

THE CITY OF DURHAM TRUST

Web site: <http://www.DurhamCity.org>

c/o Blackett, Hart & Pratt, LLP
Mandale Business Park
Belmont
Durham, DH1 1TH

14 April 2024

Mr David Richards
Planning Development Central/East
Room 4/86-102
County Hall
Durham City DH1 5UL

Dear Mr Richards

**DM/24/00766/FPA: 3no 1.5 storey 2 bedroom dwellings with associated parking/turning area,
land east of 7 Church Street Villas, Durham DH1 3DW**

The Trustees of the City of Durham Trust have considered the above application and have resolved to object on the following grounds.

Student accommodation

The Planning Statement recognises that the scheme needs to be judged under County Durham Plan Policy 16.2 relating to Purpose Built Student Accommodation. Policy 16.2 sets a primary requirement **(a) to demonstrate the need for additional student accommodation of this type in this location**. The Planning Statement discusses quantitative need but disregards the now well-established fact that there is a surplus of student accommodation here. It then claims a qualitative need based on market demand for small units; however, this is from the County Council's SHMAA 2019 which does not deal with the student accommodation market. The Trust considers that the claims made by the applicant are simply assertions and do not demonstrate the need as required by Policy 16.2.

The second requirement in the Policy is **(b) to demonstrate consultation with the relevant education provider pursuant to the identified need**. The University has been consulted and replied that it has no interest in the proposed properties either for ownership or for leasing. The reply goes on to explain that the number of students has been successfully reduced from the unintended peak of 22,219 in 2021/22 to 21,588 in 2023/24 and is to be kept stable at around 21,500 from now on. This confirms for the Trust that there is no need for additional student accommodation here.

Requirement **(g) is to demonstrate that the activities of the occupants will not have an unacceptable impact upon the amenity of surrounding residents**. On this, the Trust points out that No.1 Boyd Street is the corner property for the proposed access to these three units of student accommodation. Planning application DM/22/01134/FPA for the change of use of 1 Boyd Street from dwelling-house class C3 to 4 person house in multiple occupation Class C4 was

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refused on appeal in May 2023 (reference APP/X1355/W/22/3312412). A copy of the Inspector's decision letter is attached to ensure that there is no issue of lack of details.

The Appeal Inspector concludes as follows.

"Students add to the culture, economy and vibrancy of the city, and the proposal would, provide a small, but valuable contribution to the delivery of high-quality student accommodation. However, I do not consider that despite the high level of C4 use within 100 metres of the appeal property, it is at a level that creating a further C4 house would make no difference to the balance of housing provision or the level of community cohesion. It would increase and therefore worsen the over-concentration of C4 properties within the 100-metre radius of the site, thereby affecting the living conditions and balance of communities within the area as set out in Policy 16 of the DLP. In conclusion, the proposal would be harmful to the creation of a mixed and balanced community in this location. Consequently, it would not accord with Policies 16, 29 and 31 of the DLP which cumulatively seek to achieve sustainable and balanced communities with no impact on amenity. It would also not accord with the Framework in seeking to create inclusive places."

Whilst that determination was for an adjacent proposed HMO, the increase in numbers of students is the issue. The Trust submits that the above conclusion applies to the current application.

There are also significant issues with the provisions made for car and cycle parking. Requirement **(h) is that the quantity of cycle and car parking provided has regard to the Council's Parking and Accessibility Supplementary Planning Document (SPD)**, and this is reinforced in Policy 21. The cycle storage is shown as open-air, but the SPD requires enclosed, covered accommodation. The parking area surface material is shown as gravel; this is absolutely unacceptable under the SPD.

On quantity of car parking, if judged as PBSA the SPD does not require any car parking as the site is within the CPZ. If considered as three separate HMOs a total of six spaces would be the starting point according to the SPD, but less car parking may be permitted "for reasons of sustainability, design or viability". The Trust considers that for student properties so close to the University, it would be best to discourage car use by providing no car parking for reasons of sustainability. Only around 5% of students travel to the university by car, so providing 3 spaces for 6 students would be considerably in excess of need.

