

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 September 2023** at **9.30 am**

Present:

Councillor D Freeman (Chair)

Members of the Committee:

Councillors L Brown, I Cochrane, J Cosslett, S Deinali, J Elmer, L Fenwick (substitute for A Surtees), C Kay, D McKenna, R Manchester, I Roberts, K Shaw and D Sutton-Lloyd (substitute for D Oliver)

Also Present:

Councillors C Hood and E Scott

1 Apologies for Absence

Apologies for absence were received from Councillors A Bell, D Oliver and K Robson and A Surtees.

2 Substitute Members

Councillor L Fenwick substituted for Councillor A Surtees and Councillor D Sutton-Lloyd substituted for Councillor D Oliver.

3 Minutes of the meeting held on 11 July 2023

The minutes of the meeting held on 11 July 2023 were confirmed as a correct record by the Committee and signed by the Chair.

4 Declarations of Interest

Councillor L Brown noted that she was a member of the City of Durham Trust, however she was not a Trustee and had not been party to their submissions in objection to applications on the agenda.

Councillor L Brown declared an interest in Items 5a and 5d, noting she was Local Member and explained she would speak in objection to those items and leave the meeting during the consideration thereof.

The Chair, Councillor D Freeman noted he was a member of the City of Durham Trust, however he was not a Trustee and had not been party to their submissions in objection to applications on the agenda.

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

a DM/21/01789/FPA - Land at St John's Road Nevilles Cross

The Senior Planning Officer, Lisa Morina gave a detailed presentation on the report relating to the abovementioned planning application, a copy of which had been circulated (for copy see file of minutes). Members noted that the written report was supplemented by a visual presentation which included photographs of the site. The 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 construction of 12 townhouse dwellings with associated works and was recommended for approval subject to conditions and s106 Legal Agreement as set out within the report.

The Senior Planning Officer noted that since the publication of the report, additional objections had been received, noting concern of damage to neighbouring properties and the Council, as Lead Local Flood Authority had agreed the drainage scheme was acceptable. She added that the viability assessment submitted by the applicant had been subject to several amendments and updates during consideration of the application. It was noted those updates had sought to demonstrate that the scheme would not be viable in the event that financial contributions were applied in relation to open space, education and affordable housing provision. She explained that having assessed that initial report and additional information, Officers considered that whilst it would be unviable to apply the full contribution in terms of the affordable housing contribution, a reduced sum in that regard could still be sustained. She added that in relation to contributions for open space and education provision, Officers considered both requirements could be paid in full.

The Chair thanked the Senior Planning Officer and asked Parish Councillor Susan Walker to speak on behalf of the City of Durham Parish Council in relation to the application.

Parish Councillor S Walker thanked the Chair and Committee and noted she would begin with an email from the Planning Officer, which was included in the fifth viability assessment submitted on behalf of the applicant:

“It would appear from the above that we have received an impasse on the viability information. This is not only important in respect of the viability of the scheme and Section 106 payments but also with regards to the overall acceptance of the development. The application is a high-density proposal, and it is acknowledged that there is harm from the development however, it is considered that the benefit of the proposal could outweigh the harm however, this would be subject to the Council being satisfied that this is the only way the site can be re-developed and that a lesser density or a reduced scale scheme would not be achievable. As it stands, we are not in a position to recommend approval of the scheme.”

Parish Councillor S Walker explained that as no scheme for a lesser density or a reduced scale had ever been submitted, one would not know whether it was possible. She added that if the application was refused, and as the applicant does not own the land, there could be such possibility. She noted there was a pot of s106 money for affordable housing and noted several community groups with the ability to set up Community Interest Company (CIC) which could take on such a project and produce something far better on the site when the need for profit was removed.

Parish Councillor S Walker explained that the proposal over-developed the site, with the Neighbourhood Plan proposing four houses and the County Plan's own assessment indicating six properties '*provided that the scale of development and detailed design is appropriate*'. She added that the overdevelopment would be entirely out of character with the surroundings and residential properties in that part of the Conservation Area. She added that therefore the application failed to meet the guidance of the NPPF Part 12, Paragraph 127 a), b) and c) which requires that developments "*add to the overall quality of the area*", be "*visually attractive*" and be "*sympathetic to local character and history, including the surrounding built environment and landscape setting*".

Parish Councillor S Walker added that the application was in breach of Policy 44 of the County Durham Plan (CDP) which required that development must sustain the significance of both designated and non-designated heritage assets. She noted that the Parish Council felt the application was in breach of Policy 6 which states: '*The development of sites which are not allocated in the Plan or in a Neighbourhood Plan will be permitted provided the proposal accords with all relevant development plan policies and... is appropriate in terms of scale, design, layout, and location to the character, function, form and setting of the settlement*'.

Parish Councillor S Walker explained that it was felt the application also breached Policy S1 and Policy D4 of the Durham City Neighbourhood Plan (DCNP) with new development to harmonise with its context in terms of scale, layout, density, massing, height, materials and colour and to be of high-quality design reflecting the character and appearance of the area.

Parish Councillor S Walker added that the Parish Council felt the application breached CDP Policy 29, which was clear that a high-quality built environment should consider the amenity of both existing and future residents and consideration should be given to matters of privacy, outlook, natural lighting, ventilation, as well as local climatic conditions and which require developments to “*contribute positively to an area’s character, identity [and] townscape*”, further to “*achieve zero carbon buildings*” which were underpinned by core principles 5.292 to 5.296 and provide high standards of amenity and privacy. She added there was no evidence in the application that those constraints had been adequately addressed.

Parish Councillor S Walker explained that it was felt the application breached CDP Policy 15 which clearly stated to meet the needs of older people and people with disabilities, on sites of five units or more, 66 percent of dwellings must be built to Building Regulations Requirement M4(2) Standard. She added for sites of 10 units or more, there was a requirement for a minimum of 10 percent of the total number of dwellings on the site to be of a design and type that would increase the housing options of older people. She noted that those properties should be built to the M4(2) Standard and would contribute to meeting the 66 percent requirement as set out above. She explained that no provision had been made for this type of accommodation as part of the proposal.

Parish Councillor S Walker noted the application was in breach of DCNP Policy T1: that development proposals should be supported by evidence of how they contribute to sustainable transport accessibility and design. She noted there was no such evidence. She added the proposals breached the Residential Amenity Supplemental Planning Document (SPD) in that the gardens were below the minimum 9 metres required.

Parish Councillor S Walker explained that the fifth viability assessment, last month, insisted that the current scheme was only viable with an s106 payment of a figure of £13,000. She added that, apparently, the applicant had verbally accepted a figure 20 times higher. She noted the Parish Council had not seen any paperwork and had not been able to assess what that may mean for the quality of the final development and the requirements of CDP Policy 29. She noted that the Parish Council could not see how any application could proceed without any reconciliation of the two highly contradictory s106 figures.

Parish Councillor S Walker concluded by noting that, given that the Planning Department had consistently noted that the application was on a knives-edge in terms of decision, the Parish Council could not see how the Committee could accept the report's proposal for approval with any degree of confidence, and with a willingness to breach so many of its own Policies, and accordingly urged that Members refuse the application.

The Chair thanked Parish Councillor S Walker and asked Councillor E Scott, Local Member, to speak in respect of the application.

Councillor E Scott thanked the Chair and Committee and noted that she did not attend Planning Committee to speak against applications very often, only where applications were in breach of policy and where there was strong local opposition, adding in this case there was both. She noted that as Local Member for the Neville's Cross division, she joined with local residents, the City of Durham Parish Council and others in strongly opposing the proposal and urged the Committee to refuse this scheme.

Councillor E Scott noted that it was important to stress from the outset that no party disputed the need for the site to be redeveloped. She noted the site had been derelict for over 15 years and would benefit from an appropriate housing development that conformed with, and respected, the surrounding area. She added that the potential for developing the site was examined during the preparation of the Neighbourhood Plan and it was noted that the site was included in the County Council's Strategic Housing Land Availability Assessments, with the accepted assessment that the site could yield a total number of 6 residential units. She noted that, in contrast, the developer justified the over massing of this site by suggesting that the scheme would be financially unviable if the site delivered less than 12 units. Councillor E Scott added that at each stage, the developer had maintained their position that the scheme could not provide the full s106 payments that should be due to the Council for core services, such as affordable housing. She explained that as it stood, the Housing Delivery Team had asked for a financial contribution of £776,250 towards off-site affordable housing provision and a fraction of that, £114,826 was on the table. She noted that no other organisation than the County Council could be expected to pick up the shortfall, simply to meet the needs and profit margins of developers, if the proposal was accepted by Committee Members.

