

THE CITY OF DURHAM TRUST

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

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

27 September 2023

Your reference: APP/X1355/W/23/3328022

Ms Ruth Howell
The Planning Inspectorate
3D Eagle
Temple Quay House
2 The Square
Bristol BS1 6PN

Email: north2@planninginspectorate.gov.uk

TOWN AND COUNTRY PLANNING ACT 1990 - PLANNING APPEAL

Appeal by G M and J Properties Ltd

Site address: 1 Larches Road, Durham DH1 4NL

Application reference: DM/22/01650/FPA

Appeal reference: APP/X1355/W/23/3328022

Proposed development: Change of use from 6 bed C4 to 9 bed Sui Generis HMO with single storey rear extension (amended)

STATEMENT BY THE CITY OF DURHAM TRUST

Dear Ms Howell,

The City of Durham Trust wishes to make these additional written representations to accompany its original objection to the application (attached for convenience as Appendix A).

There are particular reasons for an additional statement in this case; the Trust was surprised that the County Council case officer recommended approval, given the wide range of policy issues involved and the material arguments put forward by the Trust, other bodies, and a large number of local residents. These arguments were recognised by the Members of the County Council's Central & East Area Planning Committee as recorded in the official minutes of the Committee meeting held on 9 May 2023 when it resolved to refuse the application which is the subject of this appeal. The Council may have included or will be including a copy of these minutes in its bundle of documents submitted to you; for convenience again, we attach a copy at Appendix B. The full set of minutes (and to verify authenticity) can be found at: <https://democracy.durham.gov.uk/documents/s174839/Minutes%2009052023%20Area%20Planning%20Committee%20Central%20and%20East.pdf>

THE CITY OF DURHAM TRUST

The grounds for refusal by the County Council are stated in those minutes. However, the Trust invites you to in effect re-determine the application on the additional grounds that are set out below.

The Trust's objection letter dated 1st July 2022 addressed the application as it stood at that time, which was for a change from a 6 bed C4 to a 10 bed /Sui Generis HMO with single storey rear extension. We set out how the application offended against the approved County Durham Plan Policies 29 and 31 and the 'made' Durham City Neighbourhood Plan Policies S1, D4 and H3. These two Plans comprise the statutory development plan for the area; we trust that you have access to both. The Trust re-affirms that these objections apply to the amended proposal now the subject of this appeal, and we humbly invite you to determine the amended application against these policies.

We would now add that the officer's Committee Report of 9 May 2022 states that:

"Environment, Health and Consumer Protection (Nuisance Action Team) consider that the development is likely to generate additional general noise from comings and goings of occupants. However, it is satisfied based on the information submitted with the application that the development is unlikely to cause a statutory nuisance." The officer thereby dismisses the concerns of residents about the harm to residential amenity. The Trust points out that Statutory Nuisance is not the standard sought by the County Durham Plan. Paragraph 5.328 of the County Durham Plan, which follows Policy 31, says:

"Development proposals will be unacceptable where any resulting noise from new development would constitute a Statutory Nuisance under Part III of the Environmental Protection Act 1990 or where the noise impacts, although not sufficient to constitute a Statutory Nuisance, would nonetheless have an unreasonable adverse effect on amenity."[our emphasis]

This is highly important, given that the County Council's grounds of refusal is *"The change in use of the property to a larger house in multiple occupation (Use Class Sui Generis) and the associated increase in occupants would have an adverse impact on the amenity of existing residents through increased noise, disturbance and antisocial behaviour, contrary to the aims of policies 6, 29 and 31 of the County Durham Plan and Part 15 of the NPPF."*

The Trust also notes that issues have been raised about car parking provision and domestic waste disposal. The officer's Committee report addresses car parking provision and accepts the declaration in the application form of 3 spaces. However, drawing 2176/06-E on the Planning Portal is the only drawing that indicates car parking provision and shows 4 cars, one being in the car port. The officer's Committee report does not address the matter of domestic waste disposal but the application form states under WASTE DISPOSAL AND COLLECTION that *"Bins to be stored under car port as shown on dwg no 217/05."* Regrettably there is no such drawing on the Portal, and it is therefore not possible to determine how wheelie-bins can be accommodated as well as a car in the car port. For a normal household the Council provides three wheelie-bins - a general waste bin, a re-cycling bin and a garden waste bin. For large student household at least two general waste bins are provided. The Trust is therefore

