DURHAM COUNTY COUNCIL

AREA PLANNING COMMITTEE (CENTRAL AND EAST)

At a Meeting of **Area Planning Committee (Central and East)** held **remotely** on **Friday 26 June 2020** at **9.30 am**

Present:

Councillor J Clark (Chair)

Members of the Committee:
Councillors D Brown, M Clarke (substitute for R Manchester), K Corrigan, B Coult, M Davinson, D Freeman, A Gardner, A Laing (Vice-Chair), J Maitland (substitute for G Bleasdale), R Manchester, J Robinson, J Shuttleworth and P Taylor

Also Present:
Councillor L Brown

1 Apologies for Absence

Apologies for absence were received from Councillors G Bleasdale, I Cochrane, K Hawley and S Iveson and R Manchester.

2 Substitute Members

Councillor J Maitland substituted for Councillor G Bleasdale and Councillor M Clarke substituted for Councillor R Manchester.

3 Minutes

The minutes of the meeting held on 10 March 2020 were confirmed as a correct record by the Committee and would be signed by the Chair.

4 Declarations of Interest

There were no Declarations of Interest submitted.

5 Applications to be determined by the Area Planning Committee (Central and East)

a DM/20/00865/FPA - 11 Cedar Drive, Durham, DH1 3TF

The Planning Officer, George Spurgeon, gave a detailed presentation on the report relating to the abovementioned planning application, a copy of which had been circulated (for copy see file of minutes). Members noted that the written report was supplemented by a visual presentation which included photographs of the site. The application was for the change of use from a C3 family house to a C4 house in multiple occupation (HMO), demolition of existing garage and replacement with two storey side extension and single storey extension to rear and was recommended for approval subject conditions.

The Planning Officer, GS explained that it was important to note the application site fell outside of the Article 4 Direction area and therefore planning permission was not required for the change of use from a C3 property to a C4 HMO. He added the Council had no control as regards the use of the property as C4 HMO and therefore the potential impacts of that use could not be taken into account in the consideration of the application before Committee. He clarified as regards paragraph 48 of the report, that delegated authority had been made to consult on a possible new Article 4 Direction which would cover the application area, however, that consultation had not yet been undertaken and therefore currently there was not the delegated authority to create a new Article 4 Direction.

The Chair thanked the Officer for his presentation and update and asked Parish Councillor Grenville Holland, representing the City of Durham Parish Council to speak in relation to the application.

Parish Councillor G Holland thanked the Chair and Committee and noted that there was a dilemma in respect of the application in that the use was stated as C3 to C4 and therefore he noted that it must be recognised that this was the only intention for the property and one must not let the application slip through simply because of the absence of an Article 4 Direction in the area. He noted the Parish Council believed that there were five reasons why the application should be refused. Firstly, it was contrary to Saved City of Durham Local Plan Policy H13 because it fails to promote the creation of sustainable, inclusive and mixed communities and maintain an appropriate housing mix in this part of Durham City using the same criteria as those we use in the city centre. Parish Councillor G Holland explained that H13 clearly stated 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*".

He noted that it was not just the appearance; it was the character and amenities as well and it was the adverse impact on the character and amenities of this small housing estate that should concern us.

Parish Councillor G Holland noted secondly the Saved Local Plan Policy H9, which was dedicated solely to HMOs, stated that: "*The sub-division or conversion of houses for multiple occupation, or proposals to extend or alter properties already in such use will only be permitted provided that:*
1. Adequate parking (in accordance with policy T10), privacy and amenity areas are provided or are already in existence; ……..
2. It will not adversely affect the amenities of nearby residents"

He noted that, as the residents would tell Committee, adequate parking could not be provided for the proposed number of individual occupants for this property on Cedar Drive, with up to six parking slots being needed for six individual tenants, student or otherwise, because there was no authority to limit it to two. He added that residents would also tell Committee that the additional HMO will adversely affect their amenities, with the application certainly failing to meet the test of Saved Local Plan Policies H9 and T10 in terms of privacy, amenity and parking and should therefore be refused.

He explained thirdly, Saved Local Plan Policy Q8 required that new developments must offer: "*Good quality preapplication discussion to provide adequate amenity and privacy for each dwelling, and minimise the impact of the proposal upon the occupants of existing nearby and adjacent properties*". He noted that Policy was endorsed in the NPPF which promoted pre-application engagement on applications, Section 39 of the NPPF recommending that: "*Good quality pre-application discussion enables better coordination between public and private resources and improved outcomes for the community*". He continued the Parish Council could find no evidence of any pre-application discussions having taken place in the preparation of this application and felt for such a sensitive issue that was not good enough and added that perhaps the residents would explain how the proposed development fails the test of Q8.

Parish Councillor G Holland explained that, fourthly, the application was also contrary to the NPPF's stated aim in paragraph 127 which required the creation of "*places with a high standard of amenity for existing and future users*". He noted existing residents knew just what awaited them if the conversion to yet another HMO was allowed to go ahead.

He explained the fifth reason was that Paragraph 91 of the NPPF encouraged policies that "*achieve healthy, inclusive and safe places which are safe and accessible, so that crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion*".

He noted that he was sure that the residents would tell Committee about the detrimental impact that they have already suffered from the HMOs on Cedar Drive and therefore the application failed to meet that guidance and was therefore contrary to Paragraph 91 of the NPPF.

Parish Councillor G Holland summarised that it was felt the application failed five clear tests associated with the development of an HMO in a residential environment and should therefore be refused because it was contrary to Local Plan Policies H9, H13, T10 and Q8 and NPPF paragraph 91 and section 39. He concluded by noting that, in coming to a decision, the Committee may be tempted to back away from refusing the application simply because of the threat that it may go to Appeal, however he noted that over the last 12 months there had been six Appeals against refusals of HMOs in the city and the Inspectorate has supported the County Council and its residents and turned down every single one of them of them.

The Chair thanked Parish Councillor G Holland and asked Local Member Councillor L Brown to speak in relation to the application.

Councillor L Brown thanked the Officer for his very thorough report to Committee, however, she noted she must disagree with him on one point regarding permitted development. She explained that in her many years of attending Planning Committees she had always been told by Chairs and Committee Solicitors alike that it was paramount to only comment on the application that was before the Committee on that day. She noted that therefore she would be commenting on the whole of the application that was before Members, part of which was for "*Change of Use from a C3 family house to a C4 HMO*". She reminded the Committee that the application was validated by Planning Officers in its present form.

Councillor L Brown noted she was today supporting residents in their objections to the application, there being considerable local feeling against this proposed development as could be seen by the number of objections and, having listened to the residents, she hoped to give a voice to those who could not speak to the application either because of time or technology constraints. She noted that the application was in part of the Farewell Hall estate that was built in the mid-20th century and that many of the residents would agree that they were not in the first flush of youth and had raised their children in that quiet part of south Durham City and were hoping to spend their retirement years in the area, enjoying the tranquillity. She added that there were already assimilated two student houses into the close community in this part of Cedar Drive, both located near to number 11. She noted that residents would no doubt explain how the existing HMOs had already affected them when they address the Members of the Committee.

Councillor L Brown noted that City of Durham Saved Policy H9 addressed the provision of HMOs in Durham City and added that the application was in breach of both Parts 1 and 2 of that policy, Part 1 stating that applications would only be approved if adequate parking was provided. She noted the HMO provision was for six students and yet the property had only one garage and parking for one car on the drive. She added that any other cars for residents, and the inevitable visitors, would park on a narrow street which already suffered from parking problems associated with the High School opposite and would possibly have problems with overspill student parking when the two new colleges were up and running. She noted there was no Parking Permit scheme in the area to mitigate the effects of thoughtless parking. Councillor L Brown explained that saved policy T1 backed up policy H9 in this case by stating that permission would not be granted for a development which would generate traffic which would have a significant effect on the amenities of the residents. She asked Members to bear in mind that quite apart from personal vehicles, six more people would generate significant traffic by shopping online both for food and goods, something which long-term residents tended not to do, but which experience showed that students regularly used. She noted Part 2 of policy H9 stated that permission will only be granted for an HMO if it did not adversely affect the amenities of nearby residents. Councillor L Brown noted that, as a resident of a student area herself, the Committee could believe her when she said the student lifestyle was diametrically opposed to that of local residents and did adversely affect residents' lives.

She noted she had already mentioned deliveries of goods and added there was also the regular incidence of anti-social behaviour (ASB) which was higher in student areas than areas where family houses predominated. She noted this was not intentional, and that we have all been young and empathy was something that comes with age and experience. She noted that Police statistics would confirm that the risk of crime was higher in student areas and small, high-value items were a staple of student life and add to that empty houses five months a year, and a somewhat cavalier attitude to security, and one could see why.

