



## Area Planning Committee (Central and East)

**Date** Tuesday 14 June 2016  
**Time** 1.00 pm  
**Venue** Council Chamber, County Hall, Durham

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### Business

#### Part A

1. Apologies for Absence
2. Minutes of the Last Meeting held on 10 May 2016 (Pages 1 - 12)
3. Declarations of Interest, if any
4. Applications to be determined by the Area Planning Committee (Central & East Durham)
  - a) DM/15/03779/FPA - Land adjoining Snook Acres, Front Street, Witton Gilbert, DH7 6SY (Pages 13 - 26)  
Erection of 14 residential properties, associated highways and landscaping works
  - b) DM/16/00858/FPA - 3-6 Front Street, Wheatley Hill, Durham, DH6 3NJ (Pages 27 - 40)  
12 no. residential apartments
  - c) DM/16/00892/FPA - Land to The East Of 74 High Street South, Langley Moor (Pages 41 - 52)  
Construction of two new residential care buildings
  - d) DM/16/01017/VOC - Wok Next, 97 Claypath, Durham, DH1 1RG (Pages 53 - 64)  
Variation of Condition 5 (hours of operation) of planning permission 4/11/00713/FPA from 9am – 11pm Monday – Sunday to 9am – 11pm Sunday – Thursday and 9am – 3am Friday – Saturday

- e) DM/16/01268/VOC - Pizza Uno, 92 Claypath, Durham, DH1 1RG  
(Pages 65 - 76)

Variation of Condition 4 (hours of operation) of planning permission 4/09/00251/FPA to extend opening hours from 11pm to 3am seven days a week

- f) DM/16/01331/VOC - Urban Oven, 94 Claypath, Durham. DH1 1RG (Pages 77 - 88)

Opening hours to be extended from 11pm to 3am seven days a week

- g) DM/16/01372/VOC - 86 Claypath, Durham, DH1 1RG (Pages 89 - 100)

Variation of Condition 4 (hours of operation) on planning permission 4/09/00088/FPA to extend opening hours to 3am 7 days a week (existing consent allows Friday and Saturday till 3am only with remainder of week till 11pm)

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

**Colette Longbottom**  
Head of Legal and Democratic Services

County Hall  
Durham

6 June 2016

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

Councillor P Taylor (Chairman)  
Councillor A Laing (Vice-Chairman)

Councillors A Bell, G Bleasdale, J Clark, P Conway, M Davinson, K Dearden, D Freeman, S Iveson, C Kay, J Lethbridge, R Lumsdon, B Moir, J Robinson and K Shaw

**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 10 May 2016** at **1.00 pm**

**Present:**

**Councillor P Taylor (Chairman)**

**Members of the Committee:**

Councillors A Bell, G Bleasdale, J Clark, P Conway, M Davinson, D Freeman, C Kay, J Lethbridge, B Moir and K Shaw

**Also Present:**

Councillors D Hall, M Simmons and M Wilkes

**1 Apologies for Absence**

Apologies for absence were received from Councillors S Iveson and A Laing.

**2 Substitute Members**

No notification of Substitute Members had been received.

**3 Minutes**

The minutes of the meeting held on 12 April 2016 were confirmed as a correct record by the committee and signed by the Chair.

**4 Declarations of Interest**

There were no declarations of interest.

**5 Applications to be determined by the Area Planning Committee (Central & East Durham)**

**6 DM/16/00511/OUT - Broom House, Cocken Road, Leamside, Houghton-le-Spring, DH4 6QN**

The Senior Planning Officer, Chris Baxter gave a detailed presentation on the report relating to the abovementioned planning application, copies 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 Officer advised that Members of the Committee had visited the site that day and were familiar with the location and setting with part of the application being within an area of high landscape value. The application was an outline application with all matters reserved for 9 houses (5 houses to be starter/affordable homes) and was recommended for refusal.

The Committee noted that internal and statutory consultees had responded with the Highways Section noting poor access and objecting in terms of highway safety, and the Landscape Team noting that the application would have a significant landscape and visual effects. It was added that the Sustainability Team had raised objections as the development had failed to meet some of the key principles as set out at the National Planning Policy Framework (NPPF) 17. The Senior Planning Officer added that the nearest settlement was West Rainton, approximately 1 mile away. Members noted that the Council's Environmental Management (Noise) Officer had noted there had been insufficient details in terms of allowing a proper assessment of the potential environment impact of the proposed development, with part of the site being in close proximity to the A1(M).

The Senior Planning Officer noted no objections to the proposed scheme from Northumbrian Water, the Council's Drainage Officer or the Council's Ecology Team. The Committee noted that there had been 4 letters of objection from members of the public, including a letter of objection from the City of Durham Trust.

Members were informed that there had been a petition with 240 signatures in support of the application and a number of letters from members of the public.

It was added that the applicant had cited "very special circumstances" in terms of development on the greenbelt, with the developer offering to pay £100,000 to the West Rainton and Leamside Community Association to clear debts on the community building known as Jubilee Hall. The Senior Planning Officer noted that this was not necessary to make the development acceptable in planning terms, would not be directly related to the development, and would not be reasonably related in scale or kind to the proposed development.

The Chairman asked the Local Member for Sherburn, Councillor D Hall to speak in relation to the Application.

