



County Planning Committee

Date Tuesday 1 November 2016
Time 1.00 pm
Venue Council Chamber, County Hall, Durham

Business

Part A

1. Apologies for Absence
2. Substitute Members
3. Declarations of Interest
4. Minutes of the meeting held on 6 September 2016 (Pages 1 - 16)
5. Applications to be determined

- a) DM/16/01228/FPA - Milburngate House, Durham City (Pages 17 - 72)

Detailed planning application for mixed use development comprising of leisure (use classes D1 and D2), retail (use class A1), financial and professional services (use class A2), food and drink (use class A3, A4 and A5), offices (use class B1) and 291 residential units (use class C3) together with associated access, demolition, landscaping and infrastructure works and outline planning application with all detailed matters reserved except access for a mixed use development of office (use class B1) and maximum of 150 residential units (use class C3) and associated landscaping and infrastructure works.

- b) DM/16/00526/FPA - Land Near To Hargill Road And Railway Street, Howden-Le-Wear, County Durham (Pages 73 - 96)

Hybrid application for the erection of a 57 bed care home, community hub/retail units, 20 affordable bungalows and outline permission for 61 residential units

- c) DM/16/02335/FPA - Philips Components Ltd, Belmont Industrial Estate, Belmont, Durham (Pages 97 - 114)

Distribution centre with associated vehicular and pedestrian access, car parking and landscaping, and erection of 4 units (blocks 1, 6, 8 and 9) for mixed industrial and storage use

6. Appeals Update (Pages 115 - 116)
7. Such other business as, in the opinion of the Chairman of the meeting, is of sufficient urgency to warrant consideration
8. Any resolution relating to the exclusion of the public during the discussion of items containing exempt information

Part B

Items during which it is considered the meeting will not be open to the public (consideration of exempt or confidential information)

9. Such other business as, in the opinion of the Chairman of the meeting, is of sufficient urgency to warrant consideration

Colette Longbottom
Head of Legal and Democratic Services

County Hall
Durham
24 October 2016

To: **The Members of the County Planning Committee**

Councillor K Davidson (Chairman)
Councillor B Moir (Vice-Chairman)

Councillors D Boyes, J Clare, P Conway, M Dixon, G Holland,
I Jewell, A Laing, R Lumsdon, C Marshall, H Nicholson,
G Richardson, A Shield, P Taylor and R Young

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DURHAM COUNTY COUNCIL

At a Meeting of **County Planning Committee** held in Council Chamber, County Hall, Durham on **Tuesday 6 September 2016 at 1.00 pm**

Present:

Councillor K Davidson (Chairman)

Members of the Committee:

Councillors D Boyes, J Clare, P Conway, M Dixon, G Holland, I Jewell, B Moir (Vice-Chairman), H Nicholson, J Robinson, A Shield and R Young

1 Apologies for Absence

Apologies for absence were received from Councillors A Laing, R Lumsdon, C Marshall, G Richardson and P Taylor.

2 Substitute Members

Councillor J Robinson as substitute Member for Councillor R Lumsdon.

3 Declarations of Interest

Councillor J Robinson declared an interest in Agenda Item 5(c) because he had previously expressed views about housing applications in Sedgfield to the Committee. He would act as Councillor Lumsdon's substitute Member for Agenda Items 5 (a) and 5 (b) then withdraw as a substitute Member of the Committee. He would speak as the local Member on Agenda Item 5 (c) and then withdraw from the meeting.

4 Minutes

The Minutes of the Meeting held on 26 July 2016 were agreed as a correct record and signed by the Chairman.

5 Applications to be determined

- a DM/15/02064/FPA - Pundergill, Rutherford Lane, Brignall, Barnard Castle**
- b DM/15/02063/FPA - Pundergill, Rutherford Lane, Brignall, Barnard Castle**

The Chairman proposed, and the Committee agreed, that this and the following application on the agenda be considered together for the purposes of presentations

and representations because they were similar applications but at slightly different locations. The Committee would then vote individually on each application.

The Committee considered reports of the Senior Planning Officer for the following applications:

- DM/15/02064/FPA – Erection of turbine number 1 a 43.6m tip height with associated access and sub-station, and
- DM/15/02063/FPA - Erection of turbine number 1 a 43.6m tip height with associated access and sub-station

at Pundergill, Rutherford Lane, Brignall, Barnard Castle (for copy see file of Minutes).

H Jones, Senior Planning Officer gave a detailed presentation on the applications which included photographs of the site and photo montages of the proposed turbines. Members of the Committee had visited the site the previous day and were familiar with the location and setting.

The Senior Planning Officer informed the Committee that since the production of the report a further noise assessment report had been received from the applicant. This had been considered by Environmental Health and Consumer Protection who maintained their objection and continued to have concerns regarding the adequacy of reports submitted. Additionally, one extra letter of objection had been received.

Councillor Rowlandson, local Member, addressed the Committee to object to the applications. He considered that the proposed turbines were in the wrong place and would stand out in their surroundings. They would be visible from many miles as well as from the Bowes Museum and other heritage sites. Councillor Rowlandson agreed with the officers recommendation that both applications should be refused.

Councillor Davidson informed the Committee that Councillor R Bell, Local Member was unable to attend the meeting but had submitted the following which he had asked be read out at the meeting.

The development sits very close to the border of the Barnard Castle East and West divisions. I support the officer's recommendation for refusal due to the adverse visual impact, and the adverse impact to the amenity of neighbouring properties.

It is disappointing also that an application which has been in the pipeline for many months still does not contain sufficient detail to properly assess the noise effects, and impact on heritage assets.

It would therefore seem to be unjustifiable to disagree with the report's recommendation to refuse permission

Keith Alexander of South Teesdale Action Group (STAG) addressed the Committee to object to the applications. He informed the Committee that he was representing residents who lived within 800 metres of the proposed development at Punder Gill and who had all objected. These were South Flatts, Timplon Hill Farm, Timplon Hill

Barn, Dent House, Ox Pasture and Kilmond Wood. Most of these residents lived and worked at their properties and many had lived in Teesdale for generations.

The local community had this development hanging over it for the last 5 years and had spent hundreds of hours dealing with a development that it believed was in the wrong place. As a small community it had felt very vulnerable that its voice would not be heard.

Although not against renewable energy schemes in principle, but they had to be sited in the right locations. Punder Gill, which sat within a unique landscape, was rich in ecology and heritage, and was quite simply the wrong location on which to build two 46 metre turbines. These views were in line with the Senior Planning Officer.

Both the Design and Conservation officer and the Landscape officer stated that the impact of this proposed development was wholly negative. The impacts of this scheme could not be made acceptable.

The pre-application consultation highlighted the community's concerns regarding the effect on landscape, heritage, residential amenity and ecology. Despite this the applicants stated that no further modifications had been made to their proposal as a result of pre-application consultation. Furthermore none had been made since, despite the fact that the proposals had received 41 letters of objection. As a result the planning impacts identified by the local community had not been fully addressed and the applications did not have their backing, which was a key material consideration.

The turbines, at 46-metres, twice the height of the Angel of the North, would be extremely prominent and completely out of scale with the surrounding landscape. There were no other man-made developments on this scale in this area, which was a very special landscape:

Punder Gill was less than 2 kilometres from the North Pennines AONB and would be seen in views both to and from it. The site was in an Area of High Landscape Value, with extensive views down the Tees Valley and across to the Yorkshire Dales National Park.

The turbines would impact on views of Kilmond Scar, a Site of Special Scientific Interest, which lay within 700 metres of the site. STAG agreed with the County's Landscape officer that the landscape and visual effects of the proposals, both together and singly, would be unacceptable and in clear conflict with landscape related policies. Correctly presented visualisations from more appropriate agreed viewpoints, and a fuller analysis of the effects, would only make this more apparent.

Timpton Hill Barn was only 240 metres from T1 and STAG agreed with the County Council officer that the turbines would be overbearing to this property. Timpton Hill Barn had planning permission to be converted into a home for a young family. However, STAG differed from the officer views in his conclusion that because the barn was not yet occupied the negative impact of the turbines should not be seen as a material planning consideration. The planning permission predated this

application and it was wrong that the plans and investment to develop a house on a family farm could be derailed simply because the house was not yet occupied. Despite the proximity of the turbines to Timplon Hill Barn, the applicants had completely ignored this property and as a result it had not been assessed in relation to residential amenity, noise and visual impact.

Contrary to the applicants' statement that only one objector lives within 500 metres of the nearest turbine, South Flatts, Dent House and Timplon Hill Farm were all situated within this distance and all 7 residents had objected to the schemes.

The occupier of Timplon Hill Farm was concerned about the impact on ecology and had stated the turbines would destroy years of careful practice on adjacent fields which were only 50 metres from T1. Timplon Hill was an award winning farm in a higher level stewardship scheme, with the main objective being the protection of wading birds, their chicks and their habitat, especially curlews which congregated in large numbers during staging and migration periods.

Mr Alexander lived at South Flatts and was very concerned that the turbines would be too close to his home and be overbearing in the landscape. Having moved to South Flatts some 26 years ago, he was attracted by the openness of the landscape. There was no doubt that the turbines would be prominent features and very dominant from South Flatts which had ten windows and doors which would have clear views of T1, which would be difficult to avoid. His family spend a large amount of time outdoors, with his garden and land extending 100 metres eastwards towards T2, making it only 295 metres away. His concerns were amplified by the lack of a set-back distance and he urged Councillors to include a separation distance between turbines and residential properties in the new County Plan.

The owner of Ox Pasture which was some 700 metres from the turbines was very concerned about the impact on wildlife and on her holiday businesses. Although tourism was not considered a material planning consideration, anecdotally some of her guests had said that should the turbines be built in this area they would not return.

The owner of Kilmond Wood Farm, 700 metres from the turbines had stated that the turbines were out of scale with other structures in the area and would spoil the special nature of the landscape.

The area had a rich heritage including The Bowes Museum. As the turbines would be sited directly in front of the Museum and its listed gardens, they would be seen in views both to and from it. One of the core principles of the NPPF was to conserve heritage assets in a manner appropriate to their setting, so that they could be enjoyed both now and in the future. There was little doubt that the turbines would have a negative impact on this regionally significant building. STAG agreed with the County's Design and Conservation Officer who stated that even if a more appropriate heritage statement was submitted the landscape and visual impact of the proposed development would be wholly negative.

The turbines would create noise by day and night. While the applicants had stated that the noise from the A66 was constant there was no evidence provided to support this claim as raw noise data had not been released. Residents living next

to the A66 knew that the level of traffic on the road was not constant and the road was very quiet in the evenings, during the night and some holidays.

The NPPF stated that planning policies should support economic growth in rural areas in order to create jobs as long as they respected the character of the countryside. These schemes did neither. The schemes would not create any new jobs but would simply help to maintain 1 part-time post. Other jobs created would be short-term and related to the construction of the turbines themselves. No community benefits had been identified in the applications. The benefits to the local economy were nil and did not warrant the harm the development would cause to the area.

All in all there was nothing to recommend these schemes. Their contribution to cutting greenhouse gases was outweighed by the unacceptable harm to the area. The developments were in conflict with Teesdale's Saved Local Plan, they were not within an area identified as being suitable for wind energy development. Mr Alexander on behalf of STAG asked the Committee to agree with the local community, Councillor Bell, Parish Councils, The Bowes Museum, the AONB and the County Council's officers by refusing planning permission for both applications.

Paul Bailey, agent for the applicant, addressed the Committee.

This application was not an application from an electricity generating company or an institutional investor. It was an application from two local landowners who were looking to diversify their farm and raise money to invest in it because it had been neglected since their father's death several years ago

The turbines were small-scale commercial wind turbines which would generate electricity to power almost 400 homes, reduce greenhouse gas emissions, help address the effects of climate change, improve the capacity of the grid locally and provide opportunities and jobs for local contractors amongst other benefits to local economy.

It was accepted that although there would be some landscape and visual impact as there was with all wind turbines it was not considered that impact was seriously adverse to such an extent that this harm clearly outweighed the benefits. There would be impact, particularly at near distance, but evidence provided showed that the turbines would not be overbearing so as to affect residential amenity. The view from the A66 would be a transient one and the view from the AONB would be at long distance, where it would be seen as a relatively diminutive feature from a small and very specific area of the protected landscape.

The applicant had sited the turbines close to the A66 which already exerted an urban influence upon the area. They had reduced the scale of the scheme from 5 to 2 turbines following consultation and they had sited the turbines in a relatively low lying area where they benefited from the screening effects of trees against the background hills from key viewpoint. Furthermore, the choice of grey rather than white for the turbine colour would help to make them less conspicuous and further assimilate them into the wider landscape.

Landscape impact was subjective and involved a fine and delicate balancing exercise. However, this was not the most sensitive site and the scale of the proposal was relatively small in comparison to other developments. The characteristics of the site and the surrounding landscape offered some enclosure and helped towards mitigating visual impact. Sites such as these where impacts could be satisfactorily addressed should be supported.

There was concern that the officer's report seemed to suggest that the applicant was not forthcoming with further information to assist officers in reaching a decision. This could not be further from the truth. Since January of this year the application had been waiting for a decision and as each week and month has gone by the applicant had pushed for a determination date and had continually asked whether or not any further information was required to make a decision.

The applicant was therefore surprised to find out only a few days before Committee that there were still outstanding objections from both Environmental Health with regard to noise impact and from Design and Conservation with regard to Heritage assets. Additional information could easily have been provided anytime over the last 8 months between December and now to assist the appraisal process. Further photomontages had already been supplied to supplement the LVIA in response to comments made by the AONB officer, and further line of sight assessments and visuals sent in response to comments made by the Landscape Officer.

The applicant was also concerned that the AONB officer and the landscape officer did not appear to have been re-consulted following the submission of additional reports and supplementary photomontages submitted to address their concerns and following a half day meeting with the AONB officer to examine the proposal on site in more detail.

The comments made in the officer report appeared to be taken from the consultation replies dated 8 September and 8 October, prior to the meeting held with the AONB officer on 13 November and before further reports were submitted to the case officer on 26 November. The applicant had not been made aware of any other responses received from these consultees after this date, and none appeared on the applications web page, even though the applicant urged them to re-send comments following our meeting.

In view of this, if Members felt they were not in a position to grant approval for this proposal today, the applicant respectfully asked that the matter be deferred until next Committee so further responses could be obtained from the relevant consultees which were critical to the decision-making and grant the applicant more time so that they could provide further information regarding noise and potential impact on heritage assets, in particular Bowes Museum and Dent House Farm.

The Senior Planning Officer responded to issues raised during the presentations. Referring to the processes of consultation, re-consultation had been carried out after the resubmission of further reports from the applicant around Christmas 2015. The applications were being recommended for refusal on the following three grounds and these can be considered to be the key outstanding matters:

- Regarding heritage the level of detail submitted with the applications was not sufficient to fully assess potential impacts upon the significance of heritage assets potentially impacted on by the developments and the applicant had previously in response to this stated that they considered their submissions were acceptable.
- Visual and Landscape Impact- Landscape officers originally stated that any additional and more accurate visualisations would only result in clearer demonstration of harm
- Noise – the recently submitted noise assessment report had been considered by Environmental Health and Consumer Protection who maintained their objection and continued to have concerns regarding the adequacy of reports submitted. There had been opportunities for the applicant to submit further information, however, there came a point when the application needed to be determined and the issues raised with this application could not be addressed with further work.

Councillor Holland informed the Committee that usually he was normally supportive of renewable energy schemes. However, having attended the site visit and viewed the proposed location of the turbines, he considered that this was the wrong area to site them. There were no other turbines in this area, which was an area of natural beauty. The saved Local Plan was robust and it was clear that such turbines were unacceptable, with this being supported by the NPPF. He agreed with the officer report and **moved** refusal of each application.

Councillor Boyes informed the Committee he objected to the proposed siting of the turbines. County Durham already had a high proportion of wind turbines and more than 70% of households were now supplied with electricity from renewable sources. In 2012 Phil Wilson MP had stated that the landscape in County Durham was to capacity with wind turbines and planning permission for more had been granted since this time. Councillor Boyes **seconded** refusal of each application.

Councillor Dixon informed the Committee that he agreed with the views expressed by STAG, Councillor Holland and Councillor Boyes and he supported the recommendation in both reports.

DM/15/02064/FPA - Erection of turbine no. 1 a 46.3m tip height turbine with associated access and sub-station.

Upon a vote being taken it was

Resolved:

That the application be refused for the reasons contained in the report.

DM/15/02063/FPA - Erection of turbine no. 1 a 46.3m tip height turbine with associated access and sub-station.

Upon a vote being taken it was

Resolved:

That the application be refused for the reasons contained in the report.

Councillor J Robinson withdrew as a substitute Member of the Committee.

c DM/16/01522/OUT - Land At The Former Sedgefield Community Hospital, Salters Lane, Sedgefield, County Durham

The Committee considered a report of the Senior Planning Officer regarding an outline application with all matters reserved except partial means of access, to, but not within the site, for the erection of up to 125 dwellings, associated landscaping and parking, plus demolition of existing buildings on land at the former Sedgefield Community Hospital, Salters Lane, Sedgefield (for copy see file of Minutes).

C Harding, Senior Planning Officer gave a detailed presentation on the application which included photographs of the site and setting and an indicative layout. Members of the Committee had visited the site the previous day and were familiar with the location and setting.

The Senior Planning Officer informed the Committee of the following updates to the Committee report:

- An objection had been received from Business Durham who had expressed concern that any residential development on the site may jeopardise future expansion of NetPark.
- In total, 8 letters of objection to the application had been received
- In total, 31 letters in support of the application had been received.

Councillor Davidson informed the Committee that Councillor Robinson would be invited to speak first to make representations on the application, following which he would withdraw from the meeting.

Councillor J Robinson addressed the Committee as a local Member and not as Councillor Lumsdon's substitute Member on the Committee. He informed the Committee that the issues surrounding the County Durham Plan had resulted in a great impact on both Sedgefield and Lanchester which had led to a piecemeal attack by developers lodging planning applications on areas around Sedgefield.

Councillor Robinson informed the Committee that he supported approval of this application which was on a brownfield site and therefore protected the green wedge around Sedgefield. Approval of the application was also supported by Sedgefield Town Council. However, Councillor Robinson sought assurances that, if the application was approved, further negotiations take place regarding access/egress, affordable housing and s106 payments.

Councillor Robinson expressed surprise that Northumbrian Water, who had not objected to an application for 300 houses at one end of Sedgefield, had now raised concerns on this application for 125 houses.

Referring to the sustainability of the site, Councillor Robinson informed the Committee that he had walked from the site of a previous application at Eden Drive, which had been recommended for approval, to the centre of Sedgefield and this was a longer distance than from this application site to the centre of Sedgefield.

Additionally, the site was near to Fishburn and the development may help to sustain both businesses and schools in Fishburn.

Approval of the application was supported by the residents of Sedgefield and Councillor Robinson asked the Committee to also support approval of it.

Councillor Robinson left the meeting.

Councillor Alan Blakemore of Sedgefield Town Council addressed the Committee in support of the application. He informed the Committee that he was disappointed with the officer recommendation that the application be refused. The application site was a brownfield site which was currently an eyesore in need of development and asked if not this development then what would be developed on the site. The site was sustainable and near to Winterton and NetPark and within easy reach of both Sedgefield and Fishburn.

Paragraph 36 of the Committee report referred to weight being given to relevant policies in emerging plans. The Sedgefield Neighbourhood Plan had been considered by an Inspector and considered to be sound, subject to modifications, and this site had been identified in that Plan as a preferred development site following public consultation. The site would provide 125 of the identified 300 houses needed in the Sedgefield area.

The development would be sustainable, with a footpath and a cycle path already in place to both Sedgefield and Fishburn. There were also two bus stops, one in each direction, which already existed.

The site, which was previously a 16 ward hospital, was not greenfield and the concrete footprint of the former hospital was still visible.

The areas of Fishburn and Sedgefield had, historically, been linked along Salters Lane from Fishburn coke ovens towards the River Skerne then past the General Hospital and Winterton Hospital towards Sedgefield and it was only relatively recently that this linkage had been removed.

Councillor Blakemore asked the Committee to approve the application.

Mr Lines, local resident, addressed the Committee to object to the proposal.

Mr Lines informed the Committee that he was a resident of Sedgefield and a Town Councillor and was speaking in a personal capacity but expressing the views of many others with whom he had spoken but who could not attend the meeting due to work or other commitments.

The fact that this was a brownfield site did not in itself make it suitable for housing development and the site was not a good option. Accepting that Sedgefield would grow, in order to allow for the development of a sustainable, cohesive community, it must be accepted that housing should be built within the existing community.

This site was demonstrably not within the boundary of what residents called Sedgefield. It was clearly not within easy walking distance of services and amenities, particularly for the elderly, infirm and very young. Mr Lines had measured the distance and it was a three mile round trip from the site to reach the post office, schools, churches, the doctors' surgery, many sports facilities and the headquarters of Sedgefield Community Association where so many of the clubs and societies that make the town special were based. This was not a 10 or 20 minute stroll in each direction for even the most active residents and would encourage the greater use of cars to access the centre of Sedgefield or, worse, encourage the spread of services outside the centre, which would damage the viability of the high street. It was not in a location where people who desired to live in Sedgefield would want to secure a home.

If the development was approved, people who lived there would inevitably be marginalised. They would be isolated from Sedgefield, which would cause many problems and make it extremely difficult to sustain a cohesive, integrated community.

Building on this site would directly contradict two of the Sedgefield Plan's core objectives as follows:

Objective ii - Preserving Sedgefield's distinctive identity. There was a need to preserve Sedgefield's distinctiveness from the physical growth and development of neighbouring communities such as Wynyard, Stockton and Fishburn, to preserve its important identity as a modern progressive community with an historic heritage.

Objective viii - The elderly and infirm. To create housing for independent living, as well as facilities and amenities that were accessible to those who had limited mobility encouraging intergenerational integration.

Mr Lines strongly believed that building on this site would also fundamentally undermine other objectives outlined in the plan, such as:

Objective v - Supporting generational continuity. Sedgefield was characterised by families who had lived in the community for generations. Future development must provide affordable housing for acquisition and rental in the community to enable the continuity of family development.

Objective vi - Supporting young people. To acknowledge that young people were critical to a successful future of the community and plan to provide facilities that supported their development in the community.

These objectives were critical for sustaining a long-term cohesive community in Sedgefield. Pushing the development of suitable housing for young people to a site that was clearly remote from the heart of the town would do nothing to promote generational continuity or integration, and would hinder sustainable prosperity in Sedgefield.

Although the site was the most favoured by residents in a site preference survey undertaken during the development of the Sedgefield Plan, the survey had

attracted 331 responses which was less than 6% of the population of Sedgefield. 42% of the 6% favoured this site over any other, in a survey that was undertaken over two years ago, since which a lot had happened.

It was clear to Mr Lines, and to the many other residents who shared his view, that the SHLAA assessment of this site was absolutely correct, and that the officer's recommendation was also correct.

Mr Lines urged the Committee to reject this proposal, which would marginalise the residents who lived on the site, would hugely damage the cohesiveness and distinctiveness of Sedgefield, and would fly in the face of everything required to build an integrated, sustainable community as the town inevitably grew.

Sarah Guest of Sedgefield Village Action Group (SVAG) addressed the Committee in support of the application. SVAG was committed to representing the majority community view as shown in the Site Preference Survey.

This was a brown field site which was currently wasteland and was an eyesore which should be developed to enhance the area and provide part of the agreed 300 housing allocation for Sedgefield. Although the site was on the outskirts of Sedgefield it was within walking distance of local amenities, approximately 20 minutes from Sainsbury's via safe pathways through the Winterton estate. There were also clear and safe cycle routes from the site as well as regular bus services to Sedgefield and beyond.

Ms Guest could not understand why the County Council claimed that the development would not be sustainable. Near to Sedgefield large developments were being built which were not within walking distance of anywhere yet these developments were considered to be sustainable and the houses were, according to the developers, extremely popular and selling well.

People would drive from this development to Sedgefield and it was naïve to think that this would not happen because people already did so from other estates which were much closer to the centre of Sedgefield. Parents drove their children to and from school, but this was more to do with people's busy lifestyles and schedules than living too far from the town centre. Additionally, the effective cycle routes and pathways from this development to the town centre would provide an alternative.

The site was within easy distance to all major routes north and south and was in a semi-rural setting, bringing all of the advantages that brought to people's wellbeing and work life balance. Public footpaths onto open countryside could be accessed from areas close to the development site, as could Hardwick Park.

Ms Guest was pleased that a developer had expressed an interest in the site and urged the Committee to consider the benefits of building on it. It would mean that Sedgefield could retain the highly valued green land surrounding the town as well as going some way to meet the housing requirement for the area. Homes on the site may also be slightly more affordable than homes built on green fields at the other end of the town. This could allow for more young families to be able to afford a home within the boundary of Sedgefield, with excellent schools and prospects.

Ms Guest informed the Committee it was encouraging that people were having increased opportunity to express their views through the Localism agenda. She hoped that in this instance the Committee would consider the views of local residents and approve the application.

Richard Irving of ID Planning addressed the Committee in support of the application. It was right to share the presentation time with a community action group which was committed to delivering what was best for their community in terms of the provision of new housing and where that new housing should be.

Mr Irving's colleague, Jonathan Dunbavin had written to each Member of the Committee to highlight both the benefits of this application and to express surprise that officers considered the site to be unsustainable.

While he did not want to repeat the presentation made by Ms Guest, Mr Irving wished to reiterate three key areas which he believed made this development proposal appropriate.

Firstly, notwithstanding the comments raised by Mr Lines, there was considerable support from key members of the community who believed in localism and were in favour of the development because of the benefits that would ensue. Localism was not about simply objecting to any development in any location, but was about understanding and appreciating what was best for a community in the knowledge there was a requirement for further housing in the area and where best this should be located.

Secondly, there were no technical constraints to developing this site. It was a brownfield site and as such was accorded first preference for residential development opportunities. There were no flooding, ground or highways issues that could lead to a reason to refuse the application for a site which could, in essence, be developed immediately.

Thirdly, there was a clear indication from those who had spoken in support of the application that this was a sustainable and accessible location for residential development and many were at a loss why, based on the planning and transportation evidence which accompanied the application, the conclusion of officers was that this was not a preferential location for residential development. Mr Irving firmly disagreed with this conclusion and the site related extremely well to Sedgefield and could not be deemed to be isolated by any stretch of the imagination.

On the basis of all of the technical information which accompanied the application, and the level of support afforded to the development, Mr Irving urged the Committee to review carefully the officer recommendation, overturn those recommendations, and approve a scheme which would deliver significantly more benefits than it did in its current state.

The Senior Planning Officer responded to issues raised during the presentations. Referring to the Sedgefield Neighbourhood Plan the Senior Planning Officer

informed the Committee that the Inspector had suggested that this could be progressed subject to amendments. It could only therefore be given a reduced weighting at this time because amendments were required, particularly to the policy which stated where housing should be allocated. The Plan needed significant amendments before it could be adopted.

The proposed development site had always been categorised as red in the SHLAA as being not suitable for housing.

Northumbrian Water had advised that the sewerage treatment works was nearing capacity and had a 300 dwelling headroom. It had advised that the Local Authority must coordinate the decision making process so that this capacity was not exceeded, and this was in line with advice given on previous applications in the Sedgfield area.

Ecology officers, while not objecting to the application, had considered there was an opportunity for some biodiversity enhancements although none had been forthcoming.

Referring to s106 monies, a requirement had been identified to extend school provision. However, because the application was in outline form only, it was difficult to determine other s106 requirements until more detail of the development was known.

The distances to services in the report identified the distance to the nearest service available, whether this was in Fishburn or Sedgfield.

Public transport provision was such as three buses an hour operated in close proximity to each other and this was not a full day service.

Councillor Dixon informed the Committee he considered the Neighbourhood Plan could only be given reduced weight because it needed crucial amendments. Although this was a brownfield site, such sites were usually within towns or cities. Business Durham had lodged an objection to the application because of the possibility of it jeopardising future expansion of NetPark, which was a jewel in the County's crown. Rigorous tests and criteria had been applied to determine the sustainability of the development site which was in an isolated location and was not sustainable. Councillor Dixon supported the recommendation and **moved** that the application be refused.

Councillor Holland informed the Committee that although this was a brownfield site because it was previously the site of a hospital, it was surrounded by greenfield farmland and located between the two separate settlements of Fishburn and Sedgfield. This proposed housing estate would belong to neither settlement and may encourage lateral encroachment. Councillor Holland **seconded** refusal of the application.

Councillor Shield informed the Committee he was troubled by the application. The site was currently a blight in the area and no other development of it was planned. The site was in need of development and was in close proximity to both Sedgfield

and Fishburn. The site was within reasonable walking distance of both settlements and cycle routes were also available. Public transport could be re-timed to meet any demand from the development. He was minded to refuse the officer recommendation and approve the application.

Councillor Nicholson informed the Committee he had attended the site visit and observed the isolated location of it. Although there was public transport, this was only 3 buses each hour and he did not consider that demand from the development would be sufficient for this to be increased. Additionally, this was not a full day service. He did not consider that the location of the site was within easy walking distance of Sedgefield. This was a brownfield site in a greenfield location and Councillor Nicholson agreed that the application should be refused.

Councillor Boyes informed the Committee that he agreed with Councillor Shield and that he considered the site was not far from Sedgefield. This was a brownfield site and Councillor Boyes questioned what would be developed on the site if this application was refused. There were no current plans to further develop NetPark. The residents of Sedgefield were supportive of the development and while he had listened to all issues put forward to the Committee he considered that this development of a brownfield site should be approved.

Councillor Clare informed the Committee that the previous failure of the County Durham Plan had thrown the issue of housing in Sedgefield into chaos and had led to multiple applications for Sedgefield with no coherent process. It was crucial for Sedgefield to have some coherent process behind the development of housing in the town. The Neighbourhood Plan had not been approved and therefore did not exist and the County Durham Plan was in its infancy. Until such a coherent plan was in place Councillor Clare was minded to refuse the application.

Councillor Jewell informed the Committee he had attended the site visit and his views were based on this. There seemed to be quite a distance from the edge of Sedgefield to the site, and although he acknowledged there was a footpath, he considered this would not be used by residents of the development to access Sedgefield. The site was neither within Sedgefield nor Fishburn and was outside of the perimeter of both settlements.

Councillor Conway informed the Committee that the site was located 2.4 km from the centre of Sedgefield and 0.8 km from Fishburn, yet had a Sedgefield address. Paragraph 94 of the report which referred to distances of which many were beyond acceptable but within the preferred maximum. On the issue of sustainability Councillor Conway asked why the emphasis was on distances to the community of Sedgefield rather than Fishburn. He was familiar with the area and there had been a recent plethora of development applications for the Sedgefield area. He was undecided about this application.

The Senior Planning Officer replied that the distances in the report were those to the nearest facility, whether they were in Sedgefield or Fishburn.

Councillor Conway considered that 90% of the secondary school population would be outside of the preferred maximum distance. While the distances to facilities for

everyday living, such as doctors, post office and primary school were not ideal, they were within the preferred maximum.

Councillor Davidson informed the Committee that because this was a brownfield site it did not imply that it was suitable for residential development. He referred to Chester le Street where applications for development at isolated villages surrounding Chester le Street had been refused because they could lead to ribbon development and eventually the isolated villages would become part of Chester le Street. If this site was granted permission for residential development then it would be more difficult to refuse future applications which could lead to a ribbon development to join Fishburn with Sedgefield.

Upon a vote being taken it was

Resolved:

That the application be refused for the reasons contained in the report.

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Planning Services

COMMITTEE REPORT

APPLICATION DETAILS

APPLICATION NO: DM/16/01228/FPA

FULL APPLICATION DESCRIPTION: Detailed planning application for mixed use development comprising of leisure (use classes D1 and D2), retail (use class A1), financial and professional services (use class A2), food and drink (use class A3, A4 and A5), offices (use class B1) and 291 residential units (use class C3) together with associated access, demolition, landscaping and infrastructure works and outline planning application with all detailed matters reserved except access for a mixed use development of office (use class B1) and maximum of 150 residential units (use class C3) and associated landscaping and infrastructure works

NAME OF APPLICANT: Carillion (Maple Oak) Ltd

ADDRESS: Milburngate House, Durham City

ELECTORAL DIVISION: Elvet and Gilesgate

CASE OFFICER: Henry Jones, Senior Planning Officer
03000 263960 henry.jones@durham.gov.uk

DESCRIPTION OF THE SITE AND PROPOSALS

The Site

1. Milburngate House stands just to the north of Durham City Centre on the western bank of the River Wear. Constructed in the 1960s the building was purpose built for the Post Office Savings Bank, later known as the National Savings & Investments.
2. To the north is the Radisson hotel with residential properties in Sidegate beyond, to the south runs the A690 (Leazes Road) in an east-west direction as it crosses the river by means of Milburngate Bridge, with the Gates shopping centre beyond. To the east flows the River Wear in a north-south direction, with the Freeman's Reach office development on the eastern bank. To the west runs Framwelgate Peth, with residential properties in Highgate beyond.
3. Pedestrian access is taken from Milburngate Bridge and Framwelgate Peth. Vehicular access to the basement car park is taken from Framwelgate Waterside, with an exit onto Framwelgate Peth.

4. There is a significant change in level from the riverside to the east at 33.5m Above Ordnance Datum (AOD) and to the west at Framwelgate Peth at approximately 46m AOD. The Milburngate Bridge deck to the southern boundary is approximately 42.5m AOD.
5. Milburngate House is currently occupied by Her Majesty's Passport Office (HMPO) and previously National Savings and Investments (NSI) which has now moved to new offices at Freeman's Reach across the river.
6. Although not listed Milburngate House is a non-designated heritage asset of local significance. It has been granted a Certificate of Immunity from any listing for five years by the Secretary of State. In 2015 planning permission was granted for demolition of Milburngate House including remediation and enabling works in preparation for the proposed future redevelopment on the site.
7. Situated within Durham City Centre the application site is within close proximity to a number of designated and non-designated heritage assets. Notably the site is within the Durham (City Centre) Conservation Area and within the setting of the Durham Castle and Cathedral World Heritage Site (WHS). The Castle and Cathedral WHS is located approximately 210m from the application site at the nearest point.
8. The application site covers an area of approximately 3.1 hectares. The site contains no statutory or locally designated landscapes or ecological sites. There are no designated public rights of way within the application site.

