

COMMITTEE REPORT

APPLICATION DETAILS

APPLICATION No:	DM/19/02862/FPA
FULL APPLICATION DESCRIPTION:	Change of use from 6 bedroom House in Multiple Occupation to 7 bedrooms (C4 to Sui Generis) and Loft conversion
NAME OF APPLICANT:	Dr Richard Scothern
ADDRESS:	35 Elvet Crescent Durham DH1 3AP
ELECTORAL DIVISION:	Elvet and Gilesgate
CASE OFFICER:	Jennifer Jennings Planning Officer Telephone: 03000 261057 jennifer.jennings@durham.gov.uk

DESCRIPTION OF THE SITE AND PROPOSALS

The Site

1. The application site is located to the east of Durham City Centre within a relatively modern residential estate built in the 1930/40s. It is located within Durham (City Centre) Conservation Area and is approximately 277 metres to the east of Durham Cathedral and Castle World Heritage Site (WHS).
2. The site relates to a property at no. 35 Elvet Crescent, a six-bed dwelling house in use as a house in multiple occupation (HMO), which is presently a mid-terrace of four properties that extend to the east and west of the site. The north elevation of the property overlooks a front garden and the main street, Elvet Crescent. The rear elevation benefits from a single storey extension with a small garden space beyond for bin storage. This elevation faces south towards a car parking site associated with the university. It is noted that there is a drop in levels of some 3 metres from the car parking area to Elvet Crescent, resulting in first floor windows of the properties being level with the car park.

Proposal

3. The proposal seeks full planning permission for a change of use of the property from C4 house in multiple occupation (HMO) accommodating 6 bedrooms to a sui generis 7 bedroom HMO. This would be achieved by converting the loft to create the seventh bedroom. Roof lights would be added to the roof slope, with two to the front and one to the rear.

4. In support of the application, details of tenancy agreements have been provided confirming the use as a HMO since 2016. The property is therefore an existing C4 use that predates the Article 4 direction.
5. The application is referred to Committee at the request of the local member Councillor David Freeman on behalf of the local residents in the area who requested it on the grounds that the proposals would become mini student halls of residence and would do nothing to contribute to the well being of the area. They would not help to promote balanced and mixed communities or social cohesion.

PLANNING HISTORY

6. There is no planning history for the site.

PLANNING POLICY

NATIONAL POLICY

7. The following elements of the National Planning Policy Framework (NPPF) are considered relevant to this proposal:
8. NPPF Part 11 Making Effective Use of Land - Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously-developed or 'brownfield' land.
9. NPPF Part 12 Achieving Well-Designed Places - The Government attaches great importance to the design of the built environment, with good design a key aspect of sustainable development, indivisible from good planning.
10. NPPF Part 15 Conserving and Enhancing the Natural Environment - Conserving and enhancing the natural environment. The Planning System should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, geological conservation interests, recognising the wider benefits of ecosystems, minimising the impacts on biodiversity, preventing both new and existing development from contributing to or being put at unacceptable risk from pollution and land stability and remediating contaminated or other degraded land where appropriate.
11. NPPF Part 16 Conserving and Enhancing the Historic Environment - Heritage assets range from sites and buildings of local historic value to those of the highest significance, such as World Heritage Sites which are internationally recognised to be of Outstanding Universal Value. These assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations.

<https://www.gov.uk/guidance/national-planning-policy-framework>

NATIONAL PLANNING PRACTICE GUIDANCE:

12. The Government has consolidated a number of planning practice guidance notes, circulars and other guidance documents into a single Planning Practice Guidance Suite. This document provides planning guidance on a wide range of matters. Of particular relevance to this application is the practice guidance with regards to; conserving and enhancing the historic environment; design; and use of planning conditions.

<https://www.gov.uk/government/collections/planning-practice-guidance>

LOCAL PLAN POLICY:

The City of Durham Local Plan (2004) (CDLP)

