

DURHAM COUNTY COUNCIL
AREA PLANNING COMMITTEE (CENTRAL AND EAST)

At a Special Meeting of **Area Planning Committee (Central and East)** held in **Council Chamber, County Hall, Durham** on **Tuesday 20 December 2022** at **1.30 pm**

Present:

Councillor D Freeman (Chair)

Members of the Committee:

Councillors L A Holmes (Vice-Chair), A Bell, L Brown, I Cochrane, M Currah (substitute for J Quinn), S Deinali, J Elmer, C Kay, R Manchester, C Marshall, K Shaw and A Surtees

Also Present:

Councillor C Fletcher

1 Apologies for Absence

Apologies for absence were received from Councillors D McKenna, J Quinn and K Robson.

2 Substitute Members

Councillor M Currah substituted for Councillor J Quinn.

3 Declarations of Interest

In respect of Item 4a, Councillor L Brown noted she was a Member of the City of Durham Parish Council, however, she had not been party to their representations on the application. She noted she was also a member of the City of Durham Trust, however she was not a Trustee and had not been party to their submission in objection.

In respect of Item 4a, the Chair, Councillor D Freeman noted 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.

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 submissions in objection.

Councillor C Marshall noted he was aware of both applications from his previous role as Portfolio Holder, however, he had a clear mind in terms of looking at the applications at Committee.

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

a DM/22/00961/FPA - William Robson House, Claypath, Durham, DH1 1SA

The Principal Planning Officer, Paul Hopper 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 conversion of parts of the ground, first and second floors to create 28 bed student accommodation (Sui Generis) with ancillary communal social area, plant room, cycle and refuse storage and was recommended for approval, subject to the conditions and s106 Legal Agreement as set out in the report.

The Principal Planning Officer noted the report erroneously referred to Policy 16 within the first sentence of paragraph 87, with Members to note it should have referred to Policy 6.

The Chair thanked the Principal Planning Officer and asked Parish Councillor Grenville Holland to speak in relation to the application.

Parish Councillor G Holland thanked the Chair and Committee and explained that the Officer's report clearly identified the concerns of the residents of Durham City. He added that, however, the recommendation for approval tried to interpret Policy 16 of the County Durham Plan (CDP) in favour of the applicant by finding a new route, one which he would put to the Committee was never intended by those who drafted and approved the CDP two years ago.

He explained that the key part of the Policy, concerning student accommodation read:

“All proposals for new, extensions to, or conversions to, Purpose-Built Student Accommodation on sites not allocated for student accommodation, will be required to demonstrate:

- a. *that there is a need for additional student accommodation of this type in this location;*
- b. *consultation with the relevant education provider pursuant to the identified need;*

Parish Councillor G Holland added that the precise definition of the English word “need” was: *“Because it is essential or very important, rather than just desirable.”*

He noted that therefore the question before Members was: do we need Robson House as offered in this form and can that need be shown? Was it essential or merely desirable? He explained that, of course, we did not need it and suggested asking residents and the University, who would tell you that we did not need it, and while it might be nice to have a few more beds for extras but was not essential. He stated that the only person who needed it, and for whom it was also desirable, was the developer.

Parish Councillor G Holland explained that, if approved, the outcome would be a curious melange of C3/student purpose build student accommodation (PBSA) that would surely become a larger PBSA within a short space of time, thereby losing the C3 accommodation needed in this part of the city. He reminded Members that Policy 16 was designed to avoid that situation. He added that was with good reason, and that residents did not want Robson House to be turned into a student development; and the University had neither asked for it or endorsed it, confirming that, despite the recent glitch in their admissions process last August, the PBSAs already in existence, coupled to the College rooms and HMOs available, were sufficient to keep them on course to manage their future student numbers until 2027.

Parish Councillor G Holland noted that because the University would not endorse the application, the developer went behind their back by unofficially approaching the Colleges in an attempt to overcome the constraint of “need” and “consultation” required in Policy 16. He noted that, however, the reference within the Committee Report to statements by individual Colleges and an article in Palatinate (student newspaper) carry no weight in the determination of the application because neither were the education provider, as required in Policy 16.2. He added that furthermore, Members should take into account that the students already have a large PBSA available to them called Student Castle which was just across the road from Robson House.

