

COMMITTEE REPORT

APPLICATION DETAILS

APPLICATION No: 4/12/00154/VOC

FULL APPLICATION DESCRIPTION: Variation of condition 2 of application 11/00748/FPA (Demolition of existing bungalow and erection of 2 no. dwelling houses) revising layout of site together with alterations to rear elevation of northern plot dwelling and roof profile on southern elevation of southern plot dwelling

NAME OF APPLICANT: Oaktree Homes

ADDRESS: Plot 5N and Plot 5S Bishopsgate, 48 North End, Durham, DH1 4LW

ELECTORAL DIVISION: Elvet

CASE OFFICER: Henry Jones
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DESCRIPTION OF THE SITE AND PROPOSALS

The Site

1. The application site comprises the residential curtilage of The Nook (now demolished) and an adjacent parcel of land formerly within the curtilage of a nursing home at 48 North End. At the time of the determination of the full planning application to which this variation of condition relates the site contained a garage located at the northern end of the site providing access to North End, adjacent to this were two small outbuildings and beyond a parcel of vacant land which is part of a larger development site at 48 North End. The site borders the properties of Fieldhouse Lane to the west with a hedge and fencing.
2. Since the grant of this planning permission, works have commenced on site and are well advanced toward completion.
3. Trees are located beyond but within very close proximity to the application site, namely a large sycamore on the highway to north west protected by a tree preservation order, a cherry and silver birch located on the highway directly to the north of the site and a large leylandii located within the rear garden of No. 25 Fieldhouse Lane.

The Proposal

4. This application seeks to vary condition 2 of planning permission 11/00748/FPA - demolition of existing bungalow and erection of 2 no. dwellinghouses. Condition 2 required that the development be implemented in accordance with the approved plans. For clarity the full wording of said condition was as follows;

“The development hereby approved shall be carried out in strict accordance with the following approved plans:

Plan 4 received 13th September 2011 and plans 1A, 3, 5B, 6A, 7B, 8A, 9B, received 28th November 2011

Reason: To define the consent and ensure a satisfactory form of development having regards to Policies , E16, H2, H13, T1, T10, Q8, U5, U8A and U11of the City of Durham Local Plan 2004.”

5. Since the grant of this planning permission following December’s (2011) Planning Committee, works commenced on site and it became evident that there were some inconsistencies with the approved plans as well as some further design amendments, as described below:
6. The proximity of the dwellings as partly constructed on site was found to be closer to properties on Fieldhouse Lane.
7. The width across the application site (east-west) was found to be less than the approved plans showed. The depth of some garden spaces of properties on Fieldhouse Lane was found to be less than shown on the approved plans.
8. The depth (east-west) of the two dwellings as partly constructed on site was found to be slightly less than that on approved plans. On the side (southern) elevation of the southern plot two roof gable features were found to be incorrect with the westernmost gable feature lower than on approved plan and the easternmost gable feature higher than on approved plan.
9. In addition some additional changes are also proposed to the northernmost dwelling that being the removal of the two storey projecting bay to the rear (west) elevation, the removal of one bedroom at first floor and removal of a balcony area. A small single storey infill is proposed providing store and kitchen space on the northernmost dwelling. Rooflights have also been repositioned on the southernmost dwelling. A list in table form and marked up plan of the surveyed discrepancies between approved plans and that surveyed on site is attached as an addendum to this report for information.
10. In terms of the distances as depicted on the plans accompanying this application these have been confirmed through an independent survey by the County Council to ensure accuracy (appendix 1).
11. The application is being presented to Committee at the request of the local divisional member.

PLANNING HISTORY

12. This application site in part comprises of land formerly within the curtilage of a nursing home which is presently being developed following the grant of planning permission in

2009 for 3 dwellings in full (plots 2, 3 and 4) and a further 4 dwellings (plots 1, 5, 6 and 7) in outline.

13. An application for works to protected trees including the felling of a lime and a cherry tree was also approved in 2011.
14. Later that year a retrospective application for an amended plot 4 dwelling was refused but later, following further revisions, a resubmission was approved.
15. The reserved matters for the plot 1 dwelling was also approved in 2011.
16. In November 2011 an application for the demolition of The Nook and erection of a single dwelling was approved. This application being a resubmission of an identical development approved in 2007.
17. In December 2011 planning permission was granted for the erection of 2 no. dwellings on land comprising of the former plot 5 site but also incorporating the land upon which The Nook bungalow was situated. This pending application seeks to vary condition 2 of this approval.
18. In March of this year full planning permission was granted for a single dwelling on the plot 6 site and a resubmitted reserved matters application for a single dwelling on the plot 1 site was also approved.

PLANNING POLICY

NATIONAL POLICY

19. On March 27th 2012 the Government published the National Planning Policy Framework (NPPF). The framework is based on the policy of sustainable development and establishes a presumption in favour of sustainable development. Three main dimensions to sustainable development are described; economic, social and environmental factors. The presumption is detailed as being a golden thread running through both the plan making and decision-taking process. This means that where local plans are not up-to-date, or not a clear basis for decisions, development should be allowed. However, the NPPF does not change the statutory status of the development plan as the starting point for decision making. Proposed development that accords with an up-to-date Local Plan should be approved and proposed development that conflicts should be refused unless other material considerations indicate otherwise. Planning Policy Statements and Planning Policy Guidance Notes are cancelled as a result of the NPPF coming into force. The Regional Spatial Strategy remains part of the Development Plan until it is abolished by Order using powers within the Localism Act.

