



Appeal Decision

Site visit made on 2 January 2024

by L Clark BA(Hons) DIPTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th February 2024

Appeal Ref: APP/X1355/W/23/3330576

5 Lyndhurst Drive, Crossgate Moor, Durham DH1 4AE

- 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 Ms Anika Sarania against the decision of Durham County Council.
 - The application Ref DM/23/01167/FPA, dated 24 April 2023, was refused by notice dated 14 September 2023.
 - The development proposed is change of use from dwellinghouse (Use Class C3) to small House in Multiple Occupation (Use Class C4).
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Decision

1. The appeal is allowed and planning permission is granted for change of use from dwellinghouse (Use Class C3) to small House in Multiple Occupation (Use Class C4) at 5 Lyndhurst Drive, Durham DH1 4AE in accordance with the terms of the application, Ref DM/23/01167/FPA, dated 24 April 2023, subject to the conditions set out in the attached schedule.

Application for costs

2. An application for costs was made by Ms Anika Sarania against Durham County Council. This is the subject of a separate Decision.

Preliminary Matter

3. It was apparent during my site visit that development has commenced on site, and there appear to be material differences in what has been built and the proposed plans. However, any breaches of planning control do not fall within my assessment of the appeal scheme, which has been decided on the basis of the existing and proposed plans that were submitted with the planning application and consulted upon by the Council.

Main Issue

4. The main issue is the effect of the proposed development on the living conditions of nearby residents with particular regard to noise and disturbance.

Reasons

5. No 5 Lyndhurst Drive (No 5) is a two-storey semi-detached dwelling located within a cul-de-sac characterised mainly by semi-detached houses. No 5 is set back from the road by a hard paved front area, with the rear bound by properties on Priors Close.

6. No 5 is currently in use as a three-bedroomed family home and the proposal would create an additional bedroom and change the use of the property into a four-bed house of multiple occupation (HMO). As the appeal site lies within an area subject to an 'Article 4 Direction' it is necessary to obtain planning permission for the proposed change the use.
7. The Council's decision notice contends that the proposed change of use of No 5 would, which would adversely affect non-student residents through increased noise and disturbance and cites conflict with Policies 6, 29 and 31 County Durham Plan (CDP). Policy 6 relates to development on unallocated sites and requires, amongst other things that development is compatible with, and is not prejudicial to, any existing, allocated or permitted use of adjacent land. Policy 29 requires all development to be well designed, including providing high standards of amenity and minimising the impact of the development upon the occupants of existing adjacent and nearby properties, and consider the needs of existing and future users. Policy 31 also seeks to ensure that proposals will not have an unacceptable impact including through noise unless satisfactory mitigation measures can be demonstrated.
8. Given that No 5 is located within a cul-de-sac of 13 properties, any external noise may be more audible due to the enclosed nature of the street especially when background noise levels are low, than would be the case with properties set within a through-road. The Council's Environmental Health Officer has raised no objection to the principle of the proposal, subject to conditions to impose a management plan for the tenants, as well as to control construction works and soundproofing.
9. Whilst noting that Police reports are not the only way in which anti-social behaviour including noise and disturbance can be reported or measured, the Policy Crime Reports summary provided does not indicate that the extant HMOs within the vicinity of the appeal site are the cause of persistent issues. I have been made aware of an incident when residents were woken at 4am, and of parties being held at the end of term. However, the experiences and perception of HMOs are largely anecdotal and the poor experiences arising from other HMOs does not indicate that this will be exacerbated if the appeal proposal is allowed.
10. Even if future occupiers of the proposed development were more frequent users of the night-time economy, this does not infer that there would be an unacceptable impact in terms of noise and disturbance to other nearby residents. The issues raised are not a predictable consequence of HMOs as opposed to single occupation dwellings, but rather a matter of individual behaviour and suitable management.
11. The Council's Nuisance Action Team (NAT) provided comments on the proposal that identifies the source of noise could be greater from an HMO than a single dwelling, owing to the increase in household numbers and activity and the demographic of future occupiers. The NAT comment confirms that the potential for impact is dependent on individuals. To my mind, an effective tenant management plan and other conditions, would satisfactorily mitigate any potential unacceptable impacts associated with noise and disturbance.
12. Overall, I consider that the proposed development would not be prejudicial to any existing, allocated or permitted use of adjacent land; would satisfactorily minimise the impact of the development upon the occupants of existing

adjacent and nearby properties; and will not have an unacceptable impact including through noise. The proposed development therefore complies with Policies 6, 29 and 31 of the CDP. It follows that the proposed development would not harm on the living conditions of nearby residents, with particular regard to noise and disturbance.

