

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 11 December 2018** at **1.00 pm**

Present:

Councillor P Taylor (Chairman)

Members of the Committee:

Councillors H Bennett (substitute for K Corrigan), D Brown, J Clark, M Clarke (substitute for S Iveson), I Cochrane, M Davinson, D Freeman, A Laing (Vice-Chairman), J Maitland (substitute for G Bleasdale), R Manchester and O Temple

1 Apologies for Absence

Apologies for absence were received from Councillors G Bleasdale, K Corrigan, K Hawley, P Jopling and J Robinson.

2 Substitute Members

Councillor J Maitland substituted for Councillor G Bleasdale, Councillor H Bennett substituted for Councillor K Corrigan and Councillor M Clarke substituted for Councillor S Iveson.

3 Minutes

The minutes of the meeting held on 13 November 2018 were confirmed as a correct record by the Committee and signed by the Chairman, subject to the correction of a typographical error to amend Patterson Walk to read Patton Walk at Item 5b.

4 Declarations of Interest

There were no Declarations of Interest submitted.

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

a DM/17/03548/LB & DM/17/03547/FPA - Three Tuns, New Elvet, Durham

The Senior Planning Officer, Barry Gavillet, 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 demolition and alteration of listed building at former Three Tuns Hotel (existing student accommodation) to create additional student accommodation (full planning and listed building consent) and was recommended for approval, subject to conditions and a Section 106 (s106) Legal Agreement as set out within the report.

The Senior Planning Officer noted two updates in relation to the report, that delegated authority was sought for Officers for an additional condition relating to ecology mitigation. He added that in reference to the contribution via the s106 agreement, the amount was now £82,051.30, representing a 50% reduction in respect of limited on-site provision and a further reduction in terms of removal of a need for children's play equipment.

Members noted that the site already had permission in terms of student accommodation, a change of use having been granted in 2013. The Senior Planning Officer noted that the site was located near to the Durham University Student Union, Old Shire Hall, and a number of shops and businesses. He added that Elvet Methodist Church, together with its associated Caretaker's house, was situated adjacent to the site. Councillors noted that a speaker representing the Church would address the Committee with their concerns.

The Senior Planning Officer explained that the hotel was a Grade II Listed Building within the Durham (City Centre) Conservation Area and that in reference to the proposed elevations, there was not a significant change, with some infill next to the Police Station. It was explained that there had been a lot of conversations between the Applicant and Officers and it was felt that the application enhanced the Conservation Area. Members noted the layout of the site and it was explained that no windows faced the Caretaker's property, No.8 Old Elvet.

The Committee noted no objections from statutory or internal consultees subject to conditions and a s106 legal agreement. It was explained there had been five letters of objection, with a summary of their concerns set out within the report. The Senior Planning Officer concluded by reiterating that the recommendation was for approval, subject to conditions, delegated authority in relation to an additional ecology mitigation condition, and a Section 106 (s106) Legal Agreement, as amended per the Officer's statement.

The Chairman thanked the Senior Planning Officer and asked Mr John Chamberlain representing Elvet Methodist Church to speak in objection to the application.

Mr J Chamberlin thanked the Committee and noted he represented the Caretaker living at No.8 Old Elvet in addition to the Elvet Methodist Church. He noted that the application was akin to having student accommodation in the back yard of No.8 and also the Church was not happy with the density of student accommodation as proposed within the application. Mr J Chamberlin added that there was concern in terms of the lack of communication from the Applicant and it was hoped that this would change in the future.

Mr J Chamberlin explained there was concern in relation to noise, not only during construction, but also when the student accommodation was occupied. He added that the condition in terms of no works on an evening or Sunday was welcomed, however, the Church had activities at various times throughout the day and every day of the week.

