

c/o Blackett, Hart & Pratt, LLP
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30 May 2024

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

Local Authority Ref: DM/23/03752/FPA

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

Darren Cryer
3M Kite Wing
Temple Quay House
2 The Square
Bristol BS1 6PN

Dear Mr Cryer

Town and Country Planning Act 1990

Appeal by Mr David Cullen

Site Address: Cross View House, Cross View Lane, Nevilles Cross, DURHAM, DH1 4PJ

You will have received copies of the Trust's representation on this matter, which was dated 15 January 2024. For ease of reference, we have also attached it, as Appendix 2. The Trust stands by this representation and has further comments to make in the light of the appellant's Appeal Statement. Our comments relate to both the Appeal Statement and to the broader relevant factors applying to this matter. The headings correspond to those in the Appeal Statement.

Generally

The Council's reason for refusal is the correct one. The appellant's agent has advanced a number of irrelevant arguments which we consider below.

County Durham Plan, Policy 16(3)

The Appeal Statement at paragraph 7 states that a main issue to be decided is

Whether the most important Policy, County Durham Plan ['CDP'] Policy 16(3), is outdated and a decision ought to have been made following Paragraph (d) of the National Planning Policy Framework

The appellant clearly thinks it is outdated, and we shall show that it is not. The County Durham Plan was adopted in October 2020 and so is less than four years old. The Trust participated fully in the various stages of consultation for the County Durham Plan, including attending the Examination in Public. Specifically we were there on 14 November 2019 for Policy 16 and were participants rather than observers. The relevant part of the Inspector's Report is reproduced at Appendix 1. You will note that the Inspector described the 10% threshold as "a proportionate approach" (paragraph 256). The following paragraph saw the Inspector intervene to provide clarity by defining "high concentration" as 90%.

Policy 16(3) is therefore recent and justified by evidence which satisfied the Inspector at the Examination in Public. An appeal into an individual planning refusal is not the place to challenge this. Challenges can be made at a review of the Plan, which should take place every five years.

Preliminaries

Paragraphs 10 to 19 describe an apparently unsuccessful attempt by the applicant's father to sell the property. However, as we pointed out in our letter of objection, no evidence has been put forward in the current case and so no weight can be given to these claims.

We would, however, point out that the adjacent property, 1 St John's Road, has been sold recently. The photograph shows a glimpse of that property in the top-right-hand corner. Cross View House is visible in the centre of the photo. The two properties share a common boundary. We would suggest that with an appropriate price tag Cross View House would sell.



The concentration of HMOs in the area

What the appellant calls “an incredibly rigid defence of these policy thresholds” in his paragraph 22 is what the Inspector called “providing clarity and consistency” in the report on the County Durham Plan (see Appendix 1, paragraph 257). The figure of 27.8% of properties being exempt from Council Tax because they are student lets is not borderline.

The number of students in the immediate vicinity has not prevented the sale of 1 St John's Road.

Also included under this heading, at paragraph 32, is the statement that Cross View House has “a disproportionately small garden”. The reason for this, as Councillor Liz Brown pointed out in her letter, is that in 2001 the applicant's father built a “two storey pitched roof extension to rear of existing dwelling”. This was authorised by planning application 4/00/00584/FPA, approved on 31 October 2000. Against any disbenefit arising from the smaller garden must be set the benefit of the larger house.

Primary Access Route

The Council did not give the presence of a primary access route as a reason for refusal, so it is difficult to see why the appellant devoted paragraphs 34 to 60 in considering this matter. The matter was raised by objectors and considered by the Council, who concluded that had the HMO percentage been below 10% then this would be a ground for refusal, but as the percentage was 27.8% this was irrelevant.

We dealt with the issue of police crime reports in our letter of objection, see Appendix 2.

Lack of the right to an exemption to Policy 16(3)

Why the appellant feels it necessary to consider the exemption in Policy 16.3(h) is unclear, as this only applies when the concentration of council tax exempt properties exceeds 90% and the concentration here is less than a third of that. We have shown above that the 90% figure was added to the County Durham Plan via a main modification on the express instruction of the Inspector.

The Need for More HMOs

The Trust's original letter of objection dealt with this matter and the appellant has not addressed any of the points that we raised. We can confirm that the web page in Appendix 1 of that objection remains online. By way of contrast, the reports from StuRents are alluded to but not reproduced, apparently "for copyright reasons."

Paragraph 77 of the appeal statement says "These reports should, at the very least, infer [*sic*] that Policy 16(3) is harming housing stock and that there are not enough suitable HMOs in the city to meet the current and future needs of students, let alone other social groups that would benefit from HMO in the broken housing market." The whole point of the Policy is to achieve a balance between the various social groups, and this analysis ignores the need to maintain a supply of family homes in the City.

