

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: 19 September 2024

Appeal Ref: APP/A2335/W/24/3343024

Flat 2, 11 Cable Street, Lancaster LA1 1HD

- 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 Yat Hei Lai against the decision of Lancaster City Council.
 - The application Ref is 23/01086/FUL.
 - The development is change of use of flat (C3) to HMO (C4).
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of flat (C3) to HMO (C4) at Flat 2, 11 Cable Street, Lancaster LA1 1HD in accordance with the terms of the application, Ref 23/01086/FUL, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with drawing nos: 'Location Plan' and 'Existing and Proposed Floor Plan'.
 - 2) The development hereby permitted shall be undertaken in accordance with the mitigation measures contained within the approved Flood Risk Assessment undertaken by STM Environmental reference: FRA-2023-000109 Version No: 1.0 and dated: 23/11/2023. Where required by the approved mitigation, the measures shall be retained and maintained within the development at all times thereafter.

Preliminary Matters

2. The description initially given to the development was somewhat lengthy. I have therefore adopted the description given to the scheme by the Council in its decision notice which is usefully more concise, albeit with slight amendment. I have omitted reference to the word 'retrospective' in the banner heading above, which is not an act of development. I have also used 'house in multiple occupation' in the heading in the first instance, rather than its abbreviation (HMO), in the interests of clarity. In further references below I shall refer to HMO. I am satisfied that neither party would be disadvantaged by my approach in both of these respects.

Main Issue

3. 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

4. Policy DM13 of the '*Local Plan for Lancaster District Adoption Version*¹ (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*² (SPD) sets out the Council's approach to 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'.
5. 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 upon³.
6. The proportion of HMOs within the 100m radius of the appeal site is a matter of dispute between the parties, the respective figures varying widely. Using a combination of available sources, the appellant calculates that the proportion of HMOs within 100m of the appeal site at the time of the initial planning application was 2.9%, rising to 3.4% based upon more up to date HMO licensing register details from January 2024. The Council however, maintains its position that the proportion of HMOs within a 100m radius is at the far greater level of 40.33%.
7. 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.
8. However, whilst the Council restate the original HMO proportion in their appeal submissions, no further attempt to explain, justify or substantiate those figures has been made. Neither have any workings or calculations been provided to this end. Nor, other than the general supporting text to LP Policy DM13 and the SPD has the Council sought in submissions to explain the harm arising specifically from the appeal scheme and the resulting HMO proportion within a 100m radius.

¹ '*A Local Plan for Lancaster District 2011-2031 Part Two: Review of the Development Management DPD Adoption Version*' July 2020

² Adopted 8 December 2020

³ SPD Appendix A – Determining the Concentration of HMOs

9. Within the 100m radius of the appeal property, the 40.33% proportion of HMOs relied upon by the Council is comfortably, and materially, greater than the point at which the Council consider an imbalance has occurred. By the Council's definitions, the community within the 100m radius of the appeal property is therefore already imbalanced.
10. LP Policy DM13 sets out a range of exceptions where proposals for HMOs may be acceptable, however. None of the specific criteria (labelled V. to IX.) 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 of 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 the surrounding area.
11. In this instance the appeal site lies opposite the Lancaster bus station and fronts on to Cable Street, which is part of the one-way circulatory system around the city centre. The bus station and surface car park dominate the area directly opposite the appeal site, whilst commercial premises lie around the bus station and car park. Although the area behind and beside the appeal building appears to be residential in character, the area in front and opposite is significantly more bustling and commercial in its character and nature and seems to me to be an area of some transition and more mixed in its character and nature.
12. There is a significant gulf in the HMO density figures supplied by the appellant and by the Council. Furthermore, there is little explanation on either party's behalf as to the reasons for the difference. Whilst I am aware that the Council rely on an extended range of data sources to calculate HMO density, no attempt has been made to show the workings that allowed the Council to arrive at an HMO density figure of just above 40%.
13. Such significant differences in the basis for each party's submission raise sufficient doubt in my mind as to the actual extent of the HMO density within a 100m radius of the appeal site. Nevertheless, the Council's figure would have to be subject to a significant margin of error to suggest that there might be at least a slim chance of the density being below 10%. However, notwithstanding the likelihood that the HMO density therefore exceeds the 10% threshold set out in LP Policy DM13 and the SPD, I am not persuaded that a scheme of limited scale such as that before me would cause harm to the character of the area which is, as described above, at a point of transition from the commercial central areas of the city and the residential developments around 11 Cable Street.
14. Whilst the appeal scheme would incrementally increase the proportion of HMOs within 100m radius, I am not persuaded that it would harmfully or materially impact on community balance. No case has been made that the appeal scheme otherwise causes disturbance to neighbouring properties, fails to provide adequate storage of refuse, recycling or cycles, give rise to unacceptable impact on parking provision or create sub-standard living conditions. Thus, despite a technical breach of the SPD and LP Policy DM13, I

am not persuaded that the appeal scheme would cause material harm to the character of the surrounding area.

Other Matters

15. The appeal building is a grade II listed building and is located within the Lancaster Conservation Area (the CA). As such, sections 66(1) and 72(1), respectively, of the Planning (Listed Buildings and Conservation Areas) Act 1990 place statutory duties upon the decision maker in relation to designated heritage assets. The appellant has confirmed that there are no physical works, internal or external, required for the conversion of the flat into a 3-room HMO.
16. Whilst I have considered matters relating to the effect of the appeal scheme on the character of the surrounding area in terms of the scheme's effect on housing mix above, I am satisfied that there would be a neutral effect, thereby preserving, the setting or any features of special interest of the listed building and the character or appearance of the CA. There is therefore no conflict with the aims and provisions of the Framework in respect of the historic environment.
17. The site lies within flood zone 2 and, with the Rive Lune a short distance to the rear of the property, the roads around it are identified as being at high risk of flooding. A Flood Risk Assessment was submitted with the application which recommended mitigation measures in the form of an appropriate flood emergency plan and warning systems, and details of safe egress and refuge areas be made available to residents. The Council have indicated that this could be secured by condition, and I agree.

Conditions

18. I have considered the list of conditions suggested by the Council in light of the advice set out in the Planning Practice Guidance and that of the National Planning Policy Framework. I have also carefully considered the appellant's response to the suggested conditions. I agree that a plans condition is necessary, relevant and reasonable in all other respects in the interests of good planning and to provide certainty.
19. Given the site's location close to the River Lune, a condition to ensure the application of mitigation measures set out in the Flood Risk Assessment, particularly in relation to safe access and egress in the event of flooding is a reasonable and necessary precaution. I have therefore imposed a condition to this effect.
20. The application is retrospective, so a time limit condition is not appropriate. No other conditions have been suggested by either party nor have I been presented with any other reason to impose further conditions beyond those already described.

Conclusion

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

G Robbie INSPECTOR