



Appeal Decision

Site visit made on 23 November 2020

by F Cullen BA(Hons) MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 15 February 2021

Appeal Ref: APP/X1355/W/20/3253690 55 Hawthorn Terrace, Durham DH1 4EQ

- 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 P Southern against the decision of Durham County Council.
 - The application Ref: DM/19/03949/FPA, dated 20 December 2019, was refused by notice dated 1 April 2020.
 - The development proposed is change of use from HMO (Use Class C4) to large HMO (sui generis) with two storey rear extension, rooflights and associated external alterations.
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Decision

1. The appeal is allowed and planning permission is granted for change of use from HMO (Use Class C4) to large HMO (sui generis) with rooflights and associated external alterations, at 55 Hawthorn Terrace, Durham DH1 4EQ in accordance with the application Ref: DM/19/03949/FPA, dated 20 December 2019, 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 approved plans:

Dwg No. 1105-01, Existing Floor Plans, Elevations & Section;

Dwg No. 1105-02, Site Location Plan; and

Dwg No. 1105-03, Rev A, Proposed Floor Plans, Elevations & Section, received 25 February 2020.
 - 3) Notwithstanding the details on the approved drawing, detailed drawings and manufacturers details in respect of the installation of new rooflights and the installation of new doors / windows in the rear elevation shall be submitted to and approved in writing by the local planning authority before that part of the development is commenced. The development shall be carried out in accordance with the agreed details.

Procedural Matters

2. The application originally sought permission for the change of use from HMO (Use Class C4) to large HMO (sui generis) with two storey rear extension, rooflights and associated external alterations. During the determination of the application, the scheme was revised and the two storey extension was removed

from the proposal and a revised drawing was submitted¹, upon which the Council based its decision. However, this change was not reflected in the Council's decision notice. For the avoidance of doubt, I have determined the appeal on the basis of the revised drawing and incorporated the change in the description of development proposed in the formal decision above.

3. During the course of the appeal, Durham County Council adopted the County Durham Plan 2035, October 2020 (CDP). This replaced policies in the City of Durham Local Plan, 2004 and the Interim Policy on Student Accommodation referred to within the Council's stated reason for refusal and decision notice. I have therefore determined the appeal having regard to the relevant policy within the CDP. The parties were consulted on this change and have had the opportunity to comment. I have taken any comments received into account in my determination of the appeal.

Main Issues

4. The main issues are:

- Whether or not the proposal would be contrary to local policy on student accommodation regarding houses in multiple occupation;
- The effect of the proposal on the living conditions of nearby residents, with regard to noise and disturbance; and,
- Whether or not the proposal would provide adequate living conditions for existing and future occupiers of 55 Hawthorn Terrace, with regard to the provision of amenity space.

Reasons

Local policy

5. The appeal site is a mid-terrace property which fronts Hawthorn Terrace. It is located within the Viaduct area of the City and in the Durham (City Centre) Conservation Area (the DCA). The appeal property is currently in use as a four-bedroomed house in multiple occupation (use class C4 HMO). The proposal would increase this to an eight-bedroomed HMO (sui generis large HMO) with the associated increase in number of occupants.
6. In the context of the above, Part 3 of Policy 16 of the CDP concerning HMOs is relevant. Part 3 confirms that, in order to promote, create and preserve inclusive, mixed and balanced communities and to protect residential amenity, changes of use from any use to a House in Multiple Occupation in a sui generis use (more than six people sharing) will not be permitted if: a. including the proposed development, more than 10% of the total number of residential units within 100 metres of the application site are exempt from council tax charges (Class N Student Exemption).
7. The Council states that 61.2% of the properties within a 100 metre radius of the appeal site are currently exempt from Council Tax charges². This is significantly over and above the Council's 10% 'tipping point' and, even though the proposal would not increase the total number of HMOs in the area and thus worsen the imbalance between HMOs and long-term resident dwellings, it

¹ Revised Drawing Ref: Dwg No. 1105-03 Rev A, Proposed Floor Plans, Elevations & Section.

² Data from the most recent up to date Council Tax information.

would increase the number and concentration of students within the property and the area. The appellant has not challenged the figure of 61.2% and it is not disputed by any interested party that, on this basis, the proposal would be contrary to Part 3 (a) of Policy 16 of the CDP.

