



## County Planning Committee

**Date** Tuesday 4 December 2018  
**Time** 1.00 pm  
**Venue** Council Chamber - County Hall, Durham

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### Business

#### Part A

1. Apologies for Absence
2. Substitute Members
3. Declarations of Interest
4. Minutes of the meeting held on 6 November 2018 (Pages 3 - 10)
5. Applications to be determined
  - a) DM/18/00894/FPA - Former Milburngate House, Framwelgate Waterside, Durham (Pages 11 - 46)

92-bed hotel and two commercial units for shop, professional and financial service and/or food and drink uses (Class A1-A5) with associated works.
  - b) DM/18/00896/VOC - Milburngate House, Framwelgate Waterside, Durham (Pages 47 - 86)

Variation of conditions 4 and 20 pursuant to planning permission DM/16/01228/FPA (mixed use development on Milburngate House site) so as to permit new service yard access, car parking and servicing yard amends, additional cinema screen, replacement of unit 9 leisure use with residential, insertion of mezzanine level in unit 7, movement of 7 residential units from Block 1E to Blocks 1B, 1C and 1D and replacement with storage, increase in roof terrace space at Block 1D and removal of 2 meeting rooms, fenestration amends, landscape and public realm adjustments and amendment to Framwelgate Peth access so as to permit non-residential traffic.
  - c) DM/18/02924/FPA - Milburngate House, Framwelgate Waterside, Durham (Pages 87 - 122)

Erection of office block (identified as Block 1E) (B1 use class) with flexible permission for shop, food and drink and assembly and leisure uses at ground floor level (Use Classes A1, A3 and D2) and associated public square and landscaping.

- d) DM/18/02950/FPA - Bishop Barrington School, Woodhouse Lane, Bishop Auckland DL14 6LA (Pages 123 - 140)  
Erection of building, associated external works, landscaping and car parking and demolition of 3 no. teaching blocks.
- e) DM/18/02594/FPA - Land to the East of Clare Lodge and Durham Road, Chilton DL17 0RW (Pages 141 - 164)  
Re-Plan of Phase II of Permission DM/17/01213/VOC comprising 120 Dwellings.
- f) DM/18/02424/FPA - Ebchester Hill, Medomsley (Pages 165 - 176)  
Erection of stables and formation of associated parking for equestrian purposes

6. Such other business as, in the opinion of the Chairman of the meeting, is of sufficient urgency to warrant consideration
7. Any resolution relating to the exclusion of the public during the discussion of items containing exempt information

### **Part B**

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

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

**Helen Lynch**

Head of Legal and Democratic Services

County Hall  
Durham  
26 November 2018

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

Councillor J Robinson (Chairman)  
Councillor F Tinsley (Vice-Chairman)

Councillors A Bell, J Clare, K Hawley, I Jewell, C Kay, A Laing,  
L Maddison, J Maitland, H Nicholson, L Pounder, G Richardson,  
A Shield, A Simpson, P Taylor, M Wilkes and S Wilson

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**Contact: Ian Croft**

**Tel: 03000 269702**

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**DURHAM COUNTY COUNCIL**

At a Meeting of **County Planning Committee** held in Council Chamber - County Hall, Durham on **Tuesday 6 November 2018 at 1.00 pm**

**Present:**

**Councillor J Robinson (Chairman)**

**Members of the Committee:**

Councillors J Clare, K Corrigan, I Jewell, C Kay, A Laing, L Maddison, J Maitland, G Richardson, A Shield, F Tinsley (Vice-Chairman), M Wilkes and S Wilson

**1 Apologies for absence**

Apologies for absence were received from Councillors A Bell, K Hawley, H Nicholson and P Taylor.

**2 Substitute Members**

Councillor J Maitland as substitute Member for Councillor H Nicholson and Councillor K Corrigan as substitute Member for Councillor P Taylor.

**3 Declarations of Interest**

There were no declarations of interest.

**4 Minutes**

Councillor Wilkes referred to Application DM/18/00101/OUT considered at the meeting on 2 October 2018. During consideration of the application concern was expressed about potential flood risk to a neighbouring fishery. Councillor Wilkes stated that the Senior Planning Officer informed the Committee that the fishery ponds were at a higher level than the development site. Councillor Wilkes informed the Committee that he had subsequently received communication that some of the ponds were lower than or at the same level as the development site and expressed concern that the Committee may have been provided with inaccurate information when considering the application. None of this was reflected in the minutes of the meeting.

C Cuskin, Planning and Development Solicitor informed Councillor Wilkes that officers would check their hand written notes of the meeting and it was agreed that this issue would be brought back to the next meeting.

**5 Applications to be determined**

**a DM/18/00829/OUT - Land South Of A182, Seaham**

The Committee considered a report of the Senior Planning Officer regarding an application for a garden village of up to 1500 dwellings, integrated community health and wellbeing village, commercial and leisure uses, business innovation hub, primary school, public open space, community allotments and associated infrastructure, including new pedestrian and vehicular access from A182 on land to the south of A182, Seaham (for copy see file of Minutes).

C Harding, Senior Planning Officer provided a detailed presentation of the application which included a site location map, masterplan, proposed landscape plan and the mineral consultation area identified in the Minerals Local Plan.

The Senior Planning Officer provided the Committee with the following updates since the Committee report had been produced:

- Tarmac objected to the application and had concerns that the development may have an impact on the ability to operate Hawthorn Quarry. Tarmac also considered that there was insufficient explanation around the issue of the sterilisation of mineral assets;
- Durham Wildlife Trust objected to the application on the grounds of its impact on Hawthorn Dene Site of Special Scientific Interest.

The Senior Planning Officer, in his presentation, explained that the application conflicted with Policy 49 of the Easington District Local Plan which designated the majority of the site as an employment site. However, the emerging Local Plan, the County Durham Plan Preferred Options (CDP), did not propose to allocate the site for employment purposes. Whilst no weight could currently be given to the CDP, given that the site remained undeveloped since its allocation 17 years ago and the existing levels of employment land supply within the County and within the A19 Corridor evidenced in the 2018 Employment Land Reviews, it was considered that there were grounds for considering alternative uses on the site.

The proposed development would conflict with Policy M14 of the Mineral Local Plan as it would lead to the sterilisation of a significant, high grade mineral resource. This policy was considered to be up-to-date and consistent with the NPPF and should therefore be afforded full weight in the decision making process.

The Senior Planning Officer informed the Committee that the following amendments to Conditions were proposed:

- Condition 3 – some indicative landscape plans to be added;
- Condition 14 – noise levels to include reference to the quarry;
- Condition 19 – to be ‘Prior to the completion of the 350<sup>th</sup> dwelling’ rather than ‘Prior to the occupation of the 750<sup>th</sup> dwelling’

Karen Eynon, on behalf of Rolling Stock and Engineering Co Ltd, addressed the Committee to object to the application. The proposed development was contrary to Policy 49 of the Easington District Local Plan and Policy M14 and M18 of the Durham Minerals Local Plan. The application had failed to provide the necessary evidence to demonstrate that the proposed development would not sterilize significant high grade mineral resources. Ms Eynon expressed concern that it had not been demonstrated the proposed development was in the optimum location for

a garden village, and that this would not outweigh the mineral sterilisation. The application had failed to demonstrate the potential impact of the development upon the operation of Hawthorn Quarry and incorrectly identified that the quarry would need to address its operating methods to take in account new homes, contrary to the NPPF. The Local Planning Authority could demonstrate a 6-year housing land supply and the application incorrectly stated that there was extant planning permission on the site. The proposed development was contrary to the Development Plan and there were no material considerations that would outweigh this conflict.

Helen Kennedy, representing Tarmac, addressed the Committee. The environmental statement submitted with the application did not consider possible quarry noise from the Hawthorn Quarry and there was no certainty that future operation of the quarry would not be prejudiced by this development. There were concerns that the development would result in the sterilisation of high grade limestone.

Richard Garland of George F White, acting on behalf of Rolling Stock and Engineering Co Ltd (RSE) addressed the Committee. Mr Garland objected to the application on behalf of RSE which owned the mineral rights and freehold to 280 acres of land, including the quarry. The area was one of five within the Country which contained such high quality dolomite, and this would be sterilised in the application was approved.

The planning application was speculative and not in line with the housing land requirement. It was not identified in the County Durham Plan as an area for housing and if there was a need for development in the area other sites were available. No consideration had been given to the potential conflict with quarry operations.

Mr Garland queried whether the proposed Garden Village would be able to be delivered because it would necessitate trespass onto mineral land.

C Cuskin, Planning and Development Solicitor informed the Committee that whilst the issue raised about sterilisation of minerals was a material planning consideration which had been given weight within the report, private law issues surrounding the right to undertake works on the land were not material planning considerations.

Roy Sandbach, Professor in Ageing Science of Newcastle University addressed the Committee in support of the application. The UK had an ageing population and by the year 2035 1 in 4 people would be aged over 65 years, and 100,000 in the north-east would be over 85 years. This would have an impact on the social fabric and consideration needed to be given to how to make life better for longer. Newcastle University was a leader in the study of ageing and this proposed initiative was only 20 miles from the University.

The development would bring to the region innovation in the built environment, enhanced options for life-style housing, to accommodate 21st century living, inclusive community and employability. The proposed creation within the village of

two 20,000 sq.ft buildings would provide an integrated health and wellbeing hub and an adjoining Business Incubator space, which would have immense potential for future public-private partnerships and academic collaborations.

John Wood of Tolent Ltd addressed the Committee in support of the application. The application was for 1500 houses, 750 of which would be affordable housing. The development would provide a significant contribution towards the provision of secondary education facilities, £988,000 towards coastal management mitigation, £104,000 towards mitigation at Hawthorn Dene and £550,000 towards sports provision in Seaham.

500 new construction jobs would be provided through the Construction Industry Training Board, with apprentices being trained up to become tradesmen.

Tolent was a north-east based company. The proposed development was fully-funded and an exemplar opportunity which should be granted permission.

Councillor Laing informed the Committee that she had considered the application and listened to the presentation and speakers. Members could depart from the Minerals Local Plan if material planning considerations allowed them to do so. There was no prospect of the film studio development which the site previously had permission for and although this was disappointing, the application had many positives. It was a strategic application in its own right and the proposed 50% level of affordable homes was unknown for a development of this nature, which would benefit hard working families. The east of the County suffered from both employment and health problems and this application brought a commitment to address both of these. A high quality environment was proposed and any adverse impact of the development had been addressed by Condition and the S106 Legal Agreement. Councillor Laing **moved** approval of the application.

Councillor Tinsley informed the Committee that the main objection to the development was that it would lead to the sterilisation of deposits of high grade dolomite. He agreed that there was a clear conflict with Policy M14 in the Minerals Local Plan, however, this type of dolomite was not currently in high demand, the quarry was not currently operating and the quarry would be able to operate if this development was approved. This was an application for a very large development which would generate its own dynamic. The 50% level of affordable housing was significant, as was the proposed 300 dwellings for over-55's. The development would generate its own sustainability with a retail element and hub centre being proposed and was not just a retirement village but was a development for all ages, a mixed community. The development would create 500 new construction jobs delivered through the Construction Industry Training Board as well as 300 jobs in the centre of the village.

This was a rare opportunity for a new settlement which would have a population of some 4,000 and, if permitted, some thought should be given to the name of the settlement. Overall, on balance, Councillor Tinsley considered that the application should override Policy N14 and he was minded to support approval of it.

Councillor Tinsley sought clarity on the amount of mineral resource which would be sterilised should the application be approved, in terms of the size of the overall mineral resource. The Senior Planning Officer replied that it was difficult to quantify a precise figure as the resource was large, already partly sterilised, and no specific research in terms of boreholes had been carried out in large areas of the estimated resource. Therefore, any figure for the total resource would ultimately be a theoretical, desk based estimation. It was noted that the objector estimated that 88% of the resource would be lost, however given the uncertainty over the overall level of total resource any estimation of the level of sterilisation as a proportion of this would be inexact. It was however acknowledged that whilst there was uncertainty around the exact figure it was clear that there would be a significant level of sterilisation in absolute terms.

J McKewon, Senior Policy Officer informed the Committee that two figures were being used for the loss of resource. The applicant estimated that the development would lead to the loss of 62-65m tonnes of magnesian limestone and the objectors estimated this to be 171m tonnes. On this basis the proposed development would sterilise a significant quantity of the mineral resource and that this would be contrary to Policy M14 of the Minerals Local Plan. However, the consideration of the quality of the mineral resource was as important as the consideration of the amount. Whilst there were deposits of magnesian limestone in many areas of the east of the county, the resource at this location was recognised to be one of the five highest grade areas in the UK. The loss of this would be a detriment.

Councillor Clare informed the Committee that this was the application before it today, and suggested alternative sites were not relevant to the application. The one overriding objection, however, was Policy M14 and the loss of very high quality dolomite should the application be approved. The proposed development was an exciting prospect which took future needs of the population into account and would provide the opportunity for regeneration of this part of County Durham versus the future needs of a quarry which currently was not operating. Councillor Clare informed the Committee that he was minded to support approval of the application.

Councillor Wilson referred to the legal process referred to by the objectors which was not a consideration for the Committee. The Planning and Development Solicitor informed the Committee that the legal process referred to by the objectors was an injunction against trespass onto mineral rights. While this was not a matter for the Committee to consider, the Solicitor reiterated that sterilisation was a material planning consideration.

Councillor Maitland informed the Committee that the provision of 300 dwellings for the over-55's was welcomed and would complement other house types being built on the development.

Councillor Wilkes considered the main issue when determining the application was that it did not accord with Policy M14 in the Minerals Local Plan. There was not much of such high grade dolomite in the country and this should not be sterilised for ever. There was a need to have an economy which used its resources well. Councillor Wilkes expressed concern that the proposed 75 affordable homes would not be affordable at all, given the sustainability of where they were to be built and

the cost of living in the properties. There was no mention in the application of fibre optic cabling to the properties, sustainable green energy or rainwater harvesting. While he considered that the removal of the mineral rights was not sufficient to refuse the application, it did not meet NPPF Parts 2 and 15 as it was not sustainable and clearly did not enhance or conserve the natural environment. He informed the Committee that he would be voting against approval of the application because it failed to comply with NPPF Parts 2, 6, 14 and 15 and additionally was not in accordance with Policy M14 of the Minerals Local Plan.

Councillor Richardson agreed with Councillor Wilkes. While at first glance the proposed development seemed to be an exciting one, Councillor Richardson questioned its sustainability. The development would sterilise minerals which were very high grade and this would be detrimental to the Country.

Councillor Kay reminded the Committee that the application was in outline only and specific details of the development would be submitted under reserved matters applications.

**Moved** by Councillor Laing, **seconded** by Councillor Tinsley and

**Resolved:**

That the application be approved subject to the completion of a Section 106 Legal Agreement to secure the provision of:

- 50% affordable housing;
- A financial contribution of £2,353,356 towards the provision of secondary education facilities;
- A financial contribution of £988,470 towards coastal management mitigation;
- A financial contribution of £104,000 towards mitigation at Hawthorn Dene SSSI;
- A financial contribution of £550,000 towards sports provision in Seaham

and subject to the following Conditions contained in the report, as amended by the Senior Planning Officer.

Councillor Laing left the meeting.

**b DM/18/02732/WAS - Joint Stocks Landfill Site, Quarrington Hill Road, Coxhoe**

The Committee considered a report of the Senior Planning Officer regarding an application for the change of use to green waste composting at Joint Stocks Landfill Site, Quarrington Hill Road, Coxhoe (for copy see file of Minutes).

Chris Shields, Senior Planning Officer provided a detailed presentation of the application which included a site location map, aerial photograph, a view looking south across the site and a view of the compost pad.

The Senior Planning Officer informed the Committee that Councillor Dunn, local Member, had requested that a condition be placed on the permission to restrict

HGVs to only use the haul road to avoid travelling through Coxhoe. While most vehicles accessing the site already did this, there were currently no restrictions in place. While HGVs could be instructed to use the haul road, a condition would not be enforceable because the origin of the journey of any HGV was not known.

D Wafer, Strategic Traffic Manager informed the Committee that there was currently a weight restriction to the south of Coxhoe. While a restriction on the type of vehicle could not be imposed it was within the gift of the Council to instruct HGVs on their route to the site because they would be County Council vehicles.

Councillor Richardson **moved** that the application be approved.

Councillor Wilkes informed the Committee that the local Member had requested the condition because of concerns he had about potential impact on the community. Councillor Wilkes asked why the Council could not Condition itself by placing such a restriction on the permission.

Councillor Robinson replied that this was not a planning issue but the Council could have a policy of instructing its vehicles to use Hall Lane for access. C Cuskin, Planning and Development Solicitor informed the Committee that any condition must meet certain tests, including to make the development acceptable, and must be enforceable. Councillor Wilkes asked whether the Chairman, on behalf of the Committee, write to the Portfolio Holder for Neighbourhoods and Local Partnerships to ensure that Council vehicles accessing the site used the haul road to do so. Councillor Robinson confirmed he would do this.

**Resolved:**

- (i) That the application be approved subject to the conditions contained within the report;
- (ii) That the Chairman write to the Portfolio Holder for Neighbourhoods and Local Partnerships to request that Council vehicles accessing the site be instructed to use the haul road to do so.

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# COMMITTEE REPORT

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## APPLICATION DETAILS

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<b>APPLICATION NO:</b>	DM/18/00894/FPA
<b>FULL APPLICATION DESCRIPTION:</b>	92-bed hotel and two commercial units for shop, professional and financial service and/or food and drink uses (Class A1-A5) with associated works
<b>NAME OF APPLICANT:</b>	MGH Card LLP
<b>ADDRESS:</b>	Former Milburngate House, Framwelgate Waterside, Durham City
<b>ELECTORAL DIVISION:</b>	Elvet and Gilesgate
<b>CASE OFFICER:</b>	Henry Jones, Senior Planning Officer 03000 263960 <a href="mailto:henry.jones@durham.gov.uk">henry.jones@durham.gov.uk</a>

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## DESCRIPTION OF THE SITE AND PROPOSALS

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### The Site

1. The application site comprises of the southernmost section of the wider former Milburngate House site and forms roughly one quarter of the wider site, encompassing parts of the A690 Leazes Road/Milburngate Bridge in the south and Framwelgate Peth in the west. The site is located in the north of Durham City Centre and on the western bank of the River Wear.
2. The former Milburngate House building was constructed in the 1960s and was purpose built for the Post Office Savings Bank, later known as the National Savings & Investments. Planning Permission (DM/15/01119/FPA) was granted in July 2015 for the demolition of the building including remediation and enabling works in preparation for future redevelopment on the site. These demolition and preparation works for redevelopment are now nearing completion.
3. To the north of the wider Milburngate House site is the Radisson Hotel with residential properties in Sidegate beyond whilst in the south is the former Gates Shopping Centre currently nearing completion of its redevelopment into The Riverwalk. On the opposite side of the River Wear to the east lie the Freeman's Reach office development and beyond that the Walkergate development. In the west, on the opposite side of Framwelgate Peth, are residential properties at Highgate.
4. 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 WHS is located approximately 200m from the application site at the nearest point.

5. 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 and Background:

6. In March 2018 planning permission (DM/16/01228/FPA) was granted in detail for the redevelopment of the wider site with a 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 outline planning permission with all detailed matters reserved except access for a mixed use development of office (use class B1) and a maximum of 150 residential units. The buildings and public realm forming the development would step up from the lower riverside level to the higher land towards Framwelgate Peth and would sit atop of a podium level predominantly housing four levels of parking and servicing.
7. Within the detailed planning permission that was granted, six building blocks were approved including a Block 1a building comprising, at levels 02 (effectively the ground floor above the podium) and 03, of commercial units and an energy centre with residential flats on the upper floors above.
8. The application now for consideration effectively seeks to amend the Block 1a proposals. The levels of parking and servicing would remain beneath the Block. The Block itself is now proposed to be predominantly occupied by a 92 bedroom hotel. On level 02 the hotel reception would be located accessed from the northern side of the building. Level 02 and 03 would contain commercial unit space and flexibility in the planning permission is sought so that this accommodation could be utilised for retail (use class A1), financial and professional services (use class A2) and food and drink uses (use class A3, A4 and A5). It is quite likely though, that some of the commercial space would be linked to the hotel, e.g. an ancillary restaurant/bar. Above would be four storeys of hotel bedroom and ancillary hotel space with a top floor comprising of plant space. The hotel is proposed to be occupied by Premier Inn, though a grant of planning permission would be for the hotel use in general, rather than a specific operator.
9. The footprint of the revised Block 1a would essentially remain as per the existing planning permission.
10. Public realm and landscaping to the north, east and west of the Block would again be similar to the previously approved development with generally hard surfaced pedestrian circulation space to the north and east and a feature area of terraced soft landscape treatment to the west adjacent to the Framwelgate Peth.
11. Under this application for the revised Block 1a access and parking arrangements for customers/visitors and staff and to remain as per the planning permission with the main access to the public car park proposed under the wider redevelopment to remain off Framwelgate Waterside at the riverside level to the east of the hotel building. It should be noted that a separate pending application (DM/18/00896/VOC) proposes amendments to the approved access arrangements for the wider development and that application should be referred to for the detail. There is also a further separate application being considered for an office development within the wider site (DM/18/02924/FPA).

12. This application to amend Block 1a so as to include the hotel has previously been heard at County Planning Committee (July 3<sup>rd</sup>). The decision was taken to defer the proposal at that time. The key concerns expressed by Members with the proposals at that time related to the safety of a proposed service access/layby to the south of the block off Leazes Road/Milburngate Bridge, the design of the southern elevation adjacent to this and the design of the roofscape which had a flat roofed approach.
13. In response to these concerns, the applicants have amended their proposals. In respects to the service access/layby, this is no longer proposed off Leazes Road/Milburngate Bridge and has been relocated down on Framwelgate Waterside. The servicing access for the hotel is now proposed via Framwelgate Waterside with a loading bay proposed close to the car park entrance on the western side of the carriageway. From this vehicle bay goods/refuse and the like would enter the development at the riverside level and be taken to/from an internal refuse store or taken up via a lift to the hotel itself.
14. In respects to the southern elevation of the Block which faces Leazes Road, linked to the relocation of the service access/layby, the applicant has removed servicing access from this elevation and sought to create a more active and transparent façade. There would be an access into the commercial unit from this elevation. This has been coupled with a landscaping scheme and provision of an external terrace.
15. In respects to the roofscape, the hotel has been redesigned to incorporate pitched roofs more akin to the architecture of the residential blocks in the development albeit with some differences to reflect the hotel use.
16. The brickwork facades have also been amended with a depth to reveals and detailing of brickwork seeking to break down the scale and give varying degrees of depth so as to add to the overall composition of the façade. This again is more reflective of the residential blocks proposed on the site.
17. The application is reported to the County Planning Committee as it constitutes a major commercial development and is of strategic importance to the wider redevelopment of the Milburngate House site that was previously considered by County Planning Committee in November 2016.

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## **PLANNING HISTORY**

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18. Planning Permission 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.
19. In March 2018 planning permission was granted for the redevelopment of the site with a 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 (detailed permission) and outline planning permission with all detailed matters reserved except access for a mixed use development of office (use class B1) and a maximum of 150 residential units (use class C3) and associated landscaping and infrastructure works.
20. An application is currently pending consideration (DM/18/00896/VOC) for the variation of conditions 4 and 20 of the above redevelopment so as to permit new service yard access, car parking and servicing yard amends, additional cinema screen and amendment to Framwelgate Peth access so as to permit non-residential traffic.

21. An application is currently pending consideration (DM/18/02924/FPA) for the erection of an office block (identified as Block 1E) (B1 use class) with flexible permission for shop, food and drink and assembly & leisure uses at ground floor level (Use Classes A1, A3 and D2) and associated public square and landscaping.
22. Though not on the application site but also of some background relevance is the redevelopment of the adjacent Gates Shopping Centre to a mixed use scheme known as The Riverwalk first granted planning permission in November 2015 (DM/15/01626/FPA). The redevelopment is well advanced with some of the first units now occupied.
23. On land on the opposite side of the River Wear at the Sands car park and Durham Sixth Form Centre car park, an application is also pending consideration for an office headquarters with associated car parking (inclusive of a multi-storey car park) with associated landscaping, highway and infrastructure works and demolition of existing structures (DM/18/02369/FPA).

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## **PLANNING POLICY**

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### **NATIONAL POLICY**

24. A revised National Planning Policy Framework (NPPF) was published in July 2018. The overriding message continues to be that new development that is sustainable should go ahead without delay. It defines the role of planning in achieving sustainable development under three overarching objectives – economic, social and environmental, which are interdependent and need to be pursued in mutually supportive ways.
25. In accordance with Paragraph 213 of the National Planning Policy Framework, existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with the Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given). 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.
26. *NPPF Part 2 - Achieving sustainable development.* The purpose of the planning system is to contribute to the achievement of sustainable development and therefore at the heart of the NPPF is a presumption in favour of sustainable development. It defines the role of planning in achieving sustainable development under three overarching objectives – economic, social and environmental, which are interdependent and need to be pursued in mutually supportive ways. The application of the presumption in favour of sustainable development for plan-making and decision-taking is outlined.
27. *NPPF Part 4 - Decision-making.* Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.

28. *NPPF Part 6 – 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 a low carbon future.
29. *NPPF Part 7 - Ensuring the Vitality of Town Centres.* Planning policies and decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation.
30. *NPPF Part 8 – Promoting healthy and safe communities.* The planning system can play an important role in facilitating social interaction and creating healthy, inclusive communities. Developments should be safe and accessible; Local Planning Authorities should plan positively for the provision and use of shared space and community facilities. An integrated approach to considering the location of housing, economic uses and services should be adopted.
31. *NPPF Part 9 – Promoting sustainable transport.* Encouragement should be given to solutions which support reductions in greenhouse gas emissions and reduce congestion. Developments that generate significant movement should be located where the need to travel will be minimised and the use of sustainable transport modes maximised.
32. *NPPF Part 11 – Making effective use of land.* Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously-developed or 'brownfield' land.
33. *NPPF Part 12 – Achieving well-designed places.* 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.
34. *NPPF Part 14 – Meeting the challenge of climate change, flooding and coastal change* - The planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change. It should help to: shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and support renewable and low carbon energy and associated infrastructure.
35. *NPPF Part 15 Conserving and Enhancing the Natural Environment* - Conserving and enhancing the natural environment. The Planning System should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, geological conservation interests, recognising the wider benefits of ecosystems, minimising the impacts on biodiversity, preventing both new and existing development from contributing to or being put at unacceptable risk from pollution and land stability and remediating contaminated or other degraded land where appropriate.
36. *NPPF Part 16 Conserving and Enhancing the Historic Environment* - Heritage assets range from sites and buildings of local historic value to those of the highest significance, such as World Heritage Sites which are internationally recognised to be of Outstanding Universal Value. These assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations.

37. 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; light pollution; natural environment; neighbourhood planning; noise; planning obligations; travel plans, transport assessments and statements; use of planning conditions and; water supply, wastewater and water quality.

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

#### **LOCAL PLAN POLICY:**

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

38. *Policy E3 – World Heritage Site Protection.* Protection seeks to safeguard the site and setting from inappropriate development that could harm its character and appearance.
39. *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.
40. *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.
41. *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.
42. *Policy E15 – New Trees and Hedgerows.* States that the Council will encourage tree and hedgerow planting in major development sites.
43. *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.
44. *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.

45. *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.
46. *Policy E23 – Listed Buildings.* This policy seeks to safeguard Listed Buildings and their settings from unsympathetic development.
47. *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.
48. *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.
49. *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.
50. *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.
51. *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.
52. *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.
53. *Policy T21 – Walkers Needs.* States that existing footpaths and public rights of way should be protected.
54. *Policy S1a – Retail Hierarchy.* Seeks to protect and promote the vitality and viability of Durham City Centre
55. *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.
56. *Policy V6 – Visitor Accommodation within Settlement Boundaries.* Advises that new and extensions to existing visitor accommodation within settlement boundaries will be permitted provided that they are acceptable in scale and character and comply with other policies in the plan.
57. *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).

58. *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.
59. *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.
60. *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.
61. *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.
62. *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.
63. *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.
64. *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.
65. *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.
66. *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.
67. *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.
68. *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.

69. *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.
70. *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.
71. *Policy U13 – Development on Unstable Land.* Advises that development on unstable land will only be permitted where there is no risk resulting from that instability or where the instability can be remediated.
72. *Policy U14 - Energy Conservation – General.* States that the energy efficient materials and construction techniques will be encouraged.

#### **EMERGING PLAN:**

##### The County Durham Plan

73. Paragraph 48 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. An 'Issues & Options' consultation was completed in 2016 on the emerging the County Durham Plan (CDP) and the 'Preferred Options' was approved for consultation at Cabinet in June 2018. However, the CDP is not sufficiently advanced to be afforded any weight in the decision making process at the present time.

##### Durham City Neighbourhood Plan

74. The pre submission draft of the Durham City Neighbourhood Plan has been subject to its first formal public consultation, which closed on 18th December 2017.
75. This council has made representations on the pre submission version of the plan and the associated Strategic Environmental Assessment, which raises a number of significant issues which will need to be resolved in order that the plan meets the prescribed Basic Conditions. In light of this, and given the stage of preparation, it has not yet reached a point where weight can be afforded to it.

*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)

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## **CONSULTATION AND PUBLICITY RESPONSES**

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#### **STATUTORY RESPONSES:**

76. *Highway Authority –* Raise no objections. Although concerns were expressed initially in regards to the design of the proposed service layby on Framwelgate Waterside, the Highway Authority are now satisfied, following the submission of amended proposals.

77. *Historic England* – Raised no objections to the originally submitted hotel proposals. It was considered that whilst the standardised layout of a hotel means that the Block 1a could appear somewhat more monolithic than the sloping roof pitches of the proposed neighbouring blocks this is recognised in the design proposed which utilises stepped and recessed elements and variety in tone and materiality. It was highlighted that final material choices and build quality will be important. Overall, and subject to final material choices, the proposals were considered acceptable from a design and heritage perspective, compliant with key elements of the NPPF including paragraph 137 which encourages LPAs to support proposals which preserve or make a positive contribution to Conservation Areas and World Heritage Sites. No further detailed comments have been added to the amended proposals submitted since the July Planning Committee, it is suggested that the advice of specialist conservation and archaeology advisers are sought as relevant.
78. *Coal Authority* – Raise no objections.
79. *Environment Agency* – Raise no objections, subject to conditions so as to ensure that the compensatory flood storage, provision of a safe evacuation route and adherence to finished floor levels contained within the submitted Flood Risk Assessment are met.
80. *Drainage and Coastal Protection* – Raise no objections; the proposed change to a hotel would not affect the surface water disposal approaches to the site and development and the development should be implemented in accordance with the submitted surface water management proposals.

#### **INTERNAL CONSULTEE RESPONSES:**

81. *Spatial Policy* – Raise no objections. Based upon the most up to date evidence base contained within the Retail and Town Centre Study (2018 update) the application site falls within a part of Durham City which functions as the City Centre and on this basis no objections are raised to the proposed hotel.
82. *Visit County Durham* – Raise no objections and lend support to the proposal. The proposed occupier (Premier Inn) has invested heavily in Durham City already with one city centre hotel and two more on the outskirts. They are a successful national brand. The decision to build another hotel will be based upon evidence and local and national hotel trends. The development is consistent with several key priorities within the Durham Tourism Management Plan 2016-2020. Emphasis is placed on the importance of overnight visitors to the City. Visit County Durham highlight that only 10% of visitors to Durham City stay overnight yet they account for 48% of expenditure. Reference is made to the potential for Durham's economy to grow due to strategic sites coming forward which in turn will create hotel demand.
83. *Employability Team* – Raise no objections. Targeted recruitment and training clauses are requested via condition or within a S106 legal agreement.
84. *Environment, Health and Consumer Protection (Contaminated Land)* – Raise no objections, subject to the imposition of a condition ensuring the necessary site remediation measures are undertaken together with the submission of a validation report.
85. *Environment, Health and Consumer Protection (Noise, Light, Odour and Dust)* – Raise no objections, subject to conditions relating to the agreement of a construction management plan, final lighting scheme, and to control noise emissions from plant/machinery associated with the development.

86. *Environment, Health and Consumer Protection (Air Quality)* – Raise no objections. The proposed change from a residential block to that a hotel is insignificant in air quality terms and the end user would actually be less sensitive to air quality issues. However, mitigation measures in the form of particular ventilation requirements would still apply to the hotel use as they did to the approved residential use.
87. *Ecology* – Raise no objections. The final lighting scheme must ensure that light levels are controlled so as to not cause a detrimental impact upon the river corridor.
88. *Landscape* – Raise no objections. The advice of Design and Conservation should be referred to regarding the impacts of the revised Block 1a building itself in townscape terms. A pedestrian entrance off Framwelgate Peth to the west of the Block would remain, albeit modified and slightly narrowed, however, it would remain an inviting area, articulated with soft planting.
89. *Design and Conservation* – Raise no objections. The revisions to the proposals since July Committee now incorporate a roofscape incorporating pitched roofs more akin to the adjacent residential blocks. The brickwork facades have also been amended to better reflect the residential components. The amendments have also incorporated an increase in the amount of active façade with the removal of the Leazes Road/Milburngate Bridge layby beneficial in design terms. The overall heritage impacts of the revised proposals are considered to be of the same magnitude as the originally approved development and would overall preserve the character and appearance of the Durham City Centre Conservation Area with no harm identified to other heritage assets including the WHS. It is stated that the development would demonstrate a distinctive and high quality design solution positively responding to the site constraints and historic and natural environment.
90. *Access and Rights of Way* – Raise no objections. No public rights of way would be affected by the proposals.
91. *Business Durham* – Raise no objections. The proposed hotel would be a welcomed addition to tourist facilities within Durham City. It is advised that the proposed hotelier should consult with Business Durham, Visit County Durham and the County Durham Food Hub to the explore the potential for securing linkages with local food and drink manufacturers in respects to their produce and local colleges for employment opportunities.
92. *Archaeology* – Raise no objections or detailed comments.
93. *Sustainable Travel* – Raise no objections. The submitted travel plan is considered to meet the required standards. It is emphasized that the design/layout must include good direct and safe walking routes between the site and Milburngate bus stops factoring in the significant level differences within the site. It is also emphasized that care must be given to the final design of the shared use path alongside Framwelgate Peth with its width maximised as far as practicable.

#### **NON-STATUTORY RESPONSES:**

94. *Durham Constabulary Architectural Liaison Officer* – Raise some concerns with elements of the development. Concerns are raised in regards to the compatibility of differing uses across the site and potential impacts upon amenity due to the concentration of licensed premises. Restrictions are proposed on the opening hours of the commercial units and the appropriateness of Unit 10 being a licensed premises is questioned due to its location adjacent to the pedestrian route which may encourage

loitering. External seating areas can encourage noise and nuisance. Concerns are expressed regarding pedestrian safety and it is requested that the pedestrian guardrail is extended farther up Framwelgate Peth. Concerns are raised regarding the accessibility of the site for emergency vehicles. The revised servicing arrangements are an improvement on the Leazes Road/Milburngate Bridge proposals, however.

95. *Northumbrian Water* – Raise no objections subject to the condition that foul waters are disposed to the existing combined sewer as detailed within the submitted drainage strategy.

#### **PUBLIC RESPONSES:**

96. The application has been publicised by way of press notice, site notice and individual notification letters to neighbouring residents and occupiers. A total of 12 letters of representation have been received, of which 10 letters object to the development, 1 is a request the application be heard at committee and, 1 raises concerns. Comments are summarised below.

#### Principle of the Development

- Objection to the loss of residential units in favour of the hotel. Part of the viability of the originally approved development was dependent upon the introduction of more (permanently occupied) residential units into the depleted City Centre market
- The need for another hotel is questioned and its financial viability
- Residentially occupied units at the site would be locationally sustainable – with residents able to walk to work, access public transport etc
- Durham is seeing shops close whilst the night time economy offer grows but at the expense of other services. Reference is made to the recent Durham City death as a result of the night time economy
- Independent shops cannot compete with the chains occupying the City and such chains do not have the vested interest in/care for the City which the independent businesses do

#### Highways Issues

- The proposed servicing layby off Leazes Road/Milburngate Bridge (now omitted from the scheme) is a safety hazard and will cause traffic congestion particularly as deliveries will be made during busy periods
- Queries are raised with regards to what restrictions will be made on the use of this servicing bay (now omitted from the scheme) and what will prevent its use as a drop off by the general public or by taxis
- The servicing layby (now omitted from the scheme) will require the re-routing of general public pedestrian routes for the minority usage purposes of the hotel servicing requirements
- There is no reason why servicing access cannot be provided as originally proposed
- Service layby on Framwelgate Waterside is unacceptable it is stated that the Radisson Hotel were refused a waterside servicing arrangement
- Lack of consideration to the adequacy of vehicular access arrangements
- Proposed connections to the Gates/Riverwalk development will not now materialise
- Pedestrian ingress and egress are onto an extremely busy road junction
- Access via a signalised junction on Framwelgate Peth is unacceptable

## Design and Heritage

- The design and scale of the hotel is unacceptable, harmful to the WHS and would fail to integrate into the Durham City townscape
- The WHS and Durham City are the economic and tourist driver in the County yet the views of the WHS and historic City Centre are being eroded and this proposal would contribute to this
- Within the originally approved development the corner of Milburngate Bridge and Framwelgate Peth was designed as a main pedestrian entrance into the development which this proposal would erode
- Service layby on Framwelgate Waterside would affect waterside views towards the World Heritage Site
- The amendments to the design since July Planning Committee change nothing and the proposal remains a large box

## Other

- Request made that Members of the Planning Committee undertake a site visit
- Questions are raised as to who would want to reside in the development when it contains so many drinking establishments and it is considered likely that students will therefore live in the development

97. *Cllr David Freeman* – Requests that the application be heard at planning committee due to the proposal representing a change to a major redevelopment proposal with potential impacts upon neighbouring residents.
98. *World Heritage Site Coordinator* – Raise no objections. It is stated that the design of the development is considerably improved from that presented at July Planning Committee. The roofscape, detailing and materials now proposed will substantially help in absorbing the building into the townscape and the evolving Milburngate development. The removal of the layby onto Milburngate Bridge removes a visually detracting element. The conclusions of the application submissions that the development would not impact upon the WHS are disagreed with as there will clearly be an impact from the development albeit it is concluded this is a neutral one. The originally submitted comments of the WHS comments highlighted that pedestrian linkages are important and the plans suggest that the link through to the new Riverwalk development is no longer proposed.
99. *City of Durham Trust* – Raise objections. The design of the hotel has improved from the scheme presented at July Planning Committee with the south elevation a vast improvement together with a more appropriate breaking down of mass on to the riverside elevation. However, the roofscape remains a matter of concern which is considered to remain discordant. The revised servicing arrangements with a servicing yard proposed on Framwelgate Waterside is unacceptable due to the design repercussions and impacts on the proposed walkway from the Gates/Riverwalk development. It is stated that the Radisson Hotel were not permitted a servicing yard on Framwelgate Waterside. The submitted Townscape and Visual Impact Statement assesses impacts from key viewpoints on the negative side which is not deemed a wringing endorsement.
100. *Trust Pathways* – Raise objections. The proposed servicing bay off Milburngate Bridge (now omitted from the scheme) is considered unacceptable due to its narrowing effect on the width of the footpath which would result in a substandard shared pedestrian and cycle route.

101. *Sidegate Residents Association* – Raise objections. The proposed introduction of a hotel at the expense of residential will not aid in redressing the balance of permanent rather than student residents living in the City Centre. The recent growth in hotels could potentially be at the risk of other developments which are important to the City's prosperity. Objection is raised to the detailed design of the hotel which fails to follow the approaches of the original application in terms of a cascading pitched roofscape and it is highlighted that the submitted landscape and visual appraisal states that on some key views adverse effects would result in townscape terms. Due to air pollution in the area the hotel will have to be a sealed unit whilst the vehicular traffic created will add to the existing problems. Concerns are expressed that parking provision within the wider redevelopment may be inadequate.

**APPLICANTS STATEMENT:**

102. The Proposed Development will comprise a 92-bed hotel with two commercial units for flexible A1-A5 use at ground floor level at Block 1A of the Milburngate site.
103. Following deferral at Planning Committee in July 2018, the concerns of the committee members in relation to design and highway safety have been taken into account and addressed by the applicant.
104. The roofscape of the hotel has been re-designed to incorporate pitched roofs to reflect and respond to the surrounding development form. Further design amendments have also been introduced to create a more active frontage at ground floor level and changes to the proposed brickwork have been incorporated which reduces the overall mass of the building. These changes respect the backdrop of Highgate and the wider urban context.
105. The proposed service layby on Milburngate Bridge has been removed in its entirety and replaced by a service loading bay on Framwelgate Waterside at level 00. The proposed loading bay will be located on the northbound carriageway and allows sufficient space for massing vehicles.
106. Overall, the Proposed Development is considered to compliment the other components of the previously consented mixed-use scheme and will contribute to all three dimensions of sustainable development by delivering benefits within each of the social, economic and environmental areas.
107. The Proposed Development will assist in the delivery of £160m additional inward investment in this area as part of the wider Milburngate scheme. The hotel will provide additional bed spaces for overnight visitors to the city and will continue to contribute to a truly mixed-use scheme which will provide employment opportunities, along with improved leisure and retail facilities for residents of the local community, enhancing consumer choice within a sustainable and accessible location.
108. The scheme it provides the opportunity to boost tourism and overnight visitors to the city, an aspect which the Durham Tourism Management Plan 2016-2020 states is currently static, possibly due to a lack of new overnight accommodation. The construction of a new hotel within the city centre will increase the capacity for overnight stays within Durham and will subsequently create the opportunity to attract more visitors to spend money within the city. There were 1.43 million overnight tourists in Durham in 2014 spending £308 million. This also provides the opportunity to support job creation, as tourism currently supports more than 10,800 full time equivalent (FTE) jobs in the county, and up to 75 jobs are associated with the hotel and commercial floorspace with 24 additional to the existing permission. There are also 80 direct and 121 indirect jobs proposed during the construction period.

