



Appeal Decision

Hearing held on 14 May 2024

Site visit made on 14 May 2024

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 August 2024

Appeal Ref: APP/X1355/W/24/3338834

Hallgarth Care Centre, Hallgarth Street, Durham DH1 3AY

- 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 Unity Living against the decision of Durham County Council.
 - The application Ref: DM/23/01975/FPA, dated 3 July 2023, was refused by notice dated 27 October 2023.
 - The development proposed is described as: Conversion of care home (C2) to Student Accommodation comprising 69 bedspace in the form of 9 cluster apartments, re-roofing of conservatories, erection of new cycle shelter and replacement bin store.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposal was described on the planning application form as "Conversion of a care home to 69 bedspace Purpose Built Student Accommodation (PBSA) including re-roofing of conservatories; cycle shelter; bin store; EV bays and associated works". On the decision notice issued by the Council, the development was described as "Conversion of care home (C2) to Student Accommodation comprising 69 bedspace in the form of 9 cluster apartments, re-roofing of conservatories, erection of new cycle shelter and replacement bin store". Although it does not appear that this change was agreed with the appellant during the Council's consideration of the planning application, at the hearing it was agreed that the Council's description should be used for the purposes of the appeal.

Main Issues

3. The main issues in this appeal are:
 - The effect of the proposal on creating, or maintaining, a mixed and balanced community, having regard to the policies in the development plan.
 - The effect of the proposal on the living conditions of the occupiers of nearby residential properties.

Reasons

The effect on creating, or maintaining, a mixed and balanced community

4. The proposal seeks to convert a former purpose built care home into flats to provide student accommodation. The building has a u-shaped plan form and is

predominantly two storey with a lower ground floor under part of the footprint accommodated by a change of ground level within the site. From the evidence provided, the building was constructed in the mid 1990's and ceased operating as a care home in August 2023. It is currently vacant.

5. The proposal would see the building converted into 9 flats of between 5 and 9 bedrooms. All of the bedrooms would be en-suite and each flat would have a shared living room/kitchen area. A gym and a games room would be provided for use by the occupiers. Five of the flats would be accessed via a common lobby and stairwell accessed via the existing principal entrance to the building. The remaining four flats would be accessed from secondary stairwells within the forward projecting wings of the building, two from each stairwell via a existing emergency exits that would be adapted to conventional doorways. Although the flats on the ground and first floors would have internal connecting doors, these are for fire escape purposes and would not be in general day to day use. As such, each flat within the building would effectively operate as a self-contained unit.
6. The city of Durham has a substantial student population, and the Council seeks to balance the need to provide conveniently located student accommodation with the housing needs of the non-student population. It also seeks to ensure that areas of the city do not become dominated by student accommodation in the form of houses in multiple occupation (HMOs). The Council has made an Article 4 Direction, covering a large part of the city, which prevents the permitted change of use from dwellinghouses to small HMOs.
7. Policy 16 of the County Durham Plan 2020 (the CDP), in addition to making provisions for general development by Durham University, sets out criteria against which proposals for purpose built student accommodation (PBSA) and HMOs will be assessed. The principal area of dispute in this appeal is whether the proposal is for PBSA or whether the scheme constitutes a development of HMOs and, consequently, which provisions of CDP Policy 16 should be applied.
8. The appeal proposal was promoted as PBSA. PBSA is not defined in legislation. The supporting text to Policy 16 of the CDP defines PBSA as accommodation built, or converted, with the specific intent of being occupied by students, either with individual en-suite units or sharing facilities. It goes on to set out that PBSA is a building which is not classified as Use Class C4 or anything licensable as an HMO.
9. Although the supporting text is not part of the policy and does not have the force of policy it is, nonetheless, relevant to the interpretation of the policy to which it relates. It is common ground that the proposal is predicated on the building being converted with the specific intent of being occupied by students. Where there is dispute is in relation to the second part of the definition, namely whether the resulting development would be classed as a group of HMOs, or be licensable as such.
10. What constitutes an HMO is clearly defined in statute. Part 3 of Policy 16 references Use Class C4 of the Town and Country Planning (Use Classes) Order 1987 (as amended) and *sui generis* HMOs (those occupied by more than 6 persons). The supporting text to Policy 16 sets out that an HMO under planning legislation is defined as a house or flat occupied by a certain number of unrelated individuals who share basic amenities.

