



Appeal Decision

Site visit made on 7 September 2023

by David English BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 November 2023

Appeal Ref: APP/A4520/W/23/3323713

38 Baring Street, South Shields, South Tyneside NE33 2DR

- 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 Ryan Beaumont of Beaumont & Partners Ltd against the decision of South Tyneside Council.
 - The application Ref. ST/1003/22/FUL, dated 6 December 2022, was refused by notice dated 22 May 2023.
 - The development proposed is change of use from Bed and Breakfast (Use class C1) to 10-bedroom HMO (Use class Sui Generis).
-

Decision

1. The appeal is allowed and planning permission is granted for change of use from Bed and Breakfast (Use class C1) to 10-bedroom HMO (Use class Sui Generis) at 38 Baring Street, South Shields, South Tyneside NE33 2DR in accordance with the terms of the application, Ref. ST/1003/22/FUL, dated 6 December 2022, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan; Front Elevation (photograph); Existing Floor Plan A3-01; and Proposed Floor Plan SK100.
 - 2) Within three calendar months of the date of this decision an area for the secure dedicated storage of bicycles shall have been laid out within the site in accordance with details which shall first have been submitted to and approved in writing by the local planning authority. That space shall thereafter be kept available for the parking and storage of bicycles.
 - 3) Within three calendar months of the date of this decision an area for the dedicated external storage of refuse bins shall have been laid out within the site in accordance with details which shall first have been submitted to and approved in writing by the local planning authority. That space shall thereafter be kept available for the storage of refuse bins.
 - 4) The development hereby permitted shall be occupied by no more than 10 persons in total with each bedroom being occupied by no more than one person at any time.

Applications for costs

2. An application for costs was made by Beaumont & Partners Ltd against South Tyneside Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The description of development given in the planning application form included the word 'retrospective'. However, this term does not relate to a form of

development. I have therefore deleted this word from the description given in the banner heading above and in my formal decision.

4. The planning application form indicates that the proposed development was completed on 1 February 2022, hence the appellants inclusion of the term 'retrospective' in their description of development. This information is consistent with comments provided by the Council's Environmental Health Team (the EHT) quoted in the Officer Report (the OR) to the Council's Planning Committee which confirms '*...the new owner has brought the property up to and above modern-day standards*', and that, at the time the EHT were consulted about the application, a pending HMO licence application was '*likely to be granted*'. While I did not inspect the internal layout of the premises during my site visit, it was apparent to me that the building was occupied. Taking this information together, I have determined the appeal on the basis of the plans on which the Council made their decision and on the undisputed evidence that the proposal has been completed and the building is in use as a larger house in multiple occupation (HMO). Accordingly, I refer to the proposal as 'the development' throughout my decision letter.
5. The development is within the 6km zone of influence of the Durham Coast Special Area of Conservation (the SAC) and the Northumbria Coast Special Protection Area and Ramsar Site (the SPA), identified in the Council's Interim Supplementary Planning Document 23: Mitigation Strategy for European Sites (Recreational Pressure from Residential Development) (March 2018) (SPD 23).
6. These sites are afforded protection under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) which require that permission may only be granted after having ascertained that a development will not affect the integrity of the habitats. In such areas, SPD 23 provides a mechanism to assist in ensuring mitigation can be secured to address any likely significant effects arising from residential development proposed in the zone of influence on the integrity of the interest features of the SAC and the SPA. This involves securing financial contributions from housing schemes comprising 10 or more units, with those contributions being directed towards defined mitigation measures.
7. Due to the scale of the development, the Council completed an appropriate assessment (AA) as required by the Habitats Regulations. However, having regard to the proximity of the development to the SAC and the SPA, as the competent authority for this appeal, I have a duty under Regulation 63 of the Habitats Regulations to consider whether it would be likely to have a significant effect on the integrity of the interest features of those European Sites before reaching a decision on the appeal. I shall return to this matter later.

Background and Main Issues

8. The Council's reason for refusal expresses its objections in respect of the effects of the proposal on the character and nature of the area, and on residential amenity with little further specificity given in their decision notice. Having regard to the scope of representations I have defined the main issues in this case taking account of the principal amenity concerns raised in the representations and in the minutes from the Council's Planning Committee meeting having regard to the aims of Policy DM4 of the South Tyneside Local Development Framework Development Management Policies (December 2011) (the LDF).

