



## **Area Planning Committee (Central and East)**

**Date**      **Tuesday 10 December 2019**

**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. Minutes of the meeting held on 12 November 2019  
(Pages 3 - 18)
4. Declarations of Interest, if any
5. Applications to be determined by the Area Planning Committee  
(Central and East)
  - a) DM/19/03217/FPA - 12 Hatfield Place, Peterlee  
(Pages 19 - 28)

Resubmission of DM/19/01057/FPA for new pitched roof to existing property, two storey side extension and change of use of adjacent land from open space to private garden.
  - b) DM/19/03257/FPA - 32 Whinney Hill, Durham  
(Pages 29 - 42)

Change of use from small HMO (Use class C4) to 9 bed large HMO (Use Class Sui Generis) including erection of part two-storey/part single-storey extension to rear.
  - c) DM/19/02667/FPA - Land to the North of Robson Avenue, Peterlee (Pages 43 - 62)

Construction of a new 2 and 3 Storey Extra Care building (falling within Class C2) providing 71 no. Apartments, associated access and hard and soft landscaping (amended description).

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

**Helen Lynch**  
Head of Legal and Democratic Services

County Hall  
Durham  
2 December 2019

To: **The Members of the Area Planning Committee (Central and East)**

Councillor J Clark (Chair)  
Councillor A Laing (Vice-Chair)

Councillors G Bleasdale, D Brown, I Cochrane, K Corrigan,  
B Coult, M Davinson, D Freeman, A Gardner, K Hawley,  
S Iveson, R Manchester, J Robinson, J Shuttleworth and  
P Taylor

**DURHAM COUNTY COUNCIL**

**AREA PLANNING COMMITTEE (CENTRAL AND EAST)**

At a Meeting of **Area Planning Committee (Central and East)** held in **Council Chamber, County Hall, Durham** on **Tuesday 12 November 2019** at **1.00 pm**

**Present:**

**Councillor J Clark (Chair)**

**Members of the Committee:**

Councillors D Brown, I Cochrane, B Coult, M Davinson, D Freeman, S Iveson, R Manchester, J Shuttleworth, H Bennett (substitute for G Bleasdale) and J Maitland (substitute for A Laing)

**Also Present:**

Councillors J Blakey and S Dunn

**1 Apologies for Absence**

Apologies for absence were received from Councillors G Bleasdale, K Corrigan, K Hawley, A Laing, J Robinson and P Taylor.

**2 Substitute Members**

Councillor H Bennett substituted for Councillor G Bleasdale and Councillor J Maitland substituted for Councillor A Laing.

**3 Minutes**

The minutes of the meeting held on 15 October 2019 were confirmed as a correct record by the Committee and signed by the Chair.

**4 Declarations of Interest**

There were no declarations The Chair, Councillor J Clark declared a prejudicial interest in item number 5a on the Agenda as a Board Member of the Believe Housing Values Group and confirmed that she would therefore leave the Chamber before the debate and deliberation of that application.

Councillor S Dunn, a Local County Councillor registered to speak, noted for clarity he was also Chair of Coxhoe Parish Council. Councillor D Freeman explained he was a Member of the City of Durham Parish Council, however, was not a member of their Planning Committee and had no input into their comments on the application 5b.

*Councillor J Clark left the meeting at 1.06pm.*

## **5 Applications to be determined by the Area Planning Committee (Central and East)**

The Solicitor – Planning and Development, Neil Carter asked for nominations for Chair for Item 5a.

Councillor J Shuttleworth proposed that Councillor M Davinson be elected Chair, he was seconded by Councillor R Manchester.

### **Resolved:**

That Councillor M Davinson be elected Chair, for consideration of Item 5a.

### **Councillor M Davinson in the Chair**

#### **a DM/19/01781/OUT - Garage and Yard to the rear of 1 to 2 Linden Terrace, Coxhoe**

The Senior Planning Officer, Paul Hopper, gave a detailed presentation on the report relating to the abovementioned planning application, a copy of which had been circulated (for copy see file of minutes). Members noted that the written report was supplemented by a visual presentation which included photographs of the site. The Senior Planning Officer advised that Members of the Committee had visited the site and were familiar with the location and setting.

The application was for outline planning permission for the demolition of existing buildings and the erection of 5 No. dwellings with all matters reserved (amended description) and was recommended for approval.

The Senior Planning Officer referred Members to aerial and site photos, and asked Members to note indicative plans and elevations, demonstrating that five dwellings could be accommodated on the site. He reminded Members the proposals were an outline application, with a reserved matters application at a future date to deal with all design details.

The Senior Planning Officer explained that the application had been brought to Committee at the request of Local Members and there had been 16 letters of objection to the initial application, with an additional three objections upon the amended plans being submitted. It was noted that objections were summarised in the report and included: highways safety, parking and loss of garages; impact upon residential amenity; noise and disturbance and overdevelopment of the site. He explained that a 99-signature petition in objection to the application had been received, originally sent to Believe Housing and subsequently forwarded to the Planning Department. It was noted there were no objections from statutory or internal consultees subject to condition, save Coxhoe Parish Council, who had a representative in attendance to speak.

The Senior Planning Officer reiterated that the application was in outline, however, it was noted that the indicative plan did demonstrate how access and separation distances could be achieved. He explained there was a condition within the application for bungalows along the front of the site, along Linden Grove as bungalows would relate more acceptably to existing bungalows. The Senior Planning Officer explained that the application was considered in terms of the NPPF Paragraph 11 Balance Test, and Officers considered that the negative impacts of the development did not outweigh the benefits and therefore the application was recommended for approval.

The Chair thanked the Senior Planning Officer and asked the Clerk to Coxhoe Parish Council, Claire Llewellyn to speak in objection to the application.

Parish Clerk C Llewellyn thanked the Chair and noted the Parish Council objected to the application as many residents had attended a Parish Council meeting to speak in objection to the application. She added a number of older people living nearby would be disturbed by the proposals and that the strength of feeling was indicated by the 99-signature petition. She noted objections included that the proposals represented overdevelopment of the site and were out of character with the area.

Parish Clerk C Llewellyn explained that the Parish Council and residents also had concerns in terms of traffic and parking issues, felt the proposed townhouses were too close to Linden Terrace and there would be problems with overlooking. She added that should the Committee be minded to approve the application, the Parish Council would ask that, rather than the town houses, there be four bungalows on the same alignment as the original proposal.

Parish Clerk C Llewellyn concluded by noting it was hoped the Committee would reflect on the strength of feelings of local residents, especially considering the impact on elderly residents.

The Chair thanked Parish Clerk C Llewellyn and asked Councillor J Blakey, Local Member to speak in relation to the application.

Councillor J Blakey thanked the Chair and Committee and noted the surprise of residents living very close to the site who had not been informed of the Committee meeting. She added she felt that Local Members should be kept informed and she had great concerns as regards the proposals for development right in the middle of a number of bungalows. Councillor J Blakey noted there was a need for change at the site, but the proposed in-fill development would have a negative impact on residents. She noted that Members, on their site visit, would have noted the route to gain access to the site with a number of speed humps, adding she felt the access and parking provision would not be sufficient and the proposal represented overdevelopment.

Councillor J Blakey noted that she did not object to bungalows, however, the issue was with the lives of people living nearby. She referred to numerous in-fill developments in the area where, when a site has finished, there can be issues of roads and footpaths being left incomplete and unadopted. She added this led to concern and given budget shortfalls she did not think that the Council would be able to complete such works if required. Councillor J Blakey concluded by noting that Members needed to consider the age of the residents in the area and impact the development would have on them, preventing them being able to get out and about during development.

The Chair thanked Councillor J Blakey and asked Councillor S Dunn, Local Member to speak in relation to the application.

Councillor S Dunn thanked the Chair and Committee and noted that paragraph three of the report set out the application was in outline, though for five dwellings, reduced from nine. He added that the indicative layout was referred to at paragraph four, for two bungalows and three, three-storey houses and that had raised concerns.

Councillor S Dunn noted that Paragraph 5 of the NPPF referred to “Delivering a Wide Choice of High Quality Homes”, noting to deliver a wide choice of high quality homes and create sustainable, inclusive and mixed opportunities. He added that in the context of ongoing developments in the area, with 500 homes being developed within 200 metres of the application site there was a plentiful housing supply.

Councillor S Dunn explained paragraph 21 of the report referred to saved Local Plan Policy H3 “New Housing Development within the Villages” which noted windfall development was permitted, if the scheme was appropriate in scale, design location and number of units. He noted that he respectfully suggested that the proposals were not appropriate in that respect.

It was added that Policy H10 “Backland and Tandem Development” was also applicable and Councillor S Dunn noted he felt that the application would adversely affect amenity for existing occupiers and would not be in keeping with the area. He also referred to Policy H13 “Residential Areas – Impact upon Character and Amenity”, adding he felt that the proposed change of use and application would have an adverse impact upon amenity and character of the area.

Councillor S Dunn noted that paragraph 45 of the report set out the public responses and he echoed the comments made, and in respect of paragraph 46 of the report he noted that the proposals represented a significant loss of parking and the three, three-storey properties would overlook neighbouring properties. He added that the 99-signature should be taken into account and reiterated his points regarding Policy H3, relating to paragraph 56 of the report, and noted that as it was known there were 500 houses being developed in the nearby area, then Policy H3 should apply.

Councillor S Dunn explained that in relation to paragraph 60 of the report, he disagreed with Planners in relation to NPPF Paragraph 11(d)(ii) and noted paragraph 63 of the report, relating to Inspectors’ decisions in relation to housing land supply. He reiterated that there were 500 houses being built in the vicinity and therefore local housing need was being met.

Councillor S Dunn noted paragraph 67 of the report referred to Policy H13 and it stated that the policy should be afforded significant weight. He added he agreed and that in his opinion the three-storey dwellings would not add to the quality of the area. He noted that paragraph 68 referred to the application being in outline, with design details to be determined at the reserved matters stage, however as an indicative layout had been provided with three, three-storey he felt that this would then set the principle that such dwellings were permissible. He added that if there was the possibility, he would say refuse the application.

Councillor S Dunn noted paragraph 70 of the report referred to separation distances being slightly less than the minimum requirements, he added that the community would accept this if all the dwellings were bungalows. He added that paragraph 74 of the report referred to no adverse impact on residential amenity, Councillor S Dunn noted that he felt this would be dependent upon what was put forward at the reserved matters stage and therefore he could not agree with the report in this regard.

Councillor S Dunn noted that if the Committee were minded to approve the application he would ask that they amend Condition 5 to include a restriction to the property types such that all were bungalows.

He concluded by noting he felt the benefits of the application as listed at paragraphs 110 to 113 were limited and therefore he would ask that the Committee refuse the application for the reasons he set out.

The Chair thanked Councillor S Dunn and asked if the Senior Planning Officer wished to comment on the points raised by the speakers.

The Senior Planning Officer noted the suggestion from the Local Members that all bungalows at the site would be more acceptable in terms of the local residents who had raised objections. He added that the initial scheme submitted had been revised following feedback and the application before Committee was that revised outline application. He noted that the scale, design and layout would be considered at the reserved matter stage. As regards the weight afforded to saved policies, he noted the recommendations from Officers were set out within the report. The Senior Planning Officer explained that in relation to Policy H3, colleagues from the Spatial Policy Team had considered it to be out of date and therefore the balance test as set out in NPPF Paragraph 11 would come into effect, meaning that if the adverse impacts of a proposal were outweighed by the benefits then the application would be recommended for approval.

The Solicitor – Planning and Development noted in relation to the suggestion to alter Condition 5 to restrict the dwelling type to bungalows only, he reiterated the comments of the Senior Planning Officer, noting the application being considered was in outline. He added details would be set out at the reserved matter stage and also Condition 5 as set out afforded some protection in terms of the scale of any dwellings with elevations onto Linden Grove. He noted that the view from Planning was there was a need to condition in relation to those elevations onto Linden Grove, however, their professional opinion was that this did not extend to a requirement for bungalows for the whole of the site. The Solicitor – Planning and Development noted that on that basis he did not feel an altered condition to require all dwellings to be bungalows would be sustainable if appealed.

The Highways Development Manager, John McGargill noted that in assessing the proposed development he had looked at what was presently at the site, 15 garages, and the number of trips those garages would generate. In reference to comments made by Local Members in terms of generating additional on-street parking he explained that it had been demonstrated that the site could accommodate its own parking within the application area. He added in terms of the quality, standards and maintenance of the existing road and footways that following completion of the development, that the existing assets would be inspected prior to works commencing and should there be issues of the reinstatement not being carried out to an acceptable standard then enforcement action could be taken.



He concluded by noting that as there were no highways safety issues in terms of the number of trips, parking or access there had been no objections to the proposals from the Highways Section.

The Chair thanked the Officers and asked Ms Morag Stephens, Local Resident, to speak in objection to the application.

Ms M Stephens explained she was a neighbour to the application site and noted no public notices on any lampposts in the area and there was very little boost to local housing numbers, especially given the 500 homes being developed nearby, as Councillor S Dunn had mentioned previously. She added that when looking at the application site it was in two parts, two bungalows and three, two-and-a-half storey properties which would be huge. She noted the impact on Cornforth Lane and Linden Terrace in respect of being overlooked and added there would not be that impact should those properties be replaced with bungalows. Ms M Stephens concluded by noting that there would be a negative impact from the three, two-and-a-half storey properties on those nearby and that from Linden Grove there would be a discontinuity when looking up towards those dwellings.

The Chair thanked Ms M Stephens and asked Mr Stuart Wilson, Local Resident, to speak in objection to the application.

Mr S Wilson noted he spoke on behalf of a number of local residents from Linden Grove, many of which were elderly, disabled, dependent upon assisted living or sadly terminally ill. He explained that there was strong objection from local people to the application, as evidenced by the only voice available to local residents, the 99-signature petition. He stressed that every resident of Linden Grove had signed the petition in objection to the application. He added he was not sure when the Highway Development Manager had visited the site, however, he invited him to visit while refuse vehicles were struggling to manoeuvre and when Carers' vehicles were parked while they attended to residents, noting one resident that had two Carers visit her five times a day.

He concluded by reiterating the negative impact the application would have on local residents and therefore he urged the Committee to refuse the application.

The Chair thanked Mr S Wilson and asked Officers to respond to the points raised.

The Senior Planning Officer explained that there had been two types of notice in relation to the application, a site notice attached to a nearby lamppost, which Members saw in-situ on their site visit earlier in the day, and Neighbour Notification Letters that had been delivered to those nearby as per policy.

The Highways Development Manager noted the highway at the location was a standard width to allow two vehicles to pass side by side and therefore the usual services such as refuse collection were able to access the area.

The Chair thanked the Officers and asked the Committee for their comments and questions.