13. *Policy E3 World Heritage Site – Protection* – Durham Cathedral and Castle WHS and its setting will be protected by restricting development to safeguard local and long distance views to and from the cathedral and castle and peninsula and seeking the conservation and management of buildings which make up the WHS and its setting.
14. *Policy E6 Durham City Centre Conservation Area* – states that the special character, appearance and setting of the Durham (City Centre) Conservation Area will be preserved or enhanced as required by section 72 of the Planning (Listed Building and Conservation Areas) Act 1990. The policy specifically requires proposals to use high quality design and materials which are sympathetic to the traditional character of the conservation area.
15. *Policy E21 – Conservation and Enhancement of the Historic Environment* – states that the historic environment will be preserved and enhanced by minimising adverse impacts by development proposals.
16. *Policy E22 – Conservation Areas* – seeks to preserve or enhance the character or appearance of conservation areas, by not permitting development which would detract from its setting, while ensuring that proposals are sensitive in terms of scale, design and materials reflective of existing architectural details.
17. *Policy H9 – Multiple occupation / student households* - seeks to ensure that where houses are sub divided or converted to flats, bedsits or multiple occupancy, they do not adversely affect the character of the area, the amenity of nearby residents and the concentration of sub-divided dwellings to the detriment of the range and variety of the local housing stock.
18. *Policy H13 – Residential Areas – Impact upon Character and Amenity* – protects residential areas from development that would have a significant adverse effect on their character or appearance, or the amenities of residents within them.
19. *Policy T1 – Traffic Generation – General* – states that development proposals which would result in a level of traffic generation detrimental to highway safety should not be granted planning permission.
20. *Policy T5 – Public Transport* – The council will encourage improvements to assist public transport services including the provision of suitable facilities and ensuring new development can be conveniently and efficiently served by public transport.

21. *Policy T10 – Parking* – States that vehicle parking should be limited in amount, so as to promote sustainable transport choices and reduce the land-take of development.
22. *Policy T21 – Walking* – states that existing footpaths and public rights of way should be protected.
23. *Policies Q1 and Q2 - General Principles Designing for People and Accessibility* – states that the layout and design of all new development should take into account the requirements of all users.
24. *Policy Q5 – Landscaping – General* – requires all new development which has an impact on the visual amenity of the area in which it is located to incorporate a high level of landscaping in its overall design and layout.
25. *Policy Q9 – Alterations and Extensions to Residential Property* - The design, scale and materials are sympathetic to the main dwelling and the character and appearance of the area. Wherever possible the alteration or extension incorporates a pitched roof, the alteration or extension respects the privacy of adjoining occupiers of the property and the alteration or extension will not create a level of multiple occupation.

RELEVANT EMERGING POLICY:

26. Paragraph 48 of the NPPF states that decision-takers may give weight to relevant policies in emerging plans according to: the stage of the emerging plan; the extent to which there are unresolved objections to relevant policies; and, the degree of consistency of the policies in the emerging plan to the policies in the NPPF. Following consultation at 'Issues & Options', 'Preferred Options' and 'Pre-Submission Draft' stages, the CDP was approved for submission by the Council on 19 June 2019. The CDP was submitted to the Planning Inspectorate on 28 June 2019 and the EIP is current proceeding. Although the CDP is now at a relatively advanced stage of preparation, it is considered that it is not sufficiently advanced to be afforded any weight in the decision-making process at the present time.

The above represents a summary of those policies considered most relevant in the Development Plan the full text, criteria, and justifications of each may be accessed at <http://www.cartoplus.co.uk/durham/text/00cont.htm>.

CONSULTATION AND PUBLICITY RESPONSES

STATUTORY RESPONSES:

27. Highways Authority comment that the proposed residential development is in a highly sustainable city centre location. It sits within the city's controlled parking zone. No additional parking permits would be issued to residents and it is therefore unlikely residents will seek on street parking provision as they would be subject to full Pay and Display Tariffs Monday to Saturday 8:00am to 6:00pm. This would prove cost prohibitive and inconvenient to residents. No objection to this proposal is offered on highways grounds.
28. City of Durham Parish Council – objects on the basis that the proposals conflict with the Interim Policy on Student Accommodation and would lead to a further intensification of student numbers in the area.

29. Police Liaison Officer – offers no comments.

INTERNAL CONSULTEE RESPONSES:

30. Design and Conservation – comment that there is no objection in principle given that the physical alterations needed to facilitate the increase in occupancy would be minor in nature. Concerns were raised however with regards the quality of the roof lights and amendments were sought.
31. Environment, Health and Consumer Protection (Nuisance Action Team) – have no comments or concerns with regards the application. They do not consider that the proposals would create a statutory nuisance.
32. Ecology section do not require the submission of a bat survey on this occasion, however they do request an informative be attached to any permission granted.
33. Spatial Policy – Applying the Interim Policy the percentage of HMOs within 100m of the application site is 67.1% of properties which are student properties as defined by Council Tax records, this house included.
34. HMO Section –comment that the property would need to be licensed under the Housing Act 2004 Part 2 and provide further details on the criteria associated with this legislation.

