

COMMITTEE REPORT

APPLICATION DETAILS

APPLICATION NO:	DM/21/03430/FPA
FULL APPLICATION DESCRIPTION:	Change of Use from C3 to C4
NAME OF APPLICANT:	Smriti Franklin
ADDRESS:	67 Kepier Crescent, Gilesgate Moor, Durham, DH1 1PQ
ELECTORAL DIVISION:	Belmont
CASE OFFICER:	John Russell (Senior Policy Officer) Tel: 03000 263 428 Email: john.russell@durham.gov.uk

DESCRIPTION OF THE SITE AND PROPOSALS

The Site

1. The application site is a semi-detached property located within the Gilesgate Moor area of Durham City.

The Proposal

2. Planning permission is sought for the change of use of the property from a dwelling (use class C3) to a small HMO (C4).
3. No external alterations are proposed to facilitate the change of use, although some internal alterations are required to create a 4th bedroom on the ground floor which is currently used as a dining room.
4. The application is reported to Planning Committee at the request of Councillors E and L Mavin who request that the application be reported to the Central and East Area Planning Committee for determination should officers be minded to approve the application through Powers Delegated to the Head of Planning. Both councillors raised concerns regarding the rising concentration of student housing among traditional family accommodation as seen in nearby areas, and consider that where this occurs, the character of an area can be drastically changed resulting in an extremely negative impact upon existing communities. The councillors also felt strongly that there is not a need for further HMO properties in this area given the current volume of purpose-built student accommodation in the area and that the development would have an impact in terms of increased noise and disturbance, traffic and parking congestion, and for these reasons consider that the application contravenes relevant planning policies and should be considered by the Committee.

PLANNING HISTORY

5. A planning application (DM/18/02365/FPA) for change of use from Class C3 to Class C4 - HMO was withdrawn on the 30th November 2018.

PLANNING POLICY

NATIONAL POLICY

6. The following elements of the National Planning Policy Framework (NPPF) are considered relevant to this proposal:
7. NPPF Part 2 Achieving Sustainable Development - The purpose of the planning system is to contribute to the achievement of sustainable development and therefore at the heart of the NPPF is a presumption in favour of sustainable development. It defines the role of planning in achieving sustainable development under three overarching objectives - economic, social and environmental, which are interdependent and need to be pursued in mutually supportive ways. The application of the presumption in favour of sustainable development for plan-making and decision-taking is outlined.
8. NPPF Part 4 Decision-Making - Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.
9. NPPF Part 5 Delivering a Sufficient Supply of Homes - To support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay.
10. NPPF Part 8 Promoting Healthy and Safe Communities - The planning system can play an important role in facilitating social interaction and creating healthy, inclusive communities. Developments should be safe and accessible; Local Planning Authorities should plan positively for the provision and use of shared space and community facilities. An integrated approach to considering the location of housing, economic uses and services should be adopted.
11. NPPF Part 9 Promoting Sustainable Transport - Encouragement should be given to solutions which support reductions in greenhouse gas emissions and reduce congestion. Developments that generate significant movement should be located where the need to travel will be minimised and the use of sustainable transport modes maximised.
12. 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.

13. 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.

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

LOCAL PLAN POLICY:

14. The County Durham Plan (CDP) was adopted by Full Council on the 21st October 2020. The following policies of the CDP are considered relevant to the determination of this application.
15. Policy 16 (Durham University Development, Purpose Built Student Accommodation and Houses in Multiple Occupation) seeks to provides a means to consider student accommodation and proposals for houses in multiple occupation in ensure they create inclusive places in line with the objective of creating mixed and balanced communities.
16. Policy 21 (Delivering Sustainable Transport) requires all development to deliver sustainable transport by: delivering, accommodating and facilitating investment in sustainable modes of transport; providing appropriate, well designed, permeable and direct routes for all modes of transport; ensuring that any vehicular traffic generated by new development can be safely accommodated; creating new or improvements to existing routes and assessing potential increase in risk resulting from new development in vicinity of level crossings. Development to have regard to Parking and Accessibility Supplementary Planning Document.
17. Policy 29 - Sustainable Design requires all development proposals to achieve well designed buildings and places having regard to SPD and sets out 18 elements for development to be considered acceptable, including: positive contribution to areas character, identity etc.
18. Policy 31 - Amenity and Pollution sets out 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 and that can be integrated effectively with any existing business and community facilities. Development will not be permitted where inappropriate odours, noise, vibration and other sources of pollution cannot be suitably mitigated against, as well as where light pollution is not suitably minimised. Permission will not be granted for locating of sensitive land uses near to potentially polluting development. Similarly, potentially polluting development will not be permitted near sensitive uses unless the effects can be mitigated.

