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## Appeal Decision

Site visit made on 2 July 2024

by **Andrew McCormack BSc (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 8 August 2024

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**Appeal Ref: APP/N4720/W/24/3338882**

**7 Edwin Road, Hyde Park, Leeds LS6 1NL**

- 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 Shakeel Sharif against the decision of Leeds City Council.
  - The application Ref 23/03598/FU, dated 12 June 2023, was refused by notice dated 15 August 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 dismissed.

### Procedural Matters

2. I have noted the extensive planning history in relation to this appeal proposal and taken account of this insofar as it is a material consideration along with the other considerations that have been identified. However, I have assessed and determined this appeal principally on the merits and specific circumstances of the proposal for which planning permission has been sought and the evidence before me.

### Main Issues

3. The main issues in this appeal are the effect of the proposed change of use on:
  - the housing mix and balance within the local community; and
  - the living conditions of neighbouring occupiers regarding noise, disturbance and anti-social behaviour.

### Reasons

4. The proposal relates to an end of terrace property situated on the corner of Edwin Road and Regent Terrace. The property is a traditional Victorian red brick terrace house which has been extended and altered to accommodate five bedrooms. It has modestly sized front and rear garden areas with a vehicle access and small parking area included as part of the rear garden. The area is characterised by rows of similar Victorian red brick terrace streets.

### Effect on Housing Mix and Balance

#### *Housing mix and balance*

5. The appeal property is within the Headingley and Hyde Park Ward which is recognised to be part of Leeds with one of the highest concentrations of Houses in Multiple Occupation (HMOs) in the city. I note that some nearby streets to the appeal property consist of HMOs being around 80-90% of the total housing stock in that street. It is further noted that the

area includes a high number of other forms of residential accommodation, such as flats and purpose-built student accommodation which, like HMOs, are popular with students due to the proximity of the area to the University. As a result, I am aware that there has been a severe housing and population imbalance in the local area for a long time.

6. Whilst recognising the economic benefits of the increase in the student population in the city, the Council has sought to address this imbalance through several policy approaches over recent years. However, the uneven distribution of the resulting student population has continued to pose a challenge with the majority of students in the city living within the local area around the appeal property.
7. In a further attempt to tackle the housing and population imbalance in this and other areas, I note that the Council made an Article 4 Direction in February 2012 which now requires conversions of properties from C3 to C4 use to gain planning permission.
8. In light of the wider objectives of the policy approaches undertaken previously, the Council's Core Strategy 2014 looked to address these ongoing issues through its Policy H6. This policy aims to take a universal approach to tackling the three types of accommodation specified above which have resulted in housing and population imbalances in certain parts of the city. It is noted that the policy's wider objective to address housing and population imbalances through the creation of sustainable development is consistent with the National Planning Policy Framework (the Framework). Furthermore, the wider objectives of Policy H6 and the detailed criteria for Part A of the policy, amongst other things, require proposals for new HMOs in the Article 4 Direction area to both avoid detrimental impacts through high concentrations of HMOs which could undermine the balance and health of communities and avoid the loss of existing housing suitable for family occupation in areas of existing high concentrations of HMOs.
9. The most recent data available to the Council indicates that the longstanding severe imbalances in the area have not significantly improved in recent years despite the efforts of the Council. Therefore, I find it likely that the proposal to create a new HMO at the appeal property would further undermine the balance and health of the community. It would provide a form of accommodation which would add to both the existing housing and population imbalances given the high probability that the resulting HMO would be occupied by students due to the exceptionally strong demand for student housing in the area.
10. The proposal would lead to the loss of a dwelling (C3) suitable for occupation by a family which would add further to the existing imbalance. Moreover, the property has many elements which make it attractive to a family. The property is of a size and layout suitable for family occupation with outdoor space and the capacity for off-street parking. It is also located close to local amenities and greenspace such as Woodhouse Moor, its recreational area and the Queens Road park. In addition to this, I have noted the Council's point that anecdotal evidence exists from the Hyde Park Neighbourhood Forum of demand from families for properties in this location and that this was presented at a previous public inquiry relating to a proposal a relatively short distance from the appeal property.
11. I have also had regard to the fact that the appeal property is situated within a localised cluster of C3 housing which could reasonably be considered more likely to attract potential C3 occupation. In my view, this is because families would be more likely to move into a street where there are other families nearby. This is supported by the anecdotal evidence referred to above.
12. The proposal would fail to meet the wider objective of Policy H6 to address housing and population imbalance in an area with a recognised longstanding severe imbalance in these respects. Indeed, I find that it would run contrary to the Council's long term planning response in this part of the city to encourage a more sustainable housing and population mix. As such, the proposed change of use could only be considered significantly harmful when considered alongside the Council's objectives.