It is not clear how the proposed parking spaces would be managed, whether held privately or contributing to the on-street provision through being adopted as highway. Instead of car parking, the land could be used for planting. If car parking is not provided, these properties must be excluded from applying for residential parking permits. The Council's web site formerly advised that new developments built since 2000 in the CPZ would not generally be eligible for permits, but this advice no longer appears on the web site. The Trust would like assurance that such measures are being enforced.

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Sustainable design

CDP Policy 29(e) requires **all development to provide high standards of amenity and privacy and minimise the impact of development upon the occupants of existing adjacent and nearby properties**. The pre-submission advice given to the applicant was that *“the separation distances are below the standards set out in the Residential Amenity Standards SPD, particularly dwelling 3 and further consideration of the impacts on neighbouring properties on High Wood View is needed.”* The applicant’s response is that the existing terraced housing in the locality falls well below the standards set in the SPD and therefore his development should not be expected to meet the standard. This is a fallacious argument; planning authorities require new development to be up to current standards, not re-create the lower standard housing of previous centuries.

Amenity and pollution

CDP Policy 31 resists proposals that will **have an unacceptable impact such as through overlooking and loss of privacy**. As explained above in relation to Policy 29(e), the separation distances are inadequate: the proposed bedroom dormer windows will overlook the rear of the properties in High Wood View. The Trust regards this as a failure under Policy 31.

Trees, woodlands and hedges

CDP Policy 40 expects **proposals for new development to retain or replace trees within the site or the locality**. There are 11 individual trees and one group of trees in the site. Only one tree is to be retained, and four new trees installed. This is a considerable loss and does not meet the terms of Policy 40.

Habitat

It also represents a loss of habitat, which the applicant acknowledges: *“The post development impacts show a biodiversity loss of -0.34 habitat units and -0.03 hedgerow units. The assessment identifies that the predicted losses are unlikely to be fully compensated on-site and, as such, off-site mitigation is likely to be required. A Biodiversity Gain Plan can be secured by way of planning condition to ensure the required biodiversity net gains in accordance with Policy 41 of the adopted County Durham Plan.”* This accords with Policy S1(e) of the Durham City Neighbourhood Plan (DCNP) and the Trust supports the need for such a condition were the application to be approved.

Conservation Area

The site lies within the Durham City Conservation Area. Both the DCNP and the County Durham Plan have policies that seek to sustain and enhance conservation areas (DCNP Policy H2 and CDP Policy 44 respectively). The tightly-packed 19th Century terraces with small yards that surround the proposed development form the context for this proposed development. The site appears to have remained undeveloped through all the phases of building in the area. It is a plot formed during or before the 1850’s and is now the garden space of No. 7 Church Street Villas. While parts of the site may be unkempt, the greenspace is a welcome break between the close packed terraces, and the trees are a local amenity. This helps stop coalescence between the Boyd Street and Highwood View terraces. This has been part eroded by the insertion of three modern house units into the rear area that will be adjacent to the new development.

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The Trust makes the case that this is a remnant open site from an earlier period and is an essential part of the development pattern in the immediate area and thus an important characteristic of this part of the conservation area. It has value as greenspace in its division of otherwise tightly-developed terraces and helps in creating the distinctiveness of the area. The existing adjacent modern development already alters the character of the area, and this would have a significant cumulative impact if the proposals are built immediately adjacent. The contemporary range of materials shown will amplify the alteration in the balance of new and older buildings. It will alter the character of this area. The point in establishing this is that the proposal will not be neutral in impact but will have a negative impact. It cannot be considered as enhancing or sustaining the area. Private gardens are included in the definition of green assets in the Durham City Neighbourhood Plan and the loss of the site to a substantial body of development will result in the loss of positive asset. The tree removal will be particularly character altering.

