



## Area Planning Committee (Central and East)

**Date** Tuesday 12 October 2021  
**Time** 9.30 am  
**Venue** Council Chamber, County Hall, Durham

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### Business

#### Part A

1. Apologies for Absence
2. Substitute Members
3. Minutes of the meeting held on 14 September 2021  
(Pages 3 - 34)
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, DH1 5EJ (Pages 35 - 52)  
Proposed development of 5 dwellings and associated parking.
  - b) DM/21/01752/FPA - 37 North Road, Durham, DH1 4SE  
(Pages 53 - 68)  
Change of use of ground floor premises from Dental Surgery (Use Class E) to Hot Food Takeaway (Sui Generis) with associated internal alterations.
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  
4 October 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

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**DURHAM COUNTY COUNCIL**

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

At a Meeting of **Area Planning Committee (Central and East)** held in **Council Chamber, County Hall, Durham** on **Tuesday 14 September 2021** at **9.30 am**

**Present:**

**Councillor D Freeman (Chair)**

**Members of the Committee:**

Councillors S Deinali (Vice-Chair), D Brown, J Cosslett, J Elmer, L Fenwick (substitute for D McKenna), L Holmes, N Jones, C Kay, C Marshall, E Mavin and K Shaw

**1 Apologies for Absence**

Apologies for absence were received from Councillors D McKenna and R Manchester.

**2 Substitute Members**

Councillor L Fenwick substituted for Councillor D McKenna.

**3 Minutes**

The minutes of the meeting held 29 July 2021 were agreed as a correct record and signed by the Chair.

**4 Declarations of Interest**

Councillor K Shaw declared an interest in Item 5b, DM/20/01479/FPA - Land to the North of 28 North Terrace, Seaham, noting he would speak as Local Member in respect of the application and then withdraw from the Chamber while a decision was made thereon.

The Chair, Councillor D Freeman noted in respect of Item 5a, DM/20/03760/FPA - First to Third Floors, 4-6 Silver Street, Durham, and Item 5c, DM/21/02279/FPA - 26 May Street, Durham, that 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)**

**a DM/20/03760/FPA - First to Third Floors 4 - 6 Silver Street, Durham, DH1 3RB**

The Senior Planning Officer, Jennifer Jennings, gave a detailed presentation on the report relating to the abovementioned planning application, a copy of which had been circulated (for copy see file of minutes). Members noted that the written report was supplemented by a visual presentation which included photographs of the site and photomontages of the proposed development. The application was for partial change of use to create 58 bed Student Accommodation Facility to include the erection of a single storey extension to existing roof and associated access arrangements (amended title) (updated elevation and floor plan to south west) and was recommended for approval, subject to conditions.

*Councillor N Jones entered the meeting at 9.41am*

The Chair asked Councillor L Brown, representing the City of Durham Parish Council to speak in relation to the application.

Councillor L Brown explained that the Parish Council remained unhappy with the planning application, despite one storey being removed from the originally planned 70 bedroom purpose built student accommodation (PBSA), leaving a group of 5-6 bedroomed houses in multiple occupation (HMO), together comprising 58 bedrooms. She added that within a 100 metre radius of, and including 4-6 Silver Street, 74.1 percent of properties were Class N exempt student properties as defined by Council Tax records. She noted that whilst that clearly exceeded the 10 percent threshold included in Policy 16.3 of the County Durham Plan (CDP), the site was nevertheless situated within the heart of the city in an area characterised predominately by commercial uses. Councillor L Brown noted, as such, the introduction of residential dwellings to the upper floors of the retail unit were not considered to have any acceptable or fundamental impact upon the achievement of balanced communities which Policy 16.3 sought to ensure.

Councillor L Brown noted that, however, that was not the basis on which the Parish Council objected to the application. She noted that the fact remained that the application site was located within the Durham City Conservation Area (CA), as well as the setting of the Durham Castle and Cathedral World Heritage Site (WHS). She explained that CDP Policy 45 was clear that *“the Durham Castle and Cathedral WHS is a designated asset of the highest significance. Development within or affecting the WHS and its setting will be required to sustain and enhance the significance of the designated asset; and be based on an understanding of the Outstanding Universal Value of the site, having regard to the adopted WHS Management Plan and Statement of Outstanding Universal Value”*.

Councillor L Brown added that Durham City Neighbourhood Plan (DCNP) Policy H1 was also relevant to the determination of the application and cleared stated: *“Development proposals throughout Our Neighbourhood should be shown to sustain, conserve and enhance the setting of the WHS”*. She explained that it was the Parish Council’s firm belief that the application, which proposed an additional storey to the building within the setting of the WHS, constituted overdevelopment under the walls of the castle and cathedral. She noted that the Parish Council considered that the application was in breach of CDP Policy 45 and DCNP Policy H1. She added that view was clearly supported by the WHS Coordinator who stated: *“this proposal continues to have failures in heritage and WHS assessment. The importance and significance of the WHS and its relationship to the city townscape is underestimated. The design, size and form of the proposals has high negative impact and fails to uphold the views to and from the WHS”*. Councillor L Brown reminded Members that it had not been too long since Liverpool was stripped of its WHS status because of the cumulative and irreversible effect of unsympathetic development within its setting. She added that a vote in favour of the application today put Durham one step further to a similar fate and noted that must not be allowed to happen.

Councillor L Brown noted the site was also within the Durham City CA which was protected by DCNP Policy H2 and CDP Policy 44. She added both policies sought to preserve and enhance the significance of the CA and the significance of its setting and heritage assets. She noted that those policies had been hard won and could not now be forfeit. She explained that it was the Parish Council’s strong belief that the application failed the test of those important policies. She reiterated that the application, in its current form, was in breach of Policies H1 and H2 of the DCNP and Policies 44 and 45 of the CDP and that the application must therefore be refused. She concluded by noting that the Parish Council had been clear throughout consultation that it would be willing to accept such a scheme within the existing envelope of the building and therefore urged that the application be refused.

The Chair noted the comments as regards Liverpool and WHS status. He asked Mr Max Wilkinson, local resident, to speak in objection to the application.

Mr M Wilkinson thanked the Chair and Committee and noted he was a local resident living behind the proposed development on Moatside Lane. He explained he was also speaking on behalf of other local residents, Mr Burton, Mr Knowles and Mr Dobbs as well as Miss Davies who all would also be affected by the development. He added that he believed the Committee report overlooked certain key issues, and ones within the CDP. He noted that Policy 16.3(g) noted that for any HMO development there needed to be consideration given to the security of local residents. Mr M Wilkinson noted that the Applicant had failed to submit any consideration for security of local residents and therefore, as such, was material grounds for refusal of the planning application. Mr M Wilkinson explained that had such been carried out, the issue of lighting along Moatside Lane would have become obvious. He noted that Moatside Lane was currently dark and suffered from anti-social behaviour. He explained that should the site be developed, the quickest way from Durham University's Lower Mountjoy site and Hild Colleges to the development would be via Moatside Lane, dramatically increasing the use of that path. He noted, in line with the streetlighting policy of Durham County Council (DCC), that would make Moatside Lane eligible for streetlighting. He explained that, additionally, the increase in height of the building would mean there was extra shading of the lane, especially in the early mornings and evenings, contributing further to the darkening of the lane. Mr M Wilkinson reiterated those issues would mean Moatside Lane was eligible for streetlighting in line with DCC policy and therefore the Council should ensure a Section 106 contribution was provided by the developer.

He added that, in reference to the development and construction management, he had made written submissions to the Committee alongside the issue of lighting the site at night. He noted that, however, within the Committee report there was no mention of his worries and concerns about excessive lighting of the site. Mr M Wilkinson explained that his four, large bedroom windows backed on to the application site and noted that if there were floodlights throughout the night, that would prevent him, and other residents from Moatside, from being able to sleep. He noted that therefore they would request conditions that reduced the impact of such lighting, either in requesting lights be turned off by a certain time or stating that light must not intrude upon the resident's development as a result of months of construction. He added that allowing for construction to begin at 8.00am on a Saturday was unreasonable for local residents, noting that behind the development was a residential area, with residents working hard all week and being deserving of a weekend lie-in.

The Chair thanked Mr M Wilkinson and asked Mr Michael Hurlow, representing the City of Durham Trust, to speak in objection to the application.

Mr M Hurlow noted the City of Durham Trust had made a clear case for the refusal of the application, seeing no reason for the enlargement of the property to create a new student accommodation by harmful development. He added there was no public benefit. He explained the Trust was disappointed that flaws of the Applicant's assessments were echoed within the recommendation for approval.

Mr M Hurlow explained that the significance of the adjacent WHS, namely the Castle and North Terrace, was underplayed and the negative impact of the extension was underappreciated. He added that the concern was shared by the WHS Coordinator. He explained that the key impact was upon the Castle North Terrace, a seventeenth century promenade, part of the evolution of the castle walls from defence to leisure use. He added that it was significant in its own right and as part of the WHS.

Mr M Hurlow noted that the application building and two large blocks adjacent already intruded into Silver Street and intrude views from the terrace. He added that the dominance of the terrace was revealed in a survey that established the significance of the castle walls and terraces, with the County Council having helped to commission the survey. He noted that the proposals pushed the large two-storey rear extension closer to the WHS and would be clearly on view from the terrace as a result of the angles inherited from the medieval plot shape. He noted it added to the negative impact of the existing building and would cause cumulative damage to the view. He added that trees did not currently mask the view and must be regarded as transitory, having only grown on the castle banks since the late 1940s.

Mr M Hurlow noted the design was basic and demonstrated no enhancement, as required to meet DCNP policies, and brought nothing to the CA. He added that the Trust therefore asked that the Committee refuse the application, based upon its negative WHS impact and obvious failures against CDP and DCNP policies. He noted that the International Council on Monuments and Sites (ICOMOS), in reviewing the recent WHS expansion proposal, recommended referring the application back and the United Nations Educational, Scientific and Cultural Organization (UNESCO) subsequently required more proof that planning protection for the new expansion. He added that ICOMOS were very concerned as regards the development in the WHS immediate setting, citing the Elvet Business School proposal and also development north of the WHS. Mr M Hurlow noted that, in view of this, to approve the application could be seen as provocative and certainly very unhelpful.

The Chair thanked Mr M Hurlow and asked the Agent for the Applicant, Mr Ian Kettlewell, to speak in support of the application.

Mr I Kettlewell noted he was from Lichfields Planning Consultants for Metropolis Land and Property Developments Limited, the Applicant, and thanked the Chair and Members for the opportunity to speak at Committee. He explained that the planning application was submitted following extensive pre-application discussions with Council Officers following the submission, and response to the comments made by Officers, the application was significantly amended to reduce the number of bed spaces by almost 20 percent, from 70 to 58 with the removal of the fourth floor of accommodation. He noted the proposed development therefore comprised of the change of use of the first and second floors of the existing building, together with the formation of the third floor with a mansard roof to provide a total of nine apartments with 58 en suite bedrooms. He explained that, in addition to the apartments, communal facilities would be provided, including a large common room and games room, a private dining room and meeting room, and a gym and Peloton studio. Mr I Kettlewell added each apartment would have its own living room and kitchen. He noted that the ground floor would continue to operate as a large retail unit and noted the proposals were brought forward in the context of increased demand for such form of shared accommodation, and also in the context of a lack demand for large floor plate retail units spread over multiple floors. He explained that the building had been actively marketed for over three years, with no interest forthcoming for the reoccupation of the entire building. Mr I Kettlewell noted the pandemic had accelerated the change in retail habits, with large town and city centre units no longer being required by retailers. He added Bradley Hall - Chartered Surveyors had stated that they would not expect any retailer to require the upper part of the premises, the 10,000 square foot ground floor being large enough for most retailers.

