
Appeal Decision

Site visit made on 15 January 2020

by T A Wheeler BSc (Hons) T&RP MRTPI

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

Decision date: 27 February 2020

Appeal Ref: APP/X1355/W/19/3239631

24 Nevilledale Terrace, Durham DH1 4QG

- 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/19/01418/FPA, dated 2 May 2019, was refused by notice dated 2nd September 2019.
 - The development proposed is the change of use of a six-bedroom dwelling (Class C3) to a small House in Multiple Occupation (Class C4) or 6 bed dwelling (C3).
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The use of the property as a Class C4 House in Multiple Occupation (HMO) has commenced. Although an appeal against an enforcement notice has been dismissed, no appeal was made under Ground A- that planning permission should be granted for the development forming the subject of the notice. This appeal seeks such planning permission.
3. At my site visit I did not enter the property however it is not suggested by either of the main parties that the current use of the property is anything other than a Class C4 HMO and I proceed on the basis that planning permission is sought for change of use from Class C3 to C4.

Main Issues

4. The property is situated in the Durham City Conservation Area (DCCA). There is no dispute between the parties that any alterations to the property as part of the change to HMO use have affected the character or appearance of the DCCA.
5. Therefore, the main issues are:
 - Whether the use of the property as a Class C4 HMO causes harm to the living conditions of the occupiers of neighbouring properties and the social cohesion of the area;
 - The living conditions of the occupiers of the HMO;

Reasons

6. The appeal property is a 2 storey¹ mid terrace property. It can be accessed via a front door on to a path which runs the length of the terrace and from the lane to the rear, Summerville, where there is a garage. To the opposite side of the lane are houses at Briardene. According to the submitted plans, the property has 6 bedrooms, a communal lounge, kitchen and dining room and wc/shower rooms at ground floor and first floor.

Living Conditions and Social Cohesion

7. The neighbouring property at no 25 is also in C4 use and that at no 23 is a C3 dwelling. Whilst the appellant has stated that the HMO use of the property is not exclusive to students, it is not suggested that the property is presently occupied other than as student accommodation.
8. The proposal should primarily be assessed against the adopted development plan policies. Whilst the City of Durham Local Plan² (CDLP) policies are out of date, they must still be accorded some weight. The Council also has an approved an Interim Policy on Student Accommodation³ (IPSA). This seeks to impose a 10% limitation on the total number of properties comprising HMOs within 100m of an application site. The 10% threshold is based on the findings of a report produced by the National HMO Lobby⁴ in 2008. The report identified 10% as the level at which the proportion of HMO in relation to other housing can result in communities becoming unbalanced and give rise to problems which can lead to a break down in community cohesion.
9. The appellant refers to an appeal decision⁵ where permission was granted for an extension to a HMO to support the argument that only limited weight should be given to the IPSA. The Inspector regarded CDLP Policy H9 as being more permissive than IPSA, given that the 10% limitation on properties within 100m comprising HMO use referred to in the IPSA does not form part of the CDLP Policy. Whilst that is the case, the IPSA is a more up to date document than the CDLP and represents the Council's settled position on the issue of student accommodation. It is akin to supplementary planning guidance and, as my colleague suggested, should not be taken as a moratorium on any proposed HMO uses within Durham City where the 10% threshold would be exceeded.
10. The Council approved the IPSA following public consultation and the 10%/100m threshold represents a level of student occupation which the Council considers to be benign in terms of effects on the housing mix in a given area. It is not disputed that the level of HMO use in the 100m radius of the property is around 30%, equating to 30 properties out of a total of 98. The addition of the appeal property to the situation would result in a small increase in the % figure⁶. That may be so, however it would contribute to a further imbalance in the housing mix compared to the threshold identified in the IPSA.

¹ With attic storey

² Adopted May 2004

³ Dated April 2016

⁴ National HMO Lobby – Balanced Communities and Studentification Problems and Solutions 2008

⁵ Appeal ref. APP/X1355/W/16/3160444 dated 9 February 2017 – 40 Hawthorn Terrace

⁶ The appellant states this would be 3% of student exemption properties and 1% of the total no. of properties

11. In the area around the appeal property the balance remains decisively in favour of C3 family use. The Council refers to an appeal decision⁷ where the Inspector took the view that whilst 39% of the properties within 100m of the property were in HMO use the addition of more C4 uses would have a harmful effect on the housing mix, making it less attractive as a place to live for families and other non-student residents. The circumstances of the case were different to this appeal in a number of respects, including that both a change of use of dwelling to HMO was proposed, and a new build unit. Nonetheless, the same principle applies in the current appeal that allowing further incremental changes of use from C3 to C4, even where the existing level of the latter is significantly above the 10% threshold⁸, can further imbalance the housing mix to the detriment of the social cohesion of an area.
12. The appellant contends that the approach in the IPSA, based on assessing the cumulative impact of HMOs, is at odds with the Framework, which only mentions residual cumulative impacts in relation to transport⁹. The contention is not factually correct as there are other references in the Framework to cumulative effects and impact. In any event the Framework should be read as a whole and the absence of reference to cumulative effects in paragraph 127 does not preclude the possibility that they can be an important material consideration.
13. I have limited information before me concerning the effects that the current HMO use of the property has on the nearby residents in terms of noise and disturbance. Given the inevitable changes in the students accommodated in the HMO from time to time, it is likely that such problems will fluctuate depending on the time of year and the lifestyle of the individuals. There is also no assurance that a household occupied by 6 persons from the same family could not give rise to some noise and disturbance from comings and goings from the property at unsocial hours. However, the propensity for such issues to arise is greater in the case of student HMO use because of the fragmented nature of such households. The IPSA states that there can be an adverse effect on the living conditions of residents where such use becomes dominant in an area. Policy H13 of the CDLP requires that these effects should not be significant, which they have the potential to be, depending upon the neighbourliness of the occupiers of the HMO.
14. A condition is suggested which would require a management plan to be agreed with the Council were I to be minded to allow the appeal. Such a management plan would require a point of contact to be maintained for residents to get in touch with the landlord when problems such as late night disturbance occurs. There is also a Durham University Code of Conduct for students living out of college, although I have not been provided with a copy. However a management plan would essentially be a reactive process which would be unlikely to be effective in controlling the behaviour of the occupiers of the HMO at all times. Even with the guidance provided in the Code of Conduct there is every likelihood that the use of the property as a student HMO would from time to time give rise to some problems of noise and disturbance.

