

**DURHAM COUNTY COUNCIL**  
**AREA PLANNING COMMITTEE (CENTRAL AND EAST)**

At a Meeting of **Area Planning Committee (Central and East)** held in **Council Chamber, County Hall, Durham** on **Tuesday 12 October 2021** at **9.30 am**

**Present:**

**Councillor D Freeman (Chair)**

**Members of the Committee:**

Councillors S Deinali (Vice-Chair), D Brown, J Cosslett, L Holmes, N Jones, D McKenna, R Manchester, C Marshall, K Shaw and M Simmons (substitute for E Mavin)

**Also Present:**

Councillors J Chaplow and M Wilkes

**1 Apologies for Absence**

Apologies for absence were received from Councillors J Elmer and E Mavin.

**2 Substitute Members**

Councillor M Simmons substituted for Councillor E Mavin.

**3 Minutes**

The minutes of the meeting held on 14 September 2021 were confirmed as a correct record by the Committee and, subject to the amendment of typographical errors in relation to 'L Mavin' to read 'E Mavin', were signed by the Chair.

#### 4 **Declarations of Interest**

Councillor M Simmons declared an interest in respect of Item 5a, DM/21/00911/FPA - Allotments to the west of 5 to 10 Front Street, Framwellgate Moor, DH1 5EJ, she was a Member of the Framwellgate Moor Parish Council and that she would withdraw from the Chamber while a decision was made thereon.

The Chair, Councillor D Freeman noted in respect of Item 5b, DM/21/01752/FPA - 37 North Road, Durham, DH1 4SE, that he was a Member of the City of Durham Parish Council, however, he was not a member of their Planning Committee and had not been party to their submission in objection to the application. He noted he was also a Member of the City of Durham Trust, however he was not a Trustee and had not been party to their submission in objection to the application.

Councillor K Shaw noted, in respect of Item 5a, DM/21/00911/FPA - Allotments to the west of 5 to 10 Front Street, Framwellgate Moor, DH1 5EJ, he had been supportive of the development in his former role as Cabinet Member for Strategic Housing and Assets. He added however, that he had no preconceived opinion on the application and would consider the application as the Committee heard evidence during the meeting.

*Councillor M Simmons left the Chamber at 9.39am*

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

##### **a DM/21/00911/FPA - Allotments to the west of 5 to 10 Front Street, Framwellgate Moor, DH1 5EJ**

The Senior Planning Officer, Jennifer Jennings, 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 a proposed development of 5 dwellings and associated Parking and was recommended for approval, subject to conditions and a s106 Agreement. The Senior Planning Officer explained that there was an extant permission for 6 terraced properties on the site, though it had not commenced at the current time.

The Chair asked Councillor M Wilkes, Local Member, to speak in relation to the application.

Councillor M Wilkes thanked the Chair and explained to Members that he had asked that the application be brought to Committee as he felt the application represented inappropriate development. He added that he, the Parish Council, and many residents saw the application as an attempt to develop the site in such a way that the impact upon neighbouring residents would be unacceptable. He asked if the Planning Officer could display the site layout for the scheme as passed in 2018. He noted that it would be useful for the Committee to note what the outline planning permission offered. He explained that those properties were in keeping with the surrounding area as they were two-bed starter homes. Councillor M Wilkes noted that proposal had included parking to the front of each of the properties and, at the outline stage, provided two visitor parking spaces which would not have interfered with the access for the properties on Front Street, adding that the outline permission clearly indicated an adoptable road and footpath proposal.

Councillor M Wilkes noted the current, full planning application increased the number of bedrooms by 25 percent meaning the properties proposed would be three-bed, not two-bed, and therefore less likely to be starter homes and more likely to be houses of multiple occupation (HMOs) given the close proximity to Durham City. He noted that the new application would remove parking spaces for existing residents and replace them with visitor parking spaces. He added that the report stated that there were six residential, terraced properties to the front of the development site, and noted that there were, in fact, seven as numbers 5a and 5b were flats, as indicated on the 2018 plan. He explained that existing residents needed the parking to the rear of their homes and had been using the area for parking for decades, perhaps even over half a century. He noted that land was not owned by the applicant. Councillor M Wilkes noted that the removal of two parking spaces in an already difficult place to park would make it impossible for residents. He explained that other parking along Front Street was limited or already used by businesses and other residential properties. He added that it appeared to him that the applicant, in attempting to suggest that there was sufficient parking, had simply chosen to include a ridiculous amount of unusable parking spaces on the plans for current application. He noted three spaces, back-to-back, for some of the properties and added that no sane family would use the spaces as they would be required to move two cars in order to allow the third out. He explained that the result would be that the visitor parking would be used, taking it away from existing residents and would likely be used by the new residents for parking, making parking issues even worse. Councillor M Wilkes noted that the application, in removing the ability for existing residents to park, was incompatible with County Durham Plan (CDP) Policy 31 as it could clearly be demonstrated that the new development would have an unacceptable impact upon the health and living conditions of existing residents.

