

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 10 May 2022** 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, N Jones, D McKenna, R Manchester, C Marshall, E Mavin, K Shaw and A Surtees

Also Present:

Councillor L Brown

1 Apologies for Absence

Apologies for absence were received from Councillor LA Holmes.

2 Substitute Members

There were no substitute Members.

3 Minutes

The minutes of the meeting held on 12 April 2022 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 Items 5b and 5c 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 applications. 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 submissions in objection to the applications.

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

a DM/21/02193/FPA - Land to the east of Whitwell House, Front Street, New Durham, DH1 2EP

The Committee noted that the item had been withdrawn.

b DM/21/03860/FPA - 76 Whinney Hill, Durham, DH1 3BG

The Planning Officer, Michelle Penman, 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 erection of part two-storey/ part single-storey extension to rear of existing small 4-bed house in multiple occupation (HMO) (use class C4) to include provision of 2 no. additional bedrooms and was recommended for approval, subject to conditions.

The Planning Officer noted that the application was not for change of use as the property was already a four-bed HMO with C4 use, allowing for up to six bedrooms. She explained that the applicant had a fallback position in terms of a ground floor extension scheme under permitted development rights and noted a similar application that had been refused had subsequently been allowed at appeal to the Planning Inspectorate.

The Chair thanked the Planning Officer and asked Councillor L Brown, representing the City of Durham Parish Council to speak in relation to the application.

Councillor L Brown explained that the City of Durham Parish Council had come into being in 2018 and since then had endeavoured to represent the interests of the residents within the Parish. She noted that Whinney Hill was already an area with a high percentage of students and the application sought to add two bedrooms to an existing HMO and to facilitate that by building an extension to the property. She added that would turn a small MHO into a large HMO and add another two students to an area which already had 50 percent student housing by postcode.

Councillor L Brown noted that, within the Committee report, great weight had been placed on the fact that an appeal for a neighbouring property with similar planning circumstance had been allowed. She added that paragraphs 47, 50 and 64 all referred to the Inspector's conclusions.

She noted, however, that each application should be considered on its own merit and, as the City of Durham Trust had pointed out in their submission dated 6 December 2021, the Local Plan Inspector's report was omitted from the written reports submitted with the appeal documents. Councillor L Brown explained that report had placed far greater emphasis on the parts of Policy 16.3 dealing with extension which result in extra bed spaces. She noted the Inspector's actual words were "*cumulatively over time, this could lead to a significant increase in the number of students living in an area, undermining the objective of the policy*". She added that would then affect residential amenity as set out in Policies 29 and 31.

Councillor L Brown noted that furthermore, the Residential Amenity Supplementary Planning Document (SPD) referred to in Policy 29 set out minimum separation distances, which the application breached. She added the Planning Officer admitted that at paragraph 66 but then goes on to say that it was not considered that the proposals would be unacceptably harmful to residents. She noted that it was the cumulative affect on residential amenity that was the issue. She explained that not only would there an extension that would be overlooking a garden, two extra students could well mean more rubbish, more anti-social behaviour and more full-time residents suffering from lack of sleep and of a gradual erosion of their lives. Councillor L Brown concluded by noting the Parish Council urged the Committee, on behalf of residents, reject the application as it was in breach of County Durham Plan (CDP) Policies 16, 29 and 31.

The Chair thanked Councillor L Brown and asked the Committee for their comments and questions.

Councillor J Elmer noted the importance of Policy 16 within the CDP, a policy that had been hard fought by the City of Durham Parish Council and other groups, to protect against the studentification of the city, impact on services and anti-social behaviour. He explained that it was a huge credit to the Council in adopting CDP and Policy 16, drawing a line as regards student properties. He added that he felt the proposals were a clear breach of Policy 16.3 with there already being a high number of student properties in the area. He noted the argument made as regards the permitted development, however, he did not feel that was sufficient to abandon Policy 16 adding he felt that the Committee should hold the line and go against the Officer's recommendation. He noted the applicant's statement made a case for the permitted development. Councillor J Elmer moved that the application be rejected. Councillor J Cosslett seconded the proposal for refusal.

Councillor C Marshall noted the application was a difficult one, noting the existing impact of HMOs, with families moving out of the city.

