

Appeal Decision

Site visit made on 13 July 2017

by M Seaton BSc (Hons) Dip TP MRTPI

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

Decision date: 09 August 2017

Appeal Ref: APP/X1355/W/17/3168117

97 Gilesgate, Durham, DH1 1JA

- 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 Gabrielle Moore against the decision of Durham County Council.
 - The application Ref DM/16/02440/FPA, dated 12 July 2016, was refused by notice dated 20 September 2016.
 - The development proposed is the erection of one detached 6-bedroom House in Multiple Occupation (HMO) (Class C4).
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Decision

1. The appeal is allowed and planning permission is granted for the erection of one detached 6-bedroom House in Multiple Occupation (HMO) (Class C4) at 97 Gilesgate, Durham, DH1 1JA in accordance with the terms of the application, Ref DM/16/02440/FPA, dated 12 July 2016, subject to the conditions attached in the Annex.

Main Issues

2. The main issues are;
 - whether the provision of an additional 6 bedrooms in an HMO would be contrary to local policies on student accommodation and to the detriment of the housing mix within the area;
 - whether the proposed development would preserve or enhance the character or appearance of the Durham (City Centre) Conservation Area; and,
 - whether the living conditions of neighbouring occupiers would be safeguarded, having regard to privacy, noise, and light pollution.

Reasons

3. The appeal site is comprised of a long, narrow rectilinear plot of land stretching broadly north behind Nos. 96 & 97 Gilesgate, with the land within the property boundary of No. 97, which is also occupied as an HMO. Access to the site is obtained from the street through an existing 'garage' which is integral within the terrace of properties fronting on to Gilesgate. The proposed building would be set back within the appeal site, adjacent to a dwelling to the east located within a contemporary residential development of 3 properties known as Chapel Mews. To the west are other gardens and land to the rear of Gilesgate,
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with properties and land on Heaviside Place to the north. The site was substantially overgrown, with a number of mature trees accommodated.

Housing mix

4. In refusing planning permission, the Council has contended that the proposal would *detrimtally affect the residential amenity of nearby residents and increase the concentration of houses in multiple occupation to the detriment of balanced communities*. In refusing planning permission, the Council has made reference to Part 4 of saved Development Plan Policy H9 of the City of Durham Local Plan 2004 (the Local Plan), and an Interim Policy on Student Accommodation (the Interim Policy), adopted in April 2016.
5. I am mindful that Policy H9 of the Local Plan, in addressing multiple occupation and student households, explicitly addresses '*the sub-division or conversion of houses for flats, bedsits or for multiple occupation, or proposals to extend or alter properties already in such use...*', but does not make any reference to new-build development as proposed in this instance. Whilst I have had regard to the Council's acknowledgement in the Delegated Report of the applicability of Policy H9 to the current proposals, albeit in the context of a reference to Part 4 of the Policy and resistance to an increase in student accommodation leading to an overconcentration, I am satisfied that the proposal would not fall to be assessed against this policy. I have therefore limited my consideration to the Interim Policy and National Planning Policy Framework (the Framework) in this instance.
6. The Interim Policy addresses both HMOs and purpose built accommodation, and is indicated by the Council to be a material consideration which carries some weight as a consequence of its consistency with the Framework, and the level of consultation which it benefitted from, but less than the Development Plan. I would agree with this assessment of the weight to be attached to the Interim Policy. The Interim Policy sets out that 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, then the development will not be permitted. In addition, the Interim Policy sets out at Part A(a)-(e) a series of criteria to be met for the proposals to be permitted and acceptable.
7. The appellant has highlighted that their assessment of the percentage of student occupied properties was undertaken on the basis of all publically available information, which comprised the Student Exemptions Map (July 2015) contained within the Interim Policy, and the Council's Public Register of Licensed HMOs. In both instances, these data sources indicated that less than 10% of properties in the vicinity (based upon either postcodes or 100 metre radius) were occupied as HMOs.
8. The Council has indicated within the Officer Report that the area within 100 metres of the appeal site comprised 29.6% of properties occupied as HMOs in September 2016. The appellant has drawn my attention to a revised figure of 25.5% as presented by the Council in January 2017, in response to a request for updated information, and I note that the Council's Statement of Case from April 2017 indicated the figure to be 23.4%. However, I am mindful that these figures are derived from Council Tax information related to properties with a *Class N exemption* where properties are occupied only by students, and also

that the details of this data is not publically available under data protection rules.

