

Appeal Decision

Site visit made on 8 June 2020

by Graeme Robbie BA(Hons) BPI MRTPI

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

Decision date: 11 August 2020

Appeal Ref: APP/X1355/W/20/3249227

29 Lawson Terrace, Durham DH1 4EW

- 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 Judith Thompson against the decision of Durham County Council.
 - The application Ref DM/19/03408/FPA, dated 22 October 2019, was refused by notice dated 22 January 2020.
 - The development proposed is change of use from single dwelling house C3 with two bedrooms to HMO C4 with 4 bedrooms.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for an award of costs was made by Mrs Judith Thompson against Durham County Council. This application is the subject of a separate decision.

Procedural Matters

3. The Council have usefully summarised the progress of the emerging County Durham Plan (CDP), concluding that until the Inspector's final report has been received, no weight should be afforded to higher thresholds¹ to HMO proportions set out in the CDP. The appellant has not sought to dispute this approach and I have not been presented with any further evidence to persuade me otherwise. I have determined the appeal accordingly.

Main Issues

4. The main issues are the effects of the proposed development on:
 - The balance and mix of local housing stock; and
 - The living conditions of occupiers of nearby residential properties, with particular regard to noise and disturbance.

Reasons

Housing balance and mix

5. Policy H9 of the City of Durham Local Plan (CDLP) concerns the sub-division or conversion of houses for flats, bedsits or for multiple occupation (HMO), stating that subject to a range of criteria (1) to (5) such proposals will be permitted.

¹ Having previously been subject to modifications and further consultation thereon (paragraph 12, LPA Statement of Case)

CDLP policy H13 states that proposals for changes of use will not be granted if they have a significant adverse effect on the character or appearance of residential areas, or the amenities of residents within them. The LP is now of some age but LP policies H9 and H13 and the Council's adopted Interim Policy of Student Accommodation (IPSA), are broadly consistent with the National Planning Policy Framework's (the Framework) aims of addressing the housing needed for groups of people with specific housing requirements².

6. Of CDLP policy H9's five criteria there is no suggestion by the Council that the proposal would fail to satisfy CDLP H9(1) or (5). Of direct relevance to the proposal is whether or not the proposal would result in concentrations of sub-divided dwellings to the detriment of the range and variety of local housing stock (4), whether or not the proposal would adversely affect amenities of nearby residents (2) or is in scale and character with its surroundings and neighbouring properties (3).
7. The Council adopted the IPSA in April 2016, the aims of which are to promote the creation of sustainable, inclusive and mixed communities and to maintain an appropriate housing mix. Such aims are broadly consistent with the Framework's approach to housing. In order to achieve this aim, it states (Part A: HMOs) that any change of use from any use to a C4 HMO will not be permitted if more than 10% of the total number of properties within 100 metres of the application site are already in use as HMOs or student accommodation exempt from council tax charges. Additionally, in all cases, proposals will only be permitted where the proposal accords with the requirements of points (a) to (d). It goes on to state at (e) that such changes would not be resisted where an area already has such a high concentration of HMOs that the conversion of remaining C3 dwellings will not cause further detrimental harm.
8. The proportion of HMO or student accommodation exempt from council tax charges in the surrounding area is, as with other appeals referred to³, subject to a range of figures that have been quoted by the main parties. What is clear however is that all figures, whether for postcode area or, more pertinently, properties within 100 metres of the appeal site, exceed the 10% threshold figure set out in the IPSA. The 10% level is described by the Council as a 'tipping point'⁴ in the context of balance between HMOs and family housing.
9. Part A: HMOs of the IPSA is clear that changes of use to HMOs will not be permitted if more than 10% of the total properties within 100 metres of the [application] site are already in use as HMOs or student accommodation exempt from council tax charges. Adopting the Council's figures of 68.9%⁵, the proportion of properties within 100 metres of the appeal site clearly and significantly exceeds the 10% figure referred to by the Council as a 'tipping point'. The proposal would, in these terms, be contrary to the IPSA which informs CDLP policy H9(4) in terms of concentrations of sub-divided dwellings.
10. IPSA Part A: HMOs(e) is also clear however that such changes of use will not be resisted where there is 'already such a high concentration of HMOs that the conversion of remaining C3 dwellings will not cause further detrimental harm'.

