



Appeal Decision

Site visit made on 22 November 2022

by N Teasdale BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 December 2022

Appeal Ref: APP/M4510/W/22/3308161

41 Osborne Avenue, Newcastle Upon Tyne NE2 1JS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant full planning permission.
 - The appeal is made by Mr Victor Franco (Batoul Nasr and Victor Manuel Franco Perez) against the decision of Newcastle Upon Tyne City Council.
 - The application Ref 2022/0692/01/DET, dated 24 April 2022, was refused by notice dated 20 June 2022.
 - The development proposed is a change of use from six bedroom, three reception room Use Class C3 residential dwellinghouse across three levels to sui generis House in Multiple Occupation with no more than seven residents.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - The effect of the proposed development on the supply of family housing in the area.
 - The effect of the proposed development on the character of the area.
 - The effect of the proposed development on the living conditions of occupiers of neighbouring properties located along Osborne Avenue with particular reference to No. 42 in relation to noise and disturbance.

Reasons

Family housing

3. Policy CS9 of the Core Strategy and Urban Core Plan seeks to ensure that communities are sustainable for the future and prevents the loss of family homes through subdivision, change of use or redevelopment. Policy SC1 of the Maintaining Sustainable communities Supplementary Planning Document (SPD) specifically relates to Houses in Multiple Occupation (HMO) and amongst other things, resists development where it would result in the loss of a good quality, spacious and convenient dwellings suitable for occupation by a family by reason of its location and level of amenity. Although the SPD is supplementary guidance, it is an adopted document and remains a material consideration in decision making.
4. The appeal site comprises a three-storey terraced property situated along a row of linear terraces fronting onto Osborne Avenue. The site is situated within

- a predominantly residential area within walking distance of day-to-day services/facilities and in a location well served by public transport.
5. The plans submitted demonstrate that the property benefits from spacious living accommodation comprising; kitchen, dining/living space, six bedrooms and two shower rooms. The property has a small forecourt to the front and has access to a small yard to the rear and overall offers good levels of outlook and privacy. Such factors together with the overall accessible location, would provide a suitable place for family occupation either owner-occupied or rental and I note that a family already occupies the property demonstrating its suitability/capability. Whilst the front and rear garden spaces are limited, the rear yard area does provide some outdoor amenity space and is close to other recreational spaces and this would not deter families from living in the property as is the case currently.
 6. Notwithstanding the above, I note the evidence submitted to demonstrate that the property is surrounded by other HMO's and that this property is the last remaining owner-occupied property along this street and streets parallel and thus alleged to be unsuitable for family occupation. However, the evidence put forward has focussed on a narrow area adjacent the appeal site opposed to the wider area of Osborne Avenue as well as a narrow area along a parallel street. Additionally, the evidence shows that a number of the properties identified within the narrow search area comprise 2 bedrooms with 2 tenants including the ground floor of the neighbouring property at No. 42 Osborne Avenue and I have not been convinced that such properties are indeed a HMO. The Appellant's evidence is not conclusive enough to prove this to be the case nor is the fact that the owner of the property lives elsewhere.
 7. I appreciate that it is difficult to ascertain which properties comprise a HMO given some unlicensed properties that are said to be in the area as well as limitations associated with data collection. However, the HMO licencing record which covers all of Osborne Avenue does provide a good insight and demonstrates that there are a number of properties within the wider street that are not licensed as HMO's including the ground floor of neighbouring property No.42 which has also been confirmed to have just two tenants by Council Tax records. On this basis, there is no substantial evidence before me to suggest that the properties without a HMO licence are anything other than a C3 dwellinghouse. Moreover, the Council set out that 48% of the original properties along Osborne Avenue are not licensed as a HMO and despite the licensed HMO's already tipping the balance, there is still a good proportion of C3 uses even taking into account a level of flexibility for unlicensed properties.
 8. At my site visit, I observed the properties and general activity within the area and it was clear that whilst there are indeed many HMO uses, they did not dominate the area as there were also many C3 uses present. Based upon the evidence submitted and my own observations onsite, it is clear that given the overall mix of properties, the presence of HMO's do not make the area nor the property undesirable for a family.
 9. I conclude that the proposed development would result in the unacceptable loss of a family house and would therefore have a detrimental effect on the supply of family housing in the area. It would therefore be contrary to Policy CS9 of the Core Strategy and Urban Core Plan and Policy SC1 of the Council's SPD.

