

# COMMITTEE REPORT

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### APPLICATION DETAILS

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<b>APPLICATION NO:</b>	DM/14/03327/FPA
<b>FULL APPLICATION DESCRIPTION:</b>	Erection of four detached dwellings with attached garages, demolition of the stable block, conservatory extension on Fernhill and erection of a car port / covered area for parking a horse box.
<b>NAME OF APPLICANT:</b>	Wilbury Developments Limited
<b>ADDRESS:</b>	Fernhill Newcastle Road Crossgate Moor Durham DH1 4JZ
<b>ELECTORAL DIVISION:</b>	Neville's Cross
<b>CASE OFFICER:</b>	Barry Gavillet Senior Planning Officer Telephone: 03000 261958 <a href="mailto:barry.gavillet@durham.gov.uk">barry.gavillet@durham.gov.uk</a>

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### DESCRIPTION OF THE SITE AND PROPOSALS

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#### The Site

1. Fernhill is a large detached house lying in extensive grounds on the north western edge of the Crossgate Moor area of Durham. To the west is open countryside, to the east the north-south running A167 road lies beyond The Lodge at the entrance to the site, with detached residential properties and Flass Vale further beyond. To the north lie residential properties in Whitesmocks Avenue, separated from the application site by the unsurfaced Club Lane extending in an east-west direction. Immediately to the south is further open countryside, with residential properties in Crossgate Moor Gardens beyond. The site is located within the Durham City Green Belt.
2. The existing building sits in a large area predominantly given over to lawns and substantial structural planting that screens much of the site from public views. It is set on a hill with the main house at the highest point and unequal falls to each side. The greatest change in level is to the north where the slope of the property falls to Club Lane and this difference in height wraps round the contours to the main road. The road rises as it heads south, however even at the highest point of the surrounding land the house still stands clear of its surroundings.
3. Close by to the site there are bus stops with services travelling into the city centre and northbound towards the Arnison Centre and Newcastle. Durham Johnson School is close to the south along with a general retailer and a vets practice.

## The Proposal

4. This application proposes four new five-bedroom houses in addition to the retention of Fernhill as a family dwelling. Three of the four proposed dwellings are modifications of a single house type, designed to accommodate different level changes across the plot within the same layout and basic form whilst the fourth proposed dwelling is an individual house type, to address its unique topography and differing position closer to Fernhill.
5. The style of the proposed dwellings is a contemporary craft based vernacular, utilising traditional building methods with modern lines and using high quality materials and detailing. Pitched roofs form gable features with short parapet stone quoins framing the corners to create a traditional balanced facade. Chimney and bay window features are used to provide asymmetrical details that modify the extents of walling while the garage pavilion has a formal, symmetrical pitched roof.
6. The use of traditional stonework alongside hardwood windows and cladding set in aluminium frames creates a balance between the traditional and contemporary. Slate roofs on the upper levels would be used along with a planted green roof on the lower living pavilion. A soft red handmade brick would be used on the link building to the rear in contrast to the stonework on the main wings and on the front facade.
7. Access to the site is currently from two positions on the eastern boundary. In the south a gated drive gives access from the A167. This is an un-adopted private drive leading past The Lodge cottage to Fernhill. The proposal is to upgrade this access point to provide a new turning head just inside of the site. From this turning head will stem two new private access roads; the first running northwards to three of the proposed dwellings, and the second running westwards to provide access to the fourth proposed dwelling and a new access to Fernhill. These proposed roads would not be adopted.
8. It is proposed to remove some of the trees on site that are considered hazardous or are poor specimens. These would be replaced where possible with indigenous species as part of a landscape masterplan and planting schedule for the whole site.
9. This application is being reported to committee at the request of a County Councillor.

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## **PLANNING HISTORY**

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10. 95/00371/FPA - Erection of three stall stable block erection of 2.1m stone wall and raising of pitched roof over private garage – Approved
11. 03/00009/FPA - Erection of two storey pitched roof extension to side, single storey pitched roof extension to rear and extension of detached garage, to include demolition of existing garage and conservatory – Approved
12. 03/00880/FPA - Change of use and conversion of existing garage to self-contained residential bedsit – Approved
13. 08/00523/FPA - Proposed demolition of existing lodge and erection of replacement together with an additional 12 no. two storey detached dwellings with associated garaging, parking, access and landscaping – Withdrawn

14. 09/00134/FPA - Demolition of existing flat roof extension and erection of replacement single storey pitched roof extension, erection of two storey pitched roof extension to east side elevation, erection of replacement porch to north elevation, removal of chimney and erection of replacement and demolition of existing outbuildings and erection of detached double garage – Withdrawn
15. 09/00693/FPA - Demolition of existing flat roof extension and erection of replacement two storey pitched roof extension to east elevation, erection of single storey pitched roof extension to north elevation – Approved
16. 11/00535/FPA - Erection of 3 no. dwellinghouses – Refused and dismissed at appeal

