

**DURHAM COUNTY COUNCIL**  
**AREA PLANNING COMMITTEE (CENTRAL AND EAST)**

At a Meeting of **Area Planning Committee (Central and East)** held in **Council Chamber, County Hall, Durham** on **Tuesday 9 November 2021** at **9.30 am**

**Present:**

**Councillor D Freeman (Chair)**

**Members of the Committee:**

Councillors S Deinali (Vice-Chair), D Brown, J Cosslett, J Elmer, C Hood, C Hunt (substitute for LA Holmes), N Jones, R Manchester, E Mavin, K Shaw and A Surtees

**1 Apologies for Absence**

Apologies for absence were received from Councillors C Kay, D McKenna and C Marshall

**2 Substitute Members**

Councillor C Hunt substituted for Councillor LA Holmes.

*Councillor N Jones entered the meeting at 9.32am*

**3 Minutes**

The minutes of the meeting held on 12 October 2021 were confirmed as a correct record by the Committee and signed by the Chair.

**4 Declarations of Interest**

The Chair, Councillor D Freeman noted in respect of Item 5b, DM/21/02774/VOC – 57 Claypath, Durham that he was a Member of the City of Durham Parish Council, however, he was not a member of their Planning Committee and had not been party to their submission in objection to the application.

He noted he was also a Member of the City of Durham Trust, however he was not a Trustee and had not been party to their submission in objection to the application.

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

### **a DM/21/00624/FPA - Land to south west of 39, Salvin Street, Croxdale**

The Senior Planning Officer, Jennifer Jennings, gave a detailed presentation on the report relating to the abovementioned planning application, a copy of which had been circulated (for copy see file of minutes). Members noted that the written report was supplemented by a visual presentation which included photographs of the site. The application was for a proposed house and detached garage and was recommended for approval, subject to conditions.

The Chair asked Parish Councillor M Ord, representing Croxdale and Hett Parish Council, to speak in relation to the application.

Parish Councillor M Ord explained as regards the historical and geographical nature of the site, adding it was a small valley, with a culvert from the 1960s and that in the 1980s properties at Wayside had been demolished by the City of Durham Council, with the rubble spread over the application site area creating the current levels. He added that in terms of flooding, the Environment Agency had stated a one in one hundred year risk of flooding, however, he noted a number of near misses, with one only a few days ago. He noted that in terms of the access there was a risk, especially in winter with ice creating a 'sheet of glass', with the corner having an adverse camber and the road falling away. He noted the originally planned access would have been preferable, and for that reason, and those outlined within their submission, the Parish Council objected to the application.

The Chair thanked Parish Councillor M Ord and asked Mr Trevor Elsdon, the Applicant, to speak in support of his application.

Mr T Elsdon explained he purchased the site around 15 years ago to allow for a pony to be kept for his daughter. He noted that at that time the site was not fenced and had become a dumping ground, including having a number of scrap vehicles across the site. He noted work with the Environmental Health Officers from the Council at that time in terms of removing the vehicles and securing the site, with some local people being in objection as they had mistakenly believed the site was public. He noted site had not had full-time grazing and added that in moving to retirement he had looked at the possibility of building a home on the site.

Mr T Elsdon explained that the scheme included disabled access in order to accommodate his mother-in-law and he had worked with the Planning Department to look at the best way to move forward. He added that included sourcing local materials to match with the area and to agree a planting scheme to increase diversity of habitat and the blend the property with its surroundings. In respect of the access, he had worked with the Council as regards the arrangements, with the original proposed access at Chair Lane and the new access being that suggested by Highways. He noted the new access would have use as driveway and also be able to be used for vehicles as a 'pull-in' for safety and gave good visibility. He concluded by noting that once his family was on-site, they would be able to contribute to village life, with his wife working in the local community.

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

Councillor J Elmer asked if the applicant could speak in terms of flooding, having grazed animals at the site over a number of years. Mr T Elsdon noted the site had not flooded over the last 15 years and added the application included a flood plan, with a soakaway and reiterated the Environment Agency comment of flooding being a one in one hundred year event.

The Senior Planning Officer noted that in terms of the rubble being used to level the site in the past, Contaminated Land Officers had noted no objections or issue, though asked for an informative be added in terms of contamination. She explained that Flood Risk Assessment had been submitted which contained a number of recommendations, and noted the Environment Agency had not commented, though the site was not within a flood zone. She added that the Council's Drainage Team had noted no objections, however advised flood resilient measures should be built into the development. It was noted that the application had been closely assessed by the Principal Highways Engineer and, as the access was set back, there was good visibility.

Councillor J Elmer noted the application appeared, in general, to be a good application, with the applicant noting planting to achieve a biodiversity net gain. He noted with a development such as the one proposed there was the opportunity for technology such as a ground-source heat pump, high-quality insulation and electric vehicle charging points to be included. He noted the issues raised in respect of potential flooding and explained as regards some criticism levelled at the method used by Environment Agency in coming up with predictions such as 'one in one hundred years'. He therefore asked if there could be conditions associated in terms of such a flood risk. The Senior Planning Officer explained that the previous use as grazing land had limited biodiversity, with the inclusion of a bat box and the Ecology Section added that the boundary scheme would result in a net gain.

