The Planning Inspectorate

Appeal Decision

Site visit made on 2 May 2023

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th May 2023

Appeal Ref: APP/V2004/W/22/3311021
14 Glencoe Street, Kingston upon Hull HU3 6HS

- 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 Sandip Sharma of One Key Property Solutions Ltd against the decision of Hull City Council.
- The application Ref 20/01476/FULL, dated 18 November 2020, was refused by notice dated 26 August 2022.
- The development proposed is creating internal changes adding en-suites to the room to create high quality rooms for HMO. Change of use from C3 to C4 category dwelling.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The development has been implemented. I have determined the appeal on this basis.

Main Issues

3. The main issues are:

   - whether the appeal site is an appropriate location for the development with reference to its vulnerability to flooding; and
   - the effects of the development on the character and appearance of the area and the living conditions of nearby residents with regard to noise, disturbance and parking provision.

Reasons

Flood Risk

4. The appeal site is a mid-terrace property. It is located in flood zone 3(a) which the Planning Practice Guidance (the PPG) defines as having a high probability of flooding from rivers and/or the sea. It lies within flood zone 3(a)(i) as identified in the Council's 2017 Strategic Flood Risk Assessment (the SFRA), where flood depths could be up to 600mm.

5. Paragraph 167 of the National Planning Policy Framework (the Framework) and associated footnote 55 specify that a flood risk assessment is required for developments in flood zone 3, and that development should only be allowed in areas at risk of flooding where, in the light of this assessment, it can be demonstrated that certain criteria are met. These include demonstrating that

the development is appropriately flood resistant and resilient such that, in the event of a flood, it could be quickly brought back into use without significant refurbishment; any residual risk can be safely managed; and safe access and escape routes are included where appropriate, as part of an agreed emergency plan. The PPG classes residential uses as 'more vulnerable', where the exception test applies, but only if the sequential test is also satisfied.

6. Policy 40 of the 2017 adopted Hull Local Plan 2016 to 2032 (the LP) seeks to direct development to areas at the lowest risk of flooding. The policy recognises the unique circumstances within Hull and that the national approach has been refined through the development of locally defined standing advice to allow the principles to be applied, while not placing disproportionate information requirements on applications for relatively small development.

7. While I acknowledge that the area is one which benefits from flood defences[1], the SFRA nevertheless sets out information requirements depending on the vulnerability of the proposed use and the flood zone in which it would be located. The property is an existing dwelling. However, the PPG advises that changes of use can increase the vulnerability of the development. In this respect, the development has increased the number of bedrooms, including the introduction of two at ground floor level.

8. No flood risk assessment has been included to support the application. Furthermore, no details have been provided about any flood mitigation measures that have been included in the development such as the definition of finished floor levels, flood proofing or place of safety requirements.

9. In line with national and local planning policy, it is important to ensure that the risks are fully considered so that appropriate mitigation is put in place. The submitted evidence is not sufficient to adequately consider the flood risks of the development which has introduced sleeping accommodation at ground floor, and so I cannot conclude that appropriate mitigation is in place to safely manage the risk of flooding.

10. It has not therefore been demonstrated that the site is an appropriate location for the development with reference to its vulnerability to flooding. Consequently, the development conflicts with Policy 40 of the LP, the main requirements of which have been summarised above.

Character and Appearance and Living Conditions

11. The property is located on a street mainly comprising a mix of family dwellings, flats and houses in multiple occupation (HMOs). A planning application was required for the change of use of the property from a C3 dwelling to a C4 HMO due to an Article 4 Direction covering the area which has removed permitted development rights for such changes of use.

12. Policy 7 of the LP sets out the requirements for HMOs. Part 4 of Policy 7 does not allow for further small HMOs where an Article 4 Direction exists in streets where the concentration of HMOs and flats exceeds 50%. From the submitted evidence, the concentration on Glencoe Street falls below 50%. The development is not therefore precluded by part 4 of Policy 7.

[1] Environment Agency flood map for planning, appendix v of appellant's appeal statement

13. The Council's 2022 Houses in Multiple Occupation Supplementary Planning Document (SPD20) advises that an application for HMO use is unlikely to be supported if it would result in a family dwelling being sandwiched by HMOs on both sides of the dwelling, or three or more adjacent dwellings in use as HMOs. The submitted evidence indicates that no. 16 is a 'family dwelling'. The definition of an HMO in SPD20 includes that the occupation of the property is by unrelated individuals who share basic amenities such as a kitchen or bathroom. The evidence before me indicates that no. 18 contains two dwellings and is in use by two households. On this basis, I am not persuaded that no. 18 would be classed as an HMO, and therefore find no conflict with the guidance in SPD20 in this regard.

