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Planning Services

COMMITTEE REPORT

APPLICATION DETAILS

APPLICATION NO: 09/00478/FPA

FULL APPLICATION DESCRIPTION: Change of use and conversion of offices to form a 9 bedroom house in multiple occupation at 26 The Avenue, Durham, DH1 4ED

NAME OF APPLICANT: Mr. R. Wilson

ELECTORAL DIVISION: Nevilles Cross Durham

CASE OFFICER: Hilary Sperring
hilary.sperring@durham.gov.uk
0191 301 8742

DESCRIPTION OF THE SITE AND PROPOSALS

The application site is no.26 The Avenue, Durham City. The premises are a terraced property including four floors, with basement below, last in use as an office although now vacant. The site includes a rear yard with detached single garage and is sited within the Durham (City Centre) Conservation Area.

The property itself is of red brick with slate roof and includes a dormer window to the front elevation. To the rear, the property has been previously extended during the 1970's. The site lies in an established residential area within the City.

The application, as originally submitted, sought approval for a change of use of the property from offices to form a house in multiple occupation providing 10 bedrooms. This has been amended during the course of the application and a bedroom removed from the proposed ground floor arrangement and replaced with additional living accommodation.

No external alterations are proposed to the property, with the exception of the replacement basement door within the lightwell. Internal modifications to the existing four floors provide the accommodation within. Two bedrooms would be provided within the second floor level along with a shower room, a further three bedrooms at first floor level. Communal kitchen/dining/lounge space is proposed on the ground floor along with a second shower room. The lower ground floor would be include a further four bedrooms and shower area.

PLANNING HISTORY

In 1979 conditional planning permission was granted for an extension to the rear of the property to provide increased office and Committee room space for the Durham Mechanics, National Union of Mineworkers.

PLANNING POLICY

NATIONAL POLICY:

Planning Policy Statement 1: Delivering Sustainable Development sets out the Governments overachieving planning policies on the delivery of sustainable development through the planning System.

Planning Policy Guidance Note 15: This PPG lays out government policies for the identification and protection of historic buildings, conservation areas, and other elements of the historic environment. It explains the role of the planning system in their protection. The frequently close link between controls over 'listed' buildings and conservation areas and development control decisions means that development and conservation generally need to be considered together. Part One of the PPG deals with those aspects of conservation policy which interact most directly with the planning system. These include matters of economic prosperity, visual impact, building alterations, traffic and affect on the character of conservation areas. Part Two addresses the identification and recording of the historic environment including listing procedures, upkeep and repairs and church buildings.

Planning Policy Guidance 13: This PPG's objectives are to integrate planning and transport at the national, regional, strategic and local level and to promote more sustainable transport choices both for carrying people and for moving freight.

It also aims to promote accessibility to jobs, shopping, leisure facilities and services by public transport, walking and cycling and to reduce the need to travel, especially by car.

To deliver these objectives, the guidance says that local planning authorities should actively manage the pattern of urban growth, locate facilities to improve accessibility on foot and cycle, accommodate housing principally within urban areas and recognise that provision for movement by walking, cycling and public transport are important but may be less achievable in some rural areas.

Planning Policy Statement 3 underpins the delivery of the Government's strategic housing policy objectives and our goal to ensure that everyone has the opportunity to live in a decent home, which they can afford in a community where they want to live.

REGIONAL POLICY:

The North East of England Plan - Regional Spatial Strategy to 2021 (RSS) was published in mid-July 2008 in its finalised format, and now carries the full weight of forming part of the development plan for the area, and at a County level, replaces the County Durham Structure Plan. The RSS has a vision to ensure that the North East will be a Region where present and future generations have a high quality of life. It will be a vibrant, self reliant, ambitious

and outward looking Region featuring a dynamic economy, a healthy environment, and a distinctive culture. Central to the RSS is a key principle of delivering sustainable communities. Of particular relevance are the following policies;

Policy 7 (Connectivity and Accessibility) seeks to promote the need to reduce the impact of travel demand particularly by promoting public transport, travel plans, cycling and walking, as well as the need to reduce long distance travel, particularly by private car, by focusing development in urban areas with good access to public transport.

Policy 8 (Protecting and Enhancing the Environment) seeks to promote measures such as high quality design in all development and redevelopment and promoting development that is sympathetic to its surroundings.

Policy 24 (Delivering Sustainable Communities) refers to the need to concentrate the majority of the Region's new development within the defined urban areas, and the need to utilise previously developed land wherever possible.

LOCAL PLAN POLICY:

Policy E22 (Conservation Areas) 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.

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.

Policy T1 (Traffic – General) states that the Council will not grant planning permission for development that would generate traffic likely to be detrimental to highway safety and / or have a significant effect on the amenity of occupiers of neighbouring property

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.

Policy H9 (Multiple Occupation/Student Households) seeks to ensure that buildings in multiple occupancy do not adversely affect the character of the area and do not require significant extensions or alterations having regard to Policy Q9.

Policy H13 (Residential Areas – Impact upon Character and Amenity) states that planning permission will not be granted for new development or changes of use which have a significant adverse effect on the character or appearance of residential areas, or the amenities of residents within them.

Policies Q1 and Q2 (General Principles Designing for People and Accessibility) states that the layout and design of all new development should take into account the requirements of all users.

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.

The above represents a summary of those policies considered most relevant in the Development Plan the full text, criteria, and justifications of each may be accessed at <http://www.cartoplus.co.uk/durham/index.htm>

CONSULTATION AND PUBLICITY RESPONSES

STATUTORY RESPONSES:

The Highway Authority comment that the application has a garage to the rear capable of parking of one car. The Avenue lies within the Durham City Central Parking Zone and as such has parking restrictions which effectively limit parking to residents who have permits. The application site, having one off street parking space would only be entitled to apply for one permit and, due to high demand for space on this street, this would not be guaranteed. No objection is raised to the application subject to approval of details of the size and location of cycle parking facilities.

INTERNAL CONSULTEE RESPONSES:

The Council's Conservation and Design Section comment there is insufficient information to determine the effect on the character of the Conservation Area. There is seemingly little change. The issue of window replacement needs to be excluded or full details submitted in order to assess the affect on the character of the Conservation Area.

The Council's Environmental Health Section comment that the property would need to be licensed if rented to students. No objections are raised, since receipt of amended plans, the proposals give a better arrangement and allow more space for the common area.

