

STATEMENT OF CASE

APPELLANT: MR GREG MOONEY

**APPEAL ADDRESS: 96 MAULDETH ROAD WEST
WITHINGTON
MANCHESTER
M20 1AB**

NOVEMBER 2021

1158.6.GM.AJO.Fn

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1. INTRODUCTION & BACKGROUND

- 1.1 This full Statement of Case is submitted in relation to an appeal submission made by the Appellant, following the refusal by West Berkshire Council to grant planning permission under Application Ref. 21/00445/HOUSE, which sought the following;

Change of Use from residential dwelling (C3 Use) to House in Multiple Occupation (HMO) (C4 Use).

- 1.2 The planning application the subject of this appeal was validated by the Local Planning Authority (LPA) on 22nd March 2021. A copy of the required supporting documentation is enclosed with the appeal submission papers.

- 1.3 The planning application was refused on 17th May 2021 for the following reasons;

- i) *The proposal for the change of use from a dwelling Class C3 to a small House in Multiple Occupation Class C4 would lead to an over intensification in the level of occupation, and would have a detrimental impact on the sustainability and character of an area in which there is a high concentration of houses in multiple occupation. The proposal would therefore, be contrary to the provisions of Core Strategy policies SP1, H11 and DM1; and*
- ii) *The proposed change of use to a house in multiple occupation would lead to the loss of a family dwellinghouse and negatively impact on the supply of family accommodation in the area, which would in turn undermine the aim of achieving an appropriate balance of housing provision in the locality. The proposal is therefore contrary to the provisions of policies H1, H6, H11, DM1 and SP1 of the Core Strategy.*

- 1.4 The submitted Supporting Planning Statement (Doc Ref. 1158.3.GM.AJO.Fn) sets out the background, planning history and policy framework of relevance to the appeal site. This should be read in conjunction with this Statement of Case.

- 1.5 Since the refusal of planning permission in May 2021, the National Planning Policy Framework has been updated (July 2021). The references to the NPPF set out in the submitted Supporting Planning Statement remain the same, save for the reference to paragraph 59, has now become paragraph 60.
- 1.6 In addition to the local policy background already set out in the submitted Supporting Planning Statement, the LPA also cite policies SP1 and DM1 of the adopted Core Strategy in their reasons for refusal. These policies were not explicitly identified in the Supporting Planning Statement.
- 1.7 **Policy SP1: Spatial Principles**, sets out the broad spatial principles that will guide the strategic development in Manchester to 2027. These include;
- Beyond the Regional Centre and Airport areas, where the emphasis will be on the creation of neighbourhoods of choice, providing high quality and diverse housing around district centres which meet local needs, all in a distinct environment.
- 1.8 Policy SP1 also requires that development in all parts of the City should make a positive contribution to neighbourhoods of choice including,
- Making a positive contribution to the health, safety and wellbeing of residents; and
 - Considering the needs of all members of the community regardless of age, gender, disability, sexuality, religion, culture, ethnicity or income.
- 1.9 **Policy DM1: Development Management**, sets out a number of criteria that all development should have regard to, including;
- Adequacy of internal accommodation and external amenity space; and
 - Refuse storage and collection.
- 1.10 Under usual circumstances the extent of the HMO proposed by the appeal proposal would fall within the scope of permitted development set out at Schedule 2, Part 3, Class L of the Town and Country Planning (General Permitted Development) (England) Order 2015. As is explained at para. 3.14 of the submitted Supporting Planning

Statement, the City Council currently has an Article 4 Direction in place to remove the permitted development right of changing use from a C3 residential property to a C4 HMO property. This Article 4 Direction came into effect in October 2011 and at the time of the application submission had been in place for 9.5 years and applies across the whole City area. A copy of the Article 4 Direction and its associated report is enclosed at **Appendix 1**.

