



Appeal Decision

Site visit made on 17 October 2023

by L Clark BA(HONS) DIPTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31st January 2024

Appeal Ref: APP/X1355/W/23/3327209

Magdalene Heights, Magdalene Heights, Gilesgate, Durham, DH1 1SY

- 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 Dr D Garg of Kabiyan Limited against the decision of Durham County Council.
 - The application Ref DM/23/01031/FPA, dated 12 April 2023, was refused by notice dated 30 June 2023.
 - The development proposed is change use of dwellinghouse (C3) into a small house in multiple occupation (C4) with minor external alterations.
-

Decision

1. The appeal is dismissed.

Preliminary Matter

2. I have amended the description of the development in the banner above to that used by the Council in its Decision Notice and the appellant within their Planning Appeal Form. This is a more comprehensive description of the proposed development than that given on the application form and ensures that it accurately captures the scope of the proposal.

Main Issues

3. The main issues are:
 - Whether or not the proposal would be contrary to local policy on student accommodation regarding Houses in Multiple Occupation (HMO); and
 - The effect of the proposal on the living conditions of nearby residents, with regards to noise and disturbance.

Reasons

4. The appeal site is set within a detached 'L' shaped dormer bungalow and forms one of four residential units, alongside The Flat, Annex 1 and Annex 2. The land rises up from the rear and the two storey properties of Magdalene Heights towards the A690, with the appeal premises set midway. The purpose-built student accommodation (PBSA) of Chapel Heights is set beyond on the crest of the hill, beyond which is the Scheduled Monument and Grade I listed ruins of the Chapel of St. Mary; opposite are the residential dwellings of Ashwood and a Kingdom Hall. To the rear is the appeal premises garden with a tree belt. It is also located within the Durham City Centre Conservation Area (CA).

Local Policy

5. The proposal would change the use from a dwelling house Class C3 to an HMO Class C4. The appellant within their evidence indicates that the proposal would be occupied by students. I have determined the appeal on this basis.
6. Policy 16, Part 3 (Policy 16) of the County Durham Plan 2020 (CDP) relates to HMOs and acknowledges that students make up a significant proportion of the term time population, contributing towards the culture, economy and vibrancy of Durham City. It also recognises that outside these times the cumulative impact of HMOs can change the character of an area over time with communities becoming unbalanced, giving rise to problems which can lead to a breakdown in community cohesion, impacting upon residential amenity.
7. Policy 16 states, amongst other things, that development will not be permitted if: a. 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); b. there are existing unimplemented permissions for HMO within 100 metres of the application site, which, in combination with the existing number of Class N student exempt units, would exceed 10% of the total properties within the 100 metres area; or c. less than 10% of the total residential units within the 100 metres are exempt from council tax charges (Class N). The application site is in a residential area and on a street that is a primary access route between PBSA and the town centre or a university campus.
8. The Council contend that 41 of the 68 residential properties within 100 metres of the site are exempt from Council tax charges equating to 61.8%, with no existing unimplemented permissions and no applications pending consideration within the 100 metre radius. The appellant disputes the Council's figure and claims that it is distorted due to the proximity of Chapel Heights PBSA and that the exempt properties would also capture smaller properties which are occupied by students but are not HMOs. However, I have not been presented with any evidence to substantiate their claim. Furthermore, given that 61.8% of properties within 100 metres of the appeal premises are exempt from Council tax, there is a high probability that the number of properties which are HMOs exceeds the 10% threshold sited in Policy 16. As such, without any substantive evidence to the contrary, I have determined the appeal on the basis of the figures provided by the Council.
9. The appellant has not disputed that the proposal is contrary to Policy 16. They do, however, contend that the proposal is compliant with Policy 16 in all other respects and that a departure is justified given the character of the area.
10. I note that Policy 16 does take a balanced approach to applications for HMOs and provides two specific circumstances where HMOs would not be restricted. This is where, h. an area 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 the remaining C3 dwellings will not cause further detrimental harm to the residential amenity of surrounding occupants; or i, where an existing high proportion of residential properties within the 100 metres are exempt from council tax charges (Class N), on the basis that commercial uses are predominant within the 100 metre area.

11. Whilst I acknowledge that the area within which the appeal property is located exceeds the 10% threshold, the overall figure also does not exceed the 90% cited by Criterion h. at which point the imbalance is so great that owners of Class 3 dwellings find it difficult to sell their property. Furthermore, the site circumstances do not lend itself to accord with Criterion i. As such, there are no circumstances within which the balanced approach of Policy 16 would apply in this instance and in which a departure from Policy 16 would be acceptable.
12. The purpose of Policy 16 is to create and preserve inclusive, mixed and balanced communities within Durham. Taking into account the current high proportion of students, I conclude that the proposed change of use to Class C4 HMO would lead to the loss of a further Class C3 dwelling, worsening the mix and leading to further imbalance within the community contrary to Policy 16. There would also be conflict with the National Planning Policy Framework (Framework) which seeks, amongst other matters, to ensure that new developments do not undermine the quality of life or community cohesion and resilience.