9. While not presented as reasons for refusal by the Council, having regard to my responsibility as the competent authority for the purposes of the Habitats Regulations, I have also identified a main issue concerning the likely effects of the development on the nearby European sites. I have not sought comments on the approach I have taken since the matter is known to the main parties, as evidenced by the Council's AA, and I do not consider that either main party would be prejudiced by my completing the statutory obligations in this regard.
10. Therefore, the main issues in this appeal are:
- whether the development is consistent with the requirements of the development plan in respect of the Council's approach to managing the provision of larger HMOs having particular regard to any cumulative impacts; and
 - the effect of the development on European sites.

Reasons

Development plan policy on managing HMOs

Character and nature of the area and residential amenity

11. The appeal property is one of a group of three taller buildings located towards the upper end of this section of Baring Street, a primarily residential street comprising mostly two-storey traditional terraced houses. It is located a short walk from the junction of Baring Street and Ocean Road, with that road leading to the nearby town centre. There appears to be a generally vibrant evening economy along Ocean Road associated with a wide range of restaurants and hot food outlets, along with several guest houses and some pubs. Notwithstanding the busier character associated with activity along Ocean Road, and in the nearby town centre, at the time of my site visit in the early evening, the area in the vicinity of the appeal site seemed generally quiet having a settled urban residential feeling.
12. The adjoining property at 36 Baring Street is identified as 'Beach Guest House' by a sign on the front of the building, and the OR confirms the planning status of that property as being lawful as an HMO and having planning permission for '*a mixed use of bed & breakfast and HMO [with associated works]*'¹. Several representations refer to there being a significant number of HMOs in the area. More specifically, a representation from residents in Beach Road lists the addresses and scale of occupation at various HMOs in South Shields. However, while many of the properties listed are within the same general postcode area as the appeal property, apart from a 6 person HMO at 32 Pollard Street, and No 36, the addresses provided are mostly some considerable distance from the appeal property. While I have had regard to this information about the location of other HMOs in the wider area, it remains the case that Baring Street and the adjoining streets close to the appeal site exhibit the characteristics and have the appearance of an established traditional residential area, and I could not determine from my observations whether there were other HMOs nearby.
13. Nevertheless, I recognise that the activity from an HMO of the size of the development would be more intensive than a typical residential dwelling.

¹ Council application refs. ST/0211/10/CLU and ST/0001/11/FUL

However, I note from the OR that planning permission was granted in 1990² for the use of the appeal property as a boarding house, subject to a condition that limited its occupation to '*...no more than 12 paying guests at any one time*'. While I note the references in the OR to HMO licences granted at the appeal property subsequently, I have not seen evidence to suggest that the boarding house use did not commence, or that it was superseded by another use for which planning permission has been granted.

14. The appellant has not expressly claimed a reversion to the use as a boarding house to be a realistic fallback position. The EHT indicates that their records suggest that 38 Baring Street has operated as an HMO since 2007, notwithstanding a lack of clarity regarding the scale of those licensed operations. Thus, noting this position and having regard to the permitted use of the appeal property, it appears from the evidence available to me that a use similar to the development has been in existence at No 38 for a considerable period of time. I attribute significant weight to the long-term previous uses of No 38 which are likely to have generated comings and goings similar in scale and nature to the development.
15. The appeal property has previously been the subject of an Emergency Prohibition Order. While I have not been provided with further details on this matter, the OR appears to confirm a satisfactory resolution when noting the EHTs comments. A representation from a neighbouring resident on Baring Street indicates that '*...the current tenants have been a vast improvement from before it was renovated*'. Other than these comments, I have seen little in the information before me to suggest that the previous uses, or the current unauthorised use of No 38 have been the source of specific complaint in respect of noise and disturbance associated with comings and goings from the properties, or in respect of other residential amenity impact concerns.
16. From my reading of the representations, there would appear to be a concentration of HMOs on Beach Road which is some distance to the south of Baring Street. In the absence of any more detailed information regarding any significant concentration of HMOs in the vicinity of the appeal site, and without evidence of direct association between the residential amenity concerns raised by the Council and activity associated with the appeal property or any other HMOs nearby, I am unable to conclude, with any degree of certainty, that the development has, or would in future contribute significantly to any cumulative adverse impacts on residential amenity or on the character and nature of the area. In this context, even when taken together with the likely activity associated with No 36, and the HMO at Pollard Street, I am not persuaded that the scale of the development is out of place in this primarily residential area. Accordingly, the development is unlikely to lead to a materially harmful change to the character and nature of the street or the surrounding area.
17. The Council's Community Protection Service Lead (CPSL) and the Police Designing Out Crime Officer (DOCO) express concerns generally about anti-social behaviour and criminal activity associated with HMOs, and reference is made to significant and ongoing issues with anti-social behaviour and other criminality in the area. The conclusions of various national research are cited to demonstrate some causal links between criminal and anti-social activity and the occupation of shared accommodation. The DOCO raises particular concerns

² Council ref. ST/0760/90/DM

about the consequences of having inadequate communal space within HMOs which he says can lead to residents of HMOs spending significant amounts of time socialising on the streets. This, it is said, has been a consistent contributory factor associated with crime and disorder in a 'Problem Hotspot' on the adjacent Police Beat which is currently being dealt with by the Police.

