

# COMMITTEE REPORT

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### APPLICATION DETAILS

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**APPLICATION NO:** DM/14/00516/FPA  
**FULL APPLICATION DESCRIPTION:** Change of use to HMO (Sui Generis)  
**NAME OF APPLICANT:** Mr Jayprakash Sarania  
**ADDRESS:** 51 The Avenue  
Durham  
DH1 4EB  
**ELECTORAL DIVISION:** Nevilles Cross  
**CASE OFFICER:** Tim Burnham, Planning Officer, 03000 263963  
tim.burnham@durham.gov.uk

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### DESCRIPTION OF THE SITE AND PROPOSALS

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#### SITE

1. The application site is 51 The Avenue, Durham which is a large terraced property, located on a gently sloping part of the Avenue close to Durham City Centre. The site sits within the Durham (City Centre) Conservation Area.

#### PROPOSAL

2. The applicant proposes to utilise the property as a 9 bed HMO (House in Multiple Occupation) which is a Sui Generis use. The changes proposed to accommodate the additional three bedrooms within the premises would see a ground floor storage area converted into a bedroom and two attic rooms converted into bedrooms. These attic rooms, currently detailed as storage areas, would be served by dormer windows which were approved under a previously submitted application.

3. The application has been referred to planning committee by Councillor Martin due to concerns over the provision of a small bedroom within the property, concerns that no account has been taken of proposed dedicated student accommodation and concerns that the application could be contrary to Policy 32 of the emerging County Durham Local Plan.

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### PLANNING HISTORY

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4. Planning permission was granted in 2013 for two dormer windows to the rear of the property. Retrospective Conservation Area consent was refused in 2013 for the demolition of a front boundary wall.

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# PLANNING POLICY

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## NATIONAL POLICY

5. The Government has consolidated all planning policy statements, guidance notes and many circulars into a single policy statement, the National Planning Policy Framework (NPPF), although the majority of supporting Annexes to the planning policy statements are retained. The overriding message is that new development that is sustainable should go ahead without delay. It defines the role of planning in achieving sustainable development under three topic headings – economic, social and environmental, each mutually dependant.

6. The presumption in favour of sustainable development set out in the NPPF requires local planning authorities to approach development management decisions positively, utilising twelve 'core planning principles'

The following elements are considered relevant to this proposal;

7. *NPPF Part 7 – Requiring Good Design.* 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.

8. *NPPF Part 12 – Conserving and enhancing the historic environment.* Part 12 sets out the governments aims in relation to the conservation and enhancement of the historic environment and gives guidance in relation to matters concerning heritage assets.

## LOCAL PLAN POLICY:

**9. 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.

**10. 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.

**Policy H9 (Multiple Occupation/Student Households)** seeks to ensure that buildings in multiple occupancy do not adversely affect the character of the area and do not require significant extensions or alterations having regard to Policy Q9.

**11. Policy H13 (Residential Areas – Impact upon Character and Amenity)** states that planning permission will not be granted for new development or changes of use which have a significant adverse effect on the character or appearance of residential areas, or the amenities of residents within them.

**12. Policy T1 (Traffic – General)** states that the Council will not grant planning permission for development that would generate traffic likely to be detrimental to highway safety and / or have a significant effect on the amenity of occupiers of neighbouring property

**13. Policy T10 (Parking – General Provision)** states that vehicle parking should be limited in amount, so as to promote sustainable transport choices and reduce the land-take of development.

## EMERGING PLANNING POLICY

14. The emerging County Durham Plan was submitted in April 2014 ahead of Examination in Public. In accordance with paragraph 216 of the NPPF, 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. Further, the Planning Practice Guidance explains that in limited circumstances permission can be justifiably refused on prematurity grounds: when considering substantial developments that may prejudice the plan-making process and when the plan is at an advanced stage of preparation (i.e. it has been submitted). To this end, the following policies contained in the Submission Draft are considered relevant to the determination of the application:

15. Policy 32 of the Emerging Local Plan is of some relevance which relates to Houses in Multiple Occupation and Student Accommodation. It states that;

