

COMMITTEE REPORT

Date: 10 June 2021 **Ward:** Rawcliffe And Clifton
Without

Team: West Area **Parish:** Rawcliffe Parish Council

Reference: 20/01662/FUL
Application at: 37 Mitchell Way York YO30 4SW
For: Change of use of dwellinghouse (use class C3) to House in
Multiple Occupation (use class C4) (retrospective)
By: Mr Ali Gumusier
Application Type: Full Application
Target Date: 30 June 2021
Recommendation: Approve

1.0 PROPOSAL

1.1 This application seeks retrospective permission for the change of use of 37 Mitchell Way from a dwellinghouse (use class C3) to a 5 bedroom house in multiple occupation (use class C4) for 6 individuals.

1.2 The property is a modern three storey semi-detached townhouse situated in an established residential estate in close proximity to Clifton Moor. The property has two off street car parking spaces to the front of the dwelling and there are two visitor bays opposite. The original integral garage has been previously converted to a habitable room.

1.3 The application has been called to committee by Cllr Smalley on the grounds of the impact on the streetscene, proposals in the development plan and previous planning decisions and precedents on Mitchell Way.

2.0 POLICY CONTEXT

Publication Draft Local Plan 2018

CYH8 - Conversion to flats/HMO/student accom

Development Control Local Plan 2005

CYGP1 – Design

CYP4a – Sustainability

Application Reference Number: 20/01662/FUL

Item No:

3.0 CONSULTATIONS

INTERNAL

Forward Planning

3.1 Street Calculation (100m): $0 / 38 = 0\%$ therefore under threshold.

Neighbourhood Calculation: $3/1079 = 0.3\%$ therefore under threshold.

EXTERNAL

Rawcliffe Planning Panel

3.3 The Panel objects on the grounds of insufficient parking spaces provided for residents and visitors. It is believed that the continued use as a HMO will create further parking issues in this and surrounding streets.

4.0 REPRESENTATIONS

4.1 Objections from 10 neighbouring properties have been received. The following issues have been raised:

- Inconsistency with number of parking spaces – application states 3, actually only two in front of the property
- Significant number of vehicles associated with property – up to 9 including a commercial vehicle which cause significant access and parking issues
- Highway safety issues associated with excessive numbers of vehicles and lack of access for emergency vehicles
- Numbers of tenants is stated as 5, however there appears to be at least 7 plus adults residing at the address
- The property has been used as a HMO since 2017 not since 2020
- Application states other HMOs in the area however this is not the case
- Granting permission will set a precedent for similar changes of use
- Property potentially used for business use

5.0 APPRAISAL

KEY ISSUES

5.1 The key issues in the assessment of this proposal are the impact upon the amenity of neighbours and whether the car and cycle parking and refuse storage arrangements are acceptable.

POLICY CONTEXT

National Planning Policy Framework

5.2 The National Planning Policy Framework, February 2019 (NPPF) sets out the Government's overarching planning policies and at its heart is a presumption in favour of sustainable development.

5.3 Paragraph 127 states that planning policies and decisions should ensure that developments will achieve a number of aims including:

- function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development
- establish a strong sense of place
- optimise the potential of sites

Draft Local Plan Policies

Publication Draft Local Plan 2018

5.5 The Publication Draft City of York Local Plan 2018 ('2018 Draft Plan') was submitted for examination on 25 May 2018. In accordance with paragraph 48 of the NPPF the Draft Plan policies can be afforded weight according to:

- The stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);
- The extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
- The degree of consistency of the relevant policies in the emerging plan to the policies in the previous NPPF published in March 2012. (NB: Under transitional arrangements plans submitted for examination before 24 January 2019 will be assessed against the 2012 NPPF).

