

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 13 September 2016** at **1.00 pm**

Present:

Councillor P Taylor (Chairman)

Members of the Committee:

Councillors A Bell, G Bleasdale, J Clark, P Conway, M Davinson, D Freeman, A Laing (Vice-Chairman), B Moir, J Robinson and K Shaw

Also Present:

Councillors J Chaplow and G Holland

1 Apologies for Absence

Apologies for absence were received from Councillors S Iveson and C Kay.

2 Substitute Members

No notification of Substitute Members had been received.

3 Minutes

The minutes of the meeting held on 12 July 2016 were confirmed as a correct record by the committee and signed by the Chairman, subject to an amendment to a typographical error in Minute 5h to read:

“Councillor P Conway moved that the application be refused; he was seconded by Councillor J Lethbridge”.

4 Declarations of Interest

There were no Declarations of Interest.

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

The Chairman noted that Item 5a, Land at Kepier House, The Sands, Durham had been withdrawn.

The Chairman noted that applications Items 5b - 32 Faraday Court, Durham and 5c - 28 Faraday Court, Durham were similar and asked if the Committee would be willing to receive a joint presentation as regards the application, then to make individual decisions upon each application, Members agreed.

a DM/16/02285/FPA - Kepier House, The Sands, Durham

The Chairman reiterated that this item had been withdrawn.

b DM/16/02359/FPA - 32 Faraday Court, Durham

c DM/16/02358/FPA - 28 Faraday Court, Durham

The Senior Planning Officer, Chris Baxter gave a detailed presentation on the report relating to the abovementioned planning applications, copies 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 Officer advised that Members of the Committee had visited the sites that day and were familiar with the location and setting. The applications were for change of use from Class C3 Dwelling House to Class C4 House in Multiple Occupation including conversion of garage to habitable room and were recommended for approval subject to conditions.

The Committee noted that the Highways Section had stated they could not support the application in respect of the loss of garages and the potential increase in vehicles. It was added that the Planning Policy Team had noted that within a 100 metre radius of the properties, 15% of the properties were already Houses in Multiple Occupation (HMO) and that issues in terms of HMOs would be exacerbated by the changes of use. The Committee noted 6 letters of objection from the members of the public in respect of 32 Faraday Court and 8 letters of objection in respect of 28 Faraday Court. It was added that there were also objections from the City of Durham Trust and Neville's Cross Community Association with concerns including: deterioration of the visual amenity; traffic generation; highway safety and road access; adequacy of parking; loading and turning; noise and disturbance; contravening legal covenants; and conformity to planning policy.

The Senior Planning Officer noted that in terms of the principle of development, the applications were for conversion to 6 bedrooms and HMO, C3 to C4 use, and that the proposed floor plans were such that this would fall within permitted development.

Members were reminded of the Article 4 Direction that would come into force on 17 September 2016 that would withdraw those permitted development rights relating to the changes of use from C3 to C4 in Durham City, however, this was not yet in effect. In terms of the conversion of the garages to additional habitable rooms, it was explained that this did not require planning permission and therefore it was not considered that a refusal on highways grounds could be supported.

The Chairman asked the Local Member for Neville's Cross, Councillor G Holland to speak in relation to the Application.

Councillor G Holland noted it was paramount that the application was brought to Committee for consideration with the level of "studentification" in the city being highlighted by Mrs J Levitas in recent television and newspaper articles where it had been noted she was the last resident in her street, the rest having been converted to student properties.

Members were informed that some 90% of the City Centre was now occupied by student lets and residential occupancy continued to diminish with the city, which in effect was no more than a student dormitory. Councillor G Holland noted that as the housing in the city centre was consumed for student use, this use was spreading outwards into the suburbs, with new housing estates now falling victim to this debilitating trend. It was added that Sheraton Park was a new and evolving estate with an active and ambitious community association. Councillors heard that the estate had the potential to become an attractive residential area for families, unfortunately it was close to the University and houses were already being turned into student lets, possibly some without permission. Members noted that, in addition, a new purpose build student accommodation block was being constructed at the heart of the estate, which would bring in about 420 additional students, upsetting the balance of what, in essence is, or should be, a residential estate.

Councillor G Holland added that there were 3 other elements in this regard: the first being the belated introduction of an Article 4 Directive by the Council; the second was a letter sent to all the residents in Sheraton Park by a student landlord; and the third was the covenants that were established when this estate was first built and sold.

