



Appeal Decision

Site visit made on 15 October 2019 by Ifeanyi Chukwujekwu BSc MSc MIEMA
CEnv AssocRTPI

Decision by Chris Preston BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 November 2019

Appeal Ref: APP/X1355/W/19/3234988

36 The Hallgarth, Durham, DH1 3BJ

- 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 Gabrielle Moore against the decision of Durham County Council.
 - The application Ref DM/19/01683/FPA, dated 24 May 2019, was refused by notice dated 24 July 2019.
 - The development proposed is the change of use of dwelling (Use Class C3) to a small HMO (Use Class C4) and the erection of a dwelling in small HMO use (Use Class C4).
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Decision

1. The appeal is dismissed.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Procedural Matters

3. The appeal site is located within Durham (City Centre) Conservation Area (the 'CA'), in close proximity to a few listed buildings, and approximately 450 metres to the east of Durham Cathedral and Castle World Heritage Site (WHS). The Council has not refused planning permission on the ground that the proposed development would harm the character or appearance of the CA or have any effect on the setting of any heritage asset, and I have no reason to take a different approach.
4. Two previous proposals¹ relating to the appeal property have been approved by the Council, which the appellant states are her fall-back position. Work on the latter approval for the erection of two flats has begun.

Main Issues

5. The main issues are:
 - i) The effect of the proposed development on the balance and mix of the local housing stock and whether it would lead to an over-concentration of student accommodation within the area;

¹ DM/18 /00328/FPA and DM/18/03115/FPA

- ii) The effect on the living conditions of residents of the proposed new build dwelling and Hallgarth Farm House with regard to privacy and the effect of the development on the living conditions of surrounding residents, having regard to noise and disturbance.

Reasons for the Recommendation

Planning policy

6. The National Planning Policy Framework (the 'NPPF') states that existing policies should not be considered out-of-date simply because they were adopted or made prior to its publication. Due weight should be given to them, according to their degree of consistency with the NPPF. Therefore, in considering this appeal, due weight will be given to local policies in as far as they are consistent with NPPF policies. Even though the City of Durham Local Plan (the 'LP') was adopted in 2004 and was intended to cover the period to 2006, it remains the statutory development plan and the starting point for determining this appeal.
7. The NPPF states that decision-takers may give weight to relevant policies in emerging plans according to: the stage of the emerging plan; the extent to which there are unresolved objections to relevant policies; and, the degree of consistency of the policies in the emerging plan to the policies in the NPPF. An 'Issues & Options' consultation was completed in 2016 on the emerging the County Durham Plan (CDP) and the 'Preferred Options' was approved for consultation at Cabinet in June 2018. However, the CDP is not sufficiently advanced to be afforded any weight in the determination of this appeal.
8. The proposal involves two elements, which fall under differing policy considerations. The first is for the change of use of the existing property, no.36, from C3 dwelling house to a C4 house in multiple occupation (HMO). This aspect of the proposal would be considered under Policy H9 which is up to date and compliant with the NPPF.
9. The second element of the proposals involves the erection of a new dwelling, attached to no. 36, which is intended to be in use as a C4 HMO also. Policy Q8 requires that new residential development should provide adequate amenity and privacy for each dwelling and minimise the impact of the proposal upon the occupants of existing nearby and adjacent properties. To meet with these requirements, guidelines are set for privacy distances, which requires 21 metres between habitable room windows and 13 metres between blank gables and habitable windows.
10. The parties have also referred to the Council's Interim Policy on Student Accommodation (the Interim Policy) adopted in April 2016, which addresses both HMOs and purpose-built accommodation. The policy is not formally adopted and does not form part of the development plan. Nonetheless, it would appear to have been subject to consultation and previous Inspectors have attached weight to the policy, having regard to its consistency with the NPPF. I see no reason to take a different view and am satisfied that the policy is consistent with the aims of the NPPF, particularly paragraph 61 which requires that planning policies should reflect the needs of different groups within society. Consequently, I attach some weight to the Interim Policy which is akin to supplementary planning guidance.

