



Appeal Decision

Site visit made on 29 June 2020

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 September 2020

Appeal Ref: APP/X1355/W/20/3251179

35 Hawthorn Terrace, Durham DH1 4EL

- 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 Nick Swift against the decision of Durham County Council.
 - The application Ref DM/20/00235/FPA, dated 24 January 2020, was refused by notice dated 24 March 2020.
 - The development proposed is change of use from existing 6 bed small HMO (use class C4) to 8 bed large HMO (use class sui-generis) including erection of single-storey extension to rear, new window to gable elevation and rooflights to accommodate a loft conversion.
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Decision

1. The appeal is allowed and planning permission is granted for change of use from existing 6 bed small HMO (use class C4) to 8 bed large HMO (use class sui-generis) including erection of single-storey extension to rear, new window to gable elevation and rooflights to accommodate a loft conversion at 35 Hawthorn Terrace, Durham DH1 4EL in accordance with the terms of the application, Ref DM/20/00235/FPA, dated 24 January 2020, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan (Dwg No 1098-02); Proposed Plans & Roof Plan (Dwg. No.1098-03 A); and Proposed Elevation & Section (Dwg. No.1098-04 A).
 - 3) No development shall commence until details of the materials to be used in the construction of the external surfaces of the extension hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

Application for costs

2. An application for costs was made by Nick Swift against Durham County Council. This application is the subject of a separate Decision.

Procedural Matter

3. During the course of this appeal, the Examiner's final report has been issued in respect of the emerging Durham City Neighbourhood Plan 2020-2035 (NP). The main parties and the City of Durham Parish Council have been given the opportunity to comment on this matter and I have taken account of the comments made.

Main Issues

4. The main issues are:
- The living conditions of nearby residents with regards to noise and disturbance; and
 - The living conditions of future residents of the proposal with regards to amenity space.

Reasons

Living Conditions - Noise and Disturbance

5. The appeal site is located at the end of a terrace of residential properties, which is characteristic of this area of Victorian terraces. The site is in use as a 6-bedroom house in multiple occupation (HMO) and the proposal would increase this to 8 bedrooms.
6. The Council contends that additional residents would create noise and disturbance issues in an area that is already highly populated with students but retains an appropriate level of other residential uses. However, whilst the proposal would lead to more comings and goings and other activity associated with the site, there is no substantive evidence that this would be of a degree that would be unduly harmful to nearby properties. The evidence suggests that the adjoining property is an HMO and that there are a significant number of HMOs within the vicinity of the site. Within that context, I do not consider that the proposed level of occupation would lead to a material change to the area in respect of noise and disturbance.
7. In support of its stance, the Council has referred to an appeal decision¹ for an extension to an HMO which was dismissed with reference to an increase in pedestrian footfall. However, based on the evidence before me, this decision related to a proposal in a residential cul-de-sac which had a lower concentration of student properties compared to the area of the appeal site.
8. I acknowledge that an incremental intensification of HMOs and similar student accommodation can lead to issues in relation to noise and disturbance. I have been referred to percentage figures for the proportion of student properties in a 100m radius, the postcode and the wider area. This evidence indicates that the proportion of HMOs and student accommodation in the area of the appeal site is relatively high. Within that context, it has not been demonstrated that the limited increase in residents which would result from the appeal proposal would lead to a material increase in noise and disturbance.

¹ APP/X1355/W/19/3232557

9. Drawing the above together, I conclude that the proposal would not harm the living conditions of nearby residents on the basis of the characteristics of the area and the limited proposed increase in residents.
10. In its decision the Council refers to the adopted Interim Policy on Student Accommodation (IPSA), although the Council also states that this should carry less weight than adopted development plan policies. The IPSA sets out that changes of use to HMOs and extensions will not be permitted if more than 10% of properties within 100m of the site are in use as HMOs or student accommodation. Part A(e) of the IPSA also sets out that such proposals would not be resisted in an area with a high concentration of HMOs and which would not cause further harm, although this relates solely to the conversion of C3 dwellings to HMOs and is therefore not applicable to the appeal proposal. The proposal is in an area which exceeds the threshold in the IPSA and it is of a form which would not meet the exception of Part A(e). As such the proposal would conflict with the IPSA.
11. I have found that the proposal would not lead to unacceptable harm to the living conditions of nearby residents. Therefore, the proposal would not conflict with the amenity considerations of Policies H9 and H13 of the City of Durham Local Plan 2004 (the LP). The proposal would also not conflict with the National Planning Policy Framework (the Framework) in respect of the standard of amenity for existing and future residents in the area.
12. I have had regard to the IPSA as a material consideration. However, the IPSA is more restrictive than the policies of the adopted development plan referred to by the Council in its decision. In the circumstances of this appeal, I give the conflict with the IPSA on this main issue limited weight and this does not outweigh the significant weight I give to the compliance of the proposal with the policies of the adopted development plan and the Framework.