The above represents a summary of the NPPF considered most relevant the full text may be accessed at:

<http://www.communities.gov.uk/publications/planningandbuilding/letternppf>

REGIONAL PLANNING POLICY

20. *The North East of England Plan - Regional Spatial Strategy to 2021 (RSS) July 2008*, sets out the broad spatial development strategy for the North East region for the period of 2004 to 2021. The RSS sets out the region's housing provision and the priorities in economic development, retail growth, transport investment, the environment, minerals

and waste treatment and disposal. Some policies have an end date of 2021 but the overall vision, strategy, and general policies will guide development over a longer timescale.

21. In July 2010 the Local Government Secretary signalled his intention to revoke Regional Spatial Strategies with immediate effect, and that this was to be treated as a material consideration in subsequent planning decisions. This was successfully challenged in the High Court in November 2010, thus for the moment reinstating the RSS. However, it remains the Government's intention to abolish Regional Spatial Strategies when the forthcoming Local Government Bill becomes law. Both the RSS and the stated intention to abolish are material planning considerations and it is a matter for each Planning Authority to decide how much weight can be attached to this stated intention, having regard to the evidence base which informs the RSS. Policies of particular relevance to this application are as follows:
22. *Policy 2 - Sustainable Development* planning proposals should seek to promote sustainable development through social, economic and environmental objectives.
23. *Policy 4 - The Sequential Approach to Development* establishes that priority should be given to previously developed land within sustainable locations.
24. *Policy 7 - Connectivity and Accessibility* which requires new development proposals to reduce travel demands, and promote opportunities to use public transport, cycle and walk.
25. *Policy 8 - Protecting and Enhancing the Environment* which requires new development to be of high quality and maintain local distinctiveness.
26. *Policy 24 - Delivering Sustainable Communities* states that planning proposals should seek through design to promote social cohesion, reduce inequalities as well as meeting sustainable development objectives.
27. *Policy 30 - Improving Inclusivity and Affordability* sets out that developments should provide a range of housing types and sizes responding to the needs of all members of the community as well as addressing affordability issues.
28. *Policy 33 - Biodiversity and Geodiversity* requires planning proposals to ensure that the Region's ecological and geological resources are protected and enhanced to return key biodiversity resources to viable levels.
29. *Policy 35 - Flood Risk* promotes a proactive approach to reducing flood risk and advises that risk should be managed with regards to tidal effects, fluvial flooding and flooding from surface water runoff. The requirements of PPS25 with regards to the sequential approach and submission of flood risk assessments.
30. *Policy 38 - Sustainable Construction* seeks to promote development which minimises energy consumption and promotes energy efficiency. On major development proposals 10% of their energy supply should come from decentralised and renewable or low-carbon sources.

LOCAL PLAN POLICY: (City of Durham Local Plan 2004)

31. *Policy E14 - Trees and Hedgerows* sets out the Council's requirements for considering proposals which would affect trees and hedgerows. Development proposals will be required to retain areas of woodland, important groups of trees, copses and individual

trees and hedgerows wherever possible and to replace trees and hedgerows of value which are lost. Full tree surveys are required to accompany applications when development may affect trees inside or outside the application site.

32. *Policy E16 - Protection and Promotion of Nature Conservation* is aimed at protecting and enhancing the nature conservation assets of the district. Development proposals outside specifically protected sites will be required to identify any significant nature conservation interests that may exist on or adjacent to the site by submitting surveys of wildlife habitats, protected species and features of ecological, geological and geomorphological interest. Unacceptable harm to nature conservation interests will be avoided, and mitigation measures to minimise adverse impacts upon nature conservation interests should be identified.
33. *Policy H2 - New Housing Development in Durham City* states that the development of previously developed, or 'brownfield' land will be permitted providing it accords with the more detailed development proposals of the Council.
34. *Policy H13 - Residential Areas – Impact upon Character and Amenity* states that planning permission will not be granted for new development or changes of use which have a significant adverse effect on the character or appearance of residential areas, or the amenities of residents within them.
35. *Policy T1 - Traffic – General* states that the Council will not grant planning permission for development that would generate traffic likely to be detrimental to highway safety and/or have a significant effect on the amenity of occupiers of neighbouring property.
36. *Policy T10 - Parking – General Provision* states that vehicle parking should be limited in amount, so as to promote sustainable transport choices and reduce the land-take of development.
37. *Policy Q8 - Layout and Design – Residential Development* sets out the Council's standards for the layout of new residential development. Amongst other things, new dwellings must be appropriate in scale, form, density and materials to the character of their surroundings. The impact on the occupants of existing nearby properties should be minimised.
38. *Policy U5 - Pollution Prevention* seeks to control development that will result in an unacceptable impact upon the quality of the local environment.
39. *Policy U8a - Disposal of Foul and Surface Water* requires developments to provide satisfactory arrangements for disposing foul and surface water discharges. Where satisfactory arrangements are not available, then proposals may be approved subject to the submission of a satisfactory scheme and its implementation before the development is brought into use.

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.durham.gov.uk/Pages/Service.aspx?ServiceId=494>

CONSULTATION AND PUBLICITY RESPONSES

STATUTORY RESPONSES:

40. None

INTERNAL CONSULTEE RESPONSES:

41. Design and Conservation have commented on the application and the design of the dwellings is considered to be of interest. However, overall, objection is raised to the application and development of the two houses. The development is considered overdevelopment and out of keeping with the area with a lack of breathable space between property. Concerns over the development and trees are also raised, therefore they do not look favorably on the development.