### *Impact of high concentrations of HMOs*

13. The harmful impacts of high concentrations of HMOs are nationally and locally recognised and include, amongst other things, anti-social behaviour, noise and nuisance. A wider list of impacts is set out in the supporting text to Policy H6. In considering a proposal for a new HMO, these identified impacts are to be considered cumulatively with other HMOs and similar forms of housing in an area. This approach is consistent with the wider policy objectives of the Council.
14. In addition to the anecdotal evidence provided by local residents, the Council collects data in relation to a number of the identified impacts. These were set out in the Council's Delegated Report and I have had due regard to them. In particular, I note the adverse impacts resulting from anti-social behaviour, noise and nuisance where the collected data provides a clear indication of the effects of a high concentration of HMOs.
15. The data shows that between the start of 2015 and September 2016, 27% of all noise nuisance cases in Leeds were in the two wards (out of a total of 33 wards) relevant to the locality of the appeal property. It is noted that this disparity of cases was even greater when considering noise abatement notices served across the city with 78% served in this period within the Hyde Park and Woodhouse and Headingley wards. In more recent reports, I have seen that similar issues and trends are found between 2017 and 2019, with particular note taken of 'main nuisance streets' identified within proximity of the appeal property. This trend is indeed supported by the correspondence provided by the appellant in their evidence relating to noise and nuisance matters in recent years. From this, it is acknowledged there is clearly an issue regarding anti-social behaviour, noise and nuisance in relation to a high concentration of HMOs in the area around the appeal property.
16. There are also other adverse effects resulting from a high concentration of HMOs which the Council has evidenced in its Delegated Officer Report, such as relating to crime, negative impacts on the physical environment and streetscape, pressure on local community facilities and parking provision. I have also considered these impacts both individually and cumulatively in determining this appeal.
17. Whilst students and young professionals bring many benefits and make a significant contribution to the local economy, the level and high concentration of properties to accommodate the significant student population in the local area has been detrimental to other members of the community who may seek a different lifestyle and offer in terms of local services and facilities. Taking this into consideration, the proposal, when considered cumulatively with similar forms of accommodation, would add to the harmful impacts occurring in the local area, in part, because of a high concentration of HMOs. As I have noted, some impacts are in themselves alone, severe in the local area. Therefore, the proposed change of use would only be significantly harmful within this context.
18. Consequently, I conclude that the proposal would have a significant harmful effect on the housing mix and balance within the local community and would contribute to the existing imbalance and serve to undermine the Council's wider objectives to address this. Moreover, when considered cumulatively with other similar forms of housing, I find that the proposal would significantly add to the harmful impacts associated with high concentrations of HMOs. As such, the proposal is contrary to the wider aims of Policies H6 and P10 of the Leeds Core Strategy, Policy GP5 of the Leeds Unitary Development Plan (UDP) Review 2006 and the relevant guidance set out within the Framework.

### **Living Conditions**

#### *Impact on neighbour amenity*

19. The proposed change of use presents concerns relating to the intensification of the use of the property and the potential for noise, disturbance and anti-social behaviour both at the

property and through an increased number of comings and goings. This is particularly so when considered cumulatively with the large number of other HMOs and similar forms of housing in the area. This can result from an increased number, or different pattern, of comings and goings compared to a family living in the same property or due to the different lifestyles of a group of adults living together in a property rather than a family.