Councillor D Hall noted he had circulated a letter to Members of the Committee in respect of this application which set out reasons why it was felt the application should be granted, with referral to the Secretary of State. Councillor D Hall added that he and a lot of residents felt that this application represented a last chance to save the 100 year old and well-loved community facility, namely Jubilee Hall and that the £100,000 being offered would get the centre back on an even keel and be of huge benefit to local residents.

Councillor D Hall noted that three issues had been raised and he would address each of those in turn. In respect of objections in terms of highways safety, Councillor D Hall noted that a recent application had been considered by the Council concerning 120 houses with a single exit on to a 40mph road which had been assessed as acceptable. Councillor D Hall noted that this application was

only for 9 houses and now Officers were saying access would not be possible in this case, however, Councillor D Hall suggested that safe access could be agreed by condition at the reserved matters stage. In terms of sustainability, Councillor D Hall there was a “chicken or egg” issue in terms of housing to support services and services in place to support new housing, though it was noted that this proposal included affordable housing which should be welcomed. Councillor D Hall added that, in respect of the application representing development in the greenbelt, he noted the Council’s Ecology Team had not registered any objections to the proposed development and local residents preferred small schemes to large developments, such as the previously mentioned development of 120 houses. It was added that there were no issues of public access in this case and that any issues in terms of screening the site could be achieved as necessary. It was added that this particular case was special and Councillor D Hall noted from guidance that there was no statutory definition of “special circumstance” and therefore it was felt that this application should be approved and to be referred to the Secretary of State for final determination. Councillor D Hall noted he had sat on Committee where development on the greenbelt had been approved where the development would be to support a country house or large business and therefore he felt that there was a convincing argument for this application to support the community asset. Councillor D Hall concluded by reiterating that residents were requesting that the Committee approve the application for the reasons stated with referral to the Secretary of State for final determination.

The Chairman thanked the Local Member and introduced Mr J Morland and Mr A Percival, local residents, to speak in relation application, having 5 minutes to address the Committee between them.

Mr J Morland noted he had been born and raised in a property, now demolished, only yards away from the proposed development and recalled that there had been a more houses in the area in the recent past. Mr J Morland added that the scale of the development was such that it would not have a large impact on the area, and while understanding the application was within the greenbelt, it was not similar in scale to the recent approval of 120 houses on greenbelt land recently approved by the Council. Mr J Morland noted that it was good for small pieces of land that were not currently being used for anything to be developed and this was supported by national policy and would have been by the County Durham Plan (CDP) should that have been in effect.

Mr J Morland noted that part of the application, Site “B” was close to the A1(M) and this area was not overlooked by other residents, did not impact in terms of congestion or footpaths, and was not in any area of high landscape value. Mr J Morland noted that while Site “A” was within the greenbelt and an area of high landscape value, it currently formed part of a private residential garden, bounded by large trees. Mr J Morland noted that there was not a public bus running directly along past the proposed development, however, it may be possible for a community bus to be organised. Mr J Morland noted some comments that the development would not blend in with the village, however, he felt that one small row of terraced houses and few cottages would not detract from the character of the area. Mr J Morland noted as Chairman of the West Rainton and Leamside Community Association that the development would be of massive benefit to the community,

with the proposed £100,000 contribution being an opportunity to relieve the financial worries in terms of Jubilee Hall and enable the community asset to be used by local residents for years to come.

Mr A Percival noted as Treasurer of the West Rainton and Leamside Community Association that it was very important to retain the Jubilee Hall as a village hall and community centre, as there was a good footfall, with over 2,500 visiting the community centre, with many activities including employability projects. It was reiterated that the proposed development represented a unique opportunity to save Jubilee Hall and if the application was not approved, Mr A Percival could not see the community centre surviving.

The Chairman asked Members of the Committee for their questions and comments on the application.

Councillor A Bell asked whether there had been any comments from Planning Policy Officers, as he could not see any within the report. The Senior Planning Officer noted that no formal comments had been received from Policy, though he had spoken to colleagues and they confirmed agreement with the report.

Councillor J Lethbridge noted he was pleased to read within the report that the area was of high landscape value, having attended the site and found the area to be of outstanding quality, bucolic and delightful and that the instinctive feeling was not to change those characteristics. Councillor J Lethbridge added that in relation to Site "A" he had concern in relation to the speed of the traffic travelling past this Site and also felt that a link in terms of the £100,000 for the Community Association to the proposed development was not there. Councillor J Lethbridge recalled that at the site visit, the sheer noise at Site "B" from the nearby A1(M) was such that he felt it would be unacceptable in terms of anyone living at the location, requiring triple if not quadruple glazing and also there could be an issue in terms of fumes from the traffic.

Councillor B Moir noted that the application presented a difficult decision, with the money that could be used by the community association and with Councillor B Moir adding that he had recently "pinned his colours to the mast" in terms of supporting housing development. However he added that he would divorce himself from the money consideration which was being offered. Councillor B Moir added the area was bucolic and noted that close proximity of Site "B" to the A1(M), however he felt it would be a case of caveat emptor for anyone wishing to live there.

Councillor B Moir noted the comments of the Local Member in terms of approval and referral to the Secretary of State adding that at this moment he felt that to be the preferable course of action.