THE CITY OF DURHAM TRUST

doubtful that the applicant has resolved this issue. County Durham Plan paragraph 5.166 is clear:

“5.166 Poor management of rubbish and recycling at HMOs can lead to unattractive frontages, problems with vermin and raise concerns over health and safety. Such issues can affect the amenity of nearby properties and may lead to complaints from neighbouring residents. These matters should therefore be appropriately addressed at the planning application stage. Applications for new build or change of use to an HMO will be expected to be accompanied with appropriate details of how household waste and recycling will be stored and presented for collection at the property. This should include layout drawings of the application site and its surroundings, clearly indicating the bin storage area. Acknowledgement should be made of the fact that the occupiers of an HMO may generate more waste than a single household with the same number of occupiers.”

These words capture well the problems that residents have to endure if proper provision is not made at the planning application stage. The application that is the subject of this appeal does not make unambiguous provision, and should not be accepted.

Accordingly, the City of Durham Trust urges you to determine that the application fails Policies 6, 29 and 31 and paragraph 5.166 of the County Durham Plan; and Policies S1, D4 and H3 of the Durham City Neighbourhood Plan.

Yours sincerely,

John Lowe
Chair, City of Durham Trust

THE CITY OF DURHAM TRUST

Appendix A: The City of Durham Trust's objection letter

c/o Blackett, Hart & Pratt,
LLP Aire House
Mandale Business Park
Belmont
Durham, H1 1TH
1 July 2022

Dear Mr O'Connor,

DM/22/01650/FPA 1 Larches Road Durham DH1 4NL

Change from 6 bed C4 to 10 bed /Sui Generis HMO with single storey rear extension

The Trust regrets the nature of this application creating an HMO in a primarily residential area to the detriment of the other residents. It wishes to object to this application based on the significant design failings of the proposed extension and adverse impacts on local amenity.

The Trust also supports the County Council's HMO officer's objection on grounds that there is no appropriate means of escape for the new bedrooms through the kitchen.

Context

This house is not in the City Centre Conservation Area but is close to the Green Belt at Flass Vale and is in the inner setting of the World Heritage Site. Intensity of development, extent of open/garden space and trees are factors in this section of the WHS setting close to the skyline. It is within The Durham City Neighbourhood Plan area so the policies of the Neighbourhood Plan apply and should be afforded weight.

The Trust regrets the continuing spread of HMO use into residential areas and the intensification of built development that follows. This weakens the existing character of areas such as this and distorts community balance. In this instance there are already issues of nuisance and poor management as noted by a remarkably high number of local objectors. They cite noisy parties late at night, excessive parking in the surrounding area, and poor management of rubbish disposal.

This house and others nearby are larger than average 20thC development but useful in establishing a lower density of building coverage. Housing design varies but the area does have an overall character with occasional groupings that are of an earlier date and more coherent appearance.

There is a tree covered by a TPO that the applicant has failed to identify but which is affected by the proposed development.

Proposal

None of the context is noted in an applicant's statement and it fails to offer any justification for the design proposals for the extension. There is no justification for creating an HMO of this size in this location.

THE CITY OF DURHAM TRUST

The extension is large, based on three new bedrooms and an enlarged kitchen/diner. The design is oversized both for the building and in relation to neighbouring houses and very plain and utilitarian in design. It has little relation to the house or its location. It is a simple dormitory block. The kitchen/diner is a windowless space with no lounge area and lit only by roof lights. It is an artificial construct used to create space for more bedrooms. As the County Council's HMO officer's objection notes, this causes a failure to allow sufficient natural light or ventilation. The new block intrudes into the rear space of the houses on Shaw Wood Close and Fieldhouse Terrace.

This was a four bedroom house and was optimistically submitted as six bedrooms for the existing license for HMO purposes. The existing plans now submitted fail to show any conversion of the downstairs utility or room subdivision/creation need to house the six bedrooms. The applicant also appears to have created another bedroom on the second floor that is omitted from the existing plan. Without this the application should be for nine bedrooms only, not ten as submitted. The second floor bedroom may well fail natural light and space standards, but room dimensions are not provided. The proposal will create an inappropriately substantial HMO in a residential area with corresponding potential for loss of amenity by residents.

