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# Appeal Decision

Site visit made on 18 January 2022

**by R Hitchcock BSc(Hons) DipCD MRTPI**

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

**Decision date: 02 February 2022**

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**Appeal Ref: APP/N4720/W/21/3284342**

**6 Hartley Avenue, Woodhouse, Leeds LS6 2LP**

- 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 John C Heron against the decision of Leeds City Council.
  - The application Ref 21/04696/FU, dated 24 May 2021, was refused by notice dated 31 August 2021.
  - The development proposed is a flexible use permission as a dwellinghouse (Use Class C3) and a House in Multiple Occupation (Use Class C4) under the provisions of Class V of Part 2 of Schedule 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (sic).
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The description in the banner heading above is taken from the planning application form. Class V of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) permits the change of use of a building or other land from a use permitted by planning permission granted on an application, to another use which that permission would have specifically authorised when it was granted. The provision under Class V does not, in itself, grant the permission for the flexible uses being sought. It is therefore necessary to consider whether both uses referenced are acceptable having regard to the local development plan and all relevant material considerations to this appeal.
3. The planning application form indicates that the property is currently used as a small house in multiple occupation (HMO). However, there is dispute between the main parties as to the existing lawful use of the site. The Council's Decision Notice subsequently describes the proposed development as 'change of use from a dwellinghouse (Use Class C3) to flexible use as a dwellinghouse and HMO'. The appellant used the revised description on the appeal form.
4. It is not for me, under a section 78 appeal, to determine whether or not an existing development is lawful. To that end, it is open to the appellant to apply for a determination under s191 of the Town and Country Planning Act 1990 and my determination of this appeal under s78 does not affect the issuing of a determination under s191 regardless of the outcome of this appeal.
5. The appellant's statement acknowledges that the existing use has not been demonstrated as lawful. Although reference is made to correspondence between the appellant and the Council in relation to use of the site as an HMO as far back as 2007, this has not been provided in evidence.

6. Moreover, having regard to the Council's stated position that the starting point for consideration of the proposal is a C3 single household dwellinghouse, the appellant has provided little substantive evidence to counter that claim or sought to demonstrate that any existing C4 use is lawful for the purposes of the appeal.
7. In the absence of a planning record and substantial lack of evidence to demonstrate the building can lawfully be used as an HMO, either through a qualifying period of continuous use up to the present, or immediately before and since the introduction of an Article 4 Direction preventing a change of use from a C3 dwelling to a C4 HMO without recourse to a planning application, I am unable to attribute significant weight to the appellant's claims in that regard. I have proceeded on the basis of the evidence before me.

## **Main Issues**

8. The main issues are the effect of the development on:
  - the mix of housing types in the locality in the interests of achieving balanced communities
  - the living conditions of nearby residents.

## **Reasons**

### *Housing mix*

9. The appeal property is a semi-detached dwelling located within a primarily residential street. The site lies in the Woodhouse area of the city which is identified as having existing high concentrations of HMOs, particularly as occupied by students.
10. Amongst other things, Policy H6 of the Leeds City Council Local Plan Core Strategy (as amended by the Core Strategy Selective Review 2019) [2019] (CS) seeks to manage the distribution of HMOs within the Article 4 Direction area. The supporting text to the policy acknowledges the contribution that HMOs can make to low-cost housing solutions. However, it also recognises the adverse social and environmental effects that can arise from high densities of this type of accommodation amongst family and other types of housing.
11. The Council have provided evidence demonstrating that high numbers of HMOs are present in the locality, a matter which is not contested by the appellant. There is no dispute that a use as a family residence, as the most likely use for which the building was intended when built, would be acceptable in the locality.
12. The use of the building as HMO accommodation would cause a greater imbalance to housing types in the locality. Although that use would only be an incremental change, the change to include C4 would, nevertheless, run contrary to the adopted strategy of managing the extent and spatial distribution of changes of use away from family housing. This would undermine the Council's approach to achieving sustainable communities.
13. Although the policy includes a pragmatic approach to new HMOs in areas which are almost completely saturated by HMOs, this is not demonstrated to be the case in this particular location. The evidence indicates that several single unit occupation and family houses exist nearby. Substantial saturation has not

therefore occurred such that the battle is already lost or that there would be little benefit in retaining the building as a C3 dwellinghouse.

14. The appellant asserts that the proposal would meet a local need in the diversifying market for HMOs. However, any such need or growth in the private rented sector for student or non-student accommodation in this particular locality is not supported by any objective evidence. Even if it were the case, in the face of a clear strategy to seek to re-balance housing mixes in specifically identified areas, the existing high level of HMOs is not a good reason for permitting a further increase in the proportion of HMOs, albeit of potentially different tenure. Furthermore, the appellant's argument that the concentrations of nearby HMOs is likely to discourage use of the property as a C3 dwelling is supported by little evidence. Notwithstanding that the proposal would allow either use, I find those arguments lend little weight to the case for permitting an additional C4 unit in the locality.
15. The appellant contends that the use of the appeal site as an HMO has not previously led to harm. However, the legitimate aim of the policy finds its basis in the cumulative effects brought about by high concentrations of HMOs. In that context, I acknowledge that it would be difficult to attribute adverse effects such as the restructuring of services or changes to local retail to any particular individual property. However, as an adopted approach in the development plan, it is a matter that is entitled to significant weight in the appeal.
16. For the above reasons, I find the potential use of the property as an HMO would undermine the legitimate aim of seeking to rebalance housing and communities. It would conflict with Policy H6 of the CS as it seeks to strategically manage the distribution and concentration of HMOs in the interests of achieving sustainable, balanced and healthy communities and avoid the loss of existing housing suitable for family occupation in areas of high concentrations of HMOs. It would also conflict with the National Planning Policy Framework (the Framework) as it seeks sustainable communities.

