

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

Lisa Morina
Durham County Council
Planning Development
Central/East Room 4/86-102
County Hall
Durham
DH1 5UL

Dear Ms Morina,

Planning Application DM/22/00664/FPA

Change of use from C3 to C3 or C4 | Cross View House Durham DH1 4PJ

The City of Durham Trust objects to this planning application and asks you to refuse it because 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). Consequently Policy 16.3 of the County Durham Plan applies and the change of use to a flexible use of either C3 or C4 must not be permitted. Neither of the exemptions set out in clauses (h) and (i) apply. Neither does that in paragraph 5.167 of the supporting text, which is triggered when *localised communities are already so imbalanced that the policy objective of protecting a balance is unlikely to be achieved*. That is not the case here.

This analysis follows the order of the applicant's *Design and Access/Heritage Statement*.

Proposal

Paragraph 4 claims that the house has been on sale for about three years and has attracted no offers "despite the property being for sale at well below its valuation." Compared to actual recent sales in this area, the valuation is more than prices achieved for comparable properties. We give more details below.

We accept that no structural changes would be needed to convert to an HMO but full conformity with the Council's Standards for Houses in Multiple Occupation also requires a higher level of fire precautions than is common in family homes. Presumably the Council's HMO unit can advise.

Paragraph 8 is pure speculation and the experience in Durham City has been that the vast majority of HMOs are occupied by students.

Location

We agree that there are eight student lets close to the property, six of them in Ward Court. We also accept that a *maximum* of 45 students live in those properties, although the actual figure is currently slightly less, as university data disclosed to the Durham University and Residents Forum indicates that fewer than five students are living in Cross View Heights.

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The HMO data now on the planning portal indicates that there are 19 student lets within 100 metres of Cross View House, and therefore 71 properties occupied by permanent residents.

Paragraph 13 is correct in stating that 33% of the properties in postcode area DH1 4PJ are HMOs but as there are only three properties in this postcode this means that there is just one HMO. This paragraph also refers to a “significant presence” in Duresme Court but this PBSA is more than 100 metres from Cross View House and on the other side of the busy A167.

We have no comments on paragraphs 14 to 28 of the *Design and Access/Heritage Statement*..

Planning Policy

The summary in paragraphs 29 to 35 is accepted, though for completeness sake the City of Durham Neighbourhood Plan 2021 should also have been mentioned. It is the interpretation of the policies that we take issue with.

The postcode map (figure 4) referred to in paragraph 39 gives a misleading impression because it does not include the actual numbers of exempt student properties and it does not indicate which postcodes fall within a 100m radius of Cross View House. Here is a table showing the same data:

Postcode	Street/property	Class N exemptions	
		Percentage	Number
DH1 4PL	Ward Court	100.00%	6
DH1 4PJ	Cross View Lane	33.33%	1
DH1 4NU	St John’s Road	7.89%	3
DH1 4PA	George Street	8.33%	1
DH1 4PD	Monument Court	23.33%	7
DH1 4DT	Crossgate Peth	0.00%	0
DH1 4DY	Percy Terrace	6.67%	1

As will be seen, the high percentages for postcodes DH1 4PL and DH1 4PJ are not reflected in high absolute numbers. Postcode DH1 4FA is not included in this table because it is more than 100 metres from Cross View House. Its high percentage of students is not surprising because this is the Duresme Court PBSA. The southern parts of postcodes DH1 4NU (St John’s Road) and DH1 4DY (Percy Terrace) fall within the 100 metre radius and this is where the student lets are.

The applicant poses the question *Could these be significant factors making it challenging to sell the property as a family home?* Reviewing the evidence, the answer is *no*.

Paragraphs 41 and 42 correctly lead to the conclusion that neither exemptions (h) nor (i) apply, not just in a first reading, but on further examination, as we show below.

Criteria 16.3 (d) to (g) are only applicable should the property meet the other criteria. Nevertheless we do not dispute the broad conclusions, but must point out some errors.

The site is in zone ‘P’ of the control parking zone, not ‘F’, as paragraph 58 and figure 6 indicate. But no parking permits should be issued to the residents of Cross View House due to the availability of the double garage and private parking in the unadopted Cross View Lane.

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The applicant appears to be unaware of the Regulation 7 Direction which came into force on 17 October 2019. This removes the permitted development right to erect *To Let* boards in the Durham City Conservation Area. Paragraph 64 is therefore irrelevant.

As paragraph 3 makes clear, the applicant wishes to sell the property. The matters described in paragraphs 65 and 66 are ones for the eventual purchaser. There is no guarantee that the new owner would not wish to make alterations.