8. However, the appellant contends that the proposal complies with Part 3 (h) of Policy 16 of the CDP. This advises that New build Houses in Multiple Occupation, extensions that result in specified or potential additional bedspaces or a change of use to a House in Multiple Occupation would not be resisted in the following circumstance: where an area already has a concentration in excess of 90% of council tax exempt properties (Class N), that this is having an unreasonable impact on current occupiers and that the conversion of remaining C3 dwellings will not cause further detrimental harm to the residential amenity of surrounding occupants.
9. Evidence provided by the appellant illustrates that, within the appeal property's postcode area, 92.9% of the properties are exempt from Council Tax charges and that within the immediate vicinity of the appeal site the overwhelming majority of dwellings are student lets. The Council has not contested or commented upon this data and the stated percentage is corroborated to some extent by the supporting text of Policy 16, which states that the highest concentrations of HMOs are in the Viaduct area of the City, where over 90% of all properties are thought to be occupied by students living in HMOs.
10. I have considered the appellant's submissions on this point and, based on the submitted evidence, I accept that the area is distorted in terms of the provision of student accommodation in HMOs. Nevertheless, having regard to the wording of the Policy and the supporting text, as the proposal relates to the conversion of an existing HMO rather than a change of use from a C3 dwelling to an HMO, I consider that Part 3 (h) is not applicable to the appeal proposal.
11. Accordingly, I conclude that the proposal would be contrary to local policy on student accommodation regarding houses in multiple occupation, as it would conflict with Part 3 (a) of Policy 16 of the CDP and would not be applicable to Part 3 (h) of Policy 16 of the CDP, as referred to above.

Living conditions of nearby residents

12. The Council contends that the proposed increase from four to eight occupants would result in an intensification of students within the property, which would have an adverse impact on the living conditions of nearby residents in relation to noise and disturbance.
13. Taking the current situation as the baseline, the proposal would result in a doubling of the number of occupants within the dwelling. Nonetheless, as asserted by the appellant, the current use class of C4 permits the property to be occupied by up to six people and that its conversion to a six-bedroomed property could be achieved through minor internal alterations.
14. In my judgement, there is more than a theoretical possibility that the creation of an additional two bedrooms with an associated increase to six occupants could be implemented. Consequently, this represents a valid and realistic fallback position against which to assess the proposal.
15. I have given careful consideration to the concerns raised by the Council and the City of Durham Parish Council regarding the issues arising from the student

occupation of HMO properties within the City and the impact on local residents. I am also cognisant of the social objective of the planning system contained within Paragraph 8b of the National Planning Policy Framework (the Framework).

16. The intensification of activity associated with a greater number of occupants in the appeal property may cause some additional noise and disturbance issues in an area which, although highly populated with students, retains a level of other residential uses. Nevertheless, it is apparent that within the immediate vicinity and postcode area of the appeal site there is a very high concentration of HMOs and an existing and significant imbalance which is heavily skewed towards student occupation.
17. Taking into account the existing characteristics of the area, the limited increase in student occupants additional to the fallback position and noting the comments of the Council's Nuisance Action Team that the development is unlikely to cause a statutory nuisance, I am satisfied that the proposal would not result in a materially significant increase in noise and disturbance that would have a notably detrimental effect on the living conditions of nearby residents.
18. Drawing the above together, I conclude that the proposal would not have a harmful effect on the living conditions of nearby residents, with regard to noise and disturbance. This would comply with Paragraph 127 of the Framework in so far as it seeks to protect residential amenity.

Living conditions of existing and future occupiers

19. The appeal property includes an enclosed rear yard which provides external amenity space. Internally, the majority of the basement floor provides amenity space for communal cooking, eating and sitting. This existing level of external and internal amenity space would be maintained as part of the appeal proposal.
20. I acknowledge that the proposal would result in the existing external and internal amenity space serving an increased number of people and thus reduce the space available per person. Nonetheless, I am mindful that the plan form of the properties and grid pattern of the terraces are such that the provision of external amenity space is characteristically limited. Moreover, I note that the reconfiguration of the kitchen/dining/lounge and installation of new doors and windows in the rear elevation would result in an improved relationship between the external and internal amenity space. Consequently, I am satisfied that the proposal would provide a level of amenity space for existing and future occupiers which would be proportionate to this property and its use as an HMO.
21. Accordingly, I conclude that the proposal would provide adequate living conditions for existing and future occupiers of 55 Hawthorn Terrace, with regard to the provision of amenity space. As such, it would comply with Paragraph 127 of the Framework which, amongst other things, seeks to create places with a high standard of amenity for existing and future users.

Planning Balance

22. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material

considerations indicate otherwise³. The National Planning Practice Guidance (the Guidance) advises that a material planning consideration is one which is relevant to making the planning decision in question⁴.