Councillor M Davinson noted the lack of a noise report and asked whether such reports were normally expected for an outline application, adding that the edge of the site had only been 10-15 metres away from the A1(M). The Senior Planning Officer noted that the Noise Officer had raised concerns and that a noise report would be expected at this application stage, regarding impact and mitigation.

Councillor G Bleasdale noted the gesture of £100,000 for the community association was a nice one, however, she noted that while on the site visit traffic going past the application sites seemed to be travelling very fast, there was poor visibility along the road, there was a lot of noise from the A1(M) as mentioned and accordingly Councillor G Bleasdale agreed with the Officer's recommendation for refusal.

Councillor D Freeman noted he felt that it was not necessary to refer the application to the Secretary of State and that it was well within the means of the Committee to determine the application. Councillor D Freeman noted he felt sympathy for the local residents at West Rainton in terms of the community facility, however, the decision on the application needed to be based on planning grounds. Councillor D Freeman noted the issues raised in terms of noise and the proximity to the A1(M), however, noted the main issue was that of development in the greenbelt and that there did not appear to be any particular reason to go against the saved local plan or the NPPF and therefore he supported the Officer's recommendation in terms of refusal.

Councillor J Clark noted that there were some objections from residents, as well as those in support of the application and added that in terms of the saved local plan, Policy E10, it appeared that the applicant had thought of this and put forward a mix of property types. Councillor J Clark added that on balance she felt the application could be supported and referred to the Secretary of State.

Councillor P Conway noted that it was very tricky to make a judgement on this application and that he had some points that he had made having visited the site earlier. Councillor P Conway noted he did not agree with the report in terms of the sustainability argument as there were already a number of properties nearby. Councillor P Conway added that the saved local plan was very sensitive in terms of development of greenbelt and also the noise levels at Site "B" were deafening, however, he felt this was similar to other housing such as Swinside Drive at Belmont, near the A1(M) and properties that run alongside the A690. Councillor P Conway added that he was interested in the issues raised in terms of highways safety, in the context of recent decisions as mentioned by the Local Member, and added he did agree with Councillor J Lethbridge's description of the area in question as bucolic.

Councillor P Conway noted the arguments made by the Local Member in terms of the benefits of this development would bring for the community association and added he recalled sitting on Planning Committees where development was allowed in order to enable the restoration of a country house or the enlargement of an existing business and therefore queried whether this application fell into the same category. Councillor P Conway asked whether the granting of the outline application would release the £100,000 to the community association, and whether this was something that the Committee could consider.

The Chairman asked the Highway Development Manager, J McGargill to comment in terms of the issues raised in relation to highway safety.

The Highway Development Manager noted he did not see any inconsistency in the comments from the Highway Section in terms of recent applications, with the same national standards from the Department for Transport having been applied to all applications. In terms of the access for Site "B", the Highway Development Manager noted national standards would be for a stopping distance of 210 metres, and that the measurement at the site was 136 metres, significantly substandard for a derestricted road in addition to restricted visibility and a climb that would hinder a vehicle getting up to speed. The Highway Development Manager added that while there was some access to the highway from Site "A", the proposed development would increase the number of vehicles using the access and that the current access was substandard in terms of Department for Transport standards and improvements that would be required to meet standards would necessitate the removal of fencing, trees and bushes at the site. The Highway Development Manager noted that the Local Member had commented that safe access could be agreed by condition, however, the Highway Development Manager noted that it would be only possible to put forward a condition if it was reasonable and realistic and in this case it was not felt that was the case. The Highway Development Manager concluded by reiterating that in looking at this application and recent applications there had been no inconsistency in assessment, with national Department for Transport standards having been applied.

The Chairman asked the Solicitor - Planning and Development, N Carter to comment in terms of the issues raised in relation to the £100,000 contribution to the community association.

The Solicitor - Planning and Development noted that in terms of the application the key issue was that of development in the greenbelt. It was added that inappropriate development in the greenbelt was harmful as stated in the NPPF, however, there was a need to balance that harm and the additional harm as set out within the report, such as highway safety, visual amenity, landscape impacts against the benefits of granting the application. It was reiterated that it had been explained that there needed to be very special circumstances in terms of granting development on greenbelt land. The Solicitor - Planning and Development noted that Members were able to refuse the application today, however, would not be able to grant the application, as it would need to be referred to the Secretary of State for a decision on whether to call-in the decision.

Accordingly, the Solicitor - Planning and Development noted that if the Committee were minded to approve and refer the matter to the Secretary of State, then the Committee may wish to delegate the final decision to the Head of Planning should the decision not be called in. In terms of the monies for the community association, the Solicitor - Planning and Development noted that the Committee could not give weight to this as the mechanism for such monies would be via s106 Agreements and legislation laid down several tests in terms of payments in connection with developments and in this case those tests were not met. It was added that the application had not been made in terms of an "enabling development" and the Senior Planning Officer was invited to comment upon that.

Senior Planning Officer, Chris Baxter, confirmed that the application had not been put forward or assessed as an enabling development scheme.



Councillor B Moir noted he supported approval of the application in terms of reinvigorating the settlement in that area, which had been larger and more vibrant in the past, and this was development that many residents supported.

