



Appeal Decision

Site visit made on 13 November 2024

by Dr Rachael A Bust BSc (Hons) MA MSc LLM PhD MIOl MCMI FGS MEnvSci MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 December 2024

Appeal Ref: APP/C2741/W/24/3347577

12-14 Acomb Road, York, YO24 4EW

- 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 A King against the decision of City of York Council.
- The application Ref is 24/00011/FUL.
- The development proposed is Sui Generis HMO.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council changed the description of development to be "Change of use of 12-14 Acomb Road from commercial premises to Large House in Multiple Occupation (sui generis), dormer to rear and associated alterations to fenestration." Whilst no confirmation has been submitted that the applicant (now appellant) agreed to this change, the revised description has been used on the appeal form. The revised description more accurately summarises the proposal and as the Council used it in their determination of the scheme so shall I.
3. During the determination of the application, revisions to the scheme were submitted. There is no evidence that these revisions were subject to re-consultation prior to the Council's decision or made available on the Council's online public access planning register. As such Revision A and B have been included in the appeal submission.
4. The Procedural Guide: Planning Appeals – England¹ is very clear that the appeal process should not be used to evolve a scheme. Where amendments are proposed during the appeals process despite this general principle, whether they are accepted for consideration is determined by reference to two separate tests arising from case law², namely substantive and procedural.
5. Revisions A and B both contain a number of incremental design amendments including reducing the number of bedrooms from 11 to 10 in revision B. It is still essentially a scheme for a large HMO and not so fundamentally altered that either revision could be viewed as completely different schemes and thereby fail the substantive test.
6. At the start of the appeal process Revisions A and B were not initially published on the Council's online public access planning register. Consequently, an additional period of consultation during the appeal process has enabled the opportunity for

¹ Planning Inspectorate Guidance – Procedural Guide: Planning Appeals - England

² *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823 (Admin) which refined the long-standing "Wheatcroft principles" established in *Bernard Wheatcroft Ltd v SSE* [JPL 1982 P37]

interested parties to review and comment upon both sets of revised plans. The further comments received have been taken into account alongside all of the other representations made. The additional appeal consultation period therefore means that there has been no unfairness in the process which could lead to a failure of the procedural test. Consequently, this appeal has been determined by reference to the original plans together with both revisions A and B.

7. There is no adopted statutory development plan for the City of York, save for the retained Regional Spatial Strategy policies on Green Belt which are not relevant in this case. The Council has referred to emerging policies from the Publication Draft City of York Local Plan 2018 (eLP). The eLP is progressing through the independent examination period, but as it has not reached adoption the emerging policies do not carry full weight. Accordingly, the eLP and the National Planning Policy Framework³ (the Framework) are capable of being material considerations in the determination of this appeal.

Main Issues

8. The main issues are:
 - i. whether the proposed loss of employment premises is justified;
 - ii. the effect of the proposal on the living conditions of surrounding occupiers;
 - iii. whether the proposal would create acceptable living conditions for future occupiers, with particular regard to internal and external space, and car and cycle parking provision; and
 - iv. the effect of the proposal on the character and appearance of the appeal property and immediate surroundings.

Reasons

Employment premises

9. The appeal site is located towards the end of Acomb Road where various non-residential uses are present, including a takeaway, chiropodist/podiatrist, and general convenience store. This part of Acomb Road is close to the junction with Holgate Road which also contains some further ground floor level non-residential uses, such as another takeaway, physiotherapist and a public house. Together these uses give the immediate area a neighbourhood scale commercial and service character, even if it is not formally defined as such in an adopted planning policy document.
10. The appeal site comprises two commercial units at ground floor with a self-contained residential flat at first floor. At the time of my site visit, the technology repair centre was still in use. The adjacent unit, formerly a hair salon was vacant. The fixtures and fittings had been stripped out since the photographs included within the appellant's appeal statement were taken. The first floor flat was also vacant with some floors, kitchen and bathroom fittings having already been removed.
11. The appeal proposal would involve a comprehensive redevelopment of the appeal site and the loss of the two commercial units. Policy EC2 of the eLP requires evidence to justify the loss of employment land and/or buildings. It is not clear

³ Published December 2023

whether the appeal site was included by the Council as part of their identified portfolio of existing employment land and premises for the purpose of identifying sufficient sites to meet the needs anticipated during the plan period of the eLP. Furthermore, the Council has not indicated that the appeal site is a specific site allocation in the eLP for employment or retail use.

