
Appeal Decision

Site visit made on 9 June 2020

by William Walton BA MSc Dip Env Law LLM CPE BVC MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd July 2020

Appeal Ref: APP/X1355/W/20/3245601

18 Mavin Street, Durham DH1 3AU

- 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 Roberto Pitallis against the decision of Durham County Council.
 - The application Ref DM/19/03176/FPA, dated 4 October 2019, was refused by notice dated 5 December 2019.
 - The development proposed is described as the change of use of the dwelling house (Use Class C3) to a small house in multiple occupation (Use Class A4).
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Decision

1. I dismiss this appeal.

Procedural Matter

2. The appeal dwelling is located within the Durham City Centre Conservation Area. In making my determination I have had regard to the statutory duty under s.72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area.
3. The proposed development includes the installation of a small window. I note that there is a discrepancy between the position of the new window given in the plans (1st floor front elevation) and the Design and Access / Heritage Statement (1st floor rear elevation). In assessing and determining this appeal I am taking the plans as giving the correct information.

Main Issues

4. The main issue is the effect of the proposed development upon the balance of Use Class C3 family housing (C3) and Use Class C4 HMO dwellings (C4) within the area and upon community cohesion.

Reasons

5. The appeal property is a traditional 2-storey, red brick, terraced dwelling containing 2 bedrooms located in Mavin Street close to the centre of Durham. Mavin Street is a narrow, short, uneven dead-end road off Hallgarth Street with a dog-leg turn about a third of the way along giving the neighbourhood a very secluded quality.
6. The appeal proposal comprises the change of use of the property from C3 family housing to C4 house in multiple occupation and the internal

- reconfiguration to provide a third bedroom. This would result in the dwelling containing 3-single bedrooms intended for occupancy by 3 people.
7. The property has been used as a student-let since 1997. Council tax bills for each year from 2011/12 onward, evidencing that the property has been let to students and therefore exempt from payment, have been supplied by the Appellant. Currently, the property is occupied by 2 students on an assured shorthold tenancy agreement.
 8. Saved Policy H9 of the City of Durham Local Plan 2004 (LP) permits the change of use from C3 family residential to C4 house in multiple occupation where, amongst other things, the development would not adversely affect the 'amenity' of neighbours and where it would not be detrimental to the range of housing stock available for occupation. Saved Policy H13 of the LP allows a change of use where this does not have a significant adverse effect on the 'amenity' of the area.
 9. An Interim Policy on Student Accommodation 2016 (Interim Policy) seeks to give effect to Policy H9 of the LP. It was adopted following public consultation and amendment. Consequently, although not part of the Development Plan, I attach considerable weight to this policy document.
 10. The Interim Policy states that change of use from C3 to C4 will not usually be permitted where more than 10% of the properties within 100 metres of the application site are already homes in multiple occupation or used as student accommodation and exempt from council tax. However, the Interim Policy goes on to state at Part E that changes of use will not be resisted if the area has such a high concentration of C4 HMOs that the conversions of the remaining C3 dwellings would not cause detrimental harm.
 11. The number of properties within either 100 metres of the dwelling or within Mavin Street used as HMOs is far in excess of the 10% threshold set out in the Interim Policy. The Council contends that 46.3% of the properties within 100 metres are C4 whereas the Appellant contends that the more appropriate area is Mavin Street, within which 86.5% of properties are C4.
 12. One appeal arose from an enforcement notice against a change of use from C3 to C4 and does not engage with the issue of geographical concentration levels.¹ One appeal decision could not be located and was not provided by the Appellant.²
 13. In 4 of the appeals, where the level of HMO dwellings within 100 metres was over 60% (Peartree Cottages, High Wood View, Durham 61.8%³, 6 Waddington Street, Durham 70-84%⁴, 24 Mistletoe Street, Durham 78.9%⁵ and 10 High Wood View, Durham 70% or higher⁶) the Inspectors concluded that granting planning permission for one further C4 unit would be of negligible significance. Further, I note that, according to the Appellant, the Inspector in the appeal APP/X1355/W/16/3160444 (site address unknown) also found that the level of C4 properties within the 100-metre radius of that site was 71.4-79%.

