



Appeal Decision

Site visit made on 18 May 2021

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 June 2021

Appeal Ref: APP/C2741/C/21/3268139

Land at 47 Thirkleby Way, Osbaldwick, York YO10 3QA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Miss Luciana Lau against an enforcement notice issued by City of York Council.
 - The enforcement notice was issued on 6 January 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised change of use from a single dwelling house (use class C3) to a House in Multiple Occupation (HMO) (use class C4).
 - The requirements of the notice are: Cease the use of the Premises as a House in Multiple Occupation (Use Class C4) and revert the Premises to its authorised use as a single dwellinghouse (Use Class C3).
 - The period for compliance with the requirements is 7 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a) an application for planning permission is deemed to have been made under section 177(5) of the Act as amended.
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Decision

1. It is directed that the enforcement notice be corrected by the deletion of the words "and revert the Premises to its authorised use as a single dwellinghouse (Use Class C3)" in paragraph 5 (i). Subject to this correction the appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely the change of use from a single dwellinghouse (Use Class C3) to a House in Multiple Occupation (Use Class C4) at Land shown edged red on the plan attached to the notice.

Enforcement Notice

2. The requirements set out in paragraph 5(i) of the notice include a requirement for the premises to revert to its authorised use as a single dwellinghouse (Use Class C3). However, an enforcement notice cannot require that a lawful use or activity is carried out. The purpose behind the notice can be achieved by deleting the requirement to resume the lawful use and I shall do so as the requirements are no more onerous than first issued and no injustice is caused to any party.

Appeal on ground (a), deemed planning application

Policy background

3. Following changes to permitted development rights in 2010, the Council made an Article 4 Direction to bring within planning control changes of use from Class C3 dwellings to Class C4 Houses in Multiple Occupation (HMO). The associated Draft Supplementary Planning Document (SPD), "Controlling the Concentration of Houses in Multiple Occupation, 2012, amended in July 2014", seeks to avoid an over-concentration of HMOs in the interests of securing mixed and balanced communities, year-round demand for shops and services, avoiding crime, and avoiding increased parking pressures. It sets out, at paragraph 5.17, the criteria to be considered when assessing an application to change the use of a property to an HMO.
4. Policy H8 of the City of York Draft Local Plan, 2005 provides that conversion will be permitted from dwellings to HMOs where adequate parking is provided and where the conversion can be carried out without adversely impacting on the residential character of the area, including consideration of cumulative impacts of noise/disturbance and consideration of refuse storage/recycling.

Main Issues

5. The main issues in this case are the effect on the character of the area and the living conditions of neighbouring residents.

Reasons

6. 47 Thirkleby Way is a two-storey semi-detached dwelling situated on a residential street to the east of York City Centre. Thirkleby Way is not subject to any parking restrictions and it lies within walking distance of York University and close to public transport links. At its junction with Farndale Avenue there is a parade of shops which include a local supermarket, a hair salon and post box.
7. No 47 is a three bedroomed property and currently occupied by three unrelated individuals. There is a separate bathroom, kitchen, dining and living area. The property has a modest private rear garden, within which there is a detached garage. To the side of the property is a covered area/car port, and the front drive provides space for two cars. From the evidence before me the dwelling is of sufficient size and its layout and external areas would provide suitable living conditions for use as a small shared house (Class C4, HMO).
8. The Council does not dispute the fact that the proposal would not breach the threshold levels set out in the SPD, which seek to prevent concentrations of HMOs on streets and in neighbourhood areas. Consequently, there is no evidence that the proposal would create an unbalanced community. However, the Council say they are aware that the neighbouring property, No 49 is an HMO for up to six unrelated persons and No 45 is occupied by two students. Therefore, they consider that the proposal would result in a cluster of HMOs, and an increase in intensity of activity, particularly in the late evening, which would be harmful to neighbouring residents in this quiet residential street.
9. The property is currently occupied by three unrelated adults, although as a small HMO it has the potential to be occupied by up to six unrelated persons. Consequently, with a small HMO there would be comings and goings and some

general noise and disturbance. Whilst I accept that some properties on the street may be occupied by elderly persons, the housing on this street tends to be of the family type. I consider that the noise and disturbance from students or other unrelated adults comings and goings would not be significantly different to that from a large family where there would potentially be journeys to work, school and social events.

10. I understand the property has been operating as an HMO for at least two years. Although I have received a representation from a third party who cited one instance when a group of people congregated on the street late at night, there was no evidence that this was directly related to the appeal property. Moreover, I have not been provided with any clear evidence or observations of anti-social behaviour relating to this HMO or its neighbours which would support concerns relating to potential for noise and disturbance. The potential forms of noise and disturbance such as playing of loud music, partying, or social activity in the garden would not necessarily be any more likely to cause harm to neighbouring residents than would be the case with a large family engaging in similar activities.
11. The property has a modest curtilage, with adequate space for the parking of cars, cycle storage and refuse/recycling storage. From my own observations on my site visit, the appeal property and its neighbours displayed the same visual characteristics as the other properties in the street which are in family or single person occupancy. I saw no evidence of unkept gardens or accumulations of refuse or litter.
12. For the reasons given above I conclude that the proposed development would not cause harm to the living conditions of the occupants of neighbouring properties nor would it have a harmful effect on the character of the area. There is no conflict with the development plan and in particular with Policy H8 of the LP or the provisions of the Draft SPD, the aims of which are set out above. I also find no conflict with the National Planning Policy Framework (the Framework) which seeks to ensure that areas function well and are safe, inclusive and provide a high standard of amenity for existing and future occupants. The appeal on ground (a) succeeds.

Conditions

13. I have taken into consideration the Council's request to impose a condition requiring the submission and implementation of a management plan for the property. However, there is no evidence that in this instance a management plan is necessary for this small HMO. Consequently, the suggested condition would not be reasonable and would fail to meet the tests for conditions as set out in the Framework and Planning Practice Guidance.

Conclusion

14. For the reasons given above and taking into account all other matters raised, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the use as described in the notice, as corrected. The appeal on ground (g) does not fall to be considered.

Elizabeth Pleasant

INSPECTOR

