

Annex A: Appeal Decisions



Appeal Decision

Site visit made on 4 December 2012

by Robin Brooks BA(Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 4 January 2013

Appeal Ref: APP/C2741/A/12/2182758
11 Feversham Crescent, York YO31 8HQ

- 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 Anthony Peck against the decision of City of York Council.
 - The application Ref 12/01945/FUL, dated 9 May 2012, was refused by notice dated 31 July 2012.
 - The development proposed is change of use from dwelling house (Use Class C3) to house in multiple occupation (Use Class C4).
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Decision

1. The appeal is allowed and planning permission is granted for change of use from dwelling house (Use Class C3) to house in multiple occupation (Use Class C4) at 11 Feversham Crescent, York YO31 8HQ in accordance with the terms of the application, Ref 12/01945/FUL, dated 9 May 2012, 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 the location plan and floor plan received by the Council on 18 May 2012.
 - 3) No later than the expiry of two months from the date of this permission a management plan for the property shall be submitted for the approval of the Local Planning Authority including information and advice for occupants. This shall include guidance on care of external areas and appropriate storage of refuse and recycling and shall be implemented as approved.

Policy context and main issue

2. Policy H8 of the City of York Local Plan permits conversion of a dwelling to multiple occupation subject to a number of criteria covering internal suitability, external alterations, adequacy of parking, impact on neighbouring residential amenity and provision for refuse storage. As the Plan has not been formally adopted it carries only limited weight but the criteria appear to me to be generally soundly based.
3. In support of their refusal the Council also cite their Supplementary Planning Document (SPD) *Controlling the Concentration of Houses in Multiple Occupation* which sets out thresholds for levels of houses in multiple occupation which should not be exceeded if a balanced community and appropriate range

of housing are to be maintained. The latter objective generally reflects advice in the National Planning Policy Framework (NPPF). The status of the SPD is unclear as it is said to have been approved by members in April 2012 for development management purposes but is titled "draft". However, despite this ambiguity I regard it as a material consideration.

4. Against this policy background the determining issue in the appeal is the impact of the proposal on the character and appearance of the surrounding area.

Reasons

5. The SPD states that a change of use to a house in multiple occupation will only be permitted where the accommodation provided is of a high standard which does not have a detrimental effect on residential amenity; where it is in a neighbourhood where less than 20% of properties are in multiple occupancy; and where less than 10% of properties within 100m are so occupied. The Council do not argue that the property would fail to provide good accommodation and I see no reason to question that stance. It is a substantial building on 3 floors, appears to be well maintained and has a rear yard that would provide outside storage for its occupants. Parking in the area is controlled and I would expect space to be at a premium but there are bus services on Wiggington Road, a major radial road into the city centre, and the centre itself is no great distance away. The property would also be well placed for anyone employed at the adjacent General Hospital or studying at York St John University nearby. All of this could well mean a low level of car ownership among occupants.
6. As regards the occupancy thresholds, the Council say that in the neighbourhood around the property 7.3% of houses are in multiple occupation but that within 100m the figure is 15.3%. However, it seems to me that like any policy or guidance the approach set out in the SPD must be applied with a degree of flexibility and pragmatism and with due regard to the particular case at issue. Although, as the Council's development control report says, the criteria make no reference to the requirement (sic) being applied flexibly depending on the location of a property or its specific characteristics, this does not in my opinion justify refusing planning permission solely on the basis that a numerical threshold has been breached. No evidence has been submitted to indicate whether or how this particular change of use would adversely affect the specific area and community around it.
7. It is evident from the street and from representations made by objectors that there is a high level of multiple occupation in Feversham Crescent, and that this may well be above the level indicated by the Council. I also accept that such occupancy can cause problems of noise and disturbance, parking pressure and anti-social behaviour, as referred to by objectors. However, this particular case has to be seen in the context of its location close to both a main road and a large acute hospital both of which are likely to give rise to a good deal of activity. Also, from what I saw on my visit the properties in the Crescent appeared to be generally well maintained and they have very little external space, other than the enclosed rear yards, where refuse could be left in an anti-social manner. I am also mindful of the statement by the Appellant, not contradicted by the Council, that the property was registered and occupied as a house in multiple occupation for some 15 years from 1995 and that it was re-registered as such in July 2012. I conclude on the main issue that, although

the Council's objectives of maintaining a balanced community and a range of housing choice are sound, there is no cogent evidence that the appeal proposal would unacceptably harm the character and appearance of the surrounding area. It would not therefore undermine the aims of the Local Plan, the SPD or the NPPF.