109. In summary, the development of Milburngate House Hotel will deliver a significant number of social, economic and environmental benefits within the context of the approved wider Milburngate Masterplan and will subsequently compliment the neighbouring components of the consented 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:*

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

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## **PLANNING CONSIDERATIONS AND ASSESSMENT**

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110. 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. The National Planning Policy Framework (NPPF) and 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; visual, townscape and heritage impact; highway safety/issues; residential and occupier amenity; flood risk and drainage; ecology; and viability and planning obligations.

### The Principle of the Development

111. The application seeks planning permission for the revised Block 1a building which would predominantly house a C1 use class hotel together with floorspace on the lowest two storeys which could be used for shopping (use class A1), financial and professional services (use class A2) and the various food and drink uses (use classes A3, A4 and A5). The majority of these uses, save for hot-food takeaway A5 and café A3 usage, would each constitute a main town centre use as defined within the NPPF and as a result the NPPF advises that such developments should be located within town centres.
112. Under the wider redevelopment proposals with planning permission (DM/16/01228/FPA), each of the A1-A5 uses were accepted and already have planning permission, though the hotel is a new use not considered at the site before.
113. The application site is located within Durham City Centre. The CDLP includes a dedicated chapter on the City Centre advising on the range of issues which affect its environment, character and health. The chapter includes reference to a range of policies which are considered relevant to City Centre issues and three policies covering site allocations and general guidance on vitality and viability. Since the adoption of the CDLP a more recent Retail and Town Centre Study was undertaken in 2009, reviewed and updated in 2013 and again in 2018. The findings of these studies are that, since the adoption of the CDLP in 2004, city centre developments have expanded in the city (such as Walkergate and the Radisson hotel, for example) and the functional boundary of the city centre identified within those studies includes the application site. The application site is considered part of the functioning Durham City Centre and the site is therefore considered appropriate in principle for main town centre uses such as the various A use classes and the C1 use class hotel proposed under the application.
114. CDLP Policy CC1 seeks to protect and enhance the vitality and viability of Durham City Centre, in particular, by providing a mixture of uses within that area and promotes the sequential approach to site selection. The thrust of the policy is largely consistent

with the NPPF, however, it is not fully consistent as the policy explains that the sequential approach will be applied to retail and leisure developments whilst the NPPF requires a broader application of this test.

115. CDLP Policy S1a does not clearly define a hierarchy of town centres as such, and it does not extend to the whole of the County but it does, within the former City of Durham District, identify Durham City Centre at the head of the retail hierarchy, and this is considered generally consistent with the content of the NPPF as a result.
116. As the proposals would involve the provision of a mixture of retail and main town centre uses within a city centre location the proposals are considered to draw support from CDLP Policies CC1 and S1a.
117. The principle of the provision of food and drink uses would also be in accordance with CDLP Policy S10 which identifies that within settlement boundaries, such development will be permitted (subject to a range of criteria that covers amenity, parking and scale). This policy is only partially consistent with the NPPF as, unlike the NPPF, it does not reference the need to adopt a sequential approach to site selection for restaurants and drinking establishments.
118. Turning to the proposed hotel itself as discussed above as the site is a city centre location the main town centre use of a hotel is acceptable in principle at the location. The proposal draws support from CDLP Policy V6 which in principle offers support to proposals for new visitor accommodation within settlement boundaries. This policy is considered only partially consistent with the NPPF as, unlike the NPPF, it does not reference the need to adopt a sequential approach to site selection for hotels.
119. The proposals would result in the redevelopment of previously developed land in a locationally sustainable site in close proximity to Durham train station, bus station and the collection of bus stops on Milburngate.
120. Public objection to the application proposals include the principle of development. Some of the objection relates to the amends to the Block 1a resulting in the loss of residential units in favour for a hotel, residential units which the submitted comments consider would help to address the considered dearth of permanent residents (as opposed to students) in Durham City Centre. The public comments also highlight that the site would be a sustainable location for residents – with clear easy access to potential places of employment and services. This would be the case, however, as outlined above the uses sought in this revised scheme are main town centre uses, uses that are expected within a city centre location and which draw support in principle from national and local planning policy guidance. It is considered that the proposed scheme could not reasonably be opposed on the basis that it was at the expense of residential use.
121. With regards to the concerns over the need for a further hotel and, that the mixture of uses proposed is at the expense of other forms of development which could contribute to the economy of Durham City Centre, again officers would firstly highlight that the mixture of hotel and A class uses are main town centre uses which are acceptable in principle. Neither the applicable CDLP policies nor the NPPF require the need for the development be demonstrated. Notwithstanding this, it is notable that the proposals have drawn strong support from both Visit County Durham and Business Durham in their consultation responses. Visit County Durham highlight that the decision to build another hotel will be based upon evidence and local and national hotel trends whilst the development is consistent with several key priorities within the Durham Tourism Management Plan 2016-2020. Emphasis is placed on the importance of overnight

visitors to the City whom account for a disproportionately high amount of expenditure within the City.

122. Further public objections raise concerns that independent shops cannot compete with the chains occupying the City and such chains do not have the vested interest in/care for the City which the independent businesses do. However, in planning use class terms there is no distinction between independent commercial units or national chains. A planning permission for a hotel is simply for a hotel be that occupied by Premier Inn or an independent operator, and the same applies to any restaurant for instance which may occupy the lower floor.
123. Overall, the proposed development is considered to draw support from local and national planning policy guidance and represents the sustainable re-use of previously developed land within a city centre location close to other services and transport hubs. No objections are therefore raised to the principle of the development.
124. The NPPF advises that weight to local plan/development plan policies adopted prior to the publication of the NPPF (in its revised form) should be attributed according to their degree of consistency with the NPPF (the closer the policies in the plan to the policies in the NPPF, the greater the weight that may be given). Existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Equally, however, where evidence, which informed a policy, has been superseded by more up-to-date evidence, this can also be a reason to conclude the policy itself is out of date.
125. So that sustainable development is pursued in a positive way, at the heart of the NPPF is a presumption in favour of sustainable development and this is detailed at paragraph 11 which states;

For decision-taking this means:

c) approving development proposals that accord with an up-to-date development plan without delay; or

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or

ii. 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.

126. In this instance, and having regards to the above discussion on some key policies, the CDLP includes policies most important for determining the planning application, which are out-of-date. Accordingly, the acceptability of the application should be considered under the planning balance test contained within Paragraph 11 (d) of the NPPF. Such an assessment is undertaken in the concluding sections of this report, following consideration and assessment of the all the key material planning considerations.

#### Visual, Townscape and Heritage Impact

127. The Milburngate House site is located within a very sensitive and prominent location. The potential impact upon the townscape and a range of heritage assets was a critical

matter for consideration in regards to the original redevelopment proposal under application DM/16/01228/FPA.

128. The Milburngate House 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 200m 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.
129. In assessing an application, 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. Any such harm must be given considerable importance and weight by the decision-maker.
130. In the assessment of the wider redevelopment proposals with planning permission it was noted that the proposed development was of a significant scale, reflective of the significant scale of the buildings previously standing on the site and the extensive scale of the site itself, exacerbated by the significant level changes around the site. The manner in which the development sought to cascade the significant level changes down to the River Wear was welcomed including the use of pitched roofs. There was some 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 considered the proposal an improvement to the setting of the WHS in comparison to what previously stood on the site whilst Design and Conservation officers considered that whilst in some respects the WHS would be beneficially impacted upon there was some concern raised in regards to the scale of the development and impact in some key views as a result. The conclusions overall were that the townscape and visual impacts were acceptable and most importantly the character and appearance of the Conservation Area and setting of the WHS would be preserved.
131. The proposed hotel block presented to July Committee was in part deferred on the grounds of design. Some of the criticism and concern expressed related to the roofscape. This roofscape has been amended and now includes a pitched roof approach more akin to that originally approved for Block 1a.
132. The servicing layby previously proposed to Leazes Road/Milburngate Bridge has been removed from the hotel scheme and is now replaced with a hard and soft landscaping scheme to the south of the hotel. The pedestrian/cycle route would be retained along Leazes Road/Milburngate Bridge to the front and side of the hotel block. This would provide a more attractive area of public realm than that which would have resulted from the provision of the service layby and thereby address the comments Landscape Officers in this regard. The omission of the service layby has also permitted the south elevation of the hotel to have a more active façade as it would not to the same extent serve a back of house type function.

133. In overall size and scale terms, the maximum height of the hotel block now proposed is around 60m AOD. The previously approved Block 1a reached a slightly higher maximum height of around 61m AOD height albeit this was reached in only a relatively small section of the block with much of the building around 3m lower at 58m AOD. More of the hotel block would reach a height of around 60m AOD. When moving around and viewing the block from different viewpoints officers conclude the hotel would likely appear greater in scale than the previously approved block, but not significantly so. The amendments made to the roofscape would articulate the roof more than the previous flat roofed approach.
134. Historic England had not expressed concerns to the design and form of the building which was presented to Committee in July. They highlighted that the scheme had, through stepped and recessed elements and tonal variety in the proposed materials palette, avoided the potential for a monolithic or standardised appearance and would achieve, albeit in a differing manner to the previously approved Block, a varied appearance. Historic England therefore raised no objections as a result and expressed no concern that detrimental impacts upon any designated heritage assets would occur and state that the proposal would be compliant with key elements of the NPPF which encourages LPAs to support proposals which preserve or make a positive contribution to a Conservation Area and WHS. Historic England did emphasise that final material choices would be important and this can be conditioned on any approval. Historic England have raised no further detailed comments on the amended version of the hotel block now proposed and thereby their comments of no objections remain.
135. Design and Conservation have submitted amended comments in response to the revisions made. The revisions are welcomed considering that the roofscape and elevations better reflect the residential components of the wider redevelopment and thereby more complimentary to the approved proposal in that regard. The greater activity to the façade on the south facing elevation opposite Leazes Road/Milburngate Bridge and the removal of the layby are considered beneficial in design terms. Design and Conservation conclude that the overall heritage impacts of the revised proposals would be of the same magnitude as the originally approved development and would overall preserve the character and appearance of the Durham City Centre Conservation Area with no harm identified to other heritage assets including the WHS. It is stated that the development would demonstrate a distinctive and high quality design solution positively responding to the site constraints and historic and natural environment.
136. The World Heritage Site Coordinator has also revised their comments in the light of the amendments made and they confirm that the amendments are considered a considerable improvement from the scheme presented in July.
137. With regards to layout and landscaping matters, the amends to the south of the hotel are detailed above whilst the public realm and landscaping to the north, east and west of the Block would remain very similar to that previously approved. A public response objects on the grounds that a feature pedestrian entrance adjacent to the Block from Framwelgate Peth proposed under the approved development would be eroded. The pedestrian entrance into the development would remain and would include a feature landscaping area adjacent to it though the plans do depict the route narrowing though relatively slightly. There would remain an approximate 6m wide pedestrian entrance adjacent to the Block off Framwelgate Peth and Landscape Officers confirm that they consider this would remain an inviting entrance. Some additional discussion on layout where it relates to pedestrian and cycle provision is discussed in the highways section of this report below.

138. Under the original planning application a significant concentration of tree loss was accepted along a section of Framwelgate Peth and this would include those adjacent to Block 1a. The removal of trees in this area has already been implemented.
139. Public objection is raised to the relocated servicing area proposed on Framwelgate Waterside. The visual impact of this is, however, considered limited. The bay itself would be unoccupied for many periods whilst the Framwelgate Waterside is already used for parking of vehicles. The goods lifts and refuse stores are located within the car parking and serving spaces on the lowest elements of the overall development and therefore out of view of the riverside itself.
140. In terms of archaeology, conditions were imposed on the planning permission to permit the demolition of the existing building. These conditions related to the undertaken of a scheme of historic building recording and subsequent deposit with the County Durham Historic Environment Record (HER). This historic building recording has been undertaken as per the required condition. No further archaeological requirements are necessary.
141. In conclusion, no overall harm is considered to occur to the significance of individual heritage assets. Wider townscape and visual impacts are acceptable with the character and appearance of the Conservation Area and setting of the WHS preserved. More generally the design, layout and landscaping impacts of the development are considered acceptable. The amendments made to the scheme since the July Committee are considered appropriate, introducing an articulation to the roofscape more akin to that approved across the development site as a whole. The removal of the layby adjacent to the southern elevation is an improvement, permitting an improved public space to be provided together with a more active street frontage.
142. 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, E10, E14, E15, E21, E22, E23, E24, H13, S10, V6, Q4, Q5, Q6 and Q7 in this regard. All of these Policies are considered to be either partially (Policies E3, E6, E22, E23, E24, S10 and V6) or fully (remaining policies) consistent with the NPPF and all can be afforded weight in the decision making process. The development is also considered compliant with key relevant sections of the NPPF namely within Parts 12 and 16.

#### Highway Safety/Issues

143. Under this application for the revised Block 1a proposal access and parking arrangements for customers/visitors and staff are to remain as the wider planning permission. The main access to the public car park proposed under the wider redevelopment would remain off Framwelgate Waterside at the riverside level to the east of the hotel building. It should be noted that separately under the currently pending application DM/18/00896/VOC amends are proposed to access arrangements for the wider development and that application should be referred to for the detail.
144. The car park proposed beneath podium level is proposed to serve the development as a whole and it would form another city centre car park which would be available for use by visitors to not only this development, but the city centre more widely and indeed, conversely, visitors to this development could park elsewhere in the city centre.
145. In response to the proposed change to Block 1a from predominately residential occupation to hotel, the Highway Authority have not required any specific amends to the car parking including any requirement to increase parking provision.

146. The significant highways related impact under the hotel proposals presented at the July Committee was the provision of the service layby accessed off the A690 Leazes Road/Milburngate Bridge. Concerns expressed at that meeting in regards to the safety of this arrangement was a reason for the deferral of the application.
147. In relation to these revised proposals the Highway Authority initially raised some objections to the proposed servicing bay on Framwelgate Waterside considering that it had not been demonstrated that adequate space for the safe manoeuvre of servicing vehicles and those required to visit the sewage treatment works off Frankland Lane. However, amended plans were submitted providing more precise dimensions and design details of the bay and these were accepted by the Highway Authority and no objections are therefore raised.
148. Public objection is raised regarding vehicular access arrangements proposed off Framwelgate Waterside. This hotel application proposes no amendments to this access approved as part of the wider redevelopment. Amendments are proposed separately under application DM/18/00896/VOC and the implications discussed in detail under that application.
149. Public objection is raised to the considered unsafe pedestrian ingress and egress point at the junction of a busy road. As discussed the main pedestrian access point to the hotel block is via the pedestrian only public realm to the north. There would be secondary access points on the western and southern elevations which would lead to landscaped spaces before Framwelgate Peth and Leazes Road are reached but all are considered acceptable pedestrian access points.
150. The Police Architectural Liaison Officer has requested that the pedestrian/cycle route on Framwelgate Peth and Leazes Road is as wide as possible. The existing footpath width is not proposed to be narrowed, indeed widened in sections. A condition was placed on the overall planning permission DM/16/01228/FPA so as to agree the final pedestrian/cycle path with the intention of ensuring the greatest width practicable. Such a condition can be repeated on this application. The Police Architectural Liaison Officer has also requested that the existing pedestrian guardrail is extended up Framwelgate Peth. However, this would restrict the useable width of the path further and restrict the use of a potential emergency vehicle access (also raised as a priority within the Police comments). The Highway Authority consider that the extension of the guardrail would not be an appropriate measure.
151. The application is accompanied by a Travel Plan which Sustainable Travel Officers have accepted, stating that it meets the necessary standards.
152. Overall, no objections are raised to the development on highways related grounds, with the development considered compliant with relevant sections of CDLP Policies T1, T19, T20, T21, V6, Q1, Q2 and Q7. These policies are considered to be either partially (Policy V6) or fully (remaining policies) consistent with the NPPF and all can be afforded weight in the decision making process. CDLP Policy T10 is also applicable to the site and relates to parking provision. Policy T10 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 very little weight is attributed to this policy. The development is considered compliant with key relevant sections of the NPPF namely Part 9.

153. Within the approved wider redevelopment proposals key issues for consideration related to amenity were; air quality implications; lighting impacts; implications of nuisances arising from construction activities; noise and vibration and the potential for disturbances arising from the mixture of uses; odour; contamination; and whether adequate separation between buildings remains having regards to privacy, outlook and light. Subject to conditions as necessary, no objections were raised having regards to these factors.
154. In regards to air quality, Environment, Health and Consumer Protection have raised no objections to the proposed revisions to Block 1a. The proposed change from a residentially occupied block at the site to that of a hotel is insignificant in air quality terms and the end user would actually be less sensitive to air quality issues. However, mitigation measures in the form of particular ventilation requirements would still apply to the hotel use as they did to the previously approved residential occupation. Similarly during the construction phase a condition requiring confirmation of the Heavy Duty Vehicle (HDV) movements when they are known and an assessment upon air quality will be needed. To reduce the impact on air quality, the condition would also require that HDV movements are scheduled outside the AM and PM peak traffic periods.
155. Under the wider redevelopment proposals Environment, Health and Consumer Protection concluded that it was unlikely that the proposals pose any significant concerns in relation to impacts upon neighbouring occupiers. However, it was advised that final lighting proposals be controlled under condition. The current application is accompanied by a lighting assessment note which advises that the lighting assessment conclusions contained within the ES accompanying the approved application remain valid and a revised lighting strategy providing concept lighting designs of the revised Block 1a has also been submitted. Environment, Health and Consumer Protection have again raised no objections subject to the final design being agreed under condition. Officers concur with these views and a condition would be added to any planning permission.
156. The originally approved application was 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 emissions from the site. Existing noise is generally dominated by the traffic on Framwelgate Peth and Leazes Road/Milburngate Bridge whilst any implications of an increase in traffic as a result of the development upon this existing noise climate would be insignificant. As a result of the mixture of uses proposed within the wider redevelopment, there is the potential for the transfer of noise and vibration between the commercial units and residential units proposed. Proposed plant which could run 24hrs a day would be another source of noise. Consideration was also given the potential impacts of the comings and goings at the wider site due to the range and mix of uses including food, drink and cinema use which could entail late night opening.
157. This current application is accompanied by an updated noise assessment building upon the findings under the original application. Environment, Health and Consumer Protection have raised no objections to the submitted report or the revised Block 1a proposals in regards to noise. However, it is advised that conditions so as to control plant noise and sound insulation and tenant management measures would be required. Officers concur with these views and the necessary condition can be added to any planning permission.

158. The Police Architectural Liaison Officer has raised concerns regarding the compatibility of uses within the development and this is understood to relate to not only this application but the wider site as a whole. The concerns relate to the residential occupiers of the wider site and potential impacts of late night revellers visiting the licensed premises within the site. Particular concern is expressed with Unit 10 on Level 03 and the potential for loitering to occur outside it on the adjacent pedestrian routes.
159. It should be highlighted that the Block 1a within the extant planning permission also included lower floor commercial space which could be utilised as licensed premises this included a unit 10 in the same western section of the Block with an access door on the western elevation which led to a pedestrian route as proposed now. There is a slight amendment to this pedestrian route proposed under this application which involves as it would be set behind supporting pillars to the Block. The route would not be enclosed though and would remain open to the west whilst the western elevation of the unit adjacent would be largely glazed with an active façade.
160. As the upper floor use of the Block is now proposed for hotel accommodation rather than residential there is arguably less conflict between the uses than that which the scheme with planning permission has.
161. In addition to the conditions required by Environment, Health and Consumer Protection in respects to controlling noise from the units and plant, a planning condition would be added to any planning permission requiring agreement to be reached on the opening hours of the proposed food and drink uses (A3-A5 classes).
162. Consistent with the original planning permission a condition would also be added to any planning permission requiring final means of extraction equipment to be agreed so as control the emission of odours from any food and drink uses within the Block.
163. As a result, Officers consider that the proposed uses within the amended development would be acceptable, that the compatibility of those uses is arguably better than the previously approved residential occupation of the Block and conditions proposed to be added to any approval would help control noise impacts further. No objections are therefore raised on the grounds of concern over the potential for disruptive amenity impacts or potential for crime.
164. Prior to the redevelopment proposals commencing, and as per the original planning permission, there would be a requirement for the submission of, and agreement to, a construction management plan; the aim being to reduce the potential for nuisances caused by the construction of the building as a result of noise and dust etc.
165. 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 submission of a Phase 4 verification report. A condition has been partially discharged in this regard to site contamination pursuant to the approved demolition under planning permission DM/15/1119/FPA. There is a requirement for the applicant to discharge that condition in full through the submission of a phase 4 verification report in order to confirm the remediation strategy has been completed. The requirement to fully discharge this condition on DM/15/01119/FPA applies irrespective of this application and there is no requirement to repeat the condition on any planning permission for this development.
166. In regards to the layout of the development and potential for any harmful privacy, loss of outlook or light, the layout of the block and its overall scale and location of windows is similar to the Block 1a building previously approved. Its relationship with

neighbouring land uses and occupiers, both existing off-site and proposed within the wider on-site redevelopment, would also be essentially commensurate with that approved. The western elevation of the revised Block 1a would be approximately 55m from the nearest property at Highgate on the opposite side of Framwelgate Peth. Properties at St Annes and St Godrics Courts would be approximately 75m from the southern elevation of the block. On the opposite side of Leazes Road/Milburngate Bridge is the Riverwalk redevelopment which when occupied will include on the upper floors student accommodation. Distances between the student flats and the proposed hotel would be approximately 24m at the nearest point. Such distances are considered acceptable.

167. Within the site itself the relationship between the proposed Block 1a and neighbouring Block 1b would be quite intimate with distances between the blocks varying from around 10m to 25m but this relationship remains as per the previous approval under which no objections were raised referencing that the City Centre is in part characterised by winding intimate streets.
168. In conclusion, no objections are raised to the development in relation to the range of potential amenity impacts which could emerge from the development, subject, as necessary, to conditions. The proposals are considered in compliance with relevant CDLP Policies H13, Q1, Q7, U5, U7 and U11 in this regard and Part 15 of the NPPF. These CDLP Policies are considered fully (remaining policies) consistent with the NPPF and can be attributed weight in the decision making process.

#### Flood Risk and Drainage

169. The Milburngate House site is located adjacent to the River Wear and the site has a history of flooding. The originally approved wider redevelopment proposal was accompanied by an ES chapter on flood risk and hydrology and associated enclosures including a flood risk assessment (FRA). It was noted under that application that in relation to the wider redevelopment site the north western area lies within Flood Zone 1 (low flood risk probability). Parts of the western and southern section of the wider 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 eastern part of the wider site to be within Flood Zone 3b.
170. Under the original planning permission consideration of the sequential and exception flood risk tests was given. It was accepted that there was no reasonably available and sequentially preferable locations for the redevelopment. With regards to the exception test it was firstly accepted that the development provides the necessary wider sustainability benefits that outweigh the flood risk and secondly that the submitted FRA demonstrated that the development would be safe for its lifetime taking account of the vulnerability of its users, that no increase in flood risk elsewhere would occur.
171. The key flood risk mitigation measures incorporated into the overall development were to ensure 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 to ensure that the current volume of floodplain is maintained.
172. The flood risks associated with just the Block 1a revisions under this application are less complex in the sense that the amendments proposed in the main affect the development from level 02 upwards at around 39.5m AOD a full 6m above the 1%

probability event (1 in 100 year) (including appropriate allowances for climate change). Albeit there are also the serving arrangement amends on the lowest level at Framwelgate Waterside as well but this is commensurate with the nature of the approved development beneath the plinth level. The Environment Agency have raised no objections to the development subject to a condition requiring the FRA mitigation measures being implemented/adhered to.

173. In regards to surface water disposal proposals the wider drainage strategy for the site would entail the discharge into the River Wear with restriction on the discharge rate. The use of soakaways (more preferable in the surface water disposal hierarchy) were considered unsuitable due to the ground conditions. Foul water flows for the wider development would be discharged into the main sewer.
174. The proposed amendments to the Block 1a building would not alter the principles of the surface water and foul water disposal though peak foul flow disposal from a hotel would be higher than the previous residentially occupied block.
175. Neither Northumbrian Water nor Drainage and Coastal Protection raise objections to the development in regards to the drainage proposals for the development.
176. No objections are raised to the development on flood risk and drainage grounds with the development considered compliant with 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 14 of the NPPF.

## Ecology

177. The approved wider redevelopment application was accompanied by a phase 1 habitat survey, bat method statement, bat emergence surveys and a biodiversity statement. Those submissions built upon ecological submissions which accompanied the previously approved application for demolition of Milburngate House and the ecological documentation has been submitted again under this current application.
178. 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.
179. The surveys undertaken did not find any protected species on site, other than nesting birds and recommendations were included to ensure that birds were not adversely impacted upon by the proposed demolition works. Some loss of foraging habitat for badgers and hedgehogs were also identified to occur and again mitigation measures so as to control when vegetation can be removed from the site were recommended.
180. 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, a method statement was devised and trees to be lost as a result of the redevelopment would be visually inspected before they were felled. The impact of lighting was considered and it was 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.
181. The proposed amends to the Block 1a building raise no new ecological considerations. Ecology have raised no objections to the development provided that the final lighting

scheme (which can be conditioned) ensures that light spillage is restricted so as to not affect the River ecological corridor.

182. 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 2017.
183. In terms of ecological and 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 CDLP Policy E16 (fully consistent with the NPPF) and Part 15 of the NPPF.

#### Viability and Planning Obligations

184. As this planning application relates to the provision of a hotel and A1-A5 commercial units the requirements to provide some planning obligations via S106 legal agreement do not apply. No affordable housing or off-site contribution towards open space and recreation facilities are required for hotel or A1-A5 uses.
185. However, the wider redevelopment does propose residential units where obligations in relation to affordable housing and monies towards open space and recreation would ordinarily be required to mitigate the impacts of the development. Following an assessment of development viability which included the Council employing two independent consultants to appraise viability issues, it was accepted that the viability of the wider redevelopment was marginal and, as a result, affordable housing provision and open space/recreation provision was not sought at that time. However, so that the Council could retain the ability to review the viability of the site in the future a S106 legal agreement was entered into which included obligations that at certain trigger points viability reviews would be required. If it was demonstrated that the applicants profit exceeded a certain level then 50% of that surplus would be required to be paid to the Council for the provision of affordable housing and/or open space and recreation provision.
186. Whilst the planning obligations are not required by this development as such, the amended proposal would form part of the wider redevelopment site and it is considered necessary to enter into a Deed of Variation of that legal agreement so that it reflects the most up to date mixture of uses proposed and that those viability review obligations should apply to this new planning permission
187. 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.
188. 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. In this instance public art provision is not necessary to make the development acceptable – the development would remain acceptable in principle at the site without either a public art installation on site or indeed offsite contributions.

#### Other Issues

189. In regards to matters of land stability and coal mining legacy issues the Coal Authority have raised no objections to the development and require no conditions and thereby

no concerns are raised in regards to such matters having regards to CDLP Policy U13 (NPPF compliant) and Part 15 of the NPPF.

190. The application sets out within an energy report a commitment to embedded sustainable measures within the build. The key proposal is the implementation of a Combined Heat and Power (CHP) engine which would be situated within the plant areas of the Block. The report highlights that this is expected to deliver an approximate 21% reduction in carbon emissions over the 2013 Building Regulations Part L requirements. No objections to the development are therefore raised having regards to CDLP Policy U14 on energy conservation (fully consistent with the NPPF).
191. 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 to those uses proposed within Block 1a 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  
Hotel to state-funded schools or registered nursery
192. 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.

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## **CONCLUSION**

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193. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework is a material consideration in planning decisions.
194. The NPPF advises that weight to local plan/development plan policies adopted prior to the publication of the NPPF (in its revised form) should be attributed according to their degree of consistency with the NPPF (the closer the policies in the plan to the policies in the NPPF, the greater the weight that may be given). Existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Equally, however, where evidence which has informed the content of the policy is out of date this can also be a reason to conclude the policy is out of date.
195. So that sustainable development is pursued in a positive way, at the heart of the NPPF is a presumption in favour of sustainable development and this is detailed at paragraph 11
196. In this instance policies within the CDLP most relevant for determining the application are out-of-date. As a result paragraph 11(d) of the NPPF applies which states;

where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
  - ii. 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.
197. Having regards to the planning assessments above no policies within the Framework that protect areas or assets of particular importance provide a clear reason to refuse the development proposed.
198. The proposals would comprise of main town centre uses within Durham City Centre and contribute to the vitality of the City Centre. Impacts of the development in regards to key material planning considerations are considered acceptable with most notably the character, appearance and setting of designated heritage assets preserved, no harmful impacts upon highway safety resultant whilst impacts upon residential amenity are considered acceptable. No adverse impacts would result from the development that would significantly and demonstrably outweigh the benefits.
199. As a result having regards to all material planning considerations including comments raised in the public consultation exercise, it is considered that the proposals are acceptable and approval is recommended as a result.

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## **RECOMMENDATION**

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

- i) A Deed of Variation of the S106 legal agreement pursuant to planning permission DM/16/01228/FPA so that the viability review obligations in respects to affordable housing and open space and recreational space contributions reference this revised development under DM/18/00894/FPA

And subject to the following conditions:

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

Reason: Required to be imposed pursuant to Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. The development hereby approved shall not be occupied until the structure of the podium, car parking provision, plant, core, circulation and servicing areas at levels B1, 00 and 01 (the development podium / platform) as defined on drawings 2962-FBA-00-B1-DR-A-00\_10-0B100 Rev P1.1, 2962-FBA-1A-00-DR-A-00\_10-1A000 Rev P4, 2962-FBA-00-00-DR-A-00\_10-00000 Rev P1.2 and 2962-FBA-00-01-DR-A-00\_10-00100 Rev P1.2 are completed to a point that the Block 1a building can be adequately serviced and in accordance with a Schedule of Works which must first have been submitted to and approved in writing by the Local Planning Authority prior to the commencement of development (with the exception of demolition, preliminary site excavation, enabling and remedial works, the building of foundations and the erection of any supporting steel frame at levels B1, 00 and 01 inclusive).

Thereafter the development must be completed in accordance with the approved Schedule of Works.

Reason: To ensure that necessary supporting infrastructure and development to serve the development hereby approved is implemented prior to the commencement of the development hereby approved 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 2, 4, 6, 7, 8, 9, 11, 12, 14, 15 and 16 of the NPPF.

3. 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-B1-DR-A-00\_10-0B100 REV P1.1 PROPOSED LEVEL B1 GA MASTERPLAN  
2962-FBA-1A-00-DR-A-00\_10-1A000 REV P4 PROPOSED PREMIER INN LEVEL 00  
2962-FBA-00-00-DR-A-00\_10-00000 REV P1.2 PROPOSED LEVEL 00 GA MASTERPLAN  
2962-FBA-00-01-DR-A-00\_10-00100 REV P1.2 PROPOSED LEVEL 01 GA MASTERPLAN  
2962-FBA-01-02-DR-A-00\_10-0200 REV P3 PROPOSED PREMIER INN LEVEL 02  
2962-FBA-01-03-DR-A-00\_10-0300 REV P2 PROPOSED PREMIER INN LEVEL 03  
2962-FBA-01-04-DR-A-00\_10-0400 REV P2 PROPOSED PREMIER INN LEVEL 04  
2962-FBA-01-05-DR-A-00\_10-0500 REV P2 PROPOSED PREMIER INN LEVEL 05  
2962-FBA-01-06-DR-A-00\_10-0600 REV P2 PROPOSED PREMIER INN LEVEL 06  
2962-FBA-01-07-DR-A-00\_10-0700 REV P2 PROPOSED PREMIER INN LEVEL 07  
2962-FBA-01-08-DR-A-00\_10-0800 REV P2 PROPOSED PREMIER INN LEVEL 08  
2962-FBA-01-00-DR-A-01\_10-1A-51 REV P2 PROPOSED PREMIER INN ELEVATIONS  
2962-FBA-01-00-DR-A-01\_10-0\_28 REV P2 PROPOSED ELEVATION 01  
2962-FBA-01-00-DR-A-01\_10-0\_29 REV P2 PROPOSED ELEVATION 02  
2962-FBA-01-00-DR-A-01\_10-0\_30 REV P2 PROPOSED ELEVATION 03  
2962-FBA-00-00-DR-A-05\_10-0\_104 REV P1.2 LOCATION PLAN  
2962-FBA-00-03-DR-A-05\_10-00305 REV P2 PROPOSED SITE PLAN  
2962-FBA-01-00-DR-A-00\_10-0\_80 REV P1.3 PROPOSED SITE ELEVATIONS EAST AND WEST  
2962-FBA-01-00-DR-A-00\_10-0\_81 REV P1.3 PROPOSED SITE ELEVATIONS NORTH AND SOUTH  
2962-FBA-01-00-DR-A-00\_10-0\_82 REV P2 PROPOSED ELEVATION WITH PROPOSED GATES DEVELOPMENT  
AIA TPP PHASE 1 CONS. – SOUTH REV A ARBORICULTURAL IMPACT ASSESSMENT TREE PROTECTION PLAN (TPP)  
5162523-ATK-HKF-L0-DR-CH-0001 T4 KERBS, FOOTWAYS AND PAVED AREAS LEVEL 0 AREA 0A SHEET 1 OF 2  
MBG-COL-00-XX-DR-L-7025 REV 03 SERVICE BAY LOCATION DCC OPTION

Documents:

ES APPENDIX 10.1 FLOOD RISK ASSESSMENT AUGUST 2016  
ES APPENDIX 10.1 FLOOD RISK ASSESSMENT MODELLING APPENDIX B  
ES VOL 1 FLOOD RISK AND HYDROLOGY MITIGATION MEASURES DETAILED AT 10.83 – 10.97  
ES VOL 1 AIR QUALITY MITIGATION MEASURES DETAILED AT 11.111 – 11.121  
ES VOL 1 LIGHTING MITIGATION MEASURES DETAILED AT 12.75 – 12.81  
WSP MILBURNGATE HOTEL APPLICATION FLOOD RISK ASSESSMENT SEPTEMBER 2018

ATKINS TECHNICAL NOTE LIGHTING ASSESSMENT – BLOCK 1A PLANNING APPLICATION ADDENDUM 5166326  
ATKINS ENERGY STATEMENT FOR PREMIER INN HOTEL MILBURNGATE 07 SEPTEMBER 2018  
WSP AIR QUALITY TECHNICAL NOTE  
ATKINS TECHNICAL BLOCK 1A AIR QUALITY ADDENDUM NOTE PROJECT NO 5162523  
WSP ENVIRONMENTAL NOISE ASSESSMENT JANUARY 2018  
ATKINS DRAINAGE STRATEGY ADDENDUM (1A) 29 AUGUST 2018  
ES APPENDIX 10.2 DRAINAGE STRATEGY  
WSP TRAVEL PLAN 70028012-02 JANUARY 2018  
ARBORICULTURAL IMPACT ASSESSMENT REVISION A 26TH AUGUST 2016  
BAT METHOD STATEMENT MAY 2016  
BIODIVERSITY STATEMENT  
EXTENDED PHASE 1 REPORT APRIL 2015  
ES VOL 2 AMENDED APPENDIX 3.1 SCHEDULE OF DEVELOPMENT V9 (REVISED JUNE 2018)

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 2, 4, 6, 7, 8, 9, 11, 12, 14, 15 and 16 of the NPPF.

4. No development other than demolition shall take place until the following has been submitted and approved in writing by the Local Planning Authority;

i) Full details of the number and routing of all Heavy Duty Vehicle (HDV) necessary to implement the construction 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 until, the submitted AQA (where submission is necessary) has been approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details including any mitigation measures.

Reason: In the interest of reducing impacts upon air quality having regards to CDLP Policy U5 and Part 15 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.

5. No development shall take place until a Construction Management Plan (CMP) has been first submitted to and approved in writing by the Local Planning Authority. The CMP shall consider the potential environmental impacts (noise, vibration, dust & light) that the construction phase may have upon any occupants of nearby premises and shall detail mitigation proposed. This shall 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.
- 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 the development shall be carried out in accordance with the approved CMP.

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.

6. No works other than demolition, preliminary site excavation, enabling and remedial works shall take place until an Employment & Skills Plan has been submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall be carried out in accordance with the approved Employment & Skills Plan.

Reason: In the interests of building a strong and competitive economy in accordance with Part 6 of the NPPF.

7. Notwithstanding details contained within the plans and documents, no development other than, 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 red line site boundary (as defined on 2962-FBA-00-00-DR-A-05\_10-0\_104 Rev P1.2 Location Plan) has been submitted to and approved in writing 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 carried out 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 9 of the NPPF.

8. Notwithstanding the details contained within the submitted plans and documents no development other than demolition, preliminary site excavation, enabling and remedial works, the building of foundations and the erection of any supporting structural frame shall take place until a detailed landscaping scheme has been submitted to and approved in writing by the Local Planning Authority.

The landscape scheme shall include the following:

- Details of soft landscaping including plant 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; and
- Details of means of enclosure, including retaining walls;
- Details of the long term management proposals including measures to ensure the replacement of trees or plants which die, fail to flourish or are removed and details of timescales of the implementation of the landscaping proposals shall also be submitted.

Thereafter the development shall be carried out 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 12 and 15 of the NPPF.

9. Notwithstanding the details contained within the submitted plans and documents no development other than demolition, preliminary site excavation, enabling and remedial works, the building of foundations and the erection of any supporting structural frame shall take place until full details including samples and sample panels of all external materials to be used in the development have been submitted to and approved by the Local Planning Authority. Thereafter the development must be carried out 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 12 and 16 of the NPPF.

10. Notwithstanding details submitted within the submitted plans and documentation no development other than demolition, preliminary site excavation, enabling and remedial works, the building of foundations and the erection of any supporting structural frame shall take place until an advertisement and signage strategy for the development has been submitted to and approved by the Local Planning Authority.

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 12 and 16 of the NPPF.

11. 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 the building 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/Riverwalk 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. The details must include a timetable for the implementation of the connection/link and the connection/link must be completed and available for use in accordance with the approved details.

Reason: So as to ensure appropriate connectivity and accessibility having regards to CDLP Policies Q1 and Q2 and Parts 9 and 12 of the NPPF.

12. 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 the building shall take place until a scheme of sound insulation and tenant management measures 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 hotel bedroom accommodation 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 the hotel bedrooms. The approved schemes shall be carried out prior to the occupation of the development and maintained thereafter.

Reason: In the interests of preserving the residential and occupier amenity of site occupiers having regards to CDLP Policies U7 and Q8 and Part 15 of the NPPF.

13. Prior to the occupation of any A3/A4/A5 unit, or that particular unit, details all plant, extraction and ventilation 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 15 of the NPPF.

14. 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 the C1 use hotel hereby approved shall take place until full details of all plant, extraction, ventilation including fume extraction systems to be utilised within development are submitted to and approved in writing by the Local Planning Authority. Such details should 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. The approved details shall thereafter be carried out and maintained in accordance with the approved details.

Reason: In the interests of preserving visual and residential amenity of site occupiers having regards to CDLP Policies U7 and Q8 and Parts 15 and 16 of the NPPF.

15. Prior to the occupation of the development, a final external lighting scheme and associated lighting impact assessment shall be submitted and approved by the Local Planning Authority. This should include the following, commensurate with the scale/type of lighting scheme provided and having regards to the location of the site within Environmental Zone 3 in accordance with the Institution of Lighting Professionals Guidance on the Reduction of Obtrusive Light:

- 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;
- 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 the development shall be carried out in accordance with the approved schemes and assessments.

Reason: In the interests of preserving residential amenity, preserving the character, appearance and setting of heritage assets and in the interests of conserving ecological assets having regards to CDLP Policies E3, E6, E16, E21, E22, E23, U7, H13, Q7 and Q8 and Parts 12, 15 and 16 of the NPPF.

16. Prior to the occupation of any unit to be utilised within the A3, A4, or A5 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 15 of the NPPF.

17. No plant shall be operated until a detailed noise impact assessment and scheme of sound attenuation measures 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 on the site shall not exceed the representative daytime background (LA90, 1hour) by more than 5dB between 07.00-23.00 and the representative night-time background (LA90, 15mins) by more than 0dB between 23.00-07.00. The measurement and assessment shall be made according to BS 4142: 2014. The development shall then be carried and maintained in accordance with the approved measures.

Reason: In the interests of residential amenity having regards to CDLP Policy U5 and Part 15 of the NPPF.

18. 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, the WSP Milburngate Hotel Application Flood Risk Assessment September 2018 and the following mitigation measures detailed within the FRA:

- Provision of compensatory flood storage as described in section 5.2.4, 5.2.5 and 6.3 of the FRA
- 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 above Ordnance Datum (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 14 of the NPPF.

19. 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 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.

