

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 8 February 2022** at **9.30 am**

Present:

Councillor D Freeman (Chair)

Members of the Committee:

Councillors S Deinali (Vice-Chair), D Brown, J Cosslett, J Elmer, L A Holmes, C Hood, N Jones, C Kay, D McKenna, R Manchester, C Marshall, E Mavin, K Robson, K Shaw and A Surtees

Also Present:

Councillor M Wilkes

1 Apologies for Absence

There were no apologies for absence.

2 Substitute Members

There were no Substitute Members.

3 Minutes

The minutes of the meeting held on 11 January 2022 were confirmed as a correct record by the Committee and signed by the Chair.

4 Declarations of Interest

The Chair, Councillor D Freeman noted in respect of Item 5a, that he was 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.

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

a DM/21/02945/FPA - 1 Newcastle Terrace, Framwellgate Moor

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 for change of use of 2-bed C3 (dwelling) to a 4-bed C4 (HMO) with external and internal alteration and was recommended for approval, subject to conditions.

The Chair thanked the Senior Planning Officer and asked Councillor M Wilkes, Local Member, to speak in relation to the application.

Councillor M Wilkes thanked the Chair and Committee and asked them to imagine being on the deck of a 16th Century galleon, receiving lashes from a cat o' nine tails as punishment for drinking one's shipmate's rum ration. He noted that the fact you would be on deck was due to the lack of the room to swing a cat below deck. He explained that jumping forward 300 years, Newcastle Terrace was being built in the expanding mining community of Framwellgate Moor. He added that the properties were an improvement to the single storey cottages of the time, far bigger and better. Councillor M Wilkes noted that over the next 100 years building standards had appeared to go backwards and, while there were new technologies such as insulation and double-glazing, developers were building properties with box rooms which were barely capable of fitting a bed, desk and a wardrobe. He noted the introduction of the Nationally Described Space Standards (NDSS) so that residents across the country were able to live in decent homes.

Councillor M Wilkes noted that Members would be aware that those minimum standards still could result in some small rooms being built or converted and called bedrooms. He added that those minimum standards were there for very good reason and included a minimum standard property size. He explained that the two bedroom, ex-miners' properties from the 19th Century on Newcastle Terrace had been built such that they exceeded today's minimum space standards and noted that those standards also applied to conversions.

Councillor M Wilkes explained that chopping up the interior of one of those cottages and converting them to a four-bed House in Multiple Occupation (HMO) did not meet the minimum standard and breached Policy 29 of the County Durham Plan (CDP), adding that a four-bed property should be no less than 97 square metres.

He noted that the opinion within the report was not, in his view, accurate in suggesting that a plan that was more than 14 percent below the minimum standard would be passed on appeal. He noted that the NDSS stated that at least one bedroom in a four-bed home must be at least 11.5 square metres, a woefully inadequate size in his opinion. Councillor M Wilkes explained that while that may be the case, the minimum size would protect people from smaller sized bedrooms, and he noted that none of the bedrooms within the proposal before Members were that large.

Councillor M Wilkes noted that the accommodation being built and converted across Durham City, and expanding into other areas, brought with it frequent challenges. He added that it was the conversion of properties to HMOs that angered people the most, noting that Newcastle Terrace had largely been protected from such conversion, with only 6.3 percent having been converted to HMOs. He noted the reason was that the properties were too small to be converted into four-bed properties without being extended. He explained that only two houses in the street were registered HMOs, both of which had significant extensions, and with both being three storey properties.

Councillor M Wilkes noted that Framwellgate Moor Parish Council had objected to the application for various reasons, including the impact of the proposals on parking. He added that the property was on a street where parking was already a problem and noted that CDP Policy 16 required that HMOs provide adequate parking and must have regard to the Council's adopted Parking and Accessibility Supplementary Planning Document (SPD). He noted paragraph 54 of the Officer's report noted that the proposals did not meet the standards required within the SPD. Councillor M Wilkes explained that the reason given for the Committee to ignore the policy was that there was no space for the required extra parking on the street and asked how that could be a valid argument in planning terms. He noted that he felt the report was pretty clear and he felt that the proposals were in breach of Policy 16, specifically 3(d) adding that he felt policies should not be ignored. Councillor M Wilkes added that he felt the Council should not allow properties to be converted to significantly below national standards or in breach of its own policies. He explained that while he was sure the internal finish of the property would be of a good quality, that did not take away the fact that the proposal was against policy, namely policies 16 and 29. He urged the Committee to use those policies to reject the application, supported by the Parking SPD and the national space standards.

He noted Policy 29(e) stated that proposal would be required to '*provide high standards of amenity and privacy*' and Policy 29(f) stated that design should '*contribute towards healthy neighbourhoods and consider the health impacts of development and the needs of existing and future users...*'.