2. THE CASE FOR THE APPELLANT

- 2.1 In it's first reason for refusal, the LPA has contended that, the proposal for the change of use from a dwelling, Class C3, to a small House in Multiple Occupation, Class C4, would lead to an over intensification in the level of occupation, and would have a detrimental impact on the sustainability and character of an area in which there is a high concentration of houses in multiple occupation.
- 2.2 To support this contention, the LPA further states that the proposal is therefore contrary to the provisions of Core Strategy policies SP1, H11 and DM1.
- 2.3 In it's second reason for refusal the LPA has contended that the proposed change of use to a house in multiple occupation would lead to the loss of a family dwellinghouse and negatively impact on the supply of family accommodation in the area, which would in turn undermine the aim of achieving an appropriate balance of housing provision in the locality.
- 2.4 To support this contention, the LPA further states that the proposal is therefore contrary to the provisions of policies H1, H6, H11, DM1 and SP1 of the Core Strategy.
- 2.5 A detailed consideration of the adopted policy framework that applies to the appeal proposal was set out in section 2 of the submitted Supporting Planning Statement and further supplemented at paras. 1.7 – 1.9 of this Statement of Case. It provides an overview of all the policies and guidance referred to in the LPA's reasons for refusal that were material to the consideration of the appeal proposal at the planning application stage.

Against the contention that the proposal for the change of use from a dwelling, Class C3, to a small House in Multiple Occupation, Class C4, would lead to an over intensification in the level of occupation, and would have a detrimental impact on the sustainability and character of an area in which there is a high concentration of houses in multiple occupation.

- 2.6 Further rationale and background to the justification for the LPA's reason for refusal in this regard cannot be deemed from the Officer Delegated Report, as this has not been made publicly available.
- 2.7 Given the existence of the Article 4 Direction, the City Council are generally in the habit of simply refusing planning permission for small HMO's, which largely seems to have been an overreaction the historic inability of the Council to have realised sooner the impact that a concentration of such accommodation has had, particularly in more traditional students areas.
- 2.8 Consideration was given to whether there would be a detrimental impact on the sustainability and character of the area at paras. 3.12 – 3.19 of the submitted Supporting Planning Statement. The Appellant received no direct meaningful feedback to the detailed check it had carried out in this regard.
- 2.9 Essentially, the Appellants own investigations revealed that within a 100m distance of the appeal property, in all directions, there was no significant number of properties that were entirely occupied by full-time students, licensed HMO's or already in an approved HMO use. As such, it cannot therefore be concluded that the appeal site is in an area where there is already a high concentration of HMO's. To the contrary, the area is characterised by a strong existing stock of traditional family housing in this regard.
- 2.10 The appeal site itself has also previously benefited from a prior approval for the change of use of the premises from Offices to flats. This was approved in 2014 and therefore under the same broad policy framework as applies to the current appeal proposal and it was deemed that a flatted/independent occupation of the premises was acceptable.
- 2.11 The premises is also currently occupied by the owner and two lodgers, which to all intents and purposes amounts to a number of people that, save for one occupier being the owner, would otherwise comprise of a House in Multiple Occupation. In this guise and given the significant lack of concentrated HMO accommodation in the area it is not the case that the appeal site is contributing to any cumulative impact on

community sustainability. As such, it is not contrary to the provisions of the adopted development plan and an objection to the appeal proposal cannot be sustained on these grounds.

Against the contention that the proposed change of use to a house in multiple occupation would lead to the loss of a family dwellinghouse and negatively impact on the supply of family accommodation in the area, which would in turn undermine the aim of achieving an appropriate balance of housing provision in the locality.

- 2.12 As confirmed at para. 3.11 of the submitted Supporting Planning Statement the premises is not currently occupied as a single-family dwelling and owing to its historic commercial use, it never has been. As such, it is of relevance and a material consideration to understand that the appeal site does not involve the loss of an existing residential unit that is occupied by a family unit and therefore there will be no loss of such. Furthermore, given it's location within the established commercial/retail parade, it is also not located within or immediately adjacent to the more predominant and traditional housing stock.
- 2.13 It would not result in an over-concentration of HMO accommodation in the immediately surrounding area; or adversely affect the established character of traditional family housing in the wider area and as such cannot be considered to undermine the aim of achieving an appropriate balance of housing provision in the locality.
- 2.14 This is a recurring consideration for the City Council, given the volume of planning appeals that are considered in relation to this matter and which the Council have consistently failed to uphold at appeal, yet continue to refuse planning permission, contrary to the findings of many Inspectors. In this regard the Inspector's attention is drawn to a selection of appeal decisions enclosed at **Appendix 2**.
- 2.15 As such, it is not contrary to the provisions of the adopted development plan and an objection to the appeal proposal cannot be sustained on these grounds.

- 2.16 Overall and having had appropriate regard to the actual relevant material considerations in relation to the appeal proposal, there are no fundamental and overriding reasons to continue to withhold planning permission in this instance.

