



Report of the Chief Planning Officer

PLANS PANEL SOUTH AND WEST

Date: 8th November 2012

Subject: 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

Yes

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

RECOMMENDATION:

If the Panel is minded to refuse permission for the development, the following reason for refusal is suggested:

The Local Planning Authority considers that the proposed change of use would result in the stock of housing accommodation being unacceptably reduced in terms of quantity and variety through loss of a dwelling suitable for family occupation within the Area of Housing Mix, contrary to Policy H15 and Policy GP5 of the Leeds Unitary Development Plan Review (2006).

1.0 INTRODUCTION

1.1 This application was discussed by Members of the West Plans Panel on 13 September 2012 and again at the following meeting on 11 October 2012 (the report considered at the September meeting is appended). At the October meeting the Panel resolved to overturn the Officer recommendation and to refuse the application. Concerns were raised about the overdevelopment of HMOs in the area and the over intensive use of this site and the loss of a building that could potentially return to family accommodation.

1.2 Members may recall that officers recommended approval on the basis of two main considerations. Firstly, the property was not in use as a dwelling but as a children's home - a Residential Institution within the C2 Use Class, so there was no loss of a dwelling suitable for family occupation. Officers also considered that the change of use would not result in any undue loss of amenity to neighbours due to the similarity in scale of the proposal to the previous use as a Children's Home with no significant increase in comings and goings to the site.

1.3 At the October Panel officers reported that in fact the planning permission for the use of the property as a Children's Home was subject to the following condition:

This permission shall enure only for the benefit of National Children's Homes for so long as the National Children's Homes are the owner and/or occupier of the whole site edged red on the approved plan.

1.4 This would mean that should the National Children's Home (NCH) cease to own or occupy the premises that the lawful planning use of the property would revert to Class C3 Dwelling House. The view of officers is that since the NCH are still the owners that the property retains its lawful C2 use and as such similar considerations apply. Officers also remain of the view that the size of the property would limit its attractiveness to single family occupiers, although this is not to say that it would not appeal to some family occupiers

1.5 Members however resolved to refuse the application on the grounds that the proposed use would result in the unacceptable loss of a family dwelling which would be likely to result in the proliferation of HMOs in the locality.

2.0 APPRAISAL

2.1 Officers have reviewed Members' suggested reason for refusal and would advise Members that there would be significant difficulties in defending a refusal on appeal. The Council has no specific policy which relates to over-proliferation of HMOs and in any event there is no basis on which to define what constitutes an unacceptable proportion of HMOs in any particular area (which is also very difficult to define). Moreover, some of the nearby local residents in their objections to the application have stated that fact there in fact few HMOs in the immediate area. In view of the previous use as a children's home it is also difficult to envisage how a refusal based on impact on residential amenity could be defended.

2.2 Officers consider that there is some albeit limited scope to refuse the application on grounds of loss of a family dwelling, supported by policy H15 of the Unitary Development Plan Review.

Policy H15 of the adopted UDPR states that:

Within the area of housing mix planning permission will be granted for housing intended for occupation by students, or for the alteration, extension or redevelopment of accommodation currently so occupied where:

- i) the stock of housing accommodation, including that available for family occupation, would not be unacceptably reduced in terms of quantity and variety;*
- ii) there would be no unacceptable effects on neighbours' living conditions including through increased activity, or noise and disturbance, either from the proposal itself or combined with existing similar accommodation;*
- iii) the scale and character of the proposal would be compatible with the surrounding area;*
- iv) satisfactory provision would be made for car parking; and*
- v) the proposal would improve the quality or variety of the stock of student housing.*

2.3 Officers consider that it might be argued that the proposal is contrary to criterion (i) of Policy H15 - loss of a larger family house. Given that the previous and current lawful planning use is not as a family house however this may not be a strong case.

