
Appeal Decision

Site visit made on 25 May 2021

by C Dillon BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 June 2021

Appeal Ref: APP/N4720/W/20/3257198

3, Brudenell Avenue, Hyde Park, Leeds LS6 1HD

- 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 Ameena Al Rasheed against the decision of Leeds City Council.
 - The application Ref 20/01730, dated 16 March 2020, was refused by notice dated 4 August 2020.
 - The development proposed is change of use from C3 (dwelling house) to C4 (house in multiple occupation).
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Decision

1. The appeal is dismissed.

Procedural Matter

2. For the purposes of the heading above the description of development has been taken off the Council's decision notice as it is a more precise description of the appeal proposal.

Main Issues

3. The main issues are:
 - the effect of the appeal proposal on the sustainability of the community with particular regard to the balance of the mix of housing and also that of local services;
 - the effect of the appeal proposal on living conditions of local residents, with particular regard to noise, disturbance, anti-social behaviour and crime; and
 - the effect of the appeal proposal on the character and appearance of the area.

Reasons

Sustainable communities

4. The appeal property comprises a mid-terraced dwelling located in the Hyde Park area of Leeds. It is characterised by a number of dense rows of terraced properties. It is currently occupied as a single dwelling (Use Class C3). It has a small front garden and rear yard. Its layout and size are suitable for use as family accommodation. Furthermore, it is located within easy reach of a range of services and facilities and public transport links.

5. The appeal site is located within an area which has one of the highest concentrations of Houses in Multiple Occupation (HMOs) in the City which is in part due to its proximity to the universities.
6. The National Planning Policy Framework (the Framework) seeks to support strong vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations.
7. In response to an increasing concentration of HMOs in parts of the city, including Hyde Park, and the concerns this raises regarding reduced living conditions for existing residents and loss of family housing, the Council has sought to redress the housing and population imbalance that has occurred through the imposition of an Article 4 Direction. This brings the conversion of dwellings in Use Class C3 to HMOs covered by Use Class C4 under planning control.
8. The Council has advanced that they estimate that 28 of the 33 properties in the defined area of search used in the determination of this proposal remain in Use Class C3 occupation. This area of search is confined to the street on which the appeal property is situated and is a relatively small snap-shot in time of the wider neighbourhood.
9. The Council accepts that it does not have a complete record of all HMO properties. From my site inspection it is evident that there is a substantial transient population in the area. However, from the submitted evidence before me it is not by any means clear that there is no permanent community here.
10. However, the Article 4 Direction clearly demonstrates the Council's concerns about a move towards a housing and population imbalance in the area occurring which it now seeks to arrest, and data has been provided by the Council which confirms to me that this is still a relevant issue for the City.
11. Consequently, it is clear that the appeal proposal would lead to the further loss of living accommodation suitable for families in an area which already has a high number of HMOs.
12. There is no evidence before me to indicate a need to increase the provision of HMOs in this part of the City. However, given the existing high concentrations of HMOs, the loss of another dwelling could only serve to further undermine the balance of the local housing mix. This would fail to address the Council's objective of maintaining a sustainable, inclusive and mixed community here.
13. The effect of this particular appeal proposal on the appropriateness of local services and facilities has not been clearly demonstrated by either main party. I therefore attribute very limited weight to this.
14. Whilst the effect on local services has not been demonstrated through the submitted evidence, the appeal proposal would be detrimental to the sustainability of the community with particular regard to the mix of housing.
15. Policy H6 of the Leeds Core Strategy states amongst other things that proposals for new HMOs will be determined to ensure that a sufficient supply of HMOs is maintained in Leeds and to avoid the loss of existing housing suitable for family occupation in areas of existing high concentrations of HMOs.

16. This policy carries full weight. Given the identified harm and the lack of evidenced need for more of this type of accommodation, the appeal proposal conflicts with this policy.

