



# Appeal Decision

Site visit made on 17 October 2023

**by A Veevers BA(Hons) DipBCon MRTPI**

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

**Decision date: 20 November 2023**

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**Appeal Ref: APP/N4720/W/23/3324538**

**1 Dawlish Terrace, Osmondthorpe, Leeds LS9 9HB**

- 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 Peter Bradley against the decision of Leeds City Council.
  - The application Ref 23/00924/FU, dated 13 February 2023, was refused by notice dated 11 April 2023.
  - The development proposed is change of use from dwelling house (C3) to house in multiple occupation (C4).
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## Decision

1. The appeal is allowed and planning permission is granted for the change of use from dwelling house (C3) to house in multiple occupation (C4) at 1 Dawlish Terrace, Osmondthorpe, Leeds LS9 9HB in accordance with the terms of the application, Ref 23/00924/FU, dated 13 February 2023, subject to the following conditions:
  - 1) No solid means of enclosure shall be erected around the basement stairwell.
  - 2) Unless within three months of the date of this decision schemes for a glazed basement door, cycle storage, refuse and recycling bin storage, are submitted in writing to the local planning authority for approval, and unless the approved schemes are implemented within three months of the local planning authority's approval, the use of the site as a House in Multiple Occupation (HMO) shall cease until such time as schemes approved by the local planning authority are implemented.

If any of the schemes in accordance with this condition are not approved within six months of the date of this decision, the use of the site shall cease until such time as the schemes approved by the local planning authority are implemented. Upon implementation of the approved schemes specified in this condition, those schemes shall thereafter be retained. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

## Application for costs

2. An application for costs was made by Mr Bradley against Leeds City Council. This application is the subject of a separate decision.

### **Preliminary Matters**

3. I have taken the description of development from the application form, omitting wording that is not an act of development.
4. It is common ground between the parties that the appeal property is already occupied as a 3-bedroom HMO. However, when determining the application, the Council noted that there were some inaccuracies in the submitted plans. At the time of my site visit, I too noted a number of discrepancies between the internal layout of the property compared to the submitted plans. For the avoidance of doubt, I have assessed the appeal as having taken place.
5. The Council's second reason for refusal related to 'sub-standard accommodation for future occupants' as it 'fails to demonstrate that the new HMO will address all relevant amenity concerns'. Following the submission of the appeal, the Council have confirmed that this reason is similar to the first reason for refusal. As a result, the second reason for refusal has been withdrawn by the Council. On the basis of what is before me, I see no reason to disagree.

### **Main Issue**

6. The main issue is the effect of the development on the living conditions of its occupiers, with particular regard to the layout of internal accommodation, privacy, security, light and outlook.

### **Reasons**

7. The appeal site comprises an end terraced back-to-back property within a residential area. The property is presently in use as a 3-bedroom HMO with bedrooms spread over three floors. Each bedroom has its own bathroom. A dining kitchen and utility room is located at basement level.
8. Access into the property for occupants of all the bedrooms is via steep steps descending from the small front garden to an external basement door. An additional access to the property for occupants of the ground floor bedroom only is from steps leading to a front porch and door which leads directly into the bedroom. At the time of my site visit, I saw that the property number, doorbell and letterbox was on this front door. A low fence panel was positioned between the steps to the front door and the basement window.
9. The basement provides the only communal living space within the property and incorporates kitchen units, cooking facilities and a good degree of worktop space, including a breakfast bar with seating. A separate utility room opens directly from the kitchen and accommodates a boiler, washing machine and fridge-freezers.
10. In terms of light, I visited the property around mid-day on a reasonably sunny and dry day. On entering the room, I saw that it was relatively large and deep. Natural light was provided by the existing opening window in the room, although the natural light offered was limited further away from the window. When the existing external solid white uPVC door into the room was closed, the reduction in natural light reaching that part of the room furthest from the window was noticeable, despite the sunny conditions. However, the appellant proposes to replace the existing external door with a glazed door and to

remove all existing fencing around the basement. This would increase the amount of natural light into the room.