9. Whilst I would accept the figure of 0% as indicated on the Student Exemptions Map as improbable now in light of the occupied HMO at No. 97 Gilesgate, neither the appellant nor the Council have submitted any corroboration of their figures with the appeal. They couldn't have submitted anything confidentially. Whilst I have some concern that the basis for the Council's assessment and decision cannot be interrogated, in light of the percentages of student exemptions properties shown in surrounding postcodes on the map accompanying the Interim Policy, I do not find a figure in the region of 23.4 – 25.5% to be unlikely. However, I note that the most up-to-date figure provided by the Council illustrates there to have been a period of decline in the percentage of student exemption properties in the vicinity of the appeal site since September 2016, for which the Council has not provided any explanation.
10. Nevertheless, I accept that on the basis of the evidence before me, that the appeal property is located within an area where the level of HMO properties exceeds the 10% threshold set for resisting further development of this type as defined within the Interim Policy. However, on the basis of the parties identifying there as being 102 properties within 100 metres of the appeal site, the addition of a single HMO to that total would result in a less than 1% increase in the overall number of student exemption properties, although notably without any resultant loss of an existing Class C3 dwelling. Whilst I accept that this would not accord with the Interim Policy in this regard, in the context of an apparently declining percentage of student exemption properties, I do not consider that the proposal would in this instance sit contrary to the objective of paragraph 50 of the Framework, in respect of the intent to create and maintain sustainable, inclusive and mixed communities, and that a strong residential character in the immediate area would remain.
11. Turning to the criteria set out within the Interim Policy at Part A (a)-(d), I note that the Council has not raised any specific objections to the provision of car parking and turning on the site, or on the basis of cycle parking and bin storage. Furthermore, the residual area of garden and land would provide well in excess of a basic level of external amenity appropriate to the property for future occupiers. I am also not persuaded in respect of the security of the building and its occupants, and being mindful of the presence and position of other properties adjacent to the appeal site, that there is any basis from the submissions or my observations that this would be unacceptable. The Council has however expressed concerns over the design of the proposed development in respect of the character and appearance of the conservation area, and also in respect of the impact on the living conditions of neighbouring occupiers. I return to these matters below.
12. I have noted that the Council has referred to three recent appeal decisions relating to additional HMO accommodation within Durham City, as a means of demonstrating the application of the Interim Policy. However, I note that two of the appeal decisions relate to an extension to an existing HMO (40 Hawthorn Terrace) and the change of use of a Class C3 dwelling to an HMO (6 Waddington Street), neither of which would represent comparable circumstances to the appeal proposal. In respect of the remaining appeal decision (Peartree Cottages), I am mindful that the Council has sought to demonstrate that this represented a much higher concentration of student

exemption properties in accordance with Part A(e) of the Interim Policy, than is the case with the current proposals. However, for the specific reasons set out above, I consider that the proposal would not have a significant impact on the increasing primacy of Class C3 properties in the area.

13. The proposal would result in the provision of additional HMO accommodation in an area where more than 10% of properties within 100 metres of the appeal property are in use as HMOs or student accommodation. However, whilst in this respect there would be some conflict with part of the Interim Policy, I am satisfied that the proposals would not be to the detriment of the housing mix within the area. I have also not found there to be any conflict with paragraph 50 of the Framework, and also that it would accord with paragraph 47, which seeks to boost significantly the supply of a full range of housing.

Conservation area

14. As a consequence of the location of the appeal site within the Durham (City Centre) Conservation Area, I am mindful that I have a statutory duty under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, to consider the impact of the proposal on the special architectural and historic interest of the setting of the heritage asset (the conservation area). Section 72(1) of the Act sets out that in the exercise of planning functions, with respect to any buildings or other land in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.
15. The appeal site is indicated to be within the Gilesgate Character Area of the conservation area, as set out in the *Durham City Conservation Area Executive Summary – Draft, 2015*. The significance of this area is highlighted as including its historic links to the city centre as a linear settlement along the route to the city from the north-east, the surviving historic street pattern and sense of enclosure formed by continuous street form, the historic buildings surrounding the village green, and the surviving narrow but deep rectilinear form of historic Burgage plots.
16. The proposed development would be incorporated within the constraints of the existing Burgage plot on the appeal site, would be located adjacent to the existing dwellings at Chapel Mews, and would not be readily visible from the street. I accept that a consequence of the proposed development would be the loss of the undeveloped openness of the plot through the introduction of the building, but allowing for historic redevelopment of backland areas, that this would not be an uncharacteristic aspect of the conservation area at this point. However, I am mindful that the proposal would not result in a loss or amalgamation of the Burgage plot with adjoining land as would seem to have occurred historically on neighbouring sites. I am therefore satisfied that irrespective of the development, the form of the Burgage plot would still be read in the context of the historic layout of the area, and that its significance would not be adversely effected.
17. As a consequence, I am satisfied that the proposed development would preserve the character and appearance of the Durham (City Centre) Conservation Area and would not harm the significance of the heritage asset. The proposal would therefore meet the statutory test set out at Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, and would accord with saved Policies E6, E21 & E22 of the Local Plan, which seek to

