

City of Durham Parish Council

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17 February 2020

Dear Planning Committee Member,

In accordance with the Local Government Act 1972 I hereby give you notice that a meeting of the **Planning Committee** will be held in **Office 2, Clayport Library Building at 14:00** on **Friday 21 February 2020** to transact the following business:

- 1. Welcome and apologies**
- 2. To receive any declarations of interest from members.**
- 3. To receive and approve as a correct record the minutes of the meeting on 7 February 2020.**
- 4. To receive any public participation comments on the following agenda items.**
- 5. Matters arising:**
 - a.** to approve the following responses (for text of letters see Parish web site):
DM/19/03967/FPA | Change of use of first floors from retail to 5 no. HMO studio apartments | 9 And 9A Silver Street Durham DH1 3RB (follow-up letter)
DM/20/00191/FPA | Two story rear extension and a change of use from a C3 family house to a C4 HMO. | 34 The Hallgarth Durham DH1 3BJ
DM/20/00235/FPA | Change of Use from existing 6 bed small HMO (use class C4) to 8 bed large HMO (sui-generis) | 35 Hawthorn Terrace Durham DH1 4EL
 - b.** Further update on application **DM/19/03806/FPA** | Change of use of dwelling (Use Class C3) to small House in Multiple Occupation (Use Class C4) | 7 Wearside Drive Durham DH1 1LE.
 - c.** Update on **DM/20/00066/FPA** | Erection of community centre building with associated bin store and cycle parking | Lowes Barn Recreation Ground Park House Road Durham DH1 3QF (11 February).
- 6. Resisting conversions of family homes to student accommodation** – report attached
- 7. County Durham Plan:** To note Durham County Council response to Inspector's Note 20 (12.02.20), and any consequent matters.
- 8. Update on Neighbourhood Plan** – verbal update from the Chair
- 9. New County HQ on the Sands (planning reference DM/18/02369/FPA):**
 - a.** Stakeholder engagement and community involvement
 - b.** Any relevant developments

10. Update on the de-registration of the common land application

11. To consider these planning applications (the date in brackets is the deadline to call to committee):

a. To note the following

DM/20/00111/PND | Prior notification for the demolition of a block of five outhouses. | 44 Claypath Durham DH1 1QS (comments not invited)

DM/20/00165/FPA | Proposed retention of 2 no. timber dugouts erected to the north west of the existing artificial turf pitch. | Durham School Quarryheads Lane Durham DH1 4SZ (6 March)

DM/20/00197/FPA | New shopfront | 9 The Riverwalk Millburngate Durham DH1 4SL (5 March)

DM/20/00208/AD | 2x fascia signs fixed to the facades of the building and 1x double-sided monolith sign (Mathematical Sciences and Computer Science Building) | Land To The West Of Durham University Mountjoy Research Centre Stockton Road Durham DH1 3UP (25 February)

DM/20/00236/AD | 1No Non-Illuminated Banner Sign | Covered Market Market Place Durham DH1 3NJ (26 February)

DM/20/00257/CPO | Single storey rear extension. | 12 Chevallier Court Durham DH1 3RF (Not available)

DM/20/00272/AD | Display of 1 no. internally illuminated fascia sign, 1 no. fascia sign and 2 no. menu cases (retrospective). | 13 - 14 North Road (Babylon night club) Durham DH1 4SH (28 February)

DM/20/00330/LB | Replacement of existing roof timbers, relocation and resizing of existing roof opening with new access hatch into roof attic space | Durham University Palace Green Library Palace Green Durham DH1 3RN (2 March or later)

b. To consider making representations on the following:

DM/20/00139/PNT | Prior notification for the installation of a 20m monopole supporting 3 no. antennas, 4 no. equipment cabinets and 1 no. meter cabinet and ancillary development including 1 no. GPS module. | Land To The East Of The Palatine Centre Stockton Road Durham DH1 3LE (20 February)

DM/20/00262/FPA | Erection of part two-storey/part single-storey extension at rear of existing small HMO (use class C4). | 75 Whinney Hill Durham DH1 3BG (5 March)

c. Reconsideration: DM/19/03159/FPA and DM/19/03160/AD - The Curious Mr Fox, Units 35A-C The Riverwalk Millburngate Durham DH1 4SL

12. Dates of future meetings

21 February 2020 - 14.00 to 16.00 hrs – Office 2, Clayport Library Building.

6 March 2020 - 14.00 to 16.00 hrs – Office 2, Clayport Library Building.

And, pursuant to the provisions of the above-named Act, I Hereby Summon You to attend the said meeting.