² Framework paragraphs 59 and 61

³ Appellant's Full Statement of Case - Appendix 4: Appeal Decisions and LPA Statement of Case - Appendices C - H

⁴ IPSA paragraph 10, which also sets out the derivation of the term and threshold figure

⁵ Paragraphs 28 and 42, LPA Planning Services Committee Report

Neither the IPSA nor CDLP policy H9(4) (or supporting text) quantify what constitutes a 'high concentration' of HMOs but the IPSA does give some examples of factors⁶ to which regard will be had in considering the effect of further proposals in areas of already high concentration.

11. As the Council and interested parties⁷ point out, an HMO figure of 68.9% implies that almost a third of properties (31.1%) are not HMOs. A range of appeal decisions^{8,9} have been referred to by both main parties in seeking to support their respective cases which refer to HMO threshold figures both above and below the relevant percentage figure in the current instance.
12. It is acknowledged by the appellant that neither of the houses adjoining the appeal property are registered as HMOs¹⁰. Although anecdotally it is stated that one of the adjoining properties, and all but three of the remaining properties in the street, are occupied as small HMOs, resulting in approximately 88% of properties in the street being in HMO use, I have not been presented with any substantive evidence to support these anecdotal references. However, nor have the Council provided further evidence to discount such claims.
13. Nevertheless, despite a high percentage figure for registered HMOs and properties occupied as HMOs which clearly exceeds the Council's 10% threshold, at least one in three properties within 100 metres of the appeal property remain occupied as a non-HMO on the basis of the available evidence. Furthermore, the presence of at least one, and perhaps both, adjoining properties being occupied as non-HMO family housing confirms the broad pattern of the available figures and suggests that there remains more than just a token non-HMO community within Lawson Terrace.
14. The loss of a single family dwelling would not, of itself, significantly alter the proportion of HMO properties within a 100 metre radius of No. 29. It would, however, perpetuate the circumstances which CDLP policy H9 and the IPSA seek to limit and the imbalance in occupation type that they seek to resist, whilst also fragmenting an existing cluster of non-HMO residential properties. An additional property occupied as an HMO within the street would incrementally tip the balance further towards HMO proliferation. It may not be entirely reasonable to expect CDLP policy H9 and the IPSA to reverse the growth in numbers of HMO properties, but they at least introduce checks and balances into the process to slow further shifts to HMOs.
15. In this instance, I do not consider the split between HMOs and single family residential dwellings to be so heavily skewed towards the former that a further HMO would not cause harm to the balance necessary to ensure a socially cohesive and functioning local community environment. Various appeal decisions referred to me by both parties cite HMO-percentage figures above and below the relevant proportion in this instance. I am particularly mindful of the appellant's reference to a proposal at High Wood View in Durham¹¹ where a figure around 70% was regarded sufficient to engage the IPSA exception. However, the IPSA also goes on to set out a range of factors to consider,

⁶ IPSA paragraph 14

⁷ City of Durham Parish Council (17.06.20) – paragraphs 7 and 22

⁸ Appendix 4 – Appellant's 'Full Statement of Case'

⁹ Appendices C – H – LPA 'Statement of Case'

¹⁰ Paragraph 14.1 Appellant's Statement of Case

¹¹ APP/X1355/W/19/3222572

including the proximity of existing C4 units and also therefore non-C4 (ie, C3) units.

