

# COMMITTEE REPORT

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### APPLICATION DETAILS

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<b>APPLICATION NO:</b>	DM/17/00019/FPA
<b>FULL APPLICATION DESCRIPTION:</b>	Change of use from Class C3 Dwelling House to Class C4 House in Multiple Occupation
<b>NAME OF APPLICANT:</b>	Dr J and Mr A Todd
<b>ADDRESS:</b>	45 Dalton Crescent, Neville's Cross, Durham DH1 4FB
<b>ELECTORAL DIVISION:</b>	Nevilles Cross
<b>CASE OFFICER:</b>	Paul Hopper (Planning Officer) Tel: 03000 263 946 Email: paul.hopper@durham.gov.uk

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### DESCRIPTION OF THE SITE AND PROPOSALS

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#### The Site

1. The application site relates to a C3 residential property at No. 45 Dalton Crescent, Nevilles Cross. The property is a three storey town house with a bedroom, garage and utility at ground floor, living room, kitchen, bathroom and WC at first floor and three double bedrooms and bathroom to the second floor. It is located in a residential area and is served by two off street parking spaces.

#### The Proposal

2. This application seeks planning permission for the change of use of the property from C3 family house to a C4 house in multiple occupation (HMO). Works to facilitate the proposed change of use would be wholly internal comprising the relocation of the current lounge into the kitchen in order to create an additional bedroom. The result would be a HMO capable of accommodating 5 individuals.
3. This application is being reported to Planning Committee at the request of Cllr Holland who considers that the nature of the proposal and the potential impact upon the residential character of Sheraton Park are such that the application should be considered by the planning committee.

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### PLANNING HISTORY

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4. There is no planning history relevant to the current application.

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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 dependent.
10. 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 of the NPPF are considered relevant to this proposal;
11. *NPPF Part 1 Building a Strong, Competitive Economy*: The Government is committed to ensuring the planning system does everything it can to support sustainable economic growth. Planning should operate to encourage and not act as an impediment to sustainable growth. Therefore significant weight should be placed on the need to support economic growth through the planning system.
12. *NPPF Part 4 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.
13. *NPPF Part 6 Delivering a Wide Choice of High Quality Homes*. Local Planning Authorities should use evidence bases to ensure that their Local Plan meets the needs for market and affordable housing in the area. Housing application should be considered in the context of the presumption in favour of sustainable development. A wide choice of homes, widened opportunities for home ownership and the creation of sustainable, inclusive and mixed communities should be delivered. Where there is an identified need for affordable housing, policies should be met for meeting this need unless off-site provision or a financial contribution of broadly equivalent value can be robustly justified and such policies should also be sufficiently flexible to take account of changing market conditions over time.
14. *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.
15. *NPPF Part 8 Promoting Healthy 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
16. *NPPF Part 11 Conserving and Enhancing the Natural Environment*: Planning policies and decisions should aim to avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development and mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions.

## LOCAL PLAN POLICY:

### City of Durham Local Plan

17. Policy H9 (Multiple Occupation / Student Households) states that the sub division or conversion of houses for flats, bedsits or for multiple occupation, or proposals to extend or alter properties already in such use will be permitted provided that it does not adversely impact on other planning considerations.
18. 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.
19. 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.

### EMERGING COUNTY DURHAM PLAN:

#### The County Durham Plan

20. Paragraph 216 of the NPPF says 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. The County Durham Plan (CDP) was submitted for Examination in Public and a stage 1 Examination concluded. An Interim Report was issued by an Inspector dated 18 February 2015, however that Report was quashed by the High Court following a successful Judicial Review challenge by the Council. In accordance with the High Court Order, the Council has withdrawn the CDP and a new plan being prepared. In the light of this, policies of the CDP can no longer carry any weight. As the new plan progresses through the stages of preparation it will begin to accrue weight.

*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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### STATUTORY RESPONSES:

21. Highway Authority has no objection to the application noting that the applicant has previously widened the existing drive to accommodate two vehicles.

### INTERNAL CONSULTEE RESPONSES:

22. Spatial Planning Policy has indicated that applying the interim policy on student accommodation, 8.2% of properties within 100 metres of the site are currently occupied as HMOs.
23. Noise Action Section notes that the change of use itself does not lead to any specific/quantifiable noise impacts but nevertheless notes that the potential of noise associated with student lets increases when compared to single households. Whilst in this case the applicants advise that management methods would be implemented to prevent noise impacts the issues are inherent with the use applied for and generally very difficult to impose enforceable controls. Nevertheless, the conclusion is drawn that the development is unlikely to cause a statutory nuisance.
24. HMO Licensing Officer offers no objection to the application.

