

# COMMITTEE REPORT

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## APPLICATION DETAILS

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APPLICATION NO:

APPEAL DECISIONS UPDATE

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## APPEAL UPDATE REPORT

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**Appeal by Mrs Gabrielle Moore**  
**Site at 1 Larches Road, Durham DH1 4NL**  
**Planning Reference DM/22/01650/FPA**

1. An appeal was lodged against the Council's refusal of planning permission for change of use from 6 bed small HMO (Use Class C4) to 10 bed Large HMO (Use Class Sui Generis).
2. The application was refused by the Council's Central and East Area Planning Committee for the following reason:

*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.*

3. The appeal was considered via written representations and following their submission and consideration the Planning Inspector concluded that 3 more occupants would result in unacceptable additional noise, disturbance and antisocial behaviour, detrimental to the living conditions of neighbours. In dismissing the appeal, the Inspector had regard to policies 6, 29 and 31 of the County Durham Plan and the NPPF noting that the latter requires development to create places with a high standard of amenity for existing users.
4. The appeal was therefore dismissed.
5. Recommendation:
6. That the decision be noted.

**Appeal by Dr D Garg of Kabiyan Limited**  
**Site at Magdalene Heights, Gilesgate, Durham, DH1 1SY**  
**Planning Reference DM/23/01031/FPA**

1. An appeal was lodged against the Council's refusal of planning permission for change of use from dwellinghouse (Use Class C3) to use as a small HMO (Use Class C4) with minor external alterations.

2. The application was refused through powers delegated to the Head of Planning for the following reason:
3. *The proposed change of use from Class C3 dwellinghouse to a C4 house in multiple occupation would result in 61.8% of all properties within 100 metres of the application site being Class N exempt from Council Tax as being wholly occupied by students, thereby exceeding the 10% threshold set out Policy 16 Part 3 of the County Durham Plan. The proposals would therefore result in the further imbalance of the community leading to the detrimental impact on quality of life from increased noise and disturbance, and community cohesion for surrounding residents contrary to Policies 16, 29 and 31 of the County Durham Plan and Parts 8 and 15 of the National Planning Policy Framework.*
4. The appeal was considered by way of written representations. In dismissing the appeal, the Inspector noted that the purpose of Policy 16 of the CDP is to create and preserve inclusive, mixed and balanced communities within Durham. They note that Council Tax data confirms that 61.8% of properties within 100 metres of the appeal property are exempt from Council Tax as being wholly occupied by students. They conclude that *'Taking into account the current high proportion of students, I conclude that the proposed change of use to C4 HMO would lead to the loss of a further Class C3 dwelling, worsening the mix and leading further imbalance within the community contrary to policy 16 of the CDP'.*
5. The appeal was dismissed.
6. Recommendation:
7. That the decision be noted.

**Appeal by Ms Anika Sarania**

**Site at 5 Lyndhurst Drive, Crossgate Moor, Durham DH1 4AE**

**Planning Reference DM/23/01167/FPA**

1. An appeal was lodged against the Council's refusal of planning permission for change of use from dwellinghouse (Use Class C3) to a small HMO (Use Class C4).
2. The application was refused by the Council's Central and East Area Planning Committee for the following reason:
3. *The change of use of the property to a house in multiple occupation (Use Class C4) within this locale (which includes several properties occupied as HMOs but unregistered as being Class N exempt from Council Tax), would unbalance the community and have a detrimental impact upon community cohesion and adversely affect the amenity of non-student residents within the local area from increase noise and disturbance. Therefore, the proposal is contrary to Policies 6, 29 and 31 of the County Durham Plan.*
4. The appeal was considered via written representations and following their submission and consideration the Planning Inspector concluded that the proposal would not be prejudicial to any existing, allocated or permitted use of adjacent land; would satisfactorily minimise the impact of the development upon the occupants of existing adjacent and nearby properties; and will not have any unacceptable impact including through noise. Specifically, the Inspector considered the experiences and perception of HMOs are largely anecdotal and the poor experiences arising from other HMOs does not indicate that this will be exacerbated if the appeal is allowed. They also noted that the issues raised [noise, disturbance and antisocial behaviour]

are not a predictable consequence of HMOs as opposed to single occupation dwellings, but rather a matter of individual behaviour and suitable management.

