



Appeal Decision

Site visit made on 11 March 2024

by P. D. Biggers BSc Hons MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 April 2024

Appeal Ref: APP/C2741/W/23/3322462 15 Main Avenue, York YO31 0RT.

- 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 City Consulting York LLP against the decision of the City of York Council.
 - The application Ref 22/00726/FUL, dated 1 April 2022, was refused by notice dated 21 November 2022.
 - The development proposed is change of use from a dwelling house (class C3) to a house in multiple occupation (class C4) to house a maximum of 4 people.
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Decision

1. The appeal is allowed and permission is granted for change of use from a dwelling house (class C3) to a house in multiple occupation (class C4) to house a maximum of 4 people at 15 Main Avenue, York YO31 0RT in accordance with the terms of the application, Ref 22/00726/FUL, dated 1 April 2022 and subject to the conditions at the Schedule below.

Preliminary Matters

2. The description of the development used above is not that on the application form. The description was varied with the agreement of the appellant to make it clear that the proposed occupancy of the building would be for a maximum of 4 people. For the purposes of my determination, I have therefore taken the revised description from the appeal form.
3. The change of use took place on 31 March 2014 according to appeal paperwork only coming to light recently and has been occupied on a multi-occupancy basis by individual tenants for most of that time. It was apparent from the site visit that the existing layout is not as shown on the submitted existing floorplans and currently the house has 6 bedrooms and is occupied by 6 tenants.
4. In the period since the appeal was submitted the Government has published a revised version of the National Planning Policy Framework. None of the changes are relevant to this appeal but I have used the paragraph referencing from the new Framework in my decision below.

Main Issues

5. The main issue is whether the proposed development would have a detrimental effect on the character, appearance and amenities of the surrounding area as a result of the concentration of houses in multiple occupation (HMO) on the street.

Reasons

6. The appeal site is located on the north side of Main Avenue and is one of a terrace of small, two storey properties set behind small front gardens which typify the character of this part of the street. The terraced properties have small narrow rear gardens to which there are shared pedestrian accesses. No 15 gains rear access between Nos 19 and 21. At some point in the past the property has been extended into the roof space to create additional bedroom space.
7. According to the appellant's appeal statement the property has been licensed by the Council as a HMO for some time and the application is to regularise the planning status of the property by applying for the change of use from C3 to C4. Although ordinarily the change of use from C3 to C4 (small HMO) would constitute permitted development, in order to retain control of small HMOs in the city the Council has in force an Article 4 Direction removing this permitted development right for most of the main urban area of York including Heworth.
8. Applications for the provision of new HMO and conversion of dwellings to HMO use are controlled by Policy H8 on conversions in the *City of York Local Plan 2005* (CYLP) approved for development management purposes and Policy H8 on HMOs in the *New City of York Local Plan* (NCYLP) which is at an advanced stage in its examination and carries weight in development management. Both these seek to control HMOs to ensure there is not an over concentration in particular areas of the city. Additionally, the Council has prepared supplementary planning document - *Controlling the Concentration of Houses in Multiple Occupation* (Amended 2014) (the SPD) which sets out the procedure by which concentrations will be assessed.
9. The NCYLP at Policy H8 and the SPD establish that concentration in a particular neighbourhood should not exceed 20% of the total housing stock and that concentrations on any one street should not exceed 10% of the stock taken over a 100 metre distance either side of the property. In terms of the neighbourhood concentration in Heworth the number of HMOS is well below the 20% figure. However, at street level the Council has calculated that the concentration is sitting at 11.1% not including the appeal property. It has been put to me that the calculation is flawed in that there are elements of it that are incapable of verification. If the SPD methodology is to be used it should be applied in a transparent way and if there is no way of applicants confirming the calculation this is unreasonable. The Framework makes it clear that policies should be clearly written and unambiguous, so it is evident how a decision maker should react to development proposals.
10. Notwithstanding the disputed calculation there would still appear to be a concentration in excess of 10% at street level with the appeal property counted in, as the applicant in their statement accepts that there are at least 5 properties including the appeal property within the postcode and a total of 42 properties within the 100 metre stretch either side of the appeal site (11.9%). There is therefore conflict with the policies on that point alone.
11. This would be definitive in respect of the establishment of a new HMO. However, according to the appellant, the appeal property has been operating as an HMO for some time. The Council was asked to confirm that the property is currently a licensed HMO but has failed to do so. Given that there are already tenants in the property who would be made homeless as a result of dismissing the appeal this is a material consideration in this case.
12. It is therefore necessary to look at whether the continued use as an HMO in this

particular location will give rise to actual harm to character and appearance of the area and amenity for neighbouring properties.

