



Area Planning Committee (Central and East)

Date Tuesday 9 November 2021
Time 9.30 am
Venue Council Chamber, County Hall, Durham

Business

Part A

1. Apologies for Absence
2. Substitute Members
3. Minutes of the meeting held on 12 October 2021 (Pages 3 - 22)
4. Declarations of Interest, if any
5. Applications to be determined by the Area Planning Committee (Central and East)
 - a) DM/21/00624/FPA - Land to south west of 39, Salvin Street, Croxdale, DH6 5HZ (Pages 23 - 42)
Proposed house and detached garage.
 - b) DM/21/02774/VOC - 57 Claypath, Durham, DH1 1QS (Pages 43 - 56)
S.73 application for the removal of Condition No.3 (Outside seating) to permit outside seating within the rear garden on a permanent basis pursuant to DM/19/01789/VOC.
 - c) DM/21/02896/FPA - Fernhill, Newcastle Road, Crossgate Moor, Durham, DH1 4JZ (Pages 57 - 84)
Redevelopment of stables to provide 1no 4 bed dwelling.
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
1 November 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 A Holmes, C Hood,
N Jones, C Kay, D McKenna, R Manchester, C Marshall,
E Mavin, K Shaw and A Surtees

DURHAM COUNTY COUNCIL

AREA PLANNING COMMITTEE (CENTRAL AND EAST)

At a Meeting of **Area Planning Committee (Central and East)** held in **Council Chamber, County Hall, Durham** on **Tuesday 12 October 2021** at **9.30 am**

Present:

Councillor D Freeman (Chair)

Members of the Committee:

Councillors S Deinali (Vice-Chair), D Brown, J Cosslett, L Holmes, N Jones, D McKenna, R Manchester, C Marshall, K Shaw and M Simmons (substitute for E Mavin)

Also Present:

Councillors J Chaplow and M Wilkes

1 Apologies for Absence

Apologies for absence were received from Councillors J Elmer and E Mavin.

2 Substitute Members

Councillor M Simmons substituted for Councillor E Mavin.

3 Minutes

The minutes of the meeting held on 14 September 2021 were confirmed as a correct record by the Committee and, subject to the amendment of typographical errors in relation to 'L Mavin' to read 'E Mavin', were signed by the Chair.

4 Declarations of Interest

Councillor M Simmons declared an interest in respect of Item 5a, DM/21/00911/FPA - Allotments to the west of 5 to 10 Front Street, Framwellgate Moor, DH1 5EJ, she was a Member of the Framwellgate Moor Parish Council and that she would withdraw from the Chamber while a decision was made thereon.

The Chair, Councillor D Freeman noted in respect of Item 5b, DM/21/01752/FPA - 37 North Road, Durham, DH1 4SE, 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. He noted he was also a Member of the City of Durham Trust, however he was not a Trustee and had not been party to their submission in objection to the application.

Councillor K Shaw noted, in respect of Item 5a, DM/21/00911/FPA - Allotments to the west of 5 to 10 Front Street, Framwellgate Moor, DH1 5EJ, he had been supportive of the development in his former role as Cabinet Member for Strategic Housing and Assets. He added however, that he had no preconceived opinion on the application and would consider the application as the Committee heard evidence during the meeting.

Councillor M Simmons left the Chamber at 9.39am

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

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. The application was a proposed development of 5 dwellings and associated Parking and was recommended for approval, subject to conditions and a s106 Agreement. The Senior Planning Officer explained that there was an extant permission for 6 terraced properties on the site, though it had not commenced at the current time.

The Chair asked Councillor M Wilkes, Local Member, to speak in relation to the application.

Councillor M Wilkes thanked the Chair and explained to Members that he had asked that the application be brought to Committee as he felt the application represented inappropriate development. He added that he, the Parish Council, and many residents saw the application as an attempt to develop the site in such a way that the impact upon neighbouring residents would be unacceptable. He asked if the Planning Officer could display the site layout for the scheme as passed in 2018. He noted that it would be useful for the Committee to note what the outline planning permission offered. He explained that those properties were in keeping with the surrounding area as they were two-bed starter homes. Councillor M Wilkes noted that proposal had included parking to the front of each of the properties and, at the outline stage, provided two visitor parking spaces which would not have interfered with the access for the properties on Front Street, adding that the outline permission clearly indicated an adoptable road and footpath proposal.

Councillor M Wilkes noted the current, full planning application increased the number of bedrooms by 25 percent meaning the properties proposed would be three-bed, not two-bed, and therefore less likely to be starter homes and more likely to be houses of multiple occupation (HMOs) given the close proximity to Durham City. He noted that the new application would remove parking spaces for existing residents and replace them with visitor parking spaces. He added that the report stated that there were six residential, terraced properties to the front of the development site, and noted that there were, in fact, seven as numbers 5a and 5b were flats, as indicated on the 2018 plan. He explained that existing residents needed the parking to the rear of their homes and had been using the area for parking for decades, perhaps even over half a century. He noted that land was not owned by the applicant. Councillor M Wilkes noted that the removal of two parking spaces in an already difficult place to park would make it impossible for residents. He explained that other parking along Front Street was limited or already used by businesses and other residential properties. He added that it appeared to him that the applicant, in attempting to suggest that there was sufficient parking, had simply chosen to include a ridiculous amount of unusable parking spaces on the plans for current application. He noted three spaces, back-to-back, for some of the properties and added that no sane family would use the spaces as they would be required to move two cars in order to allow the third out. He explained that the result would be that the visitor parking would be used, taking it away from existing residents and would likely be used by the new residents for parking, making parking issues even worse. Councillor M Wilkes noted that the application, in removing the ability for existing residents to park, was incompatible with County Durham Plan (CDP) Policy 31 as it could clearly be demonstrated that the new development would have an unacceptable impact upon the health and living conditions of existing residents.

He added that CDP Policy 29(e) stated that developments should '*provide high standards of amenity and privacy and minimise the impact of development upon the occupants of existing adjacent and nearby properties*' and added that clearly the application did not do that.

Councillor M Wilkes noted he had two questions in relation to the proposed s106 Agreement. He noted that previously he had requested a condition be placed on the properties prohibiting them from being used as HMOs, as they were meant to be starter homes under the outline application, with the outline application having been passed with that condition in place. He noted it appeared that the current application omitted that condition. He noted the outline application stated: '*The dwellings hereby approved shall only be occupied in accordance with the C3 (dwellinghouses) use class and are not authorised for C4 (houses in multiple occupation) use. Reason: To define the consent and in the interests of residential amenity in accordance with Policy H13 of the City of Durham Local Plan 2004*'. He asked why the condition had been removed rather than amended and updated to reflect the new CDP.

Councillor M Wilkes noted his second question related to highways adoptions and asked if Planning Officers could confirm that the Council would be able to insist that the road be brought up to adoptable standard, given that the applicant did not own all the land that was required to put in place the footpath and road. He noted a development on a nearby road, South Terrace, resulted in a decade of issues caused by the same problem, taking up a huge amount of Council Officer time, with the road having not been adopted, with resulting impacts for residents. He added that we could not be seen to be building new developments which would end up with unadoptable roads, noting that all could see the damage that had been caused over the last century elsewhere in the county.

The Chair thanked Councillor M Wilkes and asked Miss Nicola Brown and Ms Anita Harvey, local residents, to speak in objection to the application.

Miss N Brown explained she lived at 7 Front Street and noted she had reservations as regards parking during and after the proposed development. She noted that six cars from numbers 3, 4, 5a, 5b, 7 and 9 Front Street used the east and north of the development, on the unadopted road, to park their vehicles due to the lack of parking space on and around the property. She added that none of the residents had been able to acquire parking permits for Front Street, often enough there was insufficient parking for six cars due to the amenities on the front street. She noted that her biggest concern was that once the houses were built and the new residents moved in, there would be disputes about parking and access. She added that no doubt the residents and visitors of both Front Street and the new development must use the area to park their cars, in a marked bay or not.

Miss N Brown asked what provision would be made for those cars that had nowhere to park and what would happen while the works were underway as the cars in question were not going to disappear.

She added that the road was unadopted and would be used for visitor parking spaces for the proposed development, with one of those spaces blocking vehicle access to the garden of 7 Front Street. She explained she had noticed that the gate into the garden of 9 Front Street had not been included on the application plans and access had not been provided to 9 Front Street.

Miss N Brown explained the application would affect her access, amenity and transport conditions. She noted that surely residents that had maintained the road for a number of years should be able to have a say in how that road be used, adding it seemed the developer had not considered that. She explained that she assumed Highways would take ownership of the road and that it would not be the responsibility of the new residents, and asked who would claim ownership of those parking bays.

Miss N Brown informed Members that the last time works had been carried out at the site work vehicles had blocked access to the west of Front Street for around a week. She asked where work vehicles would be parked while work was underway and what contingency plans were in place to prevent the blocking of access and conflict between residents and workers on site. She noted there was also a safety issue with a number of heavy goods vehicle (HGV) deliveries throughout the day for the carpet shop. She explained she had previously witnessed a close-call with a large vehicle and a young child and noted the children and disabled residents used the street for recreational purposes and, when the development of family housing was complete, there may be more vulnerable residents. She asked if safety provisions could be put in place.

In reference to affordable homes, as mentioned by Councillor M Wilkes, Miss N Brown noted that Framwellgate Moor had a lot of unaffordable housing, with 1,400 properties being built at Sniperley, with only 25 percent being affordable, adding she did not think the houses proposed in the application were affordable. She added that she agreed with the points raised in relation to CDP Policy 29, adding she did not feel high standards of amenity and privacy were being respected. She explained that, as there were disabled residents living in the street, Policy 29(f) was relevant, it stating that development should '*Contribute towards healthy neighbourhoods and consider the health impacts of development and the needs of existing and future users, including those with dementia and other sensory or mobility impairments*'. She added she felt that policy was not being met by the application.

Miss N Brown noted she had hoped the developer would have been in attendance at Committee to help answer a lot of her worries about the development and to have been able to move the visitor parking as it looked as if access to numbers 8 and 9 Front Street would be severely impacted. She noted earlier that morning the resident of number 9 had reversed out of her parking bay towards her garden at number 7. She explained that if there was a car parking bay in that location the resident of number 9 would be unable to get out.

Ms A Harvey explained her son lived at number 8 Front Street and noted she jointly owned the property with him. She explained her son had autism and had very high social difficulties, very rarely leaving the house. She added that his garage was not shown on the plans and there was no turning space for his garage. She explained that was needed, as her son's carer was undertaking driving lessons to ensure she could get him out of the house. Ms A Harvey noted she previously had a carer's permit to be able to park on Front Street, however, that had not made any difference and she had been required to park some distance away, even with a permit. She noted there was absolutely no consideration for the residents of those houses and explained the only reason that there was any community in the area was due to the access at the back of the properties. She noted the impact on the current access and privacy to the properties and added that the building works were going to have a high impact upon her son particularly, as he used the outside communal area when he needed space and some air, something he was unable to do on the Front Street. Ms A Harvey explained that residents were considering whether to put a caution on the register against first registration by prescription for use of that area.

The Chair thanked the speakers and asked the Officers to respond to the comments and questions raised.

The Senior Planning Officer noted that in reference to the condition relating to HMOs, in the case of the application before Members it was not required as there was an Article 4 Direction covering the area, removing the permitted development rights in terms of a HMO, with any change to an HMO requiring a full planning application. She referred to the plan setting out the fall back position of the extant outline consent, which also included adopted highway, footpaths and parking provision for the two-bed dwellings. She referred to the plan for the current application, noting the footway all the way round, adding it would be possible, within a condition on the hard surfacing, in the details, to confirm that there would be dropped kerbs to allow access to the garage site. In terms of access, there would be a three metre gap that would allow access in and out of that particular garage site, and other accesses would also be retained. As regards back-to-back parking, she added it would not be an issue that Officers could refuse an application upon, it not being unusual for parking to be laid out in that way.

She confirmed that the hardstanding area currently available to residents at the rear related to a 4.7 metre width, with the proposal opening up that to provide better access into the site and larger space for manoeuvring cars in and out of garages. The Senior Planning Officer noted that the visitor parking would be available for the residents of 5 to 10 Front Street to use, it was free for use by anyone as an adopted road.

The Principal Development Management Engineer, David Smith noted that the Highways Development Manager had assessed the proposals and noted that the Front Street was well served, was lit by streetlights and had good footpath connectivity. He noted the proposed development would comprise a shared surface scheme, with a different textured material for the footpaths and road for shared use. He added that there was sufficient space for pedestrians and vehicles to operate in that area. He explained that in terms of the width there was no issues in terms of safe operation and that shared surface schemes allowed up to 100 vehicle movements, which would equate to around 12 houses, the proposed development being for five houses, therefore less than the maximum number of vehicle movements for such a shared surface scheme. In terms of accessibility for residents he noted the kerbed areas would be lowered, as mentioned by the Senior Planning Officer, with all of the shared surface scheme being on one level.

The Principal DM Engineer noted that in terms of parking provision, the developer had overprovided in respect of in-curtilage parking, with the average provision for a three-bed dwelling being 1.66 spaces per dwelling. He added the 0.66 would refer to the visitor parking element and reiterated there was overprovision in terms of in-curtilage parking and with two visitor spaces. He noted those visitor spaces would be on a first come, first served basis. He referred to parking permits and noted that he had raised the issue with colleagues from the Traffic Section and explained that as the area was within the controlled parking permit area, residents would be able to apply, via The Parking Shop, for parking permits. In respect of displaced parking the Principal DM Engineer explained that Officers could only consider what was contained within the application area with parking being able to be contained within the development. He noted the element that could be controlled was in terms of whether the parking provision was up to the Council's standards, and it was, and whether there was safe access on to the highway, and he noted it complied with the requisite Manual for Streets Technical Design Standards and therefore there were no technical grounds for refusal.

In respect of the adoption of the highway, the Principal DM Engineer noted that the Highways Development Manager had agreed for the road to be adopted so that they could be street-lit, adequately drained and constructed to highways standards.

He concluded by noting on technical grounds and highways safety grounds, there was nothing that would amount to a highways refusal.

Councillor M Wilkes noted it was still not clear, his question was whether the Council could insist that the road be brought up to an adoptable standard, given the applicant did not own all of the land. The Solicitor – Planning and Development, Neil Carter explained that as he understood, the access that was proposed, and in front of Committee for consideration, did involve access to an adoptable standard, however, Members had heard there may be some ownership issues. He added that if that was the position it may be, though he did not know, that the applicant was unable to enter into a s38 Agreement. He added that in those circumstances, the road would not be something that could be dedicated as a highway and adopted by the Council, however, it would still need to be built to an adoptable standard as that was within the scheme before Members. He noted that it may not end up as an adoptable highway. He noted that the Council could not insist upon it being adopted, however, the Council could insist upon it being to an adoptable standard, in accordance with the proposals before Members. In reference to the issues raised in respect of access and parking as raised by residents, they were predominately private law matters between the residents and the applicant, not something the planning system could control. He noted that, for example, if residents had particular private law rights that prevented the scheme that was before Members coming forward, that would be a matter for applicant to address.

Councillor M Wilkes asked if the application could be passed without a condition that the street had to be adopted. He noted comments relating to shared use of the back street and reiterated that very large HGVs reversed and drove into the site to deliver to the carpet shop and asked if the Council was suggesting that shared surface scheme, with no pavements, would be suitable where HGVs manoeuvred next to a housing development and next to where children would potentially play. The Solicitor – Planning and Development noted that the Council would not be able to insist that the road was actually adopted, however, it was proposed to be an adoptable standard as controlled by Condition 5 which required details of that surface treatment to be provided to the Authority. He added that whether the road then was subsequently adopted by the Council was not something the Council could insist upon as part of the planning application. The Principal DM Engineer noted on the turning head feature, as set out on the plan, there was space for a refuse vehicle to manoeuvre, and therefore if someone was using the shop floor area, they would be able to manoeuvre a vehicle within that area. He noted that with all such cul-de-sac features one would expect deliveries from time-to-time, however, the number of movements per day would be under the 100 vehicle movements, even when including the shop, and therefore there was no technical reason in relation to trip generation to refuse the application, being light traffic levels within the cul-de-sac.

The Principal Planning Officer, Paul Hopper reiterated the points made by the Principal DM Engineer and noted Councillor M Wilkes had referred to CDP Policy 29(e) in terms of loss of the existing parking as an amenity loss. He added that, as the Solicitor – Planning and Development had noted, the area in question was unregistered and was subject to an adverse possession claim in terms of residents looking to prove some level of ownership. He added that the supporting text to Policy 29(e) provided some narrative as to how Officers would apply that particular part of the policy. He explained that it stated that ‘...*consideration should be given to matters of privacy, outlook, natural lighting, ventilation, as well as local climatic conditions*’. He noted that the Committee report detailed Officers’ assessment of that at paragraphs 57 to 61.

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

Councillor C Marshall asked if Officers could confirm if land ownership issues were material planning considerations, and if Highways could confirm the parking provision was in excess of that required for new build properties under policy. The Principal Planning Officer noted that land ownership issues were civil matters and fell outside of the scope of planning. The Principal DM Engineer noted the amount of allocated and non-allocated parking proposed was in excess of the Council’s parking standards, a good mix of visitor and in-curtilage parking.

Councillor K Shaw referred to CDP Policy 6 and noted a sum in the amount of £2,970 as regards alternative allotment space and asked whether that was a sufficient amount and whether there was an ability to deliver such space. The Senior Planning Officer noted the matter had been discussed with colleagues from spatial planning in terms of the Open Space Needs Assessment and it was noted that, in general, there was a shortfall in respect of allotment space. She added that accordingly there was deemed a need for that contribution to be made as regards additional allotment space or upgrading of existing allotment space within the Parish area. She noted that had also been a condition in terms of the previously granted permission.

