



Appeal Decision

Site visit made on 5 November 2019

by Sarah Manchester BSc MSc PhD MEnvSc

an Inspector appointed by the Secretary of State

Decision date: 11 December 2019

Appeal Ref: APP/X1355/W/19/3235421 Ingleside, Whinney Hill, Durham DH1 3BE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mrs Dunn against the decision of Durham County Council.
 - The application Ref DM/18/03736/VOC, dated 06 December 2018, was refused by notice dated 09 April 2019.
 - The application sought planning permission for part change of use from C3 (dwellinghouse) to C1 (holiday let) retaining the existing C3 use across the remainder of the property without complying with a condition attached to planning permission Ref DM/18/01731/FPA, dated 14 September 2018.
 - The condition in dispute is No 3 which states that: *The 4 rooms forming part of the C1 use hereby approved shall not be occupied for any purpose other than that falling within Class C1 of the Town and Country (Use Classes) Order 1987 as amended and shall not be occupied as permanent residential accommodation, or for any single continuous period of occupation in excess of 3 weeks in any 6 month period.*
 - The reason given for the condition is: *To maintain a balanced community and the character of the residential area in accordance with the aims of policy H13 of the City of Durham Local Plan and paragraph 91 of the NPPF.*
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The appeal relates to a property where planning permission was granted for part of the house to be used as holiday accommodation, subject to a condition restricting the period of occupancy of any of the rooms to a maximum of 3 weeks. The appeal seeks to vary the condition to remove this short-term occupancy restriction, whilst ensuring that the rooms do not become someone's permanent home.

Main Issue

3. The main issue is whether the condition is necessary and reasonable having regard to the balance and mix of the community and the character of the area.

Reasons

4. Ingleside is a substantial detached 2 storey dwelling on the outskirts of Durham. As a result of its proximity to the university, the area is popular with students and over 60% of properties in the surrounding area are in use as

Houses in Multiple Occupation (HMOs). To address the imbalance, in 2016 the Council introduced an Article 4 Direction which removes permitted development rights in respect of a change of use from C3 dwellinghouses to C4 HMOs.

5. Areas with high concentrations of HMOs and associated large and transient populations of unrelated adults are known to suffer adverse effects including in relation to noise and disturbance, community cohesion, delivery of local services and the character of the area. In this case, I visited the area during the day when the majority of residents would be expected to be away from their homes. Nevertheless, it was apparent that there is a large population of students with a high proportion of properties in HMO use. As a consequence of this, the street scene is characterised in part by a high level of on-street parking and a large number of bins for the disposal of waste.
6. The appellant was advised in 2017 that a change of use of the property from a dwellinghouse to a HMO would be unlikely to be supported on the grounds that it would further contribute to the imbalance in the mix of housing in the area. However, permission was granted in 2018 for the part change of use of the property to Class C1 use, which includes hotels, boarding and guest houses where no significant element of care is provided. Consequently, part of the property is currently in use as a dwellinghouse with a further 4 rooms in use as holiday accommodation.
7. Condition 3 prevents the holiday let rooms from being occupied on a permanent residential basis or for continuous periods longer than 3 weeks in any 6 month period. In this respect, while it does not prevent short-stay visitors from returning, it does prevent long-term occupation which would exacerbate the imbalance in the local community. At the time of the original application, the appellant had envisaged that the typical length of stay would be 1-3 nights, although sometimes extending to several weeks. The restriction imposed by Condition No 3 is therefore appropriate both to accommodate the proposed business model and to avoid detrimental impacts on the area.
8. The Accommodation Study submitted with the appeal emphasizes the need for an adequate supply and range of accommodation to meet the varying requirements of visitors to Durham, including tourists, corporate and university, and visiting friends and relatives. It notes that there is a strong year round demand for rooms, particularly at weekends between April to October and throughout the week in the peak summer months. On that basis, it appears that the property already contributes to the supply and range of accommodation required in the city.
9. The appellant has received enquiries about the possibility of longer-term letting which she has been unable to accommodate. However, there is nothing before me to suggest that those enquiries would all have resulted in bookings or that those individuals were unable to find suitable alternative accommodation elsewhere. Moreover, the enquiries received are not by themselves substantive proof that the proposal is necessary to meet an unmet or high demand for long-term letting rooms.
10. No information has been provided about the total number of enquiries received over the same time period, the proportion of those that were for long-term versus shorter term lets, the occupancy rates of the rooms or the durations of stay. In the absence of information about the current operation of the rooms, it has not been demonstrated that the business is not currently viable or that the