18. I have not been provided with details regarding any minimum communal space standards required by the Council at larger HMOs. However, while no source is provided, I note the minimum room sizes for kitchens in HMOs referred to by the DOCO. From the plans, it appears that the provision for kitchens and communal space in the proposal would exceed those sizes. In this respect, recognising that the Council raised no specific concerns in respect of the size of any rooms shown on the plans, I am satisfied that adequate communal space would be provided in the development to serve the occupiers of a 10-bed 10-person HMO, noting the Council's suggested condition regarding maximum occupation were the appeal to be allowed.
19. The research and studies referred to provides evidence of a general nature which demonstrates a greater prevalence of some types of crime associated with the occupation of shared housing by unrelated individuals. However, the evidence does not demonstrate that this would necessarily be a likely outcome associated with the appeal before me. The DOCO refers to recent crime statistics from Police Beat B1A3 within which 38 Baring Street is located. While I appreciate that this provides a general picture of criminal behaviours in part of South Shields, I have not been provided with information showing the geographic extent of that Police Beat. Furthermore, no documented correlation is provided showing specific or general links between the crimes referred to and the occupiers of HMOs. Moreover, as the development will be registered as an HMO, it will be subject to oversight and monitoring separately by the Council, and this would provide an appropriate means to address any future documented unneighbourly conduct.
20. I appreciate that local residents and elected Members have genuine concerns about crime and anti-social behaviour in the local area. However, there is no firm evidence that such occurrences, which are ultimately a matter for the relevant authorities, would be attributed to residents of the HMO the subject of this appeal. Furthermore, it does not seem to me that crime and disorder are an inevitable consequence of multi-occupation dwellings as opposed to single family dwellings, but rather a question of individual behaviour.
21. Therefore, while I accept the legitimate concerns of the CPSL, DOCO and the Planning Committee about local crime rates, I find that the information provided does not allow me to draw any meaningful conclusions about the source of local criminal activity and anti-social behaviour. Furthermore, the evidence I have seen is not sufficiently convincing to demonstrate that the development would materially or significantly add to anti-social or criminal activity in the local area. Accordingly, from the information available to me, I could not find that the proposal would adversely impact residential amenity or the character and nature of the locality in this respect.

Car parking and highway safety

22. Representations raise concerns about the adequacy of car parking arrangements to serve the development, and the associated effect on highway safety, and I note those comments regarding the number of vehicles currently

considered to be associated with occupiers of No 38. However, car parking on most of this section of Baring Street and in the neighbouring adjoining streets is generally unrestricted. From my observations, while providing only a snapshot in time, there did not appear to be a lack of available on-street parking spaces in the early evening, a time when I would anticipate generally higher demand. Overall, notwithstanding comments made in representations, many of which come from residents some distance from the appeal site, the area close to the appeal site did not appear to suffer from parking stress.

23. The Highway Authority raises no objection to the development subject to securing appropriate cycle and refuse bin storage, matters that could be addressed by conditions were the appeal to be allowed. I note the Highway Authority's confirmation that the development does not meet the guidance for HMOs set out in the South Tyneside Local Development Framework SPD6 Parking Standards (December 2010). However, notwithstanding the lack of off-street parking provided at the site, given the extent of on-street parking options in the vicinity, in this case I see no reason to disagree with the conclusions of the Highway Authority in respect of this matter. Accordingly, the development is unlikely to adversely impact upon existing traffic and parking conditions in the area. It would therefore accord with paragraph 111 of the National Planning Policy Framework (the Framework) which advises that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety.

Conclusion on this main issue

24. Having regard to all of the evidence presented in representations and the explanation from the Council in its Statement of Case regarding the weight given to those representations by elected Members, on this main issue I find that the development is consistent with the requirements of the development plan in respect of the Council's approach to managing the provision of larger HMOs having particular regard to any cumulative impacts. Accordingly, the development does not conflict with the intentions of Policy DM4 of the LDF in respect of its impact on residential amenity and the character and nature of the locality, existing traffic and parking conditions in the area, the requirement to make sufficient provision for the storage of refuse containers, and that the property is suitable and of an appropriate size for the proposed use.