He added that CDP Policy 29(e) stated that developments should '*provide high standards of amenity and privacy and minimise the impact of development upon the occupants of existing adjacent and nearby properties*' and added that clearly the application did not do that.

Councillor M Wilkes noted he had two questions in relation to the proposed s106 Agreement. He noted that previously he had requested a condition be placed on the properties prohibiting them from being used as HMOs, as they were meant to be starter homes under the outline application, with the outline application having been passed with that condition in place. He noted it appeared that the current application omitted that condition. He noted the outline application stated: '*The dwellings hereby approved shall only be occupied in accordance with the C3 (dwellinghouses) use class and are not authorised for C4 (houses in multiple occupation) use. Reason: To define the consent and in the interests of residential amenity in accordance with Policy H13 of the City of Durham Local Plan 2004*'. He asked why the condition had been removed rather than amended and updated to reflect the new CDP.

Councillor M Wilkes noted his second question related to highways adoptions and asked if Planning Officers could confirm that the Council would be able to insist that the road be brought up to adoptable standard, given that the applicant did not own all the land that was required to put in place the footpath and road. He noted a development on a nearby road, South Terrace, resulted in a decade of issues caused by the same problem, taking up a huge amount of Council Officer time, with the road having not been adopted, with resulting impacts for residents. He added that we could not be seen to be building new developments which would end up with unadoptable roads, noting that all could see the damage that had been caused over the last century elsewhere in the county.

The Chair thanked Councillor M Wilkes and asked Miss Nicola Brown and Ms Anita Harvey, local residents, to speak in objection to the application.

Miss N Brown explained she lived at 7 Front Street and noted she had reservations as regards parking during and after the proposed development. She noted that six cars from numbers 3, 4, 5a, 5b, 7 and 9 Front Street used the east and north of the development, on the unadopted road, to park their vehicles due to the lack of parking space on and around the property. She added that none of the residents had been able to acquire parking permits for Front Street, often enough there was insufficient parking for six cars due to the amenities on the front street. She noted that her biggest concern was that once the houses were built and the new residents moved in, there would be disputes about parking and access. She added that no doubt the residents and visitors of both Front Street and the new development must use the area to park their cars, in a marked bay or not.

Miss N Brown asked what provision would be made for those cars that had nowhere to park and what would happen while the works were underway as the cars in question were not going to disappear.

She added that the road was unadopted and would be used for visitor parking spaces for the proposed development, with one of those spaces blocking vehicle access to the garden of 7 Front Street. She explained she had noticed that the gate into the garden of 9 Front Street had not been included on the application plans and access had not been provided to 9 Front Street.

Miss N Brown explained the application would affect her access, amenity and transport conditions. She noted that surely residents that had maintained the road for a number of years should be able to have a say in how that road be used, adding it seemed the developer had not considered that. She explained that she assumed Highways would take ownership of the road and that it would not be the responsibility of the new residents, and asked who would claim ownership of those parking bays.

Miss N Brown informed Members that the last time works had been carried out at the site work vehicles had blocked access to the west of Front Street for around a week. She asked where work vehicles would be parked while work was underway and what contingency plans were in place to prevent the blocking of access and conflict between residents and workers on site. She noted there was also a safety issue with a number of heavy goods vehicle (HGV) deliveries throughout the day for the carpet shop. She explained she had previously witnessed a close-call with a large vehicle and a young child and noted the children and disabled residents used the street for recreational purposes and, when the development of family housing was complete, there may be more vulnerable residents. She asked if safety provisions could be put in place.

In reference to affordable homes, as mentioned by Councillor M Wilkes, Miss N Brown noted that Framwellgate Moor had a lot of unaffordable housing, with 1,400 properties being built at Sniperley, with only 25 percent being affordable, adding she did not think the houses proposed in the application were affordable. She added that she agreed with the points raised in relation to CDP Policy 29, adding she did not feel high standards of amenity and privacy were being respected. She explained that, as there were disabled residents living in the street, Policy 29(f) was relevant, it stating that development should '*Contribute towards healthy neighbourhoods and consider the health impacts of development and the needs of existing and future users, including those with dementia and other sensory or mobility impairments*'. She added she felt that policy was not being met by the application.

Miss N Brown noted she had hoped the developer would have been in attendance at Committee to help answer a lot of her worries about the development and to have been able to move the visitor parking as it looked as if access to numbers 8 and 9 Front Street would be severely impacted. She noted earlier that morning the resident of number 9 had reversed out of her parking bay towards her garden at number 7. She explained that if there was car parking bay in that location the resident of number 9 would be unable to get out.