## **PUBLIC RESPONSES:**

25. The application has been publicised by way of site notice and individual notification letters to neighbouring properties. 20 letters/emails of objection have been received from respondents, 3 from the same address. In addition 2 letters/emails of support have been received although it is noted that one of these respondents resides outside the County area.

The reasons for objection are summarised as;

- a) Need: There is no need for additional HMOs within the area as planning permission was recently granted for purpose built student accommodation to the rear of the site. In approving the application it was noted that this would negate the need for smaller HMOs in the future.
- b) Precedent: The development would set an unwelcomed precedent which would make resisting future applications difficult.
- c) Residential Amenity: The development would lead to unacceptable levels of noise and antisocial behaviour to the detriment of the amenity of existing residents which includes young families and the elderly.
- d) Parking, Access and Highway Safety: The development would lead to an increase in vehicle movements and demand for parking which the current level of provision could not satisfy.
- e) Visual Amenity: Rented properties are rarely well maintained and as such have a detrimental impact upon the surrounding locality.
- f) Article 4 Notice: The Article 4 Notice was served to resist the over proliferation of HMOs within the city and the shortage of family homes in the area. The concentration of HMOs within the area is already over 10%.
- g) Housing Mix: The development was not intended to include HMOs when constructed and current residents purchased properties on this basis. C3 uses are therefore more appropriate to the area and those remaining residents would find it difficult to sell their properties should planning permission for more HMOs be granted.
- h) The proposal is driven by the applicant's financial gain and despite claims in the supporting statement the applicant has not attempted to market the property for its current use.
- i) Legal Covenants exist which restrict the use of the properties.

The reasons for support are summarised as;

- a) Interim Policy and Article 4 Notice: The Council's Interim Policy and Article 4 Notice were introduced to ensure a balanced community across the city and includes a cap at 10% of student lets within an area and as such there can be no precedent in terms of the council's ability to refuse future applications.
  - b) Noise: Effective management of the property and robust terms of contract would be used to mitigate any impact in this regard.
  - c) Parking: Adequate parking exists and it is unlikely that all residents would have private vehicles.
  - d) Students contribute to communities and are important in providing economic stability of the city and are intrinsic to the Heritage of Durham.
  - e) Large Student Accommodation: Whilst planning permission exists for large purpose built student accommodation to the rear of the site this has yet to be constructed and may take years to fully complete and in any event mass accommodation is not suitable for all students.
26. The City of Durham Trust object to the application noting that whilst the concentration of HMOs within 100 metres of the site is currently below the 10% threshold contained within the interim policy, planning permission exists for two large PBSA blocks close to the rear of the property.

## APPLICANTS STATEMENT:

27. Full planning permission was not sought until the results of the pre-application came back of which the key consideration was whether or not the 10% threshold contained in the interim policy relating to HMO's had already been reached. The pre-app indicated that Dalton Crescent was currently under the 10% threshold (at 8.2%). It stated that all other requirements of the Interim report (noise, rubbish, parking, security) needed to be met, all of which were addressed in the Design and Access Statement. Full planning was only sought as the Planning Officer concluded that change of use would be considered acceptable in principle.
28. Factually, the application is for a 5-person house, with a contract limiting parking to 2 cars (which could not be guaranteed with a private sale). The objections on noise and property disrepair are all based on conjecture, and likewise again cannot be guaranteed with a private sale. Other comments on precedent being set are unnecessary as the 10% cap will stop this happening. The current resident students on the street blend in harmoniously to the existing community.

*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>*

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## PLANNING CONSIDERATIONS AND ASSESSMENT

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29. 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 development, the impact upon residential amenity and highway safety.

The principle of development

30. 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 this provision contained within the GPDO. However, an Article 4 direction came into effect on 17 September 2016 withdrawing permitted development rights in this regard and as such planning permission is required.
31. Policy H9 of the Local Plan is therefore relevant which relates to the conversion of houses for multiple occupation. It states that such development will be permitted where adequate parking, privacy and amenity areas can be provided, where it will not adversely affect the amenities of nearby residents and is of a scale and character appropriate to its surroundings and where it will not result in concentrations of sub divided dwellings to the detriment of the range and variety of the local housing stock.
32. Policy H13 of the Local Plan is also relevant and states that planning permission will not be granted for new development or changes of use in this regard which would have a significant adverse effect on the character or appearance of residential areas or the amenities of residents within them.