Councillor L Brown explained a final issue was the maintenance and upkeep of student houses which was honoured more in the breach than in the observance. She noted she had lost count of the amount of management plans she had seen in her time, with not one of them being enforced or indeed having proved to be enforceable. She noted that this was not leading to the healthy, balanced, safe and sustainable communities which paragraphs 62, 91 to 95 and 192 of the National Planning Policy Framework sought to promote adding those paragraphs were in place to safeguard the community in areas like Cedar Drive.

She concluded by asking that the Committee refuse the application for the reasons stated and the fact the adverse impacts on the residents of approving the application would significantly and demonstrably outweigh the benefits, of which there were none.

The Chair thanked Councillor L Brown and asked Mr Robert Williams, local resident, to speak in objection to the application.

Mr R Williams noted he spoke on behalf of the residents of Farewell Hall and noted the large number of objections from 27 local residents, their Local County Councillor, their Parish Councillor and the City of Durham Trust. He noted the area was quiet, comprising of family homes that helped provide the balance against areas already dominated by student housing. He explained that there were concerns in terms of the extension aspect of the application, however, it was felt the change to an HMO for 6 adults was of deep concern for the community. He noted that firstly there would be a significant loss of amenity, with already two HMOs on Cedar Drive within a stretch of six houses and the extension of 11 Cedar Drive would place 11 adults in two adjacent properties in a family area. It was noted that 13 Cedar Drive had already been extended and was occupied by five or six students, with the neighbour having noted examples where they had to go out in the early hours of the morning in an attempt to calm a drunk and rowdy party and ask if cars could be moved to allow others access to their driveways. Mr R Williams noted that when 13 Cedar Drive had been occupied by five professional temporary residents, there had been five cars parked on the street and this had resulted in the street being blocked and prevented bin collection for most of Cedar Drive. He added that 3 Cedar Drive had been converted to an HMO and had works to convert the front garden to allow off-street parking and, while significantly altering the character of the house, was recognition by one Landlord of the problems with parking on Cedar Drive. He noted that the proposed development at 11 Cedar Drive would clearly cause harm to the living conditions of residents of nearby family homes and would have an adverse impact upon the balance of the housing mix, damaging the cohesion of the Farewell Hall community and therefore was contrary to Policy H13. He added that the proposed development as an HMO would introduce noise, disruptive parking, issues relating to bin collection, erosion and loss of community spirit and neglect or disruption to the frontage of the property causing negative change to the character of Cedar Drive.

Mr R Williams explained that the Applicant had claimed two cars could be parked on the driveway, however, that would not solve the parking problem, with potentially six residents have cars.

He noted from the existing HMOs in the area, resident had learned there was no restriction on the number of cars and with Cedar Drive only being six metres wide with parking and drives on both side of the street, when parking was permitted on both side the width remaining was not sufficient to allow refuse vehicles or other large delivery vehicle to get along the street.

Mr R Williams noted that NEDL had not been consulted as regards the application, however, they would require access to their sub-station located further along Cedar Drive. He noted in summary that residents would wish for the application to be refused as the adverse impact of its resulting use would have on the community, another HMO within a stretch of six homes would add further disruption to the small neighbourhood of families, a mix of younger and older residents. He added that residents' experience was that the temporary occupants of such HMOs had no interest or regard for our balanced communities and had so far shown no regards for the welfare of residents in their conduct, blocking the street with their cars, and leaving their bins out obstructing the street. He noted the extensions and conversions to HMOs had no regard for the quality and character of the street. He concluded by noting that the residents of Farewell Hall would appreciate if the Committee could support local residents and refuse the application to protect the character of the estate, the quiet amenity of immediate neighbours and prevent traffic issues.

The Chair thanked Mr R Williams and asked the Senior Committee Services Officer, Ian Croft to read out a statement received from Mary Foy, MP for the City of Durham.

The Senior Committee Services Officer noted the statement from Mary Foy MP read as follows:

"*This application for an HMO is in an area of the city that remains mostly populated by families and elderly residents. As such, it is one of the few locations in what could be considered the city that has not seen a huge increase in the number of HMOs, although several have appeared recently. Although the conversion to an HMO does not require planning permission, and so cannot be considered by the Committee, there are however a number of concerns that my constituents have raised that they feel will fundamentally affect the local area in a number of ways.*

First, there is the issue of traffic. This application is for the demolition of an existing garage and the construction of an extension to the side and the rear of the property. The properties along Cedar Drive are semi-detached properties, with many having extended above existing garages, but none having extended to the rear. As such, if these properties are used as family homes, then there would usually be adequate off-street parking for these properties.

This application, however, proposes removing the garage but introducing six bedrooms to the property. As Cedar Drive is a narrow street where on-street parking would either block the road, or access to another property, it is hard to see how this was assessed as having adequate parking. Saved Policy T1 indicates that "The Council will not grant planning permission for development that would generate traffic which would be detrimental to highway safety and/or have a significant effect on the amenity of occupiers of neighbouring property." Given that this property will house six unrelated people, it is easy to see that this development could introduce an unacceptable level of vehicles to this street and will significantly affect the amenity of local residents.

Furthermore, H9 states that the conversion of properties will only be permitted if "it will not affect the amenity of nearby residents…" Given the traffic issue, and the fact that my constituents have reported that even with the small number of HMOs in the area, the disruption is such that they feel the need to move away from the area, this application for the development of the property to incorporate 6 bedrooms would breach this policy.

I am also aware of a number of other issues that have been raised by constituents, including the effect that the extension would have on the amenity of No.9 Cedar Drive through the loss of privacy and daylight. This would seem to be in contravention of policies H13 and Q9.

Ultimately, while there is no current mechanism to stop the conversion of this property into an HMO, it seems unlikely that this application for an extension would be proceeding without the intention to change the use of the property. Indeed, one more additional occupant to the property would push this property into the realm of a large HMO and require planning permission as this would then be Sui-Generis.

The Chair thanked the Senior Committee Services Officer and asked the Applicant, Ms Gabrielle Moore to speak in support of her application.

Ms G Moore thanked the Chair and noted that the intention was for the garage to be used and was included on the plans to be taken down and rebuilt as it did not have foundations sufficient to hold an extension above it. She added that the garage as included in the plans was four metres long which was long enough to park most cars and noted there was parking for two cars outside of the house, not going out onto the street. She noted that if one were to drive up and down Cedar Drive one would find it was a quite affluent area and the residents usually had two or more cars, typically more than a group of students would have, which Ms G Moore noted was her experience as a student landlord for 10 years. She explained that it was rare for more than one car per student household, and usually there was no car.

Ms G Moore noted she found Parish Councillor G Holland's representation to be very saddening and very shocking in prejudging that students would be involved in crime, she noted that in terms of her properties she had only ever had one incident involving the law and that had not been to do with students, it had not been a student property. She asked that people stop prejudging the students within our communities. In relation to comments from Councillor L Brown noting concerns as regards deliveries causing traffic in the area, Ms G Moore noted that residents traveling by car to a shop or themselves ordering goods for delivery equated to the same amount of traffic on the road. She noted that it had been pointed out that student properties were unoccupied for five months of the year as a problem and suggested that if there would then be peace and quiet and less traffic generated then she could not see the logic in complaints in that regard. As regards sui generis use of the property, Ms G Moore noted that if that was her intention for the property that would have been the permission she would have applied for, however, her student properties had large rooms for students and as her children were students she wanted the properties to be as she would want them for her own children. She noted that if one were to make the property into a seven bedroom property, it would require a living room and therefore it would not be possible and was not her desire in any case. She asked that the Committee be assured it would never be more than six bedrooms and the garage was intended for use as a garage.

Ms G Moore noted that it had been mentioned that there were no rear extensions to nearby properties, however, if one checked on the Council's website you could find that 4 Cedar Drive had a much larger extension to the rear than the one proposed within her application. She noted she had friends that lived nearby, and she did not want them to have "an embarrassment of a house" in their street. Ms G Moore noted an example of friends in their late 80s and 90s that lived in another part of Durham where the neighbouring property had come up for sale and they rang her to ask her to purchase the property as they knew she would look after the property and deal with any issues with students should they arise. She noted an issue with another student property she owned having been an opaque window not being sufficiently opaque, so a blind was installed. She noted that she would appreciate if students would not be prejudged, highlighted that a mixed community was just that, residents that worked, those of low-income and students, and noted that she found the snobby attitude against students quite upsetting.

