



Appeal Decision

Site visit made on 13 April 2021

by Diane Cragg DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 May 2021

Appeal Ref: APP/X1355/D/20/3258480 75 Whinney Hill, Durham DH1 3BG

- 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 (Aztec North) against the decision of Durham County Council.
 - The application Ref DM/20/00262/FPA, dated 14 January 2020, was refused by notice dated 3 July 2020.
 - The development proposed is part two storey-part single storey extension to rear of property, changing from a 4 bedroom C4 HMO to a 6 bedroom C4 HMO.
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Decision

1. The appeal is allowed and planning permission is granted for part two storey-part single storey extension to rear of property, changing from a 4 bedroom C4 HMO to a 6 Bedroom C4 HMO in accordance with the terms of application DM/20/00262/FPA dated 14 January 2020 and subject to the conditions in the attached schedule.

Procedural Matters

2. During 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 policies within the CDP. The parties were consulted on this change and have had the opportunity to comment. I have taken the comments received into account in my determination of the appeal.
3. During the determination of the application the proposal was amended. The evidence confirms that the proposal was determined based on drawing number 1090 – 03 B. Therefore, for the avoidance of doubt, I have determined the appeal based on this drawing.
4. I saw during my site visit that the appeal property is not currently occupied, and internal alterations were being undertaken. Nevertheless, the parties agree that the property's existing use is a House in Multiple Occupation (HMO), Use Class C4 with 4 bedrooms. The existing plans confirm that the property had 4 bedrooms with communal living and kitchen areas.

Main Issues

5. The main issues are:

- (i) whether or not the proposal would comply with local policy for the provision of Houses in Multiple Occupation (HMOs) for student accommodation; and
- (ii) the effect of the proposal on the living conditions of nearby residents, with regard to noise and disturbance and the character and appearance of the area.

Reasons

6. The appeal site is a two-storey semi-detached property facing Whinney Hill. The proposal is to extend the property to the rear at ground and first floor to increase the living accommodation and provide 2 additional bedrooms for student occupation.

Local policy

- 7. Whinney Hill is located within the eastern sector of the designated Durham City Centre Conservation Area (DCCCA). The area is characterised by interwar semi-detached houses and dwellings in groups of four either side of Whinney Hill.
- 8. Part 3 of Policy 16 of the CDP states that in order to promote, create and preserve inclusive, mixed and balanced communities and to protect residential amenity extensions that result in specified additional bedspaces will not be permitted if, 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).
- 9. The text to Policy 16 confirms that where the 10% 'tipping point' has been exceeded it is considered that there is an existing imbalance between HMO's occupied by students and homes occupied by other non-student residents.
- 10. The Council states that the most recent up to date council tax information identifies that 39.6% of those properties within 100 metres of the appeal site are currently occupied as student let accommodation. There is no dispute between the parties that the proposal exceeds the 10% threshold and that the proposal conflicts with Policy 16, part 3 in this respect.
- 11. The appellant refers to the appeal proposal not conflicting with Part 3(h) of Policy 16, however, as Part 3(h) is relevant only where the concentration of student occupation in an area is in excess of 90% of council tax exempt properties I am satisfied that this section of the policy does not apply here.
- 12. Therefore, I conclude that the proposal would not comply with local policy for the provision of HMOs for student accommodation and would conflict with Policy 16 of the CDP.

Living conditions

13. No 75 Whinney Hill is set back behind a small front garden and has a good-sized garden to the rear. There are no car parking spaces within the

properties' curtilages and pedestrian access to the side of the property is shared with No 74. Controlled parking is in place along Whinney Hill.

14. Although I note the concerns of the adjacent resident, I agree with the Council that the design and siting of the proposed extension would not detract from the living conditions of the neighbouring properties.
15. When considering the parking restrictions in the area, the convenience of the location and the scale of the development, additional parking pressures would be very limited. I note that the Highways Officer raised no objection to the adequacy of parking provision or highway safety, and I see no reason to disagree. I do not consider that the lack of parking at the site would lead to increased noise and disturbance to residents.
16. Regarding the character and appearance of the area, I accept that cumulatively with other accommodation, the incremental increase in numbers of students could lead to an imbalance in the community and could create additional noise and disturbance to its residents. However, although general concerns have been raised about the impact of additional students, I have very limited specific evidence that the student occupation of two additional bedspaces in the existing HMO would be detrimental to the area. The Council's Nuisance Action Team does not raise objections to the additional bedspaces or extension. Therefore, in the circumstances of this case, there is an insufficient basis to find that any materially harmful effects would arise from the cumulative contribution that the proposal would make to HMO bedspaces.
17. Nevertheless, because of the additional students living at the property, there would be a small increase in the comings and goings to the appeal property including a small increase in deliveries and visitors. Given the proximity of the appeal site to No 74 there would be some limited additional noise and disturbance associated with the additional residents living at the property.
18. However, the appellant has brought to my attention that the site benefits from permitted development rights and indicates that this is a fallback position. A scheme has been provided that shows how permitted development could be utilised to provide 6 bedrooms at the property by extending at ground floor level. The evidence confirms that the appellant is a large private student accommodation provider and although the appeal scheme would be the preferred approach to extending the property, as it is considered to provide a better layout overall for its occupants, the alternative proposal would be pursued if the appeal is dismissed. I have no reason to conclude that this would not be the case and I note that the Council accepted in their officer's report that there is a legitimate fallback position.
19. The fallback scheme would provide the same number and similar size of bedrooms. Although the living accommodation would be slightly smaller, and one shower room would be downstairs, the general arrangement and functioning of the accommodation is comparable and would accommodate two further bedspaces for two additional students. Therefore, the fallback proposal would result in the same number of additional bedspaces as the appeal proposal and in this respect the two schemes to extend the property would be indistinguishable.