It is not clear whether the extension will impact the TPO tree or its root protection zone there is another failure in the supplied information. Improvement in relation to energy sustainability is not demonstrated. There is limited information on car parking – noted by another objector as an existing problem given that the garden can be accessed by cars through the open car port.

An additional difficulty is that access to the rear of the property is a narrow lane that also provides access to Nos.1-6 Fieldhouse Terrace and there is potential for disruption to this access by excessive parking and by construction vehicles.

The Trust therefore considers that the proposal has substantial design failings and potential for loss of local amenity and disruption of a sustainable community.

Policies

In detail, as submitted, the proposal fails against the following policies:

County Durham

Plan Policy 29

Sustainable Design

The development proposals do not achieve a well-designed building and place and:

- a. Do not contribute positively to an area's character, identity, townscape helping to create and reinforce locally distinctive and sustainable communities.
- e. Do not provide high standards of amenity and privacy and minimise the impact of development upon the occupants of existing adjacent and nearby properties.

THE CITY OF DURHAM TRUST

Extensions and Alterations

The proposals for this extension to a residential property do not ensure that the development is sympathetic to the existing building and the character and appearance of the area in terms of design, scale, layout, roof design and materials.

Policy 31

Amenity and Pollution

The development should not be permitted because it cannot be demonstrated that there will be no unacceptable impact, either individually or cumulatively, on living conditions and that it can be integrated effectively with existing community facilities. The proposal does not demonstrate that future occupiers of the proposed development will have acceptable living conditions. The proposals will have an unacceptable impact through overlooking, visual intrusion, visual dominance or loss of light, noise, and privacy. Mitigation measures are not demonstrated.

City of Durham Neighbourhood Plan

Policy S1: Sustainable Development Requirements of all Development and Redevelopment Sites Including all New Building, Renovations and Extensions

Conservation, preservation, and enhancement of Our Neighbourhood

The proposal fails to:

- c) Harmonise with its context in terms of scale, layout, density, massing, and materials.
- d) Conserve the significance of the setting, character, local distinctiveness, tranquillity, and the contribution made to the sense of place.

Securing equity and benefit to the local community:

m) Does not secure a design and layout which is capable of respecting privacy of, and visual impact on, occupiers of neighbouring properties.

Policy D4: Building Housing to the Highest Standards

As a new extension to existing housing, it is not of high quality design relating to:

- a) the character and appearance of the local area; and
- b) aesthetic qualities; and
- c) external and internal form and layout; and
- d) functionality; and
- e) adaptability; and
- f) resilience; and
- g) the improvement of energy efficiency and the reduction of carbon dioxide emissions.

Policy H3: Our Neighbourhood Outside the Conservation Areas

The development proposals are within 'Our Neighbourhood' outside the Conservation Areas but fail to demonstrate an understanding of the area of the proposed development and its relationship to Our Neighbourhood as a whole.

The development proposals are outside the Conservation Areas and do not take into account or meet the following requirements that are relevant to the area to which the proposal relates.

- a) They fail to sustain and make a positive contribution to the character and distinctiveness of the area; and
- c) Fail to use high quality design which contributes to the quality and character of

THE CITY OF DURHAM TRUST

the area; and

d) Fail to have scale, density, massing, form, layout appropriate to the context and setting of the area; and

e) Fail to use materials and finishes appropriate to the context and setting of the area.

The Trust objects to the application, based on the above points and policies

Yours sincerely

John Lowe,
Chair, City of Durham Trust

THE CITY OF DURHAM TRUST

Appendix B: Extract of the approved minutes of the meeting of Durham County Council's Central and East Area Planning Committee held on 9 May 2023

Parish Councillor G Holland explained that Members of the Committee would have noted that no less than 38 households in the immediate vicinity of the property had lodged written objections. He added that the strength and the breadth of those objections should alert the Committee to the level of feeling in the neighbourhood, a feeling which, as Members would be hearing, was based on their experiences in recent years. He noted that, in planning terms, the extension of the property apparently survived the restrictions imposed by County Durham Plan (CDP) Policy 16.2 whose intention was to prevent our city becoming no more than a student dormitory for Durham University. He added that, as Members were aware, it was a policy that was being bypassed by the landlords. He explained that, however, Policy 16 was not the only constraint on such developments, there were other policies designed to protect both the setting of our neighbourhoods and the welfare of its residents, and the integrity of those policies must not simply be minimised, as had happened in the Officer's report at paragraph 71. Parish Councillor G Holland noted that it was a great pity that Committee Members no longer made the once obligatory site visit prior to their meetings as it would have enabled Members to see first-hand the concerns of the residents.

