The Planning Inspectorate

Appeal Decision

Site visit made on 31 January 2017

by I Jenkins BSc CEng MICE MCIWEM

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

Decision date: 27 February 2017

Appeal Ref: APP/X1355/W/16/3161707
6 Waddington Street, Durham, DH1 4BG

- 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 Mrs J Levitas against the decision of Durham County Council.
- The application Ref DM/16/02507/FPA, dated 2 August 2016, was refused by notice dated 27 September 2016.
- The development proposed is a change of use from class C3 dwellinghouse to class C4 house in multiple occupation.

Decision

1. The appeal is allowed and planning permission is granted for a change of use from class C3 dwellinghouse to class C4 house in multiple occupation at 6 Waddington Street, Durham, DH1 4BG in accordance with the terms of the application, Ref DM/16/02507/FPA, dated 2 August 2016, subject to the following condition:

   1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

Main Issue

2. I consider that the main issue in this case is whether, having regard to local and national policy for the creation of sustainable, inclusive and mixed communities, the proposal would be an appropriate change of use.

Reasons

3. No. 6 is a mid-terrace house that fronts onto Waddington Street, opposite the site of the former County Hospital, and is situated within the Durham City Centre Conservation Area. The proposed development is a change of use of the property from class C3 dwellinghouse to class C4 house in multiple occupation (HMO).

4. Policy H9 of the *City of Durham Local Plan 2004* (LP) indicates that the sub-division of houses for flats, bedsits or for multiple occupation will be permitted provided that it does not adversely impact on other planning considerations. LP Policy H13 indicates that planning permission will not be granted for changes of use which have a significant adverse effect on the character or appearance of residential areas, or the amenities of residents within them.

5. The *National Planning Policy Framework* (the Framework) indicates that to create sustainable, inclusive and mixed communities, local planning authorities should, amongst other things, plan for a mix of housing based on the needs of different groups in the community. In response to residents' concerns in respect of the concentrations of students in certain areas of the city, the Council adopted, following public consultation, its *Interim Policy on Student Accommodation* (IPSA) in April 2016. *Part A-HMOs* indicates that in order to promote the creation of sustainable, inclusive and mixed communities and maintain an appropriate housing mix, applications for changes of use from any use to a class C4 (HMO) use will not be permitted if more than 10% of the total number of properties within 100 metres of the application site are already in use as HMOs or student accommodation exempt from Council Tax charges. There is no dispute that within 100 metres of the appeal site the figure is far greater than 10%.

6. However, the IPSA also confirms that, in circumstances where identified criteria a)-d) are met, such a change would not be resisted where criterion e) is also met. Criterion e) indicates that such changes would not be resisted where an area already has such a high concentration of HMOs that the conversion of remaining class C3 dwellings will not cause further detrimental harm.
The reasoned justification for the IPSA explains that whilst the Council would like areas with high concentrations of HMOs to become more mixed, there may be some cases where localised communities are already so imbalanced that the policy objective of protecting a balance is unlikely to be achieved.
In considering whether to make an exception in such cases the Council will have regard to things such as: the proximity of existing class C4 uses where they might be likely to affect the amenities of normal family life, for example if there were such uses on both adjoining sides; any demonstrable difficulty in achieving a satisfactory sale of a property as a class C3 dwelling; and, any other circumstances indicating that the policy restriction is causing severe personal hardship.

7. Using Council Tax Exemption data, the Council has estimated that 70% of properties within 100 metres of the appeal site are exempted from Council Tax charges. It has taken this as an indicator of the number of properties within the area occupied by students, given that any property wholly occupied by students can apply for a Council Tax exemption. Whilst it appears to me that this would be likely to provide a reasonable estimate of the minimum level of HMOs [1], it may be an underestimate, as not all HMOs are occupied by students; a matter acknowledged by the IPSA. Furthermore, data may become out of date over the passage of time and it is not made clear in the September 2016 Planning Services Delegated Report, which identifies the 70% figure, when the data was compiled. Under these circumstances, I consider that the estimate must be regarded with caution. The appellant has calculated a figure of 84%, which appears to have been based on a database compiled to inform the emerging Durham City Neighbourhood Plan, validated by the appellant by undertaking a door to door survey in October 2016. In the absence of independent verification, I consider that this estimate should also be treated with caution. However, I have no reason to believe that the actual figure lies significantly outside the range 70-84%. Whilst it is clear that, in terms of residential character, this area is already unbalanced, the proportion of HMOs vastly exceeding the 10% limit advocated by the IPSA as an appropriate mix of

[1] Ref. appeal decision APP/Y1110/W/15/3005030.

housing, as the IPSA does not identify a figure at which the conversion of remaining class C3 dwellings would not cause further harm, this is of limited assistance on its own.

8. I turn then to consider the other factors that the IPSA indicates can be taken into account. Development that fronts onto Waddington Street itself is characterised by non-residential uses at either end of the street and in between there is a single terraced row of residential properties. The Council acknowledges that No. 6 is the last remaining class C3 property on Waddington Street, all the other residential properties, including those adjoining either side of No. 6, comprising class C4 uses.

