

DURHAM COUNTY COUNCIL
AREA PLANNING COMMITTEE (CENTRAL AND EAST)

At a Meeting of **Area Planning Committee (Central and East)** held in **Council Chamber, County Hall, Durham** on **Tuesday 19 September 2017** at **1.00 pm**

Present:

Councillor P Taylor (Chairman)

Members of the Committee:

Councillors G Bleasdale, D Brown, J Clark, I Cochrane, K Corrigan, M Davinson, D Freeman, S Iveson, P Jopling, J Maitland, R Manchester and O Temple

1 Apologies for Absence

Apologies for absence were received from Councillors N Grayson, K Hawley, A Laing and J Robinson.

2 Substitute Members

Councillor J Maitland substituted for Councillor A Laing.

3 Declarations of Interest

There were no declarations of interest submitted.

4 Applications to be determined by the Area Planning Committee (Central & East Durham)

a DM/17/00011/FPA - 24 The Avenue, Durham

The Committee considered a report of the Planning Officer regarding an application for the construction of 12 one and two bedroom flats in 3 blocks within a C3 (dwelling house) use class with associated alterations on 24 The Avenue (amended description) (for copy see file of Minutes).

S Hyde, Planning Officer gave a detailed presentation on the application which included photographs of the site. Members had visited the site and were familiar with the location and setting.

The Officer informed Members that since the report had been circulated a request had been received from an objector that the application be deferred due to the release of a consultation document by Government 'Planning for the Right Homes in the Right Places' which set out proposals to reform the planning system, and

which included examining future housing supply. Members were informed that the document had only recently been published and the Council had yet to consider a formal response to the consultation. This was a windfall site within an existing built up area in the settlement boundary of Durham City, in accordance with the City of Durham Local Plan Policy H2. However the application should be subject to the planning balance test in paragraph 14 of the NPPF.

By way of clarification N Carter, Solicitor – Planning and Development explained that Paragraph 14, which established a presumption in favour of sustainable development, was engaged when Local Plan Policy regarding settlement boundaries was out of date or where a 5 year housing land supply could not be demonstrated. The report made reference to the five year housing supply position but in light of the recent Government consultation Members were advised that this should not be relied upon in the determination of the application. Policy H2 was an out of date settlement boundary policy and also only partially consistent with the NPPF and therefore the test in Paragraph 14 of the NPPF should be applied.

Councillor E Scott addressed the Committee against the application. The Member advised that this was not a new scheme; and the site had been the subject of two earlier applications for C4 use and these proposals were similar in scope to those considered previously. Paragraph 54 in the report stated that the provision of the accommodation was consistent with the Interim Policy on Student Accommodation, and referred to a supporting statement from the applicant's agent which advised that the intention for the apartments would be for rent to professional people working in the City. Despite this there was nothing in the application which provided an assurance that this would not also become student accommodation in an area with a student population of 44%. The applicant was not able to determine the market and the Member asked the Committee to apply a minimum age restriction, similar to that imposed in respect of the development at Old Elvet. This would help to preserve the City's housing for residents and families.

Councillor Scott asked for the application to be deferred to allow consideration of the recent Government consultation document, when a more informed decision could then be made on the proposals.

Mr S Priestly addressed the Committee as the representative of Crossgate Community Partnership and a longstanding resident in The Avenue. Along with the majority of the objectors to this scheme he welcomed the potential for the development of family homes on this site. However these proposals did not offer that. This was a potential C4 development masquerading as a C3 development. There were minimal changes to the previously refused C4 development and some of their concerns arose from this.

If Members did not defer the application residents asked that permission be refused on the following grounds:-

The site assessments included in the application only covered the site itself with no recognition that there had been significant movement of nearby properties and the roadway in the past. No assessment had been made of the impact of the proposed works on adjacent properties, particularly during soil compaction and potential

piling. The Council should have photographs of the crevasse in The Avenue which occurred a number of years ago.

The proposal was contrary to Policy H9 of the City of Durham Local Plan. Although not formally a property in multiple occupation it had the potential to be occupied by between 21 and 42 residents, based upon the submitted designs. This could affect the amenity of nearby residents.

The properties were considered to be poorly designed; there was limited natural light to the basement living areas; there appeared to be insufficient headroom in the attic flats; there was only one means of egress for the flats from the property. It was contended that the development did not fulfil the requirements of retained Local Plan Policies Q1, Q2 or Q8.

Arrangements for the disposal of refuse and recycling did not fit current collection arrangements around The Avenue. Recycling vehicles could not access the rear of the properties and all bins/boxes would need to be moved over 300m from the rear to the front of the property. A mess was currently created with students properties on the front.

