



**CITY OF DURHAM
PARISH COUNCIL**

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9th September 2021

Dear Ms Jennings,

DM/21/02952/FPA | Conversion of upper floors to create a 6-bed HMO (Use Class C4), installation of rooflights and new door within frontage | 24 - 25 Market Place Durham DH1 3NJ and DM/21/02953/LB | Conversion of upper floors to create a 6-bed HMO (Use Class C4) | 24 - 25 Market Place Durham DH1 3NJ

The City of Durham Parish Council considered these applications on the 3rd September 2021 and agreed to respond to this application as follows.

Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires applications for planning permission to be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework (NPPF) operates under a presumption in favour of sustainable development. It states that development proposals, which accord with the development plan, should be approved without delay. The adopted Development Plan where the site is located comprises the planning policies of the County Durham Plan (CDP) and the Durham City Neighbourhood Plan.

1. Change of upper floors to C4 use

The Parish Council understands that, within a 100m radius of, and including 24 – 25 Market Place, 63.5% of properties are currently Class N exempt student properties as defined by Council Tax records. There are 63 properties within 100m of the application site and 39 currently benefit from a Class N exemption. Whilst this clearly exceeds the 10% threshold included in Policy 16.3 of the County Durham Plan (CDP), the site is nevertheless situated within the commercial heart of the city in an area characterised predominantly by commercial uses. As such, the introduction of residential dwellings to the upper floors of this retail unit is not considered to have any unacceptable or fundamental impact upon the achievement of balanced communities which Policy 16.3 seeks to ensure.

Policy 9 of the CDP also relates to town centre development and is also relevant in the determination of this application. Para 5.64 states: *“In some instances town centres may provide suitable locations for residential uses, contributing to the overall housing supply and also to a centre's vitality and viability, whilst also increasing footfall. Residential uses will be encouraged within Sub Regional, Large and Small-Town Centres, where it complies with relevant policies in the Plan.”* The Parish Council believes that the use of the upper floors of this site for residential purposes would not give rise to conflict with existing uses in the area and is therefore consistent with the aims of Policy 9.

As the development proposes residential use of the upper floors, it can draw some support from Policy 9, subject to the proper consideration of the impact of the development upon the character of the area and the amenity of nearby occupiers.

With regard to the impact upon the vitality and viability of the city centre, it is noted that Policy 9 of the CDP seeks to protect and promote the vitality and viability of the city centre and that this approach displays a broad level of accord with the aims of the NPPF which require local plan policies to recognise town centres as the heart of their communities and Local Planning Authorities (LPAs) to pursue policies to support their vitality and viability.

It is the Parish Council's view that any proposal which seeks to retain and support the continued retail use of this area ought to be supported. Such an approach also displays a broad level of accord with the aims of Parts 6 and 11 of the NPPF.

More crucially however, Policy E3 of the emerging Durham City Neighbourhood Plan deals with retail development and is clear that: *“Development proposals that provide residential accommodation in upper floors of commercial properties will be supported, as long as they do not have a negative impact on retail, commercial and tourism activities and the general amenity of neighbouring properties and residential amenity including noise impact”*. It is the Parish Council's view that this proposal conforms with the requirements of Policy E3.

2. Proposed arrangements for recycling and refuse bins

The Parish Council notes from the applicant's submitted Design, Access and Heritage Statement that provision is proposed to be made for refuse and recycling bins at the rear of the building. The applicant states that bins will be brought down to Back Silver Street on collection days and would be moved by use of an electric powered stair climber to meet the requirements of the manual handling regulations. This is completely unacceptable in this part of Durham City and the Parish Council is highly sceptical as to the practicalities of these arrangements. The Parish Council therefore submits that this aspect of the proposal is contrary to CDP Policy 31. Policy 31 is clear that:

“Development will be permitted where it can be demonstrated that there will be no unacceptable impact, either individually or cumulatively, on health, living or working conditions or the natural environment and that can be integrated effectively with any existing

business and community facilities. The proposal will also need to demonstrate that future occupiers of the proposed development will have acceptable living and/or working conditions. Proposals which will have an unacceptable impact such as through overlooking, visual intrusion, visual dominance or loss of light, noise or privacy will not be permitted unless satisfactory mitigation measures can be demonstrated whilst ensuring that any existing business and/or community facilities do not have any unreasonable restrictions placed upon them as a result.

Development which has the potential to lead to, or be affected by, unacceptable levels of air quality, inappropriate odours, noise and vibration or other sources of pollution, either individually or cumulatively, will not be permitted including where any identified mitigation cannot reduce the impact on the environment, amenity of people or human health to an acceptable level”.

The onus is clearly on the developer to demonstrate that this issue has been considered and addressed, and that has not been done. It is also clear that the intended occupants are students, so there will be an annual turnover of six tenants. Rubbish disposal and recycling are ongoing problems with many student households living in terraced houses with associated bins. Experience suggests that this will be even more of a problem in this proposed development unless appropriate steps are taken.

It should also be noted that the recent (and highly similar) applications for 68 Saddler Street (DM/20/03436/FPA and DM/20/03437/LB) were amended as a result of concerns regarding bin storage and were only granted permission following the applicant’s subsequent amendments to the proposed schemes.

3. Impact on heritage assets

The application site dates back to the 17th Century, is located prominently within the commercial centre of Durham City, the Durham City Conservation Area as well as the setting of the Durham Castle and Cathedral World Heritage Site. The building was listed grade II on 19th February 1970. The list description reads:

House, now shop. Mid C18; C17 stair. Rendered with painted ashlar dressings. Welsh slate roof with brick chimney. 4 storeys, one bay. Tuscan pilasters frame shop door and renewed window under entablature with dentilled cornice. 2-storey oriel above has hipped roof; third floor sash in architrave with projecting stone sill. Chamfered quoins above ground floor; paired modillions and paired end brackets support gutter cornice. Left end chimney.