Ms A Harvey explained her son lived at number 8 Front Street and noted she jointly owned the property with him. She explained her son had autism and had very high social difficulties, very rarely leaving the house. She added that his garage was not shown on the plans and there was no turning space for his garage. She explained that was needed, as her son's carer was undertaking driving lessons to ensure she could get him out of the house. Ms A Harvey noted she previously had a carer's permit to be able to park on Front Street, however, that had not made any difference and she had been required to park some distance away, even with a permit. She noted there was absolutely no consideration for the residents of those houses and explained the only reason that there was any community in the area was due to the access at the back of the properties. She noted the impact on the current access and privacy to the properties and added that the building works were going to have a high impact upon her son particularly, as he used the outside communal area when he needed space and some air, something he was unable to do on the Front Street. Ms A Harvey explained that residents were considering whether to put a caution on the register against first registration by prescription for use of that area.

The Chair thanked the speakers and asked the Officers to respond to the comments and questions raised.

The Senior Planning Officer noted that in reference to the condition relating to HMOs, in the case of the application before Members it was not required as there was an Article 4 Direction covering the area, removing the permitted development rights in terms of a HMO, with any change to an HMO requiring a full planning application. She referred to the plan setting out the fall back position of the extant outline consent, which also included adopted highway, footpaths and parking provision for the two-bed dwellings. She referred to the plan for the current application, noting the footway all the way round, adding it would be possible, within a condition on the hard surfacing, in the details, to confirm that there would be dropped kerbs to allow access to the garage site. In term of access, there would be a three metre gap that would allow access in and out of that particular garage site, and other accesses would also be retained. As regards back-to-back parking, she added it would not be an issue that Officers could refuse an application upon, it not being unusual for parking to be laid out in that way.

She confirmed that the hardstanding area currently available to residents at the rear related to a 4.7 metre width, with the proposal opening up that to provide better access into the site and larger space for manoeuvring cars in and out of garages. The Senior Planning Officer noted that the visitor parking would be available for the residents of 5 to 10 Front Street to use, it was free for use by anyone as an adopted road.

The Principal Development Management Engineer, David Smith noted that the Highways Development Manager had assessed the proposals and noted that the Front Street was well served, was lit by streetlights and had good footpath connectivity. He noted the proposed development would comprise a shared surface scheme, with a different textured material for the footpaths and road for shared use. He added that there was sufficient space for pedestrians and vehicles to operate in that area. He explained that in terms of the width there was no issues in terms of safe operation and that shared surface schemes allowed up to 100 vehicle movements, which would equate to around 12 houses, the proposed development being for five houses, therefore less than the maximum number of vehicle movements for such a shared surface scheme. In terms of accessibility for residents he noted the kerbed areas would be lowered, as mentioned by the Senior Planning Officer, with all of the shared surface scheme being on one level.

The Principal DM Engineer noted that in terms of parking provision, the developer had overprovided in respect of in-curtilage parking, with the average provision for a three-bed dwelling being 1.66 spaces per dwelling. He added the 0.66 would refer to the visitor parking element and reiterated there was overprovision in terms of in-curtilage parking and with two visitor spaces. He noted those visitor spaces would be on a first come, first served basis. He referred to parking permits and noted that he had raised the issue with colleagues from the Traffic Section and explained that as the area was within the controlled parking permit area, residents would be able to apply, via The Parking Shop, for parking permits. In respect of displaced parking the Principal DM Engineer explained that Officers could only consider what was contained within the application area with parking being able to be contained within the development. He noted the element that could be controlled was in terms of whether the parking provision was up to the Council's standards, and it was, and whether there was safe access on to the highway, and he noted it complied with the requisite Manual for Streets Technical Design Standards and therefore there were no technical grounds for refusal.

In respect of the adoption of the highway, the Principal DM Engineer noted that the Highways Development Manager had agreed for the road to be adopted so that they could be street-lit, adequately drained and constructed to highways standards.

He concluded by noting on technical grounds and highways safety grounds, there was nothing that would amount to a highways refusal.

Councillor M Wilkes noted it was still not clear, his question was whether the Council could insist that the road be brought up to an adoptable standard, given the applicant did not own all of the land. The Solicitor – Planning and Development, Neil Carter explained that as he understood, the access that was proposed, and in front of Committee for consideration, did involve access to an adoptable standard, however, Members had heard there may be some ownership issues. He added that if that was the position it may be, though he did not know, that the applicant was unable to enter into a s38 Agreement. He added that in those circumstances, the road would not be something that could be dedicated as a highway and adopted by the Council, however, it would still need to be built to an adoptable standard as that was within the scheme before Members. He noted that it may not end up as an adoptable highway. He noted that the Council could not insist upon it being adopted, however, the Council could insist upon it being to an adoptable standard, in accordance with the proposals before Members. In reference to the issues raised in respect of access and parking as raised by residents, they were predominately private law matters between the residents and the applicant, not something the planning system could control. He noted that, for example, if residents had particular private law rights that prevented the scheme that was before Members coming forward, that would be a matter for applicant to address.

