Planning Inspectorate

Appeal Decision

Site visit made on 26 November 2024

by R Bartlett PGDip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 January 2025

Appeal Ref: APP/C2741/W/24/3349195
234 Melrosegate, York, YO10 3SW

- 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 Mrs Assia Matova against the decision of City of York Council.
- The application Ref is 23/02336/FUL.
- The development is conversion of a single family dwelling into a HMO with 3 or more unrelated inhabitants.

Decision

1. The appeal is allowed, and planning permission is granted for conversion of a single family dwelling into a HMO with 3 or more unrelated inhabitants, at 234 Melrosegate, York, YO10 3SW, in accordance with the terms of the application, Ref 23/02336/FUL, subject to the following conditions:

    1) The development hereby permitted shall be carried out in accordance with the submitted 1:1250 site location plan and the floor plans identifying bedroom 1 at ground floor level and bedrooms 2, 3 and 4 at first floor level.

    2) A shed providing secure enclosed cycle parking for a minimum of 4 cycles shall be retained within the site, and available for use by the occupiers of the approved HMO, for its intended purpose, at all times.

    3) The HMO hereby approved shall not be occupied by more than 4 persons at a time and the smallest first floor bedroom, labelled bedroom 4 on the approved plans, shall only be used as a study or storage space, or as a bedroom occupied by a child aged 10 or under that is a relative of an occupier of one of the larger bedrooms.

Preliminary Matters

2. The appeal property is already in use as a HMO for up to 4 unrelated persons and as such planning permission is sought retrospectively.

3. The plans submitted with the appeal did not include all of those considered by the Council and did not correctly identify all of the 4 bedrooms. Clarification was sought on this matter and I have determined the appeal based on the plans that were determined by the Council and which identify the front ground floor room as bedroom 1 and the smallest first floor bedroom as bedroom 4.

4. A revised version of the National Planning Policy Framework (the Framework) was published on 12 December 2024. Any reference to the Framework in this decision is to the most recent version and its new paragraph numbers. As the

National Design Guide (NDG) 2019 was updated in 2021, I have referred to the most recent version of this document.

5. The decision notice refers to various policies in the emerging City of York Local Plan – Publication Draft (February 2018) as modified 2023 (eLP). As this has not yet been adopted, I cannot afford it full weight. The Supplementary Planning Document (SPD) Controlling the Concentration of Houses in Multiple Occupation, which provides guidance only, is also in draft form and is unsupported by any adopted development plan policy. Nevertheless, these documents are material considerations in my determination of this appeal.

Main Issues

6. The main issues are the effect of the change of use on i) the concentration of HMOs in the area; ii) whether bedroom 4 provides a satisfactory standard of living space; and iii) car parking.

Reasons

Concentration of HMOs

7. The appeal site comprises a semi-detached house, set behind a front garden, with a driveway to the side, and a garden to the rear containing a large shed. According to the submitted documents the property has been in use as a HMO since October 2019 and the start date of the current HMO licence issued by the Council is 1 April 2023. The change of use from a C3 dwelling to a C4 small HMO would normally be permitted development. However, an Article 4 Direction is in place in this area removing these rights. The purpose of the Article 4 Direction is not to prevent development but to enable the Council to manage the number and location of HMOs in the city.

8. Policy H8 of the eLP, and the draft SPD, state that additional HMOs will only be granted where less than 10% of properties within 100 metres of the site along the same street frontage and less than 20% of properties in the same neighbourhood area, are HMOs. Although the draft policy and SPD also refer to properties that are exempt from council tax, because they are entirely occupied by full time students, not all such properties will be HMOs. A dwelling would only be classed as a HMO if it is occupied by 3 or more unrelated individuals as their main residence, who share basic facilities such as a kitchen and bathroom. The draft policy, SPD and the Article 4 Direction are all specifically aimed at managing HMOs and not other forms of residential accommodation occupied by students.

9. The Council has provided a plan identifying the 100m extent of Melrosegate to either side of the appeal property. This includes the Working Men's Club and a parade of shops, both with residential flats above, a Chiropractic property, purpose-built flats on Matmer Court (most of which are in a separate cul-de-sac type arrangement behind the Melrosegate street frontage), and part of the purpose-built apartment complex accessed from Beckside Gardens. On the opposite side of the road to the appeal site there is a large public park. Given the mixed-use nature of the area there are very few residential houses directly fronting Melrosegate within the 100m street level buffer identified by the Council.

10. I have also been provided with a spreadsheet listing the addresses of the 50 properties that fall within the 100m street area buffer and the addresses of the

9 HMOs in this zone. I noted that there are some discrepancies between the addresses identified as HMOs on these two lists. Out of the 9 HMO properties listed by the Council, 4 comprise the two-pairs of semi-detached houses 230-236 Melrosegate that the appeal site forms part of. The other 5 are flats, which are unlikely to have more than 1 or 2 bedrooms or to be occupied by more than 2 unrelated persons.

11. With regard to the wider neighbourhood, the Council has provided me with a plan to show the extent of the area considered, and spreadsheets listing the addresses of 1489 properties in that area and the addresses of 705 properties that the Council are counting as HMOs. Out of the 705 listed properties that the Council are treating as existing HMOs, only 120 are noted as having a HMO licence and 44 are identified as having planning permission or a lawful development certificate. This leaves approximately 563 property addresses that are not confirmed to have a HMO licence or to be exempt from planning enforcement action. Furthermore, many of the listed addresses seem to be the same, relating to large blocks of flats that are exempt from council tax. These most likely comprise purpose build student accommodation or off campus student halls of residence that are only available to students and therefore do not affect the supply of housing available to other members of the community.

