



## Area Planning Committee (Central and East)

**Date** Thursday 29 July 2021  
**Time** 9.30 am  
**Venue** Council Chamber, County Hall, Durham

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### Business

#### Part A

#### Items which are open to the Public and Press

1. Apologies for Absence
2. Substitute Members
3. Minutes of the meeting held on 11 June 2021 (Pages 3 - 20)
4. Declarations of Interest, if any
5. Applications to be determined by the Area Planning Committee (Central and East)
  - a) DM/21/00911/FPA - Allotments to the west of 5 to 10 Front Street, Framwellgate Moor (Pages 21 - 38)  
Proposed development of 5 dwellings and associated parking.
  - b) DM/21/00011/FPA - The Paddock and Land To The Rear Of The Paddock, Station Town, Wingate, TS28 5HE (Pages 39 - 54)  
Retention of kennels in association with the keeping and breeding of dogs at the site (amended description).
  - c) DM/21/01918/FPA - 8 Laburnum Avenue, Durham, DH1 4HA (Pages 55 - 68)  
Change of use from C3 (dwellinghouse) to either C3 (dwelling house) or C4 (house of multiple occupation).

d) DM/21/01351/FPA - Land to the South of Bradyll Street, Kelloe, DH6 4PL (Pages 69 - 88)

Restore land to agricultural by removal of old house foundation, planting, hard standing and temporary demountable pens.

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  
21 July 2021

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

Councillor D Freeman (Chair)  
Councillor S Deinali (Vice-Chair)

Councillors D Brown, J Cosslett, J Elmer, L Holmes, N Jones, C Kay, D McKenna, R Manchester, C Marshall, E Mavin, K Shaw 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 **Friday 11 June 2021** at **9.30 am**

**Present:**

**Councillor D Freeman (Chair)**

**Members of the Committee:**

Councillors S Deinali (Vice-Chair), D Brown, J Elmer, L Holmes, N Jones, D McKenna, E Mavin and K Shaw

**Also Present:**

Councillor Jan Blakey

**1 Apologies for Absence**

Apologies for absence were received from Councillors I Cochrane, C Kay, C Marshall and P Taylor.

**2 Substitute Members**

No notification of Substitute Members had been received.

**3 Minutes**

The minutes of the meeting held on 13 April 2021 were confirmed as a correct record by the Committee and signed by the Chair.

**4 Declarations of Interest**

The Chair, Councillor D Freeman noted in respect of Item 5b, DM/21/01145/FPA - 9 Cedar Drive, Durham, DH1 3TF, he was a Member of the City of Durham Parish Council, however, he was not a member of their Planning Committee and had not been party to their submission in objection to the application.

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

The Chair wished to note his thanks to the previous Chair of the Committee, June Clark, in particular the last 18 months where Committee meetings had been undertaken remotely. He added his thanks to the previous Vice-Chair, Audrey Laing and noted that both former Members would be missed from the Committee.

The Chair hoped that all Members of the Committee could work together constructively going forward, offering challenge, and asking questions as regards applications and the recommendations as set out within Officers' reports.

### **a DM/21/01325/FPA - The Manse, Linden Villas, Coxhoe, Durham, DH6 4DX**

The Planning Officer, Lisa Morina, 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 application was for temporary change of use from dwelling (use class C3) to children's home (use class C2) and was recommended for approval, subject to conditions.

The Planning Officer noted the property was two-storey, semi-detached and was surrounded on all sides by residential development. She added that vehicular access was at the west, between the bungalow and 1 Linden Cottages and the property had a private garden and off-street parking. It was explained the access was not within the ownership of the property, however a right of access did exist. The Committee were shown site photographs and proposed floorplans, it was noted there were no external alterations proposed.

In respect of consultation, the Planning Officer noted that there had been no objections from statutory or internal consultees, with the application having been advertised via site notice and neighbour consultation letters. She added there had been 11 letters of objection received, with concerns raised relating to: impact on residential amenity; having vulnerable young people in an area with elderly people and young children; and crime and the fear of crime. Other issues raised included the detrimental impact on local residents from a former occupant of the property and concern that new occupants with difficult behaviours may adversely impact upon the children of existing families in the area.

Objectors had also raised concerns as regards the parking provision being limited and that carers did not utilise the existing car park, reducing the availability of on-street provision for other residents. The Planning Officer noted objectors had also cited concerns in respect of the level of consultation and in respect of how the facility would be managed, with queries relating to further consultation should a person with high risk move to the property and the process for making a formal complaint. She noted other matters raised by Objectors related to another property owned by the owner of The Manse and the mortgage status of the property.

The Planning Officer noted that the application was considered to meet the aims of Policy 18 of the County Durham Plan (CDP) in terms of residential amenity and the character and appearance of the locality. She added that in reference to highway safety, Policy 21 of the CDP, the application was considered to have sufficient off-street parking. She concluded by noting that the concerns of Objectors had been noted, however, they had not been deemed sufficient to sustain a refusal and therefore the application was recommended for approval, subject to the conditions as outlined within the report.

The Chair thanked the Planning Officer and asked if there were any questions on the presentation.

Councillor D Brown asked for clarification as regards where objections had come from, the vicinity of them to the property, how many site visits had been undertaken, and what dialogue had there been with objectors to the application. The Planning Officer noted there had been two site visits, one at the start of the application, another prior to the application coming to Committee for consideration. She added objectors had been in contact via telephone and e-mail.

The Chair noted the Planning Officer would look for information relating to where the objectors lived and in the meantime asked Councillor J Blakey, Local Member, to speak in respect of the application.

Councillor J Blakey thanked the Chair and Committee and asked for Members to really consider the refusal of the application. She noted there had been a number of issues around the home, with the previously occupant having not been supervised to the extent Local Members had been told. She added that residents of the area deserved better and that there had been nothing but trouble from that home and the other Council home, the village having suffered over the last three years from anti-social behaviour. Councillor J Blakey noted she was not against people with difficult behaviours; however, she would ask that the Council considered prior to placing young people into such facilities whether they were fit and proper for both the young people involved and the local residents.

The Chair thanked Councillor J Blakey and asked the Committee Services Officer to read out a statement from Councillor M McKeon, Local Member in relation to the application.

*“As Councillors, we have two solemn objectives: to speak on behalf of our residents, and to treat the children in the Council's care as if they are our own. It's called being a corporate parent, and every Councillor is one, regardless of where they represent and which Committees they sit on. These two responsibilities almost never clash, and when the community was first approached about the proposed children's home on the Manse, I thought it would stay that way.*

*Residents and Councillors were told that the home was designed bespoke for a young man with complex needs, who would have round-the-clock intensive caring from staff and would not, for example, be able to leave the home without supervision. There was a small possibility that another young person would live alongside this young man eventually, subject to him settling in and finding a suitable foster-sibling, and that the process would be closely managed and communicated to Councillors and residents. When I learned a month ago that young people had already been moved into the site, that one of these young people had caused an issue on the street, that none of these young people were the very vulnerable young man the Manse was designed for, and that neither residents nor Councillors were informed of this, I was bitterly disappointed. Coxhoe has another children's home already, and although most of the young people there have settled well, there were some very challenging anti-social behaviour issues tied to a particular young person a few years back. Those experiences, combined with the fact that young people were moved into the Manse against the assurances given to the community, leads residents and Councillors to question if the proposed home will remain for one very vulnerable young man, or whether its character will change again, and residents will not be able to do anything about it.*

*Cornforth Lane is a complex area of Coxhoe. It has an ongoing and acute parking issue that will take massive capital investment to solve, it has the same issues with private landlords that other terraced streets have; if Cornforth Lane is not the most sensitive area of Coxhoe then it is one of the most sensitive areas of Coxhoe.*

*Although one young person with constant supervision and enough parking on-site for staff could find a decent home on the street, it would not be a suitable place for a home that was any larger or more volatile, both for the residents of the street and for the young people. It takes a village to raise a child, and there is a reason why so many families choose Coxhoe to be that village. It is quiet, with a thriving high street and lots of kids to do.*

*As a corporate parent, I have been proud of how looked-after children moving to the village have become so actively involved in Coxhoe life, attending youth clubs, and making friends. I want to make sure that the young man with complex needs and nowhere else in Durham to go has a house where he can feel safe, but I also do not want to see our children in a house that will not work as a home for them in the long run, because its location was selected under a different pretence and relationships have broken down with the local community. I am not sure that a Planning Committee will resolve that tension, that is a bridge for children's services to build. I have spoken to the service and they seem keen to do this, but as a Councillor I am uncomfortable without a way for the village to object to its use evolving further away from the assurances we were first given”.*

The Chair thanked the Committee Services Officer and asked Mr McKenzie, local resident, to speak in objection to the application.

Mr McKenzie thanked the Chair and noted that he and his wife had lived in Linden House which adjoined The Manse for 39 years and had brought up a family while living there. He noted that since The Manse had been used as a children's home from last year, there had been music blasting at all hours and with screaming and doors banging until 2.30am. He added that the Police had arrived at the property and noted that bedroom doors had been kicked in where the resident had been locked inside. Mr McKenzie noted that the properties were built in the early 1900s and had a single brick dividing wall and explained that he had asked the Council as regards soundproofing, with an Officer from the Council having noted it “could be mentioned”. He added he had not been given a copy of fire regulations and noted that he and his wife were “living on a knife edge”.

Mr McKenzie explained his wife had been a carer for her sister for 19 years and they were therefore very sympathetic to the needs of the children referred to children's homes. However, he noted he and his wife could not live as things stood, with staff at the home being unable to handle the young person that had been at the property.

He noted information as regards the potential next young person to occupy the home, with fears as regards young people gathering at the property to drink and play music loudly, a situation that has occurred in the past. He added that if that information was correct then this worried both him and his wife, noting they had five grandchildren and other residents nearby had children.

Mr McKenzie noted Members would have seen from the site plan that the properties were semi-detached and explained that visitors from the Council had in fact walked straight into his conservatory, uninvited without knocking or ringing the bell. He added he did not think anyone within the Council Chamber would like such a thing to happen to them.

He reiterated as regards Police being called to the lane and noted issues where cars had been parked in front of his property and buses had been unable to get past and those people with issues would come and knock on his door to complain as regards the matter.

Mr McKenzie noted that the area was a quiet part of the village and residents were happy with the way it was. He added that if permission had not yet been approved then why people working and receiving deliveries at The Manse currently. He noted people had knocked at his property as regards deliveries and he noted noise from The Manse and that there had been some alterations. He explained that residents needed to know who was in charge and contact numbers if the proposals were to go ahead, stressing that the residents were those that were paying Council Tax and he hoped their views would be listened to. Mr McKenzie explained that if the proposals were to go ahead, the owner of the property, and Durham County Council, would change part of the village, cause all the aforementioned problems raised by objectors, and he noted there was no doubt in his mind that there would be double parking and parking on pavements in the location. He added this was forcing elderly residents using mobility scooters to go on to the road and he had in fact witnessed one accident. He noted people with children, going past to reach the nearby school, would have to also go on the road if they had pushchairs due to the double parking, adding he felt that was surely an accident waiting to happen.

The Chair thanked Mr McKenzie and asked the Strategic Manager (Looked after Children) Claire Morris, to speak on behalf of Durham County Council as applicant.

The Strategic Manager explained she understood the concerns of residents and noted that the proposal was that the property would be a Durham County Council children's home and therefore would be regulated in terms of fire safety and be subject to Ofsted regulations and inspection criteria.

She added that the no children would move into the property until registration had been completed, not only in terms of the planning permission, also from Ofsted as regulator. The Strategic Manager explained that Ofsted had informed the Council that the property was suitable and legally compliant with all the relevant regulations, including fire safety.

The Strategic Manager noted that the proposals were for a children's home for up to two young people and, as correctly noted, there would be one young person to initially reside at the property and only when that young person was settled would the addition of a second young person be considered. She added that there would need to be a "match" of the young people, with that match being risk assessed and in line with all the regulations coherent with a children's home.

It was added that the service would work closely with members of the community so that issues, such as parking, were addressed and the Strategic Manager noted that those attending the property would not park on the street, they would use the off-street parking provided. She added that if the property was in full use the parking situation would be easier to manage as staff would be present and be able to pick up and communicate on any issue very quickly.

The Strategic Manager confirmed that there were no children currently living at the property and therefore anyone that has been accessing the property had been doing so to check on the property and to receive any post, parcels and carry out any administration required in connection with the Council looking to establish the property as a children's home.

In relation to the support for the children that would go into the children's home, the Strategic Manager noted that it was two-fold, firstly there would be two full-time members of staff, their jobs being to make sure the children that lived in the property were well supervised and safeguarded, both of them from others and of them to others. She added that would be in line with guidance and regulations in respect of children's care. It was explained that while there was only two members of staff, there was oversight from a manager and there was also service and strategic management oversight in addition. She emphasised that there was significant oversight of a property once it became a children's home. She noted that she was unable to know what children may do in the future, however, she could guarantee that there would be regular risk assessments, planning, together with close work with partners, such as local schools and the Police, as regards the risk assessments and planning undertaken to support the young people to ensure that they are safe, and to support the communities that they live in.

The Strategic Manager explained that it was the intention that Durham's children, in Durham's children's homes, would have the ability to create a stable future for themselves as they move into adulthood either in that locality or a close locality of their choice.

She noted it was very important to support Members in understanding the purpose of the service and, while unable to share private details of individuals, the service would work in such a way to reassure those that the Council was working to support those children and young people.

She noted the service would be providing contact details so that anyone with complaints or queries would be able to speak directly to the registered manager, or other members of the management team in order to be provided with the assurances they needed. She explained noise would be kept to a minimum and the Council did everything it could to ensure that.

She added that it was recognised that the property was joined on to another house and that was why the proposals were temporary, with the intention being for the Authority to purchase a permanent property somewhere within Durham in the future, with the young person to move to that property. The Strategic Manager reiterated that the proposal was to temporarily register the property as a children's home for the period it took to purchase and establish a permanent home for those children. She noted she would wish to provide the Committee and members of the community with reassurances that the property would be well managed and regularly inspected by Ofsted, who would not only look at the quality of the care provided, but also scrutinise any of the concerns that any resident would have, as referred to by the potential neighbour.

The Chair thanked the Strategic Manager and asked Members for any questions relating to the points raised by the speakers.

Councillor E Mavin asked as regards the training of the staff, for example in terms of restraint techniques, and also as regards night-time arrangements and whether there would be two members of staff over that period.

*Councillor K Shaw entered the meeting at 10.00am*

The Strategic Manager noted that staff were fully trained, with Children's Homes 2015 regulations stating very clearly what training any member of staff who worked in a children's home must have. She emphasised that was a legal requirement and would be inspected by the regulator and both the point they would make a decision to register the new children's home, prior to any children moving in, and also through monitoring through at least an annual two-day inspection. She noted that was one measure in terms of ensuring the suitability of staff, alongside monthly Regulation 44 reports which were undertaken by an independent visitor, one aspect of the visit being to look at the suitability of the staff, including their training. The Strategic Manager noted that there would always be two members of staff at the children's home day and night, with staff swapping every 24 hours. She added that was in addition to the registered manager who would be there Monday to Friday, alongside an on-call management service which existed after hours and at weekends, and while it was unlikely they would be required to visit in those periods, the management oversight was in place. She clarified that the manager was counted as "additional" with the two on-site staff being classed as the actual number of staff for the children's home.

Councillor J Elmer noted his query related to the quality of supervision, adding he felt no one would deny that it was vital need to be able to take care of those with complex needs and to ideally embed those people within communities.

He noted the local resident had described a previous situation where it did not appear that those in the property had been correctly supervised which had resulted in anti-social behaviour in terms of noise and disturbance. He noted that the Strategic Manager's assertion was that the quality of supervision would be very high indeed which did not match that experienced by the local resident and therefore he would ask for further information in order to resolve that mismatch. The Strategic Manager noted the incident referred to by the neighbour occurred when a young person was at the property for six nights, and on a particular night there was loud music and the music was turned down and headphones purchased for that young person, as would be for any young person being looked after. She added that there was an incident with loud banging noise and the young person was moved following that incident out of respect for the local resident. She noted that there would be always be occasions in any property or home environment where there would be times where noises could be heard through properties, though in the case of the proposals that would be kept to a minimum as there would be two members of staff and all times and issues with noise or car parking would be resolved.

Returning to the query made by Councillor D Brown, the Planning Officer referred the Committee to the location plan on the projector screen, highlighting that five objections had come from properties within the area with the remainder coming from objectors within the wider village. In reference to points raised, the Planning Officer noted the application was restricted to use by two children via condition and that the permission would be temporary for two years, also by condition. She reiterated that there was sufficient off-street parking at the application site and therefore there should not be issues relating to on-street parking as a result of the children's home.

The Principal Planning Officer, Paul Hopper noted that Durham Constabulary's Architectural Liaison Officer had offered no objections to the application and had noted that the arrangements in terms of the proposed number of children at the home was what they would expect to see and was in line with good practise.

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

Councillor D Brown noted the recommendation for approval within the report and added he had sympathy for those objecting, especially the neighbour. He added he appreciated that the application was only temporary for two years and asked, if the Committee were minded to refuse the application and the decision was appealed, whether the Council would have a good case.

The Solicitor – Planning and Development, Neil Carter noted it would depend upon the reason for refusal, and while he had not heard any reasons put forward by Members at this point, he noted that if a refusal reason proposed was crime and disorder, there would be significant difficulty sustaining such a reason as there were no objections from the Police and therefore there was not that evidence base to rely upon. He noted if those were the reasons that Members wished to advance then his advice would be that those the reasons would struggle to be sustained at appeal and that costs could be applicable.

Councillor E Mavin explained that he had 20 years' experience working with children with special needs and noted that each day was different. He added that as long as there were well trained staff in place then he felt the proposals would be acceptable, however, he did note his sympathy with the objector.

Councillor S Deinali explained she understood the concerns put forward by residents and Local Members, however, looking at the report there did not appear to be any material planning grounds that would visibly stand and she could not see any way that the Committee could refuse the application. She noted as a Corporate Parent and parent of a child with additional needs that each day was different and while she sympathised with the neighbouring resident, she felt every child needed a safe place to live and the applicant had put forward a good case in terms of what they would provide and the regulations that would be in place. She noted she would reserve judgement until all Members had made their comments.

Councillor E Mavin moved that the application be approved as per the recommendation as set out within the report, Councillor D Brown seconded the proposal.

Upon a vote being taken it was:

## **RESOLVED**

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

### **b DM/21/01145/FPA - 9 Cedar Drive, Durham, DH1 3TF**

The Planning Officer, George Spurgeon, 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 application was for a two storey side extension, single storey rear extension and widening of driveway and was recommended for approval, subject to conditions.

The Planning Officer noted a similar application for 11 Cedar Drive, the adjoining property, had been considered last year by Planning Committee and had been approved. He explained that the current application for 9 Cedar Drive did not include a proposal for change of use to a C4 House in Multiple Occupation (HMO) adding that was already possible under permitted development rights. He noted the Council was in the process of introducing an Article 4 Direction that would cover the application site, however, no Direction had been confirmed at the current time. He explained that should such a Direction be confirmed it would not come into effect until January 2022. The Planning Officer noted that therefore the issues being considered were the physical extensions to the property.

