



Appeal Decision

Site visit made on 13 December 2022

by A Veevers BA(Hons) PGDip (BCon) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 January 2023

Appeal Ref: APP/N4720/W/22/3307977

19 Ash Grove, Hyde Park, Leeds LS6 1AX

- 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 J Planas against the decision of Leeds City Council.
 - The application Ref 22/01206/FU, dated 14 February 2022, was refused by notice dated 6 April 2022.
 - The development proposed is described as 'retrospective application on change of use from 6 bed HMO to 8 bed Sui-Generous HMO, with lightwell to front and groundworks to the rear'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the planning application was refused, the Council have issued a Certificate of Lawful Development for use of the appeal property as a small House in Multiple Occupation (HMO) (C4 use) for up to 6 residents¹.
3. The appellant submitted amended plans as part of the appeal². The amendments seek to address the Council's fourth reason for refusal, in so far as the split bedroom arrangement of bedroom 6 on the plan submitted with the planning application³ is proposed to be a utility and a store-room and a bedroom is proposed to replace a games room in the basement.
4. Whilst the amended plans were submitted at the outset of the appeal and the overall number of bedrooms and proposed occupants remains 8, the amended plans are not the plans that were determined by the Council or upon which the views of interested parties were sought. The Procedural Guide to Planning Appeals – England (2016) states that the appeal process should not be used to evolve proposals and is clear that revisions intended to overcome reasons for refusal should normally be tested through a fresh application.
5. Having regard to the Wheatcroft Principles⁴, the degree of engagement of all parties and the interests of fairness, I cannot be certain that if I was to accept them no interested party would be prejudiced by my so doing. Accordingly, I have determined the appeal on the basis of the plans that were before the Council when it made its decision and on which parties were consulted.

¹ Local Planning Authority Ref: 22/04825/CLE

² Drawing No: 004 Rev C (Original & As-built floor plans & Location plan)

³ Drawing No: 004 Rev A (Original & As-built floor plans & Location plan)

⁴ Wheatcroft (Bernard) Ltd v Secretary of State for the Environment [1982] JPL 37

6. Reference is made by the appellant to the Leeds City Council Development Management Practice Note – Houses in Multiple Occupation (May 2019). The Note is not a statement of policy and does not change the wording or primacy of the development plan. It is not referred to in the Council's Decision Notice. Although supplementary planning documents are capable of being a material consideration in planning decisions, there is little evidence that the document has been subject to any external consultation or ratified otherwise. Whilst relevant, its commentary is therefore a matter of limited weight in my consideration of the appeal.

Main Issues

7. The main issues are the effect of the proposed development on:
- Living conditions of future occupants, with particular regard to the standard of internal bedroom accommodation;
 - The mix and balance of housing, with particular regard to the supply of family and other C3 dwellings in the area;
 - The living conditions of occupiers of the neighbouring properties and, more broadly, residents in the area, with particular regard to noise and disturbance, anti-social behaviour, crime, restructuring of local services and facilities to meet the needs of the predominant population; and,
 - The character and appearance of the area.

Reasons

Living Conditions for Future Occupants

8. Policy H9 of the Leeds Core Strategy (amended 2019) (CS) sets out minimum space standards for bedspaces within new dwellings. Although the proposed scheme is not for a new dwelling, the justification text supporting Policy H9 states that 'it is reasonable for HMOs to provide adequate levels of amenity for residents in terms of space, light and ventilation'. The space standards provide a measurable indication of appropriate bedroom size, requiring that, amongst other criteria, a single bedroom should have a floor area of at least 7.5sqm and be at least 2.15m wide. Proposed bedroom 6 shown in drawing 004 Rev A would comprise two separate rooms, one for sleeping and one for studying.
9. At my site visit I was able to go into both these rooms and saw that they were in use for general storage/desk space and the drying of clothes. Although cumulatively the total amount of floorspace would meet the standard for a bedroom within a new dwelling, the physical separation of the two rooms by a communal landing area would result in an unreasonable and unacceptable division of living space. It would require the occupant to make frequent movements across the communal landing area to access their essential belongings, which would be divided between two rooms.
10. Accordingly, the standard of internal bedroom accommodation would harm the living conditions of occupants. It would therefore be contrary to Policy H9 of the CS which, amongst other things, seeks to improve the quality of housing to create a healthy and sustainable living environment for current and future generations.

Housing Mix

11. Having regard to the recently issued Certificate of Lawful Development for the C4 HMO use of the property, the Council have confirmed in their appeal submission, that the first reason for refusal relating to the housing and population balance in the area, is no longer applicable. Consequently, there is no conflict with Policy H6 of the CS in so far as it relates to housing mix and the supply of family and other C3 dwellings in the area.

