

DURHAM COUNTY COUNCIL
AREA PLANNING COMMITTEE (NORTH)

At a Meeting of the **Area Planning Committee (North)** held in the **Council Chamber - County Hall, Durham** on **Thursday 25 July 2019** at **1.00 pm**

Present:

Councillor I Jewell (Chair)

Members of the Committee:

Councillors S Wilson (Vice-Chair), A Bainbridge, A Bell, L Boyd, J Higgins, A Hopgood, E Huntington (substitute for C Kay), O Milburn, C Martin, A Shield, J Shuttleworth and T Tucker

1 Apologies for Absence

Apologies for absence were received from Councillors D Boyes, C Kay, J Robinson and K Thompson.

2 Substitute Members

Councillor E Huntington substituted for Councillor C Kay.

3 Minutes

The minutes of the meeting held on 16 May 2019 were confirmed as a correct record by the Committee and signed by the Chair.

4 Declarations of Interest

There were no Declarations of Interest submitted.

5 Applications to be determined by the Area Planning Committee (North Durham)

a DM/19/01108/FPA - Land South of Whitehill Farm, Fell Road, Pelton Fell

The Senior Planning Officer, Steve France 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 residential development of 30 dwellings and associated infrastructure and was recommended for approval, subject to conditions and a Section 106 Legal Agreement.

The Senior Planning Officer referred Members to plans and aerial photographs highlighting the proposed site and the route the site visit coach had taken to access the site. A proposed site plan was displayed on the projector screens and the Committee were shown the house types and noted that due to the access road width, the number of houses that could be developed was 30, the applicant having originally looked for 75. The Senior Planning Officer noted there was a Site of Special Scientific Interest (SSSI) nearby, though not adjacent to the site, and there was also the nearby nature reserve and Cong Burn Wood. It was explained that due to the site levels, there was not a request for footpath links through to the nearby former Waldrige Wagon Way. The Senior Planning Officer noted the highway link to the site, left ready by the developer from previous phases of development, and that footpaths on either side of the road would link through to the proposed development.

The Committee were informed of an application nearby, though not adjacent, which had been considered by the County Planning Committee for 150 houses, minded to be approved, subject to a s106 agreement.

Councillors noted the house types proposed, two, three and four bed properties, two and three storey units, with two dormer windows. The Senior Planning Officer explained as regards proposed sustainable urban drainage system (SUDS) and noted that the application having only 30 properties proposed, as opposed to the original 75 sought, allowed for a large buffer around the site, helping in terms of ecology and protecting the neighbouring nature reserve.

The Senior Planning Officer noted responses from statutory and internal consultees, with Highways noting the proposals were acceptable in terms of the estate roads and the wider transport network.

He added there were no objections from Northumbrian Water or the Coal Authority. The Committee were informed that the Spatial Policy Team had noted the application was for 100 percent affordable properties, though policy only required 15 percent, and it was proposed for a £47,223 contribution as regards off-site open space provision. It was explained that the site was regarded as greenfield and outside of the settlement boundary as set out in the Local Plan, however, as the Local Plan policy was considered out-of-date then Paragraph 11 of the National Planning Policy Framework (NPPF) would be engaged. The Senior Planning Officer explained that there were no objections from Environmental Health, Archaeology, Ecology, Drainage, Landscape, Housing and Design Sections subject to conditions. He added that the Education Department had advised that there was capacity for school places and no mitigation was required.

The Senior Planning Officer noted consultation as regards the application, with 32 letters of objection and three representations, together with a late objection from the Council for the Protection of Rural England (CPRE). He explained that the main concerns raised related to highways safety, increased traffic over the lifetime of the development as well as disruption during the construction phase. The Senior Planning Officer noted that there were conditions within a Construction Management Plan which aimed to mitigate issues. It was explained that other issues raised by objectors included: anti-social behaviour from social/affordable housing; social housing requirements in the area already being met; scepticism as regards whether residents in the new development would be from the local area; overlooking from three storey units; and flooding and contaminated land. The Senior Planning Officer explained that other issues raised by objectors included devaluation of existing properties as a result of the development and claims that assurances had been given when existing residents had purchased their properties that the application site would remain undeveloped.

The Senior Planning Officer concluded by noting that in terms of NPPF Paragraph 11 it was felt the adverse impacts of the development did not outweigh the benefits and therefore the application was recommended for approval, subject to conditions and a s106 Legal Agreement.

The Chair thanked the Senior Planning Officer and asked Mr S McGregor, local resident to speak in objection to the application.