Councillor B Moir moved that the application be approved and referred to the Secretary of State; he was seconded by Councillor J Clark. The motion was lost.

Councillor G Bleasdale moved that the application be refused; she was seconded by Councillor J Lethbridge.

## **RESOLVED**

That the application be **REFUSED** for the reasons detailed in the Officer's report.

### **7 DM/16/00987/FPA - 170 York Crescent, Newton Hall, Durham, DH1 5QS**

The Principal Planning Officer, Alan Dobie gave a detailed presentation on the report relating to the abovementioned planning application, copies 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 Officer advised that Members of the Committee had visited the site that day and were familiar with the location and setting. The application was for change of use of open space to private garden area (retrospective application).

Members were asked to note from the site visit and plans that there were a number of open spaces alongside the footpath links within the area, not consistent in terms of size or the types of wall or fence or bushes running alongside, however, they did make the footpath links to shops, bus stops and schools attractive. It was added the type of fencing that had been used to enclose the area of open space was of concrete post construction with wood panelling in between, and was felt to be of acceptable visual impact. Members were also asked to note the amount of land enclosed in proportion to the whole area of open space.

The Committee noted that internal and statutory consultees had responded with the Police Architectural Liaison Officer noting the development was an improvement and should be retained. The Principal Planning Officer added that the Landscape Team had responded after the report had been published in terms of not supporting the application, with concerns in terms of the narrowing of the open space, changing the landscape feel and loss of amenity.

It was noted there were no objections from the Rights of Way Team as there were no recorded rights of way through the area in question.

The Committee noted that there had been 5 letters of objection from members of the public, including concerns such as loss of public space, lack of consultation and noting the area was maintained by the Council.

The Principal Planning Officer explained that there had been 4 letters in support of the application, with comments including: the land in questions was derelict; collected rubbish; and was an area blighted with dog fouling.

Members were informed that the three Local Councillors had all noted objections to the application, noting the loss of open space and with the land having been maintained by the Council for over forty years. It was added that Local Members were in attendance to speak.

The Principal Planning Officer noted the land was only overlooked by a limited number of properties and by footpath users and on balance it was felt there was enough of the open space remaining in terms of amenity and that darker stain could be used on the panelling to help it match other nearby fencing. It was added that approval would not set a precedent with any enclosure of land at another location to be looked at in the local and cumulative context in terms of impact.

The Chairman asked the Local Members for Framwellgate and Newton Hall, Councillors M Simmons and M Wilkes to speak in relation to the Application.

Councillor M Simmons noted that the application land had been described as a grassed wasteland and explained that this was not the case. Councillor M Simmons explained that there were a number of open spaces all around Newton Hall and that these spaces had been deliberately included within the design of the whole area, including the access and links to the two shopping areas. Members were reminded that the green space had been maintained by the Council and that Local Members felt that it should remain so. Councillor M Simmons added that Local Members worked to ensure any open spaces were litter free and noted the open spaces were designed as places to play. Councillor M Simmons added that the applicant did not own the land, the fencing that had been erected was of a significant height and width, and a significant area of the open space had been enclosed. Councillor M Simmons noted that the footpath alongside the area of land enclosed was frequently used by residents to gain access to bus services and added that should the application be allowed it could lead to other residents enclosing other areas of land, creating alleyways where residents would fear to walk. It was added that many of the surrounding properties were bungalows and many residents nearby were elderly and the open space was of great significance.

Councillor M Simmons added that she had received ten telephone calls from residents objecting and also a number of objections had been raised at a local meeting. Councillor M Simmons asked of those supporting the application, how many used the footpath or lived locally.

It was added that the surrounding area was one where everyone respected and looked after each other and there were no issues of anti-social behaviour and that for those elderly residents that were unable to travel very far it was important to retain the visual amenity and accordingly she felt that the benefits to the majority of residents of retaining the land as open space was such that the application should be refused.

Councillor M Wilkes pointed out that the applicants were known to him personally but he only realised this in the last 2 days. He noted two points in terms of the application: loss of open space; and lack of consultation. Councillor M Wilkes noted that looking at a map of the area, of the 200 or more properties in the surrounding area only 4 properties had been consulted, with none of the properties on the cul-de-sac having been included. Councillor M Wilkes referred Members to a number of “before and after” photographs of the site that were displayed on the projector screen. Councillor M Wilkes noted that if the consultation had included these residents that maybe there would have been significantly more comments from residents. Councillor M Wilkes added that the fencing had clearly altered visibility for residents noting other fencing in the area was staggered or stepped in height to allow for this. Councillor M Wilkes noted comments from Durham Constabulary as regards the area and that there was no issues of anti-social behaviour, however, the footpath would not be visible from the nearby properties and should a person fall and be injured they would not be seen. Councillor M Wilkes noted that the open space had looked visually pleasing and that the proportion that had been enclosed was significant, especially when looking at the view from 166 York Crescent. Councillor M Wilkes agreed with Councillor M Simmons in that the land in question was not wasteland and in fact had been well maintained, and also that if any issues of litter or dog fouling were brought to Local Members’ attention they would ensure the appropriate actions were taken. Councillor M Wilkes noted that should the Committee be minded to refuse the application, then Policies H13, E5A, Q9 and Q1 may be applicable in terms of adverse impact on visual amenity; the character of the area; scale of development; and layout and design of development. Councillor M Wilkes noted that should Members be minded to approve the application, that it should be reiterated that only 4 properties had been consulted on the application.