Councillor J Shuttleworth noted that from the comments from speakers and past experience of Committee Members, bungalows were considered more acceptable. He noted the access did not lend itself to the three storey dwellings, the issues in terms of local concerns as regards adoptable standards and therefore he felt he would not be able to vote in favour of the application.

Councillor J Maitland noted that Policy H3 referred to not granting permission if a proposed development had significant impact upon character and amenity. She noted she felt the application represented a significant impact.

Councillor D Freeman noted that objectors had made it clear there was not opposition to the site being developed, just objection to the specific scheme being considered. He asked that if the Committee were minded to approve the application the reserved matters application would come back to Committee for Members to consider. He also asked as regards the proposed amendment to Condition 5 in terms of all bungalows for the site. The Senior Planning Officer noted that, in general, most reserved matters applications would be considered under delegated authority by Officers unless called-in for consideration by Committee in line with the Council's Constitution.

The Highways Development Manager noted that in respect of the access within the site, this would be a shared private access and would not be adopted by the Authority.

Councillor D Brown noted that he understood the concerns of residents, however, the application was in outline form and the list of benefits as set out outweighed the limited impact as set out by Officers and therefore, he did not feel the Committee could go against the Officer's recommendation and felt that any appeal would likely be successful.

The Solicitor – Planning and Development reiterated that Condition 5 could be altered to propose all the dwellings at the site be bungalows, however, there would need to be a planning justification. He felt that the justification would be limited as there was already one area of the site where the restriction was proposed, with justification as set out within the report. He added that there would need to be demonstration of the condition being necessary for a planning purpose and asked for the Senior Planning Officer for his comments in this respect.

The Senior Planning Officer noted that in assessing the application, the issue of the elevation at Linden Grove had been looked at and bungalows were proposed in order to be in keeping with the existing properties along Linden Grove. He noted that in terms of the southern part of the application site, the properties at Linden Terrace and Cornforth Lane were two storeys, therefore the restriction for bungalows was only justified at the part of the site facing onto Linden Grove.

Councillor R Manchester referred to paragraph 45 which noted “the site was previously reserved for bungalows” and asked for further information. The Senior Planning Officer noted that the planning history for the site and comments from legal as regards any covenants relating to the site had shown no such previous designation for bungalows as asserted by objectors.

Councillor J Maitland noted that given the comments from all sides she felt that the outline application should be approved and proposed the recommendation for approval as set out within the report. She added that she hoped Local Members would monitor the situation and that the details could come back to Committee as required. Councillor S Iveson seconded the proposal.

## **RESOLVED**

That the application be **APPROVED** subject to the conditions as set out within the report.

*Councillor J Clark entered the meeting at 1.55pm*

## **Councillor J Clark in the Chair**

### **b DM/19/02862/FPA - 35 Elvet Crescent, Durham**

The Planning Officer, Jennifer Jennings, gave a detailed presentation on the report relating to the abovementioned planning application, a copy of which had been circulated (for copy see file of minutes). Members noted that the written report was supplemented by a visual presentation which included photographs of the site. The Planning Officer advised that Members of the Committee had visited the site and were familiar with the location and setting. The application was for change of use from 6 bedroom House in multiple Occupation (HMO) to 7 bedrooms (C4 to Sui Generis) and loft conversion and was recommended for approval.

The Planning Officer noted that the property was in central Durham with University owned land to the rear used for staff parking, and the property was one of four in a semi-detached block.

She referred Members to elevations and noted that, except for roof lights, there would be no external alterations. She referred the Committee to existing and proposed floorplans, highlighting the change from six to seven bedrooms.

The Planning Officer noted no objections from the Highways Section or Police, with objections having been received from the City of Durham Parish Council and City of Durham Trust. She noted objections included the application being considered contrary to the interim policy on student accommodation and concerns as regards the number of applications to convert family dwellings into HMOs or to increase the size of existing HMOs which did not promote or preserve an inclusive, mixed and balanced community, contrary to NPPF Paragraph 8(b).

The Planning Officer noted that in terms of internal consultees, Design and Conservation noted no objections, subject to heritage style roof lights being used. She added there were no objections from Environmental Health or Ecology in relation to the application. The Planning Officer noted that Spatial Policy had reported that the percentage of HMOs within a 100-metre radius was 67.1 percent. She noted that the HMO Licensing Team had noted the property would need to be licenced under the Housing Act 2004 Part 2, and the applicant had demonstrated the requirements in terms of room sizes.

The Planning Officer noted the application had been called-in by the Local Member, noting the concerns as raised by those in objection and issues in terms of community cohesion.

The Planning Officer noted that saved Local Plan Policy H9 applied to HMOs and student accommodation and therefore NPPF Paragraph 11 was not engaged and policy H9 could be afforded full weight in considering the application.

The Planning Officer noted that the percentage of HMOs within the 100-metre radius as set out in the interim policy would not be increased and therefore the application was not in conflict with the aims of the interim policy in terms of housing mix. The Planning Officer noted the report set out recent appeals decision which gave Members context in this regard.

The Planning Officer noted that when assessing against the relevant policies, Officers felt that the application would not alter the housing mix and taking into account the recent appeal decision, and that the alterations proposed were not significant and would not impact negatively upon the Conservation Area. She concluded by noting the interim policy had less weight than saved Policy H9 and on that basis the application was recommended for approval, subject to the conditions as set out within the report.

The Chair thanked the Planning Officer and asked Parish Councillor, Roger Cornwell, representing the City of Durham Parish Council, to speak in relation to the application.

Parish Councillor, R Cornwell explained the Parish Council urged the Committee to refuse the application because it breached the Interim Policy on Student Accommodation. He noted that the 67.1 percent of student households was well in excess of the 10 percent threshold. He added that it was not so far gone to say that the localised community was too imbalanced to be worth protecting and supporting. He noted one third of the local residents were not students and that a good number of student residents appreciated peace and quiet so that they can get on with their studies.

Parish Councillor, R Cornwell noted his remarks would focus on paragraphs 42 and 43 of the Officer's report, in which she tried to make a case that the community was already too imbalanced. He noted she referred to two recent appeal decisions, in the first of which at 10 High Wood View the percentage of student households was 73 percent, six percentage points higher than the case for the Committee to consider today. Parish Councillor, R Cornwell explained that indeed the appellant has argued that due to the number of empty properties owned by the University the figure there could be as high as 87 percent and therefore one more HMO would not make things much worse.

Parish Councillor, R Cornwell noted the second case might at first glance appear more difficult for those objecting because the percentage was 61.8. He noted that Members had received a briefing at a recent meeting of the Committee and this case was mentioned. He reminded Members that this property was in Peartree Cottages, also in High Wood View, adjacent to St. Oswald's Cemetery and with Oswald's Court on the other side.

Parish Councillor, R Cornwell noted the successful applicant in the second case said in his appeal statement:

*"Oswald Court is an entirely separate and distinct housing area the southern extent of which just happens to be within 100m of the appeal site. This has extremely low levels of student exemption housing (2 percent) and therefore significantly affects the average percentage rating when calculated within the 100 metres radius".*

Parish Councillor, R Cornwell explained the applicant went on to say:

*"When properly considered it can be seen that the seven postcode areas within the distinct housing area of which the appeal site is formed have an average exemption level of over 85 percent".*

Parish Councillor, R Cornwell noted that while the interim policy set a lower threshold it did not set a higher one, instead it states that there may be some cases where localised communities were already so imbalanced that the policy objective of protecting a balance was unlikely to be achieved.

He added the appeal cases showed that when you get concentrations of student HMOs at these high levels you have to treat each case on its merits. Parish Councillor, R Cornwell noted that in the case of the application at Committee, with one third of the households within 100 metres being non-student, the bar had not been crossed. He noted other objectors had elaborated on this point, including in comments received from the City of Durham Trust, with concerns that student accommodation would outnumber local people.

Parish Councillor, R Cornwell noted his final point was that, in a masterpiece of timing, the issue was being discussed on Thursday this week at the County Durham Plan Examination in Public. He added the County Council was proposing a main modification which would set that bar at 90 percent and it was not known whether this would find favour with the Inspector, however, the new County Durham Plan would have a permanent, not an interim, student accommodation policy and all the signs were that it would be stricter. Parish Councillor, R Cornwell noted that if the application was refused and then went to appeal, the case would be judged on the new policies and the Parish Council would suggest any such appeal would be refused. Parish Councillor, R Cornwell concluded by noting that firstly the Committee would have to turn the application down, which the Parish Council urged the Committee to do.

The Chair thanked Parish Councillor, R Cornwell and asked the Planning Officer to respond to the points raised.

The Planning Officer noted that the main points were that the property was an existing six-bedroom HMO and the proposal would not affect the percentage of HMOs within 100 metres. She added that given the information referred to within paragraph 42 of her report relating to the recent appeal decisions it was not possible to refuse an application on increasing the size of an existing HMO by one bed.

The Chair thanked the Planning Officer and asked the Committee for their comments and questions.

Councillor J Shuttleworth noted that from the site visit it was clear the housing stock was former "Council Housing" and that the increase of students was creating an imbalance. He noted Council Tax was not payable by students and wondered how much was lost to the Council in cases such as this.

He asked if there were sufficient safeguards in place, especially in terms of the roof space being converted. The Planning Officer noted that the HMO Licensing Section had reported that the application met their guidelines, including in respect of fire safety.

Councillor D Freeman noted he agreed with Councillor J Shuttleworth and explained the City of Durham Parish Council had estimated the County Council lost out on around £6.5 million in terms of students in place of paying residents. He noted paragraph 40 of the report spoke of the interim policy on student accommodation with the policy including additional bed spaces and extensions as being contrary to the policy, not just an increase in the percentage within a 100-metre radius. He added that he said this at each meeting each month. Councillor D Freeman noted he received the weekly planning lists and he saw a gradual “drip-drip”, each week, each month, each year with the city being transformed as a result. He stressed that the appeals that were lost and referred to were not in this particular street and in those cases the percentage of student properties was much higher, with Elvet Crescent having around one third private residential properties. He noted his opinion was that adding more was adding more and the issues as set out in Policy H9 came into play. Councillor D Freeman noted he felt the application was contrary to the interim student policy and there were the issues of increased noise, disturbance, potential of unkempt properties and anti-social behaviour. He added he felt these types of application should be stopped and that they could be refused. He noted the upcoming Inspection in Public for the County Durham Plan and hoped there would be a better position after this.

The Chair noted the property was an existing HMO and asked if Councillor D Freeman was proposing that the application be refused. Councillor D Freeman noted he was proposing refusal. The Chair asked the Principal Planning Officer, Alan Dobie to address the points raised.

The Principal Planning Officer explained that he understood the concerns of the Local Member and the Parish Council and gave reassurance that Officers had fought the case in terms of the interim student policy in terms of both extensions and additional bed spaces. He reiterated that in those cases the Inspector had not agreed. He added that there was consistent argument in terms of cumulative impact and a number of appeals had been fought, again with decisions going against the Council, with costs awarded in one case. The Principal Planning Officer noted that it was in that context that Officers made the very measured recommendation as set out within the report.

The Solicitor – Planning and Development noted that any decision by the Committee would need to be based upon existing policy currently in effect and not in considering what may be decided upon by the Inspector when looking at the County Durham Plan.

The Chair asked if anyone would second the motion for refusal made by Councillor D Freeman. Councillor J Shuttleworth seconded the motion. The Chair asked for refusal reasons. Councillor D Freeman noted as the application was contrary to the interim policy on student accommodation and Policy H9 of the City of Durham Local Plan. The Solicitor – Planning and Development asked if the Member could elaborate as regards the aspects that were contrary to Policy H9. Councillor D Freeman noted the adverse impact on the character of the area and negative impact on the amenity of nearby residents. The Solicitor – Planning and Development noted there was little he could add to that said by the Principal Planning Officer in terms of the strength of any such refusal and the recent appeals decisions.

Upon a vote being taken, the motion was **LOST**. The Chair asked the Committee for any other proposals.

Councillor M Davinson noted he felt paragraph 42 within the report was unhelpful as the property was an existing HMO and therefore a lot of the information was not relevant. He asked as regards more information following from paragraph 41 in order to help Members understand being unable to refuse applications for an extra bed and more information in terms of costs being awarded. He added he agreed with the comments from Parish Councillor, R Cornwell and Councillor D Freeman. The Chair noted it was a broad subject and noted information in general could be circulated to Members. Councillor M Davinson asked if it would be possible to defer the application. The Chair asked the Area Planning Team Leader (Central and East), Sarah Eldridge to provide further advice and information for the Committee.

The Area Planning Team Leader (Central and East) noted appeals decisions in respect of HMO applications including: 6 Waddington Street a change of use; 24 Mistletoe Street, a change of use; 40 Hawthorn Terrace an extension; former Neville's Cross Club, a Purpose Built Student Accommodation (PBSA); Pear Tree Cottage, one HMO; 97 Gilesgate, one HMO; Laburnum Avenue, one HMO; and 10 High Wood View, change of use and the case where costs were awarded as the Inspector noted the application would not give rise to an increase in the concentration and the percentage of HMOs within a 100 metre radius would remain the same.

Councillor M Davinson noted that only one of those applications was for an additional bedroom and he hoped progress following the Examination in Public would help provide more options for the Committee. He noted that no one on the Committee was happy with these types of application, however, given the information within the report, and provided by Officers today he would move approval as per the recommendation. The Chair noted she understood his frustrations and asked if there was a seconder for the motion. Councillor J Maitland seconded the motion for approval.



## **RESOLVED**

That the application be **APPROVED** subject to the conditions as set out within the report.

*Councillors I Cochrane and J Shuttleworth left the meeting at 2.30pm*

## **6 Planning Development Management**

The Committee considered the Planning Development Management Performance Summary for Quarter One/Quarter Two 2019/2020 (for copy see file of Minutes). Members were informed that the report would be submitted to each of the Council's Area Planning Committees and the County Planning Committee.

In discussing the report, the Area Planning Team Leader (Central and East) noted that in terms of performance the Central and East Team performance was above target, noting levels above the national average and of neighbouring Local Authorities. She explained that in terms of appeals against decisions of the Area Planning Committee (Central and East) considered by the Planning Inspectorate, four had been submitted, with two having been upheld. Members were asked to note the high levels of performance in respect of enforcement action.

Councillor M Davinson asked if the recent appeals that had been upheld by the Planning Inspectorate represented a trend. The Area Planning Team Leader (Central and East) noted there did not appear to be a trend, referring to two recent decisions by an Inspector, one being dismissed and one upheld.

### **Resolved:**

That the content of the report be noted.

