

DURHAM COUNTY COUNCIL

At a Meeting of **County Planning Committee** held **remotely via Microsoft Teams** on **Tuesday 3 November 2020** at **9.30 am**

Present:

Councillor J Robinson (Chair)

Members of the Committee:

Councillors J Atkinson, A Bell, J Clare, I Jewell, B Kellett, A Laing, L Marshall, L Pounder, G Richardson, J Shuttleworth, A Simpson, M Wilkes and S Wilson

Also Present:

Councillor D Freeman

1 Apologies for Absence

Apologies for absence were received from Councillors K Corrigan, K Hawley, C Kay, A Shield and F Tinsley.

2 Substitute Members

Councillor L Pounder substituted for Councillor K Corrigan, Councillor L Marshall substituted for Councillor C Kay, and Councillor B Kellett substituted for Councillor F Tinsley.

3 Declarations of Interest

The Chair, Councillor J Robinson declared an interest in Item 5b - DM/20/01334/VOC, DM/20/01333/VOC & DM/20/01332/VOC - Former Millburngate House, Framwelgate Waterside, Durham DH1 5TL, noting one of the registered speakers had been the Mayor of the City of Durham at the same time he had been the Mayor of Sedgefield Brough Council and noted that he would leave the meeting during the consideration of that item.

4 Minutes

The minutes of the meeting held on 2 September 2020 were confirmed as a correct record by the Committee and would be signed by the Chair.

5 Applications to be Determined by Committee

a DM/20/01499/WAS - Enterprise Point 1, Enterprise City, Green Lane Industrial Estate, Spennymoor, DL16 6JF

The Senior Planning Officer, Chris Shields, 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 to clinical waste treatment and transfer facility, including autoclave, air condenser, boiler, shredder, compaction units, bin washes and extraction flues and was recommended for approval subject to conditions.

The Senior Planning Officer noted the application site had previously been used as a distribution hub and explained the adjacent unit, owned by the applicant, was used for same use as proposed within the application. Members were advised of the site layout, including loading dock and locations of equipment such as wash plant, shredder and autoclave. The Committee were informed of the proposed access arrangements from Meadowfield Avenue and details of car parking and vehicle movements.

In reference to consultee responses, the Senior Planning Officer noted no objections from Statutory consultees subject to conditions. He noted in respect of public responses there had been 134 letters of objection from residents, and objections from County Councillor N Grayson and Spennymoor Town Councillor M Harmer. It was explained that the objections were set out within the report and included: odour; noise and disturbance; traffic and increased vehicle movements; potential risk from hazardous materials; and potential negative impact upon house prices.

The Senior Planning Officer noted that the development was mainly the relocation of a long established business from an adjacent unit with the addition of a treatment process for a waste stream that was already collected at the adjacent site. He explained that the potential impacts of the development had been fully assessed and found to be acceptable, subject to conditions where appropriate and that the development would be fully contained within an industrial building on a site allocated for employment use.

The Senior Planning Officer noted concerns of objectors had been taken into account along with other responses including those of statutory consultees that had raised no objections to the proposal, subject to conditions where appropriate. He added that whilst mindful of the nature and weight of public concerns it was considered that those were not sufficient to outweigh the planning judgement in favour of the proposal.

He concluded by noting that the proposals were considered to fully accord with all relevant national and local planning policies and therefore were recommended for approval, subject to the conditions as set out within the report.

The Chair thanked the Senior Planning Officer and asked if the objections raised by Spennymoor Town Councillor M Harmer were on behalf of the Town Council or as an individual Member. The Senior Planning Officer noted they were in his capacity as an individual Town Councillor. The Chair asked Mr M Fearman, local resident, to speak in relation to the application.

Mr M Fearman thanked the Chair and Committee for the opportunity to speak and also thanked Planning and Environmental Health Officers for their time and help in respect of his, and his brother's, objections. Mr M Fearman thanked the applicant and noted he understood that, if the application was granted, the applicant had agreed conditions that would ease some of the concerns.

Mr M Fearman noted that his objections were based around the noise report, adding he did not believe the report was based on a "worst case scenario" as requested by the Council's Environmental Health Officer. For context, he explained that the BS4142 noise assessment would entail a noise consultant visiting the area, obtaining existing noise measurements in the area where the properties were and then modelling of the plant that would go into the unit would be undertaken. He added that then the modelled level of noise from the plant would be compared to the existing noise level in the area. Mr M Fearman explained that the noise consultant could add subjective penalties on to the assessment if they believed certain noises would be heard at the nearest residential property, those noises being: impulsive; tonal; intermittent; and other sounds characteristics that may be distinctive against the residual acoustic environment.

Mr M Fearman noted that the conclusion of the noise report could be one of three, namely: any noise up to 5dB above the background level showed no impact from the development, the result in this case with the report noting only 3dB above the background level; any noise of 5-9dB above the background level, which showed the development may have an adverse impact; and noise levels of 10dB or above which showed the development may cause a significant adverse impact. He reiterated that he believed that the report had not been undertaken in terms of a worst case scenario as requested by the Council. He added that the noise levels within the report show the shredder would operate at 102dB and the autoclave being 96dB. He explained that these levels were obtained by the noise consultant when visiting another site to record similar plant noise levels.

Mr M Fearman noted he requested that those results were made available to scrutinise, to understand at what distance the noise levels were recorded from the plant, and whether the plant was operating at full load or half load, full speed or half speed and so on. He noted that some penalties had been applied in respect of tonality, for the extraction system, with the consultant noting the noise would just be perceivable for the nearest residential properties and some penalties had also been applied in terms of impulsive noises for door slams and skid movements, again just perceivable for the nearest residential properties.