Adam Shanley
Clerk to the City of Durham Parish Council

City of Durham Parish Council

Minutes of Planning Committee meeting held at 14:00pm on Friday 7th February 2020 in Office 2, Clayport library building, 8 Millennium PI, DH1 1WA.

Present: Cllr R Cornwell (in the Chair), Cllr J Ashby, Cllr V Ashfield, Cllr L Brown, Cllr G Holland and Cllr C Reeves.

Also present: Parish Clerk Adam Shanley and Cllr Esther Ashby (member of the public).

1. Welcome and apologies

Apologies were received from Cllr J Elmer

2. To receive any declarations of interest from members

Cllr L Brown declared an interest in application DM/20/00066/FPA

3. To receive and approve as a correct record the minutes of the meeting on 24 January 2020

The minutes of the meeting held on 24th January 2020 were unanimously agreed as a true and accurate record of proceedings.

4. To receive any public participation comments on the following agenda items.

Cllr E Ashby advised that she was attending the meeting to listen to discussions on application DM/20/00066/FPA.

5. Matters arising:

- a. to approve the following responses (for text of letters see Parish web site):
 - DM/19/03707/FPA** | Dormer windows to front and rear elevations of existing larger HMO (sui generis use). | 1 Laburnum Avenue Durham DH1 4HA. The response to this application was **agreed** by the Committee.
 - DM/19/03836/FPA** | Change of use from betting shop (sui generis) to restaurant (use class A3) including extraction to side elevation. | Ground Floor 66 Saddler Street Durham DH1 3NP. The response to this application was **agreed** by the Committee.
 - DM/19/03949/FPA** | Change of use from HMO (Use Class C4) to large HMO (sui generis) with two storey rear extension, rooflights and associated external alterations | 55 Hawthorn Terrace Durham DH1 4EQ. The response to this application was **agreed** by the Committee.
 - DM/19/03968/FPA** | Extension and conversion of the multi-level decked car park to form 8no. 2-bed apartments. | William Robson House Claypath Durham DH1 1SA. The response to this application was **agreed** by the Committee.
 - DM/20/00059/FPA** | The installation of stainless-steel flue to rear (retrospective) | The Bridge 39 - 40 North Road Durham DH1 4SE. The response to this application was **agreed** by the Committee.
- b. To approve the response to **DM/19/03967/FPA** | Change of use of first floors from retail including a loft conversion in to residential accommodation providing 5 no. HMO studio apartments | 9 And 9A Silver Street Durham DH1 3RB, and to consider whether to call it to Committee. The response to this application was **agreed** by the Committee. The Chair also reported that the applicant has now written to the

Planning department of Durham County Council as follows: *"I refer to the above application, I've been away from the office for a couple of days and just returned and noted some comments from the Parish Council submitted on the 3rd Feb with a quick turnaround for further consultation on the 7th Feb, apologies for the delay but I've only just seen them. We understand that some additional lighting will be required for the safety of the residents but are also aware of the limitations because of the location. If the application is approved, we would want to work with the Council and the Parish council to agree adequate lighting and appropriate styles of lighting to provide a well-lit access but also take into consideration not to have any adverse effect on the views to and from the WHS."*

It was **agreed** that a follow up letter to this application should be drafted, noting the remarks of the applicant and requesting that this be a condition of the application being granted. It was also **agreed** that the applicant should be asked to work with both the Parish Council and the World Heritage Site Co-ordinator to ensure both safety and no negative impact of such lighting on the World Heritage Site. Cllr R Cornwell **agreed** to draft this response.