Councillor M Wilkes reminded Members that people had just come through the worst health crises for a century, adding that everyone in the room would understand the difficulties of being stuck inside their home during the pandemic. He asked Members to imagine being stuck inside a 7.5 square metre bedroom with the only other room one could sit in being a shared all-in-one kitchen/lounge with three other people who were not members of your family. He noted that was what was being proposed by the application and added that he felt it was unacceptable, reiterating that it breached national guidelines and the Council's own CDP. He concluded by noting that, should the application be passed, he hoped that the tenants did not get a cat.

The Chair thanked Councillor M Wilkes and asked Mr Roger Cornwell, representing the City of Durham Trust to speak in relation to the application.

Mr R Cornwell thanked the Chair and Committee and noted he would refer to slides on the projector screen. He explained that the City of Durham Trust's case was that the proposal was not consistent with Policy 29 of the CDP adding that the policy was aimed at driving up building standards in the County, however, the proposals would take a house that met the NDSS and turn it into one that did not.

He referred to a slide setting out the current property layout and noted there were two bedrooms, both on the first floor, and both large enough to be a double bedroom. He added that the ground floor was a living room and presumably a kitchen. He referred to a second slide which set out the proposals, noting that there were now four bedrooms, the largest of which was 10.4 square metres. He added there were now two bathrooms and that the amount of shared space had been halved, crammed into what was described as the kitchen. Mr R Cornwell noted that space would not meet the NDSS.

Mr R Cornwell referred Members to points he would list, from the NDSS:

- a) There's a minimum floor area which to some extent depends on the number of residents and the number of bedrooms.
- b) If a house has more than one bedroom, one of them must be a double. It's this rule that explains why, as the report paragraph 44 notes, the NDSS does not provide guidance specifically relating to 4 bedspace, 4 person dwellings.
- c) All of the bedrooms meet the standard for a single bedroom, but
- d) None of them meets the minimum for a double, which is 11.5 square metres. You will recall the largest is 10.4 square metres.

Mr R Cornwell explained that the internal floor area of the house was 85 square metres, spread over two floors.

He added this was more than was needed for a two-bedroom house, which was 79 square metres, however, not for the proposed four-bedroom house, where the minimum was 97 square metres.

Mr R Cornwell noted that the City of Durham Trust agreed with the Officer's report, which stated that the NDSS cannot be applied rigidly, but it was '*a relevant measurement against which to assess the suitability of internal space provided within all residential development in the context of policy 29(e) of the CDP which requires new development to provide high standards of amenity and privacy.*'

Mr R Cornwell reiterated that one of the aims of Policy 29 was to drive up residential living standards and reiterated that the proposals would turn a house that met the NDSS into one that did not. He noted that there should be no backtracking and added that was a fairly basic principle that he hoped the Committee agreed with. He noted that, consequently, the application should be refused as it did not meet the requirements of Policy 29(e) of the CDP.

The Chair thanked Mr R Cornwell and asked Officers to comment of the points raised by the speakers.

The Principal Planning Officer, Paul Hopper noted that it was important to understand when and where the NDSS would apply and explained that the supporting text within the standards referred to '*all new residential development*'. He added this was followed up in CDP Policy 29 in terms of when those space standards should apply, as well as in the supporting text. He explained that Officers had taken the view, in this instance, that the rigid applications of the NDSS did not apply. The Principal Planning Officer noted that Councillor M Wilkes had suggested that some of the information within the report was misleading and explained that he disagreed adding that any decision which specifically cites as a refusal reason failure to comply with NDSS could not be sustained at appeal. He added that, as referred to within the report, it was a measurement of the quality of a particular development. He noted in reference to the application, Officers view was the NDSS did not apply to conversions, with the only instance where it would apply to conversions was if there was a net increase in the number of dwellings, if a new dwelling was created then the NDSS could be applied rigidly.

The Principal Planning Officer noted comments relating to a double-bedroom and he explained that was a requirement contained within the NDSS and referred to his previous comments on when the NDSS would apply. He added that given the proposed use for student occupation, it was likely that all of those bedrooms would be occupied as single bed spaces.

He reiterated that the requirement for a double-bedroom was included within the NDSS and added that the standards should not be applied rigidly and that it was felt there was not a sustainable refusal reason based upon that.

The Principal Planning Officer noted that, as set out within the report, the proposed use would not be licensable as a HMO, nevertheless, if the space requirements were applied as part of a licencing regime, the development would meet with those minimum requirements.

In summary, the Principal Planning Officer noted that if Members were minded to apply the NDSS as a measure of the quality of the space provided within the development and were minded to refuse the application as they felt the application did not provide a satisfactory level of residential amenity in terms of internal space, in the context of Policy 29, Officers felt that any refusal reason that cited failure to comply with the NDSS would be challengeable.