Mr I Kettlewell noted that it was therefore the case that without the proposed development the upper floors would remain vacant and become a liability. He added the planning application demonstrated there was a need for type of accommodation proposed and that there was a shortfall in supply in Durham. He noted that paragraph 95 of the Committee report confirmed the proposals would not lead to any oversupply of such accommodation, notwithstanding there was no requirement to demonstrate such a need in any event, as set out in paragraph 96. Mr I Kettlewell noted that Durham University had raised no issue to the principle of the proposed development and added that no changes were proposed to the front elevation of the building, other than the creation of a new mansard roof to form a third floor, set back from the front of the building.

Mr I Kettlewell noted paragraph 108 of the Committee report referred to that roof as “*successfully fitting with the upper neo-Georgian style façade of the host building*”. He added the removal of the unsightly flat roof, which added nothing to the city’s character, allowed the creation of a new, more interesting roof that better reflected and added to the defining roofscape characteristics as set out in the CA Character Appraisal. He noted the building remained subordinate to its neighbours and added it was pleasing to note that Officers considered that the proposals would enhance the conservation area in that regard. Mr I Kettlewell reiterated that the proposal would have a positive impact on the CA and would easily assimilate itself within its setting. He noted the new roof structure resulted in the removal of unsightly external plant, together with the use of high quality materials, and would be a positive addition and improvement in that part of the city centre.

Mr I Kettlewell noted a full assessment of the proposals impact on the WHS had been undertaken with a range of visualisations submitted. He explained Council Officers had considered the assessment and concluded that the development would not be harmful to the WHS. He added that, as set out within the report, the development was in accord with the National Planning Policy Framework (NPPF), CDP and DCNP. He noted that the proposal would deliver a wide range of public benefits, including the reuse of a vacant building in an economic climate where large retail units were no longer in demand. He added the increase in footfall in that part of the city would generate a capital investment of around £4.2 million, 85 full-time equivalent construction jobs and an additional 100 indirect jobs in the construction industry and supply chain during the build period. He added there would be an additional £11.2 million in economic output during the build period and net additional expenditure by residents of the development by £365,000 per year, which could support five full-time equivalent jobs in local shops and services. Mr I Kettlewell concluded by noting the planning application and Committee report demonstrated that the proposed development was in accord with the development plan and the NPPF and urged Members to accept their Officers’ recommendation and approve the application.

The Chair thanked Mr I Kettlewell and noted the occupancy of the ground floor retail unit on a month by month basis and asked if there would be impact upon the current tenant as a result of a successful application. Mr I Kettlewell noted ground unit would remain available for retail use on the same basis, as the tenant required.

Councillor J Elmer noted the issue of a bat roost and a condition that a licence be sought and asked what the position would be should analysis show that the bats should remain in-situ and a licence was not granted. The Senior Planning Officer noted the Committee report detailed the position in relation to a further survey that was undertaken, with the roost found within the annex building.

She explained that roost covered a small number of Common Pipistrelle bats and based upon the type of bats found and nature of the roost found, i.e. the roosts were not considered to be a maternity or hibernating roost, the Council's Ecology Officer assessed the details and was satisfied that a licence could be obtained from Natural England. If there was a possibility that a licence could not be attained, the Authority would have to take that into consideration, however, based on surveys received and assessment of these the Authority is satisfied that a licence would be provided. Accordingly, a condition is attached requiring strict adherence to the recommendations and mitigations set out within the bat report.

The Senior Planning Officer noted the significant concerns raised by objectors relating to the impact on the WHS, with reference made to a potential cumulative impact and future loss of the WHS status. She noted that Officers were generally satisfied, having looked at the details of the proposal, impacts and visualisations, that the extent of change was acceptable and would not be of a significance to the continuing dominance of the WHS. She added that original submission had proposed two additional floors and there were concerns raised by Historic England at that time. She noted that submission of a reduced scheme was subject to further consultation where Historic England had no further comments and were happy to defer to the Council's Design and Conservation Officers. She explained those Officers had assessed the proposals and felt that essentially the proposals would have a sustaining, conserving impact and felt there would be a minor enhancement in terms of the removal of a lot of the roof clutter on that floor, with a roof design that was in keeping with the building, a modern building that was not listed. She added that the mansard roof had been designed to be in scale with the building adding an additional 2.6 metres to the height, not significant and certainly no higher than the adjacent Tesco building and was quite a bit lower than the annex building to the rear. Accordingly, the Senior Planning Officer noted Officers had no concerns that there would be a negative impact upon the WHS in that regard or cumulatively undermining the special values of that particular site.

The Senior Planning Officer noted the issue raised as regards construction works and explained that the condition applied was the standard construction condition with timing of operations. She added a Construction Management Plan (CMP) would be sought, with specific details of how construction works being proposed not to start before 8.30am on a Saturday. She noted in respect of the concerns raised as regards excessive lighting, there may be the opportunity to apply a condition for detail specific to the lighting on site and limit hours of operation, however, there was a condition for a management plan for the site and issues regarding hours of lighting in the rear courtyard could be covered and assessed within that.

The Senior Planning Officer advised that Officers had taken into consideration the possibility of lighting along Moatside Lane and that, in terms of the overshadowing, Officers did not consider that would be significant as the mansard roof was set back from the parapet wall. She referred to the development layout plan and noted that any proposal to use Moatside Lane would be a significant detour for future occupants at the site, with Officers noting that it would be 153 metres and a steeper walk for future residents. Accordingly, in terms of increasing footfall on that pathway it was not anticipated that the development would lead to any notable increase and therefore it would be hard to justify the need for lighting at this point. The Senior Planning Officer clarified that external construction works were conditioned as 8.30am to 2.00pm on Saturdays, however, internal works could commence from 8.00am, so long as it was not audible outside the site boundary.

The Chair asked for any comments from the Highways Officer and Solicitor on the comments made by the speakers.

The Principal Development Management (DM) Engineer, David Smith explained that the existing vennel was not lit and historically had not been lit. He added that the Council maintained the surface of that vennel and reiterated the comments of the Senior Planning Officer in terms of the vennel not being a convenient route for regular use by occupants of the proposed development. He noted there were no reported accidents on the vennel, even though it was not lit, and noted the public highways of Silver Street and Saddler Street were both lit to public highway standards P4 and P6 which were the Council's standard for lighting. The Principal DM Engineer explained that those technical standards related to high flow of pedestrians at night-time, with the vennel not being a receptor for high levels of pedestrian flow. He reiterated that it was not felt that it was necessary for the development to provide any lighting along the vennel for the reasons stated.

The Solicitor – Planning and Development, Clare Cuskin noted that if the Committee were minded to seek Section 106 monies in respect of street lighting, Members would need to be satisfied that planning permission would otherwise have to be refused if that streetlighting was not provided, and that the requirement for the streetlighting was arising solely from the proposed development. She noted Members had heard from both the Planning Officer and Highways Officer who were both of the view, a view she shared, that it would be difficult to impose the imposition of a Section 106 obligation in this instance relating to street lighting.

The Chair asked Members of the Committee for their comments and questions.

Councillor J Elmer noted he had lived in and around the city for some time and added he felt most would be able to appreciate that a single building going forward had been considered by the heritage team of the Council as not posing any real threat to the heritage value of the city. He added he felt the question was not the impact of an individual building, rather the cumulative impact of building after building. He explained that all would be able to see that over the last 10, 15, 20 years that in the development of Durham City, that was exactly what had happened. Councillor J Elmer noted all could see that the cumulative impact of all the large buildings that had gone up and modifications to existing buildings had been extremely significant. He added he felt all were worried that at some point in the future it may threaten the WHS status of the city centre. He noted that needed to be borne in mind and that the question was did the development have an impact upon the WHS. He noted it was a difficult question to ask and that there were differing opinions that had been presented to Committee by differing people and groups that had considered the matter. He added that, on the one hand, the Council's Heritage Team who had noted a net improvement from the proposed development to the heritage value of the city centre, and on the other hand there was a group of organisations including the WHS Coordinator, City of Durham Trust, ICOMOS, and the Parish Council stating that the opposite was the case. Councillor J Elmer noted, for him, it was a matter of who did he trust, and who had an interest in conserving the heritage value of the city centre and put it to Members that it was the latter organisations that had a real interest in conserving the heritage interest of the city centre. He noted he would have to trust those organisations and concluded that the proposals would have an overall net negative impact on the heritage value of the city, and he asked Members to consider that very seriously and reject the application on that basis.

Councillor J Elmer noted additional concerns as regards the bat licence, noting he felt the survey and assessment work should have been completed prior to getting to Committee in order to inform Members' deliberations. He added he also had concerns as regards the security of adjacent residents, loss of retail, and breaches of policies within the DCNP. He added the latter was of importance to him as he felt Members should be listening to local people who, over the last few years, had come together to create a Neighbourhood Plan for the area. He added he felt strongly that decision making in relation to the city centre should be delegated down to the people that actually lived in an area. Councillor J Elmer noted that while he would like Members to reject the application, it did not prevent the development going forward, rather the development needed to exist within the existing envelope of the building, not with an additional storey placed on top, reducing the number of rooms, with any future still being able to include visual improvements to the roof.

Councillor C Marshall noted from his experience serving on various Planning Committees that applications within Durham City were often contentious, with a range of different people with views and opinions.

He added that the starting point was to look at any application in terms of policies in place, and he noted his thanks to the Officers for the way it had been presented and the level of detail shared with Members. He noted that planning was a matter of opinion, however, he had found some of the comments made by Councillor J Elmer were quite derogatory as regards the staff and teams at the Council. Councillor C Marshall noted it was not a matter of trust, it was the professional opinions of those Council Officers and people would always have different views and opinions as regards planning decisions. He explained that, in looking at the application, one of the questions that came to light related to the viability of the scheme as there was a risk that if nothing was done with the building, which was outside of the Council's ownership, there was the potential for the building to remain vacant, void and become a blight on the city, as similarly seen in towns right across County Durham. He noted therefore he would be interested in the economic viability of trying to have a scheme within the existing envelope of the building. He suggested that the Applicant would have looked at the viability while pulling together the proposals before Committee, clearly why an additional storey was being sought. Councillor C Marshall noted that if Members were minded to refuse the application, he felt there was potential for the decision to come back and bite the Council with a large building in the city sitting empty. He noted issues in terms of viability in terms of delivering the quality of development, adding that if the scheme was within the existing envelope then perhaps the cloth would need to be cut to suit in respect of renovation works and standards. He noted the concerns raised by those neighbouring the property should be taken into account and he noted Members should be looking to condition in that respect and look for those requirements being met as part of the management plan going forward so the Council had as many powers as possible to make sure it was carried out sympathetically to those neighbouring the development.

Councillor C Marshall returned to the policies and noted that the Council's Heritage Team, the statutory consultees, were satisfied the proposals sat with the policies laid down within the CDP. He noted he felt Members needed to be very careful in terms of planning and not look to amend planning policy at Committee. He added if Members were not happy with a policy the Council had or the policies developed in the Neighbourhood Plan, both of which had been developed recently, then they should go back and review and amend those policies, otherwise there would be no confidence from the private sector to come and develop and spend money in County Durham.

Councillor C Marshall noted he felt there were two questions for the Committee, with one being did the proposals sit within planning policy, with the professional Officers from the Council stating that in their view that they did.

