



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: 26 March 2025

Appeal Ref: APP/X1355/W/24/3351686

58 Frank Street, Gilesgate Moor, Durham DH1 2JF

- 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 Sugar Tree Limited against Durham County Council.
 - The application Ref is DM/24/01647/FPA.
 - The development proposed is change of use from dwellinghouse (Use Class C3) to a house in multiple occupation (Use Class C4) including single storey rear extension, formation of car parking area, cycle parking and bin storage.
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Decision

1. The appeal is allowed and planning permission is granted for a change of use from dwellinghouse (Use Class C3) to a house in multiple occupation (Use Class C4) including single storey rear extension, formation of car parking area, cycle parking and bin storage at 58 Frank Street, Gilesgate Moor, Durham DH1 2JF in accordance with the terms of application reference DM/24/01647/FPA, dated 19 June, 2024, subject to the conditions listed in the attached schedule.

Preliminary Matters

2. The appeal is against the failure of the Council to determine the planning application. The Council's statement of case advises that it was not able to conclude their assessment of the proposed scheme within the deadline for the submission of the appeal documents. Consequently, the Council has not provided the likely recommendation to committee and there are no putative reasons for refusal. However, the Council has set out within its statement, the policy context for the assessment of the proposal, and details of the consultation responses. I have determined the appeal on this basis.
3. A revised version of the National Planning Policy Framework (the Framework) was published in December 2024, however, the principles relevant to this decision remain the same. Consequently, it has not been necessary to request observations from the main parties upon any implications of the revised Framework's publication.

Main Issues

4. Therefore, based on the evidence from the main parties, as well as third party responses, the main issues are:
 - the suitability of the proposal in this location, given policies to create mixed and balanced communities;

- whether the proposal would provide acceptable living conditions for future occupiers with regards to internal and external space;
- the effect of the proposal on parking and highway safety;
- the effect of the proposal on the living conditions of the occupiers of neighbouring properties with regards to privacy, noise and disturbance; and
- the effect of the proposal on the property and the character and appearance of the area.

Reasons

Mixed and balanced communities

5. Policy 16 of the County Durham Plan, 2020 (CDP) seeks to promote, create and preserve inclusive mixed and balanced communities where student accommodation is created, including Houses in Multiple Occupation (HMOs). Where planning permission is required, the policy does not permit a change of use to a Class C4 property if 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). Additionally, it is not permitted where there are existing unimplemented permissions for HMOs within 100 metres of the application site, which combined with the existing number of Class N exemptions would exceed 10% of the total properties within 100 metres of the site.
6. The submitted evidence, which is not disputed by the parties, identifies that within a 100m radius of 58 Frank Street there are 82 residential properties. Of these, less than 3, equating to 4.9% of properties, are Class N exempt in the Council tax records. In addition, there are two unimplemented consents, which equals 7.3% of properties.
7. Whilst third parties refer to the appeal site being within a quiet residential area of families and elderly people, and that the proposal would remove a family home, the submitted data details that there are limited numbers of HMOs in this area, and it would therefore accord with the criteria set out in Policy 16.
8. Other submissions from interested parties refer to the need for more affordable family housing, either to buy or rent, and that Durham University has declared that there is sufficient housing for students within the city, and that future student numbers would be lower. However, I have no substantive evidence of this, and moreover, the policy does not require a need for student accommodation to be demonstrated. Therefore, I have no reason to consider this further.
9. Therefore, based on the evidence before me, the proposal would not be harmful to the creation of a mixed and balance community in this location. Consequently, it would accord with Policy 16 of the CDP as set out above.

Living conditions of future occupiers

10. The appeal site is a two-storey, semi-detached house, located in a residential area with a small garden to the front. To the side is a wide passageway shared with No 56 Frank Street which leads to a wooden gate providing access to the back garden. This is covered by a lawn and bushes.