8. The Council have suggested a condition requiring submission of a management plan for occupants of the property that would help address potential areas of friction between them and neighbours. Given the number of people who might be accommodated, this seems to me a reasonable approach and in principle to fulfil a planning purpose. I have amended the Council's suggested wording for greater clarity and precision. I have also applied a condition requiring compliance with the submitted plan for the avoidance of any doubt as to the nature or scope of the change of use.
9. For the reasons given above, and taking account of all other matters raised, I conclude that the appeal should be allowed.

Robin Brooks

INSPECTOR



Appeal Decision

Site visit made on 7 January 2013

by Elaine Worthington BA (Hons) MTP MUED MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 31 January 2013

Appeal Ref: APP/C2741/A/12/2183491
20 Hartoft Street, York, YO10 4BN

- 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 Miss Sally Cakebread against the decision of City of York Council.
 - The application Ref 12/01938/FUL, dated 9 May 2012, was refused by notice dated 24 August 2012.
 - The development proposed is change of use from dwelling house (Use Class C3) to house in multiple occupation (Use Class C4).
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Miss Sally Cakebread against City of York Council. This application is the subject of a separate Decision.

Procedural Matters

3. In the interests of accuracy I have taken the site address and the description of development from the Council's decision notice.
4. Information provided by the appellant indicates that the appeal property was successfully let to tenants in October 2012. As such, I have considered the appeal on the basis that the development proposed has already taken place.
5. The appeal site lies within a larger area that is covered by an Article 4 Direction made by the Council, which came into force on 20 April 2012. The Direction removes permitted development rights for change of use from Class C3 (dwelling houses) to Class C4 (houses in multiple occupation) in an effort to control the number of houses in multiple occupation, to ensure that communities do not become imbalanced. It applies across the whole of the main urban area of York.

Main Issue

6. The main issue in this case is the effect of the proposal on the residential character of the area.

Reasons

7. The appeal site is a modest three bedroom mid terrace house. The surrounding area is residential, characterised by other similar terraced houses fronting directly onto the street with rear yards and accesses.

8. Policy H8 of the Local Plan¹ indicates that houses in multiple occupation (HMOs) will only be permitted where, amongst other things, they would not have an adverse impact on the residential character of the area by virtue of the conversion alone, or cumulatively with a concentration of such uses. Similarly, the Council's SPD² seeks to ensure that communities do not become imbalanced through unsustainably large concentrations of houses in multiple occupation. The SPD is only permissive of HMOs in neighbourhood areas where less than 20% of properties are in multiple occupation and, at street level³, where less than 10% of properties are in multiple occupation.
9. The appeal site is within a neighbourhood area where, based on the Council's analysis, the proportion of houses in multiple occupation is low at 8.8% (falling well below the 20% threshold). However, at street level 13.1% of properties are considered by the Council to be HMOs. Whilst the appellant questions how this figure was arrived at, no alternative, substantiated evidence has been submitted to undermine the Council's figure. As such I see no reason to dispute the Council's view that the 10% threshold set out in the SPD is already exceeded.
10. I am conscious that only slightly more than the recommended level of existing properties at street level are HMOs, and the appeal property has only three bedrooms. On this basis, allowing one additional property to be used as a HMO, may appear insignificant in itself. However, it increases the already high concentration of houses in multiple occupation in the immediate area, which detracts from its character and contributes to an imbalance in the make up of the local community. This impact exacerbates a situation which already requires careful management, and has been identified by the Council as a concern.
11. I note the appellant's view that the SPD is unfair to new landlords, will put off investors, and is detrimental to the relationship between the Council and the University, forcing students to live in worse locations and inferior accommodation. I have also considered the argument that the thresholds in the SPD have been set too low, particularly having to regard to the historical levels of student houses in the area. Further, I acknowledge that the appellant considers a street level threshold of 15% would be more appropriate and better reflect the representations made on the SPD. However, I am mindful that the SPD has been subject to thorough research and consultation. In particular the alternative approach of a variable threshold was considered but not favoured by consultees. On this basis, the adopted thresholds are considered by the Council to be the point at which a community can tip from balanced to imbalanced, and I see no reason to disagree with this stance. Moreover, the SPD allows for a consistent approach to the determination of relevant applications and is an important tool in the Council's efforts to prevent the gradual erosion of residential areas, and the creation of unsustainably large concentrations of HMOs.