Mr J Chamberlin reminded the Committee that No.8 Old Elvet would overlook an entrance and cycle store, another source of potential noise at all times. He added that the Church welcomed the conditions in relation to materials and hoped that this could be looked at in reference to the cycle shed in terms of noise mitigation. Mr J Chamberlin asked that the management methods for the site could be reviewed once the site was up and running, and that if residents nearby experienced issues, for example such as noise nuisance, that there would be a contact, preferably by telephone, so that matters could be acted upon quickly.

Mr J Chamberlin noted a fire escape that led out on to Church owned land, with no discussions with or communications from the Applicant in this regard to date. He added that in relation to the car park belonging to the Church, if access was required by the Applicant then they would need to fully discuss this and seek agreement from the Church beforehand. Mr J Chamberlin noted plans for basement areas adjacent the car park and therefore the Church would need assurance that works would not undermine the car park, asking the Applicant to speak to the Church.

The Chairman thanked Mr J Chamberlin and asked Mr David Coundon, to speak on behalf of the Applicant in support of the application.

Mr D Coundon thanked Members for the opportunity to speak to Committee and referred to the conclusion set out within paragraph 58 of the report, with Officers stating the application would "...result in an enhancement to both the Listed Building and the Conservation Area." Mr D Coundon noted that the sections proposed for demolition were poor quality 1970s-1980s extensions and the removal of these was a positive step. Mr D Coundon explained that he was a local lad and that he felt the redevelopment of an important site within the Conservation Area was vital in terms of the city centre, with the proposals representing a high quality and sustainable use. He added that the design featuring a varied roof line respected the medieval buildings, the Cathedral and the surrounding area. Mr D Coundon noted that the proposals would restore the historic street front, utilise local materials and retain important features such as oriel windows and the carriage entrance. He added that the design had been such to retain the quality views from the world heritage site.

Mr D Coundon explained that the need in respect of student accommodation was already well established and that the number of rooms for students was 118, and he reminded Members that the former use was as a hotel and it was likely that there would have been more noise from that use. He emphasised that the statutory and internal consultees had raised no objections to the application.

Mr D Coundon noted that the genuine concerns raised by the Church and sought to address them in noting that there would be a construction management plan in place while works were undertaken and a management plan for when the accommodation was occupied. He added that there was acoustic mitigation within the design and that fire escape mentioned was an existing established feature, however, this was not required. In relation to the basement, Mr D Coundon explained that there were two existing basements and the relevant measures would be taken in terms of construction. He concluded by noting the Officer's recommendation for approval and asking Members to go along with their Officer.

The Chairman thanked Mr D Coundon and asked the Senior Planning Officer to respond to issues raised by the speakers.

The Senior Planning Officer emphasised conditions within the report: Condition Three referring to a construction management plan, including issues relating to traffic and noise; Condition Five referring to construction hours and no works on evenings, Sundays or Bank Holidays; and Condition Seven relating to a student management plan, with options that may include CCTV or a warden on site.

The Chairman thanked the Senior Planning Officer and asked the Committee for their questions and comments, asking Councillor D Freeman as a Local Member to speak first.

Councillor D Freeman noted that there clearly was some merit in returning the former Three Tuns Hotel back to use, and while he would have preferred another use, the use for student accommodation was acceptable. He noted that the Senior Planning Officer had referred to the proposals as being three and four storeys, however, the existing buildings were three storeys and therefore the application represented a higher building and roof-scape that did not mirror the existing buildings. Councillor D Freeman noted he had sympathy with the points made on behalf of the Church and the resident at No.8 Old Elvet. He noted that while the plans protected the views to the world heritage site, there were still the issue of noise from the adjacent courtyard, entrance and cycle store. Councillor D Freeman noted that information in respect bus stop and the footpath and highlighted that the footpath was very narrow and may not be able to cope with the volumes of people and would welcome the views of the Highways Section on the matter. He also asked for further information in relation to the change to the s106 contribution.