The Planning Officer noted the property was located south-west of Durham City centre and referred to photographs showing that of eight semi-detached properties in the area, six having extensions currently, with one having permission for an extension with works in the process of being started. He noted that therefore 9 Cedar Drive was the last property of the row of eight to look to extend, adding that the properties stepped down north to south with the height of 9 Cedar Drive being less than 11 Cedar Drive, though greater than 7 Cedar Drive. He referred Members to photographs showing a car parking space and garage, with the garage to be demolished, being smaller than the required minimum for use by a car. The Committee were shown photographs of a number of two-storey extensions in the area, at 7, 15 and 3 Cedar Drive, with the proposed design being similar to that of 11 Cedar Drive, approved by Committee last year. The Planning Officer referred to photographs showing before and after the construction of a single-storey extension to 11 Cedar Drive, the length of the property, and noted the proposals for 9 Cedar Drive would replicate that of 11 Cedar Drive. He explained that the width of the driveway was proposed to be increased to allow a second car to park and the side extension was proposed to extend forward of the main property by 600mm, in line with the existing bay window. It was explained the gap between the shared boundary with 7 Cedar Drive would be retained to allow external access to the rear garden.

In respect of internal alterations, the Planning Officer noted that the existing garage would be demolished and replaced by a lounge, with the rear extension to accommodate a dining area with the existing lounge and dining area to be converted to two additional bedrooms on the ground floor. He noted there were currently three bedrooms on the first floor with one being quite small and it was proposed that would be converted to a shower room, with the side extension at the second floor proposed to contain two additional bedrooms making for a total of six bedrooms, increased from three.

The Planning Officer referred to elevations and noted they were same as those previously approved for 11 Cedar Drive.

In respect of representations, the Planning Officer noted that there had been no objections from the Highways Section, with the two spaces proposed meeting the requirements for a six-bed property as set out within the Council's Car Parking Accessibility Standards. He noted there had been a number of representations received, including from the Local Member, the City of Durham Parish Council, and the City of Durham Trust. It was noted the majority of the objections related to the potential use as an HMO, in particular use by students, with a summary of all issues raised contained within the Committee report.

The Planning Officer reiterated that the application was not for a change of use to HMO and that planning permission was not required for such change of use. He explained that in looking at the physical extensions and alterations it was not considered that the proposals were overbearing or that there would be loss of light or privacy. He reiterated that the proposals were similar to those in place at 11, 15 and 3 Cedar Drive and were therefore sympathetic that would make a positive contribution to the character of the area. He noted there were no objections from the Highways Section as the sufficient amount of in-curtilage parking was proposed. The Planning Officer noted that, while the application had proven to be somewhat controversial and attracted a number of objections, Officers had taken into account the objections where material to the application and had felt that on balance the application was in compliance with CDP and City of Durham Neighbourhood Plan (CoD NP) policies as well as the Council's Residential Amenity Standards Supplementary Planning Document and Residential and was therefore recommended for approval.

The Chair thanked the Planning Officer and asked Members of the Committee for any questions relating to the presentation.

Councillor J Elmer asked as regards the point made by the Planning Officer that the proposed extensions would represent a "positive contribution" to the character of the area, adding he felt that it would be at best a neutral contribution. The Planning Officer explained that it was a subjective judgement, however, with seven of the eight properties already having extensions, and with three having similar extensions, it was not unreasonable to suggest there would be a positive contribution.

The Chair asked Parish Councillor Grenville Holland, representing the City of Durham Parish Council, to speak in respect of the Parish Council's objections to the application.

Parish Councillor G Holland thanked the Chair and Committee and began by explaining that the progressive and uncontrolled studentification of a small community on the southern margin of the City was causing despair. He noted that there was now yet another C3 house being modified as a *de facto* C4 HMO. He added that the local despair was outlined in 18 letters of objection from immediate residents because Farewell Hall was still not protected by an Article 4 Direction. Parish Councillor G Holland noted that yet, in the absence of an Article 4 Direction, no one need tolerate bad planning and bad consequences. He explained there were three lines of defence: the National Planning Policy Framework (NPPF), the CoD NP and the CDP, all of which carried their full weight. He added that the comments of the residents must also carry weight as they told Members of the Committee that the progressive introduction of HMOs into their community was causing ever increasing problems with its cumulative impact.

Parish Councillor G Holland suggested that, for a moment, Members could listen to just a few of their words and he quoted:

*“4 out of 7 houses will then be HMOs in this row of houses. This will be over 50% concentration of HMOs on that side of street alone”;*

*“Until recently this area was a residential area, but over a short time the nature of this area has changed significantly”;*

*“The environment is being degraded”;*

*“The irreversible negative impact on this small estate is unacceptable”;*

*“The proliferation of HMO's is clearly driving people out”;*

*“The loss of family homes in Farewell Hall”;*

*“There is a large provision of new student accommodation within 5 minutes' walk of this location as well as 2 or 3 other colleges within 10 minutes' walk”.*

Parish Councillor G Holland explained that planning policies did not encourage that outcome, they were designed to protect buildings, families, and communities. He noted the application contravened several elements of 2019 NPPF, Section 12 which was dedicated to achieving well-designed places, but most especially paragraph 127 that required buildings to add to the overall quality of the area, to be visually attractive, to be sympathetic to the local character and history, and to promote health and well-being. He commented that no one could pretend that yet another HMO in Cedar Drive had any of those merits.

Parish Councillor G Holland noted the CoD NP Policy D4 (a) required that: *“all ...extensions and other alterations to existing housing should be of high-quality design relating to the character and appearance of the local area”.*

He added that the proposal was not of high-quality design nor did it relate to the character and appearance of the local area. He explained that CoD NP Policy D4 (c) also sought high quality design in terms of internal form and layout. He suggested that cramming six bedrooms into the property, including two on the ground floor, simply failed to meet that standard.

He noted that removing part of the front garden to replace it with a hardstanding did not add to the quality of the property as had already happened at 3 Cedar Drive, another HMO.

Parish Councillor G Holland noted a similar theme in Cod NP Policy H3, sections a) and c) which required the *“sustaining, and making a positive contribution to, the character and distinctiveness of the area”* and using *“high quality design”*. Again, he noted no one could pretend that the application matched the demands of Policy H3.

He explained that the application also failed to meet the demands of CDP Policy 29 on Sustainable Design, which directed that *“All development proposals will be required to achieve well designed buildings”*, the policy not being restricted to building new estates. He added that CDP Policy 29a required developments to *“contribute positively to an area’s character and identity”*. Parish Councillor G Holland explained that local community was harmonious, well-established, and sustainable, with families of varying ages. He noted the many comments from the residents clearly showed that what was proposed would not contribute positively to the community: quite the opposite. He referred to CDP Policy 29c and noted that, given the increase from three to six bedrooms and the additional numbers of residents, the heating systems would need to be upgraded. He noted that no details had been provided as to any new installation proposed, and whether they would achieve the reductions in carbon emissions that the policy demanded.

Parish Councillor G Holland noted that CDP Policy 29(d), sought *“appropriate storage space and segregation facilities for recyclable and non-recyclable waste”*. He added that facility would be needed, given that there would be six, or maybe more, residents. He noted again there was no indication in the details supplied as to how the requirement would be met, within the report the Planning Officer makes a guess for the applicant. Parish Councillor G Holland explained that CDP Policy 29 was also underpinned by its Core Principles, and these form an important guide in helping Members to make their decision. He noted CP5.284 encouraged a *“high design quality that respects and responds to the local context and distinctiveness of the area”*, adding the application lacks that respect. He continued explaining that CP5.286 confirmed that one *“should consider the amenity of both existing and future residents and consideration should be given to matters of privacy”*. Parish Councillor G Holland noted that consideration was missing. He added that CP5.287 stated that *“Extensions [even if they] are sympathetically designed, must not detract from the character of the area and have no adverse effect on the amenity of neighbours”*. He noted that there was no sympathy in the design and, as the residents had set out, the effects were clearly adverse.

Parish Councillor G Holland noted that the application therefore failed CDP Policy 29 (a), (c) and (d) and three of its Core Principles. He added that the application should be rejected, with the decision being sustained by reference to the NPPF section 12 paragraph 127 and CoD NP Policies D4 (a) and (c), H3 (a) and (c). He explained the Parish Council did not agree with the Officer's analysis which had minimised the damage already done in Cedar Drive and the potential damage attached to the new proposal; and the Parish Council did not agree with the Officer's recommendation. Parish Councillor G Holland explained that, in planning terms, Members now had the new CDP and new CoD NP, both rooted in the NPPF, adding that those plans were designed to protect our communities from unwanted incursions such as this one. He concluded by urging the Committee to use the plans as they were intended to protect the residents living on Cedar Drive and above all, let right be done.

The Chair thanked Parish Councillor G Holland and asked the Planning Officer to respond to the points raised.

The Planning Officer noted reference to a number of policies, including CoD NP Policy D4(a) and CDP Policy 29 both of which required that proposals contributed positively to the character of the area and to have high quality of design. He reiterated that the application was for extension to a residential dwelling and did not proposed change of use to a C4 HMO. He noted that therefore in terms of the character and appearance of the area, the impact on the proposed extensions was just a physical, visual impact. He reiterated that there were similar two-storey extensions at 11, 3 and 5 Cedar Drive, and another three properties that had extended to the side to first floor level. He noted that therefore there would not be any negative impact from the proposals adding he felt there would be a small positive impact. The Planning Officer noted Parish Councillor G Holland had referred to the internal alterations to the property and layout not being of a high quality of design. He explained that all of the bedrooms met nationally described space standards and therefore would provide a high standard of amenity to existing and future residents and complied with policy.

In reference to CDP Policies 29(c) and (d) the Planning Officer noted that (c) sought to provide renewable and low carbon energy generation for main heating where connection to the gas network was not viable. He added that section of the policy referred to the erection of new dwellings and not those already connected to a heating system and therefore to ask the applicant to explore changes to the heating system was not reasonable or proportionate.

With reference to (d) the Planning Officer explained that the purpose was to encourage recycling and segregated storage, and while he felt the kitchen and dining areas were sufficiently large enough to accommodate segregated storage, he noted that if Members were suitably concerned then an appropriately worded condition could be produced, requiring details of such storage prior to occupation of the extension.

The Principal DM Engineer, David Battensby noted that in respect of parking provision, the proposals included an increase in parking provision to meet the required standards and therefore the Highway Section offered no objections to the application.

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

Councillor J Elmer noted it was worth taking time to reflect upon the impact that the rapid expansion of Durham University was having on the cohesion of communities across Durham City and while it had originally focussed on the centre it was now increasing spreading to the outskirts of the city, taking in new estates as in the proposals. He added it was very much a race against time as Durham University had plans for even more rapid expansion and, he was afraid to say, were doing so pretty much regardless of the concerns of settled communities across the area. He added that regardless of how the application was decided, it was incumbent upon the Planning Department to expedite the extension of the Article 4 Direction as rapidly as it possibly could to give the Council the powers needed to object to this sort of application that would have a severe impact upon the cohesion of communities in the area.

In reference to CDP Policy 29 (a), Councillor J Elmer noted it referred to a "positive contribution to the community" and he could not see how the application provided such positive contribution and therefore it could be a CDP policy on which the Committee could hang an objection. He added that he would challenge the idea the application represented a positive visual contribution to the area, being a subjective point of view, adding that some people may feel that it had a negative contribution. He noted there needed to be care taken to make objective statements in cases like these, so as not to steer thinking in a particular direction, which he felt was inappropriate. Councillor J Elmer noted the large number of people that would be living in the property and suggested that being able to accommodate all recycling within the kitchen was not credible. In reference to the changes to the heating systems, he noted this would be mandated by Government within the next five years or so and there would be a move away from coal and gas use.

He suggested the Council should be on the front foot and look to use opportunities where there were large extensions to buildings to also require that the heating systems were modernised to low carbon solutions.

Councillor E Mavin noted he agreed with Councillor J Elmer and in reference to HMOs he noted the problems in his area were such that he called HMOs “how many others”. He added HMOs were saturating and watering down communities and did not believe they brought much benefit to an area. He noted the Article 4 Direction was due to come into force in January 2022 and he wished for it to be brought into effect as soon as possible.

The Solicitor – Planning and Development noted the Article 4 Direction was being brought into effect as quickly as possible. He explained that in terms of any “non-immediate Article 4 Direction” there was a 12 month period prior to coming into effect and it was subject to a confirmation regime where, once made, the Council would need to consider all representations and then consider whether or not to confirm it. He noted that in the case that it was confirmed, then the date would not change it would still be January 2022. He added that it was also important to bear in mind what the application before Committee was asking Members to consider. He reiterated the comments of the Planning Officer in that the application was not an HMO in terms of its use, that use already being able to be implemented without planning permission as it was permitted development. He noted that, as the application was not relating to change of use, issues relating to HMO use were not material in terms of the application being considered by Committee. The Solicitor – Planning and Development noted that the issue for consideration was purely the proposed extensions, the operational development the applicant had applied for. He took on board the comments of Councillor J Elmer in respect of CDP Policy 29 requiring a positive contribution in terms of design, clearly an issue that was subjective, however, there appeared to be several other almost identical extensions in the street and surrounding area, therefore that would be an issue for Members to bear in mind when looking specifically at the issues of character, appearance and design.

The Chair noted it was for the Committee to decide upon how to proceed having heard from those stating how HMOs were ruining the City and also having been advised that the area was not yet covered by an Article 4 Direction. He noted that Members had referred to relevant policies within their comments on the application and reiterated it was for Members to decide upon any proposals.

Councillor K Shaw moved that the application be approved as per the recommendation as set out within the report, Councillor D Brown seconded the proposal.

Upon a vote being taken it was:

**RESOLVED**

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

## Planning Services

# COMMITTEE REPORT

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### APPLICATION DETAILS

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<b>APPLICATION NO:</b>	DM/21/00911/FPA
<b>FULL APPLICATION DESCRIPTION:</b>	Proposed development of 5 dwellings and associated parking
<b>NAME OF APPLICANT:</b>	Mr A Blair
<b>ADDRESS:</b>	Allotments to the west of 5 to 10 Front Street Framwellgate Moor DH1 5EJ
<b>ELECTORAL DIVISION:</b>	Framwellgate and Newton Hall
<b>CASE OFFICER:</b>	Jennifer Jennings Senior Planning Officer Telephone: 03000 261057 <a href="mailto:jennifer.jennings@durham.gov.uk">jennifer.jennings@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 an allotment site located to the rear of a line of terraces along Front Street within the settlement of Framwellgate Moor. To the north of the site lies Tindale Avenue which consists of a line of 11 two storey terraced dwellings that face the application site. These dwellings have their main gardens to the rear (northside) of the dwellings as well as a small garden area to the south of Tindale Avenue abutting the application site and many of the dwellings have small sheds or ancillary buildings on this area of land. To the west of the site is a residential nursing home that is screened by a mature tall hedge and accessed from a separate road, Camsall Drive.
2. To the south lies an industrial building that currently operates as a carpet factory and store. This business has a right of access over the southern part of the application site to access the service yard to the back of the business premises and adjacent to the south of the application site. A further line of 6 residential terraced properties lies to the east of the site that front Front Street, with their rear elevation and yard area facing the application site.
3. The application site itself is predominantly flat and was last in use as a private allotment site of nine plots. An informal hardstanding access road runs along the south, allowing access to the business premises, and along the east end of the allotments, which provides access to the rear of the garden areas of properties 5a to 10 Front Street.

## The Proposal

4. The application seeks planning permission to erect 5 dwellings on the site, consisting of a semi-detached pair and a terrace of three. All properties would have three bedrooms, with downstairs lounge / diner and separate kitchen area. In curtilage parking is provided for three of the dwellings, with parking spaces designated for the remaining two dwellings close by. The dwellings would be finished in red brick with red double pantile roof tiles. Each property would have access to a rear garden space and small front garden area.
5. The application is being considered by Committee at the request of a Councillor Mark Wilkes who raises concerns with regards to highway safety and parking, the appearance and massing of the dwellings and that no bin stores are indicated.

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## PLANNING HISTORY

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6. Outline planning permission was approved in 2019 for 6 terraced dwellings with details relating to layout and access approved with details relating to scale, design and landscaping reserved.
7. A reserved Matters application was submitted to provide details relating to access, appearance, landscaping, layout and scale on the 17 February 2021 but this was withdrawn due to not being in accordance with the approved layout associated with the outline permission.

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## PLANNING POLICY

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### NATIONAL POLICY

8. The following elements of the National Planning Policy Framework (NPPF) are considered relevant to this proposal:
9. *NPPF Part 2 - Achieving sustainable development.* The purpose of the planning system is to contribute to the achievement of sustainable development and therefore at the heart of the NPPF is a presumption in favour of sustainable development. It defines the role of planning in achieving sustainable development under three overarching objectives – economic, social and environmental, which are interdependent and need to be pursued in mutually supportive ways. The application of the presumption in favour of sustainable development for plan-making and decision-taking is outlined.
10. *NPPF Part 4 - Decision-making.* Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.
11. *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.

12. *NPPF Part 6 - Building a Strong, Competitive Economy*: The Government is committed to securing economic growth in order to create jobs and prosperity, building on the country's inherent strengths, and to meeting the twin challenges of global competition and a low carbon future.
13. *NPPF Part 8 – Promoting healthy and safe communities*. The planning system can play an important role in facilitating social interaction and creating healthy, inclusive communities. Developments should be safe and accessible; Local Planning Authorities should plan positively for the provision and use of shared space and community facilities. An integrated approach to considering the location of housing, economic uses and services should be adopted.
14. *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.
15. *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.
16. *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.
17. *NPPF Part 14– Meeting the challenge of climate change, flooding and coastal change*. The planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change. It should help to: shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and support renewable and low carbon energy and associated infrastructure.
18. *NPPF Part 15 - Conserving and enhancing the natural environment*. Planning policies and decisions should contribute to and enhance the natural and local environment.

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

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

19. The Government has consolidated a number of planning practice guidance notes, circulars and other guidance documents into a single Planning Practice Guidance Suite. This document provides planning guidance on a wide range of matters. Of particular relevance to this application is the practice guidance with regards to; air quality; historic environment; design process and tools; determining a planning application; flood risk; healthy and safe communities; land affected by contamination; housing and economic development needs assessments; housing and economic land availability assessment; light pollution; natural environment; neighbourhood planning; noise; open space, sports and recreation facilities, public rights of way and local green space; planning obligations; travel plans, transport assessments and statements; use of planning conditions; and; water supply, wastewater and water quality.

## LOCAL PLAN POLICY:

### The County Durham Plan

20. *Policy 6 - Development on Unallocated Sites* states that the development of sites within the built up area that are not allocated in the plan or in a neighbourhood plan will be permitted provided they accord with all relevant development plan policies and meet specific criteria in relation to existing permitted uses, coalescence of settlements, loss of land with identified value such as in relation to ecology or recreation, is appropriate, is not prejudicial to highway safety, has good access to sustainable modes of transport to relevant services and facilities, does not result in the loss of the settlements last community building, minimises vulnerability and provides resilience to impacts resulting from climate change, maximises the effective of previously developed land and where appropriate reflects priorities for urban regeneration.
21. *Policy 19 - Type and Mix of Housing*. Advises that on new housing developments the council will seek to secure an appropriate mix of dwelling types and sizes, taking account of existing imbalances in the housing stock, site characteristics, viability, economic and market considerations and the opportunity to facilitate self-build or custom build schemes.
22. *Policy 21 - Delivering Sustainable Transport* states that all development shall deliver sustainable transport by (in part) ensuring that any vehicular traffic generated by new development, following the implementation of sustainable transport measures, can be safely accommodated on the local and strategic highway network and does not cause an unacceptable increase in congestions or air pollution and that severe congestion can be overcome by appropriate transport improvements.
23. *Policy 25 - Developer Contributions* states that new development will be approved where any mitigation necessary to make the development acceptable in planning terms is secured through appropriate planning conditions or planning obligations. Such mitigation will relate to the provision, and/or improvement, of physical, social and environmental infrastructure taking into account the nature of the proposal and identified local or strategic needs.
24. *Policy 27 - Utilities, Telecommunications and Other Broadband Infrastructure* states new residential development should be served by a high speed broadband connection that will need to be directly accessed from the nearest exchange and threaded through resistant tubing to enable easy access to the cable for future repair, replacement and upgrading. Where it can be demonstrated that this is not appropriate, practical or economically viable, developers will be encouraged to provide appropriate infrastructure to enable future installation.
25. *Policy 29 - Sustainable Design* details general design principles for all development stating that new development should contribute positively to an areas' character, identity, heritage significance, townscape and landscape features, helping to create and reinforce locally distinctive and sustainable communities.
26. *Policy 31 - Amenity and Pollution* states that new development will be permitted where it can be demonstrated that there will be no unacceptable impact, either individually or cumulatively, on health, living or working conditions or the natural environment and should be integrated effectively with any existing business and community facilities.