12. The appellant's comment that a property estate agency business has not identified any suitable users for either commercial unit is not supported or further substantiated in any way with detailed, but proportionate, evidence. Even irrespective of the emerging policy requirements, it would be reasonable to expect that some details are provided about what marketing had been undertaken to substantiate the suggestion that there was no interest in the commercial units. From the information contained in both the application and appeal submissions, there is no cogent evidence that this issue has been thoroughly explored to make a coherent and evidence led argument that the existing land/buildings are not viable, and the employment use is no longer required.
13. The appellant's contention that the two commercial units require refurbishment is not sufficient to conclude that they are no longer required or viable. No evidence of an objective assessment of works required and costs involved has been presented which could have formed part of a viability assessment for a redevelopment proposal. In any event, refurbishment and maintenance are part of good business management practice. Furthermore, without the details of the circumstances which led to a neighbouring commercial unit being converted, I cannot draw any meaningful comparisons with the appeal scheme before me.
14. The appellant has drawn my attention to a recent revision in the permitted development rights. Using the permitted development rights regime is an alternative means of achieving permission for some forms of development, subject to conditions and prior approval as appropriate. However, I am required to determine the appeal scheme which has been presented to me and which is what I have done.
15. I find that the case for the proposed loss of the employment premises has not been made out and is not justified. Accordingly, there would be conflict with Policy EC2 of the eLP. Alongside this, paragraph 85 of the Framework states that planning decisions should help create the conditions within which business can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity. As the appeal proposal would involve the loss of existing employment related premises it would run counter to the national policy approach which therefore weighs heavily against the appeal proposal.

Living conditions of surrounding occupiers

16. In the HMO form of accommodation, the occupants do not form a single household; they live different and independent lifestyles which tends to lead to more comings and goings together with potentially more visitors and deliveries. Whilst the appeal building could be physically converted to accommodate the 10 or 11 single occupancy bedrooms, the outcome of all 3 schemes would likely be a much more intensive form of use, including during the evenings and weekends than would be expected from two modestly sized two commercial units and single residential flat at first floor. The size of the two commercial units is to an extent self-limiting in terms of intensity of use and would be more likely to operate daytime opening hours.

17. The proposed dormer roof extension would not enable any direct overlooking or reduce light for adjoining occupiers; however, its presence would reinforce the intense nature of the proposed use of the appeal building in all 3 schemes. The terraced form of the appeal building could give rise to noise transmission to the adjacent occupiers from the proposed use. Whilst no information has been submitted regarding the nature of the building's construction, this issue could be addressed by requiring a technical assessment and installation of suitable noise attenuation measures for the building. This could be secured by a planning condition if all other aspects of the scheme were found to be acceptable.
18. Although the potential harm from noise could be mitigated, the disturbance from the comings and goings of such a large number of occupants would, in my view, lead to an unacceptable level of disturbance to the existing living conditions of surrounding occupiers. Accordingly, all 3 schemes would conflict with paragraph 135 f) of the Framework which seeks to ensure a high standard of amenity for existing users. It would also conflict with Policy ENV2 of the eLP which seeks to ensure that development permitted does not unacceptably harm existing occupants.

Living conditions of future occupiers

19. Various concerns have been raised regarding the internal and external space for the future occupiers. No formally adopted specific space standards for determining planning applications for HMOs have been presented. The standard and management of HMOs is primarily controlled through the Housing Act 2004 and accompanying regulations which require local authorities to establish a licensing regime for HMOs.
20. The appellant has submitted a copy of the Council's HMO Licensing Guidance Notes. Whilst licensing requirements may inform the design process, HMO licensing is a separate regime to planning. Representations have raised concerns about room sizes; however, I note that the Council's Housing Standards consultation response raises no similar concerns. Even with reference to the Council's HMO licensing standards, the proposed bedrooms in all versions of the scheme exceed the minimum of 6.51 square metres for single room occupancy. As such in the absence of any planning-based space standards I see no reason that the individual bedrooms would be unacceptable.
21. The kitchen/dining space is similar in all 3 schemes. The proposed store/utility in revisions A and B would provide a potential solution to the concerns raised in relation to insufficient storage in the kitchen/dining area of the original scheme.
22. The original submission retained the existing external outside space to the rear. Although details of hard landscaping and the enclosed bicycle store were not submitted with the original scheme, these could be secured by a planning condition if all other aspects of the scheme were found to be acceptable. In Revisions A and B, as a consequence of extending the building into the existing rear area to create bedroom 4 (Revision A) and bedroom 3 (Revision B) the external communal space is reduced. The additional small external courtyard adjoining the kitchen/dining area would offer future occupiers an additional/alternative communal area which is positive. However, in my view, the overall provision of external amenity space for the potential number of future occupiers under all 3 schemes would feel constrained and be insufficient to ensure an acceptable living environment.
23. Concerns have been raised regarding the provision of car parking. The Council's Officer Report indicates in paragraph 5.11 that the car parking standards require up

to 6 car parking spaces for an 11-bedroom HMO. The submitted car and cycle parking standards form Appendix E to an approved, but unadopted development plan document used for development management purposes. The parking standards contain zone definitions and the Council has not indicated within which zone the appeal site lies. From my reading of Appendix E⁴ Residential (C1/C2/C3) – Special Categories there are no car parking standards for an HMO within York City Centre foot streets; but if the appeal site were considered to be in the rest of York City Centre, the standard would be 1 space per two units, therefore 6 spaces required for the original scheme and revision A and 5 spaces required for revision B. None of the 3 schemes illustrate the provision of any existing or proposed car parking.