33. In addition the Council's Interim Policy relating to student accommodation is also relevant and states that the Local Planning Authority will not support the change of use of properties in instances where there is in excess of 10% of properties within 100 metres of the site already used as student accommodation. Whilst the Interim Policy has less weight than the saved policies of the City of Durham Local Plan it is nevertheless a material consideration and has been endorsed by cabinet and subject to a 6 week consultation period ending April 2016. The threshold of 10% was derived from section 2 of the 'National HMO Lobby Balanced Communities and Studentification Problems and Solutions', 2008 and in this respect is considered up to date and accords with the aims of the NPPF.
34. The Council's Spatial Policy Section advises that the most recent up to date Council Tax information identifies that 8.2% of those properties within 100 metres of the site are currently occupied as student let accommodation. This concentration is below the 10% threshold stated in the Interim Policy and as such the development can be considered acceptable in principle, subject to proper consideration of the impact of the proposal upon residential amenity and highway safety.
35. Notwithstanding the above, 19 letters/emails of objection have been received from 15 residents, the majority of which object to the principle of development citing the recent Article 4 Notice and interim policy. Concerns specifically relate to the need to control the over proliferation of HMOs within the city to protect the housing mix and character of existing residential areas. Several respondents have also highlighted a concern that more than 10% of properties within the area are currently student let accommodation citing in particular the presence of planning permission for two purpose built student accommodation (PBSA) blocks to the rear of Dalton Crescent. The concern is that these units were not included when calculating the current level of student let within 100 metres of the site.
36. In formulating the Interim Policy on Student Accommodation the impact of pipeline consents (i.e. those which benefitted from planning permission but have not yet been implemented) was considered. Accordingly the policy is such that only those properties occupied and registered as exempt from council tax at the time that the application is considered would be taken into consideration when calculating the % of student properties within 100 metres of the site. In this instance planning permission exists for two residential blocks of student accommodation to the rear of Dalton Crescent which are currently under construction and expected to be ready for first occupation in September 2017. However, these have yet to be occupied and as such cannot be taken into consideration when assessing the development against the threshold figure of 10% contained within the interim policy.
37. Notwithstanding the above it should be noted that the impact of HMOs is somewhat different from that of large self-contained student accommodation which in most cases are subject to their own management plans to control both occupants and facilities and therefore some of the common problems that occur in HMOs where students are entirely self-sufficient, do not occur in larger purpose built student accommodation. On this basis it is considered appropriate that the two types of accommodation are separated for the purposes of the policy.
38. Residents have also raised concerns that should planning permission be granted this would set an unwelcomed precedent that would undermine the Council's ability to resist HMO development within the area in the future. However, the 10% threshold contained within interim policy is considered to provide an appropriate cap on the number of HMO's within an area and is sufficiently robust to ensure a balanced community in the future.

39. The combination of the Interim Policy and Article 4 Notice, along with Policies H9 and H13 of the Local Plan, provide a policy framework whereby the change of use from C3 to C4 could be supported in principle subject to proper consideration of the impact of the proposal upon residential amenity and highway safety. With regard to the NPPF whilst there is no specific reference to HMOs or student accommodation, it is noted that at paragraph 50 the NPPF considers the need to create sustainable, inclusive and mixed communities. In light of the relatively moderate levels of student concentration numbers in this area at present, it is not considered that this proposal would be contrary to the aims and intentions of the NPPF.

#### Residential Amenity

40. Paragraph 123 of the NPPF requires that planning decisions avoid noise from development giving rise to significant adverse impacts on health and quality of life; and mitigate and reduce to a minimum other adverse impacts through the use of conditions. Policy H9 of the Local Plan displays broad accord with the aims of paragraph 123 in this regard and states that the sub division or conversion of properties to provide student development will be permitted provided that it will not adversely affect the amenities of nearby residents.
41. In this instance the application site is a mid-terraced property located within a residential area and as such the nearest residential units adjoin the application property to the north and south at Nos. 44 and 46 Dalton Crescent respectively.
42. Several residents have raised objection to the application citing the potential adverse impact upon residential amenity particularly from noise and antisocial behaviour.
43. The Council's Environmental Health Section has not raised any objection to the application noting that the use itself does not lead to any specific/quantifiable noise impacts and is unlikely to result in any statutory nuisance as a result. However, in responding the officer does note that evidence demonstrates student demographic properties have increased potential of noise associated with them when compared with a single household property and that whilst the applicant has advised management methods will be in place to prevent noise impacts, the above issues are inherent with the use applied for and generally very difficult to imposed enforceable controls.
44. It is accepted that the proposed occupation of the building by 5 unrelated individuals may result in different patterns of behaviour when compared to a single family unit. However, there is no evidence to suggest that the proposed HMO would be materially more harmful than that of a large dwelling being occupied by a large family unit, to an extent that it would result in an increase to harm so significant as to warrant a refusal of this application. In this regard it is noted that the Environmental Health Section does not raise any objection to the application noting that the use itself does not lead to any specific/quantifiable noise impacts. The applicant has provided assurances regarding the management of the property and intends to include restrictive clauses in the tenancy agreements in this regard which is welcomed and it is noted that larger student accommodation is managed effectively in this way. Whilst not essential to make the development acceptable, it should help to provide some reassurance for neighbours.
45. Several residents have raised objection to the cumulative impact of the proposal when considered in the context of the previously approved PBSA to the east of the site. These concerns relate specifically to increases in noise, nuisance and antisocial behaviour.