The Proposal:

9. A mixed use development is proposed split into three development zones. Full planning permission is sought within Zone 1 and outline permission sought within the majority of Zones 2 and 3.
10. Zone 1 comprises the majority of the site covering the more southern and central parts of the site. A three level podium is proposed rising to a height of 43m AOD. Above the podium and set back in the site up to six buildings are proposed (Blocks 1A to 1F). These blocks would vary in scale and height. The lowest block (1F), situated closer to the river, would rise to two stories above the podium (up to 49m AOD) whilst the highest (1E), set adjacent to Framwelgate Peth, would rise to nine stories above the podium level (up to 70m AOD). Within Zone 1 a mix of commercial and non-commercial uses are identified. 291 residential units are proposed. A boutique cinema of 1,130m² floorspace is proposed. A degree of flexibility is sought with regards to the remaining 12 commercial units proposed. The 12 further commercial units within zone 1 total 5,979m² floorspace. A3 and A4 food and drink establishment uses are sought on a flexible basis so as to enable those uses to potentially utilise all the 12 units. Planning permission is also sought for the 12 commercial units so as to permit A1 shops (max 649m²), A2 financial and professional services (max 649m²) A5 hot food takeaway (max 500m²), B1 business use (max 128m²), D1 non-residential institutions (nursery, crèche, health centre, clinic or galleries usage max 2000m²) and D2 gym use (max 150m²). A total of 339 parking spaces are proposed for Zone 1. The application notes that the ES has assessed the acceptability of 300 residential units within Zone 1, however, any increase in units sought would be subject a further planning application.
11. The majority of Zones 2 and 3 are sought in outline with all detailed matters reserved except access. A total of 13,285m² of accommodation is sought. Again the application seeks flexibility so as to permit the accommodation to comprise of either/ or a mixture of B1 business use and a maximum of 150 residential units (use class

C3). It is proposed that Zone 2, situated in the north-west of the site, would comprise of a building with a maximum of eight stories above the podium (up to 68m AOD). Within Zone 2, 93 car parking spaces are proposed. Zone 3 relates to the north-eastern section of the site and proposes a development with a maximum of six stories above the podium height (up to 56.5m AOD) with upper stories which may split vertically. One element within Zone 2 seeks planning permission in detail rather than outline, this relates to part of the podium development where it would extend out of the land identified as Zone 1 and marginally into Zone 2.

12. A vehicular access to the site would be retained at the existing access from Framwelgate Waterside, albeit in an amended form. This would lead to car parking for the commercial elements of the proposal beneath podium level.
13. A second access would be taken via a new signalised junction from Framwelgate Peth approximately in the location of an existing egress. This access would serve the residential properties and would lead to a car park below podium level. Associated with this signalised junction alterations to Framwelgate Peth are proposed with the widening of the highway carriageway and the highway boundary in turn widened. During times of flood this signalised access would also be utilised as an evacuation route for traffic on the riverside.
14. A separate service access is proposed from Framwelgate Waterside, north of Zone 3. This will serve as a potential additional car park access to Zone 2 and future servicing to Zone 3, and to the main service yard to Zone 1.
15. To provide pedestrian permeability a number of access points are proposed. In the north-west of the site a pedestrian access would be taken from Framwelgate Peth down through the site to Framwelgate Waterside. Further pedestrian access points are provided from Milburngate Bridge and close to the signalised junction at the bottom of Framwelgate Peth, The latter would also provide an emergency vehicle access point.
16. Removal of existing trees within the site is proposed to facilitate the development and to establish greater arboricultural management of the site. This tree removal would include removals where trees would conflict with the siting of the proposed buildings. Removal of a significant section of the trees adjacent to Framwelgate Peth is proposed. This is as a result of the proposal to remove an existing retaining wall in this area which has come to the end of its life and a ramped access. The retaining wall is to be replaced. North of the retaining wall proposed for removal, in the north-west of the site it is proposed to retain a grouping of trees.
17. Landscaping proposals for the site are proposed in distinct character areas. These being; woodland; residential; terraces; and riverside. The woodland character is represented by the retained trees in the north-west of the site, acting as a green backdrop to the site. Dropping down to the residential character area the character changes to a woodland garden approach with planted spaces for residential use. The commercial uses are located within the terraces character area and is envisaged to be a lively space with pedestrian movements and spaces with newly formed views of the City. At riverside level a new public space with seating and tree planting is envisaged.
18. It is envisaged that construction would commence in May 2017 overlapping with ongoing demolition of the existing building. It is estimated that construction of Zone 1 would take 30 months and 36 months for Zones 2 and 3 if developed simultaneously.

19. During the course of the application amendments to the plans and additional information has been submitted. Key amendments have related to; revisions to plans to provide more clarity in regards to the visual impact of the development; the reduction in the maximum height of Block 2A (Zone 2) by 3m; repositioning and redesign of the passenger lift; adjustments to the design Block 1A (Zone 1); amended arboricultural and landscape documentation; amended flood risk documentation; and amended illustrative views. In addition amended plans so as to show a revised pedestrian connection point beneath Milburngate Bridge to the Gates shopping centre opposite have been received.
20. The application is accompanied by an Environmental Statement (ES). This report has taken into account the information contained in the ES and subsequently submitted details and that arising from statutory consultations and other responses. An addendum to the ES dated August 2016 containing an updated chapter regarding matters of air quality was received during the course of the application.
21. The application is reported to the County Planning Committee as it constitutes a major mixed use development of over 10,000m² floorspace.

PLANNING HISTORY

22. Over the years planning permission has been granted for various internal alterations to the office block, stair/lift access as well as a number of advertisements.
23. Planning Permission No. DM/15/01119/FPA was granted in July 2015 for the demolition of Milburngate House including remediation and enabling works in preparation for the proposed future redevelopment on the site.
24. Though not on the application site but also of relevance to the consideration of the application is the redevelopment of the adjacent Gates shopping centre as a mixed use scheme. Demolition has recently commenced on this site following the grant of planning permission in November 2015 (DM/15/01626/FPA) and more recently so as to permit extended demolition/construction working hours in September 2016 (DM/16/01567/VOC).

PLANNING POLICY

NATIONAL POLICY

25. The Government has consolidated all planning policy statements, guidance notes and many circulars into a single policy statement, the National Planning Policy Framework (NPPF). The overriding message is that new development that is sustainable should go ahead without delay. It defines the role of planning in achieving sustainable development under three topic headings – economic, social and environmental, each mutually dependant. The presumption in favour of sustainable development set out in the NPPF requires local planning authorities to approach development management decisions positively, utilising twelve ‘core planning principles’.
26. In accordance with paragraph 215 of the National Planning Policy Framework, the weight to be attached to relevant saved local plan policy will depend upon the degree of consistency with the NPPF. The greater the consistency, the greater the weight. The relevance of this issue is discussed, where appropriate, in the assessment section of the report. The following elements of the NPPF are considered relevant to this proposal.

27. *NPPF Part 1 – Building a Strong, Competitive Economy.* The Government is committed to securing economic growth in order to create jobs and prosperity, building on the country's inherent strengths, and to meeting the twin challenges of global competition and of a low carbon future.
28. *NPPF Part 2 – Ensuring the Vitality of Town Centres.* Planning policies should be positive, promote competitive town centre environments and set out policies for the management and growth of centres over the plan period.
29. *NPPF Part 4 – Promoting Sustainable Transport.* The transport system needs to be balanced in favour of sustainable transport modes, giving people a real choice about how they travel. It is recognised that different policies and measures will be required in different communities and opportunities to maximize sustainable transport solutions which will vary from urban to rural areas. Encouragement should be given to solutions which support reductions in greenhouse gas emissions and reduce congestion.
30. *NPPF Part 6 - Delivering a Wide Choice of High Quality Homes.* To boost significantly the supply of housing, applications should be considered in the context of the presumption in favour of sustainable development.
31. *NPPF Part 7 – Requiring Good Design.* The Government attaches great importance to the design of the built environment, with good design a key aspect of sustainable development, indivisible from good planning. Planning decisions must aim to ensure developments; function well and add to the overall quality of an area over the lifetime of the development, establish a strong sense of place, create and sustain an appropriate mix of uses, respond to local character and history, create safe and accessible environments and be visually attractive.
32. *NPPF Part 8 – Promoting Healthy Communities.* Recognises the part the planning system can play in facilitating social interaction and creating healthy and inclusive communities. Access to high quality open spaces and opportunities for sport and recreation can make an important contribution to the health and well-being of communities and planning policies and decisions should achieve places which promote safe and accessible environments. This includes the development and modernisation of facilities and services.
33. *NPPF Part 10 – Meeting the Challenge of Climate Change, Flooding and Coastal Change.* Planning plays a key role in helping shape places to secure radical reductions in greenhouse gas emissions, minimising vulnerability and providing resilience to the impacts of climate change, and supporting the delivery of renewable and low carbon energy.
34. *NPPF Part 11 – Conserving and Enhancing the Natural Environment.* The planning system should contribute to, and enhance the natural environment by; protecting and enhancing valued landscapes, recognizing the benefits of ecosystem services, minimising impacts on biodiversity and providing net gains in biodiversity where possible, preventing new and existing development being put at risk from unacceptable levels of soil, air, water or noise pollution or land instability, and remediating contaminated and unstable land.
35. *NPPF Part 12 – Conserving and Enhancing the Historic Environment.* Local planning authorities should set out in their Local Plan a positive strategy for the conservation and enjoyment of the historic environment, including heritage assets most at risk through neglect, decay or other threats. In doing so, they should recognise that

heritage assets are an irreplaceable resource and conserve them in a manner appropriate to their significance.

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/2116950.pdf>

36. The Government has consolidated a number of planning practice guidance notes, circulars and other guidance documents into a single Planning Practice Guidance Suite. This document provides planning guidance on a wide range of matters. Of particular relevance to this application is the practice guidance with regards to; air quality; climate change; conserving and enhancing the historic environment; design; ensuring the vitality of town centres; environmental impact assessment; flood risk; health and well-being; land stability; land affected by contamination; housing and economic development needs assessments; housing and economic land availability assessment; light pollution; natural environment; noise; open space, sports and recreation facilities, public rights of way and local green space; planning obligations; travel plans, transport assessments and statements; use of planning conditions and; water supply, wastewater and water quality.

<http://planningguidance.planningportal.gov.uk/>

LOCAL PLAN POLICY:

The City of Durham Local Plan (May 2004) (CDLP)

37. *Policy E3 – World Heritage Site Protection.* Protection seeks to safeguard the site and setting from inappropriate development that could harm its character and appearance.
38. *Policy E6 – Durham City Centre Conservation Area.* States that the special character, appearance and setting of the Durham (City Centre) Conservation Area will be preserved or enhanced as required by section 72 of the Planning (Listed Building and Conservation Areas) Act 1990. The policy specifically requires proposals to use high quality design and materials which are sympathetic to the traditional character of the conservation area.
39. *Policy E10 – Areas of Landscape Value.* States that development which would have an unacceptable adverse impact upon areas of high landscape value will be resisted.
40. *Policy E14 – Existing 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.
41. *Policy E15 – New Trees and Hedgerows.* States that the Council will encourage tree and hedgerow planting in major development sites.
42. *Policy E16 – Nature Conservation – The Natural Environment.* This policy 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.

43. *Policy E21 – The Historic Environment.* This requires consideration of buildings, open spaces and the setting of these features of our historic past that are not protected by other legislation to be taken into consideration.
44. *Policy E22 – Conservation Areas.* This policy seeks to preserve or enhance the character or appearance of conservation areas, by not permitting development which would detract from its setting, while ensuring that proposals are sensitive in terms of scale, design and materials reflective of existing architectural details.
45. *Policy E23 – Listed Buildings.* This policy seeks to safeguard Listed Buildings and their settings from unsympathetic development.
46. *Policy E24 – Ancient Monuments and Archaeological Remains.* This policy sets out that the Council will preserve scheduled ancient monuments and other nationally significant archaeological remains and their setting in situ. Development likely to damage these monuments will not be permitted. Archaeological remains of regional and local importance, which may be adversely affected by development proposals, will be protected by seeking preservation in situ.
47. *Policy H2 – New Housing in Durham City.* States that new residential development comprising windfall development of previously developed land will be permitted within the settlement boundary of Durham City provided that the proposals accord with Policies E3, E5, E6, Q8, R2, T10 and U8A.
48. *Policy H7 – City Centre Housing.* Seeks to encourage appropriate residential development and conversions on sites conveniently located for the City Centre.
49. *Policy H12 – Affordable Housing* – states that on sites of 25 or more dwellings or 1 ha or more in size a fair and reasonable proportion of affordable housing will be provided.
50. *Policy H12A – Type and Size of Housing.* States that the type and size of dwellings will be monitored with where appropriate negotiation.
51. *Policy H13 – Residential Areas – Impact upon Character and Amenity* – protects residential areas from development that would have a significant adverse effect on their character or appearance, or the amenities of residents within them.
52. *Policy EMP12 – Office Development.* This policy provides for the demand for new purpose built office space, the sympathetic conversion of existing buildings or re-use of redundant upper floors for office purposes.
53. *Policy T1 – Transport – General.* This policy 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.
54. *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.
55. *Policy T19 – Cycling – Development of Cycle Routes.* The Council will seek to ensure the development of a safe, attractive and convenient network of cycle routes.

56. *Policy T20 – Cycling – Provision of Cycle Parking.* Sets out a requirement to encourage the provision of facilities for parking cycles in the city centre and at other appropriate locations.
57. *Policy T21 – Walkers Needs.* States that existing footpaths and public rights of way should be protected.
58. *Policy S1a – Retail Hierarchy.* Seeks to protect and promote the vitality and viability of Durham City Centre
59. *Policy S2A – A2 and A3 Uses in the Primary Retail Area.* Seeks to limit the proportion of non-A1 Retail Uses to safeguard the retail character of the shopping street.
60. *Policy S10 – Food and Drink.* Advises that planning permission for food and drink uses will be permitted provided that there are no adverse impacts upon nearby occupiers, there is no harm to the character and appearance of the area, no objection to parking provision and the development does not compromise the proportion of uses within the primary and secondary retail areas of the City.
61. *Policy R1 – Provision of Open Space – Overall Standards.* This policy seeks to ensure that a minimum level of 2.4 ha of outdoor sports and play space per 1,000 population is maintained.
62. *Policy R2 – Recreational and Amenity Space in New Residential Developments.* Seeks to ensure that the provision of open space for outdoor recreation is evenly distributed and is maintained at a level that meets the needs of its population. A minimum overall standard of 2.4 hectares of outdoor sports and play space per 1,000 population will be sought.
63. *Policy CC1 – Vitality and Viability.* Seeks to protect and enhance the vitality and viability of the City Centre (reference is made to mixed uses, active street frontages, use of upper floors, residential occupation, environmental improvement and a safe, accessible and friendly public realm).
64. *Policy C2 - Health Centres, Surgeries and Clinics.* This policy seeks to ensure that development accords with criteria of accessibility and standards of amenity.
65. *Policy C8 - Community Facilities – Provision of New.* This policy states that planning permission will be granted for community facilities such as community centres where, amongst other things, they are within existing settlement boundaries and are well-related to residential areas, are capable of serving a number of uses, and would not adversely affect residential amenity.
66. *Policy Q1 – General Principles Designing for People.* Requires the layouts of developments to take into account the requirements of users including: personal safety and security; the access needs of people with disabilities and the elderly; and the provision of toilets and seating where appropriate.
67. *Policy Q2 – General Principles Designing for Accessibility.* The layout and design of all new development should take into account the requirements of users and embody the principle of sustainability.

68. *Policy Q4 - Pedestrian Areas.* Requires public spaces and such areas to be well designed and constructed with quality materials. Public realm and lighting to ensure community safety are referred to.
69. *Policy Q5 – Landscaping – General.* Requires all new development which has an impact on the visual amenity of the area in which it is located to incorporate a high level of landscaping in its overall design and layout.
70. *Policy Q6 – Landscaping – Structural Landscaping.* Requires all new development located on the outer edge of settlements or exposed sites will be required to include peripheral structural landscaping within the site in order to minimise any adverse visual impact of the proposal.
71. *Policy Q7 – Layout and Design – Industrial and Business Development.* Requires the siting, design and external appearance of all new industrial and business development to; be of a standard appropriate to the designated area within which it is located; and have regard to policies Q1 and Q2.
72. *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.
73. *Policy Q15 – Art in Design.* This policy states that the Council will encourage the provision of artistic elements in the design and layout of proposed developments. Due regard will be made in determining applications to the contribution they make to the appearance of the proposal and the amenities of the area.
74. *Policy U5 – Pollution Prevention – General.* Planning permission for development that may generate pollution will not be granted if it results in; an unacceptable adverse impact upon the quality of the local environment; the amenity of nearby and adjoining land and property or; will unnecessarily constrain the development of neighbouring land.
75. *Policy U7 – Pollution Prevention – Development Sensitive to Pollution.* Developments which are sensitive to pollution will not be permitted on land which is subject to unacceptable levels of contamination, pollution, noise or vibration.
76. *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.
77. *Policy U9 – Watercourses.* States that development which may affect watercourses will only be permitted provided that they do not result in flooding or increase flood risk elsewhere; or they do not result in the pollution of the watercourse; or they do not adversely affect nature conservation interests; or they do not adversely affect the visual appearance of the landscape; and their environmental impact is properly assessed.
78. *Policy U10 - Development in Flood Risk Areas.* States that proposals for new development shall not be permitted in flood risk areas or where an increased risk of flooding elsewhere would result unless it can be demonstrated that alternative less vulnerable areas are unavailable, that no unacceptable risk would result, that no

unacceptable risk would result elsewhere, or that appropriate mitigation measures can be secured.

79. *Policy U11 - Development on Contaminated Land.* Sets out the criteria against which schemes for the redevelopment of sites which are known or suspected to be contaminated. Before development takes place it is important that the nature and extent of contamination should be fully understood.
80. *Policy U14 - Energy Conservation – General.* States that the energy efficient materials and construction techniques will be encouraged.

RELEVANT EMERGING POLICY:

The County Durham Plan

81. Paragraph 216 of the NPPF says that decision-takers may give weight to relevant policies in emerging plans according to: the stage of the emerging plan; the extent to which there are unresolved objections to relevant policies; and, the degree of consistency of the policies in the emerging plan to the policies in the NPPF. The County Durham Plan (CDP) was submitted for Examination in Public and a stage 1 Examination concluded. An Interim Report was issued by an Inspector dated 18 February 2015, however that Report was quashed by the High Court following a successful Judicial Review challenge by the Council. In accordance with the High Court Order, the Council has withdrawn the CDP and a new plan being prepared. In the light of this, policies of the CDP can no longer carry any weight. As the new plan progresses through the stages of preparation it will begin to accrue weight.

NEIGHBOURHOOD PLANNING:

82. A Neighbourhood Planning Forum has been established in the City with the Neighbourhood Plan area covering a large part of the City, including the application site. The Forum is in the process of drawing up draft policies so as yet there is no Draft Plan against which to assess proposals.

The above represents a summary of those policies considered most relevant. The full text, criteria, and justifications of each may be accessed at:

<http://www.durham.gov.uk/ldf> (City of Durham Local Plan)

CONSULTATION AND PUBLICITY RESPONSES

STATUTORY RESPONSES:

83. *Highway Authority* – Raise no objections. The site is considered to be located within a sustainable location in travel terms. Access to the development will be at three locations. The office and retail/leisure units will be accessed from Framwelgate Waterside and the residential element via a signalised junction off Framwelgate Peth. All servicing of the site is designed to take place from Framwelgate Waterside. Servicing arrangements are acceptable.
84. The proposed signalised junction at Framwelgate Peth is proposed for use only by residential occupiers. A means to control that the access is for the use of residents only requires submission.
85. A drawing indicating the traffic signals layout at Framwelgate Peth has been submitted. This drawing and others propose the widening of the carriageway and

results in the requirement to widen the footway outside the current highway boundary. These works would need to be subject to a combined Highways Act S278/ S38 agreement. The applicant should be advised on the necessity to enter into this legal agreement. Drawings indicate the existing footway is to be re-constructed on the development side to accommodate carriageway widening. The current provision includes a grassed verge and is designated for both pedestrians and cyclists. Sustainable Transport request that the replacement provision is 4.0m wide to accommodate a shared cyclists and pedestrian route. This may impact on the final height of the retaining structure. The drawings indicate that a highway guardrail is to be confirmed. The design would need to be amended such that a highway verge sits alongside the shared surface which can accommodate a safety barrier system at the top of the slope.

86. An existing pinch point within the footway at Milburngate roundabout is retained within current design. Sustainable Transport have requested that the design is amended and the dwarf wall is set back to improve access for pedestrians and cyclists.
87. A proposed site access layout from Framwelgate Peth has been supplied. This layout shows realignment of the Highgate access to step out into Framwelgate Peth. This would result in both nearside and offside lanes merging at a pinch point at Highgate. This is not acceptable and should be re-designed. The re-design of this can be covered in the agreed condition for the junction.
88. The degree of parking provision proposed is generally acceptable and conditions should be secured relating to EV, cycle parking, signing, signalised access and travel planning.
89. *Historic England* – Raise no objections. Redevelopment will have an impact upon the character of the Conservation Area and the setting of the World Heritage Site (WHS). Zone 2 is in outline only and a conclusion on final impacts of this section of the development cannot be reached. The Zone 1 development is considered to replicate the overall sense of scale of Milburngate House but with a pronounced reference back to the historic city in its layout, use of topography, materials and design. In so doing the development presents a clear improvement in terms of the character of the Conservation Area and for the most part the setting of the WHS. Amendments submitted during the course of the application to lighten the appearance of the Block 1A building are welcomed. Careful drafting of conditions to control the outline element of the proposal including the scale parameters of the development the commissioning of a design guide document are necessary.
90. *Natural England* – No objections. It is considered unlikely that the development would result in significant impacts on statutory designated nature conservation sites or landscapes.
91. *Coal Authority* – Raise no objections. It is confirmed that the site does not fall within the defined Development High Risk Area. If planning permission is granted it will be necessary to include an informative with standing advice.
92. *Northumbrian Water* – Raise no objections. A condition should be added to any planning permission to ensure that the development is implemented in accordance with the submitted drainage strategy.
93. *Environment Agency* – Raise no objection but consider that the proposed development would only meet the requirements of the NPPF if specific measures are detailed in the Flood Risk Assessment are implemented and secured through

condition. These relate to the provision of compensatory storage, identification and provision of safe route(s) into and out of the site to an appropriate safe haven, that finished floor levels are set no lower than 33.5m AOD, and the cinema area is protected to a level no lower than the 33.5m AOD.

94. *Drainage and Coastal Protection* – Raise no objection subject to conditions to ensure that the development is constructed in accordance with the design principles and statements as contained within the submitted Flood Risk Assessment and Drainage Strategy documents and the mitigation measures raised by the Environment Agency are complied with.

INTERNAL CONSULTEE RESPONSES:

95. *Spatial Planning* – Raise no objections. The principle of the mix of uses proposed within the redevelopment is acceptable. It is considered that the site lies within a town centre location and there is no requirement for the application to adhere to the sequential test or impact assessments for town centre uses. The scheme offers the potential to enhance the viability and vitality of the City Centre. Matters of detail and other material planning considerations must be considered in the determination.
96. *Employability Team* – Raise no objections. Targeted recruitment and training clauses are requested within any S106 legal agreement.
97. *Environment, Health and Consumer Protection (Contaminated Land)* – Raise no objections. A condition should be added to any planning permission requiring the completion and submission of detailed Phase 2 site investigation report and, as necessary, Phase 3 remediation strategy and Phase 4 verification report.
98. *Environment, Health and Consumer Protection (Noise, Light, Odour and Dust)* – Raise no objections. A number of conditions are requested to resolve final details. These relate to; noise impact assessment and sound attenuation measures relating to machinery and plant; noise insulation between units and from the residential units and road traffic; scheme of vibration control; construction management plan; final lighting impact assessment/scheme and extraction system details for the A3/A5 uses.
99. *Environment, Health and Consumer Protection (Air Quality)* – Raise no objections. In respect to the construction phase of the development the number of movements undertaken by heavy duty vehicles (HDV) is at this stage unknown and though it is understood that it is unlikely, it cannot be determined whether the criteria within applicable guidance will be exceeded. Confirmation of the HDV movements should be confirmed when they are known and the assessment upon air quality will need to be assessed should the guidance relating to the Annual Mean Air Quality Objective be exceeded. To reduce the impact on air quality, the movement of HDVs should be scheduled outside the AM and PM peak traffic periods. With regards to the operational phase submitted modelling demonstrates that within localised areas existing levels of nitrogen dioxide exceed the Annual Mean Air Quality Objective. The development will have a further impact on these levels, however, only up to a maximum of a 2% level of change. In order to mitigate impact, a travel plan should be conditioned including adherence to a number of specific measures to aid in reducing dependency on the car. Potentially, residents within the proposed Blocks 1A and 1D, adjacent to Framwelgate Peth and Milburngate Bridge, could be exposed to levels of nitrogen dioxide close to and above the Annual Mean National Air Quality Objective. The installation of mechanical ventilation so as to provide mitigation to the affected units is therefore required.

100. *Ecology* – Raise no objections. The submitted ecological reports are considered sufficient to inform on the proposal. Mitigation measures proposed should be conditioned in the event of an approval.
101. *Landscape* – Raise no objections. The proposals would entail the removal of a large number of mature trees on the lower eastern side of Framwelgate Peth and as a group they make a significant contribution to the character of the Peth. The trees cannot practically be retained, however, due to the need to remove retaining structures. Through condition and/or at the reserved matters stage the precise loss of trees as a result of Phase 2 of the development and means to reinforce remaining planting can be resolved. The relationship between Framwelgate Waterside and the site is described as a critical one though indicative treatment to soft planting and public realm are provided more detailed consideration under condition is necessary. Similarly the final approach to the pedestrian connection under Milburngate Bridge requires a detailed scheme to be agreed. Hard and soft landscape proposals are generally well considered though a condition should be used to resolve final details. It is stated that no significant effects on the character of the Durham Area of High Landscape Value would result.
102. *Design and Conservation* – Raise no overall objections. Officers consider that the site is highly sensitive deriving from a number of contextual factors; occupying a key riverside position within the Durham (City Centre) Conservation Area; being included within the inner setting of Durham Cathedral and Castle WHS; being within the setting of other heritage assets (designated and non-designated); and allied to all of the above it is prominent in local and longer distance viewpoints.
103. The proposed development model appropriately references the historic built format of the City in a distinctive high quality contemporary manner which overall is considered to enhance the character and appearance of the prominent riverside site and increases its contribution within the townscape. The development would make a positive contribution to local character and distinctiveness. The setting of various heritage assets would overall be considered enhanced by the demolition of the existing modern building and redevelopment of a high quality contemporary aesthetic. Some concern with regards to the overall height and scale of the development is raised with particular reference to views, along the newly created townscape down Framwellgate Peth and the Milburngate Bridge, which detrimentally impact upon the transient/emerging views of the WHS. However, through considered design the proposal exploits opportunities to create new public views towards the WHS which will vary moving through the spaces generating an interrelationship and better revealing the significance of the WHS. In reverse (when viewed from the WHS) the development will be positive given the quality of the new background architecture proposed. The development is considered compliant with key CDLP Policies regarding heritage.
104. *Housing Delivery Team* – Request a tenure mix of 75% affordable rent and 25% intermediate affordable home ownership. An element of older persons accommodation to meet identified need is also sought if possible. Open market values of the units are requested so as to calculate the appropriate discount figure.
105. *Sustainability* – Raise no objections. In terms of the location of the site, it has generally good access to most facilities and services. Set against the social, economic and environmental sustainability determinants the scheme is generally received positively. Overall it is generally pleasing that the applicant is investigating the use of CHP and District Heating and should link up with the Council. Further discussions should be held with regards to the approach to embedded sustainability. The applicant confirms the intention to build to Part L 2013, instead of Part L 2010.

This is acceptable, however SAP reports confirming the design stage assessment should be produced to confirm this.

106. *Access and Rights of Way* – Raise no objections. It is confirmed that there are no recorded Public Rights of Way within the site. Officers consider that pedestrian approaches look to facilitate pedestrian flow through the site and they would support a requirement for a retained underpass link with The Gates site. It is noted that the site has cycling links with the north of the city, along Framwellgate waterside towards Newton Hall and Frankland Lane, and along Framwellgate Peth towards Aykley Heads etc, but has few or poor cycling links with the City Centre. It is not considered unreasonable for the developer to contribute towards improvements to the cycling network via s106 or community infrastructure levy.
107. *Travel Planning Advisor* – Raise no objections to the proposal. An amended travel plan has been reviewed and is considered acceptable.
108. *Business Durham* – supports the redevelopment of Milburngate House. Business Durham is the economic development company for County Durham and as such its principle objectives are to attract business, support their growth, raise the profile of the County and create jobs. The presence of a mixed use development, including retail and leisure facilities, office space, restaurants and residential units within Durham City positively contributes to all of its objectives by improving the quality of life for local residents. The proposed scheme would significantly enhance the competitive positioning of Durham as a place to live, work and play.
109. *Archaeology* – raise no objections. It is noted that conditions were attached to the previously granted Planning Permission No. DM/15/01119/FPA for the demolition of Milburngate House requiring a written scheme of investigation which has been submitted and approved. A further condition can be discharged when the recording work has been completed as it involves the depositing of final reports in relevant depositories.

PUBLIC RESPONSES:

110. The application is accompanied by a Statement of Community Involvement (SCI). The SCI states that public exhibitions regarding the redevelopment of the site were held in February 2015 and February 2016. A website was also setup to inform on the development of the proposals. The SCI summarises the responses received in regards to the consultation events and provides commentary on the points raised.
111. The Local Planning Authority (LPA) has advertised the application within the press, on site and through the issue of letters to neighbouring properties. Re-consultation exercises have been undertaken during the course of the application. Representations have been received from local residents, Councillors, community groups and other interested parties with a total of 10 representations received including 8 objections, 1 comment raising neither objection nor support and 1 letter of support.
112. The matters raised by local residents are summarised below.

Design, Visual and heritage Impacts

- Unacceptable scale and massing.
- Detrimental impacts upon views of the WHS.

Residential Amenity

- Loss of natural light.
- Impacts of light pollution.
- Noise pollution from both the demolition/construction phase and occupancy of the development.
- Dust pollution and air quality concerns during demolition/construction phase and queries how dust would be monitored.
- Concerns regarding what the proposed demolition and construction working hours would be, compounded by a planning application being received for night working at The Gates.

Highways Issues

- Unacceptable signalised junction proposed on Framwellgate Peth and associated left and right turns. This was considered contentious when tabled with local residents at the consultation stage.
- Traffic movements from the construction and demolition phases of the development would have a significant impact on the congestion within the City Centre, air quality and noise pollution.

113. The other comments received are summarised below.

114. *City of Durham Trust* – Raise objections considering that the application at present does not represent the finished article and requests that clarification and more detail is sought. Comments are made in relation to architecture, townscape and transport and circulation. Some of the architectural and design approaches the development are welcomed. However, it is considered that the visualisations present an inaccurate interpretation of the impact of the development in some views. It is queried if any recognition has been given to The Gates development. The Trust considers the traffic analysis to be deficient and the site to have poor accessibility for pedestrians. Concerns are expressed with regards to impacts from an air quality management perspective. It is considered absolutely critical that the underpass link with The Gates development is maintained and enhanced and the Trustees urge this to be a condition of consent for the site. Cycle access is considered to be highly inconvenient and contorted contrary to views expressed in the application documentation.

115. *Sidegate Residents Association (SRA)* – Object to the development. It is considered that the heights of the buildings proposed are excessive particularly in the north-western part of the site. It is suggested that a cascading effect of rooflines towards the river and the A690 would be more appropriate. Concerns are raised with the acceptability of the development having regards to the proximity to the WHS and City Centre. SRA is in favour of residential buildings being sited near the river and offices being sited near Framwellgate Peth but query the need for the number offices proposed. Concerns are expressed regarding the wholesale removal of trees along the western edge of the site which have a valuable screening effect as well as benefits for wildlife, air quality and climate change. Connectivity with the new Gates development is cited as requiring serious consideration and regret is expressed at the apparent abandonment of the new footbridge across the river, which would have provided a good pedestrian link with the City Centre away from main roads. Clarification is requested that, in times of flood, all traffic from the new development would be able to exit directly from the site onto Framwellgate Peth and would not have to go up Sidegate. Reassurance that Sidegate will not be used as a rat-run during demolition and construction is sought.

116. Concerns are raised with regards to the environmental, health and safety impacts of the development during the demolition/construction phases and a construction/demolition management plan should be agreed. Concerns about possible damage to property as a result of vibrations caused by pile-driving, etc. are raised with surveys requested. Greater consideration to sustainable transport provision is required with reference made to the comments of consultees and public responses in this regard. A contribution towards recreation facilities and the provision of public art should be made. Reference is made to City of Durham Local Plan policies in respect of the concerns raised.
117. *Friends of Durham Green Belt* – object to the development. The proposed removal of trees along the western edge of the site on Framwellgate Peth is objected to. Although new trees may be planted it is believed that as many established existing trees should be retained which will be better for the local environment - in visual and air pollution terms. Reference is made to the advice within CDLP Policies E14 and E15 relating to trees and hedgerows.
118. *Councillors Freeman and Ormerod* (local Members) – Object to the development. The height of the proposal, particularly within the north-western corner is considered excessive and is in conflict with CDLP Policy E6 requirements. A cascading effect of the rooflines towards the river would be more suitable. Objection is raised to the “wholesale” removal of trees along the western edge of the site with reference made to relevant CDLP Policies E14 and E15. Connectivity with the new Gates development is described as very poor. Assurance is sought that in times of flooding the vehicular traffic will exit directly onto Framwellgate Peth rather than going up Sidegate and that construction/demolition traffic will not use Sidegate. Concerns are expressed regarding the potential for damage to properties on Sidegate as a result of vibrations and a query is raised as to whether a survey could be undertaken under condition in this regard.
119. *Campaign to Protect Rural England (CPRE)* – Object to the proposals though do support the principle of the redevelopment. Concerns are raised regarding the impact upon the WHS. It is considered that the redevelopment must be of the very highest standard and enhance the current situation as well as retaining any current features that enhance the setting of the WHS. Concerns are expressed with regards to the loss of trees on Framwellgate Peth, however, it is accepted that if the retaining walls have now reached the end of their life, they will have to be replaced and trees will of necessity be removed. It is assumed that replanting would be required through condition. Measures to encourage wildlife and provide green infrastructure are suggested. On site cycle parking is welcomed however, this alone does not make the site sustainable. Cycling provision in the area needs improvement and this development can contribute to this with a suggestion that the developer contributes to an improved cycle system in the City Centre. Reference is made to CDLP Policies, the NPPF, relevant legislation and case law.
120. *Durham Bird Club* – It is considered that the proposal would have a significant impact in the locality and there are similarities within the implications of the Integra 61 development at Bowburn. Concerns are raised regarding the loss of habitat and impact on birds species recorded in the location which may have already been affected by the development on the opposite side of the river. The development does provide opportunity to create habitat and measures to encourage birds are suggested. The creation of such habitat needs to be promoted.