9. With reference to a record of correspondence with relevant authorities and other interested parties, the appellant has supported the position that her living conditions have been adversely affected over a number of years as a result of the concentration of neighbouring properties in class C4 use, with reference to, amongst other things, noise and disturbance caused by residents of those properties. This situation is exacerbated by noise and disturbance late at night caused, from time to time, by students returning to The Village@The Viaduct, purpose built student accommodation (PBSA) with capacity for over 200 students, the primary access route for which is along Waddington Street. Furthermore, at the other extreme, I understand that during University holiday periods, it is not unusual for neighbouring properties to be deserted. At such times, it is likely that No. 6 would be the only property occupied at night, which in my view would be likely to cause a feeling amongst any residents of No. 6 of being isolated, insecure and vulnerable, to the detriment of their living conditions. I am satisfied that, as a result of the concentration of neighbouring properties in class C4 use and the PBSA nearby, the amenities of residents of No. 6, occupied as family accommodation, would be relatively poor.

10. Under the particular circumstances in this case, I consider it likely that it would be difficult to achieve a satisfactory sale of the property to a general purchaser as a class C3 dwelling and, in my judgement, it is not necessary to undertake a marketing exercise to demonstrate that that is the case. My view in this respect is reinforced by the following factors. I understand that when the former owner of No. 4 Waddington Street marketed his dwelling for sale in 2013, when 3 of the properties in the terrace were still in class C3 use, the only offer he received after a number of months of marketing was from a landlord of student property and he sold at a loss after 9 years of ownership. Furthermore, I understand that the Council is in receipt of correspondence from an estate agent which indicates that No. 6 is likely to be almost unsaleable to the owner-occupier sector of the market due to the number of student properties in the immediate vicinity.

11. As regards personal circumstances, the IPSA acknowledges that there can be an adverse impact on the amenity of residents in areas where student HMOs are dominant and the appellant has set out her own experience in that regard. Those impacts include anxiety caused by issues such as late night noise and other anti-social behaviour during University term times and a feeling of isolation and vulnerability when there are few, if any, people living in neighbouring properties during University holiday periods. I consider that impacts such as these are likely to have a particularly significant adverse impact on living conditions when the only permanent resident of the street is an elderly person, living alone, such as the appellant. Furthermore, as

indicated by the appellant, the situation is likely to become more wearing as time goes on. Under these circumstances and given the likely difficulties that she would face in selling her property as a class C3 dwelling, I consider that the policy restriction against changes of use from any use to a class C4 use is causing and is likely to continue to cause the appellant severe personal hardship.

12. In contrast, given that the proposal involves the change of use of a small, mid-terrace appeal property to a class C4 use, in common with the other residential properties within the terrace, it would be unlikely to have a material impact on either the character or appearance of the locality, the amenities of local residents, housing mix in the area or the sustainability of the local community. I have had regard to the concern that the proposal, if approved, could give rise to an undesirable precedent which could be used to support other similar proposals. However, my attention has not been drawn to any other proposals that are directly comparable to that before me, which involves a single dwelling occupied by one elderly resident, within a row of residential properties that otherwise comprise HMOs and that fronts onto a street which forms the primary access route to a substantial student accommodation complex nearby. In any event, each case must be considered primarily on its own merits and in any future case it would remain open to the Council to show in the particular circumstances that harm would be caused. I give the concern regarding precedent little weight.

13. Under the circumstances I have identified, I consider that the proposal would accord with criterion e) of the IPSA. I have not been provided with any evidence to show that the proposal would conflict with criteria a)-d) of Part A of the IPSA and in my view, it would not. With reference to those criteria, it appears to me that the property has rear yard space where cycles could be satisfactorily stored and I understand that the site is within an area where parking is formally controlled. In common with neighbouring properties, refuse bins could be stored in the rear lane without obstructing traffic. No significant changes in the design of the building are proposed. Furthermore, the proposal would address existing security concerns, referred to above, and in my view would be unlikely to raise new concerns, given the characteristics of the terrace.

14. I conclude that the proposal would accord with the IPSA, which in keeping with the aims of the Framework, seeks to ensure the creation of sustainable, inclusive and mixed communities, through, amongst other things, securing a mix of housing based on the needs of different groups in the community and the type of housing that is required in particular locations. Nor would it conflict with LP Policies H9 or H13. I conclude overall, having regard to local and national policy for the creation of sustainable, inclusive and mixed communities, that the proposal would be an appropriate change of use.

Other matters

15. My attention has been drawn to a previously dismissed appeal[2] involving the proposed conversion of the Kings Lodge Hotel, which is accessed from the northwestern end of Waddington Street, to student accommodation. The Inspector in that case noted that the percentage of properties within the post code area covering Waddington Street carrying student exemptions from

[2] APP/X1355/W/14/3002049.

Council Tax was 89% and he dismissed the appeal with particular reference to the likely impact on the character of the area and the living conditions of neighbouring residents. However, the circumstances in that case were significantly different from those in the case before me. That previous case involved the creation of 10 self-contained flats each catering for 5-6 students and the decision was made in 2015, before the adoption of the IPSA. The circumstances associated with another previous appeal[3], which involved the redevelopment of the former County Hospital site and was allowed, are also materially different, as it involved the conversion of the former hospital to accommodate 83 student studios and the erection of 2 student accommodation blocks containing 281 student flats. Therefore, I consider that those appeal decisions are of little relevance in the case before me and I give them little weight. Neither these, nor any other matters raised are sufficient to outweigh the considerations which have led to my conclusion on the main issue.

Conditions

16. The Council has not suggested any conditions that it considers should be imposed in the event of the appeal being allowed and in my view, with the exception of the standard commencement condition, none are necessary.

Conclusion

17. For the reasons given above, I conclude that the appeal should be allowed.

I Jenkins

INSPECTOR

[3] APP/X1355/W/15/3127950.