Councillor M Wilkes asked if the application could be passed without a condition that the street had to be adopted. He noted comments relating to shared use of the back street and reiterated that very large HGVs reversed and drove into the site to deliver to the carpet shop and asked if the Council was suggesting that shared surface scheme, with no pavements, would be suitable where HGVs manoeuvred next to a housing development and next to where children would potentially play. The Solicitor – Planning and Development noted that the Council would not be able to insist that the road was actually adopted, however, it was proposed to be an adoptable standard as controlled by Condition 5 which required details of that surface treatment to be provided to the Authority. He added that whether the road then was subsequently adopted by the Council was not something the Council could insist upon as part of the planning application. The Principal DM Engineer noted on the turning head feature, as set out on the plan, there was space for a refuse vehicle to manoeuvre, and therefore if someone was using the shop floor area, they would be able to manoeuvre a vehicle within that area. He noted that with all such cul-de-sac features one would expect deliveries from time-to-time, however, the number of movements per day would be under the 100 vehicle movements, even when including the shop, and therefore there was no technical reason in relation to trip generation to refuse the application, being light traffic levels within the cul-de-sac.

The Principal Planning Officer, Paul Hopper reiterated the points made by the Principal DM Engineer and noted Councillor M Wilkes had referred to CDP Policy 29(e) in terms of loss of the existing parking as an amenity loss. He added that, as the Solicitor – Planning and Development had noted, the area in question was unregistered and was subject to an adverse possession claim in terms of residents looking to prove some level of ownership. He added that the supporting text to Policy 29(e) provided some narrative as to how Officers would apply that particular part of the policy. He explained that it stated that ‘...*consideration should be given to matters of privacy, outlook, natural lighting, ventilation, as well as local climatic conditions*’. He noted that the Committee report detailed Officers’ assessment of that at paragraphs 57 to 61.

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

Councillor C Marshall asked if Officers could confirm if land ownership issues were material planning considerations, and if Highways could confirm the parking provision was in excess of that required for new build properties under policy. The Principal Planning Officer noted that land ownership issues were civil matters and fell outside of the scope of planning. The Principal DM Engineer noted the amount of allocated and non-allocated parking proposed was in excess of the Council’s parking standards, a good mix of visitor and in-curtilage parking.

Councillor K Shaw referred to CDP Policy 6 and noted a sum in the amount of £2,970 as regards alternative allotment space and asked whether that was a sufficient amount and whether there was an ability to deliver such space. The Senior Planning Officer noted the matter had been discussed with colleagues from spatial planning in terms of the Open Space Needs Assessment and it was noted that, in general, there was a shortfall in respect of allotment space. She added that accordingly there was deemed a need for that contribution to be made as regards additional allotment space or upgrading of existing allotment space within the Parish area. She noted that had also been a condition in terms of the previously granted permission.

Councillor D Brown noted he had never heard so much discussion in respect of car parking, however, having listened intently and read the Officer’s report he would propose that the application be approved, as per the Officer’s recommendation. He was seconded by Councillor K Shaw.

Upon a vote being taken it was:

## **RESOLVED**

That the application be **APPROVED** subject to the conditions as set out within the report, with a s106 Agreement in relation to provision of alternative allotments within the local area.

Councillor C Marshall noted he felt Members in objection to an application should make their objections known and give valid reasons rather than simply voting against an application.

*Councillor M Simmons entered the meeting at 10.29am*

### **b DM/21/01752/FPA - 37 North Road, Durham, DH1 4SE**

The Senior Planning Officer, Leigh Dalby, 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 change of use of ground floor premises from Dental Surgery (Use Class E) to Hot Food Takeaway (Sui Generis) with associated internal alterations and was recommended for approval, subject to conditions.

The Chair asked Parish Councillor Victoria Ashfield, representing the City of Durham Parish Council, to speak in objection to the application.

Parish Councillor V Ashfield thanked the Chair and Committee and noted she was a Parish Councillor and was Vice-Chair of their Planning Committee. She explained that the Parish Council strongly objected to the application and would ask that the Committee refuse the application without delay. She added that it must be refused on a range of policies, all agreed in the CDP which had been recently debated and agreed by the Council to enhance the county and city. She explained that, as the Parish Council stated that the application contradicted policies, and Officers had deemed it complied with policy, it was clear that policy matters must be a matter of opinion. She asked therefore whether Officers could describe the differential weight they gave to the applicant's convenience and the unacceptable impact upon residents and the wider community on amenity, in particular in relation to highway safety, noise and odours. She noted, in relation to the policies, it was a matter of opinion, not a matter of fact.

Parish Councillor V Ashfield explained that number 37 North Road was one of a short street of five properties situated north of the viaduct. She added that two of the properties already had takeaway permission and a third was a public house that served take away food.

She noted that part of the city was on the route to St. Leonard's and Durham Johnston schools and was in close proximity to Rushford Court, student accommodation used as a temporary college for Durham University. She noted that was to say that it was close to places where young people would be vulnerable to excessive fast food. She noted that the Officer commented that it was more than 400 metres away from St. Leonard's school, however, within his description of the application site, he had noted it was 'on the way to St. Leonard's' and she added it was clearly on a main thoroughfare to the school, where many students pass on their way to school.