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## **PLANNING POLICY**

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### **NATIONAL POLICY**

17. The following elements of the National Planning Policy Framework (NPPF) are considered relevant to this proposal:
18. NPPF Part 2 - Achieving sustainable development. The purpose of the planning system is to contribute to the achievement of sustainable development and therefore at the heart of the NPPF is a presumption in favour of sustainable development. It defines the role of planning in achieving sustainable development under three overarching objectives – economic, social and environmental, which are interdependent and need to be pursued in mutually supportive ways. The application of the presumption in favour of sustainable development for plan-making and decision-taking is outlined.
19. NPPF Part 4 - Decision-making. Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.
20. NPPF Part 5 – Delivering a wide choice of high quality homes. The Government advises Local Planning Authority's to deliver a wide choice of high quality homes, widen opportunities for home ownership and create sustainable, inclusive and mixed communities.
21. NPPF Part 6 – Building a strong, competitive economy: The Government is committed to ensuring the planning system does everything it can to support sustainable economic growth. Planning should operate to encourage and not act as an impediment to sustainable growth. Therefore, significant weight should be placed on the need to support economic growth through the planning system.
22. NPPF Part 8 – Promoting healthy and safe communities. The planning system can play an important role in facilitating social interaction and creating healthy, inclusive communities. Developments should be safe and accessible; Local Planning Authorities should plan positively for the provision and use of shared space and community facilities. An integrated approach to considering the location of housing, economic uses and services should be adopted.

23. NPPF Part 9 – Promoting sustainable transport. Encouragement should be given to solutions which support reductions in greenhouse gas emissions and reduce congestion. Developments that generate significant movement should be located where the need to travel will be minimised and the use of sustainable transport modes maximised.
24. NPPF Part 11 Making Effective Use of Land - Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously-developed or 'brownfield' land.
25. NPPF Part 12 Achieving Well-Designed Places - The Government attaches great importance to the design of the built environment, with good design a key aspect of sustainable development, indivisible from good planning.
26. NPPF Part 13 Protecting Green belt Land - The government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.
27. NPPF Part 14 – Meeting the challenge of climate change, flooding and coastal change - The planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change. It should help to: shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and support renewable and low carbon energy and associated infrastructure.
28. NPPF Part 15 - Conserving and enhancing the natural environment - Planning policies and decisions should contribute to and enhance the natural and local environment.

<https://www.gov.uk/guidance/national-planning-policy-framework>

#### **NATIONAL PLANNING PRACTICE GUIDANCE:**

29. The Government has consolidated a number of planning practice guidance notes, circulars and other guidance documents into a single Planning Practice Guidance Suite. This document provides planning guidance on a wide range of matters. Of particular relevance to this application is the practice guidance with regards to; conserving and enhancing the historic environment; design; and use of planning conditions.

<https://www.gov.uk/government/collections/planning-practice-guidance>

#### **LOCAL PLAN POLICY:**

The following policies of the County Durham Plan is considered relevant to the determination of this planning application;

30. Policy 6 Development on unallocated Sites states that the development of sites within the built up area that are not allocated in the plan or in a neighbourhood plan will be permitted provided they accord with all relevant development plan policies and meet specific criteria in relation to existing permitted uses, coalescence of settlements, loss of land with identified value such as in relation to ecology or recreation, is appropriate, is not prejudicial to highway safety, has good access to sustainable modes of transport to relevant services and facilities, does not result in the loss of the settlements last community building, minimises vulnerability and provides resilience to impacts resulting from climate change, maximises the effective of previously developed land and where appropriate reflects priorities for urban regeneration.
31. Policy 15 Addressing Housing Need notes the need to increase the range and quality of housing provision within the County and with regard to meeting the needs of older people and people with disabilities states that 66% of dwellings on sites of 5 dwellings or more must be built to Building Regulations M4(2) (accessible and adoptable dwellings) standard.
32. Policy 20 Green Belt states that development proposals within the Green Belt will be determined in accordance with national planning policy.
33. Policy 21 Delivering Sustainable Transport states that all development shall deliver sustainable transport by (in part) ensuring that any vehicular traffic generated by new development, following the implementation of sustainable transport measures, can be safely accommodated on the local and strategic highway network and does not cause an unacceptable increase in congestions or air pollution and that severe congestion can be overcome by appropriate transport improvements.
34. Policy 29 Sustainable Design details general design principles for all development stating that new development should contribute positively to an areas' character, identity, heritage significance, townscape and landscape features, helping to create and reinforce locally distinctive and sustainable communities.
35. Policy 31 Amenity and Pollution states that new development will be permitted where it can be demonstrated that there will be no unacceptable impact, either individually or cumulatively, on health, living or working conditions or the natural environment and should be integrated effectively with any existing business and community facilities.
36. Policy 32 - Despoiled, Degraded, Derelict, Contaminated and Unstable Land states [in part] that development will not be permitted unless the developer can demonstrate that the site is suitable for the proposed use, and does not result in unacceptable risks which would adversely impact on the environment, human health and the amenity of local communities.
37. Policy 35 Water Management states that all new development should adopt the hierarchy of preference in relation to surface water disposal.
38. Policy 36 Disposal of Foul Water states that all new development should adopt the hierarchy of preference.
39. Policy 39 Landscape states that proposals for new development will be permitted where they would not cause unacceptable harm to the character, quality or distinctiveness of the landscape, or to important features or views and that development affecting valued landscapes will only be permitted where it conserves, and where appropriate enhances, the special qualities of the landscape, unless the benefits of the development in that location clearly outweigh the harm.