Despite quoting extensively from Policy 16.3, the applicant has not quoted in full supporting text 5.167 on which he relies heavily. Here it is:

5.167 The council would like the areas with high concentrations of HMOs to become more mixed. However, there may be some cases where localised communities are already so imbalanced that the policy objective of protecting a balance is unlikely to be achieved. In these cases owners of Class C3 dwellings may find difficulty in finding a purchaser for continued Class C3 use and may therefore wish to change to Class C4/HMO use. In considering whether to make an exception in such cases the council will have regard to things such as:

- the proportion of existing Class N council tax exempt properties within 100 metres of the application site and their impact upon the character of the area in terms of whether such a concentration might be likely to affect the amenity of normal family life;
- there is documented evidence of unsuccessful active marketing of the property as a Class C3 dwelling, with at least one recognised estate agent at local market levels, over a continuous period of at least 12 months; or
- other circumstances where the applicant can provide evidence which confirms that the policy restriction is causing severe personal hardship.

This area does not have a high concentration of HMOs. The percentage is 22% within 100 metres. The localised community is not imbalanced. Indeed, if one excludes Monument Court, which is on the far side of the busy A690 and not part of the localised community, the percentage falls to 20%. The wording is “In considering whether to make an exception in such cases” but this is not such as case so the issues described in the bullet points do not arise.

Nevertheless, for the sake of completeness, we shall consider them.

Potential Anti-Social Behaviour

Appendix 1 of the *Design and Access/Heritage Statement* shows, over 18 pages, very limited anti-social behaviour in the vicinity of the application site. Clicking the link labelled *Download area crime data* leads to the <https://data.police.uk/data> website from which further details of the crimes may be seen. These are shown below. This shows all crime (25 cases), of which anti-social behaviour amounted to 10 cases in three years. By way of contrast, in the same period Laburnum Avenue saw 50 reported crimes, 40 of which were anti-social behaviour.

Month	Location	Crime type	Last outcome category
2019-01	On or near George Street	Other crime	Court result unavailable
2019-02	On or near Percy Lane	Anti-social behaviour	
2019-02	On or near Percy Lane	Anti-social behaviour	
2019-05	On or near George Street	Anti-social behaviour	

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Month	Location	Crime type	Last outcome category
2019-07	On or near St John's Road	Anti-social behaviour	
2019-10	On or near Percy Lane	Other crime	Further investigation is not in the public interest
2019-11	On or near George Street	Violence and sexual offences	Investigation complete; no suspect identified
2020-01	On or near George Street	Bicycle theft	Investigation complete; no suspect identified
2020-01	On or near St John's Road	Burglary	Unable to prosecute suspect
2020-01	On or near Percy Lane	Anti-social behaviour	
2020-02	On or near St John's Road	Other theft	Investigation complete; no suspect identified
2020-03	On or near St John's Road	Drugs	Local resolution
2020-03	On or near Percy Lane	Anti-social behaviour	
2020-05	On or near George Street	Violence and sexual offences	Investigation complete; no suspect identified
2020-06	On or near George Street	Public order	Unable to prosecute suspect
2020-06	On or near George Street	Violence and sexual offences	Court result unavailable
2020-07	On or near George Street	Public order	Local resolution
2020-08	On or near George Street	Anti-social behaviour	
2020-08	On or near George Street	Violence and sexual offences	Unable to prosecute suspect
2021-03	On or near George Street	Anti-social behaviour	
2021-03	On or near George Street	Burglary	Local resolution
2021-03	On or near George Street	Vehicle crime	Investigation complete; no suspect identified
2021-04	On or near George Street	Anti-social behaviour	
2021-04	On or near George Street	Anti-social behaviour	
2021-04	On or near George Street	Other crime	Awaiting court outcome

We agree with the applicant's conclusion (paragraph 76) that *it appears that neighbouring properties are suitably well managed and are currently not causing any significant harm to the residential amenity of the area.*

Paragraph 71 asks *Is this high concentration causing noise and disturbance that would likely harm the residential amenity enjoyed by the applicant and his family?* No evidence has been produced to lead one to this conclusion, so yet again the answer is *no*.

Paragraph 77 is speculative.

Unsuccessful active marketing

The requirement here is for marketing to be *at local market levels*. The Land Registry publishes price paid data, and Appendix 1 shows sales within the vicinity of the application site in the past five years. We have used this to establish what the local market level is, based on what prices were actually achieved.

The first thing to note is that sales have been going through in areas where the Class N percentages are higher than for the application site. For example, in postcode DH1 4EB (42.86%) both 55 The Avenue (5 bedroom - £430,000) and Moreland House (4 bedroom - £450,000) have sold as family homes. The case file for application DM/22/00369/FPA, which is ongoing, shows that 26.5% of the properties within 100 metres of 24 Nevilledale Terrace are class N exempt student properties. Nevertheless both numbers 20 and 29 have sold as family homes within the past five years.