Mr S McGregor thanked the Chair and Committee for the opportunity to speak and explained he was a resident of Littleburn Way and noted he and his neighbours were profoundly concerned as regards the proposed development. He noted there were concerns as regards the interruption to wildlife at the site, including bats, deer and owls, as well as traffic calming and increased traffic in the existing, quiet cul-de-sac.

He noted it would represent a 200 percent increase in traffic along Littleburn Way and that this would present a danger to young children playing, adding many residents bought properties in good faith on the basis of having a quiet and traffic-free environment. Mr S McGregor explained residents would be devastated if this quiet environment was taken away, the area having developed a strong, tight-knit community from the lack of traffic allowing young children to mix and play together. He added many residents feel that should the application be approved they would put their homes on the market, having worked hard to buy a property that would afford that particular lifestyle.

Mr S McGregor referred to paragraph 39 of the report which stated the 4.8-metre-wide highway could serve up to 100 dwellings and explained that there were currently 72 dwellings and therefore approving 30 additional properties would represent 102, contrary to 2014 guidance in this regard. He noted this was a disregard to residents' safety.

In relation to public consultation, Mr S McGregor noted there was a legal requirement to undertake this and asked whether the Committee were aware of this. He added that for comparison, there had be 32 objections for this application and only 10 objections for the large development nearby as mentioned by the Officer. Mr S McGregor concluded by noting this showed local people were strongly opposed to the application and urged the Committee to reject the application.

The Chair thanked Mr S McGregor and asked if Officers could clarify some of the issues in relation to highways.

The Principal DM Engineer, David Smith explained there were a few issues raised as regards the estate road, and that Highways considered all new developments in terms of being able to safely serve residents. He added in this case this was 30 units and that the B Road and estate roads were more than capable. It was explained that the assertion that trip rates would be doubled was not correct, with The Principal DM Engineer explaining that for a development of 30 units a transport statement was not required as there would be a modest increase of around 20 trips at peak hours, equivalent to one every three or four minutes. He added that in terms of parking in the estate overall there was the legacy of previous policies in terms of one space per dwelling, however, as the application had all parking on-site and was at new 2019 standards there would be no overspill. The Principal DM Engineer noted the had been no accidents recorded on the estate roads, with one minor accident recorded on the B Road. In terms of 100 dwellings against 102 dwellings, the Principal DM Engineer noted that the design of the estate was such to slow vehicles down and the application site was at the last part of the estate.

He concluded reiterating there was no objection to the application from Highways, and that he did not feel a refusal recommendation could be sustained on any technical reasons.

The Chair thanked the Principal DM Engineer and asked if Officers could respond in relation to any legal agreement and the density of the proposed development.

The Senior Planning Officer explained that the legal agreement could only stipulate 15 percent affordable housing, however the applicant had stated the development was for 100 percent affordable. He added that the applicant, Karbon Homes was a Registered Social Landlord (RSL) and preference as regards local residents would be dealt with by them as landlord.

The Chair thanked the Senior Planning Officer and asked Mr A Willis, agent for the applicant to speak in support of the application.

Mr A Willis thanked the Chair and Committee for the opportunity to speak and explained that the agents had worked with the Planning Officer in respect of the application on aspects including ecological improvements and to produce a high-quality development that meets the needs of the local area. He explained that the application represented a sustainable development and had good access to services, as set out within paragraph 83 of the Officer's report, such as a GP Surgery, Post Office, shop and bus stops. Mr A Willis noted that the site currently did not have access and was ecologically poor. He added that if the development was approved, approximately 50 percent of the site would have ecological improvement.

Mr A Willis explained that the applicant, Karbon Homes would offer the homes as 100 percent affordable, with many of the properties being a rent-to-buy product, very popular and therefore over time properties would be purchased and that capital would be used by Karbon Homes to reinvest in affordable properties in the County.

In respect of the highways issues raised, Mr A Willis deferred to the Principal DM Engineer's comments. He concluded by noting the application represented a suitable and sustainable development, with conditions and a s106 Legal Agreement which demonstrated social, economical and ecological benefits and asked the Committee to approve the application.

The Chair thanked Mr A Willis and asked the Committee for their comments and questions.

Councillor T Tucker noted concerns in terms of comments from internal consultees, with the Spatial Policy Team setting out at paragraph 44 that “the site is included within the SHLAA and rated as unsuitable (amber) in principle”. She added that paragraph 46 stated that the Council could demonstrate more than six years supply of deliverable housing, meaning the tilted balance did not apply. Councillor T Tucker noted that the report also set out that the application site was outside of the settlement boundary, on greenfield land and adjacent to the nature reserve. She noted that within the report it stated that Spatial Policy noted limited weight should be given to the local plan policies and asked why the NPPF was referred to and the tilted balance being used. Councillor T Tucker added that the report set out at paragraph 51 that Environmental Health had noted “some unsuitable material has been identified and therefore is required to be removed and visually validated”. She concluded by asking why, considering the comments from the internal consultees, the application was being entertained on a greenfield site and asked were there not other more suitable sites available.