20. The Council has referred to records which show that a significant number of properties in the immediate area around the appeal property are in C3 use. A significant number of these are likely to be occupied by families and, I note, this includes properties to the rear of the appeal property, at 9 Edwin Road and directly adjacent at 2 Hall Grove. Furthermore, it is noted that more than ten dwellings in the immediate section of Regent Terrace to the appeal property are also recorded as being in C3 use. The residents of these properties are all likely to be impacted upon in the ways that I have identified above.
21. It is accepted that all residents, whether students or not, would experience the impacts of noise, disturbance and anti-social behaviour. Indeed, as I have noted and the Council has demonstrated, student residents have, historically, formed a relatively high proportion of complainants to the Council's Anti-Social Behaviour Team in relation to noise. However, within the context identified and that has been set out, I find that the proposal would be harmful to the amenity of neighbours due to the increased comings and goings at the property. This would lead to more frequent instances of noise, disturbance and anti-social behaviour which, in turn, would likely result from the introduction of a new HMO.
22. Therefore, I conclude that the proposal, when considered cumulatively with the large number of existing HMOs in the area, would result in significant harm to the residential amenity of neighbouring occupiers in terms of increased anti-social behaviour, noise and disturbance. As a result, it would be contrary to the wider aims of Policies H6 and P10 of the Core Strategy, Policy GP5 of the Leeds UDP Review and the guidance contained within the Council's Headingley and Hyde Park Neighbourhood Design SPD and the Framework.

### Other Considerations

#### *HMO exception tests*

23. The supporting text to Policy H6 refers to two exception tests and I note that the Council has provided advice to the appellant in respect of the exception tests previously and throughout the application process. However, the appellant has not sufficiently clarified which of the two tests is sought to be applied in this case. Nonetheless, I have considered whether either of the two exception tests would apply in determining this appeal.
24. The first test asks whether the lack of any significant additional detrimental and localised harm to a street reason would be enough to allow a new HMO to be created, even where this may lead to wider harm in the wider locality. The supporting text of Policy H6 is not specific about how the phrase 'will not cause further detrimental harm' should be interpreted. Despite this, in my view, given that it is most likely that the exception test would be most relevant in areas of very high concentrations of HMOs, the granting planning permission for a new HMO in such situations would inevitably add to the overall concentration in the community and add therefore to the harmful impacts identified.
25. The Council acknowledges that Policy H6 could penalise homeowners in streets where the balance of housing between C3 and C4 had already been lost and where there was little point in blocking the conversion of the last family house in a street. I find that for this exception test to apply, the property in question must be the last, or at least 'approaching the last' C3 property on the street. To apply the test more loosely would only undermine the policy. I note that this approach, and its reasoning, is set out in the Council's *Development Management Practice Note in relation to HMOs - May 2019* (the HMO Practice Note), and in my assessment this is reasonable and justified.

26. The HMO Practice Note provides advice at paragraph 5.32 as to the appropriate study area for exception test 1 and I have considered this. Although the address of the appeal property is Edwin Road, the property fronts on to Regent Terrace and is more identifiable as part of that street as a result. Regent Terrace is therefore the most appropriate study area for examining whether the exception test should apply. I note from the Council's evidence that of the 27 residential units on the relevant section of Regent Terrace nine have been identified through Council records as being HMOs. As such, the appeal property is clearly not the last, or even approaching the last, C3 property in the street or row of properties in which it is situated. Consequently, I find that exception test 1 to Policy H6 is not met in this case.
27. The second exception test relates to whether a property is so unappealing with a potential C3 use that this would serve as a reason to allow its conversion to a HMO. The Council has indicated that it has previously advised that this exception test could be applied on compassionate grounds. For example, to prevent the last or approaching the last remaining C3 property being subject to the scenario because of the property being unattractive to potential C3 use if it was sought to be sold. This remains the pragmatic test on which to apply the second exception test. Therefore, 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 caused by the addition of a further HMO in a high concentration area.
28. To demonstrate that a property is effectively unsaleable with a C3 use, robust evidence is required. In response, the appellant has provided a range of evidence showing that the property has been marketed for sale as a C3 dwelling. I have taken account of this evidence which indicates that the property has been marketed for a long period of time and has not been sold within that period.
29. However, there are concerns relating to this evidence. I note the difference in valuation of the appeal property for sale, as taken in October 2022, and the valuation taken from the Nationwide House Price Index Calculator. The Calculator indicates that a C3 valuation in the postcode of the appeal property in Quarter 4 of 2022 of £325,000 would be in line with the presented asking price for the property at that time. However, when the property was first marketed in April 2019, at that same asking price, the Calculator indicates that the C3 valuation for the property in April 2019 would have been equivalent to £260,000. This significant difference suggests the asking price for the property in 2019 was significantly above market levels and was therefore never realistically likely to achieve a C3 sale.
30. Furthermore, I find that there is a lack of any robust local C3 benchmarking evidence provided by the appellant regarding local selling prices. It is noted that the Council has provided evidence through neighbouring property sales which further indicates that a £325,000 asking price in April 2019 was not realistic, despite the slightly larger than average size of the property. Whilst it is acknowledged that a number of viewings occurred, none progressed to an offer which again indicates that the asking price was too high.
31. Overall, when considered as a whole, I find that the marketing evidence provided by the appellant is not sufficiently robust to clearly demonstrate that the property is effectively unsaleable with a C3 use, at a reasonable market price for a C3 property over a reasonable marketing period. Consequently, I conclude that the property is suitable for use as a C3 dwelling and is currently used as such. Moreover, it is likely to be desirable as a C3 property, given its size and location close to amenities. As a result, I find that the second exception test is not met.