20. Therefore, I give this 'fallback position' significant weight and I am satisfied that the proposal would not have a harmful effect on the living conditions of nearby residents with regard to noise and disturbance and the character and appearance of the area. The development would comply with Policy 16 of the CDP in this respect. It would also accord with the Framework where it seeks to ensure that places are inclusive and do not undermine quality of life or community cohesion.

Other Matters

21. The appeal property lies within the DCA. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act), requires that special attention is paid to the desirability of preserving or enhancing the character or appearance of the conservation area.
22. The special interest and significance of the DCA around Whinney Hill is its relatively dense residential character. The properties fronting onto the main road are interwar semi-detached houses and houses in groups of four. They are suburban in nature and typical social housing designs of their time, being 2 storeys with hipped roofs and generous gardens. The gaps between the built form, appear to be designed features which present vistas to the west across to Durham Cathedral.
23. The proposed rear extension would not alter the original block form, layout of this part of the estate or create any harmful terracing affect. Furthermore, the side elevation of the proposed extension would not obstruct the channelled view between the site and its neighbour from the main street towards the central tower of Durham Cathedral. Overall, in the context of the street scene, the core special characteristics of the area, and key heritage views, the character of the conservation area would be preserved.
24. Consequently, the impact on the character, appearance, and significance of this part of the DCA would be neutral. As such, it would accord with the Act and the Framework where it seeks to protect the significance of designated heritage assets. It would also accord with the requirements of Policy 44 of the CDP where it seeks to ensure that development contributes positively to the built and historic environment.
25. I have had regard to the concerns about bin storage but the Council has not raised a concern in this respect and is satisfied that the development in relation to Part 3 (d), (e), (f) and (g) of Policy 16 of the CDP is acceptable. Based on the evidence before me I see no reason to disagree.
26. I note the concern that up to 10 people could live at the property. However, the proposal is for 6 people and this is the basis on which the proposal has been considered. It is also the maximum occupancy of a property under use Class C4.

Planning Balance

27. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that planning decisions must be made in accordance with the development plan unless material considerations indicate otherwise. The National Planning

Practice Guidance (PPG) advises that a material planning consideration is one which is relevant to making the planning decision in question¹.

28. I have concluded that the proposal would not comply with local policy for the provision of HMOs for student accommodation and the proposal would conflict with Part 3 of Policy 16 of the CDP. This conflict with the recently adopted development plan carries considerable weight. However, having regard to the fallback position, I have concluded that there would be no harmful effects to the living conditions of nearby residents with regard to noise and disturbance and the character and appearance of the area. These are relevant factors in make the planning decision and ones to which I attach substantial weight in favour of the appeal.
29. Overall, in my judgement, the considerable weight which I attach to the conflict with the CDP is outweighed by the substantial weight I attribute to the lack of harm in relation nearby residents' living conditions and the character and appearance of the area. I therefore conclude that, in the specific circumstances of the 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.

Conditions

30. As well as the standard implementation condition it is necessary to refer to the approved drawings in the interests of certainty. I have also imposed a condition, required prior to commencement, relating to materials in the interests of safeguarding the character and appearance of the DCA.
31. A condition preventing windows being placed in the side elevations of the extensions are required to protect the amenity of the neighbours to either side of the property.
32. The Council's consultation responses refer to the possibility that the site may need to be subject to a specific management plan condition. However, the Council have not suggested such a condition. As an HMO the property will be subject to a licence for its occupation. I see no reason for a specific management plan in this case.

Conclusion

33. Overall, I conclude that material considerations indicate that a decision should be taken other than in accordance with the development plan for the reasons given. Therefore, the appeal is allowed.

Diane Cragg

INSPECTOR

¹ Planning Practice Guidance: Paragraph: 008 Reference ID: 21b-008-20140306

Schedule of Conditions

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission
- 2) The development hereby approved shall be carried out in strict accordance with the following approved plans: 1090 – 01, 1090 – 02, 1090 – 03B
- 3) Notwithstanding any details of materials submitted with the application no development shall commence until details of the make, colour and texture of all walling and roofing materials have been submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the approved details.
- 4) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (or any Order revoking and re-enacting that Order) no additional windows or other openings shall be formed in the existing gable elevation or the side elevation of the proposed part single-storey/part two-storey extension facing south towards No 74 Whinney Hill or in the side elevation of the proposed part single-storey/part two-storey extension facing north towards No 76 Whinney Hill.