



Appeal Decision

Site visit made on 4 March 2024

by L Clark BA(HONS) DIPTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 April 2024

Appeal Ref: APP/X1355/W/23/3335811

33 St Bedes Close, Crossgate Moor, Durham DH1 4AA

- 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 Dr Nan Hu against the decision of Durham County Council.
 - The application Ref is DM/23/01442/FPA.
 - The development proposed is change of use of dwellinghouse (Use Class C3) to HMO (Use Class C4) The Full Pre-Application Advice Report I received showed that the change of use would be considered to be acceptable in principle.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of dwellinghouse (Use Class C3) to HMO (Use Class C4) at 33 St Bedes Close, Durham DH1 4AA in accordance with the terms of the application, Ref DM/23/01442/FPA, subject to the conditions set out in the attached schedule.

Preliminary Matter

2. The description of development on the application form is set out above. However, the description on the decision notice and the appellant's appeal form, whilst the same, differ from that above. The descriptions are "change of use of dwellinghouse (Use Class C3) to HMO (Use Class C4)." This is a more accurate description of the development and I have therefore determined the appeal on this basis.

Main Issue

3. 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

4. The appeal property (No 33) is a two-storey semi-detached dwelling located within a cul-de-sac, characterised mainly by semi-detached houses. No 33 is set back from the road by a front garden area and drive, with the rear bound by properties on St. Monica Grove.
5. No 33 is currently in use as a four-bedroomed family home and the proposal would create 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 of use.
6. As a semi-detached property, any noise and disturbance generated within the house is going to have a more significant effect on the occupants of the adjoining property, No 35. As a four-bedroom house, No 33 would suit a family

of 4-6 people. A family of this size would generate comings and goings on a daily basis, although this would probably vary, depending on the ages of any adults and children living there.

7. The decision notice contends that the proposed change of use would adversely affect non-student residents through increased noise and disturbance, and cites conflict with Policies 29 and 31 of the County Durham Plan 2020 (CDP). 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 33 is located within a cul-de-sac, 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 raises no objection to the principle of the proposal subject to the imposition of the following conditions: a management plan for the tenants; appropriate management of waste; soundproofing; and control of construction works.
9. I am aware of an incident when residents were woken at 2 am and subjected to verbal abuse. 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. The experiences and perceptions of HMOs are largely anecdotal and the poor experiences arising from other HMOs do not indicate that this will be exacerbated if the appeal proposal is allowed.
10. Furthermore, the council's Nuisance Action Team (NAT) raise no objection to the proposal even though it identifies that the source of noise could be greater from an HMO than a single dwelling, owing to the increase in household numbers, activity and the demographic of future occupiers. The NAT considers 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.
11. I conclude that the proposed use would not harm the living conditions of nearby residents with regards to noise and disturbance. There would be no conflict with Policies 29 and 31 of the CDP, which collectively seek to ensure that development will minimise the impact upon the occupants of existing adjacent and nearby properties and cause no unacceptable impact on living conditions.

Other Matters

12. The original assessment made by the council was that if planning permission was granted for No 33, there would be 6.9% of the properties within 100m-radius of the appeal site registered as 'student-exempt'. It now contends that there are additional unregistered 'student-exempt' HMOs within the immediate vicinity of the appeal site at 4, 24, 27 and 34 St Bedes Close (Nos 4, 24, 27 and 34), which increase the number of HMOs to 13% and which exceeds the 10% threshold within CDP Policy 16. Whilst the council's statement does not

provide specific distances from these properties from No 33, the appellant's statement does and shows that Nos 4 and 24 are set outside the 100-metre radius. The evidence provided does not demonstrably indicate that the 10% threshold, in this case, has been breached and the decision notice does not identify a conflict with Policy 16.