Parish Councillor G Holland noted he would refer to the policies that led to the conclusion that the application should be refused, explaining that they included Part 12 of the National Planning Policy Framework (NPPF), CDP Policy 29 paragraphs a, c, e and f, and Policy 31, as well as Policies S1, H3 and D4 of the Durham City Neighbourhood Plan (DCNP). He noted that Part 12 of the NPPF was a baseline policy, which sets the platform to achieve well-designed places, and offered guidelines as to how that target could be reached by requiring sustainable buildings and by making certain that developments will 'always add to the overall quality of an area, not just for the short term but over the lifetime of the development'. He added that the proposed development at Larches Road missed that target completely. He explained that Policy 29 of the CDP provided more restrictive conditions, and that the proposed extension did not, to quote 29a, 'contribute positively to an area's character, identity, townscape and landscape features', nor did it help 'to create and reinforce locally distinctive and sustainable communities'. He added that furthermore, it most certainly did not, to quote 29e, 'provide high standards of amenity and privacy and minimise the impact of [the] development upon the occupants of existing adjacent and nearby properties'.

Parish Councillor G Holland explained that there was plentiful evidence from the local residents that the property already fails 29f, 'contribute towards healthy neighbourhoods; noting that indeed, once increased in size, as planned, its negative impact would be even more damaging. In respect of CDP Policy 31, amenity and pollution, Parish Councillor G Holland noted that it required that 'there will be no unacceptable impact, either individually or cumulatively, on health, living or working conditions' and that it 'can be integrated effectively with any existing community facilities'. He added that the application also fell short of DCNP Policy S1, sections a) and c), because it did not, 'conserve the significance of the setting, character, local distinctiveness, tranquillity, and the contribution made to the sense of place'. He noted that nor did it secure the 'equity and benefit to the local community' required by that policy nor, according to the residents, did it offer 'a design and layout capable of respecting the privacy of, and visual impact on, occupiers of neighbouring properties'.

THE CITY OF DURHAM TRUST

Parish Councillor G Holland added that the application did not meet the constraints of DCNP Policy D4 by providing accommodation to the highest standards. He explained that this particular building was once a fine residential home with beautiful and well-maintained gardens and noted that now it was proposed to reduce it to no more than an unkempt functional building of convenience designed solely for profit by crowding in as many students as possible. He noted that as a new extension to an existing house, it would fail to respect 'the character and appearance of the local area'.

Parish Councillor G Holland added that the application did not meet the demands of DCNP Policy H3 because the development would most certainly not 'sustain and make a positive contribution to the character and quality of the area'. Parish Councillor G Holland noted, in summary, that the application failed elements of the NPPF Part 12, and the constraints embedded in CDP Policies 29 and 31 and DCNP Policies S1, D4 and H3. He explained that the detailed record of neighbours' concerns made it clear that the proposed development would have an unacceptable impact on their neighbourhood and their lives. He added that even the Officer admits in her report that 'the change of use proposed will lead to a significant intensification of residential use. This will increase the likelihood of general noise... which may impact on neighbouring residential use'. He added that, however, the Officer sets that aside as 'unlikely to cause a statutory nuisance'. He asked did that mean that the policies he had just discussed carried no weight unless it was certain there would be a statutory nuisance.

Parish Councillor G Holland explained that the golden thread of these policies was that any development: must 'always add to the overall quality of the area'; must 'sustain and make a positive contribution to the character and distinctiveness of the area'; must bring 'equity and benefit to the local community'; and must respect "the privacy of occupiers of neighbouring properties'. He noted that the phrasing, the words, and the spirit of those policies could not be set aside and added that simply concluding in the Officer's report that it would not do that much damage and that residents would just have to get used to the added problems it created in their community, did not accord with those policies and was no longer acceptable. He added that the Committee therefore would need to confirm that our planning policies, so recently endorsed and approved, actually mean what they say they mean, and that they were policies that set the standard both now and in the future.

Parish Councillor G Holland explained that the application had understandably aroused strong local opposition and noted that the Committee would hear first-hand about those concerns. He concluded by asking that the Committee listen to them, as it was Members who acted as their voice, and today Committee Members were the only voice that they had.