The Chair thanked Ms G Moore and asked the Officers to respond to the points raised by the speakers.

The Planning Officer, GS noted that in respect of Policy H9 he could clarify that it was not relevant as the change of use did not require planning permission and the extension was not to an existing HMO, the property currently being in C3 use and therefore the policy did not apply and the impacts not considered. In respect of previous Appeals, he noted the application was different in that it fell outside of the Article 4 Direction, the successful Appeals being for properties within the Article 4 Direction area and added that each application should be judged upon its own merits. The Planning Officer, GS noted that while seeking pre-application advice was preferable, it was not a requirement for Applicants to seek such advice and an application would not be looked upon less favourable should such pre-application advice not be sought.

The Solicitor – Planning and Development, Neil Carter noted that in respect the change of use, it was listed as part of the description of the application and therefore if the permission was approved, the permission would cover the change of use. He noted the position that Officers had taken was that as the change of use from C3 to C4 was permitted development, a deemed planning permission, then the principle of that use was established and provided a strong fallback position for the Applicant. He noted this was why the Planning Officer focused on issues with the built form of the development within his report.

The Highway Development Manager, John Mcgargill noted that Objectors had suggested parking provision in curtilage in line with the number of bedrooms and added this would not normally be the case for any other type of development, for example three-bedroom properties did not require three parking spaces, four-bedroom properties did not require four spaces. He noted that numbers for greater numbers of bedroom were not within the Council's parking standards and added there were two in-curtilage parking spaces, together with the garage albeit at five metres it was not considered. He explained that Officers had looked at the two spaces being provided, noted existing HMOs in the area, and looked at the potential impacts of the application including parking on the street, on the amenity of neighbours and whether the application would then be contrary to saved Local Plan Policy T1. He noted that Officers had felt in general that it would not be contrary to T1 in that car ownerships within the Area Action Partnership (AAP) area was not 100 percent, rather was around 75 percent, and one would not expect 100 percent of students, especially within Durham City, to own a vehicle. The Highway Development Manager noted there was a bus stop at the top of South Road which could be accessed from the rear of the property and there had been reference to the property being served by delivery vehicles so therefore car ownership may not be as high as being suggested. He reiterated he did not feel the application was contrary to T1 as it was not a significant effect on the amenity of neighbourhood if there was an additional car parked on the street.

He added that street was 5.5 metres wide and therefore sufficient to enable parking of cars alongside the footway and allow for service and emergency vehicles to pass parked cars. He noted that there was a reliance on responsible parking so that there was not an obstruction, however, this would be no different to any other street. The Highway Development Manager noted there had been reference by speakers that the application would be contrary to Policy T10 which was contradictory as that policy sought to limit the number of parking spaces provided in order to promote sustainable modes of transport. He reiterated that it was the Officers' view that the application was in sustainable location with a bus stop nearby. The Highway Development Manager noted that there had been a query in terms of Policy H9 and adequate parking an impact upon amenity in the area. He shared a street view of Cedar Drive with the Committee on screen and noted that the position of Officers was that the provision of off-street and on-street parking was such to allow emergency and service vehicles to pass any parked vehicles.

The Chair thanked the Officers and asked the Committee for their comments and questions on the application.

Councillor P Taylor thanked the Officer for an excellent report and the Local Member and Parish Councillor for their representations. He noted he felt some confrontation from the Applicant and added he was against the proliferation of business opportunities in terms of student properties within residential areas and would look to resist such applications. However, he noted that he was struggling in terms of planning policy reasons and therefore refusal would be very difficult. He reminded Members that it was the Committee's decision to make, however he felt, while not afraid of any Appeal of a decision, unfortunately a case for refusal could not be made.

Councillor J Shuttleworth noted he agreed with Councillor P Taylor in respect of the proliferation of student properties and noted residents of the city were sick and tired of HMOs. He added that HMOs were destroying the city centre, noted the many purpose build student accommodations within the city and felt that there was a degree of pandering to the University. He noted it was not fair to residents that lived in the city, used the shops and paid money to the Council, students did not, and he was of a mind to let the application go to Appeal.

Councillor A Gardner noted he worked for St. Mary's College, Durham University and explained he was therefore aware of how students may act on occasion within some of the HMOs. He understood the position as set out be the Applicant, students were requiring homes while they studied at the University, which itself had expanded at a rapid rate, and he added that there was a balance required in terms of protecting local residents.

He thanked the Solicitor – Planning and Development for the clarification in terms of the change of use, and while he would like to stand with residents, Councillor A Gardner felt any refusal would be overturned on Appeal

Councillor D Freeman thanked the Chair and noted, like the Members who had already spoke, he had immense sympathy with the residents' position. He asked as regards why Policy H9 could not be applied in this case, feeling that it was relevant with the change of use to an HMO. He felt H9 and H13 were grounds for refusal and it was not clear why H9 could not be used as it was a student property within a small street affecting the balance of the area and the amenity of residents.

The Planning Officer, GS noted Policy H9 referred to changes of use to sub-divide houses, which would include C4 HMOs as well as extensions to existing HMOs. He reiterated that the application site was outside of the Article 4 Direction area and therefore planning permission for change of use from C3 to C4 was not required, it being permitted development. In respect of the extensions, it was clear the policy referred to existing HMOs, with the current property not being an HMO, therefore Policy H9 did not apply.

Councillor M Davinson asked if the Highway Development Manager could comment in terms of similar applications where parking permits were issued, or otherwise. He noted a cycle store within the plans and asked for further information in relation to the 75 percent car ownership within the area and guidance and parking standards.

The Highway Development Manager noted that parking standards referred to properties up to four-bed, with no specific requirements for those beyond four bedrooms. He noted the usual in-curtilage provision was two, with this being met by the proposed development. He noted the question of "adequate" parking then required consideration of issues such as car ownership levels and noted if demand was such for a car parking space per bedroom of a property the streets would be blocked. He explained that even with car ownership of 75 percent, that would represent four cars, with two in-curtilage and two parked on the street, with Officers believing there was adequate space available to park responsibly.

Councillor A Laing noted that as Members were not able to find policies in order to refuse the application, she would move that the application be approved.

Councillor M Davinson asked as regards paragraph 54, where Councillor L Brown had requested a construction management plan (CMP) be put in place should the application be approved.

The Planning Officer, GS noted that he had noted within his report the suggestion from Councillor L Brown as regards the inclusion of a CMP or similar to protect residents during the construction phase. He noted that Officers did not feel that was necessary in order to make the application acceptable as CMPs were generally for larger types of development which would take place over larger timescales. He noted CMPs would normally include details relating to issues such as hours of operation and locations for the unloading and storing of materials. He noted the report had suggested the inclusion of an informative to advise the Applicant as to what reasonable construction working hours would be and Officers felt a condition in this respect was not required.

Councillor M Davinson suggested that a condition in respect of hours of operation and protecting against the possibility of the street becoming blocked would be beneficial and that the Planning Officer, GS could look to speak as regards the necessary times and requirements. The Solicitor – Planning and Developer noted that whether such a condition was necessary was for Members to decide, noting it was the opinion of the Planning Officer that it was not necessary.

Councillor P Taylor had similar concerns in respect of the construction phase and agreed with having levels of control to protect the amenity of residents.

Councillor A Laing recalled at previous Committee meetings similar conditions as alluded to by Councillor M Davinson had been added by Members and would agree for that to be the case for this application.

Councillor J Robinson seconded the motion for approval, with the CMP condition to take Members concerns into account, noting for them to be delegated to the Officer, in consultation with the Chair and Vice-Chair of the Committee. Councillor D Brown noted he agreed with the comments as made by Councillor J Robinson.

RESOLVED

That the application be **APPROVED** subject to the conditions set out within the report and an additional condition relating to a Construction Management Plan, the details of which to be delegated to the Planning Officer in consultation with the Chair and Vice-chair of the Committee.

b DM/20/00262/FPA - 75 Whinney Hill, Durham, DH1 3BG

The Planning Officer, Lisa Morina, gave a detailed presentation on the report relating to the abovementioned planning application, a copy of which had been circulated (for copy see file of minutes). Members noted that the written report was supplemented by a visual presentation which included photographs of the site. The application was for the erection of part two-storey/part single-storey extension at rear of existing small HMO (use class C4) and was recommended for approval subject conditions.