Councillor E Scott explained that she felt two points were particularly striking from the process, first being that, generally, if there was a requirement for contributions under s106, the first area to take the hit should be the land value. She noted the applicant had effectively conceded that the value they initially ascribed to the land, £525,000, was too high. She added that the most recent appraisals had reduced this to £350,000.

Councillor E Scott noted that if the scheme could not deliver the planning gain required in policy terms, the land value should be reduced further. She noted that nothing in any subsequent report had addressed the issue.

Councillor E Scott explained that the second point was that none of the four appraisals put forward by the applicant considered a lesser density or a reduced scale scheme other than the one that was before Committee. She noted that Officers had been clear that Durham County Council needed to be satisfied that a lesser density or reduced scale scheme would not be achievable. She added that nothing other than a high-density development which delivered 12 units on the site had been considered by the applicant. Councillor E Scott explained that, as Officers have noted, the high-density nature of the proposal in itself causes harm, particularly in relation to the proposed height of the units. She added that the proposal placed a vertical emphasis on the development and that was entirely out of character with the surrounding area and residential properties.

Councillor E Scott noted the application site was within the Durham City Conservation Area and whilst she acknowledged that there was a mix of different development styles within close proximity to the application site, that should not justify the development of new dwellings that were out of character with that part of the Conservation Area. She noted that, as such, the application failed to meet the requirements of CDP Policy 6 sections (d) and (e) as well as DCNP Policies S1 and D4 which required developments to be high-quality and appropriate in terms of scale, design, layout and location to the character, function, form and setting of the settlement.

Councillor E Scott noted that, similarly, the development would result in harm to the significance of the Conservation Area, contrary to CDP Policy 44 and DCNP Policy H2 as well as Part 12 of the NPPF, as it would not reflect the positive characteristics of the area and cause harm by consequence.

Councillor E Scott reiterated that whilst she supported the principle of redeveloping the site, the current proposal represents a harmful overdevelopment within the Durham City Conservation Area. She noted that the public benefits of the proposal were greatly diminished by the reduced s106 offer and, in any case, could not outweigh the harm the development would cause to the area and my residents. She concluded by asking Members to refuse the application.

The Chair thanked Councillor E Scott and asked Councillor L Brown, to speak in relation to the application.

Councillor L Brown thanked the Chair and noted that no one was against the redevelopment of the area, the fact that the land had been vacant for over 20 years, and was frankly a bit of an eyesore, did not mean that the site should be developed at any cost. She noted that indeed the Neighbourhood Plan and CDP recommended both four and six houses in their initial assessments, emphasising that the scale and design must be appropriate for the Conservation Area. She noted that the Planning Officer had described, in her e-mail to the applicant in November 2022, a high-density proposal, together with the acknowledgement that there was harm from the development. Councillor L Brown noted that the development was of two parts, all of which was in the Conservation Area. She referred to the Newcastle Road side and explained this was an extension of George Street, an 1890s terrace, not 1920s as stated in paragraph 125 of the Committee report. She added that when permission had been given for an extra house at the end of the terrace in 2016, Design and Conservation had been insistent that the house reflected the street with bay windows and chimneys. She noted that similarly, student accommodation at the other end of the street built in 2015 reflected the vernacular architecture. She added that what was planned for the application site did not. She noted the Architect had taken their height cues from the other side of the road, outside of the Conservation Area as stated on page 30 of their Design and Access Statement. She noted the statement did not contain a single picture of George Street. Councillor L Brown noted that although the overall height had been reduced, there were still four storey town houses, a clear case of overdevelopment on a small site. She noted the Committee report referred at paragraphs 129 and 130 to such. She added that the plans were not even new and seemed to reflect work done elsewhere by the applicant, with references to flats and the 'urban setting', set out at page 6 of the Design and Access Statement. She noted that, in planning terms, the terrace was in breach of CDP Policies 6 and 44, DCNP Policies S1 and H2, which considered the relationship between new build and the area.

Councillor L Brown explained that the area between the railway bridge and the A690 was sometimes the only sight that drivers on the A167 get of the Durham City Conservation Area, and therefore we should make it worth looking at.

She noted the proposed terrace at St John's Road, again a street of Edwardian and Victorian houses, described by the Council's own conservation report in 2015 as a green and leafy cul-de-sac, with a vibrant mix of housing types, character and age. Councillor L Brown noted the developer had failed to recognise that, taking the height cues from buildings nowhere near the site. She noted that would lead to some overshadowing of the buildings to either side of the planned development.

She noted concern as regards the proposed amenity space, what could only be described as a north, not east, facing pit which would not be the sunken courtyard garden the architect refers to, and would be unsuitable for at least six months of the year. She added that the design of the terrace again had no relationship with the other buildings in the street and had been designed with both eyes on exploitation for financial gain rather than sympathy with the Conservation Area.

Councillor L Brown noted that, until the report had been published, the developer had been pleading poverty, within the latest written viability statement in August 2023, their own consultant had argued that £13,000 was all that was available for s106, and the application was down to be refused. She added that suddenly, and at the same time their consultant had submitted that viability statement, the applicant had been able to find quarter of the million pounds, although there had been no written report and no assessment by the County Council, and no chance for others to challenge the figures.

Councillor L Brown noted that at this point she would have hoped to provide Members with enough sensible reasons why the application should be refused, however, should Members be minded to approve the application, she would wish for a robust construction management plan to be put in place to protect the amenity of surrounding residents. She added that we did not want to see a repetition of the fiasco when Sheraton Park was being built and vehicles blocked pavements and caused damage to grass verges which took some time to repair. She highlighted that paragraph 149 referred to removal of permitted development rights, however, she could not see any such condition within the recommendation. She noted her usual recommendation as regards construction within residential areas starting at 8.00am, not 7.30am Monday to Friday, she asked if it would be possible to forbid deliveries between 8.00am and 9.00am and 2.45pm and 3.45pm to protect pupils from the three schools in the area.

Councillor L Brown noted that, finally, she would like Members of the Committee to think very carefully about the application. She noted the report had stated that it was very finely balanced and had come down on the side of approval. She noted that the design review panel had given it a score of four reds, as noted in paragraph 121 of the report, and added that she was at a loss as to why approval was recommended. She reminded Members that one red on the building for life traffic light system was enough to merit refusal. She added the scheme had four reds and she respectfully suggested that the site should not be developed at any cost. Councillor L Brown noted that residents deserved better, and she was sure that someone could, and would, come up with a design that respects the Conservation Area and aligns with the existing statements on what would be a sensible development of the site, which the proposals certainly did not.

Councillor L Brown left the meeting at 10.00am

The Chair thanked Councillor L Brown and asked Debbie Conway and Clare Green, Local Residents, to speak in relation to the application.

D Conway explained she had been a resident of St. John's Road for 30 years and that she and C Green represented the numerous objectors to the application.

She added that the Committee would be aware of the strength of feeling by the number of objectors in attendance, being both voters and Council Taxpayers. She noted there was serious concern in terms of several aspects relating to the applications, including the s106, highways, loss of trees and harm to the Conservation Area. She noted that the report set out that there would be 'less than substantial' harm to the Conservation Area, however, there was no evidence in terms of the benefits being greater than the harm.

D Conway noted that the Council had sufficient housing in terms of a five-year supply, and noted the site was not a nuisance site and the suggested option proposed was weak. She noted that both the CDP and NPPF sought to protect heritage assets and asked how permission could be granted for 12 properties when six was set out within the CDP. She noted that the ugly, ungainly design was for House in Multiple Occupation (HMOs), not family homes. She added that, despite the developer's claims in relation to Norman Cornish, the proposals represented greed and overdevelopment and was not for residential use.

C Green noted she had been a resident of the area for 23 years and explained that it was evident from the many objections that the proposals were out of character for the area. She noted that St. John's Road was a cul-de-sac and was a family area, close to three schools, and reiterated that the proposed 12 dwellings were not family homes and that the lack of parking for 12 households would impact on St. John's Road. She added there were safety concerns in terms of increased traffic from residents and deliveries, with subsequent issues of delays and impact upon parking. She reiterated that the area was a cul-de-sac and that children played in the street and walked to school. She explained to the Committee that there had been felt to be some discrepancy in terms of a dormer window to a property in the area having been refused, however, the proposal in front of Members was recommended for approval. C Green concluded by asking the Committee to protect the City and refuse the application as it was in conflict with policy and that she hoped the applicant would submit a more sympathetic scheme in the future.

The Chair thanked D Conway and C Green and asked Helen Marks, Agent for the Applicant to speak in support of the application.

H Marks thanked the Chair and Members for the opportunity to speak at Committee in support of the application. She noted that the proposals were to redevelop a site that had been vacant for 15 years, since its last use as a petrol filling station. She added that the proposals would make good a derelict site and a suitable scheme had not come forward until this point. She explained that the applicant specialised in the development of such sites and that the proposals were for a visually appealing redevelopment of the site.