14. Part 2 of LP Policy 7 requires a consideration of whether the concentration of similar uses would adversely affect the character of the area or residential amenity including through noise and disturbance or the creation of parking problems.

15. At the time of my site visit the property appeared managed and was reasonably well maintained and decorated internally and externally. There was no obvious difference between the standard of maintenance of the property and others in the area, whether HMOs or not. There was no noticeable over-spill of refuse or litter.

16. The property is quite a substantial sized dwelling capable of accommodating a relatively large family. I acknowledge that HMO occupation can be different to family occupation. It is generally more transient, with a different nature and pattern of activity. However, the noise and disturbance from unrelated adults' comings and goings would not be significantly different to that of a large family where there would potentially be journeys to work, school and social events. Nor would other potential forms of noise and disturbance such as the playing of music or social activities in the property or outdoor amenity area necessarily be any more likely to cause harm to neighbouring residents than would be the case with a large family engaging in similar activities.

17. Furthermore, while the information on the application form identifies that the property has been let since September 2020, I have not been directed to any reports or complaints to the Council's enforcement or environmental health teams with regard to noise, disturbance or anti-social behaviour.

18. Policy 32 of the LP sets out the requirements for parking provision. The Council states that the use of the property as a C4 HMO with six bedrooms requires five off-street parking spaces. A new four-bedroom house, which is what the property was before the change of use, would require three parking spaces. There is no provision for on-site parking at the property, which is consistent with most properties on Glencoe Street and those of the older terraced properties on other streets in the area.

19. Policy 32 allows for some flexibility in the number of parking spaces in certain circumstances, to take account of the accessibility of the development; the type, mix and use of development; the availability of public transport; local car ownership levels and the need to reduce the use of high-emission vehicles.

20. There is unrestricted on-street parking for much of the length of Glencoe Street although there are double yellow lines at its junction with Anlaby Road and at its far end. Other nearby streets that are off Anlaby Road have double yellow

lines at their junction with this road. Melrose Street, Plane Street and De La Pole Avenue also have restrictions which limit parking to one hour except for permit holders for much of the week.

21. There is no site-specific information before me regarding parking pressure, for example a parking survey. However, during my site visit, I observed that there was limited on-street parking capacity on Glencoe Street, with some on-street capacity at other nearby streets. While my site visit was just a snapshot in time, there is no evidence to suggest that it was not representative of the general parking situation, noting the local concerns regarding on-street parking pressure.

22. However, the property is within a reasonable walking distance of bus stops and the range of services and facilities on Anlaby Road. Occupiers of the development would therefore not necessarily have to rely on a car for day-to-day requirements. Furthermore, in my experience of HMOs, occupants often have a low rate of car ownership, and in this regard, the Council identifies that the local demographic includes below average car ownership.

23. On this basis, any car parking demand associated with the development is unlikely to have materially adverse implications for the availability of nearby on-street parking provision.

24. In conclusion, the development has not resulted in a meaningful change to the housing mix of the area to the detriment of the character or appearance of the area or the living conditions of nearby residents. Consequently, the development does not conflict with the requirements of Policies 7 and 32 of the LP which have been summarised above.

Other Matters

25. The appellant contends that a fallback position is the change of use to a C4 HMO under permitted development rights, on the basis that it is likely that the change of use commenced before the Article 4 Direction came into effect. The appellant highlights a previous application at the property,[2] which sought confirmation that the change of use would be permitted development, as evidence to substantiate this position. This application, dated 2 August 2019, was determined on 7 August 2019, which is just before the Article 4 Direction came into effect on 8 August 2019. The Council's conclusion on this application appears to be that the change of use was not permitted development as it related to a proposed change of use, and to benefit from permitted development, the use would need to have been implemented before the Article 4 Direction came into effect.

26. This is consistent with the approach taken by the Council on an application[3] for a Certificate of Lawful Use (CLU) for a C4 HMO nearby, as detailed in the appellant's evidence. In that case, the Council's position was that proof that the use subsisted on the day the Article 4 Direction came into effect would be sufficient to issue a CLU. I am mindful that there does not appear to be a CLU at the property for the fallback position attesting to compliance with permitted development requirements.

27. On this basis, I give this fallback limited weight.

[2] Application reference 19/00939/PD
[3] Application reference 22/00881/LAW

Conclusion

28. I find the development to be acceptable in terms of its effect on the character and appearance of the area and the living conditions of nearby residents. However, I am unable to conclude that the site is an appropriate location for the development with reference to its vulnerability to flooding. This is a matter of overriding concern, and to this extent, there is conflict with the development plan when considered as a whole. Therefore, the appeal should be dismissed.

F Wilkinson

INSPECTOR