16. In order to support mixed and balanced communities and maintain an appropriate housing mix, applications for new build Houses in Multiple Occupation and changes of use from:

- a Class C3 (dwelling house) to a Class C4 (House in Multiple Occupation), where planning permission is required; or
- a Class C3 (dwelling house) to a House in Multiple Occupation in a sui generis use (more than six people sharing).

will not be permitted if the application site is located in, or within 50m of, a postcode area where more than 10% of the total number of properties is already in use as a licensed HMO or student accommodation exempt from council tax charges

In all cases proposals will only be permitted where:

- a. There is sufficient car parking to avoid exceeding the capacity of the street (taking into account any existing parking restrictions);
- b. They provide acceptable arrangements for bin storage and other shared facilities; and
- c. The design of the building or any extension would be appropriate in terms of the property itself and the character of the area

*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>.*

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## CONSULTATION AND PUBLICITY RESPONSES

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### CONSULTEE RESPONSES:

17. Councillor Martin has expressed concerns over the provision of a small bedroom within the property. Concerns are also expressed that no account has been taken of proposed dedicated student accommodation. Councillor Martin is also concerned that the application would be contrary to Policy 32 of the emerging County Durham Local Plan.

18. Highways Development Management have raised no objections.

## **INTERNAL CONSULTEE RESPONSES:**

19. Environmental Health Officers have raised no objections.

20. Design and Conservation have raised no objections.

## **PUBLIC RESPONSES:**

21. Two letters of objection has been received in relation to the application. Concern is put forward that the provision of a further HMO on the street would cause it further imbalance. Concern is put forward in relation to the size of a proposed bedroom, bathroom provision and the lack of a communal eating space. The ability of the dwelling to accommodate a disabled person is questioned. It is suggested that the application would be contrary to Policies H9, H12A and H13. It is stated that the application is contrary to paragraph 50 of the NPPF in that it would not be sustainable. It is suggested that the application is contrary to draft policy in the emerging local plan. Concerns are put forward in relation to bin storage and parking.

## **APPLICANTS STATEMENT:**

22. I welcome the opportunity to make this statement to the Committee. My application is supported by a comprehensive, 33-page, Design and Access statement ['DAS']. I hope that the Committee will appreciate that this will demonstrate that my proposals have been carefully considered.

23. The Design and Access statement goes into significant detail as to why I consider that the development proposed adheres to development plan and national planning policy. Careful analysis of the relevant policies indicates that there is no policy objection to the proposals and that there remains a demonstrable need for the additional bedrooms proposed despite current and future plans for the provision of purpose built student accommodation in the City.

24. Since I acquired the property, I have already ensured, through a programme of internal and external refurbishment, a significant improvement in the appearance of the property. It now appears better kept than many of its neighbours. I intend to ensure that the property is well maintained and continues to be well managed to ensure that the use does not demonstrably impact upon the character and appearance of the area or is detrimental to the amenity of residents. That is my commitment to you and adjacent residents.

25. I note that at the time of writing this statement there had been only one public objection made in respect of my proposals. Everyone is entitled to form their own opinions but those expressed by Mrs Evans are isolated. I am confident that every one of Mrs Evans' concerns is dealt with in considerable detail in the DAS and I trust officers will address these points in their report to Committee. However, I would wish to address a couple of points raised in more detail.

26. Mrs Evan's quite rightly points to the works undertaken to the front boundary last year. This was no act of vandalism. The wall was removed as it was about to collapse and I have evidence to this effect. On advice, I sought retrospective conservation area consent for the proposals and although the proposals eventually obtained officer support, the application was refused at Committee.

27. Through my agent, I have since made compelling arguments that as a matter of fact and degree and having regard to permitted development rights and the Shimizu case

neither planning permission nor conservation area consent was required in relation to the removal of the wall. The matter is currently being considered by officers and the Council's legal representatives and we expect a formal response from the Council very soon. Informal indications are that the deductions of my agent are correct. That being the case, we will have to discuss with officers the mechanism for the rebuilding of the walls but like many of my neighbours, I would wish to secure sympathetic parking within the property screened in accordance with details that we hope can be agreed with the Council.