27. *Policy 32 - Despoiled, Degraded, Derelict, Contaminated and Unstable Land* states [in part] that development will not be permitted unless the developer can demonstrate that the site is suitable for the proposed use, and does not result in unacceptable risks which would adversely impact on the environment, human health and the amenity of local communities.
28. *Policy 35 - Water Management* states that all new development should adopt the hierarchy of preference in relation to surface water disposal.
29. *Policy 36 - Water Infrastructure*. Advocates a hierarchy of drainage options for the disposal of foul water. Applications involving the use of non-mains methods of drainage will not be permitted in areas where public sewerage exists. New sewage and waste water infrastructure will be approved unless the adverse impacts outweigh the benefits of the infrastructure. Proposals seeking to mitigate flooding in appropriate locations will be permitted though flood defence infrastructure will only be permitted where it is demonstrated as being the most sustainable response to the flood threat.

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## **CONSULTATION AND PUBLICITY RESPONSES**

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### **STATUTORY RESPONSES:**

30. *Framwellgate Moor Parish Council* raised concerns with regards the changes to the proposed application which no longer followed the layout and form of the originally approved outline permission. They requested it be refused for the following reasons:
- a. Highways concerns due to the highway no longer being adopted with no footpaths leading into the site. Concerns that the bin truck would not enter the site resulting in 10-15 bins being left on Front Street blocking the pavement.
  - b. Concerns as to whether drainage and contaminated land issues have been addressed
  - c. Concerns that the outline permission was for 2-bed starter homes and were in keeping with the area. The current application does not meet this and is out of keeping.
  - d. Insufficient parking is being provided for visitors and existing properties along Front Street.
  - e. Not sufficient turning space for trucks attending to the carpet business site. Access is therefore a problem.
  - f. Concerns that the properties are too close to existing houses and no details on room sizes are provided
  - g. Concerns that bin storage not provided.
  - h. Requests that condition be applied to ensure they remain in family use and not for HMO use
  - i. Requires that the originally agreed Section 106 is carried forward for this development.
31. The Parish was advised of the updated plans which sought to address the issues raised. However no further comments were received at the time of writing.
32. *The Highway Authority* raised a number of issues and requested amendments to the scheme, including details indicating a bin collection point and visitor parking. They noted that the development would not prevent existing users from accessing the site as they do at present.
33. Upon receipt of amendments to the scheme, highways removed their objections to the proposals. Further details are discussed within the main body of the report.

## INTERNAL CONSULTEE RESPONSES:

34. *Environment, Health and Consumer Protection (Contaminated Land)* considered the details and note that because the development constitutes a change of use to a sensitive receptor a pre commencement condition is required for Phase 1, 2 and 3 reports and a Phase 4 verification report prior to occupation of the development.
35. *Environment, Health and Consumer Protection (Nuisance Action Team)* raise no objection to the proposals, noting that although a commercial use exists close to the site, residential uses are well established within the area and no concerns are raised. A condition is requested to be applied limiting hours of construction works.
36. *Ecology section* raise no objection to the principle of the development, however, they request that the dwellings include ecological enhancement to secure biodiversity net gain in accordance with the NPPF and that this include provision of a bat ridge tile per property and an integrated bird breeding box per property.

## PUBLIC RESPONSES:

37. Four objections received in relation to the original submitted scheme, raising the following concerns:
  - Concern that the proposal would leave garage unusable and it is essential for parking at their house.
  - Concern that the proposal does not even show an existing garage on site and would not allow enough space for a car to turn into garage.
  - Issues raised that parking for existing residents is scarce, meaning land to the rear is used and has been for over 60 years.
  - Concerns raised over safety for cars pulling out and that insufficient room is available for a turning circle
  - Concern over construction works given the extent of traffic to the carpet factory.
  - Application bears no resemblance to the outline permission which was for affordable housing and the current scheme goes against the spirit of policy 15
  - Layout provides insufficient parking and does not take into account that residents along Front Street use this area for parking.
  - The application is over development of the site
  - Request that section 106 be agreed with this current scheme due to loss of allotments
  - Proposals are not in keeping with the character and appearance of surrounding properties.
  - Houses would breach privacy distance standards
  - Proposals have adverse impacts that outweigh benefits and should be refused.
38. Upon receipt of amended scheme 3 further objections received stating:
  - The visitor parking bay will block access to back gardens of Front Street. The plans take away parking on unadopted road.
  - Concerns that residential amenity not being considered in terms of protecting parking to rear of the properties along Front Street
  - Concerns that oversupply of parking within housing curtilage contrary to sustainable travel policies in CDP21.
  - As resident, have used parking in excess of 22 years to the rear. Parking on Front street not always available as used by people visiting shops.
  - Concerns over losing access to the rear yard for parking
39. The local ward member was concerned that the updated scheme appeared worse. The annotated visitor parking bays block parking for existing residents. Parking for

cars back to back is not suitable on the driveways. If the road is not to be adopted, there would be no support for the proposed scheme as it is considered unacceptable to allow roads to be put in without pavements, particularly where lorries use access for deliveries.

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

40. We believe that the scheme proposed is superior to the one already granted planning permission.

The latest proposal is more desirable on a number of grounds, including a lower housing density with less visual mass and a much preferable parking arrangement. The 3 bedroom homes proposed are more suitable for the market and would suit a larger variety of potential occupiers than the previous scheme.

As a small local developer we pride ourselves on building quality housing that will stand the test of time and enhance the local area. As such we are confident we would deliver an excellent development that represents a welcome addition to Framwellgate Moor.

We respectfully believe the committee should grant planning permission

*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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41. As identified in Section 38(6) of the Planning and Compulsory Purchase Act 2004 the key consideration in the determination of a planning application is the development plan. Applications should be determined in accordance with the development plan unless material considerations indicate otherwise. In assessing the proposals against the requirements of the relevant planning guidance and development plan policies and having regard to all material planning considerations it is considered that the main planning issues in this instance relate to the principle of development, impact on the appearance and character of the area, impact on amenity of neighbouring residents and highway safety.

### Principle of the Development

42. The County Durham Plan (CDP) was adopted in October 2020 and as such represents the up to date local plan for the area and the starting point for the determination of this planning application. Consequently, the application is to be determined in accordance with relevant policies set out within the CDP.

43. The NPPF is a material planning consideration. Paragraph 11 of the NPPF establishes a presumption in favour of sustainable development. For decision taking this means

approving development proposals that accord with an up to date development plan without delay.

44. The application site is located within the settlement of Framwellgate Moor. It is not allocated for housing within Policy 4 of the County Durham Plan (CDP). Development of housing on unallocated sites within the built-up area should be assessed and determined against Policy 6. This policy sets out the following criteria:

The development of sites which are not allocated in the Plan or in a Neighbourhood Plan which are either (i) within the built-up area; or (ii) outside the built-up area (except where a settlement boundary has been defined in a neighbourhood plan) but well-related to a settlement, will be permitted provided the proposal accords with all relevant development plan policies and:

- a. is compatible with, and is not prejudicial to, any existing, allocated or permitted use of adjacent land;
- b. does not contribute to coalescence with neighbouring settlements, would not result in ribbon development, or inappropriate backland development;
- c. does not result in the loss of open land that has recreational, ecological or heritage value, or contributes to the character of the locality which cannot be adequately mitigated or compensated for;
- d. is appropriate in terms of scale, design, layout, and location to the character, function, form and setting of, the settlement;
- e. will not be prejudicial to highway safety or have a severe residual cumulative impact on network capacity;
- f. has good access by sustainable modes of transport to relevant services and facilities and reflects the size of the settlement and the level of service provision within that settlement;
- g. does not result in the loss of a settlement's or neighbourhood's valued facilities or services unless it has been demonstrated that they are no longer viable;
- h. minimises vulnerability and provides resilience to impacts arising from climate change, including but not limited to, flooding;
- i. where relevant, makes as much use as possible of previously developed (brownfield) land; and
- j. where appropriate, it reflects priorities for urban regeneration.

45. The proposal is within the built up area and therefore is acceptable in principle, subject to assessment against the various criteria in a) – j) above, which will be detailed in the following relevant sections.

46. In relation to criteria a) and b), proposed residential dwellings in this location are considered compatible with adjoining residential uses. There is no concern that it would result in inappropriate ribbon development, nor that it would be considered inappropriate backland development, as the site has ready independent highway access and can meet distance standards, which will be discussed further in the section below. In line with criteria f), the site is noted as being highly sustainable, being located within walking distance to a range of facilities and with ready access to sustainable modes of transport.

47. The development of this land to erect five residential dwellings in a highly sustainable location would therefore be deemed acceptable in principle, subject to other considerations below.

#### Impact on the character and appearance of the area

48. Policy 6c) of the CDP states that development should not be approved where it would result in the loss of open land that has recreational, ecological or heritage value or contributes to the character of the locality which cannot be adequately mitigated or compensated for. It also states under criteria d) that development should be appropriate in terms of scale, design, layout and location to the character, function, form and setting of the settlement.

49. Policy 29 relating to sustainable design states that all proposals will be required to achieve well designed buildings and places having regard to supplementary planning documents and contribute positively to an area's character, identity, heritage significance, townscape and landscape features, helping to create and reinforce locally distinctive and sustainable communities; and create buildings and spaces that are adaptable to changing social, technological, economic and environmental conditions and include appropriate and proportionate measures to reduce vulnerability, increase resilience and ensure public safety and security.

50. The site is a private allotment site and must be considered under policy 6c) as open land with recreational value, the loss of which would need to be mitigated or compensated for. At the time of the original 2018 outline application for six terraced properties, the occupiers of the nine private allotments were all given notice to quit. Whilst it is noted that the allotment holders raised no objections, local ward members indicated that there was a demand for allotments in the area and a request was made for a financial contribution to pay for replacement allotments. As a result, the outline application was approved subject to a section 106 agreement for a financial contribution of £3564.00 towards further allotment provision within the local area.

51. As the outline application has not been implemented, the Council has not received any of the agreed commuted sums to date. As such, the requirements for a financial contribution still apply for this new submission. Policy 6c) is clear in its requirement for compensation for loss of open land and the latest evidence base within the Open Space Needs Assessment identifies an undersupply of allotment space within the Durham City area. However, with a reduced number of dwellings now being applied for, the required financial contribution would equate to £2970.00. Subject to the applicant agreeing to the terms of a section 106 agreement to secure this financial contribution the proposals are considered to accord with the requirements set out in policy 6c).

52. As previously noted, outline permission exists for the erection of six 2-bed dwellings on the site. The current proposals seek full planning permission for five 3-bed dwellings on site, consisting of a semi-detached pair and a terrace of three, all two storey in height. The linear layout proposed would be similar to the outline permission, with dwellings facing south towards the business premises, and rear gardens on the north side facing Tindale Avenue. The dwellings are simple in appearance, with a proposed red brick (Mardale Antique) finish and pantile roof tile. The detailed design would consist of brick soldier coursing, with brick lintels and cement cills on window surrounds and a small triangular canopy for the front door. Boundary treatments to the rear would consist of 1.8 metres high close boarded timber fencing, with open plan front garden spaces and in curtilage parking spaces for three of the properties. The site plan has also been updated to indicate the provision of bin stores for each of the

properties. Full details of the materials and boundary treatments have been provided with the application and they would be marked as approved details should planning permission be granted. A condition would also be applied requiring the submission and agreement of precise details in relation to all hardsurfaced areas.

53. In light of the above the proposals are considered to be in keeping with the general form of development in the local area, which is noted as largely consisting of two storey terraced properties laid out in traditional linear format, finished in a mix of brick and render materials. On this basis, the proposals are deemed to accord with requirements set out in policies 6d) and 29 of the CDP as the dwellings would be appropriate in terms of scale, design and layout to the character, function, form and setting of the settlement.

#### Impact on amenities of neighbouring residents

54. Policy 29 requires that all development achieves well designed buildings and places having regard to supplementary planning documents and: e) provide high standards of amenity and privacy and minimises the impact of development upon the occupants or existing adjacent and nearby properties. Distance standards are outlined within the Residential Amenity Standards Supplementary Planning Document (SPD).

55. Policy 31 states that development will be permitted where it can be demonstrated that there will be no unacceptable impact, either individually or cumulatively, on health, living or working conditions or the natural environment and that can be integrated effectively with any existing business and community facilities. The proposal will also need to demonstrate that future occupiers of the proposed development will have acceptable living or working conditions. Proposals which will have an unacceptable impact such as through overlooking, visual intrusion, visual dominance, or loss of light, noise or privacy will not be permitted unless satisfactory mitigation measures can be demonstrated whilst ensuring that any existing business and / or community facilities do not have any unreasonable restrictions placed upon them as a result.

56. Residential properties surround the site on three sides. Tindale Avenue fronts the application site to the north, whilst to the east, the rear elevation and rear garden area of properties along Front Street face toward the proposed off-site residential parking and turning head and the end gable of the 3-terrace block. To the west lies an established high hedge beyond which lies the side elevation of the nursing home at Camsell Court.

57. In assessing the layout of the site, it is noted that distance standards are suitably met, with 21 metres maintained between facing windows of Tindale Avenue and the proposed development in line with SPD guidance. Similarly, windows on the rear elevation of Front Street properties are 16 metres from the blank gable end of the proposed terrace block which is in excess of the required 13 metres advised by the SPD. With regards to the development at Camsall Court, the nearest building to the application site is 7 metres away and has windows at ground floor level adjacent to and overlooking the existing boundary. However there is an established 3 metres high maintained evergreen planting on their side. No concerns are therefore raised with regards impacts of overlooking for existing or future occupiers on this side of the development.

58. Based on this assessment the proposed development is considered to suitably protect residential amenities of existing neighbouring properties, and with proposed dwellings

considered to be appropriate in scale and height, there are no concerns that the development would result in issues of loss of light, overshadowing or overbearing impacts.

59. To the south of the application site there is a carpet factory premises, with an industrial unit and service yard abutting the south of the application site adjacent to the access road leading to the properties. The properties would all face towards the service yard area of this site at a distance of 10 metres from its boundary, with the end terrace to the east fronting a part of the industrial unit at a distance just short of 13 metres away. As an established business on site, surrounded by existing residential uses, further residential development in this area is not considered inappropriate. Environmental Health commented that they had no concerns with regards the existing commercial site, given the existence of nearby residents and raised no issues with new housing in this location. They did however request that a condition be applied to control noise and activities associated with construction works for the benefit of all existing occupiers surrounding the site.
60. In terms of internal space standards, the proposed residential units show a level of compliance with the nationally described space standards, although it should be noted that these standards are not in force at present, due to a clause within Policy 29 of the adopted CDP which provides a transition period for one year after adoption of the plan. Nonetheless, it is noted that each of the dwellings measures 83.66 square metres, just short of the 84 square metres as recommended for two storey 3-bed dwellings for four persons. All of the double bedrooms and at least one of the single bedrooms in each property meet the space standards, with the second single bedroom in three of the dwellings falling short by one square metre. Notwithstanding these minor shortfalls it is noted that an adequate level of amenity would nevertheless be provided for residents. Noting that the requirement of policy 29 to meet the nationally prescribed standards does not take effect until October 2021, it is considered that any refusal of the application on these grounds could not be sustained.
61. The proposals have also been designed to meet the needs of older people and people with disabilities by ensuring that 3 of the 5 properties can meet M(4)2 Building Regulation standards as set out in policy 15.
62. A condition would need to be included with any permission granted requiring removal of permitted development rights associated with any works to the rear of the properties or works to increase the height of the dwellings, as outlined within Part 1, class A, AA and B of the Town and Country Planning (General Permitted Development) Order 2015 as amended, in order to protect amenities of residents along Tindale Avenue.
63. In summary, the proposals have been assessed against SPD guidance and are considered to meet amenity distance standards and mutual privacy is considered to be suitably protected. The proposed design and scale of the properties and their location and relationship to nearest properties is considered sufficiently appropriate to ensure that the proposal would not be visually dominant or intrusive on nearest residents. Spaces standards and accessibility standards have also been largely complied with to ensure suitable amenity standards for future occupiers. Subject to a condition removing permitted development rights, the proposals are considered to accord with policy 29 and 31 of the County Durham Plan and the SPD in this regard.

#### Highway Safety and Access

64. Policy 6 of the CDP requires that development will not be prejudicial to highway safety or have a severe residual cumulative impact on network capacity. Policy 21 states that development should: c) ensure that any vehicular traffic generated by new

development, following the implementation of sustainable transport measures, can be safely accommodated on the local and strategic highway network and does not cause an unacceptable increase in congestion or air pollution and that severe congestion can be overcome by appropriate transport improvements. In relation to parking the policy states that car parking at residential developments should ensure that a sufficient level is provided for both occupants and visitors, to minimise potential harm to amenity from footway parking.

65. The approved layout associated with the outline permission indicated that it would be possible to provide a public highway to adoptable standards. The original layout submitted for the current application proposed a private drive access for the 5 dwellings with retention of access to neighbouring properties. Whilst there were no highways objections to this arrangement, subject to amendments to the layout to cater for bin storage and visitor parking, significant concern was raised by the Parish and Local Ward members. Their concerns related to the fact that no footpaths would be provided as part of the private drive arrangement which was deemed unacceptable given the existing access by large trucks to the commercial premises.
66. The applicant was notified of these concerns and updated the layout for the scheme to include a public highway that would be to adoptable standards, noted as Proposed Site Plan revision I. The Principal Highways Engineer assessed the details and confirmed that there would be no highways objection to the proposed layout as amended. Footpaths measuring one metre width have been annotated on the plan, linking with main footpaths along Front Street. The updated layout also annotates an autotrack that illustrates the manoeuvrability of a refuse service vehicle on the proposed roads and shows that it could suitably enter and leave the development in a forward direction. Parking provision meets with the County Council requirement for 3-bed properties, and although some concern was raised that they were in tandem on the driveway, this was not raised as an issue by the Highway Authority, as each property would only require a single space to meet current parking requirements. Two visitor parking spaces have been provided as required and this is adequate for the number of dwellings proposed. Use of shared surfaces without footways is noted to the west of the site, but this is not considered inappropriate and is advocated in the Department for Transport manual for streets and included in the DCC residential design guide as an acceptable highway solution for access to residential development. Any permission granted would be subject to an informative detailing requirements for the applicant to enter a Section 38 Agreement with the Council to submit precise details of highway layout for Highways Authority approval.
67. Further objections have been raised with regards to the amended plan, largely relating to the location of visitor parking which is proposed to be located where existing residents park their cars. It is noted from comments received that these residents have had access to this parking for a number of years. However, as private land now in the ownership of the applicant, any dispute between the parties involved about car parking rights would be a civil matter and one falling outside of the planning process. However, it is noted within the amended site plan (Revision I) that a metre wide footway has been annotated between the rear garden boundary fences and the visitor parking bays, meaning that sufficient space is provided to allow continued access to the existing rear gardens. The amended site plan also indicates that ready access can be gained to existing garages that open out onto the newly adopted highway, and the two required visitor parking bays shown are suitably laid out on site to ensure they do not block access to an existing garage.
68. From assessing the details, it is considered that the amendments suitably address the various issues raised by the highway authority and although there are continued objections for interested parties, the layout has sought to address these concerns. In

planning terms, it is therefore considered that there is insufficient reason to refuse the application based on highway safety concerns. On this basis the proposals are considered to be compliant with the relevant parts of policies 6 and 21 of the County Durham Plan.