121. *Durham Constabulary Police Architectural Liaison Officer* – Raise no objections. There are no issues with the layout of the proposed development from a design out crime perspective.
122. *Durham World Heritage Site Coordinator* – Does not object but has made a number of comments regarding the potential for impact on the WHS. It is considered that the proposals are a carefully balanced and well-articulated response to the demands of the site configuration. Permeability, space creation and distinctiveness all contribute to a successful solution. The development makes a positive contribution to the riverside and improves on the negative impact of much of the existing development. The positive contribution outweighs the more minor negative impacts. Some issues remain in relation to successful delivery of the scheme which are not clarified within the submitted proposals. Issues raised relate to the need to consider the impact on the WHS when considering phases 2 and 3; areas outside of the application area that are in need of improvements (the car park under Milburngate Bridge and a riverside walk); lighting impact from the residential and office interior and the material palette.

APPLICANTS STATEMENT:

123. The Proposed Development will be located on a brownfield site, in a sustainable City Centre location as supported by the NPPF, adopted Development Plan and Milburngate House Design Brief.
124. Full account has been taken of the Milburngate House Design Brief, and the developers have worked closely with Durham County Council and Historic England prior to a formal planning submission being made in order to achieve a high standard of design and to fully address all other relevant issues arising from the site's prominent and sensitive position. Extensive public consultation has also taken place including individual stakeholder meetings and two public exhibitions.
125. The proposed redevelopment of the Site will bring wider benefits to the area, providing an opportunity for up to £160 million of inward investment; facilitating the provision of local jobs (up to 1,015 full time and 651 temporary construction jobs), riverside regeneration and aiding social, economic and physical regeneration. Milburngate House was built for a specific office purpose and is of its time however it has become increasingly dilapidated over the years; it has high maintenance requirements and is unviable for refurbishment.
126. The Proposed Development is an exciting opportunity to regenerate this prominent gateway Site and bring this Site up to the same high standards as the rest of the riverside. A high quality, well-designed development will eventually replace Milburngate House, bringing new homes, leisure facilities and office space making the Site and surrounding area a new vibrant Northern Riverside Quarter and more visually attractive and usable to those that live, work and visit the City.
127. The scheme very much falls within the definition of sustainable development, on which the NPPF encourages planning authorities to take a positive approach.

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://publicaccess.durham.gov.uk/online-applications/search.do?action=simple&searchType=Application>

PLANNING CONSIDERATIONS AND ASSESSMENT

128. Section 38(6) of the Planning and Compulsory Purchase Act 2004 sets out that if regard is to be had to the development plan, decisions should be made in accordance with the development plan unless material considerations indicate otherwise. In accordance with Paragraph 212 of the National Planning Policy Framework (NPPF), the policies contained therein are material considerations that should be taken into account in decision-making. Other material considerations include representations received. In this context, it is considered that the main planning issues in this instance relate to; the principle of the development; locational sustainability, visual, townscape and heritage impact; residential amenity; highway safety/issues; ecology; flood risk and drainage and viability and planning obligations.

The Principle of the Development

The Development Plan

129. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF is a material planning consideration. The City of Durham Local Plan (CDLP) remains the statutory development plan in force for the area and is the starting point for determining applications as set out at paragraph 12 of the NPPF. However, the NPPF advises at paragraph 215 that local planning authorities (LPAs) are only to afford existing Local Plans material weight insofar as they accord with the NPPF.

130. The CDLP was adopted in 2004 and was intended to only cover the period to 2006; however, NPPF Paragraph 211 advises that Local Plan policies should not be considered out-of-date simply because they were adopted prior to the publication of the NPPF. Notwithstanding this, it is considered that a policy can be out-of-date if it is based upon evidence which is not up-to-date/is time expired.

The NPPF

131. Paragraph 14 of the NPPF establishes a presumption in favour of sustainable development. For decision taking this means (unless material considerations indicate otherwise);

- approving development proposals that accord with the development plan without delay; and
- where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
 - i) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
 - ii) specific policies in this Framework indicate development should be restricted.

132. The NPPF, in its core planning principles, at Paragraph 17, requires planning to be proactive in supporting sustainable economic development, including thriving local places, whilst encouraging the re-use of previous developed land, promoting mixed use development and at the same time conserving heritage assets. It is therefore in

the context of the above decision-taking framework against which the proposals must be assessed, and in terms of the principle of development taking the component proposed uses in turn.

Leisure/retail Development

133. The application site comprises a brownfield site, located in a sustainable city centre location, and where Policy CC1 of the CDLP (consistent with the NPPF) seeks to protect and enhance the vitality and viability of Durham City Centre, in particular by providing a mixture of uses with that area. In addition to residential and office elements discussed later in this report, the proposed development would provide a range of leisure/retail and non-residential institution units with permission sought for retail (Class A1), food and drink outlets (Class A3/A4/A5), financial and professional services (Class A2), a cinema (Class D2), gymnasium (Class D2) and non-residential institution community facility uses (Class D1). The floorspace for these uses would be primarily located within the lower floor levels of the southernmost part of the site.
134. The City Centre referred to in Policies S1A and CC1 is not a defined area in the CDLP. However, the CDLP defines a hierarchy of retail centres through Policy S1A (not wholly consistent with the NPPF), with the aim of protecting and promoting the vitality and viability of all centres within the hierarchy, including the City Centre. The defined primary and secondary retail centres exclude the application site, such that the site is technically considered edge of centre. In a physical sense it can be considered a city centre location on the basis that there are a number of “city centre” allocations outside the defined City Centre, notably to the immediate north of the site where the Radisson hotel has been developed.
135. The Council undertook a Retail and Town Centre Study in 2009, and as part of this work the study provided a review of defined town centre boundaries across the County. With regards to the City Centre boundary, it recommended that it incorporate areas to the north of Millburngate Bridge including the application site. This reflected town centre uses that have been developed within this area since adoption of the CDLP in 2004, including the leisure led development at Millennium Place and also the Radisson hotel. The Retail and Town Centre Study in 2013 confirmed that there were no further changes to the boundaries recommended in the 2009.
136. Paragraph 24 of the NPPF states that LPAs should apply a sequential test to planning applications for main town centre uses. It goes on to state that applications for main town centre uses should be located in town centres, then in edge of centre locations and only if suitable sites are not available should out-of-centre sites be considered. In addition to the sequential test, Paragraph 26 of the NPPF also states that when assessing applications for retail, leisure and office development outside of town centres, an impact assessment should be required. LPAs should require an impact assessment if the development is over a proportionate, locally set threshold. Where there is not a locally set threshold, the NPPF gives a default threshold of 2,500m².
137. Whilst the CDLP is the development plan against which the proposals must be assessed, as set out above, circumstances have clearly changed in the last 12 years. Furthermore, as also set out above, the Retail and Town Centre Study from 2009 (refreshed in 2013) evidences that the site is within the City Centre. In the circumstances, the application site can reasonably be considered to be within a town centre location, and in this regard, it is considered that the sequential and impact tests outlined in the NPPF are therefore not required.

138. In any event, whilst technically beyond the primary and secondary retail areas, it is considered that the mix of uses would accord with the aims of CDLP Policies CC1 and S1A in that the proposal would seek to add to the enhance the retail/leisure and office offer in a city centre location. The principle of the provision of food and drink uses would also be in accordance with CDLP Policy S10 (partially consistent with the NPPF) which identifies that within settlement boundaries, such development will be permitted (subject to a range of criteria that covers amenity, parking and scale). CDLP Policy S2A seeks to control the proportion of A2 and A3 uses but not to the locality of the application site. The provision of community facilities and a gymnasium would, in principle, accord with CDLP Policies C2 and C8, both of which are considered to be consistent with the NPPF. Paragraph 23 of the NPPF is clear that LPAs should promote competitive town centres that provide customer choice. This mixed use development would meet this aspiration and can contribute to making the centre a greater attractor for those outside the city and increase the level of facilities for the existing community. Accordingly, it is considered that the principle of the mixture of leisure/retail uses proposed is acceptable as part of the redevelopment of an important and sustainable city centre site.

Office development

139. The application site has been in office use for over 50 years, and the proposals in part seek permission to continue the use of the site as offices. A maximum of up to 128m² of office floorspace could be contained within the leisure/retail zone of the overall site, while the remainder would be in the northernmost portion of the site and could reach a maximum of 13,285m². As the existing occupiers of the site have relocated to Freemans Reach on the opposite side of the River Wear, the site has the potential to attract new employment opportunities. Like much of the retail and leisure floorspace proposals detailed above, office floorspace is similarly considered to be a main town centre use, and furthermore, as was established earlier, it is clear that the site lies within the City Centre. As such, and combined with the existing established use of the site as office floorspace, it is considered that the sequential and impact assessment requirements of paragraphs 24 and 26, respectively, of the NPPF are not required in this case. In addition, the proposed use would also accord with the CDLP Policy EMP12 (partially consistent with the NPPF), which permits new office development within, or adjacent, the city centre. Accordingly, it is considered that office use is acceptable in principle on the site.

Residential development

140. Whilst the proposed residential development forms a key component of the mix of uses proposed, the approach to decision-taking on residential development is such that it is appropriate to consider the matter separately from the proposed leisure and office uses. The proposals themselves entail residential development consisting of 291 apartments in Zone 1 at the southern end of the site, with up to 150 apartments proposed in outline at the northern end of the development (Zones 2 and 3). The residential element of Zone 1 is proposed to be an institutionally managed Private Rented Sector (PRS) housing scheme whilst those in Zones 2/3 likely for open market sale.
141. Paragraph 47 of the NPPF requires Local Planning Authorities (LPAs) to maintain a five-year supply of deliverable sites (against housing requirements) thus boosting the supply of housing. Paragraph 49 of the NPPF advises that housing applications should be considered in the context of the presumption in favour of sustainable development and relevant policies for the supply of housing should not be considered up-to-date if the LPA cannot demonstrate a five-year supply of deliverable housing sites. In turn where a five year supply of deliverable housing

sites cannot be demonstrated then Paragraph 14 of the NPPF is engaged and an application is to be assessed in this context.

142. In this case, the proposal must be considered against Paragraph 14 of the NPPF, on the basis of both the Council's five year housing land supply position and because policies for the supply of housing within the CDLP are out-of-date.

Five Year Housing Land Supply

143. The housing trajectory associated with the withdrawn County Durham Plan (CDP) is no longer relevant and similarly the CDP Objectively Assessed Need (OAN) for housing figure no longer exists. Consultation on the first stage (Issues and Options) of preparation of a new CDP has been undertaken, and in relation to housing, three alternative assessments of housing needs are presented, each based on average net completions up to 2033 (the end of the CDP plan period). The three alternatives are:

1,533 houses per year (29,127 houses by 2033)

1,629 houses per year (30,951 houses by 2033)

1,717 houses per year (32,623 houses by 2033)

144. Set against the lowest figure the Council has been able to demonstrate a supply of 4.65 years of deliverable housing land, against the middle figure around about 4.31 years' worth supply and against the highest figure, 4.04 years of supply. Whilst none of the three scenarios been publicly tested, it does serve to demonstrate that set against varying potential figures, one of which will be identified as the OAN following consultation in the Preferred Option Stage Local Plan, the Council has a robust supply of housing which even in the most exacting scenario is not significantly short of 5 years.
145. Nevertheless, the decision-taking requirements of NPPF Paragraph 14 apply, as the Council does not have a five-year supply in the terms of the NPPF requirements. Given the age of the CDLP and housing supply figures that informed it, the housing supply policies therein do not reflect an up-to-date objective assessment of need, and are considered out-of-date, for the purposes of Paragraph 14 of the NPPF, and the weight to be afforded to relevant policies reduced as a result.
146. Whilst the housing policies are out-of-date, the proposed residential use of the site would be consistent with CDLP Policy H2 (partially consistent with the NPPF) which permits new housing comprising windfall development of previously developed land within the settlement boundary of Durham City. Similarly, Policy CC1 is encouraging of a mix of uses within the city centre and in so doing is consistent with Policy H7 of the CDLP which is encouraging of the principle of new housing in the city centre. Such Policies are, in the circumstances, considered to be consistent with NPPF Paragraph 23 which sets out that residential use can play an important role in ensuring the vitality of town centres, providing support for the residential element of the scheme.
147. Whilst the proposal would comply with relevant development plan policies in principle, they are of reduced weight and as such, the acceptability of the development largely rests on whether any adverse impacts of approving the development would significantly and demonstrably outweigh the benefits or whether there are any specific policies in the NPPF that indicate development should be restricted.

Conclusion of Principle of Development

148. Whilst the site lies outside of the defined shopping area, the site is clearly within the City Centre and where, both relevant Local Plan policies and the NPPF are supportive of mixed use schemes, given the sites sustainable location. Accordingly, the principle of leisure/retail development and office use is acceptable. Whilst the proposed use of the site for residential development does accord with the relevant CDLP Policies, those policies as policies for the supply of housing are considered out-of-date, and rendered so by the absence of a 5 year supply of housing land, which in turn invokes the presumption in favour of sustainable development decision-taking framework as set out at Paragraphs 14 of the NPPF, which in turn, requires a balancing exercise having regard to the assessment of all material planning issues.

Locational Sustainability of the Site

149. The submitted ES considers the socio-economic implications of the development and this includes consideration of the impacts of the development upon local services and facilities. The ES chapter references the location of the site within a city centre and in turn its proximity to a range of services and facilities. In addition it highlights local health care availability and accessibility and considers implications upon education provision as negligible.

150. The site is located within a sustainable and accessible location. It is within a city centre location with easy access to the range of services, facilities and employment opportunities located therein. The site is within close proximity to the City's major transport hubs including Durham bus station (approximately 600m from the centre of site), train station (approximately 300m from the centre of site) and the concentration of bus stops on Milburngate (approximately 250m from the centre of site).

151. Connectivity with the train station is further aided by the provision of the key pedestrian route which travels between the Framwelgate Peth and Framwelgate Peth.

152. The proposal itself could provide a range of further services, retail and leisure units which could serve both the prospective occupiers and more widely existing residents.

153. The application is accompanied by a travel plan, which has been amended during the course of the application. The travel plan seeks to ensure a series of measures are taken so as to promote sustainable transport options and reduce dependence upon the car. This would include but is not restricted to the appointment of a travel plan coordinator, provision of electric vehicle charging bays, provision of travel information packs to site occupiers, promotion of car sharing through parking space provision and advertisement online. The submitted travel plan, in its amended form, has been assessed by the Travel Planning Advisor and considered acceptable.

154. Given 441 residential units proposed consideration must be given to whether local schools have the capacity to cater for the development. During the pre-application stage consultation was undertaken with the Councils School Organisation Manager who confirmed that the 3 bed properties proposed would be the most likely to house families with children. Zone 1 of the development would contain 15 (5%) 3 bed apartments. The application confirms that the same 5% proportion of 3 bed properties is anticipated within the outline elements of the development which would equate to 8 units. Based upon the likely number of pupils generated from these 23

units the School Organisation Manager confirms that there is primary and secondary school capacity to cater for the development. However, in the event of an approval a condition should be applied so as to limit the proportion of the 3 bed properties within the outline element of the development.

155. It is noteworthy that Sustainability officers consider that the site has generally good access to most facilities and services and set against the social, economic and environmental sustainability determinants the scheme is generally received positively.
156. No objections are raised to the locational sustainability of the site.

Visual, Townscape and Heritage Impact

157. The application site is located within a very sensitive and prominent location. The potential impact upon the townscape and a range of heritage assets is a critical consideration within the application. Reflective of this, the application is accompanied by a number of documents to inform on the nature and magnitude of the impacts. Central to this are the ES chapters on Townscape Character and Visual Impact and Historic Environment (and associated appendices), a Heritage Statement and Design and Access Statement.
158. The ES considers the impact of the development having regards to both the operational scheme itself and the temporary effects arising from the construction processes. In addition consideration is given to cumulative impacts of the development with the redevelopment of The Gates shopping centre to the south of the site. The submitted Planning Statement provides conclusions on the various visual and historic environment impacts within a planning policy context.
159. The application site is located within the Durham City Centre Conservation Area. Beyond the application site, a range of designated and non-designated heritage assets are within close proximity. This includes, but is not restricted to, Durham Cathedral and Castle WHS, (approximately 235m to the southeast), Church of St Godric (Grade II listed and approximately 100m to the southwest), Castle Chare Community Arts Centre (Grade II* listed and approximately 75m to the southwest) Church of St Nicholas (Grade II listed and approximately 165m to the southeast)). Concentrations of listed buildings are also located within the Market Place, including the Grade II* Town Hall and Guildhall, some 125m to the south east.
160. In assessing the proposed development regard must be had to the statutory duty imposed on the Local Planning Authority under the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character and appearance of a conservation area. In addition the Planning (Listed Buildings and Conservation Areas) Act 1990 also imposes a statutory duty that, when considering whether to grant planning permission for a development which affects a listed building or its setting, the decision maker shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. If harm is found this gives rise to a strong (but rebuttable) statutory presumption against the grant of planning permission. Any such harm must be given considerable importance and weight by the decision-maker.
161. The application site is both significant in terms of its sensitive location, but also in terms of its size both in footprint (3.1 hectares), and depth, with a feature of the site being an approximate 15 metre change in level between the riverside to the east at Frmawellgate Waterside and Framwelgate Peth to the west. The site is occupied by

significant office buildings with a footprint of 10,604m², which, when cleared, clearly provide the opportunity for replacement buildings with significant floorspace.

162. Accordingly, the scheme proposed consists of new floorspace of up to 84,695m² in a development of up to thirteen floor levels at its highest point in the north-west corner of the site (Zone 3). At this point the development would be around 36.5m above the height of the ground level at Framwelgate Waterside and some 24m above the height of the road at Framwelgate Peth. In Zone 2 in the north-eastern part of the site, the development would reach a height of around 23m above the height of Framwelgate Waterside, thus ensuring that the development cascades downwards towards the river, as is characteristic of the existing development and development generally as it interacts with the River Wear in Durham. The detailed part of the development in Zone 1 at the southern end of the site would consist of development that seeks to both ensure the aforementioned cascade as the development moves back from the river, and to ensure the development follows the topography of Framwelgate Peth as it moves up from Milburngate towards the Railway overbridge. As a result, the six blocks which comprise this zone vary in height with those at the southernmost end of the development reaching around 6 storeys above the height of Milburngate Bridge (Blocks 1A, 1B and 1C), with two further blocks (1D and 1E) reaching 8 and 9 storeys above the height of Milburngate Bridge. A standalone block (1F) occupying a river front position would be the equivalent of two storeys above the height of Milburngate Bridge, or some five levels above Framwelgate Waterside level.
163. The proposed development is therefore on a significant scale, reflective of the significant scale of the existing buildings on site and the extensive scale of the site itself, exacerbated by the significant level changes around the site. Accordingly, in a location as sensitive as this site, it is important that development of this scale is undertaken sensitively and in a manner that respects the significance of the designated heritage assets that the site is either within or is within the setting of. Whilst the proposals are for a significant form of development it is considered that the site has the capacity to absorb this in a way which does respect the significance of the identified heritage assets.
164. Loss of Milburngate House has previously been approved under application DM/15/01119/FPA. Under that application whilst it was concluded that Milburngate House can be considered a non-designated heritage asset, its Brutalist architecture presents a generally negative contribution to the significance of the Conservation Area and to the significance of the WHS. The redevelopment proposals represented an opportunity to provide a more sympathetic development at the site. The loss of the non-designated heritage asset has therefore been accepted.
165. The proposal would result in a transformative impact due to the magnitude of change from the replacement of the existing Milburngate House with the significant scheme proposed. It is noted that within the public responses received on the application matters surrounding the scale, massing and design of the redevelopment proposals are amongst the most significant concerns raised.
166. In terms of Townscape Character and Visual Impact and the Historic Environment the ES concludes that there would be moderate adverse townscape and visual effects and moderate adverse effects upon the setting of some heritage assets as a result of construction activities. However, these impacts would be temporary in nature and are an inevitable consequence of the visibility of the hoardings, machinery and the like as a result of such a large site being redeveloped.

167. Upon completion of the development the ES concludes that there would be no significant adverse effects on the setting of individual listed buildings or scheduled monuments whilst a significant beneficial impact upon the Conservation Area and WHS would result. Similarly in broader townscape and visual impact terms the submitted documentation concludes that a significant beneficial impact upon the sites immediate townscape context would occur.
168. Specific impacts of the development could occur at night. Durham has a lightness and darkness strategy and its heritage assets, particularly the WHS, are sensitive to potential light pollution. The application considers night time light impacts and central to this are the ES chapters on Townscape Character and Visual Impact, Historic Environment and Lighting. A Conceptual Lighting Strategy sets the framework for a detailed lighting design and specification with measures proposed to minimise light spillages and glow. Through the use of conditions and the reserved matters stage a final detailed lighting scheme can be devised and it is considered that the light impacts of the development can be controlled. The submitted documentation considers that the impacts from artificial light as a result of the development could have a minor adverse effect upon the WHS.
169. Historic England has responded favourably to the proposal describing it as a “definite improvement on the existing building” within their consultation response. Historic England show some concern with the outline phases of the development in that so much detail is currently unknown. However, it is also acknowledged that parameter plans have been submitted and that the reserved matters would be required to adhere to them. Historic England recommends a stringent application of conditions in the event of approval in regards to the outline phase of the development.
170. Historic England state that the Zone 1 development replicates the overall sense of scale of Milburngate House but with a pronounced reference back to the historic city in its layout, use of topography, materials and design. In so doing the development presents a clear improvement in terms of the character of the conservation area and for the most part the setting of the World Heritage Site.
171. Historic England also emphasises the importance of the use of conditions and control exercised at the reserved matters stage so as to ensure final elements of detailed design are considered. On Phase 1 final external materials to be utilised within the development could, in the event of approval, be reached through the use of conditions and on Phases 2 and 3 at the reserved matters stage. In general terms the materials palette proposed is reflective of that within the Freeman’s Reach development. The existing Milburngate House building has a stark pale concrete finish, somewhat at odds with the rest of the Conservation Area and the proposed approach would be more sympathetic and aid significantly the integration of the development into its existing setting.
172. The comments received from the WHS Coordinator are generally positive with the development considered to make a positive contribution to the riverside and improves on the negative impact of much of the existing development. The positive contribution outweighs the more minor negative impacts of the development.
173. Key conclusions of Design and Conservation officers are that the design approach is generally well considered and welcomed with generally positive impacts upon the townscape. No harm to the Conservation Area is referenced and no harm to individually listed buildings referenced.
174. Some concern with regards to the overall height and scale of the development are raised with particular reference to views, along the newly created townscape down

Framwelgate Peth and the Milburngate Bridge, which detrimentally impact upon the transient/emerging views of the WHS. Conversely, through considered design the proposal exploits opportunities to create new public views towards the WHS which will vary moving through the spaces generating an interrelationship and better revealing the significance of the WHS. This follows guidance contained within NPPF Paragraph 137. Views from the WHS (such as the Cathedral Tower) are also stated as being improved as a result of the development. Officers note that the development would also better reveal other heritage assets - a framed view of Church of St Nicholas when travelling on the pedestrian route from Framwelgate Peth towards the river would be formed and from the terraced and commercial areas of the development towards the wider Conservation Area townscape would be better revealed.

175. There is a degree of divergence in opinion between Historic England and Design and Conservation officers in respect to the precise impacts of the development upon the WHS. Historic England clearly considers that for the most part an improvement to the setting of the WHS would result. Design and Conservation officers consider in some respects the WHS would be beneficially impacted upon, however, their degree of concern over the impact of the scale of the development in some views upon the WHS is more pronounced and consideration as to whether paragraph 134 of the NPPF (regarding less than substantial harm to heritage assets) applies is needed.
176. Officers' conclusions are that whilst some views of the WHS would be harmed, particularly when travelling down Framwelgate Peth and a limited degree of adverse impact could occur at night due to lighting, this would effectively be neutralised by the beneficial impacts in other views and the better revealing of the heritage asset. As a result it is considered that paragraph 134 does not apply in relation to the WHS.
177. Both Historic England and Design and Conservation officers consider the special character and appearance of the Conservation Area would be preserved.
178. In terms of archaeology, conditions were imposed on the planning permission to permit the demolition of the existing building. These conditions related to the undertaken of a scheme of historic building recording and subsequent deposit with the County Durham Historic Environment Record (HER). This historic building recording has been undertaken as per the required condition. Archaeology officers confirm that there are no further requirements are necessary.
179. Public responses to the application raise concerns relating to the degree of tree loss proposed and turn the replacement landscaping strategy. Within the majority of the site tree loss is relatively limited but a significant concentration of loss is proposed along a section of Framwelgate Peth as a result of the need to remove and redesign the retaining structures. With the retaining wall being of significant age its loss is accepted as being a necessary element of the redevelopment and in turn this requires the significant loss of tree. The extent of tree loss alone would create a very noticeable and transformative impact within the vicinity of the site. Whilst CDLP Policy E14 clearly establishes trees as a site constraint, the Policy states that important trees should be retained "wherever possible" and the aforementioned retaining structure issues necessitate removals. It is also noteworthy that the existing line of trees sought for removal, albeit as grouping, do have some visual value they form part of the landscaping scheme of the current Milburngate House development. They are not a historic townscape feature and indeed the heritage submissions within the application demonstrate how in past buildings have been located hard-up to Framwelgate Peth.

180. Landscaping proposals for the site are proposed in distinct character areas. These being; woodland; residential; terraces; and riverside. The landscape strategy for the development proposes differing approaches in the character areas but seeks cohesion in the strategy overall. Soft planting proposals within the woodland area are proposed to focus on replacement woodland trees, for example birch and the retention of an existing tree grouping in the north-west corner of the site is proposed. Within the residential area the creation of more private garden spaces of a more domestic scale is proposed. The terraced and riverside areas would be the most active areas of the development and therefore significant focus is made to hard surfacing proposals with the use of Cathness stone and clay brick paving key elements. The hard landscaping proposals are stated as being devised with both visual amenity considerations in mind but also the need to be robust – catering for the pedestrian movements and, at the lowest levels, potential flooding. With such changes in levels across the site retaining walls are necessary and the landscape strategy has sought to incorporate them as part and parcel of the wider landscape scheme.
181. Landscape officers raise no objections to the development though conditions and the control exercised at the reserved matters stage are needed in regards to final details of some elements of the development including tree loss and planting reinforcement in the north-west of the site and the transition from the site to Framwelgate Waterside. It is confirmed that no significant effects on the character of the Durham Area of High Landscape Value would result having regards to CDLP Policy E10 (partially consistent with the NPPF).
182. Overall officers consider that visual and townscape impacts are acceptable. The development would have a significant transformative impact and the scale of some buildings proposed is significant and would result in some of the largest buildings within the City. Views within the City are dynamic and views being obscured or revealed are part of the experience of moving around the City. The greater scale of the development is balanced by the more appropriate design and aesthetic that the redevelopment proposes. The ‘cascade effect’ of the built form and roofscapes is a particularly distinctive characteristic of central Durham’s townscape and efforts have been made within the proposed development to replicate this with the use of pitched roofs, a varying roofscape and cascading terraces. Amendments received during the course of the application have responded to concerns raised by officers regarding specific elements of the proposal as originally submitted with a 3m reduction in the maximum height of block 2A and an alteration so as to lighten the appearance of block 1A when viewed on and in the vicinity of Milburngate Bridge.
183. Landscape officers, subject to final agreement of matters of detailed which can occur either under condition or at the reserved matters stage raise no objections to the development taking into consideration the tree removal works required and then the soft and hard landscaping proposals of the development.
184. In conclusion, no overall harm is considered to occur to the significance of individual heritage assets namely listed buildings and scheduled monuments. Wider townscape and visual impacts are acceptable with the character and appearance of the Conservation Area and setting of the WHS would be preserved. As a result, no objections to the impacts of the development in visual, townscape and heritage impact terms are raised. The application is considered compliant with CDLP Policies E3, E6, E14, E15, E21, E22, E23, E24, H2, H7, H13, S10, Q4, Q5, Q6, Q7 and Q8 in this regard. All of these Policies are considered to be either partially (Policy E6, H2, H13, S10 and Q8) or fully (remaining policies) consistent with the NPPF and therefore all can be afforded weight in the decision making process. The

development is also considered compliant with key relevant sections of the NPPF namely Parts 7 and 12 and relevant guidance within the PPG in this regard.

Residential Amenity

185. The submitted ES considers Lighting and Air Quality. An addendum to the ES in relation to the Air Quality was submitted during the consideration of the application.
186. With regards to lighting the ES considers the impacts during both the construction and operational phases of development. Effects are summarised as being of minor negative significance upon nearest receptors in a worst case scenario.
187. During the operational phase the submitted documentation highlights that final lighting provision will be designed so as to minimise any effects of glare and light spill from the development at sensitive receptors.
188. Environment, Health and Consumer Protection Officers have considered the impacts of the development in respects to light. Overall, officers conclude that it is unlikely that the proposal poses any significant concerns in relation to impacts upon neighbouring occupiers. However, it is advised that conditions are attached in the event of any approval so as to agree and control final lighting proposals through a lighting scheme informed by a lighting impact assessment.
189. Air quality is considered in the ES at both the construction and operational phases. It should be noted that the application site lies partially within and otherwise adjacent to a designated Air Quality Management Area (AQMA). The ES acknowledges that the effects of the construction phase have the potential to generate dust and particulate matter but proposes to reduce impacts through the implementation of appropriate mitigation such as a dust management plan.
190. Within the operational phase of the development the ES considers the potential effects of traffic movements upon air quality and proposes to reduce potential impacts through the use of mitigation measures such as implementation of a travel plan. It is also stated that there would be a need to provide mechanical ventilation to some of the proposed residential units.
191. Environment, Health and Consumer Protection have considered the air quality implications and have raised no objections. In respect to the construction phase of the development officers consider the number of movements undertaken by heavy duty vehicles (HDV) is at this stage unknown and it cannot be determined whether the criteria within applicable guidance will be exceeded. Environment, Health and Consumer Protection therefore seek confirmation of the HDV movements when they are known and an assessment upon air quality will need to be undertaken should the relevant guidance be exceeded. To reduce the impact on air quality, Environment Health and Consumer Protection advise that the movement of HDVs should be scheduled outside the AM and PM peak traffic periods. In the event of an approval conditions can be utilised to address these matters.
192. With regards to the operational phase of the development Environment, Health and Consumer Protection confirm that the submitted modelling demonstrates that within localised areas existing levels of nitrogen dioxide already exceed the Annual Mean Air Quality Objective. The development would have a further impact on these levels, however, only up to a maximum of a 2% level of change from existing. In order to mitigate impact, a travel plan should be conditioned including adherence to a number of specific measures to aid in reducing dependency on the car.

193. The application proposes to implement mechanical ventilation within Blocks 1A and 1D, adjacent to Framwelgate Peth and Milburngate Bridge and Environment, Health and Consumer Protection confirmed this requirement as these residents could be exposed to levels of nitrogen dioxide close to and above the Annual Mean National Air Quality Objective. Should planning permission be granted mitigation measures proposed can be secured through condition.
194. The potential for the construction activities to cause harmful impacts through forms of pollution and unacceptable working hours are raised as concerns within the public responses to the application. It is acknowledged that cumulative impacts with the Gates redevelopment may occur and that the Gates development has recently gained planning permission for night time working.
195. Environment, Health and Consumer Protection officers advise that due to the potential for the construction works to cause environmental impacts such as noise, vibration, dust and light spillage a construction management plan be agreed under condition and this can include agreement to the proposed working hours. Conditions to this effect already apply to the demolition phase of the development.
196. The application is accompanied by a noise report, the scope of which was to determine the existing noise climate at the site at nearby noise sensitive receptors, to assess the suitability of the site for the proposed development having regards to potential impacts on nearby occupiers and to identify any potential constraints to the development due to noise exposure or emission from the site.
197. In principle terms as the development includes a range of retail, food and drink and leisure uses there is the potential for many comings and goings at the site including those late into the evening. Noise emanating from the units and the associated comings and goings of customers will therefore result. However, the site is located within a city centre location where such development and activities would be most expected to be located.
198. The submitted noise assessment highlights that existing noise is generally dominated by the traffic on Framwelgate Peth and Leazes Road and considers the impact of the increase in traffic that would emerge from the development (a quoted maximum of 6.7%) would not result in any significant change in circumstances or adverse impact on existing occupiers in the vicinity of the site.
199. With regard to the impacts of the road noise upon the proposed residential occupiers, Environment, Health and Consumer Protection officers advise that mitigation measures be agreed under condition which provides noise limits which must be adhered to.
200. Plant associated with the various uses proposed would be required such as refrigeration equipment and air handling plant and this may operate 24 hours a day. The final details of these requirements are at this stage unknown and the submitted report suggests a condition can be utilised to resolve this. Environment, Health and Consumer Protection officers confirm that a specific condition should be added to any planning permission to control the noise emission levels of any machinery or plant.
201. The noise assessment acknowledges that noise and vibration may transfer between the commercial units and residential units proposed. Environment, Health and Consumer Protection officers advise that conditions should be utilised so as to ensure a noise insulation scheme between units is provided. Similarly in respects to vibration, commercial units may cause structural borne vibration impacts upon the

units above and therefore a condition so as to ensure vibration proofing measures is also advised.