H Marks noted the concerns that had been raised, however, the proposals before Members had been developed carefully within the constraints of the site, within policy, and had taken into account comments from third parties. She added that a number of changes had been made to the application, in line with policy, including in relation to access, noting no access through the site. She added that the overall scale of the proposed development within the Conservation Area was not opposed by Officers, and it was acknowledged that the site in its current state did not contribute to the city or the Conservation Area. She noted that in relation to St John's Road, Officers had noted that the proposals represented '*less than substantial harm*' and Paragraph 191 of the Officer's report stated that the public benefits outweighed any minimal local harm and therefore rendered the proposals acceptable.

In respect of financial contributions, H Marks explained that the full amounts were being put forward in terms of open space and education, alongside a reduced amount in relation to affordable housing. She stated that this position had been agreed after extensive consultation with Planning Officers. She reiterated the point in terms of viability, that while the 12 properties proposed could give a viable scheme, the six properties referred to by objectors had not been subject to any detailed viability assessment. She noted that the Officer's report highlighted that there was an opportunity to bring forward residential development in a sustainable location and concluded by noting it was hoped the Committee would approve the application as per their Officer's recommendation and lead to a positive contribution to the City.

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

Councillor J Elmer asked if the Officer from the Conservation Section could elaborate on the process and reasoning behind their conclusion of the harm to the Conservation Area from the development as being '*less than substantial*', and how they could be so precise in that conclusion. The Principal Design and Conservation Officer, David Sparkes, noted that an assessment was carried out in terms of the impact of the development on the Conservation Areas as a whole, rather than a small proportion of the Conservation Area.

He added that when looking at whether a proposal was harmful it was to ascertain whether there was substantial or less than substantial harm, and in this case, it was felt it was less than substantial harm in terms of the NPPF and CDP. Councillor J Elmer asked as regards the nature of the harm. The Principal Design and Conservation Officer noted it was in terms of the scale, massing, context and relationships to existing structure and form. Councillor J Elmer asked as regards the benefits from the proposals.

The Senior Planning Officer noted they were set out within the report at Paragraph 188 onwards, reiterating the less than substantial harm, the bringing back into use a redundant site, and some direct and indirect economic benefits. She added that while the benefits were limited, the harm was also only limited and therefore Officers felt in this case the harm was outweighed. Councillor J Elmer asked if the same benefits could be achieved from a less densely developed site. The Principal Planning Officer, Paul Hopper noted that the application to be determined by the Committee was that for 12 dwellings, as set out within the agenda papers, and reiterated that Officers felt that it represented limited harm and the reasons why the benefits were felt to outweigh the harm had been set out. He added that there could be no weight attached to any potential alternative schemes and reiterated that the application before Members was that which required a determination by Committee.

Councillor C Kay noted he had been intrigued by the comments from the speakers present, especially in relation to one of the policies from either the CDP or DCNP having stated that four properties was felt to be the maximum to be built upon the site. He noted that given that information, the proposals were for treble that number of properties on the application site. He noted that initially the developer had sought to put forward only £13,000 of s106 monies, then suddenly it had risen up to £766,000 and asked where such a large increase had come from. The Principal Planning Officer noted that in terms of viability, the Council had a specialist consultant that had reviewed the original viability assessment that had been provided and therefore the Council had pushed back and challenged the viability statement from the applicant. He added that the Council position had not changed, and that the applicant had gone away and looked at the issue and it had been agreed further contributions. He added that in terms of the density of the proposals, he felt those issues had been addressed within the Agent's comments. He added that in terms of final numbers the density was such to not included a detailed scheme assessment.

The Chair noted the point raised by Councillor C Kay and asked how the CDP could set out six properties as being the maximum for the site, while it was felt that for viability, there was a need to increase the maximum to 12.

The Principal Planning Officer reiterated that the viability information provided had been robustly assessed by the consultant and the quantum of development had been shown to be 12 in order to make the development viable. Councillor C Kay noted he had not been aware that viability was looked at by external consultants and asked whether the numbers of 4 and 6 properties, as set out with the DCNP and CDP, had also been arrived at through use of consultants. The Principal Planning Officer noted that the DCNP was the Parish Council's document.

Councillor D Sutton-Lloyd noted that, while on the site visit, there was major objection to the height, impact on the Conservation Area, and access issues and traffic, especially the access to St. John's Road. He added that the junction at the traffic lights was already a nightmare and suggested that where the Council had created its CDP, he felt such policies must be adhered to.

Councillor J Elmer noted he had some concerns as regards the affordable housing not being delivered onsite, adding he felt there was a better balance for communities when the affordable housing was delivered onsite, and asked why the developer was allowed to provide a contribution for off-site affordable housing. The Senior Planning Officer explained that when speaking with the Affordable Housing Team, it was noted that it would not be possible to get providers onsite, and therefore it was agreed for off-site provision. Councillor J Elmer noted that perhaps there could have been some push back in that respect and noted there was no housing for the elderly via condition. The Senior Planning Officer noted that Condition 11 referred to M4(2) standards and being confirmed to that standard prior to occupation, with the developer having confirmed that could be achieved.

Councillor J Elmer noted he had reflected upon a range of issues and noted Members' concern included design concerns, and he noted he disagreed as regards the wider benefits being greater than the harm to the Conservation Area. He noted it was a subjective judgement and added that he felt it was important to hold out against the bit-by-bit erosion of the Conservation Area. He noted that the fixtures and fittings were not required as per 'normal residential standards', reiterating there was a need to protect the Conservation Area and the heart of the city, adding there was a reason that people and tourists held the city in such high regard and value. He noted he would move that the Committee overturn the Officer's recommendation and refuse the application.

Councillor S Deinali noted she would second refusal of the application. Councillor K Shaw added he felt that, as per other decisions at recent Committee meetings, that all aspects of the Conservation Area, in terms of character, landscape and special circumstances, he noted that development should preserve or enhance the Conservation Area.

He added that the massive overdevelopment in this case, represented harm in terms of scale and massing and therefore he would be also voting against the application. Councillor D Sutton-Lloyd noted he felt similar to Councillor K Shaw on the application. Councillor J Cosslett also agreed.

Councillor C Kay noted that while Planning Committee Members could apply their subjectivity, there was a need for material planning considerations to be able to come to a decision. He noted 'in his gut' he agreed with the Members who had proposed refusal as regards overdevelopment, however, he would wish to hear some more information as regards reasons to refuse the application before coming to a conclusion.

The Chair noted that Members had referred to overdevelopment and harm to the Conservation Area and would refer back to Councillor J Elmer.

Councillor J Elmer noted that policies he felt could be used in relation to refusal would be that the application was contrary to CDP Policy 44 in terms of the significance of impact on heritage assets, DCNP Policy S1 in relation to conserving the significance and character and of benefit to local communities. He added that he felt the application was also contrary to DCNP Policies D4 and H2 in terms of the character and appearance of the area and reminded the Committee that the policies within the DCNP had been developed over a period of time and had been subject to consultation with local residents. He noted there was persistent resistance and lack of adherence with the DCNP by developers.

The Principal Planning Officer noted that Members had referred to adverse impact in terms of impact on the Conservation Area by virtue of the scale, massing and being of a design that was incongruent and asked if that also included reference to NPPF Part 16, in terms of 'less than substantial harm' being felt by Members to be greater than the benefits from the proposals. Councillor J Elmer noted that was correct.

Upon a vote being taken, it was:

RESOLVED

That the application be **REFUSED** as proposal would, by virtue of its scale, mass and design appear as an incongruous addition to the streetscene that would have a detrimental impact upon the character and appearance of the local area including the Durham City Conservation Area causing less than substantial harm to the designated heritage asset, which would not be outweighed by the wider public benefits. The proposal is therefore in conflict with Durham City Neighbourhood Plan Policies S1, D4 and H2, County Durham Plan Policy 44, Part 16 of the NPPF and section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Councillor L Brown entered the meeting at 10.30am

b DM/23/01520/FPA - Highfield House, Sycamore Terrace, Haswell, Durham, DH6 2AG

The Senior Planning Officer, Lisa Morina gave a detailed presentation on the report relating to the abovementioned planning application, a copy of which had been circulated (for copy see file of minutes). Members noted that the written report was supplemented by a visual presentation which included photographs of the site. The 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 change of use from former nursing home to 2 separate dwellings (use class C3) (retrospective application) and was recommended for approval subject to conditions and s106 Legal Agreement as set out within the report.

The Senior Planning Officer noted that there were some trees with Tree Protection Orders in place, however, the works proposed did not impact upon those trees.

