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Decision by Richard Hickman, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2215
- Site address: 9 Castle Road East, Grantown-on-Spey PH26 3HS
- Appeal by Millers of Speyside Ltd against the decision by the Highland Council
- Application for planning permission 19/01264/FUL dated 19 March 2019 refused by notice dated 7 August 2019
- The development proposed: Change of use from residential to house in multiple occupation
- Date of site visit by Reporter: 27 November 2019

Date of appeal decision: 9 December 2019

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## Decision

I dismiss the appeal and refuse planning permission.

## Description and background

1. The appeal property is a 3 bedroom flat in a two storey block comprising 4 flats located on the outskirts of Grantown-on-Spey. There are several other similar properties in the vicinity.
2. Planning permission for the change of use to multiple occupation was refused on the basis that “The proposed use has a detrimental impact on residential amenity due to the lack of parking facilities and is therefore contrary to policy 1(7)(c) of the Cairngorm National Park Authority Local Development Plan”.
3. A similar proposal from the same applicant for the nearby flat at 14 Castle Road East was also considered by the council, leading to a refusal of permission and a second appeal (DPEA case reference PPA-270-2216). That appeal is the subject of a separate decision notice.
4. Grantown-on-Spey and Vicinity Community Council has no objection to the proposal. Although there are concerns about the potential effect on neighbours, the community council considers that the use of the multiple occupation licensing scheme should provide the necessary regulation of both properties.
5. Ten representations (from 9 households) objecting to the two changes of use have been submitted to the council.



6. Both properties are owned by Millers of Speyside Ltd (a local business) and are used to accommodate workers employed by the company.

7. The main points put forward by the council in support of the decision to refuse planning permission are:

- The adopted local development plan does not contain a policy relating to houses in multiple occupation.
- Policy 1(7)(c) of the local development plan (Alterations to Existing Houses) requires adequate off-street parking to be maintained.
- Taking account of their own local knowledge, the advice of the council's roads staff, and the first-hand experience of local residents, the committee members concluded that deficient parking provision relative to the scale of accommodation involved would have adverse effects bringing the development into conflict with this policy.
- This was on the basis that the flat can accommodate 3 people, who would have to travel 1.8 kilometres to reach the applicant's place of business, but there is parking space for only one car. There can be no control over how many cars are owned by the flat occupants, and the parking area serving these flats does not have allocated spaces. There is a lack of opportunities for safe on-street parking or convenient additional on-site parking.

8. The main matters of concern stated in the representations opposing the change of use include:

- There is a frequent turnover of short term residents living in the flat, leading to neglected outdoor areas and a lack of consideration for neighbours.
- There is regular noise from the flat, including shouting, arguing, and loud music, often late at night.
- There are late night parties at the flat nearly every weekend, sometimes requiring police attendance.
- There is a shortage of parking spaces for additional residents' cars, and to accommodate visitors' parking, bin and cycle storage, and garden ground. Vehicles parked on the street often block the pavement.
- Multiple occupation properties are out of place in a quiet residential area.
- The intensive occupation of the flat results in serious intrusions on the amenity of neighbouring residents, and a fire risk.

9. The appeal statement states that the flat residents do not have vehicles so that one parking space is sufficient. Parking is available on the road and further spaces can be provided in the garden ground of the flat.

## Reasoning

10. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise.

11. As noted above, the local development plan does not contain a policy on proposals for the formation of houses in multiple occupation.

12. Policy 1(7)(c) of the local development plan requires an adequate level of car parking provision to be maintained.

13. Policy 2 of the local development plan supports economic growth, including proposals that support or extend the economy.

14. Protection of neighbours' amenity is a component of policy 3 (Sustainable Design – Planning Guidance). This is non-statutory guidance which does not form part of the statutory development plan. However the plan makes it clear that the non-statutory guidance should be taken into account in considering proposals and it is thus an important material consideration in the determination of this appeal.

15. The council has drawn attention to planning circular 2/2012 (Scottish Government Guidance on Houses in Multiple Occupation: Planning Control and Licencing). This explains the relationship between these two separate regimes. The purpose of the licencing scheme for houses in multiple occupation is to achieve and maintain high standards of service by ensuring that the owners of such properties, and their agents, are fit and proper persons for that purpose; and to ensure the suitability of the accommodation. Although the location of the accommodation is a relevant factor, most of the guidance on licensing is related to internal matters of operation and management of the property, such as space standards and occupancy levels, fire safety etc. In addition, the licensing authority can refuse to consider an application for a licence for multiple occupation if it considers that such use would constitute a breach of planning control.