These elements cannot be considered a positive change and are not outweighed by any public benefit. They fail against the requirements of County Durham Plan Policy 29 Sustainable Design section (a), (f) and (h). They also fail against Durham City Neighbourhood Plan Policy S1: Sustainable Development sections (c) and (d), and Policy H2: The Conservation Areas, Durham City Conservation Area sections (e), (f), (i) and (l). In particular, the Trust draws attention to section (f) requiring the avoidance of loss of open space that contributes to character and appearance and (l) that requires avoiding cumulative impact by scale and mass.

Conclusion

On the above multiple failures of the proposal against County Durham Plan and Durham City Neighbourhood Plan policies, the Trust considers that this application should be refused.

Yours sincerely

John Lowe

Chair of the City of Durham Trust



Appeal Decision

Site visit made on 21 February 2023

by M J Francis BA (Hons) MA MSc MCIfA

an Inspector appointed by the Secretary of State

Decision date: 25 May 2023

Appeal Ref: APP/X1355/W/22/3312412 1 Boyd Street, Durham DH1 3DP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Mr William and Mrs Karen Byng against Durham County Council.
 - The application Ref DM/22/01134/FPA, is dated 13 April 2022.
 - The development proposed is change of use from dwellinghouse class C3 to 4 person house in multiple occupation, class C4.
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Decision

1. The appeal is dismissed and planning permission for the change of use from dwellinghouse class C3 to 4 person house in multiple occupation, class C4 is refused.

Main Issue

2. The appeal is against the failure of the Council to determine the planning application. The Council have produced a putative reason for refusal and from that I consider that the main issue is the suitability of the proposal in this location, given policies to create mixed and balanced communities.

Reasons

3. The appeal site is a two storey, red brick, end terraced house. It has a small yard to the rear, adjacent to a back lane. Boyd Street is a no through road with two, short, parallel rows of terraced housing, accessed from Church Street.
4. The site has had planning permission for a two-storey rear extension which appears to have been built. At present, the house is reputed to be occupied by two students.
5. Policy 16 of the County Durham Local Plan (DLP), adopted 2020, covers student accommodation and houses in multiple occupation. The policy does not permit a change of use to a Class C4 property, including the proposed development, 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).
6. The Council contends that 74.2% of residential units within 100 metres of the site are exempt. Combined with unimplemented permissions for HMOs within 100 metres of the application site, the Council's figure is 75.3%. The appellant has not disputed these figures.

7. Policy 16 provides two further circumstances where HMOs would not be resisted. This is where an area already has a concentration in excess of 90% of council tax exempt properties (Class N) that is having an unreasonable impact on current occupiers, and that the conversion of remaining C3 dwellings will not cause further detrimental harm to the residential amenity of surrounding occupants.
8. The parties dispute whether the student population in Durham has peaked, and therefore the demand for housing will drop, or whether it is forecast to rise. The appellant has submitted excerpts from the local press highlighting the difficulties that students have faced in acquiring accommodation and contends that recently a number of students have been studying online which is likely to reduce post pandemic, plus that there may have been students living at home because of a lack of accommodation within the city. It is suggested that this points to the need for further student accommodation within the city.
9. The DLP has allocated a number of sites for Purpose Built Student Accommodation (PBSA). Only one of these sites has had a planning application submitted at the time of the appeal, and this lack of delivery, despite it being over the plan period which extends until 2035, will, according to the appellant, result in an inadequate supply of student housing. This leads the appellant to consider that there should be a degree of flexibility over the application of Policy 16 in order to provide further HMOs.
10. Whilst the proposal at No 1 Boyd Street would conflict with policy, the appellant considers that the change of use of the building would not undermine this policy. The basis for this is that, reputedly, only No 4 Boyd Street, amongst the eighteen other properties within the street, is not occupied by students. In addition, Boyd Street has no through routes and has no physical or functional relationship with the majority of the 100-metre radius used in the calculation of the percentages by the Council. Therefore, they contend that an increase of two further students would not impact on the amenities of non-student residents within the 100m radius. Furthermore, they state that this would give rise to a less than 1% increase in total student population within this radius, and 68 of 93 properties, as listed by the Council in November 2022, already have Class N exemption. They also consider that the overall student population is likely to be much higher than listed, because of the 45-bedroom student accommodation at James Barbour House, which is within 100 metres of the site.
11. The purpose of Policy 16 is to create and preserve inclusive, mixed and balanced communities within Durham. Boyd Street is a distinctly residential area, highly accessible to the university and the city. Whilst it is predominantly occupied by students, the policy assessment is based on a 100-metre radius, designated by the Council. Whilst the proposal would only introduce two extra students, and possibly no net increase in the area taking account of proposed alterations to the University owned James Barbour House, who may, on their own, have a limited impact on the character and living conditions of neighbouring properties, increased students within an area can, through having a different pattern of living and occupation, both throughout the year, and when they are occupied during term time, alter and change an area. It is the cumulative effect of this that can create this imbalance and result in owner occupiers suffering the consequences of excessive disruptive behaviour.