The remaining arguments in this section may be relevant to a future review of the County Durham Plan but can have no bearing on an individual appeal.

FOI Request

The information which the appellant was seeking via the unsuccessful FOI request is available from the University website and the relevant page is reproduced at Appendix 1 of the Trust's original letter of objection. This states "that a detailed assessment of the housing market shows that there will be enough student accommodation to meet anticipated demand for the 2024/25 academic year."

Unsuccessful Marketing

These paragraphs are irrelevant. Cross View House was last on the market three years ago. The applicant's original Design and Access statement devoted ten paragraphs to this issue and it would have been remiss of the Council not to respond to them. The Council's analysis in its report is the correct one.

Potential for increased noise and disturbance

The appeal referenced here was for a house in a different part of the City where the percentage of student lets exempt from Council Tax was below 10%. The reasons for refusal did not include Policy 16, and so this case is not relevant to the present one.

Student v non-student-occupied HMOs

The arguments in these paragraphs are again a criticism of Policy 16(3) and contain nothing specific to the property that is the subject of this appeal. The supporting text to Policy 16 says

at paragraph 5.151 “In County Durham the majority of HMOs are located in Durham City and are occupied by students of Durham University.” The Inspector at the EiP accepted this reasoned argument.

Paragraph 122 of the Appeal Statement quotes the paragraph about the Public Sector Equality Duty. This is a faithful quotation but the Council’s report has slightly truncated the first part which reads in full *eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act*. The Act protects those with “protected characteristics” and being a student is not a protected characteristic. Consequently the conclusion in the following paragraph is incorrect. We would also point out that the Council *can* separate student occupation from non-student occupation of HMOs because students living in an HMO will have applied for a Class N exemption from Council Tax.

Conclusion

None of the arguments summarised in this part of the Appeal Statement have survived the analysis set out above. There are no material conclusions that would justify granting this appeal and we urge the Inspector to refuse it.

Yours sincerely,

JOHN LOWE

Chair, The City of Durham Trust

Appendix 1

Extract from the Inspector's report into the County Durham Plan

by William Fieldhouse BA (Hons) MA MRTPI (File Ref: PINS/X1355/429/4)

Houses in multiple occupation (policy 16 part 3)

254. Despite the increasing availability of purpose built accommodation, many students are likely to prefer to live in shared houses, and the Council expects to continue to receive a significant number of planning applications for houses in multiple occupation. Part 3 of policy 16 builds on the approach in the Council's interim policy and aims to promote, create and preserve inclusive, mixed and balanced communities and protect residential amenity.
255. To this end, the policy seeks to prevent further houses in multiple occupation in certain circumstances, including if more than 10% of the total number of residential units within 100 metres of the application site are or would be occupied by students. This would have the effect of ruling out additional houses in multiple occupation in many parts of the city, and ensuring that areas that currently have fewer than 10% do not go beyond that "tipping point". The threshold is based on national research¹ and experience of implementing the Council's interim policy over the last couple of years.
256. The details of how the 10% threshold approach would be applied are set out in the reasoned justification and were discussed at an examination hearing session. I am satisfied that it is a proportionate approach which can be consistently and efficiently applied in response to how any area changes over time provided that one main modification is made to paragraph 5.153. This is to clarify how council tax data will be updated and used to inform the implementation of the policy [**MM98**].
257. Parts (h) and (i) of part 3 of policy 16 set out two exceptions to the 10% threshold. These are if an area already has such a high concentration of student properties that further conversions would not cause additional harm to residential amenity, or if a large number of commercial properties in a particular area means that a high proportion of a low number of residential properties are occupied by students. With regard to the former, a main modification is required to define "high concentration" as 90% in order to provide clarity and consistency such that the policy is effective [**MM96**].
258. The 10% threshold applies to new build and changes of use, but not to extensions to existing houses in multiple occupation. This is to allow extensions that are required to improve the quality of accommodation or to provide additional space that would not materially impact on the character of the area or residential amenity. However, as drafted, the policy would not only allow the provision of additional living space, kitchens and bathrooms but also additional bedspaces. Cumulatively over time, this could lead to a significant increase in the number of students living in an area, undermining the objective of the policy. Main modifications are therefore required to part 3 of

¹ *Balanced Communities and Studentification Problems and Solutions* (National HMO Lobby, 2008).

policy 16 so that criteria (a), (h) and (i) apply to extensions that result in specified or potential additional bedspaces [**MM93** and **MM95**]. Consequential modifications are also required to the reasoned justification [**MM97**].

