



Appeal Decision

Site visit made on 2 July 2024

by U P Han BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 August 2024

Appeal Ref: APP/W2465/W/24/3340512

6 Flora Street, Leicester LE3 5RN

- 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 R Khanna against the decision of Leicester City Council.
 - The application Ref is 20231312.
 - The development proposed is change of use from a residential care home to 5 No H.M.O (Class C4) and internal alterations.
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Decision

1. The appeal is dismissed.

Preliminary Matters and Main Issues

2. Planning permission was granted by the Council¹ for the use of the appeal property as a care home (Use Class C2) subject to a planning condition which made that permission personal to the previous occupant and not the appellant. Prior to that permission its use was as a dwelling (Use Class C3).
3. However, during my site visit I saw that the property was occupied as bedsits within a House in Multiple Occupation (HMO). The internal layout was not as shown on the appeal plans, particularly that the communal basement kitchen had not been installed and the bedrooms contained kitchenettes which are neither shown on the existing or proposed plans.
4. The Council states in its statement that it is "willing to cede that the start position of the proposal should have been change of use from a single C3 dwelling to the proposed House of Multiple Occupation". The appellant states in their statement that they are "able to demonstrate that the property has been used as an HMO since November 2022, which predates the Article 4 Direction coming into place, and is therefore able to apply for a certificate of lawfulness".
5. There is no such certificate before me and the decision notice, application form and appeal form all describe the development as follows: 'Retrospective change of use from residential care home (3 bed) (Class C2) to HMO (5 bed) (Class C4); Installation of door to side and internal alterations.' It is this development that has been applied for, consulted upon and appealed. It is not my role in determining an appeal under S78 to determine the lawful use of the appeal property. The appellant is open to seek such a determination from the Council. I must make my determination on the same scheme which the Council made its determination.

¹ Council Ref 96/0555/5

6. In any event for the reasons that follow, the outcome of the appeal would have been the same irrespective of whether the lawful use of the appeal property falls within Use Class C2 or C3. I am therefore satisfied that no party has been prejudiced by my approach.
7. The National Planning Policy Framework (the Framework) was revised December 2023. Those parts of the Framework most relevant to this appeal have not been amended. As a result, I have not sought submissions on the revised Framework, and again I am satisfied that no party's interests have been prejudiced by taking this approach.
8. On this basis, the main issues are:
 - whether the site would be suitable for the proposed use having regard to the concentration of HMOs in the area and the mix and balance of the local community;
 - the effect of the proposal on the living conditions of the occupiers of neighbouring properties with regard to noise and fly-tipping; and
 - the effect of the proposal on the living conditions of occupants with regard to internal space.

Reasons

Mix and balance of the local community

9. The appeal relates to a two storey mid-terraced house within a predominantly residential area in Leicester. This area is covered by an Article 4 Direction (the Direction) which removes permitted development rights to change a dwellinghouse (Use Class C3) to a small HMO (Use Class C4). The Council's objectives, through the Direction and other measures, are to ensure that communities in Leicester are balanced and do not contain over-concentrations of HMOs that could lead to harmful impacts on amenity.
10. The appeal site falls within the 'Inner Area' of Leicester for the purposes of Policy CS08 of the Leicester City Core Strategy (LCCS). Policy CS08 states that new HMOs will not be permitted where they would result in a local over concentration. While Policy CS08 is not referred to in the decision notice, it was referenced in the officer report and is clearly relevant to my decision.
11. I acknowledge the Leicester's Public Register of Licensed HMOs only records HMOs with 5 or more tenants that have a license. Therefore, it does not provide an accurate picture of the number of HMOs in the city.
12. While the appellant asserts that the appeal property is not suitable as a single family dwellinghouse due to the lack of garden, I saw that there was a sizeable and usable garden to the rear of the property. Proximity to busy roads is common to many family homes and does not mean they should be precluded from such locations. Furthermore, Flora Road itself is not an excessively busy road due to its short length and local status. The lack of off-street parking may deter some prospective occupiers, but on-street parking is available and the appeal site is accessible to public transport.
13. Although the appellant suggests that the proposal responds to a high demand for HMOs in the area, conversely there is no substantive evidence before me to demonstrate a lack of demand for single family dwellings. While the appellant

argues that sufficient provision is in place for to meet the housing need of families, the housing delivery information presented to support this claim does not provide a breakdown of the dwellings delivered by size so it cannot be established that they would all be suitable for larger households.