APPENDICES

APPENDIX 1: COPY ARTICLE 4 DIRECTION

APPENDIX 1

ARTICLE 4 DIRECTION

TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) ORDER 1995

DIRECTION MADE UNDER ARTICLE 4(1)

WHEREAS the Council of the County/District of Manchester being the appropriate local planning authority within the meaning of article 4(4) of the Town and Country Planning (General Permitted Development) Order 1995, are satisfied that it is expedient that development of the description(s) set out in the Schedule below should not be carried out on the land shown edged/coloured red on the attached plan unless permission is granted on an application made under Part III of the Town and Country Planning Act 1990,

NOW THEREFORE the said Council in pursuance of the power conferred on them by article 4(1) of the Town and Country Planning (General Permitted Development) Order 1995 hereby direct that the permission granted by article 3 of the said Order shall not apply to development on the said land of the description(s) set out in the Schedule below.

SCHEDULE *

Change of use from a use falling within Class C3 (dwellinghouses) of the Schedule to the Town and Country Planning (Use Classes) Order 1987 to a use falling within Class C4 (houses in multiple occupation), being development comprised with Class I of Part 3 of Schedule 2 to the said Order and not being development comprised within any other Class.

The Article 4 Direction will come into force on 8th October 2011.

Dated this 7th day of October 2010.

The Common Seal of the Council of the City of Manchester was hereunto affixed in pursuance of an Order of the Council of the said City

.....*S. Parn*..... Authorised
signatory 

* The development to be controlled should be described in the words of Schedule 2 to the Order and the description should be followed by the words "being development comprised with Class ... of Part ... of Schedule 2 to the said Order and not being development comprised within any other Class." If control is to be limited to a particular description of the development comprised within a Part, the words "within a Part" should be adapted accordingly.

01964184



Delegated powers report

Subject: Article 4 Direction

Date: 7th October 2010

Purpose of this report: This report sets out the reasons for introducing an Article 4 Direction to remove permitted development rights for change of use from Class C3 to Class C4 across the whole City; and seeks the authority of the Head of Planning to make the Article 4 Direction, which is attached in Appendix 1.

Background

The Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2010 came into force on 1st October 2010. The Order amends the 1995 (General Permitted Development) Order and makes a change of use from a use falling within Class C3 (dwellinghouses) to a use falling within Class C4 (houses in multiple occupation) 'permitted development' – i.e. planning permission is no longer needed to do this.

Justification for introducing an Article 4 Direction

It is considered that a loss of control over changes of use from C3 to C4 will harm the sustainability of neighbourhoods within Manchester over the long term, which constitutes "damage (to) an interest of acknowledged importance". An increase in concentrations of Houses in Multiple Occupation (HMOs) in an area alters the population mix, impacting on the facilities and services that can be supported, as well as affecting residential amenity and social cohesion; and these issues cannot be addressed successfully by neighbourhood management measures alone. Evidence of the impacts caused by high concentrations of HMOs in Manchester is set out in the evidence section below. In recent years HMOs have encroached into areas traditionally characterised by family housing and the City Council has taken action to try and control this. An interim policy position on HMOs was adopted for development control purposes by the Executive Committee on 10th March which stated that from the 6th April 2010 conversion of a C3 dwelling house to a C4 HMO would not be permitted where this would have a negative impact on the sustainability of neighbourhoods and residential amenity in the surrounding area. The emerging Core Strategy contains a draft policy which uses a threshold approach to control further HMOs in areas which already have high concentrations, and which will control their spread to neighbouring areas.

Local planning authorities may make a direction under Article 4 (1) of the Town and Country Planning (General Permitted Development) Order 1995 as amended by the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2010 so that change of use by permitted development must instead require planning permission, where the

local authority is satisfied that this is expedient. It is considered that the evidence (set out below) in Manchester shows that high concentrations of HMOs have a detrimental effect on their local neighbourhood, which amounts to a compelling reason for and justifies HMOs being brought within full planning control in the public interest to ensure that Manchester can respond in a timely way to the emergence of new concentrations so as to prevent harm to localities. This amounts to circumstances which are sufficiently exceptional as to warrant the use of a City-wide Direction in Manchester, and it is intended to use the Article 4 Direction attached in Appendix 1 to do this. From the date when the Direction comes into force all changes of use from C3 to C4 will require planning permission.