Parish Councillor G Holland noted that the applicant has also used a StuRents report to suggest that there was an accommodation shortfall in Durham. He explained that StuRents was a national service for private letting agencies and therefore, that report did not include accommodation from the Colleges and other University owned properties.

He added that the developer had also devised a supposed need by suggesting that a slight modification in the design of his property would create an alternative choice in the market and, while that may be desirable, it did not prove need.

Parish Councillor G Holland noted that device involved stretching a phrase in the Policy 16 explanatory paragraph 5.141 discussing 'need' for additional student accommodation where it notes that "*PBSAs can increase choice for the student population and is an alternative to Houses in Multiple Occupation (HMO)*". He added that then so do the University Colleges and other more private arrangements increase that choice, with paragraph 5.141 merely balancing HMOs against PBSAs. He noted that, to help further their cause, the developers also provided a report to demonstrate that their plans would be well received by the student body. He explained that report should not influence Members and that such reports were designed and funded with such a purpose and the Officer had given it far too much weight. He noted the report was demonstrating desire, not need.

Parish Councillor G Holland noted that there was therefore nothing special about Robson House that could allow it to enjoy an enhanced consideration in this present planning context, noting that Policy 16 Part 2 applied. He explained that the real problem that faced all of those who were concerned about the future of Durham City was that the process of C4 encroachment would go on until residential accommodation in our City had become a thing of the past. He added that Robson House could, of course, provide welcome C3 accommodation to that part of the city, whereas the proposed melange of C3/PBSA would be an unhealthy and unsustainable arrangement. He noted that alternatives for the site should be identified following the guidance of CDP Policy 15.

Parish Councillor G Holland noted that, in the time available to him, he had only been able to look at CDP Policy 16 Section 2 paragraphs a and b, by both of which the application failed. He added that, in the final analysis, the application also failed the test of Policy 16 Section 2, paragraphs c, e, and g. He noted it failed Policy 29, Sustainable Development, sections e and f, and the guidance of paragraph 5.287. He explained it also failed Policy 31, Amenity and Pollution, whose concerns would be briefly mentioned by another speaker. He concluded by noting that the application also fell well short of the intentions of Paragraphs 91 and 127 of the NPPF and sections of the DCNP Policy 5 and therefore, for those reasons, the Parish Council felt the Committee should refuse the application

The Chair thanked Parish Councillor G Holland and asked John Ashby, representing the City of Durham Trust to speak in respect of the application.

J Ashby thanked the Chair and Committee and explained he was speaking both on behalf of the City of Durham Trust and the St. Nicholas Community Forum in respect of the application and would refer to presentation slides to give additional context.

J Ashby reminded Members that the history of the site was a saga of unsatisfactory applications that were either withdrawn or refused, including two that were lost on appeal. He explained that finally, in 2018, approval was sought for C3 residential development, with the applicant having mentioned that the apartments could be attractive to students, which the Trust opposed. He noted that assurances were sought and given that the development would not be for students and approval was duly granted only for C3 residential accommodation, with conditions on noise, waste management and construction. He noted that, however, we were at Committee today with an application for the conversion of parts of the ground, first and second floors of William Robson House to create 28-bed student accommodation.

J Ashby stated that for a PBSA, which the application was for apparently, Policy 16.2 required proof of a need for additional student accommodation of that type in that location. He noted that it was agreed by the Trust and the Planning Officer that there was not a quantitative need for the accommodation. He added that the applicant's various submissions on need were spurious, and he would gladly demonstrate that if asked. J Ashby noted that therefore the proposal should be refused, however, the Committee Report recommends approval.

He noted that the Trust disagreed with the Committee Report in that the proposal met a qualitative need, with that argument destroying requirement (a) of Policy 16.2. He added that the Trust disagrees with the Committee Report in that the University's views could be set aside, with that argument destroying requirement (b) of Policy 16.2. He noted that there was simply no point in having had those carefully-crafted requirements hammered out in the CDP Examination in Public, only for them to be turned into anything goes for developers. He added that the proposed C4 student accommodation use raised potential problems with noise, waste management, and construction.