The Principal Development Management Engineer, David Battensby explained that it was entirely possible for a property to be altered internally to provide additional rooms without planning permission. He added that, likewise, it was possible for a family to have multiple vehicles without any recourse in terms of the County Council's parking standards. He noted that the existing terrace did not generally have any in-curtilage parking, with on-street parking being the norm for family members. He added that it was not possible to require a developer to provide in-curtilage parking where it was not practicable and therefore it was not possible to impose the parking standards on such a development. In reference to the sustainability of the location, he noted that there were bus stops within 70 metres of the property and it was intended that the property would have adequate cycle storage provision. He noted that therefore the application was compliant with the standards that were asked for, however, in terms of asking for additional parking on-site, it was not possible to apply those standards. The Principal Development Management Engineer concluded by explaining that it was the responsibility of the motorist to find a place to park, adding that Highways did try to achieve what it could in terms of parking provision, however, where there was not space then it was not possible to force a developer to come up with additional space.

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

Councillor C Kay noted the objectors had placed great store in the NDSS and had explained how they felt the proposals did not meet the requirements, with Officers having a different view. He asked as for clarification of the Officer's views in terms of when the NDSS applied, and the type of secure cycling storage that would be provided.

The Principal Planning Officer noted that if Members were minded to refuse the application because they felt there was insufficient internal space provided, they would be able to do so and there were policies that Members could cite in that respect. He added that any refusal reason that specifically referred to failure to meet NDSS would struggle to be sustained at appeal. He noted any refusal of an application because Members felt it failed to provide an adequate quality of development, in the context of Policy 29, would be a decision for the Committee. In reference to cycle storage, he explained that it was subject to condition, for precise details to be submitted to, and agreed by the Local Authority.

Councillor J Elmer noted he was still slightly confused and referred to Policy 29, in terms of NDSS, and that Officers were suggesting that it would be difficult to sustain a refusal reason based on that at appeal. He added that Officers had also suggested that it would be reasonable to use the same policy albeit in relation to the quality of the development. He explained his understanding was that Policy 29 primarily focussed on space standards within properties. The Principal Planning Officer noted that Policy 29 did refer to the NDSS, however, that was in relation to new development, as previously mentioned. He added that Members could refer to Policy 29 within any refusal reason if they felt the development did not provide adequate internal amenity space, reiterating that the NDSS did not apply in this instance as it was not a new development or provided a new dwelling.

Councillor J Elmer noted the property had previously been a miner's cottage with two decent-sized rooms on the upper floor, considered adequate at the time in terms of the space people need to be able live, albeit that being quite some time ago. He added that those rooms had been subdivided down to rooms that were quite tiny and were not going to be able to provide for people's future quality of life, exacerbate people's mental health issues, noting the country was facing a mental health crisis. He explained that he felt the least the Committee could do was to try and make rooms available that had adequate space for people to live in. Accordingly, he moved that the Committee reject the Officer's recommendation and refused the application citing Policy 29 in terms of failure of the building to provide adequate quality of life.

The Principal Planning Officer noted for clarity that in terms of the NDSS and the bedroom sizes, all of the proposed bedrooms met the NDSS for single bedrooms. Councillor J Elmer noted that they did not meet Part B of the NDSS in terms of one of the bedrooms being a double-bedroom. The Principal Planning Officer noted the proposals partially complied, however the extent to which it complied or did not comply, given the nature of the development, should be afforded very limited weight in terms of a refusal reason.

Councillor J Elmer noted he felt it should be applied with a more significant degree of weight as it related to people future quality of life and that it seemed to be a matter of judgement.

Councillor C Marshall noted he agreed with Councillors M Wilkes and J Elmer in terms of the property not being suitable, adding that the city centre was full of such conversions, with poor concrete floors, lowered ceiling heights and new floors added to obtain additional storeys within a property. He explained that the issue was one that was discussed at nearly every meeting of the Committee in that there was a world-class university, with ambitions to grow the number of students and modernise its assets. He noted the major role of the university in supporting the economy of the county and the wider North East. Councillor C Marshall noted that it was impossible for the university to grow without having a plan for how students were going to live, integrate and contribute in a positive way to the wider community in and around Durham. He noted that he was supportive of the university plans for expansion, however, it would not be possible without an acceptable plan for growth noting potential uses within the city that would increase the number of students. He added that one could not flood the city with students without having an accommodation strategy that allowed those students to come and live in the city. He noted he felt there was no standing in terms of refusing the application, referring to an appeal against refusal of a similar application at North End, with the Council awaiting information in terms of whether the applicant in that case would be awarded costs. Councillor C Marshall noted that without a planning policy that could support Officers then similar situations would occur at Committee. He noted he was not sure he could support the refusal of the application as he did not feel the refusal reasons stood up in terms of planning grounds, adding he felt there would be another appeal, and with costs. He reiterated that he agreed with the sentiment that the property was unsuitable, however, he did not feel planning policy allowed for the application to be refused.