Interior: closed-string stair in narrow square well has wide grip handrail with moulded sides and fat vase-and-barley-sugar-twist balusters; deeply panelled string. Second-floor front room has stucco moulded cornice and central ceiling circle of oak leaves enclosing acanthus leaves. 8-panelled door in panelled reveal to this room.

The Local Planning Authority is therefore required by sections 16(2) and 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990 to have special regard to the desirability of preserving a listed building and its setting when exercising planning functions. Durham County Council must give considerable importance and weight to the desirability of preserving the significance of the listed building, and there is a strong presumption against the grant of permission for development that would harm its heritage significance.

The significance of a heritage asset is defined in the National Planning Policy Framework (NPPF) as being made up of four main constituents: architectural interest, historical interest, archaeological interest and artistic interest. The setting of an asset can also contribute to its interest. The assessments of heritage significance and impact are normally made with primary reference to the four main elements of significance identified in the NPPF.

Paragraphs 199 and 200 of the NPPF state that great weight should be given to the conservation of a designated heritage asset when considering applications that affect its significance, irrespective of how substantial or otherwise that harm might be.

Such an approach is reflected at County Durham Plan Policy 44 which clearly states that: *“Development will be expected to sustain the significance of designated and non-designated heritage assets, including any contribution made by their setting. Development proposals should contribute positively to the built and historic environment and should seek opportunities to enhance and, where appropriate, better reveal the significance and understanding of heritage assets whilst improving access where appropriate”.*

In dealing with proposals for Listed Buildings, Policy 44 also makes it clear that:

*“b. respect for the historic form, setting, fabric, materials, detailing, and, any other aspects including curtilage, which contribute to the significance of the building or structure; and
c. the retention of the character and special interest of buildings when considering alternative viable uses”.*

For proposals within the Conservation Area, Policy 44 states:

*“f. the demonstration of understanding of the significance, character, appearance and setting of the conservation area and how this has informed proposals to achieve high quality sustainable development, which is respectful of historic interest, local distinctiveness and the conservation or enhancement of the asset;
g. the manner in which the proposal responds positively to the findings and recommendations of conservation area character appraisals and management proposals; and
h. respect for, and reinforcement of, the established, positive characteristics of the area in terms of appropriate design (including pattern, layout, density, massing, features, height, form, materials and detailing)”.*

Neighbourhood Plan Policy H2 also makes it clear that development proposals within or affecting the setting of the Durham City Conservation Area should sustain and enhance its significance as identified within the Conservation Area Appraisals.

NPPF para. 194 is clear that *“in determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets’ importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary. Where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation”*.

County Durham Plan (CDP) Policy 45 is clear that *“the Durham Castle and Cathedral World Heritage Site is a designated asset of the highest significance. Development within or affecting the World Heritage Site and its setting will be required to (a) sustain and enhance the significance of the designated asset; and (b) be based on an understanding of the Outstanding Universal Value of the site, having regard to the adopted World Heritage Site Management Plan and Statement of Outstanding Universal Value.”*

Durham City Neighbourhood Plan (DCNP) Policy H1 is also relevant to the determination of this application and clearly states: *“Development proposals throughout Our Neighbourhood should be shown to sustain, conserve and enhance the setting of the World Heritage Site where appropriate by (e) carrying out an assessment of how the development will affect the setting of the World Heritage Site, including views to and from the World Heritage Site...”*

The Parish Council notes that the external alterations proposed as part of this scheme consist solely of the provision of a new door to the flat above (affecting the modern glazing and not the Tuscan pilasters mentioned in the building’s listing) as well as the redecoration of the façade of the building facing on to the Market Place, in what the Parish Council believes to be a sympathetic colour scheme which help to highlight some of the building’s external architectural interest. As such, the Parish Council believes that the external works will result in a net gain and enhancement to this part of the Conservation Area and the external works to the building are therefore considered to comply with the requirements of CDP Policies 44 and 45, Neighbourhood Plan Policies H1 and H2; insofar as they relate to impact on the setting of the Conservation Area and the World Heritage Site.

That being the case, the Parish Council is concerned at the lack of information and methodology within this application as to how internal features that led to the listing of this

building will be preserved. For example, the 17th Century stairs are clearly an exceptionally important part of this building and whilst it is essential that they be retained, the Parish Council is also concerned at the applicant's proposals that "access and egress for cycles from Back Silver Street will be facilitated by the insertion of a continuous aluminium channel in the rear steps to allow for cycles to be wheeled up the steps without the need to lift". The Parish Council is very concerned that the developer may damage the historic fabric of the building, which is protected by its listed building status. The Parish Council is aware that enforcement officers have recently visited the site to review the works currently being undertaken and have strongly advised that nothing more is to be removed from this building.

In order that this development does not inadvertently lead to the loss of any of the important historic features of the building and to ensure conformity with CDP Policy 44, the Parish Council urges that a more robust method statement be put in place which sets out a clear understanding of the historical significance of the internal features of this building and the impact of this proposal on those features.

Consequently the Parish Council objects to this planning application. If the applicant can come up with a practical solution that recognises the nature of the intended tenants and the historical importance of the internal features of this building, then the Parish Council will be happy to reconsider its position. Otherwise, this application should be refused as it is contrary to Policies 31 and 44 in the County Durham Plan.

The Parish Council trusts that you agree with its assessment of these applications. If officers are minded to approve these applications however, the Parish Council wishes to have these applications called in to the Central and East Area County Planning Committee so that the Parish Council may put its case to Members.

Yours sincerely,

Adam Shanley
Clerk to the City of Durham Parish Council