He noted it was not a simple case of complying or not complying with policy, rather complying in part with weight given to Policy 16 and also the wider policies within the CDP. He added that there was a risk in relation to an appeal, with Officers having set out the details of an appeal against a refusal for a similar application relating to 75 Whinney Hill that was subsequently upheld the Planning Inspector. Councillor C Marshall noted the applicant had referred to permitted development and asked why put the Council at risk at appeal without a robust case. He noted he felt there were not enough grounds for refusal and added that while some may not have concerns as regards value for money for taxpayers, he did. He noted the sale of the Council's new headquarters at the Sands and noted the additional students attending the University Business School would need somewhere to live. He concluded by noting that, looking at broader policy and not wishing to waste taxpayers' money frivolously, he would support the Officer's report and propose that the application be approved. Councillor A Surtees seconded the proposal for approval.

Councillor J Elmer agreed students would need a place to live and noted that the University wished to control that aspect and build accommodation themselves. He noted that any subsequent appeal of a refusal may be lost, and asked Officers whether the appeal referred to that was upheld was prior to the CDP and Policy 16 being in place.

The Principal Planning Officer, Paul Hopper noted that the appeal relating to 75 Whinney Hill was decided on 18 May 2021 and at that point would have determined against the interim policy. He noted another appeal decision relating to 51 Whinney Hill, and that whilst that appeal was dismissed by the Inspector it was not upheld on reasons relating to the presence of a legitimate fallback position. He added that it was likely there would be the risk of costs at appeal and explained that the Officers' professional opinion was that the application should be approved. He reiterated that the appeals had been for similar development and accordingly had significant weight.

The Lawyer (Planning and Highways), Neil Carter noted Policy 16 was the key policy, with an application to be determined in accordance with the local plan unless material considerations said otherwise. He added the fallback position relating to permitted development was sufficiently material to be given weight. He noted the applicant had submitted a permitted development scheme, which Officers noted was likely to come forward should the current proposals not be approved and added that was a significant planning consideration. The Lawyer (Planning and Highways) referred to the recent appeal decision where the Inspector had given weight to permitted development. He noted that if the application was refused, he would expect that the applicant would appeal, and he would also expect a costs application. He added that the issue of costs was not a significant or overriding issue, however, it was something for Members to have regard of.

The Chair noted that the Council, City of Durham Parish Council, City of Durham Trust and other organisations and individuals had fought hard for the policies as set out in the CDP, including Policy 16. He noted the position in relation to the appeal decisions and noted he was minded to support Councillor J Elmer.

Councillor J Elmer reiterated he felt the application should be rejected as he felt it was contrary to Policy 16 in terms of creating balanced communities, noting the age structure of the area, and the impact on the settled community in the city. He added he felt the applicant had been bombastic and bullyish in their approach in terms of permitted development. The Lawyer (Planning and Highways) noted that the applicant had undertaken a fairly standard approach in terms of stating what they would be able to take forward under permitted development adding it was not a bullying tactic, reiterating it was a common approach.

In relation to the motion for refusal proposed by Councillor J Elmer and seconded by Councillor J Cosslett, upon a vote being taken the motion was LOST.

In relation to the motion for approval proposed by Councillor C Marshall and seconded by Councillor A Surtees, upon a vote being taken it was:

RESOLVED

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

c DM/21/02034/FPA - Land at Former Skid Pan north of Woodward Way, Aykley Heads, DH1 5ZH

The Principal Planning Officer, Graham Blakey, 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 proposed development of 48 residential dwellings with associated infrastructure, open space and highway improvements and was recommended for approval, subject to conditions and Section 106 Legal Agreement.

The Chair thanked the Principal Planning Officer and asked Councillor L Brown, representing the City of Durham Parish Council to speak in relation to the application.

Councillor L Brown thanked the Chair and Members and explained that the Parish Council was not opposed in principle to the development and supported Policy 4 of the CDP, however, they felt that the application was in need of a little tweaking. She noted that was a sensitive location next to Hopper's Wood which contained ancient woodland and was surrounded by green belt and an area of high landscape value. She added that the Parish Council were therefore very happy with Condition 15 of the application.

Councillor L Brown noted that where the application failed was in the sustainability of the site. She explained that firstly it seemed that the application was focussed on private transport. She noted that there was no public transport anywhere near the site, adding that indeed the nearest bus stops were at the University Hospital, 600 metres away, despite the developer referring to the proximity of bus stops in paragraph 88 of the Committee Report. She added that Policies 21 and 22 of the CDP and T1 of the Durham City Neighbourhood Plan all called for sustainable transport and a reduction in the dominance of the private car with the consequent improvement in air quality. Councillor L Brown noted that at paragraph 124 of the Committee report the travel officer suggested walking and cycling rather than using public transport. She noted that all she could say was the travel officer had never tried to get a recalcitrant toddler and shopping home on foot.

