



Appeal Decision

Site visit made on 20 May 2025

by N Armstrong BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 July 2025

Appeal Ref: APP/X1355/W/25/3361937

63 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 refusal to grant planning permission.
 - The appeal is made by Sugar Tree Limited against the decision of Durham County Council.
 - The application Ref is DM/24/01045/FPA.
 - The development proposed is the 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 the 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 63 Frank Street, Gilesgate Moor, Durham DH1 2JF, in accordance with the terms of the application, Ref DM/24/01045/FPA, subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs has been made by Sugar Tree Limited against Durham County Council and this is the subject of a separate decision.

Main Issue

3. The main issue is whether the proposed location of the house in multiple occupation (HMO) would imbalance the community and lead to unacceptable living conditions for surrounding residential occupiers.

Reasons

4. The appeal site is a semi-detached dwelling located within an established residential area situated towards the southern end of Frank Street. The property has garden areas to the front and rear and faces towards an area of open space with car parking around this and on the street itself. At the time of my visit, which was during mid and late morning on a weekday, I noted Frank Street to be a quiet residential neighbourhood with a mix of homes. The area to the east of Frank Street includes predominantly commercial and retail development.
5. The proposal would see the change of use and extension of the existing three-bedroomed dwelling to a five-bedroomed HMO. The development proposes the construction of a single storey rear extension and the garden area to the front would be altered to accommodate three off-street car parking spaces with provision for cycle and bin storage made within the site.

6. Policy 16 of the County Durham Plan (2020) (the CDP) seeks to create inclusive places in line with the objective of creating mixed and balanced communities, as well as protecting residential amenity, which is consistent with the National Planning Policy Framework (the Framework). To achieve this, part 3 of Policy 16 of the CDP sets out a presumption against granting permission for HMOs where the total number of residential units that are exempt from Council Tax charges (Class N Student Exemption) within 100 metres of the application site exceeds 10%. The policy also sets out a presumption against granting permission where less than 10% of the total residential units within 100 metres are exempt as above, but the application site is in a residential area and on a street that is a primary access route between Purpose Built Student Accommodation (PBSA) and the town centre or a university campus. This is intended to acknowledge potential cumulative effects on the character of an area associated with the locations of PBSA and HMOs.
7. The appeal scheme would not lead to the 10% concentration threshold in Policy 16 of the CDP being exceeded. Furthermore, there is no suggestion from the Council in its evidence that the additional permission granted on appeal at 58 Frank Street¹ would lead to an over-concentration of HMO uses. Therefore, based on the evidence of both parties, the focus of this appeal is part 3 c. of Policy 16 in terms of whether 63 Frank Street is on a primary access route between a PBSA and the town centre or a university campus, and the subsequent effects on the living conditions of surrounding residents.
8. Ernest Place is an existing block of PBSA located on Renny's Lane, which lies towards the northern end of Frank Street. The CDP does not define what a primary access route is, but this could reasonably be described as the most likely route taken by residents of the PBSA when travelling between PBSA and the town centre/university campus(es).
9. Vehicular access to Frank Street is restricted from Ernest Place via Renny's Lane due to existing bollards and highway features. However, there is provision for cycle and pedestrian routes from the PBSA via Renny's Lane and Frank Street onwards to Front Street and Sherburn Road, which have bus stops and provide a route to the city centre.
10. Sherburn Road and Sunderland Road converge at a point on Gilesgate, which is then the main route into the city. The choice of route taken by pedestrians between the PBSA and the city centre would largely be a matter of both personal preference and the convenience relative to the end destination. It would also be influenced by its nature and the surroundings on that route.
11. Ernest Place has its main entrance onto Renny's Lane and there is also a separate gated pedestrian access directly onto the Marshall Terrace footpath. The appellant's evidence, which includes a Transport Technical Note (TTN), highlights the walking distances to the city centre from Ernest Place and the nearest bus stops. This demonstrates that the shortest and most direct route from the PBSA would be via Sunderland Road. Pedestrian access from Ernest Place to Sunderland Road can be taken from the footpath on Marshall Terrace immediately adjacent to the PBSA, or via Renny's Lane and Belles Ville.