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

Councillor C Hood thanked the Chair and Committee and explained he was Local Member representing Shotton Colliery, South Hetton and Haswell and that it was his first-time attending Planning Committee to object to an application. He noted he represented his local residents from Haswell and explained the application was only at Committee as a result of enforcement action, with residents having issues in terms of the impact on their quiet, peaceful residential area. He referred to a presentation slide that set out on the Planning Portal on 7 June 2023 the application referred to one self-contained dwelling. He noted that Lucan Lodge did not appear to be a residential property, with floor plans referring to a games room, staff room and ten numbered bedrooms. He referred to a slide showing that the next week, a neighbour notification list only listed seven properties. He noted that paragraph 32 of the report referred to the proposals being advertised by means of site notice and by notifying neighbouring residents by letter, however, there were 22 letters of objection, and he noted that in fact there had been 33 letters of objection from 24 properties once the application had been known about in the area. He added that the Local MP, Graeme Morris had provided his support for residents in respect of their objections.

Councillor C Hood noted that only after all those objections had been received had the latest plan been submitted, with bedrooms being relabelled as 'storerooms', however there was still a room designation as a 'staff room'. He explained that one of the main concerns of those objecting was the noise and disturbance from the use as an Air BnB and availability via Booking.com.

He noted that the website advertised the property as 'perfect for group trips, hen dos...'. He added that therefore the application was to create one property, Lucan Lodge and there was no mention of the other property being residential, rather the plans stayed the same, with a staff room. He noted that the proposals were contrary to NPPF Section 8, Paragraph 92, in terms of healthy, safe and inclusive communities, which set out that applications should not undermine community cohesion, as well as 93(b) and 94 in terms of social and environmental benefits.

Councillor C Hood added that CDP Policy 6 referred to new development not detracting from existing development and that relationships should be taken into account, and that there should not be a significant increase in terms of size. He noted policy also referred to development not having an adverse impact upon the health and wellbeing of those in the surrounding area, and that development should be appropriate and sensitive. He noted that he, and residents, would be happy to see two residential properties, noting the report referred 16 times to residential use, with paragraph 91 referring to the fact that should the application before Committee be agreed, there could still be use as holiday lets, as per the advertisements referred to previously. Councillor C Hood reiterated that the plans referred to staff rooms and numbered bedrooms, and asked how Members would feel if the property was next door to them. He reminded Members of the ongoing enforcement case and added that the Committee could put hundreds of residents at rest by refusing the application as it was contrary to NPPF and CDP policies. He reiterated that he would ask Members refuse the application, and that the applicant make the properties into residential properties.

The Chair thanked Councillor C Hood and asked Shelly Bright, local resident, to speak in relation to the application.

S Bright explained her father lived close to the property and explained that residents from Pesspool Avenue and Blossomfield Way had suffered disturbance from the properties Lucan House and Highfield House which had been operated as a holiday let business. She noted residents had issues from parties, overflowing outside, and noted the detrimental impact since 2017, with the evidence passed to the Council being the reason the application was before Committee. She added that residents would be grateful if the applicant split the properties into two residential properties, however, they felt it would be highly unlikely without specific restriction being put in place.

She asked that conditions be placed to guarantee there was not use as a holiday let. She noted the applicant had noted '...I've decided to close my business...' however, only this last Friday, there had been loud noise and disturbance from the property, the disturbance having been acknowledged. She reiterated there was a worry from residents as regards large groups using the property as a holiday let.

She noted she would ask that the cease of trading be noted in the minutes of the meeting, and that the Local Planning Authority put measures in place to prevent lettings in future. She noted that currently it hinged upon the good will of the applicant, however, the website was still present advertising the property for let, even after being served notice by the Council. S Bright noted that should the application be granted, the applicant could do what they wanted, and the disturbance could in fact increase. She therefore asked that the Committee take all of the objections into consideration and ask that anything that could be put in place to prevent this from happening be put in place.

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

Councillor C Kay noted the impassioned plea by the local resident, with residents wanting to protect their residential amenity. He noted that the report referred to 'shall be in line with approved plans' and asked for additional information. The Senior Planning Officer noted it would be for the list of approved plans to be included on the Decision Notice, the floor plans for two dwellings. Councillor C Kay asked if the Committee could ask for a condition asking for strict adherence to approved plans, and if not in accordance, then strict enforcement action must be undertaken. The Principal Planning Officer noted that, as with any condition to be imposed, any breach would be breach of the condition notice and added that what was proposed in terms of conditions was what the Local Authority could approve, in terms of two residential developments within a sustainable location. He noted that the current use was an unauthorised use as a short term holiday let, as opposed to use as a hotel, and short term holiday let falls within the C3 use class as a dwellinghouse, and therefore if granted C3 use, there would be no control in terms of such short term use. He added that while the applicant assured that there would be no further use as a holiday let, there was a condition relating to a management plan for the properties, prior to any first use as a short-term holiday let. The Principal Planning Officer noted that Members may wish for a condition to restrict use, however, he reminded Members that any condition imposed must meet the test to be a valid condition, and reiterated that the proposed condition within the report stated that should there be any use as a short term holiday let, the Council would required adherence to a management plan, else there would be enforcement.

Councillor R Manchester noted that his concerns as regards conditions had been answered, however, he would be interested to understand the applicant's opinion if the Committee were minded to restrict the use of the properties.

The Legal Officer (Planning and Highways), Laura Ackermann noted that the condition within the report was as far as it was felt Officer could go in terms of use and would ask for more information from Members as regards any condition restriction use, should they wish to include such a condition.

Councillor L Brown asked as regards sustainability, and distance to the nearest bus stop. She also asked as regards, if approved, whether a construction management plan could be included to protect residential amenity as the properties were in a residential area. She noted as regards a robust management plan, and the comments from the Principal Planning Officer and Councillor R Manchester and suggested that if legislation did not prevent such short-term letting, then during any review of the CDP, that would be a matter that should be on the agenda.

Councillor J Elmer noted the brief reference to car parking, and asked as regards the impact of hen and stag parties, with vehicles presumably spilling over on to the neighbouring streets. He added that proposals looked like a hotel, and asked as regards the difference between a hotel and a holiday let. The Principal Planning Officer noted that use as a hotel would require a change of use and noted that as referred to be Councillor L Brown, the issue of short term holiday lets was at the forefront of many Local Authorities discussions as well as national discussions, and the Council would assess any decisions against caselaw as required. Councillor J Elmer noted that the lack of clarity was exactly what was allowing the proliferation of such short-term holiday lets. The Principal Planning Officer reiterated that there could be enforcement as previously referred to.

The Senior Planning Officer noted the nearest bus stop was approximately 465 metres away from the application properties. Councillor C Hood noted that the bus stop referred to had been defunct for around 20 years, with the nearest stop being at Church View, around half a mile away.

Councillor K Shaw noted that the proposals were for two dwellings, on four bed property and one five bed property, he asked, given the reference to staff rooms and numbered bedrooms, how up to date were the plans submitted. The Senior Planning Officer noted that essentially the applicant had moved in, retaining the care home layout. She added that issues relating to the Nationally Described Space Standards (NDSS) had been put to the applicant, and it was noted that the five-bed property was the main residential property, with the smaller four bed having been let, with the numbered 'bedrooms' being in fact storerooms.

Councillor K Shaw asked as regards the protection within the condition. The Senior Planning Officer noted there was protection, and that the issues in terms of noise and disturbance were being overcome by having two residential properties, with control via the management plan.

The Principal Planning Officer noted that short term lets were in the C3 use class, and therefore placing the properties in that use class meant there could be control via a management plan, as per the included condition. He added that Members could also add a condition, should they wish, in terms of restricting use such to not allow short term holiday let, should they feel there were impacts from that use as a short-term holiday let.

The Area Planning Manager, Sarah Eldridge noted that there had been Government consultation over the summer as regards short term lets, and the overall impression was that such short term lets would eventually have their own separate use class, similar to how C4 use class or Article 4 Directions had been used, or for specific restrictions in terms of that use class. Councillor L Brown noted that such would not be retrospective.

Councillor K Shaw noted that as enforcement action had not appeared to restrict the use as short term holiday let taking place in this instance, on that basis how could the Authority control that use going forward. The Legal Officer (Planning and Highways) noted that C3 use was for residential dwellings, and that as part of any enforcement, the Council could ask to regularise any use by way of an appropriate planning application. She added the application was for C3 use, under which short term holiday let was included, though not specific for such holiday let use.

Councillor L Brown noted the additional information from Councillor C Hood as regards the nearest bus stop and noted that therefore the application was contrary to Policy 27(c) in terms of sustainability. The Principal Planning Officer noted that regardless of the nearest bus stop distance, the application was still felt to be within a sustainable location.

