



Appeal Decision

Site visit made on 18 October 2022

by F Harrison BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 December 2022

Appeal Ref: APP/X1355/W/22/3305838

24 Nevilledale Terrace, Durham DH1 4QG

- 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 Gabrielle Moore against Durham County Council.
 - The application Ref DM/22/00369/FPA, is dated 1 February 2022, was refused by notice dated 6 April 2022.
 - The development proposed is described as the change of use of a six-bedroom dwelling (Class C3) to a small House in Multiple Occupation (Class C4) or 6 bed dwelling(C3).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal site is located within an area that is subject to an Article 4 Direction, requiring a planning application to be submitted for the change of use of a dwelling in use class C3 to a House in Multiple Occupation (HMO) in use class C4.
3. From my understanding of the evidence, the appeal property has most recently been in use as an Airbnb for short term rentals.
4. I note that the appeal proposal follows two previous appeal decisions at the site, as presented by the Council. In appeal decision APP/X1355/C/17/3169798 the Inspector found it highly unlikely that the appeal property was in use as an HMO prior to the implementation of the Article 4 Direction. Similarly, the Inspector in their decision for APP/X1355/W/19/3239631 proceeded on the basis that planning permission was sought for change of use from class C3 to C4.
5. While the appellant in their submissions to this appeal maintain that the property was in use as an HMO before the Article 4 Direction was implemented, no further substantive evidence is before me on this matter. As such, I have no reason to come to a different conclusion to the previous decisions at the appeal site and have considered the appeal on the basis that the appeal property's authorised use is a dwellinghouse (use class C3).

Main Issue

6. The main issue is the effect of the proposal on the character of the street and surrounding area, with particular reference to the balance and mix of housing.

Reasons

7. Policy 16 of the County Durham Local Plan (2020) seeks to deliver student accommodation, including use class C4 HMOs, to create inclusive places, comprising mixed and balanced communities which protect residential amenity. Part 3 of Policy 16 relates to HMOs, and outlines that change of use to HMOs will not be permitted if more than 10% of the total number of residential units within 100 metres (m) are HMOs.
8. There are two exemptions listed in Policy 16 where change of use would not be resisted. This includes where an area already has a concentration in excess of 90% of HMOs and further change of use would not cause further detrimental harm to the residential amenity of surrounding occupants, or, in circumstances where commercial uses are predominant within the 100m area.
9. In adopting a threshold approach, the Council recognises that it is the cumulative impact of HMOs that has an effect upon residential amenity and can change the character of an area over time. Paragraph 5.158 of Policy 16 sets out that where an area has already exceeded the 10% tipping point, there is an existing imbalance between HMOs occupied by students and homes occupied by other non-student residents. The Council has stated that the proportion of HMOs within 100m of the appeal site is 26.5%. It is not in dispute that the threshold has been breached.
10. The proposal would add to the 10% threshold being significantly exceeded, and in the context of Policy 16 would result in an already unbalanced housing mix becoming worse. Based on the evidence before me from the Council and third parties who live in the area, it is reasonable to assume that an additional HMO in this location would be to the detriment of the character of the street and surrounding area.
11. Policy 16 at Paragraph 5.155 sets out that the main effects of HMOs on neighbouring occupiers living conditions relate to noise, the general appearance of properties, refuse management and parking issues. I note that no external changes to the building are proposed, that the property is said to be finished to a high standard and would be managed by a local resident. There is also no dispute with regard to satisfactory refuse management and car and cycle parking, and that the appeal site is in an accessible location.
12. It may well be that when students have occupied the appeal property there have been no complaints by neighbours, and that student tenants are said to have more regular contact with the landlord and would cause less issues than those on shorter lets. I note there was no objection from the Councils' nuisance action team with regard to statutory nuisance. However, there are a significant number of objections from local residents, with many citing the mix and balance of the number of HMOs as a concern and the effect this would have on the community, including noise and disturbance.
13. It is reasonable to assume that the occupiers of an HMO are likely to lead independent lives from one another. Taking account of the size of the appeal property, the activity generated by several persons living independent lives, with separate routines, and their attendant comings and goings along with those of their visitors, would lead to a level of activity that would be more marked and intensive than that which could reasonably be expected to be associated with a single household. This activity, within an area where there

are already a number of existing HMOs, would have a detrimental effect on the living conditions of neighbouring occupiers.

14. I note that the property has been empty for long periods of time and is in close proximity to Durham University. The proposal is also said to meet the Council's licensing standards for HMOs. I acknowledge that allowing one additional property to be used as an HMO, may appear insignificant in itself. However, it would increase the already high concentration of HMOs in the immediate area, contributing to a further imbalance in the housing mix. This would exacerbate a situation which already requires careful management, and has been identified by the Council as a concern requiring permitted development rights to be removed through an Article 4 Direction. Moreover, the policy approach and use of a threshold allows for a consistent approach to the determination of relevant applications and is an important tool in the Council's efforts to prevent the creation of large concentrations of HMOs, and the incremental erosion of the character of residential areas.
15. I have given careful consideration to the appellant's detailed submissions which seek to demonstrate that circumstances are such that an exemption should apply to allow the change of use to HMO, despite the threshold being breached. While it has not been clearly articulated which exemption should apply, criterion h. of Policy 16 would appear to be the most relevant. Paragraph 5.167 provides details of the matters the Council would have regard to in considering whether to make an exception. The appellant has sought to address these, namely evidence relating to unsuccessful active marketing of the property and that the policy restriction is causing severe personal hardship.
16. However, even if I were to find the submitted evidence compelling in this regard, the exemption only falls to be considered in cases where the local community is already so imbalanced that the policy objective of maintaining a mix of housing is unlikely to be achieved. Policy 16 at criterion h is clear that this would only be in cases where an area has a concentration of HMOs in excess of 90%. I note that the 90% threshold was added to the policy to make it more effective by quantifying the point at which an exception should be given consideration. Given that the proportion of HMOs in the area is not at this level, and is some way off a 90% concentration, the particular circumstances of this appeal proposal are such that the exemption does not apply.
17. For the reasons set out above, the proposal would cause harm to the character of the street and surrounding area, with particular reference to the balance and mix of housing, in conflict with policies 16, 29 and 31 of the County Durham Plan (2020). These policies seek balanced communities, and proposals that minimise the impact of development for the occupiers of adjacent and nearby properties and can demonstrate there would be no unacceptable impact on living conditions, either individually or cumulatively.
18. The proposal is also contrary to the provisions of the National Planning Policy Framework (2021), including paragraphs 92 and 130 which seek development that is inclusive, does not undermine the quality of life or community cohesion, and functions well, creating a high standard of amenity.
19. The appellant has drawn my attention to proposed Policy D3 but has provided no clear evidence as to the weight to be afforded to the policy. The Council has confirmed in the officer report that this is not an adopted policy. As such, I

have attributed this policy very limited weight and it has not been determinative in my decision.

Other Matters

20. The appeal site falls within the Durham City Conservation Area. Neither party has concerns regarding the impact of the proposal on the significance of this designated heritage asset. Having considered the proposal and visited the site, I concur with that view and find that the appeal proposal would preserve the significance of the conservation area.

Conclusion

21. My above findings bring the proposal into conflict with the development plan, read as a whole. There are no material considerations that have been shown to have sufficient weight to warrant a decision otherwise than in accordance with it. Therefore, the appeal is dismissed.

F Harrison

INSPECTOR