#### Contaminated Land

69. Contaminated land section assessed the site and historical maps and considered that a full contaminated land condition should apply requiring reports for phase 1, 2 and 3 analysis of potential ground contamination on site in line with NPPF part 15 and CDP policy 32.

#### Ecology

70. Ecology assessed the details of the scheme and confirmed that no standalone surveys would be required. However, in order to ensure net biodiversity gain is achieved in accordance with paragraph 170, it was requested that the properties include provision for bat and bird nesting. The updated site plan has indicated the installation of bat and bird boxes into the fabric of each of the properties. Whilst this is accepted, Ecology require the imposition of a condition requiring details of the design and exact location of each of these features. A condition would therefore need to be included in the event that planning permission was granted.

71. Policy 27 of the CDP requires new residential development to be served by a high-speed broadband connection unless it can be demonstrated that this is not appropriate. The development would be located in an edge of city centre location characterised by both residential and commercial development. Similar, requirement in terms of broadband connectivity and broadband connectivity would be delivered in this wider context. As such it does not appear that there any significant constraints to delivering the connectivity in accordance with the requirements of policy 27 although the submission and agreement of precise detail in this regard could be secured through planning condition noting the outline nature of the application. Subject to the inclusion of a planning condition in this regard the development is considered to accord with the aims of policy 27 of the CDP.

#### Objections received

72. As noted, a number of objections and concerns have been received. Some of the issues raised have been suitably addressed through submission of the updated layout and house designs, which now remove concerns regarding internal space standards, overlooking and a perceived overdevelopment of the site. The outstanding concerns raised with regards car parking are noted, but cannot be resolved through the planning system as discussed above. In any case, the latest amended site plan has taken into consideration access to the rear gardens and garage plots, upgrading what was originally intended as a private drive, an acceptable standard for up to five dwellings, to provide a road access to adoptable standards, over and above the Highway Authority requirements. Based on this, there would not be sufficient grounds for refusal, and the proposals are therefore deemed acceptable in this regard.

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## **CONCLUSION**

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73. Section 38(6) of the Planning and Compulsory Purchase Act 2004 sets out that planning applications be determined in accordance with the development plan unless material considerations indicate otherwise.

74. In summary, policy 6 of the CDP sets out a number of criteria for development of unallocated sites within the CDP. In this instance, and for reasons set out in this report, it is considered that on balance the proposed development complies with the criteria of policy 6. Paragraph 11 of the NPPF states that development proposals which accord with an up to date development plan should be approved without delay and as such the development is recommended for approval.

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## RECOMMENDATION

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

- Financial contribution of £2970.00 for provision of alternative allotments within the local area

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(ies) 6 and 29 of the County Durham Plan and Parts 12 of the National Planning Policy Framework.

Plan	Drawing No.	Date Received
Site Location Plan	020/055/LP	16/03/21
Type A 3 Bedroom Block Terrace Elevations and Floor Plans	021/035/1 Rev A	18/05/21
Type A 3 Bedroom Semi Elevations and Floor Plans	021/035/1 Rev A	14/05/21
Proposed Site Plan	02/055/SP Rev I	28/06/21
Wienerberger Mardale Antique 65mm Brick		
Redland Grovebury Farm House Red Roof Tile		

3. No development shall take place until verification identifying which dwellings will be built to Buildings Regulations M4(2) standard, from a suitably competent person, has been submitted to and approved in writing by the Local Planning Authority. The development shall then be implemented fully in accordance with the approved details.

Reason: To ensure development is capable of meeting needs of older people and people with disabilities in compliance with policy 15 of the County Durham Plan and Part 12 of the NPPF.

3. No development shall commence until a land contamination scheme has been submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall be compliant with the YALPAG guidance and include a Phase 1 preliminary risk assessment (desk top study).

If the Phase 1 assessment identifies that further investigation is required a Phase 2 site investigation shall be carried out, which shall include a sampling and analysis plan.

If the Phase 2 identifies any unacceptable risks, a Phase 3 remediation strategy shall be produced and where necessary include gas protection measures and method of verification.

Reason: To ensure that the presence of contamination is identified, risk assessed and proposed remediation works are agreed in order to ensure the site suitable for use, in accordance with Policy 32 of the County Durham Plan and Part 15 of the National Planning Policy Framework. Required to be pre-commencement to ensure that the development can be carried out safely.

4. Remediation works shall be carried out in accordance with the approved remediation strategy. The development shall not be brought into use until such time 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 Policy 32 of the County Durham Plan and Part 15 of the National Planning Policy Framework.

5. No development shall be occupied until details of the surface treatment and construction of all hardsurfaced areas has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be undertaken in accordance with the approved details prior to first occupation.

Reason: In the interests of the visual amenity of the surrounding areas in accordance with Policy 29 of the County Durham Plan and Parts 12 and 15 of the National Planning Policy Framework.

6. No development shall commence until such time as a scheme detailing the precise means of broadband connection to the site has been submitted to and agreed in writing by the local planning. Thereafter, the development shall be carried out in accordance with the agreed detail.

Reason: To ensure a high quality of development is achieved and to comply with the requirements of policy 27 of the County Durham Plan.

7. No development shall be occupied until details of the propriety bat and bird boxes, annotated on approved plan 'Proposed Site Plan Revision I', have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be undertaken in accordance with the approved details prior to first occupation.

Reason: In the interests of ensuring the delivery of Biodiversity Net Gain enhancement in accordance with Policy 41 of the County Durham Plan and Part 15 of the National Planning Policy Framework.

8. In undertaking the development that is hereby approved:

No external construction works, works of demolition, deliveries, external running of plant and equipment shall take place other than between the hours of 0800 to 1800 on Monday to Friday and 0800 to 1400 on Saturday.

No internal works audible outside the site boundary shall take place on the site other than between the hours of 0730 to 1800 on Monday to Friday and 0800 to 1700 on Saturday.

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

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

Reason: To protect the residential amenity of existing and future residents from the development in accordance with Policy 31 of the County Durham Plan and Part 15 of the National Planning Policy Framework.

9. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and/or re-enacting that Order), no development under Part 1 Classes A, AA and B of the GDPO shall take place without the grant of further specific planning permission from the Local Planning Authority.

Reason: In the interests of the amenity of the surrounding area in accordance of Policies 29 and 31 of the County Durham Plan and Parts 12 and 15 of the National Planning Policy Framework.

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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  
Statutory, internal and public consultation responses  
The National Planning Policy Framework (2019)  
National Planning Practice Guidance Notes  
County Durham Plan  
Residential Amenity Standards SPD (2020)



<p><b>Planning Services</b></p>	<p>DM/21/00911/FPA  Proposed development of 5 dwellings and associated parking at allotment site to the west of 5-10 Front Street, Framwellgate Moor, DH1 5EJ.</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> 29 July 2021</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/21/00011/FPA
<b>FULL APPLICATION DESCRIPTION:</b>	Retention of kennels in association with the keeping and breeding of dogs at the site (amended description)
<b>NAME OF APPLICANT:</b>	Ms Rebecca Swainston
<b>ADDRESS:</b>	The Paddock and Land To The Rear Of The Paddock Station Town Wingate TS28 5HE
<b>ELECTORAL DIVISION:</b>	Blackhalls
<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 comprises an existing residential dwelling and its associated curtilage, along with an area of separate paddock with stables which lies to the rear of the site at The Paddock, Station Town, Wingate.
2. Access to the site sits between Hillcrest and Rose Cottages which is a row of 4 dwellings that sit in front of the application property. Fields are located to the rear and east of the site with residential properties to the south across the main road and also to the west.

#### Proposal:

3. Planning Permission is sought for the retention of existing kennels and associated fencing installed at the site in December 2020 and used in association with the keeping and breeding of dogs at the premises. The application is submitted to regularise the current position which is that the kennels and the use are presently unauthorised. The application is therefore retrospective.
4. It is understood that the applicant's main interest is the showing of Dogue de Bordeaux which they do nationally, (including at Crufts), and it is understood that they have been engaged in this for the last 21 years. Currently, the applicant has 11 dogs at the site and normally has two litters per year, although it is confirmed in the

application that this can change depending on the number of dogs each litter produces.

5. The principal reason for breeding the dogs is stated in the application as providing a means to provide replacement dogs for themselves, but also to enhance and strengthening their pedigree moving forward. Surplus puppies are sold, and the income used to pay for the cost of keeping their show/breeding dogs.
6. The application is referred to the Committee at the request of former Cllr Lynn Pounder who considered the impact of the development in terms of noise, disturbance, Highway safety/Traffic generation and road access to be such that the application should be considered by planning committee.

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## **PLANNING HISTORY**

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7. 5/PL/2011/0264 – Construction of menage and relocation of stables (retrospective).  
Approved 7/3/12

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## **PLANNING POLICY**

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### **NATIONAL POLICY**

8. The following elements of the National Planning Policy Framework (NPPF) are considered relevant to this proposal:
9. NPPF Part 2 Achieving Sustainable Development - The purpose of the planning system is to contribute to the achievement of sustainable development and therefore at the heart of the NPPF is a presumption in favour of sustainable development. It defines the role of planning in achieving sustainable development under three overarching objectives - economic, social and environmental, which are interdependent and need to be pursued in mutually supportive ways. The application of the presumption in favour of sustainable development for plan-making and decision-taking is outlined.
10. NPPF Part 4 Decision-Making - Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.
11. NPPF Part 8 Promoting Healthy and Safe Communities - The planning system can play an important role in facilitating social interaction and creating healthy, inclusive communities. Developments should be safe and accessible; Local Planning Authorities should plan positively for the provision and use of shared space and community facilities. An integrated approach to considering the location of housing, economic uses and services should be adopted.
12. 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.

13. 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.
14. 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.
15. 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.

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

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

16. The Government has consolidated a number of planning practice guidance notes, circulars and other guidance documents into a single Planning Practice Guidance Suite. This document provides planning guidance on a wide range of matters.

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

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

##### County Durham Plan

17. Policy 6 (Development on Unallocated Sites) states the development on sites not allocated in the Plan or Neighbourhood Plan, but which are either within the built-up area or outside the built up area but well related to a settlement will be permitted provided it: is compatible with use on adjacent land; does not result in coalescence with neighbouring settlements; does not result in loss of land of recreational, ecological, or heritage value; is appropriate in scale, design etc to character of settlement; it is not prejudicial to highway safety; provides access to sustainable modes of transport; retains the settlement's valued facilities; considers climate change implications; makes use of previously developed land and reflects priorities for urban regeneration.
18. Policy 10 Development in the Countryside states that development in the countryside will not be permitted unless allowed for by specific policies in the Plan, relevant policies within an adopted neighbourhood plan relating to the application site or where the proposal relates to stated exceptions.
19. Policy 21 (Delivering Sustainable Transport) requires all development to deliver sustainable transport by: delivering, accommodating and facilitating investment in sustainable modes of transport; providing appropriate, well designed, permeable and direct routes for all modes of transport; ensuring that any vehicular traffic generated

by new development can be safely accommodated; creating new or improvements to existing routes and assessing potential increase in risk resulting from new development in vicinity of level crossings. Development to have regard to Parking and Accessibility Supplementary Planning Document.

20. Policy 29 - Sustainable Design requires all development proposals to achieve well designed buildings and places having regard to SPD and sets out 18 elements for development to be considered acceptable, including: positive contribution to areas character, identity etc.

21. Policy 31 - Amenity and Pollution sets out that development will be permitted where it can be demonstrated that there will be no unacceptable impact, either individually or cumulatively, on health, living or working conditions or the natural environment and that can be integrated effectively with any existing business and community facilities. Development will not be permitted where inappropriate odours, noise, vibration and other sources of pollution cannot be suitably mitigated against, as well as where light pollution is not suitably minimised. Permission will not be granted for locating of sensitive land uses near to potentially polluting development. Similarly, potentially polluting development will not be permitted near sensitive uses unless the effects can be mitigated.

#### Neighbourhood Plan

22. There is currently no neighbourhood plan in force in this area.

*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

### **INTERNAL CONSULTEE RESPONSES:**

24. Environmental Health (Nuisance) – No objection subject to conditions.

### **PUBLIC RESPONSES:**

25. The application has been advertised by means of site notice and by notifying neighbouring residents by letter.

26. Two letters of objection have been received from the Hutton Henry Parish Council which raise concerns relating to noise having a detrimental impact on neighbouring residents and land uses, in particular at the adjacent cemetery when funerals are taking place given its close proximity. Concern has also been raised regarding the access road to and from the property in as much as visitors to the kennels are reported to be using the incorrect road resulting in disturbance for adjacent neighbours who have received several 'knocks at that door' from people looking for the kennels.

27.7 letters of objection have been received from neighbouring properties with the following comments:

### Noise/Disturbance Implications

- The fact that the applicant has gone ahead with total disregard for his/ her close neighbours knowing full well the impact that kennels will have on their lives, the noise from this venture will be 24 hours a day.
- The social disruption will be enormous especially to some neighbours who need peace and quiet for the health issues
- The type of dog the applicant is proposing to breed is the Dogue de Bordeaux which is as a large dog with a deep and powerful bark.
- Procedures in the application state that any barking would be stopped after 1 minute of it commencing but in reality this would be difficult to achieve.
- Although, the kennels have been lined this would have no effect on noise limitation when the dogs spend time outside in their pens or exercising in the paddock. It is also not clear from the proposal exactly when or where the dogs will be exercised.
- The surrounding area is a quiet rural location and that is one of the main reasons many of residents decided to move there, with many elderly residents living nearby
- Excessive Noise and smell implications
- There have been considerable levels of disruption due to the building works which have already started.
- Concern regarding the areas to be used
- Concern over the number of dogs on site

### Highway Safety/Access Issues

- Adverse impact upon highway safety and access issues including insufficient visibility at the existing junction and an increase in visitors and deliveries.
- Rodridge Lane, whilst not a main road can get quite busy and is also a regular bus route. The section of the road in question is at the brow of a hill meaning residents exiting their drives already have to be very careful to avoid passing traffic. Although there is a 30 mile an hour speed limit this is often ignored, adding to the likelihood of an accident if there is increased traffic entering/exiting the kennel development.
- Customer visits along with those of deliveries, staff and vets will result in increased traffic.

### Other Issues

- Devaluation of properties
- The proposal has already begun without planning consent.
- The proposal is essentially a business within a residential property

### Procedural Issues

- The proposal should be accompanied by a noise assessment
- The description of the proposal needs to be re-considered

28.7 letters of support have been received from neighbouring properties and neighbours who have previously lived next door to the applicants with the following comments:

- No objections to the applications the dogs have not been a disturbance and have only heard them a handful of times since they have moved in.
- On the rare occasion that I have heard the dogs, I have not found them too loud, and they have not barked for an extended period of time.
- To date we have had no issues with the daily activities or noise at the Paddock. On the rare occasion we have heard barking it is stopped within a minute

- All the animals on the property appear to be happy, healthy and well looked after
- The family seem friendly and approachable.
- The applicants are very professional in terms of how they keep their dogs and how much they take care of any noise created by the dogs (on the rare time there was)
- The applicants are very conscious of the barking and there were never any complaints where they previously lived
- The dogs are very well trained and well behaved and never bark unless there is good reason.
- The street where the kennels were located is very narrow, however there were never any problems created by visitors to the premises and traffic going there was very infrequent.
- The applicants are persons of the highest integrity and have always shown complete consideration for the residents of my street, they take the welfare of their animals extremely seriously.

*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>*

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

29. I wanted to explain a little about us, I've had my show dogs my whole adult life and we have an impeccable record with Sunderland council and my previous neighbours of over 20 years. We are not a commercial breeder, more of a hobby breeder, in fact we only had 1 litter of Dogue De Bordeaux in 2020. Our main purpose for our dogs is of course we love them but exhibiting them all over the world making up many champions like we have done over the years.

30. We moved here with no facilities for my 11 Dogue De Bordeaux so I had no choice but to provide somewhere for them to live. The welfare of my dogs came before anything and I absolutely stand by my decision to put my dogs well-being first. The reason I have 18 in my application is I also have small dogs that live in my home, sleep in bed with my 3 young children but currently I have 11 Dogue De Bordeaux in the stables we have built.

31. We have owned/loved and exhibited our Dogue De Bordeaux for over 20 years while we lived at our previous address in Sunderland, making up many Champions and becoming arguably the most successful show kennel in the world for our breed winning at Crufts and even bigger shows, they are our life's work! Our dogs are kept to the highest standard not only for their breed type, but we have always been proud of how we house and manage our dogs ensuring they all have the correct training including preventing unnecessary barking as part of that training.

32. In Sunderland we had previously had planning consent for a change of use as we held a 5 star licence with an impeccable record of not one noise complaint or any complaint for that matter in that 20 years plus, I also wanted to add that we lived in a terraced house and our kennels were a stone's throw from our neighbours, here we have 1-2 acre paddock between our dogs to the nearest house with the closest properties being very supportive with our application. I believe these houses can see and hear what's going on rather than guessing like the objectors and that's why they have supported us.

33. We have had our dogs here since December with no noise complaints. The way we have designed our kennels was with our neighbours in mind and to be respectful to

their views and needs. Keeping the stables that we house them in, in line with the properties current use, not obstructing the beautiful views or for our neighbours to be able to see them in anyway which they can't and of course to minimise noise.

34. Any puppies will be reared inside our home and certainly nowhere near the stables/kennels where our adults are. We have designed and situated our kennels in a way to control any occasional barking as I myself cannot rest when my dogs bark as its usually because there is something wrong. I can't stress this enough, our dogs only bark when there is something abnormal happening which makes me panic and react to resolve the problem quickly.
35. We have strict procedures in place when a dog barks, but I rarely need to act upon them because 20 years of understanding our dogs made us fully prepared for what triggers an unnecessary bark and have designed our kennels in a way to minimise this. I would also like to add that our kennels and dog runs were located respectfully and are not visible to any of the surrounding houses.
36. I desperately want to express that we are very professional and responsible, I take a huge amount of pride in what I do, what we do! and noise control is something that is paramount in our decisions of which dogs we keep here. Our dogs are trained to behave as keeping my dogs is a must and I cannot afford to risk losing them by upsetting anyone.
37. It's important to me that we do everything correctly and lawfully which is why we applied for our licence when we moved in, not because we want to breed huge amounts of puppies but because it's the right thing to do. I welcome anyone that wants to come and meet us and meet our dogs.
38. Breeding Dogue De Bordeaux is not always easy, they are so expensive to keep and feed and especially to the standards we do this here. We breed our dogs primarily to pay for looking after them and sometimes breeding this breed can come with more expenses than anything else which is why I need the opportunity to breed again to help pay for this in a hope that the next litter will be more successful. Last year we had a wonderful litter of 7 puppies with no big vet bills or expenses so this litter was enough to pay for everything but I've seen previous years where we have bred 5 females and had no such luck, single puppies or puppies dying, huge vet and whelping bills and more frequently than not females just don't get pregnant. I keep my breeding numbers higher, not to breed them all but to have the opportunity to should we need to.
39. I would also like to point out that we are strictly governed by the Kennel Club with our Dogue De Bordeaux and having a breeding licence even more so. Having a licence makes us more accountable for our actions with our dogs, exposing us to bigger fines and penalties should we not comply, so with this in mind I would hope would give any objectors more reassurance. I don't plan on bringing more dogs to the site if our application is successful and I am happy to be restricted and comply with the terms given to me by the council with the utmost respect. I don't plan on changing anything other than making their living facilities more permanent, warmer and more secure for my dogs.