⁷ Appeal ref: APP/X1355/W/19/3234988 dated 25 November 2019 – 36 The Hallgarth

⁸ The IPSA, Part A e) acknowledges that where an area already has such a high concentration of HMOs that the conversion of remaining C3 dwellings will not cause harm changes from C3 to C4 will not be resisted.

⁹ National Planning Policy Framework February 2019 paragraph 109

15. It would be possible to provide additional noise insulation within the property which could mitigate some noise transmission to those either side. However, that would not overcome any problems of noise and disturbance resulting from comings and goings from the property or activity in the garden area.
16. I therefore conclude on this main issue that the proposal would lead to harm to the living conditions of the occupiers of neighbouring properties and the social cohesion of the area, contrary to the requirements of Policy H9 of the CDLP which requires, amongst other things, that the conversion of houses to use as a HMO should only be permitted where there will be no adverse effects on the amenity of nearby residents, and should not result in concentrations of such uses, and the associated IPSA which complements local plan policy; and Policy H13 and paragraph 127 of the Framework which require that development should provide a high standard of amenity for residents.

The living conditions of the occupiers of the HMO

17. The plans which were originally submitted showed one bedroom that would be of insufficient size to not meet the Council's licensing standards. The drawings also showed no window to the dining room area. Amended plans have been submitted that address these points and on my site visit I observed that the dining room window was in situ.
18. The Council does not amplify the comments made in the planning officer report in relation to this main issue and suggests that should the appeal be allowed I attach a condition requiring the development to be carried out in accordance with the plans submitted with the appeal.
19. In the absence of further evidence on these points I conclude that the proposal, as amended, would provide satisfactory living conditions for the occupiers of the HMO and would comply with Policy H9 (1) of the CDLP and paragraph 127 of the Framework which require, amongst other things that development should provide a high standard of amenity for occupiers of the development.

Other matters

20. The possible effects of additional vehicles coming and going from the property is a local concern. Parking in Summerville is subject to a residents' permit scheme but it was evident on my visit that access can awkward at times, for example when delivery vans are in the lane. The appellant refers me to another appeal decision¹⁰ for the erection of a 6 bedroom HMO where the Inspector acknowledged that the demand for parking would not necessarily be less were the property to be say a family dwelling where adult children live at home. The circumstances of the two cases are rather different, however I agree with the point made by my colleague that it is possible that the needs of some families with older children living at home may also increase the competition for on-street parking.

¹⁰ Appeal ref: APP/X1355/W/17/3168117 dated 9 August 2017 – 97 Gilesgate

21. The County Durham Strategic Housing Market Assessment (SHMA) identifies that many younger persons are only be able to afford shared housing, further increasing the demand for HMOs. It acknowledges that there may be a continued and growing role for such accommodation and more conversions of the existing housing stock. The appellant suggests that the evidence base for the emerging County Durham Plan also supports the need for further HMO accommodation.
22. Copies of these documents have not been supplied, however it is clear that the SHMA relates to the whole of County Durham. It is evident from the IPSA the City of Durham has its own characteristics in terms of the demand for housing, in particular the provision of student HMOs and the extent to they form a significant part of the housing mix in some parts of the City. The appellant has not proposed any mechanism to limit the occupation of the dwelling to non-students and therefore there is no convincing reason to believe that the use of the property as a student HMO would make a significant contribution towards meeting the demand for shared housing within the wider County Durham area.
23. The appellant refers me to paragraph 61 of the Framework. This requires planning policies to address the needs of different groups including students, not planning decisions. It is therefore of limited relevance to the appeal.

Conclusion

24. The proposal would not make a significant contribution to meeting the wider demand for shared accommodation for younger people in County Durham, therefore I attach limited weight to this aspect as a positive factor.
25. There would be no adverse effect on the character and appearance of the DCCA, and acceptable living conditions would be provided for the occupiers of the HMO. These are neutral factors in the planning balance.
26. However, there would be harm to the living conditions of the occupiers of neighbouring properties and the balance of the housing mix to the detriment of the social cohesion of the area and these are sufficient reasons to dismiss the appeal.

Conclusion

27. For the reasons given the appeal is dismissed.

Tim Wheeler

INSPECTOR