Councillor D Brown noted he had never heard so much discussion in respect of car parking, however, having listened intently and read the Officer’s report he would propose that the application be approved, as per the Officer’s recommendation. He was seconded by Councillor K Shaw.

Upon a vote being taken it was:

RESOLVED

That the application be **APPROVED** subject to the conditions as set out within the report, with a s106 Agreement in relation to provision of alternative allotments within the local area.

Councillor C Marshall noted he felt Members in objection to an application should make their objections known and give valid reasons rather than simply voting against an application.

Councillor M Simmons entered the meeting at 10.29am

b DM/21/01752/FPA - 37 North Road, Durham, DH1 4SE

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 change of use of ground floor premises from Dental Surgery (Use Class E) to Hot Food Takeaway (Sui Generis) with associated internal alterations and was recommended for approval, subject to conditions.

The Chair asked Parish Councillor Victoria Ashfield, representing the City of Durham Parish Council, to speak in objection to the application.

Parish Councillor V Ashfield thanked the Chair and Committee and noted she was a Parish Councillor and was Vice-Chair of their Planning Committee. She explained that the Parish Council strongly objected to the application and would ask that the Committee refuse the application without delay. She added that it must be refused on a range of policies, all agreed in the CDP which had been recently debated and agreed by the Council to enhance the county and city. She explained that, as the Parish Council stated that the application contradicted policies, and Officers had deemed it complied with policy, it was clear that policy matters must be a matter of opinion. She asked therefore whether Officers could describe the differential weight they gave to the applicant's convenience and the unacceptable impact upon residents and the wider community on amenity, in particular in relation to highway safety, noise and odours. She noted, in relation to the policies, it was a matter of opinion, not a matter of fact.

Parish Councillor V Ashfield explained that number 37 North Road was one of a short street of five properties situated north of the viaduct. She added that two of the properties already had takeaway permission and a third was a public house that served take away food.

She noted that part of the city was on the route to St. Leonard's and Durham Johnston schools and was in close proximity to Rushford Court, student accommodation used as a temporary college for Durham University. She noted that was to say that it was close to places where young people would be vulnerable to excessive fast food. She noted that the Officer commented that it was more than 400 metres away from St. Leonard's school, however, within his description of the application site, he had noted it was 'on the way to St. Leonard's' and she added it was clearly on a main thoroughfare to the school, where many students pass on their way to school.

Parish Councillor V Ashfield noted that the service would take place to the rear, however, the service counter would be to the front of the property, and therefore she asked how that would be possible. She noted the narrow entrance to the rear areas was only 2.3 metres wide and therefore too small for a standard sized food van to access. She added that entrance served all the businesses in that area, including back entrance to residential properties on Lambton Street, and was used for their parking and access. Parish Councillor V Ashfield noted that even if vans could get through the archway, there would be less manoeuvrability in that small space. She explained that the condition as regards deliveries to the rear only would not dictate what type of delivery vehicle was used and it was clear such vehicles would park on North Road. She added that where customers would park was outside of the control of the premises operator and having multiple customers arrive at the same time and to try and access the rear of the property was clearly impossible. She noted that, in practice, customers would pull up on North Road, as they do so currently for Domino's even though there was a small side road available for Domino's, and as they did so when the property next door had been a pizza shop previously. She added it would happen again and would be to the detriment of highway safety. Parish Councillor V Ashfield noted that therefore the Parish Council believed, as was the case with Domino's and The Bridge Public House, most vehicle deliveries and collection would have to take place on the street to the front, despite being protected by double yellow lines. She explained that parking on a double yellow line could be affected, without any contravention, for up to five minutes. She added that therefore the double yellow line in this case would not protect that area of the street. She noted that it would affect the sight lines coming out of Sutton Street and would also affect vehicles turning from the A690 and those requiring access to the railway station.

Parish Councillor V Ashfield noted the application was completely contrary to Durham City Neighbourhood Plan (DCNP) Policy T1 which stated, '*Adverse transport impacts should be avoided where practicable*'. She added CDP Policy 6(e) stated that development should be allowed where it '*will not be prejudicial to highway safety...*'.

She noted it was not safe to permit an additional takeaway in the area and the Parish Council could not agree with paragraph 66 within the Officer's report, which stated that there would not be any unacceptable impact.

Parish Councillor V Ashfield referred to a recent incident at the weekend where a car had been parked at 7.00pm, Saturday, 9 October in front of the Dental Surgery, on the double yellow lines, with no driver and the engine turned off. She added that the traffic in both directions had been blocked by a bus that was unable to get past the traffic coming the other way which was manoeuvring around the parked car until a bus coming in the other direction stopped to allow the first bus to pass. She noted that there was a library of photographs with dates and times indicating how dangerous parking conditions were in the area. She added that there was already an unsafe pinch point and therefore an additional takeaway would make it more difficult and more dangerous for traffic. Parish Councillor V Ashfield noted Highways Officers had stated that it would not add to the traffic and asked how any new takeaway could make money if it was not going to include new customers, noting the applicant must be anticipating more people coming to use the takeaway. She reiterated that it would be more difficult and dangerous for traffic and pedestrians and noise would make it unacceptable for residents. She added that if you had looked at the site, when approaching or leaving the railway station, you would have noticed those issues already.

Parish Councillor V Ashfield noted Durham County Council encouraged, through policy, healthy eating and added that recent Government guidance stating that the replacement of hot food regulation gave Local Authorities greater control to prevent the proliferation of hot food takeaways. She added that CDP Policy 30 stated reducing levels of obesity was a key objective of the Council. She added if the Council was serious in tackling obesity, particularly childhood obesity, it had no option other than to refuse the application. She noted the Council wished to enhance, not destroy, the amenity for its residents and CDP Policy 30 also stated that if a hot food takeaway was acceptable, consideration would need to be given to the impact of the development, particularly in terms of amenity and in relation to noise and odours. She explained that where it was considered that the application would give rise to unacceptable impact, the application should be refused. She asked that Members, during their deliberations, gave due weight to the views of the neighbours who lived within the area of the fumes, odours and noise associated with hundreds of meals served, collected and the cars that took them. She noted Policy 29 stated there must be no adverse impact upon the amenity of neighbours and, given the number of students and year-round residents that had already had their amenity impacted by existing takeaways, granting the application would be in breach of both of the policies and would further exacerbate complaints about disturbance and loss of amenity for residents.

Parish Councillor V Ashfield noted that another area for objection was in terms of the lack of detail in terms of the ventilation of fumes; rubbish collection, rubbish storage and food storage. She added that the bins for Domino's, number 41 North Road, were kept on the street corner as there was nowhere else to access them, being no access for collection vehicles. She explained it was not feasible at the archway as the pavement was very narrow. She noted that the letters in support of the application seemed very vague and the precise details of the specification for the equipment to be installed, included any extraction and odour abatement, had not yet been decided and it was anticipated that precise details would be determined at a later stage by way of condition, in the event that permission was granted. Parish Councillor V Ashfield noted that it was the view of the Parish Council that, as it was an issue that impacted both residents and motorists in the area, those issues were fundamental points that should not be left to later condition but should be available so that Members were able to make a proper decision today.

Parish Councillor V Ashfield noted that, regarding the hours of operation, the Parish Council concurred with the Police, however, would suggest further conditions, should the Committee be minded to approve the application, to reduce the opening hours to 10.30pm, in line with the other local premises. She added, in conclusion, that the Parish Council felt the application was contrary to CDP Policies 6(e), 21, 29, 30 and 31 and noted those policies had been hard won by Members and that they should not now be forfeit. She noted that Members had every right to be informed of the specification of all equipment to be installed, including extraction and odour abatement, and arrangements for refuse collection before being asked to make a decision. She added it was felt it was disingenuous for a developer not to provide such information and to ask Members to take it on trust. Parish Councillor V Ashfield noted the Parish Council urged that the Committee refused the application on those grounds.

The Chair thanked Parish Councillor V Ashfield and noted, as Local Member, he could attest to issues in terms of traffic and noise in the area. He asked the Planning Officers if they wished to comment on any of the points raised.

The Principal Planning Officer noted in respect of application of policy that it was subjective and, in the case of the application before Members, within the Officers' assessment there had been regard given to the responses from consultees, the issues raised in terms of highway safety, noise and odour. He noted the Committee would have regard in respect to the comments from internal consultees, as summarised within the report, who had offered no objections to the application, subject to conditions. The Senior Planning Officer noted some confusion as regards the terminology in relation to servicing, explaining that it referred to the receipt of goods by the unit, it was not expected that customers would be served from the rear of the unit.

He added that was not contained within Condition 4, it stating that '*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*'.

Parish Councillor V Ashfield asked how Officers balanced the weight of the convenience to the applicant and the gross inconvenience to local nearby neighbours and traffic passersby, she noted Officers had accepted that it was a question of balance, they had not explained how they balanced those differences. She added that if it was clear that servicing referred only to delivers, would large delivery van be able to fit through the alleyway and asked where cars picking up takeaways would be expected to stop. The Principal Planning Officer confirmed that Officers attached weight to material considerations as they saw fit in each individual case, adding Officers need not attach any weight in respect of convenience to applicants. He reiterated each case was looked at on its own merits in terms of policy. The Senior Planning Officer noted, in respect of those picking up takeaways, one would expect drivers to be responsible and use the parking facilities on site, with a bay around the corner. As regards the archway, Officers had noted a standard 'transit' vehicle was approximately 2.03 metres wide, with the arch being 2.5 metres wide, though objectors had stated it was 2.3 metres wide.

The Chair asked Mr Roger Cornwell from the City of Durham Trust to speak in relation to the application.

Mr R Cornwell noted the Trust welcomed the opening hours being scaled back from 3.00am and, referring to a photograph of the alley, noted he had measured the archway with a tape-measure, and it was 2.3 metres wide and added a transit van, including the wing mirrors was 2.5 metres, therefore around 7 inches wider than the gap. He explained that a small trader would not be able to dictate to a supplier what delivery vehicle they would use, and he felt it was quite clear delivery vans would pull up and deliver via the front. He added that customers, as not obliged to access via the rear, would park at the front, noting that responsible drivers were not that common with many thinking they would be 'just nipping in for three minutes'. He explained another issue was that vehicles would be unable to turn around, as the area at the bottom was private car park and would not be available to deliveries.

In reference to map of vehicle crashes around the area which had formed part of the City of Durham Trust's submission, Mr R Cornwell explained that there had been four accidents in the past five years which involving people being injured. He added there were many more accidents that shown by the map as accidents would happen.

He explained that, in reference to Policy 30, Officers had quoted most of the policy, however not the last paragraph. He noted the last part read '*Where a proposed A5 use is 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. Where it is considered that the proposal would give rise to unacceptable impact, the application should be refused*'.

The Chair thanked Mr R Cornwell and asked Councillor J Chaplow to speak in relation to the application, noting she was speaking in a personal capacity.

Councillor J Chaplow noted the change of use for 37 North Road was going to make a very big difference to Mr and Mrs Davison, with their bedroom being on North Road. She added excessive noise from traffic coming and going and food smells from the extractor fan would be just hitting at the level of their balcony and living room. She noted the chimney proposed was large. She added that the balcony was enjoyed a lot by Mrs Davison. Councillor J Chaplow noted the Davisons had lived in the neighbouring property since 1987 and leased the parking area at the rear for the use of employees and clients. She noted a drain had previously been blocked with fat, with no explanation of where it had come from.

Councillor J Chaplow noted the Indian Takeaway had no access to the back and that at the top, where the County Hospital used to be, there was a residence for Chinese students. She added there were three takeaways and a pub in such a short stretch of North Road from the roundabout, with the proposed takeaway only having access from North Road to be able to take in supplies and serve their food. She noted there was a high risk of serious accidents, with traffic turning into that stretch of North Road from the roundabout. She concluded by noting the property was not the place for an Indian takeaway.

The Chair thanked Councillor J Chaplow and asked Mr Daniel Puttick, Agent for the applicant to speak in support of the application.

Mr D Puttick thanked the Chair and Committee and explained he was Senior Planner at BHP Planning and Design, speaking on behalf of the applicant. He explained that the applicant had operated successful businesses in Durham for the past two decades. He noted Members had heard the concerns raised by those objecting and, while he would not address each point raised, he would respond to Councillor J Chaplow's reference to an Indian takeaway by noting that the specific type of food had not yet been determined. He added that the details of odour and extraction would be specific to the food type and therefore the details of amelioration would require careful consideration post-planning.

Mr D Puttick noted that many of the points raised had been dealt with in the comprehensive report before Members and he noted that policy requirements of the Local Plan were such that there were very few places where a hot food takeaway were deemed appropriate. He added whether one used hot food takeaways or not, or whether one liked them or not, they were an important part of the economy, providing employment and supply chain opportunities alongside the other shops, services and facilities in the city. Mr D Puttick noted the location was one that was acceptable in planning terms and therefore he welcomed the Officer's recommendation and was pleased to see there were no objections from consultees, including the Police. He concluded by noting that Officers were satisfied that, subject to the conditions set out in the report, there would be no adverse impact on the people living and working in the area and he hoped that Members agreed with their Officers and granted planning permission.

The Chair thanked Mr D Puttick and asked the Committee for their comments and questions.

Councillor J Cosslett asked if the height of the archway was known. The Senior Planning Officer noted he did not know, however, he added that it would be for each individual operator to ensure whatever vehicle serviced their premises was suitable to meet their needs, with it being often the case that small operators service properties themselves using their own vehicles. The Principal Planning Officer noted that, in terms of serving and access, it would be for the applicant to make suitable arrangements to service the rear. He added it was controlled by condition and there was enforcement action that could be taken should the applicant fail to comply with the condition. He noted the applicant was aware of the condition and presumably they would make arrangements to comply with the condition.

The Chair noted there were double yellow lines outside of the premises and asked who policed those double yellow lines, his understanding being that it was NCP who only operated until 6.00pm. He noted the majority of trade of a takeaway was likely to be after 6.00pm and asked what could be done as regards any vehicles parking outside the premises after 6.00pm.

The Principal DM Engineer reiterated that each application was looked on its own merits and explained that proposed site was within an established commercial area with a pub along the row, and also a pub opposite, together with a takeaway pizza shop. He added it was in a sustainable city centre area for journeys on foot to collect takeout food. He explained, in relation to accidents on the roundabout, there was often clusters of accidents on roundabouts and added there were no accident trends other than driver behaviour resulting in rear end shunts on some of the approaches to the roundabout. He noted, in terms of overall accidents, there was nothing that suggested the application would cause a significant highways impact.

The Principal DM Engineer noted that in terms of footfall and the lawful extent of use for the site, Category E, there could be uses that could also incur parking and footfall to the site, therefore it could attract other uses of a similar level. In respect of road safety and the double yellow lines on the highway, he noted that all road users needed to park responsibly and not park on double yellow lines. He noted NCP did enforce up to 6.00pm, however, if someone was to park on double yellow lines close to the roundabout and cause an obstruction, if that was deemed dangerous then the Police were able to deal with those causing an obstruction on the highway. He added that there was nothing to suggest the application would have a material impact upon highway safety for the reasons stated, with no accident trends and given the lawful extant use of the site.

The Senior Planning Officer noted Councillor J Chaplow had referred to having details of the chimney to be used and explained those details had not yet been supplied by the Applicant. He added that in terms of the type of food to be served, that was not a requirement for the application, the application being simply for a hot food takeaway.

Councillor S Deinali noted she shared the concerns raised by Parish Councillor V Ashfield in relation to parking and how that would then impact upon traffic throughout the city. She explained that from her experience travelling through the city a lot of the traffic on that particular roundabout then impacted on traffic along the road towards the Tesco store. She noted that no report had been submitted as regards odour and noted that was an issue that would severely affect residents in the area. She explained she had concerns as regards that and why a decision was sought without such a report having been submitted.

Councillor C Marshall noted he felt it would be helpful for Members to have some additional information as regards Condition 5 as set out in the report, in terms of feedback from Environmental Health in how the application would satisfy that condition. He added it was clear details would need to come back to the Authority and be approved, however, he asked if Officers could explain how the odour and extraction units would work to eradicate or mitigate that risk. He noted Members would be aware of the amount of time Environmental Health spend in terms of dealing with odour nuisance and reiterated additional information would be beneficial for the Committee.

Councillor J Cosslett asked if consideration had been given for the rise of Uber style delivery adding it would surely increase the number of vehicles stopping outside the takeaway.

Councillor L Holmes noted he was not familiar with how many parking bays were available round the corner and asked for information in that regard.

He added that while it would be good if all drivers were good some drivers were not, however, how confident were Officers in terms of enforcement of the parking restriction between 6.00pm and 11.00pm, with the potential of individuals, perhaps under the influence of alcohol, to be crossing that area of road with parked cars perhaps confusing the issue more.

The Principal Planning Officer noted that in relation to odour, Condition 5 stated '*No hot food shall be prepared or served at the premises until details of the fume extraction system*' were agreed by the Local Authority, and he explained that would be in consultation with the Environmental Health Section. He added Environmental Health had suggested the wording of the condition. In reference to the lack of the submission of a report specifically covering odour, he referred Members to the section of Condition 5 which stated a risk assessment would be required and it would inform what type of equipment was required and was in line with DEFRA guidance. He added that colleagues from Environmental Health would not have suggested the condition if they had not been confident that a solution could be provided. He explained that Officers noted that the impact on residential amenity was important, however, the inclusion of Condition 5 meant that Officers felt that any impact in that regard could be mitigated to within acceptable levels. The Principal Planning Officer noted the Committee had heard from the Highways Officers as regards how arrangements would work and responses were that the development could be satisfactorily accommodated and there was not a highway safety refusal reason in relation to policies T1 and 21.

