



Appeal Decision

Site visit made on 16 January 2023

by K Williams MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th June 2023

Appeal Ref: APP/X1355/W/22/3309512

14 Mowbray Street, Durham DH1 4BH

- 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 Harvinder Sull Durham Investment Group Ltd against the decision of Durham County Council.
 - The application Ref DM/22/01418/FPA, dated 12 May 2022, was refused by notice dated 9 September 2022.
 - The development proposed is a change of use from 5-bedroom C4 HMO to 7-bedroom sui generis HMO. Demolition of existing 2 storey extension, single storey lean-to extension and 2 storey extension to rear of property.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal property lies within the Durham City Centre Conservation Area (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 CA.

Main Issues

3. The main issues are:
 - the effect of the proposed development upon community cohesion;
 - whether the proposal would provide appropriate living conditions for future occupiers, with regard to external space and outlook; and
 - whether the proposed development would preserve or enhance the character and appearance of the CA.

Reasons

Community cohesion

4. The appeal site comprises a mid-terrace brick property which fronts Mowbray Street. It is not disputed that the appeal property is currently in use as a 5 person House in Multiple Occupation (HMO) or that it is located within an area which has a concentration in excess of 90% of council tax exempt properties Class N (student accommodation), a threshold required by the Inspector¹ during the examination of the County Durham Local Plan 2020 (DLP). The

¹ Report on the Examination of the County Durham Plan 17 September 2020

proposal would increase the occupation of the property to a larger seven-bedroom HMO.

5. Criterion a) of Part 3 of Policy 16 of the DLP seeks to resist extensions which would increase bedspaces and create a larger HMO. This is in locations such as the appeal site where more than 10% of the total number of residential properties within 100 metres of the application site are student accommodation. The aim of the Policy seeks to create mixed and balanced communities, with the supporting text to the policy identifying that there can also be adverse impacts on the amenity of residents in areas where student HMOs are dominant thus affecting community cohesion. It identifies that harm can arise as result of noise, the general appearance of properties, refuse management and parking issues.
6. Against this background, although the appellant contends Policy 16 will stem HMO growth, it seeks to manage the demand for student accommodation. Policy 16 sets out two exceptions to the 10% threshold. In respect of criterion (h) this relates to the change of use from a C3 dwelling rather than an existing HMO, a view supported by the Inspector in the Hawthorn Terrace appeal decision² and not contested by the appellant. There is also no substantive evidence presented that the proposal would fulfil criterion (i) as the area is not predominantly commercial. Although, the Council acknowledges there may be some cases where localised communities have a high proportion of student accommodation that the policy objective of protecting a balance is unlikely to be achieved, having regard to the wording of the supporting text, the proposal still would not meet any of the exceptions within Policy 16.
7. Mowbray street has a mix of uses including residential dwellings, HMOs, nearby commercial premises and a church. At the time of my site visit Mowbray Street was relatively quiet. The intensification of activity associated with a greater number of student occupants in the appeal property may cause some additional noise and disturbance issues in an area which, although highly populated with students, retains a level of other residential uses. However, I note the lack of objection from the Council's Nuisance Action Team, the Council's Environmental Health Officer, the Police Crime Prevention Team and Local Highway Authority. I also note that there were no public objections to the proposal and a condition could be imposed to ensure that there would only be two further occupants.
8. There would be no increase in the number of HMO's, and the increase in occupants, particularly against the fallback position, which I return to, may seem insignificant in itself. However, Policy 16 is an important tool in the Council's efforts to prevent further concentration and maintain community cohesion in particular areas. The cumulative effects from even small proposals, would if often repeated undermine the Council's overall policy on student accommodation. Even though there is an existing imbalance, the proposal would increase student population in the area and thus run contrary to the aims of seeking to create mixed and balanced communities and community cohesion.
9. The need to include extensions which increased bedspaces within HMOs was discussed during the examination of the DLP for the above reason. It thus illustrates that this is an issue needing to be addressed and that the Council have a clear objective to tackle any community imbalance present within it

² APP/X1355/W/20/3253690

even where the concentration is high. A view which is consistent with the John Street appeal decision presented by the Council³.

10. It may also be that the strict application of Policy 16 would restrict the change of use of smaller HMO's to a large Sui-Generis HMO. However, it would not prevent all HMOs in areas where there is no imbalance or community cohesion would not be compromised when compared against the Council's policy threshold.
11. Although the appellant contends that Policy 29 and 31 is not relevant, the Council's first reason for refusal refers to community cohesion and residential amenity. As such Policy 29 refers to the amenity, character of the area creating and sustainable communities. Whilst Policy 31 primarily relate to the physical effects of development arising from environmental considerations it requires development to be effectively integrated and not have an unacceptable impact on living conditions. The policies are therefore relevant to the appeal in this respect.
12. Consequently, the proposal 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. Similarly, the proposal would conflict with paragraphs 92 and 130 of the Framework which combined and insofar as they are relevant to the appeal seek to promote inclusive places and social interaction which function well and do not undermine community cohesion in an area where there is already an over-concentration of such uses.

