



Appeal Decision

Site visit made on 23 May 2024

by P Storey BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 June 2024

Appeal Ref: APP/X1355/W/24/3337793

12 The Hallgarth, Durham DH1 3BJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Ms Nicola McCudden against Durham County Council.
 - The application Ref is DM/23/02118/FPA.
 - The development proposed is change of use from C3 dwelling to C4 small HMO.
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Decision

1. The appeal is allowed, and planning permission is granted for change of use from C3 dwelling to C4 small HMO, at 12 The Hallgarth, Durham DH1 3BJ, in accordance with the terms of the application, Ref DM/23/02118/FPA, subject to the conditions in the attached schedule.

Preliminary Matters

2. The appeal relates to the Council's failure to determine the planning application within the statutory timescale. The Council has not explicitly confirmed what its likely decision, or recommendation to committee, would have been. Although its statement of case refers to a delegated report, it was subsequently confirmed that no report was available.
3. Nevertheless, the Council's submitted evidence sets out the planning policy context against which the application would have been assessed. I have determined the appeal on this basis.

Main Issue

4. Having regard to the submitted evidence of the main parties and interested parties, the main issue is the effect of the proposal on housing mix.

Reasons

5. The appeal site is an end-terrace house in The Hallgarth, a mid-20th-century estate comprised of similar dwellings and low-rise blocks of flats. It lies a short walk from the city centre and close to various facilities of Durham University. The proposal seeks to change the use of the property to a Class C4 house in multiple occupation (HMO). The submitted plans illustrate that internal alterations and subdivision of rooms would create a 4-bedroom HMO. Other than the provision of cycle storage, no external alterations are proposed.
6. The Council considers the main development plan policy of relevance to the proposal is Policy 16 of the County Durham Plan – Adopted 2020 (the CDP). The key objective of Policy 16, in respect of HMOs, is to promote, create and

- preserve inclusive, mixed and balanced communities and to protect residential amenity.
7. Criteria a. to c. of Part 3 of Policy 16 set criteria for the assessment of proposals for changes of use to HMOs. The policy resists proposals if they conflict with one or more of the criteria. Criterion a. resists proposals if, 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).
 8. Policy 16 sets an exception where changes of use to HMOs will not be resisted if the area already has a concentration in excess of 90% of council tax exempt properties. As such, the policy summarily seeks to resist proposals where the resulting proportion of HMOs in the area would be between 10% and 90%. The Council's data suggests that the resulting figure from the proposal would be 55%, which is within this bracket.
 9. Fig.3 of the appellant's statement of case provides a colour-coded plan of the 100-metre radius surrounding the site, including all properties in The Hallgarth. There are 4 rows of terraced houses similar to the appeal property, each containing between 4 and 6 dwellings. Of these properties, Fig.3 illustrates only the appeal property, and one other, are not currently HMOs. The other non-HMO property is within the same row as the appeal property, but 3 HMOs sit between the properties. At my visit I noted most houses displayed window stickers for student letting companies. As such, I have no reason to dispute the details shown on Fig.3.
 10. To the eastern side of The Hallgarth are three 2-storey buildings containing flats. The evidence suggests all units in these buildings are 1-bedroom flats and none are currently HMOs. The 100-metre radius also includes properties on other streets, for which I do not have specific evidence of their tenure status.
 11. The appellant argues that the nearby presence of the 1-bedroom flats skews the percentage of HMOs in the area. These are understood to be occupied predominantly by elderly residents or single-person households. By their nature, the flats are unlikely to be attractive to student occupants and would not be capable of being occupied as HMOs.
 12. The appellant states that the appeal site was previously occupied as a family home, but the current nature of the surroundings has adversely affected occupiers' living conditions to the extent that they have moved out of the property. It is claimed that efforts to sell the property as a Class C3 dwelling have failed due to its location in a highly populated student area, and a letter from an estate agent has been provided to support this.
 13. The supporting text to Policy 16 sets out that there may be some cases where localised communities are already so imbalanced that the policy objective of protecting a balance is unlikely to be achieved, and owners of Class C3 dwellings may find difficulty in finding a purchaser for continued Class C3 use. This may include where the proportion of HMO properties within 100 metres of the site is such that the concentration might be likely to affect the amenity of normal family life. Other circumstances may include where there is documented evidence of unsuccessful active marketing as a Class C3 dwelling, or where the applicant can provide evidence which confirms that the policy restriction is causing severe personal hardship.

14. The available evidence and my observations on site suggest all of the closest neighbouring properties to the appeal site are HMOs, and there are very few non-HMO properties in the immediate vicinity. Several properties already in HMO use lie between the appeal site and the closest non-HMO properties, and the properties within the 100-metre radius on other streets are physically and functionally separate from the appeal site. The appeal site currently appears as an isolated Class C3 dwelling in an area where the mix of housing is already unbalanced towards HMO tenure. As such, I am not persuaded that the proposal would further unbalance the community to the extent that it would conflict with the key objective of Policy 16.
15. The Council disputes the evidence the appellant has presented to demonstrate unsuccessful marketing and personal hardship. Whilst the details provided may not fully align with those suggested in the supporting text to Policy 16, the policy does not explicitly require these details to be presented and implies that proposals will be considered on their specific merits. Moreover, having already established that the proposal would not undermine the key objective of Policy 16, I do not consider it essential to demonstrate compliance with these additional criteria. Nevertheless, due to the surrounding nature of the site, I find the appellant's evidence credible in terms of effects on occupiers' living conditions and the associated challenges with selling the property. These considerations therefore weigh in favour of the proposal.
16. For the reasons given above, the proposed addition of a further HMO in the area would not further unbalance the community and its effect on housing mix would be acceptable. It would therefore accord with Policy 16 of the CDP, the aims of which have previously been set out.

Other Matters

17. 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.
18. The significance of the CA is derived predominantly from the historic importance of the buildings and streets forming the nearby city centre, and the areas that have grown around it. Because the proposal would involve very limited external changes to the property, it would not adversely affect the significance of the CA and would preserve its character and appearance.

Conditions

19. The Council has provided a list of suggested conditions that I have considered against the provisions of paragraph 56 of the National Planning Policy Framework and the Planning Practice Guidance. To ensure compliance, I have amended or omitted certain conditions.
20. Conditions relating to the statutory time limit and a list of approved plans are necessary in the interests of certainty.
21. A condition requiring the submission of a scheme of sound proofing measures is necessary to protect the living conditions of future and neighbouring occupiers.

22. An amended version of the Council's suggested condition can be imposed to prevent the creation of additional bedrooms, to protect the living conditions of nearby occupiers.
23. Given that the proposal is for a change of use with only limited physical works, I do not find the Council's suggested condition restricting hours for construction and associated operations to be reasonable or necessary to protect the living conditions of nearby occupiers. In any event, other regulatory regimes exist to control disturbance through such activities.

Conclusion

24. For the reasons given above, the appeal should be allowed subject to the conditions listed in the attached schedule.

P Storey

INSPECTOR

Schedule of 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 – dated 14 July 2023
Proposed Floor Plans & Elevations – 1343-03
- 3) Before the first occupation of the development hereby permitted, a scheme of sound proofing measures shall be submitted to and approved in writing by the local planning authority to ensure that the noise insulation of walls and floors between the adjoining property is sufficient to prevent excessive ingress or egress of noise. The approved scheme shall be implemented prior to the occupation of the development and retained thereafter.
- 4) The development hereby permitted shall not be subject to further works or internal room subdivisions that would result in the property containing more than four (4) bedrooms.

**** End of conditions ****