

COMMITTEE REPORT

APPLICATION DETAILS

APPLICATION NO:	DM/17/00871/FPA
FULL APPLICATION DESCRIPTION:	Change of use from C3 (dwellinghouse) to either C3 (dwelling house) or C4 (house of multiple occupation)
NAME OF APPLICANT:	Mr T Swindells
ADDRESS:	56 Dalton Crescent, Neville's Cross, Durham DH1 4FB
ELECTORAL DIVISION:	Nevilles Cross
CASE OFFICER:	Paul Hopper (Planning Officer) Tel: 03000 263 946 Email: paul.hopper@durham.gov.uk

DESCRIPTION OF THE SITE AND PROPOSALS

The Site

1. The application site relates to a C3 residential property at No. 56 Dalton Crescent, Neville's 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 a single off street parking space.

The Proposal

2. This application seeks planning permission for the change of use of the property from C3 family house to either a C3 dwellinghouse or a C4 house in multiple occupation (HMO). The intention is to obtain a permission that would allow flexibility to change between these two uses depending on the applicant's circumstances. 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 local councillor at the time who considered 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.

PLANNING HISTORY

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

PLANNING POLICY

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>.

CONSULTATION AND PUBLICITY RESPONSES

STATUTORY RESPONSES:

21. *Highway Authority* has no objection to the application subject to the extension of the existing single width drive to accommodate 2 no. vehicles.

NON STATUTORY RESPONSES:

22. *City of Durham Trust* objects to the C4 element of the application as it would appear to be contrary to the aims of the Article 4 Notice and that the C3 element of the scheme does not require planning permission.

23. *Sheraton Park Residents Association* objects to the application noting that the area will be accommodating a 418 bed purpose built student accommodation facility in August 2017 and that to allow further family dwellings to convert to HMO's will fundamentally unbalance the character of the locale, contrary to the aims of the current article 4 notice. In addition, focus is drawn to the presence of covenants placed on the properties which restrict their use to occupation by a single family only.

INTERNAL CONSULTEE RESPONSES:

24. *Spatial Planning Policy* has indicated that applying the interim policy on student accommodation, 6.5% of properties within 100 metres of the site are currently occupied as HMOs.
25. *Noise Action Section* raises no objection noting that additional noise, above that expected from a C3 use, can be associated with a C4 use which is mainly due to the increased number of adult households and specific single demographic. However, this is not measurable and is likely to differ significantly between occupiers. In addition the EHO is satisfied based on the information submitted with the application, that the development is unlikely to cause a statutory nuisance.
26. *HMO Licensing Officer* offers no objection to the application.

PUBLIC RESPONSES:

27. The application has been publicised by way of site notice and individual notification letters to neighbouring properties. One letter of objection has been received which cites the following reasons;

A 418 bed purpose built student accommodation facility within close proximity to the application site is nearing completion.

At least 4 properties within 100 metres of the site are occupied as HMO's regardless of whether they are registered as such.

There is a very healthy demand for rental properties for private individuals, couples and families with estate agents holding waiting lists of potential tenants due to a shortage of this type of accommodation in close proximity to the city. As a planning objective for the city is to provide a healthy balance of accommodation it is vital that properties such as this are retained for this type of demand.

There is a restrictive covenant placed on the properties within Sheraton Park which restrict their use to single family occupation only.

APPLICANTS STATEMENT:

28. 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.

29. 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>

PLANNING CONSIDERATIONS AND ASSESSMENT

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 development, the impact upon residential amenity and highway safety.

The principle of development

31. 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 withdrawing permitted development rights in this regard and as such planning permission is required.
32. Policy H9 of the CofDLP 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.
33. Policy H13 of the CofDLP is also relevant and 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. The approach contained within policies H9 and H13 of the City of Durham Local Plan is considered consistent with the general aim of the NPPF to create sustainable, inclusive and mixed communities and as such they remain up to date policies of the current development plan and as such can be attributed weight accordingly in determination of this application.
34. 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 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.