PUBLIC RESPONSES:

42. A total of 46 letters and emails of representation have been received with regards to this development.
43. Objection is raised to the continuing problems of the Bishopsgate development site in relation to development proceeding and failing to accord with the approved plans. Objection is raised to the size and height of the dwellings, gable as opposed hipped roof profile, the small gardens, detailed elevational treatment including use of cladded elements and glass balustrades. Several letters point out discrepancies between the development on site and that which was shown on the previously submitted application. The degree of surveying errors between the previously submitted plans and the land is considered grossly negligent by some residents, who also believe that the developer has deliberately submitted misleading information to aid planning permission being gained in the first place. Queries are raised as to how the development is being monitored by the planning department. Queries are also raised that the developer or those working on behalf of him are working to different plans. The development should be made to comply with the originally approved plans, works should not be allowed to continue and this is resulting in a disadvantage to residents as the developer will be less likely to be made to amend the development the more the build is completed. Requests are made that strong action against the developer is made by the Council including being made to demolish the works which have taken place. Without action being taken it gives developers the signal that the planning department has lost control over the development. The planning department must take responsibility for the problems at the site.
44. The dwellings cause a loss of privacy. The development is considered to be overdevelopment and Design and Conservation recommended refusal of the original application on this basis. Queries are raised as to why so many copies of letters informing residents of the application have been issued through the post, this is a waste of resources. Requests are made to clearly explain the plans and changes to the scheme, provide measurements of the dwellings, distances to nearby property, sizes of garden spaces and also clarify whether the submitted plans coincide wholly with the Planning Authority's surveying. A request is also made that a plan and montages accurately depicting the whole site are submitted. Detail on the size of garden spaces is requested. The application is considered a "done deal" by one resident. The views of local residents are not considered to be adequately heard, reference is made to a recent article regarding the development site in the Durham Times. Conditions requiring the painting of a fence and planting of a hedge on the plot 4 dwelling still have not been complied with.
45. Clarification is sought on the consultation period and exactly when public responses should be submitted to the Council, conflicting information has been disseminated in relation to this. It is considered that the application for a variation of condition is not the correct manner in which the scheme should be being considered. The originally approved plans were utterly illegitimate and consideration of the issues being limited to a variance to the approved plans disadvantages residents. The original application was

approved subject to conditions and it is understood that the discharge of these has not been fulfilled by the developer further strengthening that the application is void.

46. Queries are raised as to how another company can oversee building regulations and should this not be done by the Council. With regards to highways issues queries are raised with regards to the location of parking spaces, that the access road will be blocked by cars, what would stop owners converting garages to further accommodation. Objections are raised to the noise of the works onsite which has included working on Saturday and Sunday.

APPLICANTS STATEMENT:

47. The application has been accompanied by a covering letter in support of the application seeking to explain some of the discrepancies that has occurred on site in comparison to the previously approved plans. The developer regrets the surveying inaccuracy which in part has come from a difficulty in accurately depicting a hedge and boundaries on the former Nook site.
48. The developer has sought to reduce the plot 5N dwelling to compensate. Reference is made to the previous grant of planning permission for a single dwelling on the plot of the former Nook property which was considered to be located virtually on the boundary with the Fieldhouse Lane properties.
49. Whilst it acknowledged that work on the properties is continuing they have worked openly with the planning department, who have visited the site on numerous occasions and have agreed changes to address their and resident's concerns.

The above represents a summary of the comments received on this application. The full written text is available for inspection on the application file which can be viewed at:

<HTTP://217.23.233.227/WAM/SHOWCASEFILE.DO?ACTION=SHOW&APPTYPE=PLANNING&APPNUMBER=12/00154/VOC>

PLANNING CONSIDERATIONS AND ASSESSMENT

50. Planning permission is sought to vary condition 2 of planning application 11/00748/FPA through the submission of a section 73 application.
51. Amongst the public objections to the development, questions are raised as to whether it is correct for a variation of condition application to be submitted as the original planning permission is considered to be inaccurate.
52. Section 73 of the Act provides for applications for planning permission to develop land without complying with conditions previously imposed on a planning permission. The Local Planning Authority can grant such permission unconditionally or subject to different conditions, or they can refuse the application. Section 73A of the Act provides, among other things, for retrospective planning applications to be made in respect of development which has been carried out without permission and for applications for planning permission to authorise development which has been carried out without complying with some planning condition to which it was subject.
53. Greater flexibility for planning permissions guidance was issued in 2009 encouraging a greater use of section 73 applications to provide a more responsive and proportionate response from Local Planning Authorities to material variations to planning applications. There is no statutory definition of a minor material amendment. However, a definition is

provided within the greater flexibility guidance which is "A minor material amendment is one whose scale and nature results in a development which is not substantially different from the one which has been approved."

54. Officers acknowledge the discrepancies between the approved plans and the works which have commenced on site including the inaccuracies of the previously approved plans in terms of the dimensions of the land and in turn proximity to other property. However, the nature and scale of the development is not considered to be so significantly different that a variance of the plans via a section 73 application cannot be an acceptable form of application.
55. In the determination of this type of application however, the Local Authority must have due regard to the Development Plan and other material considerations and should approval be granted a new planning permission would result.
56. The focus of the determination of the this S73 application is on the changes between the original planning application and this variation of condition submission having regard to any changes to the Development Plan or material considerations that may have occurred in the intervening period. The key issues pertaining to the development of the two dwellings are, consistent with the original application, considered to relate to the principle of the development, impact upon the character and appearance of area, impacts upon residential amenity, highway safety, impacts on trees and protected species.