40. Policy 40 Trees, Woodlands and Hedges states that proposals will be expected to retain existing trees where they can make a positive contribution to the locality or to the development, maintain adequate standoff distances between them and new land-uses, including root protection areas where necessary, to avoid future conflicts, and integrate them fully into the design having regard to their future management requirements and growth potential.
41. Policy 41 Biodiversity and Geodiversity states that proposal for new development will not be permitted if significant harm to biodiversity or geodiversity resulting from the development cannot be avoided, or appropriately mitigated, or as a last resort, compensated for.

In line with Section 70(2) of the Town and Country Planning Act 1990 (as amended), the local planning authority must have regard to a post-examination draft neighbourhood development plan, so far as material to the application, and, para 48 NPPF guidance (i.e. where changes are required less weight to policies). In that regard the following policies of the emerging City of Durham Parish Neighbourhood Plan are considered relevant;

42. Policy S1: Sustainable Development Requirements of all Development and Redevelopment Sites Including all New Building, Renovations and Extensions seeks to sets out the economic, social and environmental criteria that development proposals will be required to meet.
43. Policy D6: Building Housing to the Highest Standards seeks to ensure that all new housing, extensions and other alterations to existing housing must be of a high quality design relating to the character and appearance of the local area, aesthetic qualities, external and internal form and layout, functionality, adaptability, resilience and the improvement of energy efficiency and the reduction of carbon dioxide emissions.
44. Policy T1: Sustainable Transport Accessibility and Design seeks to ensure that development proposals will be required to demonstrate best practice in respect of sustainable transport accessibility and design.

*The above represents a summary of those policies considered most relevant in the Development Plan the full text, criteria, and justifications of each may be accessed at <http://www.cartoplus.co.uk/durham/text/00cont.htm>*

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## **CONSULTATION AND PUBLICITY RESPONSES**

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### **STATUTORY RESPONSES:**

45. The Highway Authority have given careful consideration to safe access and egress from the proposed development. The Highway Authority does not consider that an objection on highway safety grounds could be sustained and as such offers no objection to the application subject to the inclusion of planning conditions.
46. The Drainage Authority note that the Drainage Strategy proposes the site plots to drain to soakaways, which is an acceptable SUDS form of drainage for the development.
47. NWL has confirmed that they have no comments to make.
48. City of Durham Parish Council note that at the time of the inquiry into the County Durham Plan, the Inspector carefully weighed the evidence and concluded that Fernhill should remain in the Green Belt. Consequently, with all uncertainty now removed, the Parish Council think the time is now right to refuse the application.

## **INTERNAL CONSULTEE RESPONSES:**

49. Design and Conservation officers state that the development at present is clearly at conflict with existing policies of the Development Plan by reason of inappropriate development in the Green Belt. In terms of the assets within the site (non designated house and lodge) there is no objection to part to the site being developed as the grounds are extensive and there is still an opportunity to provide suitable breathable space around the building and an appropriate setting. The site would seem to provide sufficient space for 4 large detached houses and there is no objection to this in terms of spatial orientation and location, and there should be sufficient space left for an appropriate setting. The design of the large executive homes, conservatory and carport would seem to be acceptable, the design and details would seem to be of high quality, an Arts and Crafts approach with a contemporary twist. Further details, of window and door designs, profiles and materials are required of all proposals.
50. DCC Environment, Health and Consumer Protection (Nuisance Action Team) offers no objection to the application subject to the inclusion of a planning condition which requires the submission and agreement of a construction management plan.
51. DCC Contaminated Land Section have assessed the available information and historical maps with respect to land contamination and have no adverse comments to make. Therefore there is no requirement for a contaminated land condition.
52. DCC Ecology has no objections to the proposals subject to a condition ensuring the contents of the submitted ecology surveys as these related to the general habitat compensation around the site and the bat survey report which details specific bat roost installation in the new dwellings and bat and bird boxes around the site.
53. DCC Archaeology has no objections to the application subject to a condition requiring further investigative work being carried out.
54. The Councils Spatial Policy team conclude that the proposal which seeks to develop 4 new dwellings within the Green Belt should be assessed against policies 20 and 39 of the CDP, with the NPPF (notably para's 143 - 147) a significant material consideration. The proposal is likely to be inappropriate in the Green Belt as it will reduce openness.
55. Landscape officers have commented that the grounds of Fernhill, like those of Friarside and Flass Vale Hall, contribute to the AHLV in this area through a combination of their open, largely undeveloped, character and their mature vegetation. The proposals would broadly conserve and enhance the contribution made by the site's vegetation to the AHLV but would erode its open character to a degree. The harm would be localised, but noticeable from public vantage points in the immediate vicinity including Club Lane.