202. Environment, Health and Consumer Protection officers raise the potential for odours to emerge from the food and drinking establishments proposed within the application. It is therefore proposed appropriate to control the final means of extraction equipment through condition. Details pursuant to one proposed unit (unit 8) have been submitted in detail under the application and have been considered as acceptable and can be listed as approved documentation in the event of permission being granted.
203. With regard to the potential for site contamination, Environment, Health and Consumer Protection officers raise no objections but state that a condition should be added to any planning permission requiring the completion and submission of detailed Phase 2 site investigation report and as necessary Phase 3 remediation strategy and Phase 4 verification report. Such a condition was placed on the planning approval for the demolition under DM/15/01119/FPA and there is no requirement to repeat the condition.
204. Consideration must be had to the layout and design of the development in amenity terms both with regards to existing and proposed occupiers.
205. Existing residential properties are located within the immediate surrounds of the development including the properties at Highgate to the west and Sidegate and Diamond Terrace to the north. The Radisson hotel also immediately abuts the site. As previously described the proposal seeks the erection of large buildings arranged in blocks. Residential units are proposed and their locations fixed within Zone 1. Within Zones 2 and 3 as previously described the development may include varying proportions of residential use to a maximum of 150 units and these may be located within either Zones 2 or 3 or both.
206. Properties on Highgate are most likely to be affected by Zones 1 and 2 of the development. Zone 3 would effectively be screened from Highgate by the other zones. Properties on Sidegate, Diamond Terrace and the Radisson hotel are most likely to be affected by Zones 2 and 3 of the development.
207. CDLP Policy Q8 requires that new residential developments provide adequate amenity and privacy for each dwelling and minimise the impact of the development upon existing occupiers. Separation distances between new houses are recommended; 21m should be provided between habitable windows; 13m between windows and blank two storey gables; and 6m between windows and single storey gables. These separation distances more specifically relate to the relationships between new dwellings and reference is not made to relationships between higher blocks of apartments or where changes in levels occur. However, the distances remain a guide.
208. Separation between Blocks 1E and 1D within Zone 1 and those flanking properties on Highgate varies from between approximately 26m to 42m. Blocks 1E and 1D would include several floors of residential units. Block 2A is shown on plan as being located approximately 31m from the nearest flanking property on Highgate though it must be noted that Block 2A is only proposed in outline at this stage – its precise layout on the site may alter and it may or may not include residential units. To the north, 7 Sidegate is the nearest residential property to the development and the plans show a separation distance of approximately 62m to the nearest block, again this is Block 2A shown in outline.

209. All relationships between existing and proposed residential properties meet the standards guidance contained within CDLP Policy Q8. However, site specifics must be taken into account such as the scale of the buildings proposed, location of windows, orientation of buildings, changes in levels and presence of screening. Consideration of the impact of the existing development and the degree of change that would result must also be considered. Flanking properties on Highgate currently benefit from the screening provided by the trees on Framwelgate Peth. With the proposed removal of many of these trees, siting of the proposed blocks and generally greater height of replacement buildings the development will be more imposing upon occupiers on Highgate than the existing development. The impact of the greater height of the blocks is mitigated somewhat by properties on Highgate being set on higher ground and though the proposed blocks would be higher than properties on Highgate they would not be considerably higher. Over time the soft landscaping scheme would soften views of the blocks from Highgate though it is acknowledged that a tree belt near the density of present would not develop. The proposed blocks are situated on angles adjacent to Framwelgate Peth and this helps to break up the mass of the blocks, increase distances to some properties on Highgate and make the angles between windows in some instances more acute.
210. With regards to properties on Sidegate, again the degree of tree coverage between them and the development site would thin. The proposal would bring built development closer to properties particularly Block 2A with nos. 7 and 8. Once complete the development would result in a more prominent and imposing build to the south of Sidegate. However, as referenced above distances between properties on Sidegate and the proposed build are significant and would mitigate the scale of the build and the transformative impacts. Impacts upon garden spaces at Sidegate would be more pronounced than in the dwellings themselves.
211. Aside from Highgate and Sidegate remaining residential properties in the vicinity of the site such as Diamond Terrace, St Annes Court and St Godrics Court are located farther from the development and again though transformative impacts would occur these are considered to be less pronounced.
212. Taking all these factors into account it is considered that whilst a transformative impact would occur, the levels of residential amenity that nearby residents would enjoy in terms of privacy, levels of outlook and light would remain acceptable.
213. As occupiers of the Radisson hotel rooms are temporary visitors rather than residents the same degree of amenity is not required for those occupiers. Nevertheless, the hotel rooms should still be provided with acceptable levels of amenity. The vast majority of bedroom accommodation faces east and west. The development would not affect the east facing windows. The proposed Block 2A would be located approximately 35m to the south-west (on the indicative plans) whilst Block 3A is indicatively located to be approximately 15m to the south. The southern section of the hotel, being an end elevation includes fewer windows to the hotel room accommodation. In addition the proximity and mass of the existing Milburngate House building in this location is similar to that proposed under Block 3A. Overall no objections are raised to impact of the proposed development upon the levels of amenity that can be expected by users of the hotel.
214. Within the development itself separation distances between the proposed residential units varies quite considerably as a result of the arrangement and orientation of the blocks. In some instances where the blocks diverge from one another separation distances in excess of 25m are provided for instance between sections of Blocks 1C and 1D. Equally there are instances where blocks converge and pinch points occur with separation at or even below 10m such as between sections of Blocks 1A and

1B, 1B and 1C and 1B and 1D. Relationships such as these do clearly fail the guidance contained within CDLP Policy Q8. However, there are mitigating factors. These most intimate relationships do not affect all the apartments within the blocks as it depends upon the arrangements at that level/floor. For example where Blocks 1A and 1B converge to their closest point the apartments at level 8 within Block 1A would not directly face windows within Block 1B as not apartment is proposed directly opposite. The submitted Design and Access Statement places emphasis on the location of the site within Durham City Centre and that the medieval character of the City is in part characterised by intimate winding streets. Examples are provided where intimate relationships between properties, some which will include upper floor residential accommodation, exist within the City such as on Claypath, Silver Street, North Road, Old Elvet and Silver Street. Residential streets within the City such as Mitchell Street and New Street provide further examples of intimate relationships between properties.

215. To a degree, prospective occupiers of the units can also consider for themselves whether the proposed development would provide them with the levels of amenity and privacy that they would expect. Furthermore and discussed in the viability and planning obligations section of the report the quantum of development required to make the development viable has impacts upon the layout of the development.
216. In conclusion, the development would preserve the amenity of existing occupiers within vicinity of the site. Conditions regarding a range of residential amenity matters and relating to both the construction and operation phases of the development would be required so as to provide in some instances necessary controls and mitigation. As a result the development is considered to accord with CDLP Policies H13, S10, C2, U5, U7 and U11 in this regard. Due to some relationships between proposed properties falling short of the separation distances contained within CDLP Policy Q8 it is considered that there is conflict with this policy and in turn with Policies H2 and H7. However, it is considered that there are mitigating factors and as a result objections are not raised against the development due to the conflict with these three policies. All these policies are considered to be either partially (Policies H2, H13, S10, Q8, U5 and U7) or fully (Policy H7, C2 and U11) consistent with the NPPF and therefore all can be afforded weight in the decision making process. The development is considered compliant with key relevant sections of the NPPF namely Parts 7 and 11 and relevant guidance within the PPG in this regard.

Highway Safety/Issues

217. A Transport Assessment (TA), Travel Plan (TP), Design and Access Statement and Access and Circulation Parameter Plan accompanied the application. During the consideration of the application an amended TP and highway response note with accompanying appendices have been submitted.
218. The locational sustainability of the site having regards to sustainable travel options, proximity to services and facilities and travel planning proposals are considered above and no objections are raised.
219. The submitted documents conclude that the highway safety and traffic implications of the development are acceptable. The application considers that the purpose built site access junctions (Framwelgate Peth and Framwelgate Waterside) each have sufficient capacity to accommodate the forecast development traffic levels during peak periods. The impact of the development traffic on the surrounding network is described as being minor with key junctions considered to operate effectively and within capacity under future year development flow scenarios, both with and without development. The application therefore concludes that the development proposals

could be accommodated without resulting in a significant detrimental impact upon the network.

220. The Highway Authority has raised no objections to the application. The proposed signalised junction at Framwelgate Peth is proposed for use only by residential occupiers. A means to control that the access is for the use of residents only requires submission and could be agreed under condition. A drawing indicating the traffic signals layout at Framwelgate Peth has been submitted and a widening of the carriageway and in turn footway outside of the current highway is proposed. These works would need to be subject to a combined Highways Act S278/S38 agreement.
221. The proposed site access layout from Framwelgate Peth also shows a realignment of the Highgate access to step out into Framwelgate Peth. This would result in both nearside and offside lanes merging at a pinch point at Highgate. The Highway Authority state that this is not acceptable and should be re-designed and this could be resolved under condition.
222. No objections are raised by the Highway Authority to the redesigned access from Framwelgate Waterside which would be the access point for the visitor car parks. Servicing of the site is designed to take place from Framwelgate Waterside with an access formed adjacent to the Radisson hotel and this is considered acceptable. The Highway Authority raise no objections to the impacts of the development upon existing junctions and the local highway network.
223. The degree of parking provision proposed is considered to be acceptable in general by the Highway Authority though conditions are recommended to secure electric vehicle, cycle/motor cycle parking and associated directional signage. It is considered that such conditions need only apply to Zone 1 of the development as the reserved matters can resolve the parking layout/provision in detail for the remaining development.
224. The Highway Authority state that Sustainable Transport officers have requested that the footway provision proposed adjacent to the development is amended so as to permit the provision of a 4m wide shared pedestrian and cyclist route. It is also requested that an existing pinch point within the footway at Milburngate roundabout is redesigned again to improve access for pedestrians and cyclists.
225. Linked to the requests of Sustainable Transport officers it is noted that public responses on the application includes requests for improved cycle provision. The provision of a wide shared pedestrian and cycle route down Framwelgate Peth and on Leazes Road is constrained by a number of factors. The revised access arrangements at Framwelgate Peth result in a widening of the carriageway to the east. To the west the steep embankment exists into the site. The need to retain a soft landscaping scheme between the highway and the proposed buildings is considered necessary so as to soften the visual impact of the buildings. However, a solution so as to provide as wide a pedestrian and cycle route as possible within these competing constraints is sought and a condition can seek to agree final details including the provision of the highway guardrails referenced by the Highway Authority.
226. With regard to ease of pedestrian movements and site permeability the significant change in levels between Framwelgate Peth and Framwelgate Waterside is a challenge for any redevelopment proposal. The proposals have sought to create spaces within the site which maximise areas at the same grade to enable easier movement across and around the site for people with mobility impairments or those with pushchairs. Key to this is the main development plateau being proposed on a single

level which encompasses access to almost all residential properties, restaurants and cinema. Lift access is also proposed.

227. A further challenge is the provision of a suitable connection point with the Gates shopping centre as the heavily trafficked Milburngate Bridge divides the two sites. Due to the amount of traffic which passes on Milburngate Bridge, an at grade crossing point is not feasible and so alternative means of connection are necessary. The application proposes a pedestrian crossing directly beneath Milburngate Bridge and elevated above Framwelgate Waterside which would connect with the Gates. A condition can be attached on any approval so as to resolve final and precise details. In addition the proposed development cascades down to the riverside and from here access on the Lambton Walk footpath beneath Milburngate Bridge and towards the Gates and Framwelgate Bridge beyond can be made.
228. Public comments query the absence of the footbridge across the river to meet Freemans Reach. A footbridge does not form part of this application. The footbridge remains an aspiration, however, it is still in the developmental stage with design challenges posed by flood risk.
229. Access and Rights of Way officers raise no objections to the development. Their request and that contained within public responses on the application for financial contributions under a S106 legal agreement towards improvements to the cycling network is discussed under the viability and planning obligations section of this report.
230. Public concerns are raised with regards to traffic movements and implications during the construction phase of the development. No objections are raised in principle to the highway movements that would be a necessary enabling element of redeveloping the site. A condition can be utilised to agree a construction management plan aimed to manage and mitigate a number of environmental impacts of the construction phase and this can include agreeing construction vehicle management methods. In response to public comments, the applicant has confirmed that Sidegate would not be used as a construction vehicle route.
231. Overall no objections are raised to the development on highways related grounds with the development considered compliant with relevant sections of CDLP Policies H7, T1, T19, T20, T21, C2, C8, Q1, Q2, Q7 and Q8. These Policies are considered to be either partially (Policies T1 and Q8) or fully (Policies H7, T19, T20, T21, C2, C8, Q1, Q2 and Q7) consistent with the NPPF and therefore all can be afforded weight in the decision making process. CDLP Policy T10 is also applicable to the site and relates to parking provision. The Policy seeks to minimise the level of provision which is considered contrary to the more up to date approach advocated by national guidance and as a result no weight is attributed to this policy. The development is considered compliant with key relevant sections of the NPPF namely Part 4 and relevant guidance within the PPG in this regard.

Ecology

232. The application is accompanied by a phase 1 habitat survey, bat risk assessment and bat emergence surveys and a biodiversity statement. The submissions build upon ecological submissions which accompanied the previously approved application for demolition of Milburngate House.
233. With regards to designated sites of nature conservation interest local wildlife and nature reserve sites within 1km of the application comprise of Flass Vale, Hopper's

Wood, Frankland Pond, Pelaw Wood, Houghall, Maiden Castle and Little Woods. No statutory designated sites are located within 1km of the site.

234. The surveys undertaken did not find any protected species on site, other than nesting birds. To ensure that birds are not adversely impacted by the proposed demolition, works would be carried out outside the bird breeding season. Some loss of foraging habitat for badgers and hedgehogs was also identified to occur and again mitigation measures so as to control when vegetation can be removed from the site is recommended.
235. The presence of protected species is a material consideration, in accordance with Circular 06/2005 (Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System) and Part 11 of the NPPF. In addition with regards to European Protected Species (EPS) under the requirements of The Habitats Regulations it is a criminal offence to (amongst other things) deliberately capture, kill, injure or disturb a protected species, unless such works are carried out with the benefit of a licence from Natural England. Regulation 9(3) of The Habitat Regulations requires local planning authorities to have regard to the requirements of the Habitats Directive in exercising its functions.
236. Although no bats were seen emerging from the building during the bat emergence surveys, the potential for bats to use some of the external structures of the building as roost sites was noted. In order to mitigate the impact on bats, the approved at method statement states that the demolition of specific parts of the building would be undertaken in a controlled manner under supervision of a licensed bat ecologist in addition trees to be lost would be visually inspected before they are felled. The loss of the trees to be felled is considered to have a negligible impact on the conservation status of bats in the City. The impact of lighting has been considered and concluded that the proposed development would not significantly exceed existing levels and it is unlikely that there would be any significant impact on the use of the River by foraging bats and other river wildlife.
237. Ecology officers are satisfied with the level of survey work submitted with the application and raise no objections. The submitted ecological reports are considered sufficient to inform on the proposal. Mitigation measures proposed should be condition in the event of an approval. Ecological mitigation and enhancement measures proposed include the checking of trees before felling. Natural England also raise no objections considering it unlikely that the development would result in significant impacts on statutory designated nature conservation sites or landscapes.
238. No interference with protected species is identified as a result of the development. No European Protected Species Licence is therefore considered to be required as a result of the development having regards to the requirements of the Habitats Directive brought into effect by the Conservation of Habitats and Species Regulations 2010 (and as amended in 2012).
239. In terms of biodiversity issues, it is considered that there would be no overall adverse impacts. No objections to the application on ecological or nature conservation grounds are raised with the development considered in accordance with NPPF compliant CDLP Policy E16, Part 11 of the NPPF and having regards to relevant advice within the PPG.

Flood Risk and Drainage

240. National advice within the NPPF and PPG with regards to flood risk advises that a sequential approach to the location of development should be taken with the objective of steering new development to flood zone 1 (areas with the lowest probability of river or sea flooding). When determining planning applications, local planning authorities should ensure flood risk is not increased elsewhere and only consider development appropriate in areas at risk of flooding where, informed by a site-specific flood risk assessment, following the Sequential Test and, if required, the Exception Test.
241. Given the location of the site it is recognised that the site has a history of flooding. The application is accompanied an ES chapter on Flood Risk and Hydrology and associated enclosures including a flood risk assessment (FRA). The north western part of the site lies within Flood Zone 1 (low flood risk probability). Parts of the western and southern section of the site lie within Flood Zones 2 (medium flood risk probability) with the eastern part of the site being within Flood Zone 3. Flood Zone 3a has a high flood risk probability and Flood Zone 3b is the functional flood plain. The FRA considers the eastern part of the site to be within Flood Zone 3b. The site is considered to have a high risk of fluvial flooding and to be low to negligible for all other potential sources. The FRA includes hydraulic modelling of the proposed development. The modelling has been used to determine peak levels in the River Wear and as a result has allowed a minimum finished floor level to be agreed and to inform the design of the development. It has also confirmed that there would be no discernible adverse impact on the flood risk to the surrounding area as a result of the development.
242. The PPG defines the vulnerability (to flooding) of differing types of development. Of the developments proposed residential accommodation, nurseries, crèche, health centres and clinics are defined as being within the more vulnerable classification. The cinema, gym, gallery, retail, financial and professional service, food and drink and office uses are classified as being less vulnerable uses. Water compatible uses are the car parking, landscaping, public open space, related infrastructure, ancillary works and utilities. Less vulnerable developments are suitable in Flood Zone 3a, whilst more vulnerable developments are suitable in Flood Zone 3a subject to the Exception Test be applied and passed. All of these proposed uses are also considered to be suitable in Flood Zone 2.
243. Consideration has also been given to geology and groundwater. The FRA states that the site is not located within a groundwater Source Protection Zone but is within an area of vulnerability with respect to potential groundwater pollution having soils of high leaching potential. The assessment concludes that the groundwater flood risk is low. The submitted FRA considers that flood risk from sewers or any artificial sources of flood risk are low.
244. Mitigation measures are incorporated into the design of the development which ensures that all of the uses other than water compatible elements and the cinema are located at the top of a platform set at a minimum level of 33.5m AOD. This minimum finished floor level of 33.5m AOD is above the 1% probability event (1 in 100 year) event and includes appropriate allowances for climate change. Also as mitigation, floodplain storage would be provided in Development Zone 3 to ensure that the current volume of floodplain is maintained. Bespoke flood warning and evacuation procedures are also proposed as mitigation to manage the residual risk of flooding and ensure that public space is not used during a flood event.

245. The submitted FRA considers the sequential and exception tests as referred to in NPPF and PPG advice. The only site identified within Durham City that could accommodate the proposals is the Aykley Heads site. However, the assessment does not find it to be sequentially preferable, would fail to deliver the comprehensive sustainable regeneration benefits for Durham City and concludes that there is no reasonably available alternative site for the development as a whole.
246. An Exception Test should meet two criteria:-
- it must be demonstrated that the development provides wider sustainability benefits to the community that outweigh flood risk, informed by a Strategic Flood Risk Assessment where one has been prepared; and
 - a site-specific flood risk assessment must demonstrate that the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.
247. Officers agree with the submitted assessment considering it highly unlikely that any alternative sites exist that would be available to deliver the development, deliver the regeneration benefits this development could deliver and present any lesser risk to flooding than the application site. It is therefore considered that wider sustainability benefits to the community would occur with a range of facilities and services for the community and a contribution to the vitality of the City Centre. A boost to housing would be made through the delivery of the development.
248. With regards to the second test the Environment Agency has no objection to the proposal subject to the measures detailed in the FRA are implemented and secured through condition. These relate to the provision of compensatory storage, identification and provision of safe route(s) into and out of the site to an appropriate safe haven, finished floor levels are set no lower than 33.5m AOD, and the cinema area is protected no lower than the 33.5m AOD level. These measures are required in order to prevent flooding elsewhere by ensuring that compensatory storage of flood water is provided, to ensure safe access and egress from and to the site and to reduce the risk of flooding to the proposed development and future occupants. Drainage and Coastal Protection officer raise no objections and concur with the comments made by the Environment Agency.
249. A drainage strategy has been submitted with the application. Surface water drainage from the site would remain private and would discharge into the River Wear. The submitted drainage strategy states that use of soakaways (more preferable in the surface water disposal hierarchy) are unsuitable due to the ground conditions. Foul water flows are proposed to be discharged into the main sewer. Northumbrian Water raises no objections requiring that a condition should be added to any planning permission to ensure that the development is implemented in accordance with the submitted drainage strategy. Drainage and Coastal Protection officers raise no objections subject to conditions requiring that the development is constructed in accordance with the design principles and statements as contained within the submitted FRA and Drainage Strategy documents and the mitigation measures raised by the Environment Agency are complied with.
250. No objections are raised to the development on flood risk and drainage grounds having regards to CDLP Policies U8a, U9 and U10 which are considered either fully (Policy U8A) or partially (Policies U9 and U10) consistent with the NPPF and can be attributed weight in the decision making process. The proposal is considered to accord with Part 10 of the NPPF and relevant guidance within the PPG.

Viability and Planning Obligations

251. In order to widen the choice of high quality homes and widen opportunities for home ownership, paragraph 50 of the NPPF encourages the provision of affordable housing based on evidenced need. CDLP Policy H12 requires a fair and proportionate level of affordable housing on sites over 1ha or 25 dwellings, and Policy H12A (partially NPPF compliant) requires proposed housing to be of an appropriate type and size.
252. CDLP Policy H12 is also considered to be only partially compliant with the NPPF. It is consistent with the overall objectives of NPPF, in that Paragraphs 47, 50 and 158 require an element of affordable housing to be provided on housing sites, based upon an up to date evidence base. However, the unspecified target of a “fair and reasonable” amount specified by Policy H12 should instead be replaced by an evidence based figure.
253. The County Durham Strategic Housing Market Assessment (SHMA) supplies an evidence base for affordable housing requirements across the Central Delivery Area in which the site falls. A 20% affordable housing requirement applies to the Central Delivery Area. Such affordable housing should be ensured via a S106 legal agreement.
254. CDLP Policy R1 seeks to ensure that a minimum level of 2.4 ha of outdoor sports and play space per 1,000 population is maintained whilst CDLP Policy R2 seeks to ensure adequate recreational and amenity space in new residential developments. Both Policies are considered partially NPPF compliant as whilst the objectives of the policy remain in conformity the levels of standards have been updated since through the Open Space Needs Assessment (OSNA). Although areas of general open and amenity space are proposed within the layout it is considered that the amount of provision is below the standards that evidence advises should be provided. Off-site contributions via a S106 are sought in instances where provision on-site is not adequate.
255. CDLP Policy Q15 seeks to encourage the provision of artistic elements in the design and layout of proposed development. Where such elements are not proposed again a financial contribution in lieu of this would be expected. The NPPF is silent on art though is supportive of creating well-designed spaces.
256. Having regard to the Community Infrastructure Levy (CIL) Regulations and advice contained at NPPF paragraph 204, planning obligations ensured via a S106 legal agreement should be; necessary to make the development acceptable in planning terms; directly related to the development and fairly and reasonably related in scale and kind to the development.
257. Public art provision is not necessary to make the development acceptable – a mixed use development such as this can be acceptable without either public art installations on site or indeed offsite contributions. Such an obligation would fail to meet the CIL regulations. Similarly the requests emerging from the public responses and comments of Access and Rights of Way officers for contributions towards improving cycling provision are similarly not considered necessary to make the application acceptable.
258. Regarding remaining obligations the applicant has stated that on viability grounds the development cannot provide the suite of planning obligations summarised above. Development appraisals and associated appendices and enclosures have been

submitted to demonstrate and evidence the various costs and revenues of the development.

259. The LPA employed two consultants to independently appraise the viability appraisal submissions and comment on the likely viability of the development at the site. One consultant has provided expertise on the costs side and the other values. An iterative dialogue has been undertaken between the LPA (informed by its consultants) and the applicant's development team with queries raised on the submissions by the LPA and responses and further evidence provided by the applicant.
260. Following this lengthy dialogue the conclusions of the LPA's consultants are that as the development stands the viability of the site is marginal and this is without the aforementioned planning obligations which would hinder further the viability. The consultants have outlined to the LPA that a principle reason for the marginality relates to the high preliminary costs of the development. The LPA's consultants have concluded that an approximate 13% return on the development would result based upon the evidence and that this is marginal taking into account the size and risks associated with the scheme.
261. Nevertheless the LPAs consultants have advised that the applicant should still be requested to enter into a S106 legal agreement so as to permit a review of the viability of the site at established points in the sites redevelopment. This would be so as to review the viability of the scheme over the passage of time for example to review if any value engineering savings have occurred which would increase the viability of the development. This would be with the view of seeing at that stage whether some or all of the planning obligations could then be sought. The applicant has (subject to final wording to be agreed under the S106 agreement) agreed to such an obligation being entered into. Such an agreement as considered to meet the CIL Regulations and advice contained in Paragraph 204 of the NPPF.
262. Further implications of the viability of the development relate the scale, design and layout of the development. As discussed elsewhere in the report in certain views elements of the proposal harm the WHS due to its scale and prominence. The proximity of residential units also brings the scheme into conflict with separation distance guidance within the CDLP. The marginal viability of the scheme means that reducing the number of residential units is problematic and in turn this affects the ability for the development to reduce in scale and mass through removing units.
263. The PPG includes a chapter dedicated to matters of viability in both plan making and decision taking. LPAs are advised that where an applicant is able to demonstrate to the satisfaction of the LPA that the planning obligation would cause the development to be unviable, the LPA should be flexible in seeking planning obligations. Specific reference is made to affordable housing within the PPG where it is stated that affordable housing often represents the single most significant obligation within a development and that affordable housing contributions should not be sought without regard to individual scheme viability. Similarly within the chapter on planning obligations, the PPG states that where affordable housing contributions are being sought, planning obligations should not prevent development from going forward. The PPG does state, however, that the NPPF makes it clear that where safeguards are necessary to make a particular development acceptable in planning terms, and these safeguards cannot be secured, planning permission should not be granted for unacceptable development.

264. The conclusions and overall planning balance is undertaken elsewhere in this report and considers whether planning permission should be withheld due to the absence of the planning obligations.

Other Issues

265. The Employability Team request that targeted recruitment and training clauses are included within any S106 legal agreement. It is considered that this matter can be covered under condition.

266. The application sets out a commitment to embedded sustainable measures within the build and confirms the intention to build to Building Regulations Part L 2013, instead of Part L 2010, which will ensure greater embedded sustainability. No objections to the development are therefore raised having regards to CDLP Policy U14 on energy conservation (fully compliant with the NPPF).

267. The Town and Country Planning (General Permitted Development) (England) Order 2015 permits, subject to conditions in some instances, a number of changes of use which can be undertaken without the requirement of planning permission. It is considered that should some of these changes of use occur within the development planning impacts of a material nature could occur. So as to enable the LPA to fully consider the impacts of such changes occurring at the site it is considered appropriate that these permitted development rights be removed under condition on any approval. The changes of use which it is considered should be removed so as to enable future consideration are;

- Retail or betting office or pay day loan shop to mixed use (Class G)
- Business use to Storage and Distribution (Class I)
- Offices to dwellinghouses (Class O)
- Business to state-funded schools or registered nursery (Class T)

268. It is considered there is no need to remove the permitted development rights for the change of small HMOs to dwellinghouses and vice versa (Class L) as separately, an Article 4 Direction applies to the site and said permitted development rights are therefore removed.

Paragraph 14 Assessment

269. In accordance with the advice contained at NPPF Paragraph 14 the acceptability of the development rests on whether any adverse impacts of approving the development would significantly and demonstrably outweigh the benefits or whether there are any specific policies in the NPPF that indicate development should be restricted.

270. No specific policies in the NPPF are considered to apply that would indicate that the development should be restricted. Though some adverse impacts upon views of the WHS would occur this is balanced by the positive contribution the development would make in other views and its contribution to revealing views of the WHS and indeed the wider historic core of Durham. As a result the test at paragraph 134 of the NPPF where less than substantial harm to heritage assets must be balanced against public benefits does not apply.

271. The significant removal of trees adjacent to Framwelgate Peth will remove a tree grouping of value in this part of the City. However, the complications of the retaining structures coming to the end of their life means that any wholesale redevelopment of site is likely to be posed with the same problem and requirement. Furthermore and

like the heritage impact, the wider visual and townscape impacts of the development are considered acceptable.

272. The adverse impacts of the development are that the proposal does not provide affordable housing or any financial contribution towards off-site open and recreational space. Principally these requirements are not proposed on viability grounds and the LPA has employed consultants who have advised that the scheme is marginal in viability terms.
273. National guidance in respect to planning obligations and viability is that flexibility should be exhibited where possible and essentially presents a presumption in favour of such flexibility except in those circumstances where the safeguards of the planning obligations are necessary to make the development acceptable.
274. In this particular instance it is considered that flexibility can be exhibited. With regards to open space the development is proposing provision – the application states that over 6,800m² would be provided across the three development zones. The absence of affordable housing is considered the most significant requirement which is absent from the proposal, however, the development would still represent a boost to housing supply and the residential units are proposed to include private sector rental units which would widen the choice of homes available. This housing provision must also be considered within the context of being at a time when the LPA cannot demonstrate a 5 year land supply.
275. Paragraph 23 of the NPPF is clear that LPAs should promote competitive town centres that provide customer choice. This mixed use development would meet this aspiration and can contribute to making the City Centre a greater attractor for those outside the City and increase the level of facilities for the existing community. The development represents effective re-use of previously developed land – a core planning principle of the NPPF.
276. A number of direct and indirect economic benefits would emerge from the proposed development. These would include employment opportunities created during the construction phase of the development both directly on site and also through supply chains off-site. Significant on-site employment opportunities would result from the mixture of uses proposed. Expenditure as a result of the development would contribute to the vitality of the City.
277. On balance, it is considered that the adverse impacts of the development do not significantly or demonstrably outweigh the benefits and no specific policies apply to the development which are considered to indicate that the development should be restricted.

CONCLUSION

278. The development comprises of a significant mixed use development within Durham City Centre. Policies for the supply of housing within the CDLP are out-of-date and the acceptability of the application should be considered in the context of paragraph 14 of the NPPF which advises that the acceptability of the development rests on whether any adverse impacts of approving the development would significantly and demonstrably outweigh the benefits or whether there are any specific policies in the NPPF that indicate development should be restricted.

279. The mixture of uses proposed are considered to be acceptable in principle taking into account the City Centre location, the locational sustainability credentials of the site and having regards to relevant National and Local Plan advice.
280. The site is sensitive and prominent due primarily to its scale, visibility and proximity to a range of heritage assets. Overall the scale, massing and design is considered to have respected this sensitive setting, representing high quality contemporary design but with reference to Durham's character. No harm upon heritage assets would result.
281. No objections to the development are raised with regards to the range of other key material planning considerations including; residential amenity; highway safety; ecology; and flood risk.
282. The adverse impacts of the development are that the proposal does not provide affordable housing or any financial contribution towards off-site open and recreational space. The LPA accepts, as the development stands, that the scheme is marginal in viability terms.
283. National guidance in respect to planning obligations and viability is that flexibility should be exhibited where possible and essentially presents a presumption in favour of such flexibility except in those circumstances where the safeguards of the planning obligations are necessary to make the development acceptable.
284. In this particular instance it is considered that flexibility can be exhibited and, furthermore, the applicant has agreed to enter into a S106 legal agreement so as to review the viability of the development during the build-out process.
285. This mixed use development would contribute to making the City Centre a greater attractor for those outside the City and increase the level of facilities for the existing community. Expenditure as a result of the development would contribute to the vitality of the City. A number of other direct and indirect economic benefits would emerge from the proposed development.
286. The development represents effective re-use of previously developed land – a core planning principle of the NPPF.
287. The proposal has generated some public interest, with letters of objection having been received. Concerns expressed regarding the proposal have been taken into account, and carefully balanced against the scheme's wider social, economic and community benefits but are not considered sufficient to refuse planning permission.
288. On balance, it is considered that the adverse impacts of the development do not significantly or demonstrably outweigh the benefits and no specific policies apply to the development which are considered to indicate that the development should be restricted.

RECOMMENDATION

That the application be **APPROVED** subject to the completion of a legal agreement pursuant to Section 106 of the Town and Country Planning Act 1990 to secure the following:

Viability review covenants so that during established stages of the development the ability for the proposal to provide;

- i) affordable housing (or an off-site contribution); and/or
- ii) off-site contributions towards open space and recreational space

is first reviewed and second, where viability is shown to allow, those covenants shall require said planning obligations to be delivered in accordance with a scheme to be agreed.

And subject to the following conditions:

1. Development of the area defined as Zone 1 on drawing 2962-FBA-00-00-DR-A-05_10-115 Rev P1 shall be commenced 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. Applications for approval of reserved matters pursuant to Zones 2 and 3 of the development as defined on drawing 2962-FBA-00-00-DR-A-05_10-115 Rev P1 shall be made to the Local Planning Authority before the expiration of three years beginning with the date of this permission and the development must be begun not later than the expiration of two years from the final approval of the reserved matters, or in the case of approval on different dates, the date of approval of the last of the reserved matters to be approved.

Reason: Required to be imposed pursuant to Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

3. Approval of the details of appearance, landscaping, layout and scale ("the reserved matters") pursuant to Zones 2 and 3 of the development as defined on drawing 2962-FBA-00-00-DR-A-05_10-115 Rev P1 shall be obtained from the Local Planning Authority before the commencement of development (other than demolition, preliminary site excavation, enabling and remedial works) of each of those phases of development.