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## Planning Services

# COMMITTEE REPORT

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### APPLICATION DETAILS

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Application No:	DM/19/03217/FPA
Full Application Description:	Resubmission of DM/19/01057/FPA for new pitched roof to existing property, two storey side extension and change of use of adjacent land from open space to private garden
Name of Applicant:	Mr Darrell Harris
Address:	12 Hatfield Place, Peterlee, SR8 5SZ
Electoral Division:	Peterlee
Case Officer:	George Spurgeon (Planning Officer) Tel: 03000 261 959 Email: george.spurgeon@durham.gov.uk

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### DESCRIPTION OF THE SITE AND PROPOSAL

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#### The Site

1. The application site comprises of the residential curtilage of the property number 12 Hatfield Place, Peterlee, and a parcel of land 4 metres in width that is currently in use as open space directly adjacent to this property, covering an area of approximately 69 metres squared. This parcel of open space forms part of a larger area of open space, 8.7 metres in width. The open space to the side of the property slopes down from the north east corner towards the south west corner and three mature sycamore trees are located on it.
2. 12 Hatfield Place is a two-storey end terrace property finished in red facing brick to the front and rear elevations and brown facing brick to the side elevation. The house type and materials are typical of the surrounding area. The dwelling features a traditional dual pitched roof finished in grey profiled sheeting. The property benefits from garden areas to the front and rear, bordered by a brown fence.

3. The three mature sycamore trees on the parcel of open space to the side of the property are protected under a Tree Preservation Order (TPO). These trees were considered to have a high enough amenity value to be worthy of protection under a TPO during the processing of previous application DM/19/01057/FPA. A TPO (reference TPO-110-2019) was subsequently placed on all three trees earlier this year. The surrounding area is characterised by pockets of open space in between buildings, with many of these areas containing trees.

### The Proposal

4. Full planning permission is sought for the replacement of the existing roof of the property 12 Hatfield Place with red concrete roof tiles and the conversion of a parcel of public open space to private garden, to facilitate the erection of a two-storey side extension. As a result of the construction of the extension, the two sycamore trees closest to the side elevation of the host property would need to be removed.
5. The application is reported to the Planning Committee at the request of Councillor Audrey Laing who considers that the application should be considered by planning committee to allow the benefits of the scheme to be assessed against the harm to the street scene.

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## PLANNING HISTORY

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6. DM/19/01057/FPA -New pitched roof to existing property, two storey side extension and change of use of adjacent land from open space to private garden. Withdrawn 24.07.2019

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## PLANNING POLICY

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### National Policy

7. The Government has consolidated all planning policy statements, guidance notes and many circulars into a single policy statement, the National Planning Policy Framework (NPPF), although the majority of supporting Annexes to the planning policy statements are retained. The overriding message is that new development that is sustainable should go ahead without delay. It defines the role of planning in achieving sustainable development under three topic headings – economic, social and environmental, each mutually dependent.
8. The presumption in favour of sustainable development set out in the NPPF requires local planning authorities to approach development management decisions positively, utilising twelve 'core planning principles'. The following elements of the NPPF are considered relevant to this proposal;
9. *NPPF Part 8 Promoting Healthy 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.

10. *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.
11. *NPPF Part 15 Enhancing the Natural Environment*: Aims to contribute to and enhance the natural and local environment by recognising the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best trees and woodland and by minimising impacts on providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.

### **Local Plan Policy:**

12. The following policies of the District of Easington Local Plan are considered relevant to the determination of this application.
13. Policy 1- Due regard will be given to the development plan when determining planning applications. Account will be taken as to whether the proposed development accords with sustainable development principles while benefiting the community and local economy. The location, design and layout will also need to accord with saved policies 3, 7, 14-18, 22 and 35-38.
14. Policy 35 - The design and layout of development should consider energy conservation and efficient use of energy, reflect the scale and character of adjacent buildings, provide adequate open space and have no serious adverse effect on the amenity of neighbouring residents or occupiers.
15. Policy 73 - Extensions or alterations to existing dwellings, requiring planning permission, will be approved provided that there are no serious adverse effects on neighbouring residents, the proposal is in keeping with the scale and character of the building and the proposal does not prejudice road safety or result in the loss of off street parking.
16. Policy 92 - Amenity open space will be protected from development except where the development of a small part of a larger area of open space enables the enhancement of that remaining; or alternative provision of equal or enhanced community benefit, in terms of quality and/or accessibility that is capable of serving the existing population, is provided.

### **Emerging County Durham Plan:**

#### **The County Durham Plan**

17. Paragraph 48 of the NPPF states 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. Following consultation at 'Issues & Options', 'Preferred Options' and 'Pre Submission Draft' stages, the CDP was approved for submission by the Council on 19 June 2019. The CDP was submitted to the Planning Inspectorate on 27 June 2019 and the examination in public is now progressing. Although the CDP is now at a relatively advanced stage of preparation, it is considered that it is not sufficiently advanced to be afforded any weight in the decision-making process at the present time.

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## **CONSULTATION AND PUBLICITY RESPONSES**

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### **Internal Consultee Responses:**

18. Highways Section: raises no objections to the application.
19. Landscape Section: objects to the application due to the loss of young mature trees in good condition with a high amenity value. The loss of these trees would be to the detriment of the appearance of the surrounding area.
20. Ecology Section: objects to the application due to the loss of mature trees which would result in a net loss of biodiversity.

### **Public Responses:**

21. The application has been publicised by way of notification letters sent to neighbouring properties. No letters of support or objection were received in response to the application.

### **Applicants Statement:**

22. The applicant has applied to what is now known as Believe Housing to purchase a strip of land to the side of his property, with the intention of extending his property. A planning application to cover the change of use, along with a two storey side extension was submitted to Durham County Council in April 2019.
23. In order to carry out the development my client wished to remove the existing 3 No. Norway Maple trees previously planted there by either Easington District Council or the old Peterlee Development Corporation. Their location can be seen on drawing number 1.
24. Initially the Planning Officer seemed happy with only the 2 trees nearest the proposed extension being removed, with the furthest away tree being retained. Revised drawings to reflect this requirement were sent to the Council and a Building Regulations application submitted on that basis. However the Planning Officer then changed his mind, insisting that all three trees should be retained, and indicating that he would refuse the application on that basis. We withdrew the application and after consultation with the local County Councillor, resubmitted the application on the understanding that it would be 'called in' and decided by the full Planning Committee.
25. It is understood that the Council have since taken out a tree preservation order on these trees (ref. TPO-110-2019). Looking at the D.C.C. website regarding Tree Preservation Orders, it states that the Local Planning Authority has the power to protect important trees by making a Tree Preservation Order. We question the importance of these three trees and contend that the T.P.O. has been taken out purely to give the Planners a justification for resisting this application. There are areas of open green space all around Hatfield Place, and trees have been planted on several of the larger greens. The area between the side of number 12 and the footpath is a relatively small green. The existing three trees have been planted in a group close to the rear corner of the applicant's property. A better arrangement might have been three trees in a row parallel with the footpath, evenly spaced along the length of the green. This is in fact how trees have been planted on the small green space immediately to the South of the application site.

26. If the Council grant Planning Permission to remove the two closest trees the applicant would be agreeable to plant 2 new trees of the same type in line with the remaining tree. This would provide the necessary mitigation for the removal of two existing trees. The proposed location of these new trees is shown on a revised drawing number 1. This would be done in consultation with Believe Housing. It should also be noted that on the two grassed areas immediately to the North of the application site either the County Council, or Believe Housing, has recently cut down about 11 existing trees, so the principle of removing trees on this estate is well established.
27. We contend that the Council should never have planted Norway Maple trees with an ability to grow up to 18 metres high (reference NHBC guidelines for building near trees) barely 3 metres from the corner of the applicant's house. The dwellings in Hatfield Place are built off shallow ground beam type foundations. It is impossible to know how well the ground below the foundations was consolidated before the foundations were installed. Trees too near to buildings can undermine foundations during prolonged spells of hot dry weather, which is the reason for the NHBC guidelines for building near trees. Climate change issues are very much in the news these days, and spells of extremely hot dry spells are likely to become more frequent.
28. We respectfully ask the Planning Committee to approve this application on the understanding that the applicant is willing to plant 2 No. new trees in a line near to the footpath as shown on the revised drawing no. 1.

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## **PLANNING CONSIDERATION AND ASSESSMENT**

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

### **Principle of Change of Use**

30. The application proposes to convert part of the existing public open space to the side of 12 Hatfield Place to residential curtilage. Policy 35 permits development provided sufficient open space is provided and Policy 92 of the District of Easington Local Plan states that amenity open space will be protected from development except where the development of small part of a larger area of open space enables the enhancement of that remaining or alternative provision is provided. These policies are considered to be both up to date and consistent with the NPPF, accordingly paragraph 11 is not engaged.
31. The supporting text of Policy 92 does not provide a definition of amenity open space but does state that amenity open spaces are likely to include public parks, village greens, commons, and major areas of landscaping in respect of the 'softening' of urban development. Although the parcel of open space in question under this application is of a smaller scale than that which is listed in the supporting text, the open space does contribute in terms of the 'softening' of urban development and so can be considered to be amenity open space. Therefore, Policy 92 is considered to be relevant.

32. Whilst the proposal is not fully in accordance with Policy 92, the development would result in sufficient open space remaining in the vicinity. The proposal would not result in the loss of the entire parcel of open space to the side of 12 Hatfield Place, ensuring that although some open space will be lost, approximately half of the land will remain in use as public open space, retaining a visually attractive break in development that is typical of the surrounding area and forms part of an extensive network of open spaces throughout Peterlee generally.
33. Furthermore, the land is not designated as open space within the Councils Open Space Needs Assessment and there are other areas of open space within the residential estate that will remain to be used and enjoyed by residents. The largest area of nearby open space is located to the south east of Hatfield Place and is designated as open space within the aforementioned assessment. Therefore, there is considered to be a sufficient amount of open space after the development, and so the principle of the proposed change of use is considered to be acceptable.

#### Impact on Protected Trees, Ecology and Visual Amenity

34. Policy 35 of the District of Easington Local Plan permits development provided that it reflects the character of the area. Part 15 of the NPPF aims to recognise the wider benefits from natural capital and ecosystem services - including the economic and other benefits of the best trees.
35. The application proposes to remove two mature sycamore trees that are protected under a TPO. A TPO is imposed when the Council considers that it is expedient to do so in the interests of amenity. This will include circumstances where there is a threat to a tree that is considered to be in good health and where the tree makes a valuable contribution to the amenity of the area. Once protected by a TPO there must be sound justification and evidence for works to such trees. This is usually on the grounds of health, property damage, or danger.
36. In relation to determining whether or not works to protected trees should be permitted, National Planning Practice Guidance advises Local Authorities to:
- assess the amenity value of the tree or woodland and the likely impact of the proposal on the amenity of the area;
  - consider, in the light of this assessment, whether or not the proposal is justified, having regard to the reasons and additional information put forward in support of it;
  - consider whether any loss or damage is likely to arise if consent is refused or granted subject to conditions;
  - consider whether any requirements apply in regard to protected species;
  - consider other material considerations, including development plan policies where relevant; and
  - ensure that appropriate expertise informs its decision.
37. NPPG advises that the higher the amenity value of the tree and the greater the negative impact of proposed works on amenity, the stronger the justification must be before granting consent. However, if the amenity value is lower and the impact is likely to be negligible, it may be appropriate to grant consent even if the authority believes there is no particular arboricultural need for the work. Amenity is considered to include visibility, size and form, and contribution to the landscape.



38. The Council's Tree Officer has commented that the trees are young, mature and moderate specimens that are in good condition. T2 has an included fork that may potentially reduce its safe useful life expectancy and T3 has a kink in the stem, but overall the trees are in good condition and no evidence has been submitted that suggests the trees have caused any damage to the property. The application proposes the removal of two of the trees (T1 and T2) but the Tree Officer is of the view that because the levels of the land are graded to such an extent, it is likely that the third sycamore tree (T3), that is marked on the plans to be retained, may also be damaged in order to install the foundations of the extension. In the absence of the applicant providing an adequate tree survey or arboricultural report, it should be assumed that this development may result in the removal of all three trees.
39. The applicant has put forward a number of arguments in an attempt to justify the tree removal. Firstly, it is argued that the trees have a lower amenity value because they have been planted in a close group rather than in a row parallel to the footpath. Officers disagree with this view and consider that the current location of the trees results in them being visible from the footpath and wider surrounding area, to which they make a positive contribution. Secondly, the applicant states that other trees within the estate have been felled, including around 11 immediately to the north of the application site. Officers have been unable to verify the location of these, and it has not been possible to investigate the circumstances behind their removal. Thirdly, the applicant argues that the species of tree is inappropriate for the location and could undermine the foundations of the house. However, no evidence in the form of an arboricultural report has been submitted in support of this claim.
40. The three sycamore trees are considered to have a high amenity value, as they are mature trees that are visible from and make a positive and valuable contribution to the surrounding area. The trees also form part of a wider network of planted areas, which are common throughout the estate, forming an important part of the character of the estate in terms of its layout, design and wider visual appearance. If these trees were to be removed, it is considered that this would adversely affect the visual amenity of the area.
41. The reason for the removal of the trees is to facilitate the erection of an extension to a residential property. This is not considered to justify the loss of the trees, which are in good condition and are considered to have a high amenity value that makes a positive contribution to the appearance of the area.
42. Furthermore, paragraph 170 d) of the NPPF also requires development to minimise impacts on and provide net gains for biodiversity. The Council's Ecologist has commented that the trees form a vital component of the urban biodiversity resource and the loss of these mature trees would result in a net loss of biodiversity value, in conflict with the aims and objectives of the NPPF.
43. The three sycamore trees were considered to have a high enough amenity value to be worthy of protection under a TPO. A replacement planting scheme is not considered to sufficiently mitigate for the loss of these trees as they would not have the same maturity as the current sycamore trees, resulting in them having a lower amenity value, and a lesser presence and visual impact.
44. The proposal is therefore considered to be in conflict with Policy 35 of the District of Easington Local Plan, Part 15 of the NPPF and National Planning Practice Guidance.

45. Policy 73 of the District of Easington Local Plan permits extensions or alterations to existing dwellings provided they reflect the character and appearance of the area.
46. The two-storey side extension is proposed to match the ridgeline of the main house. The extension would have a width of 3.1 metres, compared to the 5.8 metre width of the main house, leaving a gap of 800 millimetres from the proposed new side boundary line. The extension is considered to be of good design and subordinate to the main house, so the erection of the extension itself is not considered to have an adverse impact on the character and appearance of the surrounding area.
47. The replacement of the existing roof material, consisting of grey profiled sheeting, with red concrete roof tiles has been carried out on numerous properties within the surrounding area and is not considered to harm the character and appearance of the street scene.
48. The extension and replacement roof of the main house would not have an adverse impact on the character and appearance of the area and are therefore considered to be in accordance with Policy 73 of the District of Easington Local Plan.

