



Appeal Decision

Site visit made on 14 December 2020

by E Symmons BSc (Hons) MSc MArborA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 December 2020

Appeal Ref: APP/X1355/W/20/3255962

1 Wearside Drive, Durham DH1 1LE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Chris Tunstall against Durham County Council.
 - The application Ref DM/20/01018/FPA, is dated 19 April 2020.
 - The development proposed is for a change of use from C3 Residential Property to C4 Student House in Multiple Occupation (HMO) for 5 Students.
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Decision

1. The appeal is allowed and planning permission is granted for a change of use from C3 Residential Property to C4 Student House in Multiple Occupation (HMO) for 5 Students at 1 Wearside Drive, Durham DH1 1LE in accordance with the terms of application reference DM/20/01018/FPA, dated 19 April 2020 subject to the following conditions.
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following plans: Site Location Plan, Ground Floor Plan and First Floor Plan, all received by the Council on 20 April 2020.
 - 3) Notwithstanding the approved Ground Floor Plan and First Floor Plan that illustrates the dwelling accommodates a 5-bedroom HMO, no further works or internal room subdivisions shall take place that would result in the creation of a sixth bedroom.

Preliminary Matters

2. Due to the Coronavirus restrictions and subsequent uncertainty regarding the date that the application would be brought before Committee, this appeal against the Council's failure to give notice of a decision within the prescribed period is before me. The main issues in this case, are set out below and reflect the principal matters that were considered in the Council's statement of case
3. Since the appeal was submitted, the County Durham Plan 2020 (CDP) has been adopted. Saved policies and the Interim Policy on Student Accommodation have therefore been superseded. I have considered this decision within the context of the CDP.

4. The Neighbourhood Plan (NP) has been examined and a report issued with the amended plan expected to reach referendum in May 2021. The plan therefore carries significant weight within this decision. However, the examiner's recommendations are to remove Policy D3 which relates to HMOs and this policy carries little weight within this decision.

Main Issues

5. The main issues are:

- whether the principle of a change of use is acceptable or not;
- whether the proposal affects the character and appearance of the City Centre Conservation Area (CA);
- whether the proposal would harm the living conditions of neighbouring occupiers; and
- whether the proposal affects highway safety.

Reasons

Principle of a change of use

6. Concern has been raised that there is a surfeit of student accommodation in the area and this proposal will lead to a loss of a balanced community, family homes and also community spirit. To achieve mixed and balanced communities, Policy 16 of the CDP has a presumption against granting permission for HMOs where the total number of residential units within 100 metres of the application site exceeds 10%. At the time the application was made, this figure stood at 5.7%. The accuracy of this figure has been questioned due to the alleged presence of unlicensed units causing under-recording of HMO numbers, inaccuracy resulting from including only class N student exempt properties within the figure and due to only partial occupation of nearby new housing.
7. Currently there is no substantive evidence regarding the presence of unauthorised HMOs. Confirmation of this would require further investigation and is outwith the scope of this decision. Furthermore, Policy 16(b) of the CDP includes provision to include unimplemented decisions within the percentage calculation. Consequently, the Council has revised its original percentage score by including both a recent approval at 7 Wearside Drive and this proposal, should it go ahead. It also includes the current, and greater, level of occupancy within nearby new development. This results in a revised figure 7.1%.
8. The revised percentage figure is significantly below the 10% threshold set out in Policy 16(a). Furthermore, it does not conflict with Policy 16(c) as the application site is not on a street which is a primary access route between purpose-built student accommodation and the town centre/university campus.
9. Policy 16 gives a standard and consistent method to assess applications for HMOs and its use was upheld within the recent examination and adoption of the CDP. There is no substantive evidence before me to consider this measure inadequate as a means of identifying the percentage of student properties within 100 metres of the appeal property. I therefore give full weight to the lack of conflict with Policy 16 and find the principle of the proposed change of use acceptable.

