause harm to neighbours' living conditions. However, in this case, I am satisfied that the development, without a condition restricting the number of occupants to three persons, would not harm the living conditions of nearby occupiers or result in unacceptable living conditions for future occupiers.
12. Accordingly, there would be no conflict with the residential amenity requirements of Policies 8 and 10 of the Part 1 Local Plan Aligned Core Strategies adopted 2014, and Policy 17 of the 2019 adopted Part 2 Local Plan 2018 – 2028.

Conclusion

13. For the reasons outlined above, I conclude that condition No 2 is not necessary. Consequently, the appeal should be allowed, and the planning permission is varied by deleting condition No 2.

F Wilkinson

INSPECTOR