11. Policy 31 of the CDP requires a proposed development to have acceptable living conditions, whereas Policy 29 of the CDP requires all new residential development to comply with the Nationally Described Space Standards¹ (NDSS). The supporting text to Policy 29 states that all housing schemes will be expected to apply the standards unless they can demonstrate to the Council that they would render the scheme unviable.
12. The proposal currently has three bedrooms and a bathroom on the 1st floor. The proposal would alter and extend the ground floor providing a further two bedrooms, a new shower room and a reconfigured kitchen/dining and living space.
13. The NDSS requires a single bedroom to be at least 7.5m² in size and at least 2.15m wide. All five bedrooms in the property would comply with this. In addition, each bedroom shows space for storage, as well as desk space. I note that GypLynar acoustic walls would be used in the creation of bedrooms 4 and 5 on the ground floor which would improve sound proofing within the bedrooms.
14. The NDSS requires that for a 5-bedroom, 6-person house, the overall floor area of the building should exceed 110m². This would be exceeded. The proposed ground floor plan shows a kitchen area with space for sitting and eating, with an adjoining living room, which would be appropriately sized for the numbers of occupiers.
15. Policy 16 of the CDP also requires that there are acceptable arrangements for bin storage, and that other shared facilities and amenity issues, as well as the security of the building, are considered. An area for the storage of bins is shown to the side of the house, close to where secure cycle storage would be located. To the rear of the house, a moderately sized garden would be retained, providing adequate external space for the occupiers.
16. I therefore conclude that the proposal would provide acceptable living conditions for the occupiers of the property with regards to internal and external space. It would not conflict with Policies 16, 29 and 31 of the CDP.

Parking and highway safety

17. The property currently has three bedrooms and there is no on-site parking. I noted that opposite the site, around the green in the centre of Frank Street, is an area for parking. However, at the time of my visit, which was a weekday morning, most of this was being used by vehicles. This suggests that there may already be parking pressure in the area, although I saw that some houses in the vicinity of the site had parking areas within their front gardens.
18. The proposal would provide two parking spaces to the front. The Council's Parking and Accessibility SPD, 2023, (SPD) requires there to be 3 spaces for a 5-bedroom HMO. However, as the proposal is for student accommodation, it is unlikely that there would be a greater demand for car parking, above that provided. The site is close to a bus stop, and secure cycle storage would be provided. Furthermore, based on the distance from the city centre, occupiers would be able to walk.
19. Therefore, whilst it does not accord with the SPD, I concur with the views of the Highways Officer that as there is currently no parking on the site, two parking spaces would be acceptable.

¹ Technical housing standards – nationally described space standard, 2015

20. I conclude that the proposal would provide adequate parking which would not have an unacceptable effect on highway safety. It would not conflict with CDP Policies 16 and 21 which together, and amongst other things, seeks to provide secure storage and increased cycle use, and that sufficient parking is provided to minimise potential harm to amenity from footway parking.

Living conditions of neighbouring properties

21. The property is attached to No 60 Frank Street (No 60). The proposed single storey extension would be inset slightly from the party wall. The extension would be higher than the existing fence line, and would be closest to a ground floor window, likely serving a kitchen. The plans show that from this window the nearest corner of the proposed extension would be slightly within the 45 degree line. However, No 60 is located to the south of No 58, the proposal would be of limited height with a flat roof, and there is already a high wooden fence between the two properties. Whilst there might be a slight loss of light and some outlook, this would have a minimal effect.
22. The plans show that Gyplyner wall lining would be installed on the 1st floor party wall between the appeal site and No 60, and on the ground floor where bedroom 4 adjoins the living room of No 60. This would reduce noise levels between the appeal site and the neighbouring property. The Council's Nuisance Action Team have commented, that whilst noise generated from an HMO would be greater than a single dwelling use, this is anecdotal, as it depends on the individuals living there, and acknowledge that mitigation in terms of sound insulation has been provided.
23. Third parties have raised general concerns regarding the effect that HMOs have on an area, including increased rubbish, and at times anti-social behaviour. Whilst I appreciate that these issues do arise, this can also take place in properties which are not HMOs. To try and ameliorate such concerns, the Council has set up a voluntary Student Assured Housing Scheme, which the landlord is a member of. Furthermore, details of the tenancy agreement, the Student Management Plan for the property, and details of the student accommodation agent, which has a 24-hour mobile telephone service to address matters arising from the property, are within the evidence. These provide safeguards to ensure that the behaviour of the occupiers and condition of the property can be monitored and dealt with, if issues that affect the neighbourhood take place.
24. I conclude that the proposal would not harm the living conditions of neighbouring properties with regards to privacy, noise and disturbance. It would not conflict with CDP Policies 16, 29 and 31 which collectively require proposals to not have an unacceptable effect as a result of noise or privacy.