He added that if Members were not happy about that, they were not in a position to make planning policy up within the Committee meeting and all that would do would be to undermine confidence for investment, regeneration, growth, and jobs in the county. He noted Members needed to be very careful in terms of any precedent they set, very careful as regards the risk of appeal and the reputational risks to the Council going forward. Councillor C Marshall noted, having listened to all sides, he had reached the opinion that the application did sit with planning policies and that if the Committee did refuse the application his view was that the Applicant would have a strong case at appeal, which would cost the Council money. On that basis he moved that the Committee supported the Officer's recommendation and approve the application.

The Chair noted the issue raised by Councillor C Marshall as regards the viability of the proposals and asked if the Agent wished to respond and if a fallback position had been considered should the application be refused. Mr I Kettlewell noted that, in simple terms, the scheme would not be viable as a simple conversion of the existing building and first two floors. He added that the scheme was only just viable as it stood with the one additional floor and mansard roof. He noted there had been much debate with the Applicant as regards viability and reiterated that without the third floor as set out within the proposals before Members, the scheme would not be viable.

Councillor C Kay seconded the proposal of Councillor C Marshall to accept the Officer's recommendation, noting a lot of what he would have said had already been put succinctly by Councillor C Marshall. He noted the situation as regards Liverpool losing WHS status, however, he noted that Members of the Committee were not deciding upon an issue in Liverpool or what would happen with a cumulative effect, rather each application would be looked at in isolation, with applications standing or falling on their own merits. He noted that the Solicitor had referred to conditions relating to lighting and understood that conditions could only be applied if the application would not be able to be approved without such a condition being made. The Solicitor – Planning and Development noted that Members could only impose a condition if Members felt that condition was necessary to make the development acceptable in planning terms, or to say without the condition it would be refused. She noted that perhaps the best way to deal with a lighting scheme, as it was off site, would be for a Section 106 obligation to be imposed. She added that again, such a Section 106 obligation could only be imposed if Members felt that planning permission would have to be refused without that obligation.

The Chair asked the Senior Planning Officer to respond to the points raised by the Committee.

The Senior Planning Officer noted that in terms of the bat licence, the Authority would not be in any position to make a decision until it was satisfied on the position as regards bats within the building, so all the works and surveys were undertaken, reports written up and fully assessed. She added that Officers were satisfied that a licence could be achieved, as noted by the Council's Ecologist. She added that ICOMOS was a body that would inform UNESCO and had not specifically written to the Council, however, the Council requested that the Applicant undertake an assessment in line with the ICOMOS assessment in terms of impact of change, which was undertaken, and Officers were satisfied that the impacts were acceptable in that regard. The Principal Planning Officer, Paul Hopper added that the cumulative impact could be a material planning matter, however, Officers were of the view that there was an enhancement.

The Chair noted the proposal for refusal by Councillor J Elmer, Councillor C Marshall noted that the motion proposed and seconded for approval should be voted upon first, then any subsequent motions proposed and seconded should the first motion fall. The Solicitor – Planning and Development asked Councillor C Marshall as regards additional conditions he wished to attach. Councillor C Marshall noted they were in reference to the nuisance to neighbours during construction and, as mentioned by the Senior Planning Officer, there would be the management plan that would be required to be signed off by the Authority prior to works commencing. The Solicitor – Planning and Development asked therefore if the Member was asking for any additional conditions, Councillor C Marshall noted he was not.

Councillor C Marshall moved the Officer recommendation for approval, he was seconded by Councillor C Kay.

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/20/01479/FPA - Land To The North Of 28 North Terrace, Seaham, SR7 7EU**

The Senior Planning Officer, Leigh Dalby, 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 the erection of 1no. 4 storey building comprising of 3no. units (use class E (a)(b)(c) or Sui Generis (drinking establishment)) to ground floor, 1no. unit (use class E(d) to first and second floor and 4no. residential units (C3) ancillary to the commercial units to third floor (amended description) and was recommended for approval, subject to conditions.

The Chair asked Councillor K Shaw to speak as Local Member on the application, noting he would withdraw from meeting after he had spoken on the application.

Councillor K Shaw noted in respect of the consultation that he had responded and that was why Members were considering the application at Committee, he noted that had not been mentioned within the preamble given by the Officer.

Councillor K Shaw noted he was one of the two County Councillors representing the Dawdon Electoral Division, the other being Councillor L Kennedy who unfortunately was unable to attend the meeting. He explained that he was speaking on behalf of the residents who opposed the application in its current form due the impact it would have on the town centre and local community. He noted that he had been a Seaham Town Councillor since 2008 and a County Councillor since 2013. He added that Seaham Town Council stood unanimously against the development in its current form, not opposed to the site being developed, but not in the current proposed form.

Councillor K Shaw explained he was born in Seaham, within the Dawdon Electoral Division, and had attended a local school, lived, and worked in Seaham all of his life and witnessed massive changes within the town, from the closure of the three pits in the town with the loss of around 3,000 jobs, seeing the town at its worst, to the thriving community it had now become, with a growing, and increasing prosperous town centre. He noted that during his terms of office as both a Town Councillor and County Councillor he had worked to secure investment to improve Seaham, to make it a place people would want to visit, with now over 300,000 visitors a year. He noted the success in the securing and siting of the "Tommy" sculpture on the terrace in May 2014, which had helped attract visitors from all over the country and indeed from further afield. Councillor K Shaw noted the sculpture sat within yards of the proposed development, and also within yards of the proposed development was the international award winning marina and new water activity centre. He noted the work of previous Cabinet Members, working together to bring high speed broadband to the area, especially the Portfolio Holder at that time, Councillor C Marshall.

He added that just over two years ago DCC had won just over £2 million of investment, town centre heritage funding, and noted the Members should be aware that as Town Councillors, County Councillors, and individuals, all had fought hard for the best for their town, its people and the visitors who now came in their thousands daily.

Councillor K Shaw added, however, that “not all in the garden was rosy” and noted problems existed. He explained that access to shops and businesses on The Terrace needed to be improved, including remodelling of the terrace green itself, and he noted it was at that point one began to hit upon the problems the proposed development would cause. Councillor K Shaw noted the terrace itself on which the proposed development sat was about to have a major revision, cars that currently park on the front would be relocated on to the reconfigured terrace green car park, at the loss of some parking provision. He added this would enable the footpath to be widened, providing better access to businesses. He noted the roadway itself was the main arterial route into Seaham from Sunderland and also out of Seaham on to the A19. Councillor K Shaw explained that it was a very busy road and the proposed development sat on the corner of a junction which led to a residential area, adding that Seaham had over 20,000 residents. He noted that what Seaham did not have was a dedicated town centre car park, and that it was a matter of public record that the town centre car parking could not meet the current demand. He noted the spokesperson for residents would give a more detailed insight into the additional car parking problems and impact upon residents the development would cause.

Councillor K Shaw noted that car parking would become more relevant as the Council’s Leisure Transformation Programme, introduced by the previous administration in March 2021, was about to be considered by the new administration in less than two weeks. He noted the programme had itself had clearly identified that car parking was a major problem in the town centre and that a town centre car park was urgently needed. Councillor K Shaw referred to the leisure transformation update that went before Cabinet in March 2021 and noted that three sites were currently being considered as a final location for the swimming pool leisure centre, two of which were proposed to be on existing car parks in the town centre. He added that if either of those two were agreed, then car parking must be replaced, with the leisure transformation specifically aiming to provide a once in a lifetime opportunity to resolve the town centre parking to meet current and future need. He noted that during the interim around 90 spaces would cease to exist, should either of the Seaham town centre sites be formally chosen.

Councillor K Shaw referred to paragraph 68 of the Cabinet report which stated:

*“Car parking displacement would be a key issue with both the development of St Johns Square site as a standalone facility or as part of the development of a dual site. This was a key issue identified in both the technical assessment and the public consultation as car parking is an ongoing challenge in the town centre due to a lack of a central main car park”.*

Councillor K Shaw noted further paragraphs of the Cabinet report stated:

*“In looking at the current car parking provision, the land at St Johns Square provides limited appeal for users of the centre, whilst underused and derelict land at Green Street provides the prospect of a much improved gateway and enhanced aesthetic for the centre as well as consolidating a more accessible parking provision for the town.*

*An appropriate car parking solution is critical to the success of the scheme and without it alternative options may have to be considered.*

*The Council is committed to delivering suitable car parking as part of a comprehensive plan for the town centre and will explore all options as part of its acquisitions strategy in assembling the necessary land required”.*

Councillor K Shaw noted the recommendation conclusion within the report stated:

*“Recommendation conclusion: preferred option is St Johns Square with enhanced community, club and outdoor facilities at the existing site subject to resolution of car parking facilities at St Johns Square”.*

Councillor K Shaw noted therefore that it was known that the car parking within the town centre could not meet current or future needs. He noted his point was that within the Committee report there was a clear presumption stated was that though the development would create significant additional demand for car parking it could be met by town centre parking, which the Authority was on record as stating did not exist. He added that further parking would be taken away to allow the leisure transformation offer to Seaham to be delivered in the short to medium term. Councillor K Shaw noted car parking had been reduced around the terrace green, lost along almost the whole length of the terrace, did not exist in the town centre itself and may be significantly reduced to offer a long term solution. He noted the small matter of 300,000 visitors to Seaham every year and added that number was growing.

He noted that in view of the fact that the Council already recognised that car parking was not sufficient to meet current needs, he felt it was wrong to put forward within the application, that because there was normally a presumption that developments in a town centre setting can be supported in regards the car parking provision, when it was clearly not available and was a concern raised by the Council. Councillor K Shaw noted that as the decision as regards leisure transformation was due to be made shortly, he proposed that the matter was deferred to allow the decision on the leisure transformation to be made and how the future car parking would be met as it was unsafe and put the Authority at risk if a decision on the application was made in full knowledge of the points he had raised. He noted that he, and his five fellow Seaham County Councillors all shared those concerns and all Members of Seaham Town Council across both political parties were fully opposed to the development in its current form. He added that the residents themselves opposed it.

Councillor K Shaw noted that it was the wrong development, in the wrong place and definitely at the wrong time. He added that the development was overbearing and impacted upon local residents' amenity, and the impact would be significant on the town itself. He noted it would not compliment the buildings in the conservation area, indeed was overbearing and unsympathetic, was far too large and would tower over the very close Victorian properties in the area. Councillor K Shaw hoped that the Committee could support the residents, Town Council and six the County Council Members who want to see an appropriate development on the site, want to see more jobs, want to see continuing investment, and were able and willing to work with the developer in order to achieve an outcome that would be valued and supported, and work in everyone's interest going forward. Councillor K Shaw noted he would request that the application be deferred until after Cabinet had made the decision in the short term as regards its leisure offer for Seaham. He noted that was material in the future countywide leisure transformation programme and that in turn may have material impact on what was proposed at Committee. He asked if time could be taken to work together with the Applicant to seek a way forward on a development that could be supported by residents and that the town centre could accommodate.

*Councillor K Shaw left the meeting at 11.12am*

The Chair noted the issues raised by Councillor K Shaw and how they could be affected by the leisure transformation plan and how that plan could lead to further loss of car parking in Seaham. He asked if the Solicitor – Planning and Development could provide advice as regards the request for deferral. The Solicitor – Planning and Development noted that she would wish for comments from the Highways representative as regards the issues raised.