11. Use Class C4 relates to houses in multiple occupation and covers use as such by not more than six residents. HMOs with more than six residents fall outside of any defined use class. The Interpretation section of Class C4 in the Use Classes Order states that a house in multiple occupation does not include a converted block of flats to which Section 257 of the Housing Act 2004¹ (the Housing Act) applies, but otherwise has the same meaning as Section 254 of that Act. It is not unreasonable to conclude that the definition in Section 254 of the Housing Act would also include *sui generis* HMOs.
12. Section 254 of the Housing Act sets out a number of tests for determining whether a building, or part of a building, is an HMO. Section 254(3) sets out "the self-contained flat test". This states that a part of a building meets the test if: it consists of a self-contained flat; the living accommodation is occupied by persons who do not form a single household²; the accommodation is occupied by those persons as their only or main residence or are treated as so occupying it³; their occupation of the living accommodation constitutes the only use of that accommodation; rents are payable in respect of at least one of those persons occupation of the accommodation; and two or more of the households who occupy the living accommodation share one or more basic amenities.
13. Section 55 of the Housing Act makes provision for the licensing of HMOs of a prescribed description. The Licensing of Houses in Multiple Occupation (Prescribed Description)(England) Order 2018 sets out that an HMO is of a prescribed description for the purposes of Section 55 of the Housing Act if it is: occupied by more than five persons; it is occupied by persons living in two or more households; and it meets the test in Section 254(2), 254(3) or 254(4) of the Housing Act.
14. Schedule 14 of the Housing Act defines buildings which are not to be considered as HMOs for the purposes of the Act. This definition includes buildings occupied by persons undertaking full time further or higher education at an educational establishment, provided that the building is managed or controlled by an educational establishment. It is accepted that the proposed development would not be managed or controlled by an educational establishment.
15. The appellant has provided Counsel's Opinion which concludes that the definition of PBSA within the plan is clear and cannot be trumped by Schedule 14 of the Housing Act.
16. The appellant's Counsel's Opinion contains a caveat in respect of the requirement for licencing, stating that this is a matter which falls outside of the author's area of expertise and that the proposition that the property is unlikely to be licensable is based upon instruction. The Opinion sets out that the right way to interpret Policy 16 is that the CDP defines PBSA as purpose built

¹ Section 257 of the Housing Act sets out that a converted block of flats means a building or part of a building which has been converted into, and consists of, self-contained flats where the works undertaken in connection with the conversion did not comply with the appropriate building standards and less than two thirds of the flats are owner occupied. This is not applicable to the appeal proposal.

² Section 258 of the Housing Act sets out that persons are to be regarded as not forming a single household unless they are all members of the same family.

³ Section 259(2) of the Housing Act sets out that a person is to be treated as occupying a building or part of a building if it is as the person's residence for the purposes of undertaking a full-time course of further or higher education.

accommodation designed to house students with either studio flats or shared facilities and excludes properties which are licensable as HMOs.

17. Both parties agree with this definition. The key question is, consequently, whether the flats that would be provided by the proposed development would be licensable as an HMO. Within this context it is clearly necessary to consider whether the development proposed would fall within the definition of an HMO, and whether the licensing provisions apply, in order to determine whether a proposal is excluded from the definition of PBSA for the purposes of CDP Policy 16. HMOs are defined in statute and, in order to correctly apply the definition in the CDP and the terms of Policy 16, it is necessary to look to the legislation.
18. The appellant has not provided any compelling or substantiated evidence which would show that the proposed development would be outside the scope of the HMO licensing requirements. The Counsel's Opinion is based on instructions from persons unknown in this respect. The Council's Licensing team have stated that, due to the nature of the resulting development, an HMO licence would be required. In the absence of any persuasive evidence to the contrary, it is not unreasonable to assume that the Council's Licensing officers, who regularly deal with such matters, are correct on this point.
19. In the above context, and based on the drawings and other information provided, the proposed flats would meet both the self-contained flat test in Section 254(3) of the Act and the description of prescribed HMOs in The Licensing of Houses in Multiple Occupation (Prescribed Description)(England) Order 2018. As such they would each be licensable as an HMO.
20. The appellant argues that if this is the case then it would apply to each and every PBSA cluster unit in the country. However, this would only be true of accommodation which was not managed or controlled by an educational establishment. No evidence has been adduced which would show that privately operated cluster flats elsewhere in the country are not required to be licensed. The appellant also postulates that if, in the future, control or management of the building were to be taken over by an educational establishment this would allow a change of use to PBSA. However, the act of development would have already taken place and the use of the building as student flats would be unaltered. The requirement for licensing as an HMO would be removed by virtue of Schedule 14 of the Housing Act, but this would not intrinsically change the use of the building.
21. My attention has also been drawn to a number of other schemes that the Council have assessed as either PBSA or HMOs. However, there is scant information on whether or not these schemes were ultimately permitted. I have noted that one of these schemes (63 Crossgate) was refused and subsequently dismissed at appeal. A further scheme at 4 -6 Silver Street was assessed on the basis of the provision of HMOs and was found to comply with the relevant policy requirements and permission granted. Consequently, I give little weight to the suggestion of inconsistency.
22. The comparison of room sizes between the minimum requirement for rooms in an HMO and the appeal scheme advanced by the appellant is largely immaterial. The size of the accommodation to be provided is not a factor in determining whether either the scheme meets the definition of PBSA, or if the tests in Section 254 of the Housing Act are met.