Character and appearance

10. The appeal site lies within the Durham (City Centre) CA. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, requires that special attention is paid to the desirability of preserving or enhancing the character or appearance of the CA. The special interest and significance of the CA is primarily derived from a combination of the quality and architectural coherence of its historic buildings and the preservation of its medieval street pattern along with the dramatic topography of the City. The appeal property is a two-storey detached house set back from the highway behind a front forecourt/drive. It sits within a short row of properties opposite a large area of common open space. It has an open and spacious character which adds positively to the setting of the CA.
11. No external changes to the property are proposed and the use of the property would remain as residential. The proposal would therefore preserve the character and appearance of the CA. As such, it would not conflict with Policy 44 of the CDP or Policy H2 of the NP which seek to preserve or enhance the special character or appearance of the CA. It would also accord with provisions within the National Planning Policy Framework which seek to protect the significance of designated heritage assets. Notwithstanding this, the avoidance of harm in this regard weighs neutrally and does not amount to a consideration in support of the appeal.

Living conditions

12. The Council seeks to protect residential amenity through application of Policies 29 and 31 of the CDP. These policies seek that the impact of development, either individually or cumulatively, upon both future occupants and nearby properties is minimised. I appreciate that residents have genuine concerns about potential issues often associated with HMO properties. These include an increase in noise, disturbance, litter, anti-social behaviour and potential crime due to the property being empty during student vacations.
13. However, these issues are not a predictable consequence of HMO's as opposed to single occupation dwellings, but rather a matter of individual behaviour and suitable management. If such behaviour did occur, as with any resident, the local authority and police have powers to deal with it. I have no evidence to suggest that such control would be insufficient to limit any nuisance to residents. Furthermore, Durham University have a Code of Conduct relating to behaviour of students living outwith university accommodation with potentially serious consequences for breaches.
14. Problems associated with HMOs often occur in areas with relatively high concentrations of this type of housing. Policy 16 seeks to control the impact of HMOs upon neighbouring occupiers by controlling numbers present within any given area. Consequently, and in accordance with Policy 16, as the number of HMOs within the vicinity of this proposal would be less than 10%, the impact is unlikely to significantly harm the living conditions of neighbouring occupiers. Moreover, Environmental Health Officers have raised no concerns and there is existing space for refuse bins.
15. Potential issues relating to harm to the living conditions of future occupiers have been raised. The property currently has four bedrooms and two bathrooms upstairs. One downstairs room will be converted to a bedroom,

leaving a kitchen, living room, conservatory, utility room, downstairs toilet and rear garden area for communal use. The proposal will therefore provide ample room for the occupants and complies with HMO licence requirements.

16. The proposal would therefore not conflict with Policy 29 or 31 of the CDP.

Highway Safety

17. Concern has been raised that an increase in occupancy levels will lead to an additional parking requirement within the local area. However, the property is within a controlled parking zone and numbers of permits can be limited. There is also metered parking available within this area. Car and cycle parking is currently present with in-curtilage parking on the property forecourt and an integral garage. Furthermore, the property is in a sustainable position close to local amenities, public transport and within walking distance of the City Centre and University. The Highway Authority have raised no objections.

18. There is no evidence that the proposal would harm highway safety and it therefore does not conflict with Policy 21 of the CDP or Policies T1, T2 and T3 of the NP which relate to sustainable transport and residential parking.

Other Matters

19. A potential breach of restrictive covenants which may curtail proposals such as this is outwith the scope of a planning appeal and would need to be pursued separately.

Conditions

20. The conditions set out within this decision are based upon those suggested by the Council. They have been considered against the tests of the Framework and advice provided by the Planning Practice Guidance on conditions. Those included in the schedule are found to be reasonable and necessary in the circumstances of this case.

21. For certainty, conditions have been included regarding time for implementation and approved plans. To protect residential amenity, condition 3 will allow any proposals to increase occupancy levels by internal room subdivision to be assessed in relation to updated student occupancy levels in the area.

Conclusions

22. The principle of development is acceptable and would not result in an increase in the percentage of HMO properties to a level likely to harm the living conditions of neighbouring occupiers. It would also not harm highway safety and would have a neutral effect upon the character and appearance of the CA.

23. For the reasons stated above, the appeal is allowed, and planning permission is granted.

E Symmons

INSPECTOR