The Senior Planning Officer explained that the amount of contribution would be calculated from the open space needs assessment, with on-site provision being a higher value, a 50% reduction for provision off-site. It was added that further to this the use of the site for student accommodation negated the need for children's play space, further reducing the contribution.

In relation to the points raised by the Councillor as regards the footpath, the Senior Planning Officer noted that Highways Officers had not provided any objections to the application and had not asked for any improvements to the footpath.

Councillor D Freeman asked about the figure and the Senior Planning Officer replied that the figure in the report was incorrect as it had now been reduced.

Councillor J Clark asked for the slide with the site layout to be displayed and for the Officer to highlight the entrances, cycle stores and access to the courtyard. The Senior Planning Officer highlighted those areas, explaining that the access to the courtyard area was that already in place from New Elvet.

Councillor M Davinson noted he felt that given the close proximity of the Caretaker's property a more reasonable start time for works each day would be 8.00am and suggested that the Committee may wish to include this change to Condition 5 within any decision they made. Members agreed with Councillor M Davinson.

Subject to the amended start time for works in Condition 5, the amended s106 contribution and delegated authority as mentioned by the Senior Planning Officer for an additional ecology condition, Councillor J Clark moved that the application be approved, she was seconded by Councillor A Laing.

RESOLVED

That the application be **APPROVED** subject to the conditions and s106 Legal Agreement as detailed in the Officer's report, with the amendments as detailed by the Officer within his presentation and Members in relation to working hours.

b DM/18/03115/FPA - 36 The Hallgarth, Durham, DH1 3BJ

The Planning Officer, Jennifer Jennings, gave a detailed presentation on the report relating to the abovementioned planning application, a copy of which had been circulated (for copy see file of minutes). Members noted that the written report was supplemented by a visual presentation which included photographs of the site. The Planning Officer advised that Members of the Committee had visited the site and were familiar with the location and setting. The application was for 4 No. two bedroom flats (consisting of conversion of existing dwelling at No.36 into 2 dwellings and approved dwelling in garden altered to form 2 flats) and was recommended for approval, subject to conditions.

The Planning Officer reminded Members that the Committee had approved an application for a three-bed dwelling on the gable end of No.36, set back 1.5m from the building line, with the permission having not been implemented. It was noted that the application site was within the Durham (City Centre) Conservation Area, had a number of listed buildings nearby and was 450 metres east of the Durham Cathedral and Castle World Heritage Site.

The Committee were informed that the new proposed property would be set back 1.8 metres from the line of houses and Members noted proposed elevations. The Planning Officer noted the design was in keeping with the properties in the area in terms of material and scale. Councillors noted the location of bin stores for the proposed flats and that through discussions with Planners the Applicant had reduced the size of the proposed side extension.

The Planning Officer noted that the elements of the proposal were mainly as per the previously approved application, except the new extension and three additional doors to access the flats.

The Planning Officer noted no concerns from Northumbrian Water Limited and no objections from the Highways Section, highlighting no parking permits would be provided for the new property.

It was noted that the Design and Conservation Section had noted that the application would have a neutral impact in relation to heritage.

The Committee were informed that the Tree Section had noted none of the trees warranted a Tree Preservation Order (TPO) and Ecology and Contamination Land Officers had noted no objections. The Planning Officer noted the Archaeology Section had noted a condition in terms of a watching brief and investigation works as set out in the report.

Councillors noted that the City of Durham Parish Council had objected to the application and this had not been noted within the report. It was explained that their comments were set out on the planning Public Access portal, and also their letter of objection had been circulated to Members of the Committee in advance of the meeting. The Planning Officer noted a number of public responses had been received, 10 letters of objection with the main concerns raised being summarised within the report.