- c. **DM/19/03926/VOC** | Variation of Condition 3 (approved plans) of DM/19/01937/VOC comprising changes to layout of Phase 2B. | Mount Oswald (Phase 2B) Durham Report by Councillor Liz Brown. Cllr L Brown reported that the A167 had been plotted in the incorrect position in the original application and that this had resulted in the need for this application. It was **agreed** to note this application.
- d. Update on application **DM/19/03806/FPA** | Change of use of dwelling (Use Class C3) to small House in Multiple Occupation (Use Class C4) | 7 Wearside Drive Durham DH1 1LE. The Clerk advised that the planning enforcement department at the County Council is taking action on a number of potential unregistered HMOs in the Wearside Drive area.

Cllr J Ashby also reported that he had two outstanding queries with the case officer for this application. Firstly, Cllr J Ashby advised that he had requested that the total number of student properties within the 100-metre radius as the internal consultee's response states that 4.3% are student properties as defined by Council Tax records. Secondly, Cllr J Ashby advised that the data provided as part of the application was dated 07/03/2019 and had queried why the data from the current academic year wasn't used. It was **agreed** that Cllr J Ashby should remain in contact with the case officer on these matters.

6. County Durham Plan

The Chair advised that the Inspector had requested a further session as part of the Examination in Public in order to deal with housing land supply and this took place on February 6. The Chair advised that Cllr J Elmer, who had a place to speak at this session of the Examination in Public in a non-Parish Council capacity, had submitted his apologies and requested that the Parish Council be given his slot. The Inspector agreed to this and Cllr J Ashby represented the Parish Council at this session.

Cllr J Ashby advised that the session had dealt with the issue of the proposed garden village at Seaham and the impact of the proposed housing number trajectories.

Cllr J Ashby also reported that the report by the Inspector would not be published in March as originally believed. The report of the Inspector would likely be later in the year around May time.

7. Neighbourhood Plan Consultation: verbal update re consultation

The Chair advised that the Regulation 16 consultation on the Neighbourhood Plan was still ongoing. The Chair advised that he, Cllr J Ashby and the Clerk would be meeting the new officer at the County Council who is dealing with the Neighbourhood Plan to discuss the process thereafter and that a report would be given to the Planning Committee after that meeting.

Cllr J Ashby encouraged all local resident and community groups to write in support of the Plan.

8. Proposed new County HQ on the Sands (planning reference DM/18/02369/FPA).

The Clerk advised that he had no updates on this matter to provide.

9. To consider these planning applications (the date in brackets is the deadline to call to committee):

a. To note the following

DM/20/00106/VOC | Variation of conditions 2, 4 and 7 of planning permission DM/17/01682/FPA to require adherence to revised tree planting details and tree report | Durham University Teaching And Learning Centre South Road Durham DH1 3LU (20 February). It was **agreed** to note this application.

DM/20/00143/LB | To install stud wall on ground floor to create a lobby area, to reposition first floor wall to allow creation of kitchen and the removal of W/C to enlarge existing office | 17 Old Elvet Durham DH1 3HL (20 February). It was **agreed** to note this application.

b. To consider making representations on the following

DM/19/03915/FPA | Alterations to shop front consisting of the lowering of window cills | The John Duck Ale House 91A Claypath Durham DH1 1RG (18 February). It was **agreed** to note this application.

DM/20/00066/FPA | Erection of community centre building with associated bin store and cycle parking | Lowes Barn Recreation Ground Park House Road Durham DH1 3QF (11 February). The Committee was minded to agree the application, however due to a discrepancy in the application form, it was **agreed** that the Clerk should investigate further before the Committee made a formal response.

DM/20/00139/PNT | Prior notification for the installation of a 20m monopole supporting 3 no. antennas, 4 no. equipment cabinets and 1 no. meter cabinet and ancillary development including 1 no. GPS module. | Land To The East Of The Palatine Centre Stockton Road Durham DH1 3LE (20 February). The Committee felt unable to comment on this application due to a technical issue with the application. It was **agreed** that the Clerk should investigate further.