She added that the bat box and landscaping scheme were both secured by condition. She explained that Condition 10 referred to the submission of a Flood Risk Assessment to be undertaken before any dwelling would be occupied, with information on issues such as site levels, directing water away from the building, and measures for keeping water on the site to be set out.

The Principal Planning Officer, Paul Hopper explained that the application did not remove permitted development rights in terms of installation of a heat pump and noted County Durham Plan (CDP) Policy 29 referenced the need to minimise greenhouse gases, and therefore there was policy that would support the precise detail of requirements, if Members were so minded. The Chair asked if that condition would be for a negotiation between the Applicant and the Council as regards measures, rather than specific requirements, such as a heat pump or electric vehicle charge points. The Principal Planning Officer noted it would be for the submission and agreement of specific details with Officers, such as heat pump, solar panel or electric vehicle charge points.

Councillor K Shaw noted, upon initially reading the report, he had concerns as regards flooding and highways, however, having listened to the Officers in their presentation he would move that the application be approved, with the additional condition as suggested. Councillor J Elmer seconded the proposal.

Upon a vote being taken it was:

## **RESOLVED**

That the application be **APPROVED** subject to the conditions as set out within the report, with an additional condition in respect of a carbon reduction scheme to be submitted and agreed by Officers.

### **b DM/21/02774/VOC - 57 Claypath, Durham**

The Senior Planning Officer, Leigh Dalby, 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 a S.73 application for the removal of Condition No.3 (Outside seating) to permit outside seating within the rear garden on a permanent basis pursuant to DM/19/01789/VOC and was recommended for approval, subject to conditions. The Senior Planning Officer noted the previous trial period had not been for the full 12 months, due to the pandemic, however, Officers were satisfied in terms of the test in respect of noise nuisance.

The Chair asked Councillor R Ormerod, Local Member to speak as regards the application.

Councillor R Ormerod noted his belief in the freedom for people to be able to run a business, and also the freedom for people to enjoy their properties without noise nuisance. He noted he was small business friendly and added the business did add value to the local area. He added it was a residential area and noted there had not been a full 12 month period to assess the impact of noise and therefore it would be for the Committee to consider in coming to a full and balanced decision on the application.

The Chair thanked Councillor R Ormerod and asked Mr F Newton, local resident to speak in relation to the application.

M F Newton explained his family had lived adjacent to the application site for 23 years and added that he refuted the implication within the applicant's statement he was a serial objector, explaining he only objected when there were serious adverse implications for his family. He noted his objections to the application were limited to two issues, the application for the deli in 2010 and the subsequent application as regards outside seating. He explained in 2021 he had objected as he had concern as regards what might have potentially developed from that application. He noted that at that time the applicant had stated that the garden would only be used for the cultivation of produce for the deli. Mr F Newton noted that, as the current application was regards outdoor seating, his concerns had not been without foundation. He explained the Planning Officer's report had failed to identify three key aspects in respect of the application. He noted the close proximity of the seating area to his property, eight metres, with his living room and bedroom being only 12 metres away. He added that the proposed maximum number of customers was up to 25, a number that could clearly generate a large noise and that had not been experienced over the trial period. Mr F Newton noted the seating area was bounded on all sides by buildings, except the side facing his garden and home. He explained that sound generated from the seating area would rebound from the masonry walls towards his and neighbours' gardens. He added that an acoustic specialist would advise that the transmission of sound could only be reduced by physical barriers and noted that a tree belt could only be effective if dense and of considerable depth. He explained that as most of the shrubs and trees between the properties were deciduous, the existing planting barrier would be absent for a large part of the year. Mr F Newton noted the temporary, one-year use for the outdoor seating area was given on the basis that the noise management plan would be adhered to. He noted he would contend that the applicant had failed to adhere to two key parts of the plan, including communication with neighbours.

He noted it was stipulated that residents would be provided with 'phone number and designated contact in the event of excessive disturbance' and explained that he felt the applicant's assertion that he had been unable to fulfil this due to the pandemic was not credible. He noted he and his neighbours had been receiving post throughout the pandemic without issue. Mr F Newton added the applicant implied that if residents wished to complain they could look up his details in the phone book or on the internet, adding that was not within the letter or spirit of the noise management plan.

Mr F Newton noted the applicant had stated that the boundary fence for the seating area would be a 1.8 metre high close-boarded fence for the purpose of 'extra privacy and noise reduction'. He added that the photographs submitted showed this applied to the site boundary to the east and not to the side of the seating area which faced his property. Mr F Newton noted the applicant had stated that, due to the pandemic, large numbers had been using the external seating area, however, the applicant had not explained how, with limited seating capacity, this would have been possible. He noted that while the area was only a short distance from the city centre, it was a quiet residential area, with the deli being the only commercial property with a rear garden on that side of upper Claypath. Mr F Newton noted the applicant had failed to demonstrate that the proposal offered a facility to the community that was not available within a five minute walk. He added the nearest facility with outdoor seating was Millennium Square, three or four minutes away, which boasted numerous food outlets which had outdoor seating in situations that did not affect residents.