The Planning Officer noted that they did not feel that the application represented purpose built student accommodation (PBSA) and as a smaller scale scheme it did not require the level of detail that a PBSA would require. It was added that as each flat was only two-bed, the application was not considered in terms of the Interim Policy on Student Accommodation. Members noted that the application was considered in terms of the balance test of NPPF paragraph 11, and the Planning Officer explained that it was felt the benefits of the scheme outweighed the dis-benefits, the benefits being; new homes within the city, a sustainable location; the new build being in scale and of similar design to existing buildings; and "neutral" impact in terms of the Conservation Area, Listed Building and World Heritage Site. It was explained the dis-benefits were loss of a family home and loss of garden land. The Planning Officer reiterated that the application was recommended for approval, subject to the conditions as set out within the report and added that Members may find it useful to include a condition as regards a construction management plan, in respect of issues such as traffic and hours of operation.

The Chairman thanked the Planning Officer and asked Mr Roger Cornwell, Chairman of the City of Durham Parish Council's Planning Committee, to speak in objection to the application.

Mr R Cornwell thanked the Chairman and reminded Members that The Hallgarth was a small estate of seventies-built council houses, originally affordable housing, now mostly sold under the Right-to-Buy legislation and subsequently sold on.

He added that nevertheless, there were still some housing association houses in the street, and the house prices for family homes were reasonable; it being when they become student lets that they become more expensive, and the stock of affordable houses in the City would be depleted.

Mr R Cornwell noted that in fact, as set out within public objections, 36 The Hallgarth was surrounded by family homes, its neighbours at No.34, Hallgarth Farmhouse, No.31 Hallgarth Street having all objected, as well as two more in Hallgarth Street and others from further afield. He added that he felt that it was plain that the application was intended for student accommodation, a fact that was attested to by all of the other objectors to the application. Mr R Cornwell noted the design of the flats with two small bedrooms, a bathroom, a kitchen/diner was a low end student accommodation and would be unlikely to appeal to "young professional people or couples or to mature post graduate students of sabbatical year visiting lectures", which was the assertion made without proof in the Design, Access and Heritage Statement. He added that Members would note that the Statement said the property was withdrawn from sale because it was unattractive given the number of student neighbours and asked would the flats now proposed not be unattractive to anybody but students.

Mr R Cornwell noted the Applicant referred to advice from local estate agents but had not submitted it, and therefore one could only guess at who the intended tenants were, and that the Parish Council's knowledge of the local market suggested that this would be for students. Mr R Cornwell added that he understood from neighbours that the asking price had been around £300,000 which was above the going rate. Councillors were reminded that it was a finely balanced decision last time the site came to Committee, and Mr R Cornwell suggested that had this proposal been before Committee at the previous meeting Members would have refused it. He noted that by bringing the application in two stages the Applicants were hoping that the Committee would pass it, with objectors looking to the Committee to not have that happen.

Mr R Cornwell noted that as the Officer stated in her report it was a question of balance. He noted that if one believed the proposal would in fact provide additional homes within a central location of Durham City then it should be approved. Mr R Cornwell noted that if Members felt, as the Parish Council did with its local knowledge, that it was more likely that the flats would be let to students, then you would have the loss of one actual home, No.36, and the loss of one potential home, the one the Committee gave permission for earlier in the year. Mr R Cornwell noted that in that case, Members should refuse the application and that is what the Parish Council urges the Committee to do.

The Chairman thanked Mr R Cornwell and asked Ms Davina Jones and Ms Roz Leighton, local residents to speak in objection to the application.

Ms D Jones noted she was speaking in objection and that at the meeting in April, objectors had felt the properties would end up as student properties and the Chairman had assured objectors in terms of the Article 4 Direction that was in place.

She added that it was felt the new application was a blatant attempt to get around the Article 4 Direction, and while the Officer's report stated the application was outside of the Direction as each flat was only two-bed, the fact there was no living room space suggested it was low-end student accommodation that was intended.

Ms D Jones noted there were also issues in terms of: poor access; parking; an unacceptable ratio of students; and added that only the Committee could help and she urged Members to refuse the application.