Reason: Required to be imposed pursuant to Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

4. The development hereby approved shall be carried out in strict accordance with the following approved plans and documents and any recommendations, mitigation measures and adherence to parameters contained therein:

Plans:

2962-FBA-00-00-DR-A-05_10-0_101 P1 EXISTING SITE LOCATION
2962-FBA-00-00-DR-A-05_10-0_102 P1 EXISTING SITE LOCATION
2962-FBA-00-B1-DR-A-00_10-0B100 PROPOSED LEVEL B1 GA MASTERPLAN
(31.0M AOD P1.1
2962-FBA-00-00-DR-A-00_10-00000 PROPOSED LEVEL 00 GA MASTERPLAN
(33.5M A.O.D) P1.2
2962-FBA-00-01-DR-A-00_10-00100 PROPOSED LEVEL 01 GA MASTERPLAN
(36.5M A.O.D) P1.2
2962-FBA-00-02-DR-A-00_10-00200 PROPOSED LEVEL 02 GA MASTERPLAN
(39.5M A.O.D) P1.2

2962-FBA-00-03-DR-A-00_10-00300 PROPOSED LEVEL 03 GA MASTERPLAN
 (43M A.O.D) P1.1
 2962-FBA-00-04-DR-A-00_10-00400 PROPOSED LEVEL 04 GA MASTERPLAN
 (46M A.O.D) P1.1
 2962-FBA-00-05-DR-A-00_10-00500 PROPOSED LEVEL 05 GA MASTERPLAN
 (49M A.O.D) P1.1
 2962-FBA-00-06-DR-A-00_10-00600 PROPOSED LEVEL 06 GA MASTERPLAN
 (52M A.O.D) P1.1
 2962-FBA-00-07-DR-A-00_10-00700 PROPOSED LEVEL 07 GA MASTERPLAN
 (55M A.O.D) P1.1
 2962-FBA-00-08-DR-A-00_10-00800 PROPOSED LEVEL 08 GA MASTERPLAN
 (58M A.O.D) P1.1
 2962-FBA-00-09-DR-A-00_10-00900 PROPOSED LEVEL 09 GA MASTERPLAN
 (61M A.O.D) P1.1
 2962-FBA-00-10-DR-A-00_10-01000 PROPOSED LEVEL 10 GA MASTERPLAN
 (64M A.O.D) P1.1
 2962-FBA-00-11-DR-A-00_10-01100 PROPOSED LEVEL 11 GA MASTERPLAN
 (67M A.O.D) P1.1
 2962-FBA-00-12-DR-A-00_10-01200 PROPOSED LEVEL 12 GA MASTERPLAN
 (70M A.O.D) P1.1
 2962-FBA-01-00-DR-A-01_10-1A_51 BLOCK 1A ELEVATIONS P1.1
 2962-FBA-01-00-DR-A-01_10-1B_51 BLOCK 1B ELEVATIONS P1
 2962-FBA-01-00-DR-A-01_10-1C_51 BLOCK 1C ELEVATIONS P1
 2962-FBA-01-00-DR-A-01_10-1D_51 BLOCK 1D ELEVATIONS P1
 2962-FBA-01-00-DR-A-01_10-1E_51 BLOCK 1E ELEVATIONS P1.1
 2962-FBA-01-00-DR-A-01_10-1F_51 BLOCK 1F ELEVATIONS P1
 2962-FBA-00-00-DR-A-00_10-0_20 TYPICAL ROOF TERRACE BAY P1
 2962-FBA-00-00-DR-A-00_10-0_21 TYPICAL BAY P1
 2962-FBA-00-00-DR-A-00_10-0_22 TYPICAL DUPLEX BAY P1
 2962-FBA-00-00-DR-A-00_10-0_23 TYPICAL PLANT BAY P1
 2962-FBA-00-00-DR-A-00_10-0_24 TYPICAL LOFT BAY P1
 2962-FBA-00-00-DR-A-00_10-0_25 TYPICAL GABLE P1
 2962-FBA-00-00-DR-A-00_10-0_26 THREE BAYS P1
 2962-FBA-00-00-DR-A-00_10-0_27 TYPICAL ELEVATION BAY COMPOSITION P1
 2962-FBA-01-00-DR-A-00_10-0_28 ILLUSTRATIVE VIEW FROM MILBURNGATE
 BRIDGE P1
 2962-FBA-00-00-DR-A-25_10-0_11 TYPICAL EXTERNAL FACADE DETAIL P1
 2962-FBA-00-00-DR-A-00_10-0_01 PROPOSED SITE SECTION EAST P1.1
 2962-FBA-00-00-DR-A-00_10-0_02 PROPOSED SITE SECTIONS NORTH P1.1
 2962-FBA-00-00-DR-A-00_10-0_71 PROPOSED SITE ELEVATIONS EAST AND
 WEST P1.1
 2962-FBA-00-00-DR-A-00_10-0_72 PROPOSED SITE ELEVATIONS NORTH AND
 SOUTH P1.1
 2962-FBA-00-00-DR-A-00_10-0_75 PROPOSED OUTLINE SITE ELEVATION
 NORTH AND SOUTH P1.1
 2962-FBA-00-00-DR-A-00_10-0_76 SECTION THROUGH SIDEGATE P1
 2962-FBA-00-00-DR-A-00_10-0_77 SECTION LINE KEY P1
 2962-FBA-00-00-DR-A-00_10-0_78 BLOCK 1A ELEVATION WITH PROPOSED
 GATES DEVELOPMENT P1
 29622962-FBA-00-00-DR-A-05_10-110 PLAN 1 - PHASING PARAMETER PLAN
 29622962-FBA-00-00-DR-A-05_10-113 PLAN 2 - BLOCK PARAMETER PLAN

29622962-FBA-00-00-DR-A-05_10-114 PLAN 3 - ACCESS AND CIRCULATION
PARAMETER PLAN

29622962-FBA-00-00-DR-A-05_10-115 PLAN 4 - ZONAL DEVELOPMENT
PARAMETER PLAN

29622962-FBA-00-00-DR-A-05_10-116 PLAN 5 - LANDSCAPE PARAMETER PLAN

2962-FBA-00-00-DR-A-05_10-117 PLAN 6 - BUILDING HEIGHT PARAMETER
PLAN P1.1

2962-FBA-01-00-DR-A-00_10-0_11 P1 DETAILED EXTRACT SHEET 1

2962-FBA-01-00-DR-A-00_10-0_12 P1 DETAILED EXTRACT SHEET 2

2962-FBA-01-00-DR-A-00_10-0_13 DETAILED EXTRACT SHEET 3

2962-FBA-01-00-DR-A-00_10-0_14 P1 DETAILED EXTRACT SHEET 4

2962-FBA-01-00-DR-A-00_10-0_15 P1 DETAILED EXTRACT SHEET 5

2962-FBA-01-00-DR-A-00_10-0_16 DETAILED EXTRACT SHEET 6

2962-FBA-01-00-DR-A-00_10-0_37 PHASE 1 BASEMENT ELEVATION P3

2962-FBA-01-00-DR-A-00_10-0_38 PROPOSED EVERYMAN EXTERNAL
ELEVATION P3

2962-FBA-01-00-DR-A-00_10-0_39 PHASE 1 BASEMENT ELEVATION SIGNAGE
STRATEGY P2

FB/SK/2962/210916/JK05 PLANT ENCLOSURE SIGHT LINES

FB/SK/2962/190916/SK01 ROOF GUARDING STRATEGY

FB-SK-29 62-240816-JK02 UNIT 08 PLANT SOUTH-WEST SECTION

16013/M/SK4 P5 MECHANICAL SERVICES ROOF LEVEL PLANT AREA

6285 001 LANDSCAPE & PUBLIC REALM MASTERPLAN

6285 002 LANDSCAPE & PUBLIC REALM GA KEY PLAN

6285 003 LANDSCAPE & PUBLIC REALM GA HARD LANDSCAPE

6285 004 LANDSCAPE & PUBLIC REALM GA SOFT LANDSCAPE

6285 101 LANDSCAPE & PUBLIC REALM DETAIL AREA A

6285 102 LANDSCAPE & PUBLIC REALM DETAIL AREA B

6285 103 LANDSCAPE & PUBLIC REALM DETAIL AREA C

6285 104 LANDSCAPE & PUBLIC REALM DETAIL AREA D

6285 105 LANDSCAPE & PUBLIC REALM DETAIL AREA E

6285 600 LANDSCAPE & PUBLIC REALM FRAMWELGATE SECTIONS

6285 601 LANDSCAPE & PUBLIC REALM FRAMWELGATE RETAINING
STRUCTURE ELEVATION

6285 602 LANDSCAPE & PUBLIC REALM TERRACES

AIA TPP PHASE 1 DEMO-SOUTH REV A (INSOFAR ONLY TO THE TREE
WORKS WITHIN ZONE 1 AS DEFINED ON DWG 2962-FBA-00-00-DR-A-05_10-
115 REV P1)

AIA TPP PHASE 1 CONS-SOUTH REV A (INSOFAR ONLY TO THE TREE WORKS
WITHIN ZONE 1 AS DEFINED ON DWG 2962-FBA-00-00-DR-A-05_10-115 REV
P1)

Documents:

AIR QUALITY RESPONSE DOCUMENT BY WSP PARSONS BRINCHERHOFF
REF: 700100294-803/L02JG AND ACCOMPANYING FIGURES 11.2-11.4

BAT METHOD STATEMENT REVISED MAY 2016

EXTENDED PHASE 1 REPORT APRIL 2015

FRAMEWORK TRAVEL PLAN 70010294-02 SEPTEMBER 2016

UNIT 08 PLAN CLARIFICATIONS NOTE 19 SEPTEMBER 2016

SMOKI SPECIFICATION SHEET

NALAF ACOUSTIC SINGLE FANS TECHNICAL INFORMATION SHEET

ALLAWAY ACOUSTICS LTD EQUIPMENT SCHEDULE
 HUBBARD CELLAR CONDITIONING SYSTEM SPECIFICATION
 FOSTER COLDSTORES SPECIFICATION SHEET
 DALKIN EXTERNAL CONDENSING UNIT SPECIFICATION
 AIRCLEAN FILTER MANUFACTURING SPECIFICATION
 ENERGY STATEMENT 8 MARCH 2016
 ARBORICULTURAL IMPACT ASSESSMENT REVISION A (INSOFAR ONLY TO
 THE TREE WORKS WITHIN ZONE 1 AS DEFINED ON DWG 2962-FBA-00-00-DR-
 A-05_10-115 REV P1)
 ENVIRONMENTAL STATEMENT VOL 2 AMENDED APPENDIX 3.1 SCHEDULE
 OF DEVELOPMENT
 ENVIRONMENTAL STATEMENT VOL 2 AMENDED APPENDIX 10.1 FLOOD RISK
 ASSESSMENT 002 AUGUST 2016
 ENVIRONMENTAL STATEMENT VOL 1 FLOOD RISK AND HYDROLOGY
 MITIGATION MEASURES DETAILED AT 10.83 - 10.97
 ENVIRONMENTAL STATEMENT VOL 1 AIR QUALITY MITIGATION MEASURES
 DETAILED AT 11.111 – 11.116
 ENVIRONMENTAL STATEMENT VOL 1 LIGHTING MITIGATION MEASURES
 DETAILED AT 12.75 – 12.81
 ENVIRONMENTAL STATEMENT VOL 2 APPENDIX 10.2 DRAINAGE STRATEGY
 FEBRUARY 2016

Reason: To define the consent and ensure that a satisfactory form of development is obtained having regards to CDLP Policies E3, E6, E10, E14, E15, E16, E21, E22, E23, E24, H2, H7, H12A, H13, EMP12, T1, T19, T20, T21, S1A, S2A, S10, R1, R2, CC1, C2, C8, Q1, Q2, Q4, Q5, Q6, Q7, Q8, U5, U7, U8A, U9, U10, U11 and U14 and Parts 1, 2, 4, 6, 7, 8, 10, 11 and 12 of the NPPF.

5. No development shall take place within Zone 1 (as defined on drawing 2962-FBA-00-00-DR-A-05_10-115 Rev P1) nor any site cabins, materials or machinery be brought on site until all trees and hedges agreed for retention within that Zone as detailed within the Arboricultural Impact Assessment Revision A and associated drawings AIA TPP Phase 1 Demo-South Rev AAIA TPP and Phase 1 Cons-South Rev A are protected in accordance with the protection measures proposed within those approved documents and in accordance with BS 5837:2012. The protection measures shall remain in place until the cessation of the development works.

Tree works and tree removals are agreed only in regards to Zone 1 and said tree works and removals must accord with the details within the Arboricultural Impact Assessment Revision A and associated drawings AIA TPP Phase 1 Demo-South Rev AAIA TPP and Phase 1 Cons-South Rev A.

Reason: In the interests of tree protection and visual amenity having regards to CDLP Policies E6, E14, E15, E22, Q5, Q6, Q7 and Q8 and Parts 7 and 11 of the NPPF.

6. No development other than demolition shall take place on each Zone (Zones 1, 2 and 3 as defined on drawing 2962-FBA-00-00-DR-A-05_10-115 Rev P1) until the following has been submitted for each Zone and has been approved by the Local Planning Authority;
 - i) Full details of the number and routing of all Heavy Duty Vehicles (HDV) necessary to implement the construction of that Zone of the development. The details submitted

shall also confirm the hours of the HDV movements and confirm that they shall be scheduled outside of the AM and PM peak traffic periods.

If, following an assessment of the information submitted under i) the Local Planning Authority confirm that the potential impacts of HDV movements necessitate the submission of an Air Quality Assessment (AQA) (or amended AQA) the applicant shall submit said assessment.

No development shall then commence on each Zone until, the submitted AQA (where submission is necessary) has been approved in writing by the Local Planning Authority. The development shall thereafter be implemented in accordance with the approved details including any mitigation measures for that Zone.

Reason: In the interest of reducing impacts upon air quality having regards to CDLP Policy U5 and Part 11 of the NPPF. Required to be a pre-commencement condition as impacts of construction activity upon air quality must be assessed before construction works commence.

7. No development other than demolition shall take place on each Zone (Zones 1, 2 and 3 as defined on drawing 2962-FBA-00-00-DR-A-05_10-115 Rev P1) until a Construction Management Plan (CMP) for that Zone has been first submitted to and then approved by Local Planning Authority. The CMP shall consider the potential environmental impacts (noise, vibration, dust, & light) that the construction phase of the particular development Zone may have upon any occupants of nearby premises and shall detail mitigation proposed. This shall include but not necessarily be restricted to:

- An assessment of the potential for dust emissions from the site and the mitigation measures that will be used to minimise any emission taking into account relevant guidance such as the Institute of Air Quality Management Guidance on the assessment of dust from demolition and construction February 2014
- An assessment of the likely noise (including vibration) emissions from the site and the mitigation measures that will be taken to minimise noise disturbance taking into account relevant guidance such as BS5228 Code of practice for noise and vibration control on construction sites 2014.
- Where it is necessary to undertake piling on the site details shall be provided justifying the method of piling used so as to minimise disturbance, from noise and vibration, to the occupants of nearby premises.
- Details of the operating hours during which construction works are to be undertaken.
- Detail of any planned measures for liaison with the local community and any procedures to deal with any complaints received.
- Details of whether there will be any crushing/screening of materials on site using a mobile crusher/screen and the measures that will be taken to minimise any environmental impact.
- Details of vehicular routes, accesses and any highway management measures proposed

Thereafter each Zone of the development shall be implemented in accordance with the approved CMP for that Zone.

Reason: In the interests of preserving residential amenity during the construction phases of the development having regards to CDLP Policies U5 and T1 and Part 11 of the NPPF. Required to be a pre-commencement condition as impacts of construction activity upon air quality must be assessed before construction works commence.

8. No works other than demolition, preliminary site excavation, enabling and remedial works within each Zone of the development (Zones 1, 2 and 3 as defined on drawing 2962-FBA-00-00-DR-A-05_10-115 Rev P1) shall take place until an Employment & Skills Plan for that Zone has been submitted to and approved by the Local Planning Authority. Thereafter each Zone of development shall be carried out in accordance with the approved Employment & Skills Plan for that Zone.

Reason: In the interests of building a strong and competitive economy in accordance with Part 1 of the NPPF.

9. No development works other than demolition, preliminary site excavation, enabling and remedial works within Zones 1, 2 and 3 (as defined on drawing 2962-FBA-00-00-DR-A-05_10-115 Rev P1) and the building of foundations and the erection of any supporting structural frame to any block within Zone 1 shall take place until full details of the following for the Zone 1 development have been submitted to and approved by the Local Planning Authority;

- i) Details of the cycle/motorcycle parking provision and facilities
- ii) Details of a signing strategy for cyclists in regards to the cycle parking provision
- iii) Details of the provision of electric vehicle charge points/electric vehicle parking provision

Thereafter the parking provision and signage strategy for Zone 1 must be implemented in accordance with the approved details and be implemented prior to the first occupation of the development.

Reason: In the interests of integrating sustainable transport measures into the development having regards to CDLP Policy T20 and Part 4 of the NPPF.

10. Notwithstanding details contained within the plans and documents no development other than demolition, preliminary site excavation, enabling and remedial works shall take place until a final scheme of pedestrian and cycling provision by means of a footpath/cycle path and any associated verges, landscaping and enclosures on those sections of Framwelgate Peth and Leazes Road/Milburngate Bridge which are within the site boundary (as defined by drawing Existing Site Location 2962-FBA-00-00-DR-A-05_10-0_101 Rev P1) has been submitted to and approved by the Local Planning Authority. The details submitted shall include details on the timescale of the provision of the pedestrian and cycling provision.

Thereafter the pedestrian and cycling provision shall be implemented in accordance with the approved details.

Reason: In the interests of integrating sustainable transport measures into the development having regards to CDLP Policy T20 and Part 4 of the NPPF.

11. Notwithstanding details contained within the plans and documents submitted no development other than demolition, preliminary site excavation, enabling and remedial works shall take place until a detailed landscaping scheme for Zone 1 of the development as defined on drawing 2962-FBA-00-00-DR-A-05_10-115 Rev P1 has been submitted to and approved in writing by the Local Planning Authority.

The landscape scheme shall include the following:

Any trees, hedges and shrubs scheduled for retention

Details of soft landscaping including planting species, sizes, layout, densities, numbers

Details of planting procedures or specification

Finished topsoil levels and depths

Details of temporary topsoil and subsoil storage provision

The establishment maintenance regime, including watering, rabbit protection, tree stakes, guards etc

Details of hard landscaping and public realm works

Details of means of enclosure including retaining walls

Details of the long term management proposals and details of the timescales of the implementation of the landscaping proposals shall also be submitted.

Any trees or plants which die, fail to flourish or are removed within a period of 5 years from the substantial completion of the landscaping scheme shall be replaced in the next planting season with others of similar size and species. Replacements will be subject to the same conditions.

Thereafter Zone 1 of the development shall be implemented in accordance with the approved details.

Reason: In the interests of visual amenity having regards to CDLP Policies E6, E14, E15, E22, Q5, Q6, Q7 and Q8 and Parts 7 and 11 of the NPPF.

12. No development works other than demolition, preliminary site excavation, enabling and remedial works within Zones 1, 2 and 3 (as defined on drawing 2962-FBA-00-00-DR-A-05_10-115 Rev P1) and the building of foundations and the erection of any supporting structural frame to any block within Zone 1 shall take place until a detailed design including floorplans and elevations for the provision of a pedestrian connection/link between the application site and the adjacent Gates shopping centre based upon the details shown on drawing 2962-FBA-00-01-DR-A-00_10-00101 has been submitted to and approved by the Local Planning Authority.

Thereafter the development must not be occupied until the approved connection/link has been completed and is available for use.

Reason: So as to ensure appropriate connectivity and accessibility having regards to CDLP Policies Q1 and Q2 and Parts 4 and 7 of the NPPF.

13. Notwithstanding the details contained within the submitted plans and documents no development other than demolition, preliminary site excavation, enabling and

remedial works shall take place until full details including samples and sample panels of all external materials to be used within Zone 1 (as defined on drawing 2962-FBA-00-00-DR-A-05_10-115 Rev P1) of the development have been submitted to and approved by the Local Planning Authority. Thereafter Zone 1 of the development must be implemented in accordance with the approved details.

Reason: In interests of visual amenity and preserving the character, appearance and setting of heritage assets having regards to CDLP Policies E3, E6, E21, E22, E23, Q7 and Q8 and Parts 7 and 12 of the NPPF.

14. Notwithstanding details submitted within the submitted plans and documentation no development other than demolition, preliminary site excavation, enabling and remedial works shall take place until an advertisement and signage strategy for the development has been submitted to and approved by the Local Planning Authority. The approved strategy shall provide the design parameters for future advertisements to be erected within the development.

Reason: So as to ensure that that the approach to advertisements and signage within the development is sympathetic to its location and so as to preserve the character, appearance and setting of heritage assets having regards to CDLP Policies E3, E6, E21, E22, E23, Q7 and Q8 and Parts 7 and 12 of the NPPF.

15. No development works other than demolition, preliminary site excavation, enabling and remedial works, the building of foundations shall take place until a scheme of vibration proofing measures within Zone 1 of the development (as defined on drawing 2962-FBA-00-00-DR-A-05_10-115 Rev P1) has been first submitted to and then approved by the Local Planning Authority. The aim of the scheme shall be to ensure that any structural borne vibration between the commercial units and separate/adjoining residential properties shall not exceed a vibration dose value of 0.2 (0700-23.00) and 0.1 (23.00-0700). Thereafter the approved scheme shall be implemented prior to the first occupation of the development.

Reason: In the interests of preserving the residential amenity of site occupiers having regards to CDLP Policies U7 and Q8 and Part 11 of the NPPF.

16. No development works other than demolition, preliminary site excavation, enabling and remedial works, the building of foundations and the erection of any supporting structural frame to any block shall take place within each Zone (Zones 1, 2 and 3 as defined on drawing 2962-FBA-00-00-DR-A-05_10-115 Rev P1) until a scheme of sound insulation and tenant management measures for that Zone has been submitted to and approved in writing by the Local Planning Authority. The aim of the measures shall be to ensure that the tenants maximum operating noise limits, in conjunction with the sound insulation of walls, floors windows and ceilings between the commercial units and separate/adjoining residential properties shall be sufficient such that commercial noise does not exceed NR 20 (23.00-07.00) and NR 30 (07.00-23.00) (both measured as an $L_{eq,5mins}$ and assessed between 63Hz and 8kHz) within habitable areas of dwellings. The approved schemes shall be implemented prior to the occupation of the applicable Zones of the development.

Reason: In the interests of preserving the residential amenity of site occupiers having regards to CDLP Policies U7 and Q8 and Part 11 of the NPPF.

17. No development works pursuant to the erection of the units for residential occupation within each Zone (Zones 1, 2 and 3 as defined on drawing 2962-FBA-00-00-DR-A-05_10-115 Rev P1) shall take place until a detailed scheme of noise mitigation measures for the residential units within that Zone has been first submitted to and then approved by the Local Planning Authority. The noise mitigation shall demonstrate that the following noise levels are achieved.

35dB LAeq 16hr bedrooms and living room during the day-time (0700 - 2300)

30 dB LAeq 8hr in all bedrooms during the night time (2300 - 0700)

45 dB LAmax in bedrooms during the night-time

55dB LAeq 16hr in outdoor living areas

The development shall thereafter be implemented in accordance with the approved mitigation measures for each Zone.

Reason: So as to protect future occupiers from road traffic noise in the interests of residential amenity having regards to CDLP Policies U7 and Q8 and Part 11 of the NPPF.

18. Notwithstanding details submitted on plans and documentation (except for the specific details pursuant to Unit no. 8 which are approved in detail) prior to the occupation of any A3/A4/A5 unit, or that particular unit, details of the fume extraction system to be utilised within any A3/A4/A5 unit or that particular unit, to include a risk assessment, design schematic, details of any odour abatement measures, details of noise levels and any other documents considered necessary to demonstrate accordance with the current DEFRA guidance on the control of odour and noise from commercial kitchen exhaust systems shall have been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be installed prior to the use commencing on any A3/A4/A5 unit or that particular unit and shall be operated at all times when cooking is being carried out on the premises.

Reason: In the interests of preserving the residential amenity of site occupiers having regards to CDLP Policies U7 and Q8 and Part 11 of the NPPF.

19. Prior to the occupation of each Zone of the development (Zones 1, 2 and 3 as defined on drawing 2962-FBA-00-00-DR-A-05_10-115 Rev P1) a final lighting scheme and associated lighting impact assessment for that Zone, shall be submitted and approved by the Local Planning Authority. This should include the following, commensurate with the scale/type of lighting scheme provided:

- A description of the proposed lighting units including height, type, angling and power output for all lighting
- Drawing(s)/contour plans showing the luminance levels both horizontal and vertical of the lighting scheme to demonstrate that no light falls into the curtilage of sensitive neighbouring properties;
- The Environmental Zone which the site falls within, in accordance with the Institution of Lighting Professionals Guidance on the Reduction of Obtrusive

Light, to be agreed with the LPA. The relevant light sensitive receptors to be used in the assessment to be agreed with the LPA in advance of the assessment.

- Details of the Sky Glow Upward Light Ratio, Light Intrusion (into windows of relevant properties) and Luminaire Intensity.

The limits for the relevant Environmental Zone relating to Sky Glow Upward Light Ratio, Light Trespass (into windows) and Luminaire Intensity, contained in Table 2 (Obtrusive Light Limitations for Exterior Lighting Installations) of the Institute of Lighting Professionals Guidance on the Reduction of Obtrusive Light shall not be exceeded”.

Thereafter each Zone of the development shall be implemented in accordance with the approved schemes and assessments.

Reason: In the interests of preserving residential amenity and preserving the character, appearance and setting of heritage assets having regards to CDLP Policies E3, E6, E21, E22, E23, U7, Q7 and Q8 and Parts 7, 11 and 12 of the NPPF.

20. The residential units hereby approved shall not be occupied until details of an operational strategy for the proposed Framwelgate Peth signalised access junction have been submitted to and approved in writing by the Local Planning Authority. Thereafter the signalised junction shall be operated in accordance with the approved details and shall only be utilised for the purposes of access and egress for the residential units and in the case of a flood evacuation emergency, any other vehicular traffic.

Reason: In the interests of highway safety having regards to CDLP Policy T1 and Part 4 of the NPPF.

21. Prior to the occupation of any unit to be utilised within the A3, A4, A5, D1 and D2 use classes hereby approved details of the proposed opening/operating hours of the units shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the units shall operate in accordance with the approved details.

Reason: To define the consent and in the interests of residential amenity having regards to CDLP Policy U5 and Part 11 of the NPPF.

22. Notwithstanding details contained within the plans and documents submitted, work shall not commence on the provision of the proposed signalised junction on Framwelgate Peth until a detailed design has been submitted to and approved by the Local Planning Authority. The design shall include details of any highway works at or within the vicinity of the entrance to/egress from Highgate. The submitted details shall include timescales as to when the highway works and signalised junction provision shall be implemented.

The development shall thereafter be implemented in accordance with the approved details.

Reason: In the interests of highway safety having regards to CDLP Policy T1 and Part 4 of the NPPF.

23. No machinery or plant shall be operated within each Zone of development (Zones 1, 2 and 3 as defined on drawing 2962-FBA-00-00-DR-A-05_10-115 Rev P1) until a detailed noise impact assessment and scheme of sound attenuation measures for that Zone has been submitted to and approved in writing by the Local Planning Authority. The scheme of attenuation measures shall ensure that the rating level of noise emitted from plant and machinery on the site shall not exceed the background (LA90) by more than 5dB LAeq (1 hour) between 07.00-23.00 and 0dB LAeq (15 mins) between 23.00-07.00. The measurement and assessment shall be made according to BS 4142: 2014. Each Zone of the development shall then be implemented in accordance with the approved measures for that Zone.

Reason: In the interests of residential amenity having regards to CDLP Policy U5 and Part 11 of the NPPF.

24. The development permitted by this planning permission shall only be carried out in accordance with the approved Flood Risk Assessment (FRA) dated August 2016 FRA_002 and the following mitigation measures detailed within the FRA:
- i) Provision of compensatory flood storage as described in section 5.2.4, 5.2.5 and 6.3 of the FRA.
 - ii) Identification and provision of safe route(s) into and out of the site to an appropriate safe haven.
 - iii) Finished floor levels are set no lower than 33.5m above Ordnance Datum (AOD).
 - iv) The “cinema” area itself can be at a level lower than 33.5m AOD but all potential routes into the cinema should be protected no lower than the 33.5m AOD.

Reason: In the interests of flood prevention and so as to ensure safe access to and egress from and to the site having regards to CDLP Policy U10 and Part 10 of the NPPF.

25. Within Zones 2 and 3 of the development as defined on drawing 2962-FBA-00-00-DR-A-05_10-115 Rev P1 no more than 8 of the residential units shall contain 3 or more bedrooms.

Reason: So as to limit control the number of 3 bed properties within Zones 2 and 3 having regards to current school capacity levels and so as to ensure that the development meets the principles of sustainable development including the core planning principles set-out at NPPF paragraph 17.

26. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any order revoking or re-enacting that Order, no changes of use permitted under Classes G, I, O and T of Part 3 under Schedule 2 shall be undertaken without the grant of further specific planning permission from the Local Planning Authority.

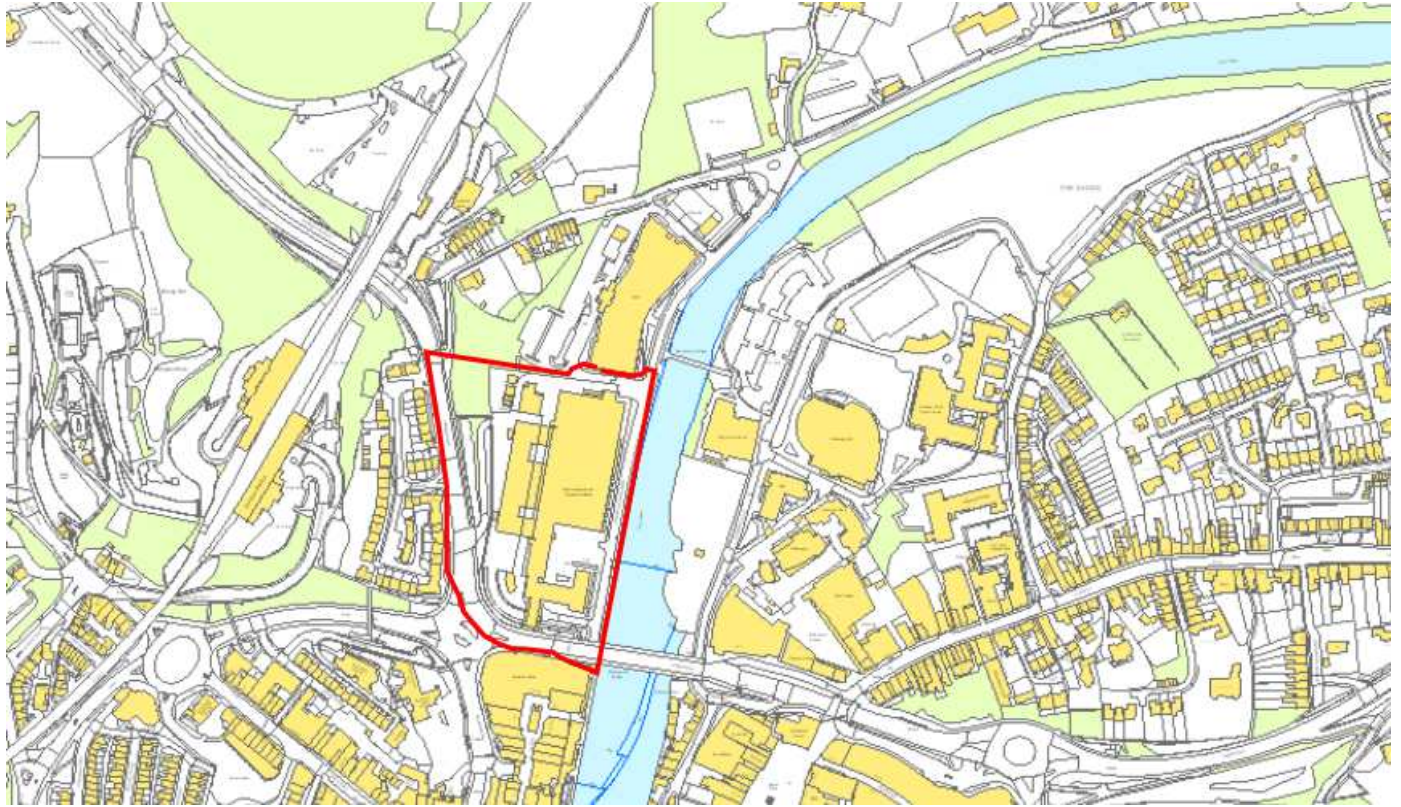
Reason: So that the Local Planning Authority can exercise further control in regards to the impacts of these changes of use.

STATEMENT OF PROACTIVE ENGAGEMENT

The Local Planning Authority in arriving at its recommendation to approve this application has, without prejudice to a fair and objective assessment of the proposals, issues raised, and representations received, sought to work with the applicant in a positive and proactive manner with the objective of delivering high quality sustainable development to improve the economic, social and environmental conditions of the area in accordance with the NPPF. (Statement in accordance with Article 35(2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.)

BACKGROUND PAPERS

- Submitted application form, plans, supporting documents and subsequent information provided by the applicant
- The National Planning Policy Framework (2012)
- National Planning Practice Guidance
- City of Durham Local Plan
- The County Durham Plan (Issues and Options)
- Statutory, internal and public consultation responses



Planning Services

DM/16/01228/FPA

Detailed planning application for mixed use development comprising of leisure (use classes D1 and D2), retail (use class A1), financial and professional services (use class A2), food and drink (use class A3, A4 and A5), offices (use class B1) and 291 residential units (use class C3) together with associated access, demolition, landscaping and infrastructure works and outline planning application with all detailed matters reserved except access for a mixed use development of office (use class B1) and maximum of 150 residential units (use class C3) and associated landscaping and infrastructure works at Milburngate House, Durham City

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Comments

Date
 October 2016

Scale
 Not to scale

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COMMITTEE REPORT

APPLICATION DETAILS

APPLICATION NO:	DM/16/00526/FPA
FULL APPLICATION DESCRIPTION:	Hybrid application for the erection of a 57 bed care home, community hub/retail units, 20 affordable bungalows and outline permission for 61 residential units.
NAME OF APPLICANT:	Atelier26 Architecture
ADDRESS:	Land Near To Hargill Road And Railway Street Howden-Le-Wear County Durham
ELECTORAL DIVISION:	Crook
CASE OFFICER:	Steven Pilkington, Senior Planning Officer, 03000 263964 steven.pilkington@durham.gov.uk

DESCRIPTION OF THE SITE AND PROPOSALS

The Site

1. The application site consists of two distinct parcels of land. The first site, described as phase I, lies to the south of Howden-le-Wear on the edge of the settlement and extends to approximately 5.2ha. The site comprises greenfield land in an agricultural use, consisting of grazing pastures. Pockets of mature trees are present centrally to the site while trees protected by tree preservation orders border the site along Howden Beck to the north. An approximate 20m, level change is evident across the site falling in an easterly direction.
2. The southern boundary of the site is bordered by a Public Right of Way (No.157 Crook). The site is served by an existing field vehicular access on to Railway Street and Hargill Road. Howden Beck separates the site from the existing residential development of Howden Green to the north, while the site borders onto Hargill Road and Howden-le-Wear Primary School to the North West. To the south open countryside is present where the land steadily rises.
3. The second parcel of land, described as phase II, is located to the west of Hargill Road. It adjoins the south west edge of Howden-le-Wear extending to approximately 2.4 hectares in area. The site comprises greenfield land currently in agricultural use laid out in a rectangular shape, served by an existing field access onto Hargill Road. An approximate 5m level change is evident across the site falling in a northerly direction.
4. A public right of way crosses the site centrally (No.125, Crook) and wraps around part of the northern boundary and the full western boundary (Crook, 126). The residential dwelling of Garden House forms part of the northern boundary of the site, beyond which lies the built development of Howden-le-Wear. The remainder of the northern boundary borders surrounding agricultural land which falls away in level towards

Howden Beck by approximately 15m. To the west a wooded plantation and small pond is present, while to the north open countryside is present separated by a green lane.