28. Mrs Evans also highlights the space provided by bedroom 7. It is slightly smaller than the rest of the bedrooms at nine square meters yet the indicative layout of furniture as shown on plan R2125\_02 demonstrates it can accommodate a double bed. This could easily be a single bed providing additional usable floorspace. Please also note that I have also retained the living room to provide communal living space, something that many property owners split to provide an additional bedroom. I hold the historic layout and features of the premises in high regard. Notwithstanding this, such matters are usually considered outside planning control, as emphasised in a number of judgements to which I can rely, and they are usually thought to be a matter for housing and environmental health legislation. I also note that the Environment, Health and Consumer Protection division have expressed no concerns regarding bedroom 7.

29. I would see no point in burdening the Committee with the comprehensive detail of the DAS and am confident that officers will make the Committee aware of its salient points. In this respect, I respectfully suggest that the Committee has all the information available to it in order to consider my proposals against the development plan and National Planning Policy Framework.

*The above represents a summary of the comments received on this application. The full written text is available for inspection on the application file*

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## **PLANNING CONSIDERATIONS AND ASSESSMENT**

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30. 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 and the impact of the development on the character and appearance of the residential area.

### **The Principle of the development of the site**

31. The application site is a well-established property on an established street and is likely to date from between 1894 – 1899. Officers understand that for a long period of time the property may have been used as a regular C3 family residence prior to its sale.

32. Officers understand that use of the dwelling house by 3-6 residents as a house in multiple occupation (C4 use) is ongoing at the property. The change of use from a C3 property to a C4 property would have constituted permitted development, with no planning approval required to change between these uses.

33. The provision of a HMO accommodating more than 6 people is considered un-classified and therefore a 'Sui Generis' use. A planning application has been made to change the use of the premises from C4 to Sui Generis. Given that there is an established use of the property for a small HMO for up to 6 people, Officers must therefore consider whether the impact of introducing three additional occupiers is acceptable.

34. Policy H9 of the current local plan offers guidance in this respect. It relates to the conversion of houses for multiple occupation. It states that such development will be permitted provided that adequate parking, privacy and amenity areas are provided, provided it will not adversely affect the amenities of nearby residents, provided it is in scale and character with its surroundings, provided it will not result in concentrations of sub divided dwellings to the detriment of the range and variety of the local housing stock and provided it will not involve significant extensions or alterations.

35. Parking is currently provided of street to the front of the dwelling, although works to enable access to the front of the property were subject to an application for Conservation Area Consent which was refused. However, if this parking provision were not available, the application is considered acceptable in terms of highway safety as two parking permits to utilise on street provision would be available. A 79m<sup>2</sup> yard is in existence to the rear to provide outdoor amenity space; this is considered acceptable by Officers. No alterations to the physical scale or character of the dwelling are proposed, with dormer windows to the rear roof slope having been considered acceptable under a previous planning approval. Officers therefore consider that the proposal will accord with section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and Policies E6 and E22 of the City of Durham Local Plan which require that the character and appearance of the Conservation Area be preserved or enhanced.

### **The impact upon the residential area**

36. Policy H13 states that planning permission will not be granted for new development or changes of use which would have a significant adverse effect on the character or appearance of residential areas, or the amenities of residents within them while Policy H9 also seeks to provide such safeguards.

37. Officers understand that as of early 2013 around 22 properties in The Avenue were licensable HMO's under the Housing Act 2004 and that there were approximately a further 11 properties in The Avenue occupied by students that did not need to be licensed. There are a number of sub divided properties in the immediate area.

38. The Council is currently considering a longer term strategy in relation to houses in multiple occupation within Durham City and the matter is still under review. Policy 32 has been included with the Emerging County Durham Plan that has been submitted for public inquiry. This policy seeks to restrict changes from C3 to C4 use and C3 to Sui Generis HMO use where there is already a high concentration of student properties. Given the level of student accommodation within The Avenue, it is likely that the increased provision of student accommodation in this area may exceed the thresholds identified within this Policy. However, given the policy has been subject to significant comment, Officers are only able to give this Policy very limited weight.