16. I take it from this that the usual planning development management regime is expected to apply to material changes of use to houses in multiple occupation, including any relevant provisions of the development plan and relevant planning guidance. The 2012 circular (in paragraph 17) states that a decision on the grant of planning permission must take account only of relevant planning issues. This would in my view include one of the fundamental principles of land use planning which is to ensure compatibility between existing and proposed uses, but (as the circular states) making no assumptions about the potential behaviour of tenants.

17. On this basis, I consider that the determining issues in this appeal are:

- in relation to the local development plan, whether the use of the appeal property for multiple occupation would meet the requirement in policy 1(7)(c) that there should be adequate parking, and whether the change of use would contribute to supporting or extending the local economy;
- and, as a material consideration in relation to the non-statutory guidance contained in policy 3, whether the change of use of the flat to multiple occupation has an unacceptable impact on the amenity of neighbouring residents.

18. The council's reason for refusal is based on the potential increase in the car parking requirement resulting from the change of use to multiple occupation. The council's transport staff consider that parking provision for houses in multiple occupation should be on the basis of one space per bedroom.

19. I accept the validity of this approach. While a family occupying the flat could give rise to a parking requirement for two or even 3 cars, the occupation of the flat by 3 (or

possibly more) people of working age would in my view be more likely to generate a higher parking requirement. This would of course vary according to the choices made by those occupying the flat, but I think it is legitimate for the council to take account of this factor, reflecting the concerns of local residents and the local knowledge of committee members.

20. During the site visit, the appellant pointed out how parking space for two cars could be provided on the garden ground assigned to flat 9, and one space in the area assigned to flat 14. Any additional cars would have to be parked on the road in front of the property as parking within the circulation area around the flats would be likely to obstruct parking by other residents.

21. Castle Road East is a fairly important road, forming part of the A939 leading north towards Nairn and Forres. It is of reasonable width allowing vehicles to pass each other even if there is parking on the east side of the road in front of the flats. Local residents report that some cars are parked partly on the pavement, causing obstruction to pedestrians with buggies or wheelchairs. I agree that this is undesirable (and probably unlawful) but I do not think that the addition of two or 3 additional cars (arising from both flats) parked at the roadside would result in a significant parking problem.

22. In relation to the potential benefit to the local economy, it might be argued that as the flat is used to accommodate workers employed at the appellant's business elsewhere in Grantown-on-Spey, it makes an indirect contribution to the success of that business. However the use for multiple occupation is a form of residential use and not an economic activity, and there is no location specific reason why this accommodation should be provided at the appeal site.

23. Turning to the non-statutory guidance contained in policy 3, this requires the amenity of all neighbours to be protected, on the basis of an impact assessment. The Report of Handling does not contain such an assessment.

24. The representations lodged by several local residents report a variety of sources of serious disturbance caused by the residents of the two flats (see paragraph 8 above), which appear to be a regular occurrence which has a very significant and continuing adverse effect on the peaceful enjoyment of the nearby flats by their occupants. I am satisfied that this is a serious intrusion on residential amenity. This does not require me to make any assumption about the potential behaviour of tenants, as local residents have described an established pattern of late night disturbance which has not been effectively curtailed by any efforts that the landlord may have made.

25. The community council considers that regulation through the multiple occupation licensing scheme offers a remedy to these problems. Given the character of this area and the flats themselves, the close proximity of other residents, and past patterns of disturbance, I agree with the submission from a local resident that the use of the flats for multiple occupation is out of place in an otherwise quiet residential area. I consider this to be a fundamental land use conflict in this location which is unlikely to be fully remedied through management of the flats.

26. In these circumstances, I conclude that this aspect of policy 3 is an important material consideration, and that the use the flat for multiple occupation is unacceptable due

to the serious adverse impact that it has on the amenity of nearby residents. Thus although in my view the change of use does not breach any policy of the statutory local development plan, the effect of the use on residential amenity is a sufficiently important material consideration to justify refusal of planning permission.

27. I have taken account of the reasons put forward in support of the appeal but they do not alter my conclusion.

*Richard Hickman*

Reporter