Councillor D Sutton-Lloyd asked as regards the options in terms of restricting the use of the property to residential. The Principal Planning Officer noted that the options were as per the report, with the condition requiring a management plan prior to any use as a short-term holiday let, or for a condition to restrict use so such short term holiday let was not permitted, based on adverse impact upon residential amenity. He asked, if the latter was the case, if Members could drill down into their reasons. Councillor R Manchester noted he would wish for restriction of use as noted by the Officer, with the reason being the impact in terms of noise, as demonstrated by previous use as a short-term holiday let, whereby there was disturbance to nearby residents.

He proposed that the application be approved, subject to an additional condition restricting use that the properties not be used as short-term holiday lets. Councillor L Brown asked how Officer felt in terms of such an additional condition holding up at any appeal. The Principal Planning Officer noted that would have the right to appeal, and Officers would defend the inclusion of the condition for the reasons stated by the Committee.

Councillor C Kay noted that he felt the applicant would not ask as regards a condition specifically restricting use. The Principal Planning Officer noted that should Members be minded, a condition could be included to restrict use such that the properties could not be occupied as short-term holiday lets. Councillor C Kay noted he would be happy with such a condition.

Councillor R Manchester reiterated he would move approval of the application, subject to a condition restricting use against any use as a short-term holiday let. The Principal Planning Officer asked if that was for both properties, of just the second dwelling. Councillor R Manchester noted it was for both dwellings. Councillor K Shaw noted he would second the proposal, with the condition regards a construction management plan being added as per Councillor L Brown's suggestion. The Principal Planning Officer noted that as the application was part retrospective, and the works would be predominantly internal he noted Officers felt a construction management plan was not required. Councillor L Brown noted at least works should not be audible outside of the building. Councillor C Hood asked for clarification, should the Committee decide to include a condition restricting use, then that condition could be enforced, if C3 use was granted. The Legal Officer (Planning and Highways) noted that any condition could lead to enforcement should there be a breach of the condition notice, she asked that Officers be delegated to agree sufficiently robust wording as regards such condition.

Upon a vote being taken, it was:

RESOLVED

That the application be **APPROVED** subject to the conditions within the Committee report and an addition condition as set out below:

The dwellings hereby approved shall not be occupied as short-term holiday accommodation defined as occupation by any persons for less than 90 days, under any circumstances.

Reason: In the interests of residential amenity of neighbouring properties in accordance with Policies 29 and 31 of the County Durham Plan and Part 12 of the National Planning Policy Framework.

c DM/23/01237/FPA - 41 Fieldhouse Lane, Durham, DH1 4LT

The Planning Officer, David Richards 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 Planning Officer advised that Members of the Committee had visited the site and were familiar with the location and setting. The application was for change of use from five bed dwellinghouse to seven bed HMO (sui generis) and was recommended for approval subject to conditions as set out within the report.

The Planning Officer noted that data on Council Tax exempt properties within 100m, including the application property, showed there were 7.7 percent, below the 10 percent threshold within CDP Policy 16. He noted that there had been objections from the City of Durham Parish Council, as well as 117 letters of objection, including from the Local MP, Mary Foy. The Planning Officer noted that Officers felt the application was in line with Policy and therefore was recommended for approval.

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

Parish Councillor G Holland thanked the Chair and Committee and explained that the problem that Durham City communities faced was the way that, in the past 25 years, the landlords had systematically consumed family homes in Durham City to such an extent that, as a university city, records show that Durham has the highest student to population ratio in the country, with a similarly disproportionate number of HMOs with its socially damaging loss of family homes. He asked therefore why we were adding to it here when we already had more than enough student accommodation available in our city and the university had over a thousand more available in the pipeline.

Parish Councillor G Holland noted as a matter of principle, we should be putting families and our communities first, and not always pandering to the transient and temporary student accommodation market, or gladly lining landlords' pockets. He noted that the Officer's report, in reaching its recommendation to approve an HMO at this locality, had placed far too much emphasis on the single CDP Policy 16 with its so-called 10 percent rule in a 100-metre circle. He noted that use of that Policy must be endorsed by other equally important policies, both national and local. He added that a balanced decision was required here, and not one that relied on a single policy option.

He explained that, in particular, Policy 16 was not exempt from these other policies and they carried the same weight, and could not simply be set aside as if they had little relevance, or ignored on the untested presumption that their terms had somehow been met, or that the damage caused by the proposed HMO would not be all that bad, which was what has happened here.

Parish Councillor G Holland explained that important and substantive group of policies, ranging from NPPF Part 12 to DCNP Policy H3, all placed constraints on the application and those constraints must also be satisfied, yet the report paid only scant attention to them. He added that NPPF section 12, paragraph 130 expected that developments such as this would function well and, in particular, would “add to the overall quality of the area”. He noted Members would hear from the next speaker that the proposed HMO conversion of a family home simply does not do that, rather on the contrary, it diminished the quality of this area.

He added that the important environmental Policy 29 of the County Durham Plan was central to most developments in our county. He noted 29(a), required development to: “contribute positively to an area’s character, identity, townscape and landscape features”, and also “to create and reinforce locally distinctive and sustainable communities”. He noted that the application certainly did not achieve that outcome. He added that 29(e) expected developments to “provide high standards of amenity and privacy and minimise the impact of [the] development upon the occupants of existing adjacent and nearby properties”. He noted that, at this locality, the over blown HMO, coupled to two neighbouring HMOs, would do exactly the opposite. He explained that the vision of 29(f) was of a development that would “contribute towards healthy neighbourhoods” and asked where the evidence was that this conversion of a family home made such a contribution.

Parish Councillor G Holland noted Policy 31 of the CDP addressed concerns that “there will be no unacceptable impact, either individually or cumulatively, on health, living or working conditions” and that this HMO “can be integrated effectively with any existing community facilities.” He added that the clustering of three HMOs into a single location, into what was essentially an uncontrolled Purpose Build Student Accommodation (PBSA), would have quite the opposite effect.

Parish Councillor G Holland explained that the more local, but equally relevant, DCNP Policy S1, sought to “conserve the significance of the setting, character, local distinctiveness, (and) tranquillity,” and also find “equity and benefit to the local community” while DCNP Policy D4 was designed to protect “the character and appearance of the local area”. He added that was most certainly not what was on offer here.

He noted that DCNP Policy H3 required that a development “sustain and make a positive contribution to the character and quality of the area”. He asked how the proposed HMO, by creating a cluster formation, achieve that?

Parish Councillor G Holland noted that the common thread to this wide range of policies was embedded in the NPPF and found expression in many of our County and City policies, repeatedly requiring us to “add to the overall quality of the area”. He asked where was the evidence this improvement?

Parish Councillor G Holland explained that the proposed HMO, at the heart of a family-oriented community, sitting on the fringe of a city centre already saturated with HMOs, clearly failed a string of key environmental policies and, as a result, the application must fail, otherwise, those policies were made redundant. He noted that, as in other areas of the city, our community in North End now feels both threatened and diminished, and they were looking to the Committee, as their only line of defence, to protect them. He argued that the reasons for refusal were strong, with the Parish Council, alongside our Local MP, with her excellent letter of objection, strongly urging Members to refuse this application.

The Chair thanked Parish Councillor G Holland and asked Allan Gemmill, Local Resident speaking in objection, to address the Committee, noting there were accompanying slides to his presentation.

A Gemmill explained that the residents of North End were deeply concerned about the negative effect that HMOs were having on our community. He noted he was honoured to be representing those residents at Committee and explained that he had a background in building, and therefore he would like to start by bringing Members’ attention to several technical problems with the application.

A Gemmill explained that firstly, it was not a five-bed dwelling, it could only be considered a four-bedroom house as it had no Building Control consent for a fifth bedroom in the loft. He added that secondly, the Land Registry confirmed that the passage between the adjacent buildings belonged to No. 42, not to No. 41 and consequently, there was no external right of access to the rear of the applicant property. He noted that looking at the proposed plans, Members could see that there was no door to Bed Seven, contravening Fire Safety regulations and Durham Constabulary’s recommendations.

In reference to the Council’s own “Standards for Houses in Multiple Occupation”, A Gemmill noted that two WCs were required for six to ten persons, however, the attic toilet was wholly contained within Bed Seven so it could only be associated with one occupant. He added the other six were thus restricted to one WC, failing the requirement.

He noted that no shared living space was proposed, in which case the standards require that the minimum size of each bedroom to be 10m², not the 7.5m² in the Officer's report. He added that Bedrooms Three and Four were smaller than this and consequently could not be used as bedrooms. He explained that for an attic room, the standards required a minimum height of 2.15m over a 50 percent area and, as measured, the maximum height in Bed Seven was less than this, and therefore could not be used as a bedroom either.