259. Finally, to be justified and consistent with national policy, part 3 criterion (d) needs to be modified to refer to having regard to (rather than being in line with) the Council's parking and accessibility standards [**MM94**].

Conclusion

260. Subject to the modifications I have described, policy 16 provides a sound basis for considering university related development and would be effective in ensuring that such developments are carried out in an acceptable way over the coming years.

261. However, whilst the Plan should be effective in accommodating the currently identified growth in student numbers, the limited size of the city and its particular physical and historic character mean that there may be limited capacity for further growth in the city in the longer term.

Appendix 2

The original letter of objection from the City of Durham Trust

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

Lisa Morina
Durham County Council Planning Development
County Hall
Durham DH1 5UL

c/o Blackett, Hart & Pratt, LLP
Aire House
Mandale Business Park
Belmont
Durham, DH1 1TH
15 January 2024

Dear Ms Morina,

DM/23/03752/FPA | Change of use from a dwellinghouse (use class C3) to a large house in multiple occupation (sui generis). | Cross View House Cross View Lane Nevilles Cross Durham DH1 4PJ

The City of Durham Trust objects to this proposal for a change of use from C3 to *sui generis* on the grounds that it does not meet the criteria set out in County Durham Plan Policy 16.3(a), and none of the exemptions listed in Policy 16.3 apply to it. The proposals would therefore result in further imbalance in the community and have a detrimental impact on quality of life and community cohesion for surrounding residents in contravention of Policies 16, 29 and 31 of the County Durham Plan and paragraphs 96 and 135 of the National Planning Policy Framework (December 2023 revision).

This application is virtually the same as DM/22/00664/FPA, which was submitted by the present applicant's father and refused on 29 April 2022. Nevertheless, the arguments must be made again as this is a fresh application. The case made by the applicant's agent is contained in his *Design & Access Heritage Statement* and it is to these that the following remarks relate.

Planning History

Paragraphs 2 to 17 explain why he considers that the refusal of application DM/22/00664/FPA was the wrong decision. However, this is now decided and the decision was not appealed. There are references to documents contained in the earlier application, for example paragraph 17 "as evidenced by his father in his application". These are not before you and they certainly will not be before an Inspector should this go to appeal. They can be given no weight.

It is claimed that appeal decision APP/X1355/W/21/3284723 sets a precedent. It does not. We have attached a copy of the decision as a separate document. There were several material considerations that led the Inspector to decide that a departure could be made from the development plan. None of them apply in this case:

- The percentage of HMOs at 72.7% was "towards the upper end of the range within which the policy seeks to resist further conversions." Furthermore the presence of Byland Close within the 100m radius was considered to depress the percentage. This

percentage is in the upper quartile of the 10% - 90% range where a change of use to an HMO is not permitted by Policy 16.3.

- On the other hand, the current HMO percentage as quoted by HMO Data is 27.8% which is in the lowest quartile. The resident in the appeal case had 102 HMOs within 100m of his house. There are 24 HMOs within 100m of Cross View House.
- In the appeal case, evidence was submitted that led the Inspector to conclude (paragraph 12) that “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”. There is no such evidence in this case. The proximity of Ward Court is noted but there is no evidence of any anti-social behaviour by any of its residents.
- In the appeal case evidence was produced as to the health impact of the anti-social behaviour on the appellant and his family. There is no such evidence in the current case.

Paragraph 10 refers to the “active marketing of the property over nearly three years” and a letter in support of this from a local estate agent was attached. However this letter is very nearly two years old and the property is not currently listed by that estate agent. There is no evidence of recent marketing. The adjacent property has been sold, subject to contract, by Bradley Hall. In any case the evidence would only be relevant if the localised community were already so imbalanced that the policy objective of protecting a balance was unlikely to be achieved.

Proposal

Paragraph 19 says “There is compelling evidence that the city may have an insufficient supply of HMO accommodation”. If such a statement is made it is incumbent on the applicant to provide that evidence. This has not been done, and in fact the opposite is the case. We refer you to Appendix 1. This confirms that the number of students accepted by the University was reduced in 2022 and going forward student numbers will not increase significantly, with more students being in University accommodation.

To spell this out in more detail, the University planned to grow to 21,500 students in the year 2026/27 but the unexpectedly high A-level grades around Covid led to offers having to be honoured that resulted in 22,220 students in 2021/22. The figure for 2022/23 is 1,090 lower at 21,130 students as a result of determined work by the University, This information is in the public domain and demonstrates that the University is working very effectively to stabilise at around 21,500 and that the claim of "insufficient supply of HMO accommodation" is not correct.