The Effect on the Mix and Balance of the Local Housing Stock

11. The proposal would involve the conversion of an existing dwelling to a HMO and the construction of an additional HMO. Policy H9 of the LP states that the subdivision or conversion of houses for multiple occupation will be permitted subject to 5 criteria, the fourth of which relates to the effect on the range and variety of the local housing stock. That policy applies to the proposed change of use of the existing dwelling but would not be applicable to the new build element of the scheme.
12. The Interim Policy applies to new build HMOs and conversions and states that such development will not be permitted if more than 10% of the total number of properties within 100 metres of the site are already in use as HMOs or student accommodation. Subsection (e) does allow for an exception to that criteria in areas where there is already a high concentration of HMOs such that the conversion of further properties would not cause any detrimental harm to the balance of the housing mix.
13. The Council maintains that 39.2 per cent of properties within 100 metres are used as HMOs and those figures are not disputed by the appellant. In a wider context, the parties agree that 44 per cent of properties within the post-code area within which the site is located are in use as HMOs. Thus, it is clear that the existing percentages are far in excess of the 10 per cent figure set out in the Interim Policy. The appellant suggests that is an arbitrary figure but the Council maintain that it is based on a recommended threshold of a document published by the 'National HMO Lobby' entitled 'Balanced Communities and Studentification Problems and Solutions', published in 2008. I have not been provided with a copy of that document, but the approach of the Interim Policy was subjected to consultation and no alternative figure or methodology has been presented.
14. Defining a precise tipping point where a concentration of HMOs or student accommodation will impact on the balance of housing in an area, thereby making it less attractive to non-student occupiers, is no doubt difficult but I can appreciate that where more than one in ten properties are occupied in that manner that it has the potential to have a noticeable impact, particularly if student properties are clustered together. In the absence of an alternative figure or methodology the 10 per cent figure would appear to be a reasonable benchmark.
15. The proposal is in an area well in excess of that figure and the conversion of an existing dwelling and erection of a new HMO would further erode the local stock of family homes and add to the proportion of HMOs. The appellant notes that not all HMOs will be occupied by students. Whilst I accept that is the case, given the location within a university city in an area with high concentrations of student accommodation it would appeal likely that would be the target market.
16. In my view, the introduction of two further HMOs, directly next to one another, would have a notable and harmful effect on the balance of the local housing stock in the context of the legitimate policy aims. On the information provided, the concentration of HMOs in the surrounding area has not reached a level where the exception in sub-section (e) of the Interim Guidance is applicable. 60 per cent of properties within 100 metres are not in HMO use and well over half in the post code area. At a more local context there did not appear to be a high concentration of HMOs in the immediately surrounding houses which the Council maintains are in C3 use for the most part.

17. Thus, the balance is still tipped in favour of non-student or HMO use but that balance is at a delicate point where further conversions or new builds, as proposed, would have a harmful effect on the overall mix of housing and the subsequent character of the area, making it less attractive for families or other non-student groups. Whilst the individual percentage difference brought about by the development would be small, if viewed in isolation, the same could be said for any small scheme and the idea of a threshold is to enable a benchmark against which incremental changes can be considered.
18. In view of the above, having regard to the existing housing mix and the character of the surrounding area, I conclude that the conversion of the existing dwelling and the erection of an additional HMO would have a harmful effect on the mix of housing and the associated balance of the community. Accordingly, the conversion would be contrary to the aims of policy H9 of the LP and both elements of the scheme would be contrary to the aims of the Interim Policy.