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:

19. The Highways Authority have raised no objection to the application subject to the applicant providing suitable cycle storage facilities and have confirmed that the property is located within the Controlled Parking Zone where parking is subject to restriction.

20. Belmont Parish Council objects to the application noting that Kepier Crescent is a long-established residential area with a mix of family homes and elderly residents. A sense of community prevails, and the Parish Council notes that it has been approached by a number of residents who have expressed concerns about the area becoming yet another 'HMO quarter' of the City as has been the case in other Durham neighbourhoods. In addition, they note a need for affordable family housing in the area and that conversion from a family home to a HMO would make it more difficult to convert the property back to family occupation at a future date.
21. They do not consider that there is a need for further HMO properties in this area given the volume of purpose-built student accommodation provided by both the university and private developers. Concern is also raised that there is minimal shared social space within the development for proposed residents and that the relatively small bedroom sizes are unacceptable and do not meet minimum space standards set out in 2021. They also consider the prospect of at least four vehicles, excluding visitors, using this shared access could lead to difficulties with neighbours who use the same access and that as the occupancy of HMOs is subject to frequent change this would be disruptive for neighbours.

INTERNAL CONSULTEE RESPONSES:

22. Spatial Policy highlight various national and local policies that are relevant to the proposal, namely policy 16 of the County Durham Plan.
23. HMO officer confirms that the proposed dwelling will form a 4 bed, 2 storey house in multiple occupation but that the property would not be required to be licensed under Part 2 of The Housing Act 2004. However, they have provided advice and guidance to ensure compliance with all relevant amenity and fire safety standards relating to a HMO of this type. These include that a full Fire Risk Assessment must be carried out for the property and a suitable means of escape and other appropriate fire precaution facilities and equipment be provided of a type, number and location to the satisfaction of Durham County Council's and the Fire Authority.
24. HMO Data has confirmed that the application site does not benefit from any Council Tax exemption as being occupied solely by students. In addition, they confirm that within a 100m radius of, and including 67 Kepier Crescent, 3.8% of properties are Class N exempt student properties as defined by Council Tax records. They also note that planning permission exists for change of use from C3 to C4 HMO (reference DM/20/01294/FPA) relating to No. 10 Musgrave Gardens, Gilesgate, Durham, DH1 1PN which has not yet been implemented that would increase the number of HMOs to 5.1% if implemented.
25. Environmental Health (Nuisance Action Team) have stated that it is difficult to quantify the potential for noise impact associated with the proposed development as there is no specific guidance or thresholds associated with developments of this nature. Whilst, the change of use proposed will lead to an intensification of the use of residential property via the introduction of an additional bedroom, this is unlikely to increase the general noise climate and impact on day-to-day amenity providing good practice and guidance is adhered to. Based on the information submitted with the application, they are satisfied that the development is unlikely to cause a statutory nuisance.

PUBLIC RESPONSES:

26. The application has been advertised by means of site notice and notification letter sent to neighbouring residents.
27. To date, twelve letters of objection (including the objection from Belmont Parish Council and Councillor E Mavin and Councillor L Mavin) have been received raising the following concerns:
- Increase of traffic leading to highways safety for the elderly and young
 - Increase in parking problems
 - HMO in this area is unacceptable due to the rotation of tenants
 - Elderly residents living on their own in this area this is of great concern and could attribute to increase in the local crime rate
 - Increased noise and disturbance
 - No requirement for these type of properties in this street
 - Unsocial behaviour late night and early morning
 - HMO properties in this area, which serve no community purpose and nothing other than provide financial gain for the absent owner, who himself will not have to endure the issues caused by this
 - Don't want the spread of multi occupant housing spreading to our area like it has done through the city and surrounding areas causing problems between local residents and casual renters. It is time the council made a stand once and for all NOW

APPLICANTS STATEMENT:

28. Not provided

The above represents a summary of the comments received on this application. The full written text is available for inspection on the application file which can be viewed at <http://82.113.161.89/WAM/showCaseFile.do?action=show&appType=planning&appNumber=10/00955/FPA>

