
Report of the Chief Planning Officer

PLANS PANEL SOUTH AND WEST

Date: 15th August, 2013

Subject: APPEAL DECISION: APPLICATION 12/03473/FU – CHANGE OF USE OF FORMER CHILDREN’S HOME TO 7 BED HMO AT 35 CLAREMONT DRIVE, LEEDS, LS6 4ED

APPLICANT

Mr Jonathan Hall

DATE VALID

10 August 2012

TARGET DATE

05 October 2012

Electoral Wards Affected:

Weetwood

☐ No

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity ☐

Community Cohesion ☐

Narrowing the Gap ☐

RECOMMENDATION:

Members are asked to note the contents of this report.

1.0 This planning application was considered by Members of the South & West Plans Panel on three separate occasions and was eventually refused on 8th November 2012 on the grounds that the proposal would result in the loss of a building suitable for family occupation in an area where there was an imbalance between family and student housing. Originally the application had been recommended for approval by officers and whilst that was originally supported by members subsequent information presented which drew attention to the condition of the previous approval for the children’s home that the premises should be returned to family occupation led members to not accept the officer recommendation.

1.1 Subsequent to the refusal the application was appealed and the applicant applied for costs against the Council. The Inspectors decision has now been received and the appeal has been allowed and full costs awarded against the Council. A full copy of the appeal decision and costs award decision is attached to this report.

- 1.2** The City Council had argued in its Appeal submission that the proposal would result in the loss of a building suitable for family occupation in an area where there is an acknowledged imbalance between family dwellings and those occupied by students.
- 1.3** The Inspector considered in light of the internal layout of the property that it was institutional and not domestic, with no private garden area. As such, the Inspector concluded that the building would not easily lend itself to family occupation.
- 1.4** The Inspector went on to state that the property had not been used as a family dwelling for more than 20 years and that the proposed change of use would not therefore result in the loss of a family dwelling.
- 1.5** The Inspector considered that the City Council had failed to provide adequate evidence to support its contention that there was a shortage of family housing in the locality, adding that his Site Visit confirmed that the area around the property comprised primarily single family houses and that he was not convinced that there was any significant imbalance between family and student housing in this part of Far Headingley.
- 1.6** In the costs application decision the Inspector considered that the City Council had acted unreasonably in its decision to refuse planning permission, and added that the City Council did not provide any realistic evidence to substantiate the reasons for refusal in terms of the balance of housing in the locality or that the use of the property as a 7 bed HMO would result in unacceptable harm. As such a full award of costs against the Council was justified.
- 1.7** The appeal was dealt with by written representation.
- 1.8** What is clear from the decision and costs letter is that where officers advice is not followed then evidence must be presented at the appeal to back up the Council's case otherwise a costs award is always likely.



Appeal Decision

Site visit made on 3 June 2013

by S M Watson BA(Hons) MCD MRTPI

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

Decision date: 5 July 2013

Appeal Ref: APP/N4720/A/12/2188986

35 Claremont Drive, Headingley, Leeds, LS6 4ED

- 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 Action for Children (Mr J Hall) against the decision of Leeds City Council.
 - The application Ref 12/03473/FU, dated 8 August 2012, was refused by notice dated 9 November 2012.
 - The development proposed is the change of use from a children's home (Use Class C2) to a house in multiple occupation (*sui generis*).
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Application for Costs

1. An application for costs was made by Action for Children (Mr J Hall) against Leeds City Council. This application is the subject of a separate decision.

Decision

2. The appeal is allowed and planning permission is granted for the change of use from a children's home to a house in multiple occupation at 35 Claremont Drive, Headingley, Leeds, LS6 4ED in accordance with the terms of the application, Ref 12/03473/FU, dated 8 August 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 following approved plans: Site Location Plan and 90/16202/1B.

Procedural Matters

3. I have removed "(Use Class C2)" and "(*sui generis*)" from the decision as they are superfluous.

Main Issues

3. The main issues are the effect of the proposal upon (i) the supply of dwellings suitable for family occupation in the area; and (ii) the living conditions of the occupiers of nearby dwellings in respect of noise and disturbance.
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Reasons