Councillor J Elmer thanked the speakers, including the representations on behalf of residents. He noted that Councillor L Brown had spoken of 'balance' and while the application was in line with Policy 16, there were other policies to consider, for example Policy 6, point 4.115 which stated: '...conversions and replacement buildings, proposals should not significantly increase the size or impact of the original building where this would have an adverse effect on the character of the surrounding area or the amenity...'. He noted that the Committee had heard as regards the issues with amenity, anti-social behaviour, noise, threatening, abuse, parties, drug use and police involvement. He added that represented significant harm.

Councillor I Cochrane left at 10.23am

THE CITY OF DURHAM TRUST

Councillor J Elmer explained that Council Tax records gave an HMO percentage in the area of 8.5 percent, however, it was likely higher as it was not always possible to tell by Council Tax records whether a property was being used as a student HMO. He noted the objections that had been raised by the residents, Local Member, City of Durham Parish Council, City of Durham Trust and the Local MP and explained that therefore he would move refusal of the application. Councillor J Cosslett noted he would second the motion for refusal.

Councillor I Cochrane entered the meeting at 10.25am

Councillor K Shaw referred to a recently approved purpose built student accommodation (PBSA) block, noting such applications were approved, in part, as they helped to reduce the demand for change of use of residential dwellings into student HMOs. He added he shared the concerns raised by residents in respect of the application. He noted that Members were referred to policies within the CDP, NPPF and DCNP and told by Officers that the application should not be refused, however, he felt that there must be a tipping point. He added there had been a 900 bed student accommodation previously approved and noted that he felt that now we were at that tipping point. He explained he understood that each application should be considered on its own merits, however, in this case the move from six to nine bedrooms was too much and therefore he was opposed to the application.

Councillor A Surtees noted she agreed with Councillor K Shaw and noted that Members were in a very difficult position and noted Members had sat in Committee many times considering HMO applications. She noted there was a need to look at this issue and to have a firm policy as, at the moment, applicants use the NPPF, and reiterated that the Council needed to 'grab the bull by the horns' in terms of policy. She noted she too was opposed the application.

The Chair noted that he felt the Council did have the requisite policies to deal with HMO applications.

Councillor J Elmer noted for clarification that the large PBSA located down the hill from the application site was very much a University project and that they preferred their PBSAs and therefore he felt refusing this application would align with Durham University's position.

Councillor K Shaw noted that he felt any refusal in this case would not be carte blanche for the future applications for change of use for HMO, rather was specific for this application.

The Principal Planning Officer, Paul Hopper, noted that Policy 16 was a policy relating to the principle of HMOs, designed to protect the balance of communities. He noted the Committee had noted the issues of noise and disturbance and how that impacted the community. He added that Officers had felt that the application was in accordance with Policy, however, the speakers had referred to other policies relating to noise and disturbance that were material. He added that if Members felt that those issues outweighed in terms of residential amenity, if they could expand on their reasoning as he felt it would be important, should the decision required to be defended at appeal.

Councillor J Elmer noted he felt the strongest point was in relation to Policy 6, in securing the amenity of neighbouring properties, not just in terms of noise, but also anti-social behaviour, rats, drug use, parties, abuse and police involvement. He noted there was ample evidence of existing impact, made worse if the property was extended.

THE CITY OF DURHAM TRUST

The Principal Planning Officer noted that the identity of the applicant was not material, nor was previous impact.

Councillor J Elmer noted it was the impact on amenity by the additional number of students proposed by the application.

The Lawyer (Planning and Highways), Neil Carter noted that he would caution against any refusal reason linked to the applicant or tenants, rather to focus on amenity issues, not individual tenants or neighbour disputes.

Councillor A Surtees noted those were the reasons she felt that there needed to be an HMO policy with criteria for clarification, reiterating she felt the policy in place was not firm enough.

Upon a vote being taken it was: RESOLVED That the application be REFUSED as the change in use of the property to a larger house in multiple occupation (Use Class Sui Generis) and the associated increase in occupants would have an adverse impact on the amenity of existing residents through increased noise, disturbance and antisocial behaviour, contrary to the aims of policies 6, 29 and 31 of the County Durham Plan and Part 15 of the NPPF.