12. Furthermore, whilst the figures provided by the Council have identified that the figures for the site are significantly above the 10% set out in policy, it is also well below the 90% where it is considered that the conversion would not cause further detrimental harm to the residential amenity of surrounding occupiers. Despite this the appellant continues to believe that it is going to be unlikely to ever rebalance the street.
13. Students add to the culture, economy and vibrancy of the city, and the proposal would, provide a small, but valuable contribution to the delivery of high-quality student accommodation. However, I do not consider that despite the high level of C4 use within 100 metres of the appeal property, it is at a level that creating a further C4 house would make no difference to the balance of housing provision or the level of community cohesion. It would increase and therefore worsen the over-concentration of C4 properties within the 100-metre radius of the site, thereby affecting the living conditions and balance of communities within the area as set out in Policy 16 of the DLP.
14. In conclusion, the proposal would be harmful to the creation of a mixed and balanced community in this location. Consequently, it would not accord with Policies 16, 29 and 31 of the DLP which cumulatively seek to achieve sustainable and balanced communities with no impact on amenity. It would also not accord with the Framework in seeking to create inclusive places.

Other Matters

15. The appellant has referred to an appeal decision at 10 High Wood View, Durham¹ where it was determined that two extra students in the property would not give rise to increased noise and the mix of housing stock in the vicinity. However, this decision was prior to the adoption of the DLP, and the criteria for assessing student accommodation at that time was not part of the development plan. Student accommodation and Policy 16 was discussed during the examination of the DLP where the Inspector determined that the policy provided a proportionate approach to ensure sufficient residential accommodation to meet any expected increase in students up to 2027. I therefore give this limited weight.
16. The building is located within the Durham Conservation Area. Section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention is paid to the desirability of preserving or enhancing the character or appearance of the conservation area. The significance of the Durham Conservation Area results from the quality and coherence of the historic buildings and preserved medieval street pattern, including the dramatic topography and extensive greenery of the city.
17. The significance of the appeal site is that it is part of the modest Victorian terraces with a uniformity of design and materials infilled within the city, with in this case, high back walls around the rear yards adjoining the back lanes behind the houses. This contrasts with generally larger terraces, many with gables that line Church Street.
18. The proposal would result in no external changes to the building and so would overall have a neutral effect on the area, thereby preserving the character and appearance of the conservation area. In line with the Framework, it would sustain and enhance the significance of the heritage asset. This lack of harm is, therefore, neutral in the overall planning balance.
19. The proposal would satisfy requirements in terms of cycle and car parking,

space standards, security and bin storage. It is acknowledged that the appellant has experience in running other student accommodation. These are, however, neutral matters.

Conclusion

20. The proposed development conflicts with the development plan when considered as a whole and there are no material considerations that outweigh the identified harm and associated development plan conflict.
21. For the reasons given above, I conclude that the appeal should be dismissed.

M J Francis

INSPECTOR

¹ APP/X1355/W/19/3222572