The flats had limited off street parking, with 2 places for 12 flats. The report made much of the availability of public transport in close proximity. However given the target group for the sales/letting of the properties, then it was probable that the owners/tenants would want car access for themselves or visitors. Current parking charges were £6 per day.

Despite protestations to the contrary these properties might still be let in the student market. There was a distinct parallel with Juniper Way where the same contentions were made. The report quoted a student population in The Avenue of 44%, however in the lower part of the road it was in excess of 50% and there was a 24 place student unit owned by the same landlord adjacent to the site.

Objectors were concerned about the management of the works during the building period as access to the site was extremely restricted and building activities had the potential for serious disruption to the adjacent properties from dirt and noise.

If the Committee was minded to approve the scheme then he asked that the conditions proposed be strengthened. The conditions should be significant, enforceable and enforced. These should include:-

- The developer should be able to support the contention that the market was for professionals. Given the sizeable local student population objectors questioned that assumption. In a similar vein to the McCarthy and Stone developments, a minimum age should be applied, of for example, 25 for tenants and buyers. Extant guidance on the use of planning conditions

stated that 'conditions can enhance the quality of development...by mitigating the adverse effects of the development'.

- Further site surveys should be made to address potential disturbance in adjacent properties and movement monitors should be put in place.
- The access roads to the rear of the site should be improved to handle the traffic during construction and repaired after the completion of the project.
- The construction management plan should have clear arrangements in place for residents to raise any matters during construction. This information should be clearly communicated to the owners of adjacent properties.
- The principles for the management of the property after occupation should be approved before approval was given to start on site. This should include a clear statement of the arrangements that would be made for managing the property, particularly its maintenance given experience of tenanted properties in The Avenue and their external appearance.
- Despite planning approval having been given on previous occasions no scheme had been taken forward. The appearance of the site had deteriorated. If the scheme was not to go ahead immediately then the developer should be required to landscape the site. If, as may be possible, the land was sold once planning permission had been obtained all the conditions should be applied to the new owner.

The Planning Officer responded to the comments made by the local Member and Mr Priestly on behalf of the objectors. Addressing the concerns about the potential for the property to be occupied by students, the Officer clarified the use classes C3 and C4. The order defined a C4 use class as a small shared house occupied by between three and six unrelated individuals who shared facilities. C3 occupation was defined as a single person, two people or a family, and the layout of the proposed development was consistent with this use class, and should be considered on that basis.

The concerns about the potential for land disturbance and movement would be addressed during the construction phase. Building control consent would be required which would ensure the safe development of the site and proposed condition 3 would address any potential for land contamination.

Mr Priestly had referred to the design of the properties and in particular the basement living areas and the attic flats. The Planning Officer accepted that there was limited light in the basement flats due to the loss of the windows on the side elevation of 24 The Avenue, however to compensate a light well was proposed. Two dormer windows would provide additional headroom in the roof space. In terms of the collection of waste, the layout plans displayed collection areas to the rear of the property. As with other properties on The Avenue residents would be provided with bags for recyclable waste which would be placed to the front of the building for collection.

The location was deemed to be sustainable by Highways Officers who had not required the provision of additional parking spaces or permits.

Management of the property after occupation would be addressed by conditions but it would not be reasonable to impose an age restriction on occupants.

The Solicitor – Planning and Development confirmed that it would be unreasonable to restrict the type or age of occupants. Concerns had been expressed that the applicant may implement a C4 development, however the Solicitor explained that this would constitute an unauthorised change of use and would be dealt with through enforcement action. The untidy condition of the land, although not a matter for this Committee in the determination of the application, could be addressed through separate planning powers if necessary.

Mr P Copeland, the applicant's agent was invited to address the Committee and explained that extensive consultation with local Estate Agents had given the applicant confidence that a scheme of high end residential apartments for professionals was commercially viable. The front elevation of the building would look attractive in the street. The layout was use class C3 and he had worked closely with Planning Officers throughout the planning process. He advised that he was a resident of Durham City.

Councillors Maitland and Iveson noted that only 2 parking spaces were provided yet the applicant aimed to attract professional people who were likely to own cars. The Members were informed that Highways Officers supported the proposal for 2 parking spaces in view of the sustainable location of the site in Durham City, and supported the provision of cycle storage to the rear.

Councillor Clark noted that the staircase to the gable end of 24 The Avenue was to be retained, and asked what the separation distance was between the two buildings. The Member was concerned about the potential for anti-social behaviour and the safety of residents using the staircase. The Police had objected to the application but their concerns had been explained as being related to a desire for no more student accommodation. The Member was referred to the site plan which showed that the separation distance between the gable end of both walls was minimal.

Councillor Clark asked if additional lighting would be provided between the buildings, and also about the means of escape in case of fire. The Member was advised by the Planning Officer that the development would be required to meet Building Regulations for Fire Safety. Mr Copeland explained that there was already external lighting at the doorway on the gable end which would be retained, but that additional lighting would be provided if necessary during construction.

