
Appeal Decision

Site visit made on 12 July 2017

by Jason Whitfield BA (Hons) DipTP MRTPI

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

Decision date: 11th September 2017

Appeal Ref: APP/X1355/W/17/3172638

Land to North Side of Holly Street, Holly Street, Durham DH1 4ER

- 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 Paul Thapar, Nelson Yard Limited against the decision of Durham County Council.
 - The application Ref DM/16/02537/FPA, dated 4 August 2016, was refused by notice dated 16 December 2016.
 - The development proposed is construction of 60 bedroom student accommodation.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Paul Thapar, Nelson Yard Limited against Durham County Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The proposal was amended following submission to the Council but prior to its determination. These changes, shown on revised plans, are relatively minor in nature and I am satisfied that all relevant parties would not be prejudiced by my consideration of them. I have therefore determined the appeal on that basis.
4. Additional plans have also been provided with the appeal which are indicative in nature and do not change the overall substance of the scheme. As such, I consider no party would be prejudiced by my consideration of the plans and I have therefore taken them into account.

Main Issues

5. The main issues are:
 - the effect of the proposal on the character of the area;
 - the effect of the proposal on the living conditions of occupiers of surrounding properties with particular regard to outlook and light; and,
 - whether the proposal would meet a demonstrable need for student accommodation in the area.

Reasons

Character

6. Saved Policy H16 of the City of Durham Local Plan 2004 (LP) states that new residential institutions will be permitted where they are well related to shops, community facilities, social facilities and public transport, and they do not detract from the character of the surroundings. There is no requirement under Policy H16 to demonstrate need.
7. I agree with the appellant that H16 is broadly consistent with the National Planning Policy Framework (the Framework) which requires Council's to meet objectively assessed housing needs, which includes purpose built student accommodation (PBSA). Saved LP Policy H13 states that permission will not be granted for new development which would have a significant adverse effect on the character of residential areas.
8. The Council's emerging County Durham Plan was withdrawn from the examination process following a High Court Challenge in 2015. Whilst a new plan is being prepared, the Council indicates that no weight can be afforded to it. Given the early stage of preparation, I agree.
9. The appeal site comprises a vacant parcel of land between Holly Street and John Street. It lies within an area of the city characterised by 2 storey terraced housing arranged in a narrow grid street pattern. The majority of the housing in the area has been converted into Houses in Multiple Occupation (HMOs). The Council indicates that the postcode which covers the appeal site comprises around 91% student accommodation, whilst surrounding postcodes range between 67% and 100%. As a result, it is reasonable to consider the character of the area as one which is residential but predominately occupied by students.
10. Paragraph 50 of the Framework supports the need to create sustainable, inclusive and mixed communities. I agree with the appellant that, for the reasons above, the community is already substantially imbalanced. I also note that, given the high level of student occupation in the area, it would be difficult to rebalance the community. However, that is not good reason to allow further student housing if doing so would perpetuate the existing imbalance.
11. I recognise that providing PBSA could assist in rebalancing the community and I have considered the evidence provided of a similar approach which has been taken by Newcastle City Council. However, I am not aware of any such strategy in Durham and in the absence of any detailed evidence, cannot be certain that the circumstances are suitably similar that the approach taken in Newcastle would necessarily be an appropriate one here.
12. Thus it seems to me that the appeal proposal would materially increase the already high concentration of student accommodation within the area and contribute towards the continued imbalance of the community. There is no substantive evidence that the proposal would, individually, reduce demand for HMOs in the area and result in the return of existing housing stock currently in use for student accommodation back to family housing. As a result, on the evidence before me, the proposal would likely result in an unacceptable overconcentration of students in the area.

13. Indeed whilst I recognise circumstances in the appeal at the Kings Lodge Hotel, Waddington Street¹ were slightly different, I nevertheless agree with the Inspector in that instance that allowing further student accommodation to the exclusion of other types of residents would only propagate an unbalanced population to the detriment of its character.
14. I conclude, therefore, that the proposal would have a harmful effect on the character of the area. It would, as such, conflict with saved LP Policies H16 and H13.