A Gemmill explained that those failings meant that, on technical grounds alone, the application could not be approved. He added that the applicant had already installed three students in the property, ahead of the Committee's decision today. He explained that he felt there were also wider issues, with the Officer's report confirming that the revised Parking SPD required four spaces, but then determines that only two were sufficient. He asked why was that brand-new policy being abandoned even before the ink was dry? He noted the Highways Authority's response was that occupants would be allowed permits to park 'on street'. He added that those Officers had clearly not witnessed the parking-related issues already affecting Fieldhouse Lane, especially at school pick-up time, nor had they seen wheelchair users from the nearby care home having to resort to using the road. He explained that the increased on-street parking, contrary to Policy 21 and the SPD, could only worsen an existing highway safety issue.

A Gemmill noted that a lack of access to the rear meant that three further bins, and ideally the bike store, must be located at the front of the building. He added that, coupled with the proposed doubling of hardstanding for parking, no room would be left for any soft landscaping, completely at odds with the requirements of two SPDs. He noted that, based on past experience, one could also anticipate issues regarding the upkeep of the property and rubbish associated with it, referring to slide showing pictures of nearby HMOs that graphically illustrated the problems.

A Gemmill noted that, finally, an issue that was of huge concern to residents was that of the well-documented problem of noise, disruption and anti-social behaviour associated with student HMOs, especially where clustered together, as at the nearby 1 Larches Road. He noted that what lay ahead of residents, if Members approved the application today, was a group of three properties housing about 20 students, with adjacent gardens offering opportunities for parties and other gatherings at all times of the day or night, in effect creating an uncontrolled PBSA.

A Gemmill reiterated that over 130 local residents took the trouble to write and object to this application, as did the Local MP and the Parish Council, both of whom had given residents tremendous support.

He added that, more than anything else, they had expressed deep concern and frustration at the continuing, harmful loss of family homes caused by the relentless spread of HMOs. He noted that we were well past the 'tipping point' referred to at the Committee's meeting in May. He added that the policies identified by our Parish Councillor required that development should lead to improvement, adding what faced us was quite the opposite. He concluded by noting, on behalf of the residents of North End, he urged Members to refuse the application and stop the needless loss of another family home in this part of the City.

The Chair thanked A Gemmill and asked the Legal Officer (Planning and Highways) to respond to the points raised. The Legal Officer (Planning and Highways) noted that in relation to the new Parking SPD referred to, that new SPD was not yet in effect and therefore requirements would be as per the previous SPD as set out within the report.

The Chair asked Councillor E Scott, Local Member to speak in respect of the application.

Councillor E Scott noted many of her concerns were similar to those put forward in terms of the first application, in terms of the proposals being in breach of policy and having large public objection. She noted that it would be the loss on another family home and referred Members to a decision where they had refused an application for 1 Larches Road in May which sought change of use from six bed to nine bed. She noted this application represented an additional seven HMOs beds and would have the same impacts as the application refused in May. She reiterated that the application was contrary to Policies other than Policy 16, one in particular being Policy 29(e). She asked that the Committee carefully consider the application and refuse permission.

The Chair thanked Councillor E Scott and asked the Committee for their comments and questions.

Councillor L Brown referred to paragraph 103 and 104 of the Committee report and asked whether, given there were two in-curtilage parking spaces, that the property would not get permits to enable parking in the street. The Highway Development Manager, Phil Harrison explained there would be three permits per property, regardless of the two off-street parking spaces.

Councillor L Brown asked as regards whether the parking surface material was known.

Councillor J Elmer noted that too often Policy 16 was looked at whenever there was an HMO to consider at Committee. He noted that the percentage within 100 metres was 7.7 percent, however, that only represented Council Tax exempt property, rather than any other type of HMO that could exist. He noted that Members could consider the wider amenity issues relating to existing residents and he was concerned as regards the technical issues as raised by A Gemmill in his presentation, especially in terms of the number of bedrooms and what could and could not be considered a bedroom, and the number of toilets. He noted that the parking provision resulted in a loss of garden and living space, noting he understood from his daughter who was living in such as student property, the issues that arose. He noted that the gardens of such student properties over a time tended to become of a poor quality and that such a property would not offer the positive experience that Durham University was trying to offer through their own properties. Councillor J Elmer noted he felt that the refusal of the application could be justified based on NPPF, CDP and DCNP policies in terms of the impact upon the amenity of residents of the city.

The Chair asked if Officers had any response to the points raised by A Gemmill as referred to by Members. The Principal Planning Officer noted many of the issues raised were not Planning matters rather Building Control, however, he noted that NDSS and where they applied had been explained to the Committee in terms of Policy 29(e). He noted Councillor E Scott had referred to the decision relating to 1 Larches Road made by the Committee in May for refusal. He added that that application was pending appeal and the Committee would be updated in due course as regards the outcome. He reiterated that Officer felt the key policy was Policy 16, in respect of the 10 percent threshold of Council Tax exempt properties within 100 metres, however, there were other policies Members could attach weight to as per the 1 Larches Road in relation to Policy 31. He reiterated that the Officer's recommendation was for approval.

Councillor D Sutton-Lloyd noted he felt Policy 16 was short-sighted in some regards and added why have other policies if they could not be used to look at an application. He added he had been moved by the presentation from Parish Councillor G Holland and agreed the proliferation of HMOs was akin to measles on one's face, and he felt that many good points had been raised in terms of refusal.

Councillor K Shaw explained he felt there was a continued drip-drip of applications such that family homes were being lost in Durham City. He added that we needed urgently in place a policy that helped to balance the needs of the University, students and residents. He noted he felt, similar to the refusal of 1 Larches Road, the application should be refused, being contrary to Policies 6, 29 and 31 of the CDP and Part 15 of the NPPF and moved refusal.

Councillor J Elmer seconded the motion for refusal.

The Chair noted that the Committee would be greatly interested in the appeal decision relating to 1 Larches Road and asked if there had been any further information to date. The Principal Planning Officer noted no change since May.

Upon a vote being taken, it was:

RESOLVED

That the application be **REFUSED** as the change in use of the property to a larger house in multiple occupation (Use Class Sui Generis) would have an adverse impact upon the amenity of existing residents and the character of the area through increased noise, disturbance and anti-social behaviour, contrary to the aims of policies 6, 29 and 31 of the County Durham Plan and Parts 12 and 15 of the NPPF.

d DM/23/01167/FPA - 5 Lyndhurst Drive, Crossgate Moor, Durham, DH1 4AE

The Planning Officer, Michelle Penman 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 Planning Officer advised that Members of the Committee had visited the site and were familiar with the location and setting. The application was for change of use from dwellinghouse (Use Class C3) to small House in Multiple Occupation (Use Class C4) with alterations to existing bay window and was recommended for approval subject to conditions as set out within the report.

The Planning Officer noted that HMO Data confirmed that including the application property, the percentage of Council Tax exempt properties within 100 metres would be six percent. She added if other pending applications for HMOs at 1 and 3 St. Monica's Grove were approved, the percentage would be nine percent. She noted 54 letters of objection had been received, including from the Local MP, Mary Foy.

The Chair thanked the Planning Officer and asked Parish Councillor S Walker to speak in relation to the application on behalf of City of Durham Parish Council.

Parish Councillor S Walker noted that the Parish Council joined with the huge numbers of residents and local MP in strongly objecting to the proposal and urged that Committee Members refuse the application today.

She noted that the Parish Council believed that the application did not meet the intent of Policy 16 and that further grounds existed in relation to the wider planning objectives that support the refusal of the application. She noted that starting with Policy 16, it was known that the Council's measure was woefully inadequate and in fact student numbers were far greater than stated. She added that the use of the 100m radius related poorly to the way communities operated in practice. She noted that the use of information based on individual streets provided a better means of assessing the experience of local people. She noted that for Lyndhurst Drive there were 13 houses: 1 registered HMO, with No.5 and two unregistered but equally relevant HMOs which is over 30 percent. She noted that was unbalanced and unacceptable. Parish Councillor S Walker explained it was worth noting that Lyndhurst Drive backed on to the 1 and 3 St Monica Grove development which would in effect act as a small, conjoined PBSA, occupied prior to finishing flouting the planning conditions, with the chance of them being enforced seemingly increasingly vanishing.

Parish Councillor S Walker added that the proposed development was also in conflict with the other policies, including Section 2 of the NPPF which required that strong, vibrant and healthy communities were supported, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations. She added that any further erosion of the balance of affordable residential locations, any further encroachment by HMO properties and further loss of housing stock was likely to persuade existing residents to move out and future residents may be reluctant or unable to move in. She added that our children could not afford to live where they were raised.