Ms R Leighton reiterated the issues raised by Ms D Jones, and noted NPPF Part 5 in terms of sufficient homes. She explained there was over 200 homes and PBSA being built at Whinney Hill and she felt that the application before Committee was an attempt to body swerve the Article 4 Direction and felt that may open the way to cynical development and urged the Committee to refuse the application.

The Chairman thanked Ms D Jones and Ms R Leighton asked Mr David Leybourne to speak in support of the application.

Mr D Leybourne thanked the Chairman and the Committee for the opportunity to speak and referred Members to the Officer's report as set out in the agenda pack. He noted that paragraph 70 referred to the internal layout and being less favourable for family occupation. He noted that the space was flexible, and one of the two proposed bedroom could be utilised as a living room and there was scope for different room uses. He added that as the application was only for two-bed flats, then saved Local Plan Policies H9 and H10 did not apply. Mr D Leybourne explained that paragraph 71 of the Officer's report stated that the policy in terms of PBSA did not apply to this application and paragraph 72 stated that the application was not considered to be a detriment in respect of conversion of a house to flats. He added that paragraph 73 of the report noted the frustration in terms of the loss of a family home, however, set out that paragraph 68 of the NPPF gave great weight to the benefits of using suitable windfall sites located within existing settlements for homes.

Mr D Leybourne referred Members to paragraph 87 of the Officer's report which reiterated that the Article 4 Direction did not apply in terms of two-bed flats and that should there be occupation such to be considered a house of multiple occupation (HMO) then a change of use application would be required. He explained that paragraph 88 referred to potential anti-social behaviour within the area due to the density of students, raised by objectors, and that Officers felt that this was not sufficient to warrant refusal. Mr D Leybourne noted that paragraph 102 of the report explained the planning balance and that Officers felt that subject to the appropriate conditions the concerns raised by the objectors were not of sufficient weight to justify refusal of the application.

He concluded by noting that the proposal was not for a HMO and therefore as per policies the application should be approved.

The Chairman thanked Mr D Leybourne and asked the Principal Planning Officer, Alan Dobie, to respond to the issues raised by the speakers.

The Principal Planning Officer noted that the planning system did not differentiate in terms of the type of occupier, for example a family, single person, or student, rather planning looked at land use, for example for a single dwelling, flats and so on. He noted there was nothing preventing a student buying a house within Durham. He added that the application, in seeking to develop flats, could be seen to be adding to the housing mix within the area. The Principal Planning Officer reassured Members that if there was an application for a HMO at this site, this would be something Planners would resist and recommend refusal upon. He reminded Members that the application at Committee was not for a HMO, and that if in the future it was shown that the property was being used as such then the necessary action would be taken, and retrospective consent would need to be sought.

The Chairman thanked the Principal Planning Officer and asked the Committee for their questions and comments, with Councillor D Freeman to speak first as the application was in his Electoral Division.

Councillor D Freeman noted that he felt there was a number of issues, and he would not go into the merits of building within a garden as he had made these points at the Committee in April. He noted that since permission had been granted in April for a property, the Applicant stated the property had been marketed unsuccessfully. He added that he did not feel seven months was a long time to market a property in the current market and it was not the responsibility of the Planning Committee to concern itself with the saleability of a property. He added that the sale of properties at the nearby Whinney Hill development showed that properties within the area were selling.

Councillor D Freeman noted that paragraph 86 of the Officer's report referred to three of the eight bedrooms potentially being able to accommodate two people per bedroom. While the application was not for a HMO, he added that it felt like a HMO. Councillor D Freeman noted that paragraph 52 of the report noted students were more likely to reside in larger HMOs, however, Councillor D Freeman felt that there was no minimum number of occupants in terms of a PBSA and that looking at the floor plan proposed and the lack of parking provision that the application did not reflect the assertion of the flats being preferred by young professional or retired couples. Councillor D Freeman noted it would represent a test case in terms of attempts to circumvent the Council's policies and that in 10 years there may be no residential properties at all.