¹ Appeal Ref APP/X1355/W/24/3351686, dated 26 March 2025

12. The TTN includes survey information from a 16-hour period and concludes that most pedestrian trips from the PBSA to Sunderland Road used Marshall Terrace. The data from the TTN (Ped 1 – Renny’s Ln) indicates that there were 64 pedestrian movements leaving Ernest Place in the direction of Frank Street although only 4 leaving in the direction of Marshall Terrace. There is data in the TTN indicating movements at the northern end of Marshall Terrace (Ped 2 – Sunderland Road), and some assumptions appear to have been made. From the information before me, it is not entirely clear if this data solely comprises students from the PBSA, or if this might also include other residents from the development at Shepherds Court, which lies adjacent. It also does not make clear if these movements were from the pedestrian gate onto Marshall Terrace given the limited recorded movements towards this route from the main entrance.
13. The Council contends that Marshall Terrace is likely to be considered undesirable by students due to its nature and surroundings. This is predominantly a surfaced footpath with some streetlights. There are parts of Marshall Terrace that have a greater sense of enclosure due to the PBSA and Shepherds Court buildings, which also have windows directly overlooking it, boundary treatments, hedgerows and trees, with some overgrown areas of landscaping. However, the evidence within the TTN does suggest that this is regularly used.
14. From my site visit I did not see significant numbers of pedestrians using Marshall Terrace. However, it was being used, and I also observed a range of pedestrians using Renny’s Lane and Belles Ville. I observed some pedestrians entering and leaving the PBSA using Frank Street, although similar to my observations for other routes, these were relatively limited during my visit. Walking the routes, I found Sunderland Road to be generally busier in terms of pedestrian use relative to Sherburn Road, and both featured a mix of pedestrian users. Having regard to the evidence before me and my observations on site, Frank Street is not the shortest and most direct walking route from the PBSA to the city centre or the nearest bus stops.
15. As well as the survey information in the TTN, the appellant has also provided copies of the Council’s relatively recent delegated officer reports for similar proposals at 21 Frank Street², 48 Frank Street³ and 61 Frank Street⁴. The officer reports all state that the sites are not located on a primary access route and do not therefore conflict with Policy 16 of the CDP in that respect. Furthermore, the Council’s written statement in response to the appeal at 58 Frank Street did not make the case that the site was on a primary access route.
16. These are reasonable planning judgements based on the evidence before me and my observations. Having regard to the similarities with the appeal proposal, their proximity to the site, and recognising the importance for consistency in decision making, those decisions weigh significantly in favour of the scheme. I also do not have anything from the Council to adequately counter these or the evidence within the TTN.
17. Despite some evidence of Frank Street being used for access, based on the information before me, I do not consider that the appeal site is located on a primary access route, and therefore the proposal would not conflict with Policy 16

² Planning application ref DM/22/03667/FPA

³ Planning application ref DM/23/01774/FPA

⁴ Planning application ref DM/22/02205/FPA

of the CDP. Consequently, given the intention of part 3. c. of Policy 16 in terms of the concentration of HMOs in an area and their location relative to primary access routes to and from PBSA, the proposal would not imbalance the community, add significantly to existing PBSA traffic, or result in adverse cumulative impacts on the character of the area or the living conditions of surrounding residents in terms of noise and disturbance due to comings and goings associated with the PBSA.

18. I acknowledge that interested parties have concerns about potential issues associated with HMO properties, including an increase in noise, disturbance, waste management and antisocial behaviour. However, I consider that these issues are not a predictable consequence of HMOs, but rather a matter of individual behaviour and suitable management. The Council's Nuisance Action Team acknowledge the potential for increased noise given the nature of the proposal, but raise no objection, subject to conditions, which include securing sound proofing measures. Their comments are instructive in this regard. The Council has also suggested a condition to secure the implementation of the appellant's student management plan. I consider that such conditions would satisfactorily mitigate any potential unacceptable impacts associated with noise and disturbance from the HMO itself.
19. I conclude that the location of the proposed development would not imbalance the community or lead to unacceptable living conditions for surrounding residential occupiers. It would therefore accord with Policy 16 of the CDP, the aims of which are set out above. It would also accord with Policies 29 and 31 of the CDP, which amongst other things require development to contribute positively to an area's character, help to create sustainable communities, provide high standards of amenity, and ensure that proposals will not have an unacceptable impact, either individually or cumulatively, on living conditions.