5. In allowing the appeal the Inspector considered Policy 16 of the County Durham Plan and evidence submitted by interested parties relating to other properties within the wider street which related to other properties that were occupied as HMOs. On this issue the Inspector concluded that the evidence provided did not demonstrably indicate that the 10% threshold within the CDP Policy 16 had, in this case, been breached or that there would be a harmful impact in terms of the balance and cohesion of the community if the appeal were allowed.
6. With regards to need, the Inspector noted that this was raised in third party representations but concluded that *'whether or not there is a need for further student accommodation will be dictated by market forces. If the HMO is not ultimately used as such, it does not preclude it being occupied again in the future as a family home'*.
7. The appeal was therefore allowed, and planning permission granted subject to planning conditions.
8. An application for costs was made in association with this case with the appellant claiming that the Council acted unreasonably in making vague, generalised and inaccurate assertions not supported by objective analysis, thus preventing development which should have been permitted and which has resulted in the applicant incurring unnecessary or wasted expense at appeal.
9. In dismissing the costs appeal the Planning Inspector noted that in respect of policy 16 of the CDP, this was not a policy cited in the Council's reason for refusal, yet the Council's Statement of Case went on to consider the proposals impact upon community cohesion. However, they went on to state that they found the Council's approach to the matter of this policy to be vague in so far as the harm being identified in respect of community cohesion was not reflected in any of the policies on the decision notice. However, they nevertheless concluded that *'even if the Council had failed to substantiate its position in respect of policy 16 of the CDP and community cohesion, this was a matter raised by a substantial number of interested parties. It follows that the issue warranted consideration by the applicant and therefore no unnecessary or wasted expense occurred'*.
10. The application for costs was refused.
11. Recommendation:
12. That the decision be noted.

**Appeal by Mrs Gabrielle Moore**  
**Site at No. 24 Nevilledale Terrace, Durham DH1 4QG**  
**Planning Reference DM/23/00241/FPA**

1. An appeal was lodged against the Council's refusal of planning permission for the change of use from a 6 Bed dwellinghouse to 2 No. flats.
2. The application was refused by the Council's Central and East Area Planning Committee for the following reason:
3. *The change of use of the property to 2no. 2bed flats would be attractive for student occupation and would therefore have an adverse impact upon the amenity of existing residents through increased noise, disturbance, anti-social behaviour and pollution,*

*due to the property being located in an area with a high concentration of student occupied HMOs, contrary to the aims of policy 31 of the County Durham Plan and Parts 12 and 15 of the NPPF.*

4. The appeal was considered by written representations and following submission and consideration the Planning Inspector concluded that the proposal would not have an adverse effect on the living conditions of the occupiers of neighbouring properties through increased noise, disturbance, antisocial behaviour or pollution.
5. In allowing the appeal and granting planning permission the Inspector had regard to policy 31 of the County Durham Plan.
6. An application for costs was made by the appeal in association with this case with the appellant claiming that the planning committee behaved unreasonably in not supporting the recommendation of planning officers.
7. In dismissing the costs appeal the Planning Inspector noted that the determination of planning applications by a planning committee is no established democratic process, and the committee reaching a different conclusion to that recommended by officers does not necessarily amount to unreasonable behaviour. The Inspector was satisfied that although in allowing the appeal (and arriving to at a different conclusion to the committee) the LPA arrived at their decision to refuse the application following proper process and in a reasonable manner.
8. The appeal was allowed. The application for an award of costs was refused.
9. Recommendation:
10. That the decision be noted.

**Appeal by Mrs Gabrielle Moore**  
**Site at No. 41 Fieldhouse Lane, Durham, DH1 4LT**  
**Planning Reference DM/23/01237/FPA**

1. An appeal was lodged against the Council's refusal of planning permission for the conversion and change of use from a 5 bed dwellinghouse (Use Class C3) to 7 bed large HMO (Use Class Sui Generis).
2. The application was refused by the Council's Central and East Area Planning Committee for the following reason:
3. *The change in use of the property to a larger house in multiple occupation (Use Class Sui Generis) would have an adverse impact upon the amenity of existing residents and the character of the area through increased noise, disturbance and anti-social behaviour, contrary to the aims of policies 6, 29 and 31 of the County Durham Plan and Parts 12 and 15 of the NPPF.*
4. The appeal was dealt with by written representations and following submission and consideration the Planning Inspector concluded that the proposed use would not harm the living conditions of nearby residents with particular regards to noise and disturbance. Specifically, the Inspector noted that *'As a five bedroom house, No.41 would suit a family of 6-7 people. A family of this size would generate comings and goings on a daily basis, although this would probably vary, depending on the ages of any adults and children living there'*. In addition, the Inspector noted that *'an effective management plan and other conditions, would satisfactorily mitigate any potential unacceptable impacts associated with noise and disturbance'*.