The Principal DM Engineer explained that looking at the accident statistics there was no trends suggesting a road safety issue, with incidents being driver behaviour and rear end shunts. He noted the average daily traffic through the city centre was around 20,000 vehicles and therefore there would be clusters of incidents around roundabouts, however, in trying to attribute issues to the type of development as in the application, he felt it would not be possible to sustain a highways objection in terms of Paragraph 111 of the National Planning Policy Framework (NPPF).

The Chair asked if Officers could respond to the point made by Councillor J Cosslett in terms of the potential increase in use by new methods of takeaway delivery methods. The Principal Planning Officer added that in terms of the existing restrictions in place, it would be assumed that those restrictions would act effectively. The Solicitor – Planning and Development noted that, as he understood, the situation was that the double yellow lines would be enforced by the enforcement team up until 6.00pm, thereafter it would be for the Police to enforce as regards any obstruction that would occur if someone was to park on those double yellow lines. He added that there was an effective enforcement mechanism post 6.00pm.

He agreed with the Principal Planning Officer, noting that it was assumed that those other legislative controls would operate correctly, and added one could not come from a starting point that they would be ineffective, one would assume they would be effective. He noted that in reality there would be some breaches that would have to be dealt with by enforcement and reiterated that the assumption would be that those controls outside of the planning system would be operated satisfactorily.

The Chair noted the issue of the hours of operation had been raised, noting that the condition within the report noted the shop would stop operating at 11.00pm. He asked as regards whether the Licensing Team could grant different hours of operation and the suggestion by the Parish Council of 10.30pm as a closing time. The Senior Planning Officer noted the planning conditions would take precedence and explained that while Environmental Health and the Police had noted no objections to the 11.00pm closing time, that was a matter Members may wish to decide upon.

Councillor C Marshall noted he had listened very carefully to the points raised by Officers and the questions and points raised by the speakers. He noted that in any other area within the county the potential to occupy an empty building with a business would not be contentious. He noted in terms of the change of use, the area already had the principle established in terms of hot food takeaway. He noted the application sought to bring an empty building back into use and raised the question, while not a material planning consideration, what the alternative could be and whether the Committee would be looking at a planning application for an HMO, likely the only other viable alternative use in that part of the county.

Councillor C Marshall noted the point raised by the Parish Council in that policies were subjective and added that he had been convinced by the Officers that the application did comply with the Council's policies. He noted that he did have concerns as regards the extraction system and therefore he would move support of recommendation, with an additional requirement that the details to be agreed with Planning and Environmental Health Officers also be in consultation with the Chair and Vice-Chair of the Committee, which was not uncommon, to ensure there was a greater degree of scrutiny on behalf of the Members of the Committee. He added that he felt the applicant could not be held responsible for pedestrians crossing the road and noted that he had several takeaways in his Division that were in villages and were well used though until 11.30pm-12.00am. He reiterated that he moved the application be approved, subject to the conditions as set out in the report and an additional requirement for the details relating to extraction to be in consultation with the Chair and Vice-Chair of the Committee. He was seconded by Councillor K Shaw.

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 requirement that the ventilation/extraction details required under Condition 5 are only approved in consultation with the Chair and Vice-Chair of the Committee.

COMMITTEE REPORT

APPLICATION DETAILS

APPLICATION NO:	DM/21/00624/FPA
FULL APPLICATION DESCRIPTION:	Proposed house and detached garage
NAME OF APPLICANT:	Mr Trevor Elsdon
ADDRESS:	Land to the south west of 39 Salvin Street Croxdale DH6 5HZ
ELECTORAL DIVISION:	Coxhoe
CASE OFFICER:	Jennifer Jennings Senior Planning Officer Telephone: 03000 261057 jennifer.jennings@durham.gov.uk

DESCRIPTION OF THE SITE AND PROPOSALS

1. The application site is located at the south western edge of Croxdale and consists of a broadly triangular parcel of land currently in use as grazing land for the keeping of horses, measuring approximately 2,600 sqm. A small rectangular, rendered, dual pitched roof stable block currently sits centrally on site as part of that equestrian use. The site is bounded by a one metre high post and rail fence, with areas of established hedge planting along the north east and western edges of the site. A current gate access exists on the south west boundary of the site onto Chair Lane, with a second gated access on the eastern corner adjacent to the main road access to the terraced properties along Wood View, Salvin Street and Front Street.
2. The site is framed by terraced housing to the north east which includes Front Street terrace which is Grade II listed. Public open amenity space lies to the north associated with the terraced housing in this area. The access road bounding the north of the site that leads to the terraced houses also doubles as a public right of way and heads towards a designated Area of High Landscape Value that commences just at the north west boundary of the site. To the south and west of the site lies open countryside with large field systems laid to crop. Bounding the south of the site is Chair Lane, a minor unclassified highway, of largely single lane width that provides a secondary road to Tudhoe.
3. Nickynack Beck is culverted under the site, entering from the south east corner and emerging again at its north west end. A Northumbrian Water pumping station and compound is located at the north west corner of the site. Due to this culverted area running through the land, a portion of the site is undevelopable meaning there are constraints on where the house and garage can be located.

4. The application seeks planning permission to erect a two storey house with detached garage. The dwelling would be located in a similar position as the existing stable block, just south west of central on the site, and would be orientated in a south east, north west direction, relatively parallel to the Public Right of Way (PROW). The garage would be located to the north east of the site, with access taken from the existing eastern gate that links to the main access road to the terraced properties. It is proposed as a four bed dwelling, with a natural stone and slate roof finish. The detached double garage would have matching materials to the dwelling. Substantial boundary planting is proposed along all of the boundaries.
5. The application is being considered by Committee at the request of Croxdale and Hett Parish Council who raise concerns with regards to possible flooding, access and egress to the site as well as what is described as the historical planning background.

PLANNING HISTORY

6. Planning history at the site is detailed below and revolves around the use of the land for the keeping of horses, including erection of stable block and access points to the land.

4/07/00714/FPA Erection of stable block with new vehicular access Application Withdrawn 14th September 2007

4/07/01002/FPA Change of use to allow keeping of horses, erection of stable block and associated access with retention of existing fence and access gate Refused 5th December 2007

4/09/00272/FPA Change of use to allow keeping of horses, erection of stable block and associated access with retention of existing fence and access gate (revised and resubmitted) Approved 9th June 2009

4/09/00481/FPA Erection of detached stable block and hardstanding Approved 20th August 2009

PLANNING POLICY

NATIONAL POLICY

7. The following elements of the National Planning Policy Framework (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 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.
11. *NPPF Part 8 – Promoting healthy and safe communities.* The planning system can play an important role in facilitating social interaction and creating healthy, inclusive communities. Developments should be safe and accessible; Local Planning Authorities should plan positively for the provision and use of shared space and community facilities. An integrated approach to considering the location of housing, economic uses and services should be adopted.
12. *NPPF Part 9 – Promoting sustainable transport.* Encouragement should be given to solutions which support reductions in greenhouse gas emissions and reduce congestion. Developments that generate significant movement should be located where the need to travel will be minimised and the use of sustainable transport modes maximised.
13. *NPPF Part 11 - Making Effective Use of Land.* Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously-developed or 'brownfield' land.
14. *NPPF Part 12 - Achieving Well-Designed Places.* The Government attaches great importance to the design of the built environment, with good design a key aspect of sustainable development, indivisible from good planning.
15. *NPPF Part 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.
16. *NPPF Part 15 - Conserving and enhancing the natural environment.* Planning policies and decisions should contribute to and enhance the natural and local environment.
17. *NPPF Part 16 - Conserving and enhancing the historic environment.* Heritage assets range from sites and buildings of local historic value to those of the highest significance, such as World Heritage Sites which are internationally recognised to be of Outstanding Universal Value. These assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations

NATIONAL PLANNING PRACTICE GUIDANCE:

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

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

LOCAL PLAN POLICY:

The County Durham Plan

19. 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.
20. 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.
21. Policy 26 (Green Infrastructure) states that development will be expected to maintain and protect, and where appropriate improve, the County's green infrastructure network. Advice is provided on the circumstances in which existing green infrastructure may be lost to development, the requirements of new provision within development proposals and advice in regard to public rights of way
22. 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.
23. 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.
24. 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.

25. 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.
26. Policy 35 (Water Management) requires all development proposals to consider the effect of the proposed development on flood risk, both on-site and off-site, commensurate with the scale and impact of the development and taking into account the predicted impacts of climate change for the lifetime of the proposal. All new development must ensure there is no net increase in surface water runoff for the lifetime of the development. Amongst its advice, the policy advocates the use of SuDS and aims to protect the quality of water.
27. 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.
28. Policy 39 (Landscape) states that proposals for new development will only be permitted where they would not cause unacceptable harm to the character, quality or distinctiveness of the landscape, or to important features or views. Proposals are expected to incorporate appropriate mitigation measures where adverse impacts occur. Development affecting Areas of Higher landscape Value will only be permitted where it conserves and enhances the special qualities, unless the benefits of the development clearly outweigh its impacts
29. Policy 40 (Trees, Woodlands and Hedges) states that proposals for new development will not be permitted that would result in the loss of, or damage to, trees, hedges or woodland of high landscape, amenity or biodiversity value unless the benefits of the scheme clearly outweigh the harm. Proposals for new development will be expected to retain existing trees and hedges or provide suitable replacement planting.
30. Policy 41 (Biodiversity and Geodiversity) restricts development that would result in significant harm to biodiversity or geodiversity and cannot be mitigated or compensated. The retention and enhancement of existing biodiversity assets and features is required as are biodiversity net gains. Proposals must protect geological features, have regard to Geodiversity Action Plans and the Durham Geodiversity Audit and where appropriate promote public access, appreciation and interpretation of geodiversity.
31. 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

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

CONSULTATION AND PUBLICITY RESPONSES

STATUTORY RESPONSES:

33. *Croxdale and Hett Parish Council* raised concerns with regards to flooding, access and egress to and from the site, as well as stating that there is a historical planning background to the site, although no specific details of this are provided in the comments.
34. Upon receipt of amended plans they raised further concern over the new layout and state that the new access represents an arrangement less acceptable than that previously proposed.
35. *The Highway Authority* offer no objections to the proposal based on amended drawings showing a new means of access to east of the site.
36. *Local Lead Flood Authority (LLFA)* – they note the presence of a culvert on site along with surface water flood risk across the site, however, raise no objection. As an advisory flood resilient measures should be built into the development, including raised thresholds and flood doors.

EXTERNAL CONSULTEE RESPONSES:

37. *Environment Agency* – no response or comments received.
38. *Northumbrian Water* – note that a sewerage rising main and pumping station lies just beyond the boundary of the development site but that it is unlikely that their assets will be affected. However, their Asset Protection team intend to contact the applicant direct. They further comment that the pumping station operates 24 hours a day, 7 days a week and that noise and odour can be a by-product of that activity, including staff and vehicles attending site for maintenance purposes. They also provide details of expected stand off distances between dwellings and the pumping station.

INTERNAL CONSULTEE RESPONSES:

39. *Design and Conservation Section* – raised concerns over the scale and design of the dwelling as originally proposed and its impact on the adjacent listed terrace. Updated drawings were received taking into account concerns raised and as such are deemed appropriate.
40. *Landscape Section* – based on the original submission the proposals were considered to cause harm to the character and quality of the landscape and that given the location of the access onto Chair Lane (and the associated requirement for suitable visibility splays), any planting to help screen the property would be limited.
41. Upon submission of amended plans the Landscape Section required the submission of full hard and soft landscape details by means of condition prior to commencement of development.
42. *Environment, Health and Consumer Protection (Contaminated Land)* – advised there is no requirement for a contaminated land condition but that an informative should be included advising of the steps required in the event that unforeseen contamination is uncovered.

43. *Environment, Health and Consumer Protection (Nuisance Action Team)* – note that there is an NWL pumping station within the vicinity of the site, but based on information provided, the operation of the pump should not produce significant amount of noise or odour and no noise or odour impact assessment would be required. A condition is requested to ensure the proposed dwelling includes appropriate noise mitigation measures to meet standard noise levels to protect amenity of future occupiers.
44. *Ecology Section* - raise no objection to the application but require an integrated bat box to be included within the house to be secured through planning condition. The additional hedgerow provision is acceptable and in line with required ecological enhancements.
45. *Public Rights of Way* – raise no objections but highlight general points in relation to the PROW, which would be included as an informative to any approval granted.

PUBLIC RESPONSES:

46. Four letters of objection and one representation were received in relation to the original submitted scheme, raising the following concerns:
- Concerns that development will have adverse effect on listed buildings, will not fit in and look out of place.
 - Concerns over highway safety on Chair lane which is single track route.
 - House will cause loss of light and overshadowing in winter months.
 - House will cause overlooking and loss of privacy.
 - Poor access to the site and sharp bend on road, visibility obscured by screen hedge.
 - Concerns regarding flooding.
 - Land used for keeping sheep and has rubbish on it.
 - Concerns over impact on wildlife.
 - Chair lane used by pedestrians and cyclists. Development will increase risk of accidents. Lane has no lights or footpath.
 - Note that flooding does occur at the site and further flooding still a potential.
 - Parking an issue in the area
47. Upon receipt of amended scheme 3 further objections were received stating:
- The new access is considered to be in a worse location, being close to the junction and on a bend. Cars known to slide into this kerb area during winter months. Back road also used as a 'rat run'.
 - New access will cause accidents and will impact on housing opposite trying to get out of their drive.
 - New access on a 3-way junction.
 - House will look out of place in a conservation area and area is in a flood plain.

APPLICANT'S STATEMENT:

48. Notwithstanding the engineering constraints imposed on the site the design demonstrates compliance with the LPA's specific advice and guidance. Full cognisance has been taken of the historic context. The development is compatible with neighbouring uses and will create a clear boundary edge to the settlement and a high quality introduction to the village from the west. The case for the application is compelling and we would welcome the support of the planning authority in the realisation of the project.

PLANNING CONSIDERATIONS AND ASSESSMENT

49. 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, ecology and flooding risk.

Principle of the Development

50. 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.

51. 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.

52. The application site is located directly adjacent to the settlement of Croxdale. 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 or adjacent to it 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.

53. The site is located just beyond the settlement limit of Croxdale but there is no Neighbourhood Plan in force that provides a defined boundary in this regard. As such the proposed development should be considered against the requirements of policy 6 of the CDP noting the fact that it is within close proximity to the built-up area and relatively well related to it. It is noted that, apart from the stable building, the application site is undeveloped and to a degree, reads as being part of the open countryside, providing the rural setting for the village. Whilst the aerial views of the site show the existing stable building to be quite disconnected from the built area, the stable building is located such that, it is not further west or south of the existing limit of development at this part of the village and Chair Lane would help to provide a clear boundary edge, providing a level of containment to prevent unchecked sprawl. In this respect the proposals are considered well related to the existing settlement and considered acceptable in principle, subject to assessment against the various criteria in a) – j) detailed above, which are considered in more detail elsewhere in this report.

54. In relation to criteria a) and b), a proposed residential dwelling in this location is considered compatible with adjoining residential uses and there is no concern that it would result in inappropriate ribbon development, nor that it would be considered inappropriate backland development as the site can achieve ready independent highway access and can meet distance standards. In line with criteria f), the site is noted as being sustainable and located within walking distance to a small number of facilities, including a public house and a primary school and with ready access to sustainable modes of transport.

55. The development of this land to erect a single residential dwelling in a sustainable location would therefore be deemed acceptable in principle, subject to other considerations below.

Impact on the character and appearance of the area and designated heritage assets

56. 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) of the same policy that development should be appropriate in terms of scale, design, layout and location to the character, function, form and setting of the settlement.

57. 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.
58. The proposed development site lies to the west and within the setting of Front Street (numbers 1-20 and 21-38) which are Grade II listed although it is noted that the site and wider settlement are not located within a Conservation Area. Policy 44 of the CDP relates to the Historic Environment and states that development will be expected to sustain the significance of designated heritage assets, including any contribution made by their setting. Development proposals should contribute positively to the built and historic environment and should seek opportunities to enhance and where appropriate better reveal the significance and understanding of heritage assets.
59. The site is currently in use as open paddock and the Council's landscape section in assessing the details of the proposal noted that the site forms part of a complex of open spaces that relate to the settlement of Croxdale and is an approach by PROW to the Area of High Landscape Value (AHLV) that lies adjacent to the site. In their view, they consider that the site currently reads as open field/pasture with an associated blockwork stable and that a dwelling on site would intensify the use leading to a negative effect on landscape character of the site, local area, and approach to the AHLV. They further stated in relation to the original highways access point onto Chair Lane, that due to highways requirements to have suitable visibility splays, it would not be possible to incorporate any meaningful planting to mitigate against any impacts of a new dwelling in this location. They considered there to be conflict with policy 39 as a result, which requires that development proposals affecting AHLV will only be permitted where it conserves and where appropriate enhances, the special qualities of the landscape.
60. In design terms, Design and Conservation section commented on the original proposals raising significant concern over the design and scale of the dwelling, considering it to be inappropriate to the context and setting of the listed terraces. Amendments were sought as a consequence, to better reflect and respond to the proportions and material palette of the site context, noting current conflict with policy 44 of the CDP.
61. The applicant subsequently amended the scheme which reflected significant reductions in the size and scale of the dwelling, with natural stone and slate materials proposed in keeping with the listed terrace. In response to landscape section concerns, the highway access was repositioned to an existing access point to the east of the site, removing the requirement for a considerable visibility splay along the Chair Lane boundary that would in turn facilitate more robust screen planting along this boundary edge providing some landscape and visual amenity mitigation.
62. In assessing the site and proposals, it is noted that the proposed dwelling would be located just south of the centre of the site in a similar position to the existing stable building which would be removed. As such the existence of built form on the site is established and is readily noted when turning off the B6288 onto the access road leading to the wider residential area. At two storeys high, the dwelling would be more prominent, but there is a drop in levels and the dwelling would have the narrower gable end facing this entrance point.