In respect of noise, J Ashby explained that whatever was done to protect the students from external noise, none of that prevented adverse impacts upon nearby residents in Blue Coat Court from noise from the student occupants, especially from music and celebrations with windows open onto the yard adjacent to Blue Coat Court, and with student occupants returning at all hours from a night out in town.

In reference to waste disposal, J Ashby noted that applicant explained that:

“Provision has been made for external refuse storage with three 1,100 litre bins for general waste and two 1,100 litre bins for recycling. The bins will be moved to Claypath by private contractors in line with the method previously employed for the offices and collected weekly or as frequently as needed.”

J Ashby asked where on Claypath would those huge waste bins be placed, with a run of three bins being four metres in length. He added that if the bins were placed in front of the Durham Food Store they would not only block access into that shop but would also obstruct the passage on the pavement of wheelchairs and prams because of the ‘no waiting’ post there. He noted that equally, if they are placed in front of The Big Jug public house, the pavement would be blocked because of the fixed litter bin, as shown on the presentation slide. The Committee were referred to a further slide showing the 1,100 litre waste bins typically used at student premises, with the poor state of bins shown also being noted as typical by J Ashby.

In respect of construction, J Ashby explained that work had already started on the approved scheme for William Robson House, with large lorries and cement wagons having disgorged their contents on Claypath, obstructing both pedestrians and vehicles for hours. He noted that clearly the existing management plan was not good enough.

J Ashby noted that, over and above all those issues, CDP Policy 15 and DCNP Policies D2 and D3 seek 25 percent of residential units to be affordable, and 10 percent to be suitable for older people, and 66 percent to be accessible and adaptable. He noted none of those provisions were included, adding that disabled students required proper provision. He noted that the Trust and Community Forum believe that the approved C3 residential use should be retained, following the successful example across the road of the former Royal Mail offices at Claypath Court, converted to much-needed older persons’ accommodation that was, in Durham City terms, affordable. J Ashby concluded by noting that the application should be refused as it conflicted with the requirements of CDP Policy 16.2 and Policy 15 and DCNP Policies D2 and D3.

The Chair thanked J Ashby and asked Steve Major, Agent for the Applicant, to speak in support of the application.

S Major thanked the Chair and Committee and explained that throughout the application, the applicant and their team had engaged proactively with the Planning Department in relation to NPPF and CDP policies. He noted the Committee report gave a fair and balanced summary of the proposals and referred to the applicant’s statement within the report. He noted compliance with Policy 29(c) in terms of minimising CO₂ and use of low carbon energy, and use of insulating fabric and air source heat pumps.

He noted that the applicant's aim was for a high level of quality, giving use to a significant building in a sustainable way. He added he would be happy to answer any questions from Members as necessary.

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

Councillor L Brown noted that, when looking at the plans via the Planning Portal, she could not see any disabled access to the upper floors and communal areas, as required by Policy 15 of the CDP and paragraph 5.146 of Policy 16. She added that the Parish Council and City of Durham Trust had questioned the need for the proposed student provision, and could not see any independent demonstration, indeed with the University's Senior Property Asset Manager, Matthew Wright referring to the proposals as '*lower quality accommodation*'. She added that paragraph 99 of the Committee report referred to reports within Palatine that there was less student accommodation as a result of the pandemic, however, that was hearsay and not data and therefore should be disregarded.

Councillor M Currah asked for clarification from Officers in terms of need. The Principal Planning Officer noted there was quantitative and qualitative need, in terms of the range of accommodation available. He explained that the report set out the requirements in terms of range and variety and attached weight accordingly. He added the offer was significantly different from other PBSAs in the city centre and HMOs within the city, noting it was that difference that was considered in this application. He noted there were opportunities for communal living and to live alone within the proposals and noted the report set out the reasons why Officers felt the application was in line with Policy 16. In reference to the question from Councillor L Brown in terms of disabled access, the applicant's agent may be able to provide comment. The Chair allowed the agent to respond. S Major noted that the proposals were for conversion of an existing building and explained that the ground floor was actually lower than ground level. He noted a lift for access to the first, second and lower ground levels, although noted three steps to the lower ground level.