Councillor Temple also noted the objections of the Police which he felt had not been addressed. The Police had advised that this was a difficult area to police yet there may be a need to police the location given the narrow alleyway. The applicant's statement had advised that the flats would be occupied by professional people but there seemed to be a mismatch between the applicant's aims and the potential outcome, given that these were small dwellings with limited parking. In

view of these issues he considered that the development would have an adverse impact on the amenity of residents, and the application may therefore be contrary to Policy H13 of the City of Durham Local Plan.

Given the comments of the Police about the area Councillor Iveson sought further assurance that the applicant was confident that he could attract professional people. Mr Copeland reiterated that he had been assured by local Estate Agents that the scheme was commercially viable.

Councillor Clark felt that there were no grounds to refuse the application and therefore **moved** approval. However to mitigate the potential impact on the amenity of residents, the motion was subject to the inclusion of strengthened conditions requested by residents regarding improvements to the rear access lane for inclusion in the construction management plan (condition 13), and for a meaningful method of communication for residents to raise any matters during the construction period (condition 14). Councillor Manchester **seconded** Councillor Clark's motion.

Councillor Davinson asked Officers to ensure that the construction traffic remained on site, given the narrow rear access lane and the need for residents to gain access to their garages at all times. The Planning Officer advised that this was addressed in condition 13 which specified that the plan should include details about deliveries, and the location of the parking of people working on site, which was expected to be located away from the application site.

Resolved:

That the application be approved subject to:-

- i) the conditions contained in the report and the following amendments to conditions 13 and 14:-

13. Before the development commences a construction management plan shall be submitted to the Local Planning Authority and approved in writing. This plan shall include the details of the hours of operation, the management of all construction vehicles, deliveries and the location of the parking of people working on the site, which shall be expected to be located away from the application site, together with details of a contact person for local residents and the Local Planning Authority in the case of any site management issues during the construction phase. The development shall then be undertaken in accordance with the approved construction management plan.

Reason: In the interest of residential amenity in accordance with Policy Q13 as both The Avenue and particularly the rear access track are restricted for access and required to provide access for local residents at all times.

14. The development hereby approved shall not be occupied until a scheme for managing the accommodation has been submitted to, and

agreed in writing by the local planning authority. Such a scheme shall include details of building maintenance, security measures, and liaison practices with residents. The liaison practices with residents shall include details of a contact person for the management company and details of which residents/ community group(s) will be notified, as well as how any future changes in the details will be communicated. Thereafter, the development shall only be occupied in accordance with the approved scheme.

Reason: In the interests of residential amenity in accordance with Policy H13 of the City of Durham Local Plan 2004;

- ii) the completion of a Section 106 legal agreement to secure the provision of £1000 per dwelling for a contribution to play space and amenity space within the ward.

Councillor Freeman entered the meeting during the presentation on the following application and therefore took no part in the discussion or voting.

b DM/17/02274/FPA - 16 Bradford Crescent, Gilesgate, Durham

The Committee considered a report of the Planning Officer regarding an application for change of use from a family house C3 to C4 house (4 bed) in multiple occupation (for copy see file of Minutes).

The Planning Officer gave a detailed presentation on the application which included photographs of the site. Members had visited the site and were familiar with the location and setting.

Councillor Corrigan referred Members to page 22 of the report where Officers had made much of the relevant paragraphs of the National Planning Policy Framework. As with much legislation and policy, interpretation as to weighting was critical in making planning decisions and as such care must be taken with analysis.

Much was made in the report of the over-riding message that new development that was sustainable should go ahead without delay – however it was clear from this application that this was not a new development at all – the property itself was over 60 years old and having been used as a bail hostel up until recently the property had been used for multiple occupation. The comments in the report could therefore be discounted.

The reason that the application was called into the Committee by local members was due to the deep resentment that the local community had expressed at a range of previous public meetings related to planning applications. Planning Officers experienced the aggression and unrest that a previous application for a development on the estate had caused. That application was withdrawn in the light of the possibility of further anti-social behaviour and it was Councillor Corrigan's contention that this application would be viewed by the neighbourhood in a similar light and had been submitted at an inopportune time, before the problems being experienced by residents had been adequately addressed by the Council and other agencies.

In this respect the NPPF provided reasons for turning down an application as follows:-

Paragraph 17 stated that 'within the overarching roles that the planning system ought to play, a set of core land-use planning principles should underpin both plan-making and decision-taking'. These 12 principles included finding ways to enhance and improve the places in which people lived their lives. In this application there was no positive benefit to the community.

Paragraph 56 attached great importance to the design of the built environment. Good design was a key aspect of sustainable development, was indivisible from good planning, and should contribute positively to making places better for people. It was possible that the application would have a detrimental effect on the community.