35. The Council's Spatial Policy Section advises that the most recent up to date Council Tax information identifies that 6.5% 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.
36. Notwithstanding this, the City of Durham Trust, Sheraton Park Residents Association and one local resident have all raised objection to the application noting the need to control the over proliferation of HMO's within Durham City and that the current proposal would conflict with the aims of the Article 4 Notice and the associated Interim Policy which aim to protect existing housing mix and maintain balanced communities. Concern is also raised that the 2 blocks of Purpose Built Student Accommodation (PBSAs) are not included in the percentage figure calculated when assessing the proposal against the requirements of the interim policy and that some properties within 100 metres of the site are occupied as HMOs although not registered as such.
37. With regards to the PBSAs it is noted that these are not occupied and the interim policy takes into account only those units which are 'already in use'. Although not included in the percentage figure used in council's interim policy, the PBSAs benefit from an existing planning permission which has been implemented and whilst not currently occupied for the approved purpose, are a material consideration in determination of the current application. Whilst occupation of the PBSAs would have some impact upon the character of the surrounding area, key to the determination of the application is the extent to which an additional HMO in this context would conflict with the creation of sustainable, inclusive and mixed communities or have an adverse impact upon residential amenity. In this respect, and despite the presence of the PBSAs, the proposal would accord with the requirements of the interim policy in that only 6.5% of those properties within 100 metres of the site are currently HMOs registered as exempt from council tax charges.
38. The interim policy draws clear distinction between houses of multiple occupancy and purpose built student accommodation, with annex A relating to HMOs and Annex B relating to PBSAs. Text supporting the policy notes the difference between the two forms of accommodation and that the impact of HMOs can be somewhat different from that of large self-contained student accommodation, particularly as the latter is nearly always subject to a management plan aimed at controlling occupants and facilities, and as a consequence 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 that whilst the presence of the PBSAs are a material consideration in determination of the application, the proposal would nevertheless accord with the aims of the current interim policy in that 6.5% of those properties within 100 metres of the site are registered as HMOs and student accommodation exempt from Council Tax.
39. Concern is also raised from a local resident that some properties within 100 metres of the site are used as HMOs but not registered as student accommodation exempt from Council Tax. It is noted that the use of Council Tax information as the method for understanding student densities is recognised by the Planning Inspectorate as it uses a complete dataset, compiled at a consistent time and methodology. Alternative means of data collection such as independent 'door knock' style surveys are not sufficiently robust.

40. 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. The alternative use of the property as a C3 dwellinghouse would clearly also be acceptable. With regard to the NPPF whilst there is no specific reference to HMOs or student accommodation contained therein, it is nevertheless 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

41. 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 CDLP 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 affect the amenities of nearby residents.
42. 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. 55 and 57 Dalton Crescent respectively. A local resident notes the presence of the 2 No. PBSA blocks and although not explicitly stated in objection it is anticipated that the concern relates to the cumulative impact that this would have in terms of residential amenity.
43. Notwithstanding the above, 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 or 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.
44. In this respect whilst 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, there is no evidence to suggest that the proposed HMO would be materially more harmful in terms of loss of residential amenity through noise and general disturbance, any more so than that of a dwelling being occupied by a large family unit, to an extent that it would result in harm so significant as to warrant a refusal of this application.
45. The concerns and objections of a local resident with regards to the cumulative impact of the proposal in the context of the 2 PBSAs which are nearing completion immediately to the north of the application property are noted. However, it is noted that the PBSA is subject to student and noise management plans and compliance with the recommendations contained therein ratified through Section 106 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 the 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 in the locale is unlikely to be so significant as to sustain refusal of the application.

46. In light of the above therefore there are not considered to be sufficient grounds to warrant a reason for refusal on the basis of residential amenity and the proposal is considered to accord with the requirements of policy H9 and Paragraph 123 of the NPPF.

Parking, Access and Highway Safety

47. The property benefits from an integrated garage and single width drive served by a dropped kerb from the existing highway. Policy H9 and the Council's Interim Policy both require that new HMO's provide adequate parking and access.

48. Whilst it is noted that all residents of the proposed HMO could potentially have their own private vehicle this is unlikely to be the case. Nevertheless, the Highway Authority has advised that the existing drive is unlikely to be adequate and as such should be extended in order to accommodate 2 No. private vehicles, offering no objection to the application on the basis that the application is amended in this regard. Whilst the applicant has not submitted any revised plans in this regard they have confirmed an intention to undertake the works as required and this could be ensured through planning condition..

49. Subject to the inclusion of a planning condition as stated the proposal is considered to accord with the requirements of Policy H9 and the Council's Interim Policy in that it would provide safe access and adequate parking.

Other Matters

50. Whilst both the Sheraton Park Residents Association and local resident have raised objection to the application citing the fact that 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.

CONCLUSION

51. The proposed change of use would accord with the requirements of the Council's Interim Policy relating to student accommodation and would not result in more than 10% of the properties within 100 metres of the site being used as HMO's. Whilst the PBSA development to the rear of the site was not included when calculating the number of properties used as HMOs for the purposes of the interim policy, its presence is nevertheless a material consideration in determination of the application. However, it is not considered that the introduction of an additional HMO in this locale would 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 or conflict with the aims of the NPPF and Council's Interim Policy relating to the recent Article 4 Notice to create sustainable, inclusive and mixed communities.

RECOMMENDATION

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	13/03/2017

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

3. The development hereby approved shall not be occupied by more than 6 non related occupants.

Reason: An increase in the number of occupants would need further consideration by the Local Planning Authority and in the interests of residential amenity.

4. No development shall commence until details of the extended driveway have been submitted to and approved in writing by the local planning authority. Thereafter the development shall be undertaken in accordance with the agreed details and the extended driveway completed prior to the first occupation of the dwelling for the C4 use hereby approved.