Living Conditions

15. Saved Policy H16 of the City of Durham Local Plan 2004 (LP) states that student halls of residence will be permitted within settlement boundaries provided they would not lead to a concentration of student accommodation such that it would adversely detract from the amenities of existing residents.
16. LP Policy Q8 states that the layout of new residential development will be required to provide adequate amenity and privacy for each dwelling and minimise the impact of the proposal on the occupants of existing nearby and adjacent properties. Paragraph 12.32 of the supporting text states that the required distance standards between buildings are 21m window to window, 13m window to blank two storey gable and 6m window to blank single storey gable.
17. The appellant considers that the supporting text should carry less weight than statutory policy, however, the courts have held that the saving of policies had the effect in law of preserving all the supporting text and that appropriate resort could be had to supporting text when interpreting and applying saved policies.
18. Part B of the Council's Interim Policy on Student Accommodation 2016 (Interim Policy) states that proposals for PBSA will not be permitted where, amongst other things, the impacts from occupants of the development will not have an unacceptable impact upon the amenity of surrounding residents.
19. Holly Street is a terrace of two storey dwellings which contain windows that serve habitable rooms at ground and first floor facing the appeal site. The separation distance would be around 11m between habitable windows in the proposal and those of the properties on Holly Street. I note that such separation distances are typical of a relatively dense, urban area. However, that is not the case with the properties on Holly Street which enjoy a somewhat greater separation distance to the closest properties given the lack of development on the appeal site.
20. The Holly Street elevation of the development would introduce a continuous massing of two-storey built form for almost the entirety of the street. It would therefore result in a considerable erosion of the existing outlook enjoyed by residents of the properties opposite the appeal site on Holly Street.
21. The proposal would also include a three storey element of the building that would be around 6m from a bedroom window within the flank wall of 10 John Street. This would be below the separation distances within the supporting text of Policy Q8. I recognise that a failure to achieve the recommended

¹ APP/X1355/W/14/3002049

distances does not necessarily mean that there would be harm. However, whilst the proposed windows would be angled, the proposal would nevertheless result in a considerable amount of built form in particularly close proximity to the bedroom window of No 10. As such, it would appear particularly overbearing in the outlook from that window. Moreover, given the south-westerly orientation, and in the absence of any evidence from the appellant to support the view that there would be a lack of overshadowing, the height of the building and the reduced separation distance would likely result in a considerable reduction in daylight levels for the residents of No 10.

22. A three storey element of the building would also be around 8m from habitable windows within the single storey property on John Street known as The Bungalow. However, the proposal would be at an angle to The Bungalow and would not, therefore, have a significant impact on the direct outlook from those windows nor result in harmful loss of light. Nevertheless, the lack of harm in respect of the living conditions of the occupiers of The Bungalow would not mitigate against the harm I have identified to the occupiers of properties on Holly Street and 10 John Street.
23. I recognise the Council has previously granted planning permission for a residential scheme that was four storey in height and with separation distances that would be shorter to the neighbouring properties than those here. However, that permission is no longer extant and indeed the appellant indicates that it is not financially viable to build housing on the appeal site. Thus, the previous permission does not provide a fallback position to which I can afford any more than very little weight.
24. I conclude, therefore, that the proposal would have a harmful effect on the living conditions of occupiers of surrounding properties with particular regard to outlook and light. As such, it would conflict with LP Policies Q8 and H16.

Need

25. It is proposed to construct a 60 bedroom PBSA building on the site. The aforementioned Interim Policy is based upon Durham University's Accommodation Strategy 2012 (Accommodation Strategy). Part B of the Interim Policy deals with purpose built student accommodation. The policy states that any proposals for PBSA will be required to demonstrate that: there is a need for additional student accommodation; that it would not result in a significant negative impact on retail, employment, leisure, tourism or housing use; and, that consultation has taken place with the relevant education provider. Paragraphs 16 and 17 of the supporting text are clear that the purpose of the Interim Policy is to avoid an oversupply of bed spaces and progress scheme in appropriate locations to meet regeneration priorities. The supporting text also recognises there is a need to increase the number of Durham University students residing in PBSA.
26. The Council takes the view that the appellant has not demonstrated that there is a need for additional student accommodation in the area. The supporting text to the Interim Policy suggests that to demonstrate need, developers should provide evidence that looks at waiting lists for existing places and the potential contribution of schemes with planning consent, whilst also demonstrating what specific need the proposal would meet and why it is currently unmet.

