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## Appeal Decision

Site visit made on 3 September 2019

**by John Dowsett MA DipURP DipUD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 15<sup>th</sup> November 2019**

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**Appeal Ref: APP/N4720/W/19/3231854**

**7 Brudenell Grove, Hyde Park, Leeds LS6 1HP**

- 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 Abdul Ditta against the decision of Leeds City Council.
  - The application Ref: 19/00204/FU, dated 14 January 2019, was refused by notice dated 8 March 2019.
  - The development proposed is a change of use from dwelling (C3) to 7 bed HMO (sui generis).
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### Decision

1. The appeal is dismissed.

### Procedural Matter

2. The planning application form described the appeal proposal as 'Change of use application to HMO'. The decision notice issued by the Council uses the description 'Change of use from dwelling (C3) to 7 bed HMO (sui generis)'. This latter more accurately sets out the proposal as a seven bedroom HMO, as shown on the submitted drawings, would not fall within use Class C4 as defined in the Town and Country Planning (Use Classes) Order 1987 (as amended). I note that the appellant has also used the Council's description on the appeal form. I have, therefore, used this description for the purposes of the appeal.

### Main Issues

3. The decision notice issued by the Council lists three reasons for refusal. However, the second and third reasons for refusal are worded identically. The Council's appeal statement includes a third reason for refusal in respect of the effects of the proposal on the wider area (listed as the second reason in the statement) which does not appear on either the decision notice, or in the planning officer's report.
4. The appeal must be determined based on the formal decision issued by the Council. Therefore, the main issues in this appeal are:
  - The effect of the proposed development on the supply and mix of housing in the area; and
  - The living conditions of the neighbouring residential properties and, more broadly, the residents in the area, with particular regard to potential noise and disturbance and anti-social behaviour.

## Reasons

### *The supply and mix of housing*

5. Part A) of Policy H6 of the Leeds Core Strategy 2014 (the Core Strategy) sets out criteria to be used in determining applications for houses in multiple occupation (HMO). These are to ensure that a sufficient supply of HMOs are maintained; to ensure that HMOs are located in areas well connected to the employment or educational destinations associated with HMO occupants; to avoid detrimental impacts through high concentrations of HMOs undermining the balance and health of communities; ensuring that proposals for HMOs address relevant amenity and parking concerns; and to avoid the loss of existing houses suitable for family occupation in areas of existing high concentrations of HMOs.
6. The supporting text to Policy H6, which sets out how the policy will be implemented, states that it is recognised that some streets may already have such a high concentration of HMOs that the conversion of remaining C3 dwellings will not cause further harm. It also recognises that in areas where there is currently a very high concentration of HMOs that it may be the case that the remaining C3 dwellings would be unappealing and effectively unsuitable for family occupation. The supporting text states that in these circumstances Policy H6A would not be used to resist changes of use of such dwellings to HMOs. In May 2019 the Council produced a "Houses in Multiple Occupation (HMOs): Development Management Practice Note" (the Practice Note), which does not have the status of policy, but which sets out in greater detail how the Council will apply the 'exception test' set out in the supporting text to Policy H6. It is stated that the approach outlined is the one that has been taken by the Council since March 2017 in determining planning applications for HMOs.
7. The property is a mid-terraced house with accommodation over two principal floors together with a basement and an attic. It has a small front garden and a rear yard. The area has good accessibility to open space, schools and shops, as well as having good public transport links. There is nothing that would indicate that the property could not be used as a family house. Therefore, the proposed development would result in the loss of a dwelling that would be suitable for family occupation, contrary to Policy H6 of the Core Strategy.
8. It is common ground between the parties that the area is one in which there are very high numbers of HMOs. The Council has identified a number of adverse effects resulting from high concentrations of HMOs and these are not disputed by the appellant. However, the appellant argues that the exception test set out in the supporting text to Policy H6 should be applied and that there is no permanent community in the area due to the high proportion of HMOs that already exist. The appellant has submitted evidence which indicates that in Brudenell Grove and parts of Brudenell Mount and Queens Road to the west, high proportions of the properties are in use as HMOs. However, these are just a portion of the houses in the immediate surroundings and there is no evidence before me in respect of the tenure of housing to the immediate east or to the north and south, which make up the same locality. When I visited the site, it was apparent that there were a large number of buildings in use as HMOs, as evidenced by greater numbers of waste bins and the presence of security grills over windows and doors. However, there were also a significant number of

properties where it was either clear that they were in single occupation or the nature of the occupancy was not clear. Whilst it is evident that there is a substantial transient, and in particular student, population in the area, it is not by any means clear that there is no permanent community.