Application Reference Number: 20/01662/FUL

Item No:

5.6 Policy H8 states that applications for the change of use from dwelling house (Use Class C3) to HMO (Use Class C4 and Sui Generis) will only be permitted where:

- It is in a neighbourhood area where less than 20% of properties are exempt from paying council tax because they are entirely occupied by full time students, recorded on the Council's database as a licensed HMO, benefit from C4/Sui Generis HMO planning consent or are known to the Council to be HMOs; and
- less than 10% of properties within 100 metres of street length either side of the application property are exempt from paying council tax because they are entirely occupied by full time students, recorded on the Council's database as a licensed HMO, benefit from C4/Sui Generis HMO planning permission or are known to the Council to be HMOs; and
- the accommodation provided is of a high standard which does not detrimentally impact upon residential amenity.

5.7 In Paragraph 5.53 it advises that in assessing planning applications for HMOs, the Council will seek to ensure that the change of use will not be detrimental to the overall residential amenity of the area. In considering the impact on residential amenity attention will be given to whether the applicant has demonstrated the following:

- the dwelling is large enough to accommodate an increased number of residents;
- there is sufficient space for potential additional cars to park;
- there is sufficient space for appropriate provision for secure cycle parking;
- the condition of the property is of a high standard that contributes positively to the character of the area and that the condition of the property will be maintained following the change of use to HMO;
- the increase in number of residents will not have an adverse impact on noise levels and the level of amenity neighbouring residents can reasonably expect to enjoy;
- there is sufficient space for storage provision for waste/recycling containers in a suitable enclosure area within the curtilage of the property; and
- the change of use and increase in number of residents will not result in the loss of front garden for hard standing for parking and refuse areas which would detract from the existing street scene.

Development Control draft Local Plan 2005

5.8 The Development Control draft Local Plan was approved for Development Control purposes in April 2005; its policies are material considerations although it is considered that their weight is very limited. It is considered that the following policies/criteria are relevant:

Application Reference Number: 20/01662/FUL

Item No:

- Policy GP1 (a) requires development proposals to respect or enhance the local environment
- Policy GP4a (i) requires that development proposals make adequate provision for the storage and collection of refuse and recycling.
- Appendix E to the Local Plan outlines car and cycle parking standards for development and specifies that HMOs should provide 1 car parking space per 2 bedrooms and 1 cycle parking space per bedroom.
- Policy HE4 requires proposals to have no adverse effect on the character and appearance of the area.
- Policy H8 sets out the criteria by which conversions of houses to HMOs should be assessed including that the dwelling has a minimum of 4 bedrooms; adequate car and cycle parking is provided; there would be no adverse impact on neighbouring amenity by virtue of the conversion alone or cumulatively with a concentration of such uses.

Draft Supplementary Planning Document (SPD): Controlling the Concentration of Houses in Multiple Occupancy (2014)

5.9 This Guidance was prepared in connection with an Article 4 Direction which the Council made in respect of houses within the defined urban area. It has the effect of bringing the change of use of dwellings (Class C3) to small HMO's occupied by between 3 and 6 people (Class C4), which would otherwise be permitted development, within planning control. In Paragraph 5.15 the SPD recognises that concentrations of HMOs can impact upon residential amenity and can, in some cases, create particular issues with regard to:

- increased levels of crime and the fear of crime;
- poorer standards of property maintenance and repair;
- littering and accumulation of rubbish;
- noises between dwellings at all times and especially at night;
- decreased demand for some local services;
- increased parking pressures; and
- lack of community integration and less commitment to maintain the quality of the local environment.

5.10 In Paragraph 5.17 it outlines that in assessing planning applications for HMOs the Council will seek to ensure that the change of use will not be detrimental to the overall residential amenity of the area. In considering the impact on residential amenity, attention will be given to whether the applicant has demonstrated that the condition of the property is of a high standard that contributes positively to the character of the area and that the increase in number of residents will not have an

adverse impact on noise levels and the level of amenity neighbouring residents can reasonably expect to enjoy.

