

Appeal Decision

Site visit made on 2 September 2024

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 September 2024

Appeal Ref: APP/A2335/W/24/3342298

24 Franklin Street, Lancaster, Lancashire LA1 4TA

- 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 Fraser Rankin against the decision of Lancaster City Council.
 - The application Ref is 23/00951/FUL.
 - The development proposed is change of use from residential dwelling (C3) to House of multiple occupation (C4) - Student House.
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Decision

1. The appeal is allowed and planning permission is granted for change of use from residential dwelling (C3) to House of multiple occupation (C4) - Student House at 24 Franklin Street, Lancaster, LA1 4TA in accordance with the terms of the application, Ref 23/00951/FUL, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with drawing nos: location plan at scale 1:1250 and drwg no 565-01 Rev C (Existing & Proposed Plans & Site Plan).

Preliminary Matters

2. The appeal now before me follows a previous application¹ (and appeal²) in relation to the proposed change of use from residential dwelling (C3) to house of multiple occupation (C4) (HMO) – student house. The application was refused and the appeal dismissed.
3. Since that dismissal the appellant has submitted to the Council a Freedom of Information (FoI) request in respect of the data and data sources used in connection with the Council's calculation of HMO densities within 100m radius of an application / appeal property. Other than the appellant's submissions with respect to the calculation of the HMO density, the nature of the application otherwise remains as previously considered.
4. It is stated as part of the appellant's appeal statement, and reiterated at final comments stage, that the appellant should be compensated for loss of

¹ LPA Ref No: 22/00023/CU

² APP/A2335/W/22/3302882

earnings arising from the Council's refusal of planning permission for the change of use of the appeal property. The Planning Practice Guidance (the Guidance) sets out the general approach to the award of costs incurred during the appeal process and explains that parties in planning appeals are normally expected to meet their own expenses³. All parties to an appeal are expected to behave reasonably but, where a party has behaved unreasonably, and this behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.

5. The Guidance goes on to state that costs can only be awarded in relation to unnecessary or wasted expense at the appeal and not, therefore, in relation to loss of earnings during, and as a result of the outcome of, the Council's consideration of the planning application. As the appellant has not submitted a formal application for an award of costs against the local planning authority, I have not considered this matter further.

Main Issue

6. The main issue is the effect of the proposed development on the housing mix in the local area and the character of the surrounding area.

Reasons

7. Policy DM13 of the '*Local Plan for Lancaster District Adoption Version*'⁴ (the LP) and its supporting text recognises the importance of maintaining an appropriate housing mix and safeguarding the character of residential areas as being important priorities. To this end, LP Policy DM13 and the Council's '*Residential Conversions and Houses in Multiple Occupation Supplementary Planning Document*'⁵ (SPD) sets out the Council's approach to proposals for HMOs. A general presumption against new HMOs exists within the district and schemes which would lead to a concentration of more than 10% of houses being classed as HMOs 'will not be considered acceptable'.
8. The SPD further explains that schemes will be refused where a community is already imbalanced, or where granting planning permission would create an imbalance. A community will be considered already imbalanced where more than 10% of properties within a 100m radius of the application property are already in HMO use. Furthermore, an imbalance would be created if as a result of a permission the proportion of HMOs would go above 10%. The SPD goes on to set out the basis upon which such calculations are made and the range of data sources which are drawn upon⁶.
9. In this instance, the Council's officer report calculates the HMO density to be 12.5% and thus, by the SPD's definition, the community within 100m radius of the appeal property is already imbalanced. The appeal scheme would add to this figure which, at more than 10%, would exceed the threshold figure set out in LP Policy DM13.

