



Appeal Decision

Site visit made on 20 August 2024

by K L Robbie BA (Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 August 2024

Appeal Ref: APP/X1355/W/24/3344526

Cross View House, Cross View Lane, Nevilles Cross, Durham DH1 4PJ

- 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 Mr David Cullen against the decision of Durham County Council.
 - The application Ref is DM/23/03752/FPA.
 - The development proposed is the change of use from a dwellinghouse to a large house in multiple occupation (*sui generis*).
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Decision

1. The appeal is dismissed.

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 period three storey detached house on Cross View Lane. It faces towards Crossgate Peth (A690) close to its junction with the A167. It is located within the City of Durham Conservation Area (CDCA) and is a non-designated heritage asset. The proposal involves the change of use of a dwellinghouse to a House in Multiple Occupation (HMO) for up to 7 occupants. No internal or external alterations 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 stating that changes of use 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% and less than 90% 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, HMOs will not be permitted where less than 10% of the total residential units within the 100 metres are exempt from council tax charges (Class N) but, 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.
5. The Council calculates that the concentration of HMOs within a 100m radius of the appeal site to be 27.8% of the total number of residential properties. This is significantly above the threshold of 10% set out in Policy 16 where the tipping point in the concentration of HMOs is reached and further changes of

use can change a character of a residential area¹. It is, however, also below the 90% threshold where it is considered that further changes of use would not cause any more detrimental harm.

6. Consequently, the concentration of HMOs in the area surrounding the appeal site falls within the range where the Council seeks to resist further changes of use to maintain the balance of the community, albeit the situation before me is towards the lower end of the range. Nevertheless, the policy has clear aims and objectives to promote, create, and preserve inclusive, mixed, and balanced communities and these thresholds are part of that approach. As a result, the policy thresholds are not arbitrary and play an important part in the policy, I therefore afford them considerable weight in the consideration of the appeal.
7. The appellant also claims that 45 students live as immediate neighbours to the appeal site, which is in excess of 90% of residents. However, this is not the calculation upon which DCP Policy 16 relies, and I therefore afford this little weight in my consideration of the appeal.
8. The appeal property is on Cross View Lane and is accessed from that lane and although it faces directly towards Crossgate Peth which forms a primary route between PBSA at Duresme Court close by and the city centre, it is not directly located on it. Even if I were to agree with the Council that appeal property was located on a primary access route between PBSA and the city centre as set out in criteria c) of DCP Policy 16, I have found that that the proposal is in conflict with other criteria in the policy. This matter therefore has had little bearing on my consideration of the proposal.
9. Consequently, taking the above into account, I find that the proposal would have an unacceptable effect on the mix and balance of housing in the community. As such the proposal fails to accord with criteria a) and h) of DCP Policy 16 which seeks to limit the introduction of HMOs in order to maintain and create sustainable inclusive and mixed communities. The proposal would also fail to accord with DCP Policy 29 which seeks to ensure that proposals do not affect an area's character. There would also be conflict with paragraphs 96 and 135 of the National Planning Policy Framework which supports proposals which promote healthy and safe communities and add to the overall quality of an area. Nevertheless, I find no demonstrable conflict with DCP Policy 31 which is concerned with development which causes unacceptable impacts on amenity or leads to pollution.

Other Matters

10. The appeal property lies within the CDCA and is a non-designated heritage asset. The special interest and significance of this part of the CDCA is derived from the area's social and historical development as a residential area as the city grew during the Victorian era. As no external alterations to the appeal property are proposed the proposal would have a neutral effect on the character and appearance of the Conservation Area and the non-designated heritage asset. As such, the proposal would preserve the character and appearance of the CDCA.
11. The appellant refers to the unsuccessful marketing of the property as a family house. However, the marketing exercise was undertaken several years ago. I

¹ Paragraph 5.157 County Durham Plan (2020) and based on evidence in 'National HMO Lobby Balanced Communities and Studentification Problems and Solutions' 2008.

therefore cannot be certain that the factors affecting the failure to secure a sale at that time would still be relevant in the current housing market. Reference has also been made to a previous application by the appellant's father and the financial hardship which the sale of the property as a single dwelling would lead to. However, I have not been provided with any substantive evidence in these regards and these matters therefore afford little weight in my consideration.

12. My attention has been drawn to two other appeal decisions for HMOs in the city. An appeal decision for a property in Laburnum Avenue² differed in several ways from the appeal before me, including that it was being actively marketed at the time of the appeal and involved compelling evidence surrounding the appellant's personal circumstances, leading to a justified departure from the adopted policy. The appeal decision for a property in Lyndhurst Drive³ involved a smaller property where the 10% threshold in DCP Policy 16 would not have been breached as a result of the proposal. Consequently, I consider that the circumstances applicable to those schemes are not the same as presented in this case, which I have determined on its own merits.
13. The appellant states that the Police, University and the Council have put measures in place which would prevent anti-social behaviour from taking place in student occupied areas of the city. However, I have no information before me on the success or otherwise of this initiative. Moreover, anti-social behaviour is only one factor which may affect the character of a neighbourhood as a result of an over-concentration of HMOs.
14. The appellant questions the Council's approach to HMOs in DCP Policy 16 and its post-adoption monitoring obligations; however, it is not the purpose of a Section 78 planning appeal to test the soundness of an adopted policy, for which I can only have regard to the planning merits of the proposal in the context of the adopted development plan. I also note the appellant's frustration regarding the Council's non-disclosure of information which they may hold relating to the supply and demand for HMOs in the city. This is a matter between the two parties. I have determined the appeal on the evidence before me having regard to the merits of the case, noting that evidence of the need for this type of accommodation is not relevant to the appeal.
15. Reference has been made to the provisions of Section 149 of the Equalities Act 2010. However, students as a group do not display the protected characteristics which require the Public Sector Equality Duty (PSED) to be engaged. This matter therefore has had no bearing on my consideration of the appeal.

Conclusion

16. For the reasons given above, having considered the development plan as a whole and all relevant material considerations, I conclude that the appeal should be dismissed.

K L Robbie

INSPECTOR

² APP/X1355/W/21/3284723

³ APP/X1355/W/23/3330579