
Appeal Decision

Site visit made on 8 March 2021

by C Coyne BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th May 2021

Appeal Ref: APP/C2741/W/20/3264700

48 Moat Field, Osbaldwick, York YO10 3PT

- 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 Daniel Rose against the decision of City of York Council.
 - The application Ref 20/00428/FUL, dated 28 February 2020, was refused by notice dated 7 August 2020.
 - The development proposed is change of use from Class C3 to flexible use C3 and C4.
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Decision

1. The appeal is allowed and planning permission is granted for change of use from Class C3 to flexible use C3 and C4 at 48 Moat Field, Osbaldwick, York YO10 3PT in accordance with the terms of the application Ref 20/00428/FUL, dated 28 February 2020, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Existing Plans and Elevations Drawing Number: 510.001.

Procedural Matters

2. The City of York Council does not at this moment in time have a formally adopted statutory development plan. However, the overall aim of emerging Policy H8 of the York Local Plan Publication Draft February 2018 (PDLP) and the draft Controlling the Concentration of Houses in Multiple Occupation Supplementary Planning Document (SPD) is to maintain the balance of local communities which is consistent with the overall aims of the *National Planning Policy Framework* (the Framework). Consequently, I have afforded them limited weight in this case.
3. The Town and Country Planning (General Permitted Development) Order 2015 (GPDO) stipulates that the change of use from a dwelling (within the C3 use class) to a House in Multiple Occupation¹ (HMO) (within the C4 use class) is permitted development and the appeal property is within an area subject to an Article 4 Direction which removes this permitted development right.

Main Issue

4. The main issue is whether the appeal site would be a suitable location for an HMO.

¹ Shared houses occupied by between three and six unrelated individuals.

Reasons

5. The appeal property is a two-storey semi-detached dwelling with three bedrooms and one bathroom on the first floor with an open plan lounge/dining room and kitchen on the ground floor. It also has an attached single storey garage/cycle store with a separate shower room and toilet within it. It is located on a cul-de-sac in a predominately residential area. The proposal would change the use of the property from a residential dwelling to an HMO. It is not proposed to increase the number of bedrooms within the appeal property.
6. Emerging Policy H8 of the PDLP only allows the conversion of a dwelling to an HMO where amongst other things, it would not create an adverse impact on neighbouring residential amenity particularly through noise disturbance or residential character of the area by virtue of the conversion alone or cumulatively with a concentration of such uses. It is the proposal's potential conflict with this criterion which is the area of dispute between the main parties.
7. Emerging Policy H8 and the draft SPD also state that applications for the change of use from a dwelling house to an HMO will only be permitted where it is in an area where: less than 20% of properties are for various reasons classed as HMOs; less than 10% of properties within 100 metres of street length either side are classed as HMOs (for similar reasons); and the accommodation provided is of a high standard which does not detrimentally impact on residential amenity.
8. The Council's officer report states that there are approximately 18 properties within 100 metres of street length either side of the appeal property with there being approximately two HMO's amongst these meaning that the current concentration in the locality is around 11%. It goes on to state that the proposal would increase the number of HMO's within 100 metres to approximately three meaning that the concentration of HMOs would as a result be around 16.6%, taking it well above the threshold set by the draft SPD and emerging draft Policy H8. Additionally, based on the evidence before me it appears that at the time of the determination of the original application both no. 36 and no. 46 were licenced HMOs and on the Council's HMO property register.
9. However, according to the appellant's statement, no. 46 is, according to the Council's register, no longer licenced as such since 18 August 2020, suggesting that it is no longer in use as an HMO. The appellant also states that there are approximately 17 properties within 100 metres of street length either side of the appeal property meaning that the concentration of HMOs would be approximately 12%. The Council have not disputed this evidence or provided any substantive evidence of their own to support their case, that the concentration would be substantially higher. Furthermore, if the Council's figure of 18 properties was to be used in this context the likely concentration of HMOs would be approximately 11% which is only just above the 10% threshold. Consequently, when taken in the round, I find that the potential increase in the concentration of HMOs that the proposal would cause would not be significantly above the policy threshold or the current concentration within the locality.
10. I acknowledge that the Council and interested parties have raised concerns in relation to potential noise disturbance that the proposal would cause in combination with other nearby HMOs in the area. However, no substantive evidence, such as a formal notice, has been submitted to support this which suggests that noise disturbance has not been an issue at the appeal property or at no. 46 in the past or that any noise or disturbance was directly related to or caused by their occupants.

11. Consequently, this combined with the fact that the proposal would not have any additional bedrooms, means that it would be unlikely to cause any unacceptable noise or disturbance to its neighbours.
12. I also acknowledge that even though no. 46 is not listed on the Council's register that it could still nonetheless be currently being used as an unlicensed HMO. However, I also have no substantive evidence before me to support this or indeed to show that if the property is being used as an unlicensed HMO, that it is currently having any detrimental impact on neighbouring residential amenity or on the residential character of the area.
13. Accordingly, the proposal would be unlikely to create any adverse impact on neighbouring residential amenity or on the residential character of the area by virtue of the conversion alone. Similarly, I find that the proposal would also not be likely to cause any such adverse impacts cumulatively with a concentration of such uses. It would also therefore not be likely to 'tip' the locality from balanced to unbalanced as per paragraph 5.2 of the SPD.
14. I therefore conclude that while there would be a technical conflict with emerging Policy H8 and the draft SPD, the proposal would not materially harm neighbouring residential amenity or the residential character of the area and that, as a result, the appeal site would be a suitable location for an HMO. In this regard, the proposal would accord with paragraphs 127 a) and 127 f) of the National Planning Policy Framework (the Framework).

Other Matters

15. Concerns have been raised by interested parties in relation to highway safety and waste disposal. However, the Highway Authority has not raised any objection to the proposal and from the evidence before me I see no reason to disagree. Furthermore, I have no substantive evidence before me to show that waste disposal is or would be an issue at the appeal property. Consequently, these matters do not alter or outweigh my conclusion on the main issue above.

Conditions

16. The Local Planning Authority have suggested the imposition of a condition requiring the submission of a management plan for the proposal, covering aspects such as refuse, recycling, noise, property maintenance and garden maintenance. However, given the nature and scale of the proposal and being mindful of paragraph 55 of the Framework, I consider this to be neither reasonable nor necessary in this case. Consequently, in the interest of clarity, I have only imposed the standard time limit condition and a condition ensuring compliance with the approved plans.

Planning balance and conclusion

17. In the overall planning balance, even though the proposal would conflict with emerging draft Policy H8 of the PDLF and the draft SPD, it would not conflict with paragraph 127 of the Framework. As a result, the limited harm that the proposal would cause by conflicting with the emerging draft Policy H8 and the draft SPD would not significantly and demonstrably outweigh its compliance with paragraphs 127 a) and 127 f) of the Framework when assessed against the policies in the Framework as a whole. Consequently, and for the reasons set out above I conclude that the appeal should be allowed.

C Coyne

INSPECTOR