Principle of the Development

57. Within the previously approved application, the original application took in a residential property and ancillary buildings and in part the former curtilage of a nursing home. The application site is also located within the settlement boundary of Durham City and within close proximity to the City Centre.
58. The application site comprises of the curtilage of The Nook and part of the former nursing home. The Nook site has a history of planning approvals for replacement residential development with approvals in 2007 and 2011. The remaining land within the application site formed part of the former nursing home site which gained planning permission in 2009 for 7 no. dwellings.
59. Sections of the land were therefore considered to be previously developed land as they contained a dwelling and ancillary buildings to be demolished and formerly contained part of a nursing home site.
60. Policy H2 of the Local Plan accepts the principle of windfall development of previously developed parcels of land within Durham City. The proposal sought to redevelop a part brownfield, part Greenfield parcel of land within the settlement boundary of Durham City. The proposal was considered to constitute an efficient use of land with good access to services and public transport in accordance with the National Planning Policy Framework. This establishes a presumption in favour of sustainable development. The proposal is re-using land within a sustainable location and as result the development is considered to accord with this overarching aim.
61. Significant weight was also attributed to the history of extant planning permissions for residential development on the land.
62. As a result, the principle of the development was accepted. This variation of condition application once again proposes 2 no. dwellings on the application site only with the

varied detail of the plans. The use of the land essentially remains the same as the previous planning application.

63. Since the previous grant of planning permission the NPPF has come formally into effect and Planning Policy Statements and Planning Policy Guidance Notes have been replaced. Residential development on the land is still considered to accord with the provisions of the Development Plan and the NPPF as aforementioned.

Impact upon Visual Amenity and the Character and Appearance of the Area

64. A key consideration in the determination of this application is the suitability of the design, scale and massing of the proposal and in turn its impact upon the character and appearance of this part of the Durham.
65. Much public objection relates to the scale and appearance of the dwellings within this application with objection raised to the height and general scale of the dwellings, use of gable end rather than hipped roof profile. Some objectors consider the development is overdevelopment of the application site and objection is raised to the garden sizes, objection is raised to the glass balustrades and use of cladding.
66. Design and Conservation, have objected to the proposed development considering that the proposal constitutes overdevelopment and is out of keeping with the area with a lack of breathable space between property. Design and Conservation did not issue comments on the original planning permission in 2011 until after the determination of the application.
67. The architecture and design principles of the dwellings have not changed from the planning permission of 2011. The dwellings are large properties with accommodation in the roof space and incorporate feature chimneys, gable ends and bay features which remain on the southern dwelling though not now on the northern dwelling.
68. Through the approval of the 2011 application the general scale and design of the dwellings was accepted. Reference in the officers Committee report was made to the large NHS building "North End House" which contains similar design features.
69. With this variation of condition application the removal of the bay window to the rear (west) elevation of the northern dwelling is considered to cause no detriment to the original design. A slight projection of around half a bricks worth is left to provide some depth to this elevation and allow for essentially the same appearance to the elevation only this time with the reduction in projection. No objections are raised to this alteration. Adjacent to this the originally approved application proposed a small balcony area accessed via a set of first floor french doors to a bedroom. These french doors have been removed and replaced with an obscure window to en-suite and the enclosed balcony no longer proposed. No harm to the appearance of the dwelling will result from these changes.
70. The South elevation of the southern dwelling features two gable offshoots. On the original application the rear (westernmost) of these was to be the higher and the forwardmost (easternmost) was to be the lower. As works on this property have evolved, the reverse has occurred on site with the rearmost (westernmost) gable element 0.49m lower than was proposed originally and the forward most (easternmost) 0.7m higher than proposed. However, this switch and the lowering of one part and heightening of another is not considered to cause harm to the appearance of the dwelling.

71. From measurements taken on site the dwellings themselves are of the same general size and scale as those previously approved under the application of 2011. The only increase in footprint is with reference to the northernmost dwelling now proposing a single storey infill extension providing a store area and additional kitchen space.
72. Due to the incorrect surveying of land in the first instance, the two dwellings are in the correct position but the distance to surrounding dwellings is reduced effectively through a reduction in the garden areas compared to the approved plans.
73. The inaccurate surveying of the land has resulted in the build to plot ratio increasing, garden spaces have been reduced in size and the dwellings are closer to adjacent property. Effectively the total amount of open space that sits behind the two dwellings has reduced from the previously proposed 420m² to 310m² which equates to a reduction of 26%. It is a matter of judgement as to whether the development is now considered to represent overdevelopment and whether the breathable space about the dwellings in the area is now unacceptable. Officers do not consider that the difference between the previously approved scheme and that which has now been developed on the land is so significant as to now consider that it constitutes overdevelopment warranting refusal. Officers consider that the proximity of the dwellings to Fieldhouse Lane is not such that it harms the character or appearance of this part of North End.
74. Further public objection relates to detailed elements of the design namely the use of gable roof profiles, glass balustrades and aluminium cladding. The glass balustrades formed part of the originally approved application and were not considered unacceptable and weight must be attributed to this. With regards to the cladding, a condition was placed on the original application with regards to final material use and the specific design of the clad areas. It was agreed under the discharge of condition submission that the use of grey render was a more appropriate design solution and this is now shown on the plans. Examples of gable pitched roof profiles exist in the area such as the NHS building North End House and indeed steeply pitched roofs are a commonplace feature in Durham City.
75. On balance officers do not raise objection the scale and design of the proposed dwellings or their impact upon the character of the area. The development is considered to accord with relevant policies H2, H13 and Q8 of the Local Plan in this regard and the provisions of the NPPF, most notably section 7 "Requiring Good Design".

Impact upon Residential Amenity

76. Policies H2, Q8 and H13 of the Local Plan seek to ensure that the amenities of neighbouring residents and land users are preserved through new developments.
77. Public objection received in relation to the application includes objection to the impact of the development upon residential amenity. Points are raised with regards to the greater proximity of the dwellings to neighbouring property, the scale of the dwellings and the potential for overlooking.
78. Within the Committee report of the originally approved application the proposed dwellings were detailed as being large properties both containing accommodation in the roofspace and the proximity to one another would also create a lengthy, continuous build when viewed from the east and west.