Other Matters

13. The assessment is made by the Council that 6% of the properties within 100m radius of the appeal site are 'student-exempt', which would increase to 9% with the appeal proposal. On this basis the Council's decision notice does not identify conflict with CDP Policy 16. That said, the Council's refusal reason also refers the potential for the proposed development to unbalance the community and have a detrimental impact upon community cohesion. While these are matters that are referred to within Policy 16, with which the Council does not find conflict, the potential issues associated with the further spread of HMO properties have been raised by number of interested parties, including a local MP, Community Association, and the Parish Council.
14. The Council states that the adjoining property, 6 Lyndhurst Drive, is an HMO and that there are two unimplemented HMOs at Numbers 1 and 3 St Monica Grove nearby. Interested parties' representations suggest that the methodology for calculating the HMO thresholds in respect of CDP Policy 16 are inaccurate, and that there are additional unregistered HMOs within the vicinity of the appeal site that should be taken into account. I have been provided with marketing details purporting to relate to two further properties that are allegedly in use as student HMOs at 12 Lyndhurst Drive (No 12) and 4 Redhills Lane.
15. From my site visit, I observed No 12 is located on the opposite side of Lyndhurst Drive to the appeal site and 4 Redhills even further away. The Council's Appeal Statement does not provide the distance of these properties from No 5. Furthermore, although the details for 4 Redhills Lane refers to a 'student house to rent for 2023/24', the marketing details themselves are undated. Therefore, it is difficult to ascertain with certainty from the evidence provided the precise proximity of those properties to No 5 and whether the marketing of those properties has ultimately led to these being exempt from council tax charges. Nor is there any indication that enforcement action against unauthorised HMOs is being pursued. The evidence provided does not demonstrably indicate that the 10% threshold within CDP Policy 16 has, in this case, been breached or that there would be a harmful impact in terms of the balance and cohesion of the community if the appeal were allowed.
16. Although also not referenced in the Council's decision notice, interested parties have raised Policy S1(m) of the City of Durham Neighbourhood Plan 2020 to 2035 (CDNP). This seeks to ensure development will, amongst other things, secure a design which is capable of reducing crime and respecting privacy of neighbouring properties. The proposal would introduce off-street parking to the front of No 5. Considering the frontage area in relation to neighbouring properties and windows, the intervening distance and angles would not give rise to unacceptable loss of privacy even if the comings and goings to No 5 were to increase. It is not in dispute that the proposal would be in keeping with the surrounding area. Subject to the imposition of conditions to ensure a management plan, details of materials, and the provision of cycle and bin

storage, I consider the design and layout of the proposal would be acceptable and in accordance with CDNP Policy S1.

17. My attention has been drawn to two appeal decisions relating to proposed changes of use to HMOs. I am not able to ascertain fully whether they are directly comparable to the proposal before me, which I have assessed on its own merits, evidence submitted and the site-specific circumstances.
18. Whether or not there is a need for further student accommodation will be dictated by market forces. If the proposed HMO is not ultimately used as such, it does not preclude it being occupied again in the future as a family home. The number or amount of other HMO accommodation owned by the appellant within the City, or their suitability to meet HMO licensing criteria, is not relevant to my determination of this appeal, which has been determined on its own merits. Whilst noting the point made in respect of the digital process from making representations to the Council and Planning Inspectorate, this appeal received a significant number of interested parties representations in response to it. I am satisfied that interested parties were given a fair and impartial opportunity to make representations, which have been taken into account.
19. I have taken account of all other matters raised by interested parties, including the Localism Act and concerns relating to errors within the planning application form, however, based on the information before me none of these would justify dismissing the appeal.

