



Appeal Decision

Site visit made on 21 February 2023

by M J Francis BA (Hons) MA MSc MCIfA

an Inspector appointed by the Secretary of State

Decision date: 25 May 2023

Appeal Ref: APP/X1355/W/22/3312412

1 Boyd Street, Durham DH1 3DP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Mr William and Mrs Karen Byng against Durham County Council.
 - The application Ref DM/22/01134/FPA, is dated 13 April 2022.
 - The development proposed is change of use from dwellinghouse class C3 to 4 person house in multiple occupation, class C4.
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Decision

1. The appeal is dismissed and planning permission for the change of use from dwellinghouse class C3 to 4 person house in multiple occupation, class C4 is refused.

Main Issue

2. The appeal is against the failure of the Council to determine the planning application. The Council have produced a putative reason for refusal and from that I consider that the main issue is the suitability of the proposal in this location, given policies to create mixed and balanced communities.

Reasons

3. The appeal site is a two storey, red brick, end terraced house. It has a small yard to the rear, adjacent to a back lane. Boyd Street is a no through road with two, short, parallel rows of terraced housing, accessed from Church Street.
4. The site has had planning permission for a two-storey rear extension which appears to have been built. At present, the house is reputed to be occupied by two students.
5. Policy 16 of the County Durham Local Plan (DLP), adopted 2020, covers student accommodation and houses in multiple occupation. The policy does not permit a change of use to a Class C4 property, including the proposed development, if 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).
6. The Council contends that 74.2% of residential units within 100 metres of the site are exempt. Combined with unimplemented permissions for HMOs within 100 metres of the application site, the Council's figure is 75.3%. The appellant has not disputed these figures.

7. Policy 16 provides two further circumstances where HMOs would not be resisted. This is where an area already has a concentration in excess of 90% of council tax exempt properties (Class N) that 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.
8. The parties dispute whether the student population in Durham has peaked, and therefore the demand for housing will drop, or whether it is forecast to rise. The appellant has submitted excerpts from the local press highlighting the difficulties that students have faced in acquiring accommodation and contends that recently a number of students have been studying online which is likely to reduce post pandemic, plus that there may have been students living at home because of a lack of accommodation within the city. It is suggested that this points to the need for further student accommodation within the city.
9. The DLP has allocated a number of sites for Purpose Built Student Accommodation (PBSA). Only one of these sites has had a planning application submitted at the time of the appeal, and this lack of delivery, despite it being over the plan period which extends until 2035, will, according to the appellant, result in an inadequate supply of student housing. This leads the appellant to consider that there should be a degree of flexibility over the application of Policy 16 in order to provide further HMOs.
10. Whilst the proposal at No 1 Boyd Street would conflict with policy, the appellant considers that the change of use of the building would not undermine this policy. The basis for this is that, reputedly, only No 4 Boyd Street, amongst the eighteen other properties within the street, is not occupied by students. In addition, Boyd Street has no through routes and has no physical or functional relationship with the majority of the 100-metre radius used in the calculation of the percentages by the Council. Therefore, they contend that an increase of two further students would not impact on the amenities of non-student residents within the 100m radius. Furthermore, they state that this would give rise to a less than 1% increase in total student population within this radius, and 68 of 93 properties, as listed by the Council in November 2022, already have Class N exemption. They also consider that the overall student population is likely to be much higher than listed, because of the 45-bedroom student accommodation at James Barbour House, which is within 100 metres of the site.
11. The purpose of Policy 16 is to create and preserve inclusive, mixed and balanced communities within Durham. Boyd Street is a distinctly residential area, highly accessible to the university and the city. Whilst it is predominantly occupied by students, the policy assessment is based on a 100-metre radius, designated by the Council. Whilst the proposal would only introduce two extra students, and possibly no net increase in the area taking account of proposed alterations to the University owned James Barbour House, who may, on their own, have a limited impact on the character and living conditions of neighbouring properties, increased students within an area can, through having a different pattern of living and occupation, both throughout the year, and when they are occupied during term time, alter and change an area. It is the cumulative effect of this that can create this imbalance and result in owner occupiers suffering the consequences of excessive disruptive behaviour.

12. Furthermore, whilst the figures provided by the Council have identified that the figures for the site are significantly above the 10% set out in policy, it is also well below the 90% where it is considered that the conversion would not cause further detrimental harm to the residential amenity of surrounding occupiers. Despite this the appellant continues to believe that it is going to be unlikely to ever rebalance the street.
13. Students add to the culture, economy and vibrancy of the city, and the proposal would, provide a small, but valuable contribution to the delivery of high-quality student accommodation. However, I do not consider that despite the high level of C4 use within 100 metres of the appeal property, it is at a level that creating a further C4 house would make no difference to the balance of housing provision or the level of community cohesion. It would increase and therefore worsen the over-concentration of C4 properties within the 100-metre radius of the site, thereby affecting the living conditions and balance of communities within the area as set out in Policy 16 of the DLP.
14. In conclusion, the proposal would be harmful to the creation of a mixed and balanced community in this location. Consequently, it would not accord with Policies 16, 29 and 31 of the DLP which cumulatively seek to achieve sustainable and balanced communities with no impact on amenity. It would also not accord with the Framework in seeking to create inclusive places.

Other Matters

15. The appellant has referred to an appeal decision at 10 High Wood View, Durham¹ where it was determined that two extra students in the property would not give rise to increased noise and the mix of housing stock in the vicinity. However, this decision was prior to the adoption of the DLP, and the criteria for assessing student accommodation at that time was not part of the development plan. Student accommodation and Policy 16 was discussed during the examination of the DLP where the Inspector determined that the policy provided a proportionate approach to ensure sufficient residential accommodation to meet any expected increase in students up to 2027. I therefore give this limited weight.
16. The building is located within the Durham Conservation Area. 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 significance of the Durham Conservation Area results from the quality and coherence of the historic buildings and preserved medieval street pattern, including the dramatic topography and extensive greenery of the city.
17. The significance of the appeal site is that it is part of the modest Victorian terraces with a uniformity of design and materials infilled within the city, with in this case, high back walls around the rear yards adjoining the back lanes behind the houses. This contrasts with generally larger terraces, many with gables that line Church Street.
18. The proposal would result in no external changes to the building and so would overall have a neutral effect on the area, thereby preserving the character and appearance of the conservation area. In line with the Framework, it would

¹ APP/X1355/W/19/3222572

sustain and enhance the significance of the heritage asset. This lack of harm is, therefore, neutral in the overall planning balance.

19. The proposal would satisfy requirements in terms of cycle and car parking, space standards, security and bin storage. It is acknowledged that the appellant has experience in running other student accommodation. These are, however, neutral matters.

Conclusion

20. The proposed development conflicts with the development plan when considered as a whole and there are no material considerations that outweigh the identified harm and associated development plan conflict.
21. For the reasons given above, I conclude that the appeal should be dismissed.

M J Francis

INSPECTOR