The Chairman asked the Committee Services Officer to read out a statement from the remaining Local Member, Councillor A Hopgood, who was unable to attend the Committee meeting.

*“I wish to object to the application of change of use of public open space to private garden at 170 York Crescent.*

*First and foremost this is not a piece of wasteland left over by the developer. Throughout Newton Hall you will find pockets of green space at the end of cul de sacs which were deliberately left to enhance the living conditions of residents and to make the estate feel more open. Newton Hall was designed as an urban area, to mitigate against this pockets of green space were left at the end of streets and adjacent to public footpaths, this was paramount to the design of the area and nothing has changed in the last 50 years to not allow this to still stand. These pieces of land have been maintained by the local council and should remain as an amenity to all residents.*

*Whilst I acknowledge that an attractive fence has been put up, the fence is indeed of a significant height and width to have a detrimental effect on the surrounding area. When approaching the fence from the bottom of York Cres it takes up at least half of the width of the green open space, I would argue that this is significant.*

*Should this be allowed to happen we could be opening the floodgates to anyone adjacent to these valuable community green spaces to extend their boundaries and make what are now nice wide open walkways into nothing more than high fenced alley ways which could become areas where residents fear to walk as they are no longer visible to local houses and a threat to public safety”.*

The Chairman thanked the Local Members and the Committee Services Officer and introduced Ms V Jackson and Mrs A Tones, local residents, who were in attendance to speak in relation to the application, having 5 minutes to address the Committee between them.

Ms V Jackson noted the images that had been shown in relation to the area and that a van that was in one of the pictures was always parked in the area and that this in addition to the fencing that had been installed meant that the remaining area of open space and footpath were not visible from surrounding properties. Ms V Jackson noted that previously a resident had needed help at this location and that if this happened now they may not be spotted. Ms V Jackson noted that it appeared land to the front of the fencing was also being claimed, with a row of shrubs appearing in this area. Ms V Jackson noted that from looking at property deeds the land was public land and reiterated the previous comments regarding the amenity of local residents, especially those concerning elderly people using the footpath to access the shops and bus stop.

Mrs A Tones asked the Committee to note she spoke from the heart and had lived at Newton Hall for around 50 years, having bought a property “off-plan” when the areas was still all fields. Mrs A Tones added that the applicant had only recently moved into the area and asked what right had they to take the area of land from the public. Mrs A Tones added she lived in the adjacent cul-de-sac and that the notice of the application had been displayed in an obscure place and added a lot of the elderly residents would likely have been fearful of objecting in case this would lead to a “falling out”. Mrs A Tones concluded by noting that the public land had been fenced off and taken from residents and therefore the application should be refused.

The Chairman asked Officers as regards statutory obligations in terms of notices and consultation.

The Principal Planning Officer noted he had responses to several points raised, with it being highlighted that as there had been points made for and against the application it was at Committee for consideration. It was reiterated that should other applications for proposed enclosure be received, or for retrospective consent, following an area of open space being enclosed, then each application would be considered on its own merits. It was added that safety would be a potential concern if the fencing was very close to the footpath and made the footpath narrower.

In terms of the consultation, the Principal Planning Officer explained that the statutory requirement was for those immediately adjacent to the site to be notified and a notice had been placed on a lamppost very close to the development. In response to comments from Councillor M Wilkes as regards consultation and publicity, the Principal Planning Officer noted that there was a number of responses

back from the public and relevant notices had been placed in the local media. The Principal Planning Officer noted that the shrubs to the front of the site did not form part of the application, and issues regarding this had been highlighted at the site visit, noting the applicant had agreed to remove those shrubs. The Principal Planning Officer noted that the issue of fencing off “public land” was an emotive one, however, the issue to be considered was for retrospective consent for change of use and land ownership was not relevant to the planning merits. The Principal Planning Officer added that those that had written in support of the application were all from the Newton Hall area.

The Chairman asked Members of the Committee for their questions and comments on the application.

Councillor B Moir noted that he lived on an estate and that within many estates that had been developed, noting many 1960s estates within the Durham area, there was green open space provision at the ends of streets and this was one of the reasons why people chose to buy these types of properties. Councillor B Moir added that he felt that if the decision on this application was to grant the retrospective consent, then opportunistic people looking at a decision may then seek to enclose land similarly. Councillor B Moir added he did not feel that a darker brown stain on the wood panelling would help improve the appearance of the fencing used to enclose the land. Councillor B Moir noted he did not feel retrospective consent should be granted.

Councillor J Clark noted she agreed with the comments made by Councillor B Moir and added that while Officers have explained that the issue of land ownership was not a consideration in terms of planning, there was the issue of public perception in that the area of open space was being maintained by the Council and then it had been enclosed so people would think the Council had approved that.

Councillor G Bleasdale noted that, having visited the site earlier in the day, the fencing was not of an attractive design and agreed with Councillor B Moir in terms of not granting retrospective permission.