Parish Councillor V Ashfield noted that the service would take place to the rear, however, the service counter would be to the front of the property, and therefore she asked how that would be possible. She noted the narrow entrance to the rear areas was only 2.3 metres wide and therefore too small for a standard sized food van to access. She added that entrance served all the businesses in that area, including back entrance to residential properties on Lambton Street, and was used for their parking and access. Parish Councillor V Ashfield noted that even if vans could get through the archway, there would be less manoeuvrability in that small space. She explained that the condition as regards deliveries to the rear only would not dictate what type of delivery vehicle was used and it was clear such vehicles would park on North Road. She added that where customers would park was outside of the control of the premises operator and having multiple customers arrive at the same time and to try and access the rear of the property was clearly impossible. She noted that, in practice, customers would pull up on North Road, as they do so currently for Domino's even though there was a small side road available for Domino's, and as they did so when the property next door had been a pizza shop previously. She added it would happen again and would be to the detriment of highway safety. Parish Councillor V Ashfield noted that therefore the Parish Council believed, as was the case with Domino's and The Bridge Public House, most vehicle deliveries and collection would have to take place on the street to the front, despite being protected by double yellow lines. She explained that parking on a double yellow line could be affected, without any contravention, for up to five minutes. She added that therefore the double yellow line in this case would not protect that area of the street. She noted that it would affect the sight lines coming out of Sutton Street and would also affect vehicles turning from the A690 and those requiring access to the railway station.

Parish Councillor V Ashfield noted the application was completely contrary to Durham City Neighbourhood Plan (DCNP) Policy T1 which stated, '*Adverse transport impacts should be avoided where practicable*'. She added CDP Policy 6(e) stated that development should be allowed where it '*will not be prejudicial to highway safety...*'.

She noted it was not safe to permit an additional takeaway in the area and the Parish Council could not agree with paragraph 66 within the Officer's report, which stated that there would not be any unacceptable impact.

Parish Councillor V Ashfield referred to a recent incident at the weekend where a car had been parked at 7.00pm, Saturday, 9 October in front of the Dental Surgery, on the double yellow lines, with no driver and the engine turned off. She added that the traffic in both directions had been blocked by a bus that was unable to get past the traffic coming the other way which was manoeuvring around the parked car until a bus coming in the other direction stopped to allow the first bus to pass. She noted that there was a library of photographs with dates and times indicating how dangerous parking conditions were in the area. She added that there was already an unsafe pinch point and therefore an additional takeaway would make it more difficult and more dangerous for traffic. Parish Councillor V Ashfield noted Highways Officers had stated that it would not add to the traffic and asked how any new takeaway could make money if it was not going to include new customers, noting the applicant must be anticipating more people coming to use the takeaway. She reiterated that it would be more difficult and dangerous for traffic and pedestrians and noise would make it unacceptable for residents. She added that if you had looked at the site, when approaching or leaving the railway station, you would have noticed those issues already.

Parish Councillor V Ashfield noted Durham County Council encouraged, through policy, healthy eating and added that recent Government guidance stating that the replacement of hot food regulation gave Local Authorities greater control to prevent the proliferation of hot food takeaways. She added that CDP Policy 30 stated reducing levels of obesity was a key objective of the Council. She added if the Council was serious in tackling obesity, particularly childhood obesity, it had no option other than to refuse the application. She noted the Council wished to enhance, not destroy, the amenity for its residents and CDP Policy 30 also stated that if a hot food takeaway was acceptable, consideration would need to be given to the impact of the development, particularly in terms of amenity and in relation to noise and odours. She explained that where it was considered that the application would give rise to unacceptable impact, the application should be refused. She asked that Members, during their deliberations, gave due weight to the views of the neighbours who lived within the area of the fumes, odours and noise associated with hundreds of meals served, collected and the cars that took them. She noted Policy 29 stated there must be no adverse impact upon the amenity of neighbours and, given the number of students and year-round residents that had already had their amenity impacted by existing takeaways, granting the application would be in breach of both of the policies and would further exacerbate complaints about disturbance and loss of amenity for residents.

Parish Councillor V Ashfield noted that another area for objection was in terms of the lack of detail in terms of the ventilation of fumes; rubbish collection, rubbish storage and food storage. She added that the bins for Domino's, number 41 North Road, were kept on the street corner as there was nowhere else to access them, being no access for collection vehicles. She explained it was not feasible at the archway as the pavement was very narrow. She noted that the letters in support of the application seemed very vague and the precise details of the specification for the equipment to be installed, included any extraction and odour abatement, had not yet been decided and it was anticipated that precise details would be determined at a later stage by way of condition, in the event that permission was granted. Parish Councillor V Ashfield noted that it was the view of the Parish Council that, as it was an issue that impacted both residents and motorists in the area, those issues were fundamental points that should not be left to later condition but should be available so that Members were able to make a proper decision today.

