
Appeal Decision

Site visit made on 5 January 2023

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 20 March 2023

Appeal Ref: APP/M4510/C/22/3301804

61 Mayfair Road, Newcastle upon Tyne, Tyne and Wear NE2 3DN

- 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 Eleven North East Limited against an enforcement notice issued by Newcastle-upon-Tyne City Council.
 - The enforcement notice is dated 20 May 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the property from use as a dwelling house by a single person or by people regarded as forming a single household (Use Class C3) to a house in multiple occupation for not more than 6 residents (Use Class C4).
 - The requirements of the notice are: Cease the use of the property as a dwelling house in multiple occupation (Class C4).
 - The period for compliance with the requirements is: By 5 August 2022
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be amended by the deletion of the text 'By 5 August 2022' from the period of compliance paragraph and the substitution of it with the text '15 weeks'.
2. The appeal is dismissed, the deemed planning application is refused, and the enforcement notice, as amended, is upheld.

Ground (a)

3. Ground (a) is that planning permission should be granted for the alleged matters.

Main Issues

4. The main issues are the effect of the development on:
 - the provision of family and houses of multiple occupation (HMOs) in the area; and
 - the living conditions of neighbouring residents, with particular reference to noise and disturbance.

Reasons

Background and policy context

5. The appeal site comprises a first floor Tyneside flat in an area that is subject to the provisions of an Article 4 direction made on 25 November 2011. The direction restricts the change of use from Use Class C3 (dwellinghouses) to Use Class C4 (houses in multiple occupation). It was made in response to the particular popularity of the area for student accommodation, due to its proximity to university campuses and the city centre.
6. Previously in May 2021, a planning application, ref: 2021/1006/01/DET was submitted for the change of use from a dwelling in Class C3 use at No 61 to a three bed HMO. This application was refused in July 2021. A further planning application, ref: 2022/0399/01/DET, was submitted in March 2022 for the same proposed change of use and was refused in April 2022.
7. The 'Maintaining Sustainable Communities - Supplementary Planning Document' (SPD) explains the Council's aspiration to protect family housing in HMO Article 4 areas, and sets out their evidence base for the measures they have introduced. Within the SPD, Policy SC1 specifically restricts the change of use of upper Tyneside flats to HMOs at paragraph J(i).
8. Policy CS9 of the Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne 2010-2030 (CS) seeks to protect existing communities through a number of measures including the maintenance of a range of housing types and sizes, bringing empty properties back into use, preventing the loss of family homes, and preventing an overconcentration of shared accommodation.
9. Amongst other things, CS Policy CS14 seeks to create an inclusive built environment under the general aim of maintaining and improving the wellbeing and health of communities. Policy DM24 of the Newcastle upon Tyne Development and Allocations Plan 2015-2030 resists development that would give rise to unacceptable health impacts, including noise impacts.

Provision of family and HMO housing

10. No 61 is a spacious 3-4 bedroom property with a good standard of outlook and general amenity. As is a specific feature of Tyneside flats, it has a small area of outdoor space at the rear. There is enough space for cycle parking and the storage of refuse. The flat is in a location with good access to a range of local services, employment opportunities and public transport. On that basis, the Council argue that the flat is suitable for family accommodation. Its change of use to an HMO would therefore result in the loss of a unit of family accommodation, contrary to CS Policy CS9.
11. The appellant holds that the flat could theoretically be occupied by a family due to the efforts of the owner in renovating the property from its previously semi-derelict condition. However, they assert that it is not suitable for a household with children because the external space is significantly limited in size.
12. At paragraph A, Policy SC1 resists the loss of 'good quality, spacious and convenient dwellings suitable for occupation by a family by reason of its location and level of amenity'. Although outdoor space is of course desirable and contributes to the amenity of dwellings, there is no specific reference to the need for its provision within any of the relevant local plan policies.
13. In support of their case, the appellant refers to appeal decision ref: APP/M4510/C/20/3263830 which permitted a change of use from C3 to C4 at

64 Clayton Park Square. In that case, the Inspector found that the spacious interior would be suitable for a family, but he noted the lack of outdoor space. Conversely, he found that HMOs strongly characterised the immediate surroundings of the appeal site, to the point where it would no longer be attractive as family accommodation.

14. The rear yard at No 61 is typical of those provided at Tyneside flats in that it is a functional and useful space, but I accept that it is limited in terms of scope for play and leisure activities. However, if this argument is followed to its logical conclusion, then no Tyneside flats with this type of yard could be deemed to be suitable for families. This would mean that whole swathes of such housing in the city would be off-limits to families. It seems to me that such an outcome would be entirely contrary to the Council's aim to maintain a range of housing types and sizes.
15. That being the case, the limitations of Tyneside style yards should not in themselves be determinative on this main issue. The flat is in all other ways suitable to house a family. I am therefore satisfied that the unauthorised development has resulted in the loss of a unit of family accommodation.
16. The Council is also concerned that the development contributes to an overconcentration of HMO accommodation in the area. In terms of the problems that overconcentration can bring, HMOs tend to be occupied by groups of younger people who typically have a more active social life than other groups. As a result, there may be increased noise and disturbance, amongst other effects. The policy focuses on upper flats because increased use of the stairs and intensified use of the first floor can be particularly disturbing for residents on the ground floor.
17. The council tax records indicate that the upper flats at Nos 45, 53, 57 and 69 Mayfair Road are occupied as single households. The Council say that the majority of the lower flats at Nos 59, 63, 67 and 69 Mayfair Road and throughout Mayfair Road are also single households. The appellant points to the number of licensed HMOs that already exist in the street and states that the upper flats on either side of the appeal site are also HMOs.
18. From this evidence, it is clear that there is still a mix of accommodation on Mayfair Road. I have taken into account the representations from interested parties which speak to the problems experienced in the area from HMOs, and also the wish for single household accommodation such as the appeal site to be protected.
19. The Council have not defined the term 'overconcentration' and so I cannot be certain that such an effect has occurred here. Nonetheless, it is evident that the appeal scheme has added to the stock of HMOs in an area where adopted policy seeks to maintain a range of housing. Moreover, the development results on the loss of a family home. In the absence of any compelling need for an HMO at this site, or any overriding justification to set aside the relevant policy requirements, I find that the appeal scheme unacceptably conflicts with the aim of CS Policy CS9 to retain family housing, and with Policy SC1 particular in relation to upper Tyneside flats.
20. My attention has been drawn to 48a Osbourne Road where permission was granted in June 2022 (ref: 2021/0788/01/DET) for the change of use of the first floor of a medical clinic to one C3 dwelling and one C4 dwelling. It is