It will be noted that the original asking price of £750,000 was beaten by only three of the properties listed. All of these are clearly in a different class. On checking the next eight properties, down to a sold price of £500,000, all have four or five bedrooms and substantial gardens. It is plain that if the price is right sales can be achieved in this area and the presence of student lets does not deter potential buyers.

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Paragraph 87 of the *Design and Access/Heritage Statement* lists six concerns given by potential buyers and the first four of these have nothing to do with student neighbours. Regarding the fifth, there is no evidence that any of the residents of Ward Court or the other two nearby properties have ever caused any problems. The statement in the final bullet point that HMOs constitute a third of the housing mix within a 100m radius of the property is not true. The percentage is 22%, which is two ninths.

We acknowledge the letter from JW Wood Estate Agents, but consider that it underplays the other reasons for a lack of interest in this property. Durham City has two housing markets. Houses with planning permission for C4 or *sui generis* HMO uses command considerably higher prices than those with a C3 use. The asking price of £600,000 anticipates permission to convert this property to an HMO.

Other circumstances and severe personal hardship

The applicant has cited appeal decision APP/X1355/W/21/3284723 for 8 Laburnum Avenue as setting some form of precedent in the present case. We do not agree.

The trigger for being able to claim an exception is that *localised communities are already so imbalanced that the policy objective of protecting a balance is unlikely to be achieved*. The percentage of student lets around 8 Laburnum Avenue was 72%. Here it is 22%. In fact the proportion of permanent residents living within 100m of Cross View House is roughly equal to the proportion of students living around 8 Laburnum Avenue. The local community is not imbalanced.

The owner of 8 Laburnum Avenue was able to show with extensive diaries the anti-social behaviour he was experiencing. The appeal Inspector concluded “*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.*” By way of contrast, the applicant here has not produced any evidence of actual anti-social behaviour. Indeed the conclusion (paragraph 76) is that *that neighbouring properties are suitably well managed and are currently not causing any significant harm to the residential amenity of the area.*

The owner of 8 Laburnum Avenue also produced a letter from his GP regarding the impact on his health. There is no such evidence in this case.

We dispute the assertion that *the very high concentration of student occupants in the adjacent properties, compared to the percentage of student exempt properties in the area, is the principal reason the property is not selling as a family home*. The principal reasons are those listed in the first four bullet points of paragraph 87, and an asking price that is considerably more than that achieved in actual recent sales of comparable properties in the area.

National Policy

The NPPF sets out broad principles upon which Local Development Frameworks are built. The County Durham Plan, and specifically its Policy 16.3, was subject to a rigorous Examination in Public, was judged to be consistent with the NPPF, and was adopted on 21 October 2020. The

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current application may be consistent with the NPPF but it most certainly is not consistent with the County Durham Plan.

Conclusion

As the foregoing shows, Policy 16.3 of the County Durham Plan applies and the change of use to a flexible use of either C3 or C4 must not be permitted. Neither of the exemptions set out in clauses (h) and (i) apply. Neither does that in paragraph 5.167 of the supporting text, which is only triggered when *localised communities are already so imbalanced that the policy objective of protecting a balance is unlikely to be achieved*. The applicant has relied on a small number of student lets close to Cross View House, but the criterion set out in paragraph 5.167 is the proportion of existing Class N council tax exempt properties within 100 metres of the application site.

Consequently we ask you to refuse this planning application.

Yours sincerely

JOHN LOWE

Chair, City of Durham Trust

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Appendix 1

This table shows all the sales in the vicinity (approximately 300 metre radius) of Cross View House within the past five years, as reported to the Land Registry.