Mr F Newton noted his garden was very small and noted he had the right to enjoy it in accordance with the Council's policy on amenity and the Human Rights Act. He noted the application would affect his use of his garden for up to eight to ten hours a day, seven days a week. He reiterated that even within the conditional period the applicant had failed to comply with the noise management plan and added that did not bode well for the future. He concluded by noting there was no justification for the application and asked that Members refused the application.

The Chair thanked Mr F Newton and asked Mr Rory Handy, the applicant, to speak in support of his application.

Mr R Handy noted, in response to Mr F Newton, that there was ample space for 25 people to sit in the rear garden and added that there had been so on a number of occasions. He explained that the garden was a peaceful place, the business was not a pub, it did not serve alcohol and the space was a place for local residents to meet over a tea or coffee, or to read a book. He noted there had been no noise complaints whatsoever and added that the original application for the seating area had received a few more objections, however, the majority had not objected to this application.

He noted those objecting were Mr F Newton and another neighbour who objected stating the area overlooked his property. M R Handy explained he did not know what he needed to do in order to reassure Mr F Newton and added that the deli was a community place, that he was community minded person who lived locally and concluded by noting that if the business was ran by different people then there would be a completely different outlook for the business.

The Chair thanked Mr R Handy and asked the Committee for their comments and questions.

Councillor J Elmer asked for clarification in respect of the trial period as it appeared to largely overlap with the pandemic restrictions. The Senior Planning Officer noted the period ran from September 2020 to September 2021, with pandemic restrictions being in place from November 2020. He added that had meant it had not been possible to operate over that winter period, November 2020 to April 2021.

Councillor C Hunt asked if the seating area had helped the business, Mr R Handy noted it had helped as people felt safe meeting outdoors. The Chair noted that the issue was not a planning matter.

The Senior Planning Officer referred Members to the photograph showing the extent of the close-boarded fencing around the seating area and noted it did not extend beyond the seating area as the use and mitigation were for the seating area. He further explained that, in respect of the trial period, the site had operated for 259 days out of the year and there had been no reported complaints as regards noise or disturbance to the business or the Council.

The Solicitor – Planning and Development, Neil Carter noted that the objector had referred to the Human Rights Act and he explained that Article 8 was the right to respect for private and family life, home and correspondence and therefore it was a right that would be engaged as regards this particular situation. He added that, however, it was not an absolute right, it was a qualified right which meant that it could be interfered with insofar as in accordance with the law (normal planning law and principles) and where it was proportionate to do so. He noted that if Members were minded to approve the application, his advice would be that, in accordance with normal planning principles, it would not be something that infringed Article 8 of the Human Rights Act.

The Chair noted five letters of support for the application, though noted he was not aware if any of those were neighbours to the property, though the objectors were neighbours.

He noted that those using the facility would be deli customers, speaking at normal levels, however noted that up to 25 people speaking a normal level could be quite loud.

Councillor D Brown asked, through the Chair, if the objector could quantify the noise issues, noting he had stated eight to ten hours when addressing the Committee. The Chair asked Mr F Newton if he could respond. Mr F Newton noted that some supporters would no doubt be considerate and noted some people may be louder than others. He noted the proximity to his property with no barrier to block the intrusive noise, and reiterated as regards the surrounding buildings, effectively a canyon, amplifying the noise. He noted on occasion he had been able to make out conversation from the seating area. He reiterated his concerns was if 25 people were all speaking together that this would compound the issue. He reiterated he had not been provided with a number to complain to and added he did not feel his relationship with the applicant was such that he could go round to the deli and Environmental Health had been unavailable.

Councillor J Elmer noted that he felt surely a solution could be put in place to allow both activities to continue. He suggested that perhaps the application was too soon given the evaluation period had not been the full 12 months. He noted that there was a threshold in terms of noise level to cause a nuisance and that such require monitoring of levels to establish whether that was the case. He asked if any actual measurements had been taken, as that would be important for Members to be then able to decide whether any additional measures, such as acoustic fencing may be required. The Senior Planning Officer noted that in respect of the 2019 application for the 12 month temporary use, the Environmental Health Officer assessed that application and had noted while there was set guidance in relation to some cases, such as pubs, there was not in terms of a café. He added that therefore the advice from Environmental Health at that time was for temporary use, to draw out any issues or complaints. The Chair noted that was not the same as an assessment. The Principal Planning Officer noted the principle of the development had been established through previous permissions and that there would have been an amount of work undertaken in terms of whether the principle of development was acceptable. He added that the application was granted, with a 12 month period in which to establish whether or not those mitigation measures were found to be adequate. He noted that the question was had there been sufficient time, given the pandemic, to be able to clearly demonstrate any issues in terms of noise nuisance. He added that clearly the objector did not believe so and also had mentioned the area not being at capacity. The Principal Planning Officer noted that the applicant stated the area had operated at capacity.

