
Appeal Decision

Site visit made on 21 June 2022

by M J Francis BA (Hons) MA MSc MCIfA

an Inspector appointed by the Secretary of State

Decision date: 7 November 2022

Appeal Ref: APP/X1355/W/22/3296111

**Durham City Workmen's Club & Institute Ltd, 60-63 Crossgate, Durham
DH1 4PR**

- 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 Peter Lee of Langley Lodge Developments against the decision of Durham County Council.
 - The application Ref DM/21/01670/FPA, dated 7 May 2021, was refused by notice dated 21 January 2022.
 - The development is described as change of use of first and second floors to create a 12-bedroom student accommodation facility with rear extension, external communal terrace, cycle parking, bin storage and associated works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was originally submitted as purpose-built student accommodation (PBSA). Following an assessment by the Council they determined that the proposal was for two small units of Housing in Multiple Occupation (HMO) and the description on the decision notice reflects this. There does not appear to have been an agreement by the appellant to this change of description which could have consequences for considering the merits of the case. I am normally obliged to use the description as set out on the planning application and will therefore do so. To that end, although the application was submitted on 7 May 2021, the original application form was replaced on 25 May 2021 following a request by the Council to include details of the floorspace. However, this excluded the 2nd floor from the description. This would appear to be an error, as the appeal form refers to both first and second floors and the application was determined on this basis. I have therefore used the description as set out on the original planning application.
3. An outside terraced seating area was removed from the scheme following concerns regarding noise and disturbance. I have determined the case on the basis of these revisions and had the appeal been allowed, I would have removed reference to the outside terrace in my decision.

Main Issues

4. The main issues are:
 - The suitability of the proposal in this location, given policies to create mixed and balanced communities; and

- The effect of the proposal on the living conditions of nearby residents with regard to noise and disturbance and waste.

Reasons

Mixed and balanced communities

5. Durham City Workmen's Club and Institute is a semi-detached building located on Crossgate. This street rises steeply from Durham city centre and is within the designated Durham City Conservation Area, and within both the setting of a number of listed buildings and the setting of the Durham Cathedral and Castle World Heritage Site (WHS).
6. The appeal site is currently operating as a club and institute on the ground floor. The first and second floors, which it is proposed to convert to student accommodation, are stated as being underused. The proposal would create a twelve-bedroom unit. The accommodation would be laid out in a manner that could be, classified as two Houses (Use Class C4 of the UCO¹) in Multiple Occupation (HMO), along with a rear extension, cycle parking, bin storage and associated works. I am also referred to Schedule 14 of the Housing Act 2004. The Council states that under its provisions, if the accommodation is occupied solely or principally by full-time students in further or higher education and the person managing or having control is the educational establishment, it would be considered as Purpose Built Student Accommodation.
7. Policy 16 of the County Durham Plan, adopted 2020 (DP), covers student accommodation and houses in multiple occupation. The explanatory paragraph to the policy states that this has the objective of creating mixed and balanced communities.
8. The appellants state that the sole intention is for the development to be occupied by students and that part 2 of DP Policy 16 is relevant as it relates to PBSA. Consideration under that part of the policy includes a list of 9 criteria that each have to be met to demonstrate compliance. Even if the proposal is considered as PBSA, the appellants confirm that they have not put the scheme forward in consultation with the relevant education provider which is Durham University, as required by paragraph 'b' of part 2 of Policy 16. The policy does not require a pre-assessment of the proportionality of this requirement given the scale of the proposal as suggested within the statement that supported the application.
9. Alternatively, the Council has considered the proposal with respect to part 3 of this policy. That relates to changes of use to a House in Multiple Occupation in both C4 and a sui generis use. Such uses will not be permitted subject to a number of criteria including if with the proposed development (a) 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). Within a 100-metre radius of the site, and including the proposed residential accommodation, it is not disputed that 59.5% of properties would be Class N exempt student properties as defined by Council Tax records. The proposal would not comply with this part of Policy 16 either.
10. In relation to the first main issue, this is an unsuitable location for the proposed development with respect to creating mixed and balanced

¹ The Town and Country Planning (Use Classes) Order 1987 (as amended)

communities. For the reasons set out above, whether the proposal is considered as PBSA or a HMO, Policy 16 of the County Durham Plan would not be complied with.