Living conditions

17. A dwelling in Use Class C3 use would most likely comprise a single, couple or family household of mixed age groups living together as a single unit. Whereas, the proposed HMO would be more likely to house unrelated adult residents. As such, the appeal proposal is likely to lead to an increase in the level of activity and movements to and from the property which could represent a different pattern of occupation to a family. This has the potential to cause increased noise and disturbance over and above that which can be reasonably expected from a Use Class C3 occupation.
18. Whilst properties in the immediate vicinity of the appeal site may be in use as HMOs, this does not mean that the occupiers of these properties would not suffer from noise and disturbance. There is no evidence before me to indicate that occupiers of an HMO would necessarily be more tolerant of noise and disturbance than occupiers of a dwelling falling in Use Class C3. Moreover, there are still nearby properties falling in Use Class C3 whose occupants could also be impacted upon.
19. The evidence provided suggests that Brudenell Avenue and the wider Hyde Park area suffers from high levels of anti-social behaviour and crime that has been linked to high numbers of HMOs in this part of the City. A substantial level of graffiti and the presence of security grills over windows and doors are evident and are indicators of crime and anti-social behaviour and the fear of these.
20. Whilst I have no direct evidence to suggest that the occupants of this type of accommodation are the significant perpetrators, my attention has been drawn to a significant number of recorded incidents relating to nearby properties. This does indicate the potential for the appeal proposal to exacerbate the existing situation which, in turn, would be harmful to the future living conditions of local residents.
21. Main parties do not dispute that the area is one in which there are very high numbers of HMOs. The appellant has advanced that the impact of this on the living conditions of both herself and her family has led to her to pursue the proposed change of use. This in itself provides an indication of the contribution that high concentrations of HMOs are having on reducing the living conditions of this local community. However, the submitted evidence does not convince me that the appeal proposal would not have the potential to exacerbate current problems experienced by remaining local residents.
22. For the reasons given, the appeal proposal would be harmful to the living conditions of neighbouring residents with particular regard to noise, disturbance, anti-social behaviour and crime.
23. Policy H6 of the Core Strategy states amongst other things that proposals for new HMOs will be determined to avoid detrimental impacts through high concentrations of HMOs, which would undermine the balance and health of communities and address relevant amenity concerns.

24. Policy P10 of the Core Strategy states amongst other things that developments should create a safe and secure environment that reduces the opportunities for crime without compromising community cohesion and protect residential amenity.
25. Saved Policy GP5 of the Leeds Unitary Development plan review- Volume 1: Written Statement 2006 (the UDP) states that proposals should seek to avoid loss of amenity and danger to health or life and also promote the prevention of crime amongst other things.
26. In view of the identified harm, the appeal proposal would conflict with these policies, each of which carry full weight.

Character and appearance

27. In line with the evidence, during my site inspection it was apparent that there are a number of properties in use as HMOs in the vicinity of the appeal site. However, in addition to the remaining properties falling into Use Class C3 in this street, there were also a significant number of properties in the wider area that were also in single occupation or the nature of the occupancy was unclear.
28. Within Brudenell Avenue and the wider neighbourhood high numbers of refuse bins and low levels of general property maintenance are prevalent. Furthermore, high levels of graffiti and the presence of security grills over windows and doors are evident.
29. Whilst the overall character of these streets would remain as densely developed residential properties, these characteristics have some degree of synergy with the concentration of HMO uses and erode the vibrancy and in turn the character and appearance of this residential area. The appeal proposal would have potential to exacerbate this.
30. The degree of tranquillity of an area contributes to its character. This is a densely developed urban area. Nonetheless, I have already found that the appeal proposal would have the potential to give rise to further noise and disturbance to a degree that would constitute harm. This would have potential to further erode the relative tranquillity levels which should be reasonably expected in a residential area.
31. Consequently, the appeal proposal would cause harm to the character and appearance of the area.
32. Policy H6 of the Core Strategy states amongst other things that proposals for new HMOs will be determined to avoid detrimental impacts through high concentrations of HMOs, which would undermine the balance and health of communities.
33. Policy P10 of the Core Strategy states amongst other things that developments should respect and enhance existing streets with the intention of contributing positively to place making. The development should be respect the character of the locality and protect the visual and general amenity of the area.
34. Saved Policy GP5 of the UDP states that proposals should seek to avoid loss of amenity.
35. Given the identified harm, the appeal proposal conflicts with these policies, each of which carry full weight.