9. The Practice Note sets out that, for the exception test to apply, the property in question must be the last, or approaching the last, property on a street. It also states that to apply the test more liberally would only serve to undermine Policy H6. In terms of applying the policy, the Practice Note sets out that the study area for exception test should in the first instance be an individual street. Beyond the section where the appeal building is located, Brudenell Grove continues northwards to terminate at a junction with Brudenell Road. To the north of Brudenell Street, Brudenell Grove is comprised of commercial properties with flats above. There is no information relating to the tenure or occupancy of these flats but, due to their configuration, lack of external space, and position above commercial premises, they are unlikely to be suitable for occupation by families.
10. Both parties agree that of the terrace of sixteen buildings which contains the appeal building, thirteen of these are in use as HMOs and three, including the appeal building, are private houses. In these circumstances, the appeal building is clearly not the last remaining property in C3 use. Whether it is "approaching the last property" is a matter of judgement. Nonetheless, I am mindful that too benevolent an interpretation would undermine the purpose of the policy. The appellant has not offered any interpretation of what approaching the last property may mean and whilst three out of sixteen is not a large number, it is still, in my view, sufficiently large a number to not be approaching the last. Consequently, this limb of the Council's exceptions to Policy H6 is not triggered.
11. In terms of whether the property is unappealing and effectively unsuitable for family occupation, I have had regard to the appellant's evidence in respect of anti-social behaviour in the area, particularly noise nuisance, which would be a factor in whether the property is suitable for family occupation. However, there is nothing before me, such as evidence of unsuccessful marketing the property, that would indicate that there is not a demand for the appeal building as a private house. I therefore consider that the second limb of the Council's exception test is not engaged.
12. I have noted that there is a survey report on the property dating from 2006 that suggests that the building was previously used a rental property for students, although there is no conclusive evidence that planning permission was granted for this use, the previous level of occupation, or that its use was authorised specifically as an HMO.
13. A number of other decisions in respect of HMO's have been brought to my attention by the appellant. I do not have the full details of these cases and so cannot be certain that the circumstances in them are directly comparable to the appeal that is before me. I note that the Council state that many of these were determined before the approach set out by the Council in the Practice note was adopted. It is also clear from the information provided that those cases which have been allowed since that time related to existing HMOs that were either being increased in capacity or, in one case, having the use regularised. None of these appear to be analogous to the present case and,

consequently, I can give little weight to them. In any event, I have determined this appeal on its own merits.

14. The property is situated in an area with a high concentration of HMOs and there is no evidence to suggest that there is an insufficient supply of HMOs in the area. The property is suitable to be used as a family home and there is no evidence that there is not a demand for the property as a private dwelling. Given this, I consider that the loss of this dwelling would further undermine the housing and community imbalance in the area and would prejudice the Council's objectives of trying to maintain the balance and sustainability of local communities. The appeal proposal would fail to meet criteria (iii) and (v) of Part A to Core Strategy Policy H6.
15. I conclude that the proposed development would have a detrimental effect on the supply and mix of housing in the area. It would not comply with Policy H6 of the Core Strategy.

#### *Living conditions*

16. Core Strategy Policy P10 and Saved Policy GP5 of the Leeds Unitary Development Plan 2006 are general policies which seek to ensure, among other matters, that development proposals cause no loss of amenity to existing occupiers.
17. The appeal building is currently shown on the submitted drawings as a six bedroom house and the proposal would result in a seven bedroom HMO. Whilst there would be an increase in the number of bedrooms, the potential occupancy levels are likely to be similar. That said, the usage patterns of an HMO would be different from a private house and occupiers are more likely to come and go at different times which would increase the potential for disturbance from the property.
18. The appellant suggests that as there are no residential properties neighbouring the appeal building there would be no harm to the living conditions of neighbouring occupiers. Whilst the properties to either side of the appeal building are in HMO use, this does not mean that the occupiers of these premises would not suffer from noise and disturbance. There is no evidence that occupiers of an HMO would necessarily be more tolerant of noise than occupiers of a private house. The Council's evidence sets out that in 2014 to 2015, 31% of noise complaints in the area came from students and in 2015/2016 the proportion was 39%. These would have been occupiers of shared flats or HMO's. This evidence is not challenged by the appellant. In addition, there are some single occupancy dwellings nearby, both within the terrace of houses where the appeal building is located, and in the streets opposite.
19. It is not disputed that there are impacts on residential amenity and living conditions which occur as a result of high concentrations of HMOs in an area. The appeal proposal would add a further HMO to the existing high number in the area and this would exacerbate problems which currently occur.
20. I therefore conclude that the proposed development would cause harm to the living conditions of the occupiers of neighbouring properties. It would not comply with the relevant requirements of Core Strategy Policies H6 and P10, and Saved Policy GP5 of the UDP.

### **Other matters**

21. I have had regard to the information submitted by the appellant concerning his medical conditions. I have also noted that the proposal is supported by the local Ward Councillors for similar reasons and that it is considered that the exceptions to Policy H6, which have been covered above, should apply. Whilst these health issues make it understandable that the appellant wishes to move to a different location, in the absence of any substantive evidence that the appeal building cannot be sold at market value as a private house, these do not of themselves justify granting planning permission for a change of use to the property to an HMO and the detrimental effect that would have on the supply and mix of housing in the area, or on the living conditions of occupiers of neighbouring properties.

### **Conclusion**

22. For the above reasons I conclude that the appeal should be dismissed.

*John Dowsett*

INSPECTOR