5. In addition, the Inspector considered the experiences and perception of HMOs are largely anecdotal and the poor experiences arising from other HMOs does not indicate that this will be exacerbated if the appeal is allowed. They also noted that the issues raised [noise, disturbance and antisocial behaviour] are not a predictable consequence of HMOs as opposed to single occupation dwellings, but rather a matter of individual behaviour and suitable management.
6. In allowing the appeal and granting planning permission the Inspector had regard to policies 6, 29 and 31 of the CDP.
7. The appeal was allowed.
8. Recommendation:
9. That the decision be noted.

#### **Appeal by Dr Nan Hu**

**Site at No. 33 St Bedes Close, Crossgate Moor, Durham DH1 4AA  
Planning Reference DM/23/01442/FPA**

1. An appeal was lodged against the Council's refusal of planning permission for the change of use from a dwellinghouse (Use Class C3) to a small HMO (Use Class C4).
2. The application was refused by the Council's Central and East Area Planning Committee for the following reason:
3. *The change of use of the property to a house in multiple occupation (Use Class C4) within this locale (which includes several properties occupied as HMOs but unregistered as being Class N exempt from Council Tax), would unbalance the community and have a detrimental impact upon community cohesion and adversely affect the amenity of residents within the local area from increased noise and disturbance. Therefore, the proposal is contrary to Policies 29 and 31 of the County Durham Plan.*
4. The appeal was considered via written representations and following their submission and consideration the Planning Inspector concluded that the proposed use would not harm the living conditions of nearby residents with regards to noise and disturbance. Specifically, the Inspector noted that, "As a four bedroom house, No.33 would suit a family of 4 - 6 people. A family of this size would generate comings and goings on a daily basis, although this would probably vary, depending on the ages of any adults and children living there'.
5. In allowing the appeal and granting planning permission the Inspector had regard to policies 6, 29 and 31 of the CDP.
6. The appeal was allowed.
7. Recommendation:
8. That the decision be noted.

**Appeal by Sugar Tree Limited**  
**Site at No 58 Bradford Crescent, Gilesgate, Durham DH1 1HL**  
**Planning Reference DM/23/02700/FPA**

1. An appeal was lodged against the Council's failure to determine Planning Application Reference DM/23/02700/FPA within the statutory timescale which sought permission for the change of use a dwellinghouse (Use Class C3) to use as a Small HMO (Use Class C4) including erection of a single storey rear extension, cycle parking and bin storage.
2. The appeal was considered by way of written representations and after submission and consideration the Planning Inspector resolved to dismiss the appeal. In doing so they concluded that the proposal would be acceptable in terms of its effect on housing mix, parking and highway safety, the character and appearance of the area and the living conditions of nearby occupiers. Nevertheless, it would fail to provide suitable living conditions for future occupiers, and accordingly it would fail to accord with the development plan as a whole. In addition, they considered that there are no other considerations, including those of the Framework to lead them to a decision other than in accordance with the development plan.
3. The appeal was allowed, and planning permission granted.
4. Recommendation:
5. That the decision be noted.

**Appeal by Catherine McKenna**  
**Site at No29-33 Neville Street, Durham DH1 4AP**  
**Planning Reference DM/23/01777/FPA**

1. An appeal was lodged against the Council's decision to refusal of planning permission for the change of use from hot food takeaway and bar to the ground and first floors to a large House in Multiple Occupation (Sui Generis), including alterations to the west elevation and removal of two flues on the east elevation.
2. The application was refused by powers delegated to the Head of Planning for the following reason:
3. *The proposed change of use of the property to create a large 9-bedroom HMO would be unacceptable, due to 71.0% of existing properties within 100m of 29 Neville Street and 70.1% of existing properties within 100m of 30-33 Neville Street being Class N exempt student properties as defined by Council Tax, and therefore exceeding the 10% threshold set out within Policy 16 Part 3 of the County Durham Plan. The development would therefore further unbalance the existing community and have a detrimental impact upon community cohesion and adversely affect the amenity of existing residents from increased noise and disturbance. On that basis, the proposal is considered to be contrary to Policies 6, 29 and 31 of the County Durham Plan.*
4. The appeal was considered via written representations and following their submission and consideration the Planning Inspector concluded that the 'proposal fails to comply with CDP policies 6, 16 and 29 which together seek to promote inclusive, mixed and balanced communities and protect residential living [sic] conditions. Accordingly, I conclude that the scheme conflicts with the development plan read as a whole, I have had regard to the minor localised improvements to the DCA and WHS setting arising from the physical alterations to the building, and the

*other arguments put forward in support of the scheme by the appellant, but these do not indicate a decision otherwise than in accordance with the development plan'.*

5. The appeal was dismissed.
6. Recommendation:
7. That the decision be noted.