



Appeal Decision

Site visit made on 3 May 2023

by P Storey BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th August 2023

Appeal Ref: APP/N4720/W/23/3317844

13 Brudenell Grove, Hyde Park, Leeds LS6 1HP

- 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 Saqib Anwar against the decision of Leeds City Council.
 - The application Ref 22/04394/FU, dated 23 June 2022, was refused by notice dated 26 September 2022.
 - The development proposed is conversion of a single dwelling (C3) into a small house of multiple occupation (C4).
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - The effect of the proposed development on the sustainability of the local community, with particular regard to housing and population mix in the area.
 - The effect of the proposed development on the living conditions of neighbouring occupiers, with particular regard to anti-social behaviour, noise, nuisance and crime.
 - Whether the proposed development would provide acceptable living conditions for future occupiers of the host property.

Reasons

Sustainability of the local community

3. The appeal site is a mid-terrace house in a predominantly residential area comprising mainly of terraced and back-to-back houses. A parade of shops and various other local services lies a short distance to the north. The area is known to contain a high proportion of houses in multiple occupation (HMOs), due largely to its location close to the city's main university campuses and the city centre. The site is covered by an Article 4 Direction which requires planning permission for developments such as that proposed involving a change of use from Class C3 dwellinghouse to Class C4 HMO.
4. Policy H6 of the Core Strategy (as amended by the Core Strategy Selective Review 2019) Leeds Local Plan (the CS) sets out that proposals for new HMOs in the Article 4 area will be determined against the following 5 criteria:

- i) *To ensure that a sufficient supply of HMOs is maintained in Leeds,*
 - ii) *To ensure that HMOs are distributed in areas well connected to employment and educational destinations associated with HMO occupants,*
 - iii) *To avoid detrimental impacts through high concentrations of HMOs, which would undermine the balance and health of communities,*
 - iv) *To ensure that proposals for new HMOs address relevant amenity and parking concerns,*
 - v) *To avoid the loss of existing housing suitable for family occupation in areas of existing high concentrations of HMOs.*
5. There appears no dispute between the parties that the proposed development would comply with criteria i) and ii). In relation to the sustainability of the local community, criteria iii) and v) are most relevant to the proposed development. I will address criterion iv) separately.
6. The Leeds City Council Houses in Multiple Occupation (HMOs): Development Management Practice Note – May 2019 (the PN) sets out the Council's approach to interpreting CS Policy H6 and its supporting text. Although this does not hold the status of policy or adopted guidance, it is a material consideration.
7. There appears to be no dispute between the parties that areas with a high concentration of HMOs face certain challenges, including effects on local services, the physical environment and streetscape. As such, the supporting text to Policy H6 sets out instances where it may be appropriate to grant proposals for HMOs where they would not lead to any further harm in this regard. The PN sets out an interpretation of these scenarios as two 'Exception Tests': Exception Test 1 (ET1) and Exception Test 2 (ET2).
8. My attention has been drawn to a 2019 appeal for a similar development at 7 Brudenell Grove¹, which is within the same terraced row as the appeal site. This appeal was dismissed, with the Inspector finding that neither ET1 nor ET2 was triggered.
9. The supporting text to Policy H6 recognises that some streets (or a part of a street) may already have such a high concentration of HMOs that the conversion of remaining C3 dwellings will not cause further detrimental harm. The PN advises that for ET1 to apply, the property in question must be the last, or at least 'approaching the last' property on the street not to be an HMO.
10. The appellant has mapped the surrounding area to provide a visual representation of the concentration of HMOs. This indicates that, other than the appeal site and two other properties, all properties within the terraced row of 16 properties are HMOs. This statistic is agreed by the main parties.
11. Whilst this appears to be the same situation as at the time of the previous appeal, the appellant argues it is different because the appeal property is currently occupied by two students and is no longer a family dwelling.

¹ APP/N4720/W/19/3231854

12. Although the property may no longer be occupied by a family, the supporting text to Policy H6 refers to the conversion of the remaining 'C3' dwellings. Whilst I recognise that the PN refers instead to the conversion of 'family' houses, the current occupation by two students would remain a Class C3 use. The issue of whether or not it is occupied by a family is therefore not a determinative factor.
13. Accordingly, for the purposes of Policy H6 and in particular ET1, the current situation remains the same as at the time of the previous appeal. In assessing the previous appeal, my colleague noted that the issue of whether it was 'approaching the last property' was a matter of judgement and found that 3 out of 16 properties was sufficiently large a number to not be approaching the last. Because the current situation appears to remain the same and I have no substantive evidence before me to justify an alternative approach, I reach the same finding on this matter.
14. In terms of the wider area, the map submitted by the appellant indicates a very high proportion of HMOs. The appellant considers this demonstrates that the proposal would cause no further detrimental harm. The Council has presented an alternative map based on Council Tax data which indicates fewer HMOs. Although there is dispute between the parties regarding the accuracy of the data, I am presented with no compelling argument from either party that their data is more reliable than the other. Nevertheless, having previously identified that the situation in the specific terraced row would fail to meet ET1, this would not be a determinative factor.
15. I note the evidence of marketing in the form of several estate agent letters. I acknowledge that factors including the potential for noise and disturbance and the floor layout may make the property unattractive to some prospective occupiers. However, these are factors that may apply to any prospective occupier irrespective of whether the property is in C3 or C4 use. In terms of ET2, the PN advises that where a property is effectively unsaleable with a C3 use, and this can be reasonably demonstrated, this would serve as reason to outweigh the wider harm created by the addition of a further HMO in a high concentration area.
16. On the basis that ET2 refers specifically to the saleability of the property, the letter from Castlehill Estate & Letting Agents dated 18th May 2023 is particularly relevant because it refers to a sale valuation rather than rental prospects. I acknowledge this demonstrates that the property is likely to be more valuable as a Class C4 HMO than as a Class C3 dwelling. However, this is perhaps unsurprising given the higher potential rental income of a Class C4 HMO.
17. Nevertheless, a valuation has still been provided for a prospective Class C3 sale. I note the property was purchased by the current owner in February 2019 with the intention of letting the house as a single-family dwelling. However, I am provided with no details of how much was paid for the property, how this compared to the market values of other C3 properties in the area at the time, or how this aligns with the most recent valuation. Accordingly, the evidence does not demonstrate that the property would effectively be unsaleable as a C3 use, and the proposal fails to meet ET2.
18. For the above reasons, the proposed development would have an adverse effect on the housing and population mix in the area which would be harmful to the sustainability of the local community. As such, it would conflict with Policy

