



Appeal Decision

Site visit made on 2 July 2024

by C Dillon BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th July 2024

Appeal Ref: APP/C2741/W/24/3339173

65 Osbaldwick Lane, York YO10 3AY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Isa Demir on behalf of London Property 2022 Ltd against the decision of City of York Council.
 - The application Ref is 23/01822/FUL.
 - The development proposed is described as "change of use from B1 office into a Class C4 House of Multiple Occupancy for primarily student use".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Notwithstanding the description of development cited on the planning application form, the submitted evidence indicates that the permitted use of the appeal site is that of offices falling within Use Class E (formerly Use Class B1) of the Town and Country Planning Use Classes Order 1987 (as amended) (the UCO). The evidence before me indicates that the appellant has secured a House in Multiple Occupation (HMO) licence for up to 13 residents across 7 households and that the change of use has at least in part occurred. However, the proposed plans before me show that accommodation for up to 14 occupants across 7 households is proposed. The appeal proposal is therefore for the conversion of offices into a larger HMO which falls outside of Use Class C4 and is sui generis. I am satisfied that this is what the Council based their decision on, and my determination is based likewise.
3. Given the nature of the disputed matters, it was unnecessary to conduct an internal inspection of the premises in order to arrive at my decision.

Main Issues

4. The main issues are:
 - whether or not the proposed loss of employment premises would be justified; and
 - the effect of the resulting concentration of HMOs, with particular regard to the local character, the living conditions of existing residents and community balance.

Reasons

Employment premises

5. Policy EC2 of the City of York Council Draft Local Plan 2018 (the Draft Local Plan) deals with the loss of employment land and buildings. It clearly places an onus on the appellant to provide a statement to the satisfaction of the Council, evidencing that the existing building is demonstrably not viable in terms of market attractiveness, business operations, condition or compatibility with adjacent uses; and that the proposal would not lead to the loss of an employment site that is necessary to meet employment needs during the plan period.
6. It is not clear whether the appeal site was included by the Council as part of their identified portfolio of existing employment land and premises for the purposes of identifying sufficient sites to meet the needs that are projected to arise during the draft Local Plan period. Furthermore, the appeal site is not a specific site allocation that has been identified for employment purposes in the draft Local Plan.
7. The evidence submitted by the appellant does not clearly set out the means by which an alternative business occupier has been sought. As such, it has not been sufficiently demonstrated that ongoing, comprehensive, meaningful marketing of the property for employment generating uses has been undertaken but has been unsuccessful. Moreover, the appellant's evidence is not an objective assessment of the shortcomings of the premises which clearly demonstrate why it is no longer appropriate for employment use, including other employment generating uses falling outside the Use Class within which it falls.
8. Consequently, the appellant has not provided adequate evidence in line with Policy EC2 to justify the loss of premises which could accommodate an employment generating use. Consequently, I concur with the Council that the submitted evidence is insufficient to support the loss of these employment premises. In view of my findings, the appeal proposal would conflict with Policy EC2 of the draft Local Plan.
9. Paragraph 85 of the National Planning Policy Framework (December 2023) (the Framework) states that planning decisions should help create the conditions in which business can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity. However, the appeal proposal would involve the unjustified loss of employment related premises within the City area. As such, it would also run counter to that national policy approach. This weighs heavily against the appeal proposal.
10. For all of these reasons, the proposed loss of employment premises would be unjustified.

Concentration of HMOs

11. The appeal site is a generously sized detached building situated within a sizeable plot. It is located within a predominantly residential area, beyond the commercial heart of the city centre. The design of this 2.5 storey building does not distract from this residential character and appearance as it stems back to

its origins as a dwelling. Reference to its previous commercial use is relatively discreet, being more apparent to the rear given the large, surfaced car park and access arrangements.

12. The appeal site is bound by a purpose built older persons accommodation block immediately to its rear. The remaining surrounding properties include a varied mix of mainly detached and semi-detached designs. The submitted evidence confirms that these accommodate a mix of single households and HMOs. However, in terms of their size and layout, their original purpose as single household family orientated units continues to contribute positively to the pleantry and cohesiveness of the spacious, quiet, leafy suburban character of this particular mature neighbourhood relative to the more central parts of the City. This local character positively contributes a good level of amenity in terms of the living conditions of the existing community.
13. The proposed large HMO would introduce an alternative, more intensely occupied form of living accommodation into this suburban part of the City.
14. The Council's "Draft Controlling the Concentration of Houses in Multiple Occupation Supplementary Planning Document (approved 2012, amended July 2014)" (the SPD) seeks to control the number of HMOs across the City to ensure that local communities do not become imbalanced. The SPD is based on a threshold approach as a consistent means to identify a tipping point when adverse symptoms associated with concentrations of HMOs have the potential to become harder to manage and a locality is regarded to have become an unbalanced community. For this university city, through consultation, maximum HMO thresholds of 20% across a neighbourhood and 10% at street level have been established.
15. Interested parties have raised concerns that the existing occupation of the appeal site as an HMO has already given rise to poor refuse management; an absence of community integration due to the more transient nature of those whose circumstances are more conducive to this particular type of accommodation; and noise nuisance including during unsociable hours. These are anecdotal and relate to the current occupancy of the property. Nonetheless they are all matters which the SPD recognises as being symptoms of an over-concentration of HMOs which can be detrimental to local character, the living conditions of existing residents and community balance.
16. Policy ENV2 of the Draft Local Plan seeks to manage environmental quality. Amongst other things it states that development will not be permitted where existing communities would be subject to significant adverse environmental impacts, such as noise, without effective mitigation measures. Furthermore, it states that proposals for uses that are likely to have an environmental impact on the amenity of the surrounding area, including residential amenity and local character and distinctiveness, must be accompanied by evidence that the impacts have been evaluated and the proposal will not result in loss of character or amenity to existing communities.
17. Although not a policy itself, I agree that the SPD carries significant weight as the locally derived means to assess the acceptability of the appeal proposal against Policy ENV2 of the draft Local Plan.
18. In the context of the SPD and emerging Policy ENV2, the Council has calculated that within the wider neighbourhood of the 1620 properties there are currently