79. Policy Q8 of the Local Plan provides advice on the layout of residential development and provides separation distances guidance seeking to ensure that the residential amenity of all occupiers is retained within a development. This guidance states that from a window to a single storey gable 6m separation should be maintained and to a two storey gable 13m should be maintained. This is to ensure that adequate outlook is retained for occupiers and that one development is not too overbearing upon another. In terms of privacy Policy Q8 advises that 21m should remain between the main facing windows.
80. The nearest existing properties to the proposed development are those at the northern end of Fieldhouse Lane and the adjacent, recently developed plot 4 site at Bishopsgate. Within the previously approved plans the rear of the northernmost of the dwellings was to be located 19m from the rear extension of No. 26 Fieldhouse Lane at the nearest point. This nearest offshoot of the proposed dwelling was to contain just a single window to en-suite and dress space within bedroom and conditions required that these were to be obscure glazed. The revised application having removed the projection of the rear bay in the northern dwelling is now located 18m from the rear of No. 26 a difference of 1m. The only west facing window to habitable accommodation at first floor within the originally approved plans in the proposed northern plot was to a bedroom with a small balcony outside. The balcony was to be 21m from the nearest window within No. 26 Fieldhouse Lane. Within this revised application the balcony area is not proposed and the access doors replaced with a window. This window is proposed to an en-suite rather than a bedroom as a bedroom has now been removed from the first floor plan and this en-suite window can be conditioned so as to be obscure glazed on any approval. The nearest elements of the northernmost dwelling are therefore 18m rather than 19m from the rear of No. 26 Fieldhouse Lane. Local Plan Policy Q8 states that 13m should remain to a blank two storey gable. The west facing elevation of the northernmost dwelling is not wholly blank though no clear glazed windows at first floor to habitable accommodation are proposed. The established boundary between No. 26 Fieldhouse Lane and plot 5N dwelling will prevent views from the ground floor of the dwelling into No. 26 Fieldhouse Lane.
81. Within the previously approved plans the plot 5S property was to be 25m from the rear of No. 25 Fieldhouse Lane. This would include windows to main habitable rooms, ground floor kitchen/dining space and lounge and first floor bedroom accommodation. A dormer within west facing roofslope would be to a studio space. The ground floor bedrooms would be obscured by the boundary treatment between the properties. The separation distances of 25m to the bedrooms and No. 25 Fieldhouse Lane and 27.5m to the dormer considered to be of sufficient length to prevent a loss of privacy, again taking into consideration the height of the proposed dwelling and change in levels.
82. The inaccuracy in those plans has resulted in the closer proximity of the southernmost dwelling and the nearest property No. 25. The very closest element of the proposed southern dwelling now considered to be 21.5m away from No. 25 and this element would include ground floor family room and kitchen space and first floor bedroom accommodation. The guideline within Policy Q8 of the Local Plan is that a distance of 21m should remain between windows to allow for adequate privacy. The distance of 21.5m accords with this. Furthermore existing boundary landscaping obscures some of these views further particularly at the ground floor level.
83. Separation distances from the proposed dwellings to other neighbouring properties namely Nos. 24 and 23a Fieldhouse Lane and properties on The Grove are greater still and impacts upon residential amenity considered acceptable.
84. Adequate amenity is also considered to be provided for prospective occupiers of the dwellings. Consideration must be given to the reduced area of garden which both

properties now have as a result of the inaccurate surveying and altered proposal. The garden spaces proposed are not large. However, it must also be noted that in addition to any rear lawned areas each dwelling would be provided with a pergola outdoor space. On balance the amount of garden area is considered acceptable for the size of dwelling .

85. With the requirements of Policy Q8 of the Local Plan being met officers do not object to the proposal on the grounds of a loss of privacy or amenity.

Highways Issues

86. Within the previously approved application from last year the Highway Authority initially raised concern that a further parking space in addition to the double garage for each property would be needed given the size and occupancy levels.
87. Revised plans submitted during the course of the application identified that a further parking space within the curtilages would be located to the front of the entrance into each property. Provided that this space is utilised as a driveway and that the double garages are not converted the Highway Authority raise no objections to the development.
88. Despite the variances in the plans and development on site to which this application relates, each dwelling retains a double garage and parking space and no additional highways implications are considered to emerge through the application. It must be noted that the revisions to the plot 5N dwelling has resulted in one less bedroom now being proposed therefore, if anything, a slight reduction on the pressure for parking would result from this revised application.
89. Some public objection to the development raises concerns over parking matters, whether the access road would be blocked with cars and what provisions would be made to ensure that garage and curtilage space is available for parking. Conditions can as in the previous approval be attached to any approval to prevent the garages from conversion to habitable rooms and ensure that the adjacent spaces are not an enclosed courtyard space but utilised as a driveway.
90. It must be noted that Policy T10 of the Local Plan seeks to limit parking provision in new development so as to promote sustainable transport choices and therefore the proposed 3 parking spaces is considered adequate for each of the properties.
91. As a result officers do not raise objection to the proposal on the grounds of harm to highway safety in accordance with Policies T1 and T10 of the Local Plan.

Impact upon Protected Species

92. Policy E16 of the Local Plan and Policy 33 of the RSS seek to conserve nature conservation assets and prevent harm to protected species through development. This aim is replicated through the NPPF most notably at paras. 118 and 119.
93. Bats are a protected species and the presence of protected species such as bats is a material planning consideration. The requirements of the Habitats Directive were brought into effect by the Conservation (Natural Habitats etc) Regulations 1994 (since amended). These regulations established a regime for dealing with derogations which involved the setting up of a licensing regime administered by Natural England. Under the requirements of the Regulations, it is a criminal offence to kill injure or disturb the

nesting or breeding places of protected species unless it is carried out with the benefit of a license from Natural England.