Paragraph 58 noted that planning policies and decisions should aim to ensure that developments 'created safe and accessible environments where crime and disorder, and the fear of crime, did not undermine quality of life or community cohesion'. This was not the case given the response of the local community.

Paragraph 69 indicated that planning policies and decisions, in turn, 'should aim to achieve places which promoted safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion'. There was nothing in the report to contradict the possibility of increased anti-social behaviour within the community should this development go ahead.

On this basis the Member encouraged colleagues to take her objections and concerns into consideration. Councillor Corrigan **moved** refusal of the application.

The Planning Officer responded to the points made by Councillor Corrigan. Members were advised that the application also had to be considered within the Council's Planning Policy Framework. In accordance with the aim of the NPPF to promote mixed communities, the Council's Interim Policy stated that applications for C4 development would not be supported if more than 10% of the total number of properties within 100m of the application site were also in use as HMO's. The percentage level in this location was lower than the threshold and accorded with the Policy, and should therefore be permitted subject to there being no detrimental impact on residential amenity.

This property had not been occupied as a typical family home, but by individuals in the judicial system or single homeless people, and this had led to complaints from residents. When an application for a Certificate of Lawfulness had been submitted by the applicant there was insufficient evidence to demonstrate that the property was already a House in Multiple Occupation. However, the scheme proposed mixed accommodation and the agent currently managed student accommodation, and it was felt that there was no evidence to suggest that the proposed HMO would be materially more harmful in terms of loss of residential amenity or car parking.

Councillor Temple referred to the applicant's statement which advised that the property already had the appropriate approval for its current use as a bail hostel. The Member asked if the property could therefore remain as a bail hostel if the

application was refused, or if the building was not currently being used appropriately, the application would legitimise a potential enforcement situation.

The Planning Officer responded that prior to the implementation of the Article 4 Direction in September 2016, the dwelling could be occupied as either a C3 or C4 use class without consent. A bail hostel was occupied by three or more people with shared facilities but as the applicant had been unable to provide evidence of this occupation it had not been possible to determine the use class. This application sought to regularise the situation and although the end users of the property were unknown the application must be considered on the basis of C4 use.

In response to a question from Councillor Clark, the Member was informed that Management Plans were implemented for larger accommodation; this property was a family-sized home.

Councillor G Bleasdale **seconded** Councillor Corrigan's motion to refuse the application.

The Solicitor clarified with Members the exact reasons for the motion to refuse the application and advised that paragraph 56 of the NPPF would not be a sustainable reason as it was about built development, whereas the application was for a change of use. Members accepted this advice and it was:

Resolved:

That the application be refused for the following reasons:-

The change of use from a C3 family house to a C4 house in multiple occupation would not provide a positive benefit to the community, is considered to detract from the residential amenity of the area by virtue of noise and disturbance to residents from additional comings and goings, additional traffic movements from a dwelling that has no off street parking and an increase in crime and disorder and a fear of crime and disorder. For these reasons the application is not considered acceptable and is considered to be contrary to paragraphs 17, and 58 of the NPPF and policy T1 of the City of Durham Local Plan 2004.

c DM/17/02276/FPA - 58 Churchill Square, Gilesgate, Durham

The Committee considered the report of the Planning Officer regarding an application for the change of use from C3 dwelling (previously used by housing users within the justice system and by a housing charity supporting young people with housing needs) to C4 house in multiple occupation (for copy see file of Minutes).

The Planning Officer gave a detailed presentation on the application which included photographs of the site. Members had visited the site and were familiar with the location and setting.

Councillor Corrigan **moved** refusal of the application on the grounds that the application would be contrary to paragraphs 17, 56 and 58 of the NPPF, and Policy T1 of the City of Durham Local Plan. The application would have no positive benefit

for the community, and given the response from the local community about anti-social behaviour, the fear of crime and crime and disorder would increase in the area. Traffic movements would increase with no off-street parking provided. Councillor Freeman considered that the application would have a detrimental impact on the amenity of residents within the area, contrary to the City of Durham Local Plan Policy H13, and this was included as an additional reason for refusal in the motion. Councillor Bleasdale **seconded** the motion to refuse the application.

Resolved:

That the application be refused for the following reasons:-

The change of use from a C3 family house to a C4 house in multiple occupation would not provide a positive benefit to the community, is considered to detract from the residential amenity of the area by virtue of noise and disturbance to residents from additional comings and goings, additional traffic movements from a dwelling that has no off street parking and an increase in crime and disorder and a fear of crime and disorder. For these reasons the application is not considered acceptable and is considered to be contrary to paragraphs 17, and 58 of the NPPF and policies H13 and T1 of the City of Durham Local Plan 2004.