Parish Councillor V Ashfield noted that, regarding the hours of operation, the Parish Council concurred with the Police, however, would suggest further conditions, should the Committee be minded to approve the application, to reduce the opening hours to 10.30pm, in line with the other local premises. She added, in conclusion, that the Parish Council felt the application was contrary to CDP Policies 6(e), 21, 29, 30 and 31 and noted those policies had been hard won by Members and that they should not now be forfeit. She noted that Members had every right to be informed of the specification of all equipment to be installed, including extraction and odour abatement, and arrangements for refuse collection before being asked to make a decision. She added it was felt it was disingenuous for a developer not to provide such information and to ask Members to take it on trust. Parish Councillor V Ashfield noted the Parish Council urged that the Committee refused the application on those grounds.

The Chair thanked Parish Councillor V Ashfield and noted, as Local Member, he could attest to issues in terms of traffic and noise in the area. He asked the Planning Officers if they wished to comment on any of the points raised.

The Principal Planning Officer noted in respect of application of policy that it was subjective and, in the case of the application before Members, within the Officers' assessment there had been regard given to the responses from consultees, the issues raised in terms of highway safety, noise and odour. He noted the Committee would have regard in respect to the comments from internal consultees, as summarised within the report, who had offered no objections to the application, subject to conditions. The Senior Planning Officer noted some confusion as regards the terminology in relation to servicing, explaining that it referred to the receipt of goods by the unit, it was not expected that customers would be served from the rear of the unit.

He added that was not contained within Condition 4, it stating that '*All deliveries and servicing (including those being despatched and received) shall be undertaken from the delivery area at the rear of the property. No deliveries shall be received or despatched from the site outside the hours of 1000 and 2300*'.

Parish Councillor V Ashfield asked how Officers balanced the weight of the convenience to the applicant and the gross inconvenience to local nearby neighbours and traffic passersby, she noted Officers had accepted that it was a question of balance, they had not explained how they balanced those differences. She added that if it was clear that servicing referred only to delivers, would large delivery van be able to fit through the alleyway and asked where cars picking up takeaways would be expected to stop. The Principal Planning Officer confirmed that Officers attached weight to material considerations as they saw fit in each individual case, adding Officers need not attach any weight in respect of convenience to applicants. He reiterated each case was looked at on its own merits in terms of policy. The Senior Planning Officer noted, in respect of those picking up takeaways, one would expect drivers to be responsible and use the parking facilities on site, with a bay around the corner. As regards the archway, Officers had noted a standard 'transit' vehicle was approximately 2.03 metres wide, with the arch being 2.5 metres wide, though objectors had stated it was 2.3 metres wide.

The Chair asked Mr Roger Cornwell from the City of Durham Trust to speak in relation to the application.

Mr R Cornwell noted the Trust welcomed the opening hours being scaled back from 3.00am and, referring to a photograph of the alley, noted he had measured the archway with a tape-measure, and it was 2.3 metres wide and added a transit van, including the wing mirrors was 2.5 metres, therefore around 7 inches wider than the gap. He explained that a small trader would not be able to dictate to a supplier what delivery vehicle they would use, and he felt it was quite clear delivery vans would pull up and deliver via the front. He added that customers, as not obliged to access via the rear, would park at the front, noting that responsible drivers were not that common with many thinking they would be 'just nipping in for three minutes'. He explained another issue was that vehicles would be unable to turn around, as the area at the bottom was private car park and would not be available to deliveries.

In reference to map of vehicle crashes around the area which had formed part of the City of Durham Trust's submission, Mr R Cornwell explained that there had been four accidents in the past five years which involving people being injured. He added there were many more accidents that shown by the map as accidents would happen.

He explained that, in reference to Policy 30, Officers had quoted most of the policy, however not the last paragraph. He noted the last part read '*Where a proposed A5 use is considered locationally acceptable, consideration will need to be given to the impact that the development would have in terms of amenity, particularly in relation to noise and odours. Where it is considered that the proposal would give rise to unacceptable impact, the application should be refused*'.

The Chair thanked Mr R Cornwell and asked Councillor J Chaplow to speak in relation to the application, noting she was speaking in a personal capacity.

Councillor J Chaplow noted the change of use for 37 North Road was going to make a very big difference to Mr and Mrs Davison, with their bedroom being on North Road. She added excessive noise from traffic coming and going and food smells from the extractor fan would be just hitting at the level of their balcony and living room. She noted the chimney proposed was large. She added that the balcony was enjoyed a lot by Mrs Davison. Councillor J Chaplow noted the Davisons had lived in the neighbouring property since 1987 and leased the parking area at the rear for the use of employees and clients. She noted a drain had previously been blocked with fat, with no explanation of where it had come from.