It's height and scale, along with the use of natural stone to the walls and hipped slate roof would assimilate the building with the design and scale of surrounding terraced houses and relate well to the existing built form. Whilst the design of the property varies from the regulated terraced lines of surrounding properties given it relates to a detached dwelling, the individuality of its appearance and detailed design is considered acceptable and proportionate in its approach, taking all necessary cues from surrounding properties in terms of materials and scale in order to ensure it does not detract from the character of the listed terraces. A condition can be applied requiring the submission and agreement of details of all proposed walling and roofing materials, along with details of boundary treatments.

63. The single storey double garage would be finished in similar materials to the dwelling with a pyramid hipped roof, measuring 4.3 metre to tip and 2.2 metres to eaves. Located to the north east of the site, it would be set adjacent to the boundary planting. Given its height and size with matching materials to the dwelling it is not considered to create any significant visual impacts in the area and is suitably located in this position adjacent to the settlement edge. Design and conservation section assessed the updated proposals, welcoming the use of natural stone and slate materials.
64. Comments from the Council's Landscape Section are noted, and it is accepted that the site currently reads as open green space which links to the countryside setting. However, the location and presence of a rendered building with dual pitched roof located towards the centre of the site allows the site to have strong visual links with the urban residential space to the north, east and south. Whilst reference is made to it contributing to the setting to the AHLV, it should be noted that it does not fall within this landscape designation. That aside, a new dwelling and garage building would effect a change to the character of the site, but with its close proximity to the urban edge, further reinforced by its south boundary aligning with the garden boundary line of no. 38 Front Street East, this change is not considered to create significant harm, as it would comfortably read with the adjacent residential properties. With the proposed highway access repositioned during the course of the application to a point in the eastern boundary, this would allow for a more robust planting scheme along the north and south boundaries, which would allow continued ties with the surrounding countryside, more effectively screening the site, and helping reduce any perceived incursion or impacts on the surrounding countryside character. It is considered that a robust planting solution along these boundaries would provide a defensible boundary to the area of existing residential framework to the north.
65. As such the proposal is considered to align with policy 6c and policy 39 of the CDP, which both require mitigation for loss of open land that contributes to the character of a locality or any adverse visual or landscape impacts resulting from development. Through changes to the layout allowing for a more robust planting schedule along the boundaries of the site, it is considered the impacts have been reduced. Subject to a full detailed landscape condition the proposals are considered to accord with relevant planning policies.
66. In consideration of the various details above, and subject to relevant conditions, the proposals are considered to accord with policy 29 and 6d of the CDP. In relation to the listed terrace, this is considered suitably protected in line with policy 44 of the CDP, paragraph 195 of the NPPF and Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, in respect of protecting listed buildings by having special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

Impact on amenities of neighbouring residents

67. 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).
68. 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.
69. The proposed residential property is set well within the site with the majority of windows facing north east and south west. The nearest residential property to the site is located at no. 39 Salvin Street and is located approximately 30 metres to the east. Due to the location of the proposed dwelling and its orientation, there would be no direct overlooking between it and no. 39 Salvin Street. Although some concerns were raised as part of an objection that there would be a loss of privacy and overlooking, along with a loss of light and overshadowing, given the 30 metres separation distance there are no concerns with regards overlooking and the proposals accord with relevant distance standards set out in the SPD. In terms of loss of light and overshadowing, the dwelling would be 30 metres west/south west at its closest point to the nearest dwelling. As such any overshadowing would potentially happen at dusk/sunset. However, given the distance it would be expected that any shadow cast would for the most part be contained within the curtilage. Whilst there may be some impact in this regard at certain times of the year, this would be limited and not expected to result in significant impacts.
70. The proposed residential dwelling would meet internal space standards in compliance with the nationally described space standards, referenced within policy 29.
71. 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 property or works to increase the height of the dwelling, 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 the area and nearby residents.
72. Environmental Health assessed the details of the proposals as a noise sensitive development, noting that the main source of potential noise relates to an NWL compound north of the development used as a sewage pumping station. However, upon receipt of further information from NWL with regards the pumping station, Environmental Health did not consider that the dwelling would be negatively impacted by noise or odour from it. In addition NWL refers to a required 15 metres stand-off between the pumping station and any residential properties and it is noted from the site plan that this stand-off distance is comfortably met. As such Environmental Health raise no objections to the proposal but request a condition to ensure that the property meets appropriate internal noise level standards. Subject to a suitably worded condition to this effect, it is considered that the proposals meet the requirements set out in policy 31 of the CDP in this regard.

73. 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 property and its 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. Space standards are met 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

74. 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.

75. Originally access to the site was proposed to be taken through the existing access off Chair Lane. As already noted, there were concerns over the impact on the amenities of the area in creating a wide visibility splay to allow safe access and egress from the site. In addition, numerous objections and concerns were raised with regards safety of access at this point and the impact on pedestrians and cyclists that use Chair Lane which was noted as a single track with no lights or footways.

76. The applicant revisited the proposed layout, taking into account safety concerns and the requirement for planting mitigation. An existing gate access was noted at the east of the site and put forward for consideration. Highways section assessed the details of the use of the access point and commented that the revised location of the access to the eastern end of the site would offer better visibility. However, they note that vehicles heading east then north onto Wood View from Chair Lane would have poor view at the junction but vehicles coming from this direction would likely be travelling at very low speed due to the tight left turn.

77. It is noted that the existing fence line is to be removed and a new stone wall built approximately 5.5 metres back along the centre of the new access from the existing kerb line. This should enable an average vehicle to pull off the road before having to stop to allow the gates to be opened. It is noted that the gates are shown correctly opening inwards.

78. Due to the layout of the site and the position of the access the visibility splay is complex. As mentioned above, vehicles from Chair Lane should be approaching slowly however the maximum height of the wall should be 1 metre to afford good visibility to the right when exiting the site. The condition to be attached for boundary enclosures as mentioned above will allow an assessment of this to ensure it is kept at one metre for highway safety reasons.

79. A suitable quantity of parking is available within the site to serve the proposed dwelling as well as any potential visitors to the site. Although a public objection was raised with regards existing parking in the area, the introduction of the new proposed dwelling will not impact on this or make the situation worse.
80. Public rights of way assessed the details of the application including the new access to the site. Although a registered PROW runs directly passed the new access point, they raise no objection to the scheme.
81. On this basis the proposals are considered to be compliant with the relevant parts of policies 6 and 21 in terms of highway safety and policy 26 in relation to protection of PROWs.

Ecology

82. Policy 41 Biodiversity and Geodiversity of the CDP has a range of requirements, including for new development to minimise impacts on biodiversity by retaining and enhancing existing biodiversity assets and features and providing net gains for biodiversity including by establishing coherent ecological networks. Ecology raised no objections to the scheme but required that some biodiversity net gain be provided as part of the proposals. They note the proposals for enhanced landscaping which they deem to be acceptable but also request that an integrated bat box be included on the western elevation of the dwelling. A condition will be applied requesting these details. Subject to this condition, the proposals are considered to accord with policy 41 of the CDP.

Flood Risk

83. Policy 35 of the CDP relating to water management requires all development proposals to consider the effect of the proposed development on flood risk, both on-site and off-site, commensurate with the scale and impact of the development and taking into account the predicted impacts of climate change for the lifetime of the proposal. All new development must ensure there is no net increase in surface water runoff for the lifetime of the development.
84. The policy further states at part g) that where sites may be susceptible to over land flood flows (as shown in the Strategic Flood Risk Assessment) or lie within a Surface Water Risk Area (as shown in the Surface Water Management Plan) then developers must put adequate protection in place. In relation to culverts at part i) it states: all new development with culverts running through the site must seek to de-culvert watercourses for flood risk management and environmental benefit, unless it can be clearly demonstrated that this is not practical.
85. A Flood Risk Assessment (FRA) was submitted with the proposals which clarified that the site is not within the Environment Agency Flood Risk Zones 2 or 3. On this basis there is no requirement to undertake a sequential or exceptions test in relation to the development site. However, given the location of the dwelling house close to the Nickynack Beck and over a culvert, a consultation was sent to the Environment Agency but no comments were received.
86. The scheme for a single dwelling on site is below the threshold where the Councils' drainage officers or Northumbrian Water would comment in relation to surface water drainage or foul drainage. However, from assessing the submitted Flood Risk Assessment and the Council's own records on surface water overland flood routes it has been identified that a large part of the site is considered to be at risk to surface water flooding, with the southern part of the site presenting as high risk, just south and east of the proposed location of the property – high risk meaning that the area has a chance of flooding of greater than 1 in 30 (3.3%) each year.

87. The FRA went on to assess and model expected flow rates and the capacity of the culvert under the site. They identified that the culvert would potentially not be able to accommodate the worst case 1 in 100 year or 1 in 100 year plus climate change event. During these extreme events the culvert would likely become overwhelmed and the resultant flows would be conveyed above ground and through the proposed development site. Further modelling was undertaken to establish extent of overground flooding and movement across the land. Based on this, a series of mitigation measures were put forward to protect the new dwelling from flood risk, including setting all new floor levels 300 mm above adjacent existing topographic levels to ensure flood water cannot enter the proposed dwelling; shape site levels to accommodate flood flow path; and use of on-site landscaping to ensure surface water falls away from the building and towards positive on-site drainage systems.
88. The FRA also notes that anyone wishing to carry out work in, over or adjacent to an ordinary watercourse (as Nickynack Beck would be classed) must apply to DCC for consent, in line with the Land Drainage Act 1991. As part of the mitigation measures provided within the FRA it is stated that the proposed easement between the dwelling and the culvert centre line would need to be agreed by DCC.
89. Given the noted flood risk on site and the presence of a culvert, a request was made to Drainage section for comment. They responded that whilst it is advised not to build within surface water risk area, there would be no objection. If the development were to proceed the property would be advised to be resilient to potential risk from flood such as through elevated thresholds and floor levels.
90. Whilst no objections are raised by drainage section, in line with policy 35g) it would be considered appropriate to condition the mitigation measures proposed as part of paragraph 5.04 of the FRA. In terms of policy 35i) and the requirement to remove the culvert, given the size and location of the development, it would not appear practical to undertake this extent of engineering works and drainage section made no comment that this would be required. Separate to the planning process, the developer would need to secure permission from DCC for any works in and around the culvert and it is therefore considered that this aspect of the development is addressed. In terms of foul drainage from the development, this element would be regulated as part of the Building Control process to ensure appropriate standards.

Other issues

91. 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. 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.
92. Contaminated land raise no objection requiring an informative to be included as part of any approval should land contamination be found as part of any on site ground works.

CONCLUSION

93. 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.

94. 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.

95. The objections received have been noted and considered as part of the assessment of the proposals but are not considered to outweigh the merits of the scheme in this case.

RECOMMENDATION

That the application be **APPROVED**, subject to the following conditions:

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

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 29 and 44 of the County Durham Plan and Parts 12 and 16 of the National Planning Policy Framework.

Plan	Drawing No.	Date Received
Site plan	TE.06 (Rev A)	29/06/21
Ground & first floor layout plans	TE.07 (Rev A)	29/06/21
Roof plan & SW elevation	TE.08 (Rev A)	29/06/21
NE elevation	TE.09 (Rev A)	29/06/21
Section A-A, SE & NW elevations	TE.10 (Rev A)	29/06/21
Garage plans	TE.11 (Rev A)	29/06/21
Site location plan		29/06/21

3. Notwithstanding any details of materials submitted with the application no development shall commence until details of the make, colour and texture of all walling and roofing materials have been submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the approved details.

Reason: In the interests of the appearance of the area and to comply with Policy 29 of the County Durham Plan and Part 12 of the National Planning Policy Framework.

4. No development shall commence until precise details of the integrated bat box along with an elevation plan indicating its precise location on the dwelling here by approved, 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.

5. No development shall commence until a detailed landscaping scheme has been submitted to and approved in writing by the Local Planning Authority.

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

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

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

Trees, hedges and shrubs scheduled for retention.

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

Details of planting procedures or specification.

Finished topsoil levels and depths.

Details of temporary topsoil and subsoil storage provision.

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

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

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

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

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

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

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

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

Any trees or plants which die, fail to flourish or are removed within a period of 5 years from the substantial completion of the development shall be replaced in the next planting season with others of similar size and species.

Replacements will be subject to the same conditions.

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

7. Prior to the first occupation of the development hereby approved, details of all means of enclosure of the site shall be submitted to and approved in writing by the Local Planning Authority. The enclosures shall be constructed in accordance with the approved details thereafter.

Reason: In the interests of the visual amenity of the area and to comply with Policy 29 of the County Durham Plan and Parts 12 and 15 of the National Planning Policy Framework.

8. No development shall be occupied 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.

9. 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 0730 to 1800 on Monday to Friday and 0730 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.

10. The dwelling hereby approved shall not be occupied until such time as the mitigation measures detailed in paragraph 5.04 of the Flood Risk Assessment Report received 25 March 2021 (comprising of, but not limited to, ensuring finished floor levels are 300mm above existing topographical levels and landscaping site levels in order to direct drainage away from the property and towards positive onsite drainage systems) have been installed. Thereafter, the mitigation measures shall be retained in perpetuity.

Reason: To protect against flood risk on site and outside the site in compliance with policy 35 of the County Durham Plan and Part 14 of the NPPF.

11. The development shall ensure that the dwelling hereby approved achieves the following noise levels, and should be permanently retained thereafter:

- 35dB LAeq 16hr bedrooms and living room during the day-time (0700 - 2300)
- 30 dB LAeq 8hr in all bedrooms during the night time (2300 - 0700)
- 45 dB LAmax in bedrooms during the night-time
- 55dB LAeq 16hr in outdoor living areas

Any noise mitigation measures required shall be installed prior to the beneficial occupation of the development and shall be permanently retained thereafter. On written request by the planning authority the applicant shall, within 28 days, produce a verification report to demonstrate the above rating levels have been achieved.

Reason: In the interest of the amenity of existing and future occupants in accordance with Policy 31 of the County Durham Plan and Part 15 of the National Planning Policy Framework.

12. 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.

STATEMENT OF PROACTIVE ENGAGEMENT

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.)

BACKGROUND PAPERS

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

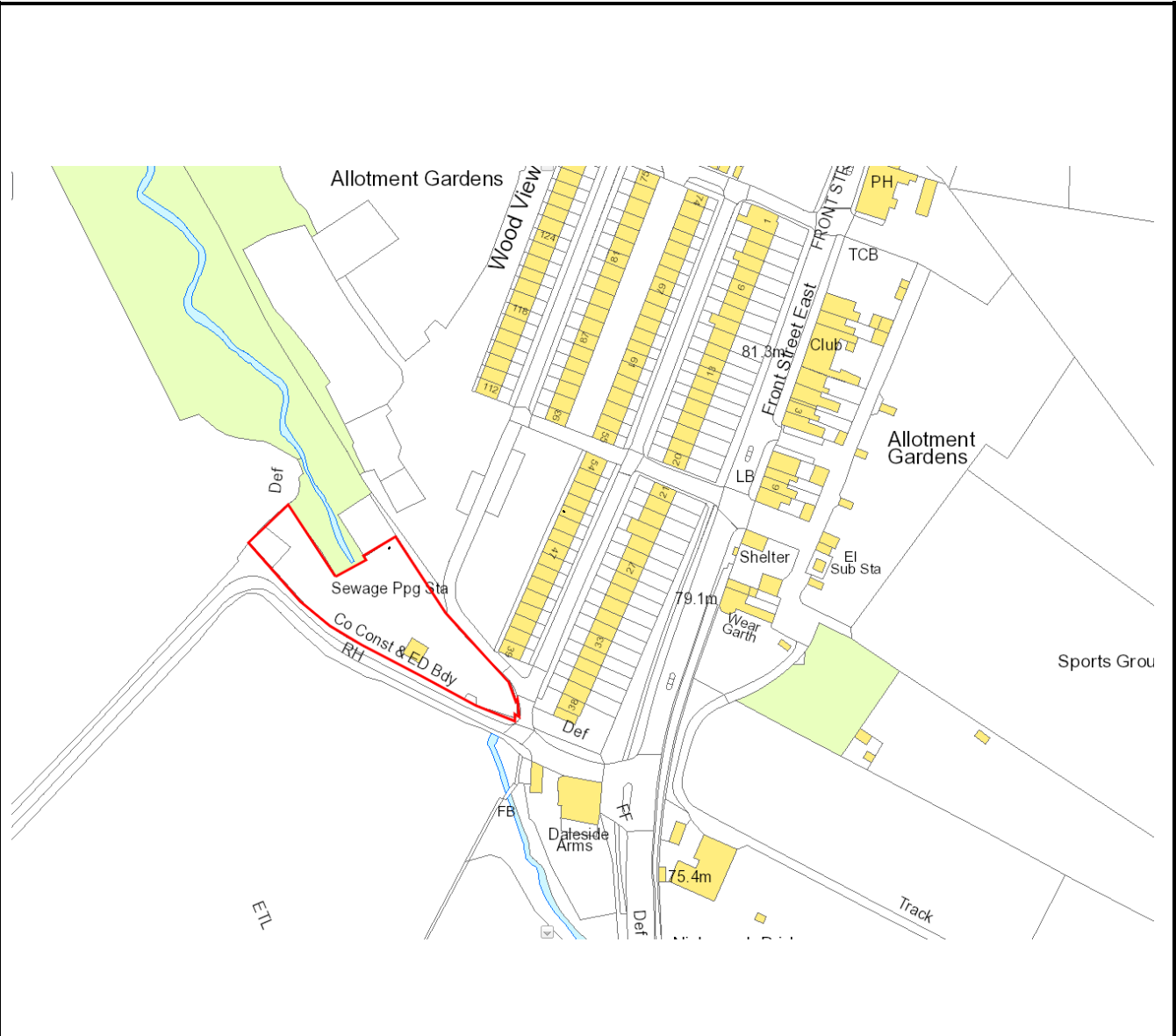
Statutory, internal and public consultation responses

The National Planning Policy Framework (2021)

National Planning Practice Guidance Notes

County Durham Plan

Residential Amenity Standards SPD (2020)



<p>Planning Services</p>	<p>DM/21/00624/FPA Proposed house and detached garage at land west of 39 Salvin Street, Croxdale, Durham, DH6 5HZ.</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>Date 9 November 2021</p>	<p>Scale NTS</p>

COMMITTEE REPORT

APPLICATION DETAILS

APPLICATION No: DM/21/02774/VOC

FULL APPLICATION DESCRIPTION: S.73 application for the removal of Condition No.3 (Outside seating) to permit outside seating within the rear garden on a permanent basis pursuant to DM/19/01789/VOC.

