



Appeal Decision

Site visit made on 30 January 2024

by P Storey BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 March 2024

Appeal Ref: APP/X1355/W/23/3334353

24 Nevilledale Terrace, Durham DH1 4QG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mrs Gabrielle Moore against the decision of Durham County Council.
 - The application Ref is DM/23/00241/FPA.
 - The development proposed is change of use from 6 bed dwelling house to 2 No. flats.
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Decision

1. The appeal is allowed and planning permission is granted for change of use from 6 bed dwelling house to 2 No. flats at 24 Nevilledale Terrace, Durham DH1 4QG, in accordance with the terms of the application Ref DM/23/00241/FPA, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans:

Location Plan – 2179/04-A

Proposed Site Plan – 2179/05-D

Proposed Floor Plan – 2179/10-D
 - 3) Prior to the first occupation of the development hereby approved, a scheme of sound insulation measures shall be submitted to and approved in writing by the local planning authority. The scheme shall ensure that the noise insulation of walls, floors, windows, roofs between the adjoining properties is sufficient to prevent excessive ingress and egress of noise. The approved scheme shall be implemented prior to the first occupation of the development and retained thereafter.
 - 4) Prior to the first occupation of the development hereby approved, bin and cycle storage shall be installed in accordance with the details shown on the approved plans and retained thereafter for the use of occupiers.

Applications for Costs

2. An application for costs has been made by Mrs Gabrielle Moore against Durham County Council and is the subject of a separate decision.

Preliminary Matter

3. An update to the National Planning Policy Framework (the Framework) was published on 19 December 2023. Other than changes to paragraph numbering, there are no material changes relevant to the substance of the appeal.

Main Issue

4. The main issue is the effect of the proposed development on the living conditions of the occupiers of neighbouring properties, with specific regard to noise, disturbance, antisocial behaviour and pollution.

Reasons

5. The appeal site is a mid-terraced house served by pedestrian-only access to the front and a lane to the rear providing vehicular and servicing access. There are breaks in the terrace roughly equidistant to both the north and south of the appeal site, where publicly accessible footpaths provide pedestrian access to the rear service lane. The proposal seeks to convert the house into 2 self-contained flats, with one accessed from the front and one from the rear.
6. I note previous appeal decisions at the property. However, the previous proposals related to the change of use of the property to a house in multiple occupation (HMO), not its conversion to 2 flats, as is proposed in this instance. Although the previous appeals carry weight as material considerations, this is limited by the differing nature of the proposals. Nevertheless, I must consider the current proposal on its own merits.
7. It is of note that the most recent appeal was dismissed partly based on its conflict with Policy 16 of the County Durham Plan – Adopted 2020 (the CDP), which relates to purpose-built student accommodation and HMOs. The local planning authority (LPA) confirms it does not consider the current proposal would conflict with Policy 16. Despite several interested parties holding views to the contrary, I concur with the LPA that, because the proposal is neither for purpose-build student accommodation or HMO development, it would not be contrary to Policy 16.
8. As such, the main development plan policy relevant to the appeal is Policy 31 of the CDP. This seeks, among other objectives, for development to demonstrate there will be no unacceptable impact, either individually or cumulatively, on health, living or working conditions or the natural environment.
9. The LPA decision notice sets out that the key concerns associated with the proposal are the potential for increased noise, disturbance, antisocial behaviour and pollution associated with its likely occupation by students. I also note the significant number of objections on similar grounds from a range of interested parties including neighbouring occupiers, Crossgate Community Partnership, City of Durham Trust and City of Durham Parish Council.
10. Based on the evidence provided, and my observations on site, no other properties within Nevilledale Terrace have been converted to flats. Nevertheless, the evidence also notes that a significant proportion of properties in the immediate area are exempt from Council tax, suggesting that they are occupied by students.

11. I visited the site late morning on a weekday during university term time. I noted no obvious indication of the types of negative effects noted above arising from the existing prevalence of student residents in the area. Although my observations were a snapshot in time, the street was pleasant and quiet with houses generally appearing well kept.
12. Students living together are likely to lead independent lives with potentially frequent comings and goings, and the nature of use could have noticeable effects for neighbouring occupiers. Although I am provided with limited evidence of any specific disturbances caused by HMOs and student properties in the area, I acknowledge the previous police matters at the property concerning previous occupiers. However, this related to individuals living under a different nature of occupancy than is proposed.
13. The appellant's statement of case acknowledges that the converted property would, in all likelihood, be attractive to students. However, the proposal would provide 2 wholly separate units of accommodation, each of which would only have 2 bedrooms. Although the converted property could be occupied by up to 8 people, this would reflect the likelihood that residents would be couples sharing a bedroom. The nature of such occupation would, to my mind, be notably different and less intensive than that of a traditional HMO containing entirely unrelated individuals.
14. In any event, the proposal does not seek purely to provide accommodation for students. It is equally possible that the converted property could be occupied by small families, unrelated professionals, or couples seeking a property with a spare bedroom. In such scenarios the nature of occupancy would be unlikely to harm the living conditions of neighbours.
15. However, based on the evidence available, the most likely scenario would be that each bedroom would be occupied by an individual, most likely being students, leading to 2 separate households of 2 people. Given the likely number of occupiers, and because each unit would use a wholly separate access limiting the potential for the properties to mix as a single larger unit, I am not persuaded that this nature of occupation would lead to an unacceptable level of intensification.
16. Given the above, I am satisfied that the proposal would result in a significantly different nature of occupancy than if it were occupied as a single HMO. Although the scenarios outlined above are not exhaustive, I consider they represent the most likely forms of occupation, and I am not persuaded that any likely form of occupation would harm the living conditions of neighbouring occupiers. Moreover, given the existing property has 6 bedrooms, it has the potential for a large number of occupiers. As such, the proposal's likely effects on neighbouring living conditions would be no worse than those that could arise through its lawful occupation as a class C3 dwelling.
17. For the reasons given above, I do not find the proposal would have an adverse effect on the living conditions of the occupiers of neighbouring properties through increased noise, disturbance, anti-social behaviour or pollution, and it would accord with Policy 31 of the CDP, the aims of which are set out above. It would also accord with the relevant provisions of the Framework, which have similar aims.