Additionally, information has been provided relating to complaints. In the last 5 years 2 complaints have been received about student properties, both regarding rubbish in the rear gardens. In the same period a further 5 complaints were received about properties that are not occupied by students. To the best of their knowledge 22 properties in The Avenue are licensable HMO's under the Housing Act 2004 (ie they are 3 or more storeys occupied by 5 or more people, comprising 2 or more household). There are a further 11 properties in The Avenue which are occupied by students but do not need to be licensed.

The Council's Anti Social Behaviour Officer comments that they have had no issues as a department relating to anti-social behaviour in the area and have not received any complaints over the last 5 years.

PUBLIC RESPONSES:

A letter of representation has been received from the Member of Parliament (MP), who has been contacted by a number of constituents regarding the application. The MP requests that due consideration be given to their views throughout the process as the opinions of local residents have an important part to play. The MP wishes to be kept informed of the progress of the application as a strong proponent of maintaining balanced and sustainable communities.

Requests have been made by both Ward Members for the Nevilles Cross Ward that the application be considered by the full Committee. For the reasons that the internal layout is inadequate for occupancy of 10 unrelated individuals, with over restricted communal space and only two shower rooms. Change of use to a HMO will further undermine the balance of the local community and amenity of other residents. Despite being in a controlled parking area restricting the number of vehicles in the house to two, experience shows attempts to bring in more, will put pressure on unregulated back lanes.

The City of Durham Trust I object to the application. They comment that it is unfortunate that another property is to be converted into a student dwelling. If relevant policies were on the statute book then an HMO proposing to hold no fewer than 10 persons in this quarter would surely be questionable. What is objectionable is the provision of only two shower rooms. Three are mentioned in the design and access statement but only two shown on plan. A query must be raised that a single room constitutes the kitchen, dining room and lounge for the ten bedrooms.

The Crossgate Community Partnership object on the grounds of lack of facilities inside and outside for 10 occupants. The proposals will further destroy social cohesion in the City. Substantial problems of noise, damage, litter and rubbish already exist and will be exacerbated. The proposals will also lead to increased parking pressures. The application is considered another poor quality conversion of a potential family house into a student hostel. A request is made that the application be considered by Committee.

Responses received following the initial public consultation exercise are summarized below. At the time of writing 16 no. letters of objection have been received.

Objections relate to: Proposed lack of facilities provided within the application property resulting in extreme overcrowding and provision of a minimum level for ten people. Only three shower rooms provided and no baths, along with cramped communal areas. Representations also express concern that other similar sized properties in the street, house 5 or 6 people not 10.

This is not a conversion of a standard one would expect in a Conservation Area. The proposals would be detrimental to the appearance of the Conservation Area. The area is within the Durham City Centre Conservation Area and is also covered by an article 4 Direction, such proposals and existing student properties make these designations a sham.

Balanced and Sustainable Communities. The change of use would adversely affect the balance of housing provision within the area. The city is already awash with empty student properties. Many properties within The Avenue are already HMO's and further change will result in the further loss of family homes and residents, which are much needed. Student population out numbers families. Studentification of the area has lead to the destruction of community with no mixed housing. The proposals are contrary to Central Government policy, PPS3 and local policy. Such examples are already seen in Hawthorn Terrace and May Street. Such properties are also left vacant for long periods throughout the year as is already the case in The Avenue. There are already surplus students properties in the area.

Further loss of amenity through increases to existing problems of noise, rubbish, fly tipping, rats, vandalism and disturbance. Deterioration of a once peaceful environment. Proliferation of 'to let' boards within a small area. Services are already stretched and facilities too small to cater for amounts of waste from 5 bed houses. Poor maintenance, repair of properties and overgrown gardens.

Granting of the proposals would be another example of the low aspirations of the region.

Increased traffic and parking pressures, especially outside controlled periods. During term time this is already a serious hazard.

Reference is also made to articles produced by the Vice Chancellor of the University opposing further conversions without people listening to the universities plans for student numbers and their potential market.

APPLICANTS STATEMENT:

The applicant has submitted a statement in support of his proposals in which he outlines the following:

The proposed change of use from offices into an H.M.O. for student accommodation is in an area with a mix of private residents and a number of H.M.O. properties already in operation. We are being open and honest about our proposals and it is our intention to accommodate 9 no. residents within this property. A precedent that has already been set elsewhere in the Avenue.

The property has already stood empty for approximately 2-3 years which itself has a detrimental effect on the neighbourhood. The proposal would not have a major impact on the street in terms of car parking issues as the property has the benefit of a private garage to the rear. Also the central location alleviates the necessity of cars being required to reside here. We understand the County Council Highways Engineer has no problem with the scheme and the minimum distribution of parking permits would apply to this property as normal.

It is a large property which could possibly accommodate more people however we have gone over and above the standard criteria for an H.M.O. in terms of living space, sanitary accommodation etc. and we understand the Environmental Health officer has no problem with the scheme.

Bin storage and cycle racks will be located to the rear of the property and could be accommodated internally if necessary. Alterations to the external appearance of the building will not be necessary and internal alterations are minimal therefore no disruptions/disturbance from builders work will arise.

As stated before the property has been empty for some time and could be for the foreseeable future due to the current climate of the property market. We feel our proposal is beneficial not detrimental to the area and poses no real problems in terms of planning issues or policy.

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://82.113.161.89/WAM/showCaseFile.do?action=show&appType=planning&appNumber=09/00478/FPA>

PLANNING CONSIDERATIONS AND ASSESSMENT

The main issues in line Policies H13, E6, E22, T1, T10, Q1 and Q2 and Q8 of the City of Durham Local Plan concern the range and variety of housing stock, impact of the development upon the existing residential amenity enjoyed by the occupiers of nearby properties, impact upon traffic and highway safety, the impact of the proposals upon the Durham (City Centre) Conservation Area and the layout and level of provision and

requirements of the users within.

At this point it is worth noting the application site has an established use as offices. The proposals would not therefore result in a loss of an existing dwelling house within the area. (Policy H9 relates to changes of use from dwelling houses to HMO's but as the existing premise is in office use it is not considered that this policy can be applied.)