The Solicitor – Planning and Development added that Councillor K Shaw had essentially made what was known as a prematurity argument, for example that determining the application that was before Committee today would prejudice the leisure transformation process the Authority was going through. She noted that, from her perspective, planning guidance was clear that applications should only be refused on the grounds of prematurity in limited circumstances. She noted an example was that the NPPF states that where the development proposed was so substantial, or its cumulative effect would be so significant that the grant of planning permission would undermine a plan making process, and that plan making process was at an advanced stage. The Solicitor – Planning and Development noted that the NPPF guidance and other guidance did largely relate to development plan documents as it was not generally anticipated that non-development plan documents would give rise to grounds for refuse an application. She noted that the leisure transformation programme was not a development plan document, however, even if Members were to apply those principles to the leisure programme, they would struggle to justify an argument that the proposal was so significant that it would undermine the leisure transformation process. The Solicitor – Planning and Development noted Members would be able to see from the Committee report, and hear from the Highways Officer in due course, that highways issues had been carefully assessed and judged to be acceptable. She added that, subject to the comments of the Highways Officer, she did not think she could advise Members that there were any grounds to refuse or defer in reference to the leisure transformation programme at this stage. She concluded by noting, as ever, it was open to Members to arrive at a different conclusion.

The Chair thanked the Solicitor – Planning and Development and asked the Principal DM Engineer to respond to the comments made by Councillor K Shaw within his request to defer the issue because of various highways issues relating to the leisure transformation plan and add to the picture in terms of the highways situation in Seaham, the leisure transformation plan and how it may be reducing car parking numbers, and how it could relate to the application.

The Principal DM Engineer noted that in respect of the planning applications before Committee, each application was taken on its own individual merits and he noted the Engineer that had dealt with the application had undertaken a robust assessment for the mixed use, residential and gymnasium. He explained that in terms of traffic generation, he noted the demand for parking within the town as mentioned by the Local Member, however, given the size and scale of the proposed development the types of trips generated were normally passer-by or link trips, people already on the network. He added that those travelling into the town centre to bars or restaurants would be using them for those uses.

The Principal DM Engineer noted there was not a large trip generator in highways terms for parking demand in the area around the “Tommy” memorial. He added there was parking on-street, however, the development could only be considered on own individual merits. He noted that looking at context of the street in was well served in that it had double yellow parking, bollards and the Engineer had looked to impose a condition to continue the parking restrictions around the side road and into the back street, protecting parking on the highway. He added there were bays along the street for everyone to use, including the other businesses. The Principal DM Engineer noted that Highways did not see a significant enough demand to refuse the application on parking demand as the trips associated with it were not severe enough to warrant highways refusal.

Councillor C Marshall asked if the Applicant was at Committee and noted that he felt that, in respect of the issues raised, that a conversation between the Applicant, Local Members, Officers from the Highways Team, and local residents could mitigate against some of the concerns that had been raised. He added that, without the Committee determining the application today, the Applicant may voluntarily wish to spend a couple of weeks undertaking those discussions to try and alleviate those concerns with residents, with a view that the application could come back to the next Committee if those issues could not be resolved. He noted he was not sure in terms of the timescales and noted it was over to the Applicant. He added that the Committee could determine the application today and noted from his point of view he would wish to consider some of the concerns that would inevitably be raised by local residents and Councillor K Shaw. He added that it was only right and proper to allow the Applicant at this stage to voluntarily enter into a dialogue, with a view to the report coming back to Committee as a sensible way forward.

The Chair noted to proceed to the remaining registered speakers, with the options in terms of proposing deferral once Members had heard from the objector and Applicant, indeed with the Applicant being able to note what they may be able to offer to Local Members.

The Chair asked Mr Gary Maughan, local resident speaking in objection to the application to address the Committee.

Mr G Maughan explained he was a resident of Tempest Road and that his family home was only a few metres away from the proposed development. He added he was speaking on behalf of neighbouring residents who had all objected to the development. He noted that the modern four-storey development would sit on an elevated site of 0.72 hectares in the heart of Seaham’s Conservation Area. He added it would occupy retail and leisure floorspace of 1,260 square metres on a prominent corner plot of North Terrace.

Mr G Maughan noted it was in close proximity to a large number of residential properties either designated as listed buildings or buildings of significant interest by DCC. He noted that the proposed development was described as being in similar scale to the ongoing development in the centre of North Terrace, The Harbour View. He explained he had submitted photographs as additional evidence to demonstrate the scale of that development, and photographs of the development site. He noted they demonstrated the scale and height of the proposed buildings in comparison to neighbouring buildings.

Mr G Maughan noted objectors referred to the character appraisal and management plan of Seaham's Conservation Area Appraisal for much of their initial objection. He added that the Appraisal document could be found on the DCC website and noted that the 181 page document stated that its purpose was to offer guidance, increase the wider understanding of the Conservation Area, and establish a framework for its preservation and enhancement. He noted the document also stated that it was a material consideration in the decision process for planning applications. He added that he had been unable to find any reference to the document within the planning application, the consultees' comments, or the Planning Team's considerations and assessment.

Mr G Maughan explained the document contained a number of considerations that objectors believed supported their objections and noted he would outline the main points. He noted that on page 168 of the document at Policy 22 it stated: "*The council will seek to preserve or enhance the character, appearance or setting of the district's conservation areas by: i) Not allowing development which would detract from the character, appearance or setting of the conservation area; ii) Only permitting development within, adjoining or affecting conservation areas where it is appropriate in terms of its siting, layout, site coverage, height, roof style, detailed design and materials; iii) Protecting important views into and out of the conservation area*".

Mr G Maughan noted that the second point related to vistas, viewpoints and settings on pages 90 and 91, the document stated: "*Seaham Conservation Area is dominated by long views and vistas... the key views within the conservation area include... North Road, North Terrace and Tempest Road. The design of new buildings should ensure that these views are preserved or enhanced, wherever possible. Planning permission will not be granted for developments which impair or deteriorate these views unless there are demonstrable public benefits which outweigh the harm*".

Mr G Maughan noted the development was proposed to take place at the junction of Tempest Road and North Terrace. He added that just by its sheer size and height, the development would impact the view both north and south along North Terrace and east and west along Tempest Road, in the heart of the Conservation Area, altering important views. He noted the development would tower above the neighbouring Victorian/Georgian residential properties.

Mr G Maughan noted thirdly that developments must not “...*adverse impact upon the tranquil or isolated character of the area*”. He noted that one of the primary proposed uses was for a gym open from 8.00am until 11.00pm, employing 120 full and part-time staff, with the addition of gym-goers. He added there would be inevitable increase to street parking. He noted that even if the use was changed from a gym to something else, the size of the building would suggest similar staff and visitor numbers. He explained that in the near future there would be 74 car parking spaces around the terrace green and North Terrace, many of which were already taken up by employees or owners of the local businesses. Mr G Maughan added that planning considerations had noted that the proposed development made very little provision to mitigate the parking issues so objectors could not see how the immediate area could cope with the extra demand given the significant issues already faced with parking and congestion. He noted that, with visitors having nowhere to park, the economic impact on the businesses of North Terrace was potentially very damaging and would make Tempest Road even busier for its residents.

Mr G Maughan noted, in summary, residents were objecting to the development as the Conservation Area Appraisal document had not been used as a material consideration in the decision process and the development did not meet those considerations. He added objectors considered that the development was inappropriate in terms of its size and scale and noted he could not emphasise enough how much bigger the building was when compared to the surrounding buildings. He noted the development would impair and deteriorate key views and spoil the peace and privacy of immediate neighbours, and that the area could not support the additional parking.

Mr G Maughan explained that the objectors were supportive of the regeneration of Seaham and not against something being built on the site, however, objectors strongly felt that allowing the development to go ahead in its current form was a mistake. He noted that the building would end up being one of Seaham's tallest buildings, on a prominent seafront corner plot in a key part of the Conservation Area. He added the character appraisal referred to a number of older developments which, in hindsight should not have been allowed, and noted that objectors felt that if not scaled back, the proposed development could fall into that category in the near future.

The Chairman thanked Mr G Maughan and asked Mr Andrew Moss, representing the Applicant, to speak in support of the application.

Mr A Moss thanked the Chair and explained that the application sought to make use of a disused parcel of brownfield land surrounded by existing development in a range of uses close to the centre of Seaham, a main town within the County with a commensurate range of services and facilities. He added it was therefore a highly sustainable site and one that should be reused.

Mr A Moss noted that it was appreciated that the site was in a sensitive location and it was important that the development integrated sensitively into the character and appearance of the area generally and the Conservation Area specifically. He added that it was acknowledged that concerns were raised about the design approach initially proposed. He noted that, in response to those concerns, the Applicant and his architects had worked with the Council's Officers and amended plans were submitted earlier this year and amongst other things, the height of the proposed development was now similar to the height of the approved development at 18 North Terrace, The Harbour View, which would give the terraced block two matching bookends.

Mr A Moss noted the DCC Conservation consultation response on the amended plans was also to be noted, which stated: "*The applicant has amended the proposed plans as requested and updated the information within the design and access statement. No further comments from a design and conservation perspective*". He added the comment was recorded in Section 19 of the Committee report.

Mr A Moss noted he agreed with the analysis in the report that the proposed development was acceptable in principle and in heritage terms and agreed with the assessment in paragraph 77 of the report that the proposal would enhance the character and appearance of Seaham Conservation Area and would preserve the setting of adjacent Listed Buildings. He explained that he also agreed with the analysis in the report that the proposed development was acceptable in streetscene, residential amenity, highway safety, parking, ecology, and connectivity terms, subject to the impositions of detailed conditions which would retain control over the development to the Council and to the payment of a financial contribution in respect of Coastal Access Management Measures.

Mr A Moss confirmed that his client, the Applicant, was agreeable to the imposition of the recommended 22 conditions and to payment of a financial contribution to be secured through Section 106 Agreement.

Mr A Moss requested that the application be determined today, whether that was approval or refusal, with his personal view and request to the Committee was that the recommendation be followed, and planning permission be granted subject to conditions and to entry into a Section 106 Agreement in respect of Coastal Access.

The Chair thanked Mr A Moss and asked Officers for any comments on the points raised by the speakers.

The Senior Planning Officer noted that in reference to the Seaham Conservation Area appraisal, while the Conservation Team had not explicitly referenced the document, they would have considered the special significance of the Conservation Area as required in the NPPF and set out within that document.

The Principal DM Engineer noted the issues raised as regards parking around the town centre and reiterated that Highways did not feel they could put forward significant refusal reasons for that.

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

Councillor C Marshall explained it was a difficult case and noted the comments from the Applicant and that there had been a bit of back and forth in terms of the designs. He added he had spent a lot of time in Seaham and added to the 300,000 visitor count and explained he felt that there should be an aspiration to double or treble that visitor number. He noted that needed to be done in keeping with the needs and aspirations of local people. He noted the Town Council and local residents had struggled for many years with highways issues and parking issues in and around the town. Councillor C Marshall noted, when he had visited, the difficulty with the notorious Seaton Lane Junction, which the Council had managed to secure funding from Government, and he admitted there were significant challenges with Seaham, with development and regeneration over a number of years which he felt was welcomed by most people, with jobs and improvements to the area not necessarily having taken into account the huge increase in visitor numbers over a short space of time. He explained that the conclusion that he had reached was that one could not put on to a local developer the issue of parking that pre-exists, not necessarily what Members take into account as part of decision making at Committee. Councillor C Marshall noted he would say there was a significant need for the Council and its Highways Team to engage with residents and the Town Council, to have a proper plan for how visitors access and interact with the community and how local residents could access the amenities in the town centre, whether that was by car, footpaths, or cycle routes.