Mr M Fearman noted that he felt that the BS4142 assessment should have additional penalties applied to it for the noise characteristics of the shredder in operation as he felt the level of 102dB would be audible at the nearest residential properties and, as the report was requested on a worst case scenario, he felt that the penalty should have been taken into account.

Mr M Fearman noted that on Sunday, 1 November, it had been witnessed that the roller shutter doors at the unit had been open most of the day while heavy good vehicles were moving in the yard and he added he had no doubt this would continue throughout the lifetime of the development. He noted that the noise report did not take into account noise escaping from the building when any roller shutter doors may be open and therefore he felt this did not allow for a full picture of the unit in terms of what the noise levels would be at the nearest residential properties with the doors open, again not a worst case scenario.

Mr M Fearman explained that the background noise level used within the noise report were not the lowest recorded background level, not a worst case scenario. He accepted that the report had been done using BS4142 methodology and that stated that the lowest background noise level did not have to be used, however, as the Council had requested worst case scenario it was his opinion that the lowest background level should have been used and if that lowest level had been used it would have taken the noise levels from being 3dB over the background, showing no impact, up to 7dB over the background, likely to cause an adverse impact.

Mr M Fearman concluded by noting that difference in dB level, the assessment being carried out with the doors closed, and lack of penalties on the application would, if looking at a worse case scenario, would change it from being currently acceptable to being unacceptable and he thanked the Committee for their time.

The Chair thanked Mr M Fearman and asked the Senior Planning Officer to respond to the points raised.

The Senior Planning Officer noted an officer from Environmental Health, the Principal Public Protection Officer, John Hayes unfortunately had been unable to join the meeting, however, he had asked for a worst case scenario in terms of the noise report. He added the study was carried out and the noise report was passed to the Principal Public Protection Officer who had been satisfied with the outcome and had recommended conditions. The Senior Planning Officer referred Members to condition four which set specific noise levels for the site and asked for the applicant to monitor levels, while not precluding the Council from undertaking monitoring itself. He explained that they were essentially top-level limits, with no degree of freedom within that, and therefore the Council would expect the applicant to reach those levels and indeed the applicant had indicated they could achieve those levels.

The Chair thanked the Senior Planning Officer and noted other issues raised by objectors and responses to those were set out within the report. He asked Mr to speak on behalf of the applicant.

Mr K Sheehan thanked the Chair and Committee and explained he was the Technical Manager from Sharpsmart Limited, the applicant, and he covered areas of work such as compliance, new infrastructure and project management. He noted that at Sharpsmart, the core business was the manufacture, supply and servicing of reusable sharps containers and their aim was to make healthcare safer through their safety engineered containers, a more environmentally friendly alternative to single-use, virgin plastic containers which are burnt after one use. He added that Sharpsmart containers could be used up to 500 times, saving thousands of tonnes of plastic and reducing CO₂ emissions by 80 percent over the life of the container.

Mr K Sheehan explained Sharpsmart had supplied the NHS with reusable containers and healthcare waste services for close to 20 years from their headquarters at Unit 44, Meadowfield Avenue and since June/July 2019 from Unit 1 which had been used for distribution and storage. He noted that Sharpsmart serviced hospitals such as the Royal Victoria Infirmary, Sunderland, James Cook and other major NHS Trusts within the region. He added that in the company's history, nationally the company had no health and safety or environmental issues, having four further regional facilities in Yorkshire, Staffordshire, Essex and Berkshire.

He asked Members to note that, in supporting the healthcare sector and NHS in the north east, Sharpsmart were looking to invest in their Spennymoor facility with new equipment and technologies for the safe processing of certain healthcare waste. He noted the sustainable process allowed waste to be rendered non-hazardous by the means of steam treatment.

He explained that the resultant material was used as an alternative to fossil fuels in power stations and cement kilns. Mr K Sheehan noted that currently there were no facilities within the region that were permitted to this, meaning waste from local hospitals was transported hundreds of miles for processing and disposal, an additional cost to the local NHS.

Mr K Sheehan explained that the investment in Unit 1 would create long-term jobs in the region, Sharpsmart currently employing 21 staff from the local area in the current facility, some of which had been with the company since the company began operating. He added there were currently five new open roles and he reiterated that the Spennymoor facility was Sharpsmart's national headquarters. He noted that roles at the site included drivers, plant operators and site managers, and the Spennymoor site was also home to the company's customers service teams, human resources department and national operation leads and the company was looking to grow the administration side of the business further out of that facility.

Mr K Sheehan explained that the healthcare waste treatment facility being proposed was not what people might envisage when they thought of a waste disposal site, with waste arriving in sealed waste containers which were then placed in locked waste carts within the building to await processing. He added that waste would be processed within 24 hours of arriving on site and then removed for onward recovery for energy to waste facilities or power plants. He noted large quantities of waste would not be stored, there would be no loose piles of material on site, all waste being stored in the sealed carts until processed. It was explained that the equipment and process underwent in-depth testing to meet the high standards set and controlled by the Environment Agency, those standards being checked weekly within the first six months of operation and then monthly for the life of the plant to ensure high standards were maintained. Mr K Sheehan explained that Sharpsmart would be willing to have open days to show the local community how the operation worked and wanted to have working relationship with the local area to be able to discuss any concerns. He added that Sharpsmart had taken note of the concerns raised to date and offered solutions to address those as set out within the conditions agreed to, such as removal of gate alarms, reversing alarms and a traffic management system to ensure no Sharpsmart vehicles accessed the site from the residential side.