Living conditions

13. The appeal property includes a small rear stepped yard. The existing yard is small and provides two levels. The upper level creates a more pleasant area, which although enclosed by boundary walls and fencing, these are not excessive in height. In contrast the proposal would excavate the rear yard to the ground floor level, removing the upper tier. This would create a more enclosed outside area, which would be significantly less attractive to be in due to the significant height of the side and rear boundaries. In addition, the proposal would result in the existing external and internal amenity space serving an increased number of people, which would increase the confinement. The presence of nearby public spaces would not provide the same convenient and private garden space required for such a property.
14. Although the reconfiguration of the downstairs layout would allow better access between the outside space and the communal dining accommodation, the overall size and quality of the outdoor space would be poor. Furthermore, although bins are stored outside the site, the provision of cycle storage would further constrain the external amenity space. The proposal would not provide an appropriate level of garden space for future occupiers.
15. The ground floor bedroom would not be the occupants sole place of accommodation, given the provision of communal space. The rear yard would be similar to a lightwell and would allow daylight and ventilation into the bedroom and views of the sky. Although cycle storage would restrict the space, the proposed bedroom would offer future occupiers a reasonable level of outlook.

³ Appeal Ref: APP/X1355/W/21/3286919

16. However, the above would not outweigh the proposal would not overcome that the proposal would not provide appropriate living conditions for future occupiers due to the reduced level and quality of external space. The proposal would conflict with DLP Policies 16, 29 and 31. Combined and insofar as they are relevant to this issue these require facilities are of an appropriate standard, providing high standards of living conditions.

Character and appearance

17. The appeal site is located within the CA. The special interest and significance of the CA is in part derived from a combination of the quality and architectural coherence of its historic buildings, which reflect urban expansion along with the dramatic topography of the city. In these respects, the appeal property and the Victorian terrace at Mowbray Street contribute positively to the character and appearance of the CA.
18. Although the amended proposal now incorporates a flat roof, the proposed lantern is a suitable treatment for it. It is not an unattractive feature, and this would be well concealed by the boundary walls particularly as it is set down. The proposal incorporates the removal of render, and replacement of an existing flat roof two storey outrigger. To my mind these alterations are not unsympathetic and would preserve the character and appearance of the CA.
19. Similarly, the glazed windows on the rear area are also well concealed, but in any event roughly align with those above. They would present a more cohesive appearance than the existing windows on the property, which also appear as modern arrangements. Whilst I acknowledge the use of traditional materials in the CA, the existing windows are already UPVC, thus no further detrimental effect would arise. The appeal proposal would therefore preserve, the character and appearance of the CA and the area in accordance with Section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990.
20. The proposal would therefore accord with DLP Policy 44. The proposal would also conform to Policy H2 of the Durham City Neighbourhood Plan. Combined and insofar as they are relevant to the appeal these seek to respect the local distinctiveness of the area and CA. As considered above the proposal would also meet the requirements contained within parts 12 and 16 of the Framework which relate to design, and which seek to protect the significance of designated heritage assets.

Other Matters

21. I appreciate the Inspector in the Hawthorn Terrace appeal decision reached a difference overall conclusion. It is not clear if the Inspector in respect of the Hawthorne Terrace appeal was aware of the background justification to DLP Policy 16 contained within the DLP report which has been evidenced in the officer report and Council's statement here⁴. I also note that permission was granted in 2019 for similar extensions and change of use from a 4-bedroom C4 HMO to a 7-bedroom sui generis HMO⁵. However, this appears to be prior to the adoption of the DLP, and it is not clear whether there was similar criterion for assessing student accommodation. I also note the Wearside Drive appeal⁶, that was allowed, was in an area which had not met the 10% threshold. As

⁴ Appendix B of the Council's Statement of Case Letter dated 10 August 2021

⁵ No. 13 Mowbray Street (ref. DM/19/02459/FPA).

⁶ Appeal Ref: APP/X1355/W/20/3255962

such there was no identified conflict with Policy C16. I therefore give these limited weight.

22. The appellant has indicated that they could deliver a smaller HMO without the need to apply for planning permission. There is nothing before me which suggests this course of action is not open to the appellant or that it could not be implemented. However, this would ultimately house fewer residents than the appeal proposal and would not alter the rear yard to the same degree. As such, the fallback position would not result in the same level of effects. I therefore attach limited weight to the fallback position.

Planning Balance and Conclusion

23. The proposal would preserve the character of the CA and would provide suitable levels of outlook and privacy for the occupiers of bedroom 2. However, it would harm community cohesion and the aims within the DLP Policy 16 to address this and result in unsatisfactory living conditions for future occupiers in terms of external space.
24. For the reasons given above, having regard to the development plan as a whole and all other material considerations, I conclude that the appeal should be dismissed.

K Williams

INSPECTOR