94. The species protection provisions of the Habitats Directive, as implemented by the Conservation (Natural Habitats etc) Regulations 1994 (as amended) contain 3 no. "derogation tests" which must be applied by Natural England when deciding whether to grant a license to a person carrying out an activity which would harm an European Protected Species (EPS). For development activities this license is normally obtained after planning permission has been granted. The three derogation tests are as follows; the activity to be licensed must be for imperative reasons of overriding public interest or for public health and safety; there must be no satisfactory alternative and; favourable conservation status of the species must be maintained.
95. Notwithstanding the licensing regime the Local Planning Authority must discharge its duty under Regulation 3(4) and also address its mind these three tests when deciding to grant planning permission for development that could harm an EPS. Within the previously approved application a bat survey did accompany the application as demolition of "The Nook" was proposed. The survey found no evidence of bats but mitigation measures were proposed in the form of bat bricks being inserted into the development. These bat bricks can be incorporated into this revised proposal and are shown on the submitted revised plans. The location of these bat bricks has previously been agreed by the Council's senior ecologist. On balance no objections are raised with regards to the development and impact upon protected species.

Impact upon Trees

96. Policy E14 of the Local Plan specifically seeks to retain trees of value or where they are to be lost to development seeks to ensure that an adequate compensatory landscaping plan is received. Design and Conservation in their response to this application have raised some concerns over the impact of the development upon trees. The previously approved application was accompanied by a tree report and a scaled plan indicating the canopy and root protection areas of the trees.
97. In the determination of that application, informed by the views of the Councils tree officer and landscape architect, all trees and landscape features within the site were considered of little value or quality and objections were not raised to their loss.
98. The most valued trees within the area are actually beyond the application site namely a cherry, silver birch and protected sycamore all of which are located on the highway to the north of the application site. The other dominant tree adjacent to the site is a large Leyland cypress within the garden of No. 25 Fieldhouse Lane. It was considered under the previously approved application that due to the location of the development from the root protection areas of these trees the development should not cause a harmful impact. It would be necessary, however, to protect those trees.
99. Protective fencing has been erected for the duration of the works that have been undertaken in relation to the two dwellings and provided that said fencing remains in place until the developed is complete, which can be conditioned, the trees of value would be protected from the development, raising no objections from officers. It was agreed prior to the commencement of works that the southernmost apple tree which would be unaffected by the build should be retained and a condition can be attached to ensure this.

Other Issues

100. The previously approved application included a condition requiring the agreement of a scheme for the disposal of foul and surface water. Under the submission to agree this condition such details were provided and agreed by the Local Planning Authority in consultation with Northumbrian Water. The details of the drainage arrangements are now shown on the submitted plans and in the event of an approval it is not considered that a specific condition is required to be attached again. The application is considered to accord with the provisions of Policy U8A of the Local Plan.
101. Much public objection relates to the continuation of the development on site despite the known inaccuracies of the submitted plans on the previous application. Objection is raised towards the actions of the developer repeatedly failing to develop in accordance with the approved plans with requests for strong action from the Council to cease development and subsequently some dismay from residents that this has not come into fruition. Some residents also consider that as the development has now continued for such a period and to such an extent the likelihood of the Council considering the development unacceptable and taking action will have reduced. Some public respondents consider that the inaccuracies in the plans originally submitted were deliberate to help the developer gain planning permission in the first place. Questions are raised as to how the Local Planning Authority has been monitoring the development.
102. Much consideration has been given to whether it would have been right, prior to this Committee meeting to take formal enforcement action. In considering any enforcement action, the decisive issue for the LPA should be whether the breach of control would unacceptably affect public amenity or the existing use of land and building meriting protection in the public interest.
103. Officers considered that despite the discrepancies in the development site and the previously approved plans that the development remained one which accorded with the provisions of the Development Plan. It was considered therefore that any enforcement action, through for example the serving of an enforcement notice and/or stop notice should not occur. Instead the application as now submitted should be considered on its own merits.
104. Officers have no means of determining whether the inaccurate plans were issued deliberately or not, neither is this relevant to the decision. The covering letter accompanying the planning application makes reference to these inaccuracies demonstrating that it was not a deliberate act.
105. In terms of the questions over the monitoring of the development on site, officers have conducted several site visits throughout the duration of the works and some key findings are attached to this report as background information.
106. Some local residents have queried how the building regulations for the development can be undertaken by a private company rather than the Local Authority. Unlike the granting of planning permission, building control does differ in that private approved inspectors can handle matters concerning building regulations.
107. Many requests for information have been received from local residents during the course of the application requesting information on the differences between the plans as approved and now submitted, results of measurements and surveys on the site and confirmation that the plans now submitted correspond with the findings of the LPA. Officers have engaged in correspondence with several local residents on detailed points relating the content of the application and the measurements and surveys of the land. In summary the submitted plans within this application are now considered to accurately

depict the development on the site. Again the appendices to this report include details of the measurements taken via a digital survey on site and also detail some key measurements and differences between the previously approved plans and that which has occurred on site. A request has also been made that further plans showing the whole development site and photo montages are submitted. However, officers consider that the application contains the necessary information for the application to be deemed valid and suitable for determination without the submission of further plans or information.