In reference to the noise report, Mr K Sheehan noted he was not qualified to speak in-depth on the issues, however, in terms of issues in respect of doors being open or closed, he explained that once the site was a permitted, operational facility there would be requirements that the doors be shut while in operation and, as per the site plan included within the Officer's presentation, the loading dock to be used for the movement of the materials was enclosed and almost a separate unit from where the waste processing would take place. He added there was an extra internal wall being in

between the processing plant and the doors that would be open during loading and unloading.

The Chair thanked Mr K Sheehan and noting the Senior Planning Officer had no points to raise he asked if the Committee had any points of clarification.

Councillor J Clare noted he took comfort in the reference to the Environment Agency carrying out inspections weekly and explained he had questions relating to paragraphs 13 and 14 of the report, referring to 600 litres of liquid effluent per cycle. He asked what the total amount would be, whether that was the 1.2 million litres referred to and also whether there was any potential for contaminated effluent being discharged to the sewer to present a danger or smell.

The Chair asked Mr K Sheehan if he could respond. Mr K Sheehan noted that in terms of contaminated effluent, it sounded worse that it was, in essence being condensed steam. He explained that it was classed as effluent as it had gone through a treatment process and classed as contaminated as it would have been in contact with a waste stream, even though that waste stream would have been rendered non-hazardous. He added that the effluent would be tested on a regular basis as part of the company's discharge consent and the company had such a consent already at Unit 44 for the discharge of wash water. He reiterated that it was condensed steam from a wash process and was non-hazardous and similar operations were carried out at other similar facilities around the country.

Mr K Sheehan noted that in terms of volume question, the 600 litres stated would be a higher estimate of the amount of effluent, this varying by ambient conditions. He added that on cold days more steam was required and this in turn would produce a greater amount of effluent. He reiterated that 600 litres would be a maximum with a more usual amount being around 300 litres per cycle, with around ten cycles on a normal processing day.

Councillor J Atkinson asked as regards the autoclaves being used subject to "high pressure and high vacuum" and asked what pressures were being used and whether there were any potential issues in terms of leakages or explosions.

He added he had worked with high pressure vessels and noted in his experience there had been a process of inspection to be able to obtain insurance and asked if such inspections were undertaken.

Mr K Sheehan explained that the pressures were in the region of 45psi, being deemed "high pressure" in terms of clinical waste treatment as some parts of the process operated under no pressure. He noted some elements used steam injected under pressure, however, the system would not in turn hold that pressure. He added that insurance requirements were such that

vessels were required to be MDT tested and pressure tested annually and signed off by insurers.

The Chair thanked Mr K Sheehan and asked the Committee for their comments or any proposals in respect of the application.

Councillor J Atkinson noted he would propose that the Committee accept the Officer's recommendation.

Councillor J Clare noted for planning applications it ultimately depended upon the promises of applicants in maintaining and in some cases, those promises were not upheld. He added that was why he asked questions and had noted the processes would be subject to regular testing by the Environment Agency. He explained this has alleviated his fears in respect of the application and that, in terms of noise and the number of journeys generated, residents would have recourse via Planning Enforcement at the Council and be able to challenge any misuse of the system. Councillor J Clare noted resident's concerns and was heartened that the company would be offering to show residents around the facility and hoped residents would be reassured by this. Councillor J Clare noted, given the promises of the applicant, he would second the proposal for approval as per the report.

Councillor I Jewell added he felt the stringent conditions associated with the application probably mitigated any of the fears local residents had.

The Chair asked the Solicitor – Planning and Development, Clare Cuskin to take the vote for the approval of the application.

Upon a vote being taken it was

Resolved:

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

Councillor J Robinson left the meeting at 10.03am

Councillor I Jewell in the Chair

- b DM/20/01334/VOC, DM/20/01333/VOC & DM/20/01332/VOC - Former Millburngate House, Framwelgate Waterside, Durham, DH1 5TL**

The Principal Planning Officer, Henry Jones, gave a detailed presentation on the report relating to the abovementioned planning applications, 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 applications were for: variation of condition 29 of DM/18/00896/VOC to permit works between 7am-8pm Monday-Friday & 8am-6pm on Saturdays until 13/05/2021 (Amended Description); variation of condition 20 of DM/18/00894/FPA to permit works between 7am-8pm Monday-Friday & 8am-6pm on Saturdays until 13/05/2021 (Amended Description); and variation of condition 23 of DM/18/02924/FPA to permit works between 7am-8pm Monday-Friday & 8am-6pm on Saturdays until 13/05/2021 (Amended Description). It was noted the applications were recommended for approval subject to conditions and a Deed of Variation of the Section 106 Legal Agreement to reflect the revised planning applications.

The Principal Planning Officer referred to plans of application site setting out the three areas covered by the applications, the whole site and two sites within the area, one area being for a hotel and the other predominately for office accommodation. He gave an overview of the site and the area in context of its city centre location, noting residential properties at St. Godric's Court, St. Anne's Court, Highgate, Sidegate and Diamond Terrace and the Radisson hotel to the north of the application site. He noted the Freeman's Reach development on the opposite site of the river, the Walkergate development and Freeman's Place Leisure Centre. Members were referred to aerial photographs giving a snapshot of development and noted the Officer had more up-to-date photographs of the site later within the presentation.

The Principal Planning Officer noted that the applications were for the variation of working times, however, he gave a brief overview of the development that was taking place on the site, with some elements being approved in detail and some being approved in outline. He explained the detailed planning permission gave permission for six building blocks, and with planning permission for the northern part of the site being in outline, with no details in terms of design, scale or layout, with a further application required to resolve those issues.

