



Appeal Decision

Site visit made on 28 January 2020

by Alison Scott BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 May 2020

Appeal Ref: APP/X1355/W/19/3241732

27 May Street, Durham DH1 4EN

- 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 and Ms Hughes and Pinan against the decision of Durham County Council.
 - The application Ref DM/19/02853/FPA, dated 5 September 2019, was refused by notice dated 1 November 2019.
 - The development proposed is the change of use from a dwelling (Use Class C3) to a small house in multiple occupation.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - The effect on housing in the area; and
 - The effect on the living conditions of neighbouring residents in respect of noise and disturbance.

Background and Policy

3. May Street consists of two rows of identical traditional Victorian terraced houses of red brick and slate roofs that are located on a hill with two detached houses at the top of the street. The appeal property is in C3 use occupied as a single family unit of three bedrooms.
4. In 2016, May Street, combined with other local streets was designated an Article 4 Direction (the Direction) preventing the permitted change of use of a C3 dwellinghouse to a C4 House in Multiple Occupation (HMO). A formal change of use application is required to permit the occupation of the appeal dwelling by 3 or more unrelated people as a C4 use.
5. Alongside the Direction, the Council approved an Interim Policy on Student Accommodation 2016 (IPSA) seeking a threshold of 10% of permissible conversions or new buildings of HMO's within a 100m radius of any application site, together with exceptions that also permit the change of use. These exceptions are defined as areas with such a high concentration of HMO's that a change of use would not cause further detrimental harm. This is explained as the proximity to other C4 uses where they might be likely to affect the

amenities of normal family life; any demonstrable difficulty in achieving a satisfactory sale; any other circumstances indicating the policy is causing severe personal hardship.

6. The aim of both the Direction and IPSA is to maintain a mix of accommodation types within the city, unless the exceptions apply, and in areas of high concentrations of HMO's, for these areas to become more mixed. The 10% of permissible conversions set by the IPSA is material in the consideration of this appeal and I apply substantial weight to this figure in its objective to support the Direction.
7. Changes of use to HMO's are permitted by Policy H9 of the Durham Local Plan 2004 (LP) provided the proposal meets 5 criteria : adequate parking; no adverse effect on the residential amenity; is in scale and character with area; it will not give rise to concentrations of subdivided dwellings to the detriment of housing stock; extensions will not unacceptably alter the character of the area. Also of relevance is Policy H13 of the LP which in summary explains that permission will not be granted for changes of use which have a significant effect on the character or appearance of residential areas or the amenities of residents.

Reasons

Housing Tenure

8. The IPSA acknowledges that HMO's can provide accommodation for a wide range of groups. I recognise the implications of Paragraph 61 of the National Planning Policy Framework (the Framework) to provide a range of housing needed for different groups. The IPSA accords with this broad aim.
9. The Council identify where the concentration of student accommodation as a housing tenure has intensified within parts of Durham City. In this particular case, the Council have relied on Council Tax figures within 100m of the appeal site as evidence of exempt Council Tax properties in order to understand the numbers of student and HMO properties here. The Council argues that their most up to date figures are of 1 October 2019, with approximately 47.3% of the properties exempt from Council Tax. I note the appellants' claim that Council figures can be inaccurate, however, the more up to date Council Tax figures demonstrates that there has been an increase in the numbers of properties paying Council Tax.
10. The Council have relied on other planning appeal decisions for HMO's within the area of the Direction whereby a 'tipping point' of 61.8% of properties within a 100m radius of an application site, is used as a rule of thumb where changes of use would cause no further detrimental harm. This is not disputed by the appellants, and both parties also recognise that HMO accommodation within 100m radius of an application site has been considerably higher, at up to 84%. Regardless of this, each individual case is assessed on its own site specific circumstances.
11. Information on more recent Council Tax records may explain that the number of exempt properties has declined, therefore the appellants argue that this gives an indication that the number of HMO's has decreased in the area since the original planning application was submitted. However, this is not substantiated by any evidence that these dwellings have indeed returned to

family occupation but could merely still be occupied by unrelated individuals who now pay Council Tax. I give this consideration limited weight.

12. Should this dwelling become converted to a C4 HMO use, this would reduce the number of C3's retained as family accommodation. The loss of another C3 family unit within the 100m radius of the appeal site would result in substantial harm by further imbalancing the range and variety of local housing stock. To this end it would not uphold the principle aims and objectives of the Direction and the IPSA to promote the creation of sustainable, inclusive and mixed communities and maintain an appropriate housing mix.
13. The evidence before me confirms the concentration of HMO's within 100m of the appeal site is approximately 47.3%. Increasing this figure would therefore be at odds with the aims of Policy H9 of the LP to prevent conversions to HMO's, with particular regard to the detriment of the local housing stock.