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## **PLANNING CONSIDERATIONS AND ASSESSMENT**

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40. As identified in Section 38(6) of the Planning and Compulsory Purchase Act 2004 the key consideration in the determination of a planning application is the development plan. Applications should be determined in accordance with the development plan

unless material considerations indicate otherwise. The main considerations in regard to this application are the principle of the use in this location, amenity considerations, design considerations and highways safety along with any other issues.

41. 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 County Durham Plan is the statutory development plan and the starting point for determining applications as set out at Paragraph 12 of the NPPF. The NPPF advises at Paragraph 213 that the weight to be afforded to existing Local Plans depends upon the degree of consistency with the NPPF.
42. The Local Plan was adopted in 2020 and is up to date. Consequently, consideration of the development should be led by the plan.

#### Principle of the Development

43. The site lies to the east of a linear collection of residential dwellings lining the road between Station Town and Hutton Henry along which planning permission was recently granted for 4 dwellings. In addition, residential properties also frame the site to the south and it is noted that outline planning permission was granted in 2019 for 9 dwellings to the south of the C22.
44. Policy 6 of the CDP supports the development of sites that are not allocated in the plan or a Neighbourhood Plan and are located within a built up area or outside the built-up area (except where a settlement boundary has been defined in a neighbourhood plan) but are well-related to a settlement, provided it accords with all relevant development plan policies and the following criteria;
  - A) is compatible with, and is not prejudicial to, any existing, allocated or permitted use of adjacent land;
  - B) does not contribute to coalescence with neighbouring settlements, would not result in ribbon development, or inappropriate backland development;
  - C) does not result in the loss of open land that has recreational, ecological or heritage value, or contributes to the character of the locality which cannot be adequately mitigated or compensated for;
  - D) is appropriate in terms of scale, design, layout, and location to the character, function, form and setting of, the settlement;
  - E) will not be prejudicial to highway safety or have a severe residual cumulative impact on network capacity;
  - F) has good access by sustainable modes of transport to relevant services and facilities and reflects the size of the settlement and the level of service provision within that settlement;
  - G) does not result in the loss of a settlement's or neighbourhood's valued facilities or services unless it has been demonstrated that they are no longer viable;
  - H) minimises vulnerability and provides resilience to impacts arising from climate change, including but not limited to, flooding;
  - I) where relevant, makes as much use as possible of previously developed (brownfield) land;
  - J) where appropriate, it reflects priorities for urban regeneration.
45. The County Durham Plan defines 'the built-up area' as land contained within the main body of existing built development of a settlement or within a settlement boundary defined in a Neighbourhood Plan. Areas falling outside this definition will be regarded as countryside. With this definition in mind it is considered that to some extent policy 6 would not be applicable. However, the site is framed by residential properties to the

south and west and understood in the context of the linear development which spans the northern side of the C22 and recent development to the south west. It is therefore considered that in this context the site is well related to the existing settlement at Station Town and those properties to the south and west.

46. Notwithstanding the above, the application site is located outside of the existing built-up areas Station Town and Hutton Henry and by definition is therefore considered to be located within the countryside for planning purposes. CDP Policy 10 relates to development in the countryside and advises that development will not be permitted unless allowed for by specific policies in the Plan (including Policy 6) or where the proposal comprises an exception related to economic development, infrastructure development or the development of existing buildings. For the reasons stated above the development would accord with policy 6 noting that the site is well related to existing development and as such, accords with Policy 10 of the CDP.
47. Taking some of the criteria stated in policy 6 in turn it is noted that criteria f) requires new development to have good access by sustainable modes of transport to relevant services and facilities and reflect the size of the settlement and the level of service provision within that settlement. In this regard the site is within reasonable distance of local shops and services and lies on a bus route which benefits from a reasonably regular service. As such the development is considered to accord with the requirements of criteria f) of Policy 6.
48. With regard to criteria g) of policy 6 it is noted that the site is wholly in the private ownership of the applicant and was previously used as stables with a paddock area and that elements of this remain with horses still being kept on site. As such the development is not considered to have resulted in the loss of any valued facilities or services in accordance with criteria g) of policy 6. Similarly, there is not considered to be any conflict with policy 6h) as the site is not located within any flood zone, fluvial or surface water and would not generate any significant increase in surface water flows.
49. Criteria i) of policy 6 requires new development where relevant, to make as much use as possible of previously developed (brownfield) land. In this instance whilst the site hosts a stable block and the kennels are positioned immediately adjacent to this, the site is not previously developed given it forms part of the paddock area and not part of the curtilage of the existing stables. However, the policy does note that this requirement should be met only where relevant and as such given the nature of the site and the proposed use, the development is not considered to present any conflict with the requirements of criteria i). Similarly, in relation to criteria g) it is noted that the site and proposal offer little opportunity to reflect the wider priorities for urban regeneration and as such there is no conflict with this element of the policy.
50. Given the above, the principle of the development is considered acceptable subject to appropriate consideration of the following, which includes assessment of the remaining criteria of policy not considered above.

#### Residential Amenity

51. Policy 31 of the CDP seeks to prevent development that would have an unacceptable impact upon the amenity of existing neighbouring residents and only allow development where adequate amenity for future occupiers is provided. In addition criteria a) of Policy 6 requires new development to be compatible with, and not prejudicial to, any existing, allocated or permitted use of adjacent land.
52. This displays a broad level of accordance with Section 11 of the NPPF requires planning decisions to ensure healthy living conditions and paragraph 122 emphasises

the importance of securing healthy places. Paragraph 170 of Section 15 of the NPPF requires decisions to prevent new development from being put at unacceptable risk from, or being adversely affected by, unacceptable levels of pollution such as noise pollution. Paragraph 180 seeks to ensure that new development is appropriate for its location taking into account the likely effects of pollution on health and living conditions.

53. In terms of noise, paragraph 180 advises that planning decisions should mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development - and avoid noise giving rise to significant adverse impacts on health and the quality of life.
54. Nearby residents have raised concerns that the proposal would result in significant impact from noise generated by dogs barking and that this would be experienced 24 hours a day. Residents consider the social disruption of the proposal in this regard would be enormous, especially to some neighbours who need peace and quiet for the health issues. Concern is also raised by residents that the measures proposed by the applicant to mitigate noise as described in the application would not be effective particularly that any barking would be stopped after 1 minute of it commencing. The belief being that in reality this would be very difficult to achieve and as such have little impact. Also of concern is a lack of clarity as to which areas are to be used for the exercising of dogs and the number of dogs that would be kept on site and how that can be controlled.
55. The applicant has confirmed that they previously bred Dogue de Bordeaux's from their home in Sunderland and that the use of the current site to accommodate 11 dogs commenced on December 2020. During this time, it has generally been the case that 11 dogs have been present at any given time. Letters of support have been received from several residents who lived adjacent or near to the applicant's previous property which advise that during this time they did not experience any adverse impacts from noise, either from the dogs themselves or from the comings and goings of visitors.
56. Given the level of interest in the application a site visit was carried out by the Council's Environmental Health Officer who confirmed that during this visit the dogs did bark whilst himself and the applicant were looking at them, but that this abated once the visitors were out of sight.
57. The applicant has advised that they have always been very aware of their neighbours at this and their previous property and have sought to provide assurances and propose mitigation aimed at managing the dogs barking where possible. Such mitigation includes the appropriate management of activities on site and also positioning the kennels behind the stable block and providing a barrier which restricts the dog's view (the aim of the latter being to reduce the likelihood of dogs barking should they see visitors). The applicant has also advised that CCTV cameras and audio microphones are used which monitors/records activity and the level of barking. The recordings feed into the main house where they can be stored for up to 4 weeks. Should barking occur this would be audible on the CCTV equipment and the applicant would act accordingly.
58. In addition, the applicant has advised that dogs are trained not to bark and that they keep dogs that have are more settled temperament, so as not to encourage other dogs to bark. The dogs are routinely exercised and never left unattended for more than 4 hours. Despite those assurances, residents remain concerned that the use would generate an unacceptable level of noise.

59. As noted the Environmental Health Officer has been consulted and advises that that it is evident that the kennels are not boarding kennels and are representative of a specialist dog breeder. They also confirm that no noise complaints have been received since the applicant has occupied the site in 2020 which seems to indicate that appropriate management has/is being carried out and there is no reason to suggest this would not continue. They go on to state that it is evident that the applicants are conscious of their dogs barking and have put reasonable controls in place to manage that risk.
60. Whilst it is noted that the dogs did bark during the visit by the Council's EHO in his view this was not excessive. However, it is considered that mitigation measures should be required to ensure that the development does not breach the thresholds stipulated within the TANS (Noise TANS section 3.7 page 18) and these could be secured through planning condition. Measure should include a limit on the number of dogs that could be housed at the site and the installation, retention and use of CCTV equipment as described.
61. With regard to concern surrounding a lack of clarity in relation to the position of the exercising area, the applicant has confirmed this would be located beyond the kennel area and away from the neighbouring properties. The Council's EHO raises no objection to this arrangement.
62. Residents have raised concern that the application is not supported by a noise assessment which they consider is required to appropriately assess the impact of the development upon residential amenity. Whilst no formal noise assessment has been submitted with the application, information was provided which detailed the proposed means of noise control and this was considered sufficient to validate the application. The EHO reviewed that information and has also visited site and offers no objection to the development confirming that they are confident that noise levels can be controlled with appropriate mitigation.
63. Whilst the development is of a type which may reasonably be considered to generate some increase in noise, particularly from dogs barking, and the concern of residents is noted in this regard, this could be sufficiently mitigated to within acceptable levels through inclusion of planning conditions restricting the number of dogs on site and the use of CCTV to monitor the dogs themselves. It should also be noted that the previous owner used the site for equestrian purposes (over which there is no planning control) and horses are still kept on site. As such, whilst the use of the kennels may generate some level of increased noise, any increase should be considered in this context.
64. With regard to limiting the maximum number of dogs assessing this can be difficult as it requires arbitrarily applying some form of limit. As a reasonable starting point, it appears the applicant currently has 11 breeding dogs on site which they have managed to satisfactorily accommodate given a lack of any noise complaints having been received by the EHO since December 2020. It therefore seems reasonable to limit the number of dogs at the current level of use and this would be secured via planning condition. It should be noted that this does not include puppies resulting from any litter and whilst it is acknowledged that this will result in additional dogs following a success litter, it is not felt that this would result in significant noise issues subject to appropriate management of the site. It is also considered that a condition restricting the use of the site to the personal use of the applicant only is also required given the relative unique nature of the use.
65. Consideration was given to potentially granting a temporary permission for a period of one year. However, noting that the use appears to have been operating since

December 2020 without complaint, it is considered there would be little benefit to any temporary permission in this regard.

66. Concern has also been raised regarding noise/disruption from the building work although in this instance it is noted that the kennels are complete and in situ. Nevertheless, there is always a level of disruption generated by construction activity although this is generally considered less intrusive given it is experienced for a temporary period.
67. Taking into account all of the issues above, it is considered that subject to the conditions stated, the proposal is considered acceptable in respect of policies 6 and 31 of the Local Plan in that it is compatible with, and not prejudicial to, any existing, allocated or permitted use of adjacent land, and also paragraph 180 of the NPPF in that it would not have an unacceptable impact upon the amenity of neighbouring residents.

#### Highway Issues:

68. Policy 21 of the CDP relates to providing sustainable transport in which the Council is committed to delivering a high quality integrated and sustainable transport network which supports our aspirations for a strong economy, a vibrant tourism offer and improved quality of life for all of our residents, including reducing air pollution and emissions of CO<sub>2</sub>. In addition, criteria e) of policy 6 states that new development will not be prejudicial to highway safety or have a severe residual cumulative impact on network capacity;
69. Objections have been received in respect of access issues, including substandard visibility at the existing access and the inability of access to accommodate an increase in customers and deliveries associated with a commercial use given the sites residential setting.
70. The proposal mixed use would inevitably lead to some increase in vehicle trips to and from the property although this is not considered to be excessive and it is noted that there appears to be sufficient parking space within the site to accommodate this.
71. With regards to access the Highway Authority notes that the existing arrangement does have limited visibility but that the small number of additional trips anticipated could be satisfactorily accommodated without adverse impact upon highway safety. As such they raise no objection to the application but do advise the inclusion of a planning condition to restrict further intensification of the use beyond the 11 dogs currently at the site which already noted can be secured through planning condition.
72. Subject to a condition in this regard the proposal would be considered acceptable in respect of highway safety and would accord with the requirements of policies 6 and 21 of the County Durham Plan and Part 9 of the NPPF.
73. Concern was also raised by the Parish Council and a resident that people are continually knocking on their door trying to find the kennels, although this has been disputed by the applicants. In any event, confusion with regards to location could reasonably be overcome by the applicant through improved communication with customers and clear directions being provided prior to arrival. As such it is not considered this could sustain refusal of the application and the applicant will be advised through an informative of the need to ensure good communication is carried out with perspective buyers.

## Visual impact on the amenity of the area

74. Policy 29 of the Local Plan states that development should contribute positively to an area's character, identity, heritage significance, townscape and landscape features. This is in accordance with the NPPF as it too seeks to secure a good standard of amenity for all existing and future occupants of land and buildings. In addition, criteria b) of policy 6 requires new development to not contribute to coalescence with neighbouring settlements, would not result in ribbon development, or inappropriate backland development.
75. The main changes to the area relate to the installation of the kennel building associated cages and fencing, all of which have already been erected on site. Whilst it is disappointing that the applicant has undertaken the works without planning permission the full visual impact of the development can be readily assessed as a consequence. In this regard it is considered that overall design and siting of the structures are acceptable given they sit adjacent to an existing stable building and are constructed of appropriate materials and have not contributed to the coalescence of the adjacent settlement in accordance with criteria b). The site itself does not have any recreational, ecological or heritage value and does not contribute to the character of the surrounding area and as such the requirements of criteria c) and d) of policy 6 are also met.
76. The proposal is therefore considered acceptable in respect of the impact on the visual amenity of the area in accordance with policies 6 and 29 of the County Durham Plan.

## Other Issues

77. Residents have raised concern regarding the devaluation of properties although this is not a material planning consideration to which weight can be attributed in determination of this application.
78. Whilst it is disappointing that the applicant has commenced the proposal without planning permission, planning legislation makes provision which allows the submission of a planning application which seeks to regularise that breach.
79. Concerns have also been raised that the description of the proposals were amended during the course of the application and amended plans submitted. Again, provision exists for an application to be amended post submission subject to re-consultation and this was undertaken in this instance.

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## **CONCLUSION**

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80. Whilst it is disappointing that use of the site has commenced without planning permission it is nevertheless considered acceptable in principle in accordance with policies 6 and 10 of the County Durham Plan, and by reason of its size, scale, position and limited nature could be satisfactorily accommodated without adverse impact upon the amenity of surrounding residents, visual amenity and highway safety in accordance with the requirements of policies 6, 10, 21, 29 and 31 of the County Durham Plan and Parts 6, 8, 9, 11, 12, 15 of the NPPF
81. Whilst the objections and concerns raised by residents and the parish council have been taken into account and addressed within the report. However, on balance, and taking into consideration all material planning considerations 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(ies) 10, 29 and 31 of the County Durham Plan and Parts 12 and 15 of the National Planning Policy Framework.*

3. The use hereby permitted shall be carried out only by Ms Rebecca Swainston and/or a dependent, relative or employee of said named person.

*Reason: In the interest of residential amenity in accordance with policy 31 of the County Durham Plan and part 15 of the NPPF.*

4. The CCTV and audio system which is currently installed shall be retained and appropriately maintained to ensure that it is in full working order and in use at all times when the kennels are occupied by dogs. All relevant recordings shall be kept for a minimum of 2 weeks and shall be made available to the local planning authority upon written request.

*Reason: In the interest of residential amenity in accordance with policy 31 of the County Durham Plan and part 15 of the NPPF.*

5. The maximum number of breeding dogs kept on the site at any one time shall not exceed 11 dogs.

*Reason: In the interest of residential amenity in accordance with policy 31 of the County Durham Plan and part 15 of the NPPF.*

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## **STATEMENT OF PROACTIVE ENGAGEMENT**

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The Local Planning Authority in arriving at its 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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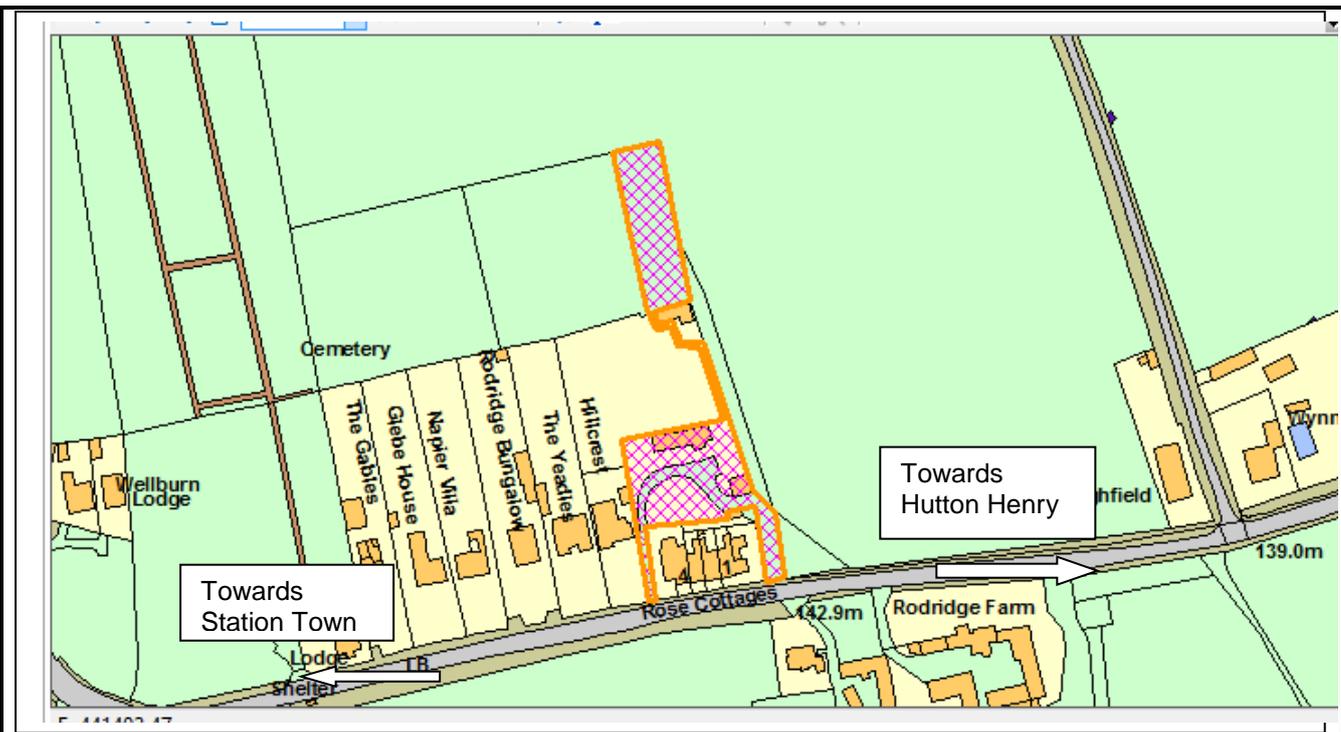
Submitted application form, plans, supporting documents and subsequent information provided by the applicant

The National Planning Policy Framework (2018)

National Planning Practice Guidance Notes

County Durham Plan

Statutory, internal and public consultation responses



<p><b>Planning Services</b></p>	<p>Erection of kennels in association with keeping and breeding of dogs on the site (amended description) at The Paddock and Land To The Rear Of The Paddock, Station Town, Wingate, TS28 5HE Application Reference: DM/21/00011/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> July 2021</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/21/01918/FPA
<b>FULL APPLICATION DESCRIPTION:</b>	Change of use from C3 (dwellinghouse) to either C3 (dwelling house) or C4 (house of multiple occupation).
<b>NAME OF APPLICANT:</b>	Mr Mike Costello
<b>ADDRESS:</b>	8 Laburnum Avenue Durham DH1 4HA
<b>ELECTORAL DIVISION:</b>	Nevilles Cross
<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 mid terraced property set over three floors located within the Viaduct area of Durham City Centre. The property sits within the conservation area and also an area subject to an Article 4 Direction which operates to withdraw PD rights for changes of use from C3 dwellinghouse to use as a C4 House in Multiple Occupation (HMO).