39. Although outlining the Councils forward thinking on this proposal, Officers also note that the Policy does not seek to restrict changes of use from C4 use to Sui Generis HMO use, as would be the case in this instance, therefore this Policy as it stands is strictly not applicable to the circumstances of this case.

40. Concern over the additional habitation of the property by students is noted. It is acknowledged that students may have different lifestyles to many other residents on the street. Officers acknowledge that the provision of 3 additional bedrooms would cause some additional comings and goings, but this is not considered to be to a degree that would be unacceptable in terms of residential amenity.

41. There is a variety of type and range of housing within The Avenue and Officers consider that provision of three additional bedroom spaces would not result in a development that

would be to the detriment of the range and variety of local housing stock. There are no set thresholds in relation to the acceptability of one type of housing or another, and it is for Officers to make a considered judgement, taking into account all relevant material considerations on the matter.

42. The provision of the property as a 9 bedroom HMO has largely respected the internal arrangement of the property. Significant or extensive internal sub division is not proposed. The property could therefore reasonably be reverted to regular family C3 use should this be required in the future.

43. The property is well sized and the accommodation would be far less dense than at some smaller HMO properties located within more modest terraced accommodation within the City. Most rooms other than bedroom 7 would be of a reasonable size with appropriate outlook. Smaller bedrooms, such as bedroom 7 within such properties are generally provided at a lower rent than larger rooms within the same residence. Environmental Health has been consulted and has not raised concern as to the size of this proposed bedroom.

44. A well sized kitchen and communal lounge area would be provided. A bin store area would be provided within the rear yard area so that bins could be kept away from cluttering the rear lane at the site.

45. In light of the above considerations and in accordance with Policies H9 and H13, officers do not consider that the provision of three additional bedrooms would create a situation where the character or appearance of the area or the amenities of residents within them would be significantly compromised.

46. Officers do not feel that the provision of three additional bedrooms would contravene the National Planning Policy Framework which aims to create safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion.

### **Other issues**

47. Officers note comments relating to the provision for disabled access to and around a dwelling. This would be unlikely to be required on such a dwelling through planning legislation, however this would likely be a building regulations matter.

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## **CONCLUSION**

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48. Officers consider the application acceptable in terms of the principle of the development and the impact upon the residential area. This is because Officers do not consider that there would be any significant additional impacts of providing 9 bedrooms at the property, as opposed to the current use as a 6 bedroom small HMO. Officers consider the property well sized and well able to accommodate an additional three bedrooms while providing sufficient levels of amenity. There are no highways objections and the development would preserve the character and appearance of the Durham (City Centre) Conservation Area.

49. Officers consider the application to meet the requirements of the National Planning Policy Framework and Policies E6, E22, H9, H13, T1 and T10 of the City of Durham Local Plan 2004.

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## **RECOMMENDATION**

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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 following approved plans. Proposed plan R2125-02 received 12<sup>th</sup> March 2014.

Reason: To define the consent and ensure that a satisfactory form of development is obtained in accordance with Policies E6, E22, H9, H13, T1 and T10 of the City of Durham Local Plan 2004.

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## **STATEMENT OF PROACTIVE ENGAGEMENT**

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50. In dealing with the application, the Local Planning Authority has worked with the applicant in a positive and proactive manner based on seeking solutions to problems arising during the application process. However, the application has not been presented to committee within the 8 week target provided to the applicant on submission and in compliance with the requirement in the National Planning Policy Framework to promote the delivery of sustainable development.

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## **BACKGROUND PAPERS**

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Submitted Application Forms, Plans and supporting documents  
National Planning Policy Framework  
City of Durham Local Plan 2004  
County Durham Emerging Local Plan  
Response from Councillor Martin  
Response from Objector  
Consultee responses





**Planning Services**

Change of use to HMO (Sui Generis) at  
51 The Avenue, Durham

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**Date 10th June  
2014**