Living Conditions of neighbouring dwellings

14. The appellants have suggested a condition in respect of a property management plan as a means of mitigating noise and disturbance to the appeal property. It is claimed this would provide noise insulation and measures that would avoid harm to the living conditions of the occupiers of nearby dwellings. They also point to the University of Durham Code of Conduct for students to uphold as a means of controlling nuisance behaviours.
15. Whilst internal insulation may help to control internal noise levels, I am not convinced all mitigation measures would be enforceable and I consider such a condition would not meet the tests set out in paragraph 55 of the Framework.
16. In my judgement, I consider a household of four individuals living as an HMO would be likely to generate different activities to that of a three-bed conventional family home consisting of related individuals living together in a family unit with parental or guardian influence, even if adult children are in residence. There would be no parental or guardian influence living under the same roof of four individuals. Four unrelated individuals could live independent lives from one another, even if they are friends. There is no evidence presented to suggest that their friendship groups would be shared, or university courses, and that the amount of activity within the house would therefore be restricted as a consequence. On this basis, I find the change of use would give rise to living conditions that would adversely affect the amenities of nearby residents, thus in conflict with both Policies H9 and H13 of the LP.
17. Complaints regarding rubbish generation have been brought to my attention. At the time of my visit, refuse bins were arranged in an orderly manner against a retaining wall at the top of the street and there was no evidence of abandoned rubbish. Back lanes I observed were no different to any other typical back lane environment. I understand rubbish generation levels could intensify in an area of student population, and my visit is a snapshot in time. The appellants point out that bin storage is provided to the rear of the dwelling and agree to a waste management plan. Nevertheless, this would not outweigh the other harm I have identified in respect of the occupiers of nearby dwellings.
18. Bringing these matters together, I find a four bed C4 HMO would have the potential to generate more noise and disturbance than a C3 use, and the mitigation measures would not have reasonable control over all eventualities.

Therefore, the proposed change of use would conflict with Policies H9 and H13 of the LP that seeks, amongst other matters, to resist development that adversely affects residential amenity.

Other Matters

19. The appeal site is situated within the Durham Conservation Area (CA). This is characterised by the Norman Durham Cathedral which dominates the skyline of the city with Victorian terraced developments of uniformity of design and roofscape creating a strong and positive character to the residential parts of the City. Paying special attention to preserving or enhancing the character or appearance of the CA under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I consider the proposal would preserve the CA's character and appearance.
20. The appellants state they have their own personal family concerns pertaining to living within a student environment and have been exposed to unsatisfactory living conditions that has encouraged the submission of the proposal. The appellants point to the exceptions cited within the IPSA in this regard. Whilst I empathise with them, I have considered the development in the first instance in accordance with the statutory duty. The development has therefore been assessed against the Council's development plan to which I have found in conflict with its relevant policies. The IPSA does not form part of the development plan with which the proposal conflicts.
21. I have taken account of the appellants own personal circumstances for wanting to change the use to C4 although I do not consider them to amount to 'severe personal hardship'.
22. The appellants have provided only limited evidence in the form of a letter from one estate agent to suggest they would find it difficult to sell their property as a C3 use, and I apply limited weight to this evidence.
23. They argue in favour of HMO's and their need throughout Durham, and that by preventing such, the rental market would occur in less sustainable areas, or lead to a proliferation elsewhere. However, there is little evidence before me to substantiate this assertion.
24. There are some identified benefits to the proposal, particularly with regards to cycle parking, and available on-street car parking, and security measures. None of these are in contention by the parties, although these benefits do not outweigh the harm I have identified.
25. An appeal decision brought to my attention by the appellants relates to an HMO for a new build development. However, that appeal is not the same circumstances applied for in this case. Another appeal relating to a new extension to a dwelling house was to a property already in a C4 use. In other appeal cases where the previous inspectors have allowed changes of use because the percentage increase in C4 use was considered to make little difference to the area, was the individual view of the inspector, and is related to its own particular circumstances. All other appeals referred to do not share precisely the same circumstances as this appeal site. In any event, I have assessed this proposal on its own individual merits.
26. Despite the letters of support to the proposal, that the property would provide a high standard of living accommodation with acceptable rooms sizes, and

although it would still remain in residential use, this would be as an HMO and not used as conventional family accommodation, none of these matters persuade me in favour of the development.

27. I have read the appellants evidence that house prices in this area increase when a change of use from C3 to C4 occurs. However, the protection of private interests such as property values is not a consideration I can apply weight to.

Planning Balance

28. The Council have demonstrated that the concentration of HMO's within 100m of the appeal site is well above the level set by the IPSA. In the final balance, the loss of C3 family accommodation and the increase of another HMO would detrimentally intensify the concentration of HMO's within this specific area. It would undermine the purpose of the Direction to redress the concentration of HMO's to create a housing mix within the area. In addition, I have found that a C4 use would substantially compromise the living conditions of local residents through increased noise and disturbance. It would therefore conflict with the relevant policies of the development plan that seeks to resist development that adversely affects residential amenity. No material considerations lead me to determine otherwise in accordance with the development plan.

Conclusion

29. I have taken account of all matters before me and conclude the appeal should be dismissed.

Alison Scott

INSPECTOR