¹ City of York Draft Local Plan Incorporating the 4th set of changes – Development Control Local Plan 2005

² Draft Supplementary Planning Document 'Controlling the concentration of houses in multiple occupation'. Although the title of the document includes the word draft, it was approved in April 2012.

³ The SPD assesses the impact of HMOs at two geographic levels: neighbourhood level and street level. The term street level is defined as including both sides of the road within 100m of street length either side of a site.

12. I conclude that the proposal causes material harm to the residential character of the area, in conflict with Local Plan Policy H8. It is also contrary to the terms of the SPD and undermines its overall aim of ensuring communities do not become imbalanced. Further, the proposal is at odds with paragraph 50 of the National Planning Policy Framework which seeks the creation sustainable, inclusive and mixed communities. The effect of the revocation of the Regional Strategy has been considered but in the light of the facts in this case, the revocation does not alter my conclusion.

Other Matters

13. I am aware that the SPD recognises the important contribution HMOs make to York's housing offer, providing flexible and affordable accommodation. I also note the appellant's view that students and local residents can benefit from living together, and that the appeal site is in a good location close to the river and the university. These factors are benefits in favour of the proposal, but taken either individually, or together, they do not outweigh the harm I have identified. I also recognise that the standard of accommodation for future occupiers would be acceptable and that no issue is taken with any adverse impact on the living conditions of adjoining occupiers, with particular regard to noise and disturbance. However, the absence of harm in this regard is not a benefit of the scheme as such.

Conclusion

14. For the reasons set out above, I conclude that the appeal should be dismissed.

Elaine Worthington

Inspector



Appeal Decision

Site visit made on 16 April 2013

by **J S Nixon BSc(Hons) DipTE CEng MICE MRTPI MCIHT**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 6 June 2013

Appeal Ref: APP/C2741/A/13/2191992
226 Melrosegate, York, YO10 3SW.

- 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 Planusual Projects Ltd against the decision of the City of York Council.
 - The application Ref. No: 12/02745/FUL, dated 27 August 2012, was refused by notice dated 4 October 2012.
 - The development proposed is for the change of use of a 5-bedroom dwelling to a 7-bedroom house in multiple occupation (HMO).
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Decision

1. For the reasons given below, this appeal is dismissed.

Main Issue

2. From the written representations and a visit to the appeal site and surroundings, it follows that the main issue to be decided in this appeal is the effect the proposed change of use would have on the character of and community in the area.

Reasons

3. In refusing the appeal scheme, the Council relies on paragraph 50 of the National Planning Policy Framework (the Framework), which advocates sustainable, inclusive and mixed communities and its two Supplementary Planning Documents (SPDs) entitled "Controlling the Concentration of Houses in Multiple Occupation" (April 2012) and "Subdivision of Dwellings" (December 2012), which are argued as being in conformity with the Framework.
4. Although the absence of an adopted local plan means that the SPDs cannot form part of the statutory Development Plan Framework at this stage, the Council has confirmed that, after the requisite extensive public consultation, both the SPDs have been formally adopted by the Council for development control purposes. Accordingly, these SPDs can be given considerable weight.
5. In the context of the appeal proposal, the threshold for the concentration of HMOs advocated by the earlier SPD seems a sensible and pragmatic approach to meeting the overarching objective of paragraph 50 of the Framework. As such, the Council's decision merits support unless other material considerations justify reaching a different conclusion.