The Chair allowed Mr R Cornwell to note that the North End application referred to had been refused at appeal. The Chair added that not all were in favour of Durham University expansion, they having hit their projected numbers around five years ahead of schedule.

Councillor J Elmer noted the university had an accommodation plan which supported the building of Purpose Built Student Accommodation (PBSA), which they would have some form of influence over. He added that the type of accommodation as referred to in the application was not supported by the university. Councillor J Cosslett noted he would second Councillor J Elmer's motion to refuse the application.

The Solicitor – Planning and Development, Neil Carter, asked for further clarity of the proposed refusal reasons, noting that Councillor J Elmer had mentioned sub-standard accommodation he believed was detrimental to the future residential amenity of occupiers, adding that was strictly different to the application of the NDSS. He added that some of the bedrooms were compliant with the NDSS and therefore he noted that it would be difficult to sustain refusal in connection with bedroom sizes given that they are compliant with NDSS. It noted that in respect of the more common parts of the property, it was known they were not compliant, and a reason could be put forward, that could be argued at appeal, in connection with a lack of adequate accommodation for future occupiers. He noted he would wish to drill down into the reasons and make the distinction, adding he was concerned that if there was a generic reason relating to space standards, then time would be spent dealing with the issue of the bedroom sizes at appeal, reiterating that the bedroom sizes were felt to be acceptable as they did comply with the space standards. He noted there was a refusal reason to be advanced, based on conflict with Policy 29, and reiterated he would welcome further qualification from Councillor J Elmer about which aspects of the development he had those concerns about.

Councillor J Elmer noted that Officers had referred twice to the application being compliant with the space standards, however, that would require there to be a double-bedroom, however there was no double-bedroom. He asked whether the proposals were compliant with the space standards. The Solicitor – Planning and Development noted the advice from Planning colleagues was that the bedrooms were compliant. Councillor J Elmer noted he felt that did not follow when looking at the standards as written as asked for more information on how that position had been reached. The Principal Planning Officer noted the NDSS included minimum requirements for bedroom sizes, a minimum requirement for overall space delivered within the development, and a requirement for one of the bedrooms to be a double-sized bedroom. He explained that the proposals were compliant in that the single bedrooms met the minimum standard. In terms of a double-bedroom, he noted that the proposals did not deliver a double-bedroom. He reiterated his earlier comments that the standards themselves were not applicable in this instance. Councillor J Elmer noted that the justification that had been given was that the proposals were not considered by Officers to be new development, being replacement of residential with residential. Councillor J Elmer put it that it was moving from a building with two decent sized rooms to four new rooms which were quite small, half the size of the previous rooms. The Principal Planning Officer noted the distinction that needed to be drawn in terms of new units and new bedrooms, being fundamentally different. He noted Policy 29 and the text at the beginning of the NDSS, adding in Policy 29 it related to all new residential development, with supporting text making reference to internal space within new dwellings. He noted in terms of the NDSS it referred to internal space within new dwellings.

He noted that the proposals could not be said to deliver a new dwelling and it was on that basis he had commented as previously mentioned.

Councillor J Elmer noted he felt there was a flaw as that would mean that any conversion of a building, from two bedrooms to four bedrooms as an example, would therefore not have to comply with the minimum space standards. He felt that was saying to all students across the city that the space standards did not apply to them, adding he felt that was a backwards way of looking at things. He noted he would wish to continue with his objection and put the Council in the position of having to make a case for developers to provide decent standards of living.

Councillor C Marshall noted that the way to do what Councillor J Elmer had said was to create a planning policy that allowed for the Officers to stand behind it. He noted the situation was going round in circles, noting he had heard no case for refusal, adding that he would support any such case if one could be made. He explained that it was not simply a case of saying that Officers were wrong and noted that Officers had succinctly put that, from a planning policy point of view, it was not possible to reject the application on space standards. He added that Members could not ignore that and hope that Officers, being put in the impossible position of defending the indefensible, could do so. Councillor C Marshall noted planning policy should not be made up in that way and, while supporting the comments from Councillors J Elmer and M Wilkes, he noted the way was to develop a policy to allow Officers to stand behind it, not to make up policy when an application was heard at Planning Committee. He concluded by noting he therefore could not support any recommendation for refusal unless a Member was able to provide clear material planning considerations that would stand up at appeal.

Upon a vote being taken on the motion to refuse, the motion was LOST.

Councillor M Wilkes asked for clarity on the vote of the Chair, the Chair noted he did not vote.

Councillor C Marshall proposed that the application be approved, he was seconded by Councillor C Kay.

Upon a vote being taken it was:

RESOLVED

That the application be **APPROVED** subject to the conditions set out within the report.