#### *Other planning appeal decisions*

32. Many examples of other planning application and appeal decisions have been put before me to support the cases of both main parties and I have had due regard to them and the points which they are intended to support. Accordingly, I have taken account of these as

material considerations in my overall determination of the appeal and attributed weight to these accordingly. However, my principal considerations relate to the main issues as I have identified them and the specific merits and circumstances of the proposal before me.

#### *Personal circumstances*

33. I have had due regard to the personal circumstances of the appellant set out in this case, including the supporting evidence that has been provided. This includes the lived experiences of the appellant and their family resulting from increased problems of noise nuisance, inappropriate behaviours and apparent drug-related activities in the area around the appeal property, their home. I also note the health issues which have been exacerbated by these issues, particularly noise. In this context, the appellant takes the view that the property, and indeed the locality, is not suitable for family occupation and that a C4 planning permission is necessary to facilitate a move from the area and also to comply with the Equality Act 2010.
34. Firstly, it is important to say that I have a great amount of sympathy with the appellant and their family in respect of these matters. Notwithstanding this, in this case, whilst the property may be able to achieve a higher price as C4 HMO, it has not been properly or sufficiently evidenced that the lack of a C4 consent would prevent the appellant from moving house. It is my view that the property is likely to be saleable at a realistic C3 price, allowing the appellant to move elsewhere, where there is no guarantee that they will not experience similar issues. Therefore, a change of use to C4 is not necessary to alleviate the issues experienced by the appellant and their family. Moreover, planning permission should not be granted on the basis that it would inflate (or otherwise impact upon) property prices for well-established reasons.
35. Consequently, whilst the personal circumstances of the appellant are acknowledged and noted, these are not considered to be sufficient to overcome the planning harm identified or result in a conflict with the Equality Act in relation to this planning appeal. Notably, I find that the appellant is free and able to move house outside of the planning process.

#### **Planning Balance and Conclusion**

36. There are benefits related to the proposal in terms of widening the provision of HMO accommodation in an area with a clear demand for such accommodation and in Leeds generally. The proposal would also provide for a sufficient level of amenity for future HMO occupants. These benefits attract limited weight in the overall balance given the extent of existing provision of such accommodation in the local area. I have also taken account of the other considerations identified, including the personal circumstances of the appellant as they relate to the planning proposal in this appeal. In this case, I give such circumstances moderate weight in favour of the proposal. However, the proposal would result in significantly harmful impacts and taking these into account, both individually and cumulatively, I attribute significant weight to them. Furthermore, the relevant exception tests in relation to Policy H6 would not be met by the proposal.
37. Whilst I have great sympathy for the personal circumstances of the appellant and their family, having carefully considered these, I have carried out my obligations in relation to the Public Sector Equality Duty and taken account of all other considerations. In doing so, I find that these benefits and circumstances would not serve to outweigh the significant harm identified, nor conflict with the Equality Act 2010.
38. Therefore, for the above reasons, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

*A McCormack*

Inspector