evident from this description that no loss of family accommodation was involved. On that ground alone, it appears to me that this case is not directly comparable to the one before me.

21. The appellant explains that the appeal site was previously in a semi-derelict condition and was not suitable for family occupation when they purchased it. They restored the flat to a significantly improved level of accommodation, but are concerned that this factor was not taken into account by the Council in their refusal of the 2021 and 2022 applications for the change of use to C4.
22. The restoration of a defective building is to be welcomed, and is in line with the aim of the National Planning Policy Framework to achieve well-designed places. However, this factor in itself does not provide a basis on which the policy requirements of the adopted development plan can be set aside. This factor is therefore neutral in my consideration.

Living conditions

23. The Council also voice concern over the effect on neighbouring residents of noise and disturbance from the HMO at the appeal site.
24. The gist of the appellant's argument is that No 61 does not have the characteristics associated with absentee landlordism and the problems this can bring. They say that the owners have no intention of letting the accommodation out to young students. Instead, they indicate a preference to let the flat to young professionals on the basis they will be responsible tenants.
25. I take into account the appellant's argument that there is no evidence of noise and disturbance from this property since the unauthorised change of use. However, planning permission goes with the land, not with individuals or companies. That being the case, there would be nothing to stop the property changing hands and giving rise to the noise and disturbance that is often associated with HMO accommodation.
26. The appellant suggests that, were I to allow the appeal, a condition could be imposed restricting the occupation of the flat to three people, and further specifying that these people should be young professionals. Planning conditions should only be imposed where they are: necessary; relevant to planning; relevant to the development to be permitted; enforceable; precise; and reasonable in all other respects¹. In this case, it is unclear how such a condition could be enforced, and so it would not meet the six tests.
27. The appellant has also suggested that the number of people at the flat could be limited by the use of a section 106 agreement. However, no such document has been submitted and so I cannot take this suggestion into account.
28. The Council couch their objection in terms of effects that 'would' occur, but have presented little evidence that unacceptable noise and disturbance has occurred. Conversely, the appellant has not satisfactorily demonstrated that no such effects will arise in the future from the change of use of the property.
29. As a result, there is not enough evidence before me to reach a firm conclusion on whether or not the living conditions of neighbours have been harmed, or will

¹ Paragraphs 56 of the National Planning Policy Framework and 21a-003-20190723 of the National Planning Policy Guidance

be in the future. However, this issue is not determinative, as I have found the development to be unacceptable on the first main issue above.

Conclusion on ground (a)

30. Despite the fact that I have been unable to reach a conclusion with regard to the effect of the development on the living conditions of neighbours, I have found that the development unacceptably harms the provision of family housing in the area. Therefore, I conclude that the appeal on ground (a) should be dismissed.

Ground (g)

31. The appeal on ground (g) is that the time given to comply with the notice is too short. The notice gives 5 August 2022 as the date by which the requirements are to be complied with. That date has now passed, but it would have been a six week compliance period has the notice come into effect on 24 June 2022.
32. At the time the enforcement notice was issued in May 2022, the property was let to three professional individuals. These persons decided to move on when their tenancy agreement ended in June 2022. The appellant then let the flat to four new tenants whose agreement will come to an end at the end of June 2023.
33. The key question for ground (g) is what is 'reasonable'. The task is essentially to balance the public interest in the notice being complied with expeditiously against the private interests bound up in the development subject to the notice. In cases where persons stand to lose their home, it is essential to consider whether the period for compliance is proportionate in view of that circumstance.
34. The Council state that they have given the appellant sufficient warning that no further tenancy amounting to C4 usage of the appeal site should be arranged. However, appellants are entitled to assume success on any ground, and the fact that they were aware of the Council's concerns should not preclude an extension of time if it is warranted.
35. Due to the timing of the appeal process, it is approximately 15 weeks until the end of June 2023 at the time of writing. That being the case, I consider it reasonable to allow that length of time for the tenants to be made aware of the situation and given time to find new accommodation. This timescale would coincide with the end of their agreement in any event.
36. To that extent, the appeal on ground (g) succeeds and I direct that the enforcement notice be amended accordingly.

Conclusion

37. The appeal is dismissed, the deemed planning application is refused, and the enforcement notice, as amended, is upheld.

Elaine Gray

INSPECTOR