Other Matters

36. Whilst there are some similarities between the appeal decisions referred to by the Council and the issues in this case, I do not have the full details of those cases. Therefore, although this indicates the Council has successfully defended a significant number of other recent appeals relating to the creation of HMOs, I cannot be certain that the circumstances in them are directly comparable to the proposal before me and the individual site circumstances. Therefore, moderate weight is given to these.
37. The supporting text to Policy H6 of the Core Strategy makes provision for exceptions to be made to where particular circumstances exist. The Council's "Houses in Multiple Occupation (HMOs): Development Management Practice Note" (the Practice Note) sets out how the exceptions test should be applied. The purpose of this document is to provide clarity and consistency in policy interpretation and application.
38. The Council has identified a particular geography upon which to base its assessment. Within that area of search although the appeal property is adjoined on either side by HMOs, it is not the last remaining property in falling in Use Class C3.
39. Whether it is approaching the last property is a matter of judgement and too benevolent an interpretation would undermine the purpose of the policy. Whilst the remaining number of properties in Use Class C3 occupation is not a large number, it is still sufficiently large a number to not be regarded as approaching the last property falling in Use Class C3. Consequently, an exception to Policy H6 of the Core Strategy is not met.
40. The appellant has advanced that the area of search is too narrow. They have drawn my attention to the existence of another HMO opposite in Wrangthorn Place which falls beyond that geography and is in addition to the adjoining HMOs on either side of the appeal site. Broadening the area of search would not necessarily serve to bring the appeal site within this exception. This is because a different geography could encompass further properties falling in Use Class C3. In any event, the results of a different area of search are not before me and my assessment must be based on the submitted evidence.
41. In terms of whether the appeal property is unappealing and effectively unsuitable for family occupation, I have had regard to the evidence before me regarding incidents of anti-social behaviour in the area as a factor of whether the property is suitable for family occupation. I have also had regard to the juxtaposition of the appeal site with known HMOs. However, there is no substantive evidence of unsuccessful marketing of the appeal property that would indicate that there is not a demand for the particular appeal property as a dwelling falling in Use Class C3 in its current context. Consequently, the second limb of the Council's exception test is not met.
42. I afford great weight to the Practice Note in the absence of substantive evidence which challenges the reasonableness of its approach in the context of Policy H6 of the Core Strategy.
43. The anti-social problems which the appellant states have been experienced do make their wish to move to a different location understandable. However, in the absence of any substantive evidence regarding the nature and degree of

impacts of this on the living conditions and well-being of the occupants of the appeal site, and in the absence of robust marketing evidence, only moderate weight can be afforded to these personal circumstances.

44. I have had regard to the Public Sector Equality Duty (PSED) contained in section 149 of the equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. This is because the appellant has alleged past racially motivated behaviour against themselves and their family and this relates to persons who share protected characteristics for the purposes of the PSED.
45. The proposal has the potential to provide benefit to the appellant and their family in terms of their future living conditions and well-being. However, it does not follow from the PSED that the appeal should succeed. I have found harm would arise from the appeal proposal in respect to the balance of the housing mix, the character and appearance of the area and living conditions of neighbouring residents for the reasons given. This would conflict with the development plan. The harm that I have identified is not out-weighed by this benefit.

Conclusion

46. The appeal proposal conflicts with the development plan when taken as a whole. There are no considerations that out-weigh this conflict so as to indicate that the decision should be made contrary to that plan.
47. For these reasons, the appeal should be dismissed.

C Dillon

INSPECTOR