108. Some local residents have stated that they have received several copies of the same letter in relation to the development and criticised the efficiency and use of resources within the planning department. Additional copies of letters were issued in error and this will be corrected from hereon out.
109. Some public objection considers that the views of residents are not being appropriately listened to or considered. Officers consider that all points raised are being duly taken into consideration and it is hoped that this report to members adequately presents the clear concerns of the local residents.
110. Some clarification has been sought on the period of consultation for this application, it is considered that this should have been clarified by the issuing of several letters informing residents of the submission of the amended plans detailing dates at which letters should be received. All residents who submitted comments on the application have been further informed of this committee meeting.
111. One local resident has raised the point that the original planning application was approved subject to conditions and that these conditions were not resolved prior to works commencing on site. The applicant did submit a discharge of condition application and matters pertaining to those conditions were being resolved. However, upon the discovery of the discrepancies of the development and those approved plans this revised application was submitted and matters pertaining to those conditions are effectively being considered under this application.
112. One local resident has stated that the conditions requiring the painting of a fence and planting of a hedge on the plot 4 dwelling have still not been complied with. These issues are being separately pursued with the developer.
113. Objections have been raised from residents about works onsite which has included working on Saturday and Sunday causing disturbance. This matter was raised with the developer during the course of the application and it is understood that works are now only occurring on weekdays.

CONCLUSION

114. This application has been submitted following the discovery that the development occurring on site is not in accordance with the previously approved plans. The dwellings are of the same general size, scale and design as previously approved though some alterations to the roof profile, rear bay, infill extension and fenestration has occurred. The key alteration from the previously approved scheme emerging from inaccurate surveying is that the dwellings are in effect closer to adjacent properties on Fieldhouse Lane than was first approved as shown on plan, albeit the houses are in their correct location but with reduced distances to boundaries.

115. Officers have considered the implications of these alterations from the previously approved scheme with regards to all relevant matters most crucially impact on the residential amenity of the nearest occupiers and impacts upon the character and appearance of the area. Officers consider that the revised scheme remains acceptable having regards to the provisions of the Development Plan and also the provisions of the NPPF which have come into force since the previously approved scheme.
116. On balance and after careful consideration of public opposition to the development officers recommend approval.

RECOMMENDATION

That the application be **APPROVED** subject to the following conditions;

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: Required to be imposed pursuant to Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. The development hereby approved shall be carried out in strict accordance with the following approved plans:

Plans numbered 0006213 03a received 1st February 2012, 2e, 3e, 5d, 6c received 2nd April 2012 and 4b, 7e, 8f and 9f received 25th April 2012

Reason: To define the consent and ensure a satisfactory form of development having regards to Policies E14, E16, H2, H13, T1, T10, Q8, U5, U8A and U11 of the City of Durham Local Plan 2004.

3. The dwellings hereby approved shall be constructed using the following materials: Ibstock Barrowdale Blend, Kimbleton Red multi bricks and Weber 2502 graphite render panelling to external walls and Redland Farmhouse red clay pantiles to roof. Vehicular hardstands shall be constructed with Marshalls Excel red multi paviers. Windows shall be grey upvc.

Reason: In the interests of visual amenity having regards to Policies H13 and Q8 of the City of Durham Local Plan 2004.

4. The hereby approved development shall be carried out in accordance with the details of landscaping as shown on plan 3e. These landscape works shall be carried out within the first planting season following completion of development of the site and shall thereafter be maintained for a period of 5 yrs following planting. Any plants which die, fail to flourish or are removed within a period of 5 years from the substantial completion of the development shall be replaced in the next planting season with others of similar size and species.

Reason: In the interests of residential amenity in accordance with Policy Q8 of the City of Durham Local Plan 2004.

5. Notwithstanding the details submitted on approved plans, full details of all means of enclosure to be retained or erected on site shall be submitted to the Local Planning Authority within 2 months of the date of this permission. Means of enclosures at the site shall thereafter be retained or erected in accordance with the scheme agreed.

Reason: In the interests of visual amenity having regards to Policy Q8 of the City of Durham Local Plan 2004.

6. Tree Nos. T02, T03, T01 and T1 as shown on submitted plan 0006213 03a shall remain adequately fenced off and protected from the development in accordance with BS.5837:2005. Said protection shall remain in situ until the development has been completed. No works to these trees without the prior approval of the Local Planning Authority shall occur.

Reason: In the interests of the preservation of trees and visual amenity having regards to Policies E14 and Q8 of the City of Durham Local Plan 2004.

7. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or in any Statutory Instrument revoking or re-enacting that Order with or without modification) no development falling within Classes A, B and E of Part 1 of Schedule 2 of the said Order shall be carried out.

Reason: To maintain the character of the scheme and to protect the privacy and amenity of existing and proposed residents, in accordance with Policy Q8 of the City of Durham Local Plan 2004.

8. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order) the garaging, hardstandings and car parking shown on the approved plans shall be used and maintained in such a manner as to ensure their availability at all times for the standing and garaging of private motor vehicles.

Reason: In the interests of highway safety having regards to Policy T1 of the City of Durham Local Plan 2004.

9. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order) the glass to be used in the west facing first floor windows of the Plot 5N dwelling shall be obscure glazed and non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room and once installed are retained as such.

Reason: In the interests of residential amenity having regards to Policy Q8 of the City of Durham Local Plan 2004.

REASONS FOR THE RECOMMENDATION

1. The development represents an acceptable use of the land in principle with no harm caused to the character or appearance of the area, the amenity of adjacent occupiers, highway safety or protected species. The development is considered to accord with relevant Policies E14, E16, H2, H13, T1, T10, Q8, U5, U8A and U11 of the City of Durham Local Plan 2004. With regards to protected species the development is considered to accord with the requirements of the Habitats Directive brought into effect through The Conservation (Natural Habitats etc) Regulations 1994

This decision has been taken having regard to the policies and proposals of the North East of England Plan - Regional Spatial Strategy to 2021 (RSS) July

2008 and the City of Durham Local Plan 2004 where it is consistent with the National Planning Policy Framework.