The Planning Officer, LM explained the property was not listed, though fell within the City of Durham Conservation Area and was in existing C4 HMO use prior to the Article 4 Direction coming into effect and therefore had not required permission at that time. She noted the Highway Section had noted no objections and the property was within a controlled parking zone. She noted there had been no response from Durham Constabulary and no objections from the Environment, Health and Consumer Protection, they did not consider the proposals to constitute a statutory nuisance. She added that the Design and Conservation Section considered the proposal would have a neutral impact, Spatial Policy provided data showing that 39.6 percent of properties within a 100 metre radius were student properties, with the HMO Team offered no objections. The Planning Officer, LM noted objections had been received from the City of Durham Parish Council, Whinney Hill Community Group and the City of Durham Trust, with a summary of their representations being set out within the report.

The Planning Officer, LM noted that the impact of the application on the residential area was felt to be acceptable and the proposals met the requirements of Local Plan and NPPF Policies. She noted that while there was some conflict with the Interim Policy on Student Accommodation it was not felt a refusal could be sustained on the basis the housing mix would remain unaltered. She concluded by noting the objections and concerns raised had been taken into account and not felt of sufficient weight to justify refusal and therefore the recommendation was for approval, subject to the conditions as set out within the report.

The Chair thanked the Planning Officer, LM and asked Parish Councillor John Ashby representing the City of Durham Parish Council to speak in relation to the application.

Parish Councillor J Ashby thanked the Chair and Committee for the opportunity to speak on behalf of the City of Durham Parish Council. He noted that the Applicant claimed that his proposal did not come under the Article 4 Direction or interim policies, with the Parish Council believing he was wrong and that it did.

Parish Councillor J Ashby added that the Applicant also stated that no significant consultee objections have been received, evidently, objections from the local community and the Parish Council were of no significance to him, the Parish Council being a Statutory Consultee. He explained that the prevailing statutory development plan is the City of Durham Local Plan 2004, with Saved Policy H9 only allowing extensions if adequate parking was provided and the amenity of nearby residents was not adversely affected. He added that the expansion of 75 Whinney Hill into a six-bedroom student HMO in this area would increase the presence of people whose life-styles were different to year-round residents and so increase the very threat to nearby residential amenity that Part 2 of Saved Policy H9 was designed to prevent.

Parish Councillor J Ashby noted that the parking situation in Whinney Hill was dreadful during University term-time, with many cars parking on the pavements and verges and therefore for the Highway Officers to say that "*any additional cars brought to the site would be subject to parking charges therefore additional demand would be limited due to this reason*" ignored the actual situation on the ground during term time. He added that the proposal was thus also contrary to Part 1 of Policy H9 and should be refused on those grounds.

It was explained that Parish Councillor J Ashby felt his principal purpose speaking at Committee was to give a fully up-to-date account of the policy position in respect of this application. He noted the County Council's Interim Policy on Student Accommodation included opposition to extensions to HMOs in areas where over 10 percent of properties were student HMOs, with the Interim Policy continuing to carry weight. He noted that, having lost the Appeal at 40 Hawthorn Terrace referred to by the Officer, the County Council in its submitted County Durham Plan (CDP) policy for HMOs proposed to drop the bit that opposed extensions to existing HMOs. The Council's Planning Officers had therefore been granting approvals to extensions under delegated powers. He informed Members that the County Council had now reversed that temporary stance and had formally proposed a Main Modification to the Submitted Plan to restore the restriction on extensions that result in additional bed spaces to existing HMOs. He explained that it was accompanied by proposed new text in the County Plan as follows: "*it is recognised that an extension to an HMO which results in additional bed spaces and therefore potentially accommodates more students would introduce further students into an area where there are already concerns about the impact of the student population on the residential amenity of non-student residents. For this reason, extensions to HMOs to accommodate bed spaces where the 10% tipping point is exceeded will not be supported*".

Parish Councillor J Ashby noted they were powerful and very welcome words and put the County Council in a strong position.

He added that the Main Modifications constituted formally adopted County Council policy and therefore were to be afforded the significant weight of being very up-to-date and in response to the Examination in Public Inspector's specific question. He noted that furthermore, the Inspector had informed the County Council that the proposed Main Modifications were necessary for making the Plan sound.

Parish Councillor J Ashby referred to the key argument put forward by the Officer, that extensions to HMOs were acceptable, and noted that it was entirely negated by the County Council's strong stance expressed in the quote from the Main Modification. He added that indeed, the Committee had recently rejected proposals by the Applicant for HMO extensions at 17 and 18 Providence Row on the grounds set out in that quote.

He noted in the case of 75 Whinney Hill, within a 100 metre radius some 40 percent of properties are student accommodation exempt from council tax charges. He explained that this was well in excess of the proportion of student properties allowed under the Interim Policy and the strengthened County Plan policy. He added that with 40 percent of properties being HMOs that meant that 60 percent were still year-round family houses and noted it was wrong of the Applicant to claim that the area had, generally, high student housing concentration implying that it was too far gone to be worth trying to retain as a balanced community.

Parish Councillor J Ashby explained that the Parish Council concluded that this application should be refused on the weighty grounds of being contrary to Saved Policy H9, the Interim Policy on Student Accommodation and the proposed Main Modifications to CDP Policy 16.3, which he repeated was required by the Inspector for the Examination in Public for the County Plan to be found sound. He noted the CDP had reached a stage where it could be given appropriate weight; as spelled out in Paragraph 48 of the NPPF. He noted that accordingly, the Parish Council urged the Committee to stand by the Council's carefully considered, up-to-date formal position on extensions to HMOs and refuse this application.

The Chair thanked Parish Councillor J Ashby and asked the Senior Committee Services Officer to read out a statement received from local resident, Mrs Pamela Hedley who had been unable to attend the meeting.

The Senior Committee Services Officer noted the statement from Mrs P Hedley read as follows:

"*I am aware that there will be a meeting this week concerning the proposed extension to 75 Whinney Hill, DH1 3BG and although I will not be able to attend, I would like my point of view to be taken into consideration.*

At present the property is home to 4 students and has been for the last several years, this has not been any cause for concern ,apart from the number of cars the household has recently had, which if you know Whinney Hill, exacerbates the problem with parking, to the point where workman to our property have to arrive by 7am to get a parking spot. I feel that possibly doubling the number of individuals may worsen this issue.

Our properties are the only ones, as far as I'm aware that share a yard. Again, the issue of refuse has not been an issue, we encourage our student neighbours to put any excess refuse into our bins if we have the room. This keeps the shared space tidy and hopefully vermin free. My concern is that the refuse created by possibly 10 people may not be manageable, especially if no extra bins are provided, which appears to be the case for example in the former prison officer flats. There doesn't seem to be any extra bins for each flat and the excess rubbish is unsightly.

Also, as we have this shared space our kitchen windows and back doors face one another. The light into this space is limited most of the day, my concern is that if a 2 storey extension is added this limited amount of daylight into our property will be further restricted. For the past several years when we have had 4 student neighbours where noise has not been an issue, but again my concern is that with possibly up to 10 in residence the noise level may increase, especially when they have visitors. Ours is a family home with extended family, including young grandchildren, visiting us on regular occasions and often staying over, again my concern maybe that noise late at night when we have grandchildren sleeping at ours maybe an issue with the number of students in number 75 significantly increased.

There are far more purpose built student accommodations now in the city that I would have hoped that residential areas may have been saved from further development to keep a more balanced community. Also, where we have had a good relationship with our student neighbours and the former landlord, I fear this may be jeopardised if problems that have been absent then appear".

The Chair thanked the Senior Committee Services Officer and asked the Planning Officer, LM to respond to the representations made.

The Planning Officer, LM noted that in respect of the number of students and the use, the property was in C4 HMO use and would continue as C4 HMO use with a maximum of six residents, further residents requiring a separate planning permission for sui generis use. In terms of the impact upon the neighbour in relation to the brickwork of the extension, the Planning Officer, LM noted that it projected 3 metres at ground floor, then 1.2 metres at the first floor.

She added that the 3 metre extension at ground floor could be carried out under permitted development, therefore the main element requiring consent was the 1.2 metre element which was not felt to have significant impact upon the neighbour.