NAME OF APPLICANT: Rory Handy

ADDRESS: 57 Claypath, Durham, DH1 1QS

ELECTORAL DIVISION: Elvet and Gilesgate

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

DESCRIPTION OF THE SITE AND PROPOSALS

The Site

1. The application site is an existing deli, café and bakery situated within Upper Claypath. The property appears to date from the early 19th Century and sits amongst a terrace of similarly aged and styled properties, most of which appear to be in residential use although towards the western end of Claypath towards the city centre the uses of properties on Lower Claypath become increasingly mixed / commercial in nature.
2. The property lies within Durham (City Centre) Conservation Area and although unlisted itself, lies adjacent to the Grade II listed house at no.56. The property is somewhat unusual in its remoteness from other non residential uses on this side of Claypath, with residential properties to all sides.

The Proposal

3. The application seeks the permanent consent to vary condition No.3 applied to consent DM/19/01789/VOC to permit outside seating within a section of the rear garden space. The application site was previously subject to a temporary 12-month trial use of the garden space to allow consideration as to whether the permanent use of the outdoor space is acceptable.
4. The previous consent also permitted extended opening hours of the premises, however that was not subject to a temporary consent period and as such this application purely relates to the use of the outdoor garden space.
5. The application is reported to Planning Committee at the request Councillor Ormerod (Local ward member) to be given consideration by the Committee due to complaints from residents in relation to noise and that due to COVID-19 restrictions the full 12-month trial period of actual business has not been possible.

PLANNING HISTORY

6. DRC/20/00272 - Discharge of condition No. 5 (Noise Management Plan) of planning application DM/19/01789/VOC. Approved 08.09.2020
7. DM/19/01789/VOC - Variation of conditions no. 3 (opening hours) to allow extended opening hours (0800 - 2100 Monday to Saturday and 1000 - 1800 Sunday), and no. 6 to permit outside seating within the rear garden of planning consent 4/10/00582/FPA. Approved 06.09.2019.
8. 4/10/00582/FPA - Change of use to delicatessen/cafe (mixed use A1/A3). Approved 11.10.2010.

PLANNING POLICY

NATIONAL POLICY

9. 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.
10. 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;
11. 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.

12. 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.
13. 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.
14. 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.
15. 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.
16. 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.
17. 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.
18. 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:

19. The following policies within the County Durham Local Plan are considered relevant in terms of this proposal:
20. Policy 1 (Quantity of Development) outlines the levels of employment land and housing delivery considered to be required across the plan period.
21. 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.

22. 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.
23. 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.
24. 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
25. 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'.

26. 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.

27. 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:

28. The following policies of the Durham City Neighbourhood Plan are considered relevant to the determination of this application.
29. 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.
30. 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
31. 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.
32. 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>

CONSULTATION AND PUBLICITY RESPONSES

STATUTORY RESPONSES:

33. The following comments were received following consultation with Statutory and Internal consultees.
34. **City of Durham Parish Council** - The Parish Council is aware that this application follows a 12-month temporary trial period, in which the applicant has been permitted use of the outdoor area to their premises. During that time, the Parish Council is not aware of any statutory noise complaints relating to the outside use of this premises.

The Parish Council notes the concerns of local residents to this application and feels that, so long as outdoor noise levels are kept at normal conversation levels and the noise management plan is adhered to, this application should be accepted by the County Council..

INTERNAL RESPONSES:

35. **DCC Env. Health** - It is noted the business has been operating under temporary planning permission and we are not aware of any statutory nuisance complaints being made to date. We are aware the business is in a predominately residential area where there will be several noise sensitive receptors and the proposed hours of operation have been increased to a suggested as 0800 to 2100 Monday to Saturday and 1000 to 1800 Sunday. To help control noise when temporary planning permission was granted a noise management plan was submitted.
36. We would therefore advise we do have concerns regarding that the new suggested increased hours of operation, which may likely impact on amenity to what is a residential area. We would suggest if permanent planning permission is granted then the above noise management plan is adhered and the stated operational hours, being 10:00 to 20:00. Any remaining customers will be asked to move inside from 19.30.
37. **DCC Design and Conservation** - This variation of condition application seeks consent to permit the outdoor customer seating area within the rear garden to be used on a permanent basis. As no physical changes are required the impact upon the character and appearance of the surrounding conservation area and the setting of listed heritage assets within the vicinity of the site, would be neutral, consequentially sustaining and conserving. There will be a benefit by helping to improve the customer offer of the well-established local business allowing it to continue to grow and contribute positively to the retail offer in the mixed use key historic street. Based on the above, there are no objections from a heritage and design perspective. The main impact would appear to be one of residential amenity which is for the planning case officer to determine.

PUBLIC RESPONSES

38. The application has been publicised by way of site notice and 40no. notification letters sent to neighbouring properties, in response 5no. letters of support have been received, and 2no. letter of objection were received, a summary of the points of objection and support are as follows:

Objection

- Loss of privacy through overlooking of customers
- Noise and disturbance from customers
- Non compliance with Noise Management Plan

Support

- The temporary trial has proved no smell noise or other problems as a result of the use
- Wonderful addition to the business, providing outside space for meetings and gatherings
- Great place for the community to meet and relax, with no known issues having occurred, customer are polite and respectful
- The business is an asset to the community in Claypath and should be supported

APPLICANTS STATEMENT:

39. Claypath Deli's Garden is a peaceful space with customers using the space as a place to sit and enjoy a tea or coffee whilst reading a book or having a chat. Since opening, we have received no complaints from neighbours over noise complaints, or any other complaints of any nature.
40. Before the trial was granted, we had objections from a few neighbours who live bordering the garden, most of whom have not subsequently objected, proving that we have not caused a nuisance.
41. The objection from Mr Tomlinson that customers could see into his window from the seating area is quite simply not true. We have invited the Planning officer for this case to see the garden and there is no way of seeing into Mr Tomlinson's house from any area of the deli garden. The customers are not allowed in the northern part of the garden which is closest to his house, and we have deliberately planted trees and shrubs to increase privacy and reduce noise.
42. The other objection we have faced is from Mr Newton and his Wife, they objected to the business even opening in the first place back in 2010, and every subsequent planning application from ourselves has been met with resistance from The Newtons. We have received no complaints from any neighbours at any point, the fact that our closest neighbour, with whom we share the full boundary has not objected is also testament to the garden not being a nuisance.
43. To answer Mr Newtons objections
- The years trial has been a fair one as the garden has been busier than it usually would as we had periods where customers were left with no other option that to sit outside due to covid restrictions.
 - The garden has been in use for 71% of the year, this is more than adequate in our view to determine if a nuisance has been caused.
 - Mr Newton mentions small groups of people being noisy in the garden, yet no complaints were received by ourselves or from environmental health. On several occasions, the garden has been at capacity yet has always remained peaceful and quiet.
 - Contact numbers for the deli were not handed to local residents as many are elderly and therefor more vulnerable to Covid, this was peak pandemic, and we believe it would have been irresponsible to hand over bits of paper containing numbers that are easily available elsewhere. Our number is available via google, we are in the phonebook and are contactable via email and social media. We see most of our neighbours on the street daily, and to date have not received any complaints.
 - The boundary fence is 1.8m in height and is closed boards, this has been proven to the Local planning officer in person and via photo evidence.
44. The local Parish council support the application and have vouched for it being a peaceful and calm space, which is a community asset rather than a hindrance. Numerous other local residents are in support of this application, and many have written letters of support.

45. We are a family run business and live close by the deli, we are very much a part of the local community. We understand how important it is to have a family run café / bakery that is a hub for the community as there is not a great deal else around upper Claypath. We do not wish the deli garden to be a nuisance, but rather a haven for local people to meet in a safe covid secure environment.

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>

PLANNING CONSIDERATIONS AND ASSESSMENT

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 the area 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. The site is located on an unallocated site outside of a designated shopping or retail area; however, it is located approximately 120m 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. The principle of the use of the site has been established by way of the original extant planning approval (4/10/00582/FPA), and therefore the use is considered acceptable in this location subject to consideration of the other material considerations as detailed below.

Impact upon Residential Amenity

50. 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.

51. 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 states “Development will not be permitted where inappropriate odours, noise, vibration and other sources of pollution cannot be suitably mitigated against”
52. 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.
53. The proposal is of a type which could give rise to additional noise and disturbance generated by users of the outside seating area. Such matters have been raised in objection by 2no. nearby residents. The closest residential properties are situated to abut the seating area to either side of the premises (being a terraced property).
54. As such, in order to assess the appropriateness of the use of the garden space as outdoor seating and the potential impact it may have on neighbouring residential properties, the outdoor seating area has been the subject of a temporary 12-month consent, (which included separate hours of operation of the outdoor seating area to the main premises), which following the expire of the trial period this application seeks the permanent retention of the outdoor seating area.
55. Concern has been raised by an objector and the City of Durham Parish Council that due to national and local COVID-19 restrictions imposed during the 12 month period it has not been possible to fully assess the proposal.
56. In response the applicant has provided details in relation to the period in which they were open for the consumption of food and drink within the rear garden as permitted by National and Regional restrictions. The applicant has confirmed that the rear garden space was in operation between 8th September 2020 – 5th November 2020, and 12th April 2021 – 8th September 2021 (end of 12 month period), this equates to 259 days of potential operation out of a possible 365 days.
57. In light of the above records, it is considered that the proposal has been in operation for a sufficient period of time to allow the use to be adequately assessed, and for any obvious significant nuisance to have been noted and recorded. Indeed, it is noted that the premises were mainly closed during the winter / early spring months when it would be expected that the outdoor area would not be regularly in use due to weather conditions, and during a period April – May 2021, when only outdoor seating was permissible and as such is likely to have seen greater usage than would usually have been expected, within normal operating periods
58. The Council's Environmental Health Officer has been consulted and confirmed that “the business has been operating under temporary planning permission and we are not aware of any statutory nuisance complaints being made to date....We would suggest if permanent planning permission is granted then the noise management plan is adhered and the stated operational hours (being 10:00 to 20:00)”. There was some confusion in relation to the opening hours in the comments from the Env. Health Officer, the application form gives the opening hours for the business, and not the outdoor seating area, the application does not seek to extend the hours of the outdoor seating area, but to remain as previously agreed (10:00-20:00). This will be controlled by a planning condition to ensure that the outdoor area is only in use between that period.

59. In addition to the above, concerns have been raised from local residents relating to the impact of the development upon residential amenity, specifically as a result of increased disturbance from noise nuisance and overlooking. Objectors have stated that there have been a number of occasions where small groups have caused noise which has disturbed the enjoyment of gardens. However, as confirmed by the Council's Env. Health section, and the applicant's own records no complaints in relation to noise were received in relation to any incidents.
60. It is therefore considered that any incidents that did occur were isolated and sporadic incidents that are not archetypal of the behaviour of users of the outdoor seating space over the trial period, and as such it is not considered that the proposal for the permanent use of the outside seating area will cause sufficient noise disturbance to a sufficient degree to warrant refusal of the application in relation to Policy 31 of the County Durham Plan.
61. In terms of the overlooking of neighbouring properties, the proposed seating area is separated from the neighbours to the side by close boarded fence of approx.. 1.8m in height and separated from the adjacent property to the rear (3 Hillcrest Mew) by mature dense landscaping, existing boundary treatment, and a separation distance of approx. 26m. It is therefore not considered that the degree of overlooking available (if any) from the seating area to neighbouring properties is sufficient to create a sufficiently detrimental impact on the occupants residential amenity to warrant refusal of the proposal.
62. Therefore, subject to the inclusion of a planning condition in relation to opening times of the outdoor garden space it is considered that the development accords with the requirements of policy 29, 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. Due to the location of the proposal within the rear garden and the existing use of the building that the proposal is acceptable in this regard given the 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

66. 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 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.

67. 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).
68. 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.
69. 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).
70. As noted the application property is located within the Durham City Conservation Area and in close proximity to the Grade II Listed buildings at 56 Claypath (adjoining property) and 64, and 66 Claypath (directly adjacent to front) along with various other listed buildings within Claypath. However, as the proposal seeks consent for the use of the enclosed rear garden which would not require any significant physical alterations to the building or its appearance within the conservation area. As such it is not considered that the proposal would have any material impact upon the character, appearance or setting of the designated heritage assets and would, through the introduction of a positive use to an otherwise vacant area of the site that will deliver enhanced vitality and viability to this part of the conservation area and the setting of the listed building. This view is supported by the Councils Conservation and Design team as detailed above.
71. 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 buildings through the reuse of otherwise underutilised area that will provide greater vibrancy and vitality to the area 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) Act 1990.

Impact on the character and appearance of the streetscene

72. 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.
73. 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.

74. It is therefore considered that the proposal is acceptable in line with Policies 29 and 30 of the CDP.

Other Matters

75. As detailed above the application has been the subject of a temporary 12-month consent to allow the trial use of the outside area to assess its appropriateness and whether the proposal will cause a significant nuisance, concern has been raised by an objector and the City of Durham Parish Council that due to national and local COVID-19 restrictions imposed during the 12 month period it has not been possible to fully assess the proposal.

76. In response to the above the applicant has provided details in relation to the period in which they were permitted to be open for the consumption of food and drink within the rear garden as permitted by National and Regional restrictions. The applicant has confirmed that the rear garden space was in operation between 8th September 2020 – 5th November 2020, and 12th April 2021 – 8th September 2021 (end of 12 month period), which equates to 259 days of potential operation out of a possible 365 days.

77. In light of the above records, it is considered that the proposal has been in operation for a sufficient period of time to allow the use to be adequately assessed, and for any obvious significant nuisance to have been noted and recorded.

78. Indeed, it is noted that the premises were mainly closed during the winter / early spring months when it would be expected that the outdoor area would not be regularly in use due to weather conditions, and during a period April – May 2021, when only outdoor seating was permissible and as such is likely to have seen greater usage than would usually have been expected, within normal operating periods.

CONCLUSION

79. 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.

80. In addition, it is considered that the proposal would enhance the character and appearance of Durham City Conservation area through the reuse of an underused area 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.

RECOMMENDATION

That the application (DM/21/02774/VOC) be **APPROVED** subject the following conditions;

1. The use of the external rear seating area (as detailed on Proposed Outdoor Changes plan as part of DM/19/01789/VOC) for the sale and consumption of goods shall be in accordance with the agreed Noise Management Plan submitted as part of DRC/20/00272.

Reason: In the interests of residential amenity, in accordance with the objectives of Policy 29 and 31 of the County Durham Plan.

2. The external rear seating area shall not be open to customers outside the hours of 10:00 to 20:00 on any day of the week.

Reason: In the interests of the residential amenity of surrounding properties in accordance with Policy 29 and 31 of the County Durham Plan, and part 12 of the National Planning Policy Framework.

3. No music shall be played in, or relayed to, any external area of the property

Reason: In the interests of residential amenity, in accordance with the objectives of Policy 29 and 31 of the County Durham Plan.

4. The premises shall not be open to customers outside the hours of 08:00 to 21:00 Monday to Saturday and 10:00 to 18:00 on Sundays, Public and Bank Holidays.

Reason: In the interests of the residential amenity of surrounding properties in accordance with Policy 29 and 31 of the County Durham Plan, and part 12 of the National Planning Policy Framework..

5. The only method of heating food employed in the premises shall be a microwave oven or other sealed unit. No other form of cooking and/or heating of food shall be utilised within the premises.

Reason: In the interests of the residential amenity of surrounding properties in accordance with Policy 29 and 31 of the County Durham Plan, and part 12 of the National Planning Policy Framework..