#### Residential Amenity

49. Policy 73 of the District of Easington Local Plan permits extensions or alterations to existing dwellings provided that they would not have an adverse impact on the residential amenity of neighbouring residents.
50. The two-storey extension is proposed to extend out from the side elevation of an end terrace property. The extension accords with the relevant guidance for separation distances and would not have an overbearing or oppressive impact on any nearby properties, nor would it result in overshadowing, visual intrusion or loss of privacy for any surrounding residents.
51. The proposed extension would not have an adverse impact on the levels of amenity currently enjoyed by neighbouring residents and is therefore considered to be in accordance with Policy 73 of the District of Easington Local Plan.

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## CONCLUSION

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52. The proposed two-storey side extension is considered to be a subordinate feature to the main house. The replacement of grey sheeting with red concrete roof tiles has occurred to multiple other properties within the surrounding area. Neither of these elements of the proposal are considered to have an adverse impact on the character and appearance of the surrounding area.
53. The change of use of part of a larger area of public open space to private garden is also considered to be acceptable in principle, as it would result in part of the area being retained as open space to provide a visually attractive break in development, in keeping with the surrounding area.

54. However, to facilitate the erection of the proposed extension, two mature sycamore trees would have to be removed and the construction of the extension may result in the loss of the third sycamore tree. The trees are protected under a TPO and are considered to have a high amenity value. The trees are visible from the surrounding area and in good condition. The loss of these trees is considered to have a detrimental impact upon the character and appearance of the street scene and would result in a net loss of biodiversity value. The points raised by the applicant have been considered but are not such as to outweigh the adverse impacts of the tree removal. A replacement replanting scheme would not be sufficient to mitigate the loss of these mature trees as they would not have the same amenity value, presence or comparable positive impact on the appearance of the street scene in the short to medium term.
55. The proposal is therefore in conflict with Policy 35 of the District of Easington Local Plan, Part 15 of the NPPF and National Planning Practice Guidance and is therefore recommended for refusal.

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## **RECOMMENDATION**

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That the application be **REFUSED** for the following reason(s)

1. The proposal would lead to the removal of at least two of the three mature sycamore trees on the site which are protected by a Tree Preservation Order. These trees are in good condition and make a positive contribution to the site and its surroundings and are considered to have a high amenity value. Insufficient justification has been provided for removal of the trees. The loss of the trees would therefore be to the detriment of the character and appearance of the surrounding area and would also result in a net loss of biodiversity value, contrary to Saved Policy 35 of the District of Easington Local Plan, the provisions of Part 15 of the NPPF and National Planning Practice Guidance.

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## **STATEMENT OF PROACTIVE ENGAGEMENT**

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The Local Planning Authority in arriving at the recommendation to refuse the application has been consistent in advice with regards the application and has considered the possibility of a positive outcome in accordance with the NPPF but it has not been possible in this instance.

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## **BACKGROUND PAPERS**

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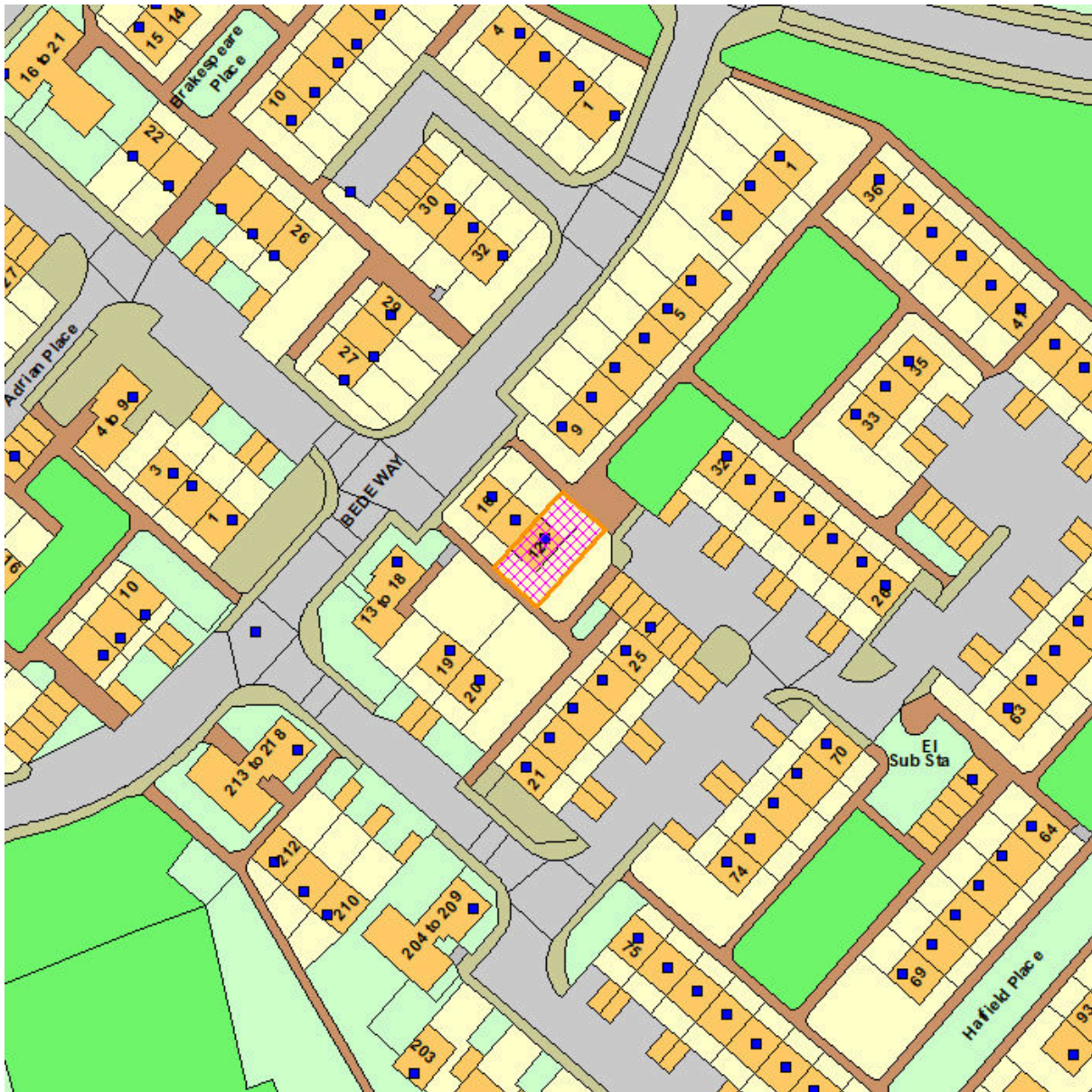
Submitted application form, plans supporting documents and subsequent information provided by the applicant.

The National Planning Policy Framework (2018)

National Planning Practice Guidance Notes

City of Durham District Local Plan 2007

Statutory, internal and public consultation responses



### Planning Services

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Resubmission of DM/19/01057/FPA for new pitched roof to existing property, two storey side extension and change of use of adjacent land from open space to private garden at 12 Hatfield Place, Peterlee

Date

10<sup>th</sup> December 2019

## Planning Services

# COMMITTEE REPORT

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### APPLICATION DETAILS

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<b>APPLICATION No:</b>	DM/19/03257/FPA
<b>FULL APPLICATION DESCRIPTION:</b>	Change of use from small HMO (Use class C4) to 9 bed large HMO (Use Class Sui Generis) including erection of part two-storey/part single-storey extension to rear.
<b>NAME OF APPLICANT:</b>	Mrs Gabrielle Moore
<b>ADDRESS:</b>	32 Whinney Hill Durham DH1 3BE
<b>ELECTORAL DIVISION:</b>	Elvet and Gilesgate
<b>CASE OFFICER:</b>	Lisa Morina Planning Officer Telephone: 03000 264877 <a href="mailto:Lisa.morina@durham.gov.uk">Lisa.morina@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 a two-storey end terraced dwelling located within the first block on the east side of Whinney Hill when approaching from along Hallgarth Street. Whinney Hill is located to the east of Durham City Centre within the Conservation Area and is an elevated street that curves gently from its junction with Old Elvet/Green Lane to the north, to Stockton Road roundabout in the South. Residential properties surround the site to both sides and to the front of the property with fields to the rear. The properties are former local authority and there is a high student population within the area. The property in question has previously been extended with a two-storey extension to the side with a flat roof.

#### The Proposal

2. This application seeks the change of use of the property from a small HMO (Use class C4) to a large HMO (sui generis use) to allow 9 students to occupy the site. To facilitate this, the proposal also includes the erection of a part two-storey/part single-storey extension to the rear of the site. The extension will project by 5m from the rear building line and have a width of 5.1m. A single-storey element is proposed as an infill between the proposed two-storey extension and the common boundary with the adjoining neighbour at no. 31 Whinney Hill which will project by 3m and have a lean to roof. A pitched roof over the flat roof is also proposed to the side of the property.



3. Members may recall a previous application for extension was approved at Committee in 2015 detailed at paragraph 5 below and it was confirmed at that time that the property was in C4 use, therefore, the property was an existing C4 use before the introduction of the Article 4. Whilst this application has not been fully built out, works have commenced on this therefore, the applicant does have a fall back position in respect of being able to complete the extension.
4. The application is referred to Committee at the request of the local member Councillor David Freeman on behalf of the residents in the area and the City of Durham Parish Council who consider that larger HMO's create additional problems of noise, anti-social activities thereby creating an imbalance in the community.

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## **PLANNING HISTORY**

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5. DM/15/02694/FPA - Erection of part two-storey/part single-storey extension to rear of dwelling and construction of pitched roof over existing flat roof at side. Approved 11/11/15.
6. 4/02/01125/FPA – Conservatory to rear of dwelling. Approved 18/2/03/

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## **PLANNING POLICY**

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### **NATIONAL POLICY**

7. The following elements of the National Planning Policy Framework (NPPF) are considered relevant to this proposal:
8. 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.
9. 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.
10. 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.
11. 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.

## **NATIONAL PLANNING PRACTICE GUIDANCE:**

12. 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; conserving and enhancing the historic environment; design; and use of planning conditions.

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

## **LOCAL PLAN POLICY:**

### **City of Durham Local Plan**

13. Policy E6 (Durham City Conservation Area) sets out the Council's aim to preserve the character, appearance and setting of the Durham City Conservation Area by ensuring high quality design.
14. Policy E21 (Conservation and Enhancement of the Historic Environment) states that the historic environment will be preserved and enhanced by minimising adverse impacts by development proposals.
15. Policy E22 (conservation Areas) sets out that the authority seeks to preserve and enhance the character and appearance of the conservation area by ensuring that development proposal should be sensitive in terms of siting, scale, design and materials where appropriate reflecting existing architectural features
16. Policy H9 (Multiple Occupation / Student Households) seeks to ensure that buildings in multiple occupancy do not adversely affect the character of the area and do not require significant extensions or alterations having regard to Policy Q9.
17. 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.
18. Policy Q1 (Design) sets out that the layout and design of all new development should take into account the requirements of users including personal safety and crime prevention and the access needs of everybody including people with needs of disabilities.
19. Policy Q9 (Alterations and Extensions to Residential Properties) states that extensions will only be approved when they met a set of specific criteria for example, including impact on residential amenity of neighbours and impact on streetscene.
20. Policy T1 (General transport Policy) requires all development to protect highway safety and/or have no significant effect on the amenity of occupiers of neighbouring properties.
21. Policy T10 (Parking - General Provision) states that vehicles parking should be limited in amount, so as to promote sustainable transport choices and reduce the land-take of development.

## RELEVANT EMERGING POLICY:

22. Paragraph 48 of the NPPF states 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. Following consultation at 'Issues & Options', 'Preferred Options' and 'Pre Submission Draft' stages, the CDP was approved for submission by the Council on 19 June 2019. The CDP was submitted to the Planning Inspectorate on 28 June 2019 and the EIP is now progressing. Although the CDP is now at a relatively advanced stage of preparation, it is considered that it 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 most relevant in the Development Plan the full text, criteria, and justifications of each may be accessed at <http://www.cartoplus.co.uk/durham/text/00cont.htm>*

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## CONSULTATION AND PUBLICITY RESPONSES

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### STATUTORY RESPONSES:

23. Highways – No objection, the proposal is within a controlled parking zone and no further permits would be given.

24. Durham Constabulary have raised no objection to the proposal.

### INTERNAL CONSULTEE RESPONSES:

25. Environment, Health and Consumer Protection (Nuisance Action Team) – The proposal is not considered to cause a statutory nuisance.

26. HMO Officers have provided comments on room sizes and licensing requirements

27. HMO Data – Within a 100m radius of 32 Whinney Hill, 57.6% of properties are student properties as defined by Council Tax records.

28. Design and Conservation – No objection the proposal is considered to have a neutral impact.

### PUBLIC RESPONSES:

29. The application has been advertised by means of site notice and by notifying neighbouring residents by letter, five letters of objection including one from Whinney Hill Community Group, the City of Durham Trust and the City of Durham Parish Council have been received with the following comments:

- Any further increase in the student population will have an unacceptable cumulative impact
- The proposal is not considered to be in keeping with the scale and character with its surroundings or neighbouring properties contrary to policy H9
- The proposal does not promote healthy, safe and sustainable communities
- The proposal will contribute further to late night noise and disturbance and generate more traffic in an area which is already experiencing all of the aforementioned issues



- Issues raised regarding noise and disturbance never seem to be appreciated by landlords whose only intention is to make money disregarding the consequences for everyone else.
- The size and scale of the proposed extension remains excessive in relation to the existing property and it is not in keeping with neighbouring properties.
- The application is against the interim student policy
- Contradictions within the heritage statement regarding the impact the proposal will have on the conservation area.
- The applicant emphasises the condition of the rear of the property, this is the result of poor maintenance by the applicant who has had the property for many years. It is not a material planning matter and should therefore be disregarded.
- This particular applicant is very reluctant to keep the front of the property tidy and the boundary hedge is a hazard when it is overgrown and not maintained
- As well as student populations there is a larger air B&B which also causes issues
- Issues during previous development works with builders, noise, disturbance and abuse
- The increase in the number of bedrooms would materially affect the residential amenity of nearby residents.
- There is no shortage of bed spaces currently
- If given approval, number 32 Whinney Hill will by far be the largest HMO in the street as it will increase the number of students by 50% from 6 - 9. It will also set an extremely worrying precedent which will potentially open the floodgates for similar applications.