RANGE AND VARIETY OF HOUSING STOCK

The concentration of student occupancy of dwellings on The Avenue and nearby streets is a concern raised by many residents of the area who are not students. Many raise issues relating to the existing numbers of Houses in Multiple Occupation already in the street. In addition to concerns that the proposed change of use will adversely affect the range and balance of housing provision within the area.

Firstly, it is important to consider the differences, between definitions relating to Houses in Multiple Occupation (HMO) as defined both by the Housing Act 2004 and within Planning legislation, which are two entirely separate pieces of legislation.

Under the 2004 Housing Act HMO's can simply be defined as premises having 3 or more storeys occupied by 5 or more people, comprising 2 or more households. In planning terms the definition is more complex.

The key principle which defines the extent to which the Local Planning Authority can attempt to control student properties is whether or not they can be considered to be Houses in Multiple Occupation. To determine this we must turn to the Use Classes Order and case law as established by the courts and Inspectors acting on behalf of the Secretary of State.

Within the Use Classes Order, Class C3 (Dwelling Houses) include use as a dwelling house (whether or not as a sole or main residence), by either a single person or by people living together as a family, or by not more than 6 residents living together as a single household (including a household where care is provided for residents).

The question with regards to student accommodation is whether the property is being occupied as a single household or not. Case law on previous cases of this nature suggests that if a house occupied by students is organised in such a way as to indicate that it is in multiple occupation, then planning permission is required as a material change of use. However, if students are living in a house on a communal basis and share costs and facilities it then has to be shown that a material change of use from a conventional dwelling house has occurred. In one case, (Sheffield CC v Barnes 1995) an Inspector identified 9 no. key indicators as to whether the building was being occupied as a single household or as a house in multiple occupation. These included; the origin of the tenancy; the extent to which facilities were shared, whether occupants were responsible for the whole house or just their rooms; the extent to which residents could lock their doors; the responsibility for filling vacancies; the allocation of rooms; the size of the establishment; the stability of the group and the mode of living.

Considerable weight is also often given to the reference within Class C3 to a "limit" of six residents. However, even if seven students were to occupy a dwelling it would not necessarily follow that a change of use had occurred. Class C3 indicates that occupation of a dwelling house previously occupied by a single family, by those living as a single household up to six members in total, conclusively does not require planning permission by

reason of being within the same Class. However, it does not state that occupation of a dwelling house by individuals living as single household totalling more than six persons is a material change of use from a lower head count. This instead is a matter of fact and degree as outlined above. It has previously been the opinion of various Inspectors that in many cases the occupation of a property by seven or even eight students would not be materially different than a property of six students.

In a recent appeal decision relating to 33 Whinney Hill the Inspector commented that any dwelling can be let to students, if the occupation of the dwelling falls within Class C3 of the Town and Country Planning (Use Classes) Order 1987 which has not been amended by Circular 03/2005, without the need to obtain planning permission. Furthermore, dwellings extended under permitted development rights or with planning permission can be let out to students if that type of occupation falls within Class C3.

Objectors have raised the issue of the existing numbers of HMO's within the street. During the consideration of the current proposals details have been requested relating to numbers of registered HMO's within The Avenue. The Environmental Health Section has advised that there are 22 properties in The Avenue which are licensable HMO's under the Housing Act 2004. There are a further 11 properties in The Avenue which are occupied by students but do not need to be licensed. These figures however relate to properties considered as HMO's under the terms of the Housing Act 2004 and not the planning system.

Under planning legislation 53, The Avenue, is a HMO and has an established use as such. Other properties are and have been sub divided into flats. In planning terms however, in the case of many of the other remaining properties within The Avenue it would appear that they have been let to students or other individuals without requiring any planning permission or a change of use to a HMO. Indeed, officers consider that many of the existing properties could be occupied by a single family rather than be rented out to other individuals or up to six students without the need for any alteration, if market demand dictated.

The current proposals would result in the change of use of existing office accommodation to a HMO however, given the existing variety, type and range of housing within The Avenue it is not considered that the proposals will result in a concentration of sub divided dwellings to the detriment of the range and variety of local housing stock. The proposals are considered to thus be in line with central Government guidance relating to the mix and type of housing provided.

In respect of the student population on the locality the Council recognises the importance of balanced and sustainable communities and these are matters that are the subject of monitoring, review and action by the Authority. Strategies are in place to work with stakeholders to make appropriate responses to local housing needs, the quality of life and the quality of the environment.

RESIDENTIAL AMENITY

Policy H13 states that planning permission will not be granted for new development or changes of use which have a significant adverse effect on the character and appearance of residential areas, or the amenities of residents within them.

It must be considered that as the property has an established office use there is a level of associated comings and goings and vehicle movements which could occur in connection with such a use. The proposals would result in a change of use to HMO with 9 bedrooms. An

important issue for consideration of the current proposals are the potential impacts of 9 individuals in one premises in terms of possible noise, associated comings and goings and also in terms of the possible pressures and demands on services and refuse. Many representations have been submitted expressing concern over problems of loss of amenity through increases to existing problems of noise, rubbish, fly tipping, rats, vandalism and disturbance etc.

It is considered that the possible additional affects of noise intrusion and associated comings and goings, can not in itself be specified to such a degree that could sustain a refusal. Policy H13 requires the adverse effect on the amenities of residents to be 'significant' and the proposed change of use alone is considered to not result in such demonstrable harm as to result in a significant adverse effect on the amenities of nearby and adjacent residents within.

TRAFFIC

Turning next to the concerns over the level of parking provision at this property. The proposals would be occupied by students and it is acknowledged that this may have implications of particular periods of heavy demand at certain times of the year. The application site is located within an area of restricted parking.

PPG13 is quite clear in stating that Local Planning Authorities should encourage sustainable methods of transport wherever possible and that it is reasonable therefore, in sustainable locations, to require a reduced level of parking provision. The Avenue is located within a short walk to the City Centre, within 1 mile of Durham Rail Station which is served by regular national rail services and also within 1 mile of Durham Bus Station providing a variety of bus services. The property is hence considered to be in a sustainable location and in accordance with national planning guidance the provision of a single parking space and the potential to apply for a further one parking permit (although not guaranteed) is considered appropriate in this instance. Furthermore the County Highway Authority has been consulted on the application and no objection is raised subject to approval of details of the size and location of cycle facilities.