20. No development works pursuant to the development hereby approved shall take place outside the hours of 7.30am - 6pm Monday to Friday (inclusive) and 8am - 1pm on a Saturday with no works on any Sunday or Bank Holiday.

Reason: To define the consent and in the interests of the amenity of neighbouring occupiers having regards to CDLP Policy U5 and Part 15 of the NPPF.

21. The development must be implemented in accordance with the air quality mitigation measures detailed within ES Vol 1 Air Quality mitigation Measures at paragraphs 11.111 – 11.121 including the provision of a suitable form of ventilation requirements for Block 1a.

Reason: The air quality mitigation measures previously required for the residential Block 1a under application DM/16/01228/FPA are required for the hotel and A1-A5 uses hereby approved in the interests of amenity and pollution mitigation having regards to CDLP Policy U7 and Part 15 of the NPPF.

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## **STATEMENT OF PROACTIVE ENGAGEMENT**

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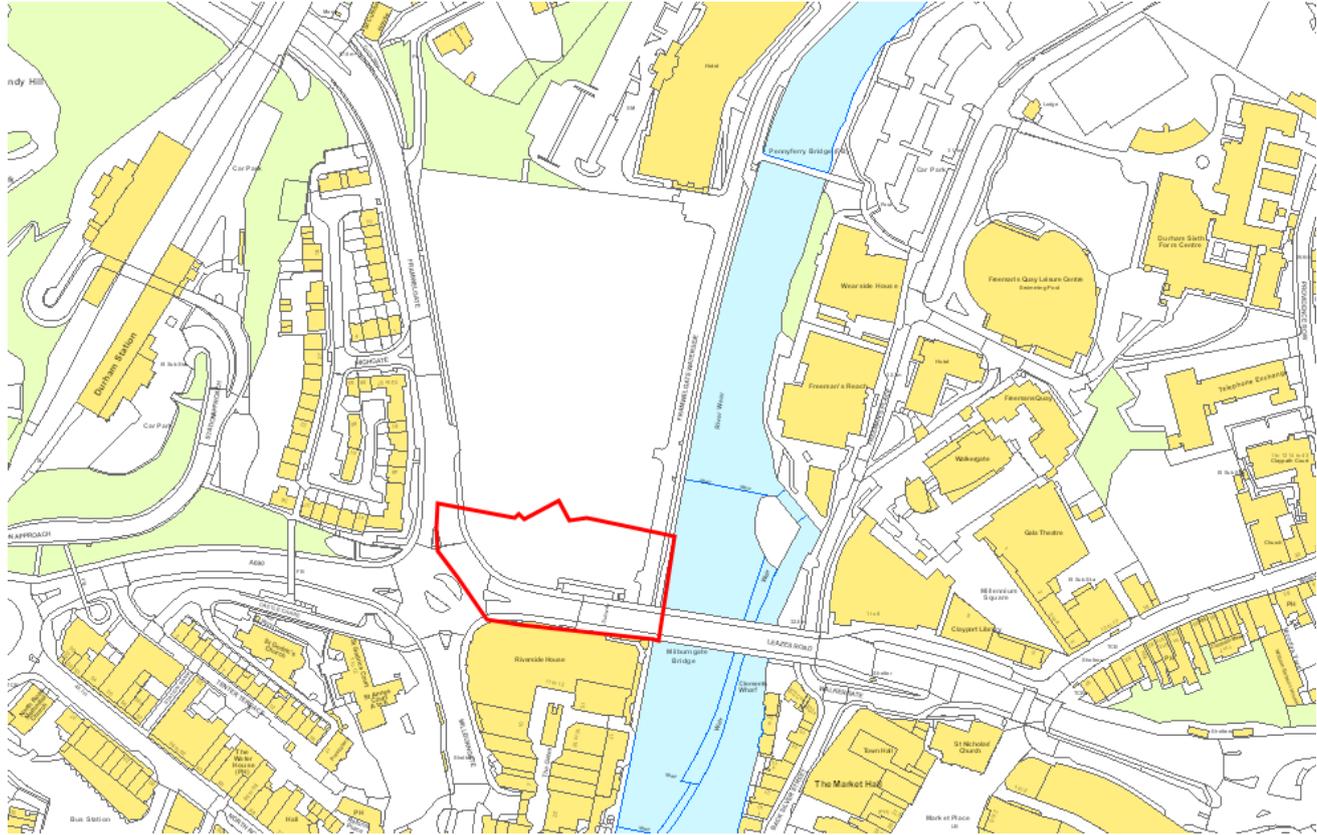
The Local Planning Authority in arriving at its recommendation to approve this application has, without prejudice to a fair and objective assessment of the proposals, issues raised, and representations received, sought to work with the applicant in a positive and proactive manner with the objective of 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.)

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## **BACKGROUND PAPERS**

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



**Planning Services**

DM/18/00894/FPA

92-bed hotel and two commercial units for shop, professional and financial service and/or food and drink uses (Class A1-A5) with associated works

MGH Card LLP

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**Comments**

**Date**  
4<sup>th</sup> December 2018

**Scale**  
Not to scale

# COMMITTEE REPORT

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## APPLICATION DETAILS

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**APPLICATION NO:** DM/18/00896/VOC

**FULL APPLICATION  
DESCRIPTION:**

Variation of conditions 4 and 20 pursuant to planning permission DM/16/01228/FPA (mixed use development on Milburngate House site) so as to permit new service yard access, car parking and servicing yard amends, additional cinema screen, replacement of unit 9 leisure use with residential, insertion of mezzanine level in unit 7, movement of 7 residential units from Block 1E to Blocks 1B, 1C and 1D and replacement with storage, increase in roof terrace space at Block 1D & removal of 2 meeting rooms, fenestration amends, landscape and public realm adjustments and amendment to Framwelgate Peth access so as to permit non-residential traffic

**NAME OF APPLICANT:** MGH Card LLP

**ADDRESS:** Former Milburngate House, Framwelgate Waterside, Durham City

**ELECTORAL DIVISION:** Elvet and Gilesgate

**CASE OFFICER:** Henry Jones, Senior Planning Officer  
03000 263960 [henry.jones@durham.gov.uk](mailto:henry.jones@durham.gov.uk)

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## DESCRIPTION OF THE SITE AND PROPOSALS

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### The Site

1. The former Milburngate House building was constructed in the 1960s and was purpose built for the Post Office Savings Bank, later known as the National Savings & Investments. Planning Permission (DM/15/01119/FPA) was granted in July 2015 for the demolition of the building including remediation and enabling works in preparation for future redevelopment on the site. These demolition and preparation works for redevelopment are now nearing completion.
2. To the north of the site is the Radisson Hotel with residential properties in Sidegate beyond whilst in the south is the former Gates Shopping Centre currently nearing completion of its redevelopment into The Riverwalk. On the opposite side of the River Wear to the east lie the Freeman's Reach office development and beyond that the Walkergate development. In the west, on the opposite side of Framwelgate Peth, are residential properties at Highgate.

3. 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 WHS is located approximately 200m from the application site at the nearest point.
4. 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 and Background:

5. In March 2018 planning permission (DM/16/01228/FPA) was granted in detail for the redevelopment of the site with a 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 outline planning permission with all detailed matters reserved except access for a mixed use development of office (use class B1) and a maximum of 150 residential units. The buildings and public realm forming the development would step up from the lower riverside level to the higher land towards Framwelgate Peth and would sit atop of a podium level predominantly housing four levels of parking and servicing.
6. Under that approved application the main vehicular access to the site would be retained at the existing access point from Framwelgate Waterside, albeit in an amended form. This would lead to the car parking beneath podium level.
7. A second access approved under that application would be taken via a new signalised junction from Framwelgate Peth approximately in the location of an existing egress. This was subject to condition 20 of that planning permission which required the final operational strategy for that junction to be agreed and furthermore stipulated that the access could only be utilised by vehicles associated with the residential units within the development or for flood evacuation purposes.
8. A separate service access was approved under that application from Framwelgate Waterside in the north of the site adjacent to the Radisson Hotel.
9. This application seeks to amend the proposed signalised junction at Framwelgate Peth and the wording of condition 20 so that it can be utilised for vehicular traffic for not only the residential units but also for access to the public car park more generally (short stay parking).
10. Employees within the development (long stay parking) would still be encouraged to enter the car park via the Framwelgate Waterside access point as only at this access point would there tokens/fobs utilise the car park be accepted.
11. The application seeks approval for a further servicing access point to be provided within the development, approximately mid-way along the Framwelgate Waterside frontage and to the immediate north of the Block 1F building.
12. Amendments to the approved Blocks 1a (to form a hotel) and 1e (to form an office) are being considered under separate planning applications (DM/18/00894/FPA and DM/18/02924/FPA respectively).

13. Aside from the access amendments proposed above further amendments are sought under this pending application in part to rationalise remaining elements of the development having regards to all the changes sought.
14. It is proposed that the approved cinema within the development is provided with an extra screen, making it a four screen cinema as oppose to the previously approved three. This would occur at level 00.
15. In Block 1b the commercial Unit 9 on level 03 is proposed to be replaced with residential accommodation (4 apartments).
16. In Block 1c a void space at level 03 is proposed to now comprise of a commercial mezzanine.
17. It is proposed to relocate 7 apartments from Block 1e (separately sought for replacement with an office block under DM/18/02924/FPA) into Blocks 1b, 1c and 1d.
18. In Block 1d a roof terrace is proposed to be enlarged and relocated to the southern end of the block and in so doing replace a meeting space at level 08.
19. Some external treatment amendments to the Blocks are also proposed. On Blocks 1b, 1c, 1d and 1f some adjustments to the fenestration and elevational detailing is proposed together with amendments to plant screening.
20. Amends to the energy strategy for the development are proposed.
21. Amendments to the car parking and servicing elements of the development are also proposed on the lowest levels of the development. The layout of the car parking areas and circulation road/route itself is proposed to be amended and the total number of parking spaces to be provided within the phase 1 of the development (the detailed planning permission) is proposed to reduce from 339 to 323. Alterations to the servicing areas include amendments and repositioning of plant rooms, water tanks, substation, design of service yard space, lift and stairway position amends and store location amends. The alignment of the supporting wall to the podium on its western side is proposed to be amended. A car park vent housing is proposed to be introduced adjacent to the Block 1d.
22. Amendments to the layout, design and materiality of the hard and soft landscaping proposals across the development are also proposed, albeit the final detail of these matters was regardless to be controlled under condition on the existing planning permission.
23. One of the most significant changes proposed to the public realm is the amendment to the feature pedestrian route which cascades down from Framwelgate Peth through the development. The position and alignment is proposed to be amended with a repositioning approximately 3m farther north and it is now proposed to be formed in part formed via a suspended staircase/walkway design rather than a cascading solid set of steps.
24. It is therefore proposed to amend the content of condition 4 of the existing planning permission to account for the necessary amendments to the affected plans.
25. Planning permission DM/16/01228/FPA was considered Environmental Impact Assessment (EIA) development under the Town and Country Planning (Environmental Impact Assessment) Regulations and was accompanied by an Environmental Statement (ES). A variation of condition or section 73 application (as submitted here)

is defined as a “subsequent application” in those regulations and it is necessary to consider whether any further information and thereby update of the previously ES is needed as a result.

26. In this instance the scope of the amendments are such that it is considered that the previous ES submissions provide adequate information to inform on the decision. Nevertheless, this report has taken into account the information contained in all previous ES submissions and matters arising from statutory consultations and other responses.
27. The application is reported to the County Planning Committee at the request of the Local Ward Councillor.

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## **PLANNING HISTORY**

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28. Planning Permission 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.
29. In March 2018 planning permission was granted for the redevelopment of the site with a 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 (detailed permission) and outline planning permission with all detailed matters reserved except access for a mixed use development of office (use class B1) and a maximum of 150 residential units (use class C3) and associated landscaping and infrastructure works.
30. An application is currently pending consideration (DM/18/00894/FPA) for a 92-bed hotel and two commercial units for shop, professional and financial service and/or food and drink uses (Class A1-A5) with associated works on part of the wider redevelopment site.
31. An application is currently pending consideration (DM/18/02924/FPA) for the erection of an office block (identified as Block 1E) (B1 use class) with flexible permission for shop, food and drink and assembly & leisure uses at ground floor level (Use Classes A1, A3 and D2) and associated public square and landscaping.
32. Though not on the application site but also of some background relevance is the redevelopment of the adjacent Gates shopping centre is a mixed use scheme known as the Riverwalk first granted planning permission in November 2015 (DM/15/01626/FPA). The redevelopment is well advanced with some of the first units now occupied.
33. On land on the opposite side of the River Wear at the Sands car park and Durham Sixth Form Centre car park, an application is also pending consideration for an office headquarters with associated car parking (inclusive of a multi-storey car park) with associated landscaping, highway and infrastructure works and demolition of existing structures (DM/18/02369/FPA).

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## **PLANNING POLICY**

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## NATIONAL POLICY

34. A revised National Planning Policy Framework (NPPF) was published in July 2018. The overriding message continues to be that new development that is sustainable should go ahead without delay. It defines the role of planning in achieving sustainable development under three overarching objectives – economic, social and environmental, which are interdependent and need to be pursued in mutually supportive ways.
35. In accordance with Paragraph 213 of the National Planning Policy Framework, existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with the Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given). 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.
36. *NPPF Part 2 - Achieving sustainable development.* The purpose of the planning system is to contribute to the achievement of sustainable development and therefore at the heart of the NPPF is a presumption in favour of sustainable development. It defines the role of planning in achieving sustainable development under three overarching objectives – economic, social and environmental, which are interdependent and need to be pursued in mutually supportive ways. The application of the presumption in favour of sustainable development for plan-making and decision-taking is outlined.
37. *NPPF Part 4 - Decision-making.* Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.
38. *NPPF Part 5 Delivering a Sufficient Supply of Homes.* To support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay.
39. *NPPF Part 6 – 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 a low carbon future.
40. *NPPF Part 7 - Ensuring the Vitality of Town Centres.* Planning policies and decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation.
41. *NPPF Part 8 – Promoting healthy and safe communities.* The planning system can play an important role in facilitating social interaction and creating healthy, inclusive communities. Developments should be safe and accessible; Local Planning Authorities should plan positively for the provision and use of shared space and community facilities. An integrated approach to considering the location of housing, economic uses and services should be adopted.

42. *NPPF Part 9 – Promoting sustainable transport.* Encouragement should be given to solutions which support reductions in greenhouse gas emissions and reduce congestion. Developments that generate significant movement should be located where the need to travel will be minimised and the use of sustainable transport modes maximised.
  43. *NPPF Part 11 – Making effective use of land.* Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously-developed or 'brownfield' land.
  44. *NPPF Part 12 – Achieving well-designed places.* 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.
  45. *NPPF Part 14 – Meeting the challenge of climate change, flooding and coastal change* - The planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change. It should help to: shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and support renewable and low carbon energy and associated infrastructure.
  46. *NPPF Part 15 Conserving and Enhancing the Natural Environment* - Conserving and enhancing the natural environment. The Planning System should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, geological conservation interests, recognising the wider benefits of ecosystems, minimising the impacts on biodiversity, preventing both new and existing development from contributing to or being put at unacceptable risk from pollution and land stability and remediating contaminated or other degraded land where appropriate.
  47. *NPPF Part 16 Conserving and Enhancing the Historic Environment* - Heritage assets range from sites and buildings of local historic value to those of the highest significance, such as World Heritage Sites which are internationally recognised to be of Outstanding Universal Value. These assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations.
- <http://www.communities.gov.uk/documents/planningandbuilding/pdf/2116950.pdf>
48. 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; neighbourhood planning; 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.

## LOCAL PLAN POLICY:

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

49. *Policy E3 – World Heritage Site Protection.* Protection seeks to safeguard the site and setting from inappropriate development that could harm its character and appearance.
50. *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.
51. *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.
52. *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.
53. *Policy E15 – New Trees and Hedgerows.* States that the Council will encourage tree and hedgerow planting in major development sites.
54. *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.
55. *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.
56. *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.
57. *Policy E23 – Listed Buildings.* This policy seeks to safeguard Listed Buildings and their settings from unsympathetic development.
58. *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.

59. *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.
60. *Policy H7 – City Centre Housing.* Seeks to encourage appropriate residential development and conversions on sites conveniently located for the City Centre.
61. *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.
62. *Policy H12A – Type and Size of Housing.* States that the type and size of dwellings will be monitored with where appropriate negotiation.
63. *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.
64. *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.
65. *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.
66. *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.
67. *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.
68. *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.
69. *Policy T21 – Walkers Needs.* States that existing footpaths and public rights of way should be protected.
70. *Policy S1 – City Centre Shopping Area.* Advises that in principle new A1 shopping development will be approved within the city centre shopping area.
71. *Policy S1a – Retail Hierarchy.* Seeks to protect and promote the vitality and viability of Durham City Centre
72. *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.
73. *Policy S3 – Elvet Bridge.* Seeks to limit the proportion of non-A1 Retail Uses to safeguard the retail character of the secondary retail area.

74. *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.
75. *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.
76. *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.
77. *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).
78. *Policy C2 - Health Centres, Surgeries and Clinics.* This policy seeks to ensure that development accords with criteria of accessibility and standards of amenity.
79. *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.
80. *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.
81. *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.
82. *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.
83. *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.
84. *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.
85. *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.

86. *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.
87. *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.
88. *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.
89. *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.
90. *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.
91. *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.
92. *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.
93. *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.
94. *Policy U14 - Energy Conservation – General.* States that the energy efficient materials and construction techniques will be encouraged.

#### **EMERGING PLAN:**

##### The County Durham Plan

95. Paragraph 48 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. An 'Issues & Options' consultation was completed in 2016 on the emerging the County Durham Plan (CDP) and the 'Preferred Options' was approved for consultation at Cabinet in June 2018. However, the CDP is not sufficiently advanced to be afforded any weight in the decision making process at the present time.

## Durham City Neighbourhood Plan

96. The pre submission draft of the Durham City Neighbourhood Plan has been subject to its first formal public consultation, which closed on 18th December 2017.
97. This council has made representations on the pre submission version of the plan and the associated Strategic Environmental Assessment, which raises a number of significant issues which will need to be resolved in order that the plan meets the prescribed Basic Conditions. In light of this, and given the stage of preparation, it has not yet reached a point where weight can be afforded to it.

*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)

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## **CONSULTATION AND PUBLICITY RESPONSES**

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### **STATUTORY RESPONSES:**

98. *Highway Authority* – Raise no objections. Originally concerns were raised with the proposed amendments to the junction on Framwelgate Peth so as to permit the commercial traffic to enter the car park. Further survey works and analysis was therefore requested.
99. Following receipt of this additional survey work and technical note assessment the Highway Authority have raised no objections to the proposed amendments to the Framwelgate Peth junction so that non-residential traffic are also permitted to utilise the access. A condition would be necessary to agree a final access management strategy. No objections are raised to the proposed introduction of a further service access off Framwelgate Waterside, however, it is stated that the maximum length of a service delivery vehicle must be 11.5m in length. No objections are raised to the proposed reduction in car parking spaces within the detailed planning permission element of the development.
100. *Historic England* – Raise no objections or detailed comments. It is advised that the views of the Councils specialist conservation and archaeology advisors are sought.
101. *Drainage and Coastal Protection* – Raise no objections. The amendments proposed would not affect the overall drainage proposals for the development.
102. *Coal Authority* – Raise no objections.
103. *Environment Agency* – Raise no objections. The amendments to the flood storage area and ramps have been clearly explained in submitted Flood Risk Assessment Addendums and the Environment Agency are satisfied that the amendments do not impact on the floodplain area and volume.

## **INTERNAL CONSULTEE RESPONSES:**

104. *Environment, Health and Consumer Protection (Noise, Light, Odour and Dust)* – Raise no objections to the proposed amendments and highlight that the same conditions added to the original planning permission should apply.
105. *Environment, Health and Consumer Protection (Air Quality)* – The majority of amendments under this application would not alter the air quality implications or conclusions drawn on the original planning permission. It is noted that a car park vent is located close to residential receptors within the development and it is requested that the air quality impacts upon those receptors emerging from this are determined.
106. *Design and Conservation* – The overall impacts of the proposed amendments to the original scheme upon the townscape and appearance of the historic environment are neutral. However, concern is expressed with the appearance of the suspended pedestrian walkway from Framwelgate Peth.
107. *Landscape* – Raise no objections in general to the amended landscape and public realm amends which are on the whole well considered though some amends to detail would be required this includes in key areas such as the curtilage treatment of the Block 1d whilst some areas of astroturf are proposed which should be replaced. Concern is expressed with the indicative designs of the suspended steps/walkway from Framwelgate Peth and alternative options should be investigated.
108. *Sustainable Travel* – Raise no objections. The original travel plan for the development was considered to meet the required standards. It is emphasized that the design/layout must include good direct and safe walking routes between the site and Milburngate bus stops factoring in the significant level differences within the site. It is also emphasized that care must be given to the final design of the shared use path alongside Framwelgate Peth with its width maximised as far as practicable.

## **PUBLIC RESPONSES:**

109. The application has been publicised by way of site notice and individual notification letters to neighbouring residents. A total of 11 letters have been received, with 10 letters of objection and 1 letter requesting that the application be heard at committee. Comments are summarised below.

### Highways Issues

- The request to increase the vehicle movements permitted to use the Framwelgate Peth access is unacceptable so is the introduction of a second set of traffic lights and a right turn in and out of the development at this location
- These impacts will have wider consequences upon traffic congestion and traffic flows and this in turn will have a detrimental impact upon the wider Aykley Heads masterplan proposals of the Council and more generally upon drivers ability to travel
- Traffic travelling from and towards County Hall on Framwelgate Peth must merge from two to one lane. This is a road collision hazard as a result and will be worsened by the implications of this proposal
- Concerns in regards to pedestrian safety – many pedestrians cross from one side of Framwelgate Peth to the other, a situation which has increased recently due to the amends to the train station pedestrian routes the implications of the development upon pedestrian safety is a significant concern. Concerns are

similarly expressed with the concentrations of student pedestrians who use the routes and that they walk in the road at times

- Should junctions 61 and 63 of the A1(M) but closed the diverted route is through the City Centre – grid lock would occur as a result of the amends at such times
- The submitted travel plan is criticised for containing editing/cut and paste errors
- Previously an exit only from Milburngate House onto Framwelgate Peth has been permitted
- Restrictions on access/egress at the Highgate development apply on highway safety grounds – why should this development be dealt with differently
- The implications upon traffic and congestion will affect emergency vehicle response times

#### Other

- The additional traffic congestion as a result of the amendments will have detrimental implications upon greenhouse gas emissions and air quality
- The site has been subject to so many changes it is difficult to envisage what it will now look like
- Loss of residential apartments in favour of more bars, restaurants and leisure causes a detrimental change in the balance of the City
- Noise and pollution from the commercial uses is raised as a concern
- The development will lead to increases in drunken and anti-social behaviour in the City and the Police do not have the resources to deal with this
- A wider vision for the City and World Heritage Site is needed
- Service layby on Framwelgate Waterside would affect waterside views towards the World Heritage Site

110. *Cllr David Freeman* – Requests that the application be heard at planning committee due to the proposal representing a change to a major redevelopment proposal with potential impacts upon neighbouring residents.

111. *City of Durham Trust* – Raise objections. The application is considered to omit elements important to the proposal and consideration. Most importantly there is no reference to the amendment to provide a hotel. The travel plan has not been updated whilst the Transport Statement is considered to report surprisingly low vehicle numbers at the peak hours. The repeated proposals for traffic lights at Framwelgate Peth will cause congestion and potentially chaos and the approach to modal shifts is considered ill-constructed.

112. *Sidegate Residents Association* – Raise objections. The application submissions are not forthcoming/detailed on why the amends are being requested or what the content of pre-application discussions with the Council have been. The submitted travel plan has not been devised so as to give specific consideration to the implications of the hotel proposal and contains several instances of editing/cut and paste errors. Concerns are raised with the most significant of the changes proposed – the amends to the Framwelgate junction which is already congested and close to a complicated signalised junction at the bottom of Framwelgate Peth. The increase in the traffic as a result of the proposed amendments will just worsen the situation.

#### **APPLICANTS STATEMENT:**

113. The s73 application seeks minor material amendments to Conditions 4 and 20, to implement the following changes;

- Repositioning of service access road from the north of the site to the east of Framwelgate Waterside to allow for future zones to be constructed without impeding service access;
- The use of the Framwelgate Peth access point for non-residential trips in addition to the existing provision for residential access;
- Adjustments to the car park layout and back of house units
- The addition of one cinema screen;
- The replacement of leisure unit 09 with residential units, which is deemed a more suitable use facing into the residential courtyard;
- The inclusion of a mezzanine level within leisure unit 07 to respond to demand in the retail market;
- Movement of 7 residential units from Block 1E into Block 1B, 1C and 1D. Providing tenant storage on each floor of 1E;
- Movement of and increase in size of roof terrace to block 1D with omission of 2no. meeting rooms;
- Additions and reconfigurations to the substation and plant areas in the car park;
- Updated Energy Strategy for Phase 1;
- Car park layout changes with updates to lift and stair positions;
- Back of house updates and reconfiguration;
- Minor elevation changes with regard to window/door positions;
- Landscape changes to include:
  - Realignment of the stepped route from Framwelgate Peth
  - Development of design for 'Durham Square' at the heart of the development
  - Redesign of the residential courtyard to the rear of Block 1D to accommodate a vent housing for underground car parking;
  - The general increase in areas of soft landscaping across the scheme
  - Detailed levels and drainage co-ordination/development;
  - Refinement and development of the site wide paving palette in response to the development materiality of the buildings;
  - Development of pedestrian and vehicular circulation routes.

114. The amendments outlined above are as a result of contemporary changes to commercial market requirements and capture all the changes necessary to pave the way for the successful development of the site and construction starting on site in Spring 2019 on Phase 1. Overall, the proposed amendments are considered minor and would not significantly alter the overall 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:*

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

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## **PLANNING CONSIDERATIONS AND ASSESSMENT**

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115. Section 73 of the Town and Country Planning Act 1990 (as amended) applies to the determination of applications to develop land without the compliance with conditions previously attached. S73 states that on such an application the Local Planning Authority (LPA) shall consider only the question of the conditions subject to which planning permission should be granted. The LPA should decide whether planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted or that it should be granted unconditionally. If the LPA decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they should refuse the application.

116. In considering such an application the Development Plan and any material considerations under section 38(6) of the Planning and Compulsory Purchase Act are relevant in the determination. LPAs should, in making their decisions, focus their attention on national and development plan policies, and other material considerations which may have changed significantly since the original grant of permission.
117. Under application DM/16/01228/FPA the main planning issues considered related 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 implications of the proposed amendments are discussed below.

### The Principle of the Development

118. Under application DM1/16/01228/FPA the range of commercial uses proposed - leisure and non-residential institution (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) and offices (use class B1) were considered acceptable uses in principle at the site. The site was considered to form part of the functioning City Centre where the commercial and main town centre uses proposed were thereby appropriate having regards to the sequential preference for such development to be located within a town centre established under the NPPF.
119. It was considered that the mix of uses would seek to add to and enhance the retail/leisure and office offer in the City Centre whilst appropriately reusing previously developed land and that the commercial uses proposed were compliant with CDLP Policies CC1, S1a, S10, C2, C8 and EMP12 whilst policies S1, S2a, S2b and S3, all relating to primary and secondary retail shopping areas within the City Centre, did not strictly apply to the application site given its location outwith of these designated areas.
120. In relation to the residential element of the development it was considered at that time that the Council could not demonstrate a 5 year supply of housing land whilst relevant housing policies (H2 and H7) were out of date regardless by reason of the age of the policies and housing supply figures that informed them and thereby in turn that those policies did not reflect an up-to-date objective assessment of need. Residential use at the site was considered acceptable having regards to the above and its compliance with CDLP Policies H2 which permits new housing comprising windfall development of previously developed land within Durham City, H7 which encourages new housing in the City Centre and CC1 which encourages a mix of uses within the City Centre.
121. Some changes in circumstances of significance have occurred since the original grant of planning permission. Firstly the NPPF as a whole has been amended and this application is considered against the content of the revised Framework.
122. The Council's evidence base in respects to the City Centre has been updated with the most recent Retail and Town Centre Study update emerging this year. However, the evidence therein, whilst updated from the 2013 study, considered at the time of the original grant of planning permission, raises no new or differing evidence of significance in relation to the commercial elements of the proposal.
123. In regards to the residential elements of the development the Councils 5 year housing land supply position has changed. The starting point for calculating land supply will be local housing need using the Government's standard methodology. The 'Preferred Options' (June 2018) stage of the emerging County Durham Plan (CDP) is aligned with the standardised methodology and identifies a housing need figure of 1,368

dwellings per annum (dpa). The Council is able to demonstrate in excess of 6 years supply of deliverable housing land against this figure.

124. Although in a recent written representations appeal involving land to the south of Castlefields, Esh Winning, the Inspector took the view that supply had not been demonstrated by the Council in the terms of paragraph 74 of the Framework, the Council's view is that the Inspector applied paragraph 74 prematurely in this appeal because paragraph 74 does not allow for submission of an Annual position statement on 5 YHLS until April 2019 at the earliest. It was therefore impossible for the Council to have such an annual position statement in place at the time of the appeal.
125. To summarise, the Council's position remains that the NPPF has confirmed the use of the standard method for calculating local housing need and as the emerging CDP is aligned with the figure derived from the standardised methodology (1,368dpa), a supply in excess of 6 years supply of deliverable housing can be demonstrated when measured against this.
126. Also notable is the further progression of the emerging County Durham Plan and Durham City Neighbourhood Plan and this represents further change of some significance since the original grant of planning permission. However, as summarised earlier this report neither at this stage can be attributed weight in the decision making process.
127. Irrespective of these changes since the original grant of planning permission, the proposed amendments under this application relate to matters of detail – access and layout amendments. The amendments in this particular application do not affect the uses proposed within the development or matters affecting the principle of the development. The principle of the development has been established under the existing planning permission. Separately under applications DM/18/00894/FPA and DM/18/02924/FPA the applicant has sought to introduce further hotel and office (and mixed commercial uses on their lower floors) on the site but the principle of this and its detailed implications are considered under those applications.
128. The NPPF advises that weight to local plan/development plan policies adopted prior to the publication of the NPPF (in its revised form) should be attributed according to their degree of consistency with the NPPF (the closer the policies in the plan to the policies in the NPPF, the greater the weight that may be given). Existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Equally, however, where evidence, which informed a policy, has been superseded by more up-to-date evidence, this can also be a reason to conclude the policy itself is out of date.
129. So that sustainable development is pursued in a positive way, at the heart of the NPPF is a presumption in favour of sustainable development and this is detailed at paragraph 11 which states;

For decision-taking this means:

c) approving development proposals that accord with an up-to-date development plan without delay; or

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or

ii. 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.

130. In this instance, the CDLP includes policies most important for determining the planning application, which are out-of-date. Accordingly, the acceptability of the application should be considered under the planning balance test contained within Paragraph 11 (d) of the NPPF. Such an assessment is undertaken in the concluding sections of this report, following consideration and assessment of the all the key material planning considerations.

#### Locational Sustainability

131. Under the original planning permissions DM/16/01228/FPA it was noted that the application 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).
132. Connectivity with the train station is further aided by the provision of a key pedestrian route which travels through the development between Framwelgate Peth, the development and Framwelgate Waterside. The application was accompanied by a travel plan which was considered appropriate for the development and included a series of measures so as to promote sustainable transport options and reduce dependence upon the car.
133. Consideration was given to the potential impacts of the residential development upon local school capacity with the School Organisation Manager confirming that sufficient primary and secondary school capacity existed to cater for the development.
134. It was also noted that Sustainability Officers had commented on the application considering that the site has generally good access to most facilities and services and set against the social, economic and environmental sustainability determinants the scheme was positively received.
135. The proposed amendments under this application relate to matters of detail – access and layout amendments and do not affect the more in principle issues of locational sustainability and no objections are raised to the application as a result.

#### Visual, Townscape and Heritage Impact

136. The Milburngate House site is located within a very sensitive and prominent location. The potential impact upon the townscape and a range of heritage assets was a critical matter for consideration in regards to the original redevelopment proposal under application DM/16/01228/FPA.
137. The Milburngate House 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 200m 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.

138. In assessing an application, 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.
139. In the assessment of the wider redevelopment proposals under application DM/16/01228/FPA it was noted that the proposed development was of a significant scale, reflective of the significant scale of the buildings previously standing on the site and the extensive scale of the site itself, exacerbated by the significant level changes around the site. The manner in which the development sought to cascade the significant level changes down to the River Wear was welcomed including the use of pitched roofs. There was some 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 considered the proposal an improvement to the setting of the WHS in comparison to what previously stood on the site whilst Design and Conservation officers considered that whilst in some respects the WHS would be beneficially impacted upon there was some concern raised in regards to the scale of the development and impact in some key views as a result. The conclusions overall were that the townscape and visual impacts were acceptable and most importantly the character and appearance of the Conservation Area and setting of the WHS would be preserved.
140. Some of the amendments proposed under this s73 application are considered to result in limited or no additional or altered impacts in visual, townscape and heritage terms. Impacts to the lowest floors of the development beneath the main podium level include car park changes, plant changes, the addition of a cinema screen and would essentially be hidden from view, the amends the access from Framwelgate Peth do not affect design just its use. Other elements would have impacts and these are discussed below.
141. The proposed service access would be located at the juncture where the detailed planning permission of Zone 1 ends and the outline elements in Zones 2 and 3 commence. The amendment would effectively punch a new vehicular route into this part of the development.
142. The amends to the roof terrace would result in an enlarged and repositioned roof terrace space atop of Block 1d.
143. The external treatment amendments to Blocks 1b, 1c, 1d and 1f relate to adjustments to the fenestration and elevational detailing together with amendments to plant screening. These changes would result in variations on a theme of the consented development.
144. A car park housing vent is proposed adjacent to Block 1d this would be a low level brick structure set in landscaping.

145. Design and Conservation have stated that the proposed amendments to the original scheme upon the townscape and appearance of the historic environment are neutral and that effectively the proposed amendments present variations to detailed elements of the scheme which would in the round result in equivalent impacts upon the townscape and heritage assets. Historic England have raised no detailed comments given the nature of the amendments being sought.
146. Amendments to the layout, design and materiality of the hard and soft landscaping proposals across the development are also proposed. One of the most significant changes proposed to the public realm is the amendment to the feature pedestrian route which cascades down from Framwelgate Peth through the development with this now proposed to be in part formed via a suspended staircase/walkway design rather than a cascading solid set of steps.
147. It should be noted that on the existing planning permission the final details pursuant to the hard and soft landscaping proposals across the phase 1 detailed planning permission were to be controlled and resolved via the discharge of condition 11 and in relation to the future outline phases of the development via the reserved matters process. In effect the existing planning permission established the principles of the hard and soft landscaping proposals though not final detail.
148. Many of the hard and soft landscape amends proposed now again involved variations on a theme of the consented development. Landscape have welcomed some amendments particularly the approach to hard surfacing but are less enamoured with others (for example the suggestion of astroturf). Consistent with the permitted development final details must be subject to a condition as a result. Design and Conservation and Landscape have both expressed concerns with the amendments to the cascading pedestrian route from Framwelgate Peth.
149. The applicant has stated, linked to their additional work and amended proposals to the Block 1e (sought under application DM/18/002924/FPA) that the base of the existing embankment to the west of the building would have to be regraded to tie in with the proposed level and minimise the height of the retaining wall required for basement levels and car parking. The applicant has stated that this affects the ability to provide the originally designed stepped route from Framwelgate Peth.
150. The applicant has submitted that they have looked at a number of options for the construction of the new stepped route and that in its revised form it would be likely to have a significant impact on this part of the site with regards to tree removals, the regrading of the existing embankment and the potential for high retaining walls.
151. The applicant has therefore proposed a suspended walkway solution to the northern section of this pedestrian route which would minimise intervention with the embankment.
152. Whilst such an approach would minimise impacts on the embankment Officers do have reservations over the design of a suspended walkway approach and the suitability of it in this location. More iterations of the design could be undertaken or alternative approaches involving some retaining features potentially devised. Given this and that the original final details of the hard landscaping scheme were to be resolved under condition it is considered that a suitably worded condition could be utilised to resolve the final design detail of this pedestrian route.
153. The submitted plans depict a loading bay on Framwelgate Waterside. This is proposed to serve the hotel being sought under application DM/18/00894/FPA and the

bay is considered under that application. However, as the bay is indicated on the s73 plans as well it is relevant to this application. The visual impact of this is, considered limited. The bay itself would be unoccupied for many periods whilst the Framwelgate Waterside is already used for parking of vehicles. The goods lifts and refuse stores are located within the car parking and serving spaces on the lowest elements of the overall development and therefore out of view of the riverside itself.

154. No overall harm is considered to occur to the significance of individual heritage assets as a result of the amendments. Some concern is raised over the proposed amendments to the northern section of the feature pedestrian route through the development. A final design detail can be devised under condition. Overall and in the round the wider townscape and visual impacts of the development are considered acceptable with the character and appearance of the Conservation Area and setting of the WHS 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, E10, 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 (Policies E6, E22, E23, E24, H2, H7 and S10) or fully (remaining policies) consistent with the NPPF and all can be afforded weight in the decision making process. The development is also considered compliant with key relevant sections of the NPPF namely within Parts 12 and 16.

#### Residential Amenity

155. Within the approved wider redevelopment proposals key issues for consideration related to amenity were; air quality implications; lighting impacts; implications of nuisances arising from construction activities; noise and vibration and the potential for disturbances arising from the mixture of uses; odour; contamination; and whether adequate separation between buildings remains having regards to privacy, outlook and light. Subject to conditions as necessary, no objections were raised having regards to these factors.
156. In regards to the potential impacts of the specific amendments sought under this pending application particular consideration has been given to the potential impacts of the junction amendments on Framwelgate Peth upon air quality due to the potential changes in traffic flows etc and the potential for noise impacts for instance from the provision of the new service access and the application is accompanied by addendum submissions in regards to noise and air quality.
157. In respects to noise Environment, Health and Consumer Protection advise that the proposed amendments would not raise any new unacceptably adverse impacts and that conditions added to the previous planning permission relevant to noise related controls should again be applied to any new planning permission. These conditions related to; adherence to relevant approved documentation (condition 4); vibration proofing measures (condition 15); sound insulation and tenant management measures (condition 16); noise mitigation measures for the residential units (condition 17); control of extraction and ventilation for the A3, A4 and A5 uses (condition 18); control over the opening hours of the A3, A4, A5, D1 and D2 uses (condition 21); limitation of plant noise (condition 23). Officers concur with the views of Environment, Health and Consumer Protection and consider that the proposed amends raise no new and unacceptable residential amenity issues in this regard.
158. On the related matter of the potential for noise emerging from disturbances from the mixture of uses within the development, this matter was considered under the original planning permission DM/16/01228/FPA with consultation with the Durham Constabulary Architectural Police Liaison Officer and it was concluded that no

objections be raised. The proposed amendments under this application do not affect the mixture of uses within the development. Again, the need, by condition, to agree opening hours in relation to the A3, A4, A5, D1 and D2 uses would apply to any new permission.

159. In respects to air quality issues again Environment, Health and Consumer Protection have considered the implications of the changes to access and thereby vehicles upon air quality. No objections are raised to this end. The proposals do now include the provision of a vent from the beneath podium car parking and servicing levels of the development and this would be in close proximity to Block 1d. There is already an established requirement under the existing planning permission to mitigate the impacts of air pollution from the road network with particular ventilation requirements to certain floors in Block 1d. It is considered that a condition can be utilised in order to investigate if the mitigation measures would need extending to additional apartments. Again conditions relating to air quality matters in the original planning permission would again be conditioned on any approval namely adherence to relevant approved documentation (original condition 4) and assessment of Heavy Duty Vehicle construction movements (original condition 6).
160. In regards to potential lighting implications the proposed amendments would result in no alterations to the overall lighting impacts of the development. A condition placed on the original planning permission to control a final lighting scheme (condition 19) would be added again to any new planning permission.
161. A condition was placed on the original planning permission in relation to agreement to a construction management plan (condition 7). In relation to contaminated land a condition has been part discharged in this regard pursuant to the approved demolition under planning permission DM/15/1119/FPA. There is a requirement for the applicant to discharge that condition in full through the submission of a phase 4 verification report in order to confirm the remediation strategy has been completed. The requirement to fully discharge this condition on DM/15/01119/FPA applies irrespective of this application and there is no requirement to repeat the condition on any planning permission for this development. In respects of potential odour issues the condition placed on the original planning permission in relation to the control of extraction and ventilation for the A3, A4 and A5 uses (condition 18) would seek to ensure adequate odour control from any emissions from commercial kitchen operations and the condition would be repeated on any new planning permission.
162. The amendments to relocate residential apartments from one Block to another is considered to pose no new residential amenity implications. In Block 1d a roof terrace is proposed to be enlarged and relocated to the southern end of the block. The result being that the roof terrace would have a more open and outward facing aspect than the approved approach. The nearest residentially occupied properties outwith the site would be those in Highgate and the terraced area would be approximately 44m from the nearest property. At such distances it is considered that no significant adverse impacts upon residential amenity would occur.
163. The proposed amendments to the development would preserve the amenity of existing occupiers within the vicinity of the site and prospective occupiers. As a result the development is considered to accord with CDLP Policies H13, S10, C2, U5, U7 and U11 in this regard. As was considered in detail under the original grant of planning permission 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 was considered that there were mitigating factors and as a result objections were not raised against the development due to the conflict with these three policies at that time. The

proposed amendments would have no further effects in this regard. All these policies are considered to be either fully (Q8, H13, C2, U5, U7 and U11) or partially (H2, H7 and S10) 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 Part 15.