Character

10. The SPD sets out that there is a need to prevent an oversupply in the HMO market, with its associated issues of under investment, poor maintenance and void properties which could all adversely impact a neighbourhood's character. Policy SC1 of the SPD therefore resists development where it would lead to a level of concentration of such uses that would be damaging to the character of the area.
11. Whilst there are indeed many HMO uses in the area as referred to above, they do not dominate the area where there is still a clear residential/C3 feel. Given that the Council have demonstrated that the number of HMO licences within the wider street already account for over half of the properties, the proposed development would further increase the HMO uses on this street, tipping the balance more to the HMO use which would have a detrimental impact on the mix of households in the area and overall character.
12. I conclude that the proposed development would contribute to an over concentration of HMO's in the area to the detriment of the overall character and would therefore be contrary to Policy CS9 of the Core Strategy and Urban Core Plan and Policy SC1 of the Council's SPD.

Living conditions

13. The existing property provides six bedrooms and can already accommodate a high level of occupancy similar to that of a seven bedroomed HMO. However, future occupants would live separately where there would be different comings and goings, less linked trips/visits. The evidence before me demonstrates that there are already a large number of HMO's in the area interspersed with many C3 properties including the ground floor of neighbouring property No.42. As a result, occupiers of neighbouring properties along Osborne Avenue are already likely to experience levels of noise and disturbance associated with this type of accommodation including increased movements, transient residents etc.
14. While I cannot be certain on the activities of future occupiers, evidence from the parties indicate that HMO's, including existing ones, can result in late night activity, comings and goings, taxis, car doors, parties indoors and outdoors and in the alleyway and other anti-social behaviour. The proposed development when viewed in context with the already high number of HMO's in the area would exacerbate the existing situation to a harmful degree and would be particularly adverse for the occupiers of neighbouring property No. 42 whom based on the evidence would have a HMO either side as well as above at first floor level given that this flat has been confirmed by the Council to be a HMO which is not disputed.
15. Although there are legislative controls that exist elsewhere to control noise and disturbance levels, planning policies and decisions should ensure that developments create high standards of amenity for existing and future users as per chapter 12 of the National Planning Policy Framework (Framework).
16. I conclude that the proposed development would harm the living conditions of occupiers of neighbouring properties along Osborne Avenue particularly No. 42 in relation to noise and disturbance. The proposed development would therefore be contrary to Policy CS14 of the Core Strategy and Urban Core Plan, Policies DM23 and DM24 of the Development and Allocations Plan as well as

Policy SC1 of the Council's SPD which together, amongst other things, seek to provide for good levels of amenity for future residents. The proposed development would also be contrary to chapter 12 of the Framework relating to achieving well-designed places.

Other Matters

17. I appreciate that the applicant wishes to use this property in the most effective and efficient way. However, this would not outweigh the harm I have identified.
18. My attention has been drawn to previous appeals and permissions elsewhere including a withdrawn Lawful Development Certificate. Whilst I do not have full details of all applications referred too, there are material differences between the details I do have and the appeal proposals including amongst others, the undisputed evidence that neighbouring properties to the appeal site are licensed for HMO use and dominant presence of other HMO's uses along the same section of the terrace. The previous appeal referred to is not therefore directly comparable.

Conclusion

19. For the reasons given above, I conclude that the proposed development conflicts with the development plan when considered as a whole and there are no material considerations, either individually or in combination that outweighs the identified harm and associated development plan conflict. Therefore, I conclude that the appeal should be dismissed.

N Teasdale

INSPECTOR