16. Thus, not only is the existing split significantly above the 10% threshold, the proposal would further shift the split further in favour of HMO / C4 properties and fragment the existing pattern of C3 family residential homes. The proposal would fail to support a strong, vibrant and healthy community in and around Lawson Terrace and would, for the reasons I have set out, be at odds with CDLP policy H9 and the IPSA which aims to inform CDLP policy H9. Together, they seek to avoid concentrations of sub-divided dwellings to the detriment of the range and variety of local housing stock, and the social and community issues that arise from areas, particularly where student HMOs dominate, where occupancy levels drop outside term time. The proposal would therefore also fail to sustain sufficient housing for different groups as sought by the National Planning Policy Framework (the Framework).
17. I have taken account of the appellant's thought processes in relation to the genesis of the appeal proposal and can empathise with the appellant's bond with the appeal property. However, although mindful of the reasoning set out¹², I am not persuaded that it has been adequately demonstrated that the property could not continue to be occupied as a residential family property, or that the appellant's continued ownership of it amounts to the sort of circumstances cited as examples in the IPSA of invoking the IPSA's exception.

Living conditions

18. The property is currently a modest two-bedroomed terraced property providing limited family residential accommodation. The proposal, which includes provision to convert the roof space to create two further bedrooms, would double the bedroom count of the property. In the case of proposed occupation of the appeal property as a student-exempt HMO, that could mean up to four individuals living independently of each other without, as noted in one of the many appeals referred to me¹³, the moderating influence of parental or guardian oversight.
19. Whilst it may be possible that occupation of such student HMOs can be formed around friendship groups from courses, sporting activities and societies or outside employment, it would not be possible to guarantee that to be the case. Even if there was a likelihood of accommodation groups forming on that basis, it does not necessarily follow that they would act as homogenous groups at all times. Wider circles of friends and acquaintances are likely amongst up to four individuals outside a family-unit and so comings and goings and social gatherings would be likely to reflect such a dynamic. Nor am I persuaded that HMOs provide the same scope for effective communal management in the manner that purpose-built student accommodation provides.
20. As such, it is unlikely that the resulting pattern of occupation, and the comings and goings associated with it, would be equivalent to those likely to arise from occupancy by a family unit. Nor am I persuaded that a single family occupancy with older or adult children residing together would display similar characteristics to a group of up to four unrelated students without parental guidance or influence.

¹² Appellant's 'Statement in Support of Planning Application....'

¹³ APP/X1355/W/19/3241732

21. Although the appellant seeks to suggest that the limited incidences of anti-social behaviour complaints in Lawson Terrace suggest that such concerns are over-stated by the Council, I am mindful of the Council's counter-argument citing figures for not just Lawson Terrace, but also neighbouring streets of Laburnum Avenue, Hawthorn Terrace and Mistletoe Street. In those instances, over 30 incidents were noted, with a term-time spike around the start of the academic year in October and November. Incidences may well reduce after that spike, but they suggest a correlation between student occupation and potential for activities causing noise and disturbance.
22. 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.
23. Whilst internal insulation and management plans may help to control internal noise levels, I am not convinced that they could adequately cover all eventualities arising from HMO use of the appeal property. Thus, use of external spaces and the comings and goings from new residents seeking to establish new or altered friendship groups, particularly at the beginning of a new academic year, would contribute to the erosion of amenity and residential living conditions.
24. It has been suggested that, as an alternative to the appeal proposal, the conversion of the roofspace could provide either enhanced and additional family floorspace or that only one additional HMO bedroom (rather than two). However, as family accommodation with parental guidance and oversight provided to older or adult resident children, I do not consider those occupation patterns to be comparable to that proposed in this instance. In any event, such a situation is not what was before the Council nor is it the one which falls to be considered in this appeal. 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

25. The conversion of the roof space of the property to create an additional two dwellings would be achieved without external extension. The presence of rooflights within the roof front and rear slopes would not be unusual and would not harm the character or appearance of the property. However, these are neutral factors and do not outweigh the harm that I have identified above.

Conclusion

26. For the reasons set out, and having considered all other matters raised, I conclude that the appeal should be dismissed.

Graeme Robbie

INSPECTOR