He noted the question for Committee was whether they considered that the premises had been operating sufficiently robustly within the 12 month period to be able to say that there would be no further impact in terms of residential amenity, qualifying that impact in terms of reasonableness, with one person's tolerance being different to another's. The Principal Planning Officer added that, in relation to assessment of noise, there was no requirement set out within the conditions, and also the noise management plan did not require such an assessment. In terms of compliance with the noise management plan, the objector had believed it had not been complied with, with the applicant having given an explanation in that regard.

Councillor J Elmer noted he felt the Committee could not make a decision as they did not have details of a measurable level in terms of noise and therefore, he would be minded to move against the application and ask for further assessment in terms of noise.

The Senior Planning Officer noted that at the time of the original application the Environmental Health Officer had noted that they were sceptical as regards the ability of a noise assessment to be undertaken as it would be difficult to control the noise level and external noises and there were issues in terms of whether equipment would be able to adequately assess the noise levels. He added this had led to the suggestion as regards a temporary period, initially put forward as a six month period, which was increased to 12 months to encompass the summer months. Councillor J Elmer added he felt it would be possible to conduct an assessment and that acoustic engineers would disagree with that advice from Environmental Health.

Councillor K Shaw asked it would be possible to clarify whether the business was open for use by patrons from April 2021 through to September 2021. The Chair noted the applicant may answer, Mr R Handy noted the premises was open as soon as it had been able to do so, in line with Government legislation.

Councillor K Shaw noted he had listened to the comments from all and proposed that the application be approved as per the recommendation. He was seconded by Councillor A Surtees.

Upon a vote being taken it was:

## **RESOLVED**

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

**c DM/21/02896/FPA - Fernhill, Newcastle Road, Crossgate Moor, Durham**

The Planning Officer, George Spurgeon, 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 the redevelopment of stables to provide 1 no 4 bed dwelling and was recommended for approval, subject to conditions.

The Planning Officer noted that an application for four dwellings at the site had been refused by Committee at its meeting in January 2021 and the current application had been called to Committee at the request of the City of Durham Parish Council. The Planning Officer noted that the National Planning Policy Framework (NPPF) set out at Paragraph 149(g) that development in the Green Belt should be regarded as inappropriate unless the redevelopment of previously developed land did not have a greater impact on the openness of the Green Belt than the existing development. He added that the proposed development was comparable to the existing stables and also noted there were no objections from the internal consultees. He concluded by noting that it was felt the application was in accord with the relevant policies within the NPPF, CDP and Durham City Neighbourhood Plan (DCNP) and therefore the application was recommended for approval, subject to conditions as set out within the report.

The Chair asked Parish Councillor Grenville Holland, representing the City of Durham Parish Council, to speak in objection to the application.

Parish Councillor G Holland noted the proposed development at Fernhill brought with it potential damage to our precious Green Belt and to the area of great landscape value. He added the Parish Council strongly objected to the proposal and urged Members to refuse the application. He noted that furthermore, the Committee's decision would measure both the strength and the integrity of three important planning documents: the 2021 NPPF, the 2020 CDP and the 2021 DCNP.

Parish Councillor G Holland explained that Fernhill's position within the city was clearly identified by the CDP Inspector in 2019, adding that he had recognised that Fernhill was an extension of Flass Vale and was therefore entrenched within the Durham City western Green Belt forming an integral part of the city. He added that Fernhill had been in the Green Belt since 2004 under the Durham City Plan, with the definitive map still in place today in the DCNP and carried weight.

Parish Councillor G Holland explained that the Government attached great importance to Green Belts, noting that fundamentally you did not build houses in a Green Belt unless there were exceptional circumstances. He added that the NPPF, Paragraph 149, stated that the local planning authority should regard the construction of new buildings as inappropriate in the Green Belt, however it offered seven exceptions:

1. Buildings for agriculture and forestry - Fernhill does not qualify.
2. Provision of sports facilities - Fernhill does not qualify.
3. The extension or alteration of a building but not above the size of the original building - at Fernhill, the proposed building was new and was higher than and larger than the present stables, saying it was going to be well made does not meet the exception.
4. The replacement of a new building providing that it was for the same use and not materially larger - the application was not for a stable.
5. Limited infilling in villages - this was not relevant to Fernhill.
6. Limited affordable housing for local community needs - Annex 2 of the NPPF made it clear that this was not a relevant exclusion for Fernhill.
7. Limited infilling on previously developed land to meet an "identifiable affordable housing need" that will not harm the openness of the Green Belt - by definition, the proposed four bedroom house in that location was not an affordable housing need and therefore did not qualify as an exception.