Councillor L Brown noted that secondly, the housing design was not what one would hope to see in such a development. She added that Policy 29 of the CDP and Policy S1 of the Neighbourhood Plan both called for development to utilise renewable and low carbon technologies. She noted that the development paid lip service to those policies by offering ducting and cabling for electric vehicles (EV). She asked if it would really be too difficult to provide the charging points too.

Councillor L Brown noted that the developer was providing gas-fired combi boilers to heat the houses. She noted that the development was proposed before the astronomic rise in energy and fuel costs and asked whether it was time for Persimmon Homes to think again about energy. She added that, if factored in at the design stage, photovoltaic panels would not add too much to the cost of the houses but could mean the buyers of those homes would not have to choose between eating and heating.

The Chair thanked Councillor L Brown and asked Mr John Lowe, Chair of the City of Durham Trust to speak in relation to the application.

Mr J Lowe explained that the City of Durham Trust based its objection to the application on three main grounds, the first being inappropriate design.

He explained that the site was surrounded by the Green Belt and the area of high landscape value and added it lay within the boundary of the World Heritage site inner setting. He noted that should have required particular attention to layout and design, however, the scheme failed by offering a standard layout and generic house designs with no distinctiveness or response to the site. He added that the National Planning Policy Framework (NPPF) was revised in July 2021 and was robust on design quality: paragraph 134 stating that “*development that is not well designed should be refused*”.

Mr J Lowe explained that the second ground for refusal was inadequate provision for renewable energy. He explained that there was no evidence that the development either minimised greenhouse gas emissions or sought to achieve zero carbon buildings or renewable energy generation as required by CDP Policy 29. He added that Durham City Neighbourhood Plan Policy S1 required on-site renewable energy generation wherever possible. He noted the developer had submitted a Sustainability Statement and Checklist, but the County Council’s Low Carbon Team’s response to those was lukewarm, saying that they contained limited detail. He added the developer’s offer for renewable or low carbon technologies was a gas boiler with flue heat recovery. Mr J Lowe asked why not solar panels and heat pumps?

Mr J Lowe noted the third ground for refusal was insufficient attention to sustainable transport. He explained that the case officer had provided a good summary of the transport issues and, in paragraph 126 of her report, noted that the poor access to public transport and the nature of the walking routes would be unlikely to “*promote accessibility by a range of methods for all prospective residents*” and would “*not give all future residents realistic alternatives to the private motor car*”. He added this was acknowledged as a “*negative impact to be given weight in the planning balance*”.

Mr J Lowe noted that the lack of garages and space for storing cycles at some houses was contrary to the Durham City Neighbourhood Plan Policy T3. He explained that negative impact and non-compliance with transport-related policies had been identified and that it was open to the Committee to reassess the weight that should be given to those failings. He added that in a climate emergency, where reducing car use was now essential to meet our commitments, the Council should be making every effort to avoid further car-dependent developments.

Members were asked to note that the Trust, other objectors, and the Council’s Sustainable Transport Officer had all made suggestions for improvements to accessibility. Mr J Lowe added that the developer had done hardly anything to address these: a footpath link had been realigned and a footbridge to cross the beck was proposed, that was all.

He explained that the Trust considered that transport sustainability must be given much more weight in this decision, and that further mitigations were necessary to make the application acceptable in planning terms.

In conclusion, Mr J Lowe noted that the Trust considered that it was clear that if the three issues raised were given proper weight, the proposals failed against CDP Policies 20 Green Belt, 21 Delivering Sustainable Transport, 29 Sustainable Design, and against the Durham City Neighbourhood Plan Policies S1 Sustainable Development, H1 Protection and Enhancement of the World Heritage Site, H3 Areas Outside Conservation Areas, G1 Protecting Green Infrastructure, D4 High Standards for Housing, and policies T1-T3 Sustainable Transport. He added that if the Committee accepted the Trust's assessment of the design issues, the application would need considerable reworking and must be refused in its current form. He noted that the renewable energy and sustainable transport issues could potentially be addressed through applying further conditions to achieve the mitigations required.

The Chair thanked Mr J Lowe and asked Mr Paul Hunt, from the Applicant Persimmon Homes to speak in support of the application.

Mr P Hunt began by thanking the consultees and both the Case Officer and Presenting Officer for their report and presentation. He added the application was for 48 dwellings for a new sustainable desirable development, north of Phase 1 development, approved in 2015, noting with only a few of those properties yet to be sold. He explained that the site was allocated under H4 within the CDP for housing and was a brownfield site. He added the site was close to the city centre and therefore sustainable in terms of the available services, facilities, open space, recreational facilities and local schools. Mr P Hunt noted sustainable travel options provided by both bus and train.