Evidence of the impact of high concentrations of Houses in Multiple Occupation

The problems associated with high concentrations of HMOs have been recognised nationally, by residents and organisations, the press and by the government. The study "Evidence Gathering – Housing in Multiple Occupation and Possible Planning Responses" carried out by Ecotec for the government in 2008 summarised the impacts as including:-

- Anti-social behaviour, noise and nuisance
- Imbalanced and unsustainable communities
- Negative impacts on the physical environment and streetscape
- Pressures upon parking provision
- Increased crime
- Growth in private rented sector at the expense of owner-occupation
- Pressure upon local community facilities, and
- Restructuring of retail, commercial services and recreational facilities to suit the lifestyles of the predominant population.

Evidence in Manchester

• Spread of HMOs across the City

Over 50,000 students live in Manchester, with high concentrations - over 20% of households within a Super Output Area claiming exemption from Council Tax because they are entirely occupied by full time students - in privately rented house-shares in the south of the City. In recent years student HMOs have begun to spread further south, particularly in parts of Old Moat and Withington wards, where a number of Super Output Areas have seen concentrations of student council tax exempt households double between 2007 and 2010. This means that the stock of housing available for families is reduced and they become priced out of the area due to the shortage of accommodation available. Based on these past trends, it would appear that there is a "real and specific threat" that permitted development comprising a change of use from Class C3 to C4 would be likely to take place in the future.

In addition to student HMOs there are a large number of HMOs lived in by other groups of unrelated people sharing a house or flat, such as young professionals. However the City Council has no record of these at present

apart from houses which are licensed HMOs (some of which are also student households).

- **Noise and Anti Social Behaviour**

In Manchester the problems are felt most keenly by long-term residents in the areas where student concentrations have risen recently but which traditionally catered for families. Organisations and residents in these areas feel that this is having a negative impact on their residential amenity and comments on Manchester's draft Core Strategy have set out the number of times that residents have been disturbed by noise at night and other forms of anti social behaviour, demonstrating a correlation between student term times and the disturbances caused. The number of incidents of anti social behaviour in Old Moat in 2009/10 was the highest amongst the South Manchester wards (State of the Wards 2009/2010). The percentage of respondents who perceived that there was a problem with drunk and/or rowdy behaviour in their local area in a survey of Manchester residents in 2009/10 was higher than the city average in all wards with high concentrations of HMOs apart from in Rusholme. In the same survey Fallowfield, Old Moat and Withington wards had the highest percentage of respondents who perceived a problem with noisy neighbours or loud parties in the local area for all wards in the City with the exception of the City Centre.

- **Crime**

A number of initiatives have targeted areas with high concentrations of HMOs, particularly in September when new students arrive in Manchester, to try to make them more safety conscious and so reduce crime levels in these areas. However, Old Moat was the ward with the highest volume of domestic burglaries in 2009/10, and Withington the fifth.

- **Environment**

There are a number of environmental problems visible in areas with high concentrations of HMOs such as properties in a state of disrepair, neglected gardens, problems with litter, flytipping and overflowing bins, and parking problems on the street. This is likely to be due to more people living in a HMO than would generally live in the same size house occupied by a family, higher levels of transience meaning that people feel less desire to look after the area if they are only staying there for a short time and landlords who may not maintain their properties to the same level as owner occupiers or longer-term tenants.

Fly tipping cases attended by Neighbourhood Services in Withington and Levenshulme are both above average for the wards in the South Manchester Regeneration Framework area. An operational plan is prepared for the start and finish of each academic year to try and mitigate the environmental problems which are worst at these times.

Scope of the Article 4 Direction

The Direction will cover the whole of the Manchester City Council area. Although high concentrations of HMOs are concentrated in only a few wards,

the City Council wishes to ensure that the problems are not merely dispersed to another part of Manchester. Once the Article 4 Direction comes into force it does not mean that all applications for change of use to a HMO will be refused: the Council will use the Core Strategy policy (once adopted) to determine applications, which does not rule out further HMOs in areas where concentrations are low. In the meantime it will assess change of use applications on the basis of similar, material considerations.

Procedure for introducing the Article 4 Direction

This report formally makes the Article 4 Direction attached in Appendix 1. The City Council will give notice of the Direction and representations will be sought in accordance with the requirements of the Town and Country Planning (General Permitted Development) Order 1995, as amended. It is considered that because of the extent of the Article 4 Direction it is impracticable to serve individual notices on all owners and all occupiers, as permitted by Article 5(2) of the above Order.

