



Appeal Decision

Site visit made on 1 February 2022

by Katherine Robbie BA (Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 February 2022

Appeal Ref: APP/X1355/W/21/3284723

8 Laburnum Avenue, Durham DH1 4HA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Mike Costello against the decision of Durham County Council.
 - The application Ref DM/21/01918/FPA, dated 26 May 2021, was refused by notice dated 30 July 2021.
 - The development proposed is described as "Application for flexible use permission as a dwellinghouse (Use Class C3) and a House in Multiple Occupation (Use Class C4) under the provisions of Class V of Part 2 of Schedule 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015".
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Decision

1. The appeal is allowed, and planning permission is granted under the provisions and subject to the limitations of Class V of Part 2 of Schedule 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 for the dual-use of a dwellinghouse (Use Class C3) and a House in Multiple Occupation (HMO) (Use Class C4) at 8 Laburnum Avenue, Durham DH1 4HA in accordance with the terms of the application, Ref DM/21/01918/FPA, dated 26 May 2021, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan received 27 May 2021; Floor Plans received 27 May 2021; Floor Plans received 27 May 2021.

Main Issue

2. The main issue is the effect of the development on the mix and balance of housing in the community.

Reasons

3. The appeal property is a traditional terraced property on Laburnum Avenue. It is located in the Viaduct area of the city and is currently in use as a 5-bedroomed residential house (Use Class C3). Information submitted with the appeal indicates that the existing dining room on the ground floor could be used as a sixth bedroom but no other alterations to the property are proposed.
4. Part 3 of Policy 16 of the County Durham Plan (CDP) (2020) concerns the subdivision and conversion of houses, flats and bedsits for multiple occupation (HMO) stating that changes of use to Use Class C4 are only acceptable in

- certain circumstances. The policy confirms that, in order to promote, create and preserve inclusive, mixed and balanced communities and to protect residential amenity, changes of use from any use to an HMO will not be permitted 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).
5. The Council acknowledges, in the supporting text to CDP Policy 16, that the highest concentration of students is in the Viaduct area of the city. It was also evident from my site visit that several of the properties on the Avenue itself are HMOs.
 6. The Council states that the proposal would result in 72.7%¹ of properties within 100m radius of the appeal site being in use as HMOs. This is significantly over the 10% threshold in the policy. The Policy sets a further threshold of 90% which if exceeded, the Council accepts that there is little to be gained by restricting further conversions to HMOs. Between 10% and 90%, however, the policy seeks to restrict conversions in order to promote, create and preserve, inclusive, mixed and balanced communities.
 7. There are, however, instances where the Council state that they will have regard to the circumstances of an appellant and make an exception to the policy. They recognise that in areas where there is a high concentration of HMOs, owners of C3 dwellings may find difficulty in finding a purchaser for continued C3 use. The Council also recognises that there may instances where the community is already so imbalanced that the policy objective of protecting a balance is unlikely to be achieved.
 8. The percentage of HMOs within 100m of the appeal property is towards the upper end of the range within which the policy seeks to resist further conversions. The Council states that there would be, as a result of this proposal, 102 out of 143 properties within 100m of the appeal property in use as HMOs. I have not been provided with exact numbers and locations of HMOs within the Avenue, however on my site visit it did appear that there a considerable number within the street and the appellant estimates that there are 5 permanent residents and 95 students. However, the radius around the appeal property includes Byland Close to the southwest which is a more recent mews style development of approximately 18 properties. It is both functionally and physically detached from the Viaduct terraces. The appellant states that none of these properties are HMOs, and I have no evidence before me to dispute this. These properties skew the percentage of HMOs within 100m of the appeal property, where in reality it is located within an area where there is a much greater concentration of HMOs and the appellant is affected by living close to them to a more significant extent.
 9. In considering this appeal, I have not been provided with documentary evidence that the property has been actively marketed for at least a year, as the policy justification recommends. I have, however, been provided with an email from an estate agent confirming that the property is on the market and indicating the level of interest in it. It is apparent that the appellant has been trying for some months to sell the house and no purchaser has come forward to date. I have not been presented with any evidence that the property is not being marketed at a realistic value.

¹ Data from the most recent Council Tax information on Class N Student Exemptions

10. The appellant maintains that the noise and disturbance caused because of the number of HMOs in the area has become intolerable and has increased significantly over the past few years. The Council accepts that there have been several noise and nuisance complaints but none of these have resulted in a statutory nuisance or noise abatement notice being served. However, I have not been presented with any evidence which states that a statutory nuisance has to have occurred or notices need to have been served for the effect on living conditions to be considered so unacceptable as to warrant an exception to CDP Policy 16.
11. Information submitted shows that the appellant has had cause to report incidents, over a sustained period, relating to the activities of the occupants of nearby HMOs. Not all of these have been related to noise and disturbance and the reports appear to have been inflated by incidents related to the pandemic. It is evident, however, that his health and family life have suffered because of it. He argues that the situation has caused him hardship and he has felt the need to purchase a caravan elsewhere as a place to seek respite. He also finds it difficult to spend time with his disabled son at the property. Because of the distress this has caused I find that the incidents cited would constitute anti-social behaviour.
12. Having taken the evidence submitted into account I agree that the anti-social behaviour and disturbance which the appellant experiences regularly is beyond that which should be considered acceptable in a residential neighbourhood and amounts to severe personal hardship on the appellant. The consequence of resisting a further property being converted is unlikely to alter that balance to any significance but would allow the appellant a reasonable chance of being able to sell his property. Furthermore, under the provision of Class L(a) of Part 2 of Schedule 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 would be such that the property could be brought back into use as a C3 dwelling at any point. This permitted development right is not removed by the Article 4 direction which is currently in force².
13. Para 130(f) of the National Planning Policy Framework (the 'Framework') relates to ensuring proposals provide high standards of amenity for both existing and future occupiers. I acknowledge that the proposal would introduce a further HMO into the neighbourhood, and the merit of seeking to retain C3 dwellinghouses in an area to support the preservation or creation of mixed and balanced communities in line with national policy, however, the proposal would have negligible effect on that and would not materially conflict with that guidance.
14. For the reasons set out above, I find that sufficient evidence has been demonstrated to warrant an exception to CDP Policy 16 which seeks to prevent the change of use of properties to HMOs where this would be detrimental to the range and variety of housing stock in any particular area.

Other Considerations

15. The appeal site is within the Durham (City Centre) Conservation Area. As there are no external alterations to the property proposed, the appeal scheme would not have any adverse effect on the character or appearance of the

² Article 4 Direction which came into force on 17 September 2016 made by County Council of Durham

Conservation Area. Accordingly, the proposal would preserve the character and the appearance of the Conservation Area.

Conditions

16. I have considered the Council's suggested conditions in the light of the Framework and Planning Practice Guidance and agree that a plans condition is necessary and reasonable in the interests of certainty.

Conclusion

17. Planning law³ requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The Planning Practice Guidance advises that a material planning consideration is one which relevant to making the planning decision in question. In coming to my decision, I have had full regard to the conflict of the proposal with Part 3 of CDP Policy 16. This conflict carries considerable weight in the determination of the appeal. However, the evidence put forward by the appellant with regard to his severe personal hardship due to the concentration of existing HMOs indicates that a decision otherwise in accordance with the development plan should be made in this instance.
18. For the reasons given above, having considered the development plan as a whole and all relevant material considerations, although the proposal would conflict with the development plan there are material considerations that justify a departure from it and lead me to conclude that the appeal should be allowed.

Katherine Robbie

INSPECTOR

³ Section 38(6) of the Planning and Compulsory Purchase Act 2004