#### **APPLICANT'S STATEMENT:**

30. I, the applicant, Gabrielle Moore have read the comments to the application on the council planning website and have the comments to make to reassure those who have commented.
31. The house has a large driveway with space to park 2 normal sized cars, more than most non student houses in the area.
32. I have owned the house for 5 years and have only ever had a group of tenants who owned between them none or one car, never more, so I do not see that parking should be a problem. I have left the area in front of the house with planting because I prefer to see greenery, unlike some other houses in the area, thought this could have been used for even more parking space.
33. The bins can be put down the side of the house and I shall request that the tenants do this.
34. The only complaints I have received regarding the look of the house/garden is when the hedge has become a little overgrown in the Summer. I employ a gardener who looks after the garden, front and back, the roses and hydrangea provide a prettier backdrop than some of the non-student houses!
35. The comments about deliveries is rather misleading. I have asked tenants at some of my properties and they say that they usually order groceries together rather than incur separate delivery charges. Anyhow, the students are only in residence for 33 weeks of the year (63% of the year) so the rest of the time it must be the non-student residents who are making a noise or causing disruptions with deliveries and traffic!

36. The footprint for the build has already been approved and thus the appearance will be no difference as a 9 bed house rather than a 6 bed with the same extension.
37. The house is already an HMO and given the figures quoted as 60.9% even C3 applications have been allowed to become HMOs at this level recently.
38. If this application were to be successful it wouldn't open a "floodgate of applications" because this house is larger than the average Whinney Hill house being a large end of terrace previously owned by good friends of mine.

*The above is not intended to list every point made and represents a summary of the comments received on this application. The full written text is available for inspection on the application file which can be viewed at <https://publicaccess.durham.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=P8X9C0GDL8J00>*

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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, impact on the visual amenity of the area including the conservation area in which the property is located, residential amenity and highways issues.

### **Principle of the Development**

40. The property in question is currently in use as small HMO (C4). C4 HMO's are small shared houses occupied by between three and six unrelated individuals, as their only or main residence and who share basic amenities such as a kitchen or bathroom. As part of the proposal, the number of individuals would be increased to more than 6 which would result in a change of use to a large HMO, a sui generis use.
41. Policy H9 of the local plan is relevant to this application which relates to the conversion of houses for multiple occupation. It states that such development will be permitted where adequate parking, privacy and amenity areas can be provided, where it will not adversely affect the amenities of nearby residents and is of a scale and character appropriate to its surroundings and where it will not result in concentrations of sub divided dwellings to the detriment of the range and variety of the local housing stock.
42. Policy H13 of the local plan is also relevant and states that planning permission will not be granted for new development or changes of use which would have a significant adverse effect on the character or appearance of residential areas or the amenities of residents within them.
43. As saved policies most relevant in the determination of the application are considered both up to date and consistent with the NPPF, paragraph 11 is not engaged.
44. In addition to policies H9 and H13 of the local plan, the Council's Interim Policy relating to student accommodation is also relevant and states that the Local Planning Authority will not support the change of use of properties in instances where there is in excess of 10% of properties within 100 metres of the site already used as student accommodation. Whilst the Interim Policy has less weight than the saved policies of the City of Durham Local Plan it is nevertheless a material consideration and has been endorsed by cabinet following a 6 week consultation period ending April 2016.

The threshold of 10% was derived from section 2 of the 'National HMO Lobby Balanced Communities and Studentification Problems and Solutions', 2008 and in this respect is considered up to date and accords with the aims of the NPPF.

45. The Council's Spatial Policy Section advises that the most recent up to date Council Tax information identifies that 57.6% of those properties within 100 metres of the site are currently occupied as student let accommodation.
46. Given this, the proposal would be contrary to the criteria as stated in the interim policy. However, the proposal involves an increase in number of bedrooms which tips the balance from a small to large HMO rather than the loss of an existing C3 residential property.
47. Furthermore, an appeal decision (reference APP/X1355/W/16/3160444) for a two storey rear extension of a class C4 HMO to provide 3 additional bedrooms at 40 Hawthorn Terrace, Durham, considered the issues associated with the creation of additional bedrooms within established HMOs and whether such development is considered to conflict with the Interim Policy. The Inspector found that within the Interim Policy there is no explicit reference made on how to address extensions to existing HMOs against the 10 per cent tipping point. This would suggest that the Council has essentially sought a moratorium on extensions to HMO properties within the Durham City area where the majority of residential areas are in excess of 10 per cent HMOs. The Inspector considered that such a stance would be at odds with the more permissive approach of saved Policy H9 of the local plan. The HMO policy in the emerging County Durham plan is likely to be subject to revision, and whilst it has now been discussed at the EIP, no weight can be afforded to it at present.
48. The Inspector further commented that the provision of additional bed spaces to an existing HMO in an area where more than 10 per cent of properties within 100 metres of the appeal site are in use as HMOs would not result in an adverse impact on the overall range and variety of local housing stock in the area. On this basis, the Inspector allowed the appeal.
49. In relation to the percentage figure of HMOs within 100 metres of the site, it is accepted that 57.8% is a high proportion far in excess of the ten per cent threshold within the Interim Policy.
50. Accordingly, it is considered that the proposal complies with policy H9 in that it does not result in the loss of an existing C3 use therefore, does not alter the range and variety of the local housing stock. Whilst there is conflict with the wording of the Interim Policy and breach in the threshold, this is not sufficient to justify refusal of the application especially in light of the guidance on that policy which has been provided by the recent appeal decision.
51. In summary the principle of development could be supported, subject to proper consideration of the impact of the proposal upon the character and amenity of the area including the conservation area in which the property is located, residential amenity, highway safety and any other issues.

#### Visual impact of the development on the conservation area

52. The National Planning Policy Framework in part 16 requires that the impact of the development is considered against the significance of the Heritage Asset which in this case is Durham City Conservation Area. Part 12 of the NPPF deals with good design generally advising that it is a key aspect of sustainable development, indivisible from good planning that can lead to making places better for people.

At a local level Policy E6 and E22 of the City of Durham Local Plan are also considered to be relevant. These policies state that the special character, appearance and setting of conservation areas will be preserved or enhanced. This will be achieved by only approving development that would be sensitive in terms of its siting, scale, design and materials. Policies H9 and Q9 require any extensions to such dwellings are in scale and character with its surroundings and neighbouring residential properties.

53. The aforementioned policies and guidance requires the local planning authority to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area and this would be entirely in accordance with section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
54. Objections have been raised that the proposal is too large and would have an unacceptable impact. In addition to this, concern has been raised over discrepancies in the information submitted that the proposal would help to improve the overall area, however, it also goes on to state that the proposal would not be visible.
55. The majority of the proposal is located on the rear of the site therefore would not be visible to the main public domain. In this regard, this part of the proposal would have a neutral effect on the character and appearance of the Conservation Area. The main element which would be visible would be the construction of the pitched roof over the existing flat roof to the side. This element of the proposal is considered to be an acceptable form of development given this provides a more sustainable and acceptable form of design which is considered to be in keeping with the NPPF and policy H9 of the Local Plan. In relation to Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, the proposal is considered to enhance the appearance of the Conservation Area.
56. The views of the Design and Conservation Officer also concur with this given that the majority of the proposal is located to the rear. Given this, it is felt that the character of the conservation area would be enhanced as the introduction of the pitched roof is considered to enhance the character and appearance of the conservation area.
57. The scale of the extension is large however it is not considered to be out of character to the host property and is not considered to be overdevelopment given the plot it sits in can comfortably accommodate the extension. It is acknowledged that the property has been previously extended. However, it is not felt that a refusal could be sustained on the scale of the proposal and given the principal of such has previously been approved in the previous application DM/15/02694/FPA.
58. The proposal does include a large extension to the property, however, it is considered that the character of the area would not be significantly impacted upon given the property could reasonably be reverted to regular family C3 use should this be required in the future.
59. The proposal therefore, is considered acceptable in respect of policies Q9 E6 and E22 of the City of Durham Local Plan.

60. In terms of the use of property, Policy H13 states that planning permission will not be granted for new development or changes of use which would have a significant adverse effect on the character or appearance of residential areas, or the amenities of residents within them while Policy H9 also seeks to provide such safeguards. In this regard there is an established use of the property for a small HMO for up to 6 people. The applicant is seeking to increase the number of bedrooms to 9 from 6 in the property which alters the building from a C4 planning use category to a sui generis use.
61. The proposal is considered to represent a built form which is not considered to have a significant detrimental impact on the residential amenity of the neighbouring properties as a significant loss of light/amenity is not considered to occur to either neighbour.
62. This is due to the extension not being visible from habitable room windows of the neighbour to the south given the significant existing setback of this property. In addition to this, given the distance of 3.4m which the first floor part of the extension is set away from the neighbour to the north and the position of their habitable room windows, the proposal is not considered to have a serious detrimental impact that would warrant a refusal of this application. The single storey infill projects only 3m along the shared boundary and this is similarly considered to have limited impact on the neighbours' amenities.
63. Overlooking issues are not considered to occur given there are no windows proposed in the side elevations. A condition would be added to any approval to restrict the addition of windows in the side elevation facing no. 31 to prevent any issues from potentially occurring in the future.
64. The application is, therefore, considered an appropriate addition in relation to policy Q9 of the Local Plan with regards to impact upon amenity of adjoining neighbours in respect of the proposed extension.
65. Objections have been raised that the proposed increase in the number of residents would have a significant detrimental impact on the character of the area increasing comings and goings and general disturbance in respect of deliveries, parking etc and anti-social behaviour issues and that the proposal would result in the biggest property on the street. In addition, objections state that the proposal would not promote healthy, safe and sustainable communities.
66. In respect of noise and disturbance issues and anti-social behaviour, both the environmental health team and Durham Constabulary have raised no objections to the scheme.
67. Whilst objections have been received, it is not considered that a refusal reason could be sustained in this instance. The property is located within an area where over half of the properties are within use as HMO's therefore, it is considered that there is a mixed community at present.
68. Whilst 3 additional bedrooms increases the occupancy by 50% it is not felt that a significant detrimental impact would occur. The proposal is already in use as student accommodation therefore, the proposal does not involve the loss of an existing C3 dwelling therefore, it is not considered that an additional 3 students would have a significant detrimental impact.

Inspectors decisions have considered that the change of use of a property which could accommodate up to 6 residents would not have a significant detrimental impact on the amenity of the area, therefore, it is considered that it would be difficult to refuse an additional 3 bedrooms at this property given up to 6 students are already in occupation.

69. The proposal therefore, is not considered to have a significant detrimental impact on residential amenity in accordance with policy H9 and H13 of the City of Durham Local Plan.

#### Highways issues:

70. Policy T1 of the City of Durham Local Plan states that the Council will not grant planning permission for development that would generate a level of traffic that would be detrimental to highway safety and/or have a significant effect on the amenity of occupiers of neighbouring property. This policy is not considered to conflict with the intentions of the NPPF as it too seeks to secure a good standard of amenity for residents.
71. Whinney Hill lies within the Durham City Controlled Parking Zone therefore on street parking in this street is via permit parking or pay and display. Highways officers have been consulted on the proposal and raise no objection to the proposed development on this basis. They have stated that no further permits would be issued and given this any additional cars brought to the site would be subject to parking charges.
72. The proposal is therefore considered acceptable from a highways viewpoint in accordance with policy T1 and T10 of the Local Plan and the NPPF.

#### Other Issues

73. Issues have been raised regarding comments made within the statements provided by the applicant as part of the application however, the application has been considered in accordance with the relevant plan policies.
74. Issues have also been raised regarding the applicant and the current up keep of the property as well as landlords only being interested in profit. However, the latter is not considered to be a material planning consideration and in terms of the former, no weight is being afforded to any improvement to the appearance of the rear of the property.
75. In respect of an air B&B causing issues, this cannot be considered as part of this application.
76. A bat risk assessment was submitted as part of the original application and subject to the build being carried out in accordance with the recommendations of the report there is no objection from an ecology viewpoint.

#### Conclusion

77. The principle of development and impact upon the residential area is considered to be acceptable as it is not considered that there would be any significant additional impacts of providing 9 bedrooms at the property as opposed to the current 6-bedroom HMO. The dwelling can accommodate the additional bedrooms while providing sufficient levels of amenity for the occupiers and neighbouring properties. There are no highways objections or environmental health objections and the proposal does not detrimentally impact on the character or appearance of the Durham City Centre Conservation Area, with the new roof arrangement representing an enhancement.

78. The application is considered to meet the requirements of the National Planning Policy Framework and Policies E6, E22, H9, H13, Q9 and T1 of the City of Durham Local Plan 2004, as well as satisfying the requirements of Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as it is considered to enhance the character and appearance of the Conservation Area.

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## CONCLUSION

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79. In conclusion, the proposed development would not result in an increase in HMOs in the area as the property currently operates as a C4 HMO. In this regard the proposal does not run contrary to the principles associated with the Interim Policy as the housing mix would remain unaltered. The increase in occupancy levels is not considered detrimental to the wider amenities of the area, and is considered acceptable, not causing undue harm to the surrounding heritage assets or neighbouring amenity. The proposals are considered to comply with relevant saved policies of the local plan and whilst there is some conflict with the interim policy on student accommodation, it is not felt that a refusal reason could be sustained on that basis.
80. The proposal has generated public interest, with letters of objection submitted. The objections and concerns raised have been taken into account and addressed within the report. On balance the concerns raised were not felt to be of sufficient weight to justify refusal of this application.

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## RECOMMENDATION

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That the application be **APPROVED**, subject to the conditions detailed below:

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 approved plans listed in Part 3 - Approved Plans.

Reason: To define the consent and ensure that a satisfactory form of development is obtained in accordance with Policy Q9 of the City of Durham Local Plan.

3. Notwithstanding the details shown on the submitted application, the external building materials to be used shall match the existing building.

Reason: In the interests of the visual amenity of the surrounding areas in accordance with Policy Q9 of the City of Durham Local Plan and Parts 12 and 15 of the National Planning Policy Framework.

4. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or in any Statutory Instrument revoking or re-enacting that Order with or without modification) no further windows or other openings shall be formed in the side elevations of the rear part two-storey/part single-storey extension facing north towards no. 31 Whinney Hill.

Reason: In order that the Local planning authority may exercise further control in this locality in the interests of the residential amenity of the neighbouring properties and to comply with policy Q9 of the City of Durham Local Plan.

5. Notwithstanding the details shown on the submitted application the works shall be carried out in complete accordance with the Method Statement of the Bat Survey & Risk Assessment for 32 Whinney Hill, Durham, as prepared by Veronica Howard, BSc (Hons), PhD, MCIEEM, September 2015

Reason: To conserve protected species and their habitat in accordance with Section 15 of the NPPF.