2. In particular the development is considered to cause no detrimental harm to the character or appearance of the area or upon the amenity of neighbouring occupiers despite reduced distances.
3. In total 46 letters of objection, comment and representation were received during the course of the application. The objections and concerns related to a variety of issues notably impact upon visual amenity, residential amenity, actions of the developer, actions of the planning department, requests for further information and legitimacy of the application . These matters have been discussed and assessed within the report and officers consider the impacts of the revised development remain acceptable, in accordance with the provisions of the Development Plan and NPPF.

BACKGROUND PAPERS

Submitted Application Forms and Plans and supporting documentation
City of Durham Local Plan 2004
Regional Spatial Strategy
National Planning Policy Framework
Internal consultee responses
Public responses
Planning Circular 11/95
Greater flexibility for planning permissions: Guidance



Planning Services

Variation of condition 2 of application 11/00748/FPA (Demolition of existing bungalow and erection of 2 no. dwellinghouses) revising layout of site together with alterations to rear elevation of northern plot dwelling and roof profile on southern elevation of southern plot dwelling

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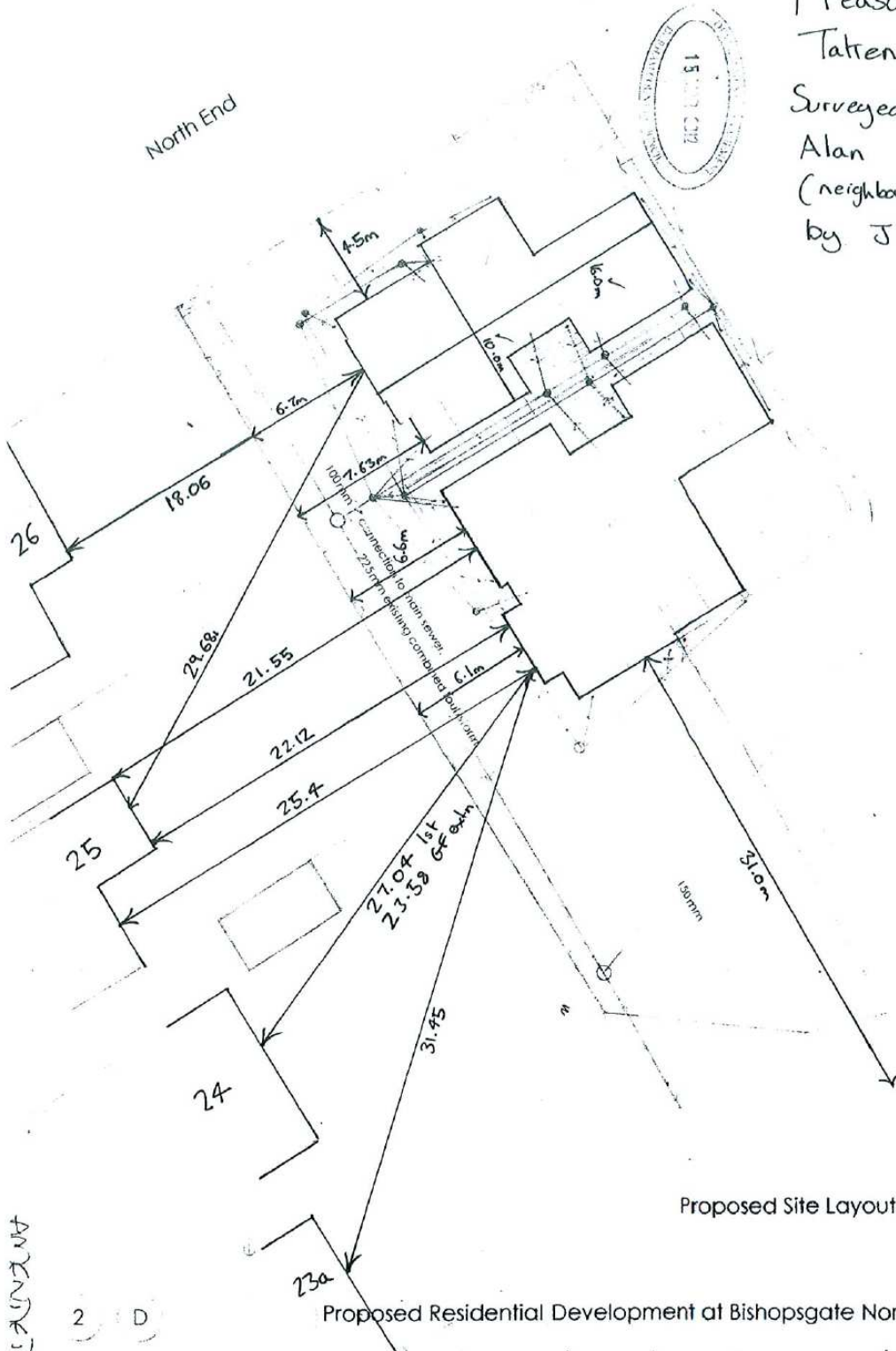
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Date 8th May 2012

Scale 1:1250

Appendix 1 – Results of electronic survey of land and development 19.3.12

Measurements
 Taken 19.3.12
 Surveyed by
 Alan Glendenning
 (neighbourhoods) checked
 by JT & BG as correct.



Proposed Site Layout Plan scale 1:200

Proposed Residential Development at Bishopsgate North End Durham City

APPENDIX 1

2 D