12. The figures collated and used by the Council appear to be somewhat misleading in that they include all student council tax exempt properties, even though these may only be occupied by 1 or 2 students and not as a small or large HMO for 3 or more persons. Whilst I appreciate such records may be a useful tool in identifying potential HMOs, it should not be assumed that all student or council tax exempt accommodation constitutes a HMO for the purposes of assessing the concentration of such uses in specific areas.

13. Based upon the evidence before me, not all of the flats listed on the spreadsheets of properties at either street or neighbourhood level, have a HMO licence, planning permission, a lawful development certificate or are known to be exempt from enforcement action. I cannot therefore be certain that they are in use as HMOs or that they contribute towards the concentration of such properties in those areas. It would be unreasonable to withhold planning permission for the appeal property based upon the presence of HMOs that may not have the relevant consents, or the presence of student accommodation or flats that are not HMOs. Moreover, even if the street level or neighbourhood levels of HMOs do exceed the thresholds set out in the eLP and draft SPD, it has not been demonstrated that the use of the appeal property has to date, or will in future, result in any negative effects or community imbalance. The Council's only amenity concern relates to restricted off-street parking provisions, which I address further below.

14. I therefore conclude, based upon the evidence before me, that it has not been robustly demonstrated that the street-level and neighbourhood-level thresholds for HMOs set out in the Council's eLP and draft SPD have been exceeded, or that this additional small HMO would result in an overconcentration of such uses, any harm to the balance of the local community, or any associated amenity concerns. I also find no conflict with paragraph 135 of the Framework, which seeks to achieve well designed places, or with the advice set out in parts U and H of the NDG 2021, which encourages socially inclusive and balanced communities that include a mix of home tenures, types and sizes that are well designed and fit for purpose.

Living space

15. HMOs are subject to licencing under the Housing Act 2004. The maximum number of occupiers allowed by the current licence is 4. Under the terms of the licence the smallest first floor bedroom (bedroom 4) can only be occupied by 1 child under the age of 10 because it is below the national minimum room size for a single adult bedroom. However, the two larger bedrooms (Bedrooms 1 and 2) could accommodate 2 persons from a single household. A planning condition could be added to the same effect to ensure overlapping planning policy requirements relating to space standards and living conditions are complied with.

16. Subject to such a condition the proposal would not conflict with the Framework, the NDG or nationally described space standards, and future occupiers of the HMO would have appropriate living conditions.

Car parking

17. The Council state that the appeal site does not provide sufficient car parking to meet the requirements of a HMO containing 4 bedrooms. However, bedroom 4 is only suitable for occupation by a child aged 10 or under. Accordingly, the property is unlikely to be occupied by more than 3 adults, and could not be occupied by more than 4 adults due to licence and planning conditions, whilst in use as a HMO.

18. The property benefits from an existing vehicular access and driveway providing off-street tandem parking for 2 cars. There are double yellow lines outside the site but unrestricted on street parking is available on the opposite side of the road to the site, adjacent to the park. I note the Council's concerns relating to the length of the driveway, but I observed two cars parked on the neighbouring drive of the same length at the time of my visit.

19. Occupancy of the property as a family dwelling with older children could generate equal parking demands and would be equally likely to result in the front lawn being replaced with additional hardstanding to accommodate this, which would not require planning permission. I acknowledge that tandem parking could result in one resident's car being blocked in the driveway by another. However, I am not persuaded that a small group of no more than 4 grown adults sharing a household could not manage their parking arrangements in a suitable manner.

20. The site is located close to services and facilities including public transport. At the time of my visit, I was able to park easily on the street and noted many people walking and cycling.

21. I have not been provided with any adopted or emerging car parking standards for C4 HMOs. The guidance I have been referred to (Appendix E of the unadopted City of York Local Plan 2005, which the Council's report confirms is out of date) specifies maximum standards, seeking a maximum of 2 spaces for a C3 dwelling with 3 or more bedrooms. It also refers to Multiple Occupation/bed sits and student accommodation in Classes C1, C2 and C3, which require only 1 space per 3 units or 1 space per 5 units.

22. I therefore conclude that the HMO use of the dwelling would not be detrimental to highway safety or to the character or appearance of the area. There is no reference to car parking in Policy H8 of the eLP although its

supporting text lists this as one of the things to be considered in assessing the effects of such development on the overall residential amenity of the area. I find no conflict with eLP policy T1, which is subject to modifications and does not mention car parking but supports development where it is within reasonable safe walking distance of public transport and where it minimises the need to travel. I also find no conflict with the Framework or NDG.

Conditions

23. As the change of use has already occurred a time limit condition is not necessary. The approved plans are conditioned for the avoidance of doubt. To ensure that the HMO provides an appropriate standard of living space and accommodation, it is necessary to impose a condition restricting its occupancy to a maximum of four persons and to ensure that bedroom 4 is only occupied by a child no older than 10 years old and that is related to another occupier. To encourage sustainable means of travel, a condition is necessary to ensure a shed is retained at all times for use by occupiers of the HMO for secure cycle storage. As the maintenance and management of the property is covered by the HMO licence, which can be revoked by the Council if its terms and conditions are not met, it is not necessary to replicate such conditions on the planning permission.

Conclusion

24. Having taken account of all relevant material considerations, I conclude that the appeal should be allowed.

R Bartlett

INSPECTOR