109 HMOs. The addition of the appeal proposal would take this up to 110 HMOs; an increase from 6.73% to 6.79%. This represents a negligible increase in this type of living accommodation at the neighbourhood level which would remain below the 20% threshold of the SPD. This signals to me that any adverse effects could be reasonably absorbed by that neighbourhood geography in terms of local character and community balance.

19. However, at the more localised street level, of the 31 properties falling within 100 metres of the appeal site, the Council has calculated that there are 12 existing HMOs. Precise details of their locations and intensity of occupation are not before me. Neither was I able to ascertain that detail from my site visit with any certainty. The addition of the appeal proposal would take that existing concentration up by one, to 13 HMOs; an increase from 38.71% to 41.94%. Being well in excess of the 10% threshold of the SPD, the additional effects of this further incremental change would be much more pronounced at the street level geography.
20. No external alterations are proposed which would alter the existing character or appearance of the appeal property. Given its detached nature, any potential for increased noise and disturbance over and above that which could be reasonably expected from the former commercial use would be confined to the use of the private front and rear outdoor areas and trips to and from the site.
21. Unlike an office use, there would be a much greater potential for any such disturbance to arise at any time of the day or night. The effects of this would be likely to be greatly exacerbated in view of the high intensity of residential occupation being pursued along with the proximity of existing neighbouring older persons, family and other single household residencies to the appeal site and also to the routes into the City that would be relied upon by the prospective occupants.
22. Consequently, there is scope for the appeal proposal to cause significant adverse change to existing levels of noise and disturbance which forms part of the local character of this part of Osboldwick Lane and is a determinant of the standard of the living conditions of its residents.
23. However, in terms of mitigation, no noise assessment has been submitted. Furthermore, neither has a bespoke Management Plan been provided to demonstrate and secure appropriate on-site arrangements in perpetuity to control the day to day occupation of the property in a manner which would not be prejudicial to the living conditions of occupants of neighbouring properties, including in relation to the management of car parking for residents and visitors; refuse storage; and the use and maintenance of external communal areas. These are not matters that could reasonably be deferred to being addressed by a planning condition given the proximity of the appeal site to the sensitivities associated with the nearby single households and older persons accommodation.
24. Furthermore, no physical or operational constraints associated with the lawful use of the appeal site have been put before me which would indicate that this particular residential use, at the intensity proposed, would be more appropriate or beneficial to the existing living conditions of neighbouring residents.
25. Consequently, overall the appellant has not adequately evidenced an absence of harm. Neither has the appellant proposed appropriate mitigation for the

harm that the appeal proposal could impose on its immediate context so as to align with the clear purposes of the SPD and the requirements of Policy ENV2.

26. Paragraph 135 of the Framework states, amongst other things, that decisions should ensure that developments will function well and add to the overall quality of the area; optimise the potential of the site to accommodate and sustain an appropriate amount of development; and create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience. In view of my findings, the appeal proposal would conflict with that national policy approach.
27. Overall, my findings firmly indicate that the appeal proposal would contribute to an already mounting imbalance in the housing stock typologies of this particular locality which would erode its existing character and would not sustain existing living conditions or a balanced cohesive community. For these reasons, the resulting concentration of HMOs would be harmful, with particular regard to the local character, the living conditions of existing residents and community balance. In the absence of adequate evidence to the contrary, the appeal proposal would conflict with Policy ENV2 of the draft Local Plan.

Other Matters

28. I recognise that the appeal proposal would contribute to providing a particular form of living accommodation in the City. However, no evidence has been provided to demonstrate that this would meet a specific local housing need which is in short or under supply. Consequently, this is a limited benefit. No other specific benefits that would weigh in favour of the appeal scheme have been put before me.
29. Having had due regard to the Public Sector Equality Duty of the Equality Act (2010) there are no substantive grounds which would alter any of my findings.

Conclusion

30. The identified policy conflicts would give rise to conflict with the draft development plan when taken as a whole.
31. The application of policies in the Framework that protect areas or assets of particular importance do not provide a clear reason for refusing the development proposed. However, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, including the contribution that the proposal would make to meeting local housing needs, when assessed against the policies of the Framework taken as a whole.
32. Consequently, the appeal proposal is not supported by either the national and emerging local policy framework.
33. For these reasons, the appeal should be dismissed.

C Dillon

INSPECTOR