## Highway Safety/Issues

164. Under the original planning permission DM/16/01228/FPA no objections were 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 was also proposed to take place from Framwelgate Waterside with an access formed adjacent to the Radisson hotel, again this was considered acceptable.
165. Under this pending application these two accesses would remain. The Highway Authority raise no objections to the impacts of the development upon existing junctions and the local highway network.
166. In respects to the proposed change to the Framwelgate Peth access so that it can be utilised for general public parking purposes, following the receipt of additional survey work and technical note assessment, the Highway Authority have withdrawn previous concerns with the impacts of the amendments upon traffic flows and potential for congestion considered acceptable with no resultant severe or unacceptable impacts. A condition would be necessary to agree a final access management strategy. As per the original planning permission, final details of the signalised junction and associated widening of the carriageway and footway would need to be subject to a combined Highways Act S278/S38 agreement.
167. A condition to agree the final detailed design of the Framwelgate Peth access including details of any highway works at or within the vicinity of the entrance to/egress from Highgate would be added to any planning permission as per the original.
168. The Highway Authority raise no objections to the proposed introduction of a further service access off Framwelgate Waterside.
169. The proposed amendments to the car park would result in a reduction in the number of spaces within the detailed planning permission element of the development (Zone 1) from 339 to 323. Potentially the 16 space shortfall can be re-provided within Zones 2 and 3 at the reserved matters stage.
170. The Highway Authority have considered the reduction in car parking spaces proposed in Zone 1 having regards to the mixture of uses, quantum of development proposed within Zone 1 and having regards to the sustainable city centre location of the site. The Highway Authority have accepted that the amended car parking provision is acceptable. Conditions relevant to the car park relating to electric vehicle parking, cycle/motor cycle parking and associated directional signage would, as per the original proposal, apply to any planning permission. 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.
171. Though a principally discussed under the hotel application DM/18/00896/VOC the proposed loading bay on Framwelgate Waterside is also depicted on some plans under this application. As discussed in more detail under the hotel application the Highway Authority raise no objections.

172. Sustainable Travel Officers have emphasized that care must be given to the final design of the shared use path alongside Framwelgate Peth with its width maximised as far as practicable. This was also a matter considered under the original planning application where it was noted that there are a number of constraints in respect to the footway down Framwelgate Peth and on Leazes Road. The provision of the Framwelgate Peth junction (in its original or amended form) would 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. Under the original planning permission a solution so as to provide as wide a pedestrian and cycle route as possible within these competing constraints was to be sought via condition and such a condition can be repeated on any planning permission relating to this amended application.
173. 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 approved proposals 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. The proposed amendments under this application albeit moving lift locations would not significantly alter the overall public realm approach or site permeability.
174. A further challenge is the provision of a suitable connection point with the adjacent Riverwalk development site 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. Under the existing planning permission a condition was to be utilised to agree the final detail of a pedestrian crossing directly beneath Milburngate Bridge and elevated above Framwelgate Waterside which would connect with the Riverwalk and this condition can be repeated on this amendment application. 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 Riverwalk and Framwelgate Bridge beyond can be made.
175. The application is accompanied by an amended travel plan to which Sustainable Travel have raised no objections. It is noted that public objections to the application consider that there are some typographical errors in its drafting but these do not affect the measures contained therein. Also raised within the public comments is the absence of reference to other uses such as the hotel also being proposed but this is being considered under the separate related applications.
176. Overall, no objections are raised to the development on highways related grounds. It is noted that the public objection raised to the highway related implications of the development is significant and is the key issue of concern amongst public responses to the application. However, the Highway Authority have considered the implications of the amendments and no impacts as a result of the amendments are considered to be so significant or unacceptably detrimental in highway safety terms to warrant objection. The development is 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 (Policy H7) or fully (Policies 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 very little weight is attributed to this policy. The development is considered compliant with key relevant sections of the NPPF namely Part 9.

## Ecology

177. The approved wider redevelopment application was accompanied by a phase 1 habitat survey, bat method statement, bat emergence surveys and a biodiversity statement. Those submissions built upon ecological submissions which accompanied the previously approved application for demolition of Milburngate House and the ecological documentation.
178. 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.
179. The surveys undertaken did not find any protected species on site, other than nesting birds and recommendations were included to ensure that birds were not adversely impacted upon by the proposed demolition works. Some loss of foraging habitat for badgers and hedgehogs were also identified to occur and again mitigation measures so as to control when vegetation can be removed from the site were recommended.
180. In order to mitigate the impact on bats, a method statement states was devised and trees to be lost as a result of the redevelopment would be visually inspected before they were felled. The impact of lighting was considered and it was 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.
181. The proposed amendments raise no new ecological considerations. Conditions which would ensure compliance with ecological mitigation measures contained within submitted reports and agreement to a final lighting scheme to ensure that light spillage is restricted so as to not affect the River ecological corridor would be added to any planning permission.
182. 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 2017.
183. In terms of ecological and 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 CDLP Policy E16 (fully consistent with the NPPF) and Part 15 of the NPPF.

## Flood Risk and Drainage

184. The originally approved wider redevelopment proposal was accompanied by an ES chapter on flood risk and hydrology and associated enclosures including a flood risk assessment (FRA). It was noted under that application that in relation to the wider redevelopment site the north western area lies within Flood Zone 1 (low flood risk probability). Parts of the western and southern section of the wider 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 eastern part of the wider site to be within Flood Zone 3b.

185. Under the original planning permission consideration of the sequential and exception flood risk tests was given. It was accepted that there was no reasonably available and sequentially preferable locations for the redevelopment. With regards to the exception test it was firstly accepted that the development provides the necessary wider sustainability benefits that outweigh the flood risk and secondly that the submitted FRA demonstrated that the development would be safe for its lifetime taking account of the vulnerability of its users, that no increase in flood risk elsewhere would occur.
186. The key flood risk mitigation measures incorporated into the overall development were to ensure 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 to ensure that the current volume of floodplain is maintained. The principles are unaffected by the changes within this proposal albeit the amendments have resulted in marginal changes to the floodplain storage proposals. The Environment Agency have raised no objections stating that the submissions clearly explain the amendments and that they do not adversely impact on the floodplain storage capabilities of the development.
187. The surface water disposal proposals for the site would entail the discharge into the River Wear with restriction on the discharge rate. The use of soakaways (more preferable in the surface water disposal hierarchy) were considered unsuitable due to the ground conditions. Foul water flows for the wider development would be discharged into the main sewer. These matters are unchanged from the approved development.
188. No objections are raised to the development on flood risk and drainage related grounds with the development considered compliant with 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 14 of the NPPF.

#### Viability and Planning Obligations

189. The proposed development includes the provision of residential units where obligations in relation to affordable housing and monies towards open space and recreation would ordinarily be required to mitigate the impacts of the development. Following an assessment of development viability which included the Council employing two independent consultants to appraise viability issues, it was accepted that the viability of the original redevelopment was marginal and, as a result, affordable housing provision and open space/recreation provision was not sought at that time. However, so that the Council could retain the ability to review the viability of the site in the future a S106 legal agreement was entered into which included obligations that at certain trigger points viability reviews would be required. If it was demonstrated that the applicants profit exceeded a certain level then 50% of that surplus would be required to be paid to the Council for the provision of affordable housing and/or open space and recreation provision.
190. 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.

191. 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. In this instance public art provision is not necessary to make the development acceptable – the development would remain acceptable in principle at the site without either a public art installation on site or indeed offsite contributions.

#### Other Issues

192. Under the original planning permission and having regards to the requests of the Employability Team targeted recruitment and training proposals are to be agreed under condition.

193. The application contained a proposal for a Combined Heat and Power (CHP) system having regards energy efficiency and carbon reducing objectives. The energy reduction measures have been amended with the applicant now instead seeking to adopt electric space heating and electric storage hot water systems for the residential units and Variable Refrigerant Flow (VRF) Air Source Heat Pump (ASHP) technologies to provide the heating and cooling for the A3, A4 and D2 commercial units. No objections to the development are therefore raised having regards to CDLP Policy U14 (fully consistent with the NPPF) which seeks to encourage energy conservation in new development.

194. 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

Business use to Storage and Distribution

Business to state-funded schools or registered nursery

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

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## **CONCLUSION**

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196. This application seeks minor material amendments to a development which already has planning permission and which establishes the principle of a mixed use development of the nature proposed at the site. When determining a S73 variation of condition application the LPA should be considering only the question of the conditions subject to which planning permission should be granted, however, in approving the application a new planning permission for the development as a whole is granted

197. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework is a material consideration in planning decisions.

198. The NPPF advises that weight to local plan/development plan policies adopted prior to the publication of the NPPF (in its revised form) should be attributed according to their degree of consistency with the NPPF (the closer the policies in the plan to the policies in the NPPF, the greater the weight that may be given). Existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Equally, however, where evidence which has informed the content of the policy is out of date this can also be a reason to conclude the policy is out of date.
199. So that sustainable development is pursued in a positive way, at the heart of the NPPF is a presumption in favour of sustainable development and this is detailed at paragraph 11.
200. In this instance policies within the CDLP most relevant for determining the application are out-of-date. As a result paragraph 11(d) of the NPPF applies which states;
- where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
  - ii. 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.
201. Having regards to the planning assessments above no policies within the Framework that protect areas or assets of particular importance provide a clear reason to refuse the development proposed.
202. The principle of the development is established. Key material considerations relevant to the specific amendments sought under this application relate to visual, townscape/landscape and heritage impacts, highway safety and residential amenity. The impacts of the development in regards to all these issues are considered acceptable. No adverse impacts would result from the development that would significantly and demonstrably outweigh the benefits.
203. As a result having regards to all material planning considerations including comments raised in the public consultation exercise, it is considered that the proposals are acceptable and approval is recommended as a result.

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## **RECOMMENDATION**

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

- i) A Deed of Variation of the S106 legal agreement pursuant to planning permission DM/16/01228/FPA so that the viability review obligations in respects to affordable housing and open space and recreational space contributions reference this revised development under DM/18/00896/VOC

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 begun no later than 12 March 2021.

Reason: To ensure planning permissions are not extended by Section 73 applications and that the time limit remains consistent to the original consent DM/16/01228/FPA and 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 12 March 2021 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: To ensure planning permissions are not extended by Section 73 applications and that the time limit remains consistent to the original consent DM/16/01228/FPA and 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) P1.3  
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AIA TPP PHASE 1 DEMO-NORTH 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)  
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2962-FBA-VH-03-DR-A-00\_00-VH52 Rev P1 CAR PARK VENT HOUSING DRAWINGS  
5162523-ATK-HKF-XX-DR-CH-0001 Rev T5 MASTERPLAN KERBS, FOOTWAYS AND PAVED AREAS

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 70028015-02 JANUARY 2018  
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 28 SEPTEMBER 2018  
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 V9 (REVISED SEPTEMBER 2018)  
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  
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ENVIRONMENTAL STATEMENT VOL 1 LIGHTING MITIGATION MEASURES  
DETAILED AT 12.75 - 12.81

ENVIRONMENTAL STATEMENT VOL 2 APPENDIX 10.2 DRAINAGE STRATEGY  
FEBRUARY 2016

MILBURNGATE HOUSE CAR PARK HIGHWAYS TECHNICAL NOTE BY WSP REF  
70028015

TRANSPORT NOTE – SECTION 73 APPLICATION BY WSP REF 70028015

MILBURNGATE HOUSE ADDENDUM FRA DATED 12 SEPTEMBER 2018

MILBURNGATE HOUSE ADDENDUM FRA BY WSP RECEIVED 12 SEPTEMBER  
2018

ENVIRONMENTAL NOISE ASSESSMENT ADDENDUM BY WSP RECEIVED 22  
MARCH 2018

DRAINAGE STRATEGY ADDENDUM 28 SEPTEMBER 2018

AIR QUALITY REPORT ADDENDUM BY WSP RECEIVED 22 MARCH 2018

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 2, 4, 5, 6, 7, 8, 9, 11, 12, 14, 15 and 16 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 associated drawings AIA TPP Phase 1 Demo-South Rev A, AIA TPP Phase 1 Demo-North Rev A, AIA TPP Phase 1 Cons- South Rev A and AIA TPP Phase 1 Cons-North Rev A and as referenced within the Arboricultural Impact Assessment Revision 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 (as defined on drawing 2962-FBA-00-00-DR-A-05\_10-115 Rev P1) and as detailed on AIA TPP Phase 1 Demo-South Rev A, AIA TPP Phase 1 Demo-North Rev A, AIA TPP Phase 1 Cons- South Rev A and AIA TPP Phase 1 Cons-North Rev A and said tree works and removals must accord with the works schedule contained within Arboricultural Impact Assessment Revision 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 12, 15 and 16 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 carried out 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 15 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.
- 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 carried out 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 15 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 6 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 carried out 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 9 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 carried out 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 9 of the NPPF.

11. Notwithstanding the details contained within the submitted plans and documents no development 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 within Zone 1 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 carried out 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 12 and 15 of the NPPF.

12. Notwithstanding the details contained within the submitted plans and documents no development other than demolition, preliminary site excavation, enabling and remedial works and the building of foundations to any block within Zone 1 shall take place until the submission of an air quality assessment (AQA) in relation to the potential impact of air quality pollutants from vehicle exhaust emissions from the car park ventilation extraction point identified adjacent Block 1d has been submitted to and approved in writing by the Local Planning Authority. As necessary, the submitted AQA shall include details of mitigation measures. Thereafter the development must be constructed and maintained in accordance with the approved details.

Reason: In the interest of reducing impacts upon air quality having regards to CDLP Policy U5 and Part 15 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 within Zone 1 shall take place until final and precise design details of the proposed pedestrian route leading from Framwelgate Peth as discussed under section 3 "Stepped Access from Framwelgate Peth" of the Landscape and Public Realm Addendum Ref. L-1953-DOC-001 have been submitted to and approved in writing by the Local Planning Authority. As necessary the submissions must include the submission of additional arboricultural assessment, tree retention/tree removal plans, tree method statements and tree protective measures/plans to inform upon and facilitate the works. Thereafter the route must be constructed in accordance with the approved details.

Reason: In the interests of visual amenity and to define the design solution of the stepped access feature having regards to CDLP Policies E6, E22, Q1, Q2 and Q4 and Parts 12 and 16 of the NPPF.

14. 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 9 and 12 of the NPPF.

15. Notwithstanding the details contained within the submitted plans and documents no development 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 within Zone 1 shall take place until full details including samples and sample panels of all external materials to be used for that block within Zone 1 (as defined on drawings 2962-FBA-00-00-DR-A-05\_10-115 Rev P1 and 29622962-FBA-00-00-DR-A-05\_10-113 Rev P1) of the development have been submitted to and approved by the Local Planning Authority. Thereafter Zone 1 of the development must be carried out 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 12 and 16 of the NPPF.

16. 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 12 and 16 of the NPPF.

17. 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 carried out prior to the first occupation of the development and maintained thereafter.

Reason: In the interests of preserving the residential amenity of site occupiers having regards to CDLP Policies U7 and Q8 and Part 15 of the NPPF.

18. 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 Leq,5mins and assessed between 63Hz and 8kHz) within habitable areas of dwellings. The approved schemes shall be carried out prior to the occupation of the applicable Zones of the development and maintained thereafter.

Reason: In the interests of preserving the residential amenity of site occupiers having regards to CDLP Policies U7 and Q8 and Part 15 of the NPPF.

19. 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 more than 10-15 times per night (as per World Health Organisation guidelines)

55dB LAeq 16hr in outdoor formal amenity areas

The development shall thereafter be carried out in accordance with the approved mitigation measures for each Zone and maintained thereafter.

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 15 of the NPPF.

20. 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 15 of the NPPF.

21. 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 external 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 and having regards to the location of the site within Environmental Zone 3 in accordance with the Institution of Lighting Professionals Guidance on the Reduction of Obtrusive Light:

- 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;
- 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 carried out 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 12, 15 and 16 of the NPPF.

22. The development hereby approved shall not be occupied until details of an operational strategy for the proposed Framwelgate Peth signalised access junction has 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.

Reason: In the interests of highway safety having regards to CDLP Policy T1 and Part 9 of the NPPF.

23. 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 Parts 8 and 15 of the NPPF.

24. 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 carried out in accordance with the approved details.

Reason: In the interests of highway safety having regards to CDLP Policy T1 and Part 9 of the NPPF.

25. 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 representative daytime background (LA90, 1hour) by more than 5dB between 07.00-23.00 and the representative night-time background (LA90, 15mins) by more than 0dB 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 carried out and maintained in accordance with the approved measures for that Zone.

Reason: In the interests of residential amenity having regards to CDLP Policy U5 and Part 15 of the NPPF.

26. 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 Milburngate House Addendum FRA by WSP dated 12 September 2018 including the following mitigation measures detailed therein:
- 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 14 of the NPPF.

27. 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 and having regards to Part 8 of the NPPF.

28. 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 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.

29. No development works pursuant to the development hereby approved shall take place outside the hours of 7.30am - 6pm Monday to Friday (inclusive) and 8am - 1pm on a Saturday with no works on any Sunday or Bank Holiday.

Reason: To define the consent and in the interests of the amenity of neighbouring occupiers having regards to CDLP Policy U5 and Part 15 of the NPPF.

30. Notwithstanding the approved plans referred to in Condition 4, no Dwellings shall be constructed on the North West red hashed area (marked 'land currently in DCC Ownership') of the site shown on drawing number FB-SK-2692-06.02.18-BH-001.

Reason: In order to define the consent.

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## **STATEMENT OF PROACTIVE ENGAGEMENT**

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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

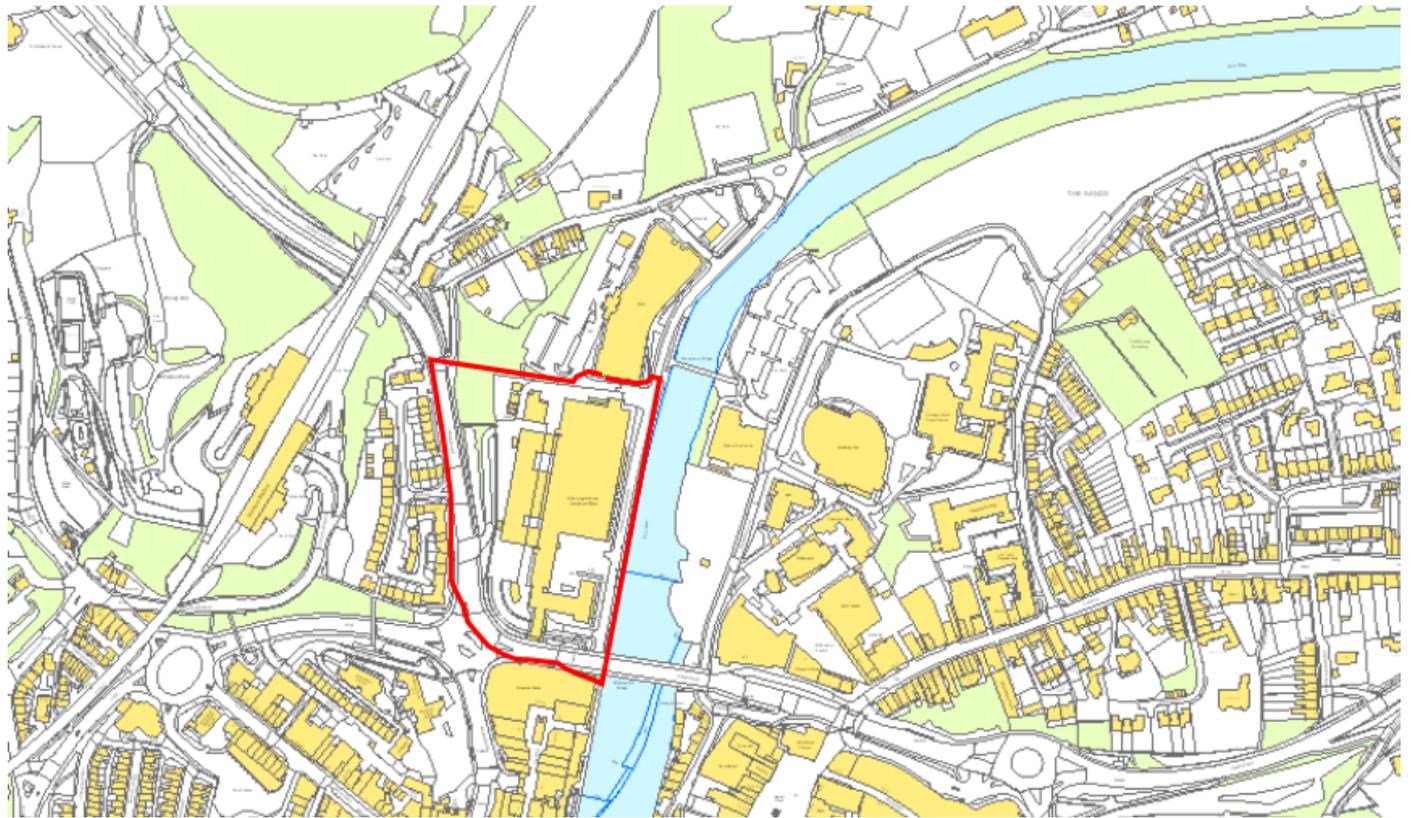
economic, social and environmental conditions of the area in accordance with the NPPF. (Statement in accordance with Article 35(2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.)

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## **BACKGROUND PAPERS**

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



**Planning Services**

DM/18/00896/VOC

Variation of conditions 4 and 20 pursuant to planning permission DM/16/01228/FPA (mixed use development on Milburngate House site) so as to permit new service yard access, car parking and servicing yard amends, additional cinema screen and amendment to Framwelgate Peth access so as to permit non-residential traffic

MGH Card LLP

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**Comments**

**Date**  
4<sup>th</sup> December 2018

**Scale**  
Not to scale

# COMMITTEE REPORT

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## APPLICATION DETAILS

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**APPLICATION NO:** DM/18/02924/FPA

**FULL APPLICATION  
DESCRIPTION:**

Erection of office block (identified as Block 1E) (B1 use class) with flexible permission for shop, food and drink and assembly & leisure uses at ground floor level (Use Classes A1, A3 and D2) and associated public square and landscaping

**NAME OF APPLICANT:** MGH Card LLP

**ADDRESS:** Former Milburngate House, Framwelgate Waterside, Durham City

**ELECTORAL DIVISION:** Elvet and Gilesgate

**CASE OFFICER:** Andrew Inch, Strategic Development Manager  
03000 261155 [andrew.inch@durham.gov.uk](mailto:andrew.inch@durham.gov.uk)

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## DESCRIPTION OF THE SITE AND PROPOSALS

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### The Site

1. The application site comprises a 0.74ha parcel of the former Milburngate House site and is situated in the more north-western quarter of this overall site. In the west the application site comprises of parts of Framwelgate Peth and at its southern end includes a proposed vehicular access into the overall development off Framwelgate Peth. The wider site is located in the north of Durham City Centre and on the western bank of the River Wear.
2. The former Milburngate House building was constructed in the 1960s and was purpose built for the Post Office Savings Bank, later known as the National Savings & Investments. Planning Permission (DM/15/01119/FPA) was granted in July 2015 for the demolition of the building including remediation and enabling works in preparation for future redevelopment on the site. These demolition and preparation works for redevelopment are now nearing completion.
3. To the north of the wider Milburngate House site is the Radisson Hotel with residential properties in Sidegate beyond whilst in the south is the former Gates Shopping Centre currently nearing completion of its redevelopment into The Riverwalk. On the opposite side of the River Wear to the east lie the Freeman's Reach office development and beyond that the Walkergate development. In the west, on the opposite side of Framwelgate Peth, are residential properties at Highgate.

4. 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 WHS is located approximately 340m from the application site at the nearest point.
5. 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 and Background:

6. In March 2018 planning permission (DM/16/01228/FPA) was granted in detail for the redevelopment of the wider site with a 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 outline planning permission with all detailed matters reserved except access for a mixed use development of office (use class B1) and a maximum of 150 residential units. The buildings and public realm forming the development would step up from the lower riverside level to the higher land towards Framwelgate Peth and would sit atop of a podium level predominantly housing four levels of parking and servicing.
7. Within the detailed planning permission that was granted, six building blocks were approved including a Block 1e building comprising of 8 storeys of residential apartments commencing at levels 03 (effectively the ground floor above the podium) with void spaces above these residential floors. The Block contained 109 apartments.
8. This planning application seeks to replace the approved residential building with one that would be occupied predominantly as an office (Class B1), although the ground floor could be utilised as office space or for retail (A1), food and drink (A3) or assembly and leisure (D2) uses. The building would comprise 6 storeys of commercial floor space albeit part of the building ceases at 5 storeys. Beneath the building would be levels of parking and servicing.
9. The footprint of the revised building would differ from that previously approved. The gross external area (GEA) is less than that previously approved (approx 6,350m<sup>2</sup> as oppose to 10,300m<sup>2</sup>). The shape of the footprint would in turn alter.
10. The northern elevation of the building would be set on a diagonal responding to a pedestrian route and vista through the development which is touched upon more below. The external facades of the building would principally comprise of reconstituted stone, masonry, aluminium metalwork and curtain walling. The building would essentially adopt a flat roofed approach to its roofscape though this would not be uniform as it would include a distinct step/cascade and would also contain a roof terrace.
11. Public realm would enclose the building to its north, west and east. To the north would be sections of a feature pedestrian route through the site leading from Framwelgate Peth and ultimately ending at the riverside level. To the east would be a feature area of hard and soft landscaping public realm. To the west between the building and Framwelgate Peth an area predominantly comprising of soft landscaping is proposed. To the immediate south of the building a narrow strip of public realm is proposed before the vehicular access route from Framwelgate Peth down to the car parking beneath the build is located.

12. There are no changes to the proposed access and parking arrangements for customers/visitors and staff. The main access to the public car park proposed under the wider redevelopment would remain off Framwelgate Waterside at the riverside level. It should be noted that a separate pending application (DM/18/00896/VOC) proposes amendments to the approved access arrangements for the wider development and that application should be referred to for the detail. There is also a further separate application being considered for a hotel development within the wider site (DM/18/00894/FPA).
13. The application is reported to the County Planning Committee as it constitutes a major commercial development and is of strategic importance to the wider redevelopment of the Milburngate House site that was previously considered by County Planning Committee in November 2016.

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## **PLANNING HISTORY**

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14. Planning Permission 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.
15. In March 2018 planning permission was granted for the redevelopment of the site with a 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 (detailed permission) and outline planning permission with all detailed matters reserved except access for a mixed use development of office (use class B1) and a maximum of 150 residential units (use class C3) and associated landscaping and infrastructure works.
16. An application is currently pending consideration (DM/18/00896/VOC) for the variation of conditions 4 and 20 of the above redevelopment so as to permit new service yard access, car parking and servicing yard amends, additional cinema screen and amendment to Framwelgate Peth access so as to permit non-residential traffic.
17. An application is currently pending consideration (DM/18/00894/FPA) for amends to Block 1a to form 2-bed hotel and two commercial units for shop, professional and financial service and/or food and drink uses (Class A1-A5) with associated works
18. Though not on the application site but also of some background relevance is the redevelopment of the adjacent Gates Shopping Centre to a mixed use scheme known as The Riverwalk first granted planning permission in November 2015 (DM/15/01626/FPA). The redevelopment is well advanced with some of the first units now occupied.
19. On land on the opposite side of the River Wear at the Sands car park and Durham Sixth Form Centre car park, an application is also pending consideration for an office headquarters with associated car parking (inclusive of a multi-storey car park) with associated landscaping, highway and infrastructure works and demolition of existing structures (DM/18/02369/FPA).

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## **PLANNING POLICY**

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### **NATIONAL POLICY**

20. A revised National Planning Policy Framework (NPPF) was published in July 2018. The overriding message continues to be that new development that is sustainable should go ahead without delay. It defines the role of planning in achieving sustainable development under three overarching objectives – economic, social and environmental, which are interdependent and need to be pursued in mutually supportive ways.
21. In accordance with Paragraph 213 of the National Planning Policy Framework, existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with the Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given). 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.
22. *NPPF Part 2 - Achieving sustainable development.* The purpose of the planning system is to contribute to the achievement of sustainable development and therefore at the heart of the NPPF is a presumption in favour of sustainable development. It defines the role of planning in achieving sustainable development under three overarching objectives – economic, social and environmental, which are interdependent and need to be pursued in mutually supportive ways. The application of the presumption in favour of sustainable development for plan-making and decision-taking is outlined.
23. *NPPF Part 4 - Decision-making.* Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.
24. *NPPF Part 6 – 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 a low carbon future.
25. *NPPF Part 7 - Ensuring the Vitality of Town Centres.* Planning policies and decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation.
26. *NPPF Part 8 – Promoting healthy and safe communities.* The planning system can play an important role in facilitating social interaction and creating healthy, inclusive communities. Developments should be safe and accessible; Local Planning Authorities should plan positively for the provision and use of shared space and community facilities. An integrated approach to considering the location of housing, economic uses and services should be adopted.
27. *NPPF Part 9 – Promoting sustainable transport.* Encouragement should be given to solutions which support reductions in greenhouse gas emissions and reduce congestion. Developments that generate significant movement should be located where the need to travel will be minimised and the use of sustainable transport modes maximised.

28. *NPPF Part 11 – Making effective use of land.* Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously-developed or 'brownfield' land.
29. *NPPF Part 12 – Achieving well-designed places.* 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.
30. *NPPF Part 14 – Meeting the challenge of climate change, flooding and coastal change* - The planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change. It should help to: shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and support renewable and low carbon energy and associated infrastructure.
31. *NPPF Part 15 Conserving and Enhancing the Natural Environment* - Conserving and enhancing the natural environment. The Planning System should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, geological conservation interests, recognising the wider benefits of ecosystems, minimising the impacts on biodiversity, preventing both new and existing development from contributing to or being put at unacceptable risk from pollution and land stability and remediating contaminated or other degraded land where appropriate.
32. *NPPF Part 16 Conserving and Enhancing the Historic Environment* - Heritage assets range from sites and buildings of local historic value to those of the highest significance, such as World Heritage Sites which are internationally recognised to be of Outstanding Universal Value. These assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations.

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

33. 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; light pollution; natural environment; neighbourhood planning; noise; planning obligations; travel plans, transport assessments and statements; use of planning conditions and; water supply, wastewater and water quality.

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

#### **LOCAL PLAN POLICY:**

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

34. *Policy E3 – World Heritage Site Protection.* Protection seeks to safeguard the site and setting from inappropriate development that could harm its character and appearance.

35. *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.
36. *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.
37. *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.
38. *Policy E15 – New Trees and Hedgerows.* States that the Council will encourage tree and hedgerow planting in major development sites.
39. *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.
40. *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.
41. *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.
42. *Policy E23 – Listed Buildings.* This policy seeks to safeguard Listed Buildings and their settings from unsympathetic development.
43. *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.
44. *Policy EMP12 – Office Development – General.* Encourages new office development within or adjacent to Durham City Centre and within district and local centres.
45. *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.

46. *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.
47. *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.
48. *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.
49. *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.
50. *Policy T21 – Walkers Needs.* States that existing footpaths and public rights of way should be protected.
51. *Policy S1a – Retail Hierarchy.* Seeks to protect and promote the vitality and viability of Durham City Centre
52. *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.
53. *Policy V6 – Visitor Accommodation within Settlement Boundaries.* Advises that new and extensions to existing visitor accommodation within settlement boundaries will be permitted provided that they are acceptable in scale and character and comply with other policies in the plan.
54. *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).
55. *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.
56. *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.
57. *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.
58. *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.

59. *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.
60. *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.
61. *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.
62. *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.
63. *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.
64. *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.
65. *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.
66. *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.
67. *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.
68. *Policy U13 – Development on Unstable Land.* Advises that development on unstable land will only be permitted where there is no risk resulting from that instability or where the instability can be remediated.
69. *Policy U14 - Energy Conservation – General.* States that the energy efficient materials and construction techniques will be encouraged.

## EMERGING PLAN:

### The County Durham Plan

70. Paragraph 48 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. An 'Issues & Options' consultation was completed in 2016 on the emerging the County Durham Plan (CDP) and the 'Preferred Options' was approved for consultation at Cabinet in June 2018. However, the CDP is not sufficiently advanced to be afforded any weight in the decision making process at the present time.

### Durham City Neighbourhood Plan

71. The pre submission draft of the Durham City Neighbourhood Plan has been subject to its first formal public consultation, which closed on 18th December 2017.
72. This council has made representations on the pre submission version of the plan and the associated Strategic Environmental Assessment, which raises a number of significant issues that will need to be resolved in order that the plan meets the prescribed Basic Conditions. In light of this, and given the stage of preparation, it has not yet reached a point where it can be afforded weight.

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

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

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## CONSULTATION AND PUBLICITY RESPONSES

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### STATUTORY RESPONSES:

73. *Highway Authority* – No objection subject to a condition to control the operation of the associated car park.
74. *City of Durham Parish Council* – recommends the application be refused on the grounds that its height and uniformity would result in a conspicuously block-like mass rising incongruously against its more varied neighbours and immediate surroundings and represents a weakening of the design ethos that underpinned the consented scheme, failing to preserve or enhance the conservation area whilst interfering with views of the World Heritage Site. Loss of residential development from the scheme is also highlighted so too is the piecemeal approach to changing elements of the overall development.
75. *Historic England* – raise concerns on heritage grounds and suggest that the viability of reducing the height of the proposal is considered in order to produce a more harmonious appearance within the Milburngate redevelopment. More specifically, they consider the proposal represents a weakening of the design ethos that underpinned the consented scheme which sought to balance its scale with references to the pattern of Durham's historic town buildings. Considering the significance of the conservation area as a whole, the negative impact would be minor in its degree of harm and, as such, this should be weighed against the public benefits of a proposal, taking into account the way in which the same benefits could be delivered with a more sympathetic design, specifically a reduction in height.

76. *Drainage and Coastal Protection* - no objection to the proposal subject to the development being implemented in accordance with Section 2 of the Drainage Strategy Addendum which confirms that the discharge points and limiting discharges remain the same as previously approved.
77. *The Coal Authority* – No objection. Whilst the proposed development site falls within the coalfield, there are no recorded coal mining legacy hazards at shallow depth that could pose a risk to land stability. Informative on Standing Advice is recommended.
78. *Environment Agency* – Raise no objections. In respects to flood risk stating that the development should be implemented in accordance with the submitted Flood Risk Assessment. In respects to ecological matters mitigation measures in respects to breeding birds and the European Hedgehog is advised in accordance with ecological submissions accompanying the application, whilst tree planting to compensate on that lost is advised as part the redevelopment having regards to bat foraging.

#### **INTERNAL CONSULTEE RESPONSES:**

79. *Design and Conservation* – Officers consider that whilst the design, through suggested revisions, has made some effort to facilitate integration through materiality, the overall height, scale, and mass, remains at odds with the original masterplanning concepts and, as such, reflects negatively on the Conservation Area and setting of the World Heritage Site. When considering this in the round, the harm is assessed as minor and in the context of the NPPF this would be less than substantial, and needs to be weighed against the public benefits of the proposal. Should the opportunity arise, the re-masterplanning of the site including the relocation of this block to a less sensitive location should be undertaken.
80. *Landscape* – Raise no objections in general to the amended landscape and public realm amends which are on the whole well considered though some amends to detail would be required this includes to the landscape treatment to Framwelgate Peth whilst some areas of astroturf are proposed which should be replaced. Concern is expressed with the indicative designs of the suspended steps/walkway from Framwelgate Peth and alternative options should be investigated.
81. *Spatial Policy* – advise that the policies most important for determining the application are out of date including those relating to the city centre where more recent retail evidence has since been published which has considered amendments to the city centre boundary and frontage policies based on updated national guidance and developments on the ground. National policy also provides more updated guidance on the sequential test. In light of the above it falls that the policy is considered through paragraph 11 and the presumption in favour of sustainable development.
82. *Ecology* – Officers advise that the ecological impacts would be in line with the previously consented scheme and, in particular, that lighting impacts on the river edge are not anticipated as the building is likely to be far enough away from the river.
83. *Archaeology* - No objection.
84. *Environment, Health and Consumer Protection (Air Quality)* – Raise no objections. During the construction phase of the development a condition requiring a dust action plan would be necessary. Further details in regards to heavy duty vehicle movements during the construction phase are requested and if necessary their impact assessment. No objections are raised in regards to the operational phase of the development.

85. *Environment, Health and Consumer Protection (Contaminated Land)* – No objection subject to a condition requiring the completion of remediation works.
86. *Environment, Health and Consumer Protection (Pollution Control)* – No objection subject to the imposition of planning conditions in relation to noise mitigation, fume extraction, external lighting, operating hours of non-office uses, noise attenuation of plant and machinery and a construction management plan.
87. *Targeted recruitment and Training* – No objection subject to a S106 agreement or a planning condition to secure employment and skills training that will assist the local community by improving job prospects and employability.
88. *Travel Planning* – Advise that some amendments be made to the submitted travel plan.

#### **NON-STATUTORY RESPONSES:**

89. *Durham Constabulary Architectural Liaison Officer* – advise that the crime risk assessment in terms of traditional offences of burglary and theft is low; however, there are some concerns as to how the development will impact on the residential amenity of the households proposed for other phases of the site as a whole. Advice is provided in respects to protective landscaping and public realm measures. The hours of operation of any A3 use should be restricted to midnight. Careful consideration should be given to outdoor seating areas. The main pedestrian route adjacent to the Block should at its northern end be lit to adoptable standards.
90. *Northumbrian Water* - No objection subject to the imposition of a planning condition requiring development to take place in accordance with the Drainage Strategy Addendum.

#### **PUBLIC RESPONSES:**

91. The application has been publicised by way of press notice, site notice and individual notification letters to neighbouring residents and occupiers. A total of 4 letters of representation have been received all raising objections to the development. Comments are summarised below.

##### Highways Issues

- The related amendments to the Framwelgate Peth access is unacceptable with concerns expressed over pedestrian safety including with regards to the concentrations of student pedestrians who use the routes and that they walk in the road at times

##### Design and Heritage

- Objection is raised to the design and visual impacts of the development which are deemed to lack the necessary quality and interest

92. *Durham Bird Club* – Express disappointment that the development does not incorporate measures so as to encourage birds to be attracted to the redevelopment. Suggestions to incorporate habitat improvement measures are included. For reference comments supplied on the original planning permission (DM/16/01228/FPA) are supplied.

93. *Campaign to Protect Rural England* – Raise objections on the grounds of the harmful townscape and heritage impacts of the development inclusive of the World Heritage Site and Conservation Area. For reference comments supplied on the original planning permission (DM/16/01228/FPA) are supplied.

**APPLICANTS STATEMENT:**

94. The proposed development comprises an office block (Class B1) with ancillary uses on the ground floor and an associated public square and landscaping at Block 1E of the Milburngate site.
95. Under the existing consent, Block 1E has permission for residential use. This proposed use was based on market intelligence and forecasting at the time of the application. However, following updated advice and detailed engagement over the last two years with potential occupiers/funders/tenants, it has become apparent that delivery of large residential schemes in this market area is not a viable and deliverable option in the first Phase of the development. For these reasons, the applicant has therefore identified a requirement to deliver alternative uses within Phase 1.
96. There has been a proven demand for employment use within the city, research by North-East agents shows that in the first six months of 2018 there were enquires from occupiers looking for a combined 730,000sqft of office space across the region which could have considered Durham with an average enquiry size of 40,000sqft, equating to in the region of 6,700 jobs. Other towns and cities in the North East have all increased commercial property development in recent years which is attracting footloose occupiers whilst Durham has no office space to meet these requirements. The proposed office will create a vital kick starter to enable Durham to be promoted to the occupier market as a city that is truly open for business. It will provide a central part of the City's core infrastructure and will enable Durham to attract occupiers who are increasingly being drawn to CBD locations, and importantly allow the City to compete with the other North East regional city centres.
97. The proposed office is within the maximum height parameters set by the existing permission and has a footprint which is 11% smaller than the approved scheme plus has created additional opportunities for landscaping and public realm. The massing of the proposed office has been developed with careful consideration of its context and avoids unsuitable uniformity by introducing several breaks in massing and materiality. The building geometry is subtle yet dynamic in the range of massing/scale relationships presented across various vantage points. This approach will provide visual clarity of the different use and step change in this area to the commercial context leading on to additional office development proposed in Phase 2, thus providing a further layer of variety which is vital to all good masterplans.
98. The proposed development will complement the other components of the consented mixed-use scheme and will provide a more attractive environment for residents and visitors. The scheme will provide high-quality office space accommodation within a sustainable city centre location which will create up to 416 jobs once operational. This has the potential to increase footfall within the city and will result in additional spending in the city and local economy. In addition, the scheme will also enable the delivery of a key axial link providing a direct route from Framwellgate Peth to the heart of the Milburngate site and through to the riverside as well as the delivery of Durham Square.
99. In summary, the development of the office will meet the proven demand for high-quality office scape in the city and will deliver a significant number of social, economic and environmental benefits itself and within the context of the approved wider Milburngate Masterplan.