The Policy Team Leader, Graeme Smith noted he would provide an update in respect of the weight of the policy which were referred to within representations by the City of Durham Parish Council. He noted that while the CDP was at an advanced stage of preparation, it was considered that no weight could be afforded to the CDP in the decision making process until the Inspector's final report had been received. He added that there had been a number of main modifications made and effectively the CDP was still within the examination process and all the main modifications were subject to consultation until 21 July 2020. He added that at the end of the period the Council would forward those comments received on the main modifications, along with its response to the comments, to the Inspector and for the Inspector to consider the comments that were put forward. He noted that therefore it was too soon to give any weight to any main modification to the CDP as in effect they were still subject to consultation. The Policy Team Leader noted from a policy perspective the view was the application should be determined under the statutory development plan, which was the saved policies of the City of Durham Local Plan, together with the Interim Policy on Student Accommodation adopted in April 2016 which was a material consideration for the decision making process. He noted it had always been very clear that the weight afforded to the Interim Policy must be less than the statutory development plan. Accordingly, he noted that the Council's approach to considering extensions to HMOs was informed by the Inspector's decision relating to 40 Hawthorn Terrace. He noted that the Inspector had made it very clear that it had seemed the Interim Policy was at odds with the more permissive stance of Saved Policy H9 of the Local Plan and therefore Officers would say that while the Interim Policy had weight, it was not part of the statutory development plan, potentially in conflict with the statutory development plan according to the Inspector and therefore Policy H9 must prevail in the determination of the application.

The Solicitor – Planning and Development reiterated that issues for Members to bear in mind were: there was no change of use application, the property was already in C4 use and the aspect to be considered was the built development of the extension: that the main modification mentioned was at the consultation stage, as set out at paragraph 22 of the report, and not part of the adopted Local Plan and therefore should not be given weight at this time; and that Interim Policy on Student Accommodation was also not part of the Local Plan and should therefore be given less weight than the Local Plan, specifically where there was conflict between the two, the Local Plan must prevail.

The Highway Development Manager noted in reference to whether there was adequate parking in the area, the application property was within the city's controlled parking zone and therefore, unlike the last application, the Council had control over who parked in the area. He added that the area was allocated for permit holders, or those that pay and display to park in the area and he highlighted the demand for parking. He noted the parking issues in the area had always been quite contentious and that residents would not be permitted any further permits to park in the area, though they could buy two permits at a cost of £100 to park within the controlled parking zone. He added that if additional students, beyond those that may have the permits, wish to park their cars then they would have to pay the pay and display charges of £24 per week. He noted that if students chose to do that it was not felt that would have a significant effect on the competition for parking.

The Chair thanked the Officers for their responses and asked the Committee for their comments and questions on the application.

Councillor J Shuttleworth noted the Highways Development Manager had stated if people were not able to park at Whinney Hill they could park slightly further away, he noted that Hallgarth Street was a bus route and these types of parking issues were a problem for the residents of the city and reiterated that people were sick and tired of the HMO applications, and that there was an adequate number of halls of residence and therefore there was not a need for HMOs.

Councillor J Maitland noted the issues relating to parking and asked as regards the issue raised by the neighbour in respect of additional bins being provided. The Planning Officer, LM noted she was not aware of the requirements in terms of provision of additional bins for six residents, though there was sufficient space for additional bins. The Chair noted as a former Member of the Environment and Sustainable Communities Overview and Scrutiny Committee she recalled there was a limit over which additional bins could be requested. The Planning Officer, LM noted that for six residents or more a request for additional bins could be made.

Councillor P Taylor thanked the Officer for her very professional presentation and noted the figure of almost 40 percent students in the area, the CDP not being ready and the weight to be afforded the interim policy. He noted that he felt that it would not be long before Whinney Hill was lost as a residential area and asked if anyone travelled to Whinney Hill now, would they consider it in compliance with Policy H9 in terms of adequate parking and would there be an adverse effect on the rest of the community and their amenity. He added that he felt the answers were no, there was not adequate parking and yes, amenity would be adversely affected.

He noted he was very unhappy, creeping towards losing Whinney Hill as a residential area and wondered, given it was 40 percent student properties now, what the amount would be by the time the CDP was in place and wondered if the Committee had the wherewithal to say enough was enough and suggested it might.

Councillor D Freeman noted he was a Member of the City of Durham Parish Council, however, was not a member of their Planning Committee and had no input in their submission on the application. He noted that he felt the response made by Parish Councillor J Ashby to the application was quite damning and while he felt the Committee report was well written, he also felt the responses from Officers were an appeasement to student property Applicants. He added that he felt it was quite clear that the Committee could refuse the application as it was contrary to Policy H9, with Whinney Hill being a narrow street without the parking provision and therefore inevitably residents would be affected by the application, noting a permanent, all-year round resident living next door to the property. Councillor D Freeman explained that the Interim Policy on Student Accommodation was quite clear and that the application breached the policy and he was aware Officers had made reference to the Appeal regarding Hawthorn Terrace, however, more recently two Appeals were won regarding properties at Providence Row and also he felt Whinney Hill with 60 percent residential properties was a different situation when compared to Hawthorn Terrace with around 90 percent student properties and was a defensible position in terms of refusing the application. He noted that while Members were told to put no weight in the emerging CDP policies, it was where the Council were going in terms of an end destination for policy and that the Council would be looking to refuse these types of application in future. He noted that he felt the Council needed to refuse these types of application today and had the policies to do that, he felt sure the Council would win any Appeal the Applicant may lodge and therefore he would propose refusal of the proposals and urged Members to refuse the application.

Councillor B Coult echoed the comments made by Councillor P Taylor and was mindful of the number of residents living in the area and the impact of expanding student properties on those residents and therefore seconded the motion for refusal as put by Councillor D Freeman.

The Planning Officer, LM noted that the 40 percent HMO statistic would not increase as a result of the application, as there was no change of use, the property already being an HMO in use. She noted that the Appeals regarding Providence Row were still being considered at Appeal, they had not yet been determined.

The Highway Development Manager noted that in terms of potential car ownership if 100 percent then this would be an additional two cars, they would have access to two permits, and it was felt that if there was demand the controlled zone could accommodate an additional two vehicles.
He noted that demand varied during the day and that the property was in a very accessible location for sustainable transport.

The Solicitor – Planning and Development asked if Councillor D Freeman could elaborate in terms of his proposed reasons for refusal.

Councillor D Freeman noted he felt the application was contrary to Policies H9, H13 and the Interim Policy on Student Accommodation, as there was a percentage greater than 10 percent of student HMOs within 100 metres of the property. He added that it was contrary to H9, HMO properties, in that "such properties or buildings do not adversely affect the character of the area and do not require significant extensions or alterations", with his feeling being the application would quite clearly affect the character. Councillor D Freeman noted that in terms of H13 he felt it was contrary in respect of character and amenity, and further students within the area, albeit the property already being an HMO and the percentage of HMOs would not change, would have a significant adverse effect upon the character and appearance of the area.

The Solicitor – Planning and Development noted that he had some concerns in reliance on conflict with the Interim Policy given the clear guidance given within previous Appeal decisions on how the Council should be interpreting that policy. He noted the impact upon the character and amenity of an area were subjective, judgement issues and noted he would be more comfortable with refusal reasons which related to those impacts, rather than reliance on conflict with the Interim Policy. Councillor D Freeman acknowledged the comments from the Solicitor – Planning and Development, however, noted he would stick with the reasons he had given, noting while one or two additional students appeared a small number, he noted the drip-drip of one or two students led to hundreds of additional students. He added he felt the focus should be on the Interim Policy and to ignore an Appeal that was made elsewhere in the City, under different circumstances with a much higher percentage of HMOs in that area.

Councillor P Taylor noted he had sympathy with the comments from the Solicitor – Planning and Development, however, the policies gave an indication of where the Council wanted to be and he accepted the point made by the Planning Officer, LM in terms of the 40 percent remaining the same, however, he noted as Councillor D Freeman had that it was the drip-drip of additional numbers that would build up and noted that the percentages were not likely to go back down.

He added that his judgement in respect of Policy H9 was that there was not adequate parking and it would have an adverse and detrimental effect on the rest of the community and the amenity of residents. He added that he felt it was very important to get the new policies from the CDP in place as soon as possible as percentages of 40 percent were demonstrating that residential communities were nearly lost.

RESOLVED

That the application be **REFUSED** as the proposal was located in an area already identified as exceeding the threshold set out in the Interim Policy on Student Accommodation and would result in a more intensive level of multiple occupancy. It would therefore adversely affect the amenities of adjacent and nearby occupiers in terms of noise and disturbance and adversely affecting the character of the area by further imbalance in the community, contrary to Policies H9 and H13 of the City of Durham Local Plan, the Interim Policy on Student Accommodation and paragraphs 91 & 127(f) of the National Planning Policy Framework.

Councillor J Robinson left the meeting at 11.37am

c DM/19/03170/CEU - 11 Mayorswell Close, Durham, DH1 1JU

The Area Planning Team Leader (Central and East), Sarah Eldridge, gave a detailed presentation on the report relating to the abovementioned certificate of lawful use application, a copy of which had been circulated (for copy see file of minutes). Members noted that the written report was supplemented by a visual presentation which included photographs of the site. The application was a certificate of lawful use application for the change of use of C3 Dwellinghouse to C4 HMO prior to the Article Four Direction coming into force and was recommended for approval.