ensure that development preserves or enhances the character, appearance and setting of the Durham (City Centre) Conservation Area. I am also satisfied that there would be no conflict with *Chapter 12: Conserving and enhancing the historic environment*, of the Framework.

Living conditions

18. The proposed building would be located adjacent to the existing dwellings at Chapel Mews and to the rear of properties on Gilesgate. I have had regard to the Council's assessment of the relationship with the adjoining development in respect of privacy, and would agree that a combination of separation distances and the positioning and use of obscurely glazed windows on the east and west elevations would safeguard the privacy of neighbouring occupiers from direct overlooking. I accept that there may be some overlooking of neighbouring gardens, but recognise that the extent of this would not represent a particular departure from existing opportunities for mutual overlooking of adjoining garden land already available in the area.
19. The Council's concerns essentially relate to the potential for impact on the living conditions from the comings and goings of future residents, particularly in respect of noise and light pollution. In this respect, I recognise that a feature of 'backland' or mews-style development is often the introduction of activities which may otherwise be expected to normally be undertaken to the front of a property, such as car parking and manoeuvring of vehicles. However, it is clear from the submitted evidence, and my observations on the appeal site, that such a form of development is already characteristic within the area, and as a consequence I do not consider that the principle of the development would be unacceptable in this instance for this reason. I have carefully considered the relationship between the access and the rear of No. 1 Chapel Mews, but do not regard this as being particularly unusual in the context of new residential development where private rear gardens are adjacent to access roads or parking courts.
20. I have had regard to the contention that the impact from the quantum and nature of occupation of the HMO in comparison to a dwelling would be very different due to the independent nature of occupation of the residents. However, I am not persuaded in respect of aspects of the development such as car parking, that there would be a significant departure from a family dwelling where adult children may reside, in respect of the frequency of comings and goings. Furthermore, whilst I agree with the appellant that it is unlikely that future occupants would have significant car ownership, in any event I recognise that the limited availability of parking on the appeal site to meet parking standards, would in itself restrict the likely number of vehicular movements, as would accessibility to the University and other services and facilities within the local area. I am also satisfied that both the proposed and existing properties within the vicinity would continue to have access to an acceptable level of outdoor space to facilitate at the very least basic activities and functions.
21. Whilst I have noted concerns over intensification of the use of the land, I am satisfied that the proposed development would not result in an adverse effect on the living conditions of neighbouring occupiers of Chapel Mews and Gilesgate, having regard to privacy, noise, and light pollution. I do not therefore find there to be conflict with saved Policies H10, H13 & Q8 of the Local Plan, which seek to minimise the amenity and privacy impact of

development on the occupants of existing nearby and adjacent properties to an acceptable level. I also do not find there to be conflict with the Core Planning Principles of paragraph 17 of the Framework, which include the requirement to ensure that development secures a good standard of amenity for all existing and future occupants of land and buildings.

Other Matters

22. I have had careful regard to various other issues which have been raised by interested parties, including the impact on biodiversity and trees, the level of car parking provided, and an increased vulnerability to crime and littering.
23. In respect of biodiversity, the Council's Ecologist has assessed the submitted ecological statement and has offered no objection to the conclusions reached. Whilst I am mindful that the accuracy of the statement has been challenged by Interested Parties, no contrary technical evidence has been adduced in respect of the ecological impact of the scheme, and I am satisfied that the imposition of an appropriate condition securing mitigative measures in respect of bird nesting and bat foraging is an appropriate response. Similarly, in light of the proposed conditions securing landscaping and additional planting, as well as the protection of all retained trees, I am satisfied that the impact on trees would not be so significant as to be unacceptable.
24. Turning to the proposed level of car parking, I see no reason to disagree with the conclusions of the Highway Authority on the acceptability of the level of parking provided, in conjunction with the requirements for the existing HMO at 97 Gilesgate, and note that sufficient space for turning would also be provided. I am also satisfied that the availability of emergency access would not differ to that provided for the dwellings at Chapel Mews, and for which I note no objection has been raised by the Highway Authority.
25. In respect of vulnerability to crime and potential for increased littering, whilst I have had regard to the concerns, I note that the proposed building would benefit from surveillance from surrounding properties, and there is no reason to believe that the accommodation would not meet reasonable security expectations. With regards to littering and refuse collection, there is no compelling evidence before me to support the contention that there would be an undoubted increase in littering as a consequence of the accommodation of further students in the vicinity, and I have not therefore attached any significant weight to this matter.