## Proposal:

2. Planning permission is therefore sought for the change of use of the property from a dwelling (use class C3) to either a dwelling (C3) or a HMO (C4). This would essentially allow the proposal to be used as either use over a 10 year period and for the use to change flexibly between the two without the need for any further consents during this period
3. No external alterations are proposed to the property to facilitate the change of use, although some internal alterations are required to create a 5<sup>th</sup> bedroom.
4. The application is referred to the Committee at the request of Cllr Liz Brown who considers the position of Policy 16.3 requires clarity in view of the outcome of a recent appeal decision at a nearby property, 55 Hawthorn Terrace.

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## **PLANNING HISTORY**

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

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## **PLANNING POLICY**

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### **NATIONAL POLICY**

6. The following elements of the National Planning Policy Framework (NPPF) are considered relevant to this proposal:
7. NPPF Part 2 Achieving Sustainable Development - The purpose of the planning system is to contribute to the achievement of sustainable development and therefore at the heart of the NPPF is a presumption in favour of sustainable development. It defines the role of planning in achieving sustainable development under three overarching objectives - economic, social and environmental, which are interdependent and need to be pursued in mutually supportive ways. The application of the presumption in favour of sustainable development for plan-making and decision-taking is outlined.
8. NPPF Part 4 Decision-Making - Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.
9. NPPF Part 5 Delivering a Sufficient Supply of Homes - To support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay.
10. NPPF Part 8 Promoting Healthy and Safe Communities - The planning system can play an important role in facilitating social interaction and creating healthy, inclusive communities. Developments should be safe and accessible; Local Planning Authorities should plan positively for the provision and use of shared space and community facilities. An integrated approach to considering the location of housing, economic uses and services should be adopted.
11. NPPF Part 9 Promoting Sustainable Transport - Encouragement should be given to solutions which support reductions in greenhouse gas emissions and reduce congestion. Developments that generate significant movement should be located where the need to travel will be minimised and the use of sustainable transport modes maximised.
12. NPPF Part 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.

13. 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.
14. NPPF Part 15 Conserving and Enhancing the Natural Environment - Conserving and enhancing the natural environment. The Planning System should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, geological conservation interests, recognising the wider benefits of ecosystems, minimising the impacts on biodiversity, preventing both new and existing development from contributing to or being put at unacceptable risk from pollution and land stability and remediating contaminated or other degraded land where appropriate.
15. NPPF Part 16 - Conserving and Enhancing the Historic Environment - Heritage assets range from sites and buildings of local historic value to those of the highest significance, such as World Heritage Sites which are internationally recognised to be of Outstanding Universal Value. These assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations.

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

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

16. The Government has consolidated a number of planning practice guidance notes, circulars and other guidance documents into a single Planning Practice Guidance Suite. This document provides planning guidance on a wide range of matters.

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

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

##### County Durham Plan

17. Policy 16 (Durham University Development, Purpose Built Student Accommodation and Houses in Multiple Occupation) seeks to provide a means to consider student accommodation and proposals for houses in multiple occupation in ensure they create inclusive places in line with the objective of creating mixed and balanced communities.
18. Policy 21 (Delivering Sustainable Transport) requires all development to deliver sustainable transport by: delivering, accommodating and facilitating investment in sustainable modes of transport; providing appropriate, well designed, permeable and direct routes for all modes of transport; ensuring that any vehicular traffic generated by new development can be safely accommodated; creating new or improvements to existing routes and assessing potential increase in risk resulting from new development in vicinity of level crossings. Development to have regard to Parking and Accessibility Supplementary Planning Document.
19. Policy 29 - Sustainable Design requires all development proposals to achieve well designed buildings and places having regard to SPD and sets out 18 elements for development to be considered acceptable, including: positive contribution to areas character, identity etc.
20. Policy 31 - Amenity and Pollution sets out that development will be permitted where it can be demonstrated that there will be no unacceptable impact, either individually or

cumulatively, on health, living or working conditions or the natural environment and that can be integrated effectively with any existing business and community facilities. Development will not be permitted where inappropriate odours, noise, vibration and other sources of pollution cannot be suitably mitigated against, as well as where light pollution is not suitably minimised. Permission will not be granted for locating of sensitive land uses near to potentially polluting development. Similarly, potentially polluting development will not be permitted near sensitive uses unless the effects can be mitigated.

21. Policy 44 (Historic Environment) seeks to ensure that developments should contribute positively to the built and historic environment and seek opportunities to enhance and, where appropriate, better reveal the significance and understanding of heritage assets. The policy advises on when harm or total loss of the significance of heritage assets can be accepted and the circumstances/levels of public benefit which must apply in those instances.

#### Neighbourhood Plan

22. The following policies of the Durham City Neighbourhood Plan are considered relevant to the determination of this application.
23. Policy S1: Sustainable Development Requirements of all Development and Redevelopment Sites Including all New Building, Renovations and Extensions seeks to sets out the economic, social and environmental criteria that development proposals will be required to meet.
24. Policy T1 Sustainable Transport Accessibility and Design seeks to ensure that development proposals will be required to demonstrate best practice in respect of sustainable transport accessibility and design.
25. Policy T2 Residential Car Parking seeks to ensure that proposed development would be served by sufficient car parking spaces.
26. Policy H2 The Conservation Areas expects development within the City Centre Conservation Area to sustain and enhance its special interest and significance identified within the conservation area character appraisal taking account of sustaining and enhancing the historic and architectural qualities of buildings, continuous street frontages, patterns, boundary treatments, floorscape and roofscapes, avoiding loss or harm of an element that makes a positive contribution to its individual significance and surrounding area, using appropriate scale, density, massing, form, layout and materials, using high quality design sympathetic to the character and context, its significance and distinctiveness.

*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:**

27. Highways – No objection
28. City of Durham Parish Council - have raised an objection to the application citing that the proposal is contrary to CDP Policy 16 and that this application must therefore be refused as insufficient evidence has been provided to show hardship/that the property

is no longer viable as a family home. They have commented that should further evidence be submitted by the applicant in support of this assertion, the Parish Council would be happy to consider that further.

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

29. Environmental Health (Nuisance) – No objection subject to conditions.

30. HMO Officers – No objection

31. HMO Data – 72% of properties are exempt within 100m.

32. Spatial Policy – The proposal is contrary to policy.

#### **PUBLIC RESPONSES:**

33. The application has been advertised by means of site notice and by notifying neighbouring residents by letter.

34. To date, two letters of objection from one property have been received raising the following concerns:

- The LPA should stop turning family homes into HMOs, Durham has enough of them and does not need anymore.
- Adverse impact to highway safety from increased cars,
- Failure to appropriately dispose of waste and a reduction in the visual amenity of the area as a result of tenants not maintaining the property or its gardens
- Adverse impact from increased disturbance from noise.
- Devaluation of properties and reduced prospect of remaining residents selling their properties should they wish to.
- There is a demand for family homes within the area and properties should be rented to families rather than students/or let as HMOs as a consequence allow families the option to remain in the city.

35. The City of Durham Trust object to the application noting the proposal would result in further imbalance to the detriment of achieving mixed and balanced communities and have an adverse impact on surrounding residential amenity in contravention of paragraph 127 (f) of the National Planning Policy Framework. The remaining percentage of properties that are not exempt from council tax is more than a quarter and those residents should be protected from further student incursions.

36. Four letters of support have also been received with the following comments:

- Policy 16 allows for supporting change of use application where the applicant can provide evidence which confirms that the policy restriction is *causing severe personal hardship*”.
- The applicant has spent a number of years to reduce the now severe anti-social behaviour occurring virtually every night bar exam time in parts of Durham City with the Viaduct area including Laburnum Avenue is a particular and intractable blackspot for such behaviour.
- Whilst I have spent considerable effort lobbying for a return to balanced communities, it is evident to me that certain parts of Durham including Laburnum Avenue will see no improvement in quality of life for long term families for a considerable time in the future because of the very high density of students living

there. This area is regarded as a desirable 'party' area by students and deliberately chosen for those seeking that lifestyle.

- Assertion is made that this application should be assessed under part 3 of Policy 16 of the County Durham Plan (CDP) which seeks to promote, create and preserve inclusive, mixed and balanced communities and to protect residential amenity.
- While the student density for this property is not yet at 90%, *the area is already so unbalanced by student occupied properties that the policy objective of achieving a balance is unlikely to be met.*
- Should this application not be granted, it is very unlikely that the house can be sold, and this will have severe financial consequences for the applicant. The decision has already been made by a number of residents that it is now impossible to live there and will continue to be impossible until a large number of the HMO properties have reduced considerably and in this area I would ask that they be supported and shown care for the circumstances that have been thrust upon them.
- Support for the proposal as a remaining resident we have been forced to buy a new home and now face the prospect of trying to sell our property
- There is a proven case of severe personal hardship for the applicant, because the policy restriction on change of use to C4 in his locality would leave him marooned in an imbalanced community where student lifestyles hold sway.

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

37. My name is Mike Costello, and I have lived at 8 Laburnum Avenue in the viaduct area of Durham City for 33 years with my partner Caroline from where we have raised four children.

38. I have already provided an applicant's statement in Appendix 2 of the Design and Access/Heritage statement supporting my application. However, I would like to thank the Committee for enabling me to emphasise these key points.

39. Historical unrelated and uncontrolled HMOs in the vicinity of the property have eroded the area's residential amenity year on year. Many of our friends have moved from the street because of the difficulties they have endured. Living in the property has become intolerable and, regrettably, we have decided that we have to move from this area of the City.

40. Accordingly to the marketing of the property to date, it is improbable that we will sell the property at market value for use as a family home. Those enquiring have been investors hoping to buy the property for let as an HMO. There has been absolutely no interest from families. This is unsurprising as officers tell us **72.7%** of the residential properties in the area are student exempt properties, i.e., HMOs. My home is adjacent to existing HMOs on all sides.

41. Both of my agents attended the Parish Council's meeting about my application. While it appears they could not support the application under rigorous application of the Council's new policy, there did seem to be an acknowledgement that the policy could trap families like ours in areas where there is already a high percentage of HMOs within 100m of the property, because the **90%** threshold of policy is not exceeded.

42. This is why we consider the policy has the inherent flexibility allowing the Council to grant consent for changes of use to an HMO in such circumstances.

43. Regrettably, we do not have the benefit of time or finances to be able to show throughout a year's active marketing that we cannot sell the property as a family

home. However, it is clear from the marketing exercise to date that there is no interest whatsoever, market value or not, to purchase the property as a family home.

44. Accordingly, it is perfectly reasonable for us to ask to change the use of the property to sell as a dual-use, as a family home or an HMO. This strategy will give us the flexibility to sell. It will also allow the Council to impose controls that will minimise the potential for the proposed use of the property to compound the problems caused by the high concentration of HMOs in the area. This is incredibly important to us; to ensure that the remaining families' amenity is not harmed further.
45. There will be very few areas of the City where the **90%** threshold of the policy is exceeded. Suppose the Council robustly defends this threshold without exception. In that case, we will be one of many many families that will be trapped in areas of high concentrations of HMOs, unable to sell our properties, financially disadvantaged and where there is a severe detriment to our everyday family life.
46. I would respectfully ask, therefore, that the Committee either can accept the Council's HMO policy does provide exemptions in its commentary as explained in my supporting documents that would allow it to grant consent OR that the policy is flawed in its drafting and that the material considerations dictate the Council should approve my application as a departure from the Development Plan.

*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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47. As identified in Section 38(6) of the Planning and Compulsory Purchase Act 2004 the key consideration in the determination of a planning application is the development plan. Applications should be determined in accordance with the development plan unless material considerations indicate otherwise. The main considerations in regard to this application are the principle of the use in this location, amenity considerations and highways safety, along with any other issues.
48. 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 County Durham Plan is the statutory development plan and the starting point for determining applications as set out at Paragraph 12 of the NPPF. The NPPF advises at Paragraph 213 that the weight to be afforded to existing Local Plans depends upon the degree of consistency with the NPPF.
49. The Local Plan was adopted in 2020 and is up to date. Consequently, consideration of the development should be led by the plan if the decision is to be defensible.

### The principle of development

50. The General Permitted Development Order 2015 (GPDO) permits the change of use from C3 (dwellinghouses) to uses within C4 (houses in multiple occupation HMOs). 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. The proposed floor plans submitted with the application indicate that the proposal is such that the development would normally benefit from the provisions contained within the GPDO. However, an Article 4 direction came into

effect on 17 September 2016 withdrawing permitted development rights in this regard and as such a specific planning permission is required.

51. Policy 16 of the County Durham Plan is relevant to this application which relates to student accommodation/HMO's and states that in order to promote, create and preserve inclusive, mixed and balanced communities and protect residential amenity, applications for new build Houses in Multiple Occupation (both Use Class C4 and sui generis), extensions that result in specified or potential additional bedspaces and changes of use from any use to:

- a Class C4 (House in Multiple Occupation), where planning permission is required;
- or
- a House in Multiple Occupation in a sui generis use (more than six people sharing)

will not be permitted if:

- a. including the proposed development, more than 10% of the total number of residential units within 100 metres of the application site are exempt from council tax charges (Class N Student Exemption);
- b. there are existing unimplemented permissions for Houses in Multiple Occupation within 100 metres of the application site, which in combination with the existing number of Class N Student exempt units would exceed 10% of the total properties within the 100 metres area;

or

- c. less than 10% of the total residential units within the 100 metres are exempt from council tax charges (Class N) but, the application site is in a residential area and on a street that is a primary access route between Purpose Built Student Accommodation and the town centre or a university campus.

52. The most recent up to date Council Tax information identifies that 72% of those properties within 100 metres of the site are currently occupied as student let accommodation and are Class N exempt. Whilst an unimplemented consent has been identified as being located within the 100m area, it is noted that the period of time for implementation of that permission has since expired and as such the permission has lapsed.

53. Policy 16 of the CDP goes on to state that new changes of use from C3 to C4 would not be resisted in areas which already have a concentration in excess of 90% of properties which are council tax exempt (Class N), and where this is having an unreasonable impact on current occupiers, and the conversion of remaining C3 dwellings would not cause further detrimental harm to the residential amenity of surrounding occupants; or

54. Where an existing high proportion of residential properties within the 100 metres are exempt from council tax charges (Class N), on the basis that commercial uses are predominant within the 100 metre area.

55. In the case of the application site the current concentration of 72% of properties as council tax exempt is above the 10% threshold stated in the policy but considerably below the 90% upper threshold. In this context it is not considered that the community has become so unbalanced so as to be overly dominated by HMO properties and as such has not resulted in an unreasonable impact on the current occupier. Therefore,

the proposed change of use fails to accord with the requirements of policy 16 of the CDP.

56. In relation to the upper threshold of 90% Policy 16 states that in some cases owners of Class C3 dwellings may find difficulty in finding a purchaser for continued Class C3 use where the balance of an existing area has shifted towards predominantly HMOs, particularly those let to students, and may therefore wish to change to Class C4/HMO use where continued occupation as a C3 dwelling is no longer feasible/viable. In considering whether to make an exception in such cases the council will have regard to the following:

- the proportion of existing Class N council tax exempt properties within 100 metres of the application site and their impact upon the character of the area in terms of whether such a concentration might be likely to affect the amenity of normal family life;
- there is documented evidence of unsuccessful active marketing of the property as a Class C3 dwelling, with at least one recognised estate agent at local market levels, over a continuous period of at least 12 months; or
- other circumstances where the applicant can provide evidence which confirms that the policy restriction is causing severe personal hardship.

57. In this instance, evidence that the property has been marketed is limited and amounts only to evidence that this was undertaken for a limited period since April 2021. As such, the application does not accord with this criterion of Policy 16. In addition, and as stated above, the percentage of properties exempt within 100m is notably below the 90% threshold and as such this is insufficient to justify any further loss of existing C3 dwellings to C4 HMO.

58. The Council's EHO has been consulted and confirms that there have been a number of noise complaints received by the Council's Environmental Health Section since 2014, although the majority of these occurred within 2015 the remainder were received between 2016 and 2021. Subsequent investigations are understood to have found no evidence of any statutory nuisance with the most recent complaint being closed in June of this year with no further action. Therefore, whilst complaints have been received investigations have not established that any statutory nuisance had occurred. Whilst it is noted that impact upon residential amenity can occur which is not considered a statutory nuisance, it seems that in this instance the issues reported in each case were not significant as no formal noise abatement action was taken. In addition, it is noted that the instances of such complaints have become less frequent more recently. The Environmental Health team therefore consider that insufficient information has been provided to establish that a significant detrimental impact on the applicant's residential amenity has occurred.

59. Notwithstanding the above, the applicant advises that the level of disturbance experienced has been so severe that it has resulted in an adverse impact upon their mental health to the extent that they felt forced to move out of the property and purchase a caravan in which to reside for the majority of the year, using considerable personal savings and a large loan.

60. A Ward Councillor for the area has stated that clarification was required in respect of a recent appeal decision for 55 Hawthorn Terrace APP/X1355/W/20/3253690 which allowed for the change of use from a small HMO to a large HMO. In this instance the Inspector confirmed that the proposal was contrary to policy 16 but stated "I fully acknowledge the merit of seeking to retain C3 properties in the area, which would

support the preservation and/or creation of mixed and balanced communities in line with local and national policy and guidance. However, the proposal would not involve the loss of a residential property in C3 use". Whilst the conclusions of the Planning Inspector in that instance are not disputed the current scheme displays little similar characteristics to that example, noting that in this instance the current proposal would result in the loss of a C3 use. As such little weight can be afforded to that decision.

61. Given the above, it is considered that the principle of the development cannot be supported as the proposal is considered contrary to policy 16 of the County Durham Plan and insufficient information has been received to demonstrate that any of the exception criteria listed in policy 16 apply.