He noted he was not sure what powers the Planning Committee had, however, he suggested it may be useful for the Chair to write to the Portfolio Holder and ask for an urgent review from the Council and a plan to be drawn up to deal with the pre-existing highways and parking issues in the town. He reiterated it was a pre-existing problem and he felt the Council needed to work with the Town Council and local residents to overcome those challenges.

Councillor L Mavin explained that he visited Seaham often and noted that parking was shocking, and one could not get parked at the best of times. He noted he was erring towards agreeing with the comments from Councillor K Shaw and for the application to be deferred.

Councillor D Brown noted he had listened very carefully to all those who had contributed to the application today. He explained that it was his understanding that, as the Highways Officer had mentioned, each application was taken on its merits and to his mind 50 percent of the discussions had been outside of the facts relating to the application. He noted it had been already discussed how thoroughly the research was done in terms of reports, with everything taken into consideration and taken on balance. He noted in respect of the application he was minded to move acceptance of the application.

Councillor C Kay noted Councillor E Mavin was minded to move toward deferring, providing a round-robin discussion as regards the thorny subject of parking in Seaham. He asked if that was an option for the Committee in planning terms. The Solicitor – Planning and Development noted deferral was an option that was open to Members to arrive at today, however, Members had heard from the Applicant's Agent that he would wish to proceed to a determination today. She noted she would like to understand from Planning Officer whether the Council was still within the determination period, as it may be open to the Applicant to appeal for non-determination if a decision on the application is not reached within the statutory time period. The Senior Planning Officer noted there was an extension until tomorrow to make a determination on the application.

Councillor J Elmer noted that once again the local community and Parish Council very much opposed to the application and he felt that should weigh strongly on Members' decision making. He added that he was a great supporter in localisation in terms of decision making as people who live in an area tended to know best about what their needs were and what would meet their future needs most effectively and tended to get the decision right. Councillor J Elmer noted parallels between this application and the previous application in terms of the difference of opinion in relation to the treatment of heritage assets.

He noted it concerned him that there could be on two subsequent occasions completely different opinions presented in relation to the heritage impact, one arising from local people and local communities, and one arising from the Council. Councillor J Elmer noted that surely, we could be at odds with each other so frequently.

The Solicitor – Planning and Development responded to the point raised by Councillor J Elmer in relation to what was and was not relevant in terms of determination of applications. She explained that the Council was required by statute to determine applications in accordance with the development plan and any other material planning considerations.

Councillor C Marshall noted he had listened to the views and opinions and noted two issues that stuck out for him. He noted Members could not make the Applicant liable for a pre-existing parking issue in Seaham, however, what Members could do was to look to try and mitigate the impact of the proposed development on making that problem worse. He noted the risk to the Council was not making the determination by the deadline, and then the Applicant would be within their rights to take the matter to appeal. He noted that if Councillor E Mavin was moving to defer the application to allow a discussion between the County Council and the Applicant and Local Members he would be happy to second that on the basis that between those three stakeholders he would hope the County Council would start to work with local residents in mitigating the pre-existing car parking places, so that Members could determine the application in the very near future with some assurances from the County Council that issues with parking were going to be dealt with. He noted that he would be much more comfortable with that as there was a decision imminent on 29 September on the leisure transformation strategy. He accepted the Solicitor's advice but noted that he did think that period of time might allow for the three main stakeholders in the area, the local community represented by the Councillors, the developer, and the County Council to come up with a solution or a plan as to how to deal with the parking issues as he felt that was the main issue with the application.

The Chair noted there was a proposal to defer by Councillor L Mavin, seconded by Councillor C Marshall and asked for final comments from the Solicitor and Planning Officers prior to moving to a vote.

The Solicitor – Planning and Development noted that Members had received her advice that she did not think there were any realistic grounds upon which to sustain a refusal or deferral. She noted she was not clear what could be achieved, in planning terms, in relation to the application and was not sure what a deferral was hoping to achieve. She added she suspected that the Applicant may go to a non-determination appeal with potentially a costs claim against the Authority and added that would be her concern.

The Senior Planning Officer noted he had nothing further to add to the comments from the Solicitor – Planning and Development.

Upon a vote being taken the motion was LOST.

Councillor D Brown moved that the application be approved, he was seconded by Councillor C Kay.

Upon a vote being taken the motion was LOST.

The Chair noted that if Members wished to reject the application there would need to be a proposal, together with policy grounds to reject.

Councillor C Marshall noted the issues of parking, the issues of amenity and the impact upon the amenity and visual amenity of the Conservation Area were those that were more prominent to him.

The Solicitor – Planning and Development noted she would be keen to hear from Planning Officers as to whether they thought there was reasonable prospects of success at appeal on those grounds. The Principal Planning Officer noted the concerns of Councillor C Marshall centred around parking, amenity, and the impact on the Conservation Area. He noted that, from what was contained within the report, Officers were of the opinion that the scheme was acceptable in that regard, adding that the Committee were able to take their own view on that. He added that one might expect that the Applicant would seek to appeal that decision, the option would be open to them, and Officers would defend that position. He noted that it would be helpful if Members could be specific as regards their concerns and refer those back to CDP policies and policies in the NPPF, those policies listed to some extent within the Committee report.

Councillor C Marshall noted Members were not Planners and were looking at material planning considerations. He added the Officer had highlighted the various policies within the report that substantiated the discussions of the Committee. He noted he felt the information was all there, material planning grounds had been given and the Committee needed to move on with a decision.

The Solicitor – Planning and Development noted she would, with the Planning Officers, go through the refusal reasons and suggest relevant policies, noting the first one mentioned by Councillor C Marshall was parking. The Principal Planning Officer noted CDP Policy 21 would be relevant in that respect. The Solicitor – Planning and Development noted the second reason mentioned had been amenity, with the final reason being impact on the Conservation Area.

The Principal Planning Officer noted if referring to residential amenity, CDP Policies 29 and 31 would be relevant, and in reference to the impact on the Conservation Area, CDP Policy 44 would be relevant. He asked, in respect of residential amenity, whether Members were referring to privacy, noise and disruption.

Councillor C Kay noted the visitors attracted to the development would result in a loss of residential amenity for the people living in the very area surrounding that in that those people had to park somewhere and there was only limited parking in the area and therefore they would lose that residential amenity that was off-street parking. The Principal Planning Officer noted that if that was the Member's assumption, the concerns raised in that regard would be a material consideration in determination of the application.

Councillor S Deinali noted that the Highways Officer had mentioned that any visits made to the building would be linked visits. She added that the Highways Officer had not mentioned where the employees were going to park their cars. She explained that she visited Seaham many times and had to return home as there been no parking and noted that was something that needed to be looked into again.

The Senior Planning Officer noted Members had referred to the character and impact on the Conservation Area and asked what specifically it was about the proposal that was of concern to Members, whether that was appearance, scale, or design. Councillor J Elmer noted the scale of the proposed building in comparison to surrounding buildings in the area, and whether it was consistent with the characteristics of the surrounding Conservation Area.

The Chair noted Councillor C Marshall had moved that the application be refused, Councillor J Elmer noted he would second the proposal.

Upon a vote being taken it was:

## **RESOLVED**

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

1. It is considered that the proposal would, by virtue of its design, appearance, characteristics, mass and scale appear as an incongruous addition to the streetscene that would have a detrimental impact upon Seaham Conservation Area resulting in less than substantial harm to the designated heritage asset which would not be outweighed by public benefits. The proposal is therefore in conflict with County Durham Plan Policies 29 and 44, Parts 12 and 16 of the NPPF and section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

2. It is considered that due to its scale, height, design and proposed use the building would have an adverse impact on the residential amenity and privacy of nearby occupiers in terms of overlooking, overbearing and increased noise and disturbance contrary to Policy 29 and 31 of the County Durham Plan and Section 12 of the NPPF.
3. It is considered that the proposal would generate increased parking demand which could not be satisfactorily met by existing provision resulting in unauthorised parking within the immediate locality to the detriment of highway safety contrary to Policy 21 of the County Durham Plan and Section 9 of the NPPF.

*Councillors C Kay and C Marshall left the meeting at 11.53am*

*Councillor K Shaw entered the meeting at 11.54am*

**c DM/21/02279/FPA - 26 May Street, Durham, DH1 4EN**

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 the erection of single-storey extension, conversion of flat roof to pitched roof and new window all to rear elevation and internal alterations to an existing HMO (use Class C4) and was recommended for approval, subject to conditions.

The Planning Officer noted there was an update to amend an error in paragraph 52 of the report, with the paragraph to read: *“Given the limited scale of the proposal and the fact that the materials proposed were considered appropriate subject to a condition that materials match, it is considered that points i - l are met. In respect of points c, d, f and h, it is considered that these are not relevant in the determination of the application”* as opposed to sample materials being submitted.

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

Councillor L Brown thanked the Chair and Committee Members and explained she was speaking to disagree totally with the Planning Officer’s recommendation that the application should be approved. She added that the determination of the application was based entirely on a flawed interpretation of CDP Policy 16.3.

Councillor L Brown noted CDP Policy 16.3 stated that applications for new build HMOs and extensions that result in specified or potential additional bedspaces would not be permitted if, including the proposed development, more than 10 percent of the total number of residential units within 100 metres of the application site were exempt from Council Tax charges, Class N Student Exemption. She added that extensions would not be resisted if the area already had a concentration in excess of 90 percent of Council Tax exempt properties.

She explained that, in plain English, that meant that an application for an extension to an HMO that resulted in a potential extra bedroom would not be allowed if the concentration of students within 100 metres was over 10 percent and under 90 percent. She added that Members would note from the documents associated with the application that 59.5 percent of the properties within 100 metres were student properties. She highlighted that the policy did not refer to the number of student properties per postcode as the Applicant's statement within the Committee report would have one believe.

Councillor L Brown noted that Policy 16.3 was adopted after much discussion at the Examination in Public, to promote, create, and preserve inclusive, mixed, and balanced communities, to protect residential amenity, and maintain an appropriate housing mix. She added the policy was supported by NPPF Policy 8 which promoted mixed and balanced communities whose residents should live without the fear of crime. She explained that it was adopted to protect the 40 percent of residents who still lived in the area and wished to go about their daily lives without interrupted sleep and fear of anti-social behaviour. Councillor L Brown noted that the Durham Constabulary crime map showed that student area, known as the Viaduct area, was subject to high rates of crime and anti-social behaviour, as were other student areas in the city.

Councillor L Brown noted Members may say "its only one room", however she added that "only one room" in every HMO in the area would result in an intolerable situation for the beleaguered residents whom she represented as County and Parish Councillor. She noted the Applicant wanted to build the extension to house a shower room which would enable him to turn the previous shower room into a bedroom, thus turning a five bedroomed HMO into a six bedroomed HMO. Councillor L Brown noted the application was for an extension that resulted in a potential addition bedroom, and therefore it was contrary to CDP Policy 16.3 and NPPF 8. She explained that the Officer's recommendation should be overturned, and the application refused.

Councillor L Brown noted she had one final point that, despite it being an extremely remote possibility that the application was approved, if the application was approved, she would ask that a construction plan be included within the conditions. She explained this was because work had been recently carried out to student properties in the area seven days a week starting early in the morning and that was not fair to permanent residents.

The Chair thanked Councillor L Brown and asked Officers to comment on the points raised.

The Principal Planning Officer noted, with reference to CDP Policy 16.3, issues were covered within the Committee report at paragraph 66. He explained that the policy made reference to extensions which would either deliver additional bed space or the potential to deliver additional bed space. He added that, for the reasons as set out within the report, Officers did not feel that the application delivered new bed space or the potential to deliver new bed space. He noted the internal alterations could take place through permitted development rights without the extension and the number of beds that were proposed could be delivered irrespective of the extension.