23. The proposal would provide communal facilities such as a gym, games room, bookable meeting room, and parcel collection facility which are not normal features of an HMO, and which may be found in other PBSA schemes. Nevertheless, Part 2 of Policy 16 does not require such facilities to be provided and they are not one of the criteria set out in the Policy that PBSA proposals are to be assessed against. Whilst I have noted the appellant's point that other local authorities may assess proposals for PBSA developments differently, this proposal falls to be assessed against the relevant policies in the CDP.
24. Drawing the above strands together, having regard to the agreed definition of PBSA in the CDP, whilst the proposed development is intended to be occupied by students, it would be excluded from being assessed under Part 2 of CDP Policy 16 of because the units would be licensable as HMOs.
25. The proposal would therefore fall to be considered under the terms of Part 3 of Policy 16. This seeks to promote, create, and preserve inclusive, mixed, and balanced communities by controlling the proportion of HMOs occupied by students in the vicinity of the appeal site.
26. The Councils records show that as of 1 April 2023 there were 126 residential properties within 100m of the appeal site, of which 33 have a Class N exemption from Council Tax because they are used as student accommodation. This amounts to 27% of the properties. This exceeds the 10% threshold beyond which Part 3 of Policy 16 states that further conversion to HMO's will not be permitted.
27. Policy 16 sets out two exceptions where further HMOs would not be resisted. Firstly, where the area already has a concentration in excess of 90% Council Tax exempt properties and, secondly where there is an existing high proportion of exempt residential properties as a result of the area containing predominantly commercial uses. The second exemption is not relevant in this case.
28. The appellant states that on the route from the appeal site to the nearby Durham University campus 85% of the properties are occupied by students. However, I saw when I visited the site that these 48 properties are within the 100m radius of the appeal site and would consequently be part of the 27% total. There is nothing in the evidence before me which would indicate that the first exemption would apply. There is no other substantiated evidence which would indicate that the surrounding area is so heavily skewed toward student accommodation that increasing the student population would make not make a significant difference.
29. The Council has not raised any objections to the proposal in respect of the proposed provisions for car and cycle parking, arrangements for bin storage, or the design and appearance of the re-roofed conservatories and the proposed new cycle shelter and replacement bin store. Nor are there any substantive concerns raised with regard to the security of the building. However, none of these points overcomes the fundamental conflict with the policy in respect of exceeding the 10% threshold for HMOs.
30. I therefore conclude that the proposed development would be harmful to the objective of creating, or maintaining, a mixed and balanced community, having regard to the policies in the development plan. It would conflict with the relevant requirements of Policy C16 of the CDP.

The effect of the proposal on the living conditions of the occupiers of nearby residential properties.