The Senior Planning Officer noted that the planning policy in County Durham was difficult and evolving, noting in the North Area there was the 1997 Derwentside District and the 2003 Chester-le-Street District Local Plans. He added that varying degrees of weight were given to those versus the NPPF and the planning report and comments from Spatial Policy state what those plans set out. The Senior Planning Officer explained that each element would be relevant to different degrees and noted that while the application site was outside of the settlement boundary, the NPPF did not use such designations and Government policy set out issues relating to housing policy. He reiterated the report set out all the relevant policies for Members information, with the NPPF setting out where weight should be given in respect of particular policies.

The Senior Planning Officer noted that the NPPF noted a preference for brownfield sites to be developed, though did not preclude development on greenfield sites. He added that an element to be considered in such application was the capacity of a settlement in terms of its sustainability. The Senior Planning Officer noted while Paragraph 170 of the NPPF encouraged those sites with housing designation were to be given more preference, if there were no other policy reasons why development should not go ahead, then NPPF Paragraph 11 required a presumption to be in favour of development.

The Senior Planning Officer noted that Spatial Policy set out all policies within their comments, including influence on the County Durham Plan (CDP) such as housing land supply, the housing market and gave an allocation based upon a traffic light system, this site being allocated as amber.

He added that the site had some issues, however, the developer came to the Planning Department to look to address those issues and the application as submitted and presented to Committee was recommended by Officers for approval.

The Senior Planning Officer noted the comments from Environmental Health as regards contaminated land and added that the issues were less than usual for many sites, and there was a four-phase approach to address any issues and would be dealt with by way of condition.

The Solicitor – Planning and Development, Neil Carter explained that there was more than one route to engagement of the NPPF Paragraph 11 balance, noting that while a five-year or more supply of housing could be demonstrated and therefore NPPF Paragraph 11 was not engaged on that basis, paragraph 49 of the report noted NPPF Paragraph 11 was engaged as the evidence base for the relevant saved policies were out-of-date. He noted that the tilted balance would therefore apply, and the advice as regards the weight to be afforded to policies was set out within the report, however, exactly how much weight there was for the Committee.

The Chair noted Councillor T Tucker alluded to other sites being more preferable and he reminded the Committee that the application as set out within the report was for Committee to determine.

Councillor A Shield noted his apologies for being unable to attend the site visit, though noted he was familiar with the location. He explained he shared the concerns raised by Councillor T Tucker and had listened to the responses from the Senior Planning Officer and the Solicitor – Planning and Development. He noted that he felt that the fact the development was proposed on a greenfield site, outside of the settlement boundary meant that the application was contrary to saved Policy NE2 in terms of settlement boundary and ecology as set out at paragraph 29 of the report. Councillor A Shield noted the nearby nature reserve and explained he had concerns as regards the impact of the development on this with both Policies NE2 and HP6 supporting settlement boundaries and resisting development. He added that in some cases Members are told saved Policies carry weight and in other cases that they do not and to look to the NPPF. Councillor A Shield explained in this case he could not ignore saved Policies and he would not be prepared to support the application at this time.

The Solicitor – Planning and Development noted that Councillor A Shield was correct in that Local Plan Policies could not be ignored, rather the report set out how much weight could be afforded to each, with weight being reduced where those policies were not consistent with the NPPF.

Councillor A Hopgood noted paragraph 60 of the report referred to affordable housing and asked why no elderly persons' bungalows were included within the scheme and why the three-storey units were proposed to the edge of the site adjacent to existing properties. The Senior Planning Officer noted paragraph 60 explained that the Council had set out the housing needs within the area and added that it was for the applicant to decide upon which types they wished to include within their application. As regards the three-storey units, the Senior Planning Officer noted there was a significant distance between those proposed and existing properties and the area was the lowest point of the site and therefore there was some justification to their design.

Councillor A Hopgood thanked the Officer for his clarification and asked if Karbon Homes could answer why, when highways issues meant they could only develop 30 units on this site which could normally accommodate more than double, they had not taken the opportunity to develop bungalows to help meet housing need.