PUBLIC RESPONSES:

35. The application has been advertised by means of site notice on site, press notice and by notifying neighbouring residents by letter. One objection has been received from the City of Durham Trust raising the following points:
 - Concerns about the steady increase in the number of planning applications seeking to convert family dwellings to houses in multiple occupation or to increase the size of existing HMOs. This is increasing the imbalance between the student population and the long-term resident population of Durham City, which does not promote and preserve inclusive, mixed and balanced communities (NPPF, 8b).
 - Objects on the basis that the proposal would be contrary to the Interim Policy based on the percentage of properties already in HMO use in the area.

APPLICANT'S STATEMENT:

regarding the addition of one more room in the house at 35 Elvet Crescent.

1. The house will not be extended with extra buildings and is a simple loft extension and will thus not impinge on the gardens or any neighbours' view. With the correct fenestration, we would make sure that it is sympathetic to the area, and thus the impact will be almost unnoticeable;
2. The working model for the percentages of students in the area cannot be absolutely clarified under the present system as is demonstrated in various other planning applications in the last few months;
3. The application is for 1 more room in an existing student property, and not changing a family home to become a new 7 bedroom HMO, which is at the heart of the Article 4 direction. Thus, the impact is 1 room, not 7 new rooms;
4. The owners of the property have stringent rules and an active hands-on involvement with making sure the property and gardens are well maintained, and that the tenants create a positive impact on the city. The owners are local people and take the matters of any anti-social issues very seriously indeed. They recognise the impact, which is why the physical change is almost unnoticeable. They also recognise their part in directing tenants to live as good Durham citizens.

PLANNING CONSIDERATIONS AND ASSESSMENT

36. Having regard to the requirements of Section 38(6) of the Planning and Compulsory Purchase Act 2004 the relevant Development Plan policies, relevant guidance and all other material planning considerations, including representations received, it is considered that the main planning issues in this instance relate to the principle of the development, impact on the character of the surrounding conservation area and heritage assets, residential amenity and highway safety.

Principle of Development

The Development Plan

37. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF is a material planning consideration. The City of Durham Local Plan (CDLP) remains the statutory development plan and the starting point for determining applications as set out at Paragraph 12 of the NPPF. However, the CDLP was adopted in 2004 and was intended to cover the period to 2006 and, whilst the NPPF advises at Paragraph 213 that Local Plan policies should not be considered out-of-date simply because they were adopted prior to the publication of the NPPF, it is considered nonetheless that a policy can be out-of-date if it is based upon evidence which is not up-to-date/is time expired depending on the circumstances. In such circumstances the weight to be afforded to existing Local Plan policies should depend upon their degree of consistency with policies of the NPPF.
38. In consideration of the above, saved policy H9 relating to multiple occupation and student accommodation is directly relevant to the proposal as it deals with alterations and extensions to existing properties already in HMO use. This policy is considered consistent with the NPPF, as it is up to date and not time limited and can therefore be afforded full weight in the decision-making process. Paragraph 11 of the NPPF is not engaged.
39. Policy H9 of the City of Durham Local Plan states that proposals to extend or alter properties which are already an established HMO use class will be permitted provided that there is adequate parking, there is sufficient privacy and amenity areas for occupiers, the proposal would not adversely affect the amenities of nearby residents and the extension would be in scale and character with the host dwelling and surrounding area in compliance with Policy Q9. The various points within Policy H9 are covered in the relevant sections of the report below. The Interim Policy on Student Accommodation includes similar criteria. However the Interim policy goes further than policy H9 as it states that extensions that result in additional bed spaces will not be permitted if more than 10 per cent of the total number of properties within 100 metres of the application site are already in use as HMOs.