5. Both sites are located 1.5km to the north of Witton-le-Wear Site of Special Scientific Interest (SSSI) and the Low Barns Durham Wildlife Trust Nature Reserve. The Grade II Listed buildings of Fir Tree Grange are located 600m to the north of the sites. Witton-le-Wear Conservation Area which contains a number of listed buildings is located 2km to the south west of the site.

The Proposals

6. The development is intended to be developed in two phases, the first phase on site 1 described above would provide for:-
 - An upgraded access taken off Railway Street leading to a series of cul-de-sacs and a cycle/footway linking onto Hargill Road.
 - A two storey 57 bed care home, sited centrally within the site laid out in a T shape measuring approximately 56m in width by 47m in length at a maximum height of approximately 8.6m. Parking would be located to the front elevation, with a separate access joining the proposed access road.
 - A single storey community hub, located centrally within the site next to the proposed care home. The building would measure approximately 29m in length by 21m in width with a ridge height of approximately 7m.
 - 5 retail units providing a total gross floor space of 451m² in a building measuring approximately 33m in width, 21m in length with a ridge height of 6.5m located adjacent the community hub.
 - 20- 2 bed semidetached affordable bungalows, consisting of 2 house types measuring approximately 8m in width by 10m in length with a ridge height of 5m. The units would predominantly cluster around a cul-de-sac to the east of the site, while additional units would be located to the northern and southern boundary of the site.
 - 19 self-build plots (outline, all matters reserved with the exception of access), located to the southern portion of the site laid out around a series of cul-de-sacs
7. In terms of the Phase 2 development an illustrated masterplan (outline, all matters reserved with the exception of access) have been submitted indicating that the dwellings would be laid out around a series of cul-de-sacs served off one vehicular access way from Hargill Road. 4 affordable units are proposed to be provided within this phase.
8. This planning application is being reported to County Planning Committee because it is a residential development with a site area in excess of 4 hectares.

PLANNING HISTORY

9. A hybrid planning application for a mixed use scheme for the erection of 10 bungalows, 3 detached bungalows, 25 self-build plots, a 57 bed care home, community centre and 7 retail unit located on the site associated with phase 1 was submitted but later withdrawn in 2014 (ref DM/14/03185/FPA).
10. An outline planning application for the erection of up to 145 dwellings on part of the site associated with Phase II was also withdrawn in 2014 (ref DM/14/01651/OUT).

PLANNING POLICY

NATIONAL POLICY

11. The Government has consolidated all planning policy statements, guidance notes and many circulars into a single policy statement, the National Planning Policy Framework (NPPF). The overriding message is that new development that is sustainable should go ahead without delay. It defines the role of planning in achieving sustainable development under three topic headings – economic, social and environmental, each mutually dependant. The presumption in favour of sustainable development set out in the NPPF requires local planning authorities to approach development management decisions positively, utilising twelve ‘core planning principles’.
12. In accordance with Paragraph 215 of the National Planning Policy Framework, the weight to be attached to relevant saved local plan policy will depend upon the degree of consistency with the NPPF. The greater the consistency, the greater the weight. The relevance of this issue is discussed, where appropriate, in the assessment section of the report. The following elements of the NPPF are considered relevant to this proposal.
13. *NPPF Part 1 – Building a Strong, Competitive Economy.* The Government is committed to securing economic growth in order to create jobs and prosperity, building on the country’s inherent strengths, and to meeting the twin challenges of global competition and of a low carbon future.
14. *NPPF Part 4 – Promoting Sustainable Transport.* The transport system needs to be balanced in favour of sustainable transport modes, giving people a real choice about how they travel. It is recognised that different policies and measures will be required in different communities and opportunities to maximize sustainable transport solutions which will vary from urban to rural areas. Encouragement should be given to solutions which support reductions in greenhouse gas emissions and reduce congestion.
15. *NPPF Part 6 – Delivering a Wide Choice of High Quality Homes.* To boost significantly the supply of housing, applications should be considered in the context of the presumption in favour of sustainable development.
16. *NPPF Part 7 – Requiring Good Design.* The Government attaches great importance to the design of the built environment, with good design a key aspect of sustainable development, indivisible from good planning. Planning decisions must aim to ensure developments; function well and add to the overall quality of an area over the lifetime of the development, establish a strong sense of place, create and sustain an appropriate mix of uses, respond to local character and history, create safe and accessible environments and be visually attractive.
17. *NPPF Part 8 – Promoting Healthy Communities.* Recognises the part the planning system can play in facilitating social interaction and creating healthy and inclusive communities. Access to high quality open spaces and opportunities for sport and recreation can make an important contribution to the health and well-being of communities and planning policies and decisions should achieve places which promote safe and accessible environments. This includes the development and modernisation of facilities and services.
18. *NPPF Part 10 – Meeting the Challenge of Climate Change, Flooding and Coastal Change.* Planning plays a key role in helping shape places to secure radical

reductions in greenhouse gas emissions, minimising vulnerability and providing resilience to the impacts of climate change, and supporting the delivery of renewable and low carbon energy.

19. *NPPF Part 11 – Conserving and Enhancing the Natural Environment.* The planning system should contribute to, and enhance the natural environment by; protecting and enhancing valued landscapes, recognizing the benefits of ecosystem services, minimizing impacts on biodiversity and providing net gains in biodiversity where possible, preventing new and existing development being put at risk from unacceptable levels of soil, air, water or noise pollution or land instability, and remediating contaminated and unstable land.
20. *NPPF Part 12 – Conserving and Enhancing the Historic Environment.* Local planning authorities should set out in their Local Plan a positive strategy for the conservation and enjoyment of the historic environment, including heritage assets most at risk through neglect, decay or other threats. In doing so, they should recognise that heritage assets are an irreplaceable resource and conserve them in a manner appropriate to their significance.

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/2116950.pdf>

21. The Government has consolidated a number of planning practice guidance notes, circulars and other guidance documents into a single Planning Practice Guidance Suite. This document provides planning guidance on a wide range of matters. Of particular relevance to this application is the practice guidance with regards to; air quality; conserving and enhancing the historic environment; design; flood risk; land stability; light pollution; natural environment; noise; open space, sports and recreation facilities, public rights of way and local green space; planning obligations; travel plans, transport assessments and statements; use of planning conditions and; water supply, wastewater and water quality.

<http://planningguidance.planningportal.gov.uk/>

LOCAL PLAN POLICY:

Wear Valley District Local Plan (2007) (WVDLP)

22. *Policy ENV1 (Protection of the Countryside).* Sets out that the countryside should be protected and enhanced, development will only be allowed for the purposes of agriculture, farm diversification, or other compatible uses as defined by local plan policies.
23. *Policy BE23 (Provision of Public Art).* In appropriate cases, the Council will encourage the provision of works of art as part of development. In considering planning applications the Council will have regard to the contribution which such works make to the appearance of the scheme and to the amenity of the area.
24. *Policy GD1 (General Development Criteria).* All new development and redevelopment within the District should be designed and built to a high standard and should contribute to the quality and built environment of the surrounding area.
25. *Policy H3 (Distribution of Development).* New development will be directed to those towns and villages best able to support it. Within the limits to development of towns and villages, as shown on the Proposals Map, development will be allowed provided it meets the criteria set down in Policy GD1 and conforms to the other policies of this plan.

26. *Policy H15 (Affordable Housing)*. The Council will, where a relevant local need has been established, seek to negotiate with developers for the inclusion of an appropriate element of affordable housing
27. *Policy H17 (Housing for the Elderly, Handicapped and Disabled)*. Sets out that planning permission will be approved for proposals for the provision of residential and nursing homes provided it is located within an established settlement, is located on or close to public transport routes and protects the amenities of surrounding residents.
28. *Policy H24 (Residential Design Criteria)*. New residential developments and/or redevelopments will be approved provided they accord with the design criteria set out in the local plan.
29. *Policy RL5 (Sport and Recreation Target)*. For every 1 hectare of land developed or redeveloped for residential purposes, at least 1300 square metres of land should directly be made available on- or off-site for sporting or recreational use as part of the development or developers will be expected to make a contribution to the provision of such facilities, including changing rooms, by other agencies. Such land should be located and developed to accord with the provisions of proposal RL1. On sites under 1 hectare (24 dwellings) a proportion of this standard will be expected.
30. *Policy T1 (General Policy – Highways)*. All developments which generate additional traffic will be required to fulfil Policy GD1 and provide adequate access to the developments; not exceed the capacity of the local road network; and be capable of access by public transport networks.

The above represents a summary of those policies considered relevant. The full text, criteria, and justifications can be accessed at: <http://www.durham.gov.uk/media/3403/Wear-Valley-local-plan-savedpolicies/pdf/WearValleyLocalPlanSavedPolicies.pdf>

RELEVANT EMERGING POLICY:

The County Durham Plan

31. Paragraph 216 of the NPPF says that decision-takers may give weight to relevant policies in emerging plans according to: the stage of the emerging plan; the extent to which there are unresolved objections to relevant policies; and, the degree of consistency of the policies in the emerging plan to the policies in the NPPF. The County Durham Plan (CDP) was submitted for Examination in Public and a stage 1 Examination concluded. An Interim Report was issued by an Inspector dated 18 February 2015, however that Report was quashed by the High Court following a successful Judicial Review challenge by the Council. In accordance with the High Court Order, the Council has withdrawn the CDP and a new plan being prepared. In the light of this, policies of the CDP can no longer carry any weight. As the new plan progresses through the stages of preparation it will begin to accrue weight.

CONSULTATION AND PUBLICITY RESPONSES

STATUTORY RESPONSES:

32. *Highways Authority* – Raise no objection. Following amendments to the scheme, it is advised that subject to securing the detailed design of the proposed highway improvement works, proposed mitigation and visibility splays, the scheme as a whole is acceptable in highway safety terms. Concerns are raised regarding the

sustainability of the site and the distance of residential properties to services and amenities and bus stops and the likely reliance on the private motor car to access services.

33. *Drainage and Costal Protection* – Raise no objection. Officers advise that surface water runoff from the development will need to be controlled and discharged at a greenfield run off rate.
34. *Coal Authority* – Raise no objection. A condition to secure further site investigations to establish what mitigation measures may need to stabilise the site in relation to historic coal mining legacy is requested.
35. *Northumbrian Water* – Raise no objection. A detailed scheme for the disposal of foul and surface water should be developed and agreed by condition. The surface water strategy should prioritise the use of soakaways and existing water courses. The presence of a public sewer which crosses the site is highlighted.

INTERNAL CONSULTEE RESPONSES:

36. *Spatial Policy* – Object to the application advising that the principle of developing the site as a residential extension to the existing settlement of Howden-le-Wear would not be supported by the existing development plan (Wear Valley District Local Plan Policy H3). It is identified that this Policy is time expired on account it is based on an out-of-date assessment of housing need. Under the NPPF (Paragraph 49) housing applications should be considered in the context of the presumption in favour of sustainable development (Paragraph 14).
37. The NPPF seeks to boost significantly the supply of housing, and the delivery of housing counts in favour of the scheme. However, these sites are situated on the edge of Howden-le-Wear which possesses a relatively limited amount of shops, services and facilities available. The proposal would thus draw no support from the objective of seeking to direct development to those settlements and towns best able to support it. The proposed development would result in an unjustified and unsustainable form of development beyond the well-established settlement edge, with limited access to services, facilities and public transport. There are also elements of this application (retails units, self-build plots) which have no proven deliverability.
38. *Landscape*– Advise that the Phase 1 development, particularly its southern extension, would have a significantly detrimental effect on the landscape which is an attractive feature of the local landscape. The development of phase 2 would also have a significantly detrimental effect of on the landscape, particularly due to its extension so far beyond the line of the existing western extent of the village. It is also identified that several mature trees old enough to have been shown on the first edition of the Ordnance Survey map in approximately 1860, and are important contributors to the landscape character as well as features in their own right. While efforts to preserve these trees have been made, there would likely be future conflict with buildings and paths.
39. *Landscape (Arboriculture)* – Highlight the presence of a number of trees protected by tree preservation orders around the boundary of the site along with a number of mature trees of significant size and quality. It is advised that subject to the implementation of appropriate protection measures it is likely that the trees would not be adversely affected during construction. It is however highlighted that many of the buildings are in close proximity to mature trees and there could be future conflict and pressure on trees.

40. *Education* – Advise that a development of 61 houses (excluding the affordable bungalows) could generate an additional 19 primary pupils and 7 secondary pupils. It is advised that there are sufficient secondary school places but no primary school places available as the local primary school has no spare capacity. An additional classroom would be required to accommodate the additional pupils generated, a contribution of £222,395 is sought to fund this infrastructure requirement.
41. *Sustainability* – Advise that both phase 1 and phase 2 parts of the site are not considered to be within a short walking distance of secondary schools, post 18 education providers, health facilities or employment opportunities and bus accessibility is poor. Although Crook and Bishop Auckland are within a short drive, employment opportunities and retail facilities of regional/ national significance are over 7km away.
42. *Archaeology* – Advise that a geophysical survey of the site should be undertaken pre-determination followed by trial trenching depending on the results to ascertain the potential for archaeological remains on site.
43. *Design and Conservation* – Advise that when assessed against the Design Council's Building for Life 12 guide, the scheme overall scored exceptionally poorly identifying that there was no distinctive character within the layout and design of the development with an ad-hoc form and overly car dominated street scene resulting in a poor pedestrian and social environment. It is also highlighted that the development has particularly poor connectivity and would not integrate well into the existing settlement
44. *Housing Delivery* – Advise that the proposed 20 affordable bungalows and 10% affordable housing provision of phase two would assist in meeting an identified need for affordable housing in particular older persons.
45. *Public Rights of Way* – Identify the presence of a number of Public Rights of Way in the vicinity of the site (Footpaths 125, 126 and 157 Crook). Officers advise that the proposed layout would need to respect the location of these footpaths.
46. *Ecology* – Offer no objections, advising that the proposed mitigation management plan would mitigate the impact of the development in this respect.
47. *Environmental Health and Consumer Protection (Air Quality)* – Identify that where there is an increase in or above 500 light duty vehicles or 100 heavy duty vehicles on the annual average daily traffic volume flow rate or where the alteration of traffic characteristics on the routes is changes an assessment on the impact of air quality may need to be undertaken. Officers advise that a dust management control plan should be secured by condition if approval is granted.
48. *Environmental Health and Consumer Protection (Contaminated Land)* – Following review of a phase 1 contamination report advise a conditional approach in relation to land contamination, securing site investigations.
49. *Environmental Health and Consumer Protection (Pollution Control)* – Advise a conditional approach to safeguard future residents from noise associated with fixed plant on the care home and retail elements of the scheme. A condition requiring a construction method statement to protect neighbouring residents during the construction phase.

PUBLIC RESPONSES:

50. The application has been publicised by way of press notice, site notice and individual notification letters to neighbouring residents. 171 letters of objection have been received in relation to the development as summarised below:

Principle/Sustainability

- The development would be located away from the village core, with no ready access to shops and services.
- The site is not well served by public transport, the care home and retail units are not accessible by the village other than by car.
- There is a lack of housing demand in the village.
- Howden-le-Wear is not a sustainable location as identified in the County Durham Settlement Study and was not a focus for growth in the withdrawn County Durham Plan. The local plan provides for housing, this site is not needed. Both sites have been designed as amber in the SHLAA.
- The scale of the development is disproportionate to the settlement. The village does not have sufficient facilities to support the scale of development. The local school is over subscribed. Residents would have to travel to Crook for services, including health and leisure facilities.
- The development is speculative with no consultation with the local area, a number of 'sweeteners' are proposed that do not meet the needs of the community to secure housing.
- The village has sufficient retail units to serve it. It is likely that the buildings would stand empty without an end user identified. A new community centre is not needed.
- There would be an excess of retail capacity in the village affecting other operators.
- There is a lack of connection to the village. It could become separate part of the village.
- There has been a lack of community consultation.
- The scheme would drastically increase the population of the village. There is not sufficient capacity at the local school or GP surgeries to accommodate the development.
- Objections were raised on previous applications which were withdrawn without explanation. The submitted planning statement uses selective quotes from the NPPF in an attempt to justify its acceptability.
- Part of the application site is located outside of the applicant's ownership on third party land.

Landscape

- The sites are located outside of the settlement boundaries of the village and their development would have a significant visual impact.
- The loss of the green open space is highlighted, which contributes to the character and setting of the village. The scheme would represent urban sprawl.
- The development would result in the loss and put future pressure on trees including those protected by TPO's.

Residential Amenity

- Loss of residential amenity caused by overlooking traffic generation, light pollution.
- The lack of overlooking of the retail units and community centre would lead to potential antisocial behaviour.
- The development would result in the loss of a view from residential properties.
- There would be a significant disturbance during construction.

Highways

- The potential impact on well used public rights of way is highlighted.

- The development would generate additional traffic which cannot be accommodated on the existing roads.
- The proposed access is not suitable to serve the development due to its width and the need of service vehicles to access the care home and retail units.
- The development could not achieve adequate site visibility splays.
- The mini roundabout could not cope with the additional traffic demand, a bypass for the village should be considered,
- The junction of phase 1 is extremely close to a culvert.
- The cycle path does not go anywhere and is speculative
- Errors are identified in the submitted TA.

Other

- The development would result in the loss of wildlife habitat Impact on Bats.
- Increased risk of flooding, caused by the development on the adjacent stream.
- There is insufficient sewerage capacity.
- There are historic coal workings on the site which the development has not taken into account.
- The scheme exhibits little architectural merit.
- There are significant site level changes which have not been taken into account.

51. A 124 signature petition against the development has been submitted from local residents raising their opposition to the scheme.
52. Campaign to Protect Rural England (CPRE) – objects to the proposals. CPRE highlights the number of objections submitted by local residents. It is also highlighted that Policy H3 of the Local Plan only refers to small scale development within the limits of Howden-le-Wear and therefore the proposal is not consistent with it. It is also considered that the proposal is an incursion into the open countryside. Paragraph 17 of the NPPF sets out that decision makers recognise the intrinsic character and beauty of the countryside. These harmful effects would outweigh the provision of housing supply.

APPLICANTS STATEMENT:

53. We appreciate the concerns regarding the appearance of this development in the landscape, but through the way we have arranged the buildings, believe that views of the scheme will be very limited. It is designed in such a way as to tuck itself between established tree lines and hedgerows. By doing this the trees obscure the views of the proposed buildings, minimizing their impact in the landscape.
54. The new houses will provide larger homes that meet current energy performance standards, for families from Howden le Wear to expand into, as well as bringing new families into the village. Positioning them away from more prominent locations within the village and between the trees and hedgerows also means that views of the new buildings from within Howden le Wear are minimised, avoiding a change in the look and feel of the character of the existing village.
55. The new care home element and commercial units provide opportunities for new small businesses and provide employment for the immediate and local area. These new jobs could provide an economic stimulus for the village, promoting its economic sustainability, addressing the decline of recent years with the closure of businesses in the village.
56. This scheme will create several bungalows for the elderly, spread through the proposed scheme to integrate them within the new context and be close to the proposed facilities. These bungalows will broaden the range of options for elderly

people to live and stay within Howden le Wear when they start to need assistance in their daily lives.

57. The new community use building will provide a venue for local groups and take over from the existing community centre, which has now been advertised by the Asset Management Department on the 22nd of August 2016 as for sale. This building will be provided to the community and consultation with the local groups will be sought, should the scheme be granted planning approval, to finalise the content of this building to suit their requirements. We ask these reasons be considered and given due weight in your decision

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 <https://publicaccess.durham.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=O2T0NGGDGG300>

PLANNING CONSIDERATIONS AND ASSESSMENT

58. Section 38(6) of the Planning and Compulsory Purchase Act 2004 sets out that if regard is to be had to the development plan, decisions should be made in accordance with the development plan unless material considerations indicate otherwise. In accordance with Paragraph 212 of the National Planning Policy Framework (NPPF), the policies contained therein are material considerations that should be taken into account in decision-making. Other material considerations include representations received. In this context, it is considered that the main planning issues in this instance relate to: the principle of the development, locational sustainability of the site, planning obligations, landscape impact, layout and design, highway safety and access, ecology, residential amenity, flooding/drainage, ground conditions, heritage and archaeology and other issues.

The Principle of Development

The Development Plan

59. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF is a material planning consideration. The Wear Valley District Local Plan (WVDLP) remains the statutory development plan and the starting point for determining applications as set out at Paragraph 12 of the NPPF. However, the NPPF advises at Paragraph 215 that local planning authorities (LPAs) that due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF and the closer the policies in the plan to the policies in the NPPF, the greater the weight that may be given.
60. The WVDLP was adopted in 1997 and was intended to cover the period to 2006. However, NPPF Paragraph 211 advises that Local Plan policies should not be considered out-of-date simply because they were adopted prior to the publication of the NPPF. Notwithstanding this, it is considered that a policy can be out-of-date if it is based upon evidence which is not up-to-date/is time expired.

The NPPF

61. Paragraph 14 of the NPPF establishes a presumption in favour of sustainable development. For decision taking this means (unless material considerations indicate otherwise);

- approving development proposals that accord with the development plan without delay; and

- where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:

- i) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or

- ii) specific policies in this Framework indicate development should be restricted.

62. Paragraph 47 of the NPPF requires Local Planning Authorities (LPAs) to maintain a five-year supply of deliverable sites (against housing requirements) thus boosting the supply of housing.

63. Paragraph 49 of the NPPF advises that housing applications should be considered in the context of the presumption in favour of sustainable development and relevant policies for the supply of housing should not be considered up-to-date if the LPA cannot demonstrate a five-year supply of deliverable housing sites. In turn where a five year supply of deliverable housing sites cannot be demonstrated then Paragraph 14 of the NPPF is engaged and an application is to be assessed in this context. However, Paragraph 14 of the NPPF is, irrespective of the position on housing land supply, relevant to this application as policies for the supply of housing within the WVDLP are out-of-date as outlined below.

Five Year Housing Land Supply

64. The NPPF states that housing applications should be considered in the context of a presumption in favour of sustainable development and that if the Council cannot demonstrate a five year housing land supply, housing policies in a Local Plan cannot be considered up to date. The housing trajectory associated with the withdrawn County Durham Plan (CDP) is no longer relevant and similarly the CDP Objectively Assessed Need (OAN) for housing figure no longer exists. This raises the issue of what is the requirement against which the supply is to be measured in order to calculate whether or not a 5 year housing supply exists.

65. On 15 June 2016 a report into the County Durham Plan Issues and Options (the first stage of the re-emerging plan process) was presented at Cabinet. The report was approved at Cabinet and consultation on the CDP Issues and Options commenced on 24 June. In relation to housing, the Issues and Options present three alternative assessments of housing needs, each based on average net completions up to 2033 (the end of the CDP plan period). The three alternatives are:

- 1,533 houses per year (29,127 houses by 2033)

- 1,629 houses per year (30,951 houses by 2033)

- 1,717 houses per year (32,623 houses by 2033)

66. Set against the lowest figure the Council has been able to demonstrate a supply of 4.65 years of deliverable housing land, against the middle figure around about 4.31 years' worth supply and against the highest figure, 4.04 years of supply.

67. Whilst none of the three scenarios within the Issues and Options been publicly tested, it does serve to demonstrate that set against varying potential figures, one of which will potentially be identified as the OAN following consultation in the Preferred

Option Stage Local Plan, the Council has a robust supply of housing which even in the most exacting scenario is not significantly short of 5 years.

68. Nevertheless, the decision-taking requirements of NPPF Paragraph 14 apply, as the Council does not have a five-year supply in the terms of the NPPF requirements and additionally the local plan may be out of date for other reasons, as discussed below, and will only be rebutted where a proposal would result in adverse impacts that would significantly and demonstrably outweigh the benefits, both in the form of a contribution to housing supply and any other benefits, or if specific policies in the NPPF indicate development should be restricted.

Assessment having regards to Development Plan Policies

69. WVDLP Policy H3 sets out that new development should be located to the towns and villages best able to support it setting out limits of development. WVDLP Policy H17 requires that developments for care homes should be located within defined settlement limits. The development conflicts with these saved Policies. The approach of directing housing to the most sustainable settlements that can support it while seeking to protect the open countryside is consistent with the NPPF (Paragraph 17). It is however recognised that the NPPF promotes a more flexible approach to site selection.
70. Furthermore, given the age of the WVDLP and housing supply figures that informed it, the housing supply policies therein do not reflect an up-to-date objective assessment of need, and must now be considered out-of-date, for the purposes of Paragraph 14 of the NPPF, and the weight to be afforded to the policies reduced as a result. However the recent Court of Appeal judgments emphasises that policies in Paragraphs 14 and 49 of the NPPF do not make “out of date” policies for the supply of housing irrelevant in the determination of a planning application. Nor do they prescribe how much weight should be given to such policies in the decision, this being a matter for the decision-maker, having regard to advice at Paragraph 215 of the NPPF.
71. WVDLP Policy H3 is supported by Policy ENV1 (Protection of the Countryside) which relates to development proposals in the countryside outside of settlements, seeking to restrict development proposals for agricultural or compatible uses as permitted by Local Plan Policies. The development would conflict with Policy ENV1. This Policy is considered partially compliant with the NPPF which takes a more permissible attitude towards a wider range of development types in the countryside than the saved Policy.
72. Remaining policies within the WVDLP of relevance to the site are considered to relate to specific matters rather than influencing the principle of the development.
73. In relation to the community hub and retail proposals, saved policies of the WVDLP are silent in respect of the principle of these elements of the scheme. Therefore the suitability of these uses needs to be assessed in the context of Paragraph 14 of the NPPF while recognising that the NPPF promotes the retention and development of local services and community facilities in villages.
74. Overall, WVDLP policies for the supply of housing and development within the countywide are not fully NPPF compliant, however, this does not mean that they should be disregarded or be given no weight, albeit the weight that can be afforded to them is reduced. As a result the acceptability of the development largely rests on whether any adverse impacts of approving the development would significantly and

demonstrably outweigh the benefits or whether there are any specific policies in the NPPF that indicate development should be restricted.

Locational Sustainability of the Site

75. The County Durham Settlement Study is an evidence based document which categorises Howden-le-Wear as a “Medium-sized Village” with a relatively minimal set of services, in this instance a primary school, a church, a public house and two convenience stores. There are limited employment opportunities within the Village other than those associated with the highlighted services/amenities and agricultural operations. Most employment opportunities are therefore likely to be located in Crook, Bishop Auckland, or further afield in Durham City. It is therefore considered that Howden le Wear could only accommodate small scale housing development, commensurate with its role within the County Durham Settlement Hierarchy in order to comply with sustainable development objectives in the NPPF. The erection of 81 dwellings and a 57 bed care home is considered to be disproportionate to the size of the Village and the level of services provided.
76. Whilst buses from Crook and Bishop Auckland serve Howden le Wear on a regular basis, the nearest bus stop would range from approximately 385m – 730m from the different housing elements of the application site due to the lack of connections into the existing settlement. Durham City is only accessible by bus by means of changing buses at Crook or Bishop Auckland. Consequently, it is considered that most employment opportunities and services would be accessed by car, a concern raised by the Highways Authority.
77. It is recognised that the development proposes to deliver retail units and a community centre which could help improve the sustainability of the village, while the care home could provide employment opportunities. However, these elements of the scheme are located off the main road through the Village and its perceived centre at a further walking distance than existing services and amenities for local residents.
78. Saved Policies GD1 and H24 of the WVDLP require that adequate links are provided within the site and to surrounding areas to facilitate access to services and amenities. Paragraph 61 of the NPPF also sets out that planning decisions should address the connections between people and places and the integration of new development into the natural and built environment. In this respect, it is considered that the scheme does not integrate itself into the built environment of Howden le Wear due to the poor connectivity between existing developments and that proposed, particularly in relation to phase 1. The scheme relies on one vehicular access point and one pedestrian link, neither of which provides a direct link into the centre of the settlement.
79. The applicant proposes to deliver the retail element, care home and community hub along with the 20 affordable units and self-build units. No end user or provider has been identified for any of these elements while there appears to be no community appetite based on the responses received in the planning application. The cost of delivering these units, the highway infrastructure and planning related costs suggest that the delivery of these elements is unlikely. No viability appraisal has been submitted that the development as a whole could bear the cost of these elements. However, these elements of the scheme are located out of the Village centre with limited accessibility, likely reliance on the private motor car, which would also discourage future users. Whilst the delivery of these elements could be conditioned, this in itself may have the effect of preventing any part of the development coming forward due to concerns around the viability of the scheme as a whole. Accordingly

it is considered that that limited weight should be afforded to any benefits associated with these proposals in this respect.

80. Overall, it is considered that the location and layout of the development would result in increased vehicular trips to access services amenities. This is contrary to the core principles (Paragraph 17) of the NPPF to focus significant development in locations which are or can be made sustainable and Paragraph 61 which encourages the integration of new development into the existing environment. The scheme is also considered contrary to WVDLP Policies GD1 and H24 which are considered consistent with the NPPF in this respect.

Planning Obligations

81. The NPPF and NPPG requires that developments mitigate its impacts, in this respect Education officers highlight that a development of 61 dwellings (excluding the 20 affordable bungalows) would likely generate an additional 19 primary and 7 additional secondary pupils. It is advised that sufficient secondary school places exist but no primary places are available as the local primary school is full. In order to accommodate the additional pupils and mitigate the impacts of the development a contribution of £222,395 is sought. The applicant has not proposed a mechanism (in the form of a S106 legal agreement) secure this contribution. Questions remain regarding the viability of the development to mitigate its impact in this respect.
82. WVLP Policy H15, in accordance with Part 6 of the NPPF, sets out where a need has been established an appropriate level of affordable housing should be provided. The identified need in the area is set out in the Strategic Housing Market Assessment and equates to a minimum of a 10% provision. It is indicated that the development would provide a total of 30% affordable housing across the development, consisting of 20 affordable bungalows in the first phase and 4 affordable housing units in the second phase. Although again no mechanism has been provided to secure this requirement, on the face of it the development would exceed the Policy requirement. However, as highlighted due to the substantial costs in delivering the speculative retail units and community building, along with other infrastructure requirements and planning obligations to mitigate the impact of the development from experience it is considered highly unlikely that the level of affordable housing across the development could be delivered and therefore this potential benefit should be afforded limited weight in the decision making process.
83. WVDLP Policy RL5 sets out that for every 1 hectare of land developed or redeveloped for residential purposes, at least 1,300 square metres of land should directly be made available on- or off-site for sporting or recreational use as part of the development or developers will be expected to make a contribution to the provision of such facilities.
84. This Policy is considered to be largely consistent with the NPPF which at Part 8 encourages the provision of adequate sporting and recreation functions. It is however recognised that the NPPF promotes an up to date needs assessment to identify needs and deficiencies in the area rather than setting a specific figure of provision. In this instance Open Space Needs Assessment highlights that there is a deficiency in Play, Outdoor sport and semi natural green space.
85. The site layout indicates that 7,500sqm of amenity land would be made available to satisfy the policy requirement and to meet part of the identified deficiency. It is however recognised there would be limited accessibility from phase 2 of the development and the wider village to this area and no formal facilities are proposed.

86. WVLP Policy GD1 seeks to ensure that development would not have a detrimental impact on the landscape quality of the area and structural landscaping is provided around the periphery of major sites. This Policy is considered compliant with the NPPF which recognising the intrinsic character and beauty of the countryside and seeking to protect valued landscapes. Full weight can therefore be given to this Policy in the decision making process in this respect. As highlighted above, WVDLP Policy ENV1 seeks to protect and enhance the countryside by restricting development proposals for agricultural or compatible uses as permitted by Local Plan policies. This Policy is considered partially compliant with the NPPF which takes a more permissible attitude towards a wider range of development types in the countryside and therefore can only be afforded moderate weight. WVLP Policy H3 is considered dual purpose, although it relates to housing supply and as above is considered out of date in this respect. The Policy justification sets out that it also seeks to protect surrounding landscapes and to ensure that the environmental capacity of the area can accommodate new development. These objectives are considered consistent with the NPPF, while recognising that the NPPF promotes a more flexible approach to site selection, in this respect moderate weight can be afforded to the policy in this respect.
87. The sites are not within any locally or nationally designated landscape, or are classed as valued landscapes for the purposes of Paragraph of 109 of the NPPF. However as advised by Landscape officers they are nevertheless, considered mature attractive areas of countryside that significantly contribute to the setting of the Village and local landscape.
88. In relation to phase 1, the existing field boundary between the proposed the care home and the self-build plots is a winding beck that also forms the ancient parish boundary. A number of mature trees are present on site, including those located at the top of the bank dividing phase 1. The landscape in this area is clearly defined as rural and the presence of the beck, mature trees within the site, and pasture into the southern edge of the village contribute to create an attractive feature of the local landscape. Landscape officers advise that the development of Phase 1 particularly the southern extension, would have a significantly detrimental effect on the landscape and would result in an unconstrained incursion into the open countryside.
89. The mature trees on site would also be obscured by the proposed development; although they are not specifically protected they are considered valued specimens, containing at least 1 veteran tree and contribute significantly to the local landscape. As advised in the applicant's arboriculture survey these trees are in good health and expect to have significant longevity. Although at least one of these trees is classed as a veteran tree, this and other mature trees would not need to be removed to facilitate the development. Therefore Paragraph 118 (a restrictive policy) of the NPPF would not be applicable.
90. In relation to the Phase 2 development, when approaching the Village from the south from the south along Hargill Road there is a strong, rural boundary to the village at Garden House, with a stone wall, boundary trees and a small woodland. This largely screens the housing beyond, while allowing views into the field behind Garden House to the west.
91. Landscape officers advise that the roadside hedge on Hargill Road is overgrown and at the height of summer would help screen the Phase 2 site. However, it is advised that this would not be the case for approximately five months of the year and if the hedge is reduced to a normal hedgerow height, clear views into the site would be

available all year round. This would appear as a significant incursion into the open countryside and would result in a significantly detrimental effect on the landscape, particularly due to the extension beyond the line of the existing western extent of the village.