3.0 LEGAL ISSUES

3.1 Since the October Plans Panel meeting the applicant has submitted a legal opinion on this matter from D E Manley QC. The opinion refers to the decision of the Council to reverse the previous resolution to grant planning permission in the light of the personal planning condition referred to above. Mr Manley considers that this condition is itself unsound and may in fact be unlawful in that it refers to a body rather than an individual – contrary to the advice on the use of personal conditions in Circular 11/95. The Circular advises that where exceptionally personal conditions are used, they should refer to a named individual rather than a company as the character of the company could change. Mr Manley questions the grounds for imposing the condition in the first place and argues that in any case its existence cannot make the current planning application any less acceptable on its planning merits. Mr Manley notes that the property is currently occupied by 5 tenants, 2 young professionals and 3 students, and that the Council would have no reasonable basis on which to enforce against this use. Mr Manley considers that both refusal of the current application and enforcement action against the current use would be unreasonable and that both would be likely to be punished by an award of costs at appeal.

3.2 Mr Manley's opinion that the personal condition is unlawful is not accepted. For this to be the case it would have to be demonstrated that the decision to impose the condition was so unreasonable that no reasonable authority could ever have come to it. Whilst it is true that Circular 11/95 advises against the use of personal conditions if a company is involved, in this case the company concerned is a national charity with its own specific charitable aims, and it is unlikely therefore that the character of that company would change in a similar way to a private company set up for profit. It is felt that the condition could be justified in policy terms.

3.3 Mr Manley's views on the policy issues involved in consideration of the application raises the issue of the risk of costs if the Council decides to refuse the application. Members will be aware that the question of costs is not a material consideration in deciding whether to grant planning permission. However, there is a risk of costs being awarded against the Council if it acts unreasonably. Circular 3/2009 sets out the circumstances in which costs may be awarded against local planning authorities and states that there is a risk if a Council prevents development which should clearly be permitted having regard to the development plan, national policy statements and any other material considerations. Authorities will be expected to produce evidence to show clearly why the development cannot be permitted and reasons should be complete, precise, specific and relevant to the application. Each reason for refusal needs to be able to be substantiated at appeal. (see conclusion below).

4.0 CONCLUSION

4.1 The view of officers remains that planning permission should be granted because, on balance, the proposed change of use to a 7 bed HMO is considered acceptable, for the reasons set out above and in the previous report. Moreover, if the application were to be refused, consideration would need to be given to enforcement proceedings involving removal of tenants already resident in the HMO. Officers consider that a refusal would be difficult to defend at appeal and that there would be a risk of an award of costs. Should members endorse the previous resolution to refuse, however, the wording at the head of this report is suggested.



Report of the Chief Planning Officer

PLANS PANEL WEST

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Specific Implications For:

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Community Cohesion

Narrowing the Gap

RECOMMENDATION:

DEFER and DELEGATE approval to the Chief Planning Officer subject to the conditions specified and subject to no further representations raising new material planning considerations being received prior to the expiry of the publicity period (14th September 2012)

1. Development to be commenced within 3 years
2. Development to be carried out in accordance with the approved plans.
3. In granting permission for this development the City Council has taken into account all material planning considerations including those arising from the comments of any statutory and other consultees, public representations about the application and Government guidance and policy as detailed in the National Planning Policy Framework, and (as specified below) the content and policies within Supplementary Planning Guidance (SPG), the Regional Spatial Strategy 2008 (RSS) and The Development Plan, the Leeds Unitary Development Plan Review 2006 (UDPR).

GP5, T2, H15, N19
Neighbourhoods for Living

On balance, the City Council considers the development would not give rise to any unacceptable consequences for the environment, community or other public interests of acknowledged importance.

1.0 INTRODUCTION:

- 1.1 This application is brought to Panel at the request of Ward Councillor Sue Bentley who has objected to the application on the grounds that it would have an unacceptable impact on local amenity and result in an unacceptable loss of a property suitable for family occupation.

2.0 PROPOSAL:

- 2.1 The application is to change the use of a former Children's Home to a 7 bed House in Multiple Occupation. No external alterations are proposed.

3.0 SITE AND SURROUNDINGS:

- 3.1 The site comprises a three storey building of red brick construction which is set in a substantial plot with lush vegetation on three sides. The site has two entrances, with a rear car park accessed from Claremont Road. The site is within the Headingley Conservation Area and is of a similar scale to other properties in the locality but differs significantly in terms of materials where the dominant form is of stone and slate. The site has a car park with room for approximately four vehicles off-street.
- 3.2 Properties within the immediate locality are typically larger residential houses, and appear to be predominantly single family houses with relatively spacious gardens.