DESIGN AND IMPACT UPON CONSERVATION AREA

The application site is not within an area covered by an Article 4 (2) Direction as stated in some letters of objection but does however lie within the Durham (City Centre) Conservation Area. Objections have been raised which relate to the impact of the proposals upon the Conservation Area.

The proposals only include external alterations involving the replacement of an existing basement door within the front lightwell. No other external alterations are proposed and this has been confirmed by the agent. The proposals are therefore considered to not have an adverse effect on, and therefore preserve, the character and appearance of the Durham (City Centre) Conservation Area. Despite objection there is not considered to be any conflict with Policies E6 and E22 of the City of Durham Local Plan 2004.

PROVISION OF FACILITIES WITHIN THE BUILDING

Many representations raise issues relating to the number of individuals proposed to be accommodated within this one building, lack of space and facilities. Comparisons are also made with other similar sized properties within The Avenue and lower levels of occupancy within.

As a point of clarification the proposals include three shower rooms, and not two as has been stated by some objectors. During the course of the application the proposals have been amended in line with comments from the Environmental Health Section and a bedroom on the proposed ground floor removed. This space has been utilised as a lounge thereby resulting in the ground floor, in the main, used to provide communal areas. The provision of additional communal living space on the proposed ground floor level coupled with a reduction of the proposed occupancy of the property to 9 individuals is considered satisfactory, a view endorsed by Environmental Health Officers, in line with their legislation. It is also considered that sufficient amenity space would be available for the number of occupants that may potentially occupy the property.

It is therefore considered that the proposals provide adequate facilities within the property and also an adequate level of outdoor amenity space for future occupants of the property and the proposals are considered acceptable in this respect in accord with Policies Q1, Q2 and Q8 of the Local Plan.

CONCLUSION

The principle issues relating to the application are considered to be the range and variety of housing stock, impact of the development upon the existing residential amenity enjoyed by the occupiers of nearby properties, impacts upon highway safety and parking, potential impacts upon the character and appearance of the Durham (City Centre) Conservation Area and levels of provision and requirements of users.

The proposals are considered to not result in a concentration of sub divided dwellings, to the detriment of the range and variety of housing stock. The proposals are also considered to not significantly harm the amenities of nearby residents or to the amenities of the area. Nor are they considered to adversely affect the character and appearance of the Durham (City Centre) Conservation Area. It is considered that the proposals will not result in an unacceptable increase in demand for on street parking in The Avenue. The proposals are considered to take into account the requirements of future users and are thus considered to accord with Policies H13, E6, E22, T1, T10 and Q1 and Q2 and Q8 of the City of Durham Local Plan 2004.

Accordingly Officers are able to recommend the application for approval subject to conditions.

RECOMMENDATION

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

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

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2. The development hereby approved shall be carried out only in accordance with the approved plans, specifications and conditions hereby imposed.
 3. Before the development is commenced precise details of the proposed cycle rack provision is to be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be implemented in accordance with the agreed details.
 4. No further subdivision of the accommodation approved, or use of rooms not demarked as bedrooms on the plans for such shall be implemented without the grant of further express consent by the Local Planning Authority.
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REASONS FOR THE DECISION

1. The principle of the proposed development together with the impacts upon the range and variety of housing stock, impact of the development upon the existing residential amenity enjoyed by the occupiers of nearby properties, impacts upon highway safety and parking, potential impacts upon the character and appearance of the Durham City Centre Conservation Area and levels of provision and requirements of users are judged acceptable, having regard to Policies H13, E6, E22, T1, T10, Q1 and Q2 and Q8 of the City of Durham Local Plan 2004 (which is a saved plan in accordance with the Secretary of States Direction under paragraph 1 (3) of Schedule 8 to the Planning and Compulsory Purchase Act 2004), and Policy 8 of the North East of England Plan - Regional Spatial Strategy to 2021.
 2. In particular the development was considered acceptable having regard to consideration of issues of range and variety of housing stock, residential amenity, highways safety and parking, impact upon the character and appearance of the Conservation Area, layout and requirements of the users within.
 3. Grounds of objection relating to the proposals were not considered to be sufficient to lead to reasons to refuse the application, in view of the developments accordance with relevant development plan policies combined with appropriate planning conditions
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BACKGROUND PAPERS

Submitted Application Forms and Plans

Design and Access Statement

North East of England Plan Regional Spatial Strategy to 2021 (RSS) July 2008

City of Durham Local Plan 2004

Planning Policy Statements / Guidance, PPS1, PPS3, PPG 13, PPG15,

Circular 01/06: Guidance on Changes to changes to the Development Control system

Circular 11/95: Use of Conditions in Planning Permission

Responses from County Highways, Heritage and Design, Environmental Health Division and others County Council Consultees