Councillor G Holland noted that as one of its intentions, the Article 4 Direction sought to achieve a balance between residents and students in Durham City and strived to avoid whole areas becoming "studentified", albeit too late for the city itself. It was added that the balance proposed was 10% although with the purpose build accommodation blocks at Sheraton Park that balance had already been exceeded. Councillor G Holland reminded Members that the Article 4 Direction did not come into force for another 2 days and added he could not understand why the Committee was being rushed into making a decision just 48 hours before the deadline was reached.

Councillor G Holland referred Members to a letter that had been circulated by a student landlord to residents in Sheraton Park to have the landlord, at a fee of £599 including VAT, to convert their houses from Class C3 to Class C4 and thereby avoid the constraints of Article 4. Councillor G Holland noted he would leave it to the Committee to decide on the integrity of that tactic adding that he had supplied the letter to Senior Planning Officers some weeks ago expressing his concerns, however that was the last he had heard about it.

Members were reminded of the issue of covenants imposed by the developer on the estate and Councillor G Holland asked whether they were binding or could they be simply cast aside a few years after they were introduced with their intention being to protect the structural and social integrity of the new estate. Councillor G Holland noted that according to the Land Registry in Schedule 4 all houses in Sheraton Park have the following restrictive covenant under 4.2 which reads: *“Not to use or suffer to be used the Property or any part thereof or any building thereof for any other purpose... than as a private residence for the use of one and not more than one family”*.

Councillor G Holland noted planning policies, both local and national and asked whether they favoured the piecemeal conversion of housing stock into ever more student lets or HMOs. He added that policy makers had not fully anticipated the surge of studentification over the last 15 years, nor had they envisaged the impact of studentification that had blighted not just Durham City but many other cities in this country, with experience showing that the impact was all but irreversible.

Councillor G Holland noted he felt the Officer’s report was rather thin on policy, and in terms of the National Planning Policy Framework (NPPF) was not convincing, touching on Parts 1, 6, 7 and 8 without any conviction. He added that the NPPF was all but silent in matters of studentification and this type of social imbalance, and certainly did not favour it.

Members were reminded that the City of Durham Local Plan (CDLP) was signed off in 2004, in the context of the experience in the City up until that time. It was explained that widespread commercially driven studentification was still in its infancy as the University was less dominant at the turn of the century. Councillor G Holland noted there were 3 local policies which recognised the potential for university expansion, C3, C4 and C5; however they were not mentioned in the report. Councillor G Holland added that these policies envisaged a partnership between the University and the then City Council and most certainly gave no approval of the whole scale commercial consumption of housing.

Councillor G Holland noted he felt housing policies could not be used to justify switching houses from Class C3 to Class C4 at a whim with Policy H9 indicating that such a switch in Class could only occur if: there was adequate parking, which formed part of Policy T1; it would not affect the amenity of nearby residents; and it would not result in a concentration of sub-divided dwellings to the detriment of the housing stock. Councillor G Holland noted that the intention of Policy H9 was to protect residential family housing.

Councillor G Holland explained that Policy H13 stated that planning permission would not be granted for changes of use that have a significant adverse effect on the character or appearance of residential areas or the amenities of residents within them. He added that the residents of Sheraton Park certainly argue that the applications would have an adverse effect on their community. Councillor G Holland added that Policy Q9 followed a similar theme with a similar conclusion.

Councillor G Holland noted that he felt the Local Plan policies gave no support to this application and on balance they gave a contrary indication sufficient to recommend refusal. He added that the evolving Durham Plan embeds Article 4 in relationship to Durham City and that it was for the Committee to decide how much weight they wished to give to Article 4 two days before its formal introduction, noting that in the past that level of proximity has been used by Officers to lend weight to their arguments.

Councillor G Holland concluded by noting that he believed that the applications should be refused as: the covenants imposed from the outset had not, to the best of his knowledge, been relinquished; the applications fail the test and intentions of Local Plan Saved Policies H9, H13 and Q9; and the applications did not meet the Article 4 Direction, first introduced in April 2015, to be embedded by the County Council in 2 days' time.

The Chairman thanked Councillor G Holland and asked Mr A Doig from the Neville's Cross Community Association to speak in relation to the Application.

Mr A Doig congratulated the Council for the introduction of the Article 4 Direction, noting it was crucial in being able to rebalance the split between students and residents, helping in terms of jobs and developers looking to build residential properties. Mr A Doig added that the covenants referred to by Councillor G Holland were in place, and this was a legal fact. In terms of the purpose build student accommodation (PBSA), it was explained that residents had fought to resist this development. Mr A Doig reiterated that a letter had been circulated from a local agent in terms of an offer to convert properties to HMO prior to the Article 4 Direction coming into effect. While it was acknowledged that there would be a demand by students, Mr A Doig highlighted that there was also the needs of the Neville's Cross residents to be addressed in addition. Mr A Doig noted that the student density was approximately 20%, with additional student properties this would increase to more like 30%, and that the worry was that the area would go the way of other areas in the city such as Hawthorn Terrace, and the streets near the viaduct. It was added that PBSA and HMOs were eating away at communities and the Article 4 Direction and Student Policy were essential in preventing this.