Following consideration of any representations, the next stage will be for the Council to confirm the Direction which will be done through another report using delegated powers and advertised as necessary. The Article 4 Direction will come into force on 8th October 2011, a year after notice of making the Direction is given, to ensure that the City Council will have no liability for compensation claims in respect of the loss of permitted development rights. The Direction will come into force automatically on this date, unless the Council receives a direction from the Secretary of State cancelling or modifying it.

I, Peter Babb, Head of Planning, hereby authorise the making of the Article 4 Direction attached for the reasons given in this report.

Signed.......... Date...7 October 2010

APPENDIX 2: REFERENCE APPEAL DECISIONS



Appeal Decision

Site visit made on 23 March 2021

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 April 2021

Appeal Ref: APP/B4215/W/20/3261807

78 Braemar Road, Manchester M14 6PG

- 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 Ms F Ali against the decision of Manchester City Council.
 - The application Ref 126551/FO/2020, dated 18 March 2020, was refused by notice dated 6 October 2020.
 - The development proposed is described as: 'continuation/reuse as a small house in multiple occupation (Use Class C4¹) (HMO).
-

Decision

1. The appeal is allowed and planning permission is granted for the change of use of dwelling house (C3) to small HMO (C4) at 78 Braemar Road, Manchester M14 6PG in accordance with the terms of the application, Ref 126551/FO/2020, dated 18 March 2020, subject to the following conditions:
 - 1) The development must be begun not later than the expiration of three years beginning with the date of this permission.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location / Site Plan SK15.02.19 and Existing Ref: SK18.02.09_01.
 - 3) The planning permission hereby granted relates to the formation of a 3no. bedroom HMO.
 - 4) The development shall be implemented in accordance with the submitted waste management arrangements received on 20 April 2020 comprising: Waste Management Proforma and photograph and plan showing location of waste and recycling containers.

Procedural Matters

2. For clarity, I have taken the description in the banner heading above from the application form, but I have used the description given on the Council's decision notice and appeal form in my decision, as it more accurately reflects the proposal, in light of the comments from the appellant in her Grounds of Appeal².
3. Whilst not cited on the Council's decision notice in respect of its first refusal reason, Policy H11 of the Council's Core Strategy Development Plan Document 2012 (CS) has been cited in respect of its second refusal reason. I will

¹ Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO)

² Section 1.0

therefore not prejudice any party, by taking CS Policy H11 into consideration on the first refusal reason.

Main Issues

4. The main issues are the effect of the proposal on:

- i. the supply of family housing and the formation of cohesive and sustainable neighbourhoods; and,
- ii. the living conditions of the occupants of nearby dwellings with particular reference to noise and disturbance.

Reasons

Supply of family housing

5. The appeal site is a mid-terraced property, where there is no dispute between the main parties that the site is within an area with a high or significant concentration of HMOs. The site is also subject of an Article 4 Direction, which came into force in 2011, removing permitted development rights in respect of a change of use from C3 to C4.
6. CS Policy SP1 seeks to meet local housing need and for development in all parts of the City to consider the needs of all members of the community. CS Policy H1 relates to overall housing provision in the City and identifies a need to increase the availability of family housing, and the mix within each area will depend on the management of areas where HMOs predominate, amongst other things. Furthermore, CS Policy H6 identifies a need for family housing in the south of the City, where the site is located.
7. CS Policy DM1 seeks regard to the impact of all development on the surrounding areas and its character, amongst other things. CS Policy H11 seeks to restrict changes of use from a dwelling house to a HMO where there are a high proportion of HMOs in the surrounding area. In this instance, there is already a very high concentration of HMOs in the vicinity which the proposal would contribute towards. This would conflict with this part of CS Policy H11.
8. The appellant has drawn my attention to a survey (the survey) of surrounding properties within a 100m radius of No 78. The concentration of HMOs in the survey identifies that of the 169 properties within a 100m radius, only 42no. properties within the survey area are occupied as single dwelling houses, equating to less than 25% of the stock. The remaining residential units are in multiple occupation, including HMOs, with a significant number comprising student accommodation. Therefore, HMOs form a notable proportion of the survey area, which in turn significantly dominates the character of the area surrounding No 78. Thus, the proposal would not significantly alter the existing balance of housing in the area or its character.
9. Whilst one of the properties adjoining the site is a dwelling house, the former public house is now a pair of flats, and the site faces a number of HMOs. I note that only taking the eastern section of Braemar Road into consideration the percentage of HMOs is lower than on other surrounding roads, but it is still notable. Additionally, I note the limitations of the property as a family home, particularly with regard to its rear yard and its 2no. bedrooms at first floor (if used as a single dwelling), but I find that the site is located in proximity of

public parks, such as Platt Fields Park and Highfield Country Park, both of which are within walking distance of the site. I therefore accept that the change of use of No 78 to a HMO would result in the permanent loss of a home for a small family. However, in addition to the physical limitations of No 78, I consider that the high number of HMOs in the area surrounding the site and the notable amount of student accommodation, would likely form a deterrent to families choosing to live at No 78.