11. The appeal property faces west, with no openings on any other elevation. As a result of the proximity of the basement steps to the window, even if the door was clear glazed, very little direct sunlight would penetrate the room at any time of day throughout the year. Nevertheless, due to the size of the room and the white ceiling and walls, even with dark flooring and worktops, the room did not feel oppressive with the door open, as would be the case with a clear glazed door. Whilst artificial lighting would likely be used for the most part when using the basement room, this is often the case in back-to-back buildings orientated in such a location.
12. While the outlook from the room is limited due to the proximity of the steps and retaining front garden wall to the basement window, I was able to see the small front garden, boundary wall and roof of the houses on the opposite side of the road when looking out of the window. Moreover, the replacement of the existing solid door with a clear glazed door would create a reasonable outlook for occupiers using the communal room. No prescribed requirements for an HMO to include a naturally lit utility room have been presented to me.
13. Given the relatively large size of the bedrooms, each with their own bathroom and front facing window, it is likely that occupiers spend much of their time in their rooms, which all have a significant amount of natural light and outlook.
14. The Council refer to the privacy and security concerns relating to the main access and thoroughfare for all occupiers of the building passing through the ground floor bedroom in their consideration that this is one aspect of the proposed development that results in unacceptable living conditions. Even though there are inaccuracies in the submitted layout plans compared to the actual internal layout of the property that was evident at my site visit, it was clear to me that the internal staircase leads from the communal basement dining kitchen to all three bedrooms. It was also apparent that, although the steps to the external basement entrance are steep and winding, this main access through the dining kitchen to the bedrooms on the first and second floor does not require occupiers to pass through the ground floor bedroom. There would therefore be no loss of privacy or security for occupants of the ground floor bedroom.
15. The first and second floor bedrooms would be more than one floor away from the communal kitchen which would be contrary to guidance in the emerging 'Houses in Multiple Occupation, Purpose-Built Student Accommodation and Co-Living Amenity Standard Supplementary Planning Document (2020)' (draft SPD). As the document remains to be formally adopted and it is unclear what, if any, consultation has taken place or whether representations have been made, it is of limited weight in the determination of this appeal.
16. Furthermore, due to the narrow back-to-back nature of the property, it is not unusual for bedrooms to be more than one floor above living, dining or kitchen areas, even when in use as a C3 dwellinghouse. Indeed, the Council's officer report confirms that the layout of the property remains similar to a C3 dwellinghouse, with living areas at basement level.
17. There is no indication on the basement door that it is the main access to the HMO. It is therefore likely that visitors to the property, postal and delivery

services use the front porch door to the ground floor bedroom, where there is a property number, doorbell and letterbox. Given the narrow access to the basement, I also accept that there are practical issues in terms of deliveries for large goods. This could lead to unwarranted disturbance to the occupiers of the ground floor bedroom. However, signage and the provision of an additional post/letter box at the appeal site may prevent some disturbance. In any event, postal and delivery arrangements are a private matter that do not amount to the demonstration of unacceptable living conditions.

18. I conclude, based on the evidence before me, the development provides acceptable living conditions for occupiers with particular regard to privacy, security, light and outlook. As a result, it complies with Policies H6, H9 and P10 of the Leeds Core Strategy (Review 2019) and Saved Policy GP5 of the Leeds Unitary Development Plan (2006). Together, these policies seek, amongst other things, to ensure that development provides acceptable levels of amenity, including in HMO's. The proposal also accords with paragraph 130 of the National Planning Policy Framework (the Framework) which requires the creation of places with a high standard of amenity for existing and future users.
19. While the development does not fully comply with the draft SPD in relation to the distance between bedrooms and the communal dining kitchen, each case must be considered on its own merits, and based on the circumstances of the site. Owing to the limited weight afforded to the draft SPD and in light of the compliance I have found with the statutory development plan, a decision other than in accordance with the document is justified in this case, but it is based on the specific circumstances of the appeal site and the details of the scheme before me.

### **Other Matters**

20. I note the consultation response from the Council's Private Sector Housing Team regarding health and fire safety. The draft SPD advises that all HMOs are subject to an assessment under the Housing Health and Safety Rating System, introduced by the Housing Act 2004. Reference has also been made to the 'Fire Safety Principles for Residential Accommodation' guidance document from the Council in consultation with the West Yorkshire Fire and Rescue Service. However, these matters are subject to separate legislation, licencing procedures and building regulations. As this would be required under procedures outside of the planning system, I have not considered this matter further.

### **Conditions**

21. I have had regard to the suggested condition put forward by the Council in relation to the tests in paragraph 56 of the Framework and the guidance in the Planning Practice Guidance. The Council has requested one condition to require the details of all plans including the internal arrangement of rooms, staircases, access points and basement steps, external changes, landscaping scheme, cycle and bins stores.
22. Given that the change of use has already taken place and there are inaccuracies relating to the internal staircase on the submitted plans, as I have found the external access to, and internal arrangement of rooms to be acceptable, I do not consider a plans condition is necessary. However, to ensure that the living conditions of occupants with regards to light and outlook

is satisfactorily improved and maintained, I consider it necessary to impose a condition requiring that a glazed external door to the basement room is provided. For the same reason, a condition is necessary to ensure that no solid enclosure is erected around the basement stairwell.

23. It is also important to ensure that provision is made for cycle and bin storage for future occupants to promote sustainable travel and to protect the character and appearance of the area, thus I consider it necessary to impose a condition requiring these details.
24. There is a strict timetable for compliance with conditions relating to the basement door, cycle and bin storage because permission is being granted retrospectively and it is not possible to use a negatively worded condition to secure the approval and implementation of these matters before the development takes place. The condition will ensure that the development can be enforced against if the requirements are not met.
25. There is limited space available to provide landscaping within the site therefore I consider a condition requiring a landscaping scheme to be unnecessary.

### **Conclusion**

26. 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 is allowed.

*A Veervers*

INSPECTOR