#### *Living conditions*

17. As a proposal for a flexible use, the characteristic profile of activity associated with the use of the building is likely to change between periods of C3 and C4 usage. Under a C4 use the building could be occupied by up to 6 unrelated individuals. As a C3 dwelling, occupancy by a single family could be to a greater or lesser extent.
18. However, as occupiers having less interdependency and therefore a greater propensity for independent activity, the use by unrelated occupiers is likely to create greater levels of coming and going. This would include that associated with visitors to those individuals. Furthermore, occupancy as an HMO is usually limited to adults whereupon the regularity of activity extending later into the evenings is likely to be greater.
19. In an area popular with students, the HMO use of the property could be occupied by transient students when tenancies have a tendency to be short term and with less opportunity for occupiers to establish links as part of the local community. Occupation by a limited age range of young adults is highly likely to increase the frequency in noisy activities and attendance of late night events compared to those living together as a multi-generational family unit.

20. As an HMO, I find that there would likely be greater levels of disturbance than in C3 use. This could be from within the premises, in the street on return home late in the evening or arising from parties held at unsociable times. Notwithstanding the number of HMO properties already in the area, the change would be a retrograde one to the aim of achieving high standards of living conditions for neighbouring occupiers, whether families or otherwise. Measures to increase the sound insulation of the building would not address incidents about the building or on the approaches to it.
21. Policy H6 recognises the Government's view that high concentrations of HMOs can lead to wider adverse economic, social and environmental effects. At the time of my site inspection, I observed that the area suffered from graffiti, litter and a high proportion of visible security measures aimed at protecting property. These attributes are indicative of the strained social and environmental conditions that the Policy seeks to redress.
22. I acknowledge the appellant's contention that some datasets indicate low levels of crime or antisocial behaviour in the locality or arising specifically from HMOs in recent years. However, this is only one indicator of social conditions. I am not therefore persuaded that they offer firm grounds for overturning a policy aimed at rebalancing existing communities and improving the wider living conditions in areas of the city.
23. The appellant contends that utilising a property management plan to minimise the potential for tenants to cause antisocial behaviour could be secured by planning condition. This could prevent the problems arising from uncontrolled HMOs elsewhere from being compounded. Whilst I acknowledge that some measures could be installed to seek to penalise unneighbourly behaviour by groups or individuals, there is little before me to demonstrate how this would be effectively achieved in practice and therefore whether conditions to secure such measures would meet the tests laid out in Paragraph 56 of the Framework. A requirement to cease the use of a lawful residential premises is unlikely to meet the test of reasonableness. Moreover, even if it were successful, it would not necessarily address the wider social and environmental implications associated with increased concentrations of HMOs.
24. As an unrestricted C4 HMO, University Rules and Sanctions would not necessarily apply to the property. Accordingly, I am not persuaded that those measures would be sufficient to offset the effects of an additional HMO in the locality.
25. In support of the development, the appellant refers me to appeal decisions elsewhere which have found the likely effect of changes of use from C3 to C4 on neighbours' living conditions to be neutral and dependent on the nature of individual occupiers rather than the type of accommodation. Whilst I note the approaches taken by other Inspectors in those cases, the full circumstances of those decisions are unclear and contrast to the approaches in other appeal decisions submitted in evidence by the Council. Although relevant, those decisions are not binding and do not limit the scope of judgement in individual case circumstances in other locations. Moreover, the existence of development elsewhere does not represent an appropriate reason to find in favour of a proposal that would cause harm in this case, a case I have considered on its own merits.

26. For the above reasons, I find that the proposal to include a C4 HMO as part of a flexible use would, in conjunction with other HMOs and similar forms of housing in the vicinity, undermine the standards of living conditions in the locality. It would conflict with the aim of achieving balanced communities, improving the local environment and the predominant social conditions. This would conflict with Policies H6 and P10 of the CS, saved Policy GP5 of the Leeds Unitary Development Plan (Review 2006) Volume 1: Written Statement, and the Framework as they seek to ensure suitable standards of living conditions and healthy communities with a positive quality of life and wellbeing.

### **Other Matters**

27. I acknowledge that occupation of the property could increase surveillance in the locality. As a flexible use, this could be without apparent abandonment of the dwelling outside of term times. The occupation of the premises could contribute to the local economy and a proposal to remove existing grilles from the doorway to improve the appearance of the site would be benefits of the scheme. However, taken individually or cumulatively, I do not find those benefits would outweigh the harm arising from the effects on local amenity and conflict with the Council's strategy for achieving sustainable communities.

28. The absence of local parking pressure is not a matter in favour of the development.

### **Conclusion**

29. The proposal would conflict with the development plan taken as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should not be allowed.

*R Hitchcock*

INSPECTOR