Conditions

20. The Council has suggested a number of conditions which I have considered against the tests set out in the National Planning Policy Framework and Planning Practice Guidance. In some instances, I have made minor changes to wording to improve precision and enforceability. A Plans condition is necessary in the interest of planning certainty. As the development has already commenced the standard three-year time limit is not necessary.
21. To safeguard the living conditions of nearby residents, a condition is necessary that requires the submission of a detailed property and tenant management plan. In the interests of the living conditions of future intended occupiers, a condition is necessary that requires the details and implementation of sound proofing measures.
22. To ensure that the development provides satisfactory refuse and recycling storage, as well as secure cycle parking, conditions are necessary that require further details of such provision and their retention within the site thereafter. A condition requiring the implementation and retention of car parking spaces is also necessary in the interests of highway safety.
23. Given the scale of works proposed, I am not satisfied that the Council's suggested condition relating to the Construction Method Plan has been properly justified, and I do not consider it would not be reasonable to impose this condition. I do, however, consider that a condition relating to materials to be used in the construction of external surfaces would be reasonable and necessary, in the interests of the character and appearance of the area.

Conclusion

24. For the above reasons, and having had regard to all other matters raised, the proposal would comply with the development plan taken as a whole and material considerations do not indicate a decision should be made other than in accordance with the development plan. I therefore conclude that the appeal should be allowed.

L Clark

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby approved shall be carried out in material accordance with the following approved drawings: 02a Proposed Floor Plans, 02b Proposed Elevations, 101 Rev A Site/Roof Plan Existing & Proposed.
- 2) Notwithstanding Condition 1, prior to the first occupation of the development hereby approved, details of the materials to be used in the construction of all new external surfaces, including hard surfacing materials, shall have been submitted to, and approved in writing by the Local Planning Authority. The development hereby approved shall be carried out in accordance with the approved details.
- 3) Prior to the first occupation of the development hereby approved, a detailed property and tenant management plan shall be submitted to and agreed in writing by the Local Planning Authority. The scheme shall include details of those specific controls to mitigate the impact on residential amenity from noise, disturbance, and anti-social behaviour and measures to secure the property outside term times or when the property is vacant, and landlord contact details. The development hereby approved shall thereafter be managed in accordance with the agreed property and tenant management plan at all times.
- 4) Prior to the first occupation of the development hereby approved, details of sound proofing measures for sleeping areas shall have been submitted to and agreed in writing by the Local Planning Authority. The details provided shall show that the acoustic insulation measures satisfy the Optional Requirement E of the Building Regulations 2010 (or any subsequent amendment in force at the time of implementation of the permission). The sound proofing measures shall be installed in accordance with the approved details and shall be retained thereafter.
- 5) Notwithstanding Condition 1, the development hereby approved shall not be occupied until details of refuse and recycling storage within the site, as well as a point of collection, shall have been submitted to and approved in writing by the Local Planning Authority. These details shall include drawings at a scale of 1:50 and show space for recycling containers and wheeled refuse bins, as well as include details of materials used in the construction of the refuse and recycling storage, enclosures or screening. The development hereby approved shall be carried out in accordance with the approved details and be retained as refuse and recycling storage for the occupiers of the approved development thereafter.

- 6) Notwithstanding Condition 1, prior to the occupation of the development hereby approved, details of secure cycle parking within the site shall have been submitted to and approved in writing by the Local Planning Authority. These details shall include plans at a minimum scale of 1:50 to show the location of cycle parking and include the type and number of stands to be installed. The development shall be carried out in accordance with the approved details and the space shall be retained as secure cycle parking for the occupiers of the approved development thereafter.
- 7) Notwithstanding Condition 1, prior to the occupation of the dwelling hereby approved, the car parking spaces as indicated on 'Proposed Site/Roof Plan' (Drawing 101 Rev A) shall be constructed and made available for use. The development shall be carried out in accordance with the approved details and shall be maintained and retained thereafter for the parking of private motor vehicles associated with the approved development.

*** END OF CONDITIONS ***