He added the development was a major mixed use development and uses within the area that had full planning permission included: a hotel with some ground commercial floors; office block with some commercial units below; restaurants on some ground floors with some residential accommodation on upper floors and a residential block.

The Principal Planning Officer noted that while the precise scope for the northern part of the site was not known yet, it would comprise of a combination of housing and office accommodation. Members were referred to a visual representation of what the site would look like upon completion

and some site photographs, some as recent as one week ago taken at dusk, for context.

Councillor M Wilkes entered the meeting at 10.15am

In terms of consultation and representations, the Principal Planning Officer noted that the City of Durham Parish Council had objected to the applications and were present at Committee to give more details, with the objections submitted including concerns relating to the extended working hours given the proximity to residential properties and with the justification of the site seeking extended hours given that it continued to operate throughout the COVID 19 pandemic.

The Principal Planning Officer noted in terms of statutory and internal and external consultees, the Highways Authority and Environment, Health and Consumer Protection had raised no objections to the applications. He added that there had been 11 letters of objection from residents and neighbourhood groups with their comments including: the unacceptable impacts the extended hours would bring; the extended hours not being justifiable, the contractor continuing on site throughout the pandemic; the site had caused harmful amenity impacts in the past; and there was a lack of confidence in enforcement to control impacts. The Principal Planning Officer noted Councillor D Freeman had relayed the concerns some residents in his Electoral Division had raised and requested that the applications be heard at Committee.

In summary, the Principal Planning Officer noted that the principle of development was established and was not the subject of the applications, rather the acceptability of the applications rested upon whether the proposals to extend the construction working hours were acceptable or not. He noted that if they were found not to be acceptable then the existing planning permissions would continue and the working hours that are currently required would subsist. He added that if the applications were approved, the extended working hours would be in place until 13 May 2021 and reiterated the requested hours were 7am-8pm Monday-Friday and 8am-6pm on Saturdays.

He explained that this represented a 30 percent increase across the working week overall, a commencement Monday-Friday of 30 minute earlier, a finish of Monday-Friday of two hours later, and a finish on Saturday of five hours later.

The Principal Planning Officer noted that during the proposed extended hours, certain operations would not take place, with a full list being set out within the report, with a number highlighted within the presentation including, but not limited to; piling operations; mechanical cutting or breaking of

concrete; concrete pumping; scab-baling or cleaning of concrete; and bulk earthworks.

The Principal Planning Officer noted that the thrust of recent Written Ministerial Statement and associated guidance in regard to extended construction working hours because of the impact of the COVID-19 pandemic was that such requests could be rejected but that “very compelling reasons” to do so should exist. He added that the acceptability of the requested extended construction working hours was considered to be finely balanced and there were sensitivities applicable to the site and the development given the proximity of sensitive receptors, business which are also affected by COVID-19 and the potential for further adverse impacts.

The Principal Planning Officer concluded by noting that Officers view was that the likely degree of the increase of any impact over current impacts ongoing at the site was not considered such to comprise very compelling reasons and therefore Officers consider that the applications should be approved.

The Chair thanked the Principal Planning Officer and asked Parish Councillor J Ashby, representing the City of Parish Council, to speak in objection to the application.

Parish Councillor J Ashby thanked the Chair and Committee for the opportunity to speak and noted he was the City of Durham Parish Councillor for Elvet and Gilesgate, which covered the whole of the city centre including the application site.

He explained the Parish Council objected to the applications for various extended hours because of the concerns of nearby residents and the applicant’s generally poor approach to the issue. He noted that Condition 20 of the original approval in 2018 said:

“No development works pursuant to the development hereby approved shall take place outside the hours of 7.30am - 6pm Monday to Friday (inclusive) and 8am - 1pm on a Saturday with no works on any Sunday or Bank Holiday.”

Parish Councillor J Ashby noted that Tolent, the applicant, had quite understandably now sought to use the Government’s temporary provisions of May 2020, however, assessing their wishes had been absurdly difficult and troubling for nearby residents by the cack-handed way Tolent had gone about it. He added that the applications were their third shot at saying what they wanted, the first being what was in Condition 20, amounting to 57.5 hours per week.

Parish Councillor J Ashby explained that in June this year Tolent applied for 7am to 9pm Monday to Friday and 8am to 9pm on a Saturday, their explanation for seeking planning permission for those extended hours was in a covering letter, but unfortunately that was missing from the Planning Portal. He added that the missing letter apparently also said how Tolent wished the condition to be varied, and again it was impossible to know any detail of the variation sought. He noted the extended hours applied for in June would have meant working 83 hours every week until May 2021.

He noted the Parish Council and local residents objected to the application as lacking essential information and failing to provide the safeguards needed to protect residential amenity. He explained Tolent then said that the reference to any working until 9pm on a Saturday was a mistake and working on a Saturday was supposed to have to remain unchanged with a 1pm finish. He noted that would mean the total would be reduced from 83 hours to 75 hours per week.

Parish Councillor J Ashby noted, having regard to further discussions with officers, a third amendment now proposed 7am to 8pm Monday to Friday and 8am to 6pm on Saturday. He added this would mean in a week there would be five hours less working on weekday evenings but five hours more on Saturday afternoons. He noted that we were of course now into the dark winter evenings so getting five hours extra daylight working in exchange for five hours less evening working did make sense from Tolent's point of view.