Parish Councillor G Holland noted that, put simply, Fernhill did not qualify for any one of those exceptions, and must be refused planning permission because there were no very special circumstances as demanded by the NPPF, Paragraph 147. He added that Fernhill was also within an area of great landscape value and that placed an additional constraint, not only in reference to the 2020 CDPP but also the 2021 DCNP. He noted such areas warranted special protection and the construction of a four bedroom house, because of its size and mass, however nicely made, would intrude into the lovely landscape setting whose compass covers many miles to the west of Neville's Cross. Parish Councillor G Holland explained those essential protective measures were found in NPPF Paragraphs 148, 149 and 174, which in turn underpinned CDP Policies 20 and 39 and DCNP Policies H3 and G4. He asked that, faced with a clearly defined set of policies that are now in place, how could the application for a four bedroom house at Fernhill merit planning permission? He noted the report clearly sought to find a way through the very obvious fact that the application failed to meet a raft of NPPF, CDP, and DCNP policies. He added that indeed, perhaps to alarm Members into agreeing approval, the Officer's submission even included, at Paragraph 69, reference to a legal challenge in 2017 against Dartford Borough Council.

Parish Councillor G Holland noted, however, that legal challenge did not entail the infringement of a Green Belt but was linked to a gypsy encampment and rested on an interpretation of the words “previously developed land”. He added that, in the context of Fernhill, those three words were contained in the sentence, NPPF paragraph 149 (g), which read: “where the development would re-use *previously developed land and contribute to meeting an identified affordable housing need*”. He reiterated that was Fernhill, not Dartford.

Parish Councillor G Holland explained that, while having some sympathy with the applicants, the policies of the planning guidance offered by the NPPF, the CDP and the DCNP must be respected and be used by Members in making their decision on the application, adding many of those policies had been hard won and must not now be forfeit. He noted that in particular, simply presenting the proposed new building as a rather nice house whose impact would not make that much difference anyway, did not cross the threshold for the very special circumstances described in NPPF Paragraph 147. He noted that therefore the Parish Council asked that Members refuse the application as being contrary to the NPPF Paragraphs 147, 148, 149 and 174, CDP Policies 20 and 39, and DCNP Policies H3 and G4.

Parish Councillor G Holland noted that, in the final analysis, the meeting was about the integrity of the planning policies that now protect our countryside. He added it was about whether the exceptional circumstances that allowed them to be breached had been achieved. He reiterated that the Parish Council believed that they had not and therefore, the application should be refused; and that a failure to do so would undermine the integrity of the very policies upon which, in the last decade, we had devoted so much time and effort in order to protect our environment now and in the future.

The Chair thanked Parish Councillor G Holland and asked Mr Michael Hurlow, representing the City of Durham Trust, to speak in objection to the application.

Mr M Hurlow explained that the Trust had made clear in its objection the value of the area of high landscape value and Green Belt. He added that the area had not been an accidental inclusion in the Green Belt, and explained it was strategically placed in the important greenspace forming the Green Belt as it ran down into Flass Vale and the City. He noted it was very difficult to see how a site occupying over half of the area at the neck of the Flass Vale wedge, as it crosses the A167, could possibly be less than important. Mr M Hurlow noted that the CDP Inspector upheld that, forcefully noting that it was part of the attractive rural area forming the setting of the historic city.

He noted that it was not wholly correct to state that the site had a long history of Officer support for development, Mr M Hurlow explaining that he was an Officer with the City of Durham Council before its closure and, with others, he recognised the value of the site as Green Belt and the harm that development would cause. He noted the principle had more recently been upheld at appeal and by rejection in relation to other proposals. He added that to term the site as 'private garden' sold the area short, not a description that an estate agent would understand. He explained it was more like a small estate complete with its own lodge and grounds, adding that it was certainly not 'urban in character', indeed with the Planning Inspector concluded that it was rural.

Mr M Hurlow noted the size of the proposed house had a larger building footprint by the Planning Officer's calculation, the lower storey being 14m<sup>2</sup> bigger. He added, however, that calculation failed to consider the footprint of the very large excavation to form the lower storey, car park and access and rear garden with its large retaining walls. He noted that at least doubled the size of the development, adding that excavation of that depth and scale must surely be considered 'development.' Mr M Hurlow noted that removing a garage from the application has still left the application undeniably larger than the existing building. He added it was materially much larger than the existing stable block and disproportionate in size. He noted it cannot be possible to conclude that the development had no greater impact on 'openness' when the proposal took out an open area resulting in the doubling the size of the existing developed area occupied by the stables.

Mr M Hurlow explained that there were no Green Belt exemptions under the NPPF for sites that were less publicly visible, just because the public could not easily see the site did not mean that it could be judged as not having an impact on openness, it was a direct loss of green space to development. He noted a High Court judgement in 2017, not reviewed by the Planning Case Officer, identified that any adverse impact was not acceptable under Green Belt policy, it was inappropriate development. He added another High Court judgment also confirmed that any inappropriate development automatically failed to meet the policy to maintain openness. He explained that, in the case of the application, it did not preserve the setting of the city or safeguard the countryside from encroachment and that should lead to rejection of the application as there were strong grounds for doing so.