The Area Planning Team Leader noted a few minor corrections to the report, in terms of multiple references to the date of the Article 4 Direction came into effect, she noted that the date was the 17 September 2016, and therefore the 16 September 2016 would be the date by which any use needed to be established to avoid needing planning permission under the Article 4 Direction. She noted that at paragraph 31 of the report, it should read two tenants moving in on 7 September, not three and consequently at paragraph 31 the reference should be four tenants, not five. She asked Members to note that reference to statutory declaration by tenants at paragraph 31 was incorrect, rather there were e-mails from tenants included within the Applicant's statutory declaration.

Members were asked to note the application was not a usual type of application, it was for a lawful use certificate and the certificate was not a planning permission and conditions could not be attached. The Area Planning Team Leader noted that the planning merits of use, including planning policy were not relevant and the issuing of the certificate depended upon the factual evidence about the use, with the responsibility to provide evidence to support the application being on the Applicant. She noted that if the Local Planning Authority was satisfied, on the balance of probabilities that the appropriate tests had been met, then the Authority must issue a lawful development certificate.

The Area Planning Team Leader noted that again the application process differed in that there was no requirement to consult with statutory consultees, however, the Local Planning Authority decided to consult in order to allow any third parties to submit their own evidence relating to the lawfulness of use so that the Local Planning Authority could take that into account when carrying out its assessment. She noted in response to the consultation an objection had been received from the City of Durham Parish Council, as they had been informed that the property was not occupied until after the Article 4 Direction came into force as students did not move into the property until just before the October Michaelmas term. She added three letters of objection had been received from neighbouring residents as regards: the property not being occupied until after the Article Four Direction came into force; that the planning permission granted for an extension was for a family home not a change of use to a HMO; there was regular noise disturbance, rubbish issues and unkept properties from nearby HMOs; and the area was over the 10 percent threshold for HMOs as set out in the Interim Policy on Student Accommodation. She reiterated that the issues and merits of an HMO were not being considered in terms of the application.

The Area Planning Team Leader referred to the Applicant's case, noting they had set out that the use began on 7 September 2016, suppling various evidence principally a sworn declaration, information from tenants, tenancy contracts and a Planning Contravention Notice, the Local Planning Authority having served on the Applicant as part of an investigation into HMO use. She noted that the Council's findings were that a planning application for single storey rear extension was granted on 8 June 2016 and a Building Control Notice was completed on 13 December 2016. It was also noted that the property was currently being used as an HMO and evidence claimed that it had been since before the Article 4 Direction came into effect. She noted the statutory declaration stated that the property was purchased in December 2015 and furnished and habitable by July 2016. The Area Planning Team Leader added it was asserted that two tenants had moved in on 6 August 2016 in order to attend pre-season football training and on 7 September 2016 two further tenants moved in and therefore at that point the use class changed to C4, with a fifth tenant moving into the property in October 2016.

She explained that on 2 September 2016, an Officer had attended the property in relation to an enforcement complaint and the extension appeared to be built in accordance with plans and did not appear to be occupied, meaning no material change of use had occurred and there was no breach identified at the time, however, this was prior to 7 September when the Applicant states the property became fully occupied. She noted that it was understood that the property had been registered Council Tax exempt under a Class N exemption since 1 July 2016.

The Area Planning Team Leader noted that in summary, the Local Planning Authority had no evidence of its own to contradict or undermine the Applicant's evidence and whilst the neighbours have asserted that the C4 use did not commence until October 2016, no substantiated evidence had been submitted to confirm this. She added that considerable weight must be given to the sworn declaration submitted by with application. She concluded by noting that taking all submitted evidence into account, on the balance of probabilities the property was brought into use as an HMO property on 7 September 2016 prior to the Article 4 Direction coming into force on 17th September 2016. On that basis, the Area Planning Team Leader noted it was recommended that a Certificate of Lawfulness of an Existing Use be granted for 11 Mayorswell Close, Durham in respect of the C4 use of the property.

The Chair thanked the Area Planning Team Leader for her presentation and noted there were a number of registered speakers. She asked Parish Councillor Roger Cornwell representing the City of Durham Parish Council to speak in relation to the application, noting he would have some accompanying slide displayed for Members' information.

Parish Councillor R Cornwell thanked the Chair and Committee and noted that this was an extraordinary case, quite unprecedented in his experience of planning applications in the City of Durham, which stretched back more than 20 years. He noted the Officer's recommendation was based on documents that were not on the public Planning Portal until yesterday afternoon. He explained that the Parish Council was only furnished with copies of the missing documents on Tuesday afternoon and Wednesday, with an amended application form only being uploaded yesterday morning.

He referred to his first slide which showed the original application form, within Box 7 the Applicant stated, in answer to the question "When was the use or activity begun, or the building works substantially completed?": 09/12/2015. Parish Councillor R Cornwell noted that was manifestly not true and the Parish Council pointed that out in October.

He added that all of the objections from the Parish Council and the neighbours had been based on this misleading information and all of the objections have been uploaded as they were submitted while the supporting information from the Applicant had been withheld till the eve of this hearing, he noted that was simply not fair.

He noted that the Parish Council was well aware of the tests to be applied in these cases, having supported the County Council in opposing an earlier Appeal elsewhere in the City. He added that in that case the Appellant was claiming the C4 use had commenced before the Article 4 Direction came into force. It was explained that the Inspector dismissed the Appeal and made it clear that the key date was when students took up occupation in the renovated building, not when their leases ran from.

At the time the Parish Council lodged its first objection, all the Parish Council knew of the Applicant's case was that the C4 use was claimed to have begun just two days after the house was purchased. Parish Councillor R Cornwell explained that neighbours had informed the Parish Council that nobody had moved in and the house had been gutted and reconfigured. He noted that in that case there was no actual evidence, simply an unsubstantiated assertion on the application form that was clearly wrong.

He added that the Parish Council learned that the Officer had asked the neighbours to provide sworn affidavits and with this being unprecedented, in his experience, and such a departure from usual procedures the Parish Council Planning Committee decided to call the application to the County Planning Committee. He asked was it appropriate for innocent neighbours, faced with an unwelcome proposal next door, to be asked to go to the expense and trouble of making a statutory declaration?

Parish Councillor R Cornwell explained that in April of this year the Parish Council investigated further and found an aerial photograph showing building materials piled in the front garden, taken on 6 May 2016, well after the claimed date of 9 December 2015. He added this was forwarded in a further submission, along with a relevant and local Appeal decision. He noted that although the Parish Council had learned that there was further material presumed to include sworn statements, it was only on reading the Officer's report that the Parish Council learned what they were. The Parish Council then asked that these be made available, ideally by being put on the Planning Portal. They were e-mailed to the Parish Council on Tuesday afternoon and Wednesday with nine documents amounting to 88 megabytes of data. Parish Councillor R Cornwell noted the documents included a sworn statement headed Strictly Private and Confidential which had been redacted so he did not know who made it, presumably the Applicant or her partner, with the name of the Solicitor also having been redacted.

He added he did not know why and highlighted that it was dated 27 November 2019, seven months ago.

Parish Councillor R Cornwell noted the key dates claimed in the latest documents had been contradicted by representations from neighbours and he would have liked the opportunity to discuss the latest documents fully with neighbours, but he had not been able to do so in the time available. He noted that the Committee agenda was published a week in advance for a very good reason.

He added that every document in support of the application had either been substituted or uploaded for the first time in the past 24 hours. He advised Members not to be fooled by the date shown against them of 3 October, that just compounded the matter, if they were available back then why had they been withheld? Parish Councillor R Cornwell noted that therefore the Parish Council was now asking the Committee to defer a decision on this matter in the interests of fairness.

The Chair thanked Parish Councillor R Cornwell and asked Officers to respond to the points raised and whether or not the Committee should proceed in determining the application.

The Solicitor – Planning and Development noted that it was acknowledged that the application was not the usual type of application that came before Members and was not to be judged on planning merit, rather the weighing of evidence of fact and the law. He reiterated that there had been no obligation on the Local Planning Authority to consult on the application, however, the Council had done so in order canvass for third party evidence that may have been relevant in order to be weighed up in the balance. He added that there was not a requirement to place supporting evidence on the Planning Portal and to be open to public inspection, it was predominantly given to the Council in confidence and when the Parish Council previously requested the evidence the Council had asked the Applicant if they would give consent to release the information and at that point the Applicant did not give the consent to do so. He added that the reason the information had been released to the Parish Council quite close to the date of the hearing was because the Council was able to do so under slightly different procedures because of the publication of the report, prior to the publication of the report the Council could not release that information. The Solicitor – Planning and Development noted that in his view, the information within the report which summarised the Applicant's evidence and that of Objectors and weighs up that evidence was clear enough in order for the Parish Council or a member of the public to understand what the issues were and what information or evidence was relevant.