4.0 RELEVANT PLANNING HISTORY:

- 4.1 There have been no recent planning applications at this site.
- 4.2 A 2009 refusal at 88 Victoria Road in Headingley for change of use of a former Care Home to 12 bedroom HMO was allowed at Appeal, with the Inspector stating that the size and existing nature of the property was such as to not reasonably lend itself to occupancy as a single family dwelling. The inspector also noted the length of time the property had been on the market without selling. Application 09/02308/FU refers.

5.0 HISTORY OF NEGOTIATIONS:

- 5.1 There have been no pre-application discussions with regard to this site.

6.0 PUBLIC/LOCAL RESPONSE:

- 6.1 The application was publicised by Site Notice on 24th August 2012.
- 6.2 Six letters of representation including a letter from Ward Councillor Sue Bentley and the Leeds HMO Lobby have been received. These are all objections to the proposal, on the grounds of the loss of a property suitable for family housing, highway safety, lack of off-street parking, impact on balanced communities and potential increase in anti-social behaviour.

7.0 CONSULTATIONS RESPONSES:

STATUTORY

- 7.1 None, due to the minor nature of the application.

NON-STATUTORY

7.2 Highway Authority – Comments will be provided to the Plans Panel at the meeting.

7.3 Neighbourhoods and Housing – No objection

8.0 PLANNING POLICIES:

DEVELOPMENT PLAN

8.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires this application to be determined in accordance with the Development Plan unless material considerations indicate otherwise.

8.2 The Development Plan for Leeds currently comprises the Regional Spatial Strategy For Yorkshire and The Humber (published in May 2008), and the Leeds Unitary Development Plan Review (July 2006), policies as saved by direction of the Secretary of State, dated September 2007. The most relevant policies in the adopted Leeds Unitary Development Plan are listed below:

UDPR POLICIES:

8.3 Policy GP5 – seeks to ensure that development proposals resolve detailed planning considerations, including amenity.

8.4 Policy T2 – this aims to avoid any undue impact on highway safety.

8.5 Policy N19 – this seeks to ensure that new development should preserve and enhance areas designated as Conservation Areas

8.6 Policy H15 – this refers to the Area of Housing Mix and sets out a range of criteria aimed at promoting mixed communities

REGIONAL PLANNING POLICIES:

8.7 It is not considered that the RSS has any policies of direct relevance to this application.

RELEVANT SUPPLEMENTARY GUIDANCE:

8.8 Supplementary Planning Guidance provides a more detailed explanation of how strategic policies of the Unitary Development Plan can be practically implemented. The following SPGs are relevant and have been included in the Local Development Scheme, with the intention to retain these documents as 'guidance' for local planning purposes:

- Neighbourhoods for Living

NATIONAL PLANNING POLICY:

8.9 The National Planning Policy Framework was issued at the end of March 2012 and is now a material planning consideration. The NPPF provides up to date national

policy guidance which is focused on helping achieve sustainable development. There is a presumption in favour of sustainable development. The basis for decision making remains that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The Planning System should have a role in " supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being" (NPPF paragraph 7).

EMERGING CORE STRATEGY:

- 8.10** The Publication Draft of the Core Strategy was issued for public consultation on 28th February 2012 with the consultation period closing on 12th April 2012. Following consideration of any representations received, the Council intends to submit the draft Core Strategy for examination. The Core Strategy set sets out strategic level policies and vision to guide the delivery of development investment decisions and the overall future of the district. As the Core Strategy is in its pre submission stages only limited weight can be afforded to any relevant policies at this point in time.
- 8.11** Paragraph 5.2.22b of this document states that the factors to consider when appraising the suitability of a building for HMO use are that account should be had to the size of the dwelling, the amount of garden and private amenity space available, the location of the property and any prolonged period of vacancy.
- 8.12** Draft Core Strategy Policy H6 refers to development proposals for the creation of new HMO's it refers to 5 criteria that should be considered when assessing planning applications;
- i) To ensure that a sufficient supply of HMOs is maintained in Leeds ,
 - ii) To ensure that HMOs are distributed in areas well connected to employment and educational destinations associated with HMO occupants,
 - iii) To avoid detrimental impacts through high concentrations of HMOs, which would undermine the balance and health of communities.
 - iv) To ensure that proposals for new HMOs address relevant amenity and parking concerns.
 - v) To avoid the loss of existing housing suitable for family occupation in areas of existing high concentrations of HMOs.