10. I acknowledge that the formation of cohesive and sustainable neighbourhoods requires provision for a mixture of households, and this includes families. I also recognise the wider objectives of the CS, particularly to increase the provision of family housing. I have noted the letter from an estate agent³, and whilst it is of limited content and refers to the lack of a Lawful Development Certificate, it does indicate that all viewings were from investors looking for a HMO. The appellant has also provided a number of appeal decisions to support her submission, which I have had regard towards.
11. The Council has provided a copy of the Manchester Housing Demand Study 2010, along with a number of appeal decisions⁴ to support its submission. The study⁵ confirms the demand profile of South Manchester and indicates the need for a balance of family homes, particularly for owner occupation and 2no. bedroom housing. It also identifies the importance of developing lower cost options for the Excluded Middle Market and the need for additional social rented accommodation in the South Manchester Strategic Regeneration Framework Area. The full evidence that was before the Inspectors in the referenced cases is not before me. Nonetheless, the property at 17 Northern Grove and 31 Northdale Road comprised 5no. bedroom semi-detached houses, 11 Tarleton Street comprised a 3no. bedroom town house, all of which are in different parts of the City. 41 Station Road is also in a different part of the City. The appeal at 59 Egerton Road involved an extension to an existing 9no bed HMO.
12. Therefore, although I have had regard to the above schemes as material considerations, I conclude that they all illustrate that every proposal has to be considered on its own particular merits. Accordingly, I find little within these cases which would lead me to alter my conclusions in this case. In the case before me, the concentration of HMOs already present in the area surrounding the site, and the apparent focus of the existing housing market towards HMOs represents a material consideration of significant weight. Thus, I am not convinced that the proposal would adversely affect the character or sustainability of the area surrounding the site or undermine the Council's strategic objectives to form inclusive, mixed and cohesive communities.
13. For the reasons given above, I find that the proposal would not conflict with local and national planning policies, which seek to achieve cohesive and sustainable neighbourhoods, or the supply of family housing. Although there would be conflict with CS Policy H11, I have found that there would be no conflict with the Council's overall development strategy in CS Policies SP1, H1, H6 and DM1. Therefore, when the development plan is taken as a whole, I find the conflict with CS Policy H11 is clearly outweighed. Furthermore, the proposal

³ JP & Brimelow Sales, dated 16 March 2020

⁴ APP/B4215/W/19/3234087; APP/B4215/W/16/3163382; APP/B4215/W/16/3149338; APP/B4215/A/13/2199702 and APP/B4215/A/13/2195179.

⁵ Section 5.27 and Appendix E

would accord with the requirements of the National Planning Policy Framework (the Framework).

Living conditions

14. The description of the proposal and submitted plans indicate that the HMO would comprise 3no. bedrooms, one of which would be on the ground floor and 2no. on the first floor. Notwithstanding the submitted drawings, under Class C4 of the UCO this would be defined as a small shared house occupied by up to six unrelated individuals, as their only or main residence, who share basic amenities such as a kitchen or bathroom. In this instance, a living room and a rear yard would be shared by future residents also.
15. The Council have asserted to a limited amount of usable outdoor amenity space on its decision. However, although the rear yard is modest, it would represent a reasonable private outdoor space for the level of accommodation proposed. Additionally, similar to the reasons on the previous main issue, I consider that future residents of the HMO would be able to easily walk to, and access the nearby public parks. I acknowledge the Council's concerns in relation to the potential effects of occupancy arising from the cumulative effect of individual activity in contrast to that of a single dwelling. Additionally, I accept, that the occupiers of HMOs are likely to have different work and social patterns and be more transient in nature.
16. Due to the constraints within No 78, the level of accommodation proposed is limited and the maximum occupancy of the HMO would be for up to 6no. residents. On the details before me, there is no substantive evidence to suggest that the behaviour of future residents of the HMO would be inconsiderate or discourteous towards neighbouring occupiers. An objection from a local Councillor has been received who states that she has been asked to represent a local residents association, which covers the area from which the site is within. However, I note that No 78 does not appear to have resulted in any actual complaints to the Council when it was previously used as a HMO, or from interested parties, such as residents from Braemar Road, including the occupiers from No 80, which is a single dwelling house.
17. Therefore, on balance, I am not convinced that the occupancy level that would be achieved at No 78 through the proposal would be markedly different to that of a C3 dwelling house. Thus, in this instance and in the absence of any substantive evidence to the contrary, I do not consider that the proposal would have a detrimental impact on the living conditions of neighbouring occupiers or on the sustainability of the wider community.
18. For the above reasons, I am not persuaded that the overall intensity of the site would be excessive for future occupants of No 78 as a HMO, nor do I consider the activity at the site would be so great or different, to adversely impact the living conditions of nearby residents or the sustainability of the wider area. I therefore conclude that the proposed development would accord with the amenity aims of CS Policies SP1, H11, DM1. Furthermore, the proposal would comply with the requirements of the Framework.