Living Conditions

13. The proposal would increase the number of bedrooms within Magdalene Heights from 3 to 6 and would introduce a further 3 occupants.
14. Whilst I accept that the source of noise could be greater from occupants within an HMO than a single dwelling, I note that the Council's Environmental Health Officer has raised no objection to the proposal regarding noise and disturbance and recommends that the developer provide an effective management plan for the tenants of the property by way of condition. I would agree that additional noise and disturbance resulting from 3 additional occupants would be negligible when considered alongside the existing context of 61.8% of properties falling within Class N exemption within 100 metres of the appeal site.
15. With regards to noise transference between the proposal and existing occupants within The Flat, Annex 1 and Annex 2, suitable noise mitigation measures could be installed and controlled by way of condition to ensure no harm is caused from noise and disturbance to existing occupiers.
16. As such the proposed change of use to HMO Class C4 would provide satisfactory living conditions for nearby residents and existing occupants within Magdalena House with regards to noise and disturbance. Accordingly, the proposal would comply with Policy 31 of the CDP. It would also comply with the Framework which requires, amongst other things, that development provide high standard of amenity for existing and future users.

Other Matters

Heritage Assets

17. The appeal premises is set within the CA and within the setting of the Grade I listed ruins of the Chapel of St. Mary, which is also a Scheduled Monument. As such, Section 72 and Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires decision makers to have special regard to the desirability of preserving or enhancing the character or appearance of a Conservation Area and preserving the listed building and its setting.

18. The building is located outside the historic core and is set within an area characterised by modern and predominantly residential buildings. Magdalene Heights is a modern dormer bungalow with a rendered exterior and of limited architectural interest. The proposed alterations to the external elevations include the insertion of an additional window to the south and the insertion of a single door and window to the west to replace existing French doors.
19. The addition of the window to the south would be modest in size and visible from the street scene, the aperture would be read alongside existing windows within the gable elevation and would retain the simple character. The insert of a single door and window to the west would be set within an existing aperture and would be obscured from view by the existing treeline buffer to the rear. The alterations, when considered alongside the building as a whole would be minor and as such, I find that the proposed external works would preserve the character and the appearance of the CA. Given the separation distance to the Chapel of St. Mary, the works would have no impact on its setting.
20. The Council has not raised any concerns with regards to the works and concluded that the proposed alterations would have no impact on the CA, nor the Scheduled Monument and Grade I listed ruins of the Chapel of St Mary. Based on the evidence before me, I see no reason to disagree.

Other Matters

21. The appellant has drawn my attention to paragraph 6.17 of the Council's statement regarding Criterion C within Policy 16 of the CDP. Whilst I concur that Criterion C did not form a reason for refusal. I do not agree that the Council have introduced new issues as they referred to Criterion C within their Officer Report stating that it was not relevant as the percentage (61.8% in this circumstance) is not below the 10% threshold but is nonetheless considered to be on a priority access route with the PBSA of Chapel Heights. As Criteria C does not form the basis of the refusal, I attach no weight to its reference.
22. The appellant has drawn my attention to a number of examples in support of the proposal. Whilst I have been provided with appeal decisions, I cannot be certain that the sites are directly comparable to that before me. In terms of No 24 Mistletoe Street¹ (No 24) I accept that this was allowed at appeal. However, whilst the issue is similar, there are differences to the appeal site, specifically the CDP was not sufficiently advanced to be afforded any weight and was determined on the basis of the Durham Local Plan (DLP) and Councils Interim Policy of Student Accommodation (IPSA). The area within which No 24 is located had approximately 78.9% of properties exempt from Council tax and/or were HMO properties and from the evidence before me, it would appear that the proposal sought an increase of one additional bed space. Whilst I have not been provided with copies of the DLP or the IPSA, I am mindful of my duties under S38(6)² of which Policy 16 forms part. As such the site is not comparable. With regards to No 55 Hawthorn Terrace³ (No 55), whilst I accept that this was allowed at appeal and was assessed against the CDP, the premises was already an HMO (Class C4) and as such, the increase to an HMO (Sui Generis) did not worsen the imbalance. This is not the case with the appeal before me and, as such, this case is not comparable. Moreover, each

¹ APP/X1355/W/19/3220653

² S38(6) of Planning and Compulsory Purchase Act 2004

³ APP/X1355/W/20/3253690

application and appeal are determined on its own merits. In this case the other examples quoted do not provide justification for harmful development.

23. The absence of harm in relation to access, parking provision, highway safety and amenity for intended future occupiers are neutral matters in the overall planning balance as they would be likely requirements of any well-designed development.

Conclusion

24. For the reasons set out above, the proposal conflicts with the development plan taken as a whole. There are no other considerations which indicate that the decision should be made other than in accordance with the development plan. Therefore the appeal is dismissed.

L Clark

INSPECTOR

.