Councillor E Mavin asked if there was a CMP set out for the proposed development. The Planning Officer noted that there was currently no condition proposed for a CMP, it not normally being a requirement for development of the size proposed, however that was something the Committee could consider should they be minded to do so.

Councillor J Elmer noted he felt that it was fairly clear that the point behind the application was to enable more people to live in the house. He added that it offered the potential to create additional bed space and while that case could not be absolutely proven, he thought that was immaterial as the word "potential" was being used specifically. He noted that gathering the evidence to prove that was the case could be the thing to do. He agreed with Councillor E Mavin in respect of a CMP as it may give clear understanding as to what precisely was proposed and to make a judgement as to whether the applicant was creating the potential for an additional room. He noted it was complex and he imagined the applicant would wish for determination at Committee today, however he did not feel Members had sufficient knowledge to be certain as regards the potential to create an additional room.

The Principal Planning Officer explained that he did not think the standard CMP that the Authority used would necessarily give control over the end layout, it would refer to how the development would be undertaken, in terms of deliveries and the like, and he was not sure that it would deliver what Members were asking for.

Councillor J Elmer noted that therefore he felt the only reasonable assumption was that the application was about creating the potential for an additional room. The Planning Officer noted that the plans showed that the development was for six bedrooms, the maximum allowed for a C4 use application and explained that the Authority could not control those aspects as all of the internal alterations could be carried out without planning permission, the six rooms could be created without planning permission. She added that the elements the Council could control were the pitched roof, which did not create any additional rooms, and the enlargement to the existing shower room, which also did not create an additional room. She noted that while the number of people in the property would increase, the development which created the increase in the number was not under the control of the Authority, the owner could carry out those works in any case. She added that if the application was refused, the Applicant could carry out the internal works with a smaller shower room and then come back to the Authority as a six bed HMO with an application for an extension to the shower room. The Planning Officer noted that, in terms of CDP Policy 16, the development that the Authority could control did not increase the number of bed spaces, rather the internal alterations would. Councillor J Elmer asked if that required a change of use application. The Planning Officer noted it did not as the use was already C4 HMO which allowed for up to six people, a change of use would only be required for a number greater than six to change from C4 use to sui generis use.

Councillor D Brown moved that the application be approved, he was seconded by Councillor L Holmes.

The Principal Planning Officer noted that rather than a CMP being conditioned for an application of the size before Committee, there was the option to control the hours of operation by condition which may be more appropriate than a full CMP. He noted the decision was for the Committee. Councillor E Mavin suggested moving to the vote, Councillor J Elmer suggested the addition of a condition relating to the hours of construction. The Solicitor – Planning and Development asked those Councillors that had proposed the approval of the application if they were also proposing a condition in relation to the hours of working. Councillors D Brown and L Holmes agreed to such an additional condition.

Upon a vote being taken it was:

## **RESOLVED**

That the application be **APPROVED** subject to the conditions as set out within the report, with an additional condition relating to the hours of construction works.

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## 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.

41. 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.

42. 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.

43. 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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44. 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

45. 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.

46. 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.

47. 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.

48. 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.

49. 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.

50. 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

51. 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.
52. 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.
53. 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.
54. 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).
55. 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.

56. 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

57. 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).

58. 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.

59. 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.

60. 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.

61. 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.

62. 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.

63. 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.
64. 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.
65. 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.
66. 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

67. 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.

68. 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.
69. 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.
70. 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.
71. 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

72. 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

73. 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 180, 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.
74. 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

75. 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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76. 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.
77. 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.

## RECOMMENDATION

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 (2021)  
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> 12 October 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/21/01752/FPA

**FULL APPLICATION DESCRIPTION:** Change of use of ground floor premises from Dental Surgery (Use Class E) to Hot Food Takeaway (Sui Generis) with associated internal alterations

**NAME OF APPLICANT:** Mr Shahram Jaberzadeh

**ADDRESS:** 37 North Road Durham DH1 4SE

**ELECTORAL DIVISION:** Elvet and Gilesgate

**CASE OFFICER:** Leigh Dalby  
(Senior Planning Officer)  
Tel: 03000 261 389  
Email: Leigh.Dalby@durham.gov.uk

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### DESCRIPTION OF THE SITE AND PROPOSALS

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#### The Site

1. The application site is located within a small terrace of mixed-use properties characterised by commercial units to the ground floor with residential units above. The site is surrounded by a mix of commercial and residential properties.
2. The site is located within a highly accessible location approximately 18m from the boundary of the designated city centre as defined within the County Durham Local Plan. The site is within walking distance from local and city services, employment areas and is also accessible to public transport including bus and rail services.

#### The Proposal

3. Planning permission is sought for a change of use of the premises from a dental surgery (Use Class E) to a Hot Food takeaway (sui-generis) with associated internal alterations.
4. The application is reported to Planning Committee at the request of the Durham City Parish Council to be given consideration by the Committee due to the proximity of education facilities, an over proliferation of takeaways in the locality, adverse impact upon highway safety and residential amenity.

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## **PLANNING HISTORY**

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5. No relevant site history

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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 2 Achieving sustainable development. The purpose of the planning system is to contribute to the achievement of sustainable development and therefore at the heart of the NPPF is a presumption in favour of sustainable development. It defines the role of planning in achieving sustainable development under three overarching objectives – economic, social and environmental, which are interdependent and need to be pursued in mutually supportive ways. The application of the presumption in favour of sustainable development for plan-making and decision-taking is outlined.
9. NPPF Part 4 Decision-making. Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.
10. NPPF Part 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.
11. NPPF Part 7 Ensuring the Vitality of Town Centres - Planning policies should be positive, promote competitive town centre environments and set out policies for the management and growth of centres over the plan period.
12. 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.

13. 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.
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. Planning policies and decisions should contribute to and enhance the natural and local environment.
16. 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.

**LOCAL PLAN POLICY:**

17. The following policies within the County Durham Local Plan are considered relevant in terms of this proposal:
18. Policy 1 (Quantity of Development) outlines the levels of employment land and housing delivery considered to be required across the plan period.
19. Policy 6 (Development on Unallocated Sites) supports 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 the 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.
20. Policy 9 (Retail Hierarchy and Town Centre Development) seeks to protect and enhance the hierarchy of Sub Regional, Large Town, Small Town, District and Local retail centres in the county.
21. 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.
22. Policy 22 (Durham City Sustainable Transport) seeks to reduce the dominance of car traffic, address air quality and improve the historic environment within the Durham City area

23. 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.; adaptable buildings; minimising greenhouse gas emissions and use of non-renewable resources; providing high standards of amenity and privacy; contributing to healthy neighbourhoods; and suitable landscape proposals. Provision for all new residential development to comply with Nationally Described Space Standards, subject to transition period.

Provision for alterations and extensions to residential property to be sympathetic to existing building and character and appearance of area

Provision for signage, adverts, street furniture and public art to be appropriate and sympathetic to users and local setting and not detrimental to visual amenity or public highway safety

Provision for major developments to appropriately consider the public realm in terms of roads, paths, open spaces, landscaping, access and connectivity, natural surveillance, suitable private and communal amenity space that is well defined, defensible and designed to the needs of its users.

Provision for new major residential development to be assessed against Building for Life Supplementary Planning Document, to achieve reductions in CO2 emissions, to be built to at least 30 dwellings per hectare subject to exceptions. All new development to achieve BREEAM minimum rating of 'very good'.

24. Policy 30 (Hot Food Takeaways) advises that proposals within Sub-Regional, Large Town, Small Town, District and Local Centres will be refused should an unacceptable impact upon the vitality and viability of those centres result. Outside of such centres, proposals within 400 metres of an entry point of an existing or proposed school or further education college will not be permitted. The specific amenity impacts of each takeaway proposal must also be acceptable.
25. 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.
26. 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:**

27. The following policies of the Durham City Neighbourhood Plan are considered relevant to the determination of this application.

28. Policy E3 - Retail Development states that development will be supported where it contributes to the lively and vibrant City Centre and enhance the character and attractiveness of the City Centre. It further states that development that provides residential accommodation in upper floors of commercial properties will be supported as long as they do not have a negative impact on retail, commercial and tourism activities and the general amenity of neighbouring properties and residential amenity including noise impact.
29. 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
30. Policy S1 - Sustainable Development Requirements of all Development and Re-development 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.
31. 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

*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:**

32. The following comments were received following consultation with Statutory and Internal consultees.
33. **DCC Highways** - Servicing would need to take place to the rear of the development. Given the central location, I would not object to the proposal on highway grounds.
34. **City of Durham Parish Council** - The Parish objects to this application citing concerns in relation to proximity of education facilities, a resulting over proliferation of takeaways in the locality, adverse impact upon highway safety and residential amenity. Consequently they consider the application to be contrary to Neighbourhood Plan Policy T1, County Durham Plan Policies 6, 29, 30 and 31, as well as NPPF paragraphs 127 and 180.

### **INTERNAL RESPONSES:**

35. **DCC Env. Health** - The information submitted indicates that the development is likely to breach the thresholds within the TANS (Noise TANS section 3.7 pg 18, Odour TANS section 3.2 pg 12,). This indicates that the development may, without further controls, lead to a significant impact. The planning officer should consider the following supporting detail for further clarification.

The development would see the introduction of a noise and odour generating development, whilst there are several commercial establishments nearby there are also residential properties within close proximity, some adjoining the premises.

There is limited information provided in relation to the control of noise and odour, although the applicant recognises that these will be issues; no consideration appears to have been given in relation to the potential for disturbance from customers, particularly in relation to late at night, the requested hours of 0900 to 0300 on every day of the week are also of concern. Such operating times would also require a premises licence.

In addition, I can confirm that I have assessed the environmental impacts which are relevant to the development in relation to their potential to cause a statutory nuisance, as defined by the Environmental Protection Act 1990 and would comment as follows:

Having considered the information submitted with the application I am of the opinion that the granting of planning permission for the development may potentially result in a statutory nuisance being created, as clarified below.

Noise and odour from the cooking processes and noise from customers impacting upon NSRs.

However, I consider that the following conditions are sufficient to mitigate the potential of a statutory nuisance and therefore if affixed will remove my objection to the development.

- No hot food shall be prepared or served at the premises until details of the fume extraction system, to include a risk assessment, design schematic, details of any odour abatement measures, details of noise levels and any other documents considered necessary to demonstrate accordance with the current EMAQ/DEFRA guidance on the control of odour and noise from commercial kitchen exhaust systems shall have been submitted to and approved in writing by the Local planning authority. The approved scheme shall be installed prior to the use commencing and shall be operated at all times when cooking is being carried out on the premise.

-The premises subject to this permission shall not be open for business outside of the hours of 0900 to 2300hrs on any night of the week, with the exception of midnight on New Year's Eve.

## **NON-STATUTORY RESPONSES**

36. The following comments were received following consultation with Statutory and Internal consultees:
37. **City of Durham Trust** – Objects to the proposal, on the basis that the proposal would be contrary to Policy 6 as a new take-away in this location will be prejudicial to highway safety. Policy 21 as this proposal would generate vehicular traffic (customers and delivery drivers) which cannot be safely accommodated on the local network. Policy 29 as the proposal is not in keeping with character, would create a highway safety hazard, increase litter, impact on residents through noise and odour, and increase the availability of unhealthy food offering. Policy 30 though an increase in noise and odour disturbance.