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## **STATEMENT OF PROACTIVE ENGAGEMENT**

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

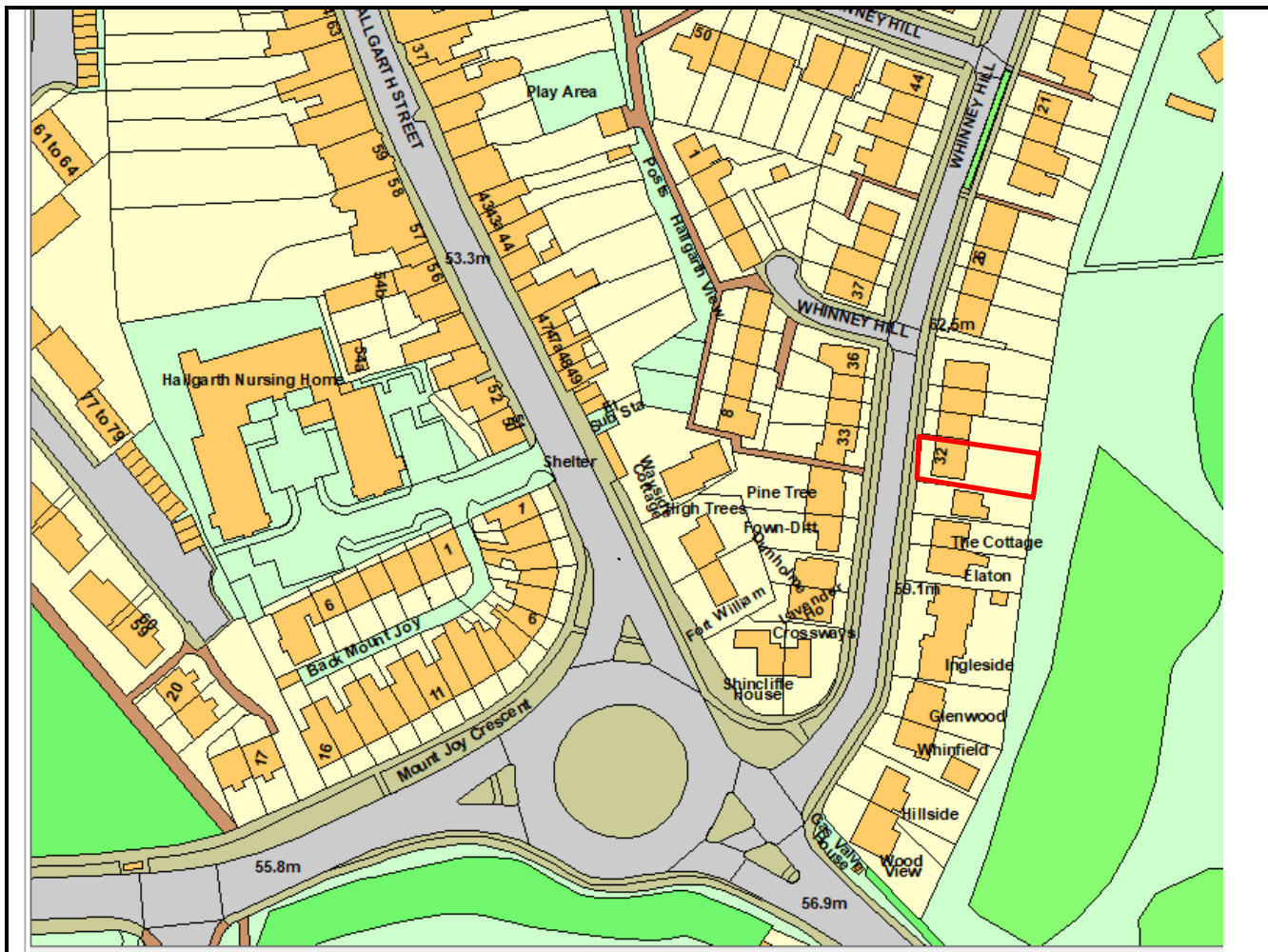
The National Planning Policy Framework (2018)

National Planning Practice Guidance Notes

City of Durham Local Plan

Statutory, internal and public consultation responses





<p><b>Planning Services</b></p>	<p>Change of use from small HMO (Use class C4) to 9 bed large HMO (Use Class Sui Generis) including erection of part two-storey/part single-storey extension to rear and pitched roof over existing flat roof at side at 32 Whinney Hill, Durham, DH1 3BE Application Reference DM/19/03257/FPA</p>	
<p>This map is based upon Ordnance Survey material with the permission of Ordnance Survey on behalf of Her Majesty's Stationary Office © Crown copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceeding. Durham County Council Licence No. 100022202 2005</p>		
	<p><b>Date</b> December 2019</p>	<p><b>Scale</b> NTS</p>

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## Planning Services

# COMMITTEE REPORT

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## APPLICATION DETAILS

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<b>APPLICATION No:</b>	DM/19/02667/FPA
<b>FULL APPLICATION DESCRIPTION:</b>	Construction of a new 2 and 3 Storey Extra Care building (falling within Class C2) providing 71 no. Apartments, associated access and hard and soft landscaping (amended description)
<b>NAME OF APPLICANT:</b>	Mr Andrew Mayfield Galliford Try Partnerships North East, 2 Esh Plaza, Sir Bobby Robson Way, Great Park, Newcastle Upon Tyne NE13 9BA
<b>ADDRESS:</b>	Land to The North Of Robson Avenue, Peterlee
<b>ELECTORAL DIVISION:</b>	Peterlee East
<b>CASE OFFICER:</b>	Paul Hopper (Senior Planning Officer) Tel: 03000 263 946 Email: paul.hopper@durham.gov.uk

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## DESCRIPTION OF THE SITE AND PROPOSALS

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### The Site

1. This application site is located within the settlement boundary of Peterlee and the Electoral Division of Peterlee East. The site measures approximately 0.7 hectares in area and is located to the north of Robson Avenue. It is previously developed and located centrally within the town and an established housing estate on the site of the former Eden Community Primary School. Since the school was demolished in 2008 the land has remained vacant with the hardstanding still in situ in places and is framed by areas of tree and shrub planting (some of which are protected through Tree Preservation Order) and former playing fields.
2. Residential streets bound the site to the east and west at Bailey Rise and Robson Avenue respectively and by a small area of open space to the north within which there sits a former community centre which has since been granted planning permission for use as a hotel. To the south of the site planning permission was granted in 2019 for the erection of 67 dwellings which has been implemented and construction is ongoing.
3. There are numerous community facilities nearby including shops, schools, healthcare services and public transport provision and the site is accessed via the historic arrangement direct from Robson Avenue.

## The Proposal

4. Full planning permission is sought for the erection of a 71 unit Extra Care residential facility on land to the north of Robson Avenue, Peterlee with associated access and hard and soft landscaping.
5. The development proposes a building of 3 storey height with a dual pitched roof set within soft and hard landscaping. Submitted plans show a building of predominantly linear layout that would occupy a north/south orientation with two perpendicular 'wings' extending east and west from the main thrust of the building. External materials would comprise facing brick, render and weatherboard cladding to the walls and concrete interlocking tiles to the roof with dark grey interlocking UPVC windows and doors. Boundary treatment would comprise the retention of the existing 2 metres high palisade security fencing which is understood to have served the previous use although this would be supplemented by timber fencing internally as part of the proposals.
6. The development would comprise 71 No. self-contained units spread across all three floors although at ground floor these would be supplemented by a number of communal areas which include activity/recreational areas, a kitchen and dining area, hair salon and laundry. Staff facilities would also be provided at this level and would include WC, offices and a staff room.
7. Access would be taken via the existing arrangement with Robson Avenue with some associated improvement works.
8. It is understood that the facility would be operated by Housing 21 who manage a number of similar facilities within the Country and Durham Care Academy would hold nomination rights for tenants.
9. This application is being reported to planning committee as it is classed as a major application.

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## PLANNING HISTORY

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10. There is no planning history relevant to the current application site.

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## PLANNING POLICY

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### NATIONAL POLICY

11. The Government has consolidated all planning policy statements, guidance notes and many circulars into a single policy statement, the National Planning Policy Framework (NPPF), although the majority of supporting Annexes to the planning policy statements are retained. The overriding message is that new development that is sustainable should go ahead without delay. It defines the role of planning in achieving sustainable development under three topic headings – economic, social and environmental, each mutually dependent.
12. The presumption in favour of sustainable development set out in the NPPF requires local planning authorities to approach development management decisions positively, utilising twelve 'core planning principles'. The following elements of the NPPF are considered relevant to this proposal;

13. *NPPF Part 2 Achieving Sustainable Development* - The Government is committed to securing economic growth in order to create jobs and prosperity, building on the country's inherent strengths, and to meeting the twin challenges of global competition and of a low carbon future
14. *NPPF Part 5 Delivering a Wide Choice of High Quality Homes*. The Government advises Local Planning Authority's to deliver a wide choice of high quality homes, widen opportunities for home ownership and create sustainable, inclusive and mixed communities
15. *NPPF Part 6 Building a Strong, Competitive Economy*: The Government is committed to ensuring the planning system does everything it can to support sustainable economic growth. Planning should operate to encourage and not act as an impediment to sustainable growth. Therefore significant weight should be placed on the need to support economic growth through the planning system.
16. *NPPF Part 8 Promoting Healthy 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
17. *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.
18. *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.
19. *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.
20. *NPPF Part 15 Conserving and Enhancing the Natural Environment*: Planning policies and decisions 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 mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions.

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

21. The following policies of the Easington District Local Plan (EDLP) are considered relevant to the determination of this application.
22. Policy 1- Due regard will be had to the development plan when determining planning applications. Account will be taken as to whether the proposed development accords with sustainable development principles while benefiting the community and local economy. The location, design and layout will also need to accord with saved policies 3, 7, 14-18, 22 and 35-38.

23. Policy 3 - Development limits are defined on the proposal and the inset maps. Development outside 'settlement limits' will be regarded as development within the countryside. Such development will therefore not be approved unless allowed by other policies.
24. Policy 14 - seeks to protect Special Areas of Conservation from development which would give rise to an adverse impact, either directly or indirectly.
25. Policy 18 - Development which adversely affects a protected species or its habitat will only be approved where the reasons for development outweigh the value of the species or its habitat.
26. Policy 35 - The design and layout of development should consider energy conservation and efficient use of energy, reflect the scale and character of adjacent buildings, provide adequate open space and have no serious adverse effect on the amenity of neighbouring residents or occupiers.
27. Policy 36 - The design and layout of development should ensure good access and encourage alternative means of travel to the private car.
28. Policy 37 - The design and layout of development should seek to minimise the level of parking provision (other than for cyclists and disabled people).
29. Policy 66 - Developers will be required to make adequate provision for children's play space and outdoor recreation in relation to housing development of 10 or more dwellings. Provision may be secured elsewhere if it is inappropriate to make provision at the development site.
30. Policy 67 - Housing development will be approved on previously developed land within settlement boundaries of established towns or villages provided the proposal is of appropriate scale and character and does not conflict with other policies in the plan.
31. Policy 71 – Rest Homes, Nursing Homes and Sheltered Accommodation - New residential institutions (class C2) and sheltered accommodation will be approved within the defined settlement boundaries of Peterlee provided the proposal accords with the provisions of policies 35-37.

#### **EMERGING COUNTY DURHAM PLAN:**

##### **The County Durham Plan**

32. Paragraph 48 of the NPPF states 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. Following consultation at 'Issues & Options', 'Preferred Options' and 'Pre Submission Draft' stages, the CDP was approved for submission by the Council on 19 June 2019 and the EIP is currently proceeding. The CDP was submitted to the Planning Inspectorate on 28 June 2019. Although the CDP is now at a relatively advanced stage of preparation, it is considered that it is not sufficiently advanced to be afforded any weight in the decision-making process at the present time.

*most relevant in the Development Plan the full text, criteria, and justifications of each may be accessed at <http://www.cartoplus.co.uk/durham/text/00cont.htm>.*

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## **CONSULTATION AND PUBLICITY RESPONSES**

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### **STATUTORY RESPONSES:**

33. The Highway Authority raises no objection to the application subject to the inclusion of a planning informative regarding the works to the access which would be subject to a Section 278 agreement.
34. Northumbrian Water Limited offer no objection to the application subject to a planning condition which requires the implementation of the development in accordance with the submitted drainage strategy.
35. Drainage and Coastal Protection Section raises no objection to the application after the applicant clarified discharge rates from the development and subject to a planning condition which ensures the development is carried out in accordance with the submitted surface water disposal detail.

### **INTERNAL CONSULTEE RESPONSES:**

36. Spatial Policy Section confirms that the planning balance test contained in paragraph 11 of the NPPF is engaged.
37. Landscape Section raises no objection to the application after the scheme was amended to improve the quality of internal landscaping and introduce Juliette style balconies at points across the development subject to a planning condition requiring the submission and agreement of a landscape plan detailing precise species mix.
38. Arborist has no objections to the application subject to the development being carried out in accordance with the requirements of the submitted Tree Protection Plan and AIA.
39. Environmental Health Section (Noise Action Team) has no objection to the application subject to the inclusion of a planning condition which requires the submission and agreement of precise detail of sound attenuation measures to be incorporated into the construction of the building.
40. Contaminated Land Section has no objection to the application subject to the inclusion of the standard planning condition requiring the submission and agreement of remediation measures and the inclusion of a standard planning informative with regard to measures to be taken should contamination be found during the course of the development.
41. Design and Conservation Section raises no objection to the application after the scheme was amended to reflect design improvements including the introduction of Juliette style balconies at points across the development.
42. Archaeology Section raises no objection to the application.
43. Ecology Section originally noted that the development is located within the 6km HRA buffer but that given the proposal relates to a residential institution, in the event that the LPA is satisfied that the nature of residents could be controlled to ensure that there would be no impact upon the Heritage Coast then no commuted sum would be required. Should this not be the case then a commuted sum of £53,560.31 would be required. In addition, a commuted sum of £16,560 to offset biodiversity loss as a result of the development is confirmed.

## **NON STATUTORY RESPONSES:**

44. NHS has requested a financial contribution of £18,480 for use towards healthcare provision in the area.

## **PUBLIC RESPONSES:**

45. The application has been publicised by way of site notice, press notice and notification letters sent to neighbouring properties. No representations have been received.