At paragraph 27 applicant appears to be referring to County Durham Plan Policy 16.3(c) but misunderstands it. The Council is not advancing “the argument that the property is unsuitable for family occupation”. As paragraph 5.164 of the County Durham Plan makes clear, the purpose of this clause is to mitigate the potential cumulative impact on remaining permanent residents of passing foot traffic from PBSAs and a house converted to an HMO.

Planning Policy

In this section of the *Design & Access Heritage Statement* the applicant is advancing the extraordinary argument that the Development Plan, in this case the County Durham Plan, is out of date even though it was only approved on 21 October 2020. The Plan was extensively consulted on, culminating in an Examination in Public. Student accommodation was discussed on Thursday 14 November 2019. An outcome was that the upper limit in Policy 16.3(h) was changed from “high concentration” to 90%. The applicant is trying to reverse that Inspector’s decision, which was made “in order to provide clarity and consistency such that the policy is effective”. The reference is PINS/X1355/429/4 *Report on the Examination of the County Durham Plan* paragraph 257.

Of course the Plan needs to be kept up-to-date with periodic reviews. Preliminary work as already started and some Trustees attended a meeting at Merryoaks Community Hall on 23 October 2023 where Mike Allum, head of Spatial Policy, spoke and took questions. There will be a formal consultation and we would encourage the applicant and his agent to participate in that. The way to achieve changes to the County Durham Plan is via this review process and not by proposing them in individual planning applications.

Paragraph 53 is irrelevant because individual postcode percentages are quoted and only the percentage of individual properties within 100 metres counts. Also, the percentage figures conceal wildly different actual numbers of properties. The two specific postcodes quoted by the applicant are both more than 100 metres from Cross View House. DH1 4FY is Duresme Court which has 275 properties. DH1 4JY covers the 14 properties in Cross View Terrace, all more than 160 metres from Cross View House.

Paragraph 61 refers to Police Crime Reports which are “summarised” over seven pages in Appendix 1. Over the 18 month period April 2022 to September 2023 there were 13 crimes of all types committed on streets within 100 metres of Cross View House:

Month	Location	Crime type	Last outcome category
2022-04	On or near Crossgate Peth	Anti-social behaviour	
2022-05	On or near George Street	Violence and sexual offences	Investigation complete; no suspect identified
2022-06	On or near Crossgate Peth	Anti-social behaviour	
2022-09	On or near Cross View Lane	Public order	Awaiting court outcome
2022-10	On or near Crossgate Peth	Anti-social behaviour	
2023-02	On or near George Street	Other theft	Investigation complete; no suspect identified
2023-02	On or near George Street	Public order	Investigation complete; no suspect identified
2023-03	On or near Crossgate Peth	Burglary	Court result unavailable
2023-03	On or near George Street	Burglary	Unable to prosecute suspect
2023-04	On or near George Street	Violence and sexual offences	Unable to prosecute suspect
2023-06	On or near Cross View Lane	Violence and sexual offences	Investigation complete; no suspect identified
2023-06	On or near Crossgate Peth	Anti-social behaviour	
2023-09	On or near George Street	Violence and sexual offences	Under investigation

These are taken from the detailed information on the data.police.uk website which is linked from the pages shown, by following the link [Download area crime data](#). Ward Court is included within the data for Cross View Lane. There was one public order offence and one of violence and/or sexual offence in Cross View Lane. We would argue that these are more serious than

anti-social behaviour. Nevertheless, this is a low level of crime unlikely to deter a potential buyer.

We fail to see the relevance of paragraphs 62 to 85, given that Policy 16.3(h) of the County Durham Plan is not engaged. There was a case to be made for a degree of hardship for the applicant's parents, but none for the applicant himself.

The arguments regarding StuRents presented in paragraphs 87 to 96 is second hand as the applicant cannot produce the report for copyright reasons. Paragraph 96, in particular, does not cite its sources, is based in part on the incorrect assumption that "demand grows in line with the historical trend" and is at odds with the known facts. The information from Durham University, reproduced below in Appendix 1, is authoritative and must be preferred.

Commentary

The arguments advanced in paragraphs 97 to 118 do not relate specifically to this application but are trying to discredit a development plan that is barely three years old. As set out above, these arguments should be reserved for the periodic review of the County Durham Plan, which we understand is due in 2025.