Mr M Hurlow explained that the Trust considered that there were other reasons to doubt the proposal, in common with other assessments of tree impact, there was no consideration to be found of the longer term implications of such a large excavation on trees. He added that the screening was not guaranteed to be long lasting.

Mr M Hurlow noted the location was not readily accessible by bus, with services being very limited along that stretch of the A167. He added that facilities were not nearby, and, in reality, the development appeared to be accessible only by car, not fulfilling sustainable transport aims. He added that despite Highways' advice to the contrary, there remained local concern about the safety of introducing more access onto the A167 in that position. He noted that it seemed obvious to the Trust that the development was large, failed to sit well with the existing buildings and surrounds and, most of all, impacted negatively on the Green Belt. Mr M Hurlow noted that it would clearly have a greater impact on openness than the current development, something specifically regarded as inappropriate under the NPPF.

Mr M Hurlow added that to allow the application would be to open up the Green Belt to other developments, digging down to create a large, buried building but retaining a similar ground level footprint to any existing outbuildings. He noted that must be seen as a very worrying precedent, approve a stable block but get a large, detached house instead. He explained that protecting green space should be something that was increasingly needed as Authorities consider their response to the Climate Emergency. He explained the Trust was not making this objection to frustrate any business interests of the applicant, it was doing so because of deep felt concern for the importance of the Green Belt, the setting of the city and safeguarding Durham's future as we face the Climate Emergency. Mr M Hurlow concluded by noting that the Trust therefore respectfully requested that the Committee refused this application and chose instead to support protection of the Green Belt and the city's setting.

The Chair thanked Mr M Hurlow and asked Mr Paul Bracewell, the applicant, and Mr Joe Ridgeon, Agent for the applicant, to speak in support of the application.

Mr P Bracewell thanked the Chair and Members and noted the Committee report set out the long history of applications at the site, adding he was pleased to note the recommendation for approval from Council Officers. He explained that the proposed development had been designed from the outset so that it was compliant with Green Belt policy and they had worked hard with the Council's Officers to ensure that the proposals were both sensitive to the landscape in which it sits and provided a unique design which would not impact on the openness of the Green Belt. He added he had employed notable architects, Jane Darbyshire and David Kendall, to design a scheme which was contemporary, but also reflected the locality and would use local materials. He explained that the design was sensitive to the main house by following a similar footprint and roof profile to the existing stables, with low pitched roofs and overhanging eaves. He noted the design made use of the sloped site to create another level of accommodation, partly set in the hillside and below the level of the stables.

Mr P Bracewell explained that, as set out by the Planning Officer in his report to Committee, the design had been fully assessed and considered to be acceptable. He added that the proposed house would have a similar form, mass and height to the existing stable building and the visual impact would be extremely limited from outside of the site due to the boundary trees being retained and by how the house would sit, being set into the hillside. He noted, as already set out by Officers, the proposed dwelling would not have a greater impact on the openness of the Green Belt than the existing stables and therefore accords with Paragraph 149(g) of the NPPF and Policy 20 of the new CDP. He concluded by respectfully asking that Members approve the application.

Mr J Ridgeon thanked the Chair and Members for the opportunity to correct some of the points raised by the objectors. He explained that in relation to the large garden, referring to Paragraph 59 of the Committee report, the paragraph set out the Planning Inspector's own assessment of the site when looking at the CDP and stated, '*Fernhill is a detached house standing within a large garden surrounded by mature vegetation*'. He added that assessment of the site related to Paragraph 149 of the NPPF and noted he would confirm, and that Members may also wish to confirm with their Officers, that what had been set out in terms of how that Paragraph should be read had been set out incorrectly. He noted it read: '*...complete redevelopment of previously developed land... (of which the garden site was), ...whether redundant or in continuing use... (of which it was in this case), ...which would: – not have a greater impact on the openness of the Green Belt than the existing development*'. Mr J Ridgeon noted that was the test Members would need to assess the application against.

In reference to the point of sustainability raised earlier in the meeting, Mr J Ridgeon explained the building had been designed and orientated with solar gain in mind, and with overhanging eaves that provided solar shading in the summer, very much a sustainable design for the building. He added that it was proposed to use locally sourced materials, including stone, to ensure that the building sat nicely in relation to Fernhill itself, which as Officers had noted was a non-designated heritage asset. Mr J Ridgeon noted that CDP Policy 20 required compliance with national policy which in the case of the application was Paragraph 149(g) of the NPPF, and he reiterated that was the test the Members should be assessing the application against. He added that they had worked hard to ensure that Council Officers, including Landscape Officers, Design and Conservation Officers and the Planning Policy Officers were all content that the scheme complied with policy. He concluded by thanking Members and noting he was happy to answer any questions they may have.