PLANNING CONSIDERATIONS AND ASSESSMENT

29. As identified in Section 38(6) of the Planning and Compulsory Purchase Act 2004 the key consideration in the determination of a planning application is the development plan. Applications should be determined in accordance with the development plan unless material considerations indicate otherwise. The main considerations in regard to this application are the principle of the use in this location, the impact upon the amenity of residents and highways safety.
30. 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 in this regard. The NPPF advises at Paragraph 213 that the weight to be afforded to existing Local Plans depends upon the degree of consistency with the NPPF.
31. The Local Plan was adopted in 2020 and is up to date. In addition, the Durham City Neighbourhood Plan was adopted in 2021 and also forms part of the up-to-date Local Plan. Consequently, consideration of the development should be led by the plan if the decision is to be defensible.

Principle of Development

32. The General Permitted Development Order 2015 (GPDO) permits the change of use from C3 (dwellinghouses) to uses within C4 (houses in multiple occupation HMOs). HMO's are small shared houses occupied by between three and six unrelated individuals as their only or main residence and who share basic amenities such as a kitchen or bathroom. The proposed floor plans submitted with the application indicate that the proposal is such that the development would normally benefit from the provisions contained within the GPDO. However, an Article 4 direction came into effect on 17 September 2016 for the area withdrawing permitted development rights in this regard and as such planning permission is required.
33. Policy 16 of the County Durham Plan is relevant to this application which relates to student accommodation/HMO's and states that in order to promote, create and preserve inclusive, mixed and balanced communities and protect residential amenity, applications for new build Houses in Multiple Occupation (both Use Class C4 and sui generis), extensions that result in specified or potential additional bedspaces and changes of use from any use to a Class C4 (House in Multiple Occupation), where planning permission is required; or a House in Multiple Occupation in a sui generis use (more than six people sharing) will not be permitted if:
 - a. including the proposed development, 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);
 - b. there are existing unimplemented permissions for Houses in Multiple Occupation within 100 metres of the application site, which in combination with the existing number of Class N Student exempt units would exceed 10% of the total properties within the 100 metres area;or
 - c. less than 10% of the total residential units within the 100 metres are exempt from council tax charges (Class N) but, the application site is in a residential area and on a street that is a primary access route between Purpose Built Student Accommodation and the town centre or a university campus.
34. The most recent up to date Council Tax information identifies that 3.8% of those properties within 100 metres of the site are currently occupied as student let accommodation and are Class N exempt. Whilst an unimplemented consent has been identified as relating to a property within the 100m area, it is noted that this would increase the percentage of Class N exempt properties to 5.1%.
35. Policy 16 of the CDP state that new changes of use from C3 to C4 would not be permitted in areas where 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).
36. In the case of the application site the current concentration of 3.8% of properties as council tax exempt is below the 10% threshold stated in the policy. Taking account of the existing planning permission which has yet to be implemented that rate increases to 5.1% which is still below the 10% threshold contained in policy 16, therefore the development is considered to be compliant with Policy 16 in this regard.

37. Criteria c) of Policy 16 states that development will not be permitted in instances where less than 10% of the total residential units within the 100 metres are exempt from council tax charges (Class N) but, the application site is in a residential area and on a street that is a primary access route between Purpose Built Student Accommodation (PBSA) and the town centre or a university campus. There are no PBSA facilities within close proximity to the site and as such the street is not considered to be positioned on a primary access route between any PBSA and the University and accords with the requirements of criteria c of Policy 16.
38. The Council's EHO has been consulted and confirmed that it is difficult to quantify the potential for noise impact associated with the proposed development as there is no specific guidance or thresholds associated with developments of this nature and that the change of use proposed will lead to an intensification of the residential property via the introduction of an additional bedroom. However, they consider the above is unlikely to increase the general noise climate in the area or impact on day-to-day amenity providing good practice and guidance is adhered to. Based on the information submitted with the application, they are therefore satisfied that the development is unlikely to cause a statutory nuisance and raise no objection.
39. Policy 16 also includes a number of other criteria to which new development must comply which includes the provision of sufficient cycle and car parking having regard to the Council's adopted Parking and Accessibility Guidelines, and that acceptable arrangements for bin storage and other shared facilities are provided. The Highway Authority has not raised any objection to the application subject to appropriate cycle parking and bin storage being provided and the agent has confirmed that sufficient space is available within the site for these to be provided. However, specific detail has not been provided and as such if the committee is minded to approve the application a condition should be included which requires the submission, agreement and implementation of precise detail in this regard be provided prior to first occupation of the property for the intended purpose.
40. Objections have been received from existing residents citing concerns that should the current application be approved this would lead to other similar applications which the Council would have difficulty in resisting. Comments identify a need to refuse the current application accordingly and identify a wider requirement to resist such applications generally. Whilst the concerns relating to the wider impacts from the over proliferation of HMO accommodation with the City are noted, the current application must be considered on its own merits and against the County Durham Plan which represents the up-to-date development plan for the area, and all other material planning considerations. In this regard it is noted that the number of properties within the 100 metres of the site is below the threshold contained in policy 16 and should permission be granted for the proposed change of use, that threshold would not be exceeded.
41. In addition, concern has also been raised that the application fails to demonstrate any need for further HMO accommodation in this area. However, it is noted that there is no requirement within policy 16 for the application to identify need, with the requirement in that regard relating to PBSA accommodation only. As such this is not considered to be a material consideration capable of sustaining refusal of the application.
42. Given the above, it is considered that the principle of the development can be supported as the proposal, subject to conditions would accord with the requirements of Policy 16 of the County Durham Plan subject to the consideration of other material matters detailed below.