Conditions

26. Turning to the suggested conditions, I have considered these in the light of paragraph 206 of the Framework. Conditions related to the submission and agreement of samples/details of external materials, surface treatment and hardsurfacing, the submissions of a landscaping and planting scheme as well as details of ongoing maintenance and tree protection, would all be reasonable and necessary in order to preserve the character and appearance of the conservation area.
27. Conditions addressing the potential for land contamination and legacy risks from coal mining would be required in order to secure and safeguard the ground conditions of the appeal site, and securing a scheme of archaeological work in accordance with a written scheme of investigation would be necessary

to ensure an archaeological interest on the site is detailed, mitigated and published. A condition controlling the timings of construction works and deliveries on site would be in the interest of protecting the living conditions of neighbouring occupiers.

Conclusion

28. For the reasons set out above, and subject to the conditions listed in the Annex, the appeal should be allowed.

M Seaton

INSPECTOR

Annex

Conditions

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The development hereby approved shall be carried out in strict accordance with the following approved plans.
Drawing no. 2166/05 Site location plan
Drawing no. 2166/11 Front elevation
Drawing no. 2166/10 Floor plans and elevations
Drawing no. 2166/07 Site layout plan
All received 25 July 2017
- 3) Notwithstanding any details of materials submitted with the application no development shall commence until samples of the external walling and roofing materials have been submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the approved details.
- 4) Prior to the commencement of the development details of the surface treatment and construction of all hardsurfaced areas shall be submitted to and approved in writing by the Local Planning Authority. The development shall be undertaken in accordance with the approved details.
- 5) The development hereby permitted shall not commence until a pre-commencement scheme to deal with contamination has been submitted to and agreed in writing with the Local Planning Authority. The full scheme, both pre-commencement and completion shall include the following, unless the Local Planning Authority confirms in writing that any part of subsections a, b, c, d or e are not required.

Throughout both the pre-commencement and completion phases of the development all documents submitted relating to Phases 1 to 4 as detailed below shall be carried out by competent person(s) and shall be submitted to and agreed in writing with the Local Planning Authority.

Pre-Commencement

(a) A Phase 1 Preliminary Risk Assessment (Desk Top Study) is required to identify and evaluate all potential sources and impacts on land and/or groundwater contamination relevant to the site.

(b) If the Phase 1 identifies the potential for contamination, a Phase 2 Site Investigation and Risk Assessment is required to fully and effectively characterise the nature and extent of any land and/or groundwater contamination and its implications. Prior to the Phase 2 a Sampling and Analysis Plan is required.

(c) If the Phase 2 identifies any unacceptable risks, a Phase 3 Remediation Strategy detailing the proposed remediation and verification works is required. If gas protection measures are required a verification plan is required detailing the gas protection measures to be installed, the inspection regime and where necessary integrity testing programme. The

installation of the gas membrane should be carried out by an appropriately qualified workforce and the verification of the installation should be carried out by an appropriately competent, experience and suitably trained person(s) (preferably independent to the installer) to ensure mitigation of the risk to the buildings and the people who occupy them. No alterations to the remediation proposals shall be carried out without the prior written agreement of the Local Planning Authority.

Completion

(d) During the implementation of the remedial works (if required) and/or development if any contamination is identified that has not been identified pre-commencement, it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment shall be carried out in accordance with part b of the condition and where necessary a Phase 3 Remediation Strategy shall be prepared in accordance with part c of the condition. The development shall be completed in accordance with any amended specification of works.

(e) Upon completion of the remedial works (if required), a Phase 4 Verification Report (Validation Report) confirming the objectives, methods, results and effectiveness of all remediation works detailed in the Phase 3 Remediation Strategy shall be submitted to and agreed in writing with the Local Planning Authority within 2 months of completion of the development. If integrity testing of the membrane(s) was required a verification pro forma should be included.