Councillor J Chaplow noted the Indian Takeaway had no access to the back and that at the top, where the County Hospital used to be, there was a residence for Chinese students. She added there were three takeaways and a pub in such a short stretch of North Road from the roundabout, with the proposed takeaway only having access from North Road to be able to take in supplies and serve their food. She noted there was a high risk of serious accidents, with traffic turning into that stretch of North Road from the roundabout. She concluded by noting the property was not the place for an Indian takeaway.

The Chair thanked Councillor J Chaplow and asked Mr Daniel Puttick, Agent for the applicant to speak in support of the application.

Mr D Puttick thanked the Chair and Committee and explained he was Senior Planner at BHP Planning and Design, speaking on behalf of the applicant. He explained that the applicant had operated successful businesses in Durham for the past two decades. He noted Members had heard the concerns raised by those objecting and, while he would not address each point raised, he would respond to Councillor J Chaplow's reference to an Indian takeaway by noting that the specific type of food had not yet been determined. He added that the details of odour and extraction would be specific to the food type and therefore the details of amelioration would require careful consideration post-planning.

Mr D Puttick noted that many of the points raised had been dealt with in the comprehensive report before Members and he noted that policy requirements of the Local Plan were such that there were very few places where a hot food takeaway were deemed appropriate. He added whether one used hot food takeaways or not, or whether one liked them or not, they were an important part of the economy, providing employment and supply chain opportunities alongside the other shops, services and facilities in the city. Mr D Puttick noted the location was one that was acceptable in planning terms and therefore he welcomed the Officer's recommendation and was pleased to see there were no objections from consultees, including the Police. He concluded by noting that Officers were satisfied that, subject to the conditions set out in the report, there would be no adverse impact on the people living and working in the area and he hoped that Members agreed with their Officers and granted planning permission.

The Chair thanked Mr D Puttick and asked the Committee for their comments and questions.

Councillor J Cosslett asked if the height of the archway was known. The Senior Planning Officer noted he did not know, however, he added that it would be for each individual operator to ensure whatever vehicle serviced their premises was suitable to meet their needs, with it being often the case that small operators service properties themselves using their own vehicles. The Principal Planning Officer noted that, in terms of serving and access, it would be for the applicant to make suitable arrangements to service the rear. He added it was controlled by condition and there was enforcement action that could be taken should the applicant fail to comply with the condition. He noted the applicant was aware of the condition and presumably they would make arrangements to comply with the condition.

The Chair noted there were double yellow lines outside of the premises and asked who policed those double yellow lines, his understanding being that it was NCP who only operated until 6.00pm. He noted the majority of trade of a takeaway was likely to be after 6.00pm and asked what could be done as regards any vehicles parking outside the premises after 6.00pm.

The Principal DM Engineer reiterated that each application was looked on its own merits and explained that proposed site was within an established commercial area with a pub along the row, and also a pub opposite, together with a takeaway pizza shop. He added it was in a sustainable city centre area for journeys on foot to collect takeout food. He explained, in relation to accidents on the roundabout, there was often clusters of accidents on roundabouts and added there were no accident trends other than driver behaviour resulting in rear end shunts on some of the approaches to the roundabout. He noted, in terms of overall accidents, there was nothing that suggested the application would cause a significant highways impact.

The Principal DM Engineer noted that in terms of footfall and the lawful extent of use for the site, Category E, there could be uses that could also incur parking and footfall to the site, therefore it could attract other uses of a similar level. In respect of road safety and the double yellow lines on the highway, he noted that all road users needed to park responsibly and not park on double yellow lines. He noted NCP did enforce up to 6.00pm, however, if someone was to park on double yellow lines close to the roundabout and cause an obstruction, if that was deemed dangerous then the Police were able to deal with those causing an obstruction on the highway. He added that there was nothing to suggest the application would have a material impact upon highway safety for the reasons stated, with no accident trends and given the lawful extant use of the site.

The Senior Planning Officer noted Councillor J Chaplow had referred to having details of the chimney to be used and explained those details had not yet been supplied by the Applicant. He added that in terms of the type of food to be served, that was not a requirement for the application, the application being simply for a hot food takeaway.

Councillor S Deinali noted she shared the concerns raised by Parish Councillor V Ashfield in relation to parking and how that would then impact upon traffic throughout the city. She explained that from her experience travelling through the city a lot of the traffic on that particular roundabout then impacted on traffic along the road towards the Tesco store. She noted that no report had been submitted as regards odour and noted that was an issue that would severely affect residents in the area. She explained she had concerns as regards that and why a decision was sought without such a report having been submitted.

Councillor C Marshall noted he felt it would be helpful for Members to have some additional information as regards Condition 5 as set out in the report, in terms of feedback from Environmental Health in how the application would satisfy that condition. He added it was clear details would need to come back to the Authority and be approved, however, he asked if Officers could explain how the odour and extraction units would work to eradicate or mitigate that risk. He noted Members would be aware of the amount of time Environmental Health spend in terms of dealing with odour nuisance and reiterated additional information would be beneficial for the Committee.