92. Further to this several of these trees are old enough to have been shown on the first edition of the Ordnance Survey map in approximately 1860. These are important contributors to the landscape character as well as features in their own right. Whilst efforts to preserve these trees have been made, the proposed scheme would result in conflict with the future of these trees in relation to maintenance issues in order to achieve the number of dwelling proposed.
93. WVDLP GD1, ENV1 and H3 collectively seek to protect and enhance the countryside, while ensuring that the environmental capacity of the area can accommodate new development. The proposed developments would result in an unjustified and unsustainable form of development beyond the well-established settlement edge contrary to local plan policies which are considered consistent with the NPPF in this respect.

Layout and Design

94. WVDLP Policies GD1 and H24 require development to be designed and built to a high standard and should contribute to the quality and built of the surrounding area. Furthermore development should be in keeping with the character and appearance of the area, and be appropriate in terms of form, scale, mass, density and layout, to its location. These Policies are considered consistent with the NPPF which at Part 7 identifies that good design is indivisible from good planning, highlighting that developments should be visually attractive as a result of good architecture, appropriate landscaping and respond to local character. Full weight can therefore be afforded to these Policies in this respect in the decision making process.
95. Furthermore Paragraph 58 of the NPPF sets out that decisions should aim to ensure that developments would function well and add to the overall quality of the area, establish a strong sense of place, use streetscapes and buildings to create attractive places, respond to local character and history, and reflect the identity of local surroundings and materials, create safe and accessible environments and are visually attractive as a result of good architecture and appropriate landscaping. Paragraph 64 of the NPPF also sets out that planning permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions. Paragraph 64 is considered a policy which restricts development for the purposes of the 2nd limb test of Paragraph 14, and should be restricted on this basis unless other factors indicate otherwise.
96. It is recognised that a large proportion of the application is in outline form, with details regarding the layout and design remaining reserved. Nevertheless full details of the means of access, care home, retail units, community centre and 20 affordable bungalows have been provided. The development has been assessed against by the Council's design and review panel as encouraged by Paragraph 62 of the NPPF. When assessed against the Design Council's Building for Life 12 guide, the scheme overall scored exceptionally poorly identifying that there was no distinctive character within the layout and design of the development with an ad-hoc form and overly car dominated street scene resulting in a poor pedestrian and social environment. It was also highlighted that the development has particularly poor connectivity and would not integrate well into the existing settlement.

97. In relation to the specific design of the buildings, it is considered that these do not have a cohesive design, display little architectural merit and display limited references to the local character/distinctiveness. This is due to the varying roof pitches of the buildings, their squat appearance and poor relationships with public spaces and vantage points. The submitted Design and Access Statement does not expand upon the design rationale of the development or outline how the scheme would create a sense of place or responds to the local character or identity.
98. As highlighted above, the formation of retail and community centres outside of the perceived village heart would effectively create a second centre. These elements of the scheme do not benefit from natural surveillance and concerns are raised regarding the potential for antisocial behaviour particularly given their questionable deliverability.
99. WVDLP Policy BE23 sets out that the Council will encourage the provision of works of art as part of development. This Policy is considered partially compliant with the NPPF which requires development to be well designed and responds to local character, while recognising no specific mention of public art is made within the NPPF. Issues around viability however need to be taken into consideration. No reference to meet the requirements of this Policy has been made by the applicant in this instance.
100. Overall it is considered that the scheme would not deliver a high quality visually attractive development and would not contribute to the quality of the surrounding area. It is also considered that the scheme would not create a strong sense of place, would not respond to local character and, would not create a safe and accessible environment integrating itself to the existing settlement, contrary to WVDLP Policies GP1 and H24 and Paragraphs 58, 61, 62 and 64 of the NPPF.

Highway Safety and Access

101. WVLP Policies GD1, H24 and T1 set out that developments should be served by a safe means of access and development should not create unacceptable levels of traffic which exceed the capacity of the local road network. These Policies are considered consistent with the NPPF in this respect which also sets out at Paragraph 32 that safe and suitable access can be achieved for all people while setting out that developments that generate a significant amount of traffic should be supported by Transport Assessments or Statements. Full weight should therefore be afforded to these Local Plan policies in the decision making process.
102. Phase 1 of the proposed development would be served a single vehicular access onto Railway Street. This existing field access would be upgraded and widened to create a T junction to allow two way vehicular traffic and pedestrian access. In order to achieve satisfactory visibility additional land opposite the junction (in the Councils Ownership) would be required. These highway works would also require the re-building of a culvert which runs directly opposite the site entrance. The submitted Transport Assessment identifies that in order to allow a safe access it is proposed to widen the carriageway at the junction of top Railway Street where it adjoins Bridge Street to 7.5m. This would allow two vehicles to pass either side of parked cars, however in order to achieve these highway improvement works land in the Councils Ownership would be required to be utilised.
103. Phase 2 of the development would be served by a single vehicular access on to Hargill Road. An existing field access would be utilised and upgraded to 5.5m carriageway width. It is proposed that a 1.8m wide pedestrian footway would extend from the site entrance to Vicarage Road, while footpath other widening and

resurfacing works would be undertaken down Hargill Road. Visibility spays of 4.5m x 215 to the south west and 2.4x110m to the north east are proposed.

104. In considering the proposed access arrangements and after reviewing the submitted Transport Assessments the Highway Authority advises that subject to securing the detailed design of the proposed highway improvement works, proposed mitigation and visibility splays the scheme as a whole is acceptable in highway safety terms and the surrounding highway network could accommodate the additional traffic flows generated. The scheme would therefore comply with WVLP Policies GD1, H24 and T1 in this respect and Paragraph 32 of the NPPF.

Residential Amenity

105. WVDLP Policies GD1 and H24 requires that the design and layout of development to ensure that appropriate relationships remain with existing dwellings and would not conflict or disturb adjoining uses. These Policies are considered NPPF compliant with a core planning principle at Paragraph 17 of the NPPF stating that planning should always seek to secure a good standard of amenity for existing and future occupants of land and buildings. Whilst Part 11 seeks to prevent both new and existing development from contributing to or being put at unacceptable risk from unacceptable levels of pollution.
106. The site layout for the housing element of the proposal demonstrates that separation distances in excess of 21m between habitable room windows to existing neighbouring residential and proposed dwellings can be achieved as advocated in the Local Plan. Given these separation distances it is considered that there would not be a significant reduction in existing residents' amenity, in terms of overlooking and privacy and outlook. Further scrutiny of this matter would be given in a reserved matters application.
107. In order to limit the potential disturbance for existing and future residents during construction, Environmental Health and Consumer Protection officers recommend that a construction management plan be secured to deal with construction related impacts. It is also recommended to attach a condition to require details of any external plant associated with the care home and retail units to be submitted and approved to prevent a loss of amenity arising.
108. The development of both sites would increase the comings and goings of vehicles and to a lesser degree pedestrians which would have a limited impact on residential amenity. However, this is not considered to be at a significant level that would warrant refusal of the application.
109. The development would fall below the thresholds requiring a requirement an assessment on the impact of air quality.
110. Overall the scheme would comply with WVLP Policies GD1 and H24 and paragraph 17 and Part 8 the NPPF and would not lead to a significant reduction in residential amenity.

Ecology

111. The closest sites of nature conservation are Witton-le-Wear SSSI and the Low Barns Durham Wildlife Trust Nature Reserve located 1.5km to the south of the sites. Part 11 of the NPPF seeks to ensure that developments protect and mitigate harm to biodiversity interests.

112. The presence of protected species is a material consideration, in accordance with Circular 06/2005 (Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System) and Part 11 of the NPPF. In addition with regards to European Protected Species (EPS) under the requirements of The Habitats Regulations it is a criminal offence to (amongst other things) deliberately capture, kill, injure or disturb a protected species, unless such works are carried out with the benefit of a licence from Natural England. Regulation 9(3) of The Habitat Regulations requires local planning authorities to have regard to the requirements of the Habitats Directive in exercising its functions.
113. The ecology surveys submitted with the application concludes that no species that are afforded special legal protection under the Conservation of Habitats and Species Regulations (Amendment) 2012 and/or the Wildlife and Countryside Act 1981 (as amended) have been recorded within the site. The report therefore concludes that the risk of protected species being on the site, with the exception of foraging bats and breeding birds, or the development being a risk to the protected species is low or negligible. Nevertheless, a biodiversity enhancement scheme is proposed to achieve a net biodiversity gain, as encouraged by the NPPF. This includes tree and shrub planting and the planting of native wildflower grasses on the undeveloped portions of the phase 1 site.
114. Ecology officers consider the submitted report sound and offer no objections to the scheme given the lack of impact on biodiversity interests, along with the planting proposed. Overall the development is considered to conform with Part 11 of the NPPF in this respect subject to a condition developing the lighting strategy for the site.

Flooding and Drainage

115. National advice within the NPPF (Paragraph 100) and PPG with regard to flood risk advises that a sequential approach to the location of development should be taken with the objective of steering new development to flood zone 1 (areas with the lowest probability of river or sea flooding). When determining planning applications, local planning authorities should ensure flood risk is not increased elsewhere and only consider development appropriate in areas at risk of flooding where, informed by a site-specific flood risk assessment (FRA).
116. The application is accompanied by a FRA which highlights that the majority of the application site is within flood zone 1 with a low flood risk probability. Elements of Phase 1 which border Howden Beck are located within Flood Zones 2 and 3. However, there is no built development in these areas with the exception of the access. The FRA identifies that there are areas of high risk of surface water flooding on the site in the proximity of 4 bungalows and mitigation would be required to deal with this. The FRA also sets out a drainage strategy including the incorporation of Sustainable Urban Drainage (SUD's). This includes the implementation of swales and storage capacity within the site, along with other techniques including infiltration, would restrict runoff to Green Field rate before being discharged to a water course. Subject to securing the detail of this approach, Drainage and Coastal Protection officers offer no objections to the development. Northumbrian Water also advises a conditional approach to managing surface water discharge.
117. In relation to foul water, it is proposed to connect to the existing sewerage network. Northumbrian Water raise no objections subject to detailing the design of the layout. Northumbrian Water does however identify that there is a significant sewerage main running across the land, interfering with the position of the which would likely need to be diverted to accommodate the development

118. Subject to conditions to resolve the final surface and foul water disposal proposals are recommended no objections to the development on the grounds of flood risk or drainage are raised having regards to Part 10 of the NPPF.

Ground conditions

119. Paragraph 109 of the NPPF sets out that unstable land should be remediated and mitigated where appropriate. In this instance the application site lies with the Coal Authority's Coalfield area of high risk, a coal mining risk assessment considering unstable land has been submitted in support of the application. In reviewing this report, the Coal Authority advises underground coal mining has taken place underneath the site at shallow depth, along with potential unrecorded mine workings. However, subject to securing further instructive site investigations and appropriate mitigation the Coal Authority raises no objection to the development.
120. In relation to land contamination the applicant has submitted a phase 1 desk top study report which identifies that there is a low risk of contaminants being present on site but site investigation work is recommended. After reviewing the submitted report Environment, Health and Consumer Protection officers (Contaminated Land) advise that the submitted Phase 1 Assessment is acceptable and recommend a conditional approach to further land contamination investigations. This would satisfy the requirements of paragraph 120 of the NPPF.

Heritage and Archaeology

121. 600m to the north of the application site is the Grade II Listed buildings of Fir Tree Grange and 2km to the south is Witton-le-Wear Conservation Area. Design and Conservation officers advise that there are no heritage related issues associated with the development, due to the limited inter visibility between the nearest listed buildings and conservation areas.
122. In terms of archaeology, the NPPF sets out the requirements for an appropriate programme of archaeological investigation, recording and publication to be made. In this respect no archaeological assessment has been made by the applicant. However, after reviewing historic maps of the area and given the outline nature of large elements of the development Archaeology officers advise that there is a limited chance of significant archaeological remains being present on site that would preclude development. Although an undesirable approach further detailed survey work could be undertaken before development commences and appropriate mitigation secured. In this instance it is considered that the lack of an archaeological assessment should not on its own be a reason to resist the development.
123. Overall it is considered that scheme would not impact on any heritage assets subject to imposing conditions on any planning approval to require further on site investigations and mitigations where appropriate. The scheme would therefore comply with Part 12 of the NPPF in this respect.

Other Issues

124. NPPF Paragraph 112 states that LPAs should take into account the benefits of the best and most versatile agricultural land and where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality. The development would result in the loss of approximately 7.6ha of agricultural land. A

site specific investigation into the land classification does not accompany the application.

125. Natural England's land classification maps for the North-East region show that the phase 1 consists of Grade 3b land while no classification is made of Phase II. Given the lack of assessment it cannot be determined whether the land is best or most versatile agricultural land. However, even in a circumstance that the land is best and most versatile land this does not preclude the land from development but is a factor to consider in the determination of the application in the planning balance.
126. In this instance it is considered that the amount of agricultural land (2.4 ha on Phase 2) that would be lost is less than significant even in the event it was found to be best and most versatile. Furthermore, it is considered that the loss of land would not undermine the ability of remaining agricultural land surrounding the site to be effectively farmed. Therefore this should not be considered an adverse impact in the event that the land is best and most versatile.

Planning Balance

127. The acceptability of the application should be considered under the planning balance test contained within Paragraph 14 of the NPPF, which states that permission should be granted unless, any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, or specific policies in this Framework indicate development should be restricted. The proposed development is considered contrary to Paragraph 64 of the NPPF, which is a Policy that indicates that development should be restricted and so displaces the presumption in favour. Therefore there is no requirement for the adverse impacts to significantly and demonstrably outweigh the benefits, however, for clarity the balance test considers the approach where that test would apply.

Benefits

128. The development would assist in maintaining housing land supply at a time when the settlement boundary policy is out of date and the Council cannot demonstrate a 5 year housing supply against an objectively assessed need, although in the light of the supply position, this benefit is a limited one.
129. Recent Planning Case Law, states that the weight given to a proposal's benefits in increasing the supply of housing will vary, depending, amongst other things, on the extent of shortfall, how long a shortfall might persist, and how much of it the development would meet. Given that even in the most exacting scenario, the Council can demonstrate 4.04 years of supply. It also considered reasonable to suppose that any shortfall is likely to be temporary, and that there is likely to be a boost in supply through housing allocations once the County Durham Plan is adopted, which is likely to be within the next 2 years. As a result, the benefits of this scheme in terms of boosting housing delivery are limited, and that less weight should be afforded to the benefits of delivering new housing than would otherwise be the case if a less healthy land supply position applied.
130. To a degree the development would provide direct and indirect economic benefits within the locality and from further afield in the form of expenditure in the local economy. This would include the creation of construction jobs and potential jobs associated with the care home and retail units.

131. The scheme to a degree could help improve the sustainability of the village through the delivery of the retail units and community centre, while recognising the poor connectivity of these elements. The scheme could boost the provision of affordable housing in the area particularly for older persons (30% proposed in excess of the 10% policy requirement). However no end user or provider has been identified for any of these elements while there appears to be no community appetite for a new community centre and/or to take ownership of it. The cost of delivering these elements, the highway infrastructure and mitigation, planning related costs, securing 3rd party land and other onsite abnormalities suggest that the delivery of these elements is unlikely. No viability appraisal has been submitted to demonstrate that the development as a whole could bear the cost of these elements, accordingly it is considered that that limited weight should be afforded to these benefits

Impacts

132. The scheme is considered to represent poor design that fails to take the opportunities for available for improving the character and quality of an area and the way it functions, due to its design, layout and poor connectivity to the surrounding area contrary to Paragraph 64 of the NPPF.
133. The development would result in significant adverse landscape harm to an area of attractive countryside which forms part of the character of the local area and contributes to the setting of the village. The development would represent an unconstrained incursion into the open countryside.
134. The location and layout of the development would result in increased vehicular trip to access, services amenities contrary to one of the core principles of the NPPF to focus significant development in locations which are or can be made sustainable.
135. Loss of agricultural land would arise, however given the site of Phase 2 (2.4ha) this should not be considered an adverse impact warranting refusal even in the event that the land is best and most versatile.

CONCLUSION

136. The proposed development is considered contrary to Paragraph 64 of the NPPF, which is a Policy that indicates that development should be restricted and displaces the presumption in favour of sustainable development.
137. Notwithstanding this adverse impacts have been identified, most notably that the development represents poor design that fails to take the opportunities for available for improving the character and quality of an area and the way it functions, significant adverse landscape harm, and poor integration into the surrounding built environment.
138. Whilst there are some benefits to the proposal, notably the boost to housing supply including affordable homes, direct and indirect economic benefits, it is considered that these do not amount to a particularly high level of benefits given the significant concerns regarding the viability and deliverability of the scheme and the level of housing supply the council can demonstrate. In this instance they are outweighed by the particular adverse impacts identified, and specifically where NPPF policies indicate development should be restricted, and therefore the proposed scheme cannot be considered to be sustainable development. In any event, the adverse impacts of the development would together, be such that they would significantly and

demonstrably outweigh the benefits if the presumption in favour of sustainable development balance test was applied.

139. The proposal has generated some public interest, with letters of objection and support having been received. Concerns expressed regarding the proposal have been taken into account, and carefully balanced against the scheme's wider social, economic and community benefits.

RECOMMENDATION

That the application be **REFUSED** for the following reason:

1. The Local Planning Authority considers that the adverse impacts of the development in terms of the proposal's poor design that fails to take opportunities for improving the character and quality of the area, the significant adverse landscape harm and the site's location in an area that would lead to reliance on private car movements are such that they would outweigh the benefits in the context of NPPF Paragraph 64 that indicates development should be restricted and that where not restricted, such adverse impacts would significantly and demonstrably outweigh the benefits. The proposals are therefore considered contrary to Policies GDP1, ENV1, and H3 of the Wear Valley District Local Plan.

STATEMENT OF PROACTIVE ENGAGEMENT

The Local Planning Authority in arriving at its recommendation to refuse this application has, without prejudice to a fair and objective assessment of the proposals, issues raised, and representations received, sought to work with the applicant in a positive and proactive manner with the objective of delivering high quality sustainable development to improve the economic, social and environmental conditions of the area in accordance with the NPPF. (Statement in accordance with Article 35(2) (CC) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.)

BACKGROUND PAPERS

Submitted application form, plans supporting documents and subsequent information provided by the applicant.

The National Planning Policy Framework (2012)

National Planning Practice Guidance Notes

Wear Valley District Local Plan

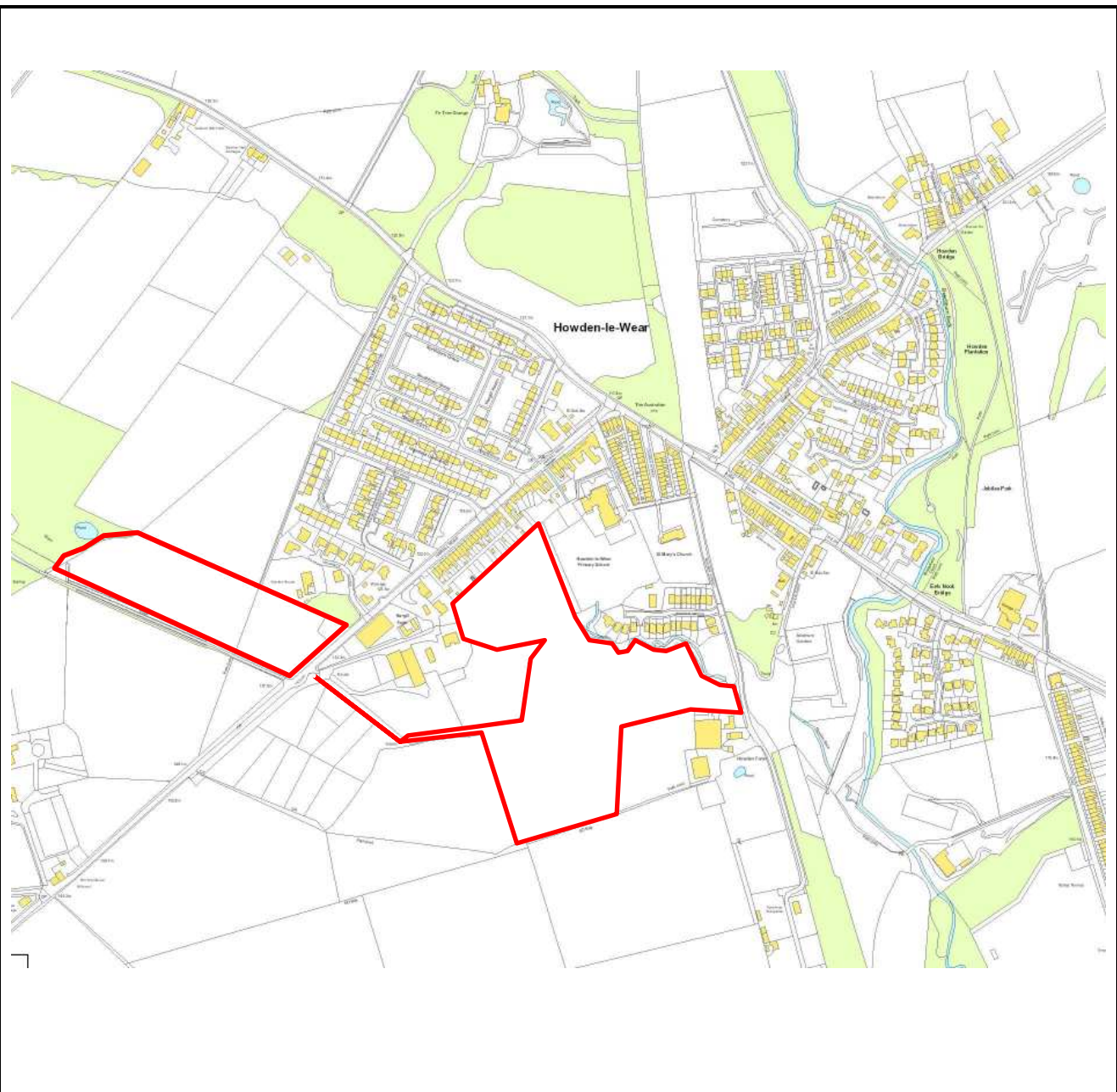
The County Durham Plan (Submission Draft)


The County Durham Strategic Housing Land Assessment

The County Durham Strategic Housing Market Assessment

The County Durham Settlement Study (2012)

Statutory, internal and public consultation responses.



 <p>Durham County Council</p> <p>Planning Services</p>	<p>DM/16/00526/FPA</p> <p>Hybrid application for the erection of a 57 bed care home, community hub/retail units, 20 affordable bungalows and outline permission for 61 residential units at Land Near To Hargill Road And Railway Street, Howden-Le-Wear</p>	
<p>This map is based upon Ordnance Survey material with the permission of Ordnance Survey on behalf of Her Majesty's Stationary Office © Crown copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceeding. Durham County Council Licence No. 100022202 2005</p>	<p>Comments</p>	
	<p>Date October 2016</p>	<p>Scale 1:5000</p>

COMMITTEE REPORT

APPLICATION DETAILS

APPLICATION NO:	DM/16/02335/FPA
FULL APPLICATION DESCRIPTION:	Distribution centre with associated vehicular and pedestrian access, car parking and landscaping, and erection of 4 units (blocks 1, 6, 8 and 9) for mixed industrial and storage use.
NAME OF APPLICANT:	Mandale Investments Ltd
ADDRESS:	Philips Components Ltd, Belmont Industrial Estate, Belmont, Durham
ELECTORAL DIVISION:	Belmont
CASE OFFICER:	Graham Blakey, Senior Planning Officer 03000 264865 graham.blakey@durham.gov.uk

DESCRIPTION OF THE SITE AND PROPOSALS

The Site

1. The former LG Philips site lies within the eastern part of the Belmont Industrial Estate which is in turn located on the north eastern edge of Durham City. The site is accessed directly from the Estate's distributor road, which joins Broomside Lane to the south by means of a recently improved traffic signal controlled junction. Broomside Lane joins the A690 via a grade separated junction to the west, and this dual carriageway directly links the city centre to the south, and Junction 62 of the A1 (M) to the north. Land levels generally follow in steps from the east (A1) to west (A690), with differing levels across the Estate between this site and the existing units to the north and west which are set at a lower level.
2. The nearest residential areas to the proposed development lie to the east at Carville, 100m across the A1(M), and to the south in both Gilesgate and Gilesgate Moor, around 700m at their closest points across from Broomside Lane. There are no landscape or nature conservation designations within or adjacent to the site boundary. An embankment within the application site has been assessed as having Durham Biodiversity Action Plan quality grassland worthy of protection.
3. The application site is on land identified within the City of Durham Local Plan (CDLP) as a Prestige Industrial Estate.

The Proposal:

4. The application site consists of a parcel of land that covers several of the partly constructed industrial blocks and the extreme north east of the site which is currently vacant. Proposed is the latest phase of the works to the site and has two main parts to the development. Firstly, the erection of a 5,387sqm (57,985sqft) distribution warehouse with associated hardstanding for lorry vehicle movements. Secondly, the variation in the use of the previously approved B1 (Light Industrial) Blocks 1, 6, 8 and 9 totalling 7,637sqm (82,204sqft) to B2 (General Industrial) and B8 (Storage and Distribution). As these blocks have not been fully constructed or occupied a new application has been submitted.
5. The new distribution centre would be made up of 5,109sqm (55,000sqft) of warehouse space (B8 use) and 278sqm (2,993sqft) of ancillary office space. The proposed building would reach a height of 10.75m (35 feet) and be constructed from trapezoidal profiled sheeting colour dark grey similar to the rest of the new development at the site. Areas of hardstanding for lorry movements would be located to the north and south of the unit, with car parking for staff located centrally.
6. The 'new' blocks would be erected as per the previously approved details creating 7,637sqm (82,203sqft) of floor space. The buildings would feature a mixture of traditional dual pitched roofs and a multi-valley waved design, and would reach 9-9.25m in overall height. Construction would be from trapezoidal profiled sheeting in a dark grey colour similar to the rest of the new development at the site. Several of the steel frames for the proposed 'Block' buildings have already been erected at the site. Mostly the Blocks are proposed as large open-plan warehousing / industrial units, the exception to this is Block 6 which is now proposed to be subdivided internally to nine smaller units with associated large vehicle openings to the south elevation and fire exits to the rear (north).
7. The application is reported to the County Planning Committee as it constitutes a major industrial development of over 10,000m² floorspace.

PLANNING HISTORY

8. Planning Permission No. 4/06/00558/FPA was granted in September 2006 for the erection of 10 office buildings, a single unit restaurant and associated car parking (Phase 1 – south west portion of the site).
9. Planning Permission No. 4/07/00375/FPA was granted in November 2008 for the erection of new office units and conversion of existing buildings to offices plus 994 car parking spaces (Phase 2 – remainder of site).
10. Planning Permission No. 4/11/00256/FPA was granted July 2011 for the renewal of planning permission for the erection of new office units and conversion of existing buildings to offices plus 720 parking spaces, as amended by 4/09/00976/VOC, (Phase 2 – remainder of site).
11. Various amendments to the layout of Phase 2 were approved between 2013 and 2015 that included the amalgamation of some Blocks, differing of contributions, greater flexibility in planning use (i.e. to B1, B2 and B8), and associated minor external alterations.

PLANNING POLICY

NATIONAL POLICY

12. The Government has consolidated all planning policy statements, guidance notes and many circulars into a single policy statement, the National Planning Policy Framework (NPPF). The overriding message is that new development that is sustainable should go ahead without delay. It defines the role of planning in achieving sustainable development under three topic headings – economic, social and environmental, each mutually dependant. The presumption in favour of sustainable development set out in the NPPF requires local planning authorities to approach development management decisions positively, utilising twelve ‘core planning principles’.
13. In accordance with paragraph 215 of the National Planning Policy Framework, the weight to be attached to relevant saved local plan policy will depend upon the degree of consistency with the NPPF. The greater the consistency, the greater the weight. The relevance of this issue is discussed, where appropriate, in the assessment section of the report. The following elements of the NPPF are considered relevant to this proposal.
14. *NPPF Part 1 – Building a Strong, Competitive Economy.* The Government is committed to securing economic growth in order to create jobs and prosperity, building on the country’s inherent strengths, and to meeting the twin challenges of global competition and of a low carbon future.
15. *NPPF Part 4 – Promoting Sustainable Transport.* The transport system needs to be balanced in favour of sustainable transport modes, giving people a real choice about how they travel. It is recognised that different policies and measures will be required in different communities and opportunities to maximize sustainable transport solutions which will vary from urban to rural areas. Encouragement should be given to solutions which support reductions in greenhouse gas emissions and reduce congestion.
16. *NPPF Part 7 – Requiring Good Design.* The Government attaches great importance to the design of the built environment, with good design a key aspect of sustainable development, indivisible from good planning. Planning decisions must aim to ensure developments; function well and add to the overall quality of an area over the lifetime of the development, establish a strong sense of place, create and sustain an appropriate mix of uses, respond to local character and history, create safe and accessible environments and be visually attractive.
17. *NPPF Part 10 – Meeting the Challenge of Climate Change, Flooding and Coastal Change.* Planning plays a key role in helping shape places to secure radical reductions in greenhouse gas emissions, minimising vulnerability and providing resilience to the impacts of climate change, and supporting the delivery of renewable and low carbon energy.
18. *NPPF Part 11 – Conserving and Enhancing the Natural Environment.* The planning system should contribute to, and enhance the natural environment by; protecting and enhancing valued landscapes, recognizing the benefits of ecosystem services, minimising impacts on biodiversity and providing net gains in biodiversity where possible, preventing new and existing development being put at risk from unacceptable levels of soil, air, water or noise pollution or land instability, and remediating contaminated and unstable land.

19. The Government has consolidated a number of planning practice guidance notes, circulars and other guidance documents into a single Planning Practice Guidance Suite (NPPG). This document provides planning guidance on a wide range of matters. Of particular relevance to this application is the practice guidance with regards to: climate change; design; flood risk; land affected by contamination; natural environment; noise; planning obligations; travel plans, transport assessments and statements; use of planning conditions and; water supply, wastewater and water quality.

<http://planningguidance.planningportal.gov.uk/>

LOCAL PLAN POLICY:

The City of Durham Local Plan (May 2004) (CDLP)

20. *Policy E16 – Nature Conservation – The Natural Environment.* This policy 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.
21. *Policy EMP5 – Prestige Industrial Sites.* This policy identifies Belmont Industrial Estate as a prestige industrial estate suitable for use class B1 and B2 uses.
22. *Policy T1 – Transport – General.* This policy 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.
23. *Policy T2 – Road Proposals – Justification.* States that the Council will grant planning permission for development that would facilitate inward investment and economic prosperity, improve road safety standards, have the minimum of adverse effect on the local environment and assist public transport/cycle provision.
24. *Policy T20 – Cycling – Provision of Cycle Parking.* Sets out a requirement to encourage the provision of facilities for parking cycles in the city centre and at other appropriate locations.
25. *Policy Q5 – Landscaping – General –* requires all new development which has an impact on the visual amenity of the area in which it is located to incorporate a high level of landscaping in its overall design and layout.
26. *Policy Q6 – Landscaping – Structural Landscaping –* requires new development to edge of settlement locations to provide peripheral structural landscaping within the site to minimise any adverse visual impact.
27. *Policy Q7 – Industrial and Business Development.* Sets out that new development should be of a standard appropriate to the designated area in which it is located.
28. *Policy U5 – Pollution Prevention – General.* Planning permission for development that may generate pollution will not be granted if it results in; an unacceptable adverse impact upon the quality of the local environment; the amenity of nearby and adjoining land and property or; will unnecessarily constrain the development of neighbouring land.

29. *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.
30. *Policy U14 - Energy Conservation – General.* States that the energy efficient materials and construction techniques will be encouraged.

RELEVANT EMERGING POLICY:

The County Durham Plan

31. Paragraph 216 of the NPPF says that decision-takers may give weight to relevant policies in emerging plans according to: the stage of the emerging plan; the extent to which there are unresolved objections to relevant policies; and, the degree of consistency of the policies in the emerging plan to the policies in the NPPF. The County Durham Plan (CDP) was submitted for Examination in Public and a stage 1 Examination concluded. An Interim Report was issued by an Inspector dated 18 February 2015, however that Report was quashed by the High Court following a successful Judicial Review challenge by the Council. In accordance with the High Court Order, the Council has withdrawn the CDP and a new plan being prepared. In the light of this, policies of the CDP can no longer carry any weight. As the new plan progresses through the stages of preparation it will begin to accrue weight.

The above represents a summary of those policies considered most relevant. The full text, criteria, and justifications of each may be accessed at:

<http://www.durham.gov.uk/ldf> (City of Durham Local Plan)

CONSULTATION AND PUBLICITY RESPONSES

STATUTORY RESPONSES:

32. *Highway Authority* – Raise no objection. Officers consider that the change from B1 to B2/B8 would reduce the overall vehicle movements at peak times, therefore having less of an impact upon the highway network. Officers are satisfied that it can be demonstrated that an HGV can manoeuvre into the various loading areas without encroaching on footways. In addition details have been provided showing areas where carriageways are to be widened. It is recommended that details of the location of cycle and electric vehicle (EV) parking are required through condition. Visibility splay at the northern most internal junction are considered acceptable following the submission of additional detail.
33. *Highways England* – Consulted, no comments received.
34. *Coal Authority* – Object to the proposals. The site does fall within the defined Development High Risk Area and no Coal Mining Risk Assessment has been submitted with the application.
35. *Northumbrian Water* – Raise no objections. No details of an agreement to enter into the public sewer have been submitted by the applicant. Condition to agree details is therefore recommended.