He noted that accordingly he could not agree with what Parish Councillor R Cornwell said in terms of anyone being prejudiced by the late disclosure of the information, and reiterated that he felt that all the relevant information was contained with the Committee report and he was sure the Parish Council had interactions with the Planning Officer prior to that. Accordingly, the Solicitor – Planning and Development noted he could not see any reason for determination of the application to be deferred.

The Area Planning Team Leader noted that the original application was submitted with a date of December 2015 and then subsequently changed to a date of 27 September 2016 and agreed with Parish Councillor R Cornwell that this had been identified early.

She noted that the original date reflected the date the property had been purchased and the Agent for the Applicant had confirmed that was a mistake and that was only rectified as part of the preparations for Committee in terms of the receipt of an amended application form. She added that she did not believe that change in date was pivotal in the matter for Committee to consider which was whether the student tenants were in occupation prior to the Article 4 Direction taking effect.

The Chair thanked the Officers and asked Mr Norman Holmes and Ms Janet George to speak in objection to the application.

Mr N Holmes thanked the Chair and noted that he and Ms J George of 12 Mayorswell Close were also speaking on behalf of Mr Bill Williamson of 10 Mayorswell Close at his request. He noted that he wished to object to the change of use and noted that he and Ms J George were splitting the allotted time between them.

Mr N Holmes noted the Planning Officer, Michelle Hurton had asked that residents offering evidence should swear an affidavit. He explained that he and Ms J George were both qualified, senior health professionals having worked in the health service for 68 years between them and had been governed by professional scrutiny and criminal record checks throughout. He added that they were not given to lying, fabricating evidence or behaving dishonestly. He noted that the onus was on the Applicant to provide clear evidence in support of the application, not Objectors.

He explained that the Applicant, until very recently, wrongly claimed that the house was used as an HMO from December 2015, a fact now disproved in an amended form submitted yesterday. He added that from December 2015 until after the regulation change date, the house was gutted, completely renovated and the ground floor partitioned into three bedrooms. He noted the single storey side extension needed substantial structural work due to significant subsidence and had detached from the original gable end.

It was added that the extension ran the entire length and parallel to the gable of 12 Mayorswell Close at less than a metre distance. Mr N Holmes noted he was very aware of the situation, having went to the extent of lending the workmen some of his tools and knowing the main workmen by name.

Mr N Holmes noted that "Bill Free Homes" did not become involved in the management of the property until the second year, 2017, in the first year it was managed by the couple who own it. He added that he and Ms J George saw no occupation of the house until the 20 September, that was after the regulation change date, apart from one evening when there were some people sitting outside 11 Mayorswell Close.
He explained that he and Ms J George and had spoken to the workman the following day who told them that the owner was angry, and that the people should not have been there as the property was not ready.

Mr N Holmes noted that residents of the cul-de-sac of five houses were all retired, spending their time in the street, no one could occupy a house and not be noticed. He added they did not observe any occupation of 11 Mayorswell Close other than that mentioned. He concluded noting residents urged the Planning Committee to reject the application today, adding that the owners of the property could easily and profitably let the house to a family.

Ms J George noted that herself and Mr N Holmes had both been qualified and registered health professionals virtually all their lives, working with vulnerable patients, relatives and never once in her entire career had she been asked to swear an affidavit. She explained that all she could say to the Committee was that due to the proximity of the property herself and Mr N Holmes were aware of any activity in it. She added they could hear occupants, see and hear if people come and go, notice bins, or cars arriving. She noted they could hear talking and music from inside the house particularly if a window was open and most definitely from the outside of the house, such as a door shutting or a car pulling up. She emphasised that they did not see or hear any signs of residential occupation prior to the change date of 17 September 2016.

Ms J George explained that her professional codes required her to adhere to high standards both during and outside her work time and she found the request for a sworn affidavit astonishing and replied to the Planning Officer, M Hurton with the following e-mail date 8 November 2019:

"*Dear Michelle,*

I am not sure what a sworn affidavit requires but I can absolutely swear that there was no one living in 11 Mayorswell Close from 9.12.15 as stated on the application on the planning portal by the owner. The property was bought then gutted and completely uninhabitable".

Ms J George noted that to add to dates, during that Spring the owner had requested to come on to her property in order to remove part of a shared fence so he could access his side extension. She explained that she had told him he would have to wait as there was a Robin nesting on eggs on the fence. She added that the owner came onto her land and pulled some of the fence panels down in front of her, despite her saying no to him, it happened too quickly to stop him.

Ms J George noted the Committee report stated that a Building Officer visited on 2 September and stated that *'the property did not appear to be occupied'*. She noted this was despite e-mails stating students were in the property in August. She explained that her and Mr N Holmes were away 7 September to 14 September and she first saw one person only on the 20 September and recorded this in her diary. She noted that from their return on the 14 September and past the regulation date of the 17September, and despite living so close by, they saw or heard no signs of occupation. She added she had a diary entry of rendering being done on the 18 September.

Ms J George concluded by noting that in the interest of healthy, balanced communities, they would urge you to reject this application and as a city resident she could say that having another registered student HMO would have a detrimental effect on residents of the quiet cul-de-sac.

The Chair thanked Mr N Holmes and Ms J George and asked Mr Darren Ridley, Planning Consultant on behalf of the Applicant, to speak in support of the application.

Mr D Ridley thanked the Chair for the opportunity to speak on behalf of the Applicant, as his planning consultant, at Committee. He noted that the Council did not compel the Applicant to make the application through any enforcement investigation, indeed, an earlier enforcement investigation into the alleged unauthorised material change of use of the property concluded that the Applicant lawfully implemented the change to a small HMO through permitted development rights.

He added that the Applicant made the application to get the paperwork in place following the Council's Article 4 Direction coming into effect such paperwork making conveyancing procedures easier by demonstrating the current use is lawful should the Applicant ever wish to dispose of his interest in the property. Mr D Ridley noted the Applicant had carefully considered the letters of objection to his application and was mindful that the thrust of the objections related to the planning merits of the use, which were irrelevant to the consideration of this application, as Officers had informed the Committee.

He noted the views expressed by third parties on the planning merits of the case, or on whether the Applicant has any private rights to carry out the use in question, were irrelevant when determining this application, for instance, considering the development against the thresholds of the interim HMO policy would be wholly improper.

Mr D Ridley explained the issue of the certificate relies on factual evidence alone and it was the Applicant's responsibility to provide the necessary evidence to support the application. Mr D Ridley noted that, in his opinion, the Applicant had discharged his obligations in providing sufficiently precise information that showed the C4 use of the property commenced before the Council's Article 4 Direction came into effect.

Mr D Ridley noted that unlike the Objectors, the Applicant had provided a statutory declaration and was concerned that it was deemed improper to do so. It was noted the Objectors did not provide any dates to support their assertions and accordingly, as Officers had pointed out, those assertions must carry less weight.

He noted the change of use of the dwelling to a Class C4 small HMO did not require the express permission of the Council as Local Planning Authority, the change of use was permitted by the 'General Permitted Development Order' as amended. He added that Government offers guidance set out in 'Lawful Development Certificates' dated 6 March 2014 that guides the Council's consideration of the application, it stated:

*'... if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the Applicant's version of events less than probable, there is no good reason to refuse the application, provided the Applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probabilit*y'.

Mr D Ridley contended the assertions of Objectors, again carrying less weight, did not constitute evidence that made the Applicant's version of events less than probable. He added that whether the Applicant was undertaking works in respect to planning or building regulation processes at the property was not a determinant factor in isolation, they would merely provide indications of the Applicant undertaking work at the property and did not provide evidence that the property was unoccupied.

Mr D Ridley noted both the Applicant and Officers contend the property was legally brought into use as a small HMO on the 7 September 2016 and before the Article 4 Direction came into effect. Accordingly, he respectfully suggested that there were no reasonable grounds to refuse the application and on the balance of probability, the test here, a certificate could be granted by the Council.

The Chair thanked Mr D Ridley and asked the Solicitor – Planning and Development to respond to the points made by the speakers.