5.11 Paragraph 5.7 of the SPD advises that applications for change of use from dwellings to HMO's will only be permitted where:

- a) The property is in a neighbourhood area where less than 20% of properties are exempt from paying council tax because they are entirely occupied by full time students, recorded on the Council's database as a licensed HMO, benefit from C4/Sui Generis HMO planning consent and are known to the Council to be HMOs; and
- b) Less than 10% of properties within 100 metres of street length either side of the application property are exempt from paying council tax because they are entirely occupied by full time students, recorded on the Council's database as a licensed HMO, benefit from C4/Sui Generis HMO planning consent and are known to the Council to be HMOs; and
- c) The accommodation provided is of a high standard which does not detrimentally impact upon residential amenity.

ASSESSMENT

5.12 Under draft Local Plan Policy and the draft SPD, in consideration of a proposal to establish an HMO, there is a requirement to avoid adverse impact on neighbouring amenity through noise disturbance or residential character by virtue of the conversion alone or cumulatively with a concentration of such uses. In this respect, Paragraph 5.2 of the SPD states a 'threshold based policy approach' is considered most appropriate method for controlling the number of HMO's across the City, as this tackles concentrations and identifies a 'tipping point' when issues arising from concentrations of HMOs become harder to manage and a community or locality can be said to tip from balanced to unbalanced.

5.13 Council data indicates that within 100m (Street level) of the site that there are currently no known HMOs out of 38 properties - 0.00%. At the neighbourhood level there are currently 3 known HMOs out of 1079 properties – 0.3%. Neither of the thresholds have been breached and as such, the proposed change of use to a HMO is unlikely to significantly affect the balance of the community or the stock of family sized dwellings. Whilst a family house would be lost in this instance, HMO properties are required to provide accommodation for non-family occupiers who also require accommodation throughout the city. By introducing the Article 4 Directive, it helps to balance York's housing market and ensure that communities are not unbalanced by large concentrations of HMO properties. The use of this particular property as a HMO is considered to be acceptable in this instance as it meets the requirements for adequate accommodation and facilities for the occupiers.

Application Reference Number: 20/01662/FUL

Item No:

Car Parking

5.14 The Development Control draft Local Plan 2005 (DCLP) contains a car parking standard of 1 space per 2 HMO bedrooms. This is a maximum, which the DCLP states should be assessed downwards depending on the individual characteristics of each site. Whilst the application site is in a sustainable location, it would not be considered unusual for a family dwelling of this size to have at least two cars. The maximum requirement for a 5 bed roomed HMO would be for 2 or 3 car parking spaces. Significant concerns have been raised by neighbouring residents with regard to car parking provision. A number of residents have reported that currently up to 9 vehicles are associated with the host property, causing significant highway safety and access issues.

5.15 In response to the neighbour objections, the applicant has written to confirm that his tenants currently have 6 vehicles, 2 parked on the drive/in front of the house, 2 occupying visitor car parking spaces opposite the drive and 2 on the street. One of these vehicles is a large van as one of the tenants works as a delivery driver.

5.16 Mitchell Way is a modern cul-de-sac with limited on street car parking. Most properties have one parking space on the drive with another space in the garage, where the garage is retained. Cars parking on the street appear to often straddle the road and pavement.

5.17 The applicant has advised that the two visitor car parking spaces opposite his property are also used by tenants of the property. Although it is understood that these visitor spaces were laid out as part of the original planning permission for the estate, they are not part of the adopted highway and there are no planning conditions controlling their use. The 2005 draft Local Plan requirement for a 5 bed HMO would be two or three car parking spaces, applied flexibly depending on the nature of the area. Two spaces are provided off street, the remaining one space within the visitor car parking space is considered to meet the published standards. Further information has been sought regarding the ownership status of the visitor spaces and will be reported verbally to Members.

5.18 The agent has stated that if parking proved to be an issue in granting consent that the tenancy agreements could be altered to limit parking to 2 vehicles. It is noted however that car ownership by tenant would be unenforceable and as such could not be conditioned.

