



Appeal Decision

Site visit made on 16 August 2024

by S. Hartley BA (Hons) Dist.TP (Manc) DMS MRTPI MRICS

an Inspector appointed by the Secretary of State

Decision date: 21 August 2024

Appeal Ref: APP/C1055/W/23/3333859

15 Pittar Street, Derby, DE22 3UN

- The appeal is made under section 78 of the Town and Country Planning Act 1990.
 - The appeal is made by Donna Pegg against the decision of Derby City Council
 - The application reference is 23/01004/FUL
 - The proposal is for the conversion of a 6 bed, 6 person HMO to a 6 bed, 9 person HMO.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. On 30 July 2024 the Government began consultations upon reforms to the National Planning Policy which will close on 24 September 2024. The reforms are draft and may be subject to change and therefore I afford the draft changes only limited weight in the decision-making process. As there are no proposed reforms which are pertinent to the main issues in this appeal, it has not been necessary for me to consult the main parties upon it.
3. The property was originally a dwellinghouse. The appellant states that it is now being used as a house in multiple occupation (HMO). The local planning authority (LPA) does not dispute this, although I am not entirely certain whether it is being occupied by nine persons or six persons. The use of the premises as an HMO for up to 6 persons constitutes a fallback position and which I afford considerable weight in decision making terms.
4. The Council has approved a license to use the appeal property as an HMO for a maximum of six households and nine persons on 13 November 2023. While the licensing and planning regimes are different, I nonetheless acknowledge the existence of the license as a material planning consideration as part of the assessment of this appeal.

Main Issues

5. The main issues are (i) the effect of the development upon the living conditions of the occupiers of neighbouring properties in respect of noise and disturbance from increased occupancy of the appeal property, (ii) the effect of the proposal upon the character of the area, and (iii) whether the HMO would include adequate internal and external space for residents.

Reasons

Living conditions

6. The property can lawfully be used as a six person HMO. In relative terms, use of the property by an extra three persons would lead to increased comings and goings from the additional occupants as well as from associated visitors and deliveries. The extra comings and goings would include car parking movements and the possible associated slamming of doors and revving of engines.
7. Pittar Street includes terraced buildings which are in residential use. While I cannot be entirely sure how many lawful HMOs are in Pittar Street, there is undisputed third-party correspondence which suggests that there are three HMOs in the street. Based on this evidence, it is therefore reasonable that I conclude that many of the other properties in Pittar Street are dwellinghouses occupied by single households.
8. I find that the use of the appeal property as a six person HMO already constitutes a very intensive use of a relatively small building. Properties are very closely aligned and on-street car parking is near to the frontages of the buildings.
9. In this residential environment, I conclude that use of the appeal property by an additional three occupants would have a cumulatively harmful impact upon the occupiers of neighbouring properties in respect of noise and disturbance. This would be from the comings and goings of the additional occupants of the property including visitors, deliveries and car parking movements. I find that there is potential for a significant amount of activity and movement to and from the property at all times of the day. This would be to the detriment of the living conditions of the existing occupiers of the terraced properties in the street.
10. I consider that the proposal comprises an overly intensive use of the terraced property to the extent that the development would result in an unacceptable level of noise and disturbance to the occupiers of neighbouring residents who should expect a reasonable degree of peace and quiet.
11. For the above reasons, I conclude that the proposal would not accord with the amenity requirements of policies CP3 and CP4 of the Derby City Local Plan Part 1 Core Strategy 2017 (CS), saved policies GD5 and H13 of the City of Derby Local Plan Review 2006 (LP), and paragraph 135(f) of the Framework. This is a matter to which I afford very significant adverse weight in decision making terms. In reaching this conclusion, I have considered the HMO license approved by the Council for a maximum of six households and nine persons. In this case, the existence of the license does not outweigh or alter my conclusion on this main issue. Indeed, it is noteworthy that the planning and licensing regimes operate independently.

Character

12. Pittar Street is characterised as a residential street where there are some pedestrian, vehicle and car parking movements associated with use of the

terraced properties and from those passing through the area to reach other surrounding streets.