40. In consideration of the above, the proposals are considered to accord with policy H9 which is permissive in principle of extensions to properties already in C4 use. However when assessed against the Interim Policy, which seeks to curtail extensions and creation of bed spaces, the proposals are contrary, particularly as the percentage of properties within the 100 metres radius of the application site equates to 67.1 per cent. It must be noted however that the proposed extension would not impact on the percentage of properties in HMO status as the application site already falls within this category. On this basis, the proposal would equate to one additional bedroom creating a 7-bed HMO over a 6-bed HMO and in consideration of this, although contrary to the strict wording of the Interim Policy, the proposals do not conflict with the aims and objectives of the interim policy which seeks to maintain an appropriate housing mix by assessing the change in the percentage of housing in student accommodation within a 100 metres radius. The addition of one additional bed space to an existing HMO property does not undermine this principle. It must also be noted that the interim policy is not part of the adopted development plan and therefore less weight must be afforded to it as a result and in the event of conflict with save local plan policies, those policies must prevail.
41. Furthermore, a recent appeal decision (reference APP/X1355/W/16/3160444) for a two storey rear extension of a class C4 HMO to provide 3 additional bedrooms at 40 Hawthorn Terrace, Durham, considered the issues associated with the creation of additional bedrooms within established HMOs and whether such development is considered to conflict with the Interim Policy. The Inspector found that within the Interim Policy there is no explicit reference made on how to address extensions to existing HMOs against the 10 per cent tipping point. This would suggest that the Council has essentially sought a moratorium on extensions to HMO properties within the Durham City area where the majority of residential areas are in excess of 10 per cent HMOs. The Inspector considered that such a stance would be at odds with the more permissive approach of saved Policy H9 of the local plan. The Inspector further commented that the provision of additional bed spaces to an existing HMO in an area where more than 10 per cent of properties within 100 metres of the appeal site are in use as HMOs would not result in an adverse impact on the overall range and variety of local housing stock in the area. On this basis, the Inspector allowed the appeal.
42. In relation to the percentage figure of HMOs within 100 metres of the site, it is accepted that 67.1 per cent is a high proportion far in excess of the ten per cent threshold within the Interim Policy. However, the Interim Policy notes that 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. This issue has been considered by Inspectors as part of recent appeal decisions (in particular appeal references APP/X1355/W/19/3222572 and APP/X1355/W/16/3165827), where a level of 61.8% or above was considered to be the point at which an area is already imbalanced and Inspectors have concluded Criterion e) of the Interim Policy is relevant.
43. Accordingly, it is considered that the proposal complies with policy H9 and whilst there is conflict with the wording of the Interim Policy and breach in the threshold, this is not sufficient to justify refusal of the application especially in light of the guidance on that policy which has been provided by the recent appeal decisions.

Impact on heritage assets and the character of the surrounding Conservation Area

44. Local authorities have a duty to preserve or enhance the Conservation Area as required by section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. This requires Local Planning Authorities in the exercise of their planning function with respect to any buildings or other land in Conservation Areas to pay special attention to the desirability of preserving or enhancing the character or appearance of that area.
45. Policies E6 and E22 of the Local Plan reflect these legislative requirements and are also deemed to be consistent with the NPPF. Within the policies there is a requirement that development be refused where it would detract from the character of the area and that all development should be sensitive in terms of siting, scale, design and materials, reflecting where appropriate existing architectural details. In addition the policy requires that trees, hedgerows, views and undeveloped areas which contribute to the character or appearance of the area should be protected.
46. The proposals would require minimal intervention to the external appearance of the dwelling to accommodate the additional bedroom in the loft space. This would include two roof lights to the front of the building providing light to the proposed bedroom and a single roof light to the rear elevation to provide light to the stair well. Design and Conservation assessed the details and initially commented that the proposed roof lights were not appropriate given that they protruded excessively above the roof line. The applicant was requested to amend the drawing to indicate conservation style roof lights. These drawings have now been submitted along with a specification of the roof lights proposed. These are deemed acceptable but a condition will be applied requiring conservation style roof lights in any case to ensure they are suitably designed for the conservation area.
47. In terms of policy Q9, this states that alterations to residential property are to appear subordinate to the host dwelling. The amended drawings identify that the roof lights will be suitably flush with the existing roof plan. The proposals will therefore not appear obtrusive or out of character with the host dwelling, surrounding properties or the immediate streetscene and is considered to accord with the policy in this regard.
48. In respect of the above and in the context of the statutory duties and relevant policies E22 and E23, as well as policies H9 and Q9 which require the design, scale and materials of alterations to be sympathetic to the main dwelling and character and appearance of the area, the proposals are considered to be compliant with these requirements.