INTERNAL CONSULTEE RESPONSES:

36. *Environment, Health and Consumer Protection (Contaminated Land)* – Raise no objections. Officers advise that a condition should be added to any planning permission requiring the completion and submission of detailed Phase 4 verification report.
37. *Environment, Health and Consumer Protection (Noise, Light, Odour and Dust)* – Raise no objections. It is noted that the proposed development is in close proximity to a significant 24hr noise source namely the A1 therefore although elements of the development have potential noise impacts associated with officers do not consider they are likely to increase the existing noise climate. Officers consider that as the application relates to a distribution centre the planning department should satisfy themselves in relation to potential impact of HGV movements further afield, especially during the late night/early morning hours. No adverse comments are made in terms of the potential of the development to cause a statutory nuisance, as defined by the Environmental Protection Act 1990. However, the Planning Authority may wish to consider the comments provided above, in determining whether there will be a loss of amenity as a result of the proposal.
38. *Ecology* – Raise no objections. The applicant has clearly identified the biodiversity resource through appropriate surveys and has agreed to create compensatory habitats for those habitats to be lost and is managing the remaining resource on site in line with best practice. The compensation and mitigation provided by the applicant is sufficient to meet the requirements of the NPPF.
39. *Design and Conservation* – Raise no objections. The development proposals are considered to be acceptable given the previous approvals and the sites location within the established mixed use industrial estate, the scale, mass, and general approach to design is appropriate to the location and end use. On this basis no objection is raised from a heritage and design standpoint, but is suggested that the materials proposed for use are secured by the imposition of standard planning conditions.
40. *Landscape* – Raise concerns. Officers note that the submitted scheme contains no landscape details beyond that which are evident on the site plan and the reference to landscaping in the Planning Statement. While soft landscaping spatial provision surrounding Blocks 1, 6, 8 & 9 might be adequate to soften the effect of built development, no such areas attend the proposed north east corner Distribution Unit. This is particularly lacking at the Unit's north end site boundary and at the south end palisade fencing to the south and south west of Blocks 8 and 9.
41. *Sustainability* – Raise no objections. Photo-voltaic panels across development to reduce carbon output by 10% proposed.
42. *Travel Planning Advisor* – Raise no objections to the proposal having reviewed the submitted Travel Plan against the BSI 'National Specification for Workplace Travel Plans' (PAS 500) a number of recommendations are made. These can be incorporated into a revised Plan required through condition should planning permission be granted.

PUBLIC RESPONSES:

43. The application was advertised within the press, on site and letters were sent to neighbouring properties.

44. One representation has been received from a neighbouring business raising objections to the application. The matters raised relate mainly to highways and access, and are summarised below.
- Marked increase in the volume and type of traffic using the roads in to the estate which will have an adverse effect on those currently based here;
 - Main entrance into estate off Broomside Road does not seem appropriate for increased HGV traffic; in addition current parking on both sides of the road along parts of the internal estate road is already an issue;
 - The access road from the Industrial Estate Service Road on to the site is not appropriate for HGV type traffic, with very high speed bumps on the access road;
 - Concerns about the safety and maintenance of these access roads with increased and heavy traffic use.

APPLICANTS STATEMENT:

45. The current application proposals relate to the development of Blocks 1, 6, 8 and 9 and Distribution Centre with associated vehicular and pedestrian access, car parking, landscaping, and bin stores at LG Philips, Belmont Industrial Estate, Durham. The application site forms part of the wider LG Philips (Phase 2) site which is allocated as a Prestige Industrial Site under the provisions of 'saved' Policy EMP5 of the City of Durham Local Plan and the wider Phase 2 site benefits from an implemented planning permission for the provision of office floorspace.
46. The change of use of the approved B1 floorspace to B2 / B8 use would have a significantly reduced impact on the operation of the local highway network during peak periods than the consented B1 floorspace and the proposed minor design amendments remain entirely complementary to the existing built form in the locality.
47. We are therefore of the opinion that the application proposals comprise of a sustainable form of development that will deliver a number of clear and substantial social, economic and environmental benefits for the local area and support the aims and objectives of the Development Plan in force for the area, as well as national guidance contained within the NPPF. We would therefore respectfully request that the LPA resolve to support the proposals through the grant of planning permission subject to any conditions deemed necessary.

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://publicaccess.durham.gov.uk/online-applications/search.do?action=simple&searchType=Application>

PLANNING CONSIDERATIONS AND ASSESSMENT

48. Section 38(6) of the Planning and Compulsory Purchase Act 2004 sets out that if regard is to be had to the development plan, decisions should be made in accordance with the development plan unless material considerations indicate otherwise. In accordance with Paragraph 212 of the National Planning Policy Framework (NPPF), the policies contained therein are material considerations that should be taken into account in decision-making. Other material considerations include representations received. In this context, it is considered that the main planning issues in this instance relate to: principle of the development; design and visual impact; highway safety issues; ecology; residential amenity and flood risk and drainage.

The Principle of the Development

49. The application site is identified for B1 (Business) and B2 (General Industrial) use within the CDLP, and forms part of the wider LG Philips site (identified as Phase 2), which is a strategically important employment site that will deliver substantial benefits for the local economy. Planning permission is already in place and implemented which covers the erection of the various 'Blocks' that are proposed within the central area of the site, these are in various stages of construction and are proposed for B1 light industrial/office use.
50. Apart from the subdivision of Block no. 6 into nine smaller units with associated additional openings to the elevations, the main difference to Blocks 1, 6, 8 and 9 from their extant planning permission is their proposed use for mixed industrial and storage (i.e. B2 and B8 uses).. Similarly, the 5,387sqm new distribution centre would propose a new building within use class B8 also. Policy EMP5 of the CDLP specifies Belmont Industrial Estate as a prestige estate that should contain use class B1 development and restricted B2 development where it has limited impacts upon the surrounding area. The restrictive nature of CDLP Policy EMP5 is at odds with the NPPF and its requirement to promote sustainable economic growth to create jobs and prosperity (Paragraphs 18 – 21). As a result, Policy EMP5 can only be considered partly consistent with the NPPF (Paragraph 215). A more open and less restrictive approach to other types of economic development should be considered.
51. It is noted that there are also similar B2 and B8 uses present on the estate, appearing to have been on site for some years, in close proximity to the application site (e.g. a beer and wine distribution hub). A local bus company, Arriva North East, relocated its workshop and depot facility to a building to the north of the application site around 5 years ago from the city centre. These are examples of where the weight that can be attributed to CDLP Policy EMP5 has been weakened through previous decision taking, and demonstrating further consistency with the economic prosperity as directed by Paragraphs 18-21 of the NPPF.
52. As a result, the proposed development that is located within the boundaries of an industrial estate and which comprises a previously developed site is considered to be appropriately located to satisfy the aims of the NPPF to support sustainable economic growth (Paragraphs 18-21) and which also fulfils the compliant aspects of CDLP Policy EMP5 in regards to principle. Other material considerations still apply and will have to be assessed and will be appropriately weighted in the decision making process.

Design and Visual Impact

53. The application site does not hold any landscape protection designations; however, CDLP Policy EMP5 does promote a high standard of design through adherence to CDLP Policies Q5, Q6 and Q7. Policies Q5 and Q6 require new development that has an impact upon the visual amenity of an area, or edge of settlement to incorporate appropriate landscaping in mitigation. Policy Q7 requires the effective management of siting, layout and external appearance of new industrial development. These Policies are consistent with Paragraph 58 of the NPPF which states that new development should be visually attractive as a result of good architecture and appropriate landscaping.
54. The proposed Blocks, centrally located within the overall LG Philips site, are surrounded by built development to the south and west and are laid out to follow the pre-approved layout. Their scale and general appearance has not altered from a

previous approval and so the landscape impacts previously considered acceptable would continue to be so.

55. The new distribution centre proposed to the north east part of the site is a substantial difference to the previously approved small office block development, and which have been built in other areas of the overall site. The building at 10.75 metres tall sits as tall as the aforementioned Blocks elsewhere on the estate and so is likely to be a visible structure in the wider landscape. The eastern boundary of the estate is flanked by the A1(M) and features a substantial and mature wedge of structure planting that at this point would result in reduced visibility of the new distribution centre from the motorway.
56. Views from the west across the River Wear and wider valley do make it possible to view the built development of the estate from places such as Newton Hall. The prominent building visible is the indoor football venue "Soccerena" located to the south west corner of the estate. The previously approved Blocks on the estate form substantially less intrusive features and so the impact upon the wider landscape is less. With the distribution centre proposal of a similar scale and height it is not considered that the centre would have an undue impact upon the wider area in accordance with CDLP Policies EMP5, Q5 and Q6.
57. Within the estate, the continuity of building materials and a consistent layout would result in a clear perception of each building that would allow logical, easy to follow movement through the estate. The Council's Design and Conservation officer acknowledges the synergy with pre-existing contemporary warehousing in the vicinity and the matching scale, massing and general approach taken and has offered no objections to the proposals. Small elements of landscape planting have been added to the scheme to soften the appearance of the car parking and expanses of hardstanding to the new distribution centre and follow the broad comments of the Landscape Officer to soften the internal views of the new development from within the estate. The proposals are therefore considered to be in line with the requirements of CDLP Policies EMP5 and Q7.
58. Landscape officers have raised concern regarding a lack of landscaping along the boundaries of the proposed distribution centre, considering that the application provides an opportunity to introduce greenery to the estate. Some attempts have been made by the applicant to introduce planting to the northern boundary of the proposed site, however these lack detail. A condition to require details of the proposed landscaping across the application site would be considered appropriate in this instance.
59. Overall, the visual impact of the proposed new distribution centre would be considered to be limited to pre-existing impacts from the built development to date. The strong structure planting to the A1(M) provides both suitable screening and a green back drop for the development to be set against. The layout of the development reads well with viewpoints of key buildings and points of interest. The proposal is therefore considered to accord with the requirements of CDLP Policies EMP5, Q5, Q6 and Q7, and Parts 7 and 10 of the NPPF.

Highway Safety Issues

60. Inclusion of a development of the scale and nature proposed would have an impact upon the highway network in the vicinity of the development. The NPPF requires that all developments generating significant amounts of movement should be supported by a Transport Statement or Transport Assessment. It highlights that development should only be prevented or refused on transport grounds where the residual cumulative

impacts of development are severe. NPPG directs LPAs to make judgements on proposed developments and the impacts associated with large amounts of vehicle movements. CDLP Policy T1 is consistent with the requirements of the NPPF to prevent detrimental impacts upon the highway network. The application is accompanied by Transport Statement and Travel Plan documents.

61. A change from B1 use to mixed industrial and storage uses has been assessed within the submitted Transport Statement. The Highway Authority considers that the trip generation associated with the industrial and storage uses would result in a reduction in peak hour vehicle movements and can be accommodated on the local road network successfully. This conclusion was reached by similar means within submitted the transport statement and is acknowledged by the Highway Authority.
62. By its very nature a distribution centre would be associated with HGV vehicle movements at a greater frequency than most other industrial uses. The position of the centre to the north east of the estate places the building at 1km from Broomside Lane, the main access point. Issues of visibility at junctions within the estate, safe cycle and pedestrian access to the site and the concerns raised by a nearby business regarding the increase in HGV traffic are all considerations.
63. Amended plans indicated that the internal junction north of Wear House via which the HGV vehicles would access the proposed distribution centre would have an enlarged 2.4m x 70m visibility splay to the south in light of the HGV usage. The Highway Authority considers this to be a suitable level of visibility to ensure no conflict in vehicle movements.
64. Similarly, the erection of mixed industrial and storage use buildings across the site would be likely to increase HGV movements throughout the development. The Transport Assessment states that the internal roads within the development site would be increased in width to accommodate increased HGV use. Following the submission of additional plans the Highway Authority is satisfied that the applicant has demonstrated that an HGV can manoeuvre into the various loading bays without encroaching onto footways.
65. The NPPF, in encouraging sustainable modes of transport, promotes cycling as part of new developments. The proposal should therefore look to accommodate parking provision for cyclists and electric vehicles; however no details have been submitted in this regard. A condition to agree this detail would therefore be appropriate in this instance.
66. Concerns raised by a local business on the estate revolve around the increased HGV traffic that would arise from the proposed development. Issues of on-road parking, speed bumps and other potential conflicts on the internal estate road can be resolved with changes to the road through continuation of the parking restrictions and removal / alteration of speed bumps as and where necessary. The Highway Authority has considered that the change from B1 to B2/B8 would reduce vehicle flows overall and while there would be a change to HGV movements these could occur within a wider range of working hours and so have a further reduced impact upon the rest of the estate.
67. A framework Travel Plan has been submitted with the application, this loose focused document has been prepared with limited knowledge of the future occupants of the proposed units. The Highway Authority and Travel Planning Team have both requested that a condition requiring the submission of a final Travel Plan be applied to any planning permission.

68. Overall, the change from B1 office space to mixed B2/B8 and the construction of a large distribution centre would not, it is considered, result in a severe residual cumulative impact upon the highway network as outlined by the NPPF. The change would result in a reduced level of peak flow traffic and there would be sufficient alterations to the internal road layout of the estate to accommodate the likely change in the nature of traffic movement. The proposal is considered to accord with the requirements of CDLP Policies T1, T2 and T20, which are consistent with the NPPF, and Part 4 (Promoting sustainable transport) of the NPPF.

Ecology

69. Paragraph 109 of the NPPF requires LPAs when assessing new development to minimise impacts on biodiversity and provide net gains where possible. CDLP Policy E16 is consistent with the approach of the NPPF and protect against loss of habitat and to provide mitigation against impacts from a development. The application site forms part of an area of Durham Biodiversity Action Plan (DBAP) quality grassland which previously formed part of the mitigation strategy for other phases of the redevelopment of the LG Philips site. This is confirmed by the submitted ecological report, which notes two areas of grassland, a larger area where development is proposed and an embankment to the south of the proposed distribution centre. The larger area would be lost as part of the proposals.
70. Subsequently, the ecology report concludes that mitigation for the larger area of grassland should instead be explored off-site. The Council's Ecology officer is supportive of this approach as the loss of the DBAP grassland can be compensated for and has worked with the applicant to produce a list of items required for the creation of habitat elsewhere. In cost terms, a contribution from the developer of £15,000 would enable the offsite creation of 0.8ha of species rich grassland. It is proposed to be secured by way of a planning obligation under Section 106 of the Town and County Planning Act 1990. The geographical location for where the monies would be spent would be specified within the obligation.
71. The grass embankment to the south of the distribution centre is proposed for retention, with the ecological report highlighting the initiation of a management plan to retain and enhance the biodiversity of the site. The applicant has subsequently submitted the management plan and the Council's Ecology officer considers it sufficient to secure the aims of Paragraph 109 of the NPPF to minimising impacts on biodiversity and providing net gains in biodiversity where possible.
72. The proposed planning obligation is considered necessary to make the development acceptable. It is considered that the three planning tests set out in paragraph 204 of the NPPF and Section 122 of The Community Infrastructure Levy Regulations 2010 are met. These being that matters specified are necessary to make the development acceptable in planning terms, are directly related to the development, and are fairly and reasonably related in scale and kind to the development. The development, proposed to an area of previous mitigation planting for the overall scheme is considered to meet these tests for relevance, siting and scale of the requested obligation.
73. With the contribution to be made for the provision of off-site mitigation and with the management plan in place to retain and enhance the grass embankment on site, the proposal would be considered to accord with the aims of Paragraph 109 of the NPPF.

74. The site is bordered to the north west and east by dual carriageway arterial roads (A690 and A1(M)), with housing fronting on to the A1(M) in Carville across the motorway from the application site (the closest being some 100m from site boundary). To the south Broomside Lane separates the industrial estate from the residential areas of Gilesgate and Gilesgate Moor approximately 700m from the application site.
75. Being located wholly upon an industrial estate, the impacts upon the amenity of neighbouring residential properties is likely to come from secondary impacts associated with the operation of the businesses such as vehicle movements or noise from plant and machinery. Paragraph 123 of the NPPF directs decision-makers to avoid noise from new development that would give rise to significant adverse impacts on health and quality of life, and where possible mitigate and reduce other adverse impacts. NPPG outlines that noise disturbance that causes significant observed adverse effects upon health and quality of life should be avoided by the planning process. The NPPG also offers quantification of the levels of impact and the weight each should be given in the decision making process. CDLP Policy U5 follows the direction of the NPPF by not allowing development that would have an unacceptable adverse impact upon the amenity of nearby and adjoining land and property.
76. The Environment, Health and Consumer Protection officer does not raise any objections to the position of the building and its operation internally to the site. The presence of the A1(M) adjacent, which is considered to be a significant noise source 24hours a day, is likely to cause the greatest disturbance upon residential amenity in the vicinity. The operation of the distribution centre is likely to cause impacts that would sit below the level of disturbance from the motorway; however impacts could still be possible. Unrestricted hours of operation are requested by the applicant. These are not considered to adversely affect the amenity of residents nearby in light of the above. Notwithstanding general business operational impacts, no details of external plant or machinery have been provided for the proposed units. Their inclusion could have the potential to impact residential amenity late at night / early in the morning and therefore a condition requiring the submission of details of any equipment to be installed prior to its installation would be appropriate.
77. The potential for off-site impacts through HGV movements during the late night/early morning hours is noted. Access to the wider road network would be via Broomside Lane, A690 and A1(M). The residential areas to the south of the estate already have some form of noise impact from the existing operation of the estate that include a local bus company depot and a beer and wine distribution hub. The addition of the distribution centre would add to the established vehicle movements resulting in some additional cumulative impact. However, this is unlikely to significantly alter the current noise climate experienced by residents nearby and so is not considered sufficient to warrant refusal of the application.
78. This proposal would add HGV vehicle movements to the road network accessing the site, as acknowledged by the Transport Statement. However, this is against a backdrop of an already established level of HGV and bus movements during the night and early morning hours. As such this proposal would be likely to cause noticeable but not intrusive impacts upon those neighbouring properties, a level not considered to cause undue impact upon residential amenity and so the development is in accordance with CDLP Policy U5, which is consistent with the NPPF, and Paragraph 123 of the NPPF.

79. Paragraph 94 of the NPPF directs decision makers to adopt a proactive strategy to mitigate against climate change, accounting for flood risk and water supply and demand. CDLP Policy U8a follows from the aims of the NPPF by ensuring that development should only be allowed where they include satisfactory arrangements for the disposal of foul and surface water. The site does not lie within an area considered to be at risk of surface water flooding, being positioned outside of flood risk areas as designated by the Environment Agency.
80. The proposed development forms part of the wider re-development. Construction work that has taken place already at the former LG Philips, whereby a previous drainage strategy for connection to the mains sewerage system had been agreed by the Council and Northumbrian Water. This development would be consistent with the approach previously agreed and so is considered to accord with the aims of CLDP Policy U8a, which is consistent with Part 10 of the NPPF.

Other Issues

81. Providing large buildings of this nature has the potential to result in a large carbon footprint through their construction and subsequent operation. Part 10 of the NPPF directs new development to reduce energy consumption and promote on site generation where possible. CDLP Policy U14 builds upon this requirement through encouraging use of energy efficient materials and construction techniques as well as efficient design and on-site renewable energy generation. The submitted Sustainability Report outlines the use of solar photo-voltaic (PV) panels to generate electricity that would have the net result of reducing carbon dioxide output by 10.62%. As such the Sustainability and Climate Change officer is satisfied that the proposed scheme would reduce the carbon energy consumption of the development. This would be considered in line with the aims of CDLP Policy U14, viewed as consistent with the NPPF, and Part 10 of the NPPF and appropriate in this instance.
82. The application site straddles areas of the Coal Authority's defined coal mining "high risk" and "low risk" areas. The Coal Authority object due to a lack of coal mining risk assessment with the application. As a result, a condition requiring the submission of a coal mining risk assessment would be necessary as part of any planning permission.
83. Environment, Health and Consumer Protection officers raise no objections in relation to contaminated land. However, a condition requiring the submission of a validation statement after completion of the development should be imposed on any planning permission.

CONCLUSION

84. The proposed development comprises a mixed industrial and storage use industrial development proposed to land designated as prestige industrial estate. CLDP Policy EMP5 restricts B8 use on the site, and accordingly, the proposals would not be wholly in accordance with Policy EMP5. However, the restrictive nature of the Policy is such that it is not consistent with the economic growth vision outlined in the NPPF, and as such the Policy cannot therefore be afforded significant weight in terms of the principle of the development. The wider industrial estate does include a number of established similar uses, such as wine and beer distribution hub and a local bus company depot. The principle of the proposed B2/B8 development is therefore considered to be acceptable.

85. The proposed buildings are large structures. Nevertheless given their position within an established industrial estate against the back drop of structure tree planting to the A1(M) boundary and other buildings in the estate, with which the general design ethos and palette of materials has been shared, both reduce the visual impact of the development to acceptable levels. Issues of highways, flood risk, residential amenity, legacy coal mining, contaminated land and sustainability have all been assessed and subject to conditions potential impacts can be adequately mitigated.
86. The site hosts DBAP grassland habitat, which should be maintained and enhanced. As a result of the proposed development the grassland would be lost. However, the applicant proposes off-site mitigation to be secured through a planning obligation.
87. The proposal has generated an objection from a neighbouring user of the estate in relation to the proposed access arrangements for the site. Concerns are expressed regarding the single access into the estate, intensification of the access and estate roads. These concerns have been taken into account, and carefully balanced against the scheme's wider social, economic and community benefits. However, they are not considered to raise issues that justify planning permission being withheld.

RECOMMENDATION

That the application be **APPROVED** subject to the completion of a legal agreement pursuant to Section 106 of the Town and Country Planning Act 1990 to secure the following:

- i) £15,000 in lieu of on-site provision of Durham Biodiversity Action Plan grassland habitat.

And 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:

Date	Plan No.	Title
20/06/2016	137 Rev D	Existing Site and Location Plan
Oct 16	648-06-184	Proposed Site Plan
07/10/2016	162 Rev E	Distribution Centre – Site Plan
20/06/2016	164 Rev A	Distribution Centre – Prop Elevations
20/06/2016	155 Rev J	Distribution Centre – Office Floor Plan
20/06/2016	181	Block 1 – Proposed Elevations
20/06/2016	180 Rev A	Block 1 – Proposed Floor Plan
05/09/2016	2040	Block 6 – Proposed Elevations
05/09/2016	2036 Rev D	Block 6 – Proposed Floor Plan
20/06/2016	135 Rev F	Blocks 8 and 9 – Proposed Elevations
20/06/2016	136 Rev G	Blocks 8 and 9 – Proposed Floor Plans
20/06/2016		Ecology Report, Dendra, 19/07/2016

Reason: To define the consent and ensure that a satisfactory form of development is obtained in accordance with Policies EMP5, T1, T2, T20, Q5, Q6, Q7 and U8A of the saved City of Durham Local Plan 2004.

3. Notwithstanding the details shown on the submitted application, the external building materials to be used shall match the existing buildings elsewhere on the development in terms of colour, texture and size.

Reason: In the interests of the appearance of the area and to comply with Policy EMP5 of the City of Durham Local Plan 2004.

4. Prior to the occupation any of the hereby approved buildings a detailed landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority. Once agreed, the proposed development shall be carried out in accordance with the approved plans.

Any submitted scheme must be shown to comply with legislation protecting nesting birds and roosting bats.

The landscape scheme shall include accurate plan based details of the following:

Trees, hedges and shrubs scheduled for retention.

Details of hard and soft landscaping including planting species, sizes, layout, densities, numbers.

Details of planting procedures or specification.

Finished topsoil levels and depths.

Details of temporary topsoil and subsoil storage provision.

Seeded or turf areas, habitat creation areas and details etc. Details of land and surface drainage.

The establishment maintenance regime, including watering, rabbit protection, tree stakes, guards etc.

The local planning authority shall be notified in advance of the start on site date and the completion date of all external works.

Trees, hedges and shrubs shall not be removed without agreement within five years.

Reason: In the interests of the visual amenity of the area and to comply with Policies Q5, Q6 and Q7 of the City of Durham Local Plan 2004.

5. Development shall not take place unless coal mining risk assessment has been submitted to and agreed in writing by the Local Planning Authority. The development shall then be carried out in strict accordance with the approved details.

Reason: To ensure the site is safe and stable to accommodate the proposed development in accordance with Paragraphs 120 and 121 of the NPPF.

6. Within 3 months of the commencement of the development details of the foul and surface water drainage shall be submitted to and agreed in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason: To prevent pollution of the water environment in accordance with Policy U8a of the City of Durham Local Plan 2004 and Part 10 of the NPPF.

7. Within 6 months of the occupation of any of the approved buildings, a final Travel Plan conforming to the National Specification for Workplace Travel Plans, PAS 500:2008 bronze level, shall be submitted to the LPA for approval. Once approved the Travel Plan must be complied with for the lifetime of the development.

Reason: In the interests of reducing the vehicular traffic impact of the development, in accordance with objectives of Policy T1 of the City of Durham Local Plan 2004 and Part 4 of the NPPF.

8. Prior to the occupation of any buildings hereby approved a Phase 4 Verification Report (Validation Report) outlining details of any soil importation on to the site shall be submitted to and agreed in writing with the Local Planning Authority.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risk to workers, neighbours and other offsite receptors in accordance with Part 11 of the NPPF.

9. Prior to the installation of any flues, vents or extracts, details shall be submitted to, and approved in writing by the Local Planning Authority. Thereafter, implementation shall be carried out in accordance with the approved details and all equipment operated and maintained in accordance with the manufacturers' instructions.

Reason: In the interests of visual amenity in accordance with Policy Q7 of the City of Durham Local Plan 2004 and Part 7 of the NPPF.

10. Prior to the occupation of any of the approved buildings, the road widening works as shown on Drawing No. 648-06-184 'Proposed Site Plan' shall be implemented in full.

Reason: In the interests of highway safety in accordance with objectives of Policies T1 and T2 of the City of Durham Local Plan 2004 and Part 4 of the NPPF.

11. Prior to the occupation of any of the approved buildings, details of secure and covered cycle parking shall be submitted to and approved in writing by the local planning authority. Thereafter implementation shall be in accordance with the approved details. The cycle parking shall be retained thereafter in perpetuity.

Reason: In the interests providing sustainable transport choice, in accordance with Policy T20 of the City of Durham Local Plan 2004 and Part 4 of the NPPF.

12. Prior to the occupation of any of the approved buildings, electrical vehicle charging points shall be installed and operational within the site, full details of which shall be agreed in writing with the local planning authority. The charging points shall be retained thereafter in perpetuity.

Reason: In the interests of reducing carbon emissions, in compliance with Part 10 of the NPPF.

13. There shall be no storage in the open of goods, materials, equipment or waste materials.

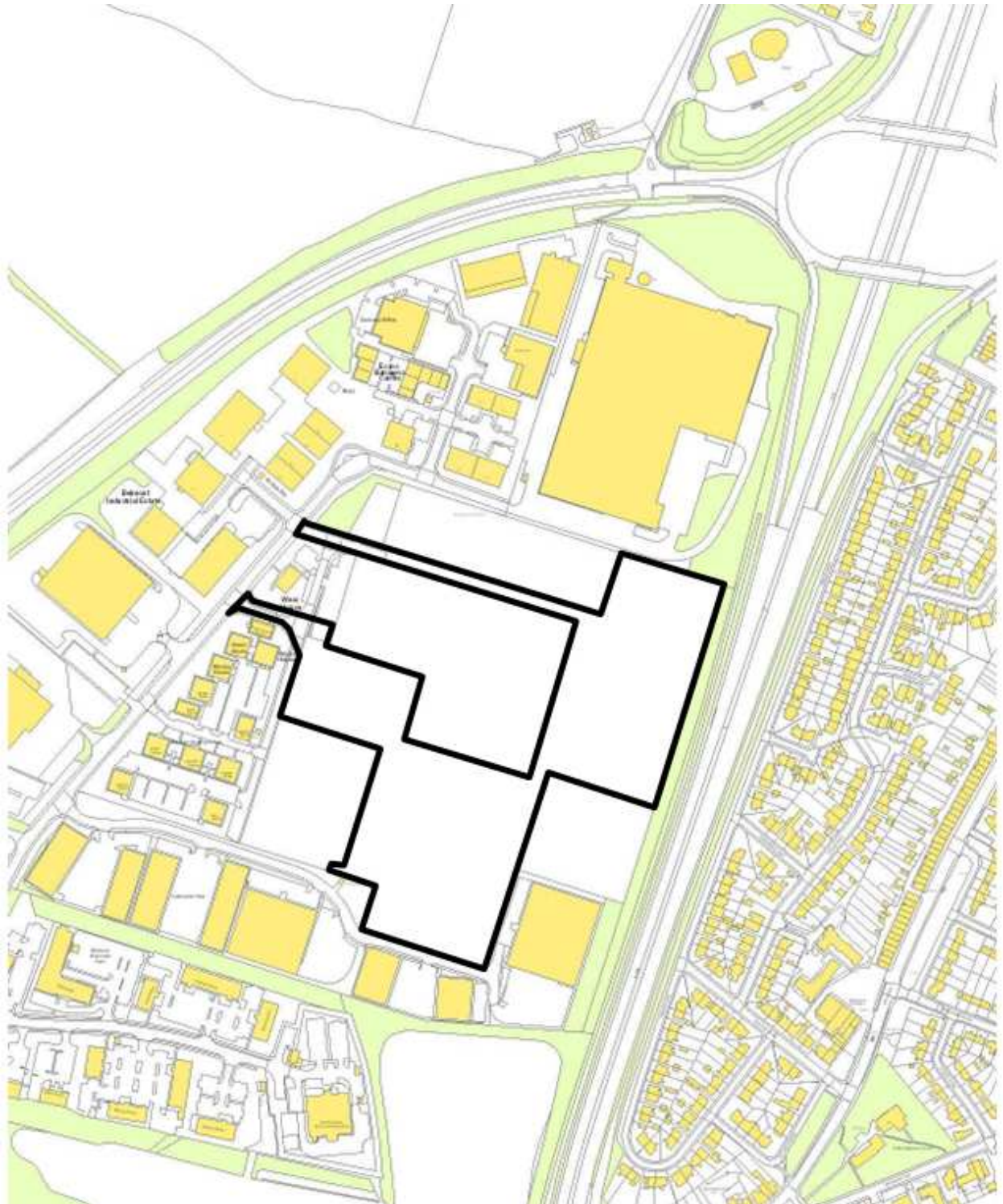
Reason: In the interests of visual amenity in accordance with Policy Q7 of the City of Durham Local Plan 2004 and Part 7 of the NPPF.

STATEMENT OF PROACTIVE ENGAGEMENT

The Local Planning Authority in arriving at its decision to approve the application has, without prejudice to a fair and objective assessment of the proposals, issues raised and representations received, sought to work with the applicant in a positive and proactive manner with the objective of delivering high quality sustainable development to improve the economic, social and environmental conditions of the area in accordance with the NPPF. (Statement in accordance with Article 35(2) (CC) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.)

BACKGROUND PAPERS

- Submitted application form, plans, supporting documents and subsequent information provided by the applicant
- National Planning Policy Framework (2012)
- City of Durham Local Plan (2004).
- Statutory, internal and public consultation responses.



Planning Services

DM/16/02335/FPA

Distribution centre with associated vehicular and pedestrian access, car parking and landscaping, and erection of 4 units (blocks 1, 6, 8 and 9) for B2 and B8 use at Philips Components Ltd, Belmont Industrial Estate, Belmont, Durham.

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Comments

Date October 2016

Scale Not to scale



Planning Services

COMMITTEE REPORT

AGENDA ITEM NUMBER:

APPEALS DETERMINED

Appeal against the refusal of planning permission for Retrospective change of use of land to leisure use including motor sport (sui generis), incorporating ancillary operational development (DM/15/02137/FPA) on land to the South of Quickburn Quarry and Drover House Lane, Satley.

An appeal against the refusal of planning permission for the above was received in June 2016, the application having been refused at the Strategic Committee meeting in October 2015 (the application referred to that Committee on the basis of the size of the application site - this report will also be forwarded to them). The application was refused for the following reasons:

1. *The use will significantly compromise the rural character of countryside tranquillity within the AONB designated landscape, and further be visually obtrusive in the landscape, contrary to relative weight given to Policies EN1, EN5 and EN26 in the saved policies of the Derwentside District Local Plan and the advice in the NPPF.*
2. *The use will generate noise of an adverse impact to a degree likely to compromise the protection of the amenities of neighbouring occupiers and land users, and in particular, those residential properties in Drover House Lane, contrary to the relative weights given to Policies GDP1 and EN26 of the saved policies in the Derwentside District Local Plan taking into account the advice set out in the NPPG.*

The Planning Inspector dismissed the appeal, concurring with the Council that the NPPF gave 'great weight' to conserving the landscape and scenic beauty of the Area of Outstanding Natural Beauty (AONB) – 'I do not see how such statutory requirements, the aims of such advice, or indeed, the compatible 'saved' policies cited above, could possibly be interpreted to condone the construction or reinstatement of a previously unauthorised motocross track in

this location'. Assessed in detail from a number of viewpoints the scheme was concluded, 'unnatural, incongruously intrusive and visually damaging'.

The effects of the proposals in terms of implications of vehicle movements and the use itself, ' would also introduce noticeable activity and noise into an area of relatively remote and tranquil countryside', which 'would further fail to conserve or enhance the natural beauty of this AONB'.

In terms of the 'noise' element of the proposals, the Inspector set out a detailed critique of the applicant's noise assessment and proposals, both finding significant elements of concern and questioning the applicant's ability to enforce their proposed management plan. The effect on local residents was concluded unacceptable.

The Inspector concluded, 'this scheme would undermine the statutory purpose of designating this AONB and impair the rural character of this tranquil moorland landscape. It would also result in activities that would intrude into the peace and quiet that might reasonably be expected by people in the vicinity and by nearby residents. The appeal was dismissed.

Enforcement Officers made immediate contact with the applicant and their agents regarding the reinstatement of the land to its former appearance.

RECOMMENDATION

That the report be noted.

Reports prepared by Steve France (Senior Planning Officer).