13. As part of my consideration of the living conditions main issue above, I have concluded that significant cumulative harm would be caused to neighbouring residents arising from increased comings and goings from pedestrians and vehicular movements/activity associated with occupying the property by nine persons. As it would seem that there are already a small number of other HMOs in the street, intensifying the residential use of the property further is likely to cause harm to the otherwise more peaceful residential environment.
14. I consider that the proposal would lead to a cumulatively harmful change to the character of this residential street arising from the increased comings and goings from additional occupants and their associated visitors and car parking movements. This would have the effect of changing the character of the street to one which would be unacceptably busy and where the level of activity would be harmfully noticeable to both passers-by and existing neighbouring residents.
15. For the above reasons, I conclude that the proposal would fail to accord with the design and character requirements of policies CP3 and CP4 of the CS, policy H13 of the LP, chapter 12 of the Framework and the National Design Guide.

Internal and External Space for Residents

16. It is not entirely clear from the evidence whether the LPA considers that the proposal comprises a mixed HMO and apartment scheme or whether it is solely an HMO proposal. Some of the units do appear to be self-contained in terms of facilities, but nonetheless, there is a communal kitchen provided within the building.
17. I am not certain whether the license for a 9 person HMO was based upon the plans that are the subject of this appeal. However, on the basis that what is proposed is an HMO, the plans indicate that room sizes would accord with HMO guidance, given that they are between about 14 and 18 square metres. In reaching this conclusion, I note that the license for use of the appellant property as a 9 person HMO includes a condition which states that any room in the HMO used as sleeping accommodation by 2 persons aged over 10 years should not be less than 10.22 square metres. I have no evidence to indicate any conflict with such a condition which was presumably based upon the Council's guidance.
18. In addition to the above, the appellant has provided an extract from Derby City Council's "Amenities and Space Guidance for Houses in Multiple Occupation" in respect of HMO room space requirements and there is no suggestion from the LPA that the proposal would conflict with it.
19. Notwithstanding the above, some of the proposed rooms would include self-contained facilities such as washing facilities, cooking facilities and bedrooms. The Housing Act 2004 defines what is a flat and what is an HMO. I have based my decision upon the basis that what is proposed overall, is an HMO and that it accords with the definition of an HMO in the Housing Act 2004. On this basis the room sizes are acceptable with reference to HMO room size guidance. I conclude that the proposed internal space for residents is acceptable. In this regard, I do not find that it is necessary to consider the proposal against the

space standards as outlined in the Government's Technical Housing Standards – Nationally Described Space Standards 2015.

20. In reaching the above conclusion, I also note that the Council has approved a license for the property to be used as an HMO for a 'maximum of six households and 9 persons'. As part of the approval of the license, the Council would have considered whether adequate rooms sizes and communal facilities were capable of being provided within the property, whether that be based on the plans that are the subject of this appeal, or based upon different plans. The existence of a license is a material planning consideration to which I afford weight in concluding that the property could be used by up to nine persons and with adequate internal communal and other space for residents. Likewise, I also find that external communal space would be acceptable based upon occupancy of up to nine persons. Indeed, I was able to see the rear outside space as part of my site visit and judge it to be acceptable in this regard.
21. Given the above, I nonetheless conclude that the property would be capable of being used by up to nine occupants as an HMO with acceptable internal space provided for its residents. In this regard, I do not find conflict with the amenity and design requirements of policies CP3 and CP4 of the CS, saved policies GD5 and H13 of the LP and paragraph 135(f) of the Framework.

Other Considerations

22. The LPA cannot demonstrate a deliverable five-year supply of housing sites. The LPA states that it can demonstrate 3.69 years supply and acknowledges that paragraph 11d of the Framework is therefore engaged. In this context, the proposal would seek to provide additional residential occupancy of the host property and therefore would seek to boost the supply of additional residential accommodation in the area. This is a social matter to which I afford moderate positive weight in the planning balance.
23. In addition to the above, there would be some economic benefits arising from the occupation of the appeal property by nine people as distinct to six people in terms of the support provided to existing facilities and services in the local area. I afford this benefit only limited weight given the relatively small difference between six persons and nine persons in housing supply terms.

Planning Balance and Conclusion

24. The proposal would cause harm to the living conditions of the occupiers of neighbouring properties from noise and disturbance and to the character of the area. These are matters to which I afford very significant adverse weight in the planning balance.
25. Weighed against the above are the other considerations outlined including the social and economic benefits associated with a more intensive use of the property for residential purposes. I also consider that HMO internal space standards are met and that the outside amenity space would be acceptable for up to nine occupants.

26. On balance, I conclude that the identified adverse impacts, including the conflict with specified development plan policies, significantly and demonstrably outweigh the identified benefits when assessed against the policies in the Framework taken as a whole. Therefore, the appeal should be dismissed.

S. Hartley

INSPECTOR