



Appeal Decision

Site visit made on 5 January 2022

by Katherine Robbie BA (Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 January 2022

Appeal Ref: APP/X1355/W/21/3284492

4 North End, Durham DH1 4NG

- 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 Claire Roper-Browning against the decision of Durham County Council.
 - The application Ref DM/21/01858/FPA, dated 19 May 2021, was refused by notice dated 3 August 2021.
 - The development proposed is the Change of use from a C3 Dwellinghouse to a C4 House in multiple occupation, and the addition of 2No. roof lights with internal layout alterations.
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Decision

1. The appeal is dismissed.

Applications for Costs

2. An application for costs was made by the appellant against the Council. This is the subject of a separate Decision.

Main Issues

3. The main issues are:
 - The effect of the development on the mix and balance of housing in the community; and
 - the effect of the development on the living conditions of neighbouring occupiers, with particular regard to noise and disturbance.

Reasons

The mix and balance of housing in the community

4. Policy 16 of the County Durham Plan (CDP) (2020) concerns the subdivision and conversion of houses, flats and bedsits for multiple occupation (HMO) stating that changes of use to Use Class C4 accommodation are only acceptable in certain circumstances. Where less than 10% of the total residential dwellings within 100 metres of a proposed development and it is on a primary access route between Purposed Built Student Accommodation (PBSA) and the town centre or a university campus the change of use will not be permitted. The CDP defines PBSA as accommodation built or converted with the specific intent of being occupied by students either with individual en-suite units or sharing facilities. Primary access routes, however, are not defined.

5. There has been some debate between the Council and the appellant as to whether Keenan and Brackenbury Houses should be classified as PBSA, given their occupation by postgraduate students and families. Policy 16, however, does not distinguish between types of PBSA occupation. From my observations and information I have been supplied with, the accommodation does constitute PBSA and is managed by the University as such. Furthermore, there is no guarantee, and I have not been presented with any evidence to suggest that the PBSA in question could only ever be used for postgraduate or family housing.
6. It is also clear from the information submitted by the appellant and from my observations on site that the appeal property lies directly on a well-used walking route between the PBSA and the city centre. The appellant argues that the distances between the PBSA and the city centre are greater than would normally be expected to be undertaken on foot and the Chartered Institute of Highway and Transport (CIHT) would expect only 25% of journeys of this length to be walked. As previously stated however, the Policy does not define what a primary access route is and comings and goings associated with cycling, public transport and the private car are also relevant to the consideration of the appeal. From my experience and the evidence that has been presented to me, students are likely to walk the distances involved and I observed several groups of people undertaking that precise journey at the time of my site visit.
7. The Council have calculated that currently 6.8% of properties within 100 metres of the appeal property are occupied as student accommodation (Class N Council Tax exempt) and as the appeal property lies directly on a primary access route between PBSA and the city centre criteria c) of the HMO section of Policy 16 of the CDP should be applied. Policy 16 gives a standard and consistent approach to assess applications for HMOs and has recently been adopted by the Council, having been scrutinised by examination in public. There is no evidence before me that would indicate that the policy has been incorrectly applied in this instance.
8. Taking the above into account, I find that the proposal has been assessed against the correct provision within the policy and consequently it would have an unacceptable effect on the mix and balance of housing in the community. As such it is contrary to Policy 16 of the CDP which seeks to limit the introduction of HMOs on primary access routes between PBSA and the city centre.

Living Conditions

9. The aim of Policy 16 is to control the impact of HMOs upon neighbouring occupiers by restricting their numbers within any given area and in the case of criteria c) of the HMO section of the policy, the location of those properties with respect to routes that students are likely to congregate upon and use regularly. The policy recognises that properties let to large numbers of students can have a detrimental impact on surrounding residential areas and there is no lower percentage density limit whereby the introduction of HMOs on primary access routes can be considered acceptable. The Council further seek to protect residential amenity through policies 29 and 31 of the CDP. These policies ensure that the impact of development upon both future occupants of a property and those of nearby properties is minimised.
10. The appeal property lies on the edge of a residential neighbourhood and on a primary access route in the form of a shared cycling and pedestrian way

directly in front of the property. It is adjacent to a large secondary school and opposite the County Hall campus which lies on the other side of a busy arterial route in and out of the city centre. As such, it does form part of a residential neighbourhood and should be considered as being within it.

11. The Council's refusal reason specifically refers to noise and disturbance which can take many forms, for example, car doors banging and general comings and goings, which particularly late at night can be intrusive regardless of the appeal site's location on a busy arterial route into the city. Where there are fewer or no HMOs in a locality this type of noise nuisance can be more perceptible and intrusive. Background noise from the road is likely to be considerably less at night, and I have not been provided with any evidence to the contrary. I observed that the highway on North End stops short of the appeal property and therefore late-night noise and disturbance from car doors banging and other comings and goings are more likely to occur closer to neighbouring properties than would have otherwise been the case had there been a road directly in front of the property. This level of noise and disturbance would likely be far greater than that generated by the occupation of the property by a single family and would have a significantly harmful effect on the living conditions of the occupants of neighbouring properties.
12. The Council have, however, concluded in their delegated report that there are no concerns in respect of noise and disturbance. This conclusion relies upon a management agreement which would be enforced by the landlord and focuses on noise levels emitted from the property itself rather than comings and goings in the locality associated with the appeal property. Moreover, as the Council's policy does not impose a lower limit on the number of HMOs considered acceptable on primary access routes it acknowledges that the introduction of any HMOs in such locations can cause an unacceptable impact.
13. The appellant argues that the appeal property is the first residential property on the edge of that area and therefore there is likely to be little additional pedestrian activity because of the change of use. The argument that North End only forms a tiny part of the primary route between the PBSA and the city centre holds little weight as this could be said of any particular part of the route.
14. The appellant has also referred to other proposed developments close to the appeal site which may attract additional pedestrian activity in the area. I do not have all the details of these developments and whilst they may have planning permission they have not yet been implemented, therefore the impact of them is difficult to predict. In any case, I must assess the proposal before me on its own merits.
15. I therefore find that the proposal would be contrary to Policies 29 and 31 of the CDP which seek to protect residential amenity. There is also clear conflict with Policy 16 of the CDP in respect of the location of the proposed HMO which seeks to protect residential neighbourhoods which lie on primary access routes from the impacts of HMOs and the introduction of such a use in this location is likely to generate the type of disturbance the policy seeks to discourage. Furthermore, the proposal would also be contrary to paragraph 130 of the National Planning Policy Framework which also seeks to ensure that new development provides a high standard of amenity for existing and future users.

Other Matters

16. The appellant has stated that the appeal property has been vacant for some years and alternative uses other than a C3 dwelling need to be considered to bring the property back into effective use. However, no evidence with regard to marketing has been put before me to consider and I have not been presented with any evidence that a C4 use is the only alternative use to which this property could be put.
17. I acknowledge that the appellant suggests that the appeal property may be attractive to tenants other than students given its location close to the hospital and the adjacent school. However, given the large numbers of students in the city, the Council assumes in all cases that HMOs will be occupied by this group, and in any event the exact nature of the future occupation of the property would not be able to be controlled or guaranteed.

Conclusion

18. For the reasons given above, having considered the development plan as a whole and all relevant material considerations, I conclude that the appeal should be dismissed.

Katherine Robbie

INSPECTOR