The Solicitor – Planning and Development noted it was perhaps useful to explain why the Planning Officer requested that the Objectors to make a statutory declaration or other type of sworn statement as it appeared to have caused some offence and consternation to the Objectors. He noted he wished to make it clear the Authority was not questioning the integrity of the Objectors, the reason the request for a statutory declaration was made was to put the Objectors' evidence on a level playing field with the Applicant's evidence. He noted these types of application were often accompanied with a sworn statement, usually in the form of a statutory declaration.
He noted the different terminology used for statements given under oath and reiterated the request for a sworn statement from the Objectors was because without that, the Authority felt that the same weight could not be given to the Objectors' evidence as to the Applicant's evidence.

The Solicitor – Planning and Development noted the crucial issue as to whether the existing use as an HMO was lawful was the date on which that use commenced. He noted that he believed the Applicant had stated in his evidence that it was commenced on 7 September 2016 and added that the Committee had heard from the Objectors and they had stated at the meeting they had not seen anyone at the premises until 20 September 2016. He noted that was the conflicting evidence that the Committee must assess and added he was happy to answer any further questions from Members.

The Chair thanked the Solicitor – Planning and Development and asked the Committee for their comments and questions.

Councillor M Clarke noted it was a difficult application as he had not sat on many planning meetings and from what he read it appeared to be close to making a legal determination. He found all of the information from the Objectors and Applicant to be very useful and noted that the Objectors were a little bit distracted by the issue of the affidavit. He noted the Objectors had stated that there was not a specific tenancy so the Article 4 Direction would have come into place prior to any new tenancy starting which would be against the rules. He noted it was interesting that a tenancy agreement was submitted as part of the evidence, that showed the initial two tenants, there was no subsequent tenancy agreement that would show when the additional tenants took occupancy. He noted he did not know whether such a tenancy agreement existed and simply had not been submitted, or whether it did not exist, however he felt it was important in determining when the second set of tenant took up occupancy and felt that it would be in place in order to ensure rent would be collected.

The Area Planning Team Leader noted that a tenancy agreement would not tell you when a tenant began occupying a property, rather just that they signed the agreement. However, she noted for clarity that it was a joint tenancy and did form part of the submitted evidence from the Applicant and was signed on 1 July 2016 and ran through until the 30 June the following year. She noted that for the purposes of lawfulness of use the date those individuals that signed the tenancy agreement took occupation of the property. She added that what had come through in the evidence from the Applicant was that two individuals took occupancy from 6 August 2016 and a further two from 7 September 2016, the fifth individual moving in on an unspecified date in October 2016.

The Area Planning Team Leader noted that the crux date was when the third and fourth tenants moved in, which the Applicant told the Authority in their statutory declaration was 7 September 2016.

Councillor A Gardner noted he had a query as regards residential occupancy. He explained that in his experience students looked for properties around Michaelmas term and sign contracts in Epiphany, shortly after Christmas, in January/February. He noted students would normally have keys in July, as stated by the Applicant, and students could often take up sports training and ambassador roles from August/September so again, in line with what the Applicant had stated. He asked the Solicitor – Planning and Development when occupancy began, was it when the tenant was in receipt of keys, was it from moving their belongings into the property or was it from the time the tenants opened the door an began staying at the property. He felt if this could be clarified it would help Members to be able to look at the balance of probability and come to a conclusion, noting currently he felt on balance the evidence was in line with what he understood as the normal student lifestyle.

The Solicitor – Planning and Development noted that it was physically occupancy that mattered so it was from when the students actually move in and start living in the property, it's not from when they simply moved some belongings in, they must be living at the property.

Councillor P Taylor noted he was uncomfortable in respect the application and felt there were legal matters he did not feel qualified to speak upon. He understood the position of the Applicant, wishing to avoid the Article 4 Direction and the Objectors in not wanting the situation in its entirety. He asked if it was beyond the realms of possibility to get the students tenants themselves to give a statement. The Solicitor – Planning and Development noted that within the Applicant's sworn evidence there were e-mails from the students and while they were not sworn evidence themselves, it was included in the sworn statement given by the Applicant. The Chair noted this was set out at paragraph 26 to the report.

Councillor P Taylor noted that the extracts from e-mails were not sworn statement from the students themselves. The Area Planning Team Leader noted it was a tricky point and the students themselves were tenants four years prior and likely had long since left Durham, and it was not possible to compel them to sign sworn declarations and it would boil down to the weight of the evidence that was before Committee, which was heavily weighted towards the Applicant in the form of a sworn declaration with slightly more vague evidence from Objectors, not been submitted in previous written form, which referring to 20 September 2016, though was still non-specific as regards the number of tenants that might have been in occupancy on that date.

The Solicitor – Planning and Development noted that the Council's assessment was that it wasn't necessary for the students to sign sworn statements, rather the Applicant had made a sworn declaration as to the date the tenants moved in so that was the key piece of evidence, with the e-mails from the tenants supplied as corroboration for his statement.

Councillor M Clarke as for clarification as regards what classed as moving into a property as there appeared to be a large grey area and he noted he felt nervous that voting in one particular way would be effectively telling the other side that they were not correct in what they were stating. The Chair noted this had been addressed, however, the Solicitor – Planning and Development reiterated that while it was not an exact science, in his opinion it was from when the students actually moved in and started living in the property, taking their meals in the property and sleeping at the property. He added there may be cases where that could be temporary, however, from the evidence supplied it appeared that occupancy was taken up on a permanent basis. The Area Planning Team Leader noted that the sworn declaration from the Applicant stated as regards 7 September 2016 that "*they could attest that the house was occupied in the sense that four tenants were eating, sleeping, washing and living at the property*". She noted that was not simply the tenants having said they had moved in; it was Applicant stating they had witnessed the tenants living at the property.

Councillor A Gardner reiterated his experience in terms of working at St. Mary's College and noted he felt on the balance of probabilities that the statement by the Applicant was probably correct and, while he had sympathy for the neighbours, he would move approval of the application.

Councillor P Taylor noted he was struggling with "he said/she said" and asked if there was any evidence of payment of rent.

The Area Planning Team Leader noted she did not believe such evidence of deposits of funds in bank accounts had been received, however, there had been sight of tenancy agreements that would put contractual obligations on the tenants to pay their rent, though again a moot point in terms of when the tenants physically moved into the property.

Councillor D Freeman noted he felt very similar to Councillor P Taylor in that the Committee was having to make a judgement on two parties that effectively stating two different things. He added that the tenancy agreement did not help as it was prior to occupation. He noted the application was within his Electoral Division and he felt on the balance of probability that neighbouring residents would know when someone had moved in, and gave the example of the previous two applications where students had been discussed and it seemed unlikely four students could have moved into a property with residents on both sides and those residents having failed to notice they were in the property.
He noted he felt Members would all feel uncomfortable in making a judgement on what individuals were saying and felt Members should not have been put into the position.

The Chair asked if there was any seconder for the motion put by Councillor A Gardner.

Councillor A Laing noted she had listened the Solicitor – Planning and Development and his clarification on the points raised and therefore would second the motion for approval. Councillor M Davinson noted he would agree, based upon the hierarchy of the evidence provided.

Councillor P Taylor noted he felt very uncomfortable and asked what the legal position would be if the Committee to go against the recommendation and how the Applicant would then challenge the decision. The Solicitor – Planning and Development noted it was a difficult judgement on competing evidence. He added that clearly Officers given the sworn evidence more weight that than provided by Objectors. He noted options would be to accept the recommendations and issue the certificate; prefer the evidence of the Objectors and refuse; or if Members felt so unsure about the evidence that the Applicant had failed to discharge the burden of proof then again this would be a refusal. He noted another option would be to defer, as suggested by the City of Durham Parish Council, however, he did not see what could be achieved in terms of gathering any additional evidence. He noted there was a right of appeal, similar to that for planning applications with a similar costs regime. He noted that he felt the Council would have a reasonable chance of defending a costs claim, however, that was one consideration and not to be given undue weight as an overriding factor in the determination of the application.

Councillor P Taylor thanked the Officers for their professional advice and reiterated he felt it was very difficult and he still did not feel qualified, but he would make a decision on the application. The Solicitor – Planning and Development added that Applicant's Agent had noted that the appeal of a refusal would be heard at a Hearing or an Inquiry, with an Inquiry enabling the testing of evidence by cross-examination.

RESOLVED

That the application be **APPROVED** as on the balance of probability based on the information provided and available to the authority, the occupation of the dwelling as a C4 HMO occurred prior to the Article 4 Direction coming into force and before 16th September 2016 at a time when change of use from C3 dwelling to C4 HMO would have benefitted from Permitted Development rights. The information provided demonstrates that this use has continued until the current day, thus making the development lawful by virtue of s191B of the Town and Country Planning Act 1990 (as amended).