Parish Councillor J Ashby noted it was a sorry story of confusion and demonstrated how much better it would have been for Tolent to undertake genuine liaison and consultation from the start. He explained the residential areas of Highgate, Diamond Terrace and Sidegate were located immediately adjacent to the Millburngate House redevelopment site and experienced noise, dust and disturbance generated at the site, the level of noise having been described as intolerable.

He explained the Parish Council has been asked by the Sidegate Residents' Association to point out that Condition 6 of the planning permission granted in 2018 required a Construction Management Plan (CMP) to include "*Detail of any planned measures for liaison with the local community and any procedures to deal with any complaints received.*"

He added that Sidegate Residents' Association stated that very little consultation had happened, with one site visit on 25 February, but nothing since. He noted there has been just one newsletter, in July, which was about their intention to extend working hours. He noted Sidegate Residents' Association had certainly received nothing from Tolent about the current applications, only from the County Council.

Parish Councillor J Ashby noted the CMP containing those requirements for liaison with the local community had only just been approved in September 2020, two years after permission was granted on the basis of that condition and long after construction started. He added that this was poor practice, disrespectful to the Planning Authority and local residents, and unworthy of a major company such as Tolent. He concluded by noting the Parish Council considered that local residents had endured enough worry and disturbance and that the applications should be refused.

The Chair thanked Parish Councillor J Ashby and asked the Principal Planning Officer to respond to the issues raised.

The Principal Planning Officer noted that in reference to the degree of confusion as regards what was being applied for, Parish Councillor J Ashby was correct in that there was some confusion earlier on in the application to as to exactly what degree of extension was being applied for, however, he felt this had been clarified recently through a combination of a renotification process where the Council went out to residents clearly defining what the description of the development was and in conjunction, at a very similar time, Tolent distributed a newsletter to residents. He noted that while he did not know how many residents received the newsletter, the Principal Planning Officer had received a copy and it stated the same hours as the Council notification.

The Principal Planning Officer noted a late update in relation to the suite of conditions, regarding condition 10 on proposed permission DM/20/01332/VOC. He noted the currently drafted condition relating to sound insulation for the operational phase of the development did not take into account that there was a partial discharge of that condition and therefore if the application was approved he would look for delegated authority to amend that condition to account for some of its requirements having previously been discharged.

The Chair thanked the Principal Planning Officer and asked Councillor D Freeman, Local Member, to speak in relation to the application.

Councillor D Freeman noted he was the County Councillor for the Elvet and Gilesgate Electoral Division and also a Member of the City of Durham Parish Council.

He explained he would not repeat the points made by Parish Councillor J Ashby relating to the history of the site and poor way Tolent had treated the local area. He noted he worked for the Home Office, based in the Passport Office just over the river from the development. He explained that throughout the period since the lockdown building works had been ongoing daily, noting his work desk faced the site, and he noted it would be true to say that within

the hours that the developers had at the moment they had made extensive progress, as shown within the photograph within the presentation taken in the evening. He added that he did not feel the case was shown that the lockdown had stopped the developer working on the site and therefore he felt it weaken the case for longer hours going forward, as was Government's intention in terms of developers that had been stopped in progressing on their sites during the lockdown.

Councillor D Freeman noted that for Members of the Committee, he felt that the question was whether the applications for the variation of working hours was therefore fair and reasonable. He added he had around 300 residents within around 100 metres of the development site and they had experienced noise, dirt and inconvenience during the working day, however, the applications sought to extend those hours and extend the problems that those residents had to experience into the evening, 8pm and throughout Saturday up to 6pm.

Councillor D Freeman noted that he felt sure every Member at Committee would not be supportive of such extension of building hours within their ward and noted that as a Member of one of the Area Planning Committees it was not something he would find favourable for any Member in any ward in the County. He noted he therefore hoped that the Committee would reject the extension of hours adding he felt they were not fair to surrounding residents and were not reasonable here or anywhere else. He noted he felt the Committee could reject the applications on the grounds of residential amenity and he hoped they would do so.

The Chair thanked Councillor D Freeman and noted there were two speakers in objection, he asked Mrs Eileen Grimes, local resident, to speak first in objection to the applications.

Mrs E Grimes stated here we were again, with another variation for the Millburngate development. She noted she understood the application was being sought as a result of the pandemic, however as previous speakers had noted, works had continued all through lockdown, Arlington Developments and Tolent having made press releases which noted they were making great progress on site and that everything was going to schedule.

She noted the applications had been brought as a result of the Ministerial Guidance and that guidance gave clear direction that it could be refused on residential amenity.

She noted that Officers were attaching conditions, however, she explained Tolent had constantly breached the conditions that were in place at the moment and those complaints had been logged with Council Officers. Mrs E Grimes asked if Members were confident that any conditions placed on

Tolent, if the applications were approved, would be enforced and adhered to by Tolent, adding she felt residents did not have that confidence.

Mrs E Grimes noted Tolent had provided little or no compelling evidence or reason for the extended hours and she felt they were purely manipulating the guidance for their own agenda. She noted the Officer's report made reference to it being a finely balanced decision and that the objections were supported through the County Durham Plan, which had recently been approved. She noted issues included visual intrusion, noise, loss of light, increased light pollution during dark mornings and evenings heightened by floodlights and additional lights required for work. She noted there had been increased noise and dust from all aspects of work which had not been monitored as per the condition of the permission. Mrs E Grimes noted the latest government guidance was for everyone to work at home where possible and this would increase the impact. She concluded by noting Ministerial Guidance highlighted, within Section 7, reasons for refusal of extended hours where sites were in close proximity to residents and she noted all the evidence given to Committee gave the opportunity for Members to put the health, mental health and wellbeing of residents nearby to the construction site above a construction company and she asked for the applications to be refused.