#### Impact on residential amenity

62. Paragraph 127 of the NPPF advises that planning decisions should create places that have a high standard of amenity for existing and future users. In line with this, CDP Policy 31 states that development will be permitted where it can be demonstrated that there will be no unacceptable impact, either individually or cumulatively, on health, living or working conditions or the natural environment. The proposal will also need to demonstrate that future occupiers of the proposed development will have acceptable living conditions. Proposals which will have an unacceptable impact such as through overlooking, visual intrusion, visual dominance or loss of light, noise or privacy will not be permitted unless satisfactory mitigation measures can be demonstrated. In addition, criterion e) of Policy 29 states that all development proposals will be required to provide high standards of amenity and privacy, and minimise the impact of development upon the occupants of existing adjacent and nearby properties.
63. In this instance the application site is a mid-terraced two storey property located within a residential area. It is considered that the introduction of a single HMO within this locale is unlikely to have any fundamental impact on the wider population in this regard and any impact could be mitigated through effective management of the property.
64. The Council's Environmental Health Section has been consulted and confirms that the development is unlikely to cause a statutory nuisance and does not raise any objection to the application in this regard given the existing use as a C3 dwelling.
65. He does note however that the demographic which use this type of accommodation are often associated with greater use of the night-time economy and as such an increased level of night-time noise may occur. Notwithstanding this, any disturbance generated by the introduction of small HMO is unlikely to be unduly significant in itself and the impact of the balance of the community has been considered in detail elsewhere. In any event evidence provided in this regard which cites concerns over noise and disturbance is to some degree anecdotal and the EHO notes that the potential for impact is associated with the individuals residing there and as such might differ greatly.
66. One of the proposed bedrooms would be located on the ground floor and may, therefore, be adjacent to a living/dining room in the adjoining house which could lead to a greater impact for the individual residing in that bedroom, as well as leading to complaints against the reasonable use of the neighbouring ground floor. However, the inclusion of a planning condition that requires a sound proofing scheme to be submitted, agreed and subsequently implemented should the application be approved would satisfactorily mitigate any adverse impact in this regard.

67. Policy 16 includes a requirement to ensure that adequate bin storage provision is provided and that other shared facilities are adequate. In this regard it is considered that there is adequate space to provide sufficient bin storage within the site to service demand generated by the number of residents. The HMO officer has noted the need to ensure licencing requirements are met, these changes are achievable and would not themselves be subject to planning control, falling under separate legislation outside of planning.

68. In light of the above the proposal is considered to be acceptable in terms of residential amenity and the proposal is considered to accord with the requirements of policies 16 and 31 of the County Durham Plan and Paragraph 127 of the NPPF

#### Parking, Access and Highway Safety

69. Policy 16 of the CDP states that new HMO's provide adequate parking and access. The proposal is located within a controlled parking zone and as such parking is limited. Objection has been received from residents who are concerned that the proposal would increase the number of vehicles using the area and that this would have a detrimental impact upon highway safety.

70. The proposed change of use would not result in any unacceptable harm with regard to highway safety in accordance with the aims of policy 16 and 21 of the CDP and paragraph 108 of the NPPF.

#### Other Issues

71. Residents have also raised objection to the application citing concern that the proposal would devalue surrounding properties although this is not a material planning consideration to which weight can be attached in determination of this planning application.

#### Conclusion

72. Whilst in terms of residential amenity and highway safety the proposals are deemed satisfactory, the applicant fails to demonstrate compliance with policy 16 of the County Durham Plan. Specifically, that the percentage of HMOs already present in the area is greater than 10% whilst below 90%, and that the change of use of an existing C3 dwelling to HMO would add to the imbalance of the existing community towards being dominated by HMOs. Whilst the applicant's concerns in relation to the ability of the property to be used for the current permitted use as a C3 dwelling are noted, based on the limited information supporting the application to demonstrate this, officers consider that the development would present significant conflict with the requirements of policy 16 of the County Durham Plan and as such is recommended for refusal.

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## **CONCLUSION**

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73. The introduction of an additional C4 house in multiple occupation within this locale would have a detrimental impact upon the range and variety of the local housing mix and community cohesion with the addition of another student HMO within the local area. Therefore, the proposal is contrary to policy 16 of the County Durham Plan and Paragraph 91 of the NPPF.

74. 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 **REFUSED**, subject to the reasons detailed below:

1. The proposed conversion the existing Dwelling to either a C3 dwelling or C4 HMO is considered unacceptable being located in an area already identified as exceeding the threshold set out in Policy 16 of the County Durham Plan. The proposals would therefore result in further imbalance in the community thereby being contrary to policy 16 and paragraph 127 (f) of the National Planning Policy Framework.

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## **STATEMENT OF PROACTIVE ENGAGEMENT**

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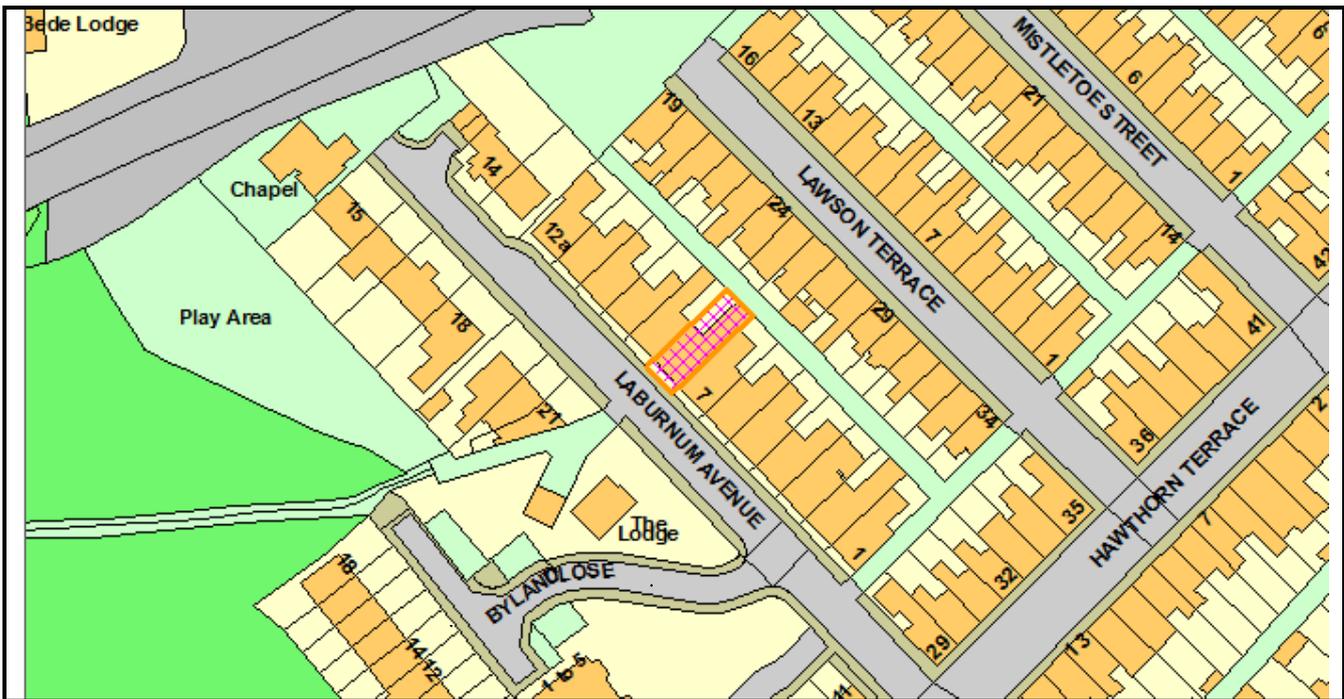
The Local Planning Authority in arriving at its decision to refuse the application has, without prejudice to a fair and objective assessment of the proposals, issues raised and representations received, sought to work with the applicant in a positive and proactive manner with the objective of delivering 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.) unfortunately, a positive determination was not able to be achieved 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  
County Durham Plan  
Statutory, internal and public consultation responses



<p><b>Planning Services</b></p>	<p>Change of use from C3 (dwellinghouse) to either C3 (dwelling house) or C4 (house of multiple occupation) at 8 Laburnum Avenue Durham, DH1 4HA Application Reference: DM/21/01918/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> August 2021</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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Application No:	DM/21/01351/FPA
Full Application Description:	Restore land to agricultural by removal of old house foundation, planting, hard standing and temporary demountable pens
Name of Applicant:	Mr Paul Carter
Address:	Land To The South Of Bradyll Street, Kelloe, DH6 4PL
Electoral Division:	Coxhoe
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 relates to an area of brownfield land located on the former East Hetton Pit Village to the south east of the settlement of Kelloe. The site was previously occupied by residential housing, although this is understood to have been subsequently cleared as part of a housing regeneration scheme in the 1950's. Since this time the site has naturally revegetated, becoming reabsorbed into the countryside, and until recently hosted various scrub vegetation and some self-seeded trees/bushes. However, the land has been cleared of all naturally regenerated vegetation and levels modified to create three plateaus across the site. The site is bounded to the north, south and east by open space and to the west by agricultural fields and buildings that are currently used by the applicant. At further distance to the south the site is framed by Raisby Quarry.
2. Land immediately to the west of the site was granted planning permission in 2014 for reclamation works involving the removal of the remains of foundations from previous terraced housing and the importation of topsoil to facilitate an agricultural use. This permission included the erection of an agricultural building

and the temporary provision of steel storage containers at the site which have since been removed as required through planning condition. Works relating to that permission are now understood to be nearing completion, although the Council is currently investigating an alleged breach of planning control relating to the unauthorised use of the agricultural building for the operation of a paving stone business.

## The Proposal

3. Planning permission is sought for earthworks comprising the removal of remaining foundations and the importation of top and subsoil to facilitate an agricultural use across the site. The application is part retrospective as the land levels have already been modified to create three plateaus across the site, of which the northern and southern most areas would be used for grazing with the central area providing a level hardstanding finished in tarmac road plainings. The area of hardstanding was initially proposed to be 350m<sup>2</sup> but has since been reduced to 175m<sup>2</sup>, covering the lower northern section of the middle plateau. The application also refers to the use of temporary demountable pens to allow the treating and worming of goats, but as these would be temporary structures that would be regularly removed when not in use, they are not considered to constitute development, are not subject to planning control and as such do not form part of the current application.
4. The site is approximately 0.9 hectares in area and occupies a linear, north south layout and is 40 metres in width with a length of around 187 metres. Works proposed include the removal of old foundations which remain from the previous use as housing, and the importation of top and subsoils to fill the resulting void. The applicant has cited an intention to expand the existing agricultural use across the current application site should planning permission be granted and this would translate to an additional 20 goats.
5. The application is reported to the Planning Committee at the request of Councillor McKeon who considers that the application should be considered by planning committee due to concerns over the impact on highway safety and residential amenity.

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## **PLANNING HISTORY**

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DM/14/02796/FPA - Earthworks including infilling and levelling (part retrospective) to facilitate use of land for agriculture, erection of a general purpose agricultural building, timber screen fencing, temporary siting of 2 No. storage containers and retention of 1 No. caravan to provide site facilities (non-residential). Approved 11<sup>th</sup> December 2014

DM/16/01878/VOC - Application to vary condition 3 of Planning Permission DM/14/02796/FPA to allow an extended period for the removal of 2 No. storage containers. Approved 4<sup>th</sup> August 2016

EN/17/01038 - Unauthorised operation of a paving stone business within agricultural building and residential occupation of a static caravan. Pending consideration

EN/18/00277 (Operational development) – Unloading / deposition of materials. Case closed, no breach.

EN/18/00270 (Deposit of waste)– Unloading / deposition of materials. Notice issued

EN/19/00718 - Alleged unauthorised importation of soils to the site and extraction and export of aggregate mineral from the site. Pending consideration

EN/20/01242 - Complaint against the site subject to DM/20/02429/FPA (consisting of the modification of land levels to create three plateaus across the site). Pending consideration

DM/20/02429/FPA - Proposed excavation & regrading of existing ground & new lambing & stable block. Refused 12<sup>th</sup> March 2021

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## **PLANNING POLICY**

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### **National Policy**

6. 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.
7. 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;
8. *NPPF Part 4 - Decision-making.* Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.
9. *NPPF Part 6 Building a Strong, Competitive Economy:* The Government is committed to securing economic growth in order to create jobs and prosperity, building on the country's inherent strengths, and to meeting the twin challenges of global competition and a low carbon future.
10. *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.

11. *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.
12. *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.

### **Local Plan Policy:**

13. The following policies of the County Durham Plan are considered relevant to the determination of this application.
14. *Policy 10 Development in the Countryside* will not be permitted unless allowed for by specific policies in the Plan or Neighbourhood Plan or unless it relates to exceptions for development necessary to support economic development and infrastructure development such as: agricultural or rural land based enterprise; undertaking of non-commercial agricultural activity adjacent to applicant's residential curtilage; essential infrastructure, provision or enhancement of community facilities or other countryside based recreation or leisure activity. All development to be of design and scale suitable to intended use.
15. *Policy 21 Delivering Sustainable Transport* requires all development to deliver sustainable transport by: delivering, accommodating and facilitating investment in sustainable modes of transport; providing appropriate, well designed, permeable and direct routes for all modes of transport; ensuring that any vehicular traffic generated by new development can be safely accommodated; creating new or improvements to existing routes and assessing potential increase in risk resulting from new development in vicinity of level crossings. Development to have regard to Parking and Accessibility Supplementary Planning Document.
16. *Policy 26 Green Infrastructure* sets out that development will be expected to maintain or improve the permeability of the built environment and access to the countryside for pedestrians, cyclists and horse riders. Proposals that would result in the loss of, or deterioration in the quality of, existing Public Rights of Way (PROWs) will not be permitted unless equivalent alternative provision of a suitable standard is made.
17. *Policy 29 Sustainable Design* details general design principles for all development stating that new development should contribute positively to an

areas' character, identity, heritage significance, townscape and landscape features, helping to create and reinforce locally distinctive and sustainable communities.

18. *Policy 31 Amenity and Pollution* states that new development will be permitted where it can be demonstrated that there will be no unacceptable impact, either individually or cumulatively, on health, living or working conditions or the natural environment and should be integrated effectively with any existing business and community facilities.
19. *Policy 32 Despoiled, Degraded, Derelict, Contaminated and Unstable Land* states [in part] that development will not be permitted unless the developer can demonstrate that the site is suitable for the proposed use, and does not result in unacceptable risks which would adversely impact on the environment, human health and the amenity of local communities.
20. *Policy 35 Water Management* requires all development proposals to consider its effect on flood risk, both on-site and off-site, commensurate with the scale and impact of the development, taking into account the predicted impacts of climate change for the lifetime of the proposal.
21. *Policy 39 Landscape* advises that proposals for new development will not be permitted that would result in the loss of, or damage to, trees, hedges or woodland of high landscape, amenity or biodiversity value unless the benefits of the scheme clearly outweigh the harm. Proposals for new development will be expected to retain existing trees and hedges or provide suitable replacement planting. The loss or deterioration of ancient woodland will require wholly exceptional reasons and appropriate compensation.
22. *Policy 41 Biodiversity and Geodiversity* restricts development that would result in significant harm to biodiversity or geodiversity and cannot be mitigated or compensated. The retention and enhancement of existing biodiversity assets and features is required as are biodiversity net gains. Proposals must protect geological features, have regard to Geodiversity Action Plans and the Durham Geodiversity Audit and where appropriate promote public access, appreciation and interpretation of geodiversity. Development proposals where the primary objective is to conserve or enhance biodiversity or geodiversity will be permitted if they comply with other local plan policy. Development proposals which are likely to result in the loss or deterioration of irreplaceable habitats will not be permitted unless there are wholly exceptional reasons and a suitable compensation strategy exists.

### **Neighbourhood Plan:**

23. The application site is not located within an area where there is a Neighbourhood Plan to which regard is to be had.

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## **CONSULTATION AND PUBLICITY RESPONSES**

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### **Statutory Consultee Responses:**

24. *The Coal Authority*: confirm that the application site falls within the defined Development High Risk Area; therefore within the application site and surrounding area there are coal mining features and hazards which need to be considered in relation to the determination of this planning application. The Coal Authority records indicate that fissures, associated with past coal mining activity, are present on the site. Where fissures are present, they pose a potential risk to surface stability and users of the site. They request a pre commencement condition requiring a scheme of intrusive site investigations and remedial work as a consequence.

### **Internal Consultee Responses:**

25. *Highways*: offers no objections to the application.

26. *Landscape*: notes that the site is in a prominent elevated location, visible in numerous distant viewpoints in and around Kelloe across the valley to the north and in closer views from the PROW's which surround the site.

27. *Nuisance Action*: offers no objections to the application.

28. *Contaminated Land*: recommend a suitably worded informative in relation to unforeseen contamination.

29. *Public Rights of Way*: notes that a 2m wide strip for Kelloe Footpath 13 has been accounted for in the proposed site plan and that a small section of Kelloe Footpath 14 is within the red line boundary but not shown on the originally submitted proposed site plan. Offers no objections to amended proposed site plan showing the location of Footpath 14. Offers no objections to the application subject to these paths not being blocked by any building, barriers, building material, waste or fencing either for the duration of any works or once works are complete, any works carried out that impact or damage the surface of the footpath must be made good, and the safety of members of the public using the right of way being ensured at all times.

### **Public Responses:**

30. The application has been publicised by way of a site notice. No objections have been received.

### **Applicants Statement:**

31. The applicant requires to reclaim this land back from derelict street foundations to agriculture as well as restoring the derelict land left by the quarry when it ceased to use it and sold it off.

32. He currently rears goats, from which he sells the young stock fattened for meat. He also buys in lambs to finish and has grazing land in Weardale where he runs a small breeding flock of sheep, again fattening lambs for the meat trade, so this land will give him more pasture to finish his livestock on.

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## **PLANNING CONSIDERATION AND ASSESSMENT**

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33. 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 development, residential amenity, the impact on the character and appearance of the area and highway safety.

### Principle of Development

34. Policy 10(a) states that new development in the countryside will not be permitted unless allowed for by specific policies in the Plan or where the proposal meets other specific exceptions. These include, but are not limited to, instances where the development is necessary to support an existing agricultural or other existing rural land-based enterprise, including the provision of new hard surfaces required for the functioning of the enterprise.

35. As already noted the applicant has an interest in adjacent land for which planning permission was granted in 2014 for infilling and levelling works to facilitate its use for agriculture which also included the erection of an agricultural building that is now in situ. However, the Council has since established through investigation of enforcement complaints that this building is not currently solely in agricultural use and is being used for the manufacture of concrete paving. This amounts to a material change in use of the building for which planning permission is required and as such is presently unauthorised.

36. It appears that the applicant's existing agricultural enterprise is limited, particularly when compared to the aspirations as detailed in the 2014 planning application. At that time the intention was that the enterprise would comprise 100 hens, sheep, grazing horses and some arable activity. However, information submitted in support of the current planning application confirms the extent of the existing enterprise as being limited to 14 goats, 7 geese and 30 hens. The extent to which the proposed development is required to support the existing enterprise is therefore questionable noting that the site was considered of sufficient area to accommodate a more intense use with a greater number of livestock than current occupy the site. For example, three times fewer hens are presently reared at the site, and no sheep or horses appear to be included in the current livestock numbers. In response to this, the applicant

has explained that much of the grass seed planted on the back of the 2014 planning application had not taken due to poor weather conditions and as such it is not yet suitable for grazing, and this is the principal reason for the delay in building up livestock numbers, rather than the use being fundamentally unviable/unsuccessful. Taking this into account, it would appear that the additional land and hardstanding could reasonably be considered as being required for the functioning of the enterprise in accordance with Policy 10 a) of the County Durham Plan.