H6 of the CS, the objectives of which are set out above. It would also conflict with the provisions of the National Planning Policy Framework (the Framework), which seeks to support strong, vibrant and healthy communities.

Living conditions of neighbouring occupiers

19. Criterion iv) of Policy H6 is most relevant to this matter. The Council's evidence sets out that the Headingley and Hyde Park ward, in which the appeal site is located, attracts a higher number of noise nuisance cases for individual properties than any other part of the city. Instances of crime and anti-social behaviour are also among the highest in the city, and the Council suggests that these effects are directly related to the high concentration of HMOs and the associated transient population.
20. The appellant does not dispute that such adverse effects are linked to the high concentration of HMOs. However, because of this, the appellant states the proposed development would not create any further harm. The appellant advises that the property would be maintained to a high level, and any instances of disturbance would be dealt with swiftly.
21. However, the proposed development would add a further HMO to the housing mix in the area, and it is clear from the evidence before me that such uses can disproportionately affect the living conditions of neighbouring residents, irrespective of how responsible the landlord is. I note that the property may not have been occupied by a family for a long time, but the evidence suggests it has not been occupied as an HMO either. I understand it is currently occupied by 2 students, and the potential jump from 2 to 6 unrelated occupiers would clearly intensify the use. Furthermore, whilst the greater proportion of the local community may be transient, the evidence suggests there remains a permanent community in the area, however small it may be. This remains the case in the terraced row containing the appeal site, and accordingly the effects would be felt on occupiers of properties in both Class C3 and C4.
22. For the above reasons, the proposed development would result in harm to the living conditions of neighbouring occupiers which would conflict with Policies H6 and P10 of the CS and Saved Policy GP5 of the Leeds Unitary Development Plan (Review 2006) Volume 1: Written Statement (the UDP) and the Framework. Among other objectives, these policies seek to ensure that development proposals protect the visual, residential and general amenity of the area.

Living conditions of future occupiers

23. The description of development in the application form does not specify the proposed number of occupiers. However, the appellant's evidence is generally consistent in referring to the proposals as a 6 bed HMO.
24. The plans against which the Council determined the planning application illustrate 5 bedrooms, which appears inconsistent with the majority of the evidence. To address this, the appellant provided a supplementary plan as part of their 'final comments' submission for the appeal, showing a 6 bedroom layout. On the basis that this evidence was submitted at a late stage and interested parties were potentially deprived of the opportunity to comment, I have considered this against the Wheatcroft Principles².

² Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]

25. The revised plan shows two bedrooms on each of the ground, first and second floors. The lower ground floor shows a kitchen and living room. To provide natural light and a means of emergency escape, the plans illustrate that a lightwell would be provided to the front elevation at lower ground floor level. This is illustrated as being subject to a separate planning application.
26. Because this room would function as a living room, it would be expected that some form of natural light and outlook should be provided to secure suitable living conditions for prospective occupiers. Whilst I acknowledge that several other properties in the street feature windows and lightwells to the lower ground floor on the front elevation, the submitted plans show very limited details and no elevations or sections. Furthermore, on the basis that there is no guarantee of any separate application being successful, it would not be reasonable to grant planning permission subject to this prospect. Notwithstanding that accepting the revised plan would in all likelihood contravene the Wheatcroft Principles, the submitted plans provide insufficient detail to determine the acceptability of the proposals.
27. For the above reasons, the submitted details fail to demonstrate that the proposed development would avoid harm to the living conditions of future occupiers, which would conflict with Policy GP5 of the UDP and the Framework, which together seek to avoid problems of environmental intrusion and loss of amenity.

Other Matters

28. I note the appellant's reference to other applications that have been granted planning permission in the area. Although I have not been provided with full details of the proposals, I note the appellant's statement that the applications at 3 Royal Park View and 23 Brudenell Avenue were granted in 2019 and 2022 respectively because they passed the Exception Tests. Although these findings are not disputed, the purpose of the Exception Tests is to assess each case on an individual basis. Whilst these cases may have passed the Exception Tests, the current appeal proposal does not.
29. Although dates have not been provided for the planning applications at 12 Brudenell Mount (and subsequent appeal) and 22 Royal Park Road, the reference numbers indicate the applications were submitted in 2016. Accordingly, it is likely that they were determined prior to the introduction of the PN, which provided greater clarity on the approach to decision-making on such schemes. These examples therefore carry limited weight.

Conclusion

30. For the reasons given above I conclude that the appeal should be dismissed.

P Storey

INSPECTOR