Reason: To protect highway safety in accordance with the requirements of policy H9 of the City of Durham Local Plan as amended by Saved and Expired Policies September 2007.

STATEMENT OF PROACTIVE ENGAGEMENT

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

BACKGROUND PAPERS

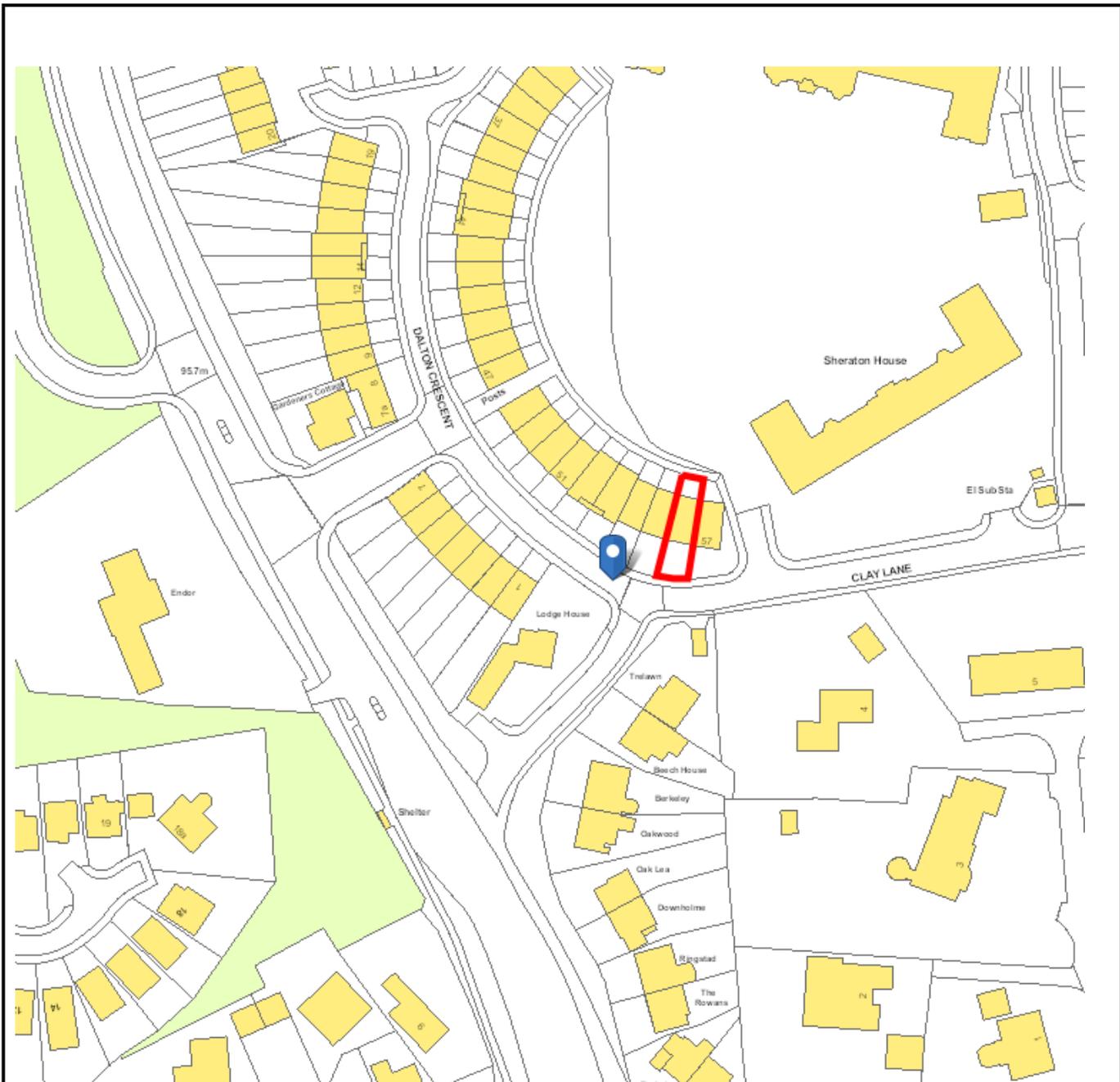
Submitted application form, plans supporting documents and subsequent information provided by the applicant.

The National Planning Policy Framework (2012)

National Planning Practice Guidance Notes

City of Durham Local Plan 2007

Statutory, internal and public consultation responses



Planning Services

Change of use from C3 (dwellinghouse) to either C3 (dwelling house) or C4 (house of multiple occupation)

This map is based upon Ordnance Survey material with the permission of Ordnance Survey on behalf of Her Majesty's Stationary Office © Crown copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceeding. Durham County Council Licence No. 100022202 2005

Comments

Date