37. In addition, the removal of foundations associated with the former residential housing site to allow the land to be restored to its former agricultural use would provide some benefit both in terms visual amenity and through the introduction of a rural business. This would consist of the removal and replacement of soil and the planting of vegetation to create new areas for grazing and wildflower meadows. The land currently consists of mostly unvegetated earth and the creation of a new large grazing area and wildflower meadow is considered to have a positive impact on the character and appearance of the area, reverting the land back to its former agricultural use and providing some net biodiversity gain. This positive contribution is considered to be a material planning consideration in the determination of this application that should be weighed in favour of the application.
38. In terms of the area of hardstanding, the application initially proposed the creation of a 350m<sup>2</sup> area of hardstanding which is required to enable the storage of approximately 125 hay bales (approximately 125m<sup>2</sup>), three tipping trailers that are presently stored further up the application site (60m<sup>2</sup>), and a small muck heap (approximately 30m<sup>2</sup>). The hay bales are stated to be required to feed the applicants goats and the tipping trailers are stated to be used to transport farm materials around the site. The hardstanding would provide some functional benefits in relation to the storage of these items: it would help to protect the hay bales from ground moisture; it would prevent the ground from being churned up by the trailers; and it would allow easier maintenance and cleaning of the muck heap. In addition, the hardstanding would allow the storage of these items in one place rather than spread across the site as is presently the case.
39. The amount of storage space required for these items was initially noted as being less than the 350m<sup>2</sup> proposed in the application particularly noting the amount of space required to store the hay bales could be reduced by stacking them. Furthermore, it was noted that the applicant already has an agricultural building that was granted planning permission in 2014, which has a floor area of 74.2m<sup>2</sup> and a cubic content of 285m<sup>3</sup>. It was considered that this building could accommodate many of the items intended to be stored on the area of hardstanding and so a 350m<sup>2</sup> area was not required for the functioning of the enterprise itself. In this regard, it is of note that the existing building is not currently used for agriculture. Therefore, any requirement to provide shelter for existing/proposed animals, or for the storage of feed and hay could be met by the existing building, as was intended as part of the previous planning application.

40. In light of the above, the amount of hardstanding proposed was considered to be more substantial than was required to meet the needs of the agricultural enterprise, although it is accepted that some area of hardstanding would be required for the trailers, muck heap and any hay bales that could not be accommodated by the existing building. The applicant was therefore invited to explore a reduction in the size of the area of hardstanding and an amended plan was submitted showing this to be half that initially proposed and limited to the lower northern part of the middle plateau. Given the above justification regarding the need for the items and their storage, this smaller area of hardstanding (which now measures approximately 160m<sup>2</sup> in area) is considered to be reasonably required for the functioning of the agricultural enterprise, and so the principle of the hardstanding broadly accords with CDP Policy 10(a). However, policy 10 also requires in all instances that the resulting development must be of a design, construction and scale which is suitable for and commensurate to the intended use and in this regard the impact of the hardstanding on the character and appearance of the area will be discussed below.

#### Landscape and Visual Impact

41. The application site is located on land to the south east of Kelloe in what is a prominent and elevated position visible in numerous distant viewpoints in and around Kelloe across the valley, and in closer views from the PROWs that surround the site.

42. As already noted, CDP Policy 10 lists exceptions where new development within the countryside can be supported. Criteria (o) of Policy 10 states that new development in the countryside must accord with all other relevant development plan policies and by virtue of their siting, scale, design and operation must not impact adversely upon the setting, townscape qualities, including important vistas, or form of a settlement which cannot be adequately mitigated against. In addition, Policy 39 of the CDP is relevant and states that proposal for new development will be permitted where they would not cause unacceptable harm to the character, quality or distinctiveness of the landscape, or to important features or views and will be expected to incorporate appropriate measures to mitigate adverse landscape and visual effects. Both approaches are considered to display a broad level of accord with the aims of Paragraph 127 of the NPPF which requires planning decisions to ensure that developments are visually attractive as a result of good architecture, layout and appropriate and effective landscaping.

43. The Council's Landscape Section has commented on the proposal and note that whilst the site is a brownfield site located on the former East Hetton Pit Village, it has been reabsorbed into the surrounding countryside over time despite works having commenced to clear the area of all naturally regenerated vegetation. Whilst the site is seen across the valley and in the context of other freestanding, industrial and residential buildings and other structures which collectively detract from the visual aesthetics of the landscape, the proposed area of hardstanding would inevitably be used as a storage area, adding to this visual clutter.

44. However, Landscape Officers indicated that if the proposal is considered to be acceptable in principle, then appropriate measures to mitigate adverse landscape and visual effects of the hardstanding would be expected, in line with CDP Policy 39. Therefore, native tree and hedgerow planting will be required around the hardstanding area, particularly to the north, to help assimilate the proposals into the surrounding countryside and screen associated visual clutter. As discussed above, the smaller section of hardstanding is considered to be acceptable in principle and a landscaping scheme would be able to adequately screen the proposed development. Two conditions (number 4 and 5) are recommended to secure the details and implementation of a landscaping scheme. With these conditions, the proposed area of hardstanding is not considered to adversely affect the character and appearance of the surrounding countryside.

#### Residential Amenity

45. The nearest residential properties to the site are No.1 and No. 2 Bradyll Street. These properties have a view over the site and associated access road. The side elevation of 2 Bradyll Street is approximately 48m away from the application site

46. Paragraph 127 of the NPPF advises that planning decisions should create places that have a high standard of amenity for existing and future users. CDP Policy 10 requires that new development in the countryside should not impact adversely upon residential or general amenity and this is mirrored by CDP Policy 31 which states that all new development that has the potential to lead to, or be affected by, unacceptable levels of air quality, inappropriate odours and vibration or other sources of pollution, either individually or cumulatively, will not be permitted including where any identified mitigation cannot reduce the impact on the environment, amenity of people or human health to an acceptable level.

47. In this regard the local councillor has raised objection to the application citing concerns that the development would have a detrimental impact upon the residential amenity of nearby residents and citing previous issues with the adjacent reclamation work undertaken by the applicant at the adjacent site, particularly with regards to noise and disturbance generated from vehicle movements during the importation of materials.

48. In terms of the proposed earthworks it is not considered that these are likely to cause any unacceptable impact to residential amenity and the agricultural use of the site itself is not subject to planning control. Whilst there may be some disruption as a result of increased vehicle movements during the earthworks themselves, these would be over a limited duration. The Council's Environmental Health Officer has been consulted and raises no objection to the application, although it is still considered appropriate to limit the times at which delivery vehicles access the site should planning permission be granted (condition number 6). A condition requiring details of a construction management plan (number 11) is also recommended to minimise disruption for

surrounding residents during the works. Therefore, with these conditions it is not considered that the levels of increased activities and movements to and from the site would be to such a level as to warrant refusal of the application.

49. In relation to the nearest residential property at No. 2 Bradyll Street, this property benefits from a side window which overlooks the site. However, given the nature of the physical development proposed, it is not considered that the proposals would have any unacceptable impact on the occupants of this property.
50. In light of the above it is not considered that the development would have any unacceptable adverse impact upon residential amenity in accordance with the requirements of Policy 10 and 31 of the County Durham Plan and Paragraph 180 of the NPPF.

#### Highway Safety and Public Rights of Way

51. CDP Policy 10 states that development in the countryside will only be permitted where it is not prejudicial to highway safety. In addition, CDP Policy 21 relates to the delivery of sustainable transport and states that the transport implications of development must be addressed as part of any planning application and [in part] that all development should deliver sustainable transport by ensuring that any vehicular traffic generated by the development, following the implementation of sustainable transport measures, can be safely accommodated on the local strategic highway network.
52. The development would generate an increase in large HGV vehicles accessing the site but these would be limited to periods during works to remove old foundations and import fill material and topsoil. The applicant has provided basic cross sections of this work and details of the final site levels that would be achieved post development. The number of vehicle movements likely to be associated with the works as described are not considered excessive and it is anticipated that in all the works would be completed expeditiously by the applicant in order to realise the final agricultural use of the site. Consequently, it is not considered necessary to seek to limit or control the duration of these works through planning conditions.
53. Access to the site is via an adopted highway which is considered capable of carrying traffic to and from the site and whilst the local councillor has raised concerns regarding the suitability of the surrounding road network to accommodate the type and frequency of vehicles required for the earthworks, the Highway Authority offers no objection to the application.
54. Therefore, in relation to matters of highway safety it is considered that the development could be satisfactorily accommodated in this regard subject to the conditions described in accordance with the aims of Policy 10 and 21 of the CDP and Paragraph 108 of the NPPF.
55. With regards to public rights of way, Kelloe Footpath No. 13 crosses the site east to west, at a point to the south of the proposed access. In addition, a small

section of Kelloe Footpath No. 14 crosses the site east to west along the northern edge which is shown on the amended proposed site plan. Policy 26 of the CDP is therefore relevant and states that development will be expected to maintain or improve the permeability of the built environment and access to the countryside for pedestrians, cyclists and horse riders. Proposals that would result in the loss of, or deterioration in the quality of, existing Public Rights of Way (PROWs) will not be permitted unless equivalent alternative provision of a suitable standard is made. Where diversions are required, new routes should be direct, convenient and attractive, and must not have a detrimental impact on environmental or heritage assets.

56. Submitted plans show the existing route of the PROW to be retained post development and that these would be protected for the duration of the earthworks by harris fencing to be removed upon completion of the works. The planning agent has confirmed that styles will be put at either end at the fence line crossing points to allow continued access to the footpath from the existing track and to reach the field boundary and a suitably worded condition (number 10) is recommended to secure this. The position of the Footpaths would therefore remain unaffected by the proposal and as such the Council's Public Rights of Way Section raises no objection to the application, but does note that any damage sustained during this period should be made good by the applicant. In addition, the applicant would require a S147 authorisation from the PROW team to install the styles but this would be dealt with under other legislation and general advice in relation to PROWs can be communicated to the applicant through a suitably worded informative should planning permission be granted.
57. The development is therefore considered to accord with the aims of CDP Policy 26 in that it would not have a detrimental impact upon existing public rights of way.

### Ecology

58. Policy 41 of the CDP states that proposal for new development will not be permitted if significant harm to biodiversity or geodiversity resulting from the development cannot be avoided, or appropriately mitigated, or as a last resort, compensated for.
59. The site has recently been cleared of vegetation which itself was not subject to planning control although nevertheless disappointing as no assessment of the biodiversity or ecological value of the site appears to have been undertaken at this time. Nevertheless, the current application must be assessed on its own merits and the Council's Ecologist raises no objection to the application in light of the above. Based on the existing situation (which comprises a site with little or no vegetation across it's entirely) the creation of a wildflower meadow would deliver some net biodiversity gain and the development would accord with the requirements of CDP Policy 41 and Paragraph 174 of the NPPF in this regard.

### Land Contamination and Stability

60. Policy 32 of the CDP states that development will not be permitted unless the developer can demonstrate that the site is suitable for the proposed use, and does not result in unacceptable risks which would adversely impact on the environment, human health and the amenity of local communities and all investigations and risk assessments have been undertaken by an appropriately qualified person. This displays a broad level of accord with Paragraph 178 of the NPPF, which 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.
61. The site lies within an area identified by the Coal Authority (CA) at high risk of been subject to previous coal mining features and hazards which need to be considered in relation to the determination of this planning application. The CA commented that the current proposal is not supported by a Coal Mining Risk Assessment or other relevant information but acknowledge their previous comments on proposals on this site, under reference DM/20/02429/FPA refused earlier this year, to address the risks posed by the recorded fissures investigatory and remedial works were proposed. These works are still considered relevant to the current submission, which includes provision of hardstanding and installation of pens, albeit that these are demountable. Any intrusive site investigations carried out should be designed and undertaken by competent persons and should be appropriate to assess the ground conditions on the site and the risks posed by past coal mining activity to the works proposed and to inform any remedial works and/or mitigation measures that may be necessary. Two suitably worded conditions (number 7 and 8) are recommended in line with the comments received from the CA. if the application is to be granted, a suitably worded informative could also be added in line with Environmental Health's comments regarding unforeseen contamination.

## Drainage

62. Policy 35 of the CDP relates to the management of surface water runoff, advising that this must be managed at source wherever possible and disposed of in the following order: 1. to an infiltration or soak away system; 2. to a watercourse open or closed; 3. to a surface water sewer; and 4. to a combined sewer. The application proposes that all surface water generated by the hardstanding would be discharged to soak away, although the precise detail of the proposed arrangement has not been provided. However, the Council's Drainage and Coastal Protection Section previously raised no objection to the application noting only that should there be concern that the development would lead to significant discharge of surface water to adjacent land, then a statement detailing how the development would meet appropriate drainage law should be provided. Notwithstanding the above, it is nevertheless considered that a suitably worded planning condition (number 9) requiring the submission and agreement of precise detail as to the means of disposal of surface water prior to the commencement of development, would satisfactorily mitigate any potentially adverse impact in this regard.

63. Subject to such a condition, the development is considered to accord with the aims of CDP Policy 35.

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## **CONCLUSION**

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64. The long-term agricultural use of the site does not require planning permission although those engineering works required to reclaim the land for this purpose are subject to control, as is the creation of the area of associated hardstanding. Policy 10 of the CDP is therefore the principal policy against which the application must be assessed, although Policy 21, 29, 35, 39 and 41 are also relevant.

65. The planning application proposes development within the countryside within which agricultural uses are considered suitable and the LPA is satisfied that the additional land and hardstanding are required for the functioning of the existing enterprise and as such the development accords with policy 10a) of the CDP. The proposed area of hardstanding has been reduced in size and is limited to the lower northern part of the middle plateau. The applicant has provided justification as to why this is required for the functioning of the enterprise in broad accordance with CDP Policy 10(a), and with conditions requiring details of a landscaping scheme the visual impact of the area of hardstanding is considered to be limited to a level where it would not adversely affect the character and appearance of the surrounding area, according with CDP Policy 39.

66. In addition, the creation of a grazing area and wildflower meadow and the removal of former foundations are would provide net biodiversity gain in accordance with paragraph 175 of the NPPF, to which weight should be attributed in support of the application.

67. Notwithstanding the above, conditions are recommended to secure details relating to previous coal mining and land stability, drainage and finished topsoil levels and depths, as well as conditions restricting the hours of works and ensuring the protection of PROWs during the works. Subject to such conditions, the proposals are considered to accord with Policy 10, 21, 26, 29, 31, 32, 35, 39 and 41 of the County Durham Plan and Parts 4, 6, 9, 12 and 15 of the NPPF and so approval is recommended.

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## **RECOMMENDATION**

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

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(ies) 10, 21, 26, 29, 31, 32, 35, 39 and 41 of the County Durham Plan and Parts 4, 9, 12 and 15 of the National Planning Policy Framework.

3. Notwithstanding the details shown on the submitted application, no earth removal, tipping of imported material or laying of hardstanding shall commence until a section drawing showing details of finished topsoil levels and depths is submitted to and approved in writing by the Local Planning Authority. Thereafter, the works shall take place in accordance with these details.

Reason: In the interests of the visual amenity of the area and to comply with Policy 10, 29 and 39 of the County Durham Plan and Part 12 of the National Planning Policy Framework.

4. No earth removal, tipping of imported material or laying of hardstanding shall commence until a detailed landscaping scheme has been submitted to and approved in writing by the Local Planning Authority.

No tree shall be felled or hedge removed until the landscape scheme, including any replacement tree and hedge planting, is approved as above.

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.

Seeded or turf areas, habitat creation areas and details etc.

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

The Local Planning Authority shall be notified in advance of the start on site date and the completion date of all external works.

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

Reason: In the interests of the visual amenity of the area and to comply with Policy 10, 29 and 39 of the County Durham Plan and Part 12 of the National Planning Policy Framework.

5. 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 approved replacement tree or hedge planting shall be carried out within 12 months of felling and removals of existing trees and hedges.

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: In the interests of the visual amenity of the area and to comply with Policy 10, 29 and 39 of the County Durham Plan and Part 12 of the National Planning Policy Framework.

6. In undertaking the development that is hereby approved:

No external construction works, works of demolition, deliveries, external running of plant and equipment shall take place other than between the hours of 8000 to 1800 on Monday to Friday and 8000 to 1400 on Saturday.

No internal works audible outside the site boundary shall take place on the site other than between the hours of 8000 to 1800 on Monday to Friday and 0800 to 1700 on Saturday.

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

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

Reason: To protect the residential amenity of existing and future residents from the development in accordance with Policy 31 of the County Durham Plan and Part 15 of the National Planning Policy Framework.

7. No development shall take place until intrusive site investigations have been undertaken to assess the ground conditions and the potential risks posed to the development by past shallow coal mining activity. The intrusive site

investigations shall include the locating and assessing of fissures. A report shall thereafter be submitted to and agreed in writing by the Local Planning Authority confirming the methods used and the findings arising from the intrusive site investigations. This report shall include a scheme of remedial work where required, incorporating a remediation strategy for any fissures identified, including any foundation designs which may be required for building over the fissures to address land instability arising from coal mining legacy. Thereafter the development shall take place in full accordance with the agreed details. The intrusive site investigations and remedial works shall be carried out in accordance with authoritative UK guidance.

Reason: The undertaking of intrusive site investigations, prior to the commencement of development, is considered to be necessary to ensure that adequate information pertaining to ground conditions and coal mining legacy is available to enable appropriate remedial and mitigatory measures to be identified and carried out before building works commence on site. This is in order to ensure the safety and stability of the development, in accordance with County Durham Plan Policy 32 and Paragraphs 178 and 179 of the National Planning Policy Framework.

8. Prior to the site being taken into beneficial use, a signed statement or declaration prepared by a suitably competent person confirming that the site is, or has been made, safe and stable for development shall be submitted to the Local Planning Authority for approval in writing. This document shall confirm the completion of any remedial works and/or mitigation necessary to address the risks posed by past coal mining activity.

Reason: To ensure the safety and stability of the development, in accordance with County Durham Plan Policy 32 and Paragraphs 178 and 179 of the National Planning Policy Framework.

9. No earth removal, tipping of imported material or laying of hardstanding shall commence until precise detail of the proposed means of the disposal of surface water have been submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall take place in accordance with the agreed details.

Reason: To ensure the appropriate discharge of surface water in accordance with Policy 35 of the County Durham Plan.

10. No earth removal, tipping of imported material or laying of hardstanding shall commence until public footpath No. 13 is protected by the erection of 1.8m high fencing to either side, located 2m apart. The fencing shall be erected along the entire length of the footpath that lies within the application site, with the exception of a style to be installed at either end of footpath crossing points into / out of the site to allow continued access during the works. The fencing and styles shall remain in place for the duration of the works and be removed upon completion of the works.

Reason: In the interests of protecting the Public Right of Way for the duration of the works in accordance with Policy 26 of the County Durham Plan.

11. No earth removal, tipping of imported material or laying of hardstanding shall commence until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Construction Management Plan shall include as a minimum but not necessarily be restricted to the following:
  1. Details of measures to prevent mud and other such material migrating onto the highway from all vehicles entering and leaving the site.
  2. Details of contractors' compounds, materials storage and other storage arrangements, including cranes and plant, equipment and related temporary infrastructure.
  3. Details of provision for all site operatives for the loading and unloading of plant, machinery and materials.
  4. Details of provision for all site operatives, including visitors and construction vehicles for parking and turning within the site during the construction period.
  5. Waste audit and scheme for waste minimisation and recycling/disposing of waste resulting from demolition and construction works.
  6. Detail of measures for liaison with the local community and procedures to deal with any complaints received.

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

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

Reason: To protect the residential amenity of existing and future residents from the development in accordance with Policy 31 of the County Durham Plan and Part 15 of the National Planning Policy Framework. Required to be pre commencement to ensure that the whole construction phase is undertaken in an acceptable way.

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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

County Durham Plan (2020)

Statutory, internal and public consultation responses



**Planning Services**

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Not Set	Restore land to agricultural by removal of old house foundation, planting, hard standing and temporary demountable pens	
<b>Comments:</b>	Not Set	
<b>Date</b>	14 June 2021	<b>Scale</b> 1:2443