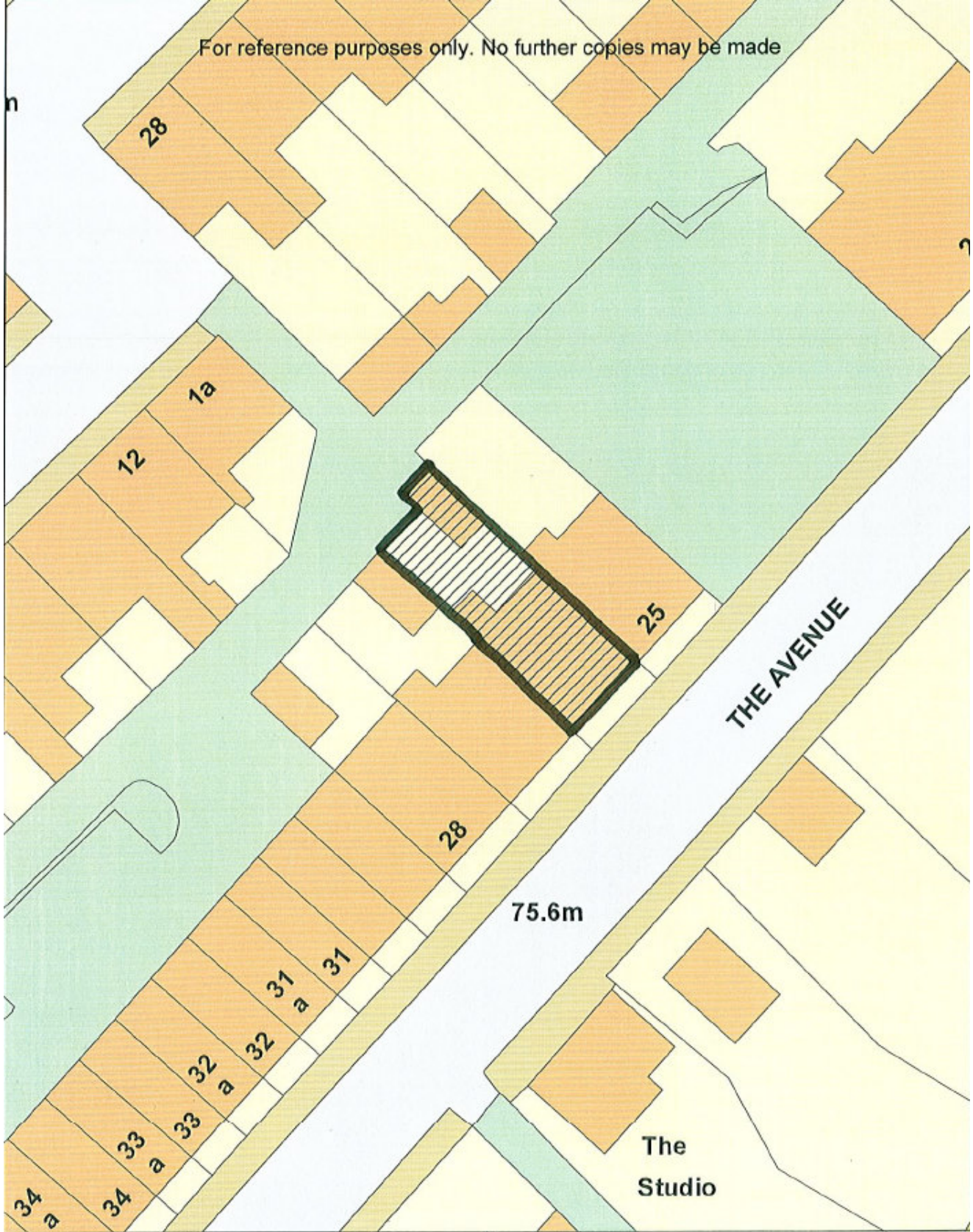
Response from MP and Ward Councillors

Response from City of Durham Trust and Crossgate Community Partnership

Various File notes and correspondence

Public Consultation Responses

For reference purposes only. No further copies may be made



Planning Services

4/09/00478/FPA - 26 The Avenue, Durham

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Comments	
Date	27 August 2009
Scale	1:352

Planning Services

COMMITTEE REPORT

APPLICATION DETAILS

APPLICATION No: 4/09/00131/FPA

FULL APPLICATION DESCRIPTION: Erection of two and a half storey detached dwelling house with basement and attached double garage on land at Low Station Road, Leamside, Durham

NAME OF APPLICANT: Mr A Condren

ELECTORAL DIVISION: Sherburn

CASE OFFICER: Steve France
Steve.france@durham.gov.uk
(0191) 301 8711

DESCRIPTION OF THE SITE AND PROPOSALS

This application proposes the erection of a single detached dwelling house, sited in the embankment of the road-bridge immediately west of the Leamside railway line. The site is at the head of a cul-de-sac, beneath the bridge, adjacent the railway line.

The site had been an overgrown embankment featuring self seeded trees, scrub, and the basic remains of line-side structures. The applicant has however prejudged the outcome of his application and removed the majority of the embankment, cleared flora and introduced a series of high retaining walls, with significant excavation work and structures introduced. With the exception of the roadside hedge, all flora has been removed from the site.

The cul-de-sac and nearby part of Leamside is an aesthetically disjointed mix of building styles, scales, types and materials, with no one dominant character. The site is screened to large degree from the general public domain by the site's levels, orientation and position.

The application proposes erection of a large detached dwelling house with integral garage, surrounded by terraced curtilage.

PLANNING HISTORY

The site benefits from a previous planning permission for a detached residential dwelling, approved in 2005 with a five year consent. The approved structure was a contemporary split level dwelling, with the two storeys of internal accommodation partially integrated into the roof-space, built into the slope. With elements of the site terraced for gardens. That scheme has not been implemented to any degree.

PLANNING POLICY

NATIONAL POLICY:

Planning Policy Statement 1, Delivering Sustainable Development: sets out the Government's overarching planning policies on the delivery of sustainable development through the planning system. This PPS replaces Planning Policy Guidance Note 1, General Policies and Principles, published in February 1997.

Planning Policy Statement 3, Housing: underpins the delivery of the Government's strategic housing policy objectives and our goal of ensuring that everyone has the opportunity to live in a decent home, which they can afford in a community where they want to live.

Planning Policy Statement 7 Sustainable Development in Rural Areas: It sets out the Government's planning policies for rural areas, which local authorities should have regard to when preparing local development documents, and when taking planning decisions.

Planning Policy Guidance 13, Transport: This PPG's objectives are to integrate planning and transport at the national, regional, strategic and local level and to promote more sustainable transport choices both for carrying people and for moving freight. It also aims to promote accessibility to jobs, shopping, leisure facilities and services by public transport, walking and cycling and to reduce the need to travel, especially by car. To deliver these objectives, the guidance says that local planning authorities should actively manage the pattern of urban growth, locate facilities to improve accessibility on foot and cycle, accommodate housing principally within urban areas and recognise that provision for movement by walking, cycling and public transport are important but may be less achievable in some rural areas.

Planning Policy Guidance 14, Development on Unstable Land: This PPG explains briefly the effects of land instability on development and land use. The responsibilities of the various parties to development are considered and the need for instability to be taken into account in the planning process is emphasised. Methods of doing this through development plans and development control are outlined. The role of expert advice is highlighted and various causes of instability are explained and sources of information are given. Separately published Annexes on Landslides and planning and Subsidence and planning develop this advice with specific reference to those areas and include background information and good practice guidance on identification and assessment of these problems and how they are can be dealt within the planning system

REGIONAL POLICY:

The North East of England Plan - Regional Spatial Strategy to 2021 (RSS) July 2008, sets out the broad spatial development strategy for the North East region for the period of 2004 to 2021. The RSS sets out the region's housing provision and the priorities in economic development, retail growth, transport investment, the environment, minerals and waste treatment and disposal. Some policies have an end date of 2021 but the overall vision, strategy, and general policies will guide development over a longer timescale.