13. It is noted that the refusal reason suggests the potential for the proposed development to unbalance the community which would have a detrimental impact upon community cohesion. Whilst these matters are referred to within CDP Policy 16, the council does not find conflict. Even though the potential issues associated with the further spread of HMO properties have been raised by a number of interested parties, including a local MP and the Parish Council, there is no evidence to demonstrably indicate that the 10% threshold within CDP Policy 16 has 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.
14. Interested parties suggest that the methodology for calculating the HMO thresholds in respect of CDP Policy 16 is inaccurate. Policy 16 gives a standard and consistent method to assess applications for HMOs and its use was upheld at examination and adoption of the CDP.
15. I understand that refuse can be problematic specifically at the end of an academic term or during a change of tenancy. However, problems which occur on an occasional basis alone would not be a justification for rejecting the proposal. Plans show refuse storage to the front which would be suitable for the future intended occupiers.
16. Although not referenced in the decision notice, interested parties have raised Policies S1(m) and H3 of the City of Durham Neighbourhood Plan (2020 to 2035) (CDNP) and Policies 6, 21 and 22 of the CDP. Policy S1(m) seeks to ensure development will, amongst other things, secure a design which is capable of reducing crime and respecting privacy of neighbouring properties. Policy H3 seeks, amongst other matters, to ensure development makes a positive contribution to the character and distinctiveness of the area. 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. Policies 21 and 22 relate to sustainable transport and collectively seek to ensure that vehicular traffic generated by new development can be safely accommodated on the local and strategic highway network.
17. There would be no change to the external appearance of the dwelling or intervening distances with those neighbouring properties, and as such the proposed development would not give rise to unacceptable loss of privacy even if comings and goings from No 33 were to increase. Furthermore, whilst I note that the appellant has suggested that they could increase the area of hardstanding to accommodate additional vehicles, this has not been shown on the submitted plans nor has it been applied for. Notwithstanding this, the highway authority offered no objection to the proposal, and I have no reason to disagree and take a different view. Subject to the imposition of conditions to ensure a management plan and the provision of cycle and bin storage, I consider the design and layout of the proposal would be acceptable and in accordance with Policies S1(m) and H3 of the CDNP and Policies 6, 21 and 22 of the CDP.

18. My attention has been drawn to an appeal (ref: APP/X1355/W/21/3284492) which I am told relates to an HMO and noise and disturbance. I have not been provided with the details of the case to make a full comparison. In any case, I have determined the appeal on its own merits, based on the evidence before me.
19. 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 from being occupied again in the future as a family home.
20. The lack of engagement by the appellant is not within the scope of my assessment which must focus on the planning merits of the appeal proposal.
21. I have taken into account all other matters raised by interested parties, including concerns regarding the loss of a family home; the need to drive further to local schools and the loss of school places. The council did not refuse permission based on any of these matters, and on the information before me, these would not justify dismissing the appeal.

Conditions

22. 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.
23. In addition to the standard time limit, a condition specifying the plans is necessary in the interests of certainty.
24. In the interests of the living conditions of future intended occupiers, a condition is necessary that requires the details and implementation of soundproofing measures. To safeguard the living conditions of nearby residents, a condition is necessary that requires the submission of a detailed property and tenant management plan, and a condition limiting the number of occupants.
25. 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 retention of car parking spaces is also necessary in the interests of highway safety.
26. Given the proposed development relates to a change of use only, I am not satisfied that the council's suggested condition relating to the Construction Method Plan has been properly justified, therefore I do not consider it would be reasonable to impose this condition. I do, however, consider that a condition relating to the retention of car parking would be reasonable and necessary, in the interest of highway safety.

Conclusion

27. 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 permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Proposed Site Plan.
- 3) Prior to the first occupation of the development hereby approved, details of soundproofing 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 soundproofing measures shall be installed in accordance with the approved details and shall be retained thereafter.
- 4) Prior to first occupation of the development hereby approved, 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 prior to first occupation and be retained as refuse and recycling storage for the occupiers of the approved development thereafter.
- 5) Notwithstanding Condition 2 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 prior to first occupation and the space shall be retained as secure cycle parking for the occupiers of the approved development thereafter.
- 6) Prior to the first occupation of the development hereby approved, a detailed property and tenant management plan shall have been submitted to and agreed in writing with the Local Planning Authority. The scheme shall include landlord contact information as well as details of those specific controls to mitigate the impact on residential amenity from refuse generated by the development, noise, disturbance and anti-social behaviour, and measures to secure the property outside term times or when the property is vacant. The development shall thereafter be managed in accordance with the agreed property and tenant management plan at all times.

- 7) The HMO hereby permitted shall not be occupied by more than four (4) residents.
- 8) The car parking spaces as indicated on the 'Proposed Site Plan' shall be maintained and retained thereafter for the parking of private motor vehicles associated with the approved development.

***** END OF CONDITIONS *****