Councillor J Lethbridge noted he too had attended the site visit and had noted the area to be very pleasant, however, he felt that there was potential use of exaggerated language in relation to this application, for example “people being fearful of walking down this area of footpath” and so on. Councillor J Lethbridge noted he found this puzzling and also found it puzzling for some to say that there was a threat to public safety, especially when the Police had confirmed that there was not an issue in terms of anti-social behaviour. It was added that within the areas surrounding the application site there were a number of boundary treatments, including fencing, bushes and hedges and Councillor J Lethbridge recalled the Principal Planning Officers comments that the suitability of the fencing was a matter of judgement and therefore supported the Officer’s recommendation for approval.

Councillor M Davinson noted he had found the construction of the fencing to be poor when visiting the site and that a dwarf wall would present an issue in terms of maintaining the grass cutting on the remaining open space.

The Principal Planning Officer noted that the quality of the fence construction was not a planning issue, however, if there was an issue preventing grass cutting then this matter would be for the Council's maintenance teams to address, although an informative to the applicant in terms of not preventing maintenance of the remaining open space could be included within any permission.

Councillor P Conway noted that it was a matter of judgement in terms of the aesthetics of an application, in this case fencing, however he noted that the land had been encroached upon and there had been evidence of further encroachment, the line of shrubs, when visiting the site. Councillor P Conway noted he did not like retrospective applications, adding that had the applicant wanted to enclose the land, they should have submitted an application in advance of any works. Accordingly, Councillor P Conway noted he did not support the recommendation for approval.

Councillor C Kay noted that while the ownership of the land was not relevant, the issue of a significant loss of open space for local residents was relevant. Councillor C Kay noted that it could be the "thin end of the wedge" in terms of such enclosure of land, though he did note Officers had explained that this was not a material concern as each case would be looked at on its merits. Councillor C Kay noted he would support refusal of the application based upon the saved local plan policies of H13, E5A, Q1 and Q9 to ensure that people have the right to open amenity space. The Solicitor - Planning and Development noted that the explanation for refusal was sufficient in terms of H13, however further details were required for the other policies stated. Councillor C Kay added that the development: detracted from the character of the area, in conflict with policy E5A; was in conflict with policy Q1 in terms of the access needs of people; and was in conflict with policy Q9 in terms of high impact upon neighbours and local residents.

Councillor A Bell sought clarification on the terms open space and open amenity space, with the Principal Planning Officer explaining that public open space was that for the general benefit of members of the public.

Councillor C Kay moved that the application be refused; he was seconded by Councillor B Moir.

## **RESOLVED**

That the application be **REFUSED** as the development was contrary to Policies H13, E5A, Q1 and Q9 of the saved City of Durham Local Plan.

# COMMITTEE REPORT

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## APPLICATION DETAILS

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<b>APPLICATION NO:</b>	<b>DM/15/03779/FPA</b>
<b>FULL APPLICATION DESCRIPTION:</b>	<b>Erection of 14 residential properties, associated highways and landscaping works</b>
<b>NAME OF APPLICANT:</b>	<b>Graform Limited</b>
<b>ADDRESS:</b>	<b>Land adjoining Snook Acres, Front Street, Witton Gilbert, DH7 6SY</b>
<b>ELECTORAL DIVISION:</b>	<b>Esh and Witton Gilbert</b>
<b>CASE OFFICER:</b>	<b>Chris Baxter Senior Planning Officer 03000 263944 chris.baxter@durham.gov.uk</b>

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## DESCRIPTION OF THE SITE AND PROPOSALS

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### The Site

1. The application site is located on land to the west of property known as Snook Acres which is on Front Street in Witton Gilbert. The site measures approximately 0.5 hectares and is currently used as a paddock. To the north of the site is Front Street highway with residential properties located beyond. To the south is the A691 highway and a roundabout to the west. The site is bounded by mature hedgerow and trees. The site is also located within the Sacriston Subglacial Channels Local Geological Site.

### The Proposal

2. Full planning permission is sought for residential development of 14 new residential properties. Permission was originally sought for 19 properties however the scheme has been amended reducing the number to 14 properties. The proposed properties will be positioned in three blocks. A block along the north, a block along the south and a block along the west. The scheme would provide a mix of two, three and four bedroom properties which would be arranged in either terraced properties or apartments. The internal estate road runs through the centre of the site and along the south boundary. Access is taken from Front Street to the north. An area of public open space is also to be provided to the west of the site.
3. The application is reported to the Planning Committee as it constitutes a major development.

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## PLANNING HISTORY

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4. Outline planning permission was refused in May 2002 for a farm shop on the site.

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## PLANNING POLICY

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### NATIONAL POLICY:

5. 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 dependant.
6. 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’.
7. The following elements are considered relevant to this proposal;
8. *NPPF Part 1 – Building a Strong and Competitive Economy.* The Government attaches significant weight on the need to support economic growth through the planning system. Local Planning Authorities should plan proactively to meet the development needs of business and support an economy fit for the 21<sup>st</sup> century.
9. *NPPF Part 4 – Promoting Sustainable Transport.* Encouragement should be given to solutions which support reductions in greenhouse gas emissions and reduce congestion. Developments that generate significant movement should be located where the need to travel will be minimised and the use of sustainable transport modes maximised.
10. *NPPF Part 6 – 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 7 – Requiring Good Design.* The Government attaches great importance to the design of the built environment, with good design a key aspect of sustainable development, indivisible from good planning.
12. *NPPF Part 8 – Promoting Healthy Communities.* The planning system can play an important role in facilitating social interaction and creating healthy, inclusive communities. Developments should be safe and accessible; Local Planning Authorities should plan positively for the provision and use of shared space and community facilities. An integrated approach to considering the location of housing, economic uses and services should be adopted.
13. *NPPF Part 11 – 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.