- 6) No development shall take place until information has been submitted to and approved in writing by the Local Planning Authority in relation to the assessment of the coal mining legacy risks within the site. In the event that the assessment confirms the need for the treatment of any areas of shallow mine workings and/or the mine entry for stability purposes, and/or any other mitigation measures (eg. Foundation precautions, gas protection measures etc.) to ensure the safety and stability of the proposed development, these works must be undertaken prior to commencement of development. The document must include details and timings for these additional identified works, and an assessment of the effect of the works on site drainage. The site must be developed wholly in accordance with said document with confirmation of its completion in full being provided at the completion of the development.
- 7) No development shall take place until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation that has been approved in writing by the Local Planning Authority. The Scheme shall provide for:
 - i; Measures to ensure the preservation in situ, or the preservation by record, of archaeological features of identified importance.
 - ii; Methodologies for the recording and recovery of archaeological remains including artefacts and ecofacts.
 - iii; Post-fieldwork methodologies for assessment and analyses.
 - iv; Report content and arrangements for dissemination, and publication proposals.
 - v; Archive preparation and deposition with recognised repositories.

- vi; A timetable of works in relation to the proposed development, including sufficient notification and allowance of time to ensure that the site work is undertaken and completed in accordance with the strategy.
- vii; Monitoring arrangements, including the notification in writing to the County Durham Principal Archaeologist of the commencement of archaeological works and the opportunity to monitor such works.
- viii; A list of all staff involved in the implementation of the strategy, including subcontractors and specialists, their responsibilities and qualifications.

The archaeological mitigation strategy shall be carried out in accordance with the approved details and timings.

- 8) Prior to the development being beneficially occupied, a copy of any analysis, reporting, publication or archiving required as part of the mitigation strategy shall be deposited at the County Durham Historic Environment Record.
- 9) No development shall commence until a detailed landscaping scheme has been submitted to and approved in writing by the Local Planning Authority.

No tree shall be felled or hedge removed until the landscape scheme, including any replacement tree and hedge planting, is approved as above.

Any submitted scheme must be shown to comply with legislation protecting nesting birds and roosting bats.

The landscape scheme shall include accurate plan based details of the following:

- Trees, hedges and shrubs scheduled for retention;
- Details of hard and soft landscaping including planting species, sizes, layout, densities, numbers;
- Details of planting procedures or specification;
- Finished topsoil levels and depths;
- Details of temporary topsoil and subsoil storage provision;
- Seeded or turf areas, habitat creation areas and details etc;
- Details of land and surface drainage; and,
- The establishment maintenance regime, including watering, rabbit protection, tree stakes, guards etc.

The local planning authority shall be notified in advance of the start on site date and the completion date of all external works.

Trees, hedges and shrubs shall not be removed without agreement within five years.

- 10) All planting, seeding or turfing and habitat creation in the approved details of the landscaping scheme shall be carried out in the first available planting season following the practical completion of the development.

No tree shall be felled or hedge removed until the removal/felling is shown to comply with legislation protecting nesting birds and roosting bats.

Any approved replacement tree or hedge planting shall be carried out within 12 months of felling and removals of existing trees and hedges.

Any trees or plants which die, fail to flourish or are removed within a period of 5 years from the substantial completion of the development shall be replaced in the next planting season with others of similar size and species.

Replacements will be subject to the same conditions.

- 11) No construction work shall take place, nor any site cabins, materials or machinery be brought on site until all trees and hedges, indicated on the approved tree protection plan as to be retained, are protected by the erection of fencing, placed as indicated on the plan and comprising a vertical and horizontal framework of scaffolding, well braced to resist impacts, and supporting temporary welded mesh fencing panels or similar approved in accordance with BS.5837:2010.

No operations whatsoever, no alterations of ground levels, and no storage of any materials are to take place inside the fences, and no work is to be done such as to affect any tree.

No removal of limbs of trees or other tree work shall be carried out. No underground services trenches or service runs shall be laid out in root protection areas, as defined on the Tree Constraints Plan.

- 12) In undertaking the development that is hereby approved:

No external construction works, works of demolition, deliveries, external running of plant and equipment shall take place other than between the hours of 0800 to 1800 on Monday to Friday and 0800 to 1400 on Saturday.

No internal works audible outside the site boundary shall take place on the site other than between the hours of 0800 to 1800 on Monday to Friday and 0800 to 1700 on Saturday.

No construction works or works of demolition whatsoever, including deliveries, external running of plant and equipment, internal works whether audible or not outside the site boundary, shall take place on Sundays, Public or Bank Holidays

For the purposes of this condition, construction works are defined as: The carrying out of any building, civil engineering or engineering construction work involving the use of plant and machinery including hand tools.