Impact on residential amenity

43. Paragraph 126 of the NPPF advises that planning decisions should create places that have a high standard of amenity for existing and future users. In line with this, CDP 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. Proposals will also need to demonstrate that future occupiers of the development will have acceptable living conditions. Development which will have an unacceptable impact such as through overlooking, visual intrusion, visual dominance or loss of light, noise or privacy will not be permitted unless satisfactory mitigation measures can be demonstrated. In addition, criterion e) of 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.
44. Belmont Parish Council have raised concerns regarding the size of rooms and shared spaces citing a perceived failure to meet minimum Nationally Prescribed Space Standards. A review of all bedroom sizes was undertaken in assessment of the application and the amount of internal amenity space provided by the property as a whole. That assessment found that in all cases the room sizes met the minimum standard required. In addition, the Council's HMO licensing section has confirmed that the property would not be licensable as a HMO.
45. In addition, existing residents have raised that the change of use would have a detrimental impact in terms of increased disruption from noise and antisocial behaviour. Whilst it is noted that this type of accommodation is often associated with greater use of the night-time economy and as such an increased level of night-time noise may occur, notwithstanding this, any disturbance generated by the introduction of small HMO is unlikely to be unduly significant. The Council's Environmental Health Section has been consulted and confirms that the development is unlikely to cause a statutory nuisance subject to appropriate management and does not raise any objection to the application in this regard.
46. It is noted that the application site is a semi-detached two storey property located within a residential area predominantly characterised by family homes. However, noting that there is no identified over proliferation of C4 dwellings currently in the locality, it is not considered that the introduction of a single HMO within this context would likely have any cumulative impact on the wider population in this regard. Whilst it is noted that tenants would likely change on a yearly basis this is unlikely to have any adverse impact capable of sustaining refusal of the planning application.
47. Policy 16 includes a requirement to ensure that adequate bin storage provision is provided and that other shared facilities are also adequate. As already noted it is considered that there is adequate space to provide sufficient bin storage within the site to service demand, with precise detail to be secured through planning condition.
48. In light of the above the proposal is considered to be acceptable in terms of residential amenity and the proposal is considered to accord with the requirements of policies 16 and 31 of the County Durham Plan and Paragraph 174 of the NPPF

Parking, Access and Highway Safety

49. Policy 16 of the CDP requires new HMO's to provide adequate parking and access and Policy 21 states that new development should ensure that any vehicular traffic generated can be safely accommodated on the local and strategic highway network. This displays broad accord with paragraph 110 of the NPPF which requires new development to provide safe and suitable access to the site.

50. The proposal is located within a controlled parking zone and would utilise a shared access from the adopted highway with an adjacent property. Objections have been received from local residents in this regard who are concerned that the proposal would increase the number of vehicles using the local road network and that this would have a detrimental impact upon highway safety.
51. The Highway Authority has been consulted and raises no objections to the proposal which it is not considered would result in any unacceptable harm to highway safety in accordance with the aims of policy 16 and 21 of the CDP and paragraph 110 of the NPPF.