## **PUBLIC RESPONSES:**

56. The Coal Authority have no objections to the proposals.
57. The MP for the City of Durham has noted that despite the apparent willingness by the local authority to remove this parcel of land from the Green Belt through the County Plan process, the Planning Inspector chose not to accept this policy and requested a modification to the Plan which left Fernhill remaining in the Green Belt. The MP asks that all of the circumstances surrounding this land are considered when a determination is reached.

58. The application has been advertised by way of a press notice, site notice and letters to individual residents in the surrounding area. 16 letters of support have been received as a result of the consultation process. The letters state that the proposals would provide much needed executive housing in a sustainable location which in turn would contribute to the local economy. It is also stated that the site makes no contribution to the Green Belt and was designated as such in error. 9 letters of objection have also been received as part of the consultation process. Objectors state that the proposals would lead to a loss of privacy and light, particularly to residents of Whitesmocks. It is also noted that the proposals may lead to a loss of wildlife and trees, an increase in traffic which may be dangerous, a harmful landscape impact, flood risk, that there has been a previous refusal and that the site should remain in the Green Belt.

#### **APPLICANT'S STATEMENT:**

59. The site was purchased in 1994. The land was not within the designated Green Belt. In 1995 the applicant started to develop the land and successfully applied for and obtained planning permission to build stables on the land and convert one of the outhouses into a cottage, which is now rented privately. The requisite planning permissions were obtained and no reference was made to Fernhill being in the Green Belt. This changed in 2004 when the site was erroneously added to the Green Belt. It was land to the south of Fernhill (a Persimmon Homes site) that was considered during the City of Durham Local Plan Inquiry.
60. Since then, the development of this site has a long history of support from the Council, including acknowledgement in 2010 that there was "no rationale or justification as to why" the site was included in the Green Belt in 2004. In 2016 Officers of DCC signed a Statement of Common Ground that stated that the land exhibited none of the five purposes of Green Belt and should be removed from the Green Belt. In 2019 Officers of DCC signed a further Statement of Common Ground which repeated the opinion held for the previous 10 years, that the site fulfilled none of the Green Belt purposes.
61. Limited infilling of previously developed land, which includes garden land in the open countryside outside of settlement boundaries, is acceptable where it would not have a greater impact on the openness of the Green Belt than the existing development. A fundamental principle of the scheme layout is to minimise the impact of the built form when seen locally and from key strategic points within Durham City. Each dwelling is split over three floors and would be cut into the existing topography, gradually stepping down to meet the lower garden level. A fourth dwelling is also proposed on the site of the existing stable block which is to be demolished. The new dwellings are located and designed to reduce the requirement for level changes and therefore protect the topographic form and landscape character of the site. This ensures that the development will not impact on the five purposes of the Green Belt, which is the key consideration in the determination of this application:
1. **To Check the Unrestricted Sprawl of Large Built-up Areas** – The properties at Whitesmocks Avenue, dwellings at Beechways and Long Garth all project further westwards into the countryside than Fernhill, with these dwellings being located directly to the north. Indeed, Beechways and Long Garth project out a further 30m and 60m respectively. The proposed development would therefore not represent unrestricted sprawl.



2. **To Prevent Neighbouring Towns from Merging** – The site has no role in preventing neighbouring towns from merging into one another.
3. **To Assist in Safeguarding the Countryside from Encroachment** – The character of the area is markedly different and has been for a considerable period of time to that of the countryside beyond. This change in character and use clearly separates this site from any encroachment into the countryside which would be a marked difference. The defensible boundaries that contain the site will safeguard the countryside from encroachment.
4. **To Preserve the Setting and Special Character of Historic Towns** – The proposed new dwellings would not prejudice or undermine the special character or setting of Durham City. No harm could be attributed to the setting of the City if the site was developed. Some of the key features contributing to the character of Durham City are the fingers of countryside that penetrate to the heart of the City. In this area the adjacent Flass Vale is one such feature. The development of a low density housing scheme in the grounds of Fernhill would not undermine this feature as the open agricultural land to the south would ensure that the open link between Flass Vale and the countryside beyond is retained.
5. **To Assist in Urban Regeneration by Encouraging the Recycling of Derelict and Other Urban Land** – The site comprises a residential curtilage and is identified in the Council's Landscape Character Assessment as being 'urban' land. The site therefore contributes to urban regeneration by focussing development within the urban area.