31. Policy 31 of the CDP seeks, amongst other matters, to ensure that new development does not have an adverse effect on the living conditions of existing residents.
32. The appeal building is in a predominantly residential area located to the south of the city centre and just to the north of the main campus of Durham University. Hallgarth Street is a principal route into Durham city centre from the south west and, together with Church Street, is an important route between the University campus and the city centre.
33. The building had previously operated as a care home which would have resulted in a level of vehicular and pedestrian movements from staff, visitors, and deliveries. The proposed use would, because of its nature, inevitably result in an intensification of movements, particularly pedestrian movements, to and from the building. The times at which these movements occur would also change.
34. Given the nature of Hallgarth Street as a through route to the city centre, additional movements during the day either to the campus to the south, or to other university buildings elsewhere in the city, would not make an appreciable difference. The principal concern is in respect of increased movements and the potential for behaviour that could be perceived as anti-social in the evenings and later at night, due to the greater use of the night time economy by the occupiers of the flats.
35. The proposed management plan and measures such as the installation of closed circuit television at the building and preventing the use of external amenity space outside of specified times could effectively control noise and disturbance in immediate proximity to the building. Provisions to manage vehicle movements and parking in connection with drop-off and pick-ups at the beginning and end of terms would also limit disturbance arising from this. Notwithstanding the appellant's references to the university's student charter and expected standards of behaviour, the proposed management plan would be less effective in addressing behaviour in the surrounding area beyond the immediate environs of the building. This is because further away from the building, activities of the residents could not be monitored by the appellant.
36. The residential properties on Hallgarth Street are predominantly constructed with the principal elevation located immediately to the back of the footway. As such they are more susceptible to noise and disturbance from pedestrian and other traffic. That said, the Councils Environmental Health Officer notes that it is difficult to quantify the potential for noise impact associated with the proposed development as there is no specific guidance or thresholds for developments of this kind. The Council also confirmed at the hearing that it has no records of statutory noise complaints in the area.
37. Although I have doubts about the efficacy of the management plan in regulating behaviour of residents beyond the immediate environs of the appeal building, this has to be seen in the context of there not being specific guidance or thresholds in regard of noise in relation to student accommodation. I do not doubt that there have been instances of noise, disturbance, or antisocial behaviour, as stated in the correspondence from interested parties. It is also

undeniable that the proposed development would increase the potential for disturbance or antisocial behaviour. In particular, students returning from the city centre in the evening/nighttime would traverse most of the length of Hallgarth Street to reach the appeal building, passing a substantial number of other residential buildings.

38. However, there is little substantiated evidence as to the frequency or nature of such behaviours. Nor would it be reasonable to assume that all students are going to conduct themselves in a less than responsible manner. Whilst there would be an increase in general, low level, noise and disturbance to local residents as a result of the proposed development, there is insufficient evidence for me to conclude that this would be of such a magnitude as to cause harm to the living conditions of local residents either in isolation, or cumulatively with other student accommodation in the area. I am also satisfied that the building could be managed in such a way that its occupation would not be a direct noise source in itself, and that parking and deliveries could be managed in such a manner as to minimise any disturbance from these sources.
39. I therefore find that the proposed development would not cause harm to the living conditions of local residents. It would comply with the relevant requirements of CDP Policy 31.

Other Matters

40. The appeal site is located within the Durham City Conservation Area and also within the inner townscape setting of the Durham Castle and Cathedral World Heritage Site. Nearby properties at 54-56 Hallgarth Street, 58 Hallgarth Street and 59 Hallgarth Street, are Grade II Listed Buildings. Mount Joy Crescent to the south is identified as a Non-Designated Heritage Asset.
41. The significance of this part of the Conservation Area is focussed around the unbroken linear built form of Church Street and Hallgarth Street, with the varying sizes and characteristics of the buildings within these frontages contributing significantly to the character and appearance of the area. This linear built form includes the Grade II listed buildings close to the appeal site. The significance of these latter is derived in part through the setting of Hallgarth Street itself, alongside their retained historic interest, comprising original features dating back through the 17th, 18th and 19th centuries, and the variety of architectural styles present.
42. The appeal site is set back from Hallgarth Street, and there are no significant external changes proposed to the building as a result of the proposed works. The appeal site itself has little or no inherent historic interest, nor does it make any particular contribution to the understanding of the significance of the World Heritage Site. Overall, the effect of the proposal on the nearby heritage assets would be a broadly neutral one, with a minor benefit being derived from bringing a disused building within the conservation area back into use.
43. Although the appellant has consulted with Durham University, the response received neither opposes nor supports the proposal, and does not specify what the University's preferred format of student accommodation might be. The response from the University is silent in respect of the future need for accommodation, both in terms of quantity and type.