## **APPLICANTS STATEMENT:**

46. Housing 21 are proposing to develop a 71 apartment extra care scheme at Robson Avenue, Peterlee. All apartments will be for rent set at affordable levels, with 100% nominations afforded to the Council. Housing 21 provide an integrated landlord, housing management, and care provider service – they consider the integrated service model provides the best service and outcomes for residents, as well as the most efficient funding model for local authority partners.
47. Housing 21 are by far the largest provider of affordable extra care in England, with more than 140 schemes currently in operation. They work with over 150 councils and deliver 40,000 hours of care to over 5000 users each week. In the north of England, their services have a 100% good rating with the Care Quality Commission.
48. Extra care housing offers a real 21st Century alternative to residential care where couples can stay together. Within the extra care scheme there will be a mix of 1 and 2 bed apartments, all level access with specially designed motion spot bathrooms. The scheme will have 2 lifts, both suitable for wheelchair access, a communal lounge and restaurant, hair salon, assisted bathing facilities, and a specially landscaped accessible garden, with opportunities for residents to tend their own allotment. This is all set within an independent living scheme, with everyone having their own front door and privacy as well as access to communal facilities. Optional tailored care packages are available which enable people to live a life of choice at a time in their lives when their needs and circumstances change.
49. Our schemes are outward facing and welcome the local community in to use the communal facilities and also to contribute to a thriving community. The scheme will also provide real and meaningful employment opportunities in care and managerial roles, as well as potential new business start-ups for restaurant operators and hairdressers. There will be approximately 24 new fulltime jobs created directly by this development. Additional services will be outsourced locally to cover building maintenance, gardening, catering etc.
50. An integral part of the extra care offer is the provision of a staff service 24/7 for safety, security, first responder, step-up care after a hospital admission, short term provision of additional planned care (e.g. where someone has a short term medication administration requirement, or additional mobility support needs for a period of time). There is an increasing body of evidence to suggest the health of residents in Extra care schemes improves, resulting in less doctor and hospital admissions and ultimately less demand on local health facilities. Allied to time and cost savings in providing care in one location, this can only be of benefit to both the town and the Council.



51. In summary, this application will provide investment into the area and will be a valuable asset to the community, providing much needed capacity for housing an ever-growing older population. We therefore urge you approve this application.

*The above represents a summary of the comments received on this application. The full written text is available for inspection on the application file which can be viewed at <http://82.113.161.89/WAM/showCaseFile.do?action=show&appType=planning&appNumber=10/00955/FPA>*

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## **PLANNING CONSIDERATIONS AND ASSESSMENT**

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

### **Principle of Development**

53. 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 Easington District Local Plan (EDLP) remains the statutory development plan and the starting point for determining applications as set out in the Planning Act and reinforced at Paragraph 12 of the NPPF. However, the NPPF advises at Paragraph 213 that the degree of weight to be afforded to existing Local Plan policies will depend upon the degree of consistency with the NPPF.
54. The Easington Local Plan (EDLP) was adopted in 2004 and was intended to cover the period to 2006. The 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.
55. On this basis, given the age of the EDLP and housing supply figures that informed it, the housing supply policies therein do not reflect an up-to-date objective assessment of need, and must now be considered out-of-date, and the weight to be afforded to the policies reduced as a result. However, this does not make out of date policies irrelevant in the determination of a planning application. Nor do they prescribe how much weight should be given to such policies in the decision, this being a matter for the decision maker, having regard to advice at Paragraph 213 of the NPPF.
56. Policy 67 of the EDLP relates to windfall housing development within settlement limits stating that housing development will be approved on previously developed sites within settlement boundaries of established towns and villages provided the proposal is appropriate in scale and character and does not conflict with specific policies relating to the settlement or the general policies of the plan. However, the out of date evidence base which underpins this policy means that it must be regarded as out of date for the purposes of paragraph 11 of the NPPF and as a consequence, can be afforded only limited weight.

57. As there are no policies in the development plan against which the principle of development can be determined, regard must therefore be had to Paragraph 11 of the NPPF which establishes a presumption in favour of sustainable development. For decision taking this means (unless material considerations indicate otherwise);

- approving development proposals that accord with the development plan without delay; or
- where there are no relevant development plan policies, or the policies which are most important for the determining the application are out-of-date, granting planning 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 impact of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework when taken as a whole.

58. There are no policies in the NPPF that protect areas or assets of particular importance and which would provide a clear reason for refusal, therefore the acceptability of the development largely rests on planning balance of whether any adverse impacts of approving the development would significantly and demonstrably outweigh the benefits in paragraph 11(d)(ii).

#### Five year Housing Land Supply

59. 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.

60. 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.

61. 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. In addition, in three further, more recent, written representation appeals (3213596, 3215357 & 3215186), the Inspector outlined that there are also the requirements of Paragraph 73 under which councils are required to identify annually a supply of housing sites to provide a minimum of 5YHLS, set against local housing needs where strategic policies are more than 5 years old. The Council's approach to demonstrating a 5YHLS is, therefore, considered to be appropriate in the circumstances, and in line with the requirements of the NPPF.

62. 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

#### Locational Sustainability of the Site

63. Paragraph 103 of the NPPF states that the planning system should actively manage patterns of growth in support of focussing significant development on locations which are or can be made sustainable through limiting the need to travel and offering a genuine choice of transport modes. In this respect, it is noted that Peterlee is a large town with access to a good range of shops, services, employment and education opportunities, and is well served by public transport. Consequently, the site is considered to represent a sustainable location capable of supporting additional residential development.

#### Impact upon Residential Amenity

64. Policy 35 of the EDLP states that layout and design of new development will be required to have no serious adverse effect on the amenity of people living and working in the vicinity of the development site and on adjacent land uses. This is considered to display a broad level of accordance with the aims of paragraph 123 of the NPPF which seeks to control the impact of a proposal upon residential amenity including through the imposition of planning conditions. This policy is considered NPPF compliant particularly with regard to paragraph 180 of the NPPF which states that planning decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development.
65. The nearest residential properties would be those located to the east and west of the site at Robson Avenue and Bailey Rise respectively. The nearest gable elevation of the former would be approximately 13.5 metres from the eastern elevation of the proposed building and the rear elevations of properties at Bailey Rise would be located approximately 19.5 metres from its western elevation. The applicant has amended the scheme since original submission to remove windows to habitable rooms within these elevations in order to meet minimum privacy distances, and has also provided a shadow analysis model which demonstrates that there would not be any adverse impact to adjacent occupiers from overshadowing or loss of light. Whilst the building would be of 3 storey height across this part of the site it is not considered that there would be any unacceptable impact in terms of overbearing given the distances achieved and noting that historically built development was provided across this part of the site through a previous use. It is also of note that there have been no representations received from surrounding residents in objection to the scheme in this regard.
66. The Council's Environmental Health Officer has been consulted and offers no objection to the application but notes the presence of a neighbouring property to the north which benefits from planning permission for use as a hotel and for which the LPA is currently considering a planning application for an extension to provide a function room. With this in mind there is a requirement to provide appropriate sound attenuation to those units with windows to the northern elevation that serve habitable rooms, along with a construction management plan detailing working practices during the construction phase. The submission and agreement of proposed mitigation could be secured through planning condition as could implementation of the construction management plan.

67. Subject to the inclusion of planning conditions in this regard, the development would not be considered to have any significant adverse impact in relation to residential amenity in accordance with the aims of policy 35 of the EDLP and paragraph 180 of the NPPF.

#### Landscape and Visual Amenity including impact upon existing trees

68. Policy 35 of the EDLP requires new development to reflect the scale and character of adjacent buildings and the area generally, particularly in terms of site coverage, height, roof style, detailed design and materials and provide appropriate landscape features and screening, where required. This is considered to display a broad level of accordance and compliance with the aims of the NPPF at paragraph 124 which states that the creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.
69. The development proposes the erection of a freestanding 71 unit Extra Care Facility spread across three storeys and presenting a principal elevation to the south onto Robson Avenue. It includes hard landscaping to the southern elevation comprising a vehicular access from Robson Avenue and a 36 space car park and would be framed by an area of soft landscaping the main thrust of which would be situated to the north west of the site. Notwithstanding the above the site is subject to a Tree Preservation Order made in 1948 although it is noted that this relates only to the northern part of the site.
70. In terms of scale and massing the proposed building despite being of 3 storey height would be set within considerable grounds and set back sufficient distance from Robson Avenue itself to ensure that it would assimilate appropriately into the existing streetscene. External materials would comprise a mix of red facing brick, render and weatherboard cladding with interlocking concrete tiles to the roof (the precise details of all external materials have been provided and are considered acceptable).
71. The design reflects amendments to the original submission and now includes decorative elements such as Juliette balconies provided to add visual interest and break up the massing of the most prominent principal elevation. Improvements have also been secured to soft landscaping to the satisfaction of the Council's Landscape Section. Use of the materials stated could be secured through planning condition.
72. As noted a Tree Preservation Order (TPO) exists across the northern part of the site and whilst the proposal would require the removal of a number of existing trees the specimens affected would be those to the southern part of the site and the applicant has sought to retain the most notable specimens where possible. In this respect the scheme has been amended to ensure that none of the trees which are subject to the TPO would be adversely affected. The Council's Arborist initially raised some concern at the loss of a Grey Alder to the south of the site although it is understood that it has not been possible to retain this specimen due to drainage requirements. However, the scheme has been amended to retain T18 which is subject to protection through TPO subject to some pruning which has been agreed with the Council's Arborist and can be secured through planning condition.
73. Where the loss of other trees is proposed, (such as along the boundary with Robson Avenue), replacements will be planted and whilst the visual benefit of these replacements maybe limited until they become established, this would nevertheless satisfactorily offset any adverse impact in this regard. Notwithstanding the above the tree protection measures detailed in the Tree Protection Plan should be installed prior to the commencement of development and retained for the duration of the construction phase and this could be secured through planning condition.

74. The site previously hosted Eden Community School and although the buildings have since been removed from the site much of the hardstanding remains. As such the proposal for the site represents its positive redevelopment and has associated visual amenity benefits as a consequence.
75. In light of the above, the redevelopment of the site would sit acceptably in the wider streetscene and would not appear as incongruent addition in accordance with the aims of policy 35 and 71 of the EDLP and paragraph 124 of the NPPF.

#### Parking, Access and Highway Safety

76. Policies 36 and 37 of the EDLP requires new development to provide safe and adequate access and sufficient parking capable of serving the amount and nature of traffic to be generated which is an approach considered consistent with paragraph 108 of the NPPF in respect of achieving safe and suitable access to the site.
77. The proposal would take an access directly from Robson Avenue to the south which would occupy a position broadly similar to that which served the previous use. This would serve an area of car parking across the south western part of the site comprising a total of 36 car parking spaces (including 4 disabled spaces) and subject to a one-way circulation system.
78. The Highway Authority has been consulted and confirms that the number of spaces provided meets the requirements of the Council's Parking Standards and that the proposed means of access is acceptable, and as such offers no objection to the application. However, a condition is advised which restricts the use of the building to that falling within Class C2 of the Town and Country Planning (Use Classes) Order 1987, as the parking requirements for Class C3 use are likely to be greater.
79. Whilst a condition could be included in this regard it is considered that sufficient control exists given that any change of use of the development from C2 to C3 would require planning permission and the impact of any such proposal in terms of parking, access and highway safety would be a material consideration in determination of any such application.
80. Consequently, the development is considered to accord with the requirements of policy 36 of the EDLP and paragraph 108 of the NPPF.

#### Ecology, Biodiversity and Protected Species

81. Policies 14 and 15 of the EDLP seek to protect Special Areas of Conservation and Sites of Special Scientific Interest respectively which is an approach that is considered to display a broad level of accordance with Part 15 of the NPPF in that it seeks to ensure that new development protects and mitigates harm to biodiversity interests.
82. Whilst there are no structures of note still present within the application site from the former use several existing trees are identified for removal and the site also lies within the 6km buffer of the Heritage Coast. As such the application is supported by Habitats Regulations Screening and the Preliminary Ecological Appraisal reports completed by Dendra Consulting. The former concludes no likely significant effect on the coastal European Protected Sites and 'screens' it out from requiring further Appropriate Assessment. However, this is at odds with the findings of the Council's own HRA of residential development along the coast. The Durham County Council HRA and the subsequent coastal avoidance and mitigation strategy have been produced in full consultation with Natural England who support the conclusion and the measures to be implemented to minimise negative effects on the coastal European Protected sites as a result of increased recreational pressure.

83. Consequently, the Council's Ecologist considers that in order to mitigate the impact of the proposal upon the Heritage Coast a commuted sum contribution of £53,560.31 is required to be used in off-site mitigation schemes calculated at £756.61 per residential unit. Specifically, the contribution would be used towards CAMMs Capital Item 3(5) High Tide Roosts, specifically Nose's Point fencing and public access management.
84. In response the applicant has advised that Clauses 3.1.4 and 3.1.5 of the HRA developer guidance appear relevant and relate to residential institutions stating that where it can be demonstrated that there would be no impact upon the coast then mitigation would not be required. Specifically, the applicant advises that as residents would be elderly and subject to care needs which would prohibit travel to and use of the coast to walk pets, then there would be no adverse impact.
85. The Council's Ecology Section has responded to this point and noted that in the event that entry age and/or the end user can be effectively controlled through planning condition to ensure residents fall within the 70s and 80's range and have some degree of medical care requirement as claimed, then the exemption clauses stated would apply and the HRA contribution not required.
86. It is considered that any planning condition which sought to control restriction upon pet ownership or the care needs of residents would not meet the tests required of all planning conditions with regard to reasonableness or enforceability, and as such the full contribution as stated would be required to mitigate impact upon the Heritage Coast as detailed above. Whilst County Durham Care Academy would have nomination rights for residents (which would offer a degree of control in this regard) it is nevertheless noted that in instances where full capacity of the facility could not be achieved the applicant would be at liberty to fill those units not occupied, and over which Durham Care Academy would have no control.
87. With regard to biodiversity paragraph 175 of the NPPF requires that if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused. The Preliminary Ecological Appraisal submitted in support of the application identifies that there would be the loss of habitats to facilitate the development and in accordance with the requirements of the NPPF, and using the appropriate Biodiversity Calculator, the commuted sum of £16,560.00 would therefore be required to off-set biodiversity loss secured via a s106 Agreement.
88. The presence of a European Protected Species (EPS) is a material planning consideration. The Conservation of Habitats and Species Regulations 2010 have established a regime for dealing with derogations which involved the setting up of a licensing regime administered by Natural England. Under the requirements of the Regulations it is an offence to kill, injure or disturb the nesting or breeding places of protected species unless it is carried out with the benefit of a licence from Natural England.
89. Notwithstanding the licensing regime, the Local Planning Authority must discharge its duty under the regulations and where the proposed development is likely to result in an interference with an EPS must consider these tests when deciding whether to grant permission. A Local Planning Authority failing to do so would be in breach of the regulations which requires all public bodies to have regard to the requirements of the Habitats Directive in the exercise of their functions.

90. The supporting Preliminary Ecological Appraisal concludes that the site offers very low potential for protected species and consequently, it is not considered that the proposed development would have an adverse impact on protected species or their habitats and therefore there is no need to consider whether an EPS licence would be granted. The Council's Ecologist agrees with these conclusions and as such the development is considered to accord with part 15 of the NPPF in this regard.
91. Whilst there would be some net loss to biodiversity this could not be offset by off-site mitigation and the applicant has agreed to provide a commuted sum of £16,560 in this regard for use at a scheme identified in Durham County Council's Local Biodiversity Compensation Strategy Document. Impact upon the Heritage Coast could be appropriately mitigated through a commuted sum of £53,560.31. The development would therefore accord with policy 18 of the EDLP and paragraph 175 of the NPPF.