European Sites

25. The SAC is the only example of vegetated sea cliffs on magnesian limestone exposures in the UK. The primary reason for designation derives from its qualifying features as an Annex I habitat as defined by the Habitats Directive³. The unique vegetation consists of a complex mosaic of grasslands, tall-herb fen, seepage flushes and wind-pruned scrub which is largely maintained by natural processes. Within these habitats rare species often grow together forming unusual and species-rich communities of high scientific interest.
26. The SPA consists of mainly discrete sections of rocky shore with associated boulder and cobble beaches, but also includes parts of three artificial pier structures and a small section of sandy beach. The primary reason for designation derives from its regular use throughout the year by three specific

³ Council Directive 92/43/EEC

qualifying protected bird species: Little Tern, Purple Sandpiper and Ruddy Turnstone; and by several other non-qualifying bird species.

27. The appeal site is located within the 6km zone of influence defined in SPD 23 and the development is not directly connected with or necessary to the management of the protected sites. Accordingly, the development would, either alone or in combination with other projects, be likely to have a significant effect on those areas. As a result, it is necessary that an AA is undertaken to determine the extent of those effects, whether they could be avoided or whether mitigation measures could remove or reduce the effects. I have noted that the Council carried out an AA during the course of the application process. As I am the competent authority in relation to the appeal, it is necessary for me to complete an AA in coming to my decision but will take the Council's AA into account.

Appropriate Assessment

28. The conservation objectives for the SAC aim to ensure that the integrity of the site is maintained or restored as appropriate and to ensure that the site contributes to achieving favourable conservation status of its qualifying features. This should be achieved by maintaining or restoring the extent, distribution, structure, and function of the qualifying natural habitats; and supporting processes on which the qualifying natural habitats rely.
29. The conservation objectives for the SPA aim to ensure that the integrity of the site is maintained or restored as appropriate, and that the site contributes to achieving the aims of the Wild Birds Directive. This should be achieved by maintaining or restoring the extent, distribution, structure, and function of the habitats of the qualifying features, the population of each of the qualifying features, and the distribution of the qualifying features within the site; and by supporting processes on which the habitats of the qualifying features rely.
30. While both sites are designated for different reasons, there is a common threat to the integrity of the sites from public access and disturbance, including activities such as walking, and dog walking. In respect of the SPA this threat relates specifically to the vulnerability to disturbance of over-wintering protected bird species. The SAC is highly sensitive to impacts that change the conditions of the site, including nutrient enrichment and direct habitat damage. Specific threats concern physical damage to plants through trampling which reduces their ability to flower, and through soil compaction and nutrient loss which can affect the soil's ability to support the species richness of the area. In addition, nutrient enrichment caused by dog fouling can affect the fauna by changing the mineral content of naturally low nutrient soils and can promote the introduction of invasive species.
31. The development comprises residential accommodation whose occupants are likely to cause increased recreational activity that would disturb the protected birds and vegetation within the European sites. Therefore, the development, alone and in combination with other development, would have the potential to have a significant adverse effect on the integrity and conservation objectives of the protected sites.
32. SPD 23 defines a variety of measures intended to avoid an adverse impact on the integrity of the sites. These comprise awareness raising and the promotion of behavioural change, including through dedicated staff resources, and

- projects for the enhancement of existing greenspace sites to draw access away from the European sites. These measures are to be funded through financial contributions secured from residential development schemes comprising 10 or more dwellings.
33. Contributions towards the adopted mitigation scheme from qualifying shared housing schemes such as the development are to be calculated based on the number of additional bedrooms. Smaller schemes of nine or fewer units are exempt. While these would have an impact on the protected sites and species proportionate to their scale, the Council has included a small uplift, equivalent to around 4% of the per-dwelling financial contribution, in the contributions sought from larger development to compensate for the lack of direct financial contributions from small schemes. This is based on the Council's conclusion that the cost of administering the collection of contributions from small schemes would be disproportionate to the benefits.
34. The development would fall within the criteria defined in SPD 23 whereby a contribution to the scheme of mitigation would ordinarily be required. However, the appeal property has previously been in use as a boarding house where a higher occupancy level was permitted, and the Council indicates that the premises has also been licensed and used as an HMO for several years. The Council suggest that a condition should be imposed if the appeal is allowed to limit the occupation of the premises to 10 residents. I agree that the use of a planning condition could be appropriate in limiting occupation. Accordingly, the number of residents that could occupy the development could be controlled such that it is unlikely to lead to a materially greater impact on the European sites than would have been the case based on the use and occupation of the premises in the recent past. I attribute substantial weight to these circumstances.
35. Natural England (NE) have endorsed SPD 23 and the Council's AA and raise no objection to the development in respect of its impact on the European sites, a position confirmed following my recent consultation with NE on this appeal. Taking all of the above into account, I am satisfied from the evidence available to me that mechanisms are in place to secure appropriate mitigation through SPD 23 from funding secured from larger residential developments such that there would be no adverse effect from the development on the integrity of the SAC or the SPA.