46. Notwithstanding the concerns raised it is noted that the PBSA in this instance is subject to student and noise management plans and compliance with the recommendations contained therein ratified through legal agreement. The plans aim to control noise and disturbance through the use of wardens, 'out of hours' security, CCTV and the use of windows restricted to 100mm opening. In addition a legal agreement also restricts the number of undergraduates that can occupy that development. With this in mind the anticipated level of disturbance as a result of the PBSA is likely to be within acceptable levels and as such any cumulative impact resulting from an additional HMO with 5 tenants is unlikely to be so significant as to sustain refusal of the application.
47. The property is a generously sized three storey town house and comprises a layout which the applicant has demonstrated could be converted to a 5 bed HMO with minimal internal alteration. In this regard the conversion is not considered to provide a level of living environment to be so unreasonable for proposed occupiers as to justify a refusal on this basis and the Council's HMO Licencing Section offers no objection to the application in this regard.
48. In light of the above there are not considered to be sufficient grounds to warrant a reason for refusal on the basis of residential amenity in accordance with the requirements of policy H9 and Paragraph 123 of the NPPF.

#### Parking, Access and Highway Safety

49. The property benefits from a single garage and double width drive served by a drop kerb from the existing highway. Policy H9 and the Council's Interim Policy both require that new HMO's provide adequate parking and access.
50. Several objections have been received from residents citing concerns over the level of on-site parking provision and an adverse impact upon highway safety. Whilst it is noted that potentially all residents of the proposed HMO could have their own private vehicle, in reality this is unlikely to be the case and the applicant has signalled an intention to restrict the number of vehicles at the property through a tenancy agreement. Notwithstanding this the Highway Authority does not raise any objection to the application noting that the drive has previously been increased to double width and as a result the proposal is considered to accord with the requirements of Policy H9 and the Council's Interim Policy. It is however considered appropriate in this instance to ensure that the existing garage and hardstanding remain available at all times for the standing and garaging of private vehicles. This can be achieved through an appropriate planning condition.

#### Other Matters

51. Whilst several residents have raised objection to the application citing the fact that legal covenants exist at this property which impose restrictions on its use, civil matters such as this are not material considerations to which weight can be attached in determination of this planning application. This is private legal issue that residents would need to pursue separately.
52. Similarly, several residents have raised concerns that the proposal appears to be driven by the financial gain of the applicant. Again this is not considered a material planning consideration in determination this application.

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## CONCLUSION

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53. The proposed change of use would accord with the requirements of the Council's Interim Policy and would not result in more than 10% of the properties within 100 metres of the site being used as HMO's and would not result in any unacceptable impact to residential amenity or highway safety in accordance with the aims of policy H9, H13 and T1 of the City of Durham Local Plan, the Council's Interim Policy relating to student accommodation and the recent Article 4 Notice.

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## RECOMMENDATION

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

1. The development hereby approved 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:

Drawing No.	Description	Date Received
	Location Plan	03/01/2017
16111_001	Block Plan and Site Plan	03/01/2017
16111_002 Rev B	Proposed Floor Plans	03/01/2017

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

3. The integrated garage, hardstanding and car parking shown on the approved plans shall be used and maintained in such a manner as to ensure their availability at all times for the standing and garaging of private motor vehicles.

Reason: In the interests of highway safety and to comply with policy T1 of the City of Durham Local Plan.

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## STATEMENT OF PROACTIVE ENGAGEMENT

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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.

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## BACKGROUND PAPERS

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

The National Planning Policy Framework (2012)

National Planning Practice Guidance Notes

City of Durham Local Plan 2007

Statutory, internal and public consultation responses



**Planning Services**

Change of use from Class C3 Dwelling House to Class C4 House in Multiple Occupation

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**Comments**

**Date** 14 February 2017