Living Conditions of Neighbouring Residents

12. Policy H6 of the CS does not differentiate between small and large HMOs. The proposed change of use from 6 to 8 occupants would not add to the overall number of HMOs in the street, nor would it increase the concentration of HMOs in this part of Leeds. Nevertheless, notwithstanding the existing C4 use of the appeal property, the statement submitted by the Council suggests that the intensification of the use of the property from 6 to 8 occupants would still be unacceptable for the same second and third reasons for refusal set out in the decision notice. Although limited details have been provided, I also note the Council's previous refusal of planning permission for the conversion of the basement of the appeal property to a single flat for similar reasons⁵.
13. There is no dispute between the main parties that the area already contains a high concentration of HMOs that are particularly attractive to students given its proximity to learning centres and amenities. However, according to the Council's evidence and that of a third party, there remains a meaningful mix of housing in the area. The supporting text to Policy H6 of the CS states that high concentrations of HMOs in an area can lead to a number of effects on the local population, such as increased anti-social behaviour, noise and nuisance, increased crime and the restructuring of local services and facilities to meet the needs of the predominant population. I recognise the effects relating to noise and disturbance can be of particular concern to immediate neighbours.
14. I acknowledge that, compared to some family living, the greater independence of individuals living in HMO's going about their daily lives would generate higher levels of comings and goings both within and about the property. For student occupiers, activity is more likely to take place throughout the day and, like other adults, potentially extend late into the evening, which has significant propensity to lead to noise and disturbance in the street and for immediately adjoining neighbours at unsociable hours.
15. It has been put to me that there is a high number of noise nuisance cases in this ward. Nevertheless, there is nothing before me that would lead me to conclude that there are any existing issues in this regard that would be amplified by the proposal for an additional 2 residents in the area, or that the proposed increase in occupiers of the appeal property would create such issues. Whilst increased occupancy would result in additional comings and goings, there is no substantive evidence to indicate that this would directly lead to noise and disturbance which would be likely to affect neighbours.
16. Furthermore, the source of noise and disturbance can often be the result of individuals' behaviour and landlord management rather than the number of occupants. Whilst occupants and landlords can change over time, I have no

⁵ Local Planning Authority Ref: 18/06261/FU

evidence before me to suggest that there have previously been noise complaints or disturbances from the property and I note the Council's environmental advisor has not raised any comments on the proposal in terms of noise, although a lack of complaint in this regard is not decisive.

17. Concerns have been raised that the proposal would lead to an increase in crime and unneighbourly behaviour in the area, however, I have no indication that the increase of 2 occupiers would be any more or less likely to engage in unneighbourly behaviour. Furthermore, I find little to substantiate the concerns of the Council regarding the effect of this particular appeal proposal on the restructuring of local services and facilities.
18. On the above basis, from my observations and the evidence provided, I find that the proposal would not harm the living conditions of occupiers of the neighbouring properties and, more broadly, residents in the area, with particular regard to noise and disturbance, anti-social behaviour, crime, restructuring of local services and facilities to meet the needs of the predominant population. I therefore find no conflict with the requirements of Policy H6 and Policy P10 of the CS and saved Policy GP5 of the Leeds Unitary Development plan review- Volume 1: Written Statement 2006 (the UDP) which together seek, amongst other things, that proposals for HMOs should create a safe and secure environment that reduces the opportunities for crime without compromising community cohesion and protect residential amenity.

Character and Appearance

19. The appeal property lies within the Headingley Hill & Hyde Park & Woodhouse Moor Conservation Area (CA). External alterations are proposed to the appeal site to create a lightwell to the front of the building and groundworks at the rear to facilitate a patio, garden and parking area. At the time of my site visit, the majority of these works had been completed.
20. There is no dispute between the main parties that the proposed development would not have an adverse effect on the character and appearance of the CA, pursuant to the duty under s72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, and I concur with that view. Accordingly, it is my view that the development would preserve the traditional appearance of the buildings along the row and the CA.
21. The Council refer to the effects of the proposal on the physical environment and streetscape, particularly with regard to the visual prevalence of bins, graffiti and litter in the area. It is likely that an additional two occupants would require one or two additional bins over and above the current number. Although an existing tree in the corner of the site is not indicated on the submitted plans, I am satisfied that additional bin storage provided within the rear garden area would not harm the appearance of the area.
22. 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 substantial number of requests to clear graffiti in the area along with litter from local parks and greenspaces. These types of activities diminish the appearance of the area. However, the submitted evidence does not convince me that the addition of 2 occupants at the appeal site would significantly increase the likelihood of this occurrence.

23. For the above reasons, I consider the proposal would not harm the character or appearance of the area. I am therefore satisfied that the proposal complies with Policy P10 of the CS and the heritage protection policies of the Framework, which together seek to ensure good design along with development that is appropriate to its context and respects the character of the area and the streets and spaces that make up the public realm and the wider locality.

Other Matters

24. Two off-road parking spaces would be provided to the rear of the property, served from Ebbotson Place. I note that the site is highly accessible, close to bus stops providing access to the city centre. I also note the Council's highway team have raised no objection to the proposal, subject to the provision of secure cycle facilities at the site. This could be dealt with by condition if the proposal were otherwise acceptable.
25. The Council have referred to a number of appeal decisions, the majority of which relate to the proposed change of use from a C3 dwelling to an HMO. As the appeal property is already in C4 use, these are not directly comparable to the proposal before me. The dismissed appeal at 15 Estcourt Terrace appears to be a similar proposal for the change of use from a C4 (6 bed) HMO to a sui generis (8 bed) HMO. However, I have not been provided with the full details or the background of this example and in any event, this decision was made prior to the amended CS. Moreover, I am required to reach conclusions based on the individual circumstances of this appeal.

Conclusion

26. Although the proposal would not lead to the loss of family or other C3 accommodation and would not be detrimental to the living conditions of those living in the wider area or the immediately neighbouring properties, it would nevertheless be detrimental to the living conditions of future occupants, with particular regard to the split configuration of bedroom 6.
27. The proposed development would therefore conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which outweigh this finding. Accordingly, the appeal is dismissed.

A Veevers

INSPECTOR