The Chair thanked Mrs E Grimes and asked Mr Michael Dowson, representing the Radisson Hotel to speak in objection to the application.

Mr M Dowson explained he represented the Closegate Radisson Blu Hotel, the direct neighbours to the construction site. He noted that they very much supported the comments from Parish Councillor J Ashby and Mrs E Grimes and reminded the Committee that works started on the site four years ago in November 2016. He explained that they would like to see the construction on the site completed as quick as possible as it was often not a pleasant environment in and around the locality. He noted that at Millburngate, and now The Sands, there had been some many times where site environmental monitoring had not been working or that the result provided after a particularly bad incident had occurred, were provided months afterwards.

He noted the Principal Planning Officer would be able to verify that with Mr M Dowson, having had conversation going back six months asking for confirmation as to why an incident had occurred as Mr M Dowson was obliged to respond to the guests at the hotel within a very short period of time. He explained guests wanted to know why their cars were covered in dust or why they had been woken in the middle of the night or very early in the morning.

Mr M Dowson noted that the CMP mentioned previously, at The Sands site, had a condition for the Developer to monitor only when they think necessary.

He explained that on a day where steel was being grinded and a stream of complaints had been made by guests, a complaint was made to the Enforcement Officer who noted the Developer had not been monitoring that day.

Mr M Dowson noted that should the Committee be minded to approved, which he hoped they would not, then he would request very strict environmental monitoring be put in place along the hotel boundary during the extended working hours, more strict than currently suggested and that there be no permitted rights such as the concrete plant that went up on the boundary for most of last year under permitted development rights. He noted there should be an obligation to cease working if early morning or night-time noise limits were breached, adding hotel guests did not want to be woken up at 7am by a reversing beeper for example. He noted he would request a planning condition whereby on-site physical monitoring for excessive noise, dust and vibration was conducted by a person during the extended working hours and that the results were provided to the Council each and every day. He concluded by hoping that would not be necessary, with Members refusing the applications, however he noted a similar condition had been applied to a sister hotel in London undergoing works.

The Chair thanked Mr M Dowson and asked the Principal Planning Officer for any comments on the points raised.

The Principal Planning Officer noted in respect of monitoring that there had been some issues in the past, with access to the environmental monitors now being better with direct access to the results of monitoring, adding that there had been some instances where monitoring results had been missing. In terms of some specific requests from Mr M Dowson, should the applications be approved he noted not all of those requests would be covered by the current suite of conditions. He noted that if Members were minded to approve the applications, but rather they were with bolstered conditions, then there would be need for further discussion as not all of the conditions would cover the requests made by Mr M Dowson.

The Chair thanked the Principal Planning Officer and asked Mr Michael Rutherford to speak on behalf of the applicant, in support of the application.

Mr M Rutherford thanked the Committee for the opportunity to speak and noted he was the Project Director for Tolent Construction and the Lead on the Millburngate project.

He noted the application had been made in line with Government guidelines and the overriding principle of the application was to make the project safer, to protect the health and safety of everyone employed on the site and by definition the health and safety of the local and wider community in Durham.

He explained that the application had not been with the intention of operating all the activities on the site throughout the extended period. Mr M Rutherford noted that the application would provide Tolent with the flexibility to manage the construction activities and the logistical arrangements on the project which would create valuable space and would allow people and operations to be carried out in line with Government guidelines.

Mr M Rutherford added that as part of the application, Tolent had provided a full and extensive schedule of operations, plant and machinery which would not be carried out under any circumstances during the extended hours. He noted that would mean there would be no increase to noise levels whatsoever throughout the project. He noted the issues raised as regards lighting and noted he could confirm all of the lighting on the site throughout the extended periods, and during the winter period, would be focussed within the internal elements of the site. He added the light would not be in any way be on the same level as the lighting of the full operational scheme upon completion. He noted Tolent had been very careful in how they had set up the work lighting and the majority of the works proposed to be carried out during the extended hours would be within the body of the development, below the podium slab and within service corridors and throughout the car park, all those areas were not visible to the public.

Mr M Rutherford noted some issues raised in objection to the operational hours and the logistics as regards deliveries. He explained that Tolent would argue that by extending the operational hours, they could schedule deliveries to avoid peak times, to avoid congestion and to avoid any particular increase in terms of traffic in and around Durham city centre. He reiterated that the application would give Tolent more flexibility to manage operations.

Mr M Rutherford noted there had been consultation with local residents, and he would argue this and added that up until the pandemic Tolent had held a number of open evenings where local residents were invited to the site to enable Tolent to explain the project, where the project was at in terms of schedule, and the logistics and constraints around the project. He noted that with the current COVID-19 restrictions, those open evenings had been postponed and these had been replaced with consultation letters, the latest of which had been sent out the end of July, adding the letters gave various information as regards the project.

Mr M Rutherford noted there had been a number of discussions as regards to the fact that Tolent had continued working throughout the pandemic and he explained this had been through the planning and dedication of the site team, however, he would say that this had been at a significantly reduced rate compared to what was anticipated within the original programme. He reiterated that while operations had continued on site, the number, level and output of those operations had been significantly reduced. Mr M Rutherford

noted that extending the hours would not recover those costs, however, it would mitigate further delays going on to the project.

Mr M Rutherford noted that Durham County Council's Nuisance Team had carried out a risk assessment and did not perceive that the extended hours would cause any nuisance to the community. He added that the current Government guidelines in relation to the pandemic was "hands, face and space" and he noted it was possible for "hands and face" on site. He noted it was also possible to do "space", however, the extended hours would allow for more flexibility to create more space from a logistical point of view to be able to separate people on the project, noting that had to be a good thing in relation to the pandemic.