This document reinforces national guidance in respect of the re-use of previously developed land and buildings, requiring Local Authorities to achieve 60% of new housing on 'brownfield' sites by 2008. Policies are also included to ensure incorporation of alternative energy production methods to reduce carbon emissions. Of particular relevance are the following policies:

Policy 4 (The Sequential Approach to Development) provides that a sequential approach to the identification of land for development should be adopted to give priority to previously developed land and buildings in the most sustainable locations.

Policy 7 (Connectivity and Accessibility) seeks to promote the need to reduce the impact of travel demand particularly by promoting public transport, travel plans, cycling and walking, as well as the need to reduce long distance travel, particularly by private car, by focusing development in urban areas with good access to public transport.

Policy 8 (Protecting and Enhancing the Environment) seeks to promote measures such as high quality design in all development and redevelopment and promoting development that is sympathetic to its surroundings.

Policy 24 (Delivering Sustainable Communities) refers to the need to concentrate the majority of the Region's new development within the defined urban areas, and the need to utilise previously developed land wherever possible.

LOCAL PLAN POLICY:

Policy E5a (Open Spaces within Settlement Boundaries) does not permit proposals which would detract from the functional, visual and environmental attributes they possess will not be permitted.

Policy E14 (Trees and Hedgerows) sets out the Council's requirements for considering proposals which would affect trees and hedgerows. Development proposals will be required to retain areas of woodland, important groups of trees, copses and individual trees and hedgerows wherever possible and to replace trees and hedgerows of value which are lost. Full tree surveys are required to accompany applications when development may affect trees inside or outside the application site.

Policy E15 (Provision of New Trees and Hedgerows) states that the Council will encourage tree and hedgerow planting.

Policy E16 (Protection and Promotion of Nature Conservation) is aimed at protecting and enhancing the nature conservation assets of the district. Development proposals outside specifically protected sites will be required to identify any significant nature conservation interests that may exist on or adjacent to the site by submitting surveys of wildlife habitats,

protected species and features of ecological, geological and geomorphological interest. Unacceptable harm to nature conservation interests will be avoided, and mitigation measures to minimise adverse impacts upon nature conservation interests should be identified.

Policy H3 (New Housing Development in the Villages) addresses the Council's approach to new housing development in the villages, Leamside being defined as part of West Rainton, and therefore identified as a 'larger' village. New housing development in addition to that formally identified in the Local Plan comprising previously developed land will be permitted, providing it is appropriate in scale, design, location, and number of units, with such site likely to be limited in number in smaller villages. The area proposed to be developed must not possess important functional, visual or environmental attributes which contribute to the settlement's character.

Policy H13 (Residential Areas – Impact upon Character and Amenity) states that planning permission will not be granted for new development or changes of use which have a significant adverse effect on the character or appearance of residential areas, or the amenities of residents within them.

Policy T1 (Traffic – General) states that the Council will not grant planning permission for development that would generate traffic likely to be detrimental to highway safety and / or have a significant effect on the amenity of occupiers of neighbouring property.

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.

Policies Q1 and Q2 (General Principles Designing for People and Accessibility) states that the layout and design of all new development should take into account the requirements of all users.

Policy Q5 (Landscaping General Provision) sets out that any development which has an impact on the visual amenity of an area will be required to incorporate a high standard of landscaping.

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

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.

Policy U13 (Development on Unstable Land) will only be permitted if it is proved there is no risk to the development or its intended occupiers, or users from such instability, or that satisfactory remedial measures can be undertaken.

The above represents a summary of those policies considered most relevant in the Development Plan the full text, criteria, and justifications of each may be accessed at [\(link to webpage\)](#)

CONSULTATION AND PUBLICITY RESPONSES

STATUTORY RESPONSES:

There are two dimensions to the Highway Authority response to this application. The first is the usual assessment of the impact of the development proposals parking requirements and on the capacity and safety of the existing road network. In this instance the stability of the adjacent highway must also be considered in relation to the applicant's unauthorised excavation of the road/bridge embankment. Highways Engineers note that consideration of the application has not been helped by the applicant proceeding with work which has caused a risk to the stability of the adjacent highway. The applicant has constructed a retaining wall which has now been inspected and found to be adequate for the retention of the highway. No details have yet been provided for the fence at the top of the embankment adjacent the road, which has an obvious safety role. Part of the proposed development will include block paving part of the existing carriageway of Low Station Road to form part of the driveway of the new dwelling, requiring a stopping up order under Section 247 of the Town & Country Planning Act 1990. Whilst the Highway Authority has no objection to this stopping up, the potential for other landowners to object is noted. No objection to the scheme is offered by Highways Officers.

Northumbrian Water raise no objection subject to two conditions designed to divert its apparatus around the site, and accommodate the disposal of surface water from the development.

INTERNAL CONSULTEE RESPONSES:

None

PUBLIC RESPONSES:

West Rainton Parish Council offer strong objection to the scheme, criticising its size, its retrospective nature, and raising concerns on the proximity to the road and railway line, and potential to compromise the future of the branch line.

Two representations have been received from local residents, both in support of the application, each noting the benefit of clearing the site which has been a focal point for tipping and anti-social behaviour. The development is considered to compliment the area and be likely to add value to properties.

APPLICANT STATEMENT:

The applicant considers he has responded to pre-submission discussions with officers and designed a dwelling that meets his aspiration for a large family home that includes traditional materials and detailing. He accepts maintenance liability for the retaining structure as it relates to the public vehicular highway above the site. He notes the approved property has a larger footprint than that proposed. He has been in touch with Railtrack regarding the siting of his dwelling +15m from the disused track and it would not be detrimental to them. He notes frustration with the pre-submission process, and points out he has tried to work with the Council to achieve an acceptable scheme.

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 ([link to webpage](#))

PLANNING CONSIDERATIONS AND ASSESSMENT

This application considers erection of a particularly large detached dwelling at the head of a cul-de-sac truncated by the dormant Leamside railway branch-line. The dwelling is to be cut into the embankment of the road-bridge that crosses the railway line. The site faces south across the now redundant group of farm out-buildings of Low Leamside Farm to the farmland beyond, which is designated 'Green-Belt'. The site is inside the settlement boundary, and is subject to a previous planning permission. The main policies pertinent to the consideration of the application are Q8 (Layout and Design, New Residential Dwellings), and H3 (New Housing Development in the Villages). Additional relevant Policies relate to vehicular highways issues (Policies T1 and T10), land stability (Policy U13), and flora and fauna (Policies E14, E15 and E16).