Living conditions of nearby residents

11. Part 3 of Policy 16 of the County Durham Plan includes the protection of residential amenity. Concerns have been raised as to the effect of the development on the living conditions of residents in the area. This includes not only noise from students living in the building, but also waste disposal arrangements resulting from the twelve residents.
12. 60-63 Crossgate is at the upper half of the street from the city and appears to be where a substantial proportion of housing occupied by permanent residents is located. As with all the properties on this street, the building has direct access onto the street, although the proposed accommodation would be accessed from a passageway at the side of the building.
13. The proposal would introduce residents into a building that would at present, have only intermittent use as a social club. Whilst acknowledging that students would not be living in the building all year round, when they are living there, the way that they use and occupy the building would be different to many other residents living in the area. Figures have been provided by both the Council and the appellants of the numbers of buildings used as a primary residence, and it was apparent from my site visit that this part of Crossgate does have a clear permanent residential presence.
14. Although there will be some noise generated from the existing use of the building as a club, the addition of a further twelve residents living in the building, particularly students, who would potentially be accessing the building at different times to other residents in the vicinity, would result in increased vocalisation within the street which could disturb residents nearby. Whilst noise mitigation measures could be installed during the conversion of the building to reduce noise escaping from it, this would not prevent it entirely, as windows could be opened, and noise would penetrate into the street. Furthermore, residents of the building are likely to receive visitors. The arrival and departure of residents and their visitors would also potentially lead to increased activity and source of disturbance.
15. In terms of waste disposal, there would be adequate space at the rear of the building for bins and waste facilities to be stored. However, twelve students would be likely to generate a significant amount of waste. Although planning conditions could ensure that appropriate storage is provided, this does not ensure that there would be suitable management of waste disposal at the site, particularly on days when waste is collected. This therefore has the potential to have a harmful effect on the living conditions of residents in the area and those accessing Crossgate.
16. Therefore, in relation to this main issue, the proposal would have a harmful impact upon the living conditions of nearby residents with regard to noise and disturbance and waste. This would be contrary to Policies 16, 29 and 31 of the County Durham Plan and paragraph 130 f) of the NPPF.

Planning Balance

17. The appellants, whilst agreeing that the proposal would not accord with Policy 16 Part 3a, in that it exceeds the 10% threshold, consider that material considerations would outweigh the conflict. The proposal may be beneficial for a number of reasons including that it would take pressure off general housing stock and provide high quality student accommodation in an accessible location.
18. The proposal would provide some economic benefits such to the construction industry, but this would only be in the short-term. There may also be support for businesses within the city centre and Crossgate using sustainable modes of travel with cycle parking at the site. However, some of these would occur wherever student accommodation was located within the city.
19. The appellant has also asserted that the development would financially support the working men's club. Although some details of the income generated from the club has been provided, this does not demonstrate that the future of the club is purely based on the change of use of the building to student accommodation. Despite any potential benefits that would result from the proposal, this would not outweigh the harm that has been demonstrated.
20. The appellants also consider that the proposal would have a positive impact on the conservation area, the World Heritage Site and other heritage assets.
21. The building is considered to be a non-designated heritage asset, and it is located within the Durham City Conservation Area, and is within the setting of a number of listed buildings. Sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 are therefore relevant in that special regard to the desirability of preserving the setting of any listed buildings and to preserving or enhancing the character or appearance of a conservation area are required. Paragraph 199 of the National Planning Policy Framework (the Framework) states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
22. The building, with its wide, painted frontage, provides a distinctive element in a street with a variety of buildings of differing heights and styles, and is a positive addition to the overall streetscape. As there would be limited external changes to the building, which would largely be confined to the rear, the proposal would overall have a neutral effect on the area thereby preserving both the setting of the listed buildings and the character of the conservation area.
23. The site is also within the setting of the Durham Cathedral and Castle WHS. As there is no intervisibility between the development and the WHS. The proposal would not harm the outstanding universal value of the WHS.
24. Reference has been made to application ref DM/18/03785/FPA for residential development to the rear of the building which was granted planning permission in 2019. The appellant has stated that this permission would lapse after 13 June 2022. Given this and as I have no information on this case, it can have no weight in my decision.
25. Appeal cases have been provided by both parties. This includes ref APP/X1355/W/20/3245601 and APP/X1355/W/20/3253690 for the creation of

HMOs in Durham which had an existing use as student lets; and APP/X1355/W/20/3245601 which was determined prior to the adoption of the County Durham Plan. These cases do not appear to be directly comparable to the proposal being considered and furthermore from the limited information that I am given, it is not clear that I am being inconsistent with them.

26. I consider for the reasons set out above that the development would not comply with the development plan as a whole. Weighing up these other matters, some of which support the proposal, I do not consider that they are individually or collectively of sufficient weight to outweigh my conclusions in relation to the main issues or that the proposal would comply with the development plan as a whole.

Conclusion

27. Therefore, for the reasons given above I conclude that the appeal is dismissed.

M J Francis

INSPECTOR