Councillor J Cosslett asked if consideration had been given for the rise of Uber style delivery adding it would surely increase the number of vehicles stopping outside the takeaway.

Councillor L Holmes noted he was not familiar with how many parking bays were available round the corner and asked for information in that regard.

He added that while it would be good if all drivers were good some drivers were not, however, how confident were Officers in terms of enforcement of the parking restriction between 6.00pm and 11.00pm, with the potential of individuals, perhaps under the influence of alcohol, to be crossing that area of road with parked cars perhaps confusing the issue more.

The Principal Planning Officer noted that in relation to odour, Condition 5 stated '*No hot food shall be prepared or served at the premises until details of the fume extraction system*' were agreed by the Local Authority, and he explained that would be in consultation with the Environmental Health Section. He added Environmental Health had suggested the wording of the condition. In reference to the lack of the submission of a report specifically covering odour, he referred Members to the section of Condition 5 which stated a risk assessment would be required and it would inform what type of equipment was required and was in line with DEFRA guidance. He added that colleagues from Environmental Health would not have suggested the condition if they had not been confident that a solution could be provided. He explained that Officers noted that the impact on residential amenity was important, however, the inclusion of Condition 5 meant that Officers felt that any impact in that regard could be mitigated to within acceptable levels. The Principal Planning Officer noted the Committee had heard from the Highways Officers as regards how arrangements would work and responses were that the development could be satisfactorily accommodated and there was not a highway safety refusal reason in relation to policies T1 and 21.

The Principal DM Engineer explained that looking at the accident statistics there was no trends suggesting a road safety issue, with incidents being driver behaviour and rear end shunts. He noted the average daily traffic through the city centre was around 20,000 vehicles and therefore there would be clusters of incidents around roundabouts, however, in trying to attribute issues to the type of development as in the application, he felt it would not be possible to sustain a highways objection in terms of Paragraph 111 of the National Planning Policy Framework (NPPF).

The Chair asked if Officers could respond to the point made by Councillor J Cosslett in terms of the potential increase in use by new methods of takeaway delivery methods. The Principal Planning Officer added that in terms of the existing restrictions in place, it would be assumed that those restrictions would act effectively. The Solicitor – Planning and Development noted that, as he understood, the situation was that the double yellow lines would be enforced by the enforcement team up until 6.00pm, thereafter it would be for the Police to enforce as regards any obstruction that would occur if someone was to park on those double yellow lines. He added that there was an effective enforcement mechanism post 6.00pm.

He agreed with the Principal Planning Officer, noting that it was assumed that those other legislative controls would operate correctly, and added one could not come from a starting point that they would be ineffective, one would assume they would be effective. He noted that in reality there would be some breaches that would have to be dealt with by enforcement and reiterated that the assumption would be that those controls outside of the planning system would be operated satisfactorily.

The Chair noted the issue of the hours of operation had been raised, noting that the condition within the report noted the shop would stop operating at 11.00pm. He asked as regards whether the Licensing Team could grant different hours of operation and the suggestion by the Parish Council of 10.30pm as a closing time. The Senior Planning Officer noted the planning conditions would take precedence and explained that while Environmental Health and the Police had noted no objections to the 11.00pm closing time, that was a matter Members may wish to decide upon.

Councillor C Marshall noted he had listened very carefully to the points raised by Officers and the questions and points raised by the speakers. He noted that in any other area within the county the potential to occupy an empty building with a business would not be contentious. He noted in terms of the change of use, the area already had the principle established in terms of hot food takeaway. He noted the application sought to bring an empty building back into use and raised the question, while not a material planning consideration, what the alternative could be and whether the Committee would be looking at a planning application for an HMO, likely the only other viable alternative use in that part of the county.

Councillor C Marshall noted the point raised by the Parish Council in that policies were subjective and added that he had been convinced by the Officers that the application did comply with the Council's policies. He noted that he did have concerns as regards the extraction system and therefore he would move support of recommendation, with an additional requirement that the details to be agreed with Planning and Environmental Health Officers also be in consultation with the Chair and Vice-Chair of the Committee, which was not uncommon, to ensure there was a greater degree of scrutiny on behalf of the Members of the Committee. He added that he felt the applicant could not be held responsible for pedestrians crossing the road and noted that he had several takeaways in his Division that were in villages and were well used though until 11.30pm-12.00am. He reiterated that he moved the application be approved, subject to the conditions as set out in the report and an additional requirement for the details relating to extraction to be in consultation with the Chair and Vice-Chair of the Committee. He was seconded by Councillor K Shaw.

Upon a vote being taken it was:

## **RESOLVED**

That the application be **APPROVED** subject to the conditions as set out within the report, with an additional requirement that the ventilation/extraction details required under Condition 5 are only approved in consultation with the Chair and Vice-Chair of the Committee.