Parish Councillor S Walker noted that the DCNP carried considerable planning weight, with the objectives under Theme 4 including: to change the imbalance towards student accommodation back to a sustainable, balanced community. She noted that there was now an imbalance towards student accommodation with the various problems that caused, alongside the need to provide more family housing. She added that the particular importance of ensuring provision for families with children was to restore and sustain community balance, inclusiveness and sustainability, notably regarding school places and children's and parents' facilities.

Parish Councillor S Walker explained that the application also fell short of DCNP Policy S1, sections (a) and (c), because the application did not, to quote, "conserve the significance of the setting, character, local distinctiveness, tranquillity, and the contribution made to the sense of place."

She added that DCNP Policy H3 required a development to “sustain and make a positive contribution to the character and quality of the area”. She noted DCNP Policy S1(m) was relevant when considering the other consequences for what was a small cul-de-sac, including car parking, the run-down nature of many of the existing properties and gardens, levels of noise, footfall and lifestyles not reflective of residential areas. She noted the application introduced a transient population with limited ties to the local community, strongly challenging the well-being and amenity of long-term residents.

Parish Councillor S Walker noted that, furthermore, the development would not:

- a. ...function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development., with CDP Policy 29 stating that all development proposals must achieve well designed buildings and places which have regard to supplementary planning documents and other local guidance documents where relevant, and:
- e. provide high standards of amenity and privacy, and minimise the impact of development upon the occupants of existing adjacent and nearby properties; and
- f. contribute towards healthy neighbourhoods and consider the health impacts of development and the needs of existing and future users.

Parish Councillor S Walker noted that equally, CDP Policy 31, relating to Amenity and Pollution, stated that development would be permitted where it could be demonstrated that there would be no unacceptable impact, either individually or cumulative, on health, living or working conditions. She added that one would argue that had not been demonstrated in this case, and asked why were so many people present at Committee on a workday morning if their lives were not so unacceptably impacted by what was being allowed to happen in Durham City.

Parish Councillor S Walker explained the Parish Council were concerned that the present proposals would result in a further imbalance in the community and would have a detrimental impact on surrounding residential amenities through noise and disturbance, contrary to CDP Policies 29 and 31 as well as the NPPF Paragraph 130 (f) which sought to resist development that adversely affects residential amenity. She added those aligned with DCNP Policies S1 and H3 and reiterated that all other those policies carry as equal weight. She noted that, as with any other local development plan policy in the determination of this application, they were not optional, aspirational or nice to have, they had to be met in full.

Parish Councillor S Walker noted that it was felt that the development certainly did not, to quote Policy 29(a), “contribute positively to an area’s character, identity, townscape and landscape features”, nor did it help “to create and reinforce locally distinctive and sustainable communities. She explained that all of those policies were in effect asking the Committee to ensure that any new development was an improvement. She noted the proposals were not an improvement and therefore she would ask on behalf of the people who live in the areas, like those in the Chamber to refuse the application and not make Durham a worse place to live.

The Chair thanked Parish Councillor S Walker and asked local resident, Heather Shaw to speak in relation to the application. The Chair noted there were accompanying slides to the presentation.

H Shaw explained she lived in Lyndhurst Drive, a small cul-de-sac and was a mother, a wife, friend and neighbour to those who lived in the enclosed and friendly community, the very nature and character of which was in great danger. She noted that granting any planning application required an acceptable impact upon any street in terms of: character; appearance; residential amenity; and safety. She added that whilst some may state that the impact of the application would be acceptable, that definition was essentially flawed. She noted that it would only be acceptable for those who did not live in Lyndhurst Drive, the street which she and those she represented loved and lived in.

In respect of the spread of HMOs, she referred Members to a slide showing a 100-metre circle and explained as regards, including the application site, the HMO density being over 10 percent, seven out of 67 properties, above the level allowed in CDP Policy 16. H Shaw noted Members may ask what the difference between the red dots and the blue dots was shown on the slide. She explained it was fundamentally none, an HMO was defined as a house of multiple occupants not whether council tax was paid, a position Sunderland Council agreed with. She added that the impact of an HMO was the same, irrespective of its classification and therefore the application should be refused.

H Shaw noted that focusing on Lyndhurst Drive alone, our smaller enclave, if approval was granted, four out of 13 houses in Lyndhurst Drive would be HMOs, 30.8 percent. She added that 40 percent of the population would be students, 16 of 40, and noted that was not a balanced or sustainable mix and reiterated that in Lyndhurst Drive residents already had considerably more than the Policy allowed. She noted that three HMOs being granted in less than six months would not make for sound planning, with the density of HMOs within our street being unacceptable, therefore the application should be refused.

H Shaw noted that in terms of appearance, she referred to slide showing an existing student property and explained that was how HMOs were and how landlords who see Lyndhurst Drive as a business making opportunity directly impacted upon the appearance of a residential street. She asked if Members would wish to live next door to such a property, she noted her neighbours Don and Susan had to. She explained that the granting of an HMO at 5 Lyndhurst Drive, immediately next door to an existing HMO, would lead to an understandable dread that in effect it will be an HMO for 11. She noted that as Rise Letting Agency described and advertised the viaduct area, perhaps the two houses together will also become 'party central'. She asked again if Members would wish to live next door to such a property, noting other neighbours including Richard, Helen, Tom and Hilary would have to. She added that the appearance within our street was far from acceptable.

H Shaw noted that her and her neighbours, like everyone else, purchased their houses in a family area, with the necessary amenities for a high standard of family life. She noted that they respect and nurture the character and were protective essence of the street, actively engaging with and caring about each other on many levels, for example: at every get together we look forward to Salvo's tiramisu; we are able to ask for an ingredient Sainsbury's doesn't have; we can borrow a ladder with Richard. H Shaw noted that student HMOs, which did not engage with the community undoubtedly generated increased refuse, disturbance, more traffic generated by deliveries, visitors and the like and more noise. She noted that who had not been woken up by students during unsociable hours making a racket in the street. She noted some might say the answer was to close your window on a hot night, however, she thought not as it was not the right way to live and the residential amenity within our street was far from acceptable.

In terms of congestion, H Shaw noted Lyndhurst Drive had no links to other streets, it was a distinct location in and of itself. She noted that the street already was in effect an overflow carpark for Durham Johnston. She noted that the road was meant to be a turning circle, however, the road was a bottleneck with frequent parking on both sides of the street where there was no off-road parking had on multiple occasions prevented access for bin collection. She added that Ambulance Services have had to park at the bottom of the street for the previous occupant of 5 Lyndhurst Drive, indeed ambulance services had to knock on doors for vehicles to be moved. H Shaw noted that loss of amenity was intolerable and unsafe, noting that there had been accidents immediately in front of 5 Lyndhurst Drive, with delivery drivers knocking down Salvo's wall and Christine's car being damaged. She reiterated that the safety within our street was far from acceptable.

In conclusion, H Shaw noted that now Members would understand the anxiety of residents in terms of the prospect of another HMO on our cul-de-sac as being so very real.

She noted that particularly when the applicant was already in contravention of the conditions, using a digger at 3:25pm on Saturday and already altering the bay window, their respect for the planning process had to surely be in doubt. H Shaw concluded by noting that her community relied on the Committee's decision and asked that Members did not allow another HMO in our midst that would do nothing but irreparable harm and reject the application.

The Chair asked Councillor L Brown to speak in relation to the application.

Councillor L Brown noted that as it had been said on so many occasions students lead a totally different lifestyle to long term residents, as they were generally only resident for nine months a year and then generally for one nine-month period have no stake in the community within which they live. She noted Policy 16, with its percentages of Class N exemptions only tells part of the story and sadly its intent to provide balanced communities was falling by the wayside. She noted that, as previously mentioned, Policies 29 and 31, which dealt with residential amenity should also be considered when looking at the application. She at that the area was a cul-de-sac where only nine houses were actually in the cul-de-sac, two looking on to Newcastle Road. She added it was difficult to ascertain how many HMOs there were in the area, as one or possibly two were allegedly unregistered, but certainly rented out and one house had rooms which were sub-let to students. Councillor L Brown asked Members to bear in mind that an HMO was not necessarily Class N exempt and noted if one member of the household was working, then the property would not appear in the statistics, but was still as student house. She noted she was adding her objections in sympathy for one of the residents who, if the application was granted, would end up with student houses on all sides. She added that once again she must ask the Committee to be very careful as regards the consequences of their decision. She noted a vote for approval would mean one more family house removed from the City's housing stock.

Councillor L Brown left the meeting at 12.45pm

The Chair thanked Councillor L Brown and asked the Committee for their comments and questions.

Councillor D Sutton-Lloyd noted the report seemed like Groundhog Day number three and felt there was a need to go back to the Administration as regards the situation in respect of HMOs. He noted that those in objection had spoken eloquently, and he would move refusal of the application. The Chair noted that some upcoming appeals decisions may help in terms future decision prior to any review of the CDP.

