



Appeal Decision

Site visit made on 10 February 2025

by M J Francis BA (Hons) MA MSc MCIfA

an Inspector appointed by the Secretary of State

Decision date: 20 March 2025

Appeal Ref: APP/X1355/W/24/3352991

27 Annand Road, Gilesgate, Durham DH1 1PW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Apple Farm Limited against the decision of Durham County Council.
 - The application Ref is DM/24/00298/VOC.
 - The application sought planning permission for change of use from dwellinghouse (Use Class C3) to a house in multiple occupation (Use Class C4) with single storey rear extension without complying with a condition attached to planning permission Ref DM/23/01690/FPA, dated 23 August 2023.
 - The condition in dispute is No 8 which states that: The small HMO hereby approved shall be occupied by a total of no more than 3 persons at any one time.
 - The reason given for the condition is: To ensure that adequate internal space is provided to serve the number of occupants in the interest of residential amenity in accordance with the aims of Policy 31 of County Durham Plan.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Whilst a revised version of the National Planning Policy Framework (the Framework) was published in December 2024, the principles relevant to this decision remain the same. Therefore, it has not been necessary to request observations from the main parties upon any implications of the revised Framework's publication.

Background and Main Issue

3. Planning permission was granted in 2023¹ for the change of use of a dwelling (Use Class C3) to a house in multiple occupation (HMO) (Use Class C4) with a single storey rear extension. Condition 8 of the permission sought to limit the numbers of occupiers to no more than three. The reason being to ensure that adequate internal space was provided for the occupiers in the interest of residential amenity and in accordance with the aims of Policy 31 of the County Durham Plan, 2020 (CDP).
4. The application² subject to this appeal sought to remove condition 8 of the planning permission and included a proposed site plan and a proposed floor plan showing an alternative internal layout. The floor plan shows four bedrooms on the 1st floor, and two bedrooms on the ground floor, including one within the single

¹ Ref DM/23/01690/FPA

² Ref DM/24/00298/VOC

storey rear extension. Two rooms, each containing a shower, toilet and basin, and a lounge/kitchen/diner would be located on the ground floor.

5. Therefore, the main issue is whether the disputed condition is necessary, having regard to whether it would provide acceptable living conditions for the future occupants in relation to internal space.

Reasons

6. The appeal site is a semi-detached, two storey dwelling. It is located on a corner site in a residential area.
7. Policy 31 of the CDP states, amongst other things, that proposals will need to demonstrate that future occupiers will have acceptable living conditions. Furthermore, Policy 29 of the CDP requires high standards of amenity, with private and communal amenity space being well-defined, defensible and appropriate in its design, size and location for the needs of its users. It requires all new residential development to comply with the Nationally Described Space Standards (NDSS).
8. An increase in the occupiers of the house to five or more would require an HMO license, which would ensure that the property was of an appropriate size, standard and quality. Whilst the appellant has set out that the size of the bedrooms would exceed that set out in the HMO standard, and other facilities and requirements would be provided, these standards differ to the NDSS.
9. There is no dispute between the main parties that the bedrooms would exceed the minimum floor area in the NDSS, although bedroom 4 is less than the 2.15m width that is required. Furthermore, it is agreed that there is not a minimum floorspace standard for a 6-bedroom, 6 person HMO, although a 5-bedroom HMO for 6 occupiers, and a 6-bedroom for 7 occupiers would be between 110-123m². The floor space proposed at the appeal site would be 92m², which would be below these figures, although it would accord with the NDSS with regards to ceiling heights, storage, a communal area and having a rear garden.
10. Although the house could have the same number of occupants if it was being used as a Use Class C3, in that situation the property would have to be occupied by up to six people living as a single household. This is not comparable to a house being used as an HMO where six individuals would lead independent lives from one another and be coming and going to the property at different times.
11. Whilst the proposed bedrooms would be satisfactory, the submitted ground floor plan shows two, small, shower rooms and toilets, one of which would be accessed directly off the shared lounge/kitchen and diner. In comparison, the original approval³ had an upstairs bathroom, and on the ground floor a toilet, and a shower room. In addition, the previous approval had a kitchen and diner with a separate lounge, as well as a study for the three occupants. Instead, this proposal, for six occupiers has significantly less communal space.
12. The alternative layout plan shows that the lounge area has several doors leading off it, and a door directly from the kitchen into bedroom 5. To ensure necessary movement within the lounge area and access to these adjoining rooms, this would result in limited space for eating and relaxing. Furthermore, whilst bedroom 3 in

³ Ref DM/23/01690/FPA

the previous proposal was also accessed directly off the kitchen, this would have been in a house with two other occupiers, not five.

13. Although there would be suitable external space, this can only be used in periods of good weather, and despite the bedrooms being adequate, an appropriately sized communal living area would be necessary for the occupiers of the house. Therefore, allowing up to six residents in the house would not provide spacious living conditions, and it would result in a poor-quality living environment for the occupiers of the HMO.
14. Therefore, I conclude that disputed condition 8 is relevant, reasonable and necessary to ensure that adequate internal space is provided for the occupiers to ensure acceptable living conditions.
15. Consequently, it would conflict with Policies 29 and 31 of the DLP as the size and design of the communal space would not be adequate, and it would not provide acceptable living conditions for the occupiers. Additionally, it would conflict with chapter 12 of the Framework.

Other Matters

16. The appellant has submitted several examples of HMO approvals⁴. Whilst the evidence is mainly limited to plans, all these properties appear to have larger internal communal areas and substantially more bathroom and toilet facilities and less bedrooms than that proposed at the appeal site. Notwithstanding this, I do not have full details of the circumstances of these cases, and have determined the appeal on its own merits, based on the evidence before me.

Conclusion

17. The proposed development conflicts with the development plan when considered as a whole and there are no material considerations, including the Framework, that outweigh the identified harm and associated development plan conflict.
18. For the reasons given above, I conclude that the appeal is dismissed.

M J Francis

INSPECTOR

⁴ Appendix 1 and 2