The Chair thanked Mr P Bracewell and Mr J Ridgeon and asked the Planning Officer if he wished to comment on the points raised by the speakers.

The Planning Officer noted that NPPF Paragraph 149(g) read: *'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'* would be an exception to the construction of new buildings as inappropriate development, as set out by that paragraph. He added that the case law referred to within the Committee report was around the definition of previously developed land. He noted that the NPPF defined previously developed land and it noted that garden land within the built up area was excluded, however, it did not refer to garden land outside of the built up area. The Planning Officer noted that the case referenced demonstrated that a residential garden, outside of the built up area would be considered as previously developed land. He noted that was a key consideration for the application as the site would have to be considered as previously developed land for the exception as set out at NPPF Paragraph 149(g).

The Planning Officer noted concerns had been raised in respect of the Area of High Landscape Value (AHLV) and added that Landscape Officers had looked at the proposals and had provided comments noting that the site was well screened from the landscape, the development would not be readily visible from outside of the application site and there was a row of mature trees that would provide effective screening, and the surrounding topography also screened the dwelling. The Planning Officer explained that therefore the impact on the AHLV was not considered to be adverse. He noted the issue of the site not being readily accessible by public transport had been raised and explained that the site was within 1.6 kilometres from the defined city of Durham, considered to be a reasonable walking distance. He added there was a bus stop approximately 560 metres from the application site at Fieldhouse Lane.

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

Councillor J Elmer noted the application site was within the Green Belt and was classified as an AHLV. He noted that residents within the city had battled long and hard to preserve the Green Belt and the current boundaries were settled as part of the adoption of the current CDP, at the Examination in Public in 2019. He noted that the CDP deferred to the NPPF in relation to policy on Green Belt. He quoted Paragraph 147 of the NPPF: *'Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances'*. He added he felt very special circumstances had not been demonstrated in this situation.

He continued by quoting NPPF Paragraph 148 *'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'*. Councillor J Elmer explained he felt the application was 'not hitting' that paragraph and noted that it meant that even if it could be argued that benefits outweighed harm, the applicant still needed to demonstrate that there were very special circumstances. He reiterated that he felt there were no very special circumstances and therefore he felt it classified as inappropriate development, with the default position being to refuse planning approval.

Councillor J Elmer noted the NPPF continued at Paragraph 149 setting out: *'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*
- 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.'*

Councillor J Elmer noted: exceptions a) and b) did not apply; in terms of c) the building was getting bigger; in terms of d) it was for a different use, not a stable, and was getting larger; e) did not apply; and f) did not apply as it would likely be an expensive property.

Councillor J Elmer noted that exemption g) was the most significant and noted that, as the proposed development was larger, there would be a greater impact on the openness of the Green Belt than the existing development. He noted it was not about looking into the site from the outside, it was also about the densification, the growth of buildings on the site. He noted in making those assessments there were two components, one being the effect on views looking in from outside, the other being the actual change on site, within the grounds themselves. He added that he felt the application failed in that aspect.

Councillor J Elmer reiterated that the second point in exception g) noted: '*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*'. He noted the word 'and' between '*...re-use previously developed land*' and '*contribute to meeting an identified affordable housing need...*' and noted the application was not contributing towards affordable housing need. Councillor J Elmer noted he felt that it was not one without the other, both were needed due to the word 'and'. He noted the Officers argued that the application would not affect the openness of the Green Belt, though that was questioned by the Parish Council and City of Durham Trust.

Councillor J Elmer noted that whether the application should be approved was dependent upon whether it could be considered exempt from normal Green Belt restrictions as it would re-use previously developed land and contribute to meeting affordable housing needs. He noted the applicant makes the case that it should be classified as previously developed land, citing case law of *Dartford v Secretary of State*, however, he felt it was not a relevant parallel situation as that application was not within a Green Belt, where development needs to meet its own specific tests and with a much higher bar to be applied. He added that he saw the argument in that case as being that gardens in the countryside should also be regarded as previously developed land. He noted that he felt the application site could not be considered garden land as it comprised of stables and grazing land as a component of a large, landscaped area. He noted, if one was to follow that line of logic, the conclusion was that countryside estates, throughout the landscape, might be classified as gardens, therefore previously developed land, and therefore developable. Councillor J Elmer noted that would set a precedent for the development of gardens and small estates across our Green Belt and beyond. He added that even if one was to consider the site previously developed land, he felt it would need to meet the affordable housing test, which it did not. Councillor J Elmer explained that Green Belt policies within the CDP attempted to draw a line, with the goal being to protect the heritage and environmental assets of Durham for perpetuity. He added that approval of the application would set a precedent and make it more difficult to defend the Green Belt from future development.

He noted he felt the application failed to cohere with Part 13, Paragraph 149 of the NPPF and Policy 20 of the CDP, both relating to the conservation of Green Belt and therefore he moved that the Officer's recommendation of approval be rejected. Councillor E Mavin seconded refusal of the application.