Mr A Doig noted that in terms of the applications, 2 houses with 6 students each had the potential for more anti-social behaviour, would generate more rubbish and there would not be sufficient parking. Mr A Doig noted £28 million of cuts at the Council and added that the change of use would lead to a loss of income of £2,000 per property. Mr A Doig reiterated the points made by Councillor G Holland in terms of the applications being contrary to NPPF and saved CDLP policies, especially H9 and H13 and therefore asked that the Committee refuse the applications.

The Chairman thanked Mr A Doig and asked Mr B Heselink from the Sheraton Park Residents' Association to speak in relation to the Application.

Mr B Heselink noted that the Sheraton Park Residents' Association was a sister organisation to the Neville's Cross Community Association, consisting of 120 followers on Facebook and holding regular monthly open meetings. Mr B Heselink added that the Residents' Association objected to the applications for change of use to HMOs. It was added that there had been many HMOs prior to the Article 4 Direction and that there was a fear amongst residents as regards the effect on their amenity and property prices. Mr B Heselink reiterated the previous speakers' comments in terms of the letter that had been sent to residents offering conversion to HMO, prior to the Article 4 Direction coming into effect.

Mr B Heselink confirmed that he had checked his deeds and indeed the covenant as previously mentioned was in place, reminded the Committee that the deeds for the properties were signed legal documents and stated the properties were restricted to one family; therefore change of use to an HMO would not comply with this. Mr B Heselink noted that should there be encouragement to break rules, would this be an issue for a Judicial Review.

Mr B Heselink explained that he felt that there were issues in terms of noise, with no noise control being in place, contrary to NPPF Paragraph 123 and that there would also be issues in terms of CDLP Policies H3 and T1, with the applications being contrary to policies. It was added Members would have seen on site the situation as regards parking along the estate roads and footpaths, with only limited space on the existing driveways, leading to congestion and danger on the roads.

Mr B Heselink reiterated that the student density was already around 20% in the area and that on that basis, and the other points raised the application should be refused. Members were reminded that the PBSA would open in Autumn 2017, with 420 beds, and that already this development was having an impact on residents and that further student properties would tip the balance from a residential estate. Mr B Heselink concluded by reiterating that the Sheraton Park Residents' Association would ask for the applications to be refused for the reasons previously mentioned: the covenants in place; planning policies; and the impact of the increasing percentage of students on local residents.

The Chairman thanked Mr B Heselink and asked the Solicitor - Planning and Development, N Carter to address some of the points raised by the speakers.

The Solicitor - Planning and Development noted that the issue as regards any covenants in place, as raised by Councillor G Holland and the objectors was a private law matter and was not an issue for the Committee to afford weight to. The Solicitor - Planning and Development added that the issue in terms of enforcement of this that had been raised, and that it would not be for the Committee, rather for the developer of the estate or for the residents themselves to pursue. It was added that in terms of a Judicial Review, this would not provide a remedy to the residents as the covenants were matters of private, not public law.

The Chairman thanked the speakers and asked the Applicant, Mr P Smith to address the Committee.

Mr P Smith thanked the Chairman and Committee and noted that he had recently completed his Master's Degree dissertation on "The rise of student housing as an asset class and its effect the HMO market" and felt that he was able to speak on the issues with some knowledge. In terms of the Article 4 Direction, Mr P Smith felt that actually this was 6 years too late. It was explained that the area was the site of the former New College Durham campus and that properties were being repurposed, with the University having indicated that they wanted more students, around 5,700 by 2022, and the price of accommodation in PBSAs would be out of reach of the finances of many students. It was added that the good quality HMOs were popular with students and also popular with residents, and were full. Mr P Smith added that there was research that showed there was a gap of around 30% in house prices between those with C3 and C4 use.

Mr P Smith noted the Legal Officer had pointed out that the covenant issue was outside of the remit of the Committee and indeed there had been a High Court case in a similar vein regarding a property at Elvet Riverside. Mr P Smith explained that issues had been raised as regards 6 students per property not being able to park; however, only around 12% of student had a car and that many landlords offered cycles and bus passes in order to help students.