The development will also result in significant benefits, which should be taken into account, including:

1. **Executive housing** – Housing of this type only represents 1% of all stock across the County. However, there is a disparity between the desires of high earning households and their ability to move to suitable stock within the County, which logically could lead to a loss of high earning households whose income and spending needs to be captured. The provision of executive homes will support the economic growth aspirations for the City through attracting businesses leaders and highly skilled workers who may wish to operate their business from the Aykley Heads Strategic Employment Site, where 6,000 jobs are proposed, or take-up other business opportunities or high level jobs within the City.
  2. **Economic Benefits** – The proposals will have important economic benefits including the creation of jobs during the construction phase, the generation of £54,000 net additional expenditure per year from the new households, a new Homes Bonus payment to Durham County Council over the 6 year period of almost £70,000 and an increase in Council Tax revenues of almost £12,500 per year.
62. This proposal remedies past errors and delivers much needed Executive Housing for Durham City. The site does not contribute to a Green Belt function in terms of its openness as it has an urban character associated with residential dwellings and associated activities. The development will therefore not impact on the openness of the Green Belt and will result in significant benefits.

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## **PLANNING CONSIDERATIONS AND ASSESSMENT**

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63. Having regard to the requirements of Section 38(6) of the Planning and Compulsory Purchase Act 2004, the relevant Development Plan policies, relevant guidance and all other material planning considerations, including representations received, it is considered that the main planning issues in this instance relate to the principle of development, the design and layout of the development, landscape, highways issues, ecology and public responses.

### Principle of the Development

64. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise with the NPPF representing a material planning consideration in this regard. The County Durham Plan (CDP) was adopted in October 2020 and as such represents the up to date local plan for the area and the starting point for the determination of this planning application. Consequently, the application is to be determined in accordance with relevant policies set out within the CDP. Paragraph 11c of the NPPF requires applications for development proposals that accord with an up to date development plan to be approved without delay.
65. This proposal seeks to develop land at Fernhill for 4 detached dwellings. The site is within the Green Belt and regarded as an area of high landscape value. It is therefore a sensitive location for development.
66. A previous planning application (4/11/00535/FPA) to develop three houses at the site was refused in September 2011, and a subsequent appeal (APP/X1355/A/11/2162513) dismissed in January 2012. Refusal and dismissal reasons centred around Green Belt implications, including the adverse effect on openness.
67. Consideration to remove the Fernhill site from the Green Belt took place through the plan making process, and the evolution and development of the County Durham Plan (CDP). The version of the CDP which was submitted for examination contained a Policy relating to 'non-strategic Green Belt amendments' which earmarked Fernhill for removal from the Green Belt (it was Policy 21 within the submission version). The Examination in Public (EiP) of the CDP commenced in November 2019 and the programmed hearing sessions closed on 6<sup>th</sup> February 2020. The Inspector issued his post hearing advice on 20<sup>th</sup> February 2020, and an amended CDP was prepared to take account of the specific instructions from the Inspector, and also to take account of all the minor/main modifications which the Council proposed following the hearing sessions and in response to the action points issued by the Inspector. This updated Plan was subject to consultation (26<sup>th</sup> May until 21<sup>st</sup> July 2020), with all comments sent to the Inspector to inform his final report, which was issued on 17<sup>th</sup> September 2020. The report confirmed that the CDP was sound and could progress to adoption.
68. The report dealt with the proposed removal of Fernhill from the Green Belt within paragraphs 334 to 337, and these are set out below:

69. 334. *Fernhill is a detached house standing within a large garden surrounded by mature vegetation. It is separate from the main built up area of Durham city which is largely on the other side of the A167, and is bordered by an historic green lane to the north and open countryside to the west and south. The site is mainly open, and appears as part of the attractive rural area forming the setting of the historic city in this particular location.*
70. 335. *Neither of the above two sites are required to meet identified development needs, and I am not persuaded that there are exceptional circumstances to justify the removal of either of them from the Green Belt.*
71. 336. *I concluded earlier in this report that there are exceptional circumstances to justify removing land at the former police skid pan at Aykley Heads from the Green Belt and that it is suitable for residential development. The allocation of the site and its exclusion from the Green Belt are clearly shown on the Policies Map, and development requirements are set out in policy 4. Policy 21 therefore serves no material purpose with regard to the site.*
72. 337. *In light of the above I conclude that policy 21 and paragraphs 5.198 to 5.201 inclusive be deleted from the Plan [MM102 and MM103]. The Policies Map should be amended to retain Fernhill and the former Lumley Boys School site in the Green Belt.*
73. The finalised CDP was subsequently adopted by the Council on 21<sup>st</sup> October 2020 and is the development plan which covers the whole of County Durham. Within the CDP, Fernhill remains within the Green Belt.
74. This proposal will be assessed against the relevant local planning policies from the CDP, as well as national planning policy. As the application site remains within the Green Belt, Policy 20 (Green Belt) of the CDP is applicable. This states that development proposals within the Green Belt will be determined in accordance with national planning policy. The supporting text confirms that there is a presumption against inappropriate development in the Green Belt unless very special circumstances can be demonstrated.
75. The NPPF (2019) should therefore be used to assess this proposal. The NPPF attaches great importance to Green Belts, and identifies, at Paragraph 134 that the Green Belt serves five purposes. Paragraph 143 of the NPPF under proposals affecting the Green Belt states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
76. Paragraph 145 of the NPPF advises that a local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this are:
- a. buildings for agriculture and forestry;
  - b. the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it;