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## **PLANNING CONSIDERATIONS AND ASSESSMENT**

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100. 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. The National Planning Policy Framework (NPPF) and 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; visual, townscape and heritage impact; highway safety/issues; residential and occupier amenity; flood risk and drainage; ecology; and viability and planning obligations.

### The Principle of the Development

101. The application seeks planning permission for the revised Block 1e building which would predominantly house a B1 use class office together with floorspace on the lowest floor which could be utilised for shop (A1), food and drink (A3) or assembly and leisure (D2) uses. The majority of these uses, save for café A3 usage, would each constitute a main town centre use as defined within the NPPF and as a result the NPPF advises that such developments should be located within town centres.
102. Under the wider redevelopment proposals with planning permission (DM/16/01228/FPA), B1, A1, A3 and D2 uses were accepted and already have planning permission and therefore the principle of such uses at the site has been accepted under the existing planning permission.
103. The application site is located within Durham City Centre. The CDLP includes a dedicated chapter on the City Centre advising on the range of issues which affect its environment, character and health. The chapter includes reference to a range of policies which are considered relevant to City Centre issues and three policies covering site allocations and general guidance on vitality and viability. Since the adoption of the CDLP a more recent Retail and Town Centre Study was undertaken in 2009, reviewed and updated in 2013 and again in 2018. The findings of these studies are that, since the adoption of the CDLP in 2004, city centre developments have expanded in the city (such as Walkergate and the Radisson hotel, for example) and the functional boundary of the city centre identified within those studies includes the application site. The application site is considered part of the functioning Durham City Centre and the site is therefore considered appropriate in principle for main town centre uses such as that proposed.
104. CDLP Policy CC1 seeks to protect and enhance the vitality and viability of Durham City Centre, in particular, by providing a mixture of uses within that area and promotes the sequential approach to site selection. The thrust of the policy is largely consistent with the NPPF, however, it is not fully consistent as the policy explains that the sequential approach will be applied to retail and leisure developments whilst the NPPF requires a broader application of this test.
105. CDLP Policy S1a does not clearly define a hierarchy of town centres as such, and it does not extend to the whole of the County but it does, within the former City of Durham

District, identify Durham City Centre at the head of the retail hierarchy, and this is considered generally consistent with the content of the NPPF as a result.

106. As the proposals would involve the provision of a mixture of office and main town centre uses within a city centre location the proposals are considered to draw support from CDLP Policies CC1 and S1a.
107. CDLP Policy EMP12 relates to office development and advises that, in principle, such development will be encouraged within or adjacent to the City Centre and within district and local centres. The justification to the policy highlights that Policy CC2 identifies specific sites within the City Centre for office development but the policy does not restrict office development to only those sites. With the application site located within the City Centre, the proposal is, in principle, considered to draw support from Policy EMP12. The policy is not fully consistent with the NPPF as the NPPF is clear that an in centre location is sequentially preferable to an edge of centre location, a distinction not made under EMP12.
108. The principle of the provision of food and drink uses would also be in accordance with CDLP Policy S10 which identifies that within settlement boundaries, such development will be permitted (subject to a range of criteria that covers amenity, parking and scale). This policy is only partially consistent with the NPPF as, unlike the NPPF, it does not reference the need to adopt a sequential approach to site selection for restaurants and drinking establishments.
109. The proposals would result in the redevelopment of previously developed land in a locationally sustainable site in close proximity to Durham train station, bus station and the collection of bus stops on Milburngate.
110. Objections received in response to the consultation on the application proposals include objection to the resultant loss of residential units. The residential units within the as approved Block 1e proposal were considered an acceptable use under that application. However, as outlined above the main office and other commercially uses sought in this revised scheme are main town centre uses, uses that are expected within a city centre location, which draw support in principle from national and local planning policy guidance and indeed represent uses which the existing planning permission has already considered are acceptable in principle at the site. It is considered that the proposed scheme could not reasonably be opposed on the basis that it was at the expense of residential use.
111. With regards to the concerns over the need for further office space and, that the mixture of uses proposed is at the expense of other forms of development which could contribute to the economy of Durham City Centre, again officers would firstly highlight that the mixture of uses are main town centre uses which are acceptable in principle. Neither the applicable CDLP policies nor the NPPF require the need for the development be demonstrated.
112. Overall, the proposed development is considered to draw support from local and national planning policy guidance and represents the sustainable re-use of previously developed land within a city centre location close to other services and transport hubs. No objections are therefore raised to the principle of the development.
113. The NPPF advises that weight to local plan/development plan policies adopted prior to the publication of the NPPF (in its revised form) should be attributed according to their degree of consistency with the NPPF (the closer the policies in the plan to the policies in the NPPF, the greater the weight that may be given). Existing policies should not be considered out-of-date simply because they were adopted or made prior

to the publication of this Framework. Equally, however, where evidence, which informed a policy, has been superseded by more up-to-date evidence, this can also be a reason to conclude the policy itself is out of date.

114. So that sustainable development is pursued in a positive way, at the heart of the NPPF is a presumption in favour of sustainable development and this is detailed at paragraph 11 which states;

For decision-taking this means:

c) approving development proposals that accord with an up-to-date development plan without delay; or

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or

ii. 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.

115. In this instance, and having regards to the above discussion on some key policies, the CDLP includes policies most important for determining the planning application, which are out-of-date. Accordingly, the acceptability of the application should be considered under the planning balance test contained within Paragraph 11 (d) of the NPPF. Such an assessment is undertaken in the concluding sections of this report, following consideration and assessment of the all the key material planning considerations.

#### Visual, Townscape and Heritage Impact

116. The Milburngate House site generally, is located within a very sensitive and prominent location. The potential impact upon the townscape and a range of heritage assets was a critical matter for consideration in regards to the original redevelopment proposal under application DM/16/01228/FPA.
117. The 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 (340m to the south), Church of St Godric (Grade II listed and approximately 150m to the southwest), Castle Chare Community Arts Centre (Grade II\* listed and approximately 120m to the southwest) Church of St Nicholas (Grade II listed and approximately 270m to the southeast)). Concentrations of listed buildings are also located within the Market Place, including the Grade II\* Town Hall and Guildhall, some 225m to the south east.
118. In assessing an application, 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. Any such harm must be given considerable importance and weight by the decision-maker.

119. In the assessment of the wider redevelopment proposals with planning permission it was noted that the proposed development was of a significant scale, reflective of the significant scale of the buildings previously standing on the site and the extensive scale of the site itself, exacerbated by the significant level changes around the site. The manner in which the development sought to cascade the significant level changes down to the River Wear was welcomed including the use of pitched roofs. There was some 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 considered the proposal an improvement to the setting of the WHS in comparison to what previously stood on the site whilst Design and Conservation officers considered that whilst in some respects the WHS would be beneficially impacted upon there was some concern raised in regards to the scale of the development and impact in some key views as a result. The conclusions overall were that the townscape and visual impacts were acceptable and most importantly the character and appearance of the Conservation Area and setting of the WHS would be preserved.
120. The proposals subject of this application would involve the replacement of a residential block with one primarily in office use. The approved Block 1e in this location was of the same architectural form as other residential blocks on the remaining parts of the site subject to the detailed planning permission with the same approach to the roofscape, to breaking up the massing and detailing, which, it was considered, reflected the finer grain of the Conservation Area. The proposed replacement building differs from that approach, driven by its use and office floorplates as opposed to residential floorplates and accordingly, the proposed building is more uniform in its outline, detailing and by the combination of height and uniformity results in a somewhat conspicuous block, with mass rising against its more varied neighbours and immediate surroundings. This is particularly the case when considering views along Framwelgate Peth and from across the River Wear where views from Freemans Reach and Walkergate allow the development to be read as one and the sense of what is already a conspicuously large-scale scheme would be emphasised.
121. When considering the proposals in respect of the impact on views/ setting of the WHS these are primarily transient views along Framwelgate Peth that, when assessed against the previous scheme, appear slightly less considered, primarily in respect of the lack of streetscape integration and the blocking impact towards the Cathedral is worsened by the increased massing of the office block. The proposal would, therefore, cause a minor degree of harm to the setting of the WHS.
122. Historic England considers that the proposal represents a weakening of the design ethos that underpinned the consented scheme that sought to balance its scale with references to the pattern of Durham's historic town buildings. This proposal uses some of those references but the more uniform appearance and height ensures that the overall effect would be a negative one. This is a view shared by the Design and Conservation Officers. Consequently, it is considered that the proposals would have a negative, albeit minor adverse impact on the significance and character and appearance of the Conservation Area.
123. Historic England suggest that the viability of reducing the height of the proposal is considered in order to produce a more harmonious appearance within the Milburngate redevelopment. Likewise, Design and Conservation Officers advise that, should the opportunity arise, the re-masterplanning of the site, including the relocation of this block, to a less sensitive location should be undertaken. Through pre-application

discussions, the applicants have already reduced the height of the building. They have advised that a further reduction in the height of the building and in turn the significant loss of office floorspace would be likely to significantly limit their ability to attract future occupiers of the building based on existing market evidence and ongoing enquiries for new office floorspace in Durham city centre. In terms of locating the office block within another part of the site where it benefits from outline planning permission for office use, the applicants have advised that it would not be a practical or feasible option. Key reasoning provided by the application is that this would require an alteration in the construction sequencing of the development and would effectively sterilise parts of the site as a result. Related to this there would be issues in relation to the construction processes and those elements of the site which would be operational such as sections of the car park and servicing elements of the development and the logistics of managing public access having regards to health and safety.

124. Accordingly, the planning application must, therefore, be judged on the merits of the proposal as it stands.
125. The proposed development would cause a minor degree of harm to the setting of the World Heritage Site and would not preserve the character and appearance of the Conservation Area, which in NPPF Part 16 terms, would be a less than substantial degree of harm. Such harm to designated heritage assets would bring the proposal into conflict with relevant CDLP Policies. CDLP Policy E3 sets out that the WHS and its setting will be protected by restricting development to safeguard local and long distance views to and from the cathedral and castle, while Policies E6 and E22 seek to ensure that the special character, appearance and setting of the Durham (City Centre) Conservation Area will be preserved or enhanced. Both the Castle and Cathedral ranges are individually listed as well, so the harm to the setting of the WHS is considered to extend to harm to the setting of the Castle and Cathedral as listed buildings. This would bring the development into some conflict with CDLP Policy E23.
126. The NPPF advises that the weight to be afforded to policies adopted prior to the publication of the NPPF should be attributed according to their degree of consistency with the NPPF. Paragraph 196 of the NPPF sets out that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. No such balancing exercise against public benefits is contained within CDLP Policies E3, E6, E22 or E23. Accordingly, the policies are considered to not be wholly consistent with the NPPF and the weight to be afforded to them is only limited.
127. Reverting back to the NPPF paragraph 11(d) planning balance, the guidance at paragraph 196 of the NPPF represents a policy which protects assets of particular importance. Therefore, it is necessary to establish whether the public benefits of the proposal outweigh the less than substantial harm to the designated heritage assets. If these public benefits are not established then this suggests that there is clear reason to refuse the development on these heritage grounds. This planning balance exercise is undertaken later in the report.

#### Highway Safety/Issues

128. Under this application for the revised Block 1e proposal no amends are proposed to the access and parking arrangements for customers/visitors and staff. The main access to the public car park proposed under the wider redevelopment would remain off Framwelgate Waterside at the riverside level. It should be noted that separately under the currently pending application DM/18/00896/VOC amends are proposed to access arrangements for the wider development and that application should be referred to for the detail.

129. The car park proposed beneath podium level is proposed to serve the development as a whole and it would form another city centre car park which would be available for use by visitors to not only this development, but the city centre more widely and indeed, conversely, visitors to this development could park elsewhere in the city centre.
130. The application is accompanied by a Transport Statement (TS) and amongst the details contained therein is a comparison of the vehicular trips pursuant to the office block proposed as oppose to the consented residential block. This demonstrates that in overall terms the AM and PM peak trips associated with the office would be higher than the residential use. The TS then presents the outcome of the modelling of these trip increases and considers the impact upon the highway network to be acceptable.
131. In response to the proposed change to Block 1e from predominately residential occupation to office, the Highway Authority have raised no objections including in respects to the submitted TS analysis whilst no specific amends to the car parking including any requirement to increase parking provision are made. The Highway Authority do highlight that there must be control on the operation of the car park via the amended access arrangements from Framwelgate Peth, a matter discussed in more detail under the application seeking those amends (DM/18/00896/VOC).
132. Overall, no objections are raised to the development on highways related grounds, with the development considered compliant with relevant sections of CDLP Policies T1, T19, T20, T21, Q1, Q2 and Q7. These policies are considered fully consistent with the NPPF and all can be afforded weight in the decision making process. CDLP Policy T10 is also applicable to the site and relates to parking provision. Policy T10 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 very little weight is attributed to this policy. The development is considered compliant with key relevant sections of the NPPF namely Part 9.

#### Residential and Occupier Amenity

133. Within the approved wider redevelopment proposals key issues for consideration related to amenity were; air quality implications; lighting impacts; implications of nuisances arising from construction activities; noise and vibration and the potential for disturbances arising from the mixture of uses; odour; contamination; and whether adequate separation between buildings remains having regards to privacy, outlook and light. Subject to conditions as necessary, no objections were raised having regards to these factors.
134. In regards to air quality, Environment, Health and Consumer Protection have raised no objections to the proposed revisions to Block 1e. In respects to the construction phase of the development it is advised that as dust emissions may impact upon sensitive receptors in the surrounding area a condition would be required in the event of an approval to agree a dust action plan. HDV movements associated with the development would be another potential source of air pollution within the construction phase of the development. Under the existing planning permission it was necessary to apply a condition (no 6) which required full details of the number and routing of HDV movements and as necessary submission of further air quality assessment and mitigation measures. Whilst further details in respects to the movements pursuant to this Block 1e development have been supplied in this regard some details remain outstanding and thereby a condition to the same effect would be necessary. In respects to the operational phase of the development Environment, Health and Consumer Protection originally raised some queries in respects to further information on the potential for cumulative impacts with other City Centre development. Clarity

has been provided in this regard, partly via further clarity of the traffic flow information which feeds into the transport submissions and a further air quality addendum. No objections have been raised in response by Environment, Health and Consumer Protection who conclude that the impacts of the revised proposals in comparison to that consented would be insignificant.

135. Under the wider redevelopment proposals Environment, Health and Consumer Protection concluded that it was unlikely that the proposals pose any significant concerns in relation to impacts upon neighbouring occupiers. However, it was advised that final lighting proposals be controlled under condition. The current application is accompanied by a lighting assessment note which advises that the lighting assessment conclusions which accompanied the approved application remain valid and a revised lighting strategy providing concept lighting designs of the revised Block 1e has also been submitted. Environment, Health and Consumer Protection have raised no issues with the application in this regard with no concerns expressed in regards residential amenity. However, so as to control the final detail of the lighting scheme and consistent with the wider existing planning permission it is considered that the final design should be agreed under condition.
136. The originally approved application was 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 emissions from the site. Existing noise is generally dominated by the traffic on Framwelgate Peth and Leazes Road/Milburngate Bridge whilst any implications of an increase in traffic as a result of the development upon this existing noise climate would be insignificant. As a result of the mixture of uses proposed within the wider redevelopment, there is the potential for the transfer of noise and vibration between the commercial units and residential units proposed. Proposed plant which could run 24hrs a day would be another source of noise. Consideration was also given the potential impacts of the comings and goings at the wider site due to the range and mix of uses including food, drink and cinema use which could entail late night opening.
137. This current application is accompanied by an updated noise assessment to reflect the revisions to the Block. Environment, Health and Consumer Protection have raised no objections to the submitted report or the revised Block 1e proposals in regards to noise. However, it is advised that conditions so as to control plant noise and sound insulation and tenant management measures would be required, the latter specifically because of the inclusion of a D2 use within the development which can contain more noisy activities and impacts. Officers concur with these views and the necessary conditions can be added to any planning permission.
138. The proposed A3 food and drink use could potentially create odours from cooking and it is considered control over final extraction proposals to mitigate this would be necessary, again this consistent with the approach taken on the existing planning permission.
139. It is noted that the Police Architectural Liaison Officer has raised comments highlighting that mixed use development can affect residents that reside therein though disturbance impacts and the like. This was a matter that required consideration in relation to the wider development as a whole at the time of the grant of planning permission. Consistent with the approach taken under the original planning permission a condition can added to any planning permission requiring agreement to be reached on the opening hours of the proposed food and drink uses and assembly and leisure uses (A3 and D2 classes).

140. In relation to the construction phase of the development the application is accompanied by a construction management plan. However, Environment, Health and Consumer Protection confirm that whilst it establishes principles in regards to construction phase management more details are required. As per the existing planning permission a condition can be added to require a final construction management plan to be agreed.
141. In regards to the layout of the development and potential for any harmful privacy, loss of outlook or light, the layout of the block and its overall scale and location of windows is similar to the Block 1e building previously approved. Its relationship with neighbouring land uses and occupiers, both existing off-site and proposed within the wider on-site redevelopment, would also be commensurate with that approved. The western elevation of the revised Block 1e would be approximately 30m from the nearest property at Highgate on the opposite side of Framwelgate Peth and properties on Highgate would be closest and most affected by the presence of the build.
142. Within the parts of the site with detailed planning permission the distance between the proposed Block 1e and neighbouring Block 1d would be approximately 16m, and 10m to Block 1c albeit these blocks would be set at acute angles. To the north the outline phases of the development are situated and thereby layout submissions are indicative only in respects to both layout and dispersion of the proposed residential or office uses approved in principle on this part of the site. Based on the indicate layout the revised Block 1e would be located approximately 14m at the nearest point. These relationships are commensurate with the previous approval under which no objections were raised referencing that the City Centre is in part characterised by winding intimate streets.
143. 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 submission of a Phase 4 verification report. A condition has been part discharged in this regards to site contamination pursuant to the approved demolition under planning permission DM/15/1119/FPA. There is a requirement for the applicant to discharge that condition in full through the submission of a phase 4 verification report in order to confirm the remediation strategy has been completed. The requirement to fully discharge this condition on DM/15/01119/FPA applies irrespective of this application and there is no requirement to repeat the condition on any planning permission for this development.
144. In conclusion, no objections are raised to the development in relation to the range of potential amenity impacts which could emerge from the development, subject, as necessary, to conditions. The proposals are considered in compliance with relevant CDLP Policies H13, Q1, Q7, U5, U7 and U11 in this regard and Part 15 of the NPPF. These CDLP Policies are considered fully (remaining policies) consistent with the NPPF and can be attributed weight in the decision making process.

#### Flood Risk and Drainage

145. The Milburngate House site is located adjacent to the River Wear and the site has a history of flooding. The originally approved wider redevelopment proposal was accompanied by an ES chapter on flood risk and hydrology and associated enclosures including a flood risk assessment (FRA). It was noted under that application that in relation to the wider redevelopment site the north western area lies within Flood Zone 1 (low flood risk probability). Parts of the western and southern section of the wider 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 eastern part of the wider site is within Flood Zone 3b.

146. Under the original planning permission consideration of the sequential and exception flood risk tests was given. It was accepted that there was no reasonably available and sequentially preferable locations for the redevelopment. With regards to the exception test it was firstly accepted that the development provides the necessary wider sustainability benefits that outweigh the flood risk and secondly that the submitted FRA demonstrated that the development would be safe for its lifetime taking account of the vulnerability of its users and that no increase in flood risk elsewhere would occur.
147. The key flood risk mitigation measures incorporated into the overall development were to ensure 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 to ensure that the current volume of floodplain is maintained.
148. The flood risks associated with just the Block 1e revisions under this application are less complex in the sense that the amendments proposed in the main affect the development from level 03 upwards, well above the 1% probability event (1 in 100 year) (including appropriate allowances for climate change). The Environment Agency have raised no objections to the development subject to a condition requiring the FRA mitigation measures to be implemented/adhered to.
149. In regards to surface water disposal, proposals for the wider drainage strategy for the site would entail discharge into the River Wear with restriction on the discharge rate. The use of soakaways (more preferable in the surface water disposal hierarchy) were considered unsuitable due to the ground conditions. Foul water flows for the wider development would be discharged into the main sewer.
150. The proposed amendments to the Block 1e building would not alter the principles of the surface water and foul water disposal and peak foul flow disposal from the proposed office block would be no higher than previously calculated for a residentially occupied block.
151. Neither Northumbrian Water nor Drainage and Coastal Protection raise objections to the development in regards to the drainage proposals for the development.
152. No objections are raised to the development on flood risk and drainage grounds with the development considered compliant with 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 14 of the NPPF

## Ecology

153. The approved wider redevelopment application was accompanied by a phase 1 habitat survey, bat method statement, bat emergence surveys and a biodiversity statement. Those submissions built upon ecological submissions which accompanied the previously approved application for demolition of Milburngate House and the ecological documentation has been submitted again under this current application.
154. 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.

155. The surveys undertaken did not find any protected species on site, other than nesting birds and recommendations were included to ensure that birds were not adversely impacted upon by the proposed demolition works. Some loss of foraging habitat for badgers and hedgehogs were also identified to occur and again mitigation measures so as to control when vegetation can be removed from the site were recommended.
156. 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, a method statement was devised and trees to be lost as a result of the redevelopment would be visually inspected before they were felled. The impact of lighting was considered and it was 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.
157. The proposed amends to the Block 1e building raise no new ecological considerations and Ecology have raised no objections to the development. The concerns of Durham Bird Club are noted and in response the applicant has confirmed that final landscaping proposals are being devised with ecological input in regards to planting species and the provision of bird boxes are proposed within the development so as to attract bird species.
158. 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 2017.
159. In terms of ecological and 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 to accord with CDLP Policy E16 (fully consistent with the NPPF) and Part 15 of the NPPF.

#### Viability and Planning Obligations

160. As this planning application relates to the provision of an office and A1-A3 and D2 commercial units, the requirements to provide some planning obligations via S106 legal agreement do not apply. No affordable housing or off-site contribution towards open space and recreation facilities are required for the proposed uses.
161. However, the wider redevelopment does propose residential units where obligations in relation to affordable housing and monies towards open space and recreation would ordinarily be required to mitigate the impacts of the development. Following an assessment of development viability, which included the Council employing two independent consultants to appraise viability issues, it was accepted that the viability of the wider redevelopment was marginal and, as a result, affordable housing provision and open space/recreation provision was not sought at that time. However, so that the Council could retain the ability to review the viability of the site in the future a S106 legal agreement was entered into which included obligations that at certain trigger points, viability reviews would be required. If it was demonstrated that the applicants profit exceeded a certain level then 50% of that surplus would be required to be paid to the Council for the provision of affordable housing and/or open space and recreation provision.

162. Whilst the planning obligations are not required by this development as such, the amended proposal would form part of the wider redevelopment site and it is considered necessary to enter into a Deed of Variation of that legal agreement so that it reflects the most up to date mixture of uses proposed and that those viability review obligations should apply to this new planning permission
163. 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.
164. 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. In this instance public art provision is not necessary to make the development acceptable.

#### Other Issues

165. In regards to matters of land stability and coal mining legacy issues, the Coal Authority have raised no objections to the development and require no conditions. The proposals would therefore accord with CDLP Policy U13 (NPPF compliant) and Part 15 of the NPPF.
166. The application includes an energy report detailing the energy strategy for the development and confirms a fabric first approach to energy reduction. Key elements include the provision of high efficiency air handling plant (AHUs). No objections to the development raised having regards to CDLP Policy U14 on energy conservation (fully consistent with the NPPF).
167. 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 to those uses proposed within Block 1e 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

Business use to Storage and Distribution

Business to state-funded schools or registered nursery

168. 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.

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## **CONCLUSION**

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169. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework is a material consideration in planning decisions.

170. The NPPF advises that weight to local plan/development plan policies adopted prior to the publication of the NPPF (in its revised form) should be attributed according to their degree of consistency with the NPPF (the closer the policies in the plan to the policies in the NPPF, the greater the weight that may be given). Existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Equally, however, where evidence which has informed the content of the policy is out of date this can also be a reason to conclude the policy is out of date.
171. So that sustainable development is pursued in a positive way, at the heart of the NPPF is a presumption in favour of sustainable development and this is detailed at paragraph 11
172. In this instance policies within the CDLP most relevant for determining the application are out-of-date. As a result paragraph 11(d) of the NPPF applies which states;
- where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
  - ii. 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.
173. Having regards to the planning assessments above there are NPPF policies which protect assets of particular importance which apply to this case in terms of designated heritage assets.
174. The development causes less than substantial harm to designated heritage assets (Castle and Cathedral WHS inclusive of their listed building status and the Durham (City Centre) Conservation Area). As a result, Paragraph 196 of the NPPF advises that this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
175. Great weight should be given to the asset's conservation and the more important the asset the greater the weight should be. The less than substantial harm would include harm to an asset of the highest significance in the WHS.
176. In terms of the public benefits, when considering the minor degree of harm to the setting of the World Heritage Site, Historic England and Design and Conservation Officers consider that any harm in views to the WHS is offset by the creation of new views from within the site. The opportunity to better reveal the significance of assets through new views in this way is considered a public benefit sufficient to outweigh the identified harm to the WHS and the Castle and Cathedral as listed buildings.
177. The harm to the significance and in turn the character and appearance of the conservation area is greater, albeit still minor, and less than substantial overall. In support of their application, the applicants have identified a number of public benefits that would be delivered by the development and which, in their view, would outweigh the identified harm. Of those identified, Officers consider that the following factors would amount to public benefits that would be delivered by the scheme:
- The office will assist in the delivery of £160m additional inward investment in the area as part of the wider Milburngate scheme;
  - Creation of high quality office space in a city centre location;

- Create up to 53 direct jobs and 48 indirect jobs during construction;
- Creation of approximately 416 FTE jobs once operational;
- Contribute to the regeneration of the wider Milburngate site;
- Bring further footfall to the consented scheme and the city, which could provide a boost for existing businesses in the city as well as the potential to attract new businesses;
- Increased spending within the city;
- Creation of new views;
- Deliver a key axial link, providing a direct route from Framwellgate Peth to the heart of the site then through to the riverside and City beyond;
- Delivery of the public square at the centre of the wider Milburngate site, which will provide a landscaped space for users to relax and enjoy views of the historic city.

178. Whilst some of the public benefits cannot in themselves be afforded significant weight, it is considered that, in particular, the opportunity to create a significant new employment opportunity for up to 416 employees in a highly accessible location should be afforded significant weight. Accordingly, it is considered that the public benefits that would arise from the development are sufficient, cumulatively, to outweigh the identified degree of harm to the designated heritage assets in the context of Paragraph 196 of the NPPF.

179. In terms of limb ii of Paragraph 11(d), there is the requirement to consider whether any adverse impacts overall would significantly and demonstrably outweigh the benefits. In this case it is considered that the identified adverse impacts from the development would not significantly and demonstrably outweigh the benefits when assessed against the NPPF taken as a whole. Accordingly, and having regards to all material planning considerations including comments raised in the public consultation exercise, it is considered that the proposals are acceptable and approval is recommended as a result.

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## RECOMMENDATION

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

- i) A Deed of Variation of the S106 legal agreement pursuant to planning permission DM/16/01228/FPA so that the viability review obligations in respects to affordable housing and open space and recreational space contributions reference this revised development under DM/18/02924/FPA

And subject to the following conditions:

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

Reason: Required to be imposed pursuant to Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. The development hereby approved shall not be occupied until the structure of the podium, car parking provision, plant, core, circulation and servicing areas at levels B1, 00 and 01 (the development podium / platform) as defined on drawings 2962-FBA-00-B1-DR-A-00\_10-0B100 Rev P1.1, 2962-FBA-1A-00-DR-A-00\_10-1A000 Rev P4, 2962-FBA-00-00-DR-A-00\_10-00000 Rev P1.2 and 2962-FBA-00-01-DR-A-00\_10-00100 Rev P1.2 are completed to a point that the Block 1e building can be adequately serviced

and in accordance with a Schedule of Works which must first have been submitted to and approved in writing by the Local Planning Authority prior to the commencement of development (with the exception of demolition, preliminary site excavation, enabling and remedial works, the building of foundations and the erection of any supporting steel frame at levels B1, 00 and 01 inclusive).

Thereafter the development must be completed in accordance with the approved Schedule of Works.

Reason: To ensure that necessary supporting infrastructure and development to serve the development hereby approved is implemented prior to the commencement of the development hereby approved having regards to CDLP Policies E3, E6, E10, E14, E15, E16, E21, E22, E23, E24, H13, EMP12, T1, T19, T20, T21, S1A, S10, CC1, Q1, Q2, Q4, Q5, Q6, Q7, Q8, U5, U7, U8A, U9, U10, U11 and U14 and Parts 2, 4, 6, 7, 8, 9, 11, 12, 14, 15 and 16 of the NPPF.

3. 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:

3503\_FBA-00-00-DR-A-05\_10\_300 REV P4 MASTERPLAN – 1E SITE BOUNDARY PLAN  
3503-FBA-00-00-DR-A-05\_10\_104 P4 1E OFFICE LOCATION PLAN  
3503-FBA-00-10-DR-A-05\_10-1000 P4 SITE PLAN  
3503-FBA-00-03-DR-A-05\_10-301 P3 SITE PLAN LEVEL 03  
3503\_FBA-00-03-DR-A-00\_00\_300 P3 LEVEL 03 GA FLOOR PLAN  
3503-FBA-00-04-DR-A-00\_00\_400 P3 LEVEL 04 GA FLOOR PLAN  
3503\_FBA-00-05-DR-A-00\_00\_500 P3 LEVEL 05 GA FLOOR PLAN  
3503-FBA\_00\_06\_DR\_A\_00\_00\_600 P3 LEVEL 06 GA FLOOR PLAN  
3503-FBA-00-07-DR-A-00\_00\_700 P3 LEVEL 07 GA FLOOR PLAN  
3503\_FBA-00-08-DR-A-00\_00\_800 P4 LEVEL 08 GA FLOOR PLAN  
3503-FBA-00-10-DR-A-00\_00\_900 P4 ROOF LEVEL GA FLOOR PLAN  
3503-FBA-00-XX-DR-A-00\_00\_70 P3 GA SECTION 01  
3503-FBA-00-XX-DR-A-00\_00\_71 P3 GA SECTION 02  
3503-FBA-00-XX-DR-1-00\_00\_72 P3 GA SECTION 03  
3503-FBA-00-XX-DR-A-00\_00\_73 P3 GA SECTION 04  
3503-FBA-00-XX-DR-AA-00\_00\_63 P3 SITE ELEVATIONS NE AND E1  
3503-FBA-00-XX-DR-A-00\_00\_62 P3 SITE ELEVATIONS NORTH AND SOUTH  
3503-FBA-00-XX-DR\_A-00\_00\_61 P3 SITE ELEVATIONS EAST AND WEST  
3503-FBA-00-XX-DR-A-00\_00\_55 P4 PROPOSED WEST ELEVATION  
3503-FBA-00-XX-DR-A-00\_00\_53 P4 PROPOSED SOUTH ELEVATION  
3503\_FBA-00-XX-DR-A-00\_00\_52 P4 PROPOSED EAST ELEVATION  
3503-FBA-00-XX-DR-A-00\_00\_50 P4 PROPOSED NORTH ELEVATION  
3503-FBA-00-XX-DR-A-00\_00\_51 P4 PROPOSED NORTH ELEVATION (TRUE)  
3503-FBA-00-XX-DR-A-00\_00\_01 P3 SITE SECTION A AND B  
MBG-COL-1E-XX-DR-L-1006 P2 LANDSCAPE MASTERPLAN BLOCK 1E  
2962-FBA-00-B1-DR-A-00\_10-0B100 REV P1.1 PROPOSED LEVEL B1 GA MASTERPLAN  
2962-FBA-00-00-DR-A-00\_10-00000 REV P1.2 PROPOSED LEVEL 00 GA MASTERPLAN  
2962-FBA-00-01-DR-A-00\_10-00100 REV P1.2 PROPOSED LEVEL 01 GA MASTERPLAN  
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 DEMO-NORTH 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)  
AIA TPP PHASE 1 CONS-NORTH 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:

ES APPENDIX 10.1 FLOOD RISK ASSESSMENT AUGUST 2016  
ES APPENDIX 10.1 FLOOD RISK ASSESSMENT MODELLING APPENDIX B  
ES VOL 1 FLOOD RISK AND HYDROLOGY MITIGATION MEASURES DETAILED AT 10.83 – 10.97  
ES VOL 1 LIGHTING MITIGATION MEASURES DETAILED AT 12.75 – 12.81  
WSP MILBURNGATE – BLOCK 1E FULL PLANNING APPLICATION FLOOD RISK ASSESSMENT  
ADDENDUM TO ENERGY STATEMENT FOR BLOCK 1E OFFICE 07 SEPTEMBER 2018 REV 4.0  
MILBURNGATE HOUSE BLOCK 1E AIR QUALITY ASSESSMENT 11 SEPTEMBER 2018  
MILBURNGATE BLOCK 1E NOISE IMPACT ASSESSMENT 5 SEPTEMBER 2018  
ATKINS DRAINAGE STRATEGY ADDENDUM (1A) 29 AUGUST 2018  
ES APPENDIX 10.2 DRAINAGE STRATEGY  
BAT METHOD STATEMENT MAY 2016  
EXTENDED PHASE 1 REPORT APRIL 2015  
ES VOL 2 AMENDED APPENDIX 3.1 SCHEDULE OF DEVELOPMENT V9 (REVISED JUNE 2018)  
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)

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, H13, EMP12, T1, T19, T20, T21, S1A, S2A, S10, R1, R2, CC1, Q1, Q2, Q4, Q5, Q6, Q7, Q8, U5, U7, U8A, U9, U10, U11 and U14 and Parts 2, 4, 6, 7, 8, 9, 11, 12, 14, 15 and 16 of the NPPF.

4. No development shall take place 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 associated drawings AIA TPP Phase 1 Demo-South Rev A, AIA TPP Phase 1 Demo-North Rev A, AIA TPP Phase 1 Cons- South Rev A and AIA TPP Phase 1 Cons-North Rev A and as referenced within the Arboricultural Impact Assessment Revision 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.

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 12, 15 and 16 of the NPPF.

5. No development other than demolition shall take place until the following has been submitted and approved in writing by the Local Planning Authority;
  - i) Full details of the number and routing of all Heavy Duty Vehicle (HDV) necessary to implement the construction 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 until, the submitted AQA (where submission is necessary) has been approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details including any mitigation measures.

Reason: In the interest of reducing impacts upon air quality having regards to CDLP Policy U5 and Part 15 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.

6. No development shall take place until a Construction Management Plan (CMP) has been first submitted to and approved in writing by the Local Planning Authority. The CMP shall consider the potential environmental impacts (noise, vibration, dust & light) that the construction phase may have upon any occupants of nearby premises and shall detail mitigation proposed. This shall 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.
  - 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 the development shall be carried out in accordance with the approved CMP.

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 15 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 works other than demolition, preliminary site excavation, enabling and remedial works shall take place until an Employment & Skills Plan has been submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall be carried out in accordance with the approved Employment & Skills Plan.

Reason: In the interests of building a strong and competitive economy in accordance with Part 6 of the NPPF.

8. Notwithstanding details contained within the plans and documents, no development other than, 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 which are within the red line site boundary (as defined on 3503-FB-00-00-DR-A-05\_10\_104 Rev P4 1E Office Location Plan) has been submitted to and approved in writing 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 carried out 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 9 of the NPPF.

9. Notwithstanding the details contained within the submitted plans and documents no development other than demolition, preliminary site excavation, enabling and remedial works, the building of foundations and the erection of any supporting structural frame shall take place until a detailed landscaping scheme has been submitted to and approved in writing by the Local Planning Authority.

The landscape scheme shall include the following:

- Details of soft landscaping including plant 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; and
- Details of means of enclosure, including retaining walls;
- Details of the long term management proposals including measures to ensure the replacement of trees or plants which die, fail to flourish or are removed and details of timescales of the implementation of the landscaping proposals shall also be submitted.

Thereafter the development shall be carried out in accordance with the approved details.

Reason: In the interests of visual amenity having regards to CDLP Policies E6, E14, E15, E22, Q5, Q6 and Q7 and Parts 12 and 15 of the NPPF.

10. Notwithstanding the details contained within the submitted plans and documents no development other than demolition, preliminary site excavation, enabling and remedial works, the building of foundations and the erection of any supporting structural frame shall take place until full details including samples and sample panels of all external materials to be used in the development have been submitted to and approved by the Local Planning Authority. Thereafter the development must be carried out 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 and Q7 and Parts 12 and 16 of the NPPF.

11. Notwithstanding details submitted within the submitted plans and documentation no development other than demolition, preliminary site excavation, enabling and remedial works, the building of foundations and the erection of any supporting structural frame shall take place until an advertisement and signage strategy for the development has been submitted to and approved by the Local Planning Authority.

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 and Q7 and Parts 12 and 16 of the NPPF.

12. 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 final and precise design details of the proposed pedestrian route leading from Framwelgate Peth as discussed under section 3 "Stepped Access from Framwelgate Peth" of the Landscape and Public Realm Addendum Ref. L-1953-DOC-001 have been submitted to and approved in writing by the Local Planning Authority. As necessary the submissions must include the submission of additional arboricultural assessment, tree retention/tree removal plans, tree method statements and tree protective measures/plans to inform upon and facilitate the works. Thereafter the route must be constructed in accordance with the approved details.

Reason: In the interests of visual amenity and to define the design solution of the stepped access feature having regards to CDLP Policies E6, E22, Q1, Q2 and Q4 and Parts 12 and 16 of the NPPF.

13. 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 the building shall take place until a scheme of sound insulation and tenant management measures 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 adjoining noise sources/external noise sources and separate/adjoining B1 use properties shall be sufficient that noise does not exceed NR 40, or otherwise adhere to the noise levels stated in the British Council for Offices guide 2009. The approved schemes shall be carried out prior to the occupation of the development and maintained thereafter.

Reason: In the interests of preserving the occupier amenity of site occupiers having regards to CDLP Policy U7 and Part 15 of the NPPF.

14. Prior to the occupation of any A3 unit, or that particular unit, details all plant, extraction and ventilation to be utilised within any A3 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 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 amenity of site occupiers having regards to CDLP Policy U7 and Part 15 of the NPPF.

15. Prior to the occupation of the development, a final external lighting scheme and associated lighting impact assessment shall be submitted and approved by the Local Planning Authority. This should include the following, commensurate with the scale/type of lighting scheme provided and having regards to the location of the site within Environmental Zone 3 in accordance with the Institution of Lighting Professionals Guidance on the Reduction of Obtrusive Light:

- 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;
- 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 the development shall be carried out in accordance with the approved schemes and assessments.

Reason: In the interests of preserving residential amenity, preserving the character, appearance and setting of heritage assets and in the interests of conserving ecological assets having regards to CDLP Policies E3, E6, E16, E21, E22, E23, U7, H13 and Q7 and Parts 12, 15 and 16 of the NPPF.

17. Prior to the occupation of any unit to be utilised within the A3 or 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 15 of the NPPF.

18. No plant shall be operated until a detailed noise impact assessment and scheme of sound attenuation measures has been submitted to and approved in writing by the Local Planning Authority. The scheme of attenuation measures shall ensure that that the rating level of noise emitted from plant at each location shall not exceed the noise levels stated below:

NSR Time Period Fixed Plant Noise Limit dB LAeq, T

1 - PRS block 1D and 1C Daytime (07:00 23:00) 62 dB

1 - PRS block 1D and 1C Night-time (23:00 07:00) 50 dB

2 Framwelgate Peth Daytime (07:00 23:00) 62 dB

2 Framwelgate Peth Night-time (23:00 07:00) 50 dB

3 - Radisson Hotel Daytime (07:00 23:00) 61 dB

3 - Radisson Hotel Night-time (23:00 07:00) 43 dB

The plant must be installed and operated in accordance with the sound attenuation measures.

Reason: In the interests of residential amenity having regards to CDLP Policy U5 and Part 15 of the NPPF.

19. 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 carried out in accordance with the approved details.

Reason: In the interests of highway safety having regards to CDLP Policy T1 and Part 9 of the NPPF.

20. The development hereby approved shall not be occupied until details of an operational strategy for the proposed Framwelgate Peth signalised access junction has 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.

Reason: In the interests of highway safety having regards to CDLP Policy T1 and Part 9 of the NPPF.

21. Within 6 months of occupation a Final Travel Plan, conforming to the National Specification for Workplace Travel Plans, PAS 500:2008, Bronze level, shall be submitted to and approved in writing by the Local Planning Authority. Once approved the Travel Plan must be complied with for the lifetime of the development.

*Reason: In the interests of promoting sustainable travel options and reducing potential impacts upon air quality having regards to Parts 9 and 15 of the NPPF.*

22. 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, the WSP Milburngate – Block 1E Full Planning Application Flood Risk Assessment and the following mitigation measures detailed within the FRA:

- Provision of compensatory flood storage as described in section 5.2.4, 5.2.5 and 6.3 of the FRA
- 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 above Ordnance Datum (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 14 of the NPPF.

23. 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 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.

24. No development works pursuant to the development hereby approved shall take place outside the hours of 7.30am - 6pm Monday to Friday (inclusive) and 8am - 1pm on a Saturday with no works on any Sunday or Bank Holiday.