The Chair thanked Mr M Rutherford and noting no comments from the Principal Planning Officer or Solicitor – Planning and Development he would ask Members of the Committee for any points of clarification.

Councillor J Clare noted paragraph 112 of the report, fifth bullet point which noted key considerations in justifying extended hours for the LPA (Local Planning Authority) included the justification for the request. He asked the applicant how many weeks behind schedule the project had fallen as a result of the pandemic. He noted he understood from the comments made by Mr M Rutherford that the extended hours would enable Tolent to reduce the intensity of work moving forward and asked if the developer had been able to maintain the works to schedule during the pandemic so far. Councillor J Clare noted there were statements throughout the Officer's report that the justifications for the request were weak and asked the Principal Planning Officer as regards his opinion in terms of how weak the request was.

Mr M Rutherford noted that in respect of how far behind the project was it was a dual approach, with an assessment being made of where the project was at the moment and also a forecast of where the project was likely to be, given the circumstances at the moment. He explained that a full programme review was undertaken, and the number and level of resources was scheduled out, every day, every week throughout the entire project. It was added that current productivity levels were approximately 30-35 percent below what was originally anticipated.

Mr M Rutherford noted that he was reporting to the client that the programme was 6.3 weeks late from the original date. He added, however, that the more important aspect was that if he was to project the reductions in levels going forward, then it was currently anticipated that the project would be 13 weeks late based upon current output levels. In relation to the current output levels, Mr M Rutherford explained that the idea of the extended hours was not necessarily that the operations would continue in full, adding Tolent had been very specific in terms of which operations would not happen. He added that

what could not be perceived from the Principal Planning Officer's presentation slides was that below the development there was a huge number of service corridors and tunnels that were utilised for distribution of materials, noting a huge amount of materials on the site. He explained to local residents and all those around the site, it was not possible to see those works until you were inside. Mr M Rutherford noted the idea predominantly was to continue with works as normal, throughout the normal operational day, however, the extended hours could be used to distribute materials safely, as there would be a reduced number of people on site.

The Principal Planning Officer noted he was not sure what within his report gave the impression that he felt the justification was weak, he noted he had not used the word weak nor intended to give that impression. He added that he would agree that the justification was not as strong as if the site had been required to close down entirely during lockdown, however, the Written Ministerial Statement and associated guidance did not say that the purpose was wholly for sites to play catch-up if they had been required shut down, it was to do with managing all the kinds of impacts the pandemic might have had, as explained by Mr M Rutherford in terms of more flexibility. He reiterated that while he had not intended to give the impression that the justification was weak, he agreed it was weaker than if the site had been required to shut down, however, he had not used those terms within the report.

The Chair thanked the Principal Planning Officer and asked Members of the Committee for their comments and questions.

Councillor J Atkinson noted that he had attended a recent meeting of the Economy and Enterprise Overview and Scrutiny Committee and the impact the pandemic was having on the economy was very stark.

He added that one of the issues was social distancing, and he noted that while that implied physical distance, he noted that if you were able to distance people by time that would give a bit more of a chance in terms of trades that may need to work in the same space, such as electricians, plumbers and carpenters, being able to separate them by time. He noted he hoped the Developer would be true to their word, noting there had been some complaints that Tolent had made promises in the past that they had not kept. Councillor J Atkinson noted that the availability of extra hours, if used properly, to social distance different trades and workers at different times would be useful and if the Developer could take note of the points raised by those that were not happy and make use of the extra hours to get the project completed, then this should help to get the benefits from extra working hours.

Councillor J Atkinson proposed that the applications be approved, with the situation to be monitored and with the Developer taking into account what had been said and make use of the extra hours properly.

Councillor J Shuttleworth noted the current situation in terms of the pandemic and added that while he was not against people working, if the development was in a field away from houses, he would have no problem with the application. However, with the start time of 7am Monday-Friday, with it now being dark nights, dark coming in on an evening and dark going out in the morning he thought it was really unreasonable to the residents of the city of Durham and therefore on that basis he proposed the applications be refused.

Councillor J Clare noted that applicants came to Committee making all kinds of promises and an application would be accepted on the good faith of those promises and where those promises were not kept, this would make it very difficult for the Committee. He noted firstly that Tolent had not taken sufficient care of their neighbours. He noted he was very strongly affected by the testimony of the adjacent hotel adding he felt it must be impossible to run an effective hotel business with the things that were happening on the site next door. He noted if there was talk of protecting the economy there was need to talk of protecting the hotel in addition.

Councillor J Clare noted that if the development was running six weeks late already and was going to come in 13 weeks late, a quarter of a year, that would not be good for the economy and it would prolong the misery for the residents for another 13 weeks. He added that residents may avoid and intensification of the work, however, at the cost of prolonging the work. Councillor J Clare explained this made it a very difficult case adding that the Principal Planning Officer had noted it was a finely balanced case with Councillor J Clare noting he felt it was incredibly finely balanced.

Councillor J Clare stated that if Committee were to approve the application, given the monitoring and the extent of planning enforcement that the Council was able to apply had been clearly inadequate to date, would the Committee wish to explore the suggestions made by Mr M Dowson in terms of beefing up the monitoring proposals. He noted Members could not do that discussing as a Committee and therefore he felt it would be necessary to give the Officers, with the Chair or Vice-Chair, the delegated authority to increase the monitoring. He asked if the Principal Planning Officer and Solicitor – Planning and Development would speak in relation to such a proposed condition on the grounds he would not be prepared to approve the proposal without that condition. He asked whether it would be possible to create such a toughened up condition or new condition.