38. **Durham Constabulary (Architectural Liaison Officer)** – whilst offering no objection to the application note that there are already 34 licenced premises on North Road, which are a mixture of public houses, hot food takeaways, restaurants, and shops. Concerns have been raised by the local Licencing Sergeant around the planned closing times for the proposed hot food takeaway, which do not align with those set out in the Durham County Council’s Statement of Licencing Policy.

The framework provided in Durham County Councils statement of licencing (2019-2024) Appendix 2, states premises licenses primarily for the late-night refreshment should be open no later than 01:00am weekdays and 02:00am on a weekend. However, we would welcome timings for this proposal being capped at 23:00 seven days a week.

We would like to make the following recommendations in relation to this application:

- External doorsets are recommended to be certified to LPS 1175: Issue 7 SR2 (or similar).
- All ground floor and easily accessible glazing should incorporate one pane of laminated glass to a minimum thickness of 6.4mm or glass successfully tested to BS EN 256:2000 Glass in building. Security glazing- resistance to manual attack to category P1A unless it is protected by a roller shutter or grille.

If the planning application is approved, we recommend the following condition be included, to keep in line with Durham County Council’s Statement of Licencing Policy:

- The takeaway opening times to be no later than 23:00hrs 7 days a week.

## **PUBLIC RESPONSES**

39. The application has been publicised by way of site notice and notification letters sent to neighbouring properties, in response 7no. letters and a petition containing 18 signatures of objection were received, a summary of the points of objection are as follows:

- Highway safety issue
- Environmental Impact (odours) on nearby residents
- Drainage
- Parking issues
- Over proliferation of takeaways in the area
- Noise and air pollution
- Litter and rubbish generation
- Waste disposal
- Anti-social behaviour

## **APPLICANTS STATEMENT:**

40. The application site is located outside of the defined area for Durham City Centre, where Policy 30 of the County Durham Plan seeks to control hot food takeaways within 400m of an entry point to an existing school or further education college.
41. The nearest entry points to existing schools and further education colleges in this case are located well in excess of 400m of the application site. The Parish Council have suggested that purpose-built student accommodation has been used as a temporary college in the past by Durham University. We are not aware of this having occurred, nor has any evidence been provided by the Parish Council to substantiate this, however any past temporary use is not sufficient for the premises to now constitute a further education college.

Were that the case, a material change of use requiring planning permission would have occurred. There is no record of this, and accordingly the premises should be regarded by Members as residential accommodation, purpose built for students at Durham University. In absence of any entry points to schools or further education colleges, the proposal complies with the locational requirement of Policy 30 and is considered to be acceptable in policy terms as a matter of principle.

42. Whilst no objections can be raised in principle to the proposed change of use of the existing premises to a hot food takeaway, Policy 30 of the County Durham Plan does make clear that when a proposed A5 use is considered locationally acceptable, as is the case here, consideration will need to be given to the impact that the development would have in terms of amenity, particularly in relation to noise and odours.
43. The applicants welcome the comments from the Council's consultees, none of whom raise any objections to the proposed development subject to conditions. The applicants are therefore pleased to see that the Council's technical experts agree that the proposal would not result in unacceptable impacts in respect of noise and odour, and that there would be no highways safety implications. The absence of an objection from Northumbria Police in relation to the application is also welcomed.
44. The concerns of those who have commented on the application have been noted and the applicant is committed to ensuring that the business operates without adverse impacts on neighbouring premises should planning permission be granted. This includes a commitment to installing high specification mechanical extraction equipment. Advances in modern technology now make it possible for noise generated by cooking equipment and extraction units to be eliminated and make odours from cooking unnoticeable. Should planning permission be granted by Members in accordance with conditions recommended by Officers and Consultees, the Council will retain control over the important aspects of the development and should take comfort in the knowledge that they will have the power to ensure the amenity of local residents is not harmed.
45. Subject to accordance with those conditions, this policy compliant proposal is capable of delivering small scale employment opportunities through the re-use of a vacant building in a sustainable location. Importantly, it can be done without adverse impact on occupants of neighbouring premises or amenity of local residents. The Applicants welcome the positive approach taken by Officers in respect of their application, and in absence of any objections from technical consultees it is hoped that Members of the Committee can reach a similar conclusion by granting planning permission for the proposed development, which we fully believe to be acceptable and in accordance with the development plan.

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

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## **PLANNING CONSIDERATIONS AND ASSESSMENT**

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46. 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 47 of the National Planning Policy Framework (NPPF), the policies contained therein are material considerations that should be taken into account in decision-making. Other material considerations include representations received. In this context, it is considered that the main planning issues in this instance relate to the principle of the development, the impact on residential amenity, highway safety, the character and appearance of visual amenity and heritage assets.

## Principle of Development

47. The County Durham Plan defines the Sub-Regional, Large Town, Small Town and District Centres across the County. As detailed above the site is located on an unallocated site outside of a designated shopping or retail area; however, it is located approximately 18m from the designated sub-regional commercial centre of Durham City.
48. Policy 6 of the County Durham Plan supports development on sites which are 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, stating that such development will be permitted provided it is compatible with uses 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 the 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.
49. As detailed above policy 6 of the CDP permits development on unallocated sites provided it meets the criteria set out within the policy. In this regard it is considered that the proposal can draw in principle support from this policy given that the site is located within close proximity to compatible commercial uses and would not be prejudicial to any existing or permitted adjacent uses (criteria a), is within the existing built framework of Durham City and would not lead to coalescence with neighbouring settlements (criteria b), would not result in a loss of open land that has any recreational, ecological or heritage value (criteria c) and has easy access to sustainable transport and local facilities (criteria f). Consideration of criteria d, e, h of policy 6 is considered elsewhere within this report. It is not considered that criteria i and j are appropriate in relation to this proposal.
50. Policy 30 of the CDP is also relevant and relates to hot food takeaways. It advises that proposals for Hot Food Takeaways located within Sub-Regional, Large Town, Small Town, District and Local Centres will be refused should development result in an unacceptable impact upon the vitality and viability of those centres. Outside of such centres, proposals within 400 metres of an entry point of an existing or proposed school or further education college will not be permitted.
51. Objection to the application has been raised by residents, adjacent occupiers, the City of Durham Trust and the City of Durham Parish Council citing concern at the over proliferation of hot food outlets in the locality and the proximity of the use to existing schools such as St Leonard's and Durham Johnson.
52. However, with regard to policy 30 it is noted that the application site is not located within the designated sub-regional retail centre as defined by the Country Durham Plan and is not within 400m of a school or further education college, as such the principle of a proposed hot food takeaway in this location would not conflict with the aims of this policy. The policy does note that if considered locationally acceptable, consideration will need to be given to the impact that the development would have in terms of amenity, particularly in relation to noise and odours. The impact of the proposal upon noise and odour is considered in more detail elsewhere in this report.
53. It is therefore considered that the proposal is acceptable in principle subject to other material considerations as detailed below.

## Impact upon Residential Amenity

54. Policy 31 of the County Durham Plan 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. In addition, policy 31 specifically requires proposals for Hot Food Takeaways to have regard to the impact of the development upon residential amenity including noise and odour.
55. Both policies display broad accordance with paragraph 130 of the NPPF which requires that planning decisions should ensure that developments will create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.
56. The development is of a type which can give rise to additional noise and odour generated by the cooking process and also as a result of increased disruption from the comings and goings of customers and deliveries, usually outside of core business hours. Such matters have been raised in objection by residents, adjacent businesses, the Parish Council and the City of Durham Trust.
57. The Council's Environmental Health Officer has been consulted and confirms that the proposal is within a sensitive location and could cause odour and noise nuisance if sufficient controls are not in place. In this regard they advise the inclusion of planning conditions limiting the opening hours to no later than 23:00hrs and that the use itself shall not commence until details of an appropriate ventilation and fume extraction system have been submitted to and agreed in writing by the Local Planning Authority, and that thereafter the agreed systems be installed and retained at all times when hot food is prepared at the premises. Subject to the inclusion of conditions in this regard they are satisfied that the proposal can be considered acceptable in terms of noise, odour and statutory nuisance.
58. Similarly, The Police Architectural Liaison Officer (PALO) has raised no objection confirming that opening hours should be limited by condition to no later than 23:00 in order to align with licensing requirements. They also make suggestions in relation to door and glazing specification which although noted, are nevertheless matters related to building control legislation.
59. Notwithstanding the above, concerns have been raised from residents relating to the impact of the development upon residential amenity, specifically as a result of increased disturbance from noise and odour nuisance. Whilst it is understood that a neighbouring commercial unit includes a residential element to the upper floor, the main thrust of residential accommodation is situated 10 metres to the west of the site at Lambton Street. It is therefore acknowledged that there is potential for additional noise disturbance from customers and deliveries entering and leaving the premises. However, given the location of the site within an area characterised by commercial properties that already includes late night uses such as 2no. public houses and 1no. hot food takeaway, and being situated immediately adjacent to the commercial centre of the city on one of the main routes into the city centre where there is already significant noise from traffic and pedestrian movement, any increase in disturbance from the proposed development would not be so significant to sustain refusal of the application.

60. In terms of the potential for odour nuisance. Again, whilst it is noted that the proposed use has the potential to generate additional odour from the cooking process the Council's Environmental Health Section has confirmed that subject to the installation of appropriate ventilation and extraction equipment the proposal would not result in a statutory nuisance, as such it is considered that the proposal is acceptable subject to the inclusion of a planning condition in this regard.
61. With regard to antisocial behaviour residents have raised concern that there is already a significant problem with anti-social behaviour in the immediate vicinity where there are frequent instances of littering/fly-tipping, rough sleeping, drug use, and in street urination/defecation. They consider increased activity in the area arising from the proposed development would exacerbate these problems. Whilst these concerns are noted there it is considered that there is no direct association between the introduction of a single new hot food takeaway in the location proposed, to any tangible likely increase in antisocial behaviour given the commercial nature of this part of the city and its position adjacent to the designated commercial centre of the city. As noted, the Police Architectural Liaison Officer raises no objection to the application subject to the inclusion of a planning condition to limit opening hours.
62. Therefore, subject to the inclusion of a planning condition in this regard the development is considered to accord with the requirements of policy 29, 30 and 31 of the CDP and sections 12 and 15 of the NPPF.

#### Highway and Pedestrian Safety

63. Policy 21 of the CDP requires that all development ensures that any vehicular traffic generated by new development can be safely accommodated and have regard to Parking and Accessibility Supplementary Planning Document and policy 22 seeks to reduce the dominance of car traffic, address air quality and improve the historic environment within the Durham City area
64. Policy T1 of the Durham City Neighbourhood Plan seeks to ensure that development proposals should be supported by evidence of how they contribute to sustainable transport accessibility and design where appropriate.
65. Objections have been received from the Parish Council, the City of Durham Trust and adjacent occupiers citing concerns that highway safety would be fundamentally undermined by the proposal as a direct result from an increase in visitors and an unsustainable demand for parking on the highway immediately in front of the premises. In objecting respondents cite previous instances where unauthorised parking has taken place along this section of North Road, various road traffic accidents and that access to the rear for servicing is limited due to a shallow, narrow archway.
66. In considering the application regard has been had to the site's central location and close proximity to the commercial centre of Durham City which itself is well served by public transport linkages. Whilst it is likely there will be some increase in vehicular movements to and from the premises compared to those currently experienced, the Highway Authority has confirmed that there would not be any unacceptable impact upon highway safety as a result, subject to servicing taking place to the rear. Whilst the presence of a narrow, shallow archway to the rear that currently restricts access is noted, it is not considered this would prohibit serving to any significant degree and that appropriately sized vehicles could be used to negate any restriction in this regard. It is also noted that it appears other existing commercial premises along North Road currently use this access effectively. A condition requiring that all servicing is undertaken via the rear access to the premises and delivery area could be included.