Councillor A Bell noted he had listened to the objections raised, however, he was struggling to find reasons for a refusal of the application and moved approval. He asked as regards the use class and whether if an HMO it would not have come to Committee, with over 85 percent of those living in the nearby areas being students.

Councillor C Marshall noted he appreciated the sensitivity in terms of student accommodation within the city. He added there was a larger issue in terms of the range and choice of student accommodation, noting that was not satisfactory.

He noted that the University had given views on need and demand, and he recalled stating, around six months ago, that there was a need for the Council and University to speak to key stakeholders on the matter. He added that until real evidence was produced, and the student policies were looked at, he would agree with the Officer's recommendation for approval, seconding Councillor A Bell, noting that the proposals would enhance the offer to students.

Councillor C Kay explained he had known the application site since the 1980s, when part of the area was used for motorcycle parking. He noted that the area was not what it once was, and the building was currently vacant. He asked as regards other PBSAs in the area and the demand levels, or lack of, as referred to by Councillor L Brown. The Principal Planning Officer noted comments from Councillor L Brown in terms of quantitative need, but that the need the application sought to address was qualitative need.

Councillor J Elmer asked Members to think back over the last few years, with the various arguments in relation to the need for student accommodation, specifically within the city. He noted the issue of quantitative need, the University and Colleges would want as many students as possible within their accommodation, and similar for private landlords. However, looking at need, he would say that the top priority was for the needs of permanent residents within the city, for affordable and appropriate provision, for example for older persons. He added that he had concerns relating to the mix of residents and failure to meet nationally describe spaces standards (NDSS). He noted that the Parish Council, City of Durham Trust and St. Nicholas Community Forum all objected to the application and therefore it was important that the Council understood the importance of local determination of issues, with none of those bodies wanting the application approved. He added he would want any application to comply with the needs of residents, and their opinion should be given weight. He noted the issue of bin storage and concluded by noting he felt the application undermined CDP Policy 16, part 2 and therefore he would recommend refusal, contrary to the Officer's recommendation. Councillor L Brown noted figures she referred to had been provided by the Parish Clerk from precept / Council Tax information. She added she would second the motion for refusal put forward by Councillor J Elmer, the application being contrary to Policies 15 and 16, noting the lack of disabled access for all.

The Principal Planning Officer noted the NDSS related to new dwellings, adding it was not easily applied to the unique offer proposed and that there was no absolute policy requirement to do so. He noted that an issue that could be looked was the size of bedrooms and communal areas and noted the choice being offered between communal living and self-contained units.

Councillor K Shaw noted the same issues always came forward when looking at these types of student accommodation applications, however, he could see the clear lines for qualitative need, as set out within the Officer's report, and the choice they would give to students. He noted the University's opposition to the proposals, though added they would prefer students to use their accommodation. He noted that he felt the application on balance was acceptable, adding there was also a significant s106 contribution which he felt would be welcome, adding he would welcome such a contribution in his Electoral Division.

The Chair noted he felt there was not a qualitative need, with many other PBSAs and HMOs and Colleges providing all types of different provision within the city centre, whether through the private sector or the University. Councillor C Marshall noted had the opposing view to the Chair, adding he felt it was not possible to have it both ways, both supporting the expansion of the University then looking to refuse applications for additional student accommodation. Councillor J Elmer noted he felt that the Council did not support mass expansion, rather it supported the needs of the University as it expanded.

Upon a vote being taken it was:

RESOLVED

That the application be **APPROVED**, subject to the conditions and s106 Legal Agreement as set out within the report.

Councillor A Bell left the meeting at 14.28pm

b DM/21/02193/FPA - Land to the east of Whitwell House, Front Street, New Durham, DH1 2EP

The Senior 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 Senior Planning Officer advised that Members of the Committee had visited the site and were familiar with the location and setting. The application was for the erection of retail unit and associated parking court (amended plans received 07.03.22) and was recommended for approval, subject to the conditions as set out in the report.