13. On the site visit the external appearance of the property looked little different to the neighbouring properties. There was some evidence on the frontage of poorly managed storage of waste and recycling but that could be dealt with by condition requiring submission of details for a bin and recycling store were the appeal to be allowed.
14. Bike storage is proposed to the rear. There was concern expressed about the potential for noise and disturbance from tenants accessing the bike store via the pedestrian access between Nos 19 and 21 and along the rear of the properties. However, I am not persuaded that this is likely to be any more the case than if the house were occupied by a single large household. Moreover, the reduction in the number of tenants from 6 to 4 reinforces the fact that there is likely to be little difference to the comings and goings of a single household of 4 people. Regarding concern expressed over the appearance of the cycle store this could be satisfactorily controlled by condition were the appeal to be allowed.
15. Concern has also been expressed regarding pressure on parking within the street. None of the terraced properties on the north side of the street where the appeal site is located has off street parking and again a household of 4 adults living as a single household could result in the same number of vehicles trying to park as a house in multiple occupation. I note that the Highway Authority has not raised objection on parking grounds and provided proper bike storage is provided which, as stated, can be conditioned, this would not result in adverse impacts on highway safety.
16. In conclusion, given that what is proposed is an HMO for four tenants rather than the current six I am not persuaded that there would be any substantive harm in terms of the character of the area and its amenities from the continued use. As such I am satisfied that, with conditions regarding management, cycle and refuse storage imposed, the fact that there is a slightly higher concentration of HMOs in Main Avenue than the SPD and emerging Policy H8 would allow is outweighed by the material consideration that this is an existing licensed HMO. Were the appeal to be dismissed it would simply result in making tenants homeless. All other aspects of the current CYLP Policy H8 on conversions and NCYLP Policy H8 can be met.
17. It should be stressed however that further concentration of new HMOs would be inappropriate in Main Avenue and it is only in this case as a result of the fact that the HMO has existed some time and occupancy levels are to reduce that it can be treated as an exception to the Policies.

Other Matters

18. The house is currently set up for six tenants. Overall, the floorspace in the house accommodating six bedrooms over three floors almost meets the 129 square metres set out in the *Technical Housing Standards – Nationally Described Space Standard*. However, I am not satisfied that the layout and provision in terms of shared living space and bathroom facilities would constitute a standard of accommodation that would protect the residential amenity for current and future occupiers as required by both CYLP Policy H8 and NCYLP Policy H8 were the house to be occupied by six tenants. As such although Use Class C4 would allow occupancy by up to six occupiers in fact the proposed use of the house as an HMO would only be suitable for four occupants. I note this is the occupancy set out in

the application description but, as the house is currently configured for six tenants, it would be necessary if allowing the appeal to condition any permission to restrict the occupancy to four occupants only.

Conclusion and conditions

19. In reaching my decision I have had regard to the matters before me and for the reasons above, the appeal should be allowed and permission granted.
20. The Council in its appeal statement has not proposed any conditions in the event the appeal is allowed. I have therefore prepared a list of conditions in the light of the advice in the Framework and *Planning Practice Guidance* and consulted the parties on these. Both the appellant and the Council have raised no objections to the proposed conditions. As this is a retrospective application and the change of use has already occurred a timing condition is not required. However, a condition requiring development to be carried out in accordance with the submitted plans is necessary in the interest of certainty and to ensure that the accommodation is adapted from six to four bedrooms in accordance with the approved plans.
21. In order to ensure that the HMO provides appropriate standards of accommodation and to reduce any impact on neighbouring properties' living conditions it is necessary to impose a condition restricting occupancy to a maximum of four persons.
22. To ensure that the facilities for cycle storage and refuse and recycling storage are provided in good time and are appropriately designed in keeping with the character and appearance of the area two conditions are necessary requiring submission of details and implementation within a controlled timescale.
23. Finally, although the conditions consulted on did not include a condition requiring a management plan to be in place, the Council has proposed a condition to this effect in its response to the consultation. The appellant has already provided details of a proposed management plan for the property in the Design and Access Statement in order to ensure no adverse impacts of the HMO on the property or neighbourhood. I therefore do not consider it is necessary to reconsult the appellant on this matter. It is only appropriate that the Council is able to control management of the HMO and I impose the condition.

P. D. Biggers

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the submitted documents and the following approved plans: NR03/01; NR03/02; NR03/03 (Revn A)
- 2) Notwithstanding the provisions of Use Class C4 of The Town and Country Planning (Use Classes) Order 1987 (or any order revoking and re-enacting that Order with or without modification) the HMO hereby permitted shall not be occupied by any more than 4 occupants at any one time.
- 3) Within 1 month of the date of this permission details of the covered, secure parking for four cycles must be submitted to the Local Planning Authority for approval in writing. The details shall include the means of enclosure, materials,

design and layout. The cycle storage facility shall be provided in accordance with the approved details within 2 months of the approval in writing and shall thereafter be kept available for the parking of bicycles.

- 4) Within 1 month of the date of this permission details of the covered, secure storage for refuse and recycling must be submitted to the Local Planning Authority for approval in writing. The details shall include the means of enclosure, materials, design and layout. The refuse and recycling storage facility shall be provided in accordance with the approved details within 2 months of the approval in writing and shall thereafter be kept available for that use.
- 5) Within 1 month of the date of this permission, a management plan for the operation of the HMO shall be submitted to the Local Planning Authority for approval in writing and shall be implemented with immediate effect following approval unless otherwise agreed in writing by the Local Planning Authority. The Management plan shall cover the following matters:
 - i) Information and advice to occupants about noise and consideration to neighbours
 - ii) Garden maintenance
 - iii) Refuse and recycling facilities
 - iv) Bicycle storage
 - v) Property maintenance