#### Land Contamination

92. Paragraph 178 of the NPPF requires that planning decisions should ensure that the site is suitable for its new use taking account of ground conditions and land instability, including from natural hazards or former activities such as mining, pollution arising from previous uses and any proposal for mitigation including land remediation or impacts on the natural environment arising from that remediation.
93. The proposal is supported by a Phase 2 Geo-Environmental Appraisal, Ground Gas Assessment and a Remediation Strategy Report which identifies remediation to mitigate against the risk to the development from previous contamination. As such the Council's Contaminated Land Section offer no objection to the application subject to the inclusion of a planning condition which requires the submission and agreement of a verification report upon completion of the remediation works in order to demonstrate compliance.
94. Therefore, subject to the inclusion of planning condition in this regard the development is considered to accord with the aims of paragraph 178 of the NPPF.

#### Drainage

95. The application proposes the disposal of both foul and surface water to existing mains connection. While NWL and the Council's Drainage Section raise no fundamental objection to this arrangement both advise the inclusion of a planning condition to ensure the development is carried out in accordance with the submitted drainage strategy.
96. Subject to the inclusion of a planning condition to ensure the development is carried out in accordance with the submitted Drainage Strategy the application is considered to accord with the requirements of policy 1 of the EDLP.

#### Planning Obligations and Section 106 Requirements

97. Saved policy 66 of the EDLP states that developers will be required to make adequate provision for outdoor recreation in relation to housing development of 10 or more dwellings. Provision may be secured elsewhere if it is inappropriate to provide provision at the development site. On this basis the applicant has agreed to make a financial contribution of £10,000 towards the provision or improvement of offsite allotment space within the electoral division in line with the requirements of the Council's Open Space Needs Assessment.

98. As already noted elsewhere in this report, contributions of £53,560.31 and £16,560 are required for use in mitigating the impact upon the Heritage Coast and off-site ecology and biodiversity improvements within the locality in accordance with the Council's Guidance to Developer Contributions and to which the applicant has agreed.
99. Paragraph 92 of NPPF recognises the need for planning decisions to ensure an integrated approach when considering the location of new housing and to plan positively for the provision and use of community facilities and local services. This provides policy justification to seek mitigation in respect to essential services including GP provision where a deficit would result or be exacerbated by the proposal. The NHS Darlington and Stockton-on-Tees Clinical Commissioning Group has confirmed that in order to mitigate the impact of the development upon existing healthcare provision within the Peterlee area there is a requirement for a financial contribution of £18,480.
100. It is considered that securing the above contributions by S106 obligation would be compliant with the relevant tests set out in the CIL Regs.

#### Planning Balance

101. As the relevant policies of the EDLP are considered to be out of date, the presumption in favour of sustainable development as contained in paragraph 11 of the NPPF is engaged which requires planning permission to be granted unless the adverse impacts of doing so significantly and demonstrably outweigh the benefits. In this regard a summary of the benefits and adverse impacts of the proposal are considered below;

#### *Benefits*

102. The development would assist in maintaining housing land supply and add to the range and variety of housing in accordance with paragraph 59 of the NPPF. Whilst the benefit to housing land supply could be considered limited in the context of the Council's ability to demonstrate a 5 year supply of housing land, and as such less weight should be attached to this as a benefit than if a sort fall in supply existed, there would nevertheless be notable benefit in terms of an increase to the range and variety of provision. In this regard Durham County Care Academy have identified demand for extra care provision in the Peterlee area.
103. The redevelopment of the site would present some benefit to the visual amenity of the surrounding area through the reintroduction of a positive use at a previously developed site which has been vacant for some time.
104. To a limited degree the development would provide direct and indirect economic benefits within the locality and from further afield in the form of expenditure in the local economy. This would include the creation of construction jobs, as well as further indirect jobs over the lifetime of the development. A temporary economic uplift would be expected to result from the development and expenditure benefits to the area supporting existing facilities in Peterlee. As such this can be afforded some limited weight.

#### *Adverse Impacts*

105. In all other respects the applicant has demonstrated that there would not be any adverse impacts as a result of the development subject to suitable mitigation through appropriate planning conditions.



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## CONCLUSION

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106. The acceptability of the application should be considered in the context of the planning balance test contained within Paragraph 11d of the NPPF. Therefore, in order to justify the refusal of planning permission any adverse impacts of a proposed development must significantly and demonstrably outweigh any benefits.
107. The site occupies a sustainable location within Peterlee which is served by a good range of shops, services, employment and education opportunities and benefits from good local transport links. The introduction of additional extra care facility in this location would help support these facilities and service an identified need for housing development of this type. As such it is considered acceptable in principle being a sustainable development in accordance with guidance contained within the NPPF.
108. The proposal presents some limited benefits in terms of a boost to housing supply and the local economy both in the short term, through the creation of construction jobs, and more long term through increased spending in the local economy from future residents. There would also be some benefit in terms of visual amenity through the redevelopment of a previously developed and vacant site.
109. The development could be satisfactorily accommodated at the site by reason of scale, mass, layout, design and materials and there would be no adverse impact in terms of residential amenity, visual amenity, highway safety, ecology, drainage or land contamination in accordance with the aims of policies 1, 3, 14, 18, 35, 36, 37, 66, 67 and 71 of the EDLP and paragraphs 11, 108, 124, 178 and 180 of the NPPF.
110. The scheme would therefore comply with all relevant saved local plan policy, general aims of the NPPF and in the context of paragraph 11, there are no adverse impacts that would significantly and demonstrably outweigh the benefits and is therefore recommended for approval.

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## RECOMMENDATION

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That the application be **APPROVED** subject to the following conditions and to the completion of a Section 106 Legal Agreement to secure the provision of:

- i) The sum of £53,560.31 for use towards CAMMs Capital Item 3(5) High Tide Roosts, specifically Nose's Point fencing and public access management.
  - ii) The sum of £10,000 to be used in the improvement of existing or the provision of new allotment facilities within the Peterlee East Ward.
  - iii) The sum of £16,560 to be used by the Council towards biodiversity enhancements in line with the framework identified in Durham County Council's Local Biodiversity Compensation Strategy document.
  - iv) The sum of £18,480 for improving access to healthcare provision in the vicinity of the development.
1. The development should not be begun later than 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:

Drawing No.	Description	Date Received
00-50	Location Plan	16/08/2019
00-54	Proposed Roof Plan	16/08/2019
00-53-P1	Proposed Floor Plans	11/10/2019
00-55-P2	Proposed Elevations	22/11/2019
00-52-P2	Proposed Site Layout	22/11/2019
A-0001-P1	Materials Schedule	19/11/2019
	FRA and Drainage Strategy	25/11/2019

*Reason: To define the consent and ensure that a satisfactory form of development is obtained.*

3. External surfaces of the development hereby approved shall comprise only those listed in the materials schedule entitled '18042 – MATERIALS SCHEDULE REVISION P1' from SPA Architects received 19 November 2019.

*Reason: To protect the character and appearance of the existing streetscene in accordance with the aims of policy 35 of the Easington District Local Plan and paragraph 124 of the NPPF.*

4. The development hereby approved shall only be carried out wholly in accordance with the Construction Management Plan entitled 'Robson Avenue, Peterlee, Site Management Methodology' received 26 November 2019.

*Reason: To protect the character and appearance of the existing streetscene in accordance with the aims of policy 35 of the Easington District Local Plan and paragraph 124 of the NPPF.*

5. Prior to the first occupation of the development hereby approved full details of all means of enclosure shall be submitted to and agreed in writing with the Local Planning Authority. Thereafter the development shall be carried out in accordance with the agreed details.

*Reason: To protect the character and appearance of the surrounding area in accordance with the aims of policy 35 of the Easington District Local Plan and paragraph 124 of the NPPF.*

6. No development shall take place at the site above damp proof course (DPC) level until a scheme to attenuate the impact of noise from the hotel to the north of the site upon those properties with windows in the north facing elevation of the development has been submitted to and agreed in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the agreed detail.

*Reason: To protect residential amenity in accordance with the aims of policy 35 of the Easington District Local Plan and paragraph 180 of the NPPF.*

7. No development shall take place at the site above damp proof course (DPC) level until a landscape plan has been submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the approved details.

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

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

Trees, hedges and shrubs scheduled for retention.

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

Details of planting procedures or specification.

Finished topsoil levels and depths.

Details of temporary topsoil and subsoil storage provision.

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

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

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

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

*Reason: To protect the landscape and visual amenity of the surrounding area in accordance with the aims of policy 35 of the Easington District Local Plan and paragraph 124 of the NPPF.*

8. All planting, seeding or turfing and habitat creation in the approved details of the landscaping scheme shall be carried out in the first available planting season following the practical completion of the development.

No tree shall be felled or hedge removed until the removal/felling is shown to comply with legislation protecting nesting birds and roosting bats.

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 will be subject to the same conditions.

*Reason: To protect existing trees and the character and appearance of the surrounding area in accordance with the aims of policy 35 of the Easington District Local Plan.*

9. No construction work shall take place, nor any site cabins, materials or machinery be brought onto the site until all trees and hedges, as indicated on the Tree Protection Plan contained at Appendix 1 of the AIA produced by Dendra and received 8 November 2019 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 whatsoever, including alterations of ground levels, storage of any materials within protective fences, work to affect any tree (including the removal of limbs or other tree work) or the excavation of underground trenches or service runs within root protection areas as defined on the Tree Protection Plan, shall take place, other than those works relating to T18 as permitted through condition 10 of this permission.

*Reason: To protect existing trees in accordance with the requirements of policy 35 of the Easington District Local Plan and paragraph 175 of the NPPF.*

10. No development shall commence until full details of all tree works proposed to T18 as shown on the AIA submitted by Dendra Consulting received 8 November 2019 have been submitted to and agreed in writing by the Local Planning Authority. The development thereafter shall be carried out in accordance with the agreed detail.

*Reason: To protect existing trees in accordance with the requirements of policy 35 of the Easington District Local Plan and paragraph 175 of the NPPF.*

11. Development shall be carried out in full accordance with the drainage scheme contained within the submitted document entitled 'Flood Risk Assessment and Drainage Strategy' dated May 2019. The drainage scheme shall ensure that foul flows discharge to the foul sewer at manhole 0402 and ensure that surface water discharges to the surface water sewer at manhole 0404. The surface water discharge rate shall not exceed the available capacity of 5.0 l/sec that has been identified in this sewer.

*Reason: In the interest of the adequate disposal of foul and surface water in accordance Part 14 of the NPPF.*

12. Remediation works shall be carried out in accordance with the approved contamination remediation strategy, dated February 2019. The development shall not be brought into use until such time as a Phase 4 verification report related to that part of the development has been submitted to and approved in writing by the Local Planning Authority.

*Reason: To ensure that the remediation works are fully implemented as agreed and the site is suitable for use, in accordance with Part 15 of the National Planning Policy Framework.*

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## **STATEMENT OF PROACTIVE ENGAGEMENT**

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In accordance with Article 35(2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015, the Local Planning Authority 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

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## **BACKGROUND PAPERS**

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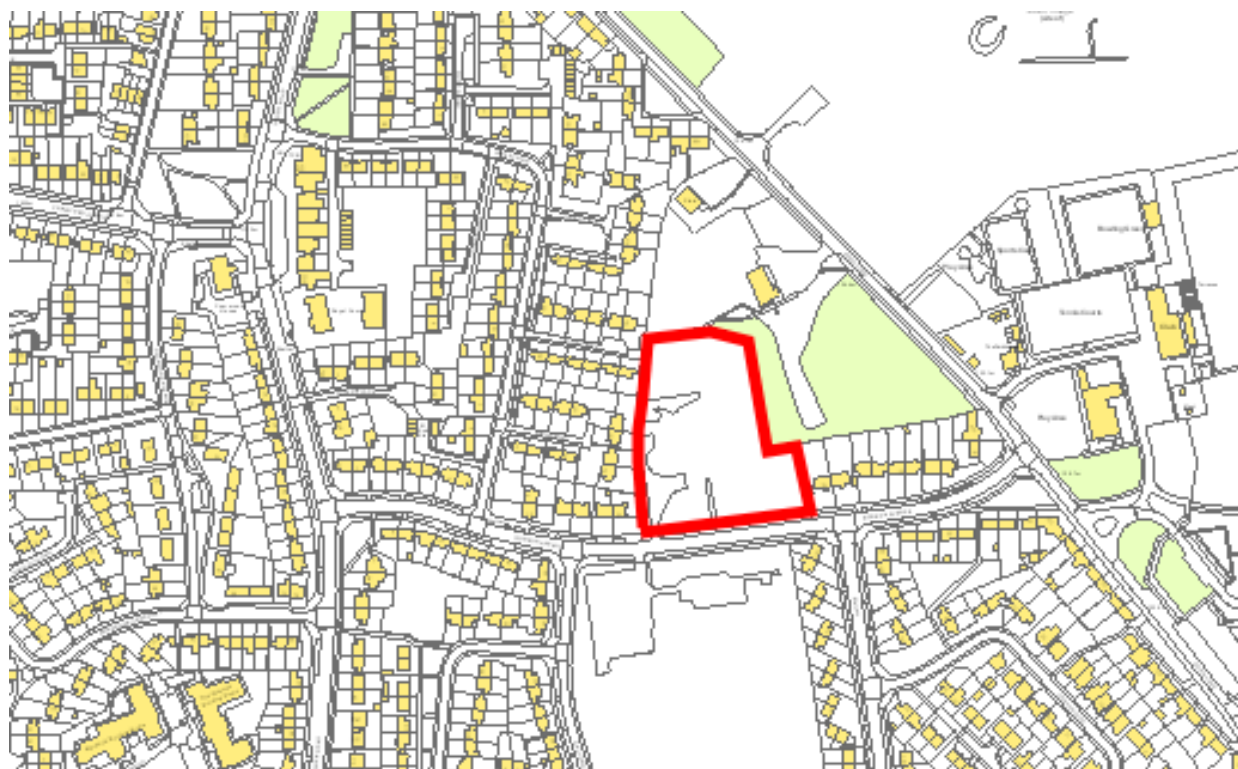
Submitted application form, plans supporting documents and subsequent information provided by the applicant.

The National Planning Policy Framework (2018)

National Planning Practice Guidance Notes

Easington District Local Plan

Statutory, internal and public consultation responses



## Planning Services

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Construction of a new 2 and 3 Storey Extra Care building (falling within Class C2) providing 71 no. Apartments, associated access and hard and soft landscaping (amended description) at Robson Avenue

### Comments

### Date

10 December 2019

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