Other Matters

18. The appeal site is within the Durham City Conservation Area (the CA). Accordingly, the statutory duty under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 applies, which requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the area.
19. The CA is divided into sub-areas, with the appeal site being within Character Area 3 – Crossgate. The Crossgate sub-area is formed largely of traditional terraced streets that have developed around several main routes, including Crossgate Peth which the appeal site fronts. It lies close to the west and southwest of the city centre, which is formed by separate sub areas of the CA. Insofar as it relates to the appeal, the significance of the CA is derived from the traditional layout and appearance of its terraced streets and the close physical and functional relationship these areas have to the historic city centre.
20. There would be no significant external indication of the proposed development taking place. Accordingly, the proposal would not harm the character or appearance of the CA and its significance would be preserved.
21. The significant number of objections have also raised issues outside of the scope of the LPA's reason for refusal. I note comments concerning the previous conduct of the appellant, the scope of detail submitted for the proposal, whether the proposal reflects what is actually proposed, and the potential for the proposal to set a precedent for future similar development. As I am required to, my assessment is based on the details before me, and I am satisfied they are sufficient to enable me to determine the appeal. Moreover, I cannot speculate on any future occurrences that may or may not take place.
22. I note comments that Durham University's student numbers are reducing and questioning the need for the proposal. However, because the proposal is not for purpose-built student accommodation, I am not required to consider the issue of need.
23. Comments have been raised regarding the proposed layout of the flats, including practical concerns regarding the two separate accesses, the need for occupiers of Flat 2 to carry waste and refuse externally from the front door to the bins to the rear of the property, and concerns regarding overlooking of the dining area of Flat 1 from Flat 2 via the roof light.
24. Whilst the bin storage arrangements may cause a degree of inconvenience for the occupiers of Flat 2, it is not a significant distance for occupiers to walk to the bins. Furthermore, this may simply involve a slight detour when leaving home if walking to the rear of the property to their parked car, or walking towards the city centre via this route. I note the LPA considers the arrangement to be acceptable and I do not consider it would harm the living conditions of prospective or neighbouring occupiers.
25. With regard to overlooking, roof lights in ground floor extensions to terraced properties are commonplace. The potential for overlooking from the upper floor windows would be comparable to the potential for the upper floor windows of one terraced house to overlook a rooflight at its adjoining house. I therefore do not find the proposal would create unacceptable overlooking of Flat 1.

26. There are objections relating to drainage, vermin, odours, parking and access for emergency vehicles. Concerns were not raised in respect of these issues by the LPA or its statutory consultees and I have limited substantive evidence before me to persuade me that an alternative view should be taken. Accordingly, these considerations carry limited weight against the proposal.

Conditions

27. The LPA has provided a list of suggested conditions that I have considered against the provisions of paragraph 56 of the Framework and the Planning Practice Guidance (the PPG). To ensure compliance with these provisions I have amended, and in some cases omitted, certain conditions.
28. Conditions relating to the statutory time limit and a list of approved plans are necessary in the interests of certainty. A condition requiring the submission of a scheme of sound insulation measures is necessary to protect the living conditions of future and neighbouring occupiers.
29. Details of bin and cycle storage are shown on the approved plans. A condition requiring these details to be installed prior to the first occupation of the development is reasonable and necessary in the interests of sustainable transport and the living conditions of neighbouring occupiers. It is not necessary to require the submission of further details.
30. A suggested condition to limit hours of construction and associated activities is not necessary as unreasonable levels of disturbance could be addressed through other regulatory regimes.
31. A condition requiring a property management plan to be submitted has been suggested by the LPA. The draft wording refers to waste management and security, and the committee report notes that this would address issues including deliveries. I am not provided with any substantive evidence as to what this should comprise, nor how this would be addressed in the event of one or both properties being sold to different owners. Accordingly, I am not persuaded this condition would be enforceable. In addition, given that it is in the interests of landlords, owners or occupiers, as the case may be, to address these matters, I am not persuaded the condition would be necessary.

Conclusion

32. For the reasons given above, I conclude that the appeal should be allowed subject to the conditions listed in my formal decision.

P Storey

INSPECTOR