In terms of the Policies referred to by the objectors, Mr P Smith suggested that in respect of CDLP Policy H13, character of the area, "that ship had sailed" with the granting previous of the large PBSA. In terms of Policy T1, Mr P Smith noted that the Planning Officers were satisfied and that in respect of the Article 4 Direction it was not yet in place, being a simple case of a base-date cut-off. Mr P Smith added that many similar applications to those being considered would have been dealt with under Delegated Authority and that the only reason it was in front of Members was that the Local Member had asked for it to be considered by Committee. Mr P Smith concluded by asking Members to approve the applications.

The Chairman thanked Mr P Smith and asked Members of the Committee for their questions and comments on the application.

Councillor B Moir noted he was very much convinced by the comments made by Councillor G Holland and the objectors, however, he was also mindful of the Planning Officers report and the comments from the Legal Officer. Councillor B Moir noted that while the applications may not be considered within the "spirit of the law", meaning the Article 4 Direction, they were within the "letter of the law" as the Direction was not yet in effect. Councillor B Moir noted that properties owned by the applicant were all kept to a good standard, often greater than some private residences, and that Divisional Members were able to contact the landlord, unlike some other absentee landlords of other student properties. Councillor B Moir noted that he therefore would support the Officer's recommendation and move that the applications be approved.

Councillor D Freeman asked why these applications were at this meeting of the Committee, noting another meeting coming up later in September. Councillor D Freeman noted his disappointment that they were not being considered once the Article 4 Direction was in place and asked if they were refused today, would any appeal on the decision be based upon the policy at this time or at the time of the appeal. Councillor D Freeman added that Sheraton Park was a residential area and the PBSA that was approved by the Council was already impacting upon residents and these applications would add to this. Councillor D Freeman noted he had listened to the Ward Councillor on the possible grounds for refusal and noted Policy H9 clearly referred to a negative impact on the amenity of residents, and noted the subdivision of the properties. Councillor D Freeman added he was not minded to support the Officer's recommendation.

Councillor A Laing noted she formally seconded the recommendation for approval as set out in the report.

Councillor P Conway asked if the Committee was in a bit of a legal knot in terms of being in a position in a few days' time to be able to refuse the application with the Article 4 Direction being in place, and also in terms of the covenants, having listened to the advice from the Solicitor. Councillor P Conway added that he felt that it was clear that the development was originally intended for families and residents and was somewhat dismayed, albeit not surprised, that the system was being played by the private sector to try and circumvent the wishes of residents, with the Direction looking to produce balanced communities with the University, public and private all working together. Councillor P Conway noted the weight in terms of the legal issues and asked whether the issues highlighted by objectors in terms of Policies T1 and H9 gave enough to be able to refuse the application.

The Solicitor - Planning and Development noted that, as the Senior Planning Officer had stated in his report, the change of use was permitted under the General Permitted Development Order 2015 (GPDO), therefore robust reasons for refusal could not be based on saved policies T1 and H9 as planning permission for the change of use already exists. The Solicitor - Planning and Development added that in terms of the query from Councillor D Freeman, should the applications be refused and be appealed, then it would be looked at in terms of the policies in place at the time of the appeal, with the Student Policy being in place, and with the Article 4 Direction being in place.

Councillor B Moir moved that the applications be approved; he was seconded by Councillor A Laing.

(b) DM/16/02359/FPA - 32 Faraday Court, Durham

RESOLVED

That the application be **APPROVED** subject to the conditions detailed in the Officer's report.

(c) DM/16/02358/FPA - 28 Faraday Court, Durham

RESOLVED

That the application be **APPROVED** subject to the conditions detailed in the Officer's report.

d DM/15/03561/OUT - Land East of Ushaw Villas, Cockhouse Lane, Ushaw Moor

The Senior Planning Officer, Chris Baxter gave a detailed presentation on the report relating to the abovementioned planning application, copies 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 Officer advised that Members of the Committee had visited the site that day and were familiar with the location and setting. The application was an outline application will all matters reserved for care home development for up to 50 residents and staff and was recommended for approval subject to conditions.

The Senior Planning Officer noted that the site had been redundant for a number of years following the demolition of the existing public house in 2004, with outline permission for residential development having been granted together the permission for demolition. Members noted that while the application was an outline application, the applicant had provided some illustrative elevations to show how the building would sit across the changing level of the site. It was added there were no objections from the statutory consultees, though the Highways Section had noted issues in terms of the proximity of an existing bus stop to the proposed entrance to the site, though this could be addressed by relocation of the bus stop.