Other Matters

19. There is a dispute between the main parties about the lawful use of the appeal property. In 2013 the Council asserts that a change of use occurred

back to a dwelling house (C3). The appellant disputes that a material change of use has occurred and that the host property still comprises a HMO (C4). Nonetheless, whilst I have noted the above matter, the lawful status of No 78 was not for my consideration under this appeal, neither has it been in isolation, a determinative factor. I have considered this appeal on its own merits and concluded that it would be acceptable for the reasons set out above.

Conditions

20. The Council has suggested conditions which I have considered, making amendments, where necessary, to ensure clarity and compliance with the tests contained within Paragraph 55 of the Framework and the Planning Practice Guidance (PPG).
21. In addition to conditions relating to the time limit for implementation and the approved plans for certainty. It is reasonable and necessary to also impose a condition restricting the use of the property to an HMO with 3no. bedrooms in order to achieve control over the development, ensure a suitable quality of accommodation and safeguard the living conditions of neighbouring occupiers. Finally, a condition is reasonable and necessary to require that the proposed waste management facilities are implemented in the interests of residential amenity and to ensure the provision of satisfactory arrangements for the collection and storage of segregated waste.

Conclusion

22. Taking all matters into consideration, I conclude that the appeal should succeed.

W Johnson

INSPECTOR

Appeal Decision

Site visit made on 4 December 2018

by Sarah Manchester BSc (Hons) MSc PhD MEnvSc

an Inspector appointed by the Secretary of State

Decision date: 28 December 2018

Appeal Ref: APP/B4215/W/18/3210218
42 Schuster Road, Manchester M14 5PE

- 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 D Puskaric against the decision of Manchester City Council.
 - The application Ref 118909/FO/2018, dated 22 January 2018, was refused by notice dated 27 March 2018.
 - The development proposed is described as 'a change of use to house in multiple occupation Class C4 (reversion to previous use)'.
-

Decision

1. The appeal is allowed and planning permission is granted for a change of use to house in multiple occupation (Class C4) at 42 Schuster Road, Manchester M14 5PE in accordance with the terms of the application, Ref 118909/FO/2018, dated 22 January 2018, subject to the following condition:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.

Procedural Matters

2. There is a dispute between the parties about the lawful use of the appeal property. The appellant claims that No 42 was in use as an HMO from 2008 until 2016, prior to its unauthorised use as a hotel. The Council's statement suggests that there is insufficient evidence to support this claim. However, the appellant's final comments include correspondence from the Council's Development Compliance Manager, apparently dated 28 December 2017. This confirmed that, as a matter of fact and degree, No 42 was in use as a C4 HMO but that this use was terminated by unauthorised use as guesthouse. It also stated that the Council would not take formal action if the property was returned to a C3 family dwellinghouse, but that planning permission would be required for a C4 use. The letter also noted the appeal property appeared to be in use as an HMO prior to the Article 4 Direction coming into force in October 2011, which removed permitted development rights in respect of a change of use from C3 to C4. On the basis of the evidence before me I am satisfied that the appeal property has been used as an HMO in the past and I have determined the appeal on that basis.

Main Issue

3. The main issues are the effects of the proposed change of use on i) the concentration of Houses in Multiple Occupation (HMOs), and ii) the supply of family housing.

