

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
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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 undertaking 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 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 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.

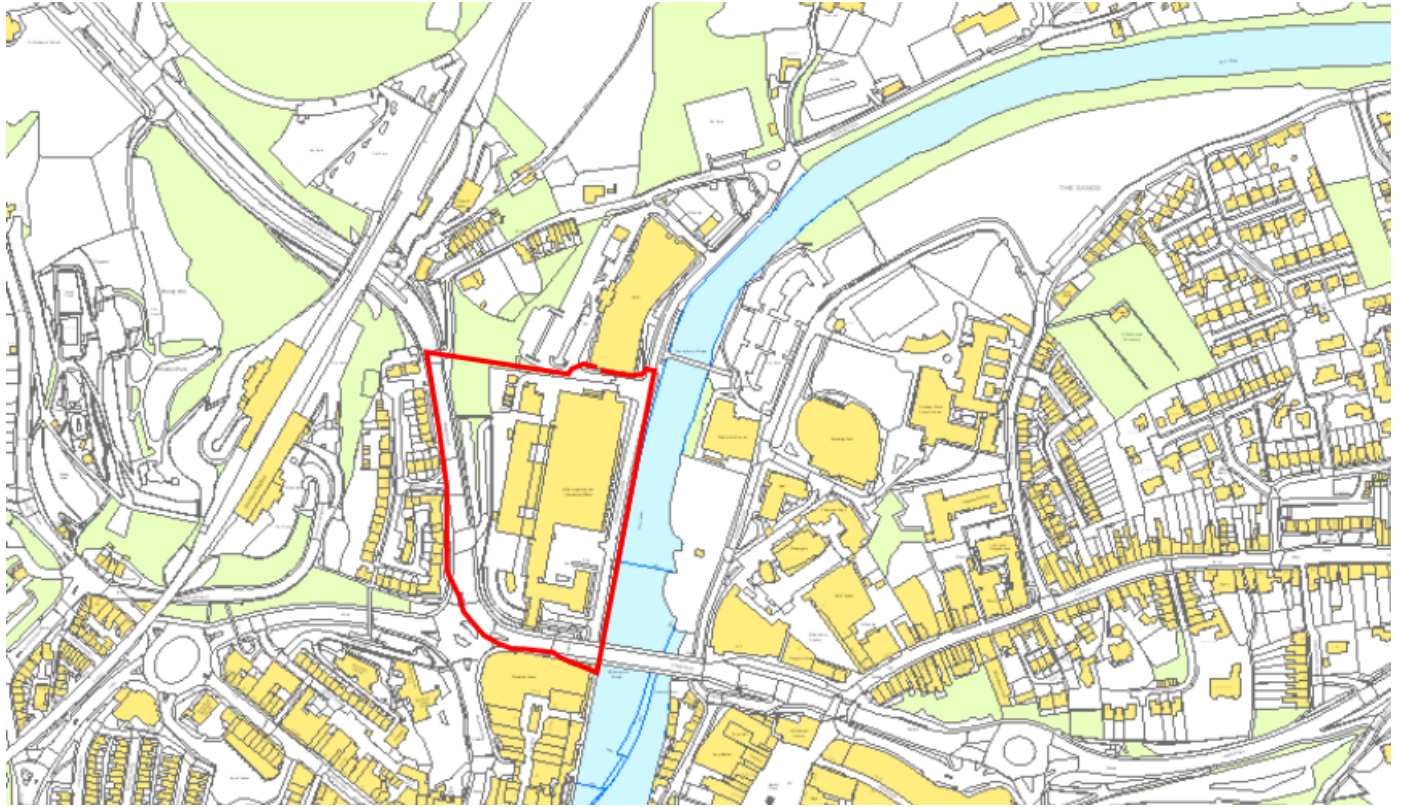
Reason: So that the Local Planning Authority can exercise further control in regards to the impacts of these changes of use.

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