Mr P Hunt noted the proposals represented a choice of dwellings to satisfy the needs of central Durham, with two to five-bed designs of types and sizes that were under-provided in the housing market. He explained that 25 percent of the dwellings would be for affordable delivery, noting market testing with three Registered Providers with offers already received. Mr P Hunt explained that the proposals represented a high quality design based upon the principles of the NPPF and being complimentary to the area. He added that the proposals would take inspiration from the Phase 1 development, however, would use materials and design reflecting the neighbouring woods, with balconies and other modern design noting the location near to the new Police headquarters and position on the edge of the historic Cathedral city. Mr P Hunt noted the varied roofscape with single, two storey and two-and-a-half storey elements and explained that significant landscaping and planting was proposed to meet the requirements of the site's allocation in the CDP.

He noted the visually attractive setting and noted a net biodiversity gain of 17.21 percent.

Mr P Hunt informed Members that all plots would have EV charge cable routing and use heat recovery devices on energy efficient gas boilers. He noted the close work with Planners and consultees in terms of the application and explained that additional reports and surveys had been completed. He noted the extensive planning gain package including contributions relating to education, the NHS, offsite public open space, infrastructure implementation and affordable housing.

Mr P Hunt concluded by explaining that there were no adverse impacts that would outweigh the benefits of the scheme, reiterating that the proposals were highly sustainable, of a high quality and visually attractive and therefore, as the proposals were in accord with the development plan, he would respectfully ask that the application be approved.

The Chair thanked Mr P Hunt and asked the Principal Planning Officer to respond to the points raised by the speakers.

The Principal Planning Officer explained that the proposals were a major development and noted that currently the CDP required a 10 percent reduction in carbon dioxide emissions adding that could be achieved through different means including fabric first approach or energy recovery, as in the case with the proposed hybrid gas boilers. He noted that while the application met those requirements, as the scheme was required to be built out also in accordance with applicable building regulations legislations. He explained that Part L of Building Regulations matched to the 10 percent reduction, however, from June 2022 that would increase within changes to the Building Regulations to 31 percent. He noted that new regulations would apply for each new building after that date, rather than for any whole site.

In respect of the installation of EV charging points rather than just providing the cabling and ducting, the Principal Planning Officer noted that as there was no standard in relation to EV charging, if a specific charger was installed that would then limit the choice of EV for the homeowner. He added the site was an allocated development site and noted the adjacent employment sites and nearby schools. In reference to the design, the Principal Planning Officer noted that Officers had considered the proposals through the usual robust process and had come to the conclusion to recommend the application for approval.

The Chair asked for clarification as regards the garages that were proposed, noting they were not large enough to store a car.

The Principal DM Engineer, David Battensby explained that if a garage was not large enough to house a car it would not be considered as a parking space when looking at parking provision. He added that this had been taken into account when assessing the proposal and the proposed in-curtilage parking and non-allocated parking met the DCC Standard.

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

Councillor D Brown explained that he had read the report and listened to the presentation and speakers very carefully and noted that the main point appeared to be sustainability. He asked for further details as regards the 'sustainability checklist' as referred to in Condition 26. The Principal Planning Officer explained that it was a validation requirement of all major developments, with the Council's Low Carbon Officer asking the developer what they were proposing to do. He added that it was a tool to ensure what was deliverable. He noted that the proposals were acceptable in terms of planning policy, securing a 10 percent carbon reduction, and reiterated, beyond planning, the Building Control regulations that were coming into effect would require a reduction of 31 percent.

Councillor K Shaw noted he had read the report and listen to the speakers and moved approval of the application. Councillor D Brown seconded the motion for approval.

Councillor J Elmer noted that the application site was around 600-700 metres from the nearest bus stop and noted that the impact on groups, such as older persons, disabled and those not able to drive, was very problematic. He noted the only solution for those people would be to book a taxi, a serious problem. He noted a major application within his Electoral Division and explained that speaking to older people in his community as regards that application, the importance of accessibility had been raised and therefore he felt it was not possible to move forward with such an application. Councillor J Elmer noted the situation as regards garage provision and explained it would lead to further congestion on the roads and footpaths. He asked why construct garages that would not fit a car, noting that it may be preferable to repurpose the space. He added that the application appeared to create car dependency when that was something that all were trying to move away from. He noted the large prominent site and the impact upon the tree belt, adding that the scaling down from 58 to 48 dwellings was welcomed.

Councillor J Elmer noted the H4 allocation in the CDP, within the green belt, noting that the developer had to argue for the release, with the Inspector having said there must not impact the tree belt. He added he felt the proposals represented an unacceptable impact upon the tree belt with 11 plots, around a fifth of all proposed properties, bordering the tree belt.