14. The evidence supporting the Direction shows that HMOs comprise 10-15% of the housing stock in the area. 10% was the threshold at which the Council considered would be effective at addressing the assessed impacts of HMOs. Thus, the proposal, irrespective of whether it would change the use of the appeal property from a care home or a single household dwellinghouse to an HMO would clearly add to an existing identified local over-concentration of HMOs in the area. It would therefore have an adverse effect on to the mix and balance of communities in the area and would be in direct conflict with Policy CS08 of the LCCS.
15. For these reasons, I conclude that the site would not be suitable for the proposed use having regard to the concentration of HMOs in the area and the mix and balance of the local community. This would conflict with Policies CS03, CS06 and CS08 of the LCCS and Policy PS10 City of Leicester Local Plan (CLLP). These policies, taken together seek to safeguard the character and balance of local communities.

Living conditions of occupiers of neighbouring properties

16. The intensified use of the appeal property as a result of an increase in the number of residents and their associated activity would likely lead to potential for more noise and disturbance to neighbouring occupiers. Such activity can often involve more people movements, increased car movements, parking stress, more rubbish to be collected and more deliveries and collections. Given the mid-terrace location of the appeal property, the increase in activity would likely have a marked effect on the occupiers of neighbouring properties.
17. With regard to fly-tipping, I did not see any evidence of such at the appeal site during my site visit. However, third parties have stated they have seen bins from the appeal property overflowing with rubbish and blocking the pavement. The Council has also provided photographic evidence of waste to the front of the property, although I cannot establish if the waste has been generated by the use of the appeal property or another source.
18. The Council's report confirming the Direction² contains evidence from its case management system which shows that the number of noise and fly-tipping cases reported at HMOs was double the rate of that at other private rented accommodation and triple the rate of the total housing stock.
19. For these reasons, I conclude that the proposed development would harm the living conditions of neighbouring occupiers with regard to noise and fly-tipping. Hence, this would conflict with Policies CS03 and CS06 of the LCCS and Policy PS10 of the CLLP. Together, these policies seek to protect local character and residential amenity taking into account noise and the visual quality of an area, including potential litter problems.

² City Mayor Decision, Confirmation of a non-immediate Article 4 Direction relating to the conversion of Class C3 Houses to Class C4 Houses in Multiple Occupation, 18 November 2022.

Living conditions of occupants with regard to internal space

20. The property benefits from an HMO license which permits the occupation of the property for up to 6 occupants. All the bedroom sizes would exceed those required by the license. While HMO licensing is a separate entity to planning, the granting of a licence is an important consideration which, in the absence of development plan policies specifying space requirements, weighs in favour of the proposal.
21. There are no development plan policies before me in relation to communal space for HMOs such as shared kitchens, dining rooms and lounges. From my site visit I found that the ceiling height of the proposed shared basement kitchen was extremely low, and the little amount of natural light afforded to the room by a small rooflight, contributed to a sense of confinement. As this is the only internal communal space provided in the HMO, it would be wholly inadequate and would encourage occupiers to remain in their bedrooms for long periods of time.
22. For these reasons, despite my finding in relation to the size of the proposed bedrooms, given that the proposed communal space would be deficient, I conclude that the proposal would have a harmful effect on the living conditions of occupants with regard to internal space. This would conflict with Policy CS06 of the LCCS and Policy PS10 of the CLLP which require development to protect residential amenity and provide quality living environments. It would also be contrary with the Framework which seeks to ensure that developments provide a high standard of amenity for existing and future users.

Other Matters

23. Compliance with the development plan in relation to drainage, highway safety, parking, accessibility local services and facilities, ecology and appearance will weigh neither in favour or against the proposal and are therefore considered neutral.
24. The economic objective of the Framework should be pursued alongside the social and environmental objectives. While the proposal would represent an effective use of land in meeting the need for homes, the Framework also requires development to ensure safe and healthy living conditions. The presumption in favour of sustainable development applies to development proposals that accord with an up-to-date development plan, and I have found that the proposal does not.

Conclusion

25. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. For the reasons given above the appeal should be dismissed.

U P Han

INSPECTOR