44. The University confirmed that in 2022/23 there were 18,760 students renting in the DH1 postcode area with 7563 in college and 11,186 in private accommodation. The University also confirmed that it is anticipated that the overall number of students at the university is expected to fall over the next few years to its target number of 21,500. Not all students at the University require accommodation. It is common ground that there are approximately 12,169 bedspaces in college and operational PBSA accommodation, and a further 1000 PBSA bedspaces which have planning permission. There are no precise figures available in respect of the number of bedspaces available in HMO and non-HMO⁴ student accommodation.
45. The Appellant's Student Accommodation Needs Assessment (the Needs Assessment) calculates the bed supply via PBSA and HMOs in Durham as being 18,288 spaces in 2024 on the assumption that all planned developments went ahead. It is not clear on what basis the number of HMO bed spaces has been derived given that neither party has enumerated this. Nor is it clear whether PBSA in this estimate includes bed spaces in college (some 7,500 spaces).
46. In addition, although the Needs Assessment assumes that some private landlords are exiting the market, resulting in a reduction in available bed-spaces, this is gainsaid to an extent by the response from the University which states that properties are passing from smaller landlords to larger ones rather than being lost to the sector. Although caveated as anecdotal evidence, the University response also suggests that there is an increase in supply through landlords purchasing properties and letting them to 2 students to avoid the requirements of HMO licensing and the Article 4 Direction.
47. Given the above, I am not satisfied that a need for further PBSA has been demonstrated.
48. It is common ground between the main parties that the loss of the care home use is not a disputed matter. However, the loss of the care home has been raised in representations by many of the interested parties. The care home is no longer operating, and the building was vacant at the time of the site visit. County Durham Care Partnership, the commissioning body for care home places commented on the application and stated that there is currently a surplus of care home bed spaces in the County. On this basis loss of the care home facility would not be a reason to withhold planning permission.

Planning balance

49. I have found that the proposed development would be harmful to the objective of creating, or maintaining, a mixed and balanced community and would conflict with the relevant requirements of Policy 16 of the CDP. This is, to my mind, an important matter and, as such, the proposal would be contrary to the development plan taken as a whole, notwithstanding that it may comply with the CDP in other respects. This conflict with the development plan weighs significantly against the proposal.
50. The re-use of a vacant building within the conservation area would represent a modest benefit. The proposal would provide employment during the conversion process, although this is most likely to be through the maintenance of existing construction jobs rather than creating new jobs. The operation of

⁴ Properties which are not a Use Class C4 HMO and are outside of the scope of the Article 4 Direction which restricts the permitted change of use between Use Classes C3 (dwellinghouses) and C4 (small HMOs).

the completed facility would also provide employment, although no figures have been provided in respect of the number of jobs that may be created. As such only moderate weight can be given to this.

51. The proposal would provide student accommodation close to university campus. However, as I have found that it has not been demonstrated that there is a need for accommodation of this type, this carries little weight.
52. It is suggested that the appeal proposal would give rise to potential to release HMO's back into the general housing market. Nevertheless, there was no substantive evidence put to me that would support this.
53. Whilst students would potentially support local shops and facilities, again there is no substantive evidence that there is a risk that these would be lost were the proposal not to proceed.
54. The proposal would retain the embodied carbon from the original construction of the building. However, it was not suggested that should the proposal not proceed that the building would be demolished. Whilst the appellant argues that there is no other potential use for the building, no substantiated evidence was provided that would demonstrate that it would not be possible to find an alternative beneficial use for the existing building. Consequently, I give little weight to this.
55. Whilst there would be some modest benefits from the proposal, none of these, either individually or cumulatively, would overcome the significant weight arising from the conflict with the development plan. No other material considerations have been identified which would warrant granting planning permission for a development that does not comply with the CDP.

Conclusion

56. For the above reasons, I therefore conclude that the appeal should be dismissed.

John Dowsett

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr R Frudd	Senior Director Quod Planning Consultants
Mr S Ellis	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr G Spurgeon	Senior Planner - Durham County Council
Mr P Hopper	Principal Planner - Durham County Council
Ms S Rider	Senior Policy Officer – Durham County Council

INTERESTED PARTIES:

Mr R Cornwell	Trustee – City of Durham Trust
Mr R Hird	Local Resident
Mr A Hayton	Local Resident
Ms R Layton	Local Resident
Ms M Seymour	Local Resident

DOCUMENTS

Document 1 – Statement of Mr R Cornwell