He noted that it was likely that owners would want to trim the trees or want trees removed and asked if Tree Preservation Orders (TPOs) were an option.

He noted a lack of detail in terms of new planting and Hopper's Wood, and asked as regards long-term maintenance, explaining as regards a large development in his area where the developer had not completed landscaping works after five years, and he noted he would not want to assume it was dealt with by condition.

Councillor J Elmer reminded Members that the Council had declared an Ecological Emergency and he added that there were concerns in relation to impact upon the area from the large number of people and their pets. He noted the potential impact upon the ancient woodland and added he felt it would not be alleviated. He added that the site-based ecology gain in terms of bird and bat boxes was welcomed, noting that his concern related to future maintenance and asked if a covenant could be made to ensure they were maintained.

Councillor J Elmer reminded Members of the Climate Emergency that had also been declared by the Council and noted that no energy statement had been included with the application, with no sign of zero carbon building or sustainable energy on site, adding those were requirements of Policy 29. He added that paragraph 161 of the report noted the proposals were in line with the minimum 10 percent and that the applicant had not provided any further information. He noted no photovoltaics, no ground source heat-pumps and added that the cost of such technology was being pushed upon future occupiers and asked if the radiators that were to be installed were compatible with future technology such as heat-pumps.

Councillor J Elmer noted the Low Carbon Team had stated to minimise resources, including energy, and to encourage renewable energy technology on-site and asked why that was not being applied to the proposed development. He noted, in summary, that he felt the application failed in terms of: Policy 21, Sustainable Transport; Policy 4, in retaining the tree belt; and Policy 29, carbon reduction. He explained that he felt the Council should be pushing the applicant to come back with an improved proposal and therefore he would move that the applicant be deferred. Councillor J Cosslett seconded Councillor J Elmer.

The Principal Planning Officer noted the issues raised in terms of sustainability, and as regards the difficulties in terms of encouraging bus operators to alter their routes. He noted the balance of factors including carbon footprint and added those were for Members to consider. He noted that the location of the site may dissuade some potential buyers, that being an issue for market forces.

He noted that TPOs were an option in terms of protecting specific trees and added that conditions referred to roosting bats and nesting birds.

The Principal Planning Officer noted the references to the comments as regards the overall Sniperley site, made at different stages within the development of the CDP and subsequent applications, however, he reminded Members that the application before Committee was felt by Officers to be acceptable and therefore was recommended for approval, subject to conditions and s106 Legal Agreement.

The Lawyer (Planning and Highways) noted there were two motions, the first being for approval. He noted that if that motion was not carried then he would come back to Councillor J Elmer for additional information on relating to his motion for deferral.

The Chair asked as regards TPOs, whether they would be by condition or other means. The Principal Planning Officer noted an option would be to add a condition attached to the application, another would be via TPO, with the Council to ensure they were in place following the application, if approved.

Councillor N Jones asked for clarification as regards central heating systems and up to what date gas boilers would be fitted. Councillor J Elmer noted that after 2025 they were no longer to be fitted. The Chair emphasised that they would not be ripped out at that time, just that they could not be replaced with a gas boiler after that date. The Principal Planning Officer explained that the Government aim was for carbon neutral by 2050, with the 2025 date in terms of no longer being able to fit gas boilers being a means to achieve that aim. Councillor J Cosslett noted from a recent visit to a school that had heat pumps installed that they had required larger radiators in order to give the same heat distribution. The Principal Planning Officer reiterated that such issues would be picked up under Building Control regulations. Councillor J Elmer asked for clarification that existing regulations would apply, and properties would not require a retrofit, noting building regulation changes had not yet taken place. The Principal Planning Officer reiterated the timescales relating to building regulations and explained that they were also such that they would come into effect for each property constructed after the date of the new regulations were implemented, with the old regulations not applying for a whole site where first construction on a site had began prior to the new regulations.

Councillor J Elmer noted the on-site ecological gain and asked what mechanism there would be to require residents to maintain the provision. The Principal Planning Officer explained that Condition 22 made reference and, if the Members proposing approval were minded, 'in perpetuity' could be added.

The Lawyer (Planning and Highways) noted the issues raised in relation to Building Control regulations, however, they were a separate matter and reminded Members to focus upon planning policies. In reference to the proposed amendment to Condition 22 he asked Councillor K Shaw as the Member who had put forward the motion for approval. Councillor K Shaw noted he was satisfied with the proposals as set out in the Committee report and would not amend his motion for approval.

Upon a vote being taken it was:

RESOLVED

That the application be **APPROVED** subject to the conditions and Section 106 Legal Agreement as set out within the report.