The Chair asked if Mr A Willis wished to answer the question. Mr A Willis noted while he was not a spokesperson for Karbon Homes, the household mix as set out in the application was based on Karbon Homes market demand. He noted the other issues raised as regards visibility and separation distances were set out within the Officer's report. The Chair reiterated that the application was as set out and agreed all Members would like developers to be aware of the need for types of housing such as bungalows. The Senior Planning Officer noted the local demand for bungalows had been communicated to the developer.

Councillor A Bell noted that to his knowledge there was a lot of pressure on school places in the Chester-le-Street area, with both Park View and Hermitage secondary schools being heavily oversubscribed. He asked how this was assessed and which school had places available. Councillor A Bell also asked as regards affordable housing and being able to purchase a property, what criteria applied and how many properties could be sold. He also asked as regards the traffic calming alluded to be the objector in his statement.

The Senior Planning Officer noted that in terms of school places, the Education Section were asked for their comments and they conducted their internal exercise and reported back that no mitigation was required, indeed the same response they gave in terms of the large 150 property development that had been approved by the County Planning Committee. In respect of affordable properties, the Senior Planning Officer noted he understood it was not the intention that all properties be sold, rather there was a number of options with some to help people on to the property ladder and some to be for rent in perpetuity.

He added that such options were looked at scheme by scheme, and a mix of different types side by side was what Government recommended.

The Principal DM Engineer noted that in terms of traffic calming, as traffic would enter through the estate, there was a number of tight bends and this would act to slow driver speeds. He added that with all new developments, there would be consideration as regards the merit of 20mph zones, however, at the moment the design of the estate was such that there was not high speeds and cushions in place and the environment had been created that slowed traffic down.

Councillor J Shuttleworth noted the Local Members in respect of the application were Councillors S Henig and L Marshall and asked if their views had been communicated to Officers. The Senior Planning Officer noted that Councillor L Marshall had passed on the concerns raised by residents in relation to the application. He added he and the Area Team Leader (North), A Farnie had visited the site and its access on several occasions and noted the issues raised echoed those raised on-site.

Councillor L Boyd noted she would echo the comments made by Councillor A Hopgood in terms of the need for bungalows, however, the social housing that would be provided was welcome. She noted paragraph 67 of the report mentioned concerns from residents in terms of social housing and an increase in crime. Councillor L Boyd explained she found that suggestion to be offensive and felt that it should not be taken into consideration.

Councillor J Higgins referred to page 19 of the report and the provision of a GP Surgery and asked whether there was capacity in this regard. The Senior Planning Officer noted the local NHS Trust was consulted at both the pre-submission and application stage, however, they had not responded.

Councillor T Tucker noted the comments as regards the design of the road network slowing vehicles down, and she recalled the route of the coach during the site visit by the Committee. She added that she had concerns as regards residents having to put up with large trucks during the construction phase and noted she felt that more weight should be afforded to Policies EN2 and HP6 and as issues had been raised in terms of building on a greenfield site and the impact on wildlife, she would propose that the application be refused.

Councillor A Bell noted that in terms of affordable housing, he would ask how affordable the properties would be, noting some "affordable housing" in his Electoral Division which was far from affordable at around £150,000 to £190,000. He thought this was a wider point Members should be aware of. Councillor I Jewell noted "affordable" was defined by specific criteria.

Councillor C Martin noted that he shared the Committee's response to the application and added he knew the area in question well and while he may not like what was proposed the Committee needed to look at the application in terms of how it stacked up against saved Local Plan Policies and the NPPF. He noted the advice given by the Senior Planning Officer and Solicitor – Planning and Development in terms of the weight that could be afforded to policies and noted he felt that the Committee did not have power against the NPPF without the CDP being in place. Councillor C Martin added that he felt that if the Committee forced the issue to go to appeal, it would likely be lost and to the cost of residents.

Councillor A Shield asked for confirmation in relation to off-site provision for play and recreation, with saved Policy RL5 stating the provision of such within a site and therefore he felt the application was also contrary to this policy and he would add this to the reasons stated by Councillor T Tucker and second that the application be refused.

The Senior Planning Officer noted that the Open Space Needs Assessment (OSNA) identified shortages in types of land and colleagues from Spatial Policy would have looked at on-site provision and off-site need and look at what was reasonable and a contribution of £47,223 was proposed for off-site open/play space provision. Councillor A Shield asked for clarification as regards whether the contribution could be allocated anywhere in the County. The Senior Planning Officer noted it was countywide.

The Solicitor – Planning and Development noted the motion to refuse had been put, citing conflict with saved Policies EN2, HP6 and RL5. He explained that he would be nervous in terms of a sustainable refusal reason based upon Policies EN2 and HP6. He acknowledged that Members could choose to afford more weight to policies than Officers, however he did not feel refusal on those alone would be sustainable. In relation to the NPPF Balance Test, the Solicitor – Planning and Development noted he had not heard from Members what negative impacts there would be as a result of the application and how that would outweigh the benefits of the proposal.