proposal would be necessary to sustain the business. Furthermore, the evidence does not demonstrate that the restriction places an unjustifiable or disproportionate financial burden on the appellant.

11. In the absence of evidence about the current frequency, intensity and duration of occupation of the rooms, I cannot be certain that the proposal would make any significantly greater contribution to supporting local services or facilities than the existing arrangement. Conversely, given that high concentrations of properties in HMO use result in unbalanced communities, additional long-term letting on a room only basis would be likely to exacerbate the imbalance in the community with consequent detrimental effects on the character of the area.
12. I appreciate that the property is not in HMO use and that it does not have communal facilities such as would be expected in a HMO. However, there is nothing before me to suggest that each room could not have basic facilities such as a kettle, toaster, fridge or microwave that would allow the making of hot drinks and some food. On that basis, I am not therefore persuaded that the effects of varying the condition would not to all intents and purposes replicate the effects of a HMO in this area.
13. While the target market may be professionals associated with the university, it would not be reasonable to restrict occupancy to those groups. Moreover, even if the rooms were let to lecturers and researchers, they would be likely to be resident during university term times. The proposal would therefore increase the already high population of unrelated adults at those times. This would further unbalance the composition of the local community and it would cumulatively contribute to detrimental effects on the character of the area.
14. In contrast, short term visitors to Durham are more likely to be intermittently present and spread throughout the year, including at weekends and during the summer months and university holidays when the area would be otherwise quieter. Such a pattern of short term stays would therefore be more readily assimilated into the area without the types of detrimental effects that would arise from long-term occupation.
15. Although the relevant development plan policies do not specifically refer to the use of conditions, the National Planning Policy Framework encourages planning authorities to consider whether otherwise unacceptable development could be made acceptable through the use of conditions. In this case, and given the particular issues in the area, the condition is clearly necessary to prevent adverse effects on the local community and the area.
16. I therefore find that the condition restricting the period of occupancy is necessary and reasonable in order to protect the balance and mix of the community and the character of the area. The proposed variation would conflict with the development plan, including Policies H13 and V6 of the City of Durham Local Plan Adopted May 2004. These require, among other things, that development should be appropriate to the area and that it should avoid significant adverse effects on the character of residential areas or on the amenities of residents.

Other Matters

17. I have been made aware of schemes elsewhere where permission has been granted for C1 uses without restrictions on occupancy. However, those

schemes appear to differ from the appeal scheme in a number of ways including in terms of the nature and size of the proposal and the surrounding context. They are not therefore directly comparable to the scheme before me, which must in any case be considered on its own merits.

18. The appeal property is in an accessible location, with regard to services and facilities and public transport. However, there are likely to be properties elsewhere that are similarly conveniently located and where longer-term letting would not give rise to adverse effects on the local community or the area. Therefore, the accessibility of the property is not a benefit of the scheme.
19. While the appellant has stated that she was unaware of the Council's intention to attach Condition No 3 in advance of the planning committee, she does acknowledge the need for appropriate conditions, and she has indicated that she may be willing to accept a restriction on occupancy. However, no amended proposals have been submitted to demonstrate an alternative scheme that would avoid the harm that I have found.

Conclusion

20. For the reasons set out above, the appeal should therefore be dismissed.

Sarah Manchester

INSPECTOR