Impact on residential amenity

49. Local plan policy H9 states that extensions should not adversely affect the amenities of nearby residents. The dwelling is already an established C4 use and the proposal to increase the number of bedrooms from six to seven would alter the use class from C4 to sui generis in this case. However, the dwelling would continue as a HMO use and it is not considered that the addition of a single bedroom to enlarge the HMO use would be sufficiently detrimental to the amenities of neighbouring residents. The objection received from the local ward member on behalf of local residents raising issues regarding noise, anti-social behaviour, rubbish, deliveries and parking in the area is noted. It is accepted that occupants of HMOs differ in their activities and general movements from that expected of family homes, and depending on individuals involved, these activities can cause levels of disturbance that create negative impacts on non-HMO residents. However it would be difficult to demonstrate any proliferation of these disturbances to the addition of a single bedroom in an established HMO or indeed sustain a refusal in this case, on that basis.

50. Environmental Health were consulted for their views in terms of noise impacts and raised no objections based on the scheme proposed.

51. In light of the above considerations and in consideration of policies H9 and Q9, it is not considered that the proposed loft conversion and resultant additional bedroom would create a situation that would significantly compromise the amenities of residents within the area. Whilst the additional bedroom may result in increased activity, this is not considered to be at a level that would materially affect the residential character of the area or amenities of the nearby neighbours, particularly as the property already operates as a HMO.

Highway Safety and Access

52. Saved local plan policy T1 requires that the council should not grant planning permission for development that would generate traffic which would be detrimental to highway safety and have a significant effect on occupiers of neighbouring properties.

53. The Council's Highways team considered the details of the application and acknowledged that the city centre location of the application site would mean that no parking provision would be required from a highways standpoint. The applicant has been advised that no parking permits to park within the Durham City controlled Parking Zone would be given in any case.

54. The lack of parking provision, whilst not ideal, is not considered a sufficient ground for refusal of planning permission, and in many respects, such a circumstance would be more likely to deter car owners from inhabiting the property as well as encourage sustainable transport choices in accordance with policy T10. The proposals are considered acceptable in this regard.

CONCLUSION

55. In conclusion, the proposed development would not result in an increase in HMOs in the area as the property currently operates as a C4 HMO. In this regard the proposal does not run contrary to the principles associated with the Interim Policy as the housing mix would remain unaltered. The small increase in occupancy levels is not considered detrimental to the wider amenities of the area, and the proposed alterations to accommodate the additional bedroom by reason of the minimal interventions required is considered acceptable, not causing undue harm to the surrounding heritage assets or neighbouring amenity. The proposals are considered to comply with relevant saved policies of the local plan and whilst there is some conflict with the interim policy on student accommodation, it is not felt that a refusal reason could be sustained on that basis.

56. The proposal has generated public interest, with letters of objection submitted from the City of Durham Parish Council and the City of Durham Trust. The objections and concerns raised have been taken into account and addressed within the report. On balance the concerns raised were not felt to be of sufficient weight to justify refusal of this application.

RECOMMENDATION

That the application be **APPROVED**, subject to the conditions detailed below:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission

Reason: Required to be imposed pursuant to Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. The development hereby approved shall be carried out in strict accordance with the following approved plans and documents:

Site location plan received 6/9/2019

Site location no. 03 received 6/9/19

Proposed floor plans no. 02a received 25/10/19

Proposed elevations no. 02b received 25/10/19

Reason: To define the consent and ensure a satisfactory form of development is obtained.

3. The roof lights hereby approved on the front and rear elevations shall be conversation style roof lights as detailed within specification 'Velux Conservation Roof Windows' received 25 October 2019.

Reason: To ensure that a satisfactory form of development is obtained in the interests of visual amenity of the Durham City Conservation Area accordance with the provisions of policies E6, E21, E22 and Q8 of the Durham City Local Plan.

STATEMENT OF PROACTIVE ENGAGEMENT

The Local Planning Authority in arriving at its decision to approve the application has, without prejudice to a fair and objective assessment of the proposals, issues raised and representations received, sought to work with the applicant in a positive and proactive manner with the objective of delivering high quality sustainable development to improve the economic, social and environmental conditions of the area in accordance with the NPPF. (Statement in accordance with Article 35(2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.)

BACKGROUND PAPERS

Submitted application form, plans, supporting documents and subsequent information provided by the applicant

The National Planning Policy Framework (2018)

National Planning Practice Guidance Notes

City of Durham Local Plan

Statutory, internal and public consultation responses



Planning Services

Change of use from 6 bedroom HMO to 7 bedrooms (C4 to Sui Generis) and Loft conversion at 35 Elvet Crescent Durham.

Application Number DM/19/02862/FPA

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Comments

Date 12 November 2019

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