



Appeal Decision

Site visit made on 5 February 2024

by L Clark BA(Hons) DIPTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 April 2024

Appeal Ref: APP/X1355/W/23/3335220

Ground and First Floor of 29-33 (odd) Neville Street, Durham DH1 4AP

- 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 Catherine McKenna against the decision of Durham County Council.
 - The application Ref DM/23/01777/FPA, dated 16 June 2023, was refused by notice dated 18 October 2023.
 - The development proposed is material change of use of a hot food takeaway and bar on the ground and first floors to a large House in Multiple Occupation (sui generis), including alterations to the west elevation and removal of two flues on the east elevation.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - whether the site would be a suitable location for a house in multiple occupation (HMO), having regard to development plan policy; and
 - whether, in the event of a policy conflict being identified in respect of the first main issue material considerations indicate that a decision should be made otherwise than in accordance with the development plan.

Reasons

3. The appeal property (No 29-33) is a mid-terraced two storey building located partly within and partly outside of Durham's commercial centre, as defined in the County Durham Plan (2020) (CDP). The street contains a small number of commercial properties at its northern end, where it connects with North Road, but the remainder comprises terraced housing.
4. The site adjoins a commercial unit (in use as a barbers) immediately to the north and a residential property to the south. Opposite is a number of commercial premises the majority of which appear to have residential accommodation above.
5. No 29-33 is currently operating as two separate uses, with a fish and chip shop on the ground floor and a bar above. The proposal would convert the whole building into a large HMO containing 9 bed spaces.

Development Plan Policy

6. Policy 16, Part 3 (Policy 16) of the 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 recognises that there can be adverse effects on the amenity of residents where student HMOs are dominant, and this can change the character of an area over time. Over-concentration of HMOs may result in communities becoming unbalanced and lead to a breakdown in community cohesion. Adverse impacts can include noise and problems relating to the general appearance of properties, refuse management and parking. Properties becoming unoccupied outside of term times can also have a negative impact upon remaining residents.
7. Policy 16 takes a balanced approach to applications for HMOs and provides two specific circumstances when they would not be restricted. The appellant is relying upon criteria (i) which indicates that an HMO would be acceptable where an existing high proportion of residential properties within 100-metres are exempt from council tax charges (Class N), on the basis that commercial uses are predominant within the 100-metre area.
8. According to the Council, and I note that this is not contested by the appellant, there are 138 residential properties within 100-metre radius of No 29, of which 71% of these are represented as Class N, council tax exempt for student properties. A similar figure has been provided for Nos 30-33 (70.1% of 137 properties being Class N). Whilst these are high percentages, the site is not wholly within the commercial centre and the character of the immediate vicinity within Neville Street is residential and distinct from the commercial context within nearby North Road. As such, the proposal would not benefit from the exemption set out within criterion (i).
9. At approximately 70%, the proportion of Class N student properties within 100-metre radius of the site is already significantly above the 10% threshold set out within criterion (a) as being acceptable within a setting outside the commercial centre boundary. I therefore find that an HMO in this location would exacerbate an existing over-concentration of student housing.
10. Amongst other things, 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 a large 9 bed HMO would lead to a further imbalance within the community contrary to Policy 16. There would also be a conflict with CDP Policies 6 and 29, insofar as these seek to ensure that development is compatible with adjacent uses and minimise the impact of development upon the occupants of existing adjacent and nearby properties.

Other material considerations

11. The proposed development would replace the existing commercial uses which are permitted to operate into the early hours of the morning and have the potential to attract a large number of patrons. It is argued that the proposed change of use would benefit local residents by reducing noise and disturbance. However, I have no substantive evidence to demonstrate that the current uses result in harmful impacts.

12. The Police Crime Report Maps submitted by the appellant in support of their appeal identify a number of anti-social behaviour incidents within Neville Street. However, they do not specify the actual source of disturbance and without this information it is impossible to conclude that the existing uses of No 29-33 are the cause.
13. The Council's Environmental Health Officer has no objection to the proposal and recommends that a condition be imposed on any planning permission to secure a scheme of soundproofing measures. Such measures would reduce noise escaping from the building, but they would not prevent it entirely as windows could be opened with noise penetrating into the street. Moreover, they would not deal with the noise and disturbance associated with the arrival and departure of visitors to the building.
14. I note the appellant's suggestion regarding a property management plan and that Durham University, Durham Constabulary and the Council have powers to respond to anti-social noise. Adherence to the 10% threshold does not guarantee a noise-free environment. However, as there is an existing high level of HMOs within 100-metre of the site, it is highly probable that the introduction of 9 additional students, together with visitors, would add to noise and disturbance outside of the hours the existing commercial uses operate. This would alter the balance of the community. I am not convinced that the mechanism set out above would be sufficient to prevent harm to the living conditions of existing residents.
15. I have been provided with the Council's decision notice and delegated report relating to a change of use of Unit 7 and Unit 8, 1-4 North Road to an HMO. Whilst the issue is similar, the location is significantly different, as it is clearly located within a commercial shopping parade. Therefore, even if the percentage of properties were similar, the circumstances are sufficiently different for the site not to be comparable to the appeal before me.
16. I have taken account of the other arguments put forward in support of the proposal, including the lack of objections from neighbours and the need for additional student accommodation in the city. However, these matters do not make the scheme acceptable or outweigh the conflict with the development plan.

Other Matters

17. The appeal property is located within the Durham Conservation Area (DCA) and the setting of the Durham Cathedral and Castle World Heritage Site (WHS). In line with my statutory duty, I have paid special attention to the desirability of preserving or enhancing the character or appearance of the DCA. I also recognise that the WHS is designated for its Outstanding Universal Value.
18. No 29-33 is a modern building with a rendered exterior to the upper floor and signage associated with commercial uses. The proposed alterations to the external elevations would comprise the removal of the commercial signage, and façade restoration which would include the insertion of timber sash windows and doors. These works would replicate the simplistic frontages of nearby properties. The removal of the flues to the rear, whilst a positive alteration, are hidden from public view.

19. Overall, I am satisfied that the appeal scheme would not harm the character and appearance of the DCA as a whole or the Outstanding Universal Value of the WHS. The Council considered that the external works would result in a localised improvement to the character and appearance of the DCA and minor localised improvement to the setting of the WHS. Any heritage benefits would be very modest, given the scale and nature of the works, but they should nevertheless be factored into the planning balance.

20. The absence of harm in relation to highway safety and living environment of future occupiers are neutral matters in the overall planning balance as they would be requirements of any well-designed development.

Planning Balance and Conclusion

21. The proposal fails to comply with CDP Policies 6, 16 and 29 which together seek to promote inclusive, mixed and balanced communities and protect residential living conditions. Accordingly, I conclude that the scheme conflicts with the development plan read as a whole, I have had regard to the minor localised improvements to the DCA and WHS setting arising from the physical alterations to the building, and the other arguments put forward in support of the scheme by the appellant, but these do not indicate a decision otherwise than in accordance with the development plan.

22. For the reasons given above the appeal should be dismissed.

L Clark

INSPECTOR