- c. the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;
  - d. the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;
  - e. limited infilling in villages;
  - f. limited affordable housing for local community needs under policies set out in the development plan (including policies for rural exception sites); and 43
  - g. limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would:
    - not have a greater impact on the openness of the Green Belt than the existing development; or
    - not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.
77. The starting point for determination of this application in terms of the principle of development is that the construction of new buildings in the Green Belt should be considered as inappropriate development. However, it is necessary to consider whether any of the exceptions set out above and in paragraph 145 of the NPPF are applicable to the proposed development.
78. In this regard, whilst the definition of previously-developed land is clearly set out within Annex 2 (Glossary) of the NPPF, the applicant has made a submission citing case law which they consider to be relevant and which supports their assertion that the Fernhill site is previously-developed land rather than a greenfield site and that the proposed development falls within the exceptions to inappropriate development set out in paragraph 145 of the NPPF..
- 74 The case concerned is *Dartford Borough Council v Secretary of State for Communities and Local Government* [2017]. This case concerned the definition in the Glossary to the NPPF of “Previously Developed Land” and in particular the exclusion of “*land in built-up areas such as private residential gardens, parks, recreation grounds and allotments*”. Dartford BC challenged a decision of one of the Secretary of State’s Inspectors which had held that the site of the proposed development in that case, which was in the countryside rather than a built-up area, was previously developed land since it was within the curtilage of an existing dwelling and not caught by the above-quoted exclusion. Dartford BC’s case was that to treat residential gardens in built-up areas as excluded by PDL but not to treat residential gardens in the countryside as PDL, was illogical. The Secretary of State submitted that Dartford BC’s interpretation defied the clear wording of the NPPF Glossary. The Court of Appeal (Lewison LJ giving the lead judgment) agreed with the Secretary of State.
79. The applicant’s submission is that as the Fernhill site is not within the settlement limits of Durham City, it can be determined that the application site is not within a built-up area. They assert that the proposal site is existing private residential garden space for Fernhill, and therefore, the proposal site is considered previously developed land and should be assessed as to whether the proposed development would have an impact on openness in the Green Belt.
80. In addition to the above the Inspector’s CDP report concluded that Fernhill “*is separate from the main built up area of Durham city which is largely on the other side of the A167*”, and that “*The site is mainly open, and appears as part of the attractive rural area forming the setting of the historic city in this particular location*”. Therefore, it is agreed that the proposal site is considered previously developed land and should be assessed as to whether it meets the criteria in sub-paragraph (g) of paragraph 145 of the NPPF.

81. Sub-paragraph (g) of para 145 of the NPPF provides that development on previously developed land would not be considered to be inappropriate development where it can be demonstrated that the development would **either** (a) not have a greater impact on the openness of the Green Belt than the existing development or (b) not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority. Having considered the provisions of paragraph 145(g) of the NPPF, the proposal is not considered to meet any of the criteria set out within this exception. The proposed development of 4 detached executive style dwellings would have a greater impact on the openness of the Green Belt than the existing development (which is largely undeveloped garden land) and would not contribute towards meeting an identified affordable housing need. It is therefore considered that the proposed development is inappropriate development.
82. Officers have also considered whether there are any very special circumstances which would justify approving the proposed development which is inappropriate. It is not considered that the benefits of executive housing and economic benefits put forward by the applicant outweigh the harm to the AHLV and Green Belt and do not constitute very special circumstances. Therefore the principle of the development cannot be accepted.
83. It was established under the adoption of the CDP that the Council can demonstrate in excess of 5 years housing land supply (6.33 years). In accordance with paragraph 74 of the NPPF, a five-year supply of deliverable housing sites, with the appropriate buffer can be demonstrated and therefore delivery of four houses in this location is not considered a significant benefit.

## Landscape

84. The site lies in an area formerly identified in the City of Durham Local Plan as Area of High Landscape Value and currently identified in the County Durham Plan as an Area of Higher Landscape Value (AHLV).
85. Policy 39 of the CDP states that *development affecting Areas of Higher Landscape Value defined on Map H, will only be permitted where it conserves, and where appropriate enhances, the special qualities of the landscape, unless the benefits of development in that location clearly outweigh the harm.*
86. The AHLV in this area covers open countryside to the west of the site and the wooded common of Flass Vale to the east. The open leafy grounds of a three large properties, Fernhill, Friarside and Flass Vale Hall, form a transition between the two.
87. As noted by Inspector Ward, in his 2012 decision letter, the proposed dwellings would be substantial split level houses occupying a substantial footprint. Views of the dwellings from distance would be limited by the nature of the topography and surrounding development. Existing and proposed landscaping along the boundaries would provide some screening and filter views into the site. However, given their scale, height and relatively elevated position, they would be prominent features at close range from Club Lane and particularly in the case of plot 1, the A167. They would also be clearly visible from houses along the A167 and the rear of houses on Whitesmocks Avenue. The visibility of the dwellings would be increased during winter months when tree cover is less. Given the topography, views of the open countryside beyond the site would be largely unaffected. However, the proposed development would substantially alter the open nature of the site itself.