24. The appeal site is in an accessible location for walking, cycling and the bus network, so the use of a car is not essential. Occupiers of HMO accommodation may not have access to or a need for a car. However, any occupiers (or their visitors) with cars would have to rely on on-street parking. From my site visit, although parking restrictions are in place outside the appeal building up to the junction with Holgate and Poppleton Roads, there were some on-street parking opportunities within the local area. I acknowledge that my visit is only a snapshot in time and at other times of the day and week representations suggest there is less opportunity for on-street parking. However, no parking surveys have been submitted to indicate the area is experiencing a level of parking stress which would lead to highway safety concerns.
25. In respect of car parking, whilst desirable, for some locations and proposals, like this appeal proposal, it is neither physically possible nor necessary to provide car parking in all circumstances. As such I do not share concerns raised relating to car parking. Appendix E refers to maximum standards which without clear and compelling justification is inconsistent with paragraph 112 of the Framework. Accordingly, I afford the car parking standards in Appendix E limited weight in my determination of this appeal.
26. The original and revision B schemes provide the bicycle parking to meet the Council's standard for an HMO as set out in Appendix E. Revision A does not and is therefore unacceptable. However, in the original scheme the location of the bicycle store would be impractical with bicycles having to be wheeled through the building, past 3 bedrooms and the kitchen/dining area. Revision B would be a practical solution for the provision of bicycle parking and comply with paragraph 114 of the Framework regarding sustainable forms of transport and Policy T1 of the eLP.
27. Although I find different elements of the 3 schemes to be acceptable, on balance, no single scheme presents an acceptable living environment for the future occupiers. As such there is conflict with Policy ENV2 of the eLP which seeks to ensure that development permitted does not unacceptably harm occupants and paragraph 135 f) of the Framework which seeks to ensure a high standard of amenity for future users.

Character and appearance

28. The appeal building is a two-storey mid terrace. This section of terrace has a settled and consistent traditional appearance of brick and slate materials and with similar sized window openings at first floor. At ground floor level there is a mix of commercial and residential uses. Within the terrace I did not observe any existing forms of roof extension to either the front or the rear.

⁴ City of York Draft Local Plan Incorporating the 4th set of changes, April 2005, Appendix E.

29. All 3 appeal schemes incorporate a roof extension to the rear to enable the roof space to be used as two bedrooms. The square box dormer in the original scheme would fill much of the width of the roof section of the appeal building. The functional design would be an unacceptably dominant feature which would introduce an unacceptable level of harm to the appearance of the appeal building within this section of terrace. Revisions A and B offer a more traditional form of dormer, similar to those found on the larger properties further along Acomb Road. However, within this two-storey section of terrace, the presence of any form of roof extension would be an incongruous feature and out of character with the appeal building and this section of the terrace as it would be visible in private views of surrounding occupiers.
30. The proposed siting and required scale of refuse bins with or without enclosures to the front of the appeal building in the original scheme and Revision A would be a harmful and unattractive feature in the appearance of the street scene. During my site visit no other similar size refuse bins were apparent within the frontage of existing properties in this part of Acomb Road. Revision B creates an internal bin (and bicycle store) which, in principle is a sensible measure. However, the secure louvre ventilated façade on the proposed front elevation would harm the existing appearance of the street scene.
31. I find that all 3 schemes would harm the character and appearance of the appeal property and immediate surroundings. Accordingly, there would be conflict with Policies D1 and D11 of the eLP which collectively seek, amongst other things, good design which responds positively to the immediate architectural context and local character. Alongside this, the 3 schemes would not find support in paragraphs 135 and 139 of the Framework which focuses on achieving good design.

Other Matters

32. I have carefully considered the other matters raised by interested parties which do not fall into the main issue topics, including type of occupant, drainage and sewerage, potential other forms of development. There is no evidence that students would be the potential tenants. Concerns regarding drainage and sewerage are noted, however, no evidence to quantify or explain the potential impact has been provided. Several comments regarding alternative forms of development are outside of the scope of this appeal as I have to determine the scheme that has been submitted. As I find the appeal scheme to be unacceptable, these and other matters have not been determinative.
33. The Council's approach to the determination of the planning application are a procedural matter and any concerns in this respect could be addressed with the Council outside of the appeal process. As such matters do not concern the planning merits of the case, I have not attached weight to them in determining this appeal.

Conclusion

34. Drawing all aspects together, for the reasons given above the appeal proposal is not supported by either national or emerging local planning policies. Accordingly, the appeal should be dismissed.

Dr Rachael A Bust

INSPECTOR