4. At the time of the appeal the property was being used as a house in multiple occupation (HMO) for 5 people having previously been used as a children's home since the early 1990s until 2012.
5. The property is a substantial detached dwelling with a large front garden and car parking for about 4 cars at the rear. It has pedestrian access from Claremont Drive and vehicular access from Claremont Road giving the dwelling a road frontage at both front and back. It is located in a predominantly residential area within the Far Headingley Conservation Area.
6. The site lies within an Area of Housing Mix to which saved Policy H15 of the Leeds Unitary Development Plan (Review 2006) (UDP) is applicable. This is permissive of housing intended for student occupation providing that the stock of housing accommodation, including that available for family occupation, is not unacceptably reduced in terms of quantity and variety. The aims and objectives of the policy are to improve the total stock of student accommodation and to relieve pressure on conventional housing.
7. The appellant says that the house is too big for single family occupation and the Council, in its first committee report seemed to agree with that. It is also clear from the plans showing the layout of the property that the internal arrangement is institutional and not domestic due to the subdivision of space. There is no private rear garden area as the rear curtilage is currently used for car parking and is open to the street. Therefore, in my view, the building does not easily lend itself to family occupation.
8. I note the Council's contention that the 1990 permission for the children's home is subject to a condition making it personal to the National Children's Home (NCH) and the building would revert to C3 once released by the NCH. The appellant says that the condition is not lawful. Whether or not this condition is lawful is not a matter for me to determine in the context of an appeal made under Section 78 of the above Act. Similarly, it is not for me to determine the lawful use of the property now that the NCH have ceased to use it as a children's home.
9. Nevertheless, regardless of what may or may not be the lawful use of the building, given that the building has not been used as a family dwelling for some 20 or so years I find that there is no loss of such a dwelling.
10. However, irrespective of the whether or not the scheme would result in the loss of housing suitable for family accommodation the Council has failed to demonstrate that there is a shortage of family accommodation in the area or a high concentration of HMOs. Whilst the Council say that the site lies in an area of acknowledged imbalance between family housing and HMOs I have no firm evidence before me to confirm this. In fact the Council in its officer report, and some of the neighbours, suggest that properties in the area are predominantly single family houses. This analysis was confirmed by my site visit.
11. I appreciate that the site lies within a very extensive area subject to an Article 4 Direction which removes permitted development rights for a change of use from a family dwellinghouse to an HMO. Nevertheless, for the reasons above, the

existence of this Direction does not convince me that there is an imbalance of accommodation in Far Headingley.

12. On the basis of the evidence before me, I therefore conclude that the proposal would not unacceptably reduce the stock of accommodation suitable for family occupation and there is no conflict with UDP Policy H15.
13. I have had regard to the Council's comments in respect of Policy H6 of the Publication Draft Core Strategy but they do not alter my findings above.
14. I acknowledge local neighbours and Council concerns that the proposals would lead to noise and disturbance. However, the plans for the children's home showed 2 staff bedrooms with 4 additional bedrooms. I therefore consider that the levels of activity for a 7 bedroom HMO would not be materially different to the previous use.
15. I note the concerns about late night activity and I accept that the lifestyles of potential occupiers might be different to that of families. However, given that the building is large and detached and that the proposal is for occupation by only 7 people, I do not consider that the proposal would lead to an unacceptable level of noise and disturbance.
16. I find, therefore, that the proposal would not result in material harm to the living conditions of the occupiers of surrounding properties and is therefore in accordance with UDP Policy GP5 which seeks that development should avoid a loss of amenity.
17. I note third party comments in respect of car parking. The site is in a sustainable location with good access to shops and other services by foot and, therefore, not all the occupiers might have cars. Even if they all did have cars, I do not consider that the car parking generated would be so significant as to materially affect highway safety.
18. I acknowledge third party references to other planning appeals. I do not have the full details of those cases before me and I have determined this appeal on its individual merits. In any event, the Southampton appeal concerned a property with more than double the number of occupants as in this case and the Glassworks case was for a large scale development of student flats. Therefore, these appeals are not directly comparable to this proposal.
19. The Far Headingley Conservation Area is characterised by a village centre surrounded by predominantly residential development. Houses are often 19th Century villas and terraces. Stone and slate are common materials and the area has a wealth of mature landscaping. As the proposal is residential in nature and no external alterations are proposed, I consider that the character and appearance of the conservation area would be preserved.
20. For the reasons set out above, and having regard to all other matters raised, including the views of local residents and organisations, I conclude that the appeal should succeed.

21. In addition to the standard time limit condition, for the avoidance of doubt and in the interests of proper planning, a condition requiring that the development is carried out in accordance with the approved plans is imposed.

Siobhan Watson

INSPECTOR



Costs Decision

Site visit made on 3 June 2013

by S M Watson BA(Hons) MCD MRTPI

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

Decision date: 5 July 2013

Costs application in relation to Appeal Ref: APP/N4720/A/12/2188986 35 Claremont Drive, Headingley, Leeds, LS6 4ED

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Action for Children (Mr J Hall) for a full award of costs against Leeds City Council.
 - The appeal was made against the refusal of planning permission for the change of use from a children's home (Use Class C2) to a house in multiple occupation (sui generis).
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
 3. As detailed in my appeal decision, I have found that the proposed scheme would be acceptable in relation to both its effect on the supply of dwellings suitable for family occupation and upon the living conditions of neighbours. These issues were the basis of the Council's and local residents' concerns.
 4. The recommendation in the committee report was that planning permission should be granted. In circumstances where officers' professional advice is not followed, the Circular states that an Authority is expected to produce relevant evidence on appeal to support the decision.
 5. Notwithstanding the reported reasoned debate at the Committee Meeting, Members appear to have given little weight to the specific advice of its officers who clearly advised them "Officers consider that a refusal would be difficult to defend at appeal and that there would be a risk of an award of costs."
 6. UDP Policy H15 indicates that student housing would be allowed in the Area of Housing Mix where the stock of housing, including that available for family occupation, would not be unacceptably reduced in terms of quantity and variety. However, irrespective of whether or not the scheme would result in the loss of housing suitable for family occupation, the Council provided no real
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information about the quantity or variety of housing in the area and therefore failed to substantiate how the proposal was in conflict with this policy.