23. In coming to my decision, I have had full regard to the proposal's conflict with Part 3 (a) of Policy 16 of the CDP and that it would not be applicable to Part 3 (h) of Policy 16 of the CDP. This conflict carries considerable weight against the appeal. However, conscious of the existing fallback position, I have also found that the proposal would not give rise to any harmful effects on the living conditions of nearby residents with regard to noise and disturbance; and that it would provide adequate living conditions for existing and future occupiers of the appeal property, with regard to the provision of amenity space. These are relevant factors in making the planning decision in question and ones to which I attach substantial weight in favour of the appeal.
24. Overall, in my judgement, the considerable weight which I attach to the conflict with the CDP is outweighed by the substantial weight I ascribe to the lack of harm in relation to the living conditions of nearby residents and the living conditions of existing and future occupiers of the appeal property. This leads me to conclude that, in the specific circumstances of this case, there are material considerations which have substantial weight and indicate that this decision should be made otherwise than in accordance with the development plan.

Other Matters

25. The appeal property lies within the DCA. 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 conservation area. The special interest and significance of the DCA 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.
26. The part of the DCA within which the appeal site is located, is characterised by a fine urban grain of Victorian terraced streets in grid patterns with linking back lanes. These are identified as important components of the townscape of the City representing its 19th/20th century residential expansion. In these respects, the appeal property, Hawthorn Terrace and the townscape of the Viaduct area contribute positively to the character and appearance of the DCA.
27. Having regard to the detail of the appeal proposal, I consider that it would have a neutral impact on, and would therefore preserve, the character and appearance of the DCA as a whole. As such, it would accord with provisions within the Framework which seek to protect the significance of designated heritage assets.
28. The Council has drawn my attention to a recent appeal decision for an extension to an existing HMO which was dismissed, concluding that the addition of one more room/person to the property would increase the level of pedestrian footfall in an area where problems already existed due to a high concentration of students⁵. However, I have not been provided with the full

³ S38(6) of the Planning and Compulsory Purchase Act 2004.

⁴ Planning Practice Guidance: Paragraph: 008 Reference ID: 21b-008-20140306.

⁵ Appeal Ref: APP/X1355/W/19/3232557 51 Whinney Hill, Durham.

details and circumstances of this case. From the evidence before me, the decision related to a property within a residential cul-de-sac in a different part of the City. As such, its context is not directly comparable to the appeal before me and I can only afford it limited weight in my consideration.

29. I note the historic and more recent planning application and appeal decisions referred to by the appellant which have been granted planning permission by the Council or allowed on appeal⁶. I do not have the full details and circumstances of these developments before me to allow any comparison with the appeal proposal. Furthermore, I am aware that they all pre-date the adoption of the CDP. Therefore, they carry only limited weight in my determination.
30. The Council highlights that the proposed change of use to sui generis would mean that the potential number of students occupying the appeal property would be unlimited, and that internal alterations could be carried out without the need for planning permission, which could allow more than eight students to reside there. However, the existing space within the appeal property has inherent limitations. No substantive evidence is before me which confirms that more than eight students could be accommodated in the property while still meeting the HMO licensing requirements. Therefore, this does not alter my conclusions on the main issues.
31. I fully acknowledge the merit of seeking to retain C3 properties in the area, which would support the preservation and/or creation of mixed and balanced communities in line with local and national policy and guidance. However, the proposal would not involve the loss of a residential property in C3 use.
32. The Council has not contested the proposal's acceptability in relation to Part 3 (d), (e), (f) and (g) of Policy 16 of the CDP. From the evidence before me I have no reason to disagree. As such, these matters are not determinative.

Conditions

33. The Council has submitted suggested conditions if the appeal were to be allowed. I have considered these in light of the advice set out in the Framework and the Guidance.
34. Planning permission is granted subject to the standard three year time limit condition. A condition specifying the relevant drawings is necessary as this provides certainty.
35. To ensure that the external appearance of the development is compatible with its built context and to preserve the character and appearance of the DCA, a condition requiring the submission of details relating to the proposed rooflights and windows/doors is necessary.
36. The City of Durham Parish Council has highlighted that there is no suggested condition stating that a Management Plan to prevent anti-social behaviour be agreed with the Local Planning Authority prior to the large HMO being brought into use. As the property is already in C4 use as an HMO and given my

⁶ 24 Mistletoe Street DM/18/03418/FPA; 3 Juniper Way DM/19/01700/FPA; 5 May Street DM/18/03301/FPA; 52 Hawthorn Terrace DM/17/03762/FPA; 46 Hawthorn Terrace (DM/16/00297/FPA; 40 Hawthorn Terrace DM/16/01691/FPA; and The Lodge, Laburnum Avenue.

conclusion on the main issue of the effect of the proposal on the living conditions of nearby residents, I have not imposed a condition requiring the submission of a Management Plan.

Conclusion

37. For the reasons given above, I conclude that, subject to conditions, the appeal should be allowed.

F Cullen

INSPECTOR