The Principal Planning Officer did not see why it would not be possible, with different ways, potentially with a condition that required a further form of CMP to be submitted and agreed. He noted there were positives and negatives to that approach, it would allow discussion on exactly the content of the CMP, however they could be difficult to agree on and could cause delays.

The Principal Planning Officer noted in terms of current monitoring, there was an environmental monitoring device at the centre of the site, monitoring noise, vibration, dust particulates of a certain size. He added that on the boundary of the site with the Radisson hotel, there were further “sticky pad” monitors which specifically monitored dust of another particulate size. He noted Members could potentially say that another environmental monitoring device similar to that at the centre of the site could be demanded to be located on the Radisson boundary. He noted Mr M Rutherford may wish to speak as regards the willingness of the applicant to agree to such a condition, and indeed whether they would want the planning permission at all if subject to such a condition.

The Solicitor – Planning and Development noted that, as stated by the Principal Planning Officer, it would be possible to impose an additional condition and there would be potential difficulties in agreeing a form of words at Committee and therefore if Members were minded to impose such a condition it would be preferable to have authority delegated to the Planning Officer in conjunction with the Chair or Vice-Chair of the Committee to agree those conditions, reiterating she felt that may not be something that could be done satisfactorily at Committee.

The Chair thanked the Solicitor – Planning and Development and asked Mr M Rutherford for his view on the suggestions.

Mr M Rutherford noted the applicant would happily look at all of those suggestions and noted, as the Principal Planning Officer had explained, Tolent had a sophisticated monitoring device on site at the moment, in a position agreed by Environmental Control Officers. He noted it would be possible to look to put additional devices in place, however, he noted the data from the device was measured real time and the device was constantly recording and when checked prior to the meeting, he noted the threshold levels for noise had not been exceeded for around six months. He noted that the applicant would be happy to look at issues in terms of additional monitors and could discuss that with the Principal Planning Officer going forward.

Councillor J Clare noted it was particularly difficult as many people would just want the Committee to say no to the application. He noted the main issue raised by objectors was that Tolent had not kept to the conditions that had

been set, with the Radisson hotel putting this down to a failure of monitoring. Accordingly, Councillor J Clare proposed a condition along the lines suggested by the Solicitor – Planning and Development for the Vice-Chair, in discussion with the Team Leader should discuss with Tolent, through the mechanisms suggested by the Principal Planning Officer, an enhancement of certainly the regularity, and perhaps the degree of monitoring so that residents could be assured that the restrictions agreed to would be adhered to.

Councillor G Richardson noted he had listened to the debate and would second Councillor J Shuttleworth's proposal for refusal.

Councillor S Wilson noted he would be happy to second Councillor J Clare in his proposal.

Councillor A Bell noted he too would have seconded Councillor J Clare in respect of approval, and while agreeing it was a very hard issue for local residents, he felt that adding in a bolstered condition would also help the County Council to address current concerns and he really hoped that Tolent take note of Members, local residents and the hotel and that bolstered conditions would help everyone become good neighbours.

The Chair noted that Councillor J Atkinson had initially proposed the application be approved, noting similarity to that of Councillor J Clare. Councillor J Atkinson noted he had felt confident that the applicant would have taken stock of the issues raised, however, if the proposal by Councillor J Clare was a more official way of achieving that then he would be happy to go with Councillor J Clare's proposal.

The Chair noted that he had listened to the speakers and Members and noted that by and large the issues were of inconvenience to local residents and noted that whether Members agreed or disagreed with the application, the inconvenience would not be taken away, the difference would be in the timing of the inconvenience, whether being early morning or at night, or longitudinal in that the project would go on for longer.

The Solicitor – Planning and Development noted there were two proposals that had been seconded, one from Councillor J Shuttleworth for refusal, seconded first before Councillor J Clare's proposal for approval subject to an additional condition. She asked Councillor J Shuttleworth as regards his reasons for refusal, whether it was in terms of what Councillor J Shuttleworth felt were unacceptable impacts on the amenity of nearby occupiers and businesses.

Councillor J Shuttleworth noted that the Solicitor – Planning and Development correct, and he reiterated that he felt it was totally unreasonable for residents to endure such impact noting that works would not just start at 7am, people would start arriving at 6.30am. He noted the dark winter mornings and added it had been agreed what hours of work would be permitted when the development applications were approved, he felt it was unreasonable for the people of the city of Durham and guests of the Radisson hotel.

The Chair noted the refusal motion would be voted on first and asked the Solicitor – Planning and Development to take Members through the vote.

Councillor M Wilkes noted he had entered the meeting after the Principal Planning Officer had started his presentation and therefore, he would not vote on the application. The Chair thanked Councillor M Wilkes for that clarification.

Upon a vote being taken the motion was **LOST**.

The Solicitor – Planning and Development noted the next proposal was by Councillor J Clare, seconded by Councillor S Wilson, and was to approve the various applications subject to an additional condition regarding monitoring to be agreed under delegated authority by the Vice-Chair and Team Leader from the Strategic Team.

Upon a vote being taken it was

Resolved:

That the applications be **APPROVED** subject to the conditions as set out within the report, a Deed of Variation of the Section 106 Legal Agreement to reflect the revised planning applications, amendment to Condition 10 of application DM/20/01332/VOC and an additional condition, the details of which to be delegated to the Team Leader in consultation with the Vice-Chair of the Committee.