88. The grounds of Fernhill, like those of Friarside and Flass Vale Hall, contribute to the AHLV in this area through a combination of their open, largely undeveloped, character and their mature vegetation. The proposals would broadly conserve and enhance the contribution made by the site's vegetation to the AHLV but would erode its open character to a degree. The harm would be localised, but noticeable from public vantage points in the immediate vicinity including Club Lane.
89. Policy 39 (Landscape) of the CDP seeks to protect the character, quality or distinctiveness of the landscape and expects new development to incorporate appropriate measure to mitigate adverse landscape and visual effect. The policy makes clear that development affecting Areas of Higher Landscape Value (as in this case) will only be permitted where it conserves, and where appropriate enhances, the special qualities of the landscape, unless the benefits of development in that location clearly outweigh the harm. It is not considered that there have been any benefits highlighted that would clearly outweigh the harm and therefore it is considered contrary to the aims of Policy 39 of the CDP.
90. In summary, this proposal which seeks to develop 4 new dwellings within the Green Belt and AHLV has been assessed against policies 20 and 39 of the CDP, with the NPPF (notably para's 143 - 147) a significant material consideration. The proposal is considered to be inappropriate in the Green Belt and very special circumstances have not been proven and would harm the AHLV, therefore the principle of the development is not accepted.

#### Design and layout of the development

91. Criteria a) of policy 6 of the CDP states that development will only be supported if it is compatible with, and is not prejudicial to, any existing, allocated or permitted use of adjacent land. In addition, policy 31 of the CDP is also relevant and states that development will be permitted where it can be demonstrated that there will be no unacceptable impact, either individually or cumulatively, on health, living or working conditions or the natural environment and that can be integrated effectively with any existing business and community facilities. This is considered to display a broad level of accordance with the aims of the NPPF at paragraphs 127 and 180 which require new development to function well and add to the quality of the overall area and prevent both new and existing development from contributing to, or being put at unacceptable risk from, unacceptable levels of pollution respectively.
92. This application provides details of 4 large linear executive styles 5 bedroom homes with attached garages, the new proposed house to the west of Fernhill would result in the demolition of the stable block and removal of the ménage. The application also includes a conservatory extension to Fernhill, the erection of a car port and covered area for parking a horsebox.
93. The design of the large executive homes would seem to be acceptable, the design and details would seem to be of high quality, an Arts and Crafts approach with a contemporary twist, that picks up distinctive references from Fernhill itself and the Lodge building and some of the adjacent properties in the North End Area i.e. steep pitches, chimneys, overhanging eaves, vertical window proportions, projecting bays, oriels, recessed openings etc. The footprint of the units is long and linear with broken up spaces, and the size and height of the dwellings is successfully designed with an interesting interlinked roofscape, taking on board different level changes.

94. The site would seem to provide sufficient space for 4 large detached houses and there is no objection to this in terms of spatial orientation linear in form and location running north to south, and there should be sufficient space for gardens to the houses and space left for an appropriate setting to the original house. The impact on Fernhill, the Lodge and Club Lane would be minimal.
95. A large number of trees, shrubs and hedges are retained on the boundaries of the site and within the site. In addition a 3m wide strip of under planting would be provided under the existing trees successfully around the site. The remaining garden to Fernhill would retain some of the existing trees and have a belt of planting wrapping round the site, to successfully provide the right setting and screen Fernhill from the new housing. Beech hedging between the new housing would also provide effective screens.
96. The scheme includes a proposal for a new conservatory on the north side of the house, overlooking the extensive grounds. The location of the extension is at the side, set away from the main frontage to some extent. The flat roof design with the central atrium and intricate glazing bars and frame and strong plinth, is acceptable in design and would provide a sympathetic addition, fitting in with Fernhills distinctive character. A few more details are required, concerning the profile of the glazing bars, the materials
97. The demolition of the relatively new wooden stable block is acceptable; the building is a relatively modern construction of no architectural character and has a temporary appearance. It is fairly poorly related from the original house, and fairly isolated. There is no objection to its demolition.
98. The new car port is situated close to Fernhill providing an attractive sense of enclosure and creating a courtyard near the front of the building and the extensive driveway and turning area. It is important that the trees are retained and that the impact on the existing group of trees would be minimal.
99. With regards to separation distances it is considered that the minimum requirements stated in the Council's Residential Design Supplementary Planning Document would be achieved, and that residential amenity for future occupiers would be sufficient. Overall it is considered that the design and layout of the proposals are of high quality and are in accordance with policy 31 of the CPD, part 12 of the NPPF and policy D6 of the Durham City Neighbourhood Plan.