The Chairman asked the Local Member for Deerness, Councillor J Chaplow to speak in relation to the Application.

Councillor J Chaplow noted that the area needed a care home to help provide this vital facility locally, for local people. Councillor J Chaplow added that she would hope that development would "begin on site tomorrow" as it would help provide a care facility, tidy up a long derelict site and also have benefits in terms of employment for local people. Councillor J Chaplow concluded by asking that the Committee agree the Officer's recommendation and approve the application.

The Chairman thanked Councillor J Chaplow and asked Alderman P Stoddart to speak in relation to the Application, on behalf of the Brandon and Byshottles Parish Council.

Alderman P Stoddart thanked the Chairman for the opportunity to speak and noted that this was not an ordinary application, rather it would help with the regeneration of the village, bringing a derelict site back into use which currently was a disgrace to the Parish, County Council and Deerness Valley.

Alderman P Stoddart added that the development would bring forward a much welcomed facility, represent a vast visual improvement to the area and therefore he would appeal to the Members of the Committee to support and approve the application as set out in the Officer's report.

The Chairman thanked Alderman P Stoddart and asked Members of the Committee for their questions and comments on the application.

Councillor A Bell noted that when Local Councillors and Parish Councils speak in support of an application this carried weight and accordingly he would therefore move the recommendation that the application be approved.

Councillor A Laing asked if a number could be put on the jobs that would be created from this application and also seconded the approval of the application. The Senior Planning Officer noted that within full planning applications there was a section that would look to gather information in this regard; however, this was only an outline application.

Councillor J Clark echoed the comments made by Councillor A Bell and noted that should the application be approved that the large containers on the site should be moved as soon as possible and even if the application were refused, the landowners should be contacted as regards tidying up the site.

Councillor A Bell moved that the application be approved; he was seconded by Councillor A Laing.

RESOLVED

That the application be **APPROVED** subject to the Section 106 Agreement and conditions detailed in the Officer's report to the Committee.

e DM/16/01486/FPA - 13 Partnership Court, Seaham Grange Industrial Estate

The Senior Planning Officer, Chris Baxter gave a detailed presentation on the report relating to the abovementioned planning application, copies 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 extension to existing factory and was recommended for approval subject to conditions.

Members noted there were no objections from statutory or internal consultees and all the additional development would be within the existing site area.

The Chairman noted there were no registered Speakers and asked Members of the Committee for their questions and comments on the application.

Councillor G Bleasdale noted she had spoken to a number of people from the area and there had been no indications of any objections to the application and therefore moved approval. Councillor K Shaw seconded the application.

Councillor G Bleasdale moved that the application be approved; she was seconded by Councillor K Shaw.

RESOLVED

That the application be **APPROVED** subject to the conditions detailed in the Officer's report to the Committee.

f DM/15/03402/FPA - Sheraton Hill Farm, Sheraton

The Senior Planning Officer, Chris Baxter gave a detailed presentation on the report relating to the abovementioned planning application, copies 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 conversion and extension of existing equestrian and agricultural buildings to form 9 dwellings, a replacement bungalow and erection of new garage blocks and was recommended for approval subject to conditions.

Members noted there were no objections from statutory or internal consultees, although the Campaign to Protect Rural England (CPRE) had raised some concerns as regards the sustainability credentials of the development.

The Chairman asked the Agent for the Applicant, Mr C Stockley to speak in relation to the Application.

Mr C Stockley noted there had been no objections to the application and therefore he would simply wish to note that he and the Applicant had worked closely with the Planning Department in terms of ensuring the application was suitable, would help to retain a heritage asset and be of benefit to the local area.

The Chairman thanked Mr C Stockley and asked Members of the Committee for their questions and comments on the application.

Councillor A Laing noted no objections from the Local Members and Councillor J Clark noted that in Paragraph 37 of the Officer's report that the Council's Conservation Team considered the main building to be a non-designated heritage asset and that this application would secure and retain the architectural qualities of the building.

Councillor M Davinson noted he supported the Officer's recommendation, however, believed that a site visit to this application site would have been beneficial. The Chairman noted and agreed with Councillor M Davinson.

Councillor A Bell asked what the view of the Planning Policy Team was in this case as he could not see reference within the report. The Senior Planning Officer noted that nothing was recorded in terms of a response from Planning Policy, however, in speaking to colleagues within that Team, it had been noted that they were comfortable with the scheme.

Councillor A Laing moved that the application be approved; she was seconded by Councillor G Bleasdale.

RESOLVED

That the application be **APPROVED** subject to the conditions detailed in the Officer's report to the Committee.