STATEMENT OF PROACTIVE ENGAGEMENT

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

BACKGROUND PAPERS

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

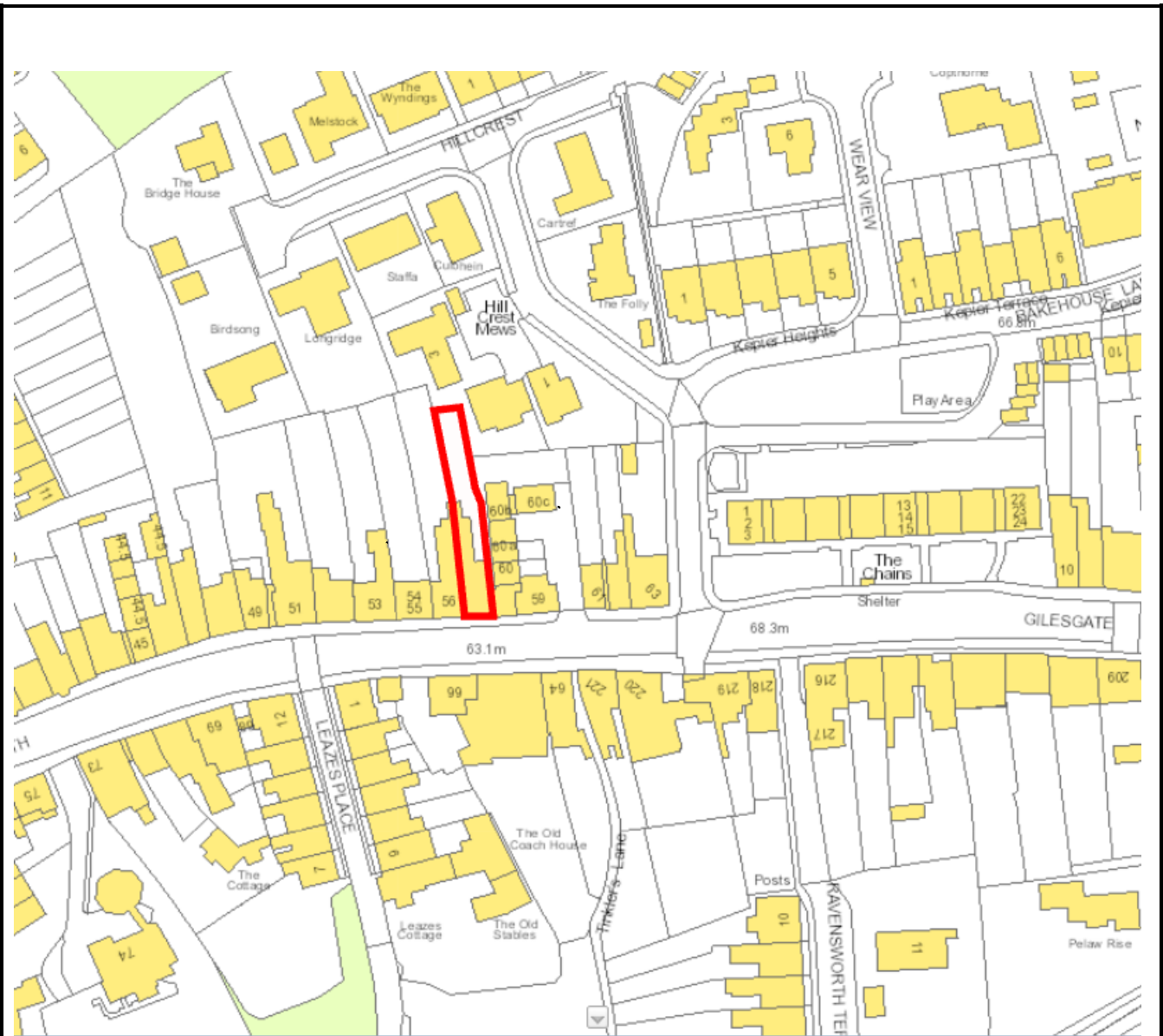
The National Planning Policy Framework (2021)

National Planning Practice Guidance Notes

County Durham Plan (2020)

City of Durham Neighbourhood Plan (2021)

Statutory, internal and public consultation responses



<p>Planning Services</p>	<p>S.73 application for the removal of Condition No.3 (Outside seating) to permit outside seating within the rear garden on a permanent basis pursuant to DM/19/01789/VOC.</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>57 Claypath, Durham, DH1 1QS</p>	
	<p>Date 06.10.2021</p>	<p>Scale NTS</p>



Planning Services

COMMITTEE REPORT

APPLICATION DETAILS

Application No:	DM/21/02896/FPA
Full Application Description:	Redevelopment of stables to provide 1 no 4 bed dwelling
Name of Applicant:	Mr and Mrs Bracewell
Address:	Fernhill, Newcastle Road, Crossgate Moor, Durham, DH1 4JZ
Electoral Division:	Neville's Cross
Case Officer:	George Spurgeon (Planning Officer) Tel: 03000 261 959 Email: george.spurgeon@durham.gov.uk

DESCRIPTION OF THE SITE AND PROPOSAL

The Site

1. Fernhill is a large detached house lying in extensive grounds on the north western edge of the Crossgate Moor area of Durham. To the west is open countryside, to the east the north-south running A167 road lies beyond The Lodge at the entrance to the site, with detached residential properties and Flass Vale further beyond. To the north lie residential properties in Whitesmocks Avenue, separated from the application site by the unsurfaced Club Lane extending in an east-west direction. Immediately to the south is further open countryside, with residential properties in Crossgate Moor Gardens beyond. The site is located within the Durham City Green Belt.
2. The existing building sits in a large area predominantly given over to lawns and substantial structural planting that screens much of the site from public views. It is set on a hill with the main house at the highest point and unequal falls to each side. The greatest change in level is to the north where the slope of the property falls to Club Lane and this difference in height wraps round the contours to the main road. The road rises as it heads south, however even at the highest point of the surrounding land the house still stands clear of its surroundings.

3. Close by to the site there are bus stops with services travelling into the city centre and northbound towards the Arnison Centre and Newcastle. Durham Johnson School is close to the south along with a general retailer and a vet's practice.

The Proposal

4. The application seeks planning permission for the demolition of the existing stables and the erection of a new 4 bed dwelling. The property known as Fernhill would be retained as a family dwelling.
5. The dwelling is proposed to be of an 'L' shape similar to the form and siting of the existing stables, with an upper floor footprint of 89m² and a lower floor footprint of 115m², compared to the approximate 100.7m² footprint of the existing stable building. The dwelling would consist of a lounge, dining area, kitchen, study and utility room to the first floor with four bedrooms and a bathroom to the lower floor. Whilst the dwelling would feature two storeys, it has been designed to be built into the landscape, resulting in the property appearing as a single storey dwelling from the north, east and west, and as a two-storey dwelling from the south. The red dashed line shown on the proposed elevation drawing indicates the height of the existing stables, of which the roof of the proposed dwelling would be comparable.
6. The dwelling has been designed to utilise traditional materials of stone to the base, complemented by timber cladding to the north, east and west external walls, stone to the southern elevation with glazing framed by stone quoins, and standing seam metal for the hipped roof. An external stone chimney is proposed to the east elevation.
7. Access to the site is currently from the A167 via two positions on the eastern boundary, with the main access to be taken from the southern gated unadopted private drive leading past The Lodge cottage and the northern entrance remaining to serve Fernhill. Two car parking spaces would be provided immediately to the south of the dwelling.
8. The application is reported to the Planning Committee at the request of the City of Durham Parish Council who consider the proposals to amount to inappropriate development within the Green Belt, as well as raising concerns over the impact on the Area of Higher Landscape Value.

PLANNING HISTORY

95/00371/FPA - Erection of three stall stable block erection of 2.1m stone wall and raising of pitched roof over private garage – Approved

03/00009/FPA - Erection of two storey pitched roof extension to side, single storey pitched roof extension to rear and extension of detached garage, to include demolition of existing garage and conservatory – Approved

03/00880/FPA - Change of use and conversion of existing garage to self-contained residential bedsit – Approved

08/00523/FPA - Proposed demolition of existing lodge and erection of replacement together with an additional 12 no. two storey detached dwellings with associated garaging, parking, access and landscaping – Withdrawn

09/00134/FPA - Demolition of existing flat roof extension and erection of replacement single storey pitched roof extension, erection of two storey pitched roof extension to east side elevation, erection of replacement porch to north elevation, removal of chimney and erection of replacement and demolition of existing outbuildings and erection of detached double garage – Withdrawn

09/00693/FPA - Demolition of existing flat roof extension and erection of replacement two storey pitched roof extension to east elevation, erection of single storey pitched roof extension to north elevation – Approved

11/00535/FPA - Erection of 3 no. dwellinghouses – Refused and dismissed at appeal

DM/14/03327/FPA – Erection of four detached dwellings with attached garages, demolition of the stable block conservatory extension on Fernhill and erection of a car port / covered area for parking a horse box - Refused

PLANNING POLICY

National Policy

9. 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.
10. 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;
11. *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.

12. *NPPF Part 5 Delivering a Sufficient Supply of Homes* - To support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay.
13. *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.
14. *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.
15. *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.
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 13 Protecting Green Belt Land*: The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.
18. *NPPF Part 15 Conserving and Enhancing the Natural Environment* - Conserving and enhancing the natural environment. The Planning System should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, geological conservation interests, recognising the wider benefits of ecosystems, minimising the impacts on biodiversity, preventing both new and existing development from contributing to or being put at unacceptable risk from pollution and land stability and remediating contaminated or other degraded land where appropriate.
19. *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:

20. The following policies of the County Durham Plan are considered relevant to the determination of this planning application:
21. 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.
22. *Policy 20 Green Belt* states that development within the Green Belt will be determined in accordance with national planning policy.
23. *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.
24. *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.
25. *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.
26. *Policy 32 Despoiled, Degraded, Derelict, Contaminated and Unstable Land* states that development will not be permitted unless the developer can demonstrate that the site is suitable for the proposed use, and does not result in unacceptable risks which would adversely impact on the environment, human health and the amenity of local communities and all investigations and risk assessments have been undertaken by an appropriately qualified person.
27. *Policy 35 Water Management* states that all new development should adopt the hierarchy of preference in relation to surface water disposal.

28. *Policy 36 Disposal of Foul Water* states that all new development should adopt the hierarchy of preference.
29. *Policy 39 Landscape* states that proposals for new development will be permitted where they would not cause unacceptable harm to the character, quality or distinctiveness of the landscape, or to important features or views and that development affecting valued landscapes will only be permitted where it conserves, and where appropriate enhances, the special qualities of the landscape, unless the benefits of the development in that location clearly outweigh the harm.
30. *Policy 40 Trees, Woodlands and Hedges* states that proposals will be expected to retain existing trees where they can make a positive contribution to the locality or to the development, maintain adequate standoff distances between them and new land-uses, including root protection areas where necessary, to avoid future conflicts, and integrate them fully into the design having regard to their future management requirements and growth potential.
31. *Policy 41 Biodiversity and Geodiversity* states that proposal for new development will not be permitted if significant harm to biodiversity or geodiversity resulting from the development cannot be avoided, or appropriately mitigated, or as a last resort, compensated for.

Neighbourhood Plan

32. The following policies of the Durham City Neighbourhood Plan are relevant;
33. *Policy S1: Sustainable Development Requirements of all Development and Redevelopment Sites Including all New Building, Renovations and Extensions* provides a general list of criteria to which all new development must adhere where relevant and appropriate.
34. *Policy H3: Our Neighbourhood Outside the Conservation Areas* which seeks to ensure that new development in these areas demonstrates an understanding of the area of the proposed development and its relationship to Our Neighbourhood as a whole.
35. *Policy D4: Building Housing to the Highest Standards* states that all new residential development should be of high quality design and meet building for life 12 standards.
36. *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.

CONSULTATION AND PUBLICITY RESPONSES

Statutory Consultee Responses:

37. The Coal Authority: considers that the content and conclusions of the Phase I Geo-Environmental Site Assessment are sufficient for the purposes of the planning system and meet the requirements of the NPPF in demonstrating that the application site is, or can be made, safe and stable for the proposed development, and as such offers no objection.
38. The City of Durham Parish Council object to the application on the grounds that the scale and massing of the proposed dwelling would have a greater impact upon the openness of the Green Belt than the existing stables so would constitute inappropriate development in the Green Belt with no very special circumstances; that the proposed dwelling would harm the surrounding Area of Higher Landscape Value (AHLV); and over concerns that the applicant would seek to erect new stables in the future as the existing stables are currently in use. Considers the proposal to be contrary to County Durham Plan Policies 20 and 39, Durham City Neighbourhood Plan Policies H3 and G4, and NPPF Parts 13 and 15.

Internal Consultee Responses:

39. *Highways*: comment that they are satisfied that the development could be accessed from the existing provision and as such offer no objections to the application.
40. *Landscape*: comment that the site is relatively well contained visually by a combination of topography, mature trees and garden vegetation and seek to ensure the retention of vegetation along the site boundaries.
41. *Arboricultural Officer*: notes that the proposal would result in the removal of T34 and T35 to facilitate the construction of the driveway and comments that their loss would not have a significant impact. The application is supported by a comprehensive Arboricultural Impact Assessment (AIA), Tree Protection Plan (TPP) and Arboricultural Method Statement (AMS) which are considered to be acceptable.
42. *Design and Conservation*: comments that the level of impact within the setting of the non-Designated Heritage Asset would be considered negligible and not harmful.
43. *Nuisance Action*: recommend a condition requiring the dwelling to be designed to ensure noise audible within the specified rooms and areas do not exceed specified noise levels.
44. *Contaminated Land*: consider that a Phase 2 site investigation report, Phase 3 remediation strategy and Phase 4 verification report should be secured by condition. Recommend a suitably worded informative in relation to unforeseen contamination.

45. *Archaeology*: notes that previous applications at this site have been commented on by the Archaeology Section, based on the findings of a desk based assessment (DBA) carried out in 2008 and submitted in support of application 4/11/00535/FPA. Consider that this is still relevant for this application and archaeological work should be carried out, to be secured by condition.

Public Responses:

46. The application has been publicised by way notification letters sent out to neighbouring land owners, and a site and press notice. 7 objections have been received, including one from the City of Durham Trust, raising the following concerns:

- The proposal is contrary to Green Belt policy as the proposal would impact negatively on the site openness and therefore the quality and value of the site as green belt, and expands the developed area within the green wedge linking to Flass Vale, with no exceptional circumstances to outweigh this harm
- Approving the application could set a precedent for replacing stables with dwellings, and would make it difficult to refuse the erection of a new garage on the site in the future
- Questions whether the stables and associated grazing land could be considered to form part of the garden of Fernhill, as the proposal takes in substantial areas of the site landscaping in addition to the current stable block
- The proposed dwelling would have a greater impact on the openness on the Green Belt than the existing stables
- The proposal would result in the loss of green space which is important for residents health and wellbeing, considers that the Fernhill site is far too large to be considered as only private residential garden space and is a landscaped estate forming a key component of the greenspace surrounding Durham City.
- The Fernhill highway access enters from a very busy section of the A167 with poor sightlines between the crest of a hill and a curve.
- Considers the proposal to be contrary to CDP Policy 10, 20 and 29, DCNP Policy S1, H3 and G1 and NPPF Part 13

47. Two letters of support have also been received, considering the proposed development to be positive for the city

Applicants Statement:

48. The site was purchased in 1994. The land was not within the designated Green Belt. In 1995 the applicant started to develop the land and successfully applied for and obtained planning permission to build stables on the land and convert one of the outhouses into a cottage, which is now rented privately. The requisite planning permissions were obtained and no reference was made to Fernhill being in the Green Belt. This changed in 2004 when the site was erroneously added to the Green Belt. It was land to the south of Fernhill (a Persimmon Homes site) that was considered during the City of Durham Local Plan Inquiry.

49. Since then, the development of this site has a long history of support from the Council, including acknowledgement in 2010 that there was “no rationale or justification as to why” the site was included in the Green Belt in 2004. In 2016 Officers of DCC signed a Statement of Common Ground that stated that the land exhibited none of the five purposes of Green Belt and should be removed from the Green Belt. In 2019 Officers of DCC signed a further Statement of Common Ground which repeated the opinion held for the previous 10 year.
50. Notwithstanding the above, we have continued to work with the local authority to reach an appropriate way forward which is both sensitive to the landscape in which it sits and provides unique design in line with the new aims of the NPPF. We have engaged in a pre-application enquiry to understand the position of officers in relation to the impact on openness of the Green Belt. It was recognised within this response that there were several merits of the proposal such as the Council’s Landscape Officer who notes that visually, the impact of the development upon openness would not be widely appreciated outside of the site in views from public vantage points. Following the pre-application response, further detailed design stages were explored to consider the best way forward.
51. The proposed home is within the footprint of the existing stable building. The scale of the building is to reflect the existing stable buildings and appear as low level single storey from the west, north and east. It is only from the south that the two storey element can be perceived.
52. The proposal now includes a singular home which utilises the topography of the site to propose a high-quality design which has carefully considered the character of the locality, introduced sustainable features with limited harm to the landscape. As acknowledged by both planning officers and landscape officers, there is significant existing screening which limits views into the site. The proposal includes locally sourced stonework with areas of timber cladding amongst other materials which provide a unique and beautiful home.
53. This proposal remedies past errors and the existing site does not contribute to a Green Belt function in terms of its openness as it has an urban character associated with residential dwellings and associated activities. The development will therefore not impact on the openness of the Green Belt as recognised by officers.