³ Paragraph 028 Reference ID: 16-028-20140306

⁴ '*A Local Plan for Lancaster District 2011-2031 Part Two: Review of the Development Management DPD Adoption Version*' July 2020

⁵ Adopted 8 December 2020

⁶ SPD Appendix A – Determining the Concentration of HMOs

10. The proportion of HMOs within the 100m radius of the appeal site is a matter of continued dispute between the main parties however. The appellant relies upon the results of an FoI request to substantiate his case that the proportion of HMOs is lower than that claimed by the Council. Thus, at a density of 6.25%, the appeal proposal would not, the appellant claims, result in an HMO density above 10%. Other than stating that it relies on more than just the three data sources the appellant cites, the Council has not provided any further evidence, workings or detail regarding how its higher figure was arrived at.
11. The SPD is clear that the publicly available data, in the form of amongst other things, the online interactive map showing HMO density and the locations of registered HMOs, may not be wholly up to date. It is also stated that the mapping and data that underlies these sources of information will be continually reviewed by the Council, the implication being that the data upon which the local planning authority rely may differ from that which applicants and appellants are able to base their applications on. The submission of a request for pre-application advice is the channel the Council advocates for the determination of accurate percentage figures. Whilst not particularly helpful for applicants or appellants, the SPD is nevertheless clear in this respect.
12. LP Policy DM13 does however set out a range of exceptions where proposals for HMOs may be acceptable. None of the specific criteria (labelled V. to IX.) set out therein are cited by the Council in the refusal reason. Nor, it has to be acknowledged, has any specific harm been identified other than a failure to comply with LP Policy DM13. Whilst the implication within this policy is that where the HMO proportion exceeds 10% there will be a detrimental effect on the character of a residential area and the housing mix within it, exception VII nevertheless considers that there may be circumstances where there may not be harm to the character of the building or surrounding area.
13. However, whilst the Council restates the original HMO proportion in their appeal submissions, no further attempt to explain, justify or substantiate those figures has been made. Nor, other than the general supporting text to LP Policy DM13 and the SPD has the Council sought to explain the harm arising specifically from the appeal scheme and the resulting HMO proportion within a 100m radius of it. Given the discrepancy in the HMO densities relied upon by each party, and the proximity on either side of it to the LP's 10% threshold, there is sufficient doubt in my mind as to whether the appeal scheme would actually result in an HMO density that would exceed the LP's 10% threshold.
14. Even if that were to be the case, there would be no external alterations to the appeal property, and no suggestion from the Council that the appeal scheme would give rise to the types of harm that criterion V, VI, VIII or IX seek to protect against. As criterion VII in particular allows for the absence of harm to character to the building or surrounding area as an exception to LP Policy DM13's 10% threshold figure, this is a matter to which I give careful consideration. Notwithstanding the proposal's description as an HMO, the scheme seeks permission for a small, 3-bedroomed HMO which would result in a proportion of HMOs within 100m radius of either 6.25% or 12.5%.

No explicit harm to character has been identified, and no other conflict with the remaining criterion of LP Policy DM13 has been identified.

15. Whilst I have no doubt that the Council's approach is clearly set out in the SPD, I am better informed as to the appellant's calculations that underpin his quoted figure than I am those of the Council. Thus, on the available evidence taken as a whole, I am not persuaded that the appeal scheme would result in a form of development that would exceed the 10% threshold regarding HMO density. There would be no conflict with LP Policy DM13 as a consequence but, even if I were to conclude that the Council's figures and calculations, such as I have been provided with, could not be disputed, I am not persuaded that the appeal scheme would result in a level of harm that would detrimentally affect the character of the surrounding area, or materially harm the housing mix of that area. In that instance, a technical breach of LP Policy DM13 would arise in respect of the 10% HMO density threshold, but the exception provided by criterion VII of that policy is a determinative and compelling factor.

Conditions

16. I have considered the list of conditions suggested by the Council in light of the advice set out in the Guidance and that of the Framework. I have also carefully considered the appellant's response to the suggested conditions.
17. The purpose of issuing an Article 4 Direction is to bring particular matters that might otherwise have been permitted development back under the control of the local planning authority. Once that is the case, the matter is considered as a planning application and, should they pass the relevant tests, conditions may be imposed. Just because those works might not have required an application for planning permission in other circumstances and locations is not justification for not imposing planning conditions on the matter in hand.
18. In any event, the Council's list of suggested conditions is neither lengthy nor onerous. I agree that time limit and plans conditions are necessary, relevant and reasonable in all other respects in the interests of good planning and to provide certainty. No other conditions have been suggested by either party, nor have I been presented with any other reason to impose further conditions.

Conclusion

19. For the reasons set out, and having considered all other matters raised, I conclude that the appeal should be allowed.

G Robbie

INSPECTOR