The Chairman noted that Councillor D Freeman was also a Parish Councillor for the City of Durham Parish Council. Councillor D Freeman noted he was a member of the Parish Council, although he was not a member of the Parish Council's Planning Committee and had not been involved in their decision making or objection to the application as submitted.

Councillor O Temple noted that he recalled the previous site visit to when the application in April had been considered. He explained that on this visit he had noted how many vehicles were parked along the street and how tight access was in general.

He explained that he had not been satisfied in respect of this when the application was for a three-bed home, and was even less so now the application was for eight beds. Councillor O Temple noted no objections raised by the Highways Section, however, he suggested that they may wish to speak to the bus driver from the Committee's two visits to the site as regards the difficulties he had in negotiating the estate.

Councillor O Temple noted Councillor D Freeman was more of an expert in terms of student housing, having many properties within his Division, however he felt saved Policy H13 may be appropriate, with the application not protecting the character and amenity of the area. He added that he felt Policy Q8, in relation to layout and design of residential developments was also relevant as the density of the application, eight beds, was inappropriate. Councillor O Temple noted he had been unhappy with the application in April and was less so with the proposals before Committee and noted the Policies he felt were germane to the application.

Councillor M Clarke noted he had previously worked as a letting agent and given this experience he felt that it would be more likely that the flats would be let to students given the close proximity to the city centre. He reiterated the comments made by Councillor O Temple as regards the estate road being tight and added that if families were to occupy the flats this could be more of an issue in terms of traffic and parking. He added that Members on the site visit had noted a Traffic Warden issuing tickets in the area. Councillor M Clarke noted he felt torn as regards the application as he could see some potential negative impacts.

Councillor D Brown noted he had listened to the comments made by the speakers and Committee Members and recalled the decision that was made in April being contentious, in terms of some Members not being in favour. He noted that the property had been placed on the market and as it had not sold the Applicant was changing tack. He added that he felt as if the application was an attempt to take advantage of the system and he was minded not to accept the recommendation.

Councillor A Laing asked for clarification in terms of parking permits, the Planning Officer noted that there would not be any permits associated with the new properties.

Councillor M Davinson noted the points made by Councillor O Temple and asked if the Solicitor – Planning and Development, Neil Carter could advise the Committee in terms of the policy points raised. The Solicitor – Planning and Development noted he would respond in relation to the points made by Councillors D Freeman and O Temple. He reiterated that the application was not for a HMO, it was for four, two-bed flats and therefore policies in relation to HMOs did not apply. The Solicitor – Planning and Development added that advice from Spatial Policy was that it was not reasonable to apply PBSA Policies to this application.

He added that any potential change of use for an HMO was not being considered by Committee at this meeting and that should the number of occupants increase in the future such that it represented a change of use, then this would be an issue for Planning Enforcement and accordingly no weight could be afforded to a potential future change of use. The Solicitor – Planning and Development referred Members to the paragraph at the end of the Planning Officer’s report which set out the balance test in respect of Paragraph 11 of the NPPF, including the benefits and dis-benefits of the application. He noted that it was for the Committee to weigh up and come to a view on those. The Solicitor – Planning and Development advised that the policies referred to by Councillor O Temple were relevant, however, a refusal reason based on character impact would be difficult to sustain, as the Design and Conservation Section had not objected to the application and there were no external changes proposed to that which had been previously approved.

Councillor M Davinson noted that it was his feeling that none of the Committee were happy in respect of what could potentially happen as regards the properties being used as HMOs, however, based upon the Planning Officer’s report and the advice of the Solicitor – Planning and Development he would move that the application be approved as recommended. Councillor A Laing seconded that the application be approved.

RESOLVED

That the application be **APPROVED** subject to the conditions as detailed in the Officer’s report, and to include a condition relating to a construction management plan.