PLANNING CONSIDERATION AND ASSESSMENT

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

Principle of Development

54. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise with the NPPF representing a material planning consideration in this regard. 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. Paragraph 11c of the NPPF requires applications for development proposals that accord with an up to date development plan to be approved without delay.
55. This proposal seeks to develop land at Fernhill for one detached dwelling. The site is within the Green Belt and regarded as an area of high landscape value.
56. There is relevant planning history on this site, as it is noted that a previous planning application (4/11/00535/FPA) to develop three houses at the site was refused in September 2011, and a subsequent appeal (APP/X1355/A/11/2162513) dismissed in January 2012. More recently, application DM/14/03327/FPA for the erection of four detached dwellings with attached garages, and the erection of a car port / covered area for parking a horse box was refused by the planning committee in January of this year. The refusal and dismissal reasons centred around Green Belt implications, including the adverse effect on openness.
57. Consideration to remove the Fernhill site from the Green Belt took place through the plan making process, and the evolution and development of the County Durham Plan (CDP). The version of the CDP which was submitted for examination contained a Policy relating to 'non-strategic Green Belt amendments' which earmarked Fernhill for removal from the Green Belt (it was Policy 21 within the submission version). The Examination in Public (EiP) of the CDP commenced in November 2019 and the programmed hearing sessions closed on 6th February 2020. The Inspector issued his post hearing advice on 20th February 2020, and an amended CDP was prepared to take account of the specific instructions from the Inspector, and also to take account of all the minor/main modifications which the Council proposed following the hearing sessions and in response to the action points issued by the Inspector. This updated Plan was subject to consultation (26th May until 21st July 2020), with all comments sent to the Inspector to inform his final report, which was issued on 17th September 2020. The report confirmed that the CDP was sound and could progress to adoption.
58. The report dealt with the proposed removal of Fernhill from the Green Belt within paragraphs 334 to 337, and these are set out below:
59. 334. Fernhill is a detached house standing within a large garden surrounded by mature vegetation. It is separate from the main built up area of Durham city which is largely on the other side of the A167, and is bordered by an historic green lane to the north and open countryside to the west and south. The site is mainly open, and appears as part of the attractive rural area forming the setting of the historic city in this particular location.

- 60.335. Neither of the above two sites are required to meet identified development needs, and I am not persuaded that there are exceptional circumstances to justify the removal of either of them from the Green Belt.
- 61.336. I concluded earlier in this report that there are exceptional circumstances to justify removing land at the former police skid pan at Aykley Heads from the Green Belt and that it is suitable for residential development. The allocation of the site and its exclusion from the Green Belt are clearly shown on the Policies Map, and development requirements are set out in policy 4. Policy 21 therefore serves no material purpose with regard to the site.
- 62.337. In light of the above I conclude that policy 21 and paragraphs 5.198 to 5.201 inclusive be deleted from the Plan [MM102 and MM103]. The Policies Map should be amended to retain Fernhill and the former Lumley Boys School site in the Green Belt.
63. The finalised CDP was subsequently adopted by the Council on 21st October 2020 and is the development plan which covers the whole of County Durham. Within the CDP, Fernhill remains within the Green Belt.
64. This proposal will be assessed against the relevant local planning policies from the CDP, as well as national planning policy. As the application site remains within the Green Belt, Policy 20 (Green Belt) of the CDP is applicable. This states that development proposals within the Green Belt will be determined in accordance with national planning policy. The supporting text confirms that there is a presumption against inappropriate development in the Green Belt unless very special circumstances can be demonstrated.
65. The NPPF should therefore be used to assess this proposal. The NPPF attaches great importance to Green Belts, and identifies, at Paragraph 138 that the Green Belt serves five purposes. Paragraph 147 of the NPPF under proposals affecting the Green Belt states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
66. Paragraph 149 of the NPPF advises that a local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this are:
- a. buildings for agriculture and forestry;
 - b. the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it;

- c. the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;
- d. the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;
- e. limited infilling in villages;
- f. limited affordable housing for local community needs under policies set out in the development plan (including policies for rural exception sites); and 43
- g. limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would:
 - not have a greater impact on the openness of the Green Belt than the existing development; or
 - not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.

67. The starting point for determination of this application in terms of the principle of development is that the construction of new buildings in the Green Belt should be considered as inappropriate development. However, it is necessary to consider whether any of the exceptions set out above and in Paragraph 149 of the NPPF are applicable to the proposed development.

68. In this regard, whilst the definition of previously developed land is clearly set out within Annex 2 (Glossary) of the NPPF, the applicant has made a submission citing case law which they consider to be relevant and which supports their assertion that the Fernhill site is previously developed land rather than a greenfield site and that the proposed development falls within the exceptions to inappropriate development set out in Paragraph 149 of the NPPF.

69. The case concerned is *Dartford Borough Council v Secretary of State for Communities and Local Government* [2017]. This case concerned the definition in the Glossary to the NPPF of “Previously Developed Land” and in particular the exclusion of “land in built-up areas such as private residential gardens, parks, recreation grounds and allotments”. Dartford BC challenged a decision of one of the Secretary of State’s Inspectors which had held that the site of the proposed development in that case, which was in the countryside rather than a built-up area, was previously developed land since it was within the curtilage of an existing dwelling and not caught by the above-quoted exclusion. Dartford BC’s case was that to treat residential gardens in built-up areas as excluded by PDL but not to treat residential gardens in the countryside as PDL, was illogical. The Secretary of State submitted that Dartford BC’s interpretation defied the clear wording of the NPPF Glossary. The Court of Appeal (Lewison LJ giving the lead judgment) agreed with the Secretary of State.

70. The applicant’s submission is that as the Fernhill site is not within the settlement limits of Durham City, it can be determined that the application site is not within a built-up area. They assert that the proposal site is existing private residential garden space for Fernhill, and therefore, the proposal site is considered to comprise previously developed land and should be assessed as to whether the proposed development would have an impact on openness in the Green Belt.

71. Annexe 2 of the NPPF defines previously developed land as: 'Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure.' It is noted that an objection was received considering that the Fernhill site is too large to be considered as only private residential garden space and is a landscaped estate forming a key component of the greenspace surrounding Durham City.
72. The application site comprises the existing stable building, menage to the south and the access from the A167 past The Lodge. Fernhill has existed since circa 1896 and planning permission granted for the erection of stables in 1995. Therefore, the land is clearly occupied by a permanent structure. The land surrounding Fernhill, whilst extensive, has not been sub-divided in any way and is clearly separated from the surrounding fields to the west and south by a line of mature trees. This gives credence to the view that the land surrounding Fernhill is private garden land associated with this property, with the stables sited on land within its curtilage.
73. In addition to the above, the Inspector's CDP report concluded that Fernhill "is separate from the main built up area of Durham City which is largely on the other side of the A167", and that "The site is mainly open, and appears as part of the attractive rural area forming the setting of the historic city in this particular location". Therefore, it is considered that the site is not excluded from the definition of previously developed land by virtue of it comprising garden land within the curtilage of an existing building, located outside the built up area of Durham City. Consequently, the proposal should be assessed as to whether it meets the criteria in sub-paragraph (g) of Paragraph 149 of the NPPF.
74. Sub-paragraph (g) of Paragraph 149 of the NPPF provides that development on previously developed land would not be considered to be inappropriate development where it can be demonstrated that the development would either (a) not have a greater impact on the openness of the Green Belt than the existing development or (b) not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.
75. The proposal would not contribute to meeting an identified affordable housing need and so whether the proposed development can be considered to qualify for this exception depends upon whether the impact of the proposed dwelling upon the openness of the Green Belt would be greater than the existing stables, which will be discussed under the heading below.

Impact on the Openness of the Green Belt

76. Planning Practice Guidance advice confirms that matters to consider when assessing the impact upon openness include acknowledgement that openness can have both spatial and visual impacts, the duration of the development and its remediability (taking into account any provisions to return land to its original state or to an equivalent or improved state of openness), and the degree of activity likely to be generated. However, it remains that any assessment as to whether openness would be preserved is a matter of judgement based upon the merits of each case.
77. With regards to the spatial aspect of openness, it is noted that in dismissing an appeal against the Council's decision to refuse planning permission for 3 residential dwellings at the site in 2012, the planning inspector considered that the development was inappropriate and would result in harm to the openness of the Durham City Green Belt, acknowledging that whilst the site topography is such that views of the open countryside beyond the site would be largely unaffected, the proposed development of the site for three dwellings would nevertheless alter the openness of the site itself.
78. The current proposals are of a much-reduced scale in terms of the quantum of development, with only one dwelling now proposed. The dwelling is proposed to be sited in the same location as the existing stable building whilst maintaining its 'L' shape form, with an upper floor footprint of 89m² and a lower floor footprint of 115m², compared to the approximate 100.7m² footprint of the existing stable building. Consequently, the dwelling would have a similar form to the existing stable building and a slightly smaller footprint at upper floor level (the level of the existing stable), with the lower floor level being built into the hillside to reduce the massing of the dwelling. Thus, in terms of the height of the proposed dwelling relative to the existing stable building, and as indicated by the red line on the proposed elevations drawing, the dwelling would not exceed the eaves or ridge height of the stables.
79. With regards to the visual aspect of openness, it is noted that the site is bordered by mature trees and vegetation. A key consideration of the proposals is to ensure that these trees and vegetation can and would be maintained after the construction works to ensure the constructed dwelling would continue to benefit from effective screening from public vantages.
80. To demonstrate this, the applicant has submitted a detailed Arboricultural Impact Assessment (AIA), Arboricultural Method Statement (AMS), and Tree Protection Plan (TPP). This information demonstrates that Tree 34 and 35C (low quality Holly trees) would need to be removed to facilitate the new driveway access to the dwelling and tree 7 would need to be pruned to establish a suitable offset from the dwelling. The AMS also details protection measures to be adhered to during construction, with the installation of protective fencing as well as the use of ground protection measures for works within the root protection areas of trees 7, 11, 32, 33, 36 and 38. The submitted AIA is a detailed document which concludes that 'no significant damage should take place during the demolition or construction phase and the tree cover should flourish in the longer term.' A condition (number 10) is recommended to ensure the development is carried out in accordance with the AMS and TPP.

81. With it being demonstrable that the trees and vegetation along the southern and western boundaries can be retained, and can be secured via a condition, the development would not be widely appreciated outside of the site in views from public vantage points. Furthermore, the residential properties at Whitesmocks to the north are located on a significantly lower land level which would prevent views of the dwelling from this location, and views of the dwelling from the A167 to the east would not be possible due to the boundary vegetation, higher ground level of the site and the position of Fernhill.
82. In summary, the proposed dwelling would be built into the hillside resulting in it having a similar form, massing and height to the existing stable building and the visual impact of the dwelling would be extremely limited from outside the application site due to the retention of the boundary vegetation and topography. Therefore, the proposed dwelling is not considered to have a greater impact upon the openness of the Green Belt than the existing stables and so is in accordance with Paragraph 149 g) of the NPPF and CDP Policy 20. Accordingly, it is not inappropriate development and the policy tests in paragraphs 147 & 148 of the NPPF do not apply. A condition (number 15) is recommended to remove permitted development rights for extensions to and free-standing structures within the curtilage of the proposed dwelling to ensure the Local Planning Authority retains control over further development of the site which may impact upon the openness of the Green Belt.

Impact on the Surrounding Landscape

83. The site lies in an area formerly identified in the City of Durham Local Plan as Area of High Landscape Value and currently identified in the County Durham Plan as an Area of Higher Landscape Value (AHLV).
84. Policy 39 (Landscape) of the CDP seeks to protect the character, quality or distinctiveness of the landscape and expects new development to incorporate appropriate measures to mitigate adverse landscape and visual effect. The policy makes clear that development affecting Areas of Higher Landscape Value (as in this case) will only be permitted where it conserves, and where appropriate enhances, the special qualities of the landscape, unless the benefits of development in that location clearly outweigh the harm.
85. The AHLV in this area covers open countryside to the west of the site and the wooded common of Flass Vale to the east. The open leafy grounds of three large properties, Fernhill, Friarside and Flass Vale Hall, form a transition between the two and contribute to the AHLV in this area through a combination of their open, largely undeveloped, character and their mature vegetation.
86. The proposals would see the erection of a dwelling on the site of the existing stable building to the west of the site which is screened by a line of mature trees. As discussed above, the dwelling has been designed to be built into the landscape to minimise its scale, massing and impact on the openness of the Green Belt. Views of the proposed dwelling from distance would be limited by the nature of the topography and surrounding development and the retention of the mature garden vegetation along the boundaries of the site. Therefore, the proposed development would not have a significant impact on the character of the wider landscape.

87. As discussed under the heading above, information has been submitted with the application to demonstrate that the mature vegetation along the boundaries of the site could be retained during the construction works, ensuring that the proposals would be visually contained and consequently the impacts in terms of public views would be minimal, broadly conserving the contribution made by the site's vegetation to the AHLV. Therefore, the proposals are considered to accord with CDP Policy 39.

Design, Layout and Heritage Assets

88. Fernhill and Lodge was originally built in the late Victorian era, firstly appearing on the 1896 ordnance survey map, it was originally known as Crofton House, and is considered to be a non-designated heritage asset (NDHA). Fernhill sits on a high point and may be considered the most prominent building within the site and the application site lies within the setting of the asset.

89. NPPF Paragraph 203 advises that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

90. In line with this, CDP Policy 44 states that a balanced judgement will be applied where development impacts upon the significance and setting of non-designated heritage assets and that in determining applications which would affect a known or suspected non-designated heritage asset with an archaeological interest, particular regard will be given to ensuring that archaeological features are generally preserved in situ; and in cases where the balanced judgement concludes preservation in situ should not be pursued, it will be a requirement that they are appropriately excavated and recorded with the results fully analysed and made publicly available.

91. CDP Policy 29 requires development to (in part): a) 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 d) minimise the use of non-renewable and unsustainable resources during both construction and use by encouraging waste reduction and appropriate reuse and recycling of materials, including appropriate storage space and segregation facilities for recyclable and non-recyclable waste and prioritising the use of local materials.

92. In addition, Policy S1 of the DCNP seeks to promote economic well-being by contributing to a mix of uses and to preserve and enhance the neighbourhood by harmonising with its context in terms of scale, layout, density, massing, height, materials, colour, and hard and soft landscaping; and conserving the significance of the setting, character, local distinctiveness, important views, tranquillity and the contribution made to the sense of place by designated and non-designated heritage assets.

93. DCNP Policy H3 relates to development outside of the conservation areas and states that development proposals outside the Conservation Areas should take into account, and meet where appropriate and relevant to the area to which the proposal relates, the following requirements, by:
- a) sustaining and making a positive contribution to the character and distinctiveness of the area; and
 - b) avoiding the loss of open space and public realm that contributes to the character and appearance of the surrounding area; and
 - c) using high quality design which contributes to the quality and character of the area; and
 - d) having scale, density, massing, form, layout, landscaping and open spaces appropriate to the context and setting of the area; and
 - e) using materials and finishes appropriate to the context and setting of the area.
94. Policy D4 Building Housing to the Highest Standards seeks to ensure that all new housing must be of a high-quality design relating to the character and appearance of the local area, aesthetic qualities, external and internal form and layout, functionality, adaptability, resilience and the improvement of energy efficiency and the reduction of carbon dioxide emissions.
95. The dwelling would be sited in the same location as the existing stables with a similar 'L' shaped form. Design and Conservation Officers have commented that the concept of the proposal aims to create a pavilion in the landscape and utilises a material palette of stone, glass, timber and standing seam roof to positively respond to Fernhill and the landscape setting whilst introducing a contemporary approach to the architecture which takes advantage of solar gain. The applicants Planning and Heritage Statement confirms the use of stone that is locally sourced which accords with the aims and objectives of criterion d) of CDP Policy 29. A condition (number 7) is recommended to secure details of the details of the make, colour and texture of all walling and roofing materials prior to the commencement of works.
96. Whilst there will be intervisibility between the proposed development site and the non-designated heritage asset, the proposed development would be built into the hillside to reduce its bulk and massing, sitting at a lower level and reading as subservient to Fernhill, with limited impact on the setting of the non-designated heritage asset. Overall, the level of impact within the setting of the non-designated heritage asset would be considered negligible and not harmful.
97. Archaeology Officers have commented that the findings of a desk-based assessment (DBA) carried out in 2008 and submitted in support of application 4/11/00535/FPA also relating to this site are still relevant and recommend the imposition of two conditions relating to a programme of archaeological work and a post investigation assessment. With these conditions the proposal is considered to accord with CDP Policy 44 and NPPF Paragraph 203.

98. Overall, it is considered that the proposals are of high quality design utilising a material palette that would respond positively to the setting of Fernhill and the wider landscape whilst comprising an appropriate scale, massing, form and layout. The proposals are therefore considered to be in accordance with CDP Policy 29 and 44, Part 12 and 16 of the NPPF and DCNP Policy S1, H3 and D4.

Residential Amenity

99. Paragraph 130 of the NPPF advises that planning decisions should create places that have a high standard of amenity for existing and future users.
100. In line with this, CDP Policy 31 states that all new development that has the potential to lead to, or be affected by, unacceptable levels of air quality, inappropriate odours and vibration or other sources of pollution, either individually or cumulatively, will not be permitted including where any identified mitigation cannot reduce the impact on the environment, amenity of people or human health to an acceptable level.
101. In addition, criterion e) of Policy 29 requires all development proposals to provide high standards of amenity and privacy, and minimise the impact of development upon the occupants of existing adjacent and nearby properties.
102. The dwelling has been designed to incorporate a sunken patio to the north to allow light to enter the window serving the study on the ground floor. The position and crown spread of T7 and T9 are unlikely to cause future loss of light to the property as the design only includes two small windows on the west elevation, serving a w/c and a secondary window serving the dining room. The majority of windows serving habitable rooms are contained within the other elevations away from any trees to provide sufficient outlook and light for the inhabitants. The proposed layout accords with the Nationally Described Space Standards and includes a generous amount of external amenity space to the south. Overall, it is considered that residential amenity for future occupiers would be sufficient.
103. With regards to separation distances, the east elevation is proposed to contain two windows serving the lounge. These would be secondary windows, with the primary windows contained within the south elevation. The east facing windows would face onto the front of the single storey dormer annexe building 12m away, which is below the typically required 18m between habitable room windows within bungalows. Therefore, a condition is recommended to require these windows to be obscure glazed to protect the privacy of the occupants of the proposed dwelling and this annexe building. With this condition (number 13), the minimum requirements stated in the Council's Residential Design Supplementary Planning Document would be achieved, ensuring all residents on the site would benefit from sufficient levels of privacy and outlook.