Reason: To define the consent and in the interests of the amenity of neighbouring occupiers having regards to CDLP Policy U5 and Part 15 of the NPPF.

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## **STATEMENT OF PROACTIVE ENGAGEMENT**

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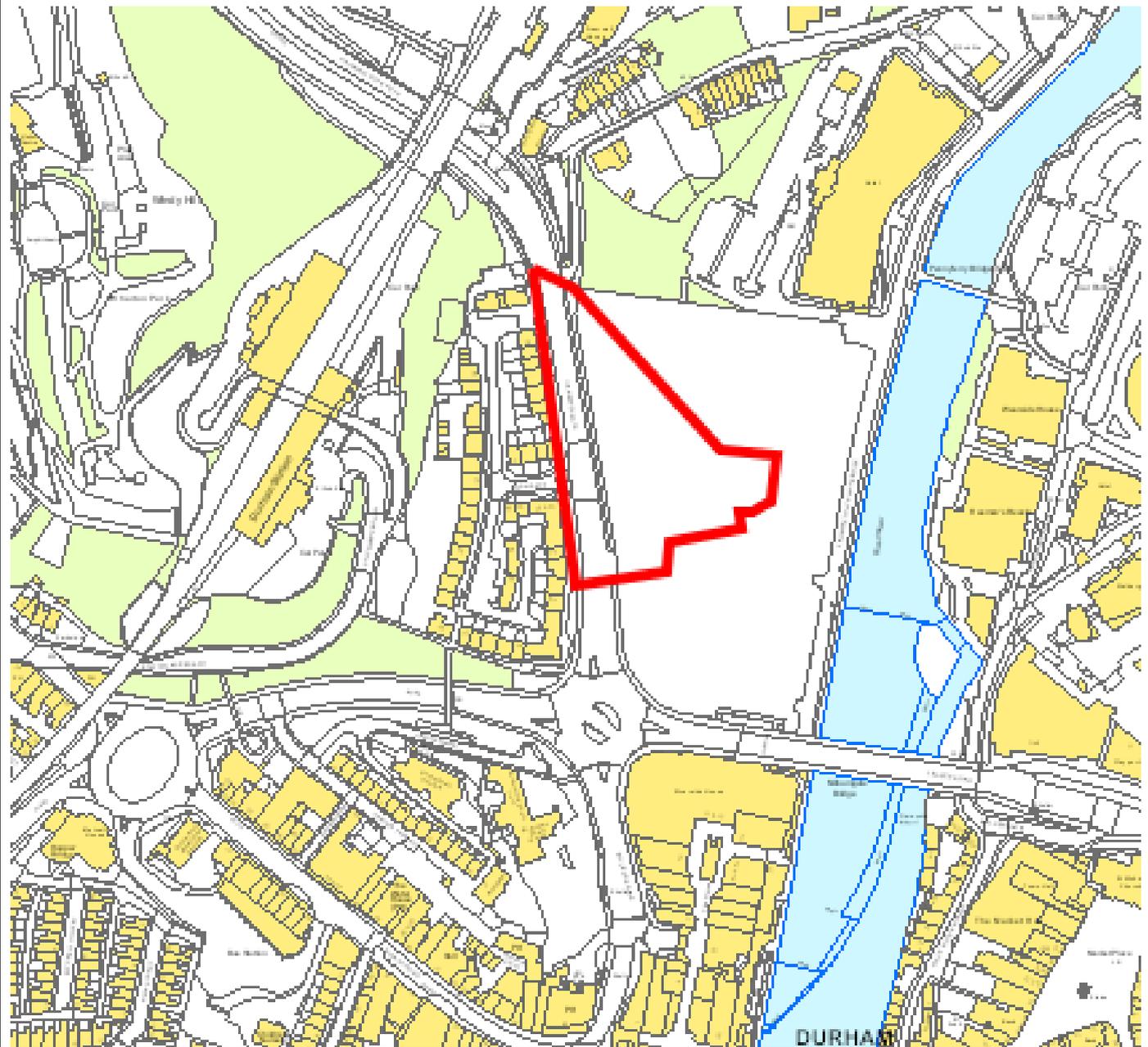
The Local Planning Authority in arriving at its recommendation to approve this application has, without prejudice to a fair and objective assessment of the proposals, issues raised, and representations received, sought to work with the applicant in a positive and proactive manner with the objective of 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.)

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## **BACKGROUND PAPERS**

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



**Planning Services**

DM/18/02924/FPA

Erection of office block (identified as Block 1E) (B1 use class) with flexible permission for shop, food and drink and assembly & leisure uses at ground floor level (Use Classes A1, A3 and D2) and associated public square and landscaping

MGH Card LLP

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**Comments**

**Date**  
4<sup>th</sup> December 2018

**Scale**  
Not to scale



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## Planning Services

# COMMITTEE REPORT

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### APPLICATION DETAILS

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<b>APPLICATION NO:</b>	DM/18/02950/FPA
<b>FULL APPLICATION DESCRIPTION:</b>	Erection of building, associated external works, landscaping and car parking and demolition of 3no. teaching blocks.
<b>NAME OF APPLICANT:</b>	Kier Construction
<b>ADDRESS:</b>	Bishop Barrington School, Woodhouse Lane, Bishop Auckland, DL14 6LA
<b>ELECTORAL DIVISION:</b>	Bishop Auckland
<b>CASE OFFICER:</b>	Steven Pilkington, Senior Planning Officer 03000 263964 <a href="mailto:steven.pilkington@durham.gov.uk">steven.pilkington@durham.gov.uk</a>

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### DESCRIPTION OF THE SITE AND PROPOSALS

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#### The Site

1. The application relates to Bishop Barrington School, a Local Authority owned Secondary school located within the Etherley area of Bishop Auckland. The site is irregularly shaped extending up to 5.36ha in area, relatively level, consisting of school buildings, parking, sports facilities and playing fields. The school complex essentially consists of 5 development blocks, including 3 teaching blocks ranging from single to three storey, a dining hall and a sports hall, with parking facilities served from a main access onto Woodhouse Lane. Residential properties encompass the site, while mature trees are present centrally within the site.
2. The site is located approximately 650m to the west of south east of Cockton Hill Conservation Area, whilst Bishop Auckland Conservation Area containing the Grade I Listed Building of Auckland Castle is located approximately 780m to the north.

#### The Proposal

3. This application seeks planning permission for the demolition of all three existing teaching blocks on site and the erection of a single new teaching block. The new block would be arranged in a T shape, with a mix of 2 and 3 storeys. The development would measure approximately 80m in width by 50m in depth, the two-storey element would have an approximate height of 8.5m, and the three storey a maximum height of 12.8m. Extract vents and boiler stacks would project beyond the roofline centrally. The proposed development while replacing existing dilapidated teaching accommodation would increase the capacity of the school from 791 to 900 pupils. The development

would be partly funded by the Education & Skills Funding Agency and Durham County Council Education Authority.

4. This planning application is being reported to the Strategic Planning Committee as the site area exceeds 4ha.

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## **PLANNING HISTORY**

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5. The site has an extensive planning history permitting development for the current school buildings and sporting facilities. However none are specifically relevant to this proposal.

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## **PLANNING POLICY**

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### **NATIONAL POLICY**

6. A revised National Planning Policy Framework (NPPF) was published in July 2018. The overriding message continues to be that new development that is sustainable should go ahead without delay. It defines the role of planning in achieving sustainable development under three overarching objectives – economic, social and environmental, which are interdependent and need to be pursued in mutually supportive ways.
7. In accordance with Paragraph 213 of the National Planning Policy Framework, existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given). 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.
8. *NPPF Part 2 Achieving Sustainable Development* - The purpose of the planning system is to contribute to the achievement of sustainable development and therefore at the heart of the NPPF is a presumption in favour of sustainable development. It defines the role of planning in achieving sustainable development under three overarching objectives - economic, social and environmental, which are interdependent and need to be pursued in mutually supportive ways. The application of the presumption in favour of sustainable development for plan-making and decision-taking is outlined.
9. *NPPF Part 4 Decision-Making* - Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.
10. *NPPF Part 8 Promoting Healthy and Safe Communities* - The planning system can play an important role in facilitating social interaction and creating healthy, inclusive communities. Developments should be safe and accessible; Local Planning Authorities should plan positively for the provision and use of shared space and community facilities. An integrated approach to considering the location of housing, economic uses and services should be adopted.
11. *NPPF Part 9 Promoting Sustainable Transport* - Encouragement should be given to solutions which support reductions in greenhouse gas emissions and reduce

congestion. Developments that generate significant movement should be located where the need to travel will be minimised and the use of sustainable transport modes maximised.

12. *NPPF Part 12 Achieving Well-Designed Places* – 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.
13. *NPPF Part 14 Meeting the Challenge of Climate Change, Flooding and Coastal Change* - The planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change. It should help to: shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and support renewable and low carbon energy and associated infrastructure.
14. *NPPF Part 15 Conserving and Enhancing the Natural Environment* - Conserving and enhancing the natural environment. The Planning System should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, geological conservation interests, recognising the wider benefits of ecosystems, minimising the impacts on biodiversity, preventing both new and existing development from contributing to or being put at unacceptable risk from pollution and land stability and remediating contaminated or other degraded land where appropriate.
15. *NPPF Part 16 Conserving and Enhancing the Historic Environment* - Heritage assets range from sites and buildings of local historic value to those of the highest significance, such as World Heritage Sites which are internationally recognised to be of Outstanding Universal Value. These assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations.

<https://www.gov.uk/guidance/national-planning-policy-framework>

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

<https://www.gov.uk/government/collections/planning-practice-guidance>

#### **LOCAL PLAN POLICY:**

Wear Valley District Local Plan (2007) (WVDLP)

17. *Policy GD1 – General Development Criteria*. All new development and redevelopment within the District should be designed and built to a high standard and should contribute to the quality and built environment of the surrounding area.
18. *Policy BE1 – Protection of Historic Heritage* – Sets out that the Council will seek to conserve the historic heritage by maintenance, protection and enhancement of features and areas of particular historic architectural interest or archaeology interest.

19. *Policy BE4 – Setting of a Listed Building* – Sets out that development which impacts upon the setting of a Listed Building and adversely affects its special architectural, historical or landscape character will not be allowed.
20. *Policy BE8 – Setting of a Conservation Area* – Sets out that development which impacts upon the setting of a Conservation Area and which adversely affects its townscape qualities, landscape or historical character will not be allowed.
21. *Policy T1 – General Policy – Highways*. All developments which generate additional traffic will be required to fulfil Policy GD1 and provide adequate access to the developments; not exceed the capacity of the local road network; and be capable of access by public transport networks.

#### **RELEVANT EMERGING POLICY:**

##### The County Durham Plan

22. Paragraph 48 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. An 'Issues & Options' consultation was completed in 2016 on the emerging the County Durham Plan (CDP) and the 'Preferred Options' was approved for consultation at Cabinet in June 2018. However, the CDP is not sufficiently advanced to be afforded any weight in the decision-making process at the present time.

*The above represents a summary of those policies considered relevant. The full text, criteria, and justifications can be accessed at: <http://www.durham.gov.uk/article/3266/Whats-in-place-to-support-planning-and-development-decision-making-at-the-moment> (Wear Valley District Local Plan)*

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## **CONSULTATION AND PUBLICITY RESPONSES**

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#### **STATUTORY RESPONSES:**

23. *Highway Authority* - It is advised that the total parking provision on site is within the relevant DCC maxima standards based on the quoted pupil and staff numbers. The DCC standards require a minimum of 3 no. electric vehicle charging points (this being based on total car parking capacity proposed) and a minimum of 15% car share space being allocated for car sharers, which should be secured. The proposed pedestrian access arrangements are acceptable.
24. *Drainage and Costal Protection* – Advise that the proposed drainage design demonstrates compliance with National Standards and Council Policies in providing sustainable solutions to surface water management and ensuring the prevention of flood risk to and from the proposed development. No objections are raised to the proposal.
25. *Northumbrian Water* – Offer no objections providing the development is carried out in accordance with the submitted drainage strategy limiting surface water and foul water flows.
26. *Sport England* – Advise that the development does not fall within their statutory remit for consultation, general guidance is offered.

#### **INTERNAL CONSULTEE RESPONSES:**

27. *Landscape* – Concerns are raised regarding the loss of trees on site, however it is advised that the replacement planting is acceptable subject to some minor amendments.
28. *Landscape (Arboriculture)* – Advise that the development would result in the loss of good quality trees within the site which have limited external visibility but make a good contribution to the landscape and nature of the school grounds. It is advised that it is preferable that existing trees were afforded more consideration for retention, whilst accepting that there is a need to increase the building space on the site. Replacement trees should be provided in sustainable positions.
29. *Archaeology* – Raise no objection due to the previously developed nature of the site.
30. *Ecology* – Offer no objections to the proposals on ecological grounds. Subject to the conditioning of the recommendations included in the Preliminary Ecological Appraisal including the timing of the works.
31. *Environmental Health and Consumer Protection (Contaminated Land)* – Advise that a Geoenvironmental Desk Study Report has been submitted in support of the application. A conditional approach to secure further site investigations and mitigation where appropriate is recommended to recognised the phased nature of the development.
32. *Environmental Health and Consumer Protection (Pollution Control)* – Advise a conditional approach to control construction related impacts and to control the installation of external plant and lighting.
33. *Sustainable Transport* – Advise that a new travel plan for the school will need submitted, to be agreed by condition.
34. *School Places and Admissions Manager* – The Education Service of the council support this project. It will enhance the building by replacing significant parts of it which are in a poor state of repair. This will enable the school to more effectively deliver the curriculum in an environment that inspires students to maximise their potential. In addition the increase in capacity will meet the known demand for places at the school in the future.

**NON -STATUTORY RESPONSES:**

35. *Police Architectural Liaison Officer* – Offers general advice in to the design of new school buildings.

**PUBLIC RESPONSES:**

36. The application has been publicised by way of press notice, site notice, and individual notification letters. One letter of objection has been received. Whilst the objector advises that they have no fundamental objection to the redevelopment and improvement of the school facilities objections are raised in relation to a loss of residential amenity on no.145 Woodhouse Lane. This is due to the proximity of the proposed new build to the residential property which would lead to a loss of privacy and amenity particularly in relation to the three storey elements of the building which have large windows which would overlook gardens and the property. It is also considered that noise generated from the development particularly through natural ventilation and open windows would impact on residential amenity.

**APPLICANTS STATEMENT:**

37. Bishop Barrington School is an 11-16 mixed secondary school within the town of Bishop Auckland. It is popular within the local community and has seen its numbers rise over the last 5 years, despite little student mobility in the area. However its existing teaching buildings that have sprouted organically over the years are at the end of their natural design life and in decline. The sprawling nature of expansion on the site over the years has resulted in split departments, impractical/ excessive pupil movement between lessons and complicated fire egress routes to name but a few issues. The building fabric both internally and externally are not in good condition and offer poor performance both thermally and acoustically making it an unsatisfactory environment for learning. In addition to this, the steeply sloping grounds are not suitable under DDA and make access into certain buildings unsatisfactory. After a successful funding application to address the conditions of the existing buildings, it was also deemed necessary to increase its pupil role from 791 to 900 to address the local demand.
38. Early dialogue with Durham County Council (DCC), Kier and ESFA determined the approach to the design of a new school building. The initial pre-application planning letter and initial discussions with DCC acknowledged the limited choice of available site for a new building. As such their priority was that any new building did not impact on the amenity of neighbouring residents, particularly the properties that front out on to Woodhouse Lane. It was recognised that the site is established in nature, has mature boundary treatments and that by utilising planning guidelines for separation distances of 2 & 3 storey facing buildings, that this amenity shouldn't be adversely affected. The Kier team has taken cognisance of this and located/ massed the new building accordingly. As such the new building is broken into two blocks; one of 2 storey that exceeds the min. 21m of the southern boundary and one of 3 storey that exceeds the min. 30m.
- The floor area of the new building is divided into basic teaching area, learning resources, staff and administration, storage and circulation areas. The existing sport and dining halls will be retained. Key aspirational drivers of the design include:
  - Creation of an attractive and welcoming arrival space with clear wayfinding to garner a positive impression to visitors and encourage continued community use of the facility.
  - Restructuring the site to form a cohesive whole by retaining existing large facilities and utilising the new teaching block as a binding element
  - Condensing the sprawling teaching blocks into one comprehensive building that supports and facilitates the schools ethos and pedagogy
  - Maximizing the educational, sporting and community use of the site.
  - Provision of safe and simple access and circulation.
39. The design was also governed by the following constraints:
- Retaining the existing school buildings as operational through the duration of the build to avoid lost cost on temporary accommodation.
  - The school site is bound by housing which require privacy distances to be maintained.
  - Significant falls across the site, especially 2.5m from west to east in hard play/ potential build zone to rear of the existing blocks.
  - Existing pedestrian and vehicular routes to be retained essentially and adapted off Woodhouse Lane. Parking provision to be increased.
  - School playing fields to the west to be retained and adopted in the proposals.
40. We feel that the new design achieves all these. The new condensed teaching blocks 'T' footprint positioned to the west of the current school, works within all these parameters

whilst also retaining a suitable offset from the existing buildings for retained circulation and segregated construction access.

41. The public frontage of the school will have an open feel to reflect the welcoming community ethos of the school. 2 storey and 3 storey wings embrace and gather visitors in unlike how it is at present. The current community use of the dining hall and sport hall buildings as well as the tennis court and pitches remain unaffected and site security is clear and secure. Distances between the buildings are minimal and now more clearly visible to create a collegiate feel campus with good passive surveillance. Strategically located staff areas across all floors ensure that the building provides natural surveillance to all areas of the site.
42. The existing drop off area outside the school site boundary is retained, and therefore it is only new staff and visitor parking that have been added. The site entrance has a very green appearance with the retained memorial garden and new replacement trees for the displaced existing ones planted to create an avenue that will lead visitors to the main entrance.
43. We feel the new building will enable the school to further develop as a beacon for learning and is something the staff, pupils and wider community deserve and can be proud of.

*The above represents a summary of the comments received on this application. The full written text is available for inspection on the application file which can be viewed at <https://publicaccess.durham.gov.uk/online-applications/search.do?action=simple&searchType=Application>*

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## **PLANNING CONSIDERATIONS AND ASSESSMENT**

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44. 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 advice within 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, design, layout and the effect on the character of the surrounding area, residential amenity, highway safety and access, ecology, flooding and drainage, ground conditions and heritage impacts.

### The Principle of Development

45. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF is a material planning consideration. The Wear Valley District Local Plan (WVDLP) remains the statutory development plan and the starting point for determining applications as set out at Paragraph 12 of the NPPF. However, the NPPF advises at Paragraph 213 that the degree of weight to be afforded to existing Local Plans is dependent upon the degree of consistency with the NPPF.
46. The WVDLP was adopted in 1996 and was intended to cover the period to 2006. 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 depending on the circumstances.
47. Within the WVDLP there are no relevant planning policies on how to assess planning applications related to new or improved education facilities, other than general

development criteria assessment contained in policy GD1 and other policies relating to specific matters.

48. Paragraph 11 of the NPPF establishes a presumption in favour of sustainable development. For decision taking this means (unless material considerations indicate otherwise):
- c) approving development proposals that accord with an up-to-date development plan without delay; or
  - d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out of date, granting permission unless:
    - i) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed or
    - ii) 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.
49. Although there are no WVDLP policies which directly relate to new build schools or alterations to existing schools, policy GD1 does set out general development principles for new development. In this instance policy GD1 is considered a relevant development plan policy that is most important for determining the application and is up to date for the purposes of paragraph 11 of the NPPF. The acceptability of the scheme therefore rests on whether the scheme accords with development plan policies taking into account material considerations.

#### Design, layout and the effect on the character of the surrounding area

50. WVDLP Policy GD1 sets out that development to be designed and built to a high standard and should contribute to the quality and built of the surrounding area. Furthermore, development should be in keeping with the character and appearance of the area, and be appropriate in terms of form, scale, mass, density and layout, to its location whilst not impacting on the landscape quality of the area. Part 12 of the NPPF seeks to ensure that good design is indivisible from good planning, highlighting that developments should be visually attractive as a result of good architecture, appropriate landscaping and respond to local character. Full weight can therefore be afforded to this policy in this respect in the decision making process.
51. The existing school consists of a number of different buildings spread out across the site, varying in scale, size and design. The majority of the buildings, including those proposed to be demolished were erected in the late 1970's. These buildings are considered to have limited architectural merit and do not positively contribute to the character and appearance of the surrounding area. The proposed redevelopment of the site would result in the erection of a mixed two and three storey building arranged in a T shape. The form of the building is a result of functional form meeting statutory requirements for the layout of new education provision. The appearance of the building is nevertheless considered to represent a significant improvement in design terms over and above the existing buildings on site and would provide an engaging place to learn in comparison.
52. The building is proposed to be sited towards the southern boundary of the site, adjacent to the school playing fields. The location of the building is of a result of an

analysis of options which allow the school to remain operational during the construction phase and negates with the use of costly temporary, demountable classrooms. The siting of the building in this location would result in the loss of a number of mature trees centrally to the site. As advised by the Council Landscape and Arboricultural Officer, these trees make a good contribution to the landscape and nature of the school grounds, however they do have limited external visibility in the wider streetscape/landscape. A comprehensive landscaping scheme is proposed, which includes replacement trees and areas of hard and soft landscaping which is considered acceptable by the council's Landscape Officer subject to reviewing finer details of planting methods. Although this landscaping scheme could not fully mitigate the loss of the mature trees it would ensure that an attractive, considered environment would be created.

53. Overall, it is considered that the proposed building would represent a positive improvement over and above the appearance of the existing buildings on site to be demolished, in accordance with policy GD1 of the WVDLP and part 12 of the NPPF. A number of mature trees would need to be removed to facilitate the development, whilst an appropriate landscaping plan has been submitted, this loss should however be considered in the planning balance.

#### Residential Amenity

54. WVDLP policy GD1 sets out that development should not disturb or conflict with adjoining uses. This policy is considered NPPF compliant which seeks to ensure a high standard of amenity for existing and future uses of land and buildings.
55. In this respect, the majority of the school buildings have been present on site from the 1970's, with a close relationship with surrounding residential properties. The presence of these buildings, noises and coming and goings with the school have an established impact on the level of residential amenity experienced with neighbouring residents. The demolition of some of the school buildings will improve the level of amenity experienced by some local residents (137-143a) Woodhouse Lane due to the presence of an existing block approximately 15m away from the rear elevations of these properties. However, the new build will be closer to the residential properties of 143 and 145 Woodhouse Lane. Objections to the development have been raised from the resident of 145 Woodhouse Lane in this respect.
56. The proposed new build would be arranged in a T shape, with the cross of the T up to three storey in height, the remainder would be 2 storey in height. The building would be located to the north west of no. 145 with the three-storey element located a minimum of approximately 32.5m from the rear elevation of the dwelling. The two-storey element would be located a minimum of approximately 35m from the side elevation of the property. Additional tree and shrub planting is proposed along the common boundary, whilst opaque film to the lower portion (1800mm from finished floor level) of the closet two windows on the 1<sup>st</sup> and 2<sup>nd</sup> floor on the three storey block.
57. In assessing the impact on the development on no. 145 Woodhouse Lane, it is recognised that there are level changes from no.145 to the school site. A detailed site survey has been undertaken which sets out that the finished floor level of the school would be approximately 2.5m lower than the finished floor level of no. 145 and 1.5m lower than the garden. These level changes would help reduce the impact of the new build. However a large element of the building would remain visible, largely equivalent to 2 storeys on the three storey element and one storey on the two storey element. Existing vegetation equivalent to one floor level would provide some screening however at certain times of the year would not be entirely effective, whilst the proposed planting would take time to mature. Views would be achievable back to the residential dwelling

and associated garden space, reducing the level of amenity currently experienced, particularly in relation to the three-storey element.

58. Although not specifically applicable to this application, as not relating to a new residential development, Policy H24 sets out a recommended separation distance of 21m should be achievable between windows of habitable rooms in new residential developments. This separation distances set out in policy H24 are considered an appropriate guide in assessing impacts of developments, although recognising the educational nature of the development. The proposed three storey element would be located a minimum of 32.5m away from the rear elevation of no. 145, whilst the garden would inherently be closer. Although recognising the scale of the development and that there would be some overlooking, in the round the impact on the level of amenity is not considered to be at a significant adverse level but would be required to be taken into account in the planning balance even taking into account the proposed mitigation of planting and obscure film on the windows.
59. A distance of approximately 22.5m would be evident from the principle rear elevation of no.143 Woodhouse Lane to the two storey gable elevation of the new building. This elevation of the new build has one window in the ground floor with a classroom window and stairwell window on the first floor set back an additional 2.4m. Due to this separation distance and the existing mature vegetation along the rear boundary of no. 143 a significant loss of amenity is not considered to arise for this resident.
60. In order to limit the potential disturbance for existing and future residents during construction, Environmental Health and Consumer Protection officers recommend that a construction management plan be secured to deal with construction related impacts. Although a construction management plan has been submitted in support of the application, clarification is sought on several matters, including whether there needs to be any piling. It is also recommended that details of any external plant and lighting should be agreed before the building being brought into use.
61. Overall, the scheme would reduce the level of amenity of the resident of no.145 Woodhouse Lane. However due to the level changes on site, existing and proposed vegetation and the separation distances, this impact is not considered to be at significant adverse level or represent a conflict of WVDLP Policy GD1 or Parts 12 and 15 of the NPPF. This impact would however need to be weighed in the planning balance.

#### Highway Safety and Access

62. WVDLP Policies GD1, and T1 set out that developments should be served by a safe means of access and development should not create unacceptable levels of traffic which exceed the capacity of the local road network. These policies are considered consistent with the NPPF in this respect (and therefore afforded full weight) which also sets out at that safe and suitable access can be achieved for all people.
63. The development as existing would be served by a vehicular access off Woodhouse Lane, which also provides the main pedestrian to the site. A second pedestrian access is located the north west of the site which will be retained. The existing car parking arrangements will be reconfigured once the buildings have been demolished to provide a total of 140 spaces. This represents an increase of 82 spaces.
64. The Highways Authority have advised the proposed parking levels and pedestrian access arrangements are acceptable and would not impact on highway safety. Conditions are however recommend to secure the provision of 3.no electric charging

points and car share spaces to be secured through a new travel plan for the school, as also requested by the Councils Sustainable Transport Team.

65. Overall, on the advice of the Highway Authority, a satisfactory means of access would be retained and the level of car parking on site is in line with DCC guidelines. The scheme is considered to accord with WVDLP Policies GD1, and T1 in this respect and Part 9 of the NPPF.

#### Ecology

66. Part 15 of the NPPF seeks to ensure that developments protect and mitigate harm to biodiversity interests. An ecology survey has been submitted with the application, highlighting that no species that are afforded special legal protection under the Conservation of Habitats and Species Regulations 2017 and/or the Wildlife and Countryside Act 1981 (as amended) have been recorded within the site. The report therefore concludes that the risk of protected species being on the site is low. Precautionary working practices particularly in relation to the timings of vegetation clearance works are however proposed.
67. The Councils Ecology Officer advises that the findings and conclusions the submitted ecology report are sound and subject to the implementation of the precautionary working practices the development is considered to conform with WVDLP policy GDP1 and Part 15 of the NPPF in this respect.

#### Flooding Risk and Drainage

68. National advice within the NPPF and PPG with regard to flood risk advises that a sequential approach to the location of development should be taken with the objective of steering new development to flood zone 1 (areas with the lowest probability of river or sea flooding). When determining planning applications, local planning authorities should ensure flood risk is not increased elsewhere and only consider development appropriate in areas at risk of flooding where, informed by a site-specific flood risk assessment.
69. The application is accompanied by a Flood Risk Assessment (FRA), which highlights that the application site is within Flood Zone 1 with a low flood risk probability. The FRA also sets out a drainage strategy including the incorporation of Sustainable Urban Drainage (SUD's) including source and site controls leading to a retention basins, permeable paving and filter trenches to capture surface water and attenuation tanks to discharge at a controlled rate. Subject to a condition securing delivery of this, the, the Council's Drainage and Coastal Protection officers and Northumbrian Water offer no objections to the development.
70. In relation to foul water, it is proposed to connect to the existing sewerage network, to which Northumbrian Water raise no objections to.
71. Subject to conditions to resolve the final surface and foul water disposal, no objections to the development on the grounds of flood risk or drainage are raised having regards to WVDLP Policy GD1 and Part 14 of the NPPF.

#### Ground Conditions

72. In relation to land contamination the applicant has submitted a phase 1 desk top study, undertaken site investigations and gas monitoring which identifies that small elements of the site that need remediating elements of the site that need remediating whilst further site investigations are required following the demolition of the school buildings.

After reviewing the submitted report Environment, Health and Consumer Protection officers (Contaminated Land) recommend a conditional approach to secure and review further investigations and mitigation, whilst accepting this will need to be done in a phased approach, in accordance with Policy GD1 of the WVDLP and Part 15 of the NPPF

## Heritage Impacts

73. Policies BE1, BE4 and BE8 of the WVDLP respectively seek to protect and enhance, historic features, listed buildings and Conservation Areas. Policy BE1 is considered largely consistent with the NPPF which at Part 16 seeks to protect heritage assets proportionate to their significance. Policies BE4 and BE8 are considered only partly consistent however, as they do not permit the same degree of flexibility as the NPPF to balance public benefits against any heritage harms. The site is located approximately 650m to the west of south east of Cockton Hill Conservation Area, whilst Bishop Auckland Conservation Area containing the Grade I Listed Building of Auckland Castle is located approximately 780m to the north. However, as the site would have no direct inter-visibility with these heritage assets, principally due to the surrounding land topography existing development of Bishop Auckland there would be no harm in this respect. The existing school buildings to be demolished have no significant architectural merit and are not considered to represent non-designated heritage assets.
74. In terms of archaeology, the NPPF sets out the requirements for an appropriate programme of archaeological investigation, recording and publication to be made. However, in this respect given the previously developed nature of the site and the Councils Archaeology Section advise that there would unlikely to be any remains of any significant on the site and therefore no further mitigation is required in this respect.

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## **CONCLUSION**

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75. Although there are no policies with the WVDLP that specifically relate to new or altered education facilities, policy GD1 does set out general development principles for new development. In this instance policy GD1 is considered a relevant development plan policy that is most important for determining the application and is up to date for the purposes of paragraph 11 of the NPPF. The acceptability of the scheme therefore rests on whether the scheme accords with development plan policies taking into account material considerations.
76. The scheme has been assessed against relevant development plan policies GD1, BE1, BE4, BE8, T1 of the WVDLP. It is identified that the development would result in harm in relation to residential amenity of to the dwelling of no.145 Woodhouse Lane and would result in the loss of mature trees on site. However these impacts are not considered to represent a conflict with relevant WVDLP policies, or specific policies within the NPPF.
77. Furthermore these impacts are also considered to be outweighed by the benefits of providing new and increased capacity education facilities, which paragraph 94 seeks to promote in the planning balance.
78. The proposal has generated some limited public interest, with a letter 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.

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## RECOMMENDATION

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That the application is **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

*Reason: Required to be imposed pursuant to Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.*

2. The development hereby approved shall be carried out in strict accordance with the following approved plans:

Proposed Block Plan - BBS-NOR-SS-XX-SP-A-9006 Rev B  
Demolition plan - BBSNORSSXXSPA9004 Rev B  
Perspective Sections - BBSNORSSZZSEA4002 Rev A  
Contextual Section - BBSNORSSZZSEA-4010 Rev C  
Sitewide Sections - BBSCOL00XXDRL3001 Rev 02  
General arrangement sections - BBSNORSSZZSEA4001 Rev D  
General Arrangement Elevations - BBS-NOR-SS-ZZ-EL-A-5001 Rev H  
Hall Works - BBSNORSSZZELA5002 Rev E  
Level 0 - General arrangement- BBSNORSS00GAA3001 Rev F  
Level 1 - General arrangement - BBSNORSS01GAA3001 Rev E  
Level 2 - General arrangement - BBSNORSS02GAA3001 Rev F  
Level Roof - General arrangement - BBSNORSSRFGAA3001 Rev D  
Floor plans for gross internal areas - JKK9301-10 Rev A  
Site Wide Section - BBSCOL00XXDRL3001REV 02  
Access & Security Boundary Treatments - BBSCOL00XXDRL6004 Rev 05  
Drainage Strategy – 1015178-RPT-C-002  
Proposed Drainage – Phase 1 - CLXX(52)1007 – Rev CP2  
Proposed Drainage – Phase 2 - CLXX(52)1008 – Rev CP2

*Reason: To define the consent and ensure that a satisfactory form of development is obtained in accordance with Policies GD1 and T1 of the Wear Valley District Local Plan and parts 8, 9, 12, 14 and 15 of the National Planning Policy Framework.*

3. No building hereby approved shall be occupied until a School Travel Plan, to achieve Bronze Level Accreditation within 1 year of the buildings first occupation, has been submitted to and approved in writing by the Local Planning Authority. The submitted details shall use Modeshift STARS to carry out this process and include mechanisms for monitoring and review over the life of the development and timescales for implementation. The approved Travel Plan shall be implemented, monitored and reviewed in accordance with the approved details.

*Reason: In order to deliver sustainable transport objectives including a reduction in car journeys and the increased use of public transport, walking and cycling. In accordance with Part 9 of the NPPF and policies GD1 and T1 of the Wear Valley District Local Plan*

4. The 3no electric charging points set out on drawing number BBS-CND-PS-ZZ-DR-E-6301 shall be installed and brought into use before within a period of 3 months form the completion of the carpark hereby approved.

*Reason: In order to deliver sustainable transport objectives. In accordance with Part 9 of the NPPF and policies GD1 and T1 of the Wear Valley District Local Plan*

5. The Landscaping set out on plans BBS-COL-00-XX-DR-L-5002, BBS-COL-00-XX-DR-L-5002, BBS-COL-00-XX-DR-L-5002 (Landscape Proposals and Masterplan) shall be completed within the first planting season following the final demolition hereby approved. Trees, hedges and shrubs planted in accordance with the scheme shall not be removed within five years. Within the area defined as public/structural landscape space any trees or plants which die, fail to flourish or are removed within a period of 5 years from the substantial completion of the development shall be replaced in the next planting season with others of similar size and species. Replacements within the area defined as public/structural landscape space will be subject to the same conditions.

*Reason: In the interests of the visual and residential amenity of the surrounding area in accordance with policy GD1 of the Wear Valley District Local Plan and in accordance with Parts 12 and 15 of the National Planning Policy Framework.*

6. No construction work shall take place, nor any site cabins, materials or machinery be brought on site until all trees and hedges, indicated in the Tree Protection and Removal Plan, BBS-COL-00-xx-DR-L-6008 are protected by the erection of fencing, placed as indicated on the plan and comprising a vertical and horizontal framework of scaffolding, well braced to resist impacts, and supporting temporary welded mesh fencing panels or similar approved in accordance with BS.5837:2012.

No operations or alterations of ground levels, and/or no storage of any materials are to take place inside the fences, and no work is to be done such as to affect any tree.

No underground services trenches or service runs shall be laid out in root protection areas, as defined on the Tree Constraints Plan.

*Reason: In the interests of the visual and residential amenity of the surrounding area in accordance with policy GD1 of the Wear Valley District Local Plan and in accordance with Parts 12 and 15 of the National Planning Policy Framework*

7. The development shall be carried out in accordance with the ecological mitigation detailed in Preliminary Ecological Appraisal ref WIE10720-104-R-10-2-1-PEA.

*Reason: To conserve protected species and their habitat in accordance with Part 15 of the National Planning Policy Framework and Policy GDP1 of the Wear Valley District Local Plan.*

8. Notwithstanding the submitted information, prior to their installation, full details and specification of:-
- Any external plant - including noise rating against background noise levels were required,
  - means of extraction, including noise rating against background noise levels and odour abatement measures were required
  - Details of the emission levels of any Combined Heat and Power Plant.

Shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details.

*Reason: In the interests of the amenity of surrounding residents and in order to comply with Policy GD1 of the Wear Valley District Local Plan and Part 15 of the NPPF.*

9. Notwithstanding the submitted information, prior to the installation of any external lighting, a lighting strategy shall be submitted and thereafter approved in writing with the Local Planning Authority. This strategy shall include:-  
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 adjacent neighbouring properties;  
Details of the Sky Glow Upward Light Ratio, Light Intrusion (into windows of relevant properties) and Luminaire Intensity  
Operational times of lights

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.

The development shall thereafter be carried out in accordance with the approved lighting strategy.

*Reason: In the interests of the amenity of surrounding residents and in order to comply with Policy GD1 of the Wear Valley District Local Plan and Part 15 of the NPPF.*

10. No external construction works, demolition, deliveries, external running of plant and equipment shall take place other than between the hours of 0800 to 1800 on Monday to Friday and 0800 to 1300 on Saturday.

No internal works audible outside the site boundary shall take place on the site other than between the hours of 0800 to 1800 on Monday to Friday and 0800 to 1700 on Saturday.

No construction works or works of demolition whatsoever, including deliveries, external running of plant and equipment, internal works whether audible or not outside the site boundary, shall take place on Sundays, Public or Bank Holidays.

For the purposes of this Condition, construction works are defined as: The carrying out of any building, civil engineering or engineering construction work involving the use of plant and machinery including hand tools.

*Reason: In the interests of the amenity of surrounding residents and in order to comply with Policy GD1 of the Wear Valley District Local Plan and Part 15 of the NPPF.*

11. Prior to the commencement of any part of the development or any works of demolition, hereby permitted, a Construction Management Plan shall be submitted to and approved in writing by the local planning authority. The Construction Management Plan shall include as a minimum but not necessarily be restricted to the following:

- A Dust Action Plan including measures to control the emission of dust and dirt during construction
- Details of methods and means of noise reduction
- Where construction involves penetrative piling, details of methods for piling of foundations including measures to suppress any associated noise and vibration.
- Details of measures to prevent mud and other such material migrating onto the highway from construction vehicles;
- Designation, layout and design of construction access and egress points;
- Details for the provision of directional signage (on and off site);

- Details of contractors' compounds, materials storage and other storage arrangements, including cranes and plant, equipment and related temporary infrastructure;
- Details of provision for all site operatives for the loading and unloading of plant, machinery and materials
- Details of provision for all site operatives, including visitors and construction vehicles for parking and turning within the site during the construction period;
- Routing agreements for construction traffic.
- Details of the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- Waste audit and scheme for waste minimisation and recycling/disposing of waste resulting from demolition and construction works.
- Detail of measures for liaison with the local community and procedures to deal with any complaints received.

The management strategy shall have regard to BS 5228 "Noise and Vibration Control on Construction and Open Sites" during the planning and implementation of site activities and operations.

The approved Construction Management Plan shall also be adhered to throughout the construction period and the approved measures shall be retained for the duration of the construction works.

*Reason: In the interests of the amenity of surrounding residents and in order to comply with Policy GD1 of the Wear Valley District Local Plan and Part 15 of the NPPF.*

12. The development hereby approved shall not commence until a scheme to deal with contamination has been submitted to and agreed in writing with the Local Planning Authority. The full scheme, both pre-commencement and completion shall include the following, unless the Local Planning Authority confirms in writing that any part of sub-sections a, b, c or d are not required.

Throughout both the pre-commencement and completion phases of the development all documents submitted relating to Phases 2 to 4 as detailed below shall be carried out by competent person(s) and shall be submitted to and agreed in writing with the Local Planning Authority.

#### Pre-Commencement

(a) A Phase 2 Site Investigation and Risk Assessment is required to fully and effectively characterise the nature and extent of any land and/or groundwater contamination and its implications. Prior to the Phase 2 a Sampling and Analysis Plan is required.

(b) If the Phase 2 identifies any unacceptable risks, a Phase 3 Remediation Strategy detailing the proposed remediation and verification works is required. If gas protection measures are required a verification plan is required detailing the gas protection measures to be installed, the inspection regime and where necessary integrity testing programme. The installation of the gas membrane should be carried out by an appropriately qualified workforce and the verification of the installation should be carried out by an appropriately competent, experience and suitably trained person(s) (preferably independent to the installer) to ensure mitigation of the risk to the buildings and the people who occupy them. No alterations to the remediation proposals shall be carried out without the prior written agreement of the Local Planning Authority.

#### Completion

(c) During the implementation of the remedial works (if required) and/or development if any contamination is identified that has not been identified pre-commencement, it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment shall be carried out in accordance with part b of the condition and where necessary a Phase 3 Remediation Strategy shall be prepared in accordance with part c of the condition. The development shall be completed in accordance with any amended specification of works.

(d) Upon completion of the remedial works (if required), a Phase 4 Verification Report (Validation Report) confirming the objectives, methods, results and effectiveness of all remediation works detailed in the Phase 3 Remediation Strategy shall be submitted to and agreed in writing with the Local Planning Authority within 2 months of completion of the development. If integrity testing of the membrane(s) was required a verification pro forma should be included.

*Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risk to workers, neighbours and other offsite receptors in accordance with Part 11 of the National Planning Policy Framework. This is required as a pre commencement condition in order to consider potential impact of land contamination which may be disturbed by site works.*

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## **STATEMENT OF PROACTIVE ENGAGEMENT**

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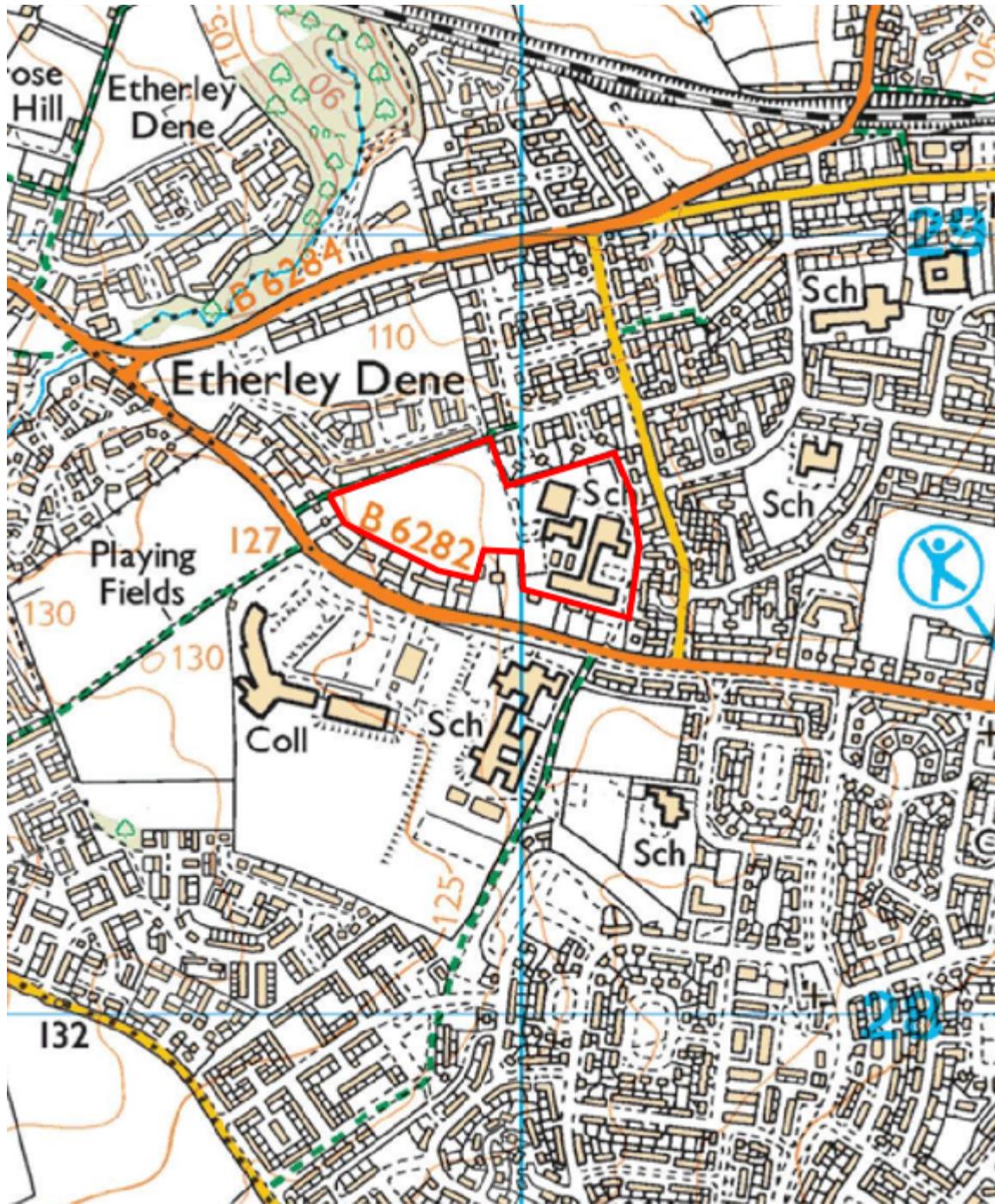
The Local Planning Authority in arriving at its recommendation to approve this application has, without prejudice to a fair and objective assessment of the proposals, issues raised, and representations received, sought to work with the applicant in a positive and proactive manner with the objective of 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) (CC) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.)

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## **BACKGROUND PAPERS**

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- Submitted application form, plans supporting documents and subsequent information provided by the applicant.
- The National Planning Policy Framework (2018)
- National Planning Practice Guidance Notes
- Wear Valley District Local Plan 2006
- Statutory, internal and public consultation responses



**Planning Services**

DM/18/02950/FPA

Erection of building, associated external works, landscaping and car parking and demolition of 3no. teaching blocks.

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**Comments**

**Date** 4 December 2018

**Scale** Not to scale

## Planning Services

# COMMITTEE REPORT

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### APPLICATION DETAILS

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<b>APPLICATION NO:</b>	DM/18/02594/FPA
<b>FULL APPLICATION DESCRIPTION:</b>	Re-Plan of Phase II of Permission DM/17/01213/VOC comprising 110 Dwellings
<b>NAME OF APPLICANT:</b>	Avant Homes
<b>ADDRESS:</b>	Land To The East Of Clare Lodge And Durham Road, Chilton, DL17 0RW
<b>ELECTORAL DIVISION:</b>	Chilton
<b>CASE OFFICER:</b>	Steven Pilkington, Senior Planning Officer, 03000 263964 <a href="mailto:steven.pilkington@durham.gov.uk">steven.pilkington@durham.gov.uk</a>

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### DESCRIPTION OF THE SITE AND PROPOSALS

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#### The Site

1. The application site is located on the southern edge of Chilton and is sited next to an associated development site being developed for housing by Avant Homes in phase I of the development. The application site measures 3.3ha and is rectangular in shape forming part of a wider site extending to 7.8 hectares. The planning permission for the wider site is granted a total of 196 dwellings (106 with detailed permission and 90 in outline form to be located on this site). Approximately 40 units have currently been constructed and occupied, whilst another 20 units are currently under construction.
2. The site is bounded by the existing settlement boundary of Chilton to the north, land in agricultural use to the south and east. To the west the existing development site including SUDS and open space is located which beyond lies Durham Road which the vehicular access into the site is taken. The site slopes from north to south, with hedgerows and existing landscape features enclosing the site from all four boundaries. Residential properties on Meadowdale abut the northern site boundary beyond existing hedgerow.
3. No statutory or locally designated landscape or ecological sites are located within or immediately adjacent to the application site, although Mill Wood Local Wildlife Site lies approximately 250m to the west, beyond the A167. No recorded public rights of way are contained within the application site, the closest being Footpath Chilton 23 approximately 75m to the north. The application site contains no watercourses, with site lying entirely within Flood Zone 1, which is the zone of lowest risk. The closest heritage asset is Windlestone Conservation Area, which is located over 1.6km to the

west. The site has been subject to an Agricultural Land Classification survey and is considered to be Grade 3b.

## The Proposal

4. This amended application seeks full planning permission to replan the second phase of the development approved in outline form under application DM/17/01213/VOC, including increasing the number of dwellings to 110 from the 90 approved. This equates to a total of 216 dwellings across the development. This would facilitate the introduction of additional smaller house types that have proved more popular on the existing development rather than the larger house types which have taken longer to sell at lower than anticipated values. This is an amended application which originally proposed 120 dwellings on the Phase.
5. The scheme would in essence retain the principles set out in the outline masterplan, with a singular vehicular access taken Phase 1, dwellings overlooking a central area of open space, a set back from the eastern boundary of the site and structural landscaping on the southern boundary. The proposed scheme would provide 27 detached, 50 semi-detached dwellings and 33 link/terraced properties. 15 of the dwellings proposed within phase 2 would be offered on an affordable basis equating to a total of 23 across the development site as a whole.
6. The sole vehicular access for the development would remain off the A167 on the western site boundary. The approved access has been implemented while the formation of a protected right turn into the site, the relocation of the 40mph restriction, new bus stop infrastructure and pedestrian/cycle access is required to be constructed under existing planning approvals. The re-plan would not materially affect the approved areas of open space central to the site, and the SUDs drainage system which would be located adjacent the southern boundary.
7. This planning application is being reported to County Planning Committee because it forms part of a major residential development with a site area in excess of 4 hectares.

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## **PLANNING HISTORY**

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8. A hybrid application secured planning permission for the erection of 92 dwellings and outline element for up to further 90 dwellings (ref DM/16/03397/FPA).
9. Planning permission was granted to allow an amendment to this permission to allow the substitution of house types and the introduction of an additional 2 units (ref DM/17/01213/VOC).
10. Planning permission was granted to replan part of phase 1 to provide 12 additional dwellings on Phase 1, increasing the total to 106 (ref DM/17/04035/FPA).
11. All three planning permissions have been implemented on site.

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## **PLANNING POLICY**

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### **NATIONAL POLICY**

12. A revised National Planning Policy Framework (NPPF) was published in July 2018. The overriding message continues to be that new development that is sustainable should go ahead without delay. It defines the role of planning in achieving sustainable development under three overarching objectives – economic, social and

environmental, which are interdependent and need to be pursued in mutually supportive ways.

13. In accordance with Paragraph 213 of the National Planning Policy Framework, existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given). The relevance of this issue is discussed, where appropriate, in the assessment section of the report. The following elements of the NPPF are considered relevant to this proposal.
14. *NPPF Part 2 Achieving Sustainable Development* - The purpose of the planning system is to contribute to the achievement of sustainable development and therefore at the heart of the NPPF is a presumption in favour of sustainable development. It defines the role of planning in achieving sustainable development under three overarching objectives - economic, social and environmental, which are interdependent and need to be pursued in mutually supportive ways. The application of the presumption in favour of sustainable development for plan-making and decision-taking is outlined.
15. *NPPF Part 4 Decision-Making* - Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.
16. *NPPF Part 5 Delivering a Sufficient Supply of Homes* - To support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay.
17. *NPPF Part 6 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 a low carbon future.
18. *NPPF Part 8 Promoting Healthy and Safe Communities* - The planning system can play an important role in facilitating social interaction and creating healthy, inclusive communities. Developments should be safe and accessible; Local Planning Authorities should plan positively for the provision and use of shared space and community facilities. An integrated approach to considering the location of housing, economic uses and services should be adopted.
19. *NPPF Part 9 Promoting Sustainable Transport* - Encouragement should be given to solutions which support reductions in greenhouse gas emissions and reduce congestion. Developments that generate significant movement should be located where the need to travel will be minimised and the use of sustainable transport modes maximised.
20. *NPPF Part 11 Making Effective Use of Land* - Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living

conditions. Strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously-developed or 'brownfield' land.

21. *NPPF Part 12 Achieving Well-Designed Places* – 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.
22. *NPPF Part 14 Meeting the Challenge of Climate Change, Flooding and Coastal Change* - The planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change. It should help to: shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and support renewable and low carbon energy and associated infrastructure.
23. *NPPF Part 15 Conserving and Enhancing the Natural Environment* - Conserving and enhancing the natural environment. The Planning System should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, geological conservation interests, recognising the wider benefits of ecosystems, minimising the impacts on biodiversity, preventing both new and existing development from contributing to or being put at unacceptable risk from pollution and land stability and remediating contaminated or other degraded land where appropriate.
24. *NPPF Part 16 Conserving and Enhancing the Historic Environment* - Heritage assets range from sites and buildings of local historic value to those of the highest significance, such as World Heritage Sites which are internationally recognised to be of Outstanding Universal Value. These assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations.

<https://www.gov.uk/guidance/national-planning-policy-framework>

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

<https://www.gov.uk/government/collections/planning-practice-guidance>

#### **LOCAL PLAN POLICY:**

The Sedgefield Borough Local Plan (SBLP) 1996

26. *Policy E1 – Landscape Protection and Enhancement.* Sets out that the distinctiveness of landscapes is dependent upon the combination of different elements, including, trees, woodlands, the scale of fields and the nature of these boundaries, style of buildings and local features. In order to maintain the diversity of the landscape character, decisions on use and management of land should take account of these features.

27. *Policy H8 – Residential Frameworks for Larger Villages.* Sets out that providing that there is no conflict with the environmental, open space of design policies, that development will normally be approved in larger villages, including Sedgfield and Fishburn.
28. *Policy H19 –Provision of a range of house types and sizes including Affordable Housing.* Sets out that the Council will encourage developers to provide a variety of house types and sizes including the provision of affordable housing where a need is demonstrated.
29. *Policy L1 – Provision of Sufficient Open Space to Meet the Needs for Sports Facilities, Outdoor Sports, Play Space and Amenity Space.* Requires a standard of 2.4 ha per 1,000 population of outdoor sports and play space in order to bench mark provision.
30. *Policy L2 – Open Space in New Housing Development.* Sets out minimum standards for informal play space and amenity space within new housing developments of ten or more dwellings.
31. *Policy T1 – Footways and Cycleways in Towns and Villages.* States that the Council will seek to ensure that safe, attractive and convenient footpath and cycleway links and networks are provided.
32. *Policy D1 – General Principles for the Layout and Design of New Developments.* This policy establishes six principles to be applied to the layout and design of new development, including a comprehensive and co-ordinated approach, attention to the design of buildings and their spatial relationship to open space, landscaping and boundary treatment, and satisfactory and safe provision for pedestrians, cyclists, public transport, cars and other vehicles.
33. *Policy D2 – Design for People.* This policy details that the requirements of users of a development should be taken into account in its layout and design, with particular regard paid to access, safety and security and the provision of appropriate facilities.
34. *Policy D3 – Design for Access.* This policy provides that development should make satisfactory and safe provision for use by all modes of transport, detailing eight criteria which will need to be included in new development as appropriate. These include cycle parking facilities, measures to minimise conflict between pedestrians, cyclists and motor vehicles and adequate car parking provision.
35. *Policy D5 – Layout of housing development.* Requires that the layout of new housing development should provide a safe and attractive environment, have a clearly defined road hierarchy, make provision for appropriate areas of public open space either within the development site or in its locality, make provision for adequate privacy and amenity and have well designed walls and fences.
36. *Policy D8 – Servicing and Community Requirements of New Development.* Sets out that developments are required to contribute towards offsetting the costs imposed by them upon the local community in terms of infrastructure and community requirements.
37. *Policy D9 – Art in the Environment.* Encourages the incorporation of artistic elements in development schemes.

**RELEVANT EMERGING POLICY:**

The County Durham Plan

38. Paragraph 48 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. An 'Issues & Options' consultation was completed in 2016 on the emerging the County Durham Plan (CDP) and the 'Preferred Options' was approved for consultation at Cabinet in June 2018. However, the CDP is not sufficiently advanced to be afforded any weight in the decision making process at the present time.

*The above represents a summary of those policies considered relevant. The full text, criteria, and justifications can be accessed at: <http://www.durham.gov.uk/article/3266/Whats-in-place-to-support-planning-and-development-decision-making-at-the-moment> (Sedgefield Borough Local Plan)*

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## **CONSULTATION AND PUBLICITY RESPONSES**

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### **STATUTORY RESPONSES:**

39. *Highways Authority* – No objection is raised following amendments to the parking provision of the plots which would now comply with DCC guidelines. It is advised that the increase in the number of dwellings by would affect traffic flow on Rushyford Roundabout over and above the level of mitigation secured under previous applications (£104,400.) In order to mitigate this impact an increase contribution of £12,491 to a total of £116,495 is sought.
40. *Drainage and Costal Protection* – Advise that a detailed scheme has been approved to deal with the attenuation of surface water from the site through SUDS on phase 1 and could accommodate the flows from this development. It is proposed to utilise permeable paving and filter strips to meet DCC guidance on water quality, treatment and attenuation. The finer details of this should be secured by condition
41. *Highways England* – Offer no objection.

### **INTERNAL CONSULTEE RESPONSES:**

42. *Landscape* – Advise that amendments during the course of the application ensure that adequate room is provided for screen planting on the southern boundary of this phase, whilst the relationship between the houses and the open space is greatly improved. Concerns are raised regarding the northern boundary, as the existing hedgerow appears to have been located within private gardens, further consideration should be given to how this will be retained and maintained in the future. It is also advised that the northern part of the site would allow little room to soften the road frontages and the appearance would be unattractively hard.
43. *Landscape (Arboriculture)* – Advise that the alterations appear to give a greater buffer on the east of the site and this is likely to be beneficial to the trees and hedges. It is recommended Tree Protection Measures should be put in place and detailed tree planting specification (landscape plan) is submitted in due course.
44. *School Places and Admissions Manager* – Advise that an additional 20 units over and above the outline permission could produce 6 pupils of primary school age. Taking into account the pupils generated in the original application there would not be sufficient space to accommodate the additional pupils. A contribution of £88,218 is sought over and above the amounts secured to mitigate the impacts of the development. There are sufficient secondary school places available to accommodate pupils from this development.

45. *Housing Delivery* – Advise that the updated evidence as part of the County Durham Plan identifies that 15% affordable housing could be delivered on this scheme to meet an identified need. It is recommended that mixed tenure of 75% affordable rent and 25% home ownership would be desirable.
46. *Ecology* – Raise no objection. Officers advise that the submitted ecology assessments submitted in support of the original application are sound and there are no protected species on site. In line with the original permission given the minimal mitigation proposed on site an offsite contribution of £33,165 is sought to deliver targeted biodiversity enhancements in the area.
47. *Design and Conservation* – Raise concerns regarding the increase in the number of units and the increase in density which created a car dominated street scene at odds with the original approval for the site.
48. *Environmental Health and Consumer Protection (Contaminated Land)* – Advise that the conclusions in the submitted geo-environmental appraisal are sound and there are no requirement for a contaminated land condition for this phase.
49. *Environmental Health and Consumer Protection (Pollution Control)* – Advise that no mitigation is required on this phase in relation to surrounding noise sources. Conditions should be attached to ensure that the development is carried out in accordance with an agreed Construction Management Plan and working hours on phase one.
50. *Environmental Health and Consumer Protection (Air Quality)* – Advise that the combined impact of this Phase with Phase I will generate a change in traffic flows. An assessment of air quality of the impacts of the Phase I development was undertaken and the modelled levels of air quality pollutants were well below the air quality objectives. The magnitude of change was determined as negligible in accordance with the EP (UK) and IAQM Guidance. It is not considered the generation of further traffic from Phase II will alter the conclusions reached for the Phase I assessment. Therefore the overall impact on air quality during the operational phase is determined as not significant and a further detailed dispersion modelling assessment is not required.
51. *Archaeology* – Advise that a geophysical survey and trial trenching evaluation have been carried out and the reports submitted in support of the previous application. These reports characterised the archaeological remains on site and the significance and impact were found to be low no objections to these proposals on archaeological grounds are therefore raised.
52. *Sustainable Transport* – Advise that the submitted travel plan need amending to meet DCC requirements whilst the infrastructure secured under the existing approval should be implemented.
53. *Employability Section* – Request that targeted recruitment and training clauses are included within the agreed S106 planning obligation are carried over onto this scheme.

#### **NON-STATUTORY RESPONSES:**

54. *Police Architectural Liaison Officer* – Raises concerns regarding the use of parking courts, long enclosed footpaths.

#### **PUBLIC RESPONSES:**

55. The application has been publicised by way of press notice, site notice, and individual notification letters to neighbouring residents, no letters of objection have been received.

#### **APPLICANTS STATEMENT:**

56. This application seeks the re-plan of the outline consent for 90 units to facilitate an additional 20 units, by introducing 'Bridge' house types on the site. The proposed amendments to this phase of the site offer a significant number of benefits for new and existing residents. The 'Bridge' product specifically aligns to paragraph 71 of the NPPF. LPA's are directed to "*support the development of entry-level exception sites, suitable for first time buyers (or those looking to rent their first home)*". This explicitly requires Local Authorities to make sufficient provision for entry-level homes on sites such as this one.
57. Avant Homes' 'Bridge' range has the same design principles as the mainstream product but is aimed at a wider customer base at the entry level of the housing market. Market research undertaken by the Applicant has shown there is a strong demand for this type of product in the local area, with a lower average selling price, for the following reasons:
- The provision of more 2 and 3 bedroom homes will offer a product size that is considered to be most appealing to first time buyers and young families;
  - The provision of more 2 and 3 bedroom entry level homes gives a greater opportunity for new and existing residents to purchase the property type whilst ensuring a high level of design and residential amenity is established and retained;
  - Unlike with second hand homes available on the general market, first time buyers of brand new homes will be able to qualify for the Government's Help to Buy scheme which enables them to buy a home with a very low deposit and with reduced mortgage payments. For many first-time buyers and young families wishing to stay in Chilton where they have grown up, this is the only way to get onto the housing ladder.
58. Avant Homes has worked closely with Officers and have sought to address design comments raised during the application process. The layout proposed maintains the design principles set out in the approved original application and will ensure delivery of a high quality, sustainable and attractive development. The additional dwellings will allow increased contributions for improvements to local education, local open space improvements, increase affordable housing deliver and highway improvements at Rushyford Roundabout.

*The above represents a summary of the comments received on this application. The full written text is available for inspection on the application file which can be viewed at*

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

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## **PLANNING CONSIDERATIONS AND ASSESSMENT**

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59. 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 advice within the National Planning Policy Framework (NPPF), the policies contained therein are material considerations that should be taken into account in decision-making. Other material considerations include representations

received. In this context, it is considered that the main planning issues in this instance relate to: the principle of the development, locational sustainability of the site, landscape and visual appraisal, layout and design, highway safety and access, residential amenity, ecology, flooding and drainage, ground conditions, heritage impacts and planning obligations.

### The Principle of Development

60. The principle of developing the site for housing has been established under planning applications DM/16/03397/FPA, DM/17/01213/VOC and DM/17/04035/FPA which, in combination, permitted the erection of 196 dwellings in total, of which 106 were approved in full, and the remainder in outline form. The detailed elements of these permissions have been implemented on site, with approximately 40 units being constructed and occupied along with a large part of the highway infrastructure and SUDS area. This application seeks to increase the number of dwellings in phase 2 of the site, the outline area, by 20. This would equate to a total of 110 dwellings in phase 2 and a total of 216 across the whole development site. This planning permission would sit in alongside the implemented permissions.

### The Development Plan

61. 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 Sedgefield Borough Local Plan (SBLP) remains the statutory development plan and the starting point for determining applications as set out at Paragraph 12 of the NPPF.
62. The SBLP was adopted in 1996 and was intended to cover the period to 2006. However, NPPF Paragraph 213 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 depending on the circumstances.

### The NPPF

63. Paragraph 11 of the NPPF establishes a presumption in favour of sustainable development. For decision taking this means (unless material considerations indicate otherwise):
- c) approving development proposals that accord with an up-to-date development plan without delay; or
  - d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out of date, granting permission unless:
    - i) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed or
    - ii) 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.

64. In line with the previous applications on this site, it is considered that Policy H8 only relates to developments within settlement limits and does not therefore apply in this case to the site itself. It is relevant in the sense that it directs housing to the specified settlements and within their residential frameworks. Policy E9 (protection of the countryside) has expired. Important policies within the Local Plan which inform on housing are therefore considered to be out of date. Therefore, it is considered that the policies which are most important for determining the application are out of date. The acceptability of the development must, therefore, be considered in the context of Paragraph 11(d) of the NPPF as set out above.

#### Five Year Housing Land Supply

65. Paragraph 73 of the updated NPPF maintains the requirement for Local Planning Authorities (LPAs) to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old.
66. Within County Durham all of the extant development plans are more than five years old and their housing figures need revising so the starting point for calculating land supply will be local housing need using the Government's standard methodology. The 'Preferred Options' (June 2018) stage of the emerging County Durham Plan (CDP) is aligned with the standardised methodology and identifies a housing need figure of 1,368 dwellings per annum (dpa). The Council is able to demonstrate in excess of 6 years supply of deliverable housing land against this figure.
67. Although in a recent written representations appeal involving land to the south of Castlefields, Esh Winning, the Inspector took the view that supply had not been demonstrated by the Council in the terms of paragraph 74 of the Framework, the Council's view is that the Inspector applied paragraph 74 prematurely in this appeal because paragraph 74 does not allow for submission of an Annual position statement on 5 YHLS until April 2019 at the earliest. It was therefore impossible for the Council to have such an annual position statement in place at the time of the appeal.
68. To summarise, the Council's position remains that the NPPF has confirmed the use of the standard method for calculating local housing need and as the emerging CDP is aligned with the figure derived from the standardised methodology (1,368dpa), a supply in excess of 6 years supply of deliverable housing can be demonstrated when measured against this.
69. Accordingly, the weight to be afforded to the boost to housing supply as a benefit of the development is clearly less than in instances where such a healthy land supply position could not be demonstrated. However, based on the current build out rates on the site (40 dwellings are occupied since the original permission was granted in March 2017), the increase in dwellings will assist in the delivery of housing over the 5-year supply period and likely increase number of completions in the county. This will need to be factored into the planning balance accordingly.

#### Locational Sustainability of the Site

70. In the original planning application it was concluded that Chilton has a reasonable array of services and facilities, largely adequate to serve the development, and that these are within relatively easy reach of the site. It was also concluded that the development would be of a scale commensurate with the role of Chilton in the settlement hierarchy. It was also considered that the walking distances, improved pedestrian links and the established bus service would give future residents alternative

options to the private motor car to access to services and amenities. In accordance with SBLP Policies D1, D2 and D8 which are considered consistent the NPPF in this respect and can be given full weight in the decision making process.

71. In relation to this amended scheme it is considered that the erection of an additional 20 units would not alter the conclusions reached within the original and subsequent planning permissions. Therefore, the locational sustainability of the site remains acceptable in accordance with relevant NPPF and SBLP policies. The implemented permissions secure the delivery the approved footpath links, and access arrangements and would be unchanged by any new permission granted.

#### Landscape and Visual Appraisal

72. In consideration of the original scheme it was identified that the scheme would result in an incursion of built development into attractive open countryside south of Chilton and would entail an increased degree of coalescence between Chilton and Rushyford. It was also identified that this would be some harmful effects on the character of the local landscape, however, these would be localised and could be mitigated in time to varying degrees by proposed structure planting. Overall, it was concluded that there would be some residual landscape harm in conflict with Policy E1 of the SBLP, which is considered consistent with Part 15 of the NPPF that would need to be weighed in the planning balance.
73. This application seeks to follow the principles established in the outline masterplan, with a set back of the eastern boundary of the site where a mature hedgerow is present, and provide structural landscaping on the eastern boundary. Although the revised scheme would inherently be more dense than the extant outline element of the application, this is confined to the northern part of the site and, as a result, it is considered that this would not result in a significant landscape impact over and above the extant planning permission.
74. The Council's Landscape Officer advises that the amendments secured during the course of the application ensures that adequate room for screen planting on the southern boundary of the phase could be provided. It is also advised that the amendments scheme, including setting the dwellings off the eastern boundary, helps to reduce the impact of the development in line with the outline masterplan. While amendments providing an active frontage to the amenity and SUDS's area are welcomed. Concerns have been raised regarding the layout of elements of the scheme which could provide a car dominated street scheme with little space for landscaping. However subsequent amendments have further reduced the density and broken up areas of car parking ensuring adequate landscaping could be incorporated. A condition to require the full detailing and delivery of the scheme is recommended.
75. The Council's Landscape Officer also raises concerns regarding the potential impact on a hedgerow along the northern boundary of the site due to the potential proximity and height of boundary treatments of the mature hedge. However it is considered that this matter can be controlled conditionally through the agreement of a detailed landscaping plan once the extent of the hedge and its condition has been fully established, which will inform the location and nature of boundary treatments in this area.
76. Overall, subject to delivering the mitigation planting proposed in the scheme and agreeing a final landscaping and boundary treatments plan, it is considered that the revised scheme would broadly have the same level of landscape impact as the approved and would provide for an acceptable urban environment. This established

impact and conflict with Policy E1 of the SBLP needs to be weighed in the planning balance.

## Layout and Design

77. SBLP Policies D1, D2, D3 and D5 seek to promote good design which relates well to the natural and built features of the site, the surrounding area and adjacent land uses. Part 12 of the NPPF seeks to ensure that good design is indivisible from good planning, highlighting that developments should be visually attractive as a result of good architecture, appropriate landscaping and respond to local character. Due to their consistency with the NPPF significant weight can be afforded to SBLP Policies D1, D2, D3 and D5 in this respect.
78. It was concluded in the original application (recognising the outline nature of this phase) that the design and layout of the proposed development, including the proposed masterplan was considered acceptable in accordance with relevant SBLP Policies and the NPPF
79. Part 12 of the NPPF sets out that the quality of approved development is not materially diminished through changes to the scheme since being permitted while also encouraging local Authorities to adopt design review processes to improve design.
80. In this respect the scheme, including amendments, have been considered by the Council's Design Review Panel. As a result of the comments raised by the panel and through negotiations with the developer, significant amendment have been secured to the scheme. This includes the reducing in the number of dwellings from 120 initially proposed to 110 which has enabled better spacing between dwelling to reduce the impact of car parking and introduce soft landscaping to improve the appearance of the development. The resultant layout is considered to respect the principles of the masterplan by including an active frontage onto the central area of open space and SUDS, being set back from the eastern boundary and the provision of structural landscaping to the southern boundary. Throughout the scheme corner turner units are used where appropriate and areas of landscaping and garden space utilised to break up parking, this would be further supplemented through a detailed landscaping scheme to be fully agreed by condition. The house types proposed and materials to be used would be commensurate with those already approved on the site.
81. Overall, it is considered that the re-plan scheme would still deliver an acceptable form of development, in line with the principles set out in the indicative master plan and would not significantly diminish the quality of the approved development in accordance with SBLP Policies D1, D2, D3 and D5, and Parts 12 and 15 of the NPPF

## Highway Safety and Access

82. SBLP Policy D3 requires that development proposals achieve a satisfactory means of access onto the wider highway network while seeking to protect highway safety in terms of vehicle movements and traffic generation. SBLP Policy T1 seeks to ensure that safe, attractive and convenient footpath links are provided, where appropriate, to serve new development. These Policies are considered compliant with the NPPF which also seeks to promote accessibility by a range of methods, while ensuring that a safe and suitable access can be achieved and therefore can be given full weight in considering the application. The NPPF sets out at Part 9 that safe and suitable access can be achieved for all people while setting out that development should mitigate significant impacts on the road network. In addition Part 9 of the NPPF states that development should only be refused on transport grounds where the residual cumulative impacts on development are severe.

83. This revised scheme would be served by the same highways infrastructure as approved, which has now largely been implemented on site. The Highway Authority has reviewed the amended layout and following amendments during the course of the application, advises that the parking provision is acceptable and would accord with the Council's parking and access standards.
84. The original planning permission required a financial contribution towards junction improvements at the Rushyford roundabout, secured by means of a Section 106 legal agreement. The Highway Authority advise that the increase in the number of dwellings (taking into account increases in other permissions) would affect traffic flow on the Rushyford Roundabout to the south of the site. Consequently, it is advised that the level of mitigation secured under previous applications to increase the capacity of Rushyford Roundabout (£104,400) would need to be increased by £12,491 to a total of £116,495. The applicant has agreed to this and a deed of variation has been submitted to secure the increased contribution. Highways England offer no objections to the increase in number of dwellings.
85. Overall, the development would be served by an appropriate means of access and would not have an adverse impact on the wider highway network, subject to the mitigation measures previously secured. The design, layout and parking provision is considered acceptable. The scheme is considered to comply with SBLP Policy D3 and Part 9 of the NPPF in this respect.

#### Residential Amenity

86. SBLP Policies D1 and D3 and D5 require that the design and layout of development to take into account the sites natural and built features and its relationship with adjacent land uses, and make provision for amenity and privacy. These Policies are considered NPPF compliant This policy is considered NPPF compliant which seeks to ensure a high standard of amenity for existing and future uses of land and buildings. Whilst Part 11 seeks to prevent both new and existing development from contributing to or being put at unacceptable risk from unacceptable levels of pollution.
87. Further to this Supplementary Planning Guidance Note 3 of the SBLP sets out minimum spacing guidelines new developments should achieve, which are also applicable to existing dwelling. These include 21m between main elevations and 14 m between habitable room windows and gable elevations and achieve reasonable privacy in garden areas. However the guidance note sets out that the standards should not be applied rigidly and may be relaxed in certain circumstances.
88. In this respect the development would be located south of the dwellings of Meadowdale, which principally consist of detached dwellings. The proposed site layout would achieve minimum separation distances of 21m (rear to rear) and 14m (rear to side) separation distances. Views would be achievable into parts of existing garden areas, however existing properties are still considered to achieve reasonable levels of privacy . Although the new properties are located to the south of the existing dwellings, and there would to a degree of shading at certain times of the year due to the pathway of the sun, this is however not considered likely to be excessive.

A number of properties within Meadowdale have inserted windows in the ground floor and removed sections of hedgerow to achieve views over the currently undeveloped fields. In line with the proposed masterplan, the scheme proposes to supplement the existing hedgerow and install formal boundary treatments. This, in combination with the presence of dwellings to the south, would reduce the outlook

experienced, however the loss of a view is not a material consideration, whilst views to these windows would be in excess of 21m or at obscure angles.

89. Internally to the site back to back distances of 21m between windows of habitable rooms on main elevations will generally be achievable. However front facing distances across highways would generally be less than this, in instances down to approximately 18m, particularly on the Bridge range element of the scheme. Side to side separation distances would also in a couple of instances measure 11.5m. However this part of the scheme has been specifically designed as a higher density element and the distances involved are considered appropriate to ensure acceptable levels of amenity for the prospective occupiers of these properties.
90. In terms of noise, the original application was accompanied by a noise survey which identifies that the site does have a relatively loud noise environment, as a result of the local road network. Mitigation measures were however approved which included acoustic ventilation principally to the properties only the western boundary adjacent the existing road infrastructure. This application includes an updated assessment to reflect the proposed layout and concludes that no mitigation is required on this phase. The Council's Environmental Health and Consumer Protection Team advise that the findings of this report are sound and no further mitigation will be required in this respect. Environmental Health and Consumer Protection Team also advise that the approved construction methodology should be adhered to on this phase of the site.
91. With regard to air quality, the original application was accompanied by an air quality survey which found that the impact of the development upon air quality, once occupied, would not be significant, with the predicted amount of air quality pollutants remaining well below the annual mean air quality objective. The Council's Environmental Health and Consumer Protection Team (Air Quality) advise that considered the generation of further traffic from Phase II will not alter the conclusions reached for the Phase I assessment and further modelling assessment is not required.
92. Overall, although reducing the level of amenity currently experienced by existing properties due to the siting of dwellings, the scheme is considered to comply with SBLP Policies D1 and D3 and Part 15 of the NPPF in this respect and would not result in a serious effect impact on the amenity of existing or future residents.

## Ecology

93. The closest site of nature conservation interest is Mill Wood Local Wildlife Site which is located 250m to the west of the application site. SBLP Policy E11 and Part 15 of the NPPF seek to ensure that developments protect and mitigate harm to biodiversity interests, and where possible, improve them. Ecology survey and bat surveys were submitted with the original application, which found that no species that are afforded special legal protection under the Conservation of Habitats and Species Regulations 2017 and/or the Wildlife and Countryside Act 1981 (as amended) were present on the site. An assessment of the site by the applicant's ecologist has found that the conclusions and recommendations within the ecology reports can be considered as still valid in relation to the proposed revised layout. The Council's Ecology Team are satisfied with the submitted information and there would therefore be no impact to protected species.
94. However, it was identified that the development of a greenfield site would have some adverse impacts upon biodiversity interests more generally. Although public open space would be provided which would operate as a wildlife corridor, a contribution of £33,165 was secured by way of a planning obligation secured under Section 106 of The Town and Country Planning Act 1990 (as amended) to provide offsite biodiversity enhancements within the local area. As the physical extent of the site to be developed

would not materially change as part of these revised proposals, no further or increased contribution is sought. A deed of variation to the existing S106 agreement to link this development to the agreed triggers would be required to ensure this contribution is secured.

95. In line with the original application, and having regard to the proposed mitigation measures, the development is considered to accord with Part 15 of the NPPF in this respect.

#### Flooding and Drainage

96. National advice within the NPPF and PPG with regard to flood risk advises that a sequential approach to the location of development should be taken with the objective of steering new development to flood zone 1 (areas with the lowest probability of river or sea flooding). When determining planning applications, local planning authorities should ensure flood risk is not increased elsewhere and only consider development appropriate in areas at risk of flooding where, informed by a site-specific flood risk assessment.
97. The original application was accompanied by a Flood Risk Assessment (FRA) which identified that the application site is located within flood zone 1 and is therefore located on land least likely to suffer from tidal or fluvial flooding. The approved drainage strategy identified that surface water would be disposed of via a connection to Rushyford Beck, which lies 0.2km to the south of the site, discharging at a rate of 26.3l/s, which is reflective of greenfield rates. Surface water attenuation would be provided on site in the form of a SUDS scheme, which will prevent external flooding for 1 in 30 year floods, and prevent buildings flooding up to 1 in 100 flood events.
98. The Council's Drainage and Coastal Protection advised that they are satisfied that the existing detention basin could accommodate the flows from this development. It is also proposed to utilise permeable paving and filter strips to meet DCC guidance on water quality, treatment and attenuation. The finer details of this are proposed to be agreed by condition. Subject to agreeing these details it is advised that the proposals meet relevant guidance and offer no objections to the proposals.

#### Ground conditions

99. In relation to land contamination, phase 1 is being developed in accordance with an approved Land contamination Strategy. In relation to this phase, an Environmental Appraisal has been submitted, which concludes that this phase would not need further investigation or mitigation. In reviewing this report, Environmental Health and Consumer Protection Team have advised they have no objections to this approach and no further mitigation is required.

#### Heritage Impacts

100. The application site does not lie within or is in close proximity of any designated heritage assets, the closest being Windlestone Conservation Area, situated some 1.6km away, and with no visual relationship with the site. It was concluded in the original application that there would be no material impact upon designated heritage assets. In terms of non-designated heritage assets, none were been identified within the immediate vicinity of the site, this position has not changed.
101. With regards to archaeology, the entire site has been geophysically surveyed, with 5% of it subsequently being subject to investigative excavation work, based upon the geophysical results. The excavations revealed no archaeological remains of

significance, and the Council's Archaeology Team has advised that the content of the submitted information, and the methodology used is sound. No further mitigation is required in relation to this matter in accordance with Part 16 of the NPPF.

## Planning Obligations

102. SBLP Policy D8 sets out that where appropriate, a contribution to the provision and subsequent maintenance of related social, community, infrastructure and leisure facilities in the locality where such provisions are necessary and directly related to the development being proposed. Furthermore SBLP Policy L1 and L2 which are considered consistent with the NPPF, sets out targets for sporting and/or recreational land as part of the development or as an alternative developers are expected to make a contribution to the provision of such facilities. These targets have been revised under the Council's Open Space Needs Assessment (OSNA) which is considered the most up to date assessment of need for the purposes of Paragraph 96 of the NPPF.
103. The OSNA sets out the requirements for different typologies of public open space on a population pro rata basis, either within the site, or through a financial contribution towards offsite provision, in lieu. In the previously approved applications it was considered that the development could accommodate appropriate levels of Amenity Open Space, Play Space, and Semi Natural Greenspace within the development. An offsite contribution of £122,507 was secured to deliver offsite provision.
104. Since approval of the original applications the Council has updated the OSNA (2018) which sets out slightly different target amounts for different typologies and costs to provide offsite. However, as the majority of the onsite open space is required to be delivered in phase 1, a pro rata approach to calculating offsite OSNA requirements to mitigate the developments impact has been adopted equating to an additional contribution of £8,750 taking the total contribution to £131,258 for the development. This amended application is considered to be in accordance with SBLP Policy L2 and Paragraph 96 of the NPPF with regards to the provision of public open space.
105. In the original application the Council's School Places and Admissions Manager advises that a development of 196 houses could generate an additional 59 primary pupils and 20 secondary pupils. Taking into account existing surplus in schools which could serve the development (based on The Education Department's Guidelines) and other proposed developments in the area, it was identified that there would not be sufficient capacity in local schools to accommodate a proportion of additional primary school age pupils generated. In order to mitigate the impact of the development in this respect a contribution of £498,224 was secured, to be delivered in the first phase of the development.
106. Taking into account the increase in number of dwellings proposed, whilst recognising that the approved development has taken up any surplus places, an additional contribution of £88,218 would be required, taking the total contribution of the development to £586,442. The applicant has agreed to this, and this would be secured through a deed of variation to the original S106 to ensure delivery
107. SBLP Policy H19, in accordance with Part 5 of the NPPF, sets out where a need has been established an appropriate level of affordable housing should be provided. In line with the Councils Strategic Housing Market Assessment (2016) and Local Plan and CIL Development Viability Study (2014) the existing permissions secured 10% affordable housing across the development, with 8 units requiring to be delivered in phase one and 11 in phase 2 due to the phasing requirements of other obligations.

108. Following approval of the previous applications, the Council has updated its Local Plan Viability Testing which now sets out that based on up to date evidence 15% is considered a level which would normally schemes to be developed viably in this part of the county. The developer has agreed to this requirement on the additional number dwellings proposed providing 15 affordable units on this phase (taking into account the shortfall on phase 1). A deed of variation to the original S106 is proposed to ensure delivery. This would take the total number of affordable housing units on site to a total of 23.
109. The original application was subject to a planning obligation in the s106 Legal Agreement to secure a targeted recruitment and training clauses to meet the request of the Council's Employability officer. This is again proposed, however, in line with the existing approval, this must be considered a voluntary arrangement.
110. No response has been received from the NHS in relation to GP capacity within existing facilities in the area either in the original or this application.