Other Matters

20. I have had regard to other matters raised by interested parties. These include concerns over the need for the proposal and suggestions that there is a surplus of student accommodation. However, an assessment of need is not a consideration for proposals to create HMOs having regard to Policy 16 of the CDP.
21. Interested parties also suggest that the methodology for calculating the HMO thresholds for Policy 16 is not appropriate and should be reviewed, along with an Article 4 Direction. The policy sets out a standard and consistent method to assess applications for HMOs. Its use was upheld at examination and adoption of the CDP. There is no substantive evidence before me to show this method is inadequate as a means to consider the impact of such uses within an area. Any subsequent review of the development plan or Article 4 Direction would be a matter for the Council, and my decision is made on the evidence before me.
22. With regard to other effects on the character of the area, I observed a mix of homes on Frank Street. There are variations in the overall condition, appearance and maintenance of properties within the area. There were no distinct external or other indications of HMO uses in the area to distinguish these from other Class C3 dwellings. I do not consider that the proposal would result in adverse effects on the character and appearance of the area in this respect.
23. Concerns have been raised on the impact of increased traffic and parking. During my visit there were more cars parked around the open space to the southern end

of Frank Street suggesting that there may be more parking pressure in this area. Many properties have off-street parking and the appeal scheme proposes off-street provision. Although there was on-street parking, it did not disrupt traffic flow or impact on pedestrian and highway safety. Based on my observations, in the absence of other evidence, and given that no objection has been raised by the Highway Authority, I have no reason to find that the proposal would have an adverse impact on highway or pedestrian safety.

24. I have had regard to all other concerns raised, including the loss of housing, but no other matter is of such weight or substance as to alter my overall conclusion.

Conditions

25. The Council has suggested a number of conditions which I have considered against the tests set out in the Framework and Planning Practice Guidance. In some instances, I have made minor changes to wording to improve precision and enforceability.
26. In addition to the standard time limit, a condition specifying the plans is necessary in the interests of certainty. A condition requiring the materials for all external alterations to match those of the existing building is necessary to protect the character and appearance of the property and the area.
27. A condition limiting the number of occupiers of the property is necessary to ensure it would not be occupied by more than the proposal has been designed for, and to ensure it would provide satisfactory living conditions for future occupiers and those of neighbouring properties. Conditions requiring the implementation of a sound insulation scheme and student management plan are also necessary to protect the living conditions of future and neighbouring occupiers.
28. To promote the use of sustainable transport modes, a condition is needed to secure the implementation of the secure cycle storage shown on the approved plan. The Council has not suggested a condition in relation to car parking provision. However, given that an amended floor plan was requested during the application to make the proposal acceptable in this respect, a condition is reasonable and necessary to secure compliance with the provision of the parking as shown on the submitted site plan.
29. As the proposal is for a change of use with an extension and alterations of a domestic scale, I do not consider the Council's suggested condition restricting hours for construction and associated operations is proportionate, 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

30. For the above reasons, the proposal would comply with the development plan taken as a whole and material considerations do not indicate a decision should be made other than in accordance with the development plan. I therefore conclude that the appeal should be allowed.

N Armstrong

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 drawing nos:
 - 1392 – 01 – Site Location Plan
 - 1392 – 02 – Existing Floor Plans & Elevations
 - 1392 – 03 – Existing Site Plan
 - 1392 – 04 A – Proposed Floor Plans & Elevations
 - 1392 – 05 – Proposed Site Plan
- 3) The external materials of the extension and alterations hereby permitted shall match those used in the existing building.
- 4) Prior to the first occupation of the property for the purposes of Use Class C4, the sound proofing detailed on drawing no. 1392 - 04 A - Proposed Floor Plans & Elevations shall be fully installed and thereafter retained at all times during which the property is in Use Class C4 use.
- 5) The development shall be operated strictly in accordance with the measures detailed in the submitted Student Management Plan for the duration that the property is occupied in Use Class C4 use.
- 6) The development hereby permitted shall not be occupied by more than 5 persons at any one time for the duration that the property is occupied in Use Class C4 use.
- 7) The development hereby permitted shall not be occupied for the purposes of Use Class C4 until the vehicle parking spaces and cycle storage provision have been provided and made available for parking and storage by its occupants in accordance with drawing no. 1392 – 05 - Proposed Site Plan. Thereafter the vehicle parking spaces and cycle storage provision shall be retained and kept available for the parking of vehicles and storage of bicycles by occupants of the development at all times.

****** END OF CONDITIONS ******