Councillor K Shaw moved that the application be approved as per the Officer's report, he was seconded by Councillor A Surtees.

The Chair noted the two motions, with the motion for refusal having been put first and asked the Solicitor – Planning and Development to advise.

The Solicitor – Planning and Development noted that first he wished to make sure Members of the Committee were fully conversant with the relevant part of the Green Belt policy. He noted that the very special circumstances test in Paragraph 148 of the NPPF only applied where the proposal was inappropriate development in the Green Belt and was a test of weighing benefits against harm. He noted that Officers were saying that did not apply here as there was an exception which would make the proposals not inappropriate development in the Green Belt. He explained that came down to an interpretation of NPPF Paragraph 149(g) which stated that redevelopment of previously developed land, where it would not have a greater impact on the openness of the Green Belt than the existing development, would not be inappropriate. The Solicitor – Planning and Development noted there was no requirement for the proposal to include an element of affordable housing, adding that was a separate limb of Paragraph 149(g), being an either/or test and not a test requiring both criteria to be met.

In respect of previously developed land, the Solicitor – Planning and Development noted the reference to *Dartford v Secretary of State* case and explained that related to whether garden land, outside of the built up area could be regarded as previously developed land, with the Court in that case saying that it could. He noted that while it was not a Green Belt case, that did not matter as the case was about the definition of previously developed land. He explained to Committee that the nub of the policy test was did Members regard the development as having a greater impact on the openness of the Green Belt than the existing development on site. He added that the Planning Officer had set out quite comprehensively in his report the reasons why there was not a greater impact on openness and if Members accepted that then it would be for the application to be approved, and if Members took a different view then it would likely be for refusal on the basis that very special circumstances had not been demonstrated. The Solicitor – Planning and Development noted the motion for refusal had been moved first and asked to hear more from Councillor J Elmer in terms of his reasons for refusal.

Councillor J Elmer referred to NPPF Paragraph 149(g) and noted he disagreed as regards the either/or interpretation, adding to him it was clear it was worded: *'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...'*. He added that even if the criteria did say 'or' rather than 'and' he felt that it was pretty clear that there would be impact on the openness of the site as the building was going to be bigger than the existing footprint, and not just the building but associated access structures, tarmac and so on. He noted the mass of the building would be bigger, and the associated structures, would incur on the openness of the site and therefore he felt there was a policy justification for refusal. Councillor J Elmer reiterated his concerns as regards setting a precedence for development in the Green Belt, adding it would be used by other applicants across the Green Belt to argue their estates could be classified as garden and therefore developable. He added the pathway to obtaining residential development would be clear, first build stables, then convert to house. He noted those were his major concerns in defending the line in terms of protecting the Council's Green Belt.

The Solicitor – Planning and Development asked Planning Officers to display NPPF Paragraph 149(g) on screen for the Committee. He referred Members to the two bullet points as set out under Paragraph 149(g), namely:

- *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*

The Solicitor – Planning and Development noted the word 'or' in between the two bullet pointed limbs of Paragraph 149(g) and explained this meant the second limb to the exception was in the alternative. He added it was the first limb that was in play, noting if the scheme had been for affordable housing then the second limb may well have been in play, however, it was not on this occasion. The Solicitor – Planning and Development noted what he understood from Councillor J Elmer was that, in reference to the first bullet point of NPPF Paragraph 149(g), Councillor J Elmer took the view that the proposal had a greater impact on the openness of the Green Belt than the existing development and for that reason it took it outside of the exception to inappropriate development and in those circumstances there would have to be a demonstration of very special circumstances sufficient to outweigh the harm by way of inappropriateness and any other identified harm, and Councillor Elmer did not feel there were any such very special circumstances.

The Solicitor – Planning and Development noted that was the reason associated with the motion for refusal by Councillor J Elmer, with the rival motion for approval being that the proposals did not have a greater impact upon the openness of the Green Belt than the existing development and therefore availed itself of the exception set out at NPPF Paragraph 149(g) and therefore there was no need to demonstrate very special circumstances, as set out in the Officer’s report. In reference to precedent, the Solicitor – Planning and Development concluded by reminding Members that they must determine the application that was before them and not think about what may or may not happen at some unspecified time in the future.

Councillor J Elmer noted the Solicitor – Planning and Development summary of his position was accurate and added that concern as regards the classification of the site as previously developed land. He noted he felt it was a very tenuous argument to make and noted Members could only go down that thread if they were to accept that definition of previously developed land based on case law that did not seem to come from a parallel situation. The Solicitor – Planning and Development reiterated his views in terms of the case law, in that it did not matter whether it was from a Green Belt case or otherwise.

Upon a vote being taken it was:

## **RESOLVED**

That the application be **REFUSED** as the proposed dwelling would have a greater impact on the openness of the Green Belt than the existing stable building and so amounts to inappropriate development within the Green Belt for which there are no very special circumstances, contrary to Policy 20 of the County Durham Plan and Paragraphs 147 - 149 of the National Planning Policy Framework.