Living Conditions

19. The appeal proposal would create two HMO properties side by side. Based on the proposed layout and location I find it likely that students would be the most probable occupants. Thus, the development would result in a concentration of student accommodation, housing up to ten non-related individuals, set amongst family housing. Each individual resident would possibly have their own friends, lifestyles, and patterns and times of movements. Letters from interested parties testify to late night disturbance associated with comings and goings from student properties and, whilst not all students engage in late night parties or excursions, it is clear that a student lifestyle is likely to generate more activity in the late evening and beyond than a standard residential unit. It would appear that such concerns were partly behind the Council's reason for publishing the Interim Policy and they are reflected in the rationale for policy H9. In other words, the type of problems referred to are based on experience of such uses in the local area.
20. The appeal site is located within a tight corner plot at the head of a cul-de-sac, surrounded by other residential properties, and occupants coming and going late at night would need to pass adjacent dwellings to gain access to the properties. The impacts of the level of occupation and activities would be likely to be harmful to the non-full-time -student residents living within the vicinity through additional noise and disturbance.
21. The appellant contends that the appeal proposal would result in a net decrease in occupancy as compared to the approved fallback four 2-bed flat development. They suggest this would translate to a reduction in intensification of activity which impacts on local amenity. However, the occupation of flats as opposed to HMOs is more likely to be based on individual households; either individual occupants, related people; couples; or even small families. In such a case they would operate as single households, not necessarily related to adjacent occupants. Even if the flats were let to students, the likely effect would be notably different to that of a larger student household where occupants are more likely to undertake activities together or come and go at the same time in the evenings. Similarly, the communal pattern of student living within HMOs is more likely to result in issues referred to by the Council and local residents, such as bins not being put out for collection/ overflowing waste, as opposed to smaller households where one or two people are directly responsible for such matters in each unit. Thus, whilst the number of occupants in the fall-back scenario may

not be substantially different to those proposed I am not satisfied that the impact on neighbouring residents would be comparable.

22. The appellant contends that she actively manages her properties and supervises her tenants with a view to reducing instances of anti-social behaviour. That may be the case, but a grant of planning permission is not personal to the appellant but is based on the use of the property. There would be no guarantee that the property would remain in the appellant's control in future or that similar management arrangements would continue to exist. Whilst I note reference to the Code of Conduct for students at the University limited information is before me of how this is enforced. In any event, tenants at student properties change frequently and any action taken by the University in relation to specific tenants would not mean that future problems would not re-occur when new tenants moved into the property.
23. Consequently, for all of those reasons the proposal would be at odds with the objectives of policies H9(2) and H13 of the LP and the aims of paragraph 127(f) of the NPPF.
24. The submitted plans depict a first-floor bedroom window proposed new HMO dwelling features a bedroom window. This window would be located less than 21 metres from the adjacent rear windows of Hallgarth Farm House, thereby falling short of the recommended separation distance set out within policy Q8 of the LP. Without mitigation the window to window relationship would have harmful impacts on mutual privacy for occupiers of both properties.
25. The appellant argues that this can be overcome by a condition of planning permission which could require the said window to be partially or fully obscured. Light and outlook could be provided via the other bedroom window on the side elevation which would be clear. Given that two windows would serve the room I am satisfied that occupants would have adequate light and outlook if the rear window was obscured and such a condition would ensure that the privacy of existing and prospective residents would be maintained to acceptable standards.
26. However, my conclusions on that matter do not overcome my concerns relating to the effect on the living conditions of surrounding residents as a result of the introduction of two HMOs side by side which are likely to be occupied by students.

Conclusion and Recommendation

27. For the reasons given above, the proposal would be contrary to the aims of the relevant policies of the development plan and the Interim Policy in respect of the effect on the balanced mix of housing in the area and the likely effect on the living conditions of surrounding residents as a result of the proposed use. The impact of the proposal are not directly comparable to the likely effects of recently granted planning permissions and the existence of those permissions does not lead me to alter my recommendation. For all those reasons, having had regard to evidence before me, I recommend that the appeal should be dismissed.

Ifeanyi Chukwujekwu

APPEALS PLANNING OFFICER

Inspector's Decision

28. I have considered all the submitted evidence and the Appeal Planning Officer's report, and on that basis, I agree that the appeal should be dismissed.

Chris Preston

INSPECTOR