



Appeal Decision

Site visit made on 9 November 2022

by S Brook BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 December 2022

Appeal Ref: APP/A2335/W/22/3302882

24 Franklin Street, Lancaster LA1 4TA

- 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 Fraser Rankin against the decision of Lancaster City Council.
 - The application Ref 22/00023/CU, dated 8 January 2022, was refused by notice dated 1 March 2022.
 - The development proposed is described as 'Change of use application (within same use class) from residential dwelling (C3) to house of multiple occupation (C4) student house'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposal to provide a 3-bedroom house in multiple occupation (HMO) would involve a material change of use, as Class C4 of the Town and Country Planning (Use Classes Order) 1987 (as amended) refers to houses in multiple occupation, which are defined as small, shared houses occupied by between three and six individuals sharing basic amenities. No exterior alterations are proposed although the property would be re-ordered internally.
3. A change of use from Class C3 (dwelling house) to Class C4 (HMO) would normally be permitted development under the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). However, the appeal property lies within an area covered by an Article 4 Direction which removes these permitted development rights in order to manage amenity and character impacts associated with HMOs, as well as to ensure that balanced communities are maintained within the City.
4. An amended drawing forms part of the submission (Existing and Proposed Plan and Site Plan Rev C). This plan was provided to and considered by the Council during the course of the application and included details of room sizes and bike storage. I have determined the appeal based on these revised plans.

Main Issue

5. The main issue is the effect of the proposed development upon the character and appearance of the area, with particular regard to housing mix and the level of houses in multiple occupation.

Reasons

6. The appeal site consists of a traditional two-storey terraced property, within a largely residential area to the south of the city centre. Surrounding properties are similar in appearance and include a small frontage area, along with rear yards, accessed from a back lane. Most properties rely on on-street parking.
7. Policy DM13 of the Local Plan for Lancaster District 2011-2031 Part Two: Review of the Development Management DPD Adoption Version July 2020 (LP) states that maintaining an appropriate housing mix and safeguarding the character of residential areas are important priorities for the Council. The supporting text explains that large concentrations of HMOs in a small area can impact on the character of a residential area and give rise to an inappropriate mix of residents. It goes on to say that this has been the case in areas of Lancaster, having a negative effect on local amenity. LP Policy DM13 contains a presumption against new housing in multiple occupation, including proposals for change of use. It states that where there is a concentration of such properties greater than 10% within a 100m radius, further such proposals will not be acceptable. LP Policy DM13 goes on to state that such proposals may on exception be considered acceptable when proposals meet the requirements of criteria V to IX.
8. The Officers Report (OR) indicates that data from HMO density records show a concentration of 13.75% with this proposal. I have not been provided with any evidence to challenge this figure. Whilst my attention has been drawn to background papers highlighting that the collation of information identifying HMO's may be problematic, without any information to the contrary, then I have no evidence on which to reach a different conclusion. As such, the proposal would exceed the 10% threshold whereby such development has been determined to have a harmful impact on the character of a residential area and mix of residents.
9. Whilst I note a request from the appellant to be provided with the Council's data, this request was only made at a late stage of the appeal process. Should the appellant wish to challenge this information, that should have formed part of the appellant's case.
10. There is some disagreement between the parties as to when an exception may be made, if the 10% threshold is exceeded. The point in contention is whether compliance with criteria V to IX alone, provides an exception to LP Policy DM13 and the 10% threshold, or whether it is necessary to firstly justify 'exceptional circumstances' to then consider the proposal against those criteria. The latter approach is put forward in the Council's Statement of Case (SoC) by reference to advice contained within the Residential Conversions and Houses in Multiple Occupation Supplementary Planning Document, Adopted 8 December 2020 (SPD). However, this is not the approach taken by the Council in the OR and it does not reflect a straightforward reading of the policy. There is no reference within LP Policy DM13 itself to requiring justification of exceptional circumstances in order to then consider the criteria, the policy states 'proposals may on exception be considered acceptable where....' and lists the criteria relevant to that determination.
11. The OR raises no concerns in relation to criteria V, VI, VIII and IX of LP Policy DM13. Criteria VII requires that the proposal would not harm the character of the building or surrounding area. Whilst the proposal would not involve any

external alterations that would physically alter the external appearance of the house or surroundings, inherent within LP Policy DM13 is the notion that a concentration of HMO's above 10% within a small area will impact detrimentally on the character of a residential area and give rise to an inappropriate mix of residents, regardless of whether this is new build or conversion. As set out above, I have not been provided with any evidence to counter that the 10% threshold is not exceeded in this case, so as to ensure that the character of the area is not harmed by an imbalance arising from an over-concentration of HMO's. Nor have I been provided with any other evidence to demonstrate that the character of the area would not be harmed or other exceptional circumstances, examples of which are provided within the SPD.

12. To conclude on this main issue, the proposed development would harm the character and appearance of the area, by exceeding the level of HMO's considered acceptable in a particular location to maintain an appropriate mix and balance of households. This would not comply with LP Policy DM13, the purpose of which has been set out above, and the Council's SPD, which seeks to manage the development of HMOs to prevent an over-concentration, which is considered harmful to local communities and to meeting housing need and balanced communities. The proposal would not comply with the objective of the National Planning Policy Framework (NPPF) to create mixed and balanced communities, whilst ensuring that development adds to the quality of an area and is sympathetic to local character.

Other Matters

13. I note that double glazing and insulation measures would mitigate possible noise intrusion and no concerns have been raised by statutory consultees. No concerns are raised by the Council in relation to parking or internal space standards. Other matters, such as bike and bin storage could be controlled by the imposition of planning conditions. Repairs undertaken to date have been made in a sympathetic manner. These matters do not outweigh my findings in relation to the main issue.
14. The appellant references a possible claim for compensation arising from procedural matters relating to the Article 4 Direction, in the event of a failed appeal. No formal application for costs has subsequently made and so I have not considered this matter further.
15. The appeal site is close to the Morecambe Bay Special Area of Conservation (SAC), Morecambe Bay Duddon Estuary Special Protection Area (SPA), and Morecambe Bay Ramsar Site. As I have found harm in relation to the main issue, it is not necessary in this instance to undertake an appropriate assessment to consider the effect of the proposed development on these designations.

Conclusion

16. For the reasons outlined above, having had regard to the development plan as a whole and all other material considerations, I conclude that the appeal should be dismissed.

S Brook

INSPECTOR