104. Environmental Health Officers (EHO) have commented that the area is primarily rural/residential, with limited sources of noise in the area, with the most significant noise source in the vicinity of the site being the A167 road. To protect the amenity of future occupiers, they recommend a condition requiring the dwelling to achieve compliance with specified noise levels. EHO also comment that the information contained within the submitted Construction Management Plan is sufficient to protect the amenity of neighbouring residents, provided the working hours and strategies for noise and light nuisance mitigation are adhered to. Accordingly, conditions (number 11 and 12) are recommended to secure this.
105. Therefore, the proposals are considered to accord with CDP Policy 29(e) and 31 and Part 12 of the NPPF.

Highway Issues

106. Paragraph 111 of the NPPF advises that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
107. CDP Policy 21 relates to the delivery of sustainable transport and states that the transport implications of development must be addressed as part of any planning application and [in part] that all development should deliver sustainable transport by ensuring that any vehicular traffic generated by the development, following the implementation of sustainable transport measures, can be safely accommodated on the local strategic highway network. This displays a broad level of accord with the aims of Paragraph 110 of the NPPF which states that planning decisions should ensure development provides safe and suitable access to the site can be achieved for all users.
108. DCNP Policy T1 seeks to avoid development that would result in adverse transport related impacts where practicable and where necessary to provide mitigation in the form of contributions to access to sustainable means of transport.
109. The Highway Authority has been consulted and advise that given the current proposal is for one dwelling only, to replace an existing private stables, they do not consider there would be a requirement to ensure access and turning are to an adoptable standard and are satisfied that the development could be accessed from the existing provision. In addition, the dwelling is proposed to be served by two in-curtilage car parking spaces which accords with the Council's Car Parking and Accessibility Standards 2019 for a four-bed dwelling. This document sets out that dedicated cycle parking is not required for dwellings with less than five bedrooms which is the case of this proposal.
110. The proposed development is in a sustainable location, would be served by a safe and suitable access, a sufficient amount of in-curtilage car parking, and would not generate a significant increase in traffic. Therefore, the proposals are not considered to adversely affect highway safety and accord with CDP Policy 21 and DCNP Policy T1

Land Contamination and Stability

111. Policy 32 of the CDP states that development will not be permitted unless the developer can demonstrate that the site is suitable for the proposed use, and does not result in unacceptable risks which would adversely impact on the environment, human health and the amenity of local communities and all investigations and risk assessments have been undertaken by an appropriately qualified person. This displays a broad level of accord with Paragraph 183 of the NPPF, which requires that planning decisions should ensure that the site is suitable for its new use taking account of ground conditions and land instability, including from natural hazards or former activities such as mining, pollution arising from previous uses and any proposal for mitigation including land remediation or impacts on the natural environment arising from that remediation.
112. The EHO has assessed the available information and historical maps with respect to land contamination and reviewed the submitted ERGO Environmental Ltd. (August 2021) Phase 1 Geo-Environmental Site Assessment. The EHO has commented that they are satisfied with the information provided in the report and given that the site has been previously developed and due to the fact that this development constitutes a change of use to a more sensitive receptor, recommend the imposition of two contaminated land conditions (3 and 4). With these conditions, the proposal accords with CDP Policy 32 and NPPF Paragraph 183.

Ecology

113. Part 15 of the NPPF seeks to ensure that developments protect and mitigate harm to biodiversity interests, and where possible, improve them.
114. In line with this, Policy 41 of the CDP states that proposal for new development will not be permitted if significant harm to biodiversity or geodiversity resulting from the development cannot be avoided, or appropriately mitigated, or as a last resort, compensated for.
115. The application is supported by a Bat Survey Report dated August 2019 and an Updating Bat Survey Report dated August 2021.
116. The 2019 survey identified a bat roost within a poplar tree within the site and concluded that development of the site would result in the loss of feeding and commuting habitat of district, local or parish value to low numbers of bats, with mitigation being particularly important due to the level of foraging activity and the close proximity of roosts to the proposed new housing.
117. This application has reduced the number of dwellings proposed from four to one and the most recent report concludes that no bats were seen emerging from the poplar tree (T2074) during the dusk survey, with a daylight inspection of the tree showing that tree was in poor condition and that tree work had been undertaken according to the advice previously provided by AllAboutTrees (2021).

However, the bat transect survey showed that common pipistrelle, soprano pipistrelle and Myotis bats use the tree lines for foraging and commuting. Up to 3 bats were seen at any one point and so two bat boxes are recommended to be added to trees near to the poplar T2074 to provide alternative roosting provision, considering the poor condition of the tree. The report concludes that no further survey work is necessary but recommends a condition to secure adherence to the Method Statement included within Appendix 1. Accordingly, a condition (number 8) is recommended.

118. With the above condition, the proposed development would accord with the requirements of CDP Policy 41, and Part 15 of the NPPF.

Drainage

119. CDP Policy 35 states that surface water run-off must be managed at source wherever possible and disposed of in the following order:
1. to an infiltration or soak away system.
 2. to a watercourse open or closed.
 3. to a surface water sewer.
 4. to a combined sewer.
120. The application proposes that all surface water generated by the development would be discharged to an existing water course, although the precise detail of the proposed arrangement has not been provided.
121. It is considered that a suitably worded planning condition (number 14) requiring the submission and agreement of precise detail as to the means of disposal of surface water prior to the commencement of development, would satisfactorily mitigate any potentially adverse impact in this regard.
122. Subject to such a condition, the development is considered to accord with the aims of CDP Policy 35.

In Response to Objectors Concerns

123. The City of Durham Parish Council consider that the proposals are contrary to DCNP Policy G4, which relates to proposals within the Green Belt land in the Sidegate and Frankland Lane area of Our Neighbourhood as shown in Proposals Map 4 (Green Belt -areas for improvement). The application site is not located within one of the two areas for improvement and so this policy is not relevant in this instance.
124. Concerns have been raised that approving the application could set a precedent for replacing stables with dwellings, and would make it difficult to refuse the erection of a new garage on the site in the future. This application does not propose the erection of a garage or new stable building. Any future planning applications for the erection of a garage or a stable block would be determined on its own merits.

CONCLUSION

125. The application site comprises private garden land of the dwelling known as Fernhill, in an area outside the settlement limits of Durham City. The development of the site therefore falls outside the exclusion of previously developed land as defined by Annexe 2 of the NPPF, and so can be considered to be previously developed land. Therefore, the proposal would comprise the partial redevelopment of previously developed land and so the acceptability of the principle of the proposal in the Green Belt rests upon whether the proposed dwelling would have a greater impact on the openness of the Green Belt than the existing stable building it would replace.
126. The dwelling is proposed to comprise a similar footprint to the existing stable and be built into the hillside to ensure its height would not exceed the eaves or ridge of the stables. With the retention of the mature vegetation along the southern and western boundaries demonstrated by the submitted Arboricultural reports and recommended to be conditioned, views of the proposed dwelling from outside the site would be extremely limited by the treeline, higher topography, and surrounding buildings. Therefore, the proposed dwelling is not considered to have a greater impact, spatially or visually, on the openness of the Green Belt than the existing stable building it would replace. Given the above, neither would the proposals adversely affect the character of the surrounding landscape.
127. The dwelling is considered to be of an appropriate design, massing, siting and form that utilises materials that would respond positively to Fernhill, a non-Designated Heritage Asset, and no concerns are raised over the proposals adversely affecting the amenity of neighbouring residents or highway safety.
128. Notwithstanding the above, conditions are recommended to secure details relating to land stability, archaeology, drainage, as well as conditions restricting the hours and timing of works, and ensuring the protection of trees during the works. Subject to such conditions, the proposals are considered to accord with Policy 6, 20, 21, 29, 31, 32, 35, 39, 40, 41 and 44 of the County Durham Plan, Policy S1, H3, D4 and T1 of the Durham City Neighbourhood Plan and Parts 2, 4, 5, 6, 8, 9, 12, 13, 15 and 16 of the NPPF and so approval is recommended.

RECOMMENDATION

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

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

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 6, 20, 21, 29, 31, 32, 35, 36, 39, 40, 41 and 44 of the County Durham Plan, Policy S1, H3, D4 and T1 of the Durham City Neighbourhood Plan and Parts 2, 4, 5, 6, 8, 9, 12, 13, 15 and 16 of the National Planning Policy Framework.

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 2 site investigation, 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 is suitable for use, in accordance with 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 commence until a written scheme of investigation setting out a programme of archaeological work in accordance with 'Standards for All Archaeological Work in County Durham and Darlington' has been submitted to and approved in writing by the Local Planning Authority. The programme of archaeological work will then be carried out in accordance with the approved scheme of works.

Reason: To safeguard any Archaeological Interest in the site, and to comply with Policy 44 of the County Durham Plan and Part 16 of the National Planning Policy Framework. Required to be a pre-commencement condition as the archaeological investigation/mitigation must be devised prior to the development being implemented.

6. The development shall not be occupied until the post investigation assessment has been completed in accordance with the approved Written Scheme of Investigation. The provision made for analysis, publication and dissemination of results, and archive deposition, should be confirmed in writing to, and approved by, the Local Planning Authority.

Reason: To comply with Policy 44 of the County Durham Plan and Part 16 of the National Planning Policy Framework, which requires the developer to record and advance understanding of the significance of heritage assets, and to ensure information gathered becomes publicly accessible.

7. Notwithstanding any details of materials submitted with the application no development shall commence until details of the make, colour and texture of all walling and roofing materials have been submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the approved details.

Reason: In the interests of the appearance of the area and to comply with Policy 29 of the County Durham Plan and Part 12 of the National Planning Policy Framework.

8. The works hereby approved shall be undertaken in strict accordance with the Method Statement for Contractors contained within Appendix 1 of the Updating Bat Survey Report published by RH Ecological Services and dated August 2021.

Prior to the first occupation of the dwelling two bat boxes shall be installed to trees near to the poplar T2074.

Reason: In the interests of protecting bats present in the area and to provide alternative roosting provision in accordance with Policy 41 of the County Durham Plan and Part 15 of the National Planning Policy Framework.

9. No works to trees, building or demolition shall take place within the bird nesting season (March - August) unless a checking survey has been carried out by a suitably qualified ecologist and a written report prepared confirming the absence of bird nesting activity is submitted to and approved by the Local Planning Authority.

Reason: In the interests of protecting bats present in the area in accordance with Policy 41 of the County Durham Plan and Part 15 of the National Planning Policy Framework.

10. No construction work shall take place, nor any site cabins, materials or machinery be brought on site until all trees and hedges, indicated on the approved tree protection plan as to be retained, are protected by the erection of fencing, and ground protection measures where identified on the plan, placed as indicated on the plan and comprising a vertical and horizontal framework of scaffolding, well braced to resist impacts, and supporting temporary welded mesh fencing panels or similar approved in accordance with BS.5837:2010.

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

No removal of limbs of trees or other tree work shall be carried out.

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

Reason: In the interests of the visual amenity of the area and to comply with Policies 20, 29, 39 and 40 of the County Durham Plan and Parts 12, 13 and 15 of the National Planning Policy Framework.

11. The dwelling shall be designed to ensure noise audible within the following specified rooms and areas will not exceed:
 - o 35dB LAeq 16hr bedrooms and living room during the day-time (0700 - 2300)
 - o 30 dB LAeq 8hr in all bedrooms during the night time (2300 - 0700)
 - o 45 dB LAmax in bedrooms during the night-time (2300 - 0700)
 - o 55dB LAeq 16hr in outdoor living areas

Any noise mitigation measures required shall be installed prior to the beneficial occupation of the development and shall be permanently retained thereafter.

Reason: To protect future occupiers from nearby noise sources in accordance with Policy 29 and 31 of the County Durham Plan and Part 12 of the National Planning Policy Framework.

12. The development shall take place in strict accordance with the submitted Draft Construction Management Plan dated August 2021, unless the Local Planning Authority gives its written consent to any variation.

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 12 of the National Planning Policy Framework.

13. 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) the two proposed east facing windows serving the lounge of the dwelling hereby approved shall be obscured to level 3 or higher of the Pilkington scale of privacy or equivalent and shall be maintained thereafter in perpetuity.

Reason: In the interests of the residential amenity of neighbouring properties in accordance with Policies 29 and 31 of the County Durham Plan and Part 12 of the National Planning Policy Framework.

14. No development shall commence until precise detail of the proposed means of the disposal of surface water have been submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall take place in accordance with the agreed details.

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

15. 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 extensions to or freestanding structures within the curtilage of the dwelling hereby approved 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 20, 29 and 31 of the County Durham Plan and Parts 12, 13 and 15 of the National Planning Policy Framework.

STATEMENT OF PROACTIVE ENGAGEMENT

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.

BACKGROUND PAPERS

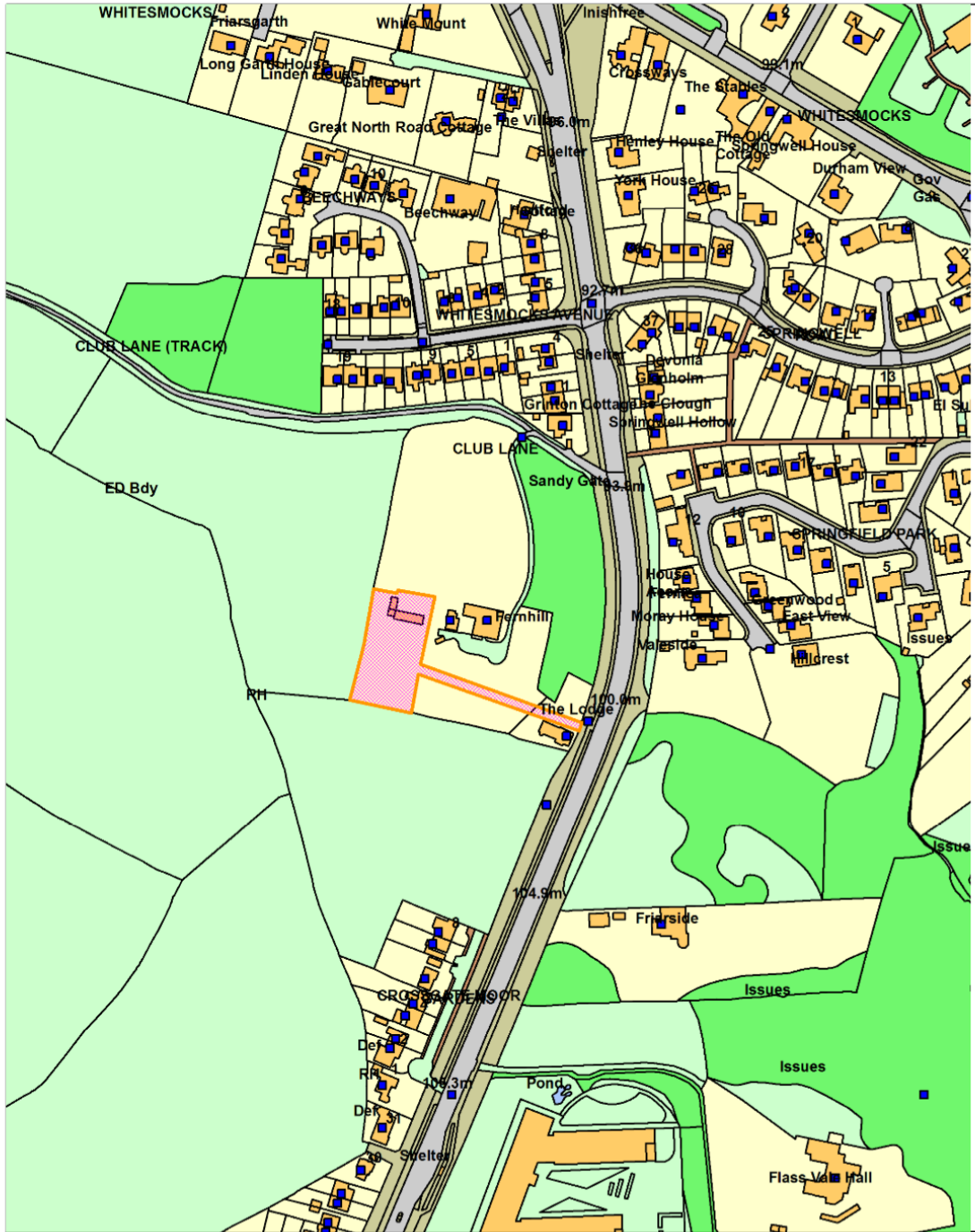
Submitted application form, plans supporting documents and subsequent information provided by the applicant.


The National Planning Policy Framework (2021)

National Planning Practice Guidance Notes

County Durham Plan (2020)

Statutory, internal and public consultation responses



 Durham County Council	Location	Fernhill, Newcastle Road, Crossgate Moor, Durham, DH1 4JZ Not Set		
	Comments	Not Set		
<small>This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office Crown copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. Durham County Council, Licence No. 100049055 (2014)</small>	Date	11 October 2021	Scale	1:2646

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