Other Issues

52. Local residents have raised objection to the application citing concern at the elderly nature of existing residents and that the proposal would lead to an increase in crime/fear of crime.
53. Part 8 of the NPPF relating to the promotion of healthy and safe communities, states within paragraph 92 that planning decisions should aim to achieve healthy, inclusive and safe places which are safe and accessible, so that crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion. Paragraph 93 further states that in order to provide social, recreational and cultural facilities and services to meet community needs, planning decisions should take into account and support the delivery of local strategies to improve health, social and cultural well-being for all sections of the community.
54. Whilst it is acknowledged that residents hold fears that crime in the area would increase as a result of the proposals, there is no evidence to underpin this. As the courts have held that the fear of crime is only a material consideration where the use, by its very nature, would provide a reasonable basis for concern, it is considered that a refusal reason framed around this issue would not be capable of being sustained. Issues of crime and the fear of crime are material considerations in determination of the application but given the nature of the proposed use it is not considered that there would be any material increase in crime as a result of the development and as such this should be afforded limited weight in the determination of this application in accordance with part 8 of the NPPF.

CONCLUSION

55. It is considered that the principle of development would accord with the requirements of Policy 16 of the County Durham Plan which is the principal policy against which the application should be assessed. In this regard it is noted that the percentage of HMOs already present in the area is below the 10% threshold contained within the policy at 3.8%, and that the change of use as proposed would not, when taking into account the presence of extant planning permissions capable of implementation, exceed this threshold.
56. When assessed against other criteria contained within policy 16 and the remaining policies of the County Durham Plan relevant to the application, it is considered that the introduction of a single small C4 HMO in this location would not unacceptably imbalance the existing community towards one dominated by HMOs, and nor would it result in any unacceptable impact upon the amenity of existing or future residents or highway safety in accordance with policies 16, 21, 29 and 31 of the County Durham Plan or parts 9, 12 and 15 of the NPPF.

57. Whilst the concerns raised by the Local Ward Cllrs, the Parish Council and several residents are noted, for the reasons discussed within this report they are not considered sufficient to sustain refusal of the application.
58. In light of the above, the application is reported to the Committee with a recommendation to approve, subject to conditions.

RECOMMENDATION

That the application be **APPROVED** subject to the following conditions;

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 approved plans listed in Part 3 - Approved Plans.

Reason: To define the consent and ensure that a satisfactory form of development is obtained in accordance with Policy(ies) 16, 21, 29, and 31 of the County Durham Plan and Parts 8, 9 11 and 12 of the National Planning Policy Framework.

3. Prior to the first occupation of the development hereby approved, details of all bin stores and cycle storage shall be submitted to and approved in writing by the Local Planning Authority. The bin stores and cycle storage shall thereafter be constructed in accordance with the approved details and be made available prior to the first occupation of the property as a C4 HMO.

Reason: In the interests of visual amenity and highway safety in accordance with Policies 21 and 29 of the County Durham Plan and Parts 9, 12 and 15 of the National Planning Policy Framework.

STATEMENT OF PROACTIVE ENGAGEMENT

In accordance with Article 35(2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015, the Local Planning Authority 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

BACKGROUND PAPERS

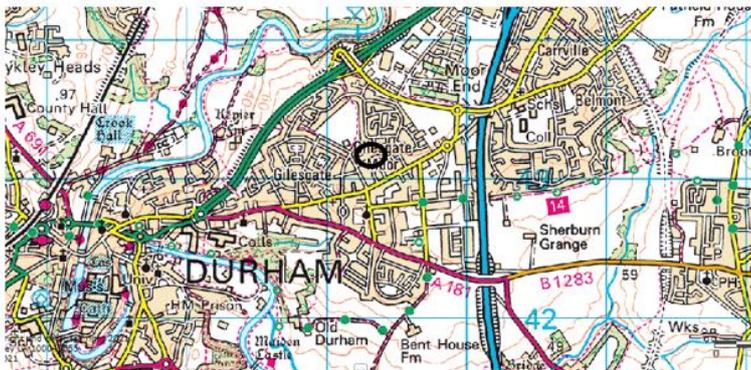
Submitted application form, plans supporting documents and subsequent information provided by the applicant.

The National Planning Policy Framework (2021)

National Planning Practice Guidance Notes

County Durham Plan (Adopted 2020)

Statutory, internal and public consultation responses



Planning Services

Change of Use from C3 to C4 at 67 Kepler Crescent, Gilesgate Moor, Durham, DH1 1PQ

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Comments

Date

December 2021