DM/20/00191/FPA | Two story rear extension and a change of use from a C3 family house to a C4 HMO. | 34 The Hallgarth Durham DH1 3BJ (20 February). It was **agreed** to object to this application and it was also **agreed** to call this to the Central and East Planning Committee if the case

officer is minded to approve this in its current form. Cllr J Ashby **agreed** to draft the response to this application.

DM/20/00235/FPA | Change of Use from existing 6 bed small HMO (use class C4) to 8 bed large HMO (use class sui-generis) including erection of single-storey extension to rear, new window to gable elevation and rooflights to accommodate a loft conversion. | 35 Hawthorn Terrace Durham DH1 4EL (21 February). It was **agreed** to object to this application. Cllr L Brown **agreed** to draft the response to this application.

10. Ground rules for calling in planning applications.

The Chair advised that a meeting had taken place between himself, the Clerk to the Council, the Chair of the Parish Council and the Vice-Chair of the Parish Council Planning Committee and it was agreed that the ground rules for the Planning Committee ought to be put for approval at Full Council; including the amendment to the Terms of Reference of the Planning Committee to also include consideration of Traffic Regulation Order consultations. It was also agreed that the Planning Committee and the Clerk should retain a data base of all applications called to the Central and East Planning Committee along with the reason(s) for the call in, in the event that any issues are raised.

11. Dates of future meetings

21 February 2020 - 14.00 to 16.00 hrs – Office 2, Clayport Library Building.

6 March 2020 - 14.00 to 16.00 hrs – Office 2, Clayport Library Building.

Due to the confidential nature of the following items, in accordance with Section 100(A)(4) of the Local Government Act 1972, the press and the public were excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in paragraph 3 of Part 1 of Schedule 12A of the LGA 1972 Act and section 1(2) of the Public Bodies (Admission to Meetings) Act 1960. At this point in time the press and the public were asked to leave the room.

12. Common land at The Sands

The Chair advised that a meeting had taken place on 4th February between representatives of both the Freeman and the Parish Council and the barrister acting on behalf of both parties in relation to the County Council's application to de-register the coach park as common land. The meeting considered the latest rebuttal from the County Council on the latest objections raised. It was agreed at the meeting on 4th February that the Barrister should draft a final rebuttal to the County Council's response; highlighting any factual errors and addressing the issue of there not being a public inquiry.

The Chair also highlighted the matter of great crested newts potentially being present on the site. The Chair advised that this had been an issue during the application for the Police Headquarters. It was **agreed** that the Clerk should write to Natural England to ask their view on how this application would impact on this protected species (if still present).

13. Neighbourhood Plan: Appointment of Independent Examiner

Councillors considered details of three individuals, as provided by NPIERS, to carry out an independent examination of the Neighbourhood Plan. It was **agreed** that Tony Burton is the Parish Council's preferred option for this.

There being no further business, the Chair thanked Members for their attendance and closed the meeting.

Signed,

Chair of the City of Durham Parish Council Planning Committee

ITEM 6: RESISTING CONVERSIONS OF FAMILY HOMES TO STUDENT ACCOMMODATION

Councillors will recall that the issue of restrictive covenants has been discussed at a recent Parish Council Planning Committee.

The query was raised as to whether such covenants are both enforceable and of material planning grounds to refuse a change of use application. It was agreed that the Clerk should seek legal advice on this matter via the solicitors currently provided through the County Durham Association of Local Councils (CDALC) as part of the Parish Council's subscription fee to CDALC.

Following a further discussion with the Chair and Vice Chair of the Planning Committee, the Clerk accordingly sought legal advice on whether it can prevent planning permission being granted for change of use class C4 (student HMOs) and *sui generis* where the properties concerned have a restrictive covenant on the registered title preventing use other than as a private dwelling. The legal advice cost £240 (ex VAT). The solicitor has provided the following advice:

"Restrictive covenants are rules preventing certain things from being done on the land. If imposed correctly they constitute a personal contractual relationship between two people i.e. the original vendor and the purchaser. In view of this it would be for the beneficiary of the restrictive covenant alone to take legal action for a breach of the covenant by a subsequent landowner. Therefore, if the current beneficiary of the covenant can be identified and is willing, they could seek an injunction and damages against the use of the property as an HMO. However the process would need to be undertaken specifically by the individual with a legal interest in the land and not by the Parish Council.