27. The Accommodation Strategy sets out an anticipated 2,000 increase in students by 2020. The appellant indicates that another 2,000 students will be decanted to Durham in the short term through the closure of the Stockton campus of the University. In the absence of any contrary evidence, I see no reason to disagree. Thus, it seems reasonable to me to conclude there would demand for around 4,000 bed spaces by 2020 within the city.
28. Figures provided by the Council indicate that there are, currently, a total of 4,313 bed spaces either with extant planning permission, that are under construction or have been completed. Figures provided by the Durham City Neighbourhood Planning Forum (DCNPF) suggest a total of 4,445 bed spaces in the pipeline.
29. The DCNPF point to the Durham University Estate Strategy 2017-2027 which seeks to establish four to six new colleges. Though the strategy does not provide figures, the DCNPF anticipates a further 2,000 to 3,000 bed spaces should be added to the 4,445 figure. However, there is no evidence that those 2,000 to 3,000 bed spaces are an accurate representation of the University's strategy or that such bed spaces have planning permission or even applications submitted. Thus, I have disregarded the assertions within paragraph 14 of the DCNPF's statement.
30. Whilst both the Council's and DCNPF's figures would exceed the anticipated need, I agree with the appellant that a surplus of 313 or 445 bed spaces would provide little flexibility, particularly as there are no guarantees that all sites with planning permission will come forward for development. Indeed, I note that both the Council and the DCNPF figures include both a single scheme for 1,000 bed spaces which has outline permission and is yet to be implemented, and another 850 bed spaces on a scheme which, on the basis of the evidence before me, has yet to obtain planning permission. I also recognise that there is a need for choice in the market and that the private sector will need to deliver a considerable proportion of PBSA in the city.
31. The appellant has provided little evidence regarding waiting lists for existing places, vacancy rates nor evidence which demonstrates the specific need the proposal would meet and why it is currently unmet. However, I recognise that such evidence could be commercially sensitive. Moreover, neither the Council nor the DCNPF has provided any evidence of the harm that would arise from an oversupply of PBSA in the city. From what I have read and seen I agree with the appellant that market forces would dictate to an extent the delivery of PBSA schemes in the city.
32. As a result, on the balance of the evidence before me, I am satisfied that the appellant has sufficiently demonstrated a need for additional student accommodation. The appellant has also provided evidence that discussions have been held with Durham University for around 2 years. Furthermore there is no evidence before me that the proposal would result in a significant negative impact on retail, employment, leisure, tourism or housing use or that it would not support the Council's regeneration objectives, particularly as it would bring a long term redundant, previously developed city centre site back into use.
33. I conclude, therefore, that the proposal would meet a demonstrable need for student accommodation in the area. Consequently, it would accord with the Durham County Council Interim Policy on Student Accommodation 2012.

Other Matters

34. The appeal site lies within the Durham City Conservation Area (CA), a heritage asset of considerable historical and ecclesiastical significance centred on the World Heritage Site of Durham Cathedral and Castle. The Hawthorn Terrace sub-character area where the appeal site is located is characterised by tightly knit Victorian Streets.
35. In addition, close to the appeal site at the end of Hawthorn Terrace is the Grade II listed Colpitt's Terrace – a curving terrace of elegant two-storey properties, and the Grade II listed Colpitt's Hotel – a public house of graceful, architectural interest.
36. Sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 place a statutory duty upon decision makers to safeguard the significance of heritage assets for future generations. Section 66(1) is clear that special regard to the desirability of preserving a listed building or its setting, or any features of special architectural or historic interest which it possesses, is to be had, whilst Section 72(1) states that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of conservation areas.
37. The Council considers the scale and massing of the scheme would be in keeping with the predominant grain of the area whilst the palette of materials and the use of architectural features reflective of the surroundings would be appropriate in this location. I agree. Given the existing condition of the site, I consider the proposal would enhance the character and appearance of the CA whilst it would also preserve the setting of the Grade II listed buildings.
38. The proposal would bring back into use a currently derelict site, would contribute towards the supply of student accommodation in the area and would be located in a highly sustainable location. These are benefits of the scheme.
39. The appellant indicates that a management plan would be in operation and I have no substantive reasoning to suggest that the proposal would give rise to harmful levels of noise and disturbance from the future occupiers. Nevertheless, such benefits, as well as the lack of harm in that respect, or indeed in respect of highway safety, flood risk and contamination, would not outweigh the harm which I have identified.
40. The appellant argues that the Council is unable to demonstrate a five year supply of housing land and that, as a result, relevant policies for the supply of housing are out-of-date and the presumption in favour of sustainable development set out in paragraph 14 of the Framework is engaged. I have little evidence from either party in respect of the current housing land supply position and I am unable therefore to ascertain whether the appellant's view is correct. In any event, even if the Council were unable to demonstrate a five year supply of housing land to the extent suggested, the harm arising from the proposal would significantly and demonstrably outweigh the benefits. Consequently, the proposal would not constitute sustainable development for the purposes of paragraph 14.
41. The Council takes the view that financial contributions towards open space, recreational facilities and public art should be provided and secured through a S106 legal agreement. The appellant has not provided any mechanism to

secure such contributions. However, the provision of such contributions would be a neutral factor in the balance rather than a benefit and, as the appeal is to be dismissed on other substantive issues, the lack of contribution towards open space, recreation and public art would not affect the outcome of the decision.

Conclusions

42. Whilst it has undergone some consultation and I have therefore had regard to the Interim Policy, as it has not undergone examination in public, it cannot be afforded the full weight of the development plan. As a result, the harm arising to the character of the area, the living conditions of neighbouring residents and the subsequent conflict of the proposal with saved LP Policies H16, H13 and Q8 weighs more heavily than the accordance of the proposal with the Interim Policy.
43. For the reasons above, I conclude, therefore, that the appeal should be dismissed.

Jason Whitfield

INSPECTOR