The Senior Planning Officer noted that there was no specific type given for the retail unit, though it had been intimated that it was likely to be a convenience store. He noted a previous application in 1998 as regards demolition of 6 Front Street, with the land subsequently walled off and used as garden for 5 Front Street. He noted that the applicants did not own all the land subject to the application, however, they had undertaken the required advertisement of the application, as part of the land was unregistered.

The Chair thanked the Senior Planning Officer and asked Councillor C Fletcher, Local County Councillor and Parish Councillor to speak in objection to the application.

Councillor C Fletcher thanked the Chair and Committee and explained that while she could appreciate that the proposals looked to be acceptable in principle, with the land identified within the CDP for retail, there were serious concerns as regards the scheme from local residents. She noted that Policy 9 referred to retail and looked at issues such as the vitality and viability of such development, together with other elements such as public safety. She noted that the applicants had yet to clarify what the retail unit would be used for specifically and that was of great concern to local residents. She noted the nearest property to the proposed development was residential and that the proposals would mean that one resident would lose access to being able to park his car and another access to his land altogether. She added she felt the report had not adequately covered this aspect and there was a need for more discussions between the applicant and residents in terms of the needs of the community. In terms of the potential use as a convenience store, Councillor C Fletcher noted she felt there was no need in the area, with the close proximity of the existing successful convenience store at 4 Front Street.

Councillor C Fletcher noted CDP Policy 29 referred to sustainable development and she felt that the proposals were contrary in terms of parking and deliveries. She noted that it would be likely that delivery vehicles would use the main road, very close to a five-way junction, leading to traffic congestion. She added that residents were concerned as regards potential opening hours, noise and light issues especially as the final use was not known. She added if the proposals were approved then hours of operation must be controlled. She noted that the Committee may feel that it would be appropriate to defer the determination, until the final use was known, and consideration was given to those residents that would lose access and amenity as a result of the application.

The Chair thanked Councillor C Fletcher and asked Alan Appleby and Chris Osborn, local residents to speak in objection to the application.

A Appleby noted he had kept horses on the adjacent land for over 20 years and the proposals would mean he would not be able to get access to allow him to provide hay for the animals.

C Osborn noted the report had been pulled previously when he had spotted inaccuracies. He noted the report did not refer to off-road parking for two cars, which would be lost. He explained he would no longer be able to charge his electric vehicle and asked who he would claim compensation from. He added there was still no idea as the intended use for the proposed retail unit or details of any lighting plan, noting rumours that the site would remain as a car wash. He noted an e-mail from the Planning Officer as regards the widening of the access road and he noted he had responded to that e-mail, however, he had no further response from Planners.

C Osborn explained that the land was unsightly as a result of the applicant and noted that previously the Council or residents had mowed the grass and kept the site clear and tidy. He noted that the applicant was occupying land they did not own and had dumped a large amount of soil on the land. He noted an incident of verbal abuse and added that A Appleby would lose vehicular access and would not be able to get a horse box or hay onto his land. C Osborn noted the proposed access for the service yard was ridiculous, going across disabled parking spaces. He added there would be vehicles having to reverse out on to the very busy main road, across a path used by many people, including children. He concluded by asking that the Committee refuse the application.

The Chair thanked the speakers and asked Steven Karim to speak on behalf of the applicant.

S Karim corrected the position, noting the applicant owned the application site, explaining the applicant had bought the land in 2018. He added there had been an application for a car wash, however that had been refused. He explained as regards discussions with the Council and noted space had been left available for access to Whitwell House and also a few metres at the rear of the site for the other resident. S Karim noted that the proposed use would be for a convenience store, the applicant already operating a successful similar store in Gateshead, showing a proven track record in that regard.

The Chair thanked S Karim and asked the Senior Planning Officer if he wished to respond to the points raised by the speakers.

The Senior Planning Officer noted the concerns raised by residents as regards any final use for the retail unit. He noted that, notwithstanding the comments from the applicant, the recommendation within the report was for Class E use, though the exact goods to be sold could not be specified.