#### Planning Balance

111. The principle of developing the site for residential purposes has been established under applications DM/16/03397/FPA and DM/17/01213/VOC. However, as set out above the acceptability of the application should be considered under the planning balance test contained within Paragraph 11d of the NPPF. No specific policies within the NPPF that protect areas or assets of particular importance provide a clear reason for refusal and therefore planning permission should be granted unless any adverse impacts of a proposed development significantly and demonstrably outweigh the benefits when assessed against the Policies of the NPPF taken as a whole.

#### *Benefits*

112. The development would assist in maintaining deliverable housing land supply in the short term at a time when housing supply policies within the SBLP are considered out date. However, in light of the Council's housing supply figure when assessed against the Government's OAN methodology this benefit is a limited one, whilst recognising the developer is active on site and the dwellings would likely be completed in the short term.
113. To a degree the development would provide direct and indirect economic benefits within the locality and from further afield in the form of expenditure in the local economy.
114. The development would provide an increased range of house types including 15 affordable housing units which would meet an identified short fall within the County.

#### *Adverse Impacts*

115. As with the extant permission the development would result in the loss of around 3.3ha of agricultural land, however as the submitted Agricultural Land Classification Report concludes that the site is Grade 3b agricultural land, it is considered to not be "best and most versatile", and the weight afforded to this adverse impact is therefore reduced. This impact is the same as approved.
116. There would be an adverse landscape impact, with the character of the site being transformed, and there being localised adverse effects upon views across the site, and in the perception of separation of Chilton from Rushyford. It is likely however that these adverse impacts would reduce in time, as a result of the proposed landscaping

scheme, although a residual adverse impact would remain. This impact would be similar to that approved, whilst recognising the density of the development on the north eastern corner of the site boundary would increase.

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## CONCLUSION

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117. The principle of developing the site for residential purposes has been established under applications DM/16/03397/FPA and DM/17/01213/VOC. This application seeks planning permission to increase the number of units on the second phase of the development by 20 units.
118. Notwithstanding this, the acceptability of the application should be considered in the context of the planning balance test contained within Paragraph 11 of the NPPF having regards to the out of date nature of important SBLP policies. In the absence of any specific policies that protect areas or assets of particular importance and provide a clear reason for refusal, Paragraph 11d sets out that the development should be approved unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
119. In line with the original approval the adverse impacts have been identified in the form of residual landscape harm and loss of agricultural land. However given the limited visibility in the wider landscape and as the agricultural land is not classed as best and most versatile. For the purposes of Paragraph 11, this harm would not significantly and demonstrably outweigh the recognised, social and economic benefits of new housing partially when considering the implemented permissions on site. It is important to note that this application seeks a variation only to an existing planning permission and thereby these harms were acknowledged already under that grant of planning permission.
120. Paragraph 204 of the NPPF and Paragraph 122 of The Community Infrastructure Levy Regulations 2010 set out three planning tests which must be met in order for weight to be given to a planning obligation. These being that matters specified are necessary to make the development acceptable in planning terms, are directly related to the development, and are fairly and reasonably related in scale and kind to the development. In this respect the contribution towards provision of open space and sporting opportunities, the provision of affordable housing, highways mitigation, off site ecology mitigation and mitigation to increase the capacity of local primary schools are considered necessary for the development to be considered acceptable and therefore meet the relevant tests. However, the provision of Targeted Recruitment Training is not considered to be necessary to make the development acceptable. Whilst the developer has agreed to provide this, it is on a voluntary basis only and cannot be afforded any weight in the assessment of this application.

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## RECOMMENDATION

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That the application is **APPROVED** subject to the completion of a deed of variation to the existing Section 106 Legal Agreement to secure the provision of the following across the whole development site:-

- 23 Affordable housing units across the development.
- £131,258 towards open space and sporting provision within the Electoral Division

- £116,495 towards highway infrastructure capacity improvements at Rushford roundabout.
- £586,442 towards increasing the capacity of primary schools in the area.
- £33,165 to deliver targeted biodiversity enhancements in the area.

and subject to the following conditions:-

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

*Reason: Required to be imposed pursuant to Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.*

2. The development hereby approved in shall be carried out in strict accordance with the following approved plans and documents :

P.10.02 Rev D - Proposed Site Layout  
 House Type Ashton, DRWG no. SUN/ASN/001  
 Cranford, DRWG no. SUN/CRD/001  
 Beckbridge House Type - Dated 24/05/2018 – 2017 Specification  
 Irtonbridge House Type - Dated 24/05/2018 - 2017 Specification  
 Queensbridge House Type - Dated 24/05/2018 - 2017 Specification  
 Seabridge House Type - Dated 24/05/2018 - 2017 Specification  
 Ulbridge Dated House Type - 24/05/2018 - 2017 Specification  
 Lorton House Type - DRWG no. 995 Rev C  
 Denbury House Type - DRWG no. 1211 rev C  
 Lathbury House Type – Floor Plans - DRWG no. LBY/001 Rev B  
 Lathbury House Type – Elevations - DRWG no. LBY/002 Rev B  
 Overbury House Type - DRWG no. – 1463 Rev D  
 Sudbury House Type - Floor Plans DRWG no. 1503 Rev B  
 Sudbry House Type - Elevations – DRWG no. 1503 Rev C

*Reason: To define the consent and ensure a satisfactory form of development is obtained in accordance with Policies E1, E11, E15, H8, H19, T1, L1, L2, L9, D1, D2, D3, D4, D5, D8 and D9 of the Sedgefield Borough Local Plan.*

3. Prior to the commencement of development all tree protection measures indicated within the Arboricultural Impact Assessment ARB/CP/1092 Drawing CH\_CP\_01 Rev B, and in accordance with specification contained within BS 5837:2012, shall be installed until the cessation of development works.

*Reason: In the interests of the visual amenity of the area having regards to Policy E15 of the Sedgefield Borough Local Plan and Parts 12 and 15 of the National Planning Policy Framework. Required to be pre-commencement as landscape features must be protected prior to works, vehicles and plant entering the site.*

4. Notwithstanding the submitted information, prior to the occupation of the 1<sup>st</sup> dwelling hereby approved a detailed landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority.

The landscape scheme shall include the following.

- A plan showing the public/structural landscaping and private/in-curtilage landscaping.
- Any trees, hedges and shrubs scheduled for retention.
- Details 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.
- The timeframe for implementation of the landscaping scheme.
- Full details of the management, maintenance and accessibility of all areas of open space and landscaping in perpetuity.
- Details of all boundary treatments and enclosures.

The approved landscaping scheme shall thereafter be undertaken in accordance with the approved details and timeframes.

Trees, hedges and shrubs planted in accordance with the scheme shall not be removed within five years. Within the area defined as public/structural landscape space any trees or plants which die, fail to flourish or are removed within a period of 5 years from the substantial completion of the development shall be replaced in the next planting season with others of similar size and species. Replacements within the area defined as public/structural landscape space will be subject to the same conditions.

*Reason: In the interests of the visual amenity of the area and to comply with Policies E1, L2 and D1 of the Sedgefield Borough Local Plan and Parts 12 and 15 of the National Planning Policy Framework.*

5. Prior to the construction of the 1<sup>st</sup> dwelling hereby approved full details of the proposed site levels and finished floor levels shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details.

*Reason: In the interests of the visual amenity in accordance with Policies E1, D1 and D5 of the Sedgefield Borough Local Plan and parts 12 and 15 of the National Planning Policy Framework.*

6. No building shall be occupied until a Travel Plan (conforming to the National Specification for Workplace Travel Plans, PAS 500:2008, Bronze level) comprising immediate, continuing or long term measure to promote and encourage alternatives to single occupancy car use has been prepared submitted to and approved in writing by the Local Planning Authority. The submitted details shall include mechanisms for monitoring and review over the life of the development and timescales for implementation. The Approved Travel Plan shall then be implemented, monitored and reviewed in accordance with the approved details.

Reason: In order to deliver sustainable transport objectives including a reduction in single occupancy car journeys and the increased use of public transport, walking and cycling. In accordance with Part 9 of the NPPF and Policy D3 of the Sedgefield Borough Local Plan

7. Prior to the construction of the 1<sup>st</sup> dwelling a detailed scheme for the management and disposal of surface water and foul water from the development shall be submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall adopt the use of permeable paving on all private parking areas and private shared drives. Thereafter the development shall be completed in accordance with the approved details.

*Reason: In the interest of the adequate disposal of foul and surface water in accordance Parts 141 of the National Planning Policy Framework.*

8. The development hereby approved, shall be carried out only in accordance with the mitigation measures contained within the document "Land East of Durham Road, Chilton - Biodiversity Management Plan for Avant Homes Ltd, April 2017".

*Reason: To conserve protected species and their habitat in accordance with Part 15 of the National Planning Policy Framework and Policy E11 of the Sedgfield Borough Local Plan.*

9. No external construction works, works of demolition, deliveries, external running of plant and equipment shall take place other than between the hours of 0800 to 1800 on Monday to Friday and 0800 to 1400 on Saturday.  
No internal works audible outside the site boundary shall take place on the site other than between the hours of 0800 to 1800 on Monday to Friday and 0800 to 1700 on Saturday.  
No construction works or works of demolition whatsoever, including deliveries, external running of plant and equipment, internal works whether audible or not outside the site boundary, shall take place on Sundays, Public or Bank Holidays. For the purposes of this condition, construction works are defined as: The carrying out of any building, civil engineering or engineering construction work involving the use of plant and machinery including hand tools.

*Reason: To protect the residential amenity of existing and future residents from the development to comply with Part 15 of the National Planning Policy Framework.*

10. Prior to the commencement of any part of the development or any works of demolition, hereby permitted, a Construction Management Plan shall be submitted to and approved in writing by the local planning authority. The Construction Management Plan shall include as a minimum but not necessarily be restricted to the following:
- A Dust Action Plan including measures to control the emission of dust and dirt during construction
  - Details of methods and means of noise reduction
  - Where construction involves penetrative piling, details of methods for piling of foundations including measures to suppress any associated noise and vibration.
  - Details of measures to prevent mud and other such material migrating onto the highway from construction vehicles;
  - Designation, layout and design of construction access and egress points;
  - Details for the provision of directional signage (on and off site);
  - Details of contractors' compounds, materials storage and other storage arrangements, including cranes and plant, equipment and related temporary infrastructure;
  - Details of provision for all site operatives for the loading and unloading of plant, machinery and materials
  - Details of provision for all site operatives, including visitors and construction vehicles for parking and turning within the site during the construction period;
  - Routing agreements for construction traffic.
  - Details of the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
  - Waste audit and scheme for waste minimisation and recycling/disposing of waste resulting from demolition and construction works.
  - Detail of measures for liaison with the local community and procedures to deal with any complaints received.

The management strategy shall have regard to BS 5228 "Noise and Vibration Control on Construction and Open Sites" during the planning and implementation of site activities and operations.

The approved Construction Management Plan shall also be adhered to throughout the construction period and the approved measures shall be retained for the duration of the construction works.

*Reason: To protect the residential amenity of existing and future residents from the development to comply with Part 11 of the National Planning Policy Framework. This is required as a pre commencement condition in order to mitigate potential impact on residential amenity which needs to be considered before site works commence.*

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## **STATEMENT OF PROACTIVE ENGAGEMENT**

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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) (CC) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.)

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## **BACKGROUND PAPERS**

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

The National Planning Policy Framework (2018)

National Planning Practice Guidance Notes

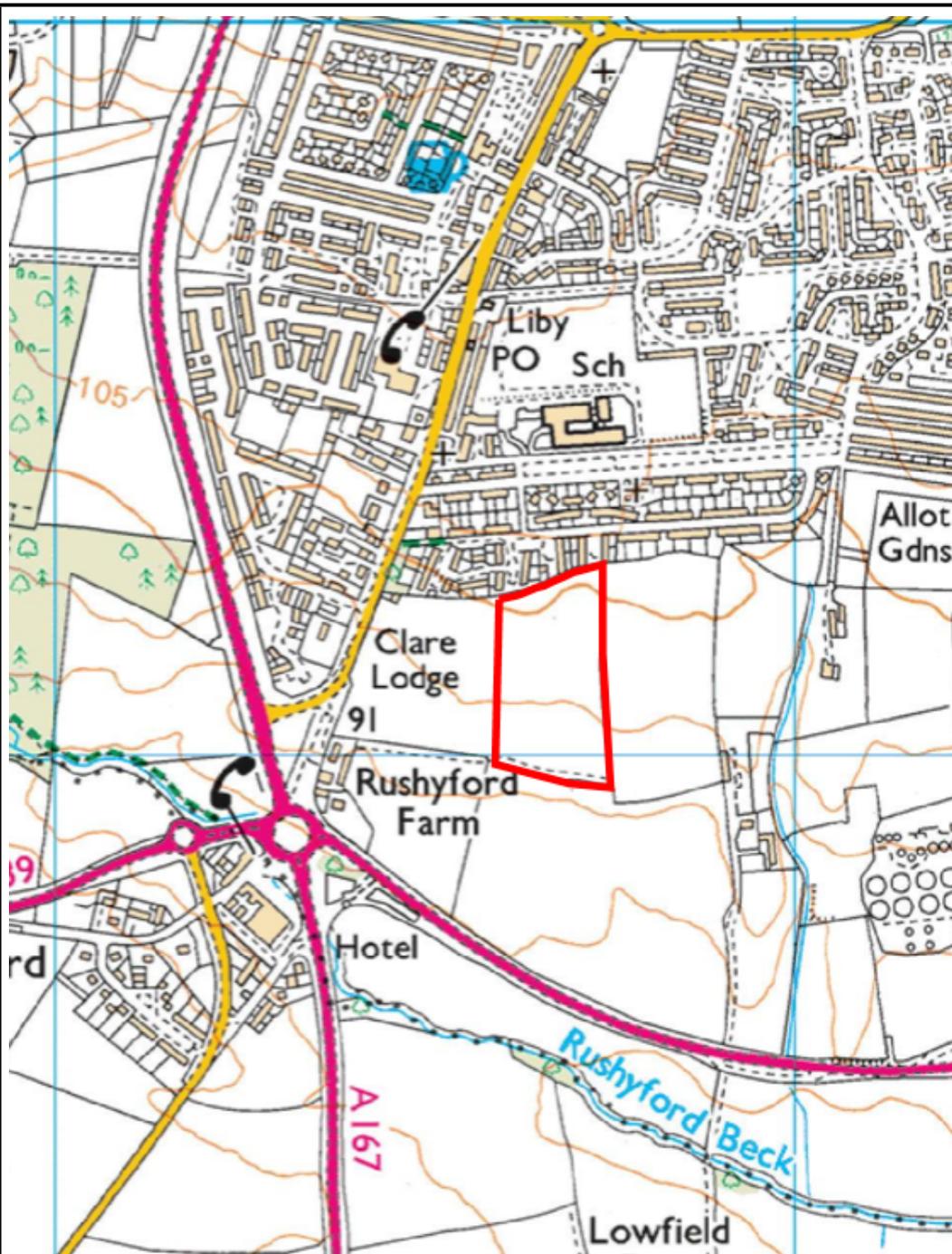
Sedgefield Borough Local Plan

The County Durham Plan (Submission Draft)

The County Durham Strategic Housing Land Assessment

The County Durham Strategic Housing Market Assessment

Statutory, internal and public consultation responses



**Planning Services**

DM/18/02594/FPA  
 Land To The East Of Clare Lodge And Durham  
 Road, Chilton, DL17 0RW

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**Comments**

**Date** 4 December 2018

**Scale** Not to scale

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# COMMITTEE REPORT

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## APPLICATION DETAILS

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<b>APPLICATION NO:</b>	<b>DM/18/02424/FPA</b>
<b>FULL APPLICATION DESCRIPTION:</b>	<b>Erection of stables, formation of associated parking and change of use of land for equestrian purposes</b>
<b>NAME OF APPLICANT:</b>	<b>Mr Ged Joyce</b>
<b>ADDRESS:</b>	<b>Ebchester Hill, Medomsley</b>
<b>ELECTORAL DIVISION:</b>	<b>Leadgate and Medomsley</b>
<b>CASE OFFICER:</b>	<b>Nick Graham</b> <b>Planning Officer</b> <b>Telephone:03000 264 960</b> <a href="mailto:nicholas.graham@durham.gov.uk">nicholas.graham@durham.gov.uk</a>

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## DESCRIPTION OF THE SITE AND PROPOSALS

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### The Site

1. The application site measures 5.24 hectares in area and is considered agricultural land. The site is bounded by a road and residential properties with timber post and wire fencing to the southern boundary, and dry stone walling to the other boundaries. The site sits at a prominent location at the corner of Ebchester Hill and Broomhill Terrace to the west and south respectively with residential properties to each of these elevations overlooking the site. Open countryside lies to the north and east of the site. The site falls away to its northern elevation in line with the topography of Ebchester Hill. The site is proposed to be accessed via an existing opening to Ebchester Hill. This site falls within a High Risk Area in terms of Coal Mining legacy.

### The Proposal

2. Planning Permission is sought to change the use of the land from agricultural to equestrian use, with a subdivision of the site into four separate paddocks. The proposal also proposes the erection of stables which would consist of four separate structures containing eight horse boxes, four tack / hay stores, and a separate manure store and would be constructed of concrete block render with vertical timber boarding and a Marley slate roof.
3. The existing access to the site would be widened and gates installed. An area of dolomite surfacing would also be created within the site, and eight parking spaces provided, along with a parking area for a horse box. This area would be divided from the stable buildings by post and rail fencing. The stables and associated hardstanding would be located near the south western boundary of the site. The applicant proposes to dispose of waste by collecting in the manure store and then spreading over the paddocks. In terms of the amount of acreage proposed, the site exceeds British Horse Society standards of two horses per hectare, as a maximum of eight horses would be stabled at the site and the site extends to over five hectares in area.

4. The application is reported to Committee due to the size of the site and that the development would be for non-personal equestrian use.

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## **PLANNING HISTORY**

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5. There is no relevant planning history at this site.

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## **PLANNING POLICY**

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### **NATIONAL POLICY:**

### **NATIONAL PLANNING POLICY FRAMEWORK:**

6. In March 2012 the Government consolidated all planning policy statements, circulars and guidance into a single policy statement, termed the draft National Planning Policy Framework (NPPF). The overriding message from the Framework is that planning authorities should plan positively for new development and approve all individual proposals wherever possible. It defines the role of planning in achieving sustainable development under three topic headings – economic, social and environmental, each mutually dependent. There is a presumption in favour of sustainable development. It requires local planning authorities to approach development management decisions positively, utilising twelve ‘core principles’ that should underpin both plan-making and decision making, the most relevant of these in this instance being:
7. *NPPF Part 2 - Achieving sustainable development* - The purpose of the planning system is to contribute to the achievement of sustainable development and therefore at the heart of the NPPF is a presumption in favour of sustainable development. It defines the role of planning in achieving sustainable development under three overarching objectives – economic, social and environmental, which are interdependent and need to be pursued in mutually supportive ways. The application of the presumption in favour of sustainable development for plan-making and decision-taking is outlined.
8. *NPPF Part 8 - Promoting healthy and safe communities* - The planning system can play an important role in facilitating social interaction and creating healthy, inclusive communities. Developments should be safe and accessible; Local Planning Authorities should plan positively for the provision and use of shared space and community facilities. An integrated approach to considering the location of housing, economic uses and services should be adopted.
9. *NPPF Part 9 - Promoting sustainable transport* - Encouragement should be given to solutions which support reductions in greenhouse gas emissions and reduce congestion. Developments that generate significant movement should be located where the need to travel will be minimised and the use of sustainable transport modes maximised.
10. *NPPF Part 15 - Conserving and enhancing the natural environment* - The Planning System should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, geological conservation interests, recognising the wider benefits of ecosystems, minimising the impacts on biodiversity, preventing both new and existing development from contributing to or being put at unacceptable risk from pollution and land stability and remediating contaminated or other degraded land where appropriate.

11. 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 below.

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

#### **NATIONAL PLANNING PRACTICE GUIDANCE:**

12. The National Planning Practice Guidance (NPPG) both supports the core government guidance set out in the NPPF, and represents detailed advice, both technical and procedural, having material weight in its own right. The advice is set out in a number of topic headings and is subject to change to reflect the up to date advice of Ministers and Government.
13. *Design* - The importance of good design. Good quality design is an integral part of sustainable development. The National Planning Policy Framework recognises that design quality matters and that planning should drive up standards across all forms of development. As a core planning principle, plan-makers and decision takers should always seek to secure high quality design, it enhancing the quality of buildings and spaces, by considering amongst other things form and function; efficiency and effectiveness and their impact on wellbeing.
14. *Land Stability* - The guidance provides advice to local authorities and developers to ensure that development is appropriately suited to its location, and that there are no unacceptable risks caused by unstable land or subsidence.
15. *Natural Environment* - Section 40 of the Natural Environment and Rural Communities Act 2006, which places a duty on all public authorities in England and Wales to have regard, in the exercise of their functions, to the purpose of conserving biodiversity. A key purpose of this duty is to embed consideration of biodiversity as an integral part of policy and decision making throughout the public sector.
16. *Noise* - Noise needs to be considered when new developments may create additional noise and when new developments would be sensitive to the prevailing acoustic environment. Consideration should be given to whether significant adverse effect or an adverse effect occurs or is likely to occur; or whether a good standard of amenity can be achieved. Paragraph 123 of the NPPF provides policy support to this aspect.

#### **LOCAL PLAN POLICY:**

17. The following section details the saved policies in the Derwentside District Local Plan thought most relevant to the consideration of this application:
18. *Policy GDP1 – General Development Principles* – outlines the requirements that new development proposals should meet.
19. *Policy EN1 - Development in the Countryside* - will only be permitted where it benefits the rural economy / helps maintain / enhance landscape character. Proposals should be sensitively related to existing settlement patterns and to historic, landscape, wildlife and geological resources.
20. *Policy EN2 - Preventing Urban Sprawl* - Except where provision has been made in the plan, development outside built up areas will not be permitted if it results in: the merging

/ coalescence of neighbouring settlements; ribbon development or; and encroachment into the countryside.

21. *Policy EN26 – Control of Development Causing Pollution* – permission will only be granted for development which is not likely to have an adverse impact on the environment having regard to likely levels of air, noise, soil or water pollution.
22. *Policy TR2 – Development and Highway Safety* – relates to the provision of safe vehicular access, adequate provision for service vehicle manoeuvring, etc.

*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.durham.gov.uk/Pages/Service.aspx?ServiceId=494>*

#### **EMERGING POLICY:**

23. 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 was submitted for Examination in Public and a stage 1 Examination concluded. An Interim Report was issued by an Inspector dated 15 February 2015, however that report was Quashed by the High Court following a successful Judicial Review challenge by the Council. As part of the High Court Order, the Council has withdrawn the CDP. In the light of this, policies of the CDP can no longer carry any weight.

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## **CONSULTATION AND PUBLICITY RESPONSES**

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#### **STATUTORY RESPONSES:**

24. *Highways Engineer*: No objections subject to the vehicular access crossing onto Ebchester Hill being constructed in accordance with the requirements of Section 184(3) of the Highways Act 1980.

#### **INTERNAL CONSULTEE RESPONSES:**

25. *Environmental Health Officer*: Considers that some of the measures proposed within the application would be difficult to control, specifically relating to the proposed hours of use and the lack of lighting proposed particularly early morning and evening when horses are turned and out and cleaned out prior to and after work. Management of the gate with each user is also queried. Lighting may also be a requirement particularly in winter months for animal welfare reasons however the applicant has indicated head torches would be used which is unlikely to cause significant impact. In terms of odour given the scale of the development the measures proposed are considered acceptable in principle.
26. Good animal husbandry and waste management should remove concerns regarding pest control whilst there is an expectation feed will be in sealed containers to prevent rodents at the site.
27. The Officer is also satisfied, based on the information submitted with the application, provided the operation of the site is carried out as per the application information, and subject to conditions relating to hours of use and prohibiting external lighting, that the potential of a statutory nuisance arising from the development would be mitigated against.

28. *Landscape Officer*: Advise that the site lies within an area identified in the County Durham Landscape Strategy as a Landscape Conservation Priority Area with a strategy of 'conserve and restore'.
29. The Officer considers that the development would have localised significant effects on the character and appearance of the site, introducing built development into a visually open part of the countryside and adversely impacting on views from bounding roads. Additionally, the area surrounding the proposal is liable to become cluttered with equestrian paraphernalia which the Local Planning Authority would have limited control over and would further erode the character of the area.
30. The Officer goes on to note the development would appear as an intrusive and isolated feature within the countryside and would not be in keeping with the open character and appearance of the site. The proposed scheme of landscaping would not be sufficient to screen the development, especially from the road to the north or residential properties to the south. The proposed materials are also considered unsuitable.

#### **EXTERNAL CONSULTEE RESPONSES:**

31. *Coal Authority*: Objects to this planning application, as the required Coal Mining Risk Assessment Report, or equivalent, has not been submitted as part of the application.

#### **PUBLIC RESPONSES:**

32. Neighbouring land owners and occupiers have been consulted, a site notice was posted close to the site and press notice published in the Northern Echo. This has resulted in 13 letters of objection being received.

Objectors' comments are summarised as follows:

- Management of the stables.
- Ancillary features associated with the stables.
- Smell from much heaps.
- Vermin from feed stores.
- Development would appear visually intrusive in the landscape.
- Design of the proposal is not in keeping with nearby stone-built properties.
- The development would be clearly visible from residential properties at Broomhill Terrace.
- The site is home to numerous wildlife species.
- Area is at saturation point with horses and stables.
- The site is unsuitable for a large commercial enterprise.
- Risk of further structures on site / a new dwelling house.
- Should the business fail there is a risk of alternative development proceeding.
- The centre of the site floods.
- Additional landscaping would be ineffective as the nearby residential buildings are taller.
- No mention of electricity or water connection including a toilet.
- No floodlighting is a risk on dark winter evenings.
- Access point is close to a busy junction on a busy road.
- Slow moving vehicles could significantly increase the risk of accidents.
- Inevitable parking of large vehicles on the roadside.
- Damage to footpath from existing horses in the area.
- The actions of existing horse riders in relation to horse manure is unacceptable.
- The site address is inaccurate and should read Medomsley Edge crossroads.
- Land ownership issues.

- Inaccuracies on the application form.
- Compliance with Health and Safety regulations.
- Informed by a solicitor nobody can build in front of my property due to mine workings.

#### **APPLICANTS STATEMENT:**

33. I have worked with officers to address concerns, particularly the potential for the development to cause a statutory nuisance. Subject to conditions of approval, the Council's Pollution Control team has removed its objection to the proposal.
34. I understand there are concerns the proposed development would have an unacceptable impact on the character of the landscape. Policy EN1 of the Local Plan advises that development will only be permitted in the countryside where it benefits the local economy or maintains or enhances landscape character. In its pre-application advice, the Council accepted the proposal would introduce economic benefits. LP Policy GPD1 requires development to be of a high-quality design, in keeping with the character and appearance of the area and which protects existing landscape features. I would welcome a condition of planning permission to ensure the materials I use are appropriate.
35. Whilst I appreciate the stables would be visible from the public vantage points, the proposed buildings, by virtue of their small scale and use of materials, would be appropriate and characteristic buildings suited to their purpose. Stables and the keeping of horses is an activity commonly found in rural areas and the site's use for these purposes is not inappropriate given its countryside location. Most of the site would remain open and undeveloped and therefore the proposal would not be unduly prominent, or so dominant, that it would harm the character and appearance of the rural landscape. Please note the land could be divided with fencing without the express planning permission of the Council. Refusing the development on the basis the land is divided would be unreasonable. Additional screening could be secured by planning condition(s) which would lessen the proposal's visual impact. Furthermore, the stable development would not be viewed in isolation but in the context of surrounding development including residential properties to the south and southwest.
36. As for the impact of vehicles and associated general activity, limiting the operations by condition will ensure any adverse impact on residential amenity is minimised, whilst noting the site is northeast of a busy junction. We are not aware of any concerns being raised regarding the proposal's impact on highway safety.
37. May I draw the Committee's attention to the Council's refusal of planning application reference DM/16/00473/FPA in May 2016. This application proposed a new stable block at Broomhill South Farm, Ebchester Hill, Durham DH8 6RZ just to the north of my site. The Council's decision was overturned at appeal, reference APP/X1355/W/16/3153532.
38. Councils are at risk of an award of costs at appeal if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing planning applications. '*Not determining similar cases in a consistent manner*' is an example of unreasonable behaviour. I suggest this appeal decision is a material planning consideration that carries significant weight in the consideration of my application. '*Refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead*' is another example. I firmly believe that conditions of planning permission that afford the Council control over the development will make my proposal acceptable. For this reason, I would respectfully ask

the Committee to overturn the Officer recommendation and grant conditional planning permission for my proposal.

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## **PLANNING CONSIDERATIONS AND ASSESSMENT**

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39. Having regard to the requirements of Section 38(6) of the Planning and Compulsory Purchase Act 2004, the relevant Development Plan policies, relevant guidance and all other material planning considerations, including representations received, it is considered that the main planning issues in this instance relate to the principle of the development, protection of existing landscapes, design, residential amenity, highway safety, land stability and drainage.

### The Development Plan

40. 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 Derwentside District Local Plan remains the statutory development plan and the starting point for determining applications as set out at Paragraph 12 of the NPPF. However, the NPPF advises at Paragraph 213 that the weight to be afforded to existing Local Plans depends upon the degree of consistency with the NPPF.

41. The Local Plan was adopted in 1997 and was intended to cover the plan period until 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 depending on the circumstances.

42. The County Plan is at the beginning of the process to consider and ultimately adopt its policies.

### The NPPF

43. Paragraph 11 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 an up-to-date development plan without delay; or
- where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
  - i. the application of policies in this (sic) Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
  - ii. 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.

### Policy Principle – Development in the Countryside

44. The Policies 'most important' for determining the application are; EN1, 'Protecting the Countryside' and EN2, 'Preventing Urban Sprawl'. These policies are designed to protect

the intrinsic value of the countryside and are not considered out-of-date therefore the first bullet point of Paragraph 11 of the NPPF is applicable.

45. Policy EN2's relevant criteria, Point C, that development will not be permitted outside existing built up areas if it results in an encroachment into the countryside, is failed. Policy EN1 allows for development where it would benefit the rural economy, or where it helps maintain or enhance landscape character. It further requires proposals should be sensitively related to existing settlement patterns and to historic, landscape, wildlife and geographical resources in the area. The proposals are considered to fail these requirements for the reasons outlined below.
46. The Landscape Officer has set out value of the site as countryside, and its raised value as within an area identified in the County Durham Landscape Strategy as a Landscape Conservation Priority Area with a strategy of 'conserve and restore'. The value the local community put on the land is strongly represented through their consultation responses.
47. It is accepted that by their nature such proposals are frequently found in the countryside. The Landscape Officer has however noted significant concerns in relation to the localised effects of the development on the character and appearance of the site. The development is proposed in a visually prominent location, at the crossroads of two well-used rural routes within this area of the County and would be viewed from considerable distances within the locality.
48. There is also the risk of the area becoming cluttered with equestrian paraphernalia which the Local Planning Authority would have limited control over and would further erode the character of the area. A formalised parking area close to Ebchester Hill would also negatively impact upon this countryside setting, with the Landscape Officer noting the proposed scheme of screening / planting appearing out of place at this part of the site. Significant concerns have also been raised by objectors in this regard.
49. Given all of the above, it is considered the development would not protect the existing landscape features of the site, and would result in encroachment into the countryside, contrary Policies EN1 and EN2 of the Local Plan.

## Design

50. Derwentside Local Plan Policy GDP1, Point A, requires a high standard of design in keeping with the character and appearance of the area. The form, mass, layout, density and materials must be appropriate to the site's location and should take into account the site's natural and built features. This fully complies with Section 7 of the NPPF. It is noted that objectors consider that the design is not in keeping with the character of the area as the buildings are not in keeping with the nearby residential stone-built properties.
51. The buildings are of a simple design and are generally of a suitable material for non-personal equestrian use, with the design being similar to many other modern equestrian buildings seen throughout the County and the materials alone are not considered unacceptable. However, the buildings would be visible from the first floor windows of the residential properties approximately at Ebchester Hill and Broomhill Terrace, and in terms of their overall scale and massing are likely to have a negative effect due to the overall built development proposed and their concentration within the western part of the site. This is likely to affect the overall character of the area in association with the landscape concerns raised above and in this regard the development is considered contrary to Point A of Policy GDP1.

## Impacts on residential amenity

52. Derwentside Local Plan Policy GDP1 seeks to ensure that neighbours are protected from harmful development. Policy EN26 of the Derwentside Local Plan only allows for development to be granted where it is not likely to have an adverse impact on the environment having regard to likely levels of noise pollution. Both policies accord with Part 15 of the NPPF which advises that decisions regarding developments should aim to avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development and should aim to mitigate and reduce impacts arising from noise through the use of conditions.
53. Proposals involving stables and keeping of horses have the potential to cause detrimental impacts upon the amenity of residents in terms of noise, odour and general disturbance from comings and goings which are all concerns raised by residents.
54. The stables would be approximately 55m from the nearest neighbouring properties at Ebchester Hill. Whilst the concerns of neighbours are recognised the Environmental Health Officer considers that subject to appropriate conditions relating to lighting and the hours of operation, the proposal is unlikely to lead to a statutory nuisance and would not lead to an adverse impact in relation to noise, odour or vermin issues for residents due to the waste management proposed and number of horses detailed in the application.
55. It is considered therefore that there would be no adverse impacts in terms of residential amenity and therefore the proposal accords with both the policies of the Local Plan and the NPPF.

#### Highway Safety

56. In accordance with Derwentside Local Plan Policy TR2 all developments should have a safe access to the Highway. Whilst it is recognised the existing access to the site from Ebchester Hill would be insufficient, the Highways Engineer is satisfied the improved access as detailed on the proposed plans, along with the proposed parking arrangement, would be acceptable in highways terms.
57. Concerns raised by objectors in relation to access visibility, and additional and slow moving traffic, have not been raised as concerns by the Highways Officer. Therefore, it is considered that the access would be adequate and vehicle movements / types of vehicles associated with the usage would not be detrimental to the safety of the local roadways in accordance with Policy TR2.

#### Land stability

58. The site is within a high risk area in terms of former mine workings which could affect the safety and stability of the area. Land stability and the lack of detail in relation to this matter is a concern that has been raised by several local residents.
59. In terms of the NPPF, Part 15 requires Local Planning Authorities to prevent new development from being put at unacceptable risk from amongst other effects land instability. It is noted that the Coal Authority have objected to the development as they consider there is insufficient information to assess whether or not issues of land instability relating to the past coal mining activity on the site can be satisfactorily overcome. The applicant has been advised to undertake a Coal Mining Risk Assessment to overcome this issue however as the proposal in principle has not provided this detail.
60. In this regard the development is considered unacceptable in land stability terms as the required Risk Assessment has not been provided to sufficiently address the potential land instability issues at the site, contrary to Part 15 of the NPPF.

## Drainage Issues

61. Derwentside Local Plan Policy GDP1 seeks to ensure that there is adequate provision for surface water drainage. This has been raised as a concern by residents who detail historical drainage issues within the centre of the site particularly. It is proposed that surface water will drain to a soakaway which would accord with the County Durham Surface Water Management Plan and therefore this would be considered acceptable subject to a suitable condition requiring its installation within a specific timescale. This policy is consistent with Part 11 of the NPPF and can therefore be afforded weight in the decision making process.
62. The applicant has confirmed a mains water connection would be secured to each individual stable block. The views of Northumbrian Water had not been received in this regard at the time of the report being published.

## Promotion of Health

63. Part 8 of the NPPF seeks to facilitate social interaction and create healthy, inclusive communities and recognises the importance of access to opportunities for sport and recreation. Being a proposal that enables personal outdoor pursuits this proposal would gain the support from the NPPF in this respect.

## Ecology

64. Concerns have been raised by objectors in relation to wildlife at the site, however the proposal does not fall within any of the ecology buffer zones relating to ponds, water or woodland, and given most of the site would remain grassed it is not considered reasonable to request a Biodiversity survey is undertaken in this regard.

## Other Issues

65. The objectors have raised several issues many of which are not material planning considerations and do not therefore form a part of the assessment of the application. Issues regarding the ownership of the site and land ownership rights across the access are not of relevance as the correct notice has been served on the land owners.
66. It is noted that objectors are concerned that approval of the application would set a precedent for further or different development however any further applications would be considered on their own merits.
67. Concerns have been raised over the cumulative impacts of equestrian development in the vicinity of Medomsley. This has come about in recent years due to the national trend of closure of riding schools and the breakup of agricultural smallholdings in the area and it is acknowledged in edge of settlement and countryside locations such development is more prevalent, however each case must be considered on its own merits.
68. Comments have been raised regarding whether the proposal complies with Health and Safety legislation in terms of floodlighting / electricity / drainage / lack of a toilet, however this would be a matter for the relevant legislation and is not for the Planning Department to enforce.

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## **PLANNING BALANCE AND CONCLUSION**

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69. The Policies most important for determining the application, Policies EN1 and EN2, are not out-of-date and therefore lead the assessment and conclusions of the application.

70. The short-term benefits to the local economy brought by the construction phase are identified as of positive material weight. Additional economic activity by prospective tenants in the local area also counts in the application's favour.

71. However, the landscape impacts and encroachment into the countryside are considered unacceptable and contrary to Policies EN1, EN2 and GDP1 of the Derwentside District Local Plan, whilst the required Coal Mining Risk Assessment has not been provided to address land instability concerns contrary to Part 15 of the NPPF.

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## **RECOMMENDATION**

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

1. The proposed development and paraphernalia normally associated with equestrian activity is considered to conflict with the Policies, EN1, EN2 and GDP1 in the saved Policies of the Derwentside District Local Plan 1997, and Paragraph 170 of the Framework, being an encroachment into the open countryside in a prominent and open location thereby having a significant and detrimental impact upon the landscape character the area.
2. The land instability impacts of the proposal have not been sufficiently addressed, contrary to Part 15 of the NPPF.

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## **STATEMENT OF PROACTIVE ENGAGEMENT**

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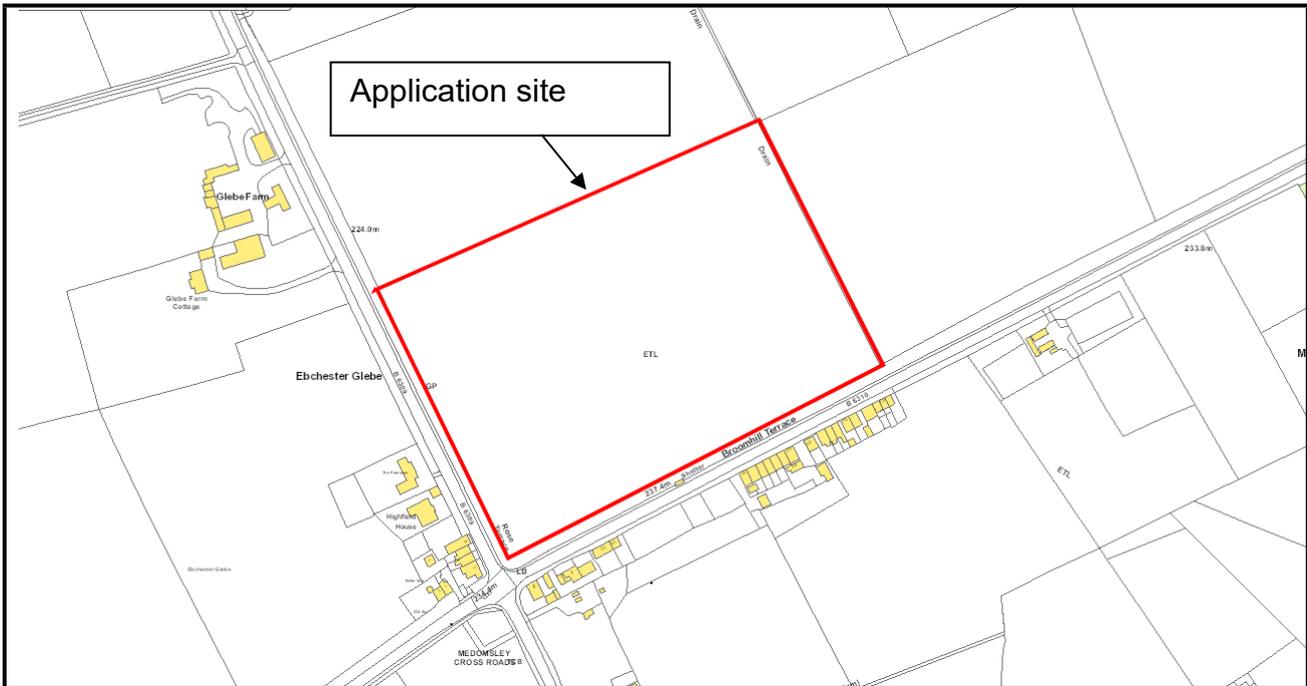
The Local Planning Authority in arriving at the decision to refuse the application has tried to secure a positive outcome in accordance with the NPPF however the proposal is considered to be unacceptable in principle.

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## **BACKGROUND PAPERS**

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Derwentside District Local Plan (saved policies 2007)  
National Planning Policy Framework, March 2012  
National Planning Practice Guidance  
Statutory, internal and public consultation responses  
Submitted forms, plans and supporting documents



**Planning Services**

**Ebchester Hill, Medomsley**

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**Comments**

**Date** 4<sup>th</sup> December 2018

**Scale** 1:2500