#### Highways issues

100. The Highway Authority have given careful consideration to safe access and egress from the proposed development. An access exists for two residential units, the proposal is to increase by a further 4 units resulting in a total of six residential units served from a private access and driveway. It is noted that the visibility to the north (left) for vehicles egressing is restricted below highway standards by trees in the highway verge. The visibility splay for a 40mph carriageway could not be achieved, hence safe stopping distance would be reduced. However at this location the carriageway carries a wide centre hatching between the opposing lanes. It is therefore considered that an overtaking vehicle would remain within the hatched area and therefore highways officers conclude that the risk of collision between an overtaking and emerging vehicle could in this circumstance be negligible and would therefore accept the access would be suitable for an increase in vehicular movements.

101. Turning to the infrastructure providing access to the development. Presently the development is gated with a single width dropped kerb access through the verge. It will be necessary to form an access and road to an adoptable standard to permit two vehicles to pass when entering/ leaving the A167 and a service vehicle to turn and egress in a forward direction. It will therefore be necessary to construct an access to an adoptable standard with an access road and turning area leading to the private drive accesses. An amended road marking scheme would also be necessary indicating a protected right turn lane within the hatched central area.
102. Highway Authority does not consider that an objection on highway safety grounds could be sustained and as such offers no objection to the application subject to the inclusion of planning conditions.
103. On the basis of the above it is considered that the proposals are acceptable from a highways point of view and are in accordance with policies 6 and 31 of the CDP, part 9 of the NPPF and policy T1 of the Durham City Neighbourhood Plan.

## Ecology

104. Part 15 of the NPPF seeks to ensure that developments protect and mitigate harm to biodiversity interests, and where possible, improve them. In particular paragraph 175 requires the planning system to achieve measurable net gains for biodiversity. Policy 41 displays a broad level of accord with approach stating that new development will be expected to minimise impacts on biodiversity by retaining and enhancing existing biodiversity assets and features and providing net gains for biodiversity including by establishing coherent ecological networks.
105. A range of biodiversity mitigation options are proposed in the submitted ecology surveys, providing the measures are implemented in the final design of the site and dwellings, the biodiversity loss can be minimised and compensated for. The mitigation relates to the general habitat compensation around the site and details specific bat roost installation in the new dwellings and bat and bird boxes around the site (among other measures such as lighting constraints).
106. Subject to the inclusion of a planning condition in this regard the development is considered to accord with the aims of policy 41 of the CDP and paragraph 175 of the NPPF.

## Public responses

107. With regard to the consultation responses from the public it is acknowledged the proposals represent a high quality development of executive housing. However, it is considered that the impact of the housing on the openness of the green belt outweighs these benefits. Whether the site should or should not be in the green belt is not considered a relevant issue with regard to the determination of this application, the fact remains that the site is in the green belt and that proposals must be assessed in this context.
108. As discussed above, it is not considered that the proposals would lead to any significant loss of amenity to nearby residents that would warrant refusal of planning permission. With regard to ecology, flooding and highways concerns, the appropriate specialist officers dealing with these issues raise no objections.



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## **CONCLUSION**

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109. Section 38(6) of the Planning and Compulsory Purchase Act 2004 sets out that planning applications be determined in accordance with the development plan unless material considerations indicate otherwise.
110. In summary, this proposal which seeks to develop 4 new dwellings within the Green Belt and AHLV has been assessed against policies 20 and 39 of the CDP, with the NPPF (notably para's 143 - 147) a significant material consideration. The proposal is considered to be inappropriate development in the Green Belt as it will reduce openness and very special circumstances have not been proven, therefore the principle of the development is not accepted.
111. It is therefore considered that the Durham City Green Belt and the national importance of the protection of the openness of designated green belt far outweighs the need for four executive houses. Furthermore, whilst it is a recognised planning principle that all proposals must be assessed on their individual merits, no special justification has been put forward that would allow this development to not be inappropriate and as such is recommended for refusal.

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## **RECOMMENDATION**

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That the application be **REFUSED** for the following reason:

1. It is considered that the proposal would harm the openness of the Durham City Green Belt and constitutes inappropriate development without very special circumstances to indicate otherwise, contrary to policies 20 and 39 of the County Durham Plan and parts 13 and 15 of the National Planning Policy Framework.

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## **STATEMENT OF PROACTIVE ENGAGEMENT**

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The Local Planning Authority in arriving at its decision to approve the application has, without prejudice to a fair and objective assessment of the proposals, issues raised and representations received, sought to work with the applicant in a positive and proactive manner with the objective of delivering high quality sustainable development to improve the economic, social and environmental conditions of the area in accordance with the NPPF. (Statement in accordance with Article 35(2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.)

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## **BACKGROUND PAPERS**

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Submitted application form, plans, supporting documents and subsequent information provided by the applicant  
The National Planning Policy Framework (2018)  
National Planning Practice Guidance Notes  
County Durham Plan  
Statutory, internal and public consultation responses



**Planning Services**

DM/14/03327/FPA

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Erection of four detached dwellings with attached garages, demolition of the stable block, conservatory extension on Fernhill and erection of a car port / covered area for parking a horse box.

**Date** November 2020

**Scale** NTS