The Parish Council is not a planning authority and should be cautious about over emphasising its role in this matter.

The Parish Council should work to build an evidence base and strong case for the extension of the existing Article 4 Direction to cover the City of Durham Parish area at the earliest opportunity. This plan of action is already identified in the submission version of the Parish Council's Neighbourhood Plan at 4.194 alongside the associated proposals outlined at Polict D3. In doing this, the Parish Council should seek to collaborate with any other interested parishes or stakeholders on the relevant area. The Parish Council could also consider seeking the services of a qualified and experienced planning consultant to assist with the preparation of the evidence base and submission to the county council.

The Parish Council could seek to identify who imposed the restrictive covenant in the first place. This may assist with the process of identifying which properties are affected. This could then be confirmed by commissioning a Land Registry search on a case by case basis".

Use of deeds of covenants

The Parish Council cannot enforce deeds of covenant; this can only be done by the original vendor, or their successor in title. The legal advice points out that for the Parish Council to search the Land Registry would be both costly and time consuming. However, it is a reasonable assumption that all of the houses on an estate will have the same restrictive covenant so if those existing owners who were objecting to houses being converted to HMOs were to make their own covenants available then the terms of any covenants binding the owners of the HMO in question could be reasonably inferred.

The Chair has been advised that there is a type of covenant, the *estate covenant*, where all of the property owners on the estate have the right to take action against anybody

breaking its terms. We do not know if any of the estates in Durham have this type of covenant, but examining the covenants of other householders should provide the answer.

Extending the area covered by the Article 4 Direction

The Article 4 direction was brought into Durham as an additional layer of planning protection to the existing Conservation Area by removing Permitted Development Rights. Within the emerging Durham Local Plan, it is stated that the council will *"consider the introduction of further Article 4 Directions where appropriate"*. The Town and Country Planning Act 1990 states that local authorities should consider making article 4 directions only in those *"exceptional circumstances where the exercise of permitted development rights would harm local amenity, the historic environment or the proper planning of the area"*.

The Article 4 direction in the City came into force on 17 September 2016 and so pre-dates the Parish Council. It does not cover all of the Parish.

The main areas excluded are most of the Aykley Heads estate in the north and, in the south, Mount Oswald, the University Mountjoy estate east of South Road, Houghall College and Maiden Castle. The County Council web page at <https://www.durham.gov.uk/article/2499/Multiple-occupancy-homes> links to the maps and has further information.

Beyond the Parish, Gillesgate Moor as far as the motorway is included. The built-up area of Framwellgate Moor, Pity Me and Newton Hall also has an Article 4 Direction which came into force on 13 May 2017.

The new developments at Aykley Woods (on the former Police HQ) and Mount Oswald, plus the longer established Farewell Hall and Roundhaven estates do not benefit from an Article 4 Direction and student HMOs are beginning to appear in these areas. The legal advice recommended that *"The Parish Council should work to build an evidence base and strong case for the extension of the existing Article 4 Direction to cover City of Durham Parish at the earliest opportunity."*

However, County Councillors were advised that a proposal to extend the Article 4 Direction to include Mount Oswald, Carrville, and Belmont was to be put to the Cabinet on 13 November last year. This did not happen but we must infer that a report was drafted.

The Parish Clerk has, with the agreement of the Planning Committee Chair, sought quotations from planning consultants to produce a planning technical note, which would outline why in the planning balance, the areas included in the proposed Article 4 boundary should be considered as exceptional circumstances. Such an undertaking would hopefully help to build a strong case for the Article 4 boundary to be extended with particular reference to student accommodation.

In light of this advice, the Committee is asked to consider what next steps it wishes to take on this matter.

DECISION REQUIRED	That representatives of the Parish Council discuss with DCC the current position and the steps necessary to extend Article 4 coverage as outlined in the above report. The results of these discussions will be reported to this Committee to decide what further action should be taken, including possibly commissioning a planning consultant to assist with the preparation of the evidence base.
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