Councillor A Hopgood asked if the application site was allocated as development within the draft CDP. The Senior Planning Officer noted the CDP would not have weight, however for information he noted it was not included within the CDP. Councillor A Hopgood noted Members were not being allowed to use either old policies or new policies. She added that she felt the Committee had cover both sides, in terms of the Local Plan Policies and CDP, with the application not being acceptable.

The Solicitor – Planning and Development noted the CDP could not be afforded weight at this time. He added that even if a site was not allocated for a particular use that would not preclude development, should a suitable planning application be made. In referring to the NPPF Paragraph 11 Balance Test, it stated that permission should be granted unless “any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole”. He asked what adverse impacts Members were referring to when proposing refusal of the application.

Councillor J Shuttleworth left the meeting at 2.10pm

Councillor T Tucker reiterated that Spatial Policy had set out within their comments that the Council could demonstrate a six-year supply of housing land and the site was outside of the settlement boundary, an oversupply of housing.

The Chair noted that if the Committee were minded to refuse the application, they would need to ensure their refusal reasons were robust and be able to stand up at Appeal, he noted the Solicitor – Planning and Development had asked twice for Members’ reasons.

Councillor T Tucker noted saved Policies NE2 and HP6 noted development outside settlement boundaries was generally resisted and therefore she felt that to go outside of what had been done in the past would lead to overdevelopment. She noted she felt Policies NE2 and HP6 applied and the application should be rejected on that basis, and in protecting the ecology of the area and the wildlife. The Solicitor – Planning and Development noted that this was a reiteration of the settlement boundary issue and he had not yet heard a reasonable argument in terms of a sustainable refusal reason. He asked Members to think in terms of what specific planning harm they felt would significantly outweigh the benefits of the development in this case.

Councillor A Shield noted Policy NE2 stated “protect and enhance the countryside” and stated this was not the case, when building outside the settlement boundary. He added it would not sustain agricultural or rural business and therefore was a clear breach and he felt that should be sufficient for refusal.

The Chair noted the application had been discussed at length and as a proposal for refusal had been made and seconded the Committee should vote.

The Solicitor – Planning and Development sought clarification as regards the refusal reasons from the proposer and seconder. He asked as regards refusal in terms of settlement boundary alone or inclusion of conflict with Policy RL5 in terms of open space provision, noting the policy was one of some antiquity and the OSNA evidence base was much more up-to-date. He added that should the issue for Members be where the contribution was to be spent, this could be controlled by, setting out in the S106 agreement the Electoral Division where the monies should be used. He added that refusal in terms of Policy RL5 would not be sustainable, given the Policy allowed off-site contributions, where appropriate.

Councillor A Shield noted he would withdraw Policy RL5 as a refusal reason, noting Policies EN2 and HP6 to stand. Councillor T Tucker as proposer agreed.

The Chair noted that the proposal for refusal had been put by Councillor T Tucker and seconded by Councillor A Shield and upon a vote being taken, the motion was **LOST**.

The Senior Planning Officer noted if Members were minded to approve the application, he would ask for an additional condition as regards highways arrangements.

The Chair noted a proposal made by Councillor A Bell for approval subject to clarification that the financial contributions to be used within the Electoral Division, he was seconded by Councillor O Milburn, upon a vote being taken it was;

RESOLVED

That the application be **APPROVED** subject to completion of a s106 legal agreement and the conditions as set out within the report, and an additional condition in relation to highways arrangements.

6 Appeal Update

The Committee considered a report of the Principal Planning Officer, Fiona Clarke which provided details of a recent appeal decisions.

Members noted the first was in relation to application for the retention of a timber fence at 4 Brantwood, Chester-le-Street and the Principal Planning Officer advised that the appeal had been dismissed by the Planning Inspector and appropriate enforcement action would be therefore taken in respect of the fence.

The Principal Planning Officer noted a second appeal relating to an application for the erection of an equestrian worker's dwelling, garages, tack room, riding area, and extension to stable building at land west of Peters Bank Cottage, Peters Bank, Harperley. The Principal Planning Officer advised that the Planning Inspector issued a split decision the proposed stables extension and riding arena were approved subject to conditions and the proposed equestrian workers dwelling was refused.

Councillor A Shield asked as regards costs, the Principal Planning Officer noted that there had not been any application for costs.

RESOLVED

That the content of the report be noted.