6. Several submissions are made on behalf of the Appellants and these are looked at in turn. As for the need for any planning permission, this appeal is dealt with on the basis that planning permission has been sought. However, as the Council says, if it is felt that a material change from the existing situation would not take place, a Lawful Development Certificate could be applied for.
7. The SPDs are also objected to on a ground of principle. However, it is not accepted that they are fundamentally flawed but, as noted above, having undergone appropriate levels of public consultation carry significant weight. Moreover, even though it is suggested that the Council's assessment only looks at student houses, the Council points out that this is not the case, confirming that the SPDs consider all shared houses. This seems reasonable, because nothing is identified that would preclude any shared house being used by students. It is also worth noting that the Council believes its assessment, using the records it has, is likely to produce an underestimate of HMOs. This is not disputed.
8. Next, having regard to the open land nearby, the density of housing within the 100 metre walking distance may be lower than some other areas in the City. However, the SPDs make clear that they apply to all areas of the City and are not intended only to apply to certain areas or for the threshold to vary dependant on the prevailing local density. No doubt this was a feature retained or included following the consultation responses.
9. Moving on, it is submitted that the appeal premises is capable of supporting eight people, which is said to be one more than is now proposed. The application does not give the internal measurements of the appeal dwelling, so it is not possible to compare this with the guidance in paragraph 3.6 of the second SPD. However, the Council emphasises that the ability of the property to support the number of residents proposed has not influenced its decision. On this basis, this is not something that counts against the project.
10. Whereas the proposed conversion itself might only have a modest effect on the character of the area, the SPDs require that consideration is given to the cumulative effect on the character of a particular area of all the HMOs within that area. The guideline threshold figure evinced by the first SPD is 10% within a 100 metres walking distance and the figure here is quoted as 19.2%. Although the 19.2% figure is questioned, the Council draws this from its figures, including registered student council tax exemptions. There is nothing objective that is proffered to challenge this figure. As such, an additional HMO would mean the guideline is breached by almost 100%. This would make it very difficult for the Council to support the SPD threshold in the future. In addition, although less of a breach the proposal would exceed the neighbourhood threshold of 20% within a 450 metre radius. It is noted that the first SPD requires proposals for HMOs to fall within both thresholds.
11. Looking next at arguments relating to the scheme's sustainability accreditation, the appeal site is relatively close to the University, but no travel audit is contained in the Design and Access Statement accompanying the application to show that this is a better area than others. There is certainly no objective audit to demonstrate the present modal split. Even if it is a good area locationally, and even if there is some conflict with the sustainability policies in the Framework and development plan, this does not outweigh the SPD and

Framework objectives for the community. To adopt a strict sustainability stance in every case would conflict with the overarching intentions of the SPDs.

12. Finally, it is submitted that there is no evidence that HMOs create any greater noise and disturbance in an area and in this case there have been no objections to the proposal. On the first point, the Council disagrees and common sense dictates that it is unlikely that the SPDs would have been felt necessary if there were no problems in areas where there are a high level of HMOs. The Farnworth decision cited exhibits several differences from this case, not least that it would house less people. More importantly, however, it is not identified as in an area where there is already a concentration of HMOs, and it is the cumulative effect that causes the City Council most concern.
13. As for the lack of local objection, experience shows that it is quite often the case that, to avoid bad feelings, neighbours do not object, especially where there are clear policies available for the council to invoke. Certainly the lack of local objection is not a sound reason for allowing something in the face of a firm policy objection.
14. In summary, the proposed scheme would materially breach the Council's recently published SPDs and the objectives of the Framework pertaining to inclusive and mixed developments and have a harmful effect on the character of and community in the area. The arguments advanced in support of the scheme and the challenges to the Council's stance do not, either individually or cumulatively, overcome the clear policy objection. Moreover, to allow a proposal that runs counter to an objective that has been the subject of very recent public consultation would undermine the Council's position for the future. Accordingly, and having taken into account all other matters raised, this appeal fails.

JS Nixon

Inspector