*The above represents a summary of the NPPF considered most relevant the full text may be accessed at:*

<http://www.communities.gov.uk/publications/planningandbuilding/nppf>



## LOCAL PLAN POLICY:

### City of Durham Local Plan

14. *Policy E14 (Trees and Hedgerows)* sets out the Council's requirements for considering proposals which would affect trees and hedgerows. Development proposals will be required to retain areas of woodland, important groups of trees, copses and individual trees and hedgerows wherever possible and to replace trees and hedgerows of value which are lost. Full tree surveys are required to accompany applications when development may affect trees inside or outside the application site.
15. *Policy E15 (Provision of New Trees and Hedgerows)* states that the Council will encourage tree and hedgerow planting.
16. *Policy H13 (Residential Areas – Impact upon Character and Amenity)* states that planning permission will not be granted for new development or changes of use which have a significant adverse effect on the character or appearance of residential areas, or the amenities of residents within them.
17. *Policy T1 (Traffic – General)* states that the Council will not grant planning permission for development that would generate traffic likely to be detrimental to highway safety and / or have a significant effect on the amenity of occupiers of neighbouring property.
18. *Policy T10 (Parking – General Provision)* states that vehicle parking should be limited in amount, so as to promote sustainable transport choices and reduce the land-take of development.
19. *Policy Q5 (Landscaping General Provision)* sets out that any development which has an impact on the visual amenity of an area will be required to incorporate a high standard of landscaping.
20. *Policy Q8 (Layout and Design – Residential Development)* sets out the Council's standards for the layout of new residential development. Amongst other things, new dwellings must be appropriate in scale, form, density and materials to the character of their surroundings. The impact on the occupants of existing nearby properties should be minimised.
21. *Policy Q15 (Art in Design)* states that the Council will encourage the provision of artistic elements in the design and layout of proposed developments. Due regard will be made in determining applications to the contribution they make to the appearance of the proposal and the amenities of the area
22. *Policy U8a (Disposal of Foul and Surface Water)* requires developments to provide satisfactory arrangements for disposing foul and surface water discharges. Where satisfactory arrangements are not available, then proposals may be approved subject to the submission of a satisfactory scheme and its implementation before the development is brought into use.
23. *Policy U13 (Development on Unstable Land)* states that development on unstable land will only be permitted if it is proved that there is no risk to the development or its intended occupiers or users.

24. *Policy R2 (Provision of Open Space – New Residential Development)* states that in new residential development of 10 or more units, open space will be required to be provided within or adjacent to the development in accordance with the Council's standards. Where there is an identified deficiency and it is considered appropriate, the Council will seek to enter into a planning agreement with developers to facilitate the provision of new or improved equipped play areas and recreational/leisure facilities to serve the development in accordance with Policy Q8.

#### **EMERGING POLICY:**

25. Paragraph 216 of the NPPF says that decision-takers may give weight to relevant policies in emerging plans according to: the stage of the emerging plan; the extent to which there are unresolved objections to relevant policies; and, the degree of consistency of the policies in the emerging plan to the policies in the NPPF. The County Durham Plan (CDP) was submitted for Examination in Public and a stage 1 Examination concluded. An Interim Report was issued by an Inspector dated 18 February 2015, however that Report was quashed by the High Court following a successful Judicial Review challenge by the Council. In accordance with the High Court Order, the Council has withdrawn the CDP and a new plan being prepared. In the light of this, policies of the CDP can no longer carry any weight. As the new plan progresses through the stages of preparation it will begin to accrue weight.

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## **CONSULTATION AND PUBLICITY RESPONSES**

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#### **STATUTORY RESPONSES:**

26. *Environment Agency* has not raised any objections to the proposed scheme.

27. *Police Architectural Liaison Officer* has not raised any objections to the proposed scheme indicating that the crime risk assessment for this site is low.

28. *Northumbrian Water* have not raised any objections but has requested a condition for details of surface and foul water drainage to be submitted.

29. *Durham County Highways Authority* has not raised any objections to the proposed scheme.

30. *Durham County Drainage Team* has not raised any objections.

31. *Coal Authority* has confirmed that the application lies within a defined Development High Risk Area.

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

32. *Public Rights of Way Section* have not raised any objections indicating that there are no registered or claimed public rights of way in the vicinity of the proposed development. The PROW Officer has indicated that footpath Nos 3 and 37 in the surrounding area could benefit from surface water improvements.

33. *Design and Conservation* has not raised any objections to the proposed scheme.

34. *Tree Section* has highlighted some trees and hedgerow which should be retained. It has also been indicated that the trees which surround the site when fully mature

may become problematic to future home owners increasing pressure to remove or reduce.