Price paid	Deed date	Property Type	Freehold or leasehold?	Address
£935,000	2019-04-24	D	Freehold	Keystone House, The Avenue DH1 4DX
£900,000	2020-12-17	D	Freehold	Percy House, Percy Lane DH1 4HE
£765,000	2019-08-13	D	Leasehold	Bramley View, 7, Cross Valley Court DH1 4GD
£695,000	2017-06-02	D	Freehold	Holly Cottage, Crossgate Peth DH1 4DT
£615,000	2017-09-06	D	Freehold	6, Copeland Court DH1 4LF
£605,000	2018-08-17	D	Freehold	Oaklea, The Avenue DH1 4DX
£590,000	2020-11-27	D	Freehold	62, Archery Rise DH1 4LA
£550,000	2020-01-06	D	Freehold	62, Archery Rise DH1 4LA
£540,000	2019-06-07	D	Freehold	Oatlands, Farnley Mount DH1 4DZ
£540,000	2020-01-10	D	Freehold	1, Archery Rise DH1 4LA
£518,300	2019-07-05	D	Freehold	Heather Lea, Farnley Mount DH1 4DZ
£485,000	2021-03-17	D	Freehold	5, Farnley Hey Road DH1 4EA
£475,000	2019-08-21	D	Freehold	32, Archery Rise DH1 4LA
£453,000	2017-08-14	D	Freehold	6, St Johns Road DH1 4NU
£450,000	2017-03-31	D	Freehold	Oaklea, The Avenue DH1 4DX
£450,000	2020-11-06	T	Freehold	Moreland House, The Avenue DH1 4EB
£445,000	2017-12-15	D	Freehold	28, Archery Rise DH1 4LA
£440,000	2018-09-11	S	Freehold	22, Crossgate Peth DH1 4PZ
£435,000	2021-11-10	D	Freehold	4, Archery Rise DH1 4LA
£435,000	2021-11-10	D	Freehold	4, Archery Rise DH1 4LA
£430,000	2021-06-29	S	Freehold	55, The Avenue DH1 4EB
£420,000	2019-05-24	D	Freehold	11, Farnley Ridge DH1 4HB
£420,000	2018-10-26	S	Freehold	9, Crossgate Peth DH1 4PZ
£399,999	2018-11-30	D	Freehold	7, Farnley Ridge DH1 4HB
£395,000	2020-10-26	T	Freehold	20, St Johns Road DH1 4NU
£395,000	2017-06-21	T	Freehold	36, St Johns Road DH1 4NU
£390,000	2019-06-06	S	Freehold	27, Archery Rise DH1 4LA
£385,000	2020-01-27	T	Freehold	20, Nevilledale Terrace DH1 4QG
£383,000	2019-08-15	D	Freehold	3, Farnley Ridge DH1 4HB
£380,000	2018-08-06	T	Freehold	7, Brierville DH1 4QE
£360,000	2020-08-17	S	Freehold	23, Geoffrey Avenue DH1 4PF
£355,000	2020-11-06	S	Freehold	Aspen Lodge, Crossgate Peth DH1 4PZ
£350,500	2020-05-29	D	Freehold	9, Farnley Ridge DH1 4HB
£350,000	2021-04-30	S	Freehold	13, Geoffrey Avenue DH1 4PF
£350,000	2017-08-14	D	Freehold	9, Ellam Avenue DH1 4PG
£345,000	2017-08-31	T	Freehold	35, The Avenue DH1 4EB
£343,300	2017-06-21	T	Freehold	29, Nevilledale Terrace DH1 4QG
£343,000	2020-12-18	S	Freehold	1, Howlcroft Villas DH1 4DU
£343,000	2017-01-10	T	Freehold	32, The Avenue DH1 4EB
£340,000	2018-09-28	D	Freehold	Wychwood, Farnley Hey Road DH1 4EA
£330,000	2017-07-14	T	Freehold	4, Howlcroft Villas DH1 4DU
£325,500	2021-05-07	S	Freehold	4, Ellam Avenue DH1 4PG

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Price paid	Deed date	Property Type	Freehold or leasehold?	Address
£325,000	2021-02-08	S	Freehold	2, Ellam Avenue DH1 4PG
£320,000	2021-08-11	S	Freehold	21, Geoffrey Avenue DH1 4PF
£312,000	2021-03-25	S	Freehold	Kenfrid, Percy Lane DH1 4HE
£310,000	2021-02-19	T	Freehold	7, Beechcrest DH1 4QF
£308,000	2019-06-28	S	Freehold	15, Geoffrey Avenue DH1 4PF
£297,500	2019-05-24	D	Freehold	12, Percy Terrace DH1 4DY
£285,000	2017-03-17	D	Freehold	5, Farnley Ridge DH1 4HB
£274,500	2019-02-01	S	Freehold	21, Geoffrey Avenue DH1 4PF
£266,000	2017-10-05	S	Freehold	9, Geoffrey Avenue DH1 4PF
£234,000	2021-09-14	T	Freehold	6, George Street DH1 4PA
£222,500	2018-09-21	T	Leasehold	3, Cross Valley Court DH1 4GD
£222,500	2019-07-18	T	Freehold	1, George Street DH1 4PA
£209,950	2018-06-06	S	Freehold	7, Ellam Avenue DH1 4PG
£200,500	2021-05-14	T	Freehold	5, George Street DH1 4PA
£196,000	2019-02-22	T	Freehold	5, George Street DH1 4PA
£182,500	2021-08-18	F	Leasehold	17, Monument Court DH1 4PD
£180,000	2020-07-20	S	Freehold	6, Darlington Road DH1 4PE
£135,000	2018-10-02	S	Freehold	Old Coach House, Percy Terrace DH1 4DY
£133,000	2017-04-28	S	Freehold	3, Darlington Road DH1 4PE
£129,950	2017-08-11	T	Freehold	14, Cross View Terrace DH1 4JY

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Property Type: D = detached, S = semi-detached, T = terraced (including end-of-terrace), F = flat