The excavation and remodeling of the site is extensive and dramatic. Effectively the applicant has pre-judged any survey and conditions the Council may have imposed regarding retention of flora, site investigation and working methods on the potentially unstable land, on a site with critical stability issues for the adjacent public highway, by commencing works before consideration of the application.

Site visits from Highway Engineers have ascertained that the works, and the applicants willingness to accept liability for the retaining structures and slope are acceptable, officers being prepared to accept that this meets the requirements of Policy U13 (Development on Unstable Land), and the advice set out in PPG14 (Development on Unstable Land). Whilst there were a number of trees removed from the site, it is noted that these were not of a quality where they were subject to formal protection by Tree Preservation Order, and their protection was not proposed on the previous planning approval. The trees on the eastern slope of the site had self-seeded into the basic ruins of the railway line-side buildings making retention into a residential development site highly difficult. A condition is suggested attached to any approval to ensure that in association with required safety fencing along the main road-side boundary, a strong belt of screen planting – extending that maturing on the adjacent property, to both screen the proposed property and mitigate any habitat loss there has been from removal of the scrub/trees from the site. There has been no suggestion of protected species present on the site (Policy E16). The replanting condition that would be attached to any approval will satisfy the requirements of Policies E14/E15.

As noted in the introduction to this report the settlement of Leamside is a loose association of residential buildings with an eclectic range of styles, character, scale and materials, traditional and modern. Both Policies H3 and Q8 require new development to be appropriate in scale, design and materials. The applicant seeks to use traditional building materials, and detailing that perhaps hints at railway architecture, given the presence of the adjacent line. The proposed structure is undoubtedly large, and its roof structure and upper rear elevation will be visible from the main public roadway on the embankment. This can be mitigated to a degree by trees and fencing – which must incorporate highway safety barriers, and the screen planting referred to above. In terms of massing, the proposed dwelling could be argued to have a scale that is read with both the existing large dwelling to the east of the railway line, and the development of 14 apartments, approved but unimplemented on the same site at the Coal Merchants yard of T Hardy at West Rainton. Effectively officers are prepared to accept, on a site with a limited public aspect, in a loose settlement of indeterminate scale and character, that a proposed dwelling, that reflects the taste of the applicant rather than any local vernacular, could be considered appropriate and without detriment or harm to the surroundings. The embankment itself has already been developed

by modern dwellings, albeit of smaller scale, establishing a precedent for the urban form. The proposals can therefore be argued to meet this aspect of the requirements of Policy Q8.

The dwelling faces across the cul-de-sac head to the farm buildings of Low Leamside, with no implications to residential privacy or amenity for existing or proposed residents. Officers had requested amendment to the upper terrace of garden which gave slight potential for overlooking from the garden into the driveway / patio doors of the residential dwelling adjacent to the west, and this has been accommodated.

The land could have been interpreted as open space from a plan assessment, but a site visit before the unauthorized works would have confirmed, as evidenced by the photographs in the submitted 'design and access statement', the site was obstructed by dense scrub and a steep slope. It would have been difficult therefore to assess the land as an 'open space' which 'possess(es) important functional, visual or environmental attributes, which contribute to the settlement's character or to the small scale character of an area', as protected by Policy E5a (Open Spaces within Settlement Boundaries). It is noted from correspondence from neighbours that the site has been seen as attractive to fly-tippers and other forms of anti-social behaviour, and therefore a negative feature, rather than one that possesses visual or natural value.

The applicant is planning to stop-up the head of the cul-de-sac for use as private drive. This forms part of the planning application and will also be part of a separate formal procedure under the Highway Legislation. Highways Engineers raise no objection to the proposal through the planning application, but note the potential for third parties to object through this second 'stopping up' procedure. In relation to the implications of the scheme to the public highway of the cul-de-sac, and the level and layout of parking provision, the scheme is considered to meet the requirements of Policies T1 (Traffic – General) and T10 (Parking – General Provision) of the Local Plan.

The requirements of Northumbrian Water as Statutory undertaker can be accommodated by use of appropriate conditions, in line with Policy U8a (Disposal of Foul and Surface Water).

No objection has been received from any body related to the railway line, and the applicant has provided evidence of correspondence to show they are aware of the application. The applicant is aware of the potential for the line to be reactivated, and must assume a personal responsibility for that eventuality.

The proposed building is the largest the applicant can achieve on the site that may be acceptable to the Council. To this end officers feel it appropriate in the event of any approval to restrict the applicant's ability to add further structures and residential site features to the development without further grant of consent by withdrawing permitted development rights. Given the extensive walling already erected on the site boundaries which will require additional fencing for curtilage privacy, special attention is drawn to the need for a condition to be attached to any approval giving the Council control over the height and design of such features, both during the construction of the dwelling, and in future, through the removal of permitted development rights. The detailed construction of the safety fence on the upper boundary must likewise be brought under detailed current, and future control.

CONCLUSION

This is an application for a very large dwelling on a site of restricted public view within the settlement boundary of West Rainton. By virtue of the previous consent, in principal the site is considered acceptable for development. The proposed dwelling has some justification in scale, and can be made to assimilate into the existing residential environment by the use of an appropriate palette of materials, a condition for which is proposed. The alterations to the landform have been extreme, but do relate in part to the previous approval. The proposals do not 'harm' the local environment, and on balance officer are prepared to recommend they be approved.

Members will note that the applicant has already implemented extensive works on the site in advance of any approval. The application must however be considered on its own merits, and the unauthorized works must not prejudice members consideration of such.