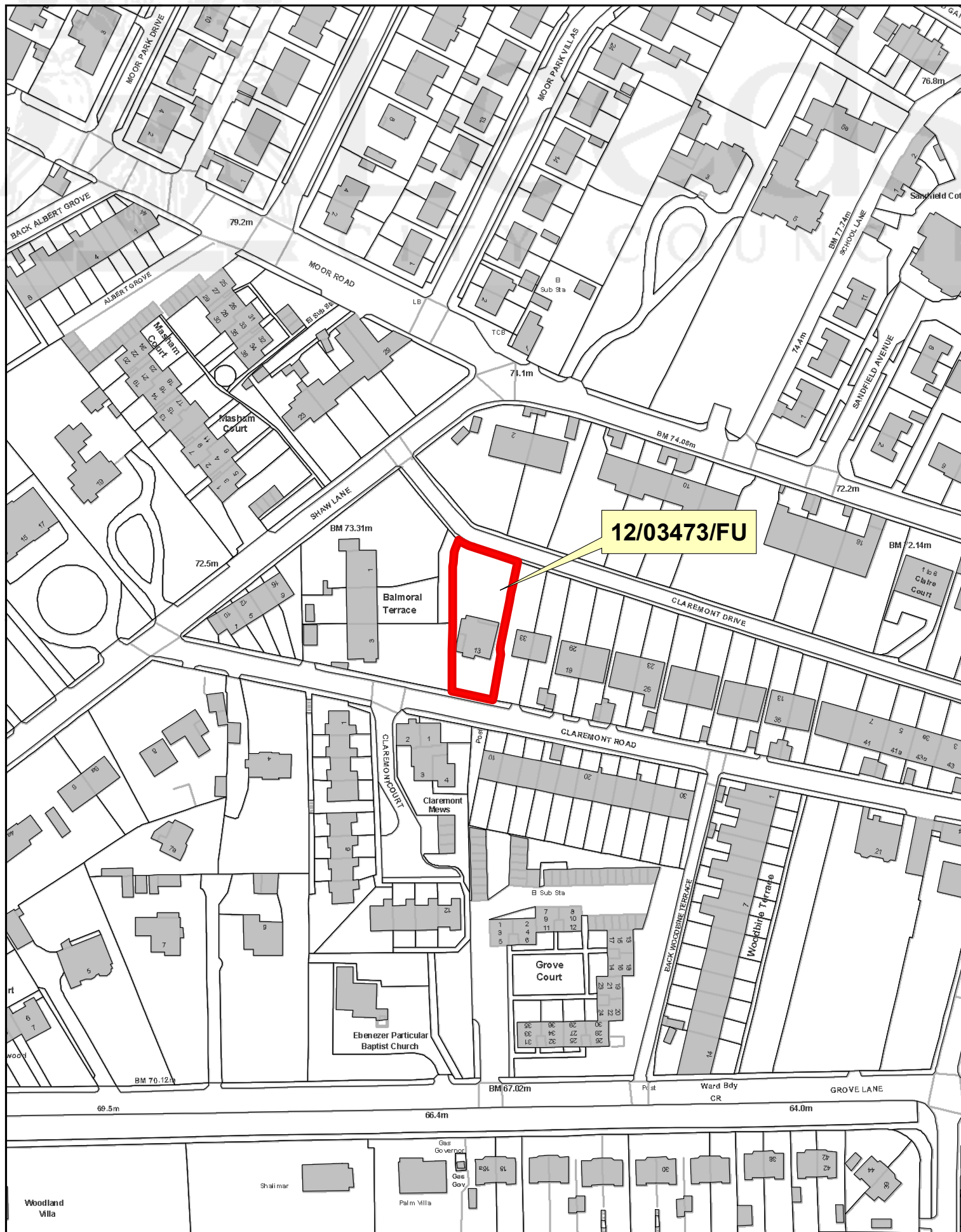
7. Whilst the Council provided a map of the Area of Housing Mix and details of the Article 4 Direction, this indicated nothing about housing quantity and variety.
8. The Council did not provide any convincing evidence that the proposal would harm the living conditions of neighbouring properties, save to say that there would be unrestricted movements of 7 unrelated individuals in a quiet location. There was no realistic evidence provided to substantiate the implication that the movements would cause harm.
9. In the light of Circular 03/2009 I therefore find that the Council behaved unreasonably in refusing permission for the scheme and that the appellant's costs in making the appeal were unnecessarily incurred. A full award of costs is thus justified.

Costs Order

10. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Leeds City Council shall pay to Action for Children (Mr J Hall), the costs of the appeal proceedings described in the heading of this decision.
11. The applicant is now invited to submit to Leeds City Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Siobhan Watson

INSPECTOR



SOUTH AND WEST PLANS PANEL