The conclusion reached in paragraph 119 is based on a misunderstanding of the current position. A detailed assessment of the housing market by Durham University, in conjunction with relevant bodies, "shows that there will be enough student accommodation to meet anticipated demand for the 2024/25 academic year". Appendix 1 has more information.

Criteria (d) through (g) of the policy

These criteria are contingent on criteria (a) through (c) having been met and the arguments in paragraphs 120 to 148 are therefore irrelevant since these pre-requisites have not been met.

We would however point out that the site is within CPZ zone P, not zone F. This error was pointed out in the Trust's representation on the previous application. And as we pointed out then, 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.

National Policy

It is difficult to follow the detail of the arguments advanced here as paragraphs 149 to 157 appear to be referring to a superseded version of the NPPF. The extract quoted in paragraph 152 is now at paragraph 63 of the NPPF and Part 8, *Promoting healthy and safe communities* now starts at paragraph 96.

Nevertheless, the County Durham Plan was judged at Examination to be consistent with the NPPF and nothing has changed in the intervening three years to change that.

Conclusion

Paragraph 158 claims that the breach of policy 16.3 of the County Durham Plan is only "technical" in nature. It is in fact a clear breach. The percentage of Class N exemptions within 100 metres is 27.8%. Arguments trying to discredit the 90% figure in policy 16.3(h) are simply irrelevant in this context.

The following paragraphs 159 to 167 are simply summarising earlier paragraphs, and we have already shown that these are fallacious.

Residential amenity

The high concentration of students and student properties within the area is already likely to have some impact on the amenity of the families living in the vicinity of the application site. In addition, the primary route from the Duresme Court PBSA to the City Centre passes the site. This area is already unbalanced by a high proportion of students and adding a further large HMO can only worsen the existing situation, so further adversely affecting the amenity of neighbouring residents.

Criterion (e) of CDP Policy 29 states that all development proposals will be required to provide high standards of amenity and privacy and minimise the impact of development upon the occupants of existing adjacent and nearby properties. Policy 31 states that development will be permitted where it can be demonstrated that there will be no unacceptable impact, either individually or cumulatively, on health, living or working conditions or the natural environment. It has not been demonstrated that there will be no unacceptable impact.

Consequently

As stated in our opening paragraph, this application should be refused because it does not meet the criteria set out in County Durham Plan Policy 16.3(a), and none of the exemptions listed in Policy 16.3 apply to it. The proposals would therefore result in further imbalance in the community and have a detrimental impact on quality of life and community cohesion for surrounding residents in contravention of Policies 16, 29 and 31 of the County Durham Plan and paragraphs 96 and 135 of the National Planning Policy Framework (December 2023 revision).

Yours sincerely

JOHN LOWE

Chair, City of Durham Trust

Appendix 1

Source: <https://www.durham.ac.uk/news-events/latest-news/2023/10/campaign-launched-to-reassure-students-on-housing-supply/> retrieved 3 January 2024.

Campaign launched to reassure students on accommodation

5 October 2023



We're reassuring students that there is enough student housing to meet anticipated demand in Durham for the next academic year, and we're supporting them to take their time in choosing accommodation.

We've launched an information campaign for students reassuring them that a detailed assessment of the housing market shows that there will be enough student accommodation to meet anticipated demand for the 2024/25 academic year.

As part of the campaign, we've launched an online Housing Hub, with information and resources to support students through the house hunting process.

Working together

Aware that in previous years students have felt pressure to sign increasingly early, over the past year we've worked with City of Durham MP Mary Kelly Foy, Durham Students' Union, letting agents, landlords, City of Durham Parish Council and Durham County Council with the aim of ensuring a student housing market that works for everyone in Durham.

A multi-agency Housing Group has also developed a Student Lettings Code of Practice for landlords and letting agents.

This enables responsible agents and landlords to demonstrate their commitment to putting student welfare at the heart of their practices.

Student numbers

In the period to 2019, we grew our student numbers, in a carefully planned and managed way, focusing on certain key departments.

Our intake was higher than anticipated in 2020 and 2021 due to unexpected shifts in A-level grading, but we responded by reducing our intake for 2022.

Earlier this year we undertook a refresh of our ten-year Strategy.

This reaffirmed that we would manage student intake and accommodation mindful of its impact on Durham City.

In coming years, we will not grow our student numbers significantly, but will diversify its social and international mix.

We remain committed to our collegiate model under which most first-year undergraduates live in University accommodation, and we're aiming that 40-45% of our students will live in University-owned or -managed accommodation by 2027.

Find out more

- More information on the University Strategy Refresh is available [here](#)
- Browse our Housing Hub [webpages](#)
- Learn more about the [Student Lettings Code of Practice](#)