
Appeal Decision

Site visit made on 1 February 2022

by C Coyne BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 May 2022

Appeal Ref: APP/X1355/W/21/3286919

9 John Street, Durham DH1 4DE

- 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 Mr Robin Durie against the decision of Durham County Council.
 - The application Ref DM/21/02626/FPA, dated 20 July 2021, was refused by notice dated 16 September 2021.
 - The development proposed is Change of use from small HMO (use class C4) to a sui generis HMO.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposed change of use on the mix of housing in the area having regard to the balance between family housing and houses in multiple occupation (HMOs), community cohesion and the amenities of non-student residents.

Reasons

3. The appeal property is a terraced property which fronts onto John Street which is situated within the City Centre Conservation Area (CA). It is currently in use as a six-bedroomed HMO (use class C4). The proposal would increase this to a seven-bedroomed HMO (sui generis large HMO) with the associated increase in number of occupants.
4. Criterion a) of Part 3 of Policy 16 of the adopted County Durham Plan (CDP) states that a change of use such as the proposal's 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). It also states under criterion h) that 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.
5. According to the Council's evidence, as of November 2021 the total number of residential units, including the appeal property, within 100 metres of the application site as defined by Council tax records as being within Class N was approximately 68.5%. This is a figure that the appellant has not challenged.

6. Therefore, the concentration of Class N properties within 100 metres of the appeal site is both above 10% and less than 90%. Consequently, the proposal would fail to accord with criteria a) and h) of part 3 of Policy 16 in these regards. Indeed, it is stated in the appellant's submitted Design and Access Statement (DAS) that the proposal fails to meet the relevant thresholds.
7. The appellant has argued that the 90% criterion h) of part 3 of Policy 16 is an arbitrary one and that there should be a lower threshold. They also argue that if the 10% and 90% thresholds of the aforementioned criteria are rigorously applied then this would hamper the provision of HMO development in the city which is much needed to meet the demand of student housing. However, these thresholds are within part 3 of Policy 16 of a development plan which, according to the evidence this plan has relatively recently undergone independent examination and been found sound with the evidence underpinning the plan being tested. Furthermore, Policy 16 also has a clear strategic approach to promote, create, and preserve inclusive, mixed, and balanced communities and these thresholds are part of that approach. Consequently, to my mind, if these thresholds were lowered or diluted it would undermine the policy, its strategic approach, and the development plan as a whole. As a result, I consider these policy thresholds and their strict application to be wholly appropriate in this case and I also therefore afford them considerable weight in the planning balance.
8. The appellant has also stated that as the proposal is not for a new HMO and that it would only create one additional bedspace in an existing HMO means that its impact on the mix of the housing and the balance of the community in the area would be limited. However, as highlighted by the Council in their evidence, this issue was also explored during the recent examination of the development plan with the explicit addition of wording relating to potential additional bedspaces being added to the emerging policy due to the cumulative impact that several similar such proposals could potentially have in a particular area in addition to an existing high number of such properties being present, a fact that is referred to in the associated Inspector's report submitted by the Council. Indeed, as stated by the appellant the area has a high or very high concentration of HMOs which, in my view, further strengthens the case for the strict application of these thresholds.
9. In their statement the appellant also highlights that 92.9% of properties in the postcode area were class N properties and that in their view it would not be unreasonable to consider the concentration of properties in the postcode area. They also highlight that the supporting text to policy 16 states that the Viaduct area of the city more than 90% of all properties there are estimated to be student HMOs. However, while not explicitly stated in criterion h), given that the 100m radius method is mentioned several times elsewhere in the application of the policy criteria, it would be reasonable to think that this is the method that is meant to be used in relation to criterion h). Indeed, this point was clarified by the Council in the letter they sent to the Planning Inspectorate dated 10 August 2021¹.
10. In any event, in practical terms, I consider that the 100m radius method to be a highly pragmatic method for applying the thresholds within policy 16 given that the daily interpersonal interactions of members of a typical residential

¹ Appendix B of Council's statement of case.

community is typically done within a relatively short distance of their homes and not necessarily across an entire postcode which can often span a much wider area that would likely straddle everyday community boundaries.

11. John Street is a relatively quiet area as I observed on my visit at approximately 12:45pm on a weekday. However, this was but a snapshot in time and not necessarily representative of the situation at night on a weekend for example when students would potentially be more likely to be coming and going to and from the property. Consequently, while the addition of one bedspace in a student house would not be likely to generate more noise and disturbance in itself, there would be the potential for there to be a cumulative impact in combination with the comings and goings from the other high number of HMOs within a 100 metre radius of the appeal property.
12. Moreover, the fact that the area does not wholly comprise non-student residential dwellings does not mean that it does not have a predominately residential character or that an increase of an existing over-concentration of HMOs in this location would not have an unacceptable adverse impact on the balance of the local community to the detriment of the amenities of existing residents. In addition, the fact that an Article 4 direction is in place shows that this is an issue needing to be addressed in the area and that the Council have a clear objective to prudently manage its housing mix and tackle any community imbalance present within it.
13. While I note that the proposal would only create one additional student bedspace given that it would not meet the specified thresholds it would increase the existing over-concentration of HMOs in the area and further imbalance its housing mix as well as the make-up of its community, nonetheless. Consequently, it would add to the cumulative impact that such HMOs have on an area which already has an overconcentration of such properties thereby having an adverse impact on the balance of housing types and the amenities of non-student residents in the area as a whole.
14. I therefore conclude that the proposed development would further unbalance the mix of housing in the area thereby materially harming community cohesion and the amenities of non-student residents. Accordingly, it would fail to meet the relevant requirements of policies 16, 29 and 31 of the CDP.

Other considerations

15. In support of the appeal proposal the appellant has cited similar proposals that were granted planning permission: Ref. APP/X1355/W/20/3253690; and Ref. APP/X1355/W/20/3255962. However, the area where the first scheme was located had a lower concentration of HMOs within a 100m radius of the appeal site and the Inspector assessed the proposal's compliance with criterion h) of policy 16 on a postcode and area-wide basis rather than on a 100m radius basis. In addition, for the second scheme, the area where it was located had a HMO concentration below the policy threshold of 10% within a 100m radius of the appeal site. Consequently, I consider that the circumstances applicable to these schemes are not the same as those presented in this case, which I have determined on its own merits, and I therefore afford this consideration limited weight.

Other Matters

16. The appeal property lies within the 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 conservation area. 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.
17. The part of the CA 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, John Street, and the townscape of the Viaduct area contribute positively to the character and appearance of the CA. 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 CA as a whole. As such, it would accord with provisions within the Framework which seek to protect the significance of designated heritage assets.
18. The Council has not contested the proposal's acceptability in relation to Part 3 criteria (d), (e), (f) and (g) of Policy 16. From the evidence before me I have no reason to disagree. As such, these matters are not determinative.

Planning Balance and Conclusion

19. The proposal would not accord with the development plan when read as a whole and the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the policies contained within it. Furthermore, there are no material considerations which indicate a decision otherwise than in accordance with the development plan. Therefore, for the reasons set out above, I conclude that the appeal should be dismissed.

C Coyne

INSPECTOR