Councillor C Kay noted he would not play politics, however, those Members who represented the Administration could be feeding back to see if there could be a change to the planning framework. Councillor D Sutton-Lloyd noted that was what he had meant when referring to feedback.

Councillor J Elmer noted Members once again were referring to Policy 16, the 100-metre radius and while he understood the rationale behind the rule, it was clear now that many HMOs were not Council Tax exempt and therefore were not being taken into account. He noted that as the proliferation of HMOs move towards 10 percent, those other policies as referred to during the other HMO items became more and more important. He noted he was not anti-student, and he was sure that no one on the Committee felt that way either, however, it was important to get the right balance and mix for students too when looking at applications. He noted that right now, nationally, students were being exploited with a monthly rent akin to the cost of a mortgage in some instances. He noted he would second Councillor D Sutton-Lloyd's refusal motion.

Councillor S Deinali noted she supported the proposal for refusal and add in terms of Policy 31, and the impact on residential amenity. The Chair asked Officers if they had sufficient grounds from the comments from Members. The Legal Officer (Planning and Highways) noted there were sufficient points raised. Members noted they felt the application was contrary to policies 6, 29 and 31, as per the previous applications, with Councillor R Manchester noting with reference to protecting balanced communities. Councillor S Deinali noted Policy 16 in terms of comments from Councillor R Manchester and the Principal Planning Officer noted that citing Policy 16 in such a way could prove an issue at any appeal of a refusal decision. Councillor S Deinali noted not to put forward Policy 16 as being a policy that Members felt the application was contrary to.

Upon a vote being taken, it was:

RESOLVED

That the application be **REFUSED** as the change of use of the property to a house in multiple occupation (Use Class C4) within this locale (which includes several properties occupied as HMOs but unregistered as being Class N exempt from Council Tax), would unbalance the community and have a detrimental impact upon community cohesion and adversely affect the amenity of non-student residents within the local area from increase noise and disturbance. Therefore, the proposal is contrary to Policies 6, 29 and 31 of the County Durham Plan.

*Councillor J Cosslett left the meeting and
Councillor L Brown entered the meeting at 1.00pm.*

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The Planning Officer, Mark Sandford 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 building from betting office (Sui Generis) to drinking establishment (Sui Generis) and was recommended for approval subject to conditions as set out within the report.

The Chair thanked the Planning Officer and asked Town Councillor Audrey Laing, representing Peterlee Town Council to speak in respect of the application.

Town Councillor A Laing thanked the Chair and Committee for the opportunity to speak on the application. She noted that there were many concerns she felt as a local Councillor and resident of Peterlee, firstly that there were enough bars, restaurants and takeaways within the town centre, and while she would generally support new businesses, she opposed this application. She explained that there were issues of anti-social behaviour and violence within the town centre, associated with alcohol, and noted the close proximity of the application site to a GP Surgery, Job Centre and Church, noting the impact on younger and older people. She noted NPPF Part 8 promoted Healthy Communities and planning had an important role in helping to maintain and encourage inclusive communities. She added that the proposed change of use was contrary to that goal.

Town Councillor A Laing noted CDP Policy 31 noted that development was permitted where no negative impact either directly or cumulatively could be demonstrated. She noted that alcoholism impacted all elements of society and unfortunately could lead to violence against women. She added that out of 76 risk factors it was found that alcohol was number three in terms of the impact on health, only after obesity and smoking. She asked Members to refuse the application in terms of the impacts on health referred to.

The Chair thanked Town Councillor A Laing and asked Councillor D Howarth, Local County Councillor, to speak in relation to the application.

Councillor D Howarth thanked the Chair and noted she represented Peterlee East, the division in which the application was proposed. She reiterated the points made by Town Councillor A Laing in that the NPPF looked to achieve healthy, safe, inclusive lifestyles. She noted the already existing high levels of alcoholism, anti-social behaviour and domestic violence in Peterlee and noted that another club was not appropriate.

She explained that the recently prepared Masterplan for Peterlee, last year, had bid for Levelling Up funding and asked Members to refuse the application.

The Chair thanked Councillor D Howarth and asked Matthew Lee, Agent for the applicant and Sean Sayers, the applicant to speak in support of the application.

M Lee noted the Peterlee Masterplan and the need for town centre investment. He added that there was some unwilling to invest in the town and it had been noted there was a need for more leisure facilities. He explained that the proposals were not for a 'run of the mill' drinking establishment, rather it would echo the comments from the Officer within his report, that the proposals were policy compliant and was a use town centres were designated for. S Sayers noted he had been a resident of Peterlee for 50 years and his vision for his establishment 'Ales and Tales' was for a unique establishment for Peterlee, with a micropub, cocktail bar and coffee bar. He added that there would be no TV screens or pool tables, rather ambient music and also live performances from local musicians, including from the nearby East Durham College. He noted the establishment would operate a strict Challenge 25 policy and also joint the local Pubwatch and work with the Council's Licensing Team. He noted that there would be no issues with any congestion, with ample parking in the areas and good links to the bus network. He reiterated he hoped for a unique offer and explained there would only be nine drinking establishments for a population of over 30,000 residents, with other comparable towns such as Seaham and Chester-le-Stret having 17 and 34 per 30,000. He concluded by noting the numbers at Peterlee were not excessive and he would ask that Members grant planning permission.

The Chair thanked the applicant and his agent and asked the Committee for their comments and questions.

Councillor L Brown asked if it was correct that there was no cumulative impact when looking at drinking establishment from a planning perspective and noted paragraph 32 referred to restrictions, but she could not see those mirrored within the conditions. The Principal Planning Officer noted no such cumulative impact, with the use proposed being an accepted town centre use. He noted that the Environmental Health Officer's response was set out verbatim within the report, noting some confusion in relation to sui generis use.

Councillor L Fenwick noted she was a Councillor for Peterlee and asked if there would be alcoholic and non-alcohol drinks and whether children would be permitted entry.

S Sayers noted that it would be the same as any other drinking establishment, with children requiring to be accompanied by a responsible adult. Councillor L Fenwick noted the points raised by Councillor D Howarth in terms of smoking outside in the pedestrian areas.

Councillor C Kay noted he was struggling with the application, he has listened to the statements from Town Councillor A Laing and Local Member, D Howarth, however, despite his own experience of the impact of alcoholism on a family member, a town centre location was the natural location for such an application and noted that problems within an area were not always the responsibility of a licence holder.

Councillor D Sutton-Lloyd noted he understood the points raised by the speakers and Councillor C Kay and asked as the activity next door, the Catch 22 College. Councillor K Shaw noted that paragraph 52 of the report noted Policy 31, no development being permitted if there was impact/harm. He asked how that related to the college next door. The Principal Planning Officer noted that in terms of residential amenity, there was no impact as was a town centre location. In terms with the compatibility with those aged 16-18, one would expect such an establishment to be managed correctly in terms of underage sales and so on in order to satisfy Policy 31. He reminded Members that Planning Guidance states that policy should not look to mirror other regulations that may apply.

Councillor I Roberts noted the impact of alcoholism and noted that Peterlee was an area requesting a treatment centre to help those suffering from addiction. She noted the other activities in the area, cafes, bingo and the Church, she felt there was a need to protect against alcohol harms.

Councillor J Elmer noted that cumulative impact would not usually be considered under Policy 31, however, it was noted that the town had a large impact already in terms of alcohol. The Principal Planning Officer reiterated that there was no cumulative impact in relation to drinking establishments, as there was for hot food takeaways, and reiterated Policy 31 referred to residential amenity and it was not felt there was an over-proliferation of drinking establishments and it was a town centre location. Councillor J Elmer felt that there should be some way to make a link to the levels of alcoholism in the town, however, the applicant had been very positive in his support of his application. He asked as regards any controls that could be put in place via planning. The Principal Planning Officer noted the sui generis use and all such uses described fell within that use.

Councillor L Brown noted, as a Chair of Licensing, that such applications must be considered by Licensing in terms of a premises licence and was an important check and balance in terms of such drinking establishments.

Councillor S Deinali noted her concerns as regards the Catch 22 College being located next door.

Councillor L Brown moved approval of the application as per the Officer's recommendation, she was seconded by Councillor C Kay.

Upon a vote being taken, it was:

RESOLVED

That the application be **APPROVED** as per the conditions set out within the report.

Councillor J Elmer noted he felt that the concerns of the Committee could be fed into the licensing process, the Legal Officer (Planning and Highways) noted that it was a separate process. Councillor L Brown noted that Planning Officers were consulted as part of the licensing process.

6 Special Meeting

The Chair informed Members there would be a special meeting of the Committee scheduled for Monday, 25 September 2023 at 1.30pm, with the associated site visit being Wednesday, 20 September 2023, leaving County Hall at 1.30pm.