67. In light of the above it is considered that given the location of the application site, within close proximity to Durham city centre and access to sustainable travel facilities that the proposal would be acceptable in relation to Policy 22 of the CDP and T1 of the neighbourhood plan and that in relation to highway safety the proposal would accord with the requirements of Policy 21 of the CDP, and Part 4 of the NPPF.

#### Impact on Designated & Non-Designated Heritage Assets

68. The application site is located within the Durham City Centre Conservation Area and the setting of a Grade II\* Listed Building. When considering any application for planning permission that affects a conservation area or the setting of a Listed Building, the Planning (Listed Buildings and Conservation Areas) Act 1990 s.66 is relevant and requires the Local Planning Authority to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses; and in relation to conservation areas, s.72 of the Act requires a local planning authority to pay special attention to the desirability of preserving or enhancing the character or appearance of the area.
69. Section 16 of the National Planning Policy Framework (NPPF) states that planning decisions should take into account the desirability of sustaining and enhancing the significance of heritage assets and ensuring new developments make a positive contribution to local character and distinctiveness (para. 197), whilst requiring local planning authorities when considering the impact of a proposed development on the significance of a designated asset to give great weight to the asset's conservation irrespective of the level of any potential harm (Para. 199).
70. Policy 44 of the CDP 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.
71. Policy H2 of the Durham City Neighbourhood Plan states that "Development proposals within or affecting the setting of the Durham City Conservation Area should sustain and enhance its significance as identified within the Conservation Area Appraisals" and goes on set out requirements that proposals in the conservation should take account of, and meet (where relevant).
72. As noted the application property is located within the Durham City Conservation Area and in close proximity to the Grade II\* Listed Viaduct. However, the proposal seeks consent for the material change of use of the property only which requires internal alterations retaining the external appearance of the building fundamentally unaltered – with the likely exception of replacement signage which does not form part of the current planning application. As such it is not considered that the proposal would have any negative material impact upon the character, appearance or setting of the designated heritage assets and would, through the reintroduction of a positive use to a currently vacant building, prevent it's further deterioration and deliver some limited enhancement to this part of the conservation area and the setting of the listed building.
73. It is therefore considered that the proposed development would make a modest positive contribution to the Durham City (Centre) conservation area and the setting of the Grade II\* Listed Viaduct through the reuse of an empty building in accordance with Policy 44 of the CDP, Policy H2 of the DCNP, Section 16 of the NPPF and Sections 66 & 72 of the Planning (Listed Building and Conservation Areas) Act 1990.

## Impact on the character and appearance of the streetscene

74. Policy 29 (Sustainable Design) of the County Durham Plan requires all development proposals to achieve well designed buildings and places having regard to SPD advice and sets out 18 elements for development to be considered acceptable, including: making positive contribution to areas character, identity etc.; adaptable buildings; minimising greenhouse gas emissions and use of non-renewable resources; providing high standards of amenity and privacy; contributing to healthy neighbourhoods; and suitable landscape proposals.
75. With regard to the impact of the development upon the character and appearance of the surrounding locality and streetscene it is considered that the proposed development is acceptable in that it does not propose any material alteration to the external appearance of the host property. As such the development is considered to accord with policy 29 in this regard.
76. However, objections have been received in relation to increased litter generated by the proposal which cite concerns regarding similar issues with the existing hot food takeaway already operating from this short section of properties north of the Viaduct. Whilst it is acknowledged that the nature of the use will result in customers leaving the premises with associated packaging that will require disposal, the area is well served by existing litter bins (3 bins being located within a 100m of the site, and 12no. with approx. 200m of the site). The applicant has also confirmed that bins will be provided within the premises for customer use. There is understood to be no provision to consume food within the premises and as such food will be taken away and consumed offsite. As such it is considered that the proposal is located within an area whereby any customers arriving on foot will have opportunity to dispose of their waste appropriately.
77. With regard to the requirement to contribute to healthy neighbourhoods, Policy 29 requires that proposals contribute towards a healthy neighbourhood and consider the health impacts of developments, whilst section 8 of the National Planning Policy Framework (NPPF) acknowledges the role of planning in improving health.
78. In this regard, it is acknowledged that whilst significant high levels of hot food takeaways within an area can have a detrimental impact on the physical health of residents within communities within this location it is not considered that there is an over proliferation of hot food takeaways in the immediate vicinity to a level that could be considered to have a direct detrimental impact on the physical health of the neighbourhood, to a level that could warrant refusal of the application.
79. Whilst the precise nature of the hot food offer is unknown at this time, the type of food is not a material consideration, and that the re-use of the vacant building is considered to contribute to the neighbourhood in enhancing the vitality and viability of the area bringing back into use a vacant property, adequate distance from sensitive locations as set out in Policy 30 of the CDP.
80. It is therefore considered that the proposal is acceptable in line with Policies 29 and 30 of the CDP.

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## CONCLUSION

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81. The proposed development is considered acceptable in principle and would not have an unacceptable impact upon the character and appearance of the area, residential amenity or highway safety in accordance with the requirements of policies 1, 6, 21, 22, 29, 30, 31 and 44 of the County Durham Plan, E3, H2, S1 and T1 of the Durham City Neighbourhood Plan and sections 2, 4, 6, 7, 8, 9, 12, 15 and 16 of the NPPF 2021.
82. In addition, it is considered that the proposal would enhance the character and appearance of Durham City Conservation area through the reuse of a vacant building in accordance with policy 44 of the County Durham Plan, section 16 of the NPPF (2021) and Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 subject to the inclusion of appropriate planning conditions.

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## RECOMMENDATION

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That the application (DM/21/01752/FPA) be **APPROVED** subject the following conditions;

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

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

2. The development hereby approved shall be carried out in strict accordance with the 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) 1, 6, 21, 22, 29, 30, 31 and 44 of the County Durham Plan, E3, H2, S1 and T1 of the Durham City Neighbourhood Plan and sections 2, 4, 6, 7, 8, 9, 12 and 16 of the NPPF 2021

3. The premises shall not be open to customers outside the hours of 10:00 to 23:00 on any day of the week.

Reason: In the interests of the residential amenity of surrounding properties in accordance with Policy 31 of the County Durham Plan and Part 15 of the National Planning Policy Framework.

4. All deliveries and servicing (including those being despatched and received) shall be undertaken from the delivery area at the rear of the property. No deliveries shall be received or despatched from the site outside the hours of 1000 and 2300.

Reason: In order to ensure the highway safety in accordance with Policy 21 of the County Durham Plan.

5. No hot food shall be prepared or served at the premises until details of the fume extraction system, (to include a risk assessment, design schematic, details of any odour abatement measures and any other details necessary to demonstrate accordance with the current EMAQ/DEFRA guidance on the control of odour and noise from commercial kitchen exhaust systems) have been submitted to and approved in writing by the Local planning authority. The approved scheme shall be installed prior to the use commencing and shall be operated at all times when cooking is being carried out on the premise.

Reason: To ensure adequate ventilation and extraction to prevent a statutory nuisance, in accordance with Policy 29 and 31 of the County Durham Plan.

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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.

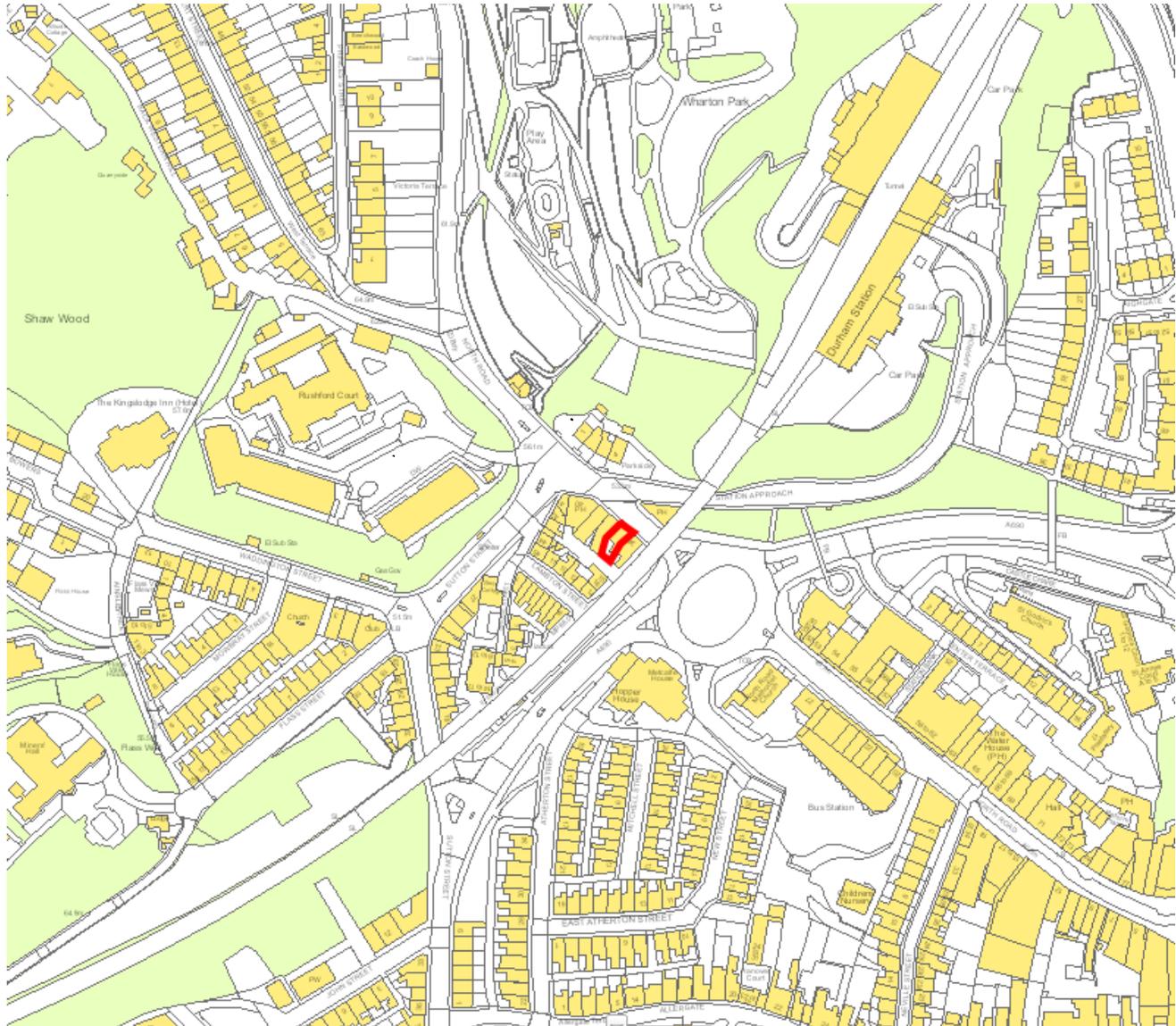
The National Planning Policy Framework (2021)

National Planning Practice Guidance Notes

County Durham Plan (2020)

City of Durham Neighbourhood Plan (2021)

Statutory, internal and public consultation responses



**Planning Services**

DM/21/01752/FPA Change of use of ground floor premises from Dental Surgery (Use Class E) to Hot Food Takeaway (Sui Generis) with associated internal alterations

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**Date** 12 October 2021

**Scale** NTS