¹ APP/X1355/C/17/3169798

² APP/X1355/W/16/3160444

³ APP/X1355/W/17/3165827

⁴ APP/X1355/W/16/3161707

⁵ APP/X1355/W/19/3220653

⁶ APP/X1355/W/19/3222572

14. The three appeals that are potentially the most relevant are those at 97 Gilesgate, Durham⁷, 36 The Hallgarth, Durham⁸ and 18 Boyd Street, Durham⁹ where the levels of C4 use within 100 metres were 23.4-25.5%, 39.2% and 46% respectively, so lying in this middle ground area between very low (10% or less) and very high HMO presence (60% and over).
15. In the first case the Inspector held that, since the level of C4 housing was falling and that the construction of a new dwelling would not affect the absolute numbers of C3 properties within 100 metres, the proposal would not adversely affect housing mix or community cohesion. However, the level of C4 use is considerably below the level for the appeal in front of me.
16. In the latter two cases the Inspectors found that the level of C4 use was such that resisting further incursion was important to maintaining community cohesion. Both appeals were refused. Because the levels of properties in C4 use within 100 metres in these two cases is similar to that in the current appeal case, both decisions are highly relevant to my decision.
17. More than 80% of properties on Mavin Street are currently HMOs or in student use. However, the 100-metre radius is a more suitable geographical denominator by which to measure the level of C4 properties than use of 'the street' since the latter would turn on the highly variable dimension of the length of the road and the number of dwellings along it, rendering it of limited use.
18. The use of the 100-metre approach in the Interim Policy is compatible with Policy H9 of the LP which seeks to protect the 'amenity' of nearby residents and avoid concentrations of sub-divided dwellings to the detriment of the range and variety of the local housing stock. Thus, both these components of Policy H9 have an explicit spatial dimension ('nearby' and 'local') which the Interim Policy seeks to quantify in order to give more meaningful expression to.
19. It follows from this that the Council's decision to approve an application for a change of use from C3 to C4 at 13 Mavin Street, whilst refusing that submitted for the same development at the same time at 18 Mavin Street, was not incorrect. It is, instead, a sensible way to implement a policy that recognises that a householder's day to day social interaction with others is often dependent upon distance and not just street address. Whilst it is accepted that Mavin Street is secluded that does not mean that it should be treated as a student-only enclave.
20. I am not able to comment in any detail upon the Council's decision to grant permission for a change of use at Wynyard Street (reference DM/19/02175/FPA) since the officer's report and other supporting documents have not been provided. The Appellant states that the Officer's Report made specific reference to a figure of 92% of HMOs within the street but acknowledges that the 100-metre level of HMO housing was higher than in the case before me.
21. Policy 16 of the emerging Durham Local Plan (DLP) refers to the 'area' rather than to the 100-metre criterion when considering proposals for change of use to C4. But as the full text of this emerging policy in the DLP has not been

⁷ APP/X1355/W/17/3168117

⁸ APP/X1355/W/19/3234988

⁹ APP/X1355/W/19/3236839

provided I cannot properly assess its contents. Moreover, since the DLP has not been adopted, and might yet be subject to further amendment prior to adoption, I only give it limited weight.

22. As the subject property is occupied by students a decision to dismiss this appeal would not result in any change to the percentage of dwellings within the 100 metres occupied by families or others not in university education. Nevertheless, the extra bedroom would probably be occupied by a student, further increasing the numbers of students within the 100-metre radius and the street. Within the 100-metre radius there would be mini clusters of C4 properties with C3 occupants having HMO properties on either side. However, it is the level of HMO housing within the 100 metres as a whole that is the most relevant measure in the application of the Interim Policy.
23. Whilst most students are no doubt well behaved most of the time it is generally accepted that some can be an occasional source of rowdiness, which some permanent residents may consider to constitute anti-social behaviour. However, within the context of a dead-end, secluded street, there is likely to be a fear of more serious wrongdoings amongst the C3 dwelling occupants brought about by its near total depopulation during the long university vacations. By changing the use of the subject property and so reducing the likelihood that it will be one day be occupied year-round by a family or a young couple this possible fear is only likely to be increased.
24. Thus, I do not consider that the level of C4 use within 100 metres of the appeal property has reached the point where any further loss of C3 dwellings will make little overall difference to the balance of housing provision or the level of community cohesion. The development proposal would exacerbate the over-concentration of C4 properties within the 100-metre radius of the site. Consequently, it would fail to accord with Policies H9 and H13 of the LP which seek to protect areas against an over concentration of C4 uses and maintain community cohesion.
25. Furthermore, the proposal would fail to comply with the C4 threshold in the Interim Policy. Finally, it would fail to accord with Paragraph 91 of the National Planning Policy Framework which seeks to promote the development of inclusive communities.

Other Matters

26. I note that the development proposal would not generate any parking problems and would provide for the satisfactory living conditions of future occupants. However, these considerations have no more than a neutral effect on my findings on the levels of H4 concentration and attendant community cohesion issues.

Conclusion

27. Consequently, the appeal should be dismissed.

William Walton

INSPECTOR