Living Conditions - Amenity Space

13. The appeal site includes a rear yard which provides the private external amenity space for residents. I saw that this rear yard was of a limited size and quality due to the degree of enclosure by adjacent buildings as well as boundary walls.
14. The proposal includes an extension which would project into the yard further reducing its size. The number of residents would also be increased.
15. However, the extension would enclose an area of the rear yard which is already compromised by the high building walls that enclose it on three sides, giving this area a dark and dingy character. Furthermore, by moving the lounge and dining area to the rear of the building, the proposal would provide a much better relationship between the internal communal areas of the dwelling and the external amenity space. On that basis, I conclude that the proposal would provide suitable external amenity space for residents despite the reduction in area. Furthermore, the yard would also provide suitable space for cycle and bin storage.
16. I conclude that due to its layout and design, the proposal would not harm the living conditions of future residents of the development with regards to amenity space. The proposal would therefore not conflict with policies H9 and H13 of the LP with regard to the provision of adequate amenity areas and the

amenities of residents. The proposal would also comply with the Framework in respect of the standard of amenity for existing and future users of the property. Furthermore, the proposal would not conflict with the advice of the IPSA with regards to amenity issues as well as cycle and bin storage.

Other Matters

Emerging Development Plan Documents

17. I have been referred to the emerging **County Durham Local Plan** (ELP), which is undergoing examination and on which consultation on the proposed 'Main Modifications' has recently been undertaken. Of particular relevance to this appeal is Policy 16 of the ELP which relates to HMOs amongst other things. This policy, as modified, sets out that extensions to HMOs would not be resisted where there is a concentration in excess of 90% of Council tax exempt properties and where this is already having an unreasonable impact on current occupiers.
18. The Council has confirmed that the appeal site is in the Viaduct area, and the supporting text for Policy 16 indicates that this area exceeds the specified 90% concentration threshold. The Council has also referred to a history of noise complaints associated with HMOs within this street, which indicates that the appeal proposal is in an area affected by unreasonable impacts. On that basis, the proposal would comply with Policy 16.
19. However, although the ELP is at an advanced stage, I have not been provided with details of unresolved objections to this particular Policy. On that basis, I give the compliance with Policy 16 no more than limited weight in favour of the proposal. This reflects the conclusions of the Council and the appellant on the weight to be given to this Policy.
20. My attention has also been drawn to the emerging **City of Durham Neighbourhood Plan** (NP). As stated previously, the Examiner's final report on the NP has been issued and it sets out recommended changes and the deletion of some policies. At this stage weight can start to be given to the NP for decisions in line with Section 70(2) of the Town and Country Planning Act 1990 (as amended), which provides that regard must be had to a post-examination draft neighbourhood development plan, so far as material to the application, and paragraph 48 of the Framework.
21. Policy D3 of the draft NP relates to student accommodation in HMOs. The proposal would conflict with this Policy as it is within an area which exceeds a 10% threshold of residential units in use as HMOs or student accommodation. However, the Examiner has recommended that Policy D3 should be deleted. On that basis, whilst the NP should carry some weight, the recommended deletion of Policy D3 means that the identified conflict with this policy should not be afforded any significant weight in the overall planning balance. This is therefore not a determinative matter in this appeal.

Durham City Conservation Area

22. The appeal site is within the Durham City Conservation Area (CA). Some concerns have been expressed in relation to the proposed use of UPVC windows. However, I saw that the existing windows at the property are UPVC and within that context the proposal would have a neutral effect on the appearance of the CA. Other proposed alterations are also of such a scale or

design which would not harm the character or appearance of the CA. I note that this reflects the conclusions of the Council on this matter.

Conditions

23. The Council has suggested a number of planning conditions which I have considered against the advice in the Planning Practice Guidance. As a result, I have amended some of the conditions for clarity. In addition to the standard 3 year time limitation for commencement, I have imposed a condition requiring the development to be carried out in accordance with the submitted plans in the interests of certainty.
24. A condition requiring the approval of materials is appropriate in the interests of character and appearance. These details should be submitted and approved at the pre-commencement stage as they relate to details which need to be established before the start of building operations.

Conclusion

25. Drawing the above together, I conclude that the proposal would comply with the policies of the adopted development plan, and there are no material considerations of such weight which indicate that the proposal should be determined otherwise than in accordance with that plan.
26. For the reasons given above I conclude that the appeal should be allowed.

David Cross

INSPECTOR