5.19 This is a retrospective application. The issues raised by neighbours with regard to parking provision are based on observations rather than perceived parking issues and as such the multiple comments about parking would suggest that the current use is posing a considerable issue for neighbours. The nature of a House in Multiple Occupation use means that the parking situation will fluctuate over time as tenants change. The application has to be considered on its own merits, rather than

wholly on the basis of current occupants. It is not considered reasonable to require parking provision over the maximum standards outlined in the draft Plan.

Cycle Storage

5.20 Cycle Standards require provision of 5 no covered and secure spaces for a 5 no bedroom HMO. An existing cycle store for 5 bicycles is located in the rear garden accessed from the side passageway.

Amenity of Occupants

5.21 The property appears to be well-maintained, both internally and externally, and this was confirmed by the internal inspection carried out by the Housing team. There is an open plan kitchen/diner to the rear of the ground floor. Both of the original living rooms (ground and first floor) have been converted to bedrooms. Therefore the arrangement of bedrooms is one on the ground floor, two to the first floor with a communal bathroom and two further bedrooms (one en-suite) on the second floor plus a small box room for storage. Bin and recycling box storage is provided in the rear garden as per the previous arrangements for the house. Despite the lack of a separate living room, the property is considered to provide a good level of accommodation.

Impact on the Amenity of the Occupants of Neighbouring Properties

5.22 Objections have been received from multiple neighbouring residents in relation to the impact of the existing use of this property as a HMO, mainly in relation to the multiple comings and goings by occupants and the number of vehicles and associated parking/ highway issues. The adverse impact is suggested by objectors to be because there are more than 6 occupants currently residing at the property. If planning permission is granted for a C4 use, this limits the occupancy within the use class to no more than 6 residents. Occupation by more than 6 residents may be a material change of use requiring a further planning permission.

5.23 Given the very low numbers of HMOs in the neighbourhood, it is not considered that the use would unbalance the community. In addition, it is considered that the occupation of the property as an HMO would not individually or cumulatively result in significant harm to the amenity of neighbouring residents. As part of all consents approving a HMO use, a 'management plan' is required to be conditioned to address issues which can arise in properties in multiple occupation. This plan is required to be provided to existing and future tenants and would relate to property maintenance, acceptable behaviours to help prevent anti-social behaviour and noise nuisance. However it is noted that anti-social behaviour, noise, disturbance etc can occur anywhere in the city and there are agencies and legislation to deal with this, should it happen.

Application Reference Number: 20/01662/FUL

Item No:

6.0 CONCLUSION

6.1 On balance and subject to conditions, it is considered that the use of the property as a HMO within the C4 use class is acceptable in terms of the balance of the community, highways impact and local amenity. The application accords with the requirements of the NPPF, Policy H8 of the Publication Draft York Local Plan 2018 and Policies GP1 and H8 of the Development Control Local Plan 2005.

7.0 RECOMMENDATION: Approve

1 A detailed written management plan for the property shall be submitted to the Local Planning Authority within 3 months of the date of this permission for approval in writing and shall thereafter be implemented as approved unless otherwise agreed in writing by the Local Planning Authority. The Management plan shall relate to the following matters:

- i) Information and advice to occupants about noise and consideration to neighbours
- ii) Garden maintenance
- iii) Refuse and recycling facilities
- iv) Property maintenance

Reason: In the interests of the proper management of the property and the amenity of adjacent residents.

2 The cycle store as shown on the approved site plan shall be retained solely for such use unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure adequate cycle storage provision.

8.0 INFORMATIVES:

Notes to Applicant

1. STATEMENT OF THE COUNCIL'S POSITIVE AND PROACTIVE APPROACH

In considering the application, the Local Planning Authority has implemented the requirements set out within the National Planning Policy Framework (paragraph 38) in seeking solutions to problems identified during the processing of the application. The Local Planning Authority took the following steps in order to achieve a positive outcome:

Application Reference Number: 20/01662/FUL

Item No:

Officers sought additional information regarding numbers of tenants and parking arrangements.

Contact details:

Case Officer: Elizabeth Potter

Tel No: 01904 551477