Character and appearance

25. Where there is the change of use to a HMO, and an extension is proposed, CDP Policy 16 requires the design of the extension to be appropriate to the property itself and the character of the area. Although there would be no changes to the front elevation of the property, the brick boundary wall would be removed to facilitate parking at the front. Although having a defined front boundary would be preferable, there are several properties close to the site where there is parking within the front garden. Therefore, it would not harm the overall character and appearance of the area.

26. On the rear elevation, a single storey, brick extension would be constructed. Whilst at 3.8 metres in depth, it would result in a sizeable increase in the floorspace of the ground floor, there is adequate space within the rear garden to accommodate it and retain a reasonably sized garden. The design of the extension, including the use of matching materials, would be appropriate to the property and to the character of the area.
27. I therefore conclude that the proposal would not harm the character and appearance of the property and the area. It would not conflict with CDP Policy 16 and 29 which requires the design of any extension to be appropriate as set out above.

Conditions

28. I have considered the conditions suggested by the Council with reference to the Framework and the Planning Practice Guidance. In addition to the standard time limit, a condition listing the plans is necessary in the interest of certainty. In order that a satisfactory appearance and form of development is achieved, a condition requiring the materials match the existing house is necessary.
29. To ensure that the property is not occupied by greater numbers than the proposed development has been designed for, and to ensure it would provide satisfactory living conditions for future occupiers and those of neighbouring properties, a condition limiting the numbers of occupiers is considered reasonable and necessary. Likewise, a condition requiring the installation of sound proofing insulation on the party wall and the provision of appropriate waste storage is required to ensure that both noise and the rubbish generated by the property does not affect the living conditions of neighbouring properties. This is necessary and reasonable.
30. Additionally, a condition requiring the property to be managed in accordance with the Student Management Plan is necessary and reasonable for the living conditions of the occupiers, as well as those living nearby. Ensuring that appropriate cycle storage is installed prior to the occupiers moving in, is necessary and reasonable to encourage sustainable transport and avoid highway congestion.
31. Two further conditions which limit construction working hours and operations are necessary and reasonable to prevent disturbance to the occupiers of neighbouring properties during building work at the site.
32. Any amendments I have made to the Council's suggested list of conditions are in the interests of precision and clarity and to ensure compliance with the Framework.

Conclusion

33. For the reasons set out above, having had regard to the development plan as a whole and all other material considerations, I conclude that the appeal should be allowed.

M J Francis

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 approved shall be carried out in accordance with the following approved plans:
Drawing No: 1404-01, Site location plan
Drawing No: 1404-03 A, Proposed floor plans and elevations
Drawing No: 1404-04 A, Existing and proposed site plans.
- 3) The external materials of the extension hereby permitted shall match those used in the existing dwelling.
- 4) The number of persons in residence at the premises shall not exceed 5 at any one time.
- 5) Prior to the occupation of the use hereby permitted, the party wall adjoining No 60 Frank Street shall be upgraded with Gyplyner Independent wall lining, or similar product that achieves the same acoustic requirements. It shall be implemented in accordance with the approved details and shall thereafter be retained and maintained as such.
- 6) The development hereby permitted shall not be brought into use until the bin storage as shown on Drawing No: 1404-04 A shall be installed. Development shall be carried out in accordance with the approved details and thereafter retained as such.
- 7) The development hereby permitted shall not be brought into use until the cycle storage as shown on Drawing No: 1404-04 A shall be installed. Development shall be carried out in accordance with the approved details and thereafter retained as such.
- 8) The development hereby permitted shall be operated strictly in accordance with the measures detailed in the Student Management Plan (Harringtons Sales and Lettings Limited) for the duration of the property operating as a Use Class C4, House in Multiple Occupation.
- 9) Any external construction works, demolition, deliveries, external running of plant and machinery shall only take place between the hours of 0730 to 1800 Monday to Friday, and 0730 to 1400 on Saturday. This excludes Public or Bank Holidays where no works shall take place at any time.
- 10) No internal works audible outside the site boundary shall take place on the site other than between the hours of 0730 to 1800 Monday to Friday and 0800 to 1700 on Saturday. This excludes Public or Bank Holidays where no works shall take place at any time.

End of conditions