9.0 MAIN ISSUES:

- It is the considered view that the main issues are:
- Principle of use
- Impact on neighbouring residential amenity
- Amenity and living conditions for future residents
- Parking provision
- Area of Housing Mix

10.0 APPRAISAL:

PRINCIPLE OF USE

- 10.1** The application site is within walking distance of both of the Universities and is considered to offer a sustainable use of a vacant building which is in need of re-use. The site lies within an existing residential settlement which is already served by existing infrastructure capable of serving a development of the scale proposed. The proposal is not considered to result in the loss of a building suitable for occupation by a family due mainly to its large size.

IMPACT ON RESIDENTIAL AMENITY

- 10.2** The site has previously been used as a Children's Care Home which falls within the C2 Use Class. Such a use is likely to have generated significant comings and goings to the property with the potential for 24-hour callouts by staff on a frequent basis. The proposed conversion to a 7 bed HMO is considered to result in similar levels of activity to and from the site during the day but less so at anti-social hours as the use of the property will be purely residential rather than offering counselling or support. As such, it is considered that overall levels of activity will be on a par with, if not in fact less than previously and thus offer no undue increase impact on residential amenity.

AMENITY AND LIVING CONDITIONS FOR FUTURE RESIDENTS

- 10.3** The proposed conversion provides accommodation for up to 7 residents. Each room is relatively well-lit, affording acceptable levels of privacy. As such, the accommodation is likely to be on a par with that available in the locality and therefore acceptable on balance. No new windows or external alterations are proposed as such it is not envisaged the proposal will result in any changes to the outlook, privacy and amenity of neighbouring residents.

PARKING PROVISION

- 10.4** The site has space for four vehicles to be parked off-street. The Highways Officer has not yet commented on the proposal however, but Officers consider that the site is in a highly sustainable location with easy access to frequent bus services and that there are no current waiting restrictions for on-street parking. As such, the proposal is considered acceptable with regard to parking provision.

AREA OF HOUSING MIX

- 10.5** This policy states that within the area of housing mix planning permission will be granted for housing intended for occupation by students, or for the alteration, extension or redevelopment of accommodation currently so occupied where:
- The stock of housing accommodation, including that available for family occupation, should not be unacceptably reduced in terms of quantity and variety;
 - There would be no unacceptable effects on neighbours' living conditions including through increased activity, or noise and disturbance, either from the proposal itself or combined with existing housing similar accommodation;
 - The scale and character of the proposal should be compatible with the surrounding area;
 - Satisfactory provision should be made for car parking
 - The proposal should improve the quality or variety of the stock of student housing;

In response to the above points:

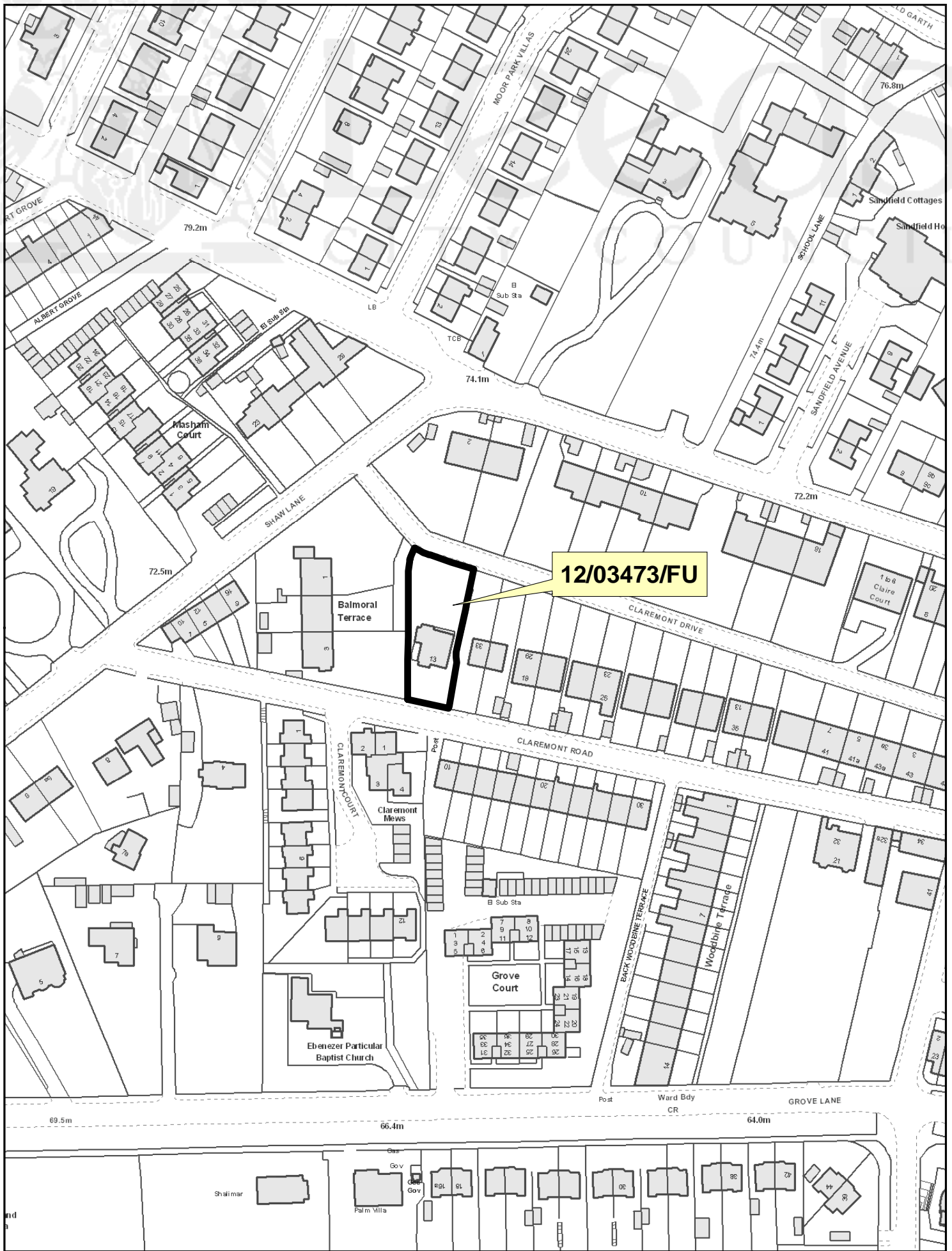
- The site was previously used as a Children's Home (C Use Class). Although such a use may appear on face value to be a residential use, the definition of C2 is very different from a C3 use, being defined as a use for the provision of residential accommodation and care to people in need. As such, there will be no loss of existing family housing accommodation;
- It is considered that the levels of activity produced by 7 residents will be on a par with that previously generated by the use of the building as a Children's Home where it is acknowledged that there would have been occasional call-outs and impromptu visits to and from the site by staff and callers.
- There are no external additions or extensions to the property. As such, the proposal has no impact on the existing scale or character.
- The site has 4 dedicated off-street parking spaces, with the site considered to be in a highly sustainable location with no current waiting or parking restrictions in place. As such, the proposal is considered acceptable on balance with regard to parking provision.
- The proposed bedrooms within the HMO and the associated living space would have adequate levels of light and are of a reasonable size. The scheme is thus considered to comply with this element of the policy.

11.0 CONCLUSION:

- 11.1** On balance, the proposed change of use of this property to a 7 bed HMO is considered acceptable. The site is located in an area with a low number of HMO's and as such will contribute to a mix of accommodation which can help create balanced communities. It is therefore considered that the proposal will prove beneficial through the bringing back into use of a vacant property in the Conservation Area, and that the scale of shared housing within the scheme is such as to not result in any undue harm. Members are therefore recommended to approve the scheme subject to the conditions set out at the head of this report.

Background Papers:

Application and history files.
Certificate of Ownership.



WEST PLANS PANEL