RECOMMENDATION

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

1. Notwithstanding any details of materials submitted with the application no development shall commence until details of the make, colour and texture of all walling and roofing materials have been submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the approved details.
2. Prior to the re-commencement of the development details of walls, fences and means of enclosure shall be submitted to and approved in writing by the Local Planning Authority. This must include also full details of the Highway safety barriers proposed for the northern boundary of the site adjacent the railway bridge. The enclosures shall be constructed in accordance with the approved details prior to the occupation of the dwelling to which they relate.
3. The development hereby approved shall be carried out only in accordance with the approved plans, specifications and conditions hereby imposed.
4. Before any further development commences, the applicant must provide a detailed scheme for the re-direction of Northumbrian Water apparatus, with no building works permitted over such. Furthermore the applicant must provide a detailed scheme for the removal of surface water, both to be submitted to, and approved in writing by the Local Planning Authority before further building works occur. The scheme must thereafter be implemented in accordance with said approval.
5. No further development shall commence until a detailed landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme of landscaping shall include details of hard and soft landscaping, planting species, sizes, layout, densities, numbers, method of planting and maintenance regime, as well as indications of all existing trees and hedgerows on the land and details of any to be retained, together with measures for their protection in the course of development.
6. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting that Order) no enlargement, improvement or other alteration to the dwelling hereby approved and any buildings, including

extensions, sheds, garages, swimming pools, leisure water facilities and glass-houses to be erected within the curtilage of the dwelling-house is permitted without the grant of further specific permission from the Local Planning Authority.

7. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 or any order revoking or re-enacting that Order, no fences, gates or walls, other than those expressly authorised by this permission shall at any time be erected beyond the forward-most part of any wall of the dwelling-house, without the grant of further specific permission from the Local Planning Authority.

REASONS FOR THE DECISION

1. The development was considered acceptable having regard to the following development plan Policies E5a, E14, E15, E16 H3 H13, T1, T10, Q1, Q2, Q5, Q8, U8a and U13 of the City of Durham Local Plan 2004.
2. The development was considered acceptable having regard to consideration of issues of scale and character, unstable land, and highways issues.
3. Objection was received on the grounds of the impact of the size of the building, the retrospective nature of the works and the possible effect on the railway line.

BACKGROUND PAPERS

Submitted Application Forms and Plans.

Design and Access Statement

North East of England Plan Regional Spatial Strategy to 2021 (RSS) July 2008

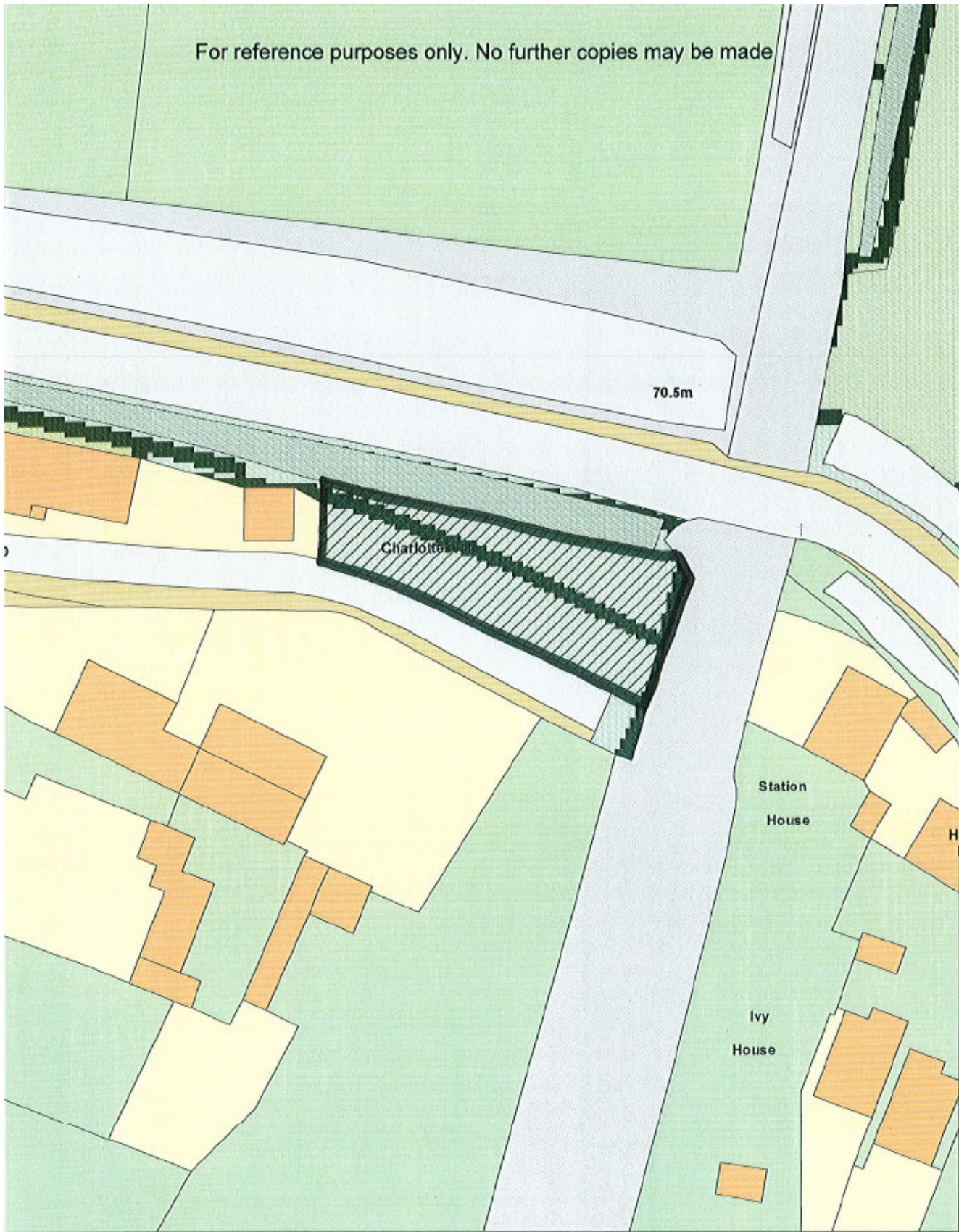
City of Durham Local Plan 2004

Planning Policy Statements / Guidance, PPS1, PPG2, PPS3, PPS7, PPS9, PPS13, PPG15, PPG16

Responses from County Highways and Northumbrian Water

Public Consultation Responses incl. West Rainton Parish Council

For reference purposes only. No further copies may be made



Planning Services

4/09/00131/FPA - Land At Low Station Road, Leamside

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Comments

Date

28 August 2009

Scale

1:625