Reasons

The Concentration of HMOs

4. No 42 Schuster Road is a modern 2 storey dwelling on a residential estate in the Victoria Park Conservation Area, to the south of Manchester City centre. As a consequence of the popularity of the area with students, many properties are already in multiple occupation.
5. Policy H11 of Manchester City Council's Local Development Framework Core Strategy 2012 to 2027 sets out that change of use from C3 dwellinghouse to C4 HMO will not be permitted where there is already a high concentration of HMOs within a short distance. The prohibition on the creation of further HMOs in areas of high concentration supports broader policy objectives of maintaining sustainable communities with a mix of households that are committed to the neighbourhood and support local facilities. When the Core Strategy was published, it was the Council's intention to prepare a Development Plan Document to define 'high concentration' and 'short distance'. These terms have not been defined and there is no current information about the number of HMOs in the immediate area around No 42. However, Figure 9.6 of the Core Strategy indicates that Schuster Road is in an area where HMOs make up 40-49% of properties and neither party disputes that there is a high level of HMO use in Schuster Road. As this area is heading towards a position where half the properties would be HMOs, the proposal could exacerbate the problems associated with overconcentration of HMOs. The proposed change of use is therefore theoretically in conflict with Policy H11.
6. I acknowledge concerns in respect of the detrimental effects that increasing concentrations of HMOs can have in terms of nuisance, community cohesion, the delivery of local services and the character of an area. However, while Schuster Road may contain a high number of HMOs, there is no evidence that this number has been increasing to the detriment of community sustainability or the provision of local services, or that the character of the area is being harmed as a result. Moreover, the proposal would not in fact result in the creation of an additional HMO since No 42 has, to all intents and purposes, previously operated as an HMO apparently without any resulting nuisance. Given the particular circumstances, neither allowing nor dismissing this appeal would be likely to have any significant effect on the concentration of HMOs.
7. The Council has drawn my attention to an appeal decision¹ where the Inspector concluded that one more HMO would not make a difference. However, it maintains that the cumulative impact of even small changes in areas of high concentration can contribute to the creation of unsustainable communities. In this case, No 42 was used as an HMO prior to its unauthorised use as a hotel. I therefore see no reason why the proposal would contribute to any cumulative impact on community sustainability. The proposed change of use in an area with already high concentration of HMOs would not therefore 'tip the balance' in favour of unsustainable neighbourhoods.
8. In conclusion, the proposed change of use would not result in an increase in the concentration of HMOs in this area. It would not result in any discernible effects on community sustainability or the provision of local services. It would not result in harm to the appearance of the area or to the living conditions of

¹ APP/B4215/A/14/2211026

neighbouring occupants. Therefore, although there is an apparent conflict with the requirements of Policy H11, there are specific circumstances which justify a departure from the Policy in this case.

The Supply of Family Housing

9. Policy H1 of the Core Strategy relates to overall housing provision. It identifies that the housing mix will be influenced by a range of factors including local housing need and economic viability, the management of areas where HMOs predominate, and the need to increase the availability of family housing.
10. The proposed change of use to an HMO would result in the permanent loss of family accommodation in an area where there is a demand for family accommodation. However, No 42 was in use as an HMO prior to the unauthorised use as a hotel and has not therefore been used as a family home for many years. Thus although suitable to be used as a family home, the proposed change of use would not result in the loss of a property currently occupied by a family.
11. The Council has drawn my attention to several appeal decisions² dismissing proposed changes of use to an HMO and where the loss of a family home was identified as an issue. However, my impression is that there are key differences between those schemes and the appeal before me. These include the existing use of the property, evidence of the impact of a high concentration of HMOs on community sustainability, the effect on living conditions of neighbours, and a lack of evidence of previous use as an HMO. I therefore do not consider that any of those schemes is directly comparable with this case, which I have considered on its individual merits.
12. I therefore conclude that the proposed change of use would not result in an unacceptable loss to the supply of family housing. It would not give rise to a conflict with Policy H1.

Other matters

13. The appeal site is within the Victoria Park Conservation Area. However, the proposed change of use does not require any external alterations, and would not therefore have an impact on the character or appearance of the conservation area.

Conclusion and Conditions

14. For the reasons above, I conclude that the appeal should be allowed.
15. Aside from the standard time limit, the Council has suggested a condition requiring a scheme for the storage of refuse. No 42 is a 4 bedroom property with storage space adjacent to the property for bins as are necessary for the separation of household waste and recycling. On this basis the proposed condition does not appear necessary to make the development acceptable.

Sarah Manchester

INSPECTOR

² APP/B4215/W/17/3189101; APP/B4215/C/17/3182684; and APP/B4215/W/17/3189061