Conclusion

36. For reasons set out in the AA, I conclude that the development would not have an adverse effect on the integrity of the SAC and the SPA. The development would therefore comply with Policy EA3 of the South Tyneside Local Development Framework Core Strategy (June 2007) and the Framework which seek to protect nature conservation sites of international importance, such as SACs, SPAs and Ramsar sites, including requiring that adequate measures are put in place to avoid or mitigate any potential adverse effects on the ecological integrity of sites.
37. The development would comply with the Habitats Regulations. Given the outcome of my AA and having regard to paragraph 182 of the Framework, the presumption in favour of sustainable development is applicable to this appeal.

Other Matters

38. A number of other matters have been raised in representations by local residents and other interested parties, and I do not underestimate the strength of feeling raised in relation to the proposal. Issues have been raised regarding potential impacts on property values, and the financial motives and intentions of the appellant. However, these issues do not relate to the planning merits or planning policies relevant to this case and consequently they have no bearing upon my consideration of this appeal.
39. The CPSL raises a specific concern about the possibility of vulnerable individuals being housed in the appeal property. However, the identity, characteristics or individual needs of people who may occupy an HMO are not matters that could reasonably be controlled through the planning system which seeks to manage the use of land in the public interest. Other public agencies have mechanisms in place to support and assist future residents who may have specific health, welfare and well-being needs and this is not a matter to which I can attribute weight in my decision.
40. The addition of new housing can add pressure on local infrastructure and services including leisure facilities, and healthcare, a matter raised by the CPSL and others in representations. There may be pressures faced by the existing local health facilities and the emergency services, as noted in several representations. However, the development is of a limited scale, it has been occupied for some time and I have seen little evidence to demonstrate any specific pressures placed on health or emergency services by the development in that time. Furthermore, such pressures on services and infrastructure in themselves do not justify rejection of this small-scale development, and there must be a legitimate expectation that the health service and the emergency services would provide the necessary facilities and responses to meet the needs of the local population as and when required.
41. Safety concerns have been raised in respect of local school pupils who may need to pass by the appeal site, and in respect of the proximity of the development to local mosques. Many representations express concerns about feelings of intimidation attributed to the concentrated presence of residents from HMOs in public spaces locally, particularly where those people are intoxicated or under the influence of drugs. However, while accepting that these are genuinely held concerns based on observations of activity elsewhere in South Shields cited in many representations, I have seen no substantive evidence that such concerns are justified in relation to the development itself, or its specific setting and location.
42. The effect of the development on businesses, especially those reliant on tourism is raised in several representations. These concerns appear to stem from the perception of residents and others about a negative impression and image of the town being created by the occupiers of other HMOs. I accept that these concerns are genuine, and that the effects are difficult to quantify. However, I have not seen substantive evidence that any such change in the perception of and attractiveness of the town to visitors and tourists could reasonably be attributed to the development in its context, and these concerns would not justify dismissing the appeal.

Conditions

43. I have had regard to the conditions suggested by the Council. I have imposed a condition specifying the approved plans as this provides certainty. I have imposed a condition requiring the submission and approval of details of refuse storage and disposal arrangements in the interests of highway safety and to protect the living conditions of residents in the development and those of neighbours. I have also imposed a condition requiring the submission and approval of details of cycle parking and storage arrangements to ensure that provision is made to encourage the use of sustainable modes of travel and to ensure the expectations of the Highway Authority can be met.
44. I have amended the suggested wording of the conditions regarding refuse and cycle storage (conditions 2 and 3) to ensure that the required details are submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because the use is already in operation and it is therefore not possible to use a negatively worded condition to secure the approval and implementation of these requirements before the development takes place. The condition will ensure that the development can be enforced against if the requirements are not met.
45. A condition is necessary, and has therefore been imposed with no objection from the appellant, to limit the occupation of the development to no more than 10 persons at any time, with each bedroom having no more than one occupant. This is to protect the living conditions of the occupiers of the development by ensuring appropriate levels of communal space are available to meet their needs; and to ensure the development does not generate additional activity that would have an adverse effect on the integrity of the European sites having regard to the conclusion of my AA.

Conclusion

46. For the reasons given above, having had regard to the development plan as a whole, the approach in the Framework and all other relevant material considerations, I conclude that the appeal should be allowed subject to the conditions set out in the formal decision above.

David English

INSPECTOR