He added that use as a car wash would not be permitted as this fell within another use class and any use other than within Class E would be subject to enforcement action. He added that reference to another similar store nearby and potential competition were not material in considering the proposed use. The Senior Planning Officer noted that opening hours would be set by Condition 17 being 7.00am to 10.00pm on Sunday to Thursday and 7.00am to 11.00pm on Fridays and Saturdays. He noted these were similar to that of the nearby convenience store. He noted that Condition 6 referred to external lighting and that details of which would be required to be submitted and approved prior to first use. He added that noise from plant equipment would also be subject to condition, with the applicant having to demonstrate compliance.

In reference to the comments relating to land ownership, the Senior Planning Officer noted a Land Registry Search from May 2022 noted ownership of a strip of land by another party, part ownership by the applicant, together with an area of unregistered land. He noted that land ownership issue was a civil matter and not a material consideration in terms of planning.

The Senior Planning Officer noted that each application was assessed on its own merits and added that planning permission was attached to land and was not granted to an applicant as such.

The Principal DM Engineer, David Battensby noted the concerns raised by the Local Member and resident in respect of delivery vehicles and referred the Committee to Condition 18 within the report which set out that Servicing Management Plan would be required to be submitted to and agreed by the Local Planning Authority. He noted the suggestion that there would not be sufficient space, however, that was incorrect. He noted that the development plan showed a turning circle that did not go over the proposed disabled parking space, rather it was over the section of the road that would be marked with "keep clear" around the disabled parking space and therefore was acceptable. In terms of reference to the proximity to the signalised junction at Dragonville, he explained that junction was around 180 metres to the east and there were already two access points to other service yards in between the application site and the junction. He noted it was felt the proposals were acceptable, given the light additional volume the proposals would generate, the traffic calling in at the proposed store likely to be predominately already on the network. He reiterated that the proposals were acceptable in highways terms.

The Lawyer (Planning and Highways), Neil Carter reiterated the points made by the Senior Planning Officer in that the land ownership and access matters raised were private law matters and not for the planning system to resolve.

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

Councillor C Kay noted that any development of the land would be an improvement on the current situation. He noted that the issues of land ownership were not material, however, he could not recall a full planning application where the final use of the proposed unit was not known, with the application appearing like an outline application, with a reserved matters application to follow. He asked what the situation would be in terms of any different use and requirements for change of use application in future as required. The Senior Planning Officer noted that Use Class E covered all retail use, for convenience store, clothing store etc., with the planning system not requiring that level of specificity. He added that if the store changed from convenience store use to another Class E use it would not require a change of use application.

Councillor A Surtees asked for clarity in terms of the access, noting residents having noted access for over 40 years. The Lawyer (Planning and Highways) reiterated that was not an issue for the Committee. He noted there may be private rights, however, that was not an issue for Members to consider.

Councillor K Shaw noted the issue would be civil matter, however, the application would have an impact upon the residential amenity of those residents currently accessing their property. The Lawyer (Planning and Highways) noted that as a general proposition that was the case, however, it was difficult if framed purely on the impact on any right of way that may or may not exist. Councillor K Shaw noted those residents affected would lose their currently enjoyed rights of access to parking and in maintaining horses. The Lawyer (Planning and Highways) understood the point, however, it was not permissible to consider private law rights as amenity in order to come to a refusal reason, it was not for planning to enforce any such existing rights.

Councillor M Currah asked if there could not be some compromise in terms of the site layout in order to retain access for residents. The Senior Planning Officer noted that the application before Members was that which was submitted and ultimately that was to be determined, any discussions and agreement between the applicant and residents was for them as private citizens. Councillor A Surtees asked if it would be appropriate to defer the application in order to have the access issues discussed further. The Lawyer (Planning and Highways) noted that the strict legal position was that as resolution of those access issues was not a requirement in terms of planning, there was no basis to defer determination. Councillor A Surtees noted she thought that any agreement in terms of a private right of way could impact on whether an application goes ahead and is completed.

The Lawyer (Planning and Highways) noted that in some cases there were restrictive covenants in place and other issues that may prevent an application from being built out. He noted that if planning permission was granted, it would not necessarily follow that the scheme could go ahead for a number of other reasons. He reiterated that, however, those other reasons were not for the planning system to address.

The Chair proposed that the application be approved, he was seconded by Councillor LA Holmes, and upon a vote being taken it was:

RESOLVED

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