35. *Landscape Officer* has indicated that the proposals would have some significant adverse landscape and visual effects.
36. *Environmental Management (Noise)* has not raised any objections in principle.
37. *Environmental Management (Contamination)* has not raised any objections but has indicated that a condition is required for further site investigation works to be undertaken.
38. *Ecology Section* has not raised any objections in terms of the Extended Phase 1 Habitat Survey which has been submitted. Concerns have been raised in terms of impacts on the Sacriston Subglacial Channels Local Geological Site.
39. *Spatial Planning Policy Section* has stated that development of the site would provide economic benefits both in terms of employment in the construction and development process as well as in helping to sustain local services. It will also provide an element of affordable housing. However balancing against the above benefits, this site forms a prominent and attractive gateway and setting to the village therefore any development would require high quality design and landscaping as required by the NPPF. Para 64 of the NPPF suggests that development of poor design that fails to take opportunities for improving the character and quality of an area should be resisted. With this in mind comments from DCC Landscape along with DCC Conservation & Design will be crucial as the acceptability of the proposal. Potential harm to the local geological and geomorphological interest also needs to be weighed in the balance as a dis-benefit, subject to specialist views on the matter.
40. *Housing Development and Delivery Team* have confirmed that there is no requirement for affordable housing as the site falls below the threshold.

#### **PUBLIC RESPONSES:**

41. The application has been advertised in the local press and a site notice was posted. Neighbouring residents have also been notified in writing. Seven letters of representations have been received, including a letter from Witton Gilbert Parish Council.
42. Witton Gilbert Parish Council have indicated that they supports new development but not in its current form in type and design. A Neighbourhood Plan for the village is nearing first draft stage with one of the key policies promoting this site as a housing site. Whilst housing is supported in principle, the house types proposed are not considered appropriate and show little regard to the setting of Front Street and the unique character of Witton Gilbert. It is also important that the network of footpaths and alleyways are properly integrated into any new development to help form a more cohesive and connected community.
43. Representations received from local residents have raised concerns regarding the proposed development. It is considered that the scheme would have an adverse impact on highway safety as there would be an increase in traffic and insufficient parking. The proposed scheme is considered to be an overdevelopment which is out of keeping with its surroundings. Concerns are raised with regards to flooding and the pressure which will be put on services in the village. It is also considered that the development would create disruption

during the construction period. Finally, a resident has asked whether the buildings would meet zero carbon standards.

#### **APPLICANTS STATEMENT:**

44. The scheme is designed to provide much needed good quality new housing to retain and attract all age groups to the village.
45. The design sits down below the level of the existing road to form a new courtyard that is acoustically screened from the bypass and will be a pleasant a safe place for children to live and play.
46. An existing site access provides a safe vehicular access to the scheme.
47. The design uses local materials and architectural features to fit into the street scene.
48. Existing landscape features have been retained where possible, with new landscaping and POS/Play Area introduced.
49. The scheme has been reduced in number from 19 to 14 units in response to comments received during the planning process, with larger gardens and better car parking provision being provided

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## **PLANNING CONSIDERATIONS AND ASSESSMENT**

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50. Having regard to the requirements of Section 38(6) of the Planning and Compulsory Purchase Act 2004, the relevant Development Plan policies, relevant guidance and all other material planning considerations, including representations received, it is considered that the main planning issues in this instance relate to the principle of residential development of the site; residential amenity; layout, design and visual amenity; highway and access issues; section 106 contributions; and ecology.

#### Principle of residential development

51. The site is bounded by existing residential properties to the north and east. With the A691 bypass to the south it is considered that the site can be classed as being within the built form of the village. The settlement of Witton Gilbert is classed as a medium sized settlement within the Council's Settlement Study which indicates that these villages tend to have fairly minimal facilities with some public transport services. It is considered that the development of this site for residential purposes would help in supporting the limited services currently within the village. Given the regeneration benefits which the proposal brings and that the development would help support local services, it is considered that the proposed development would be in accordance with the sustainability principles of the NPPF.

#### Residential amenity

52. The nearest neighbouring property is located over 40 metres away. This separation distance would ensure that there would be no loss of privacy and no adverse impacts created in terms of overbearing or overshadowing effects. It is considered that the residential amenity of neighbouring properties would not be adversely affected by the proposed development.

53. Each property proposed (except the apartments) would have individual rear garden amenity areas for the future occupiers. Whilst the majority of these garden areas provide ample amenity space, there are several which could be considered substandard as they are small areas of approximately 30sqm. These garden areas are associated with the smaller 2 bedroom properties. Ultimately, it would be for prospective purchasers of the properties to decide on whether the garden areas are of sufficient size for their needs. It is not considered that the substandard size of some of the gardens of sufficient to warrant refusal of the application. It is also noted that there is some public open space proposed as part of the scheme which would be available for use as amenity space for future occupiers of the properties.
54. It is noted that the site is within close distance to the existing A691 bypass and therefore noise impacts from traffic could be a potential issue on future occupants of the site. A noise survey has been submitted which indicates that subject to specific mitigation measures in relation to building construction, there would be no adverse impacts on the amenity of future residents. It is noted that there are other existing houses within Witton Gilbert which are located a similar distance away from the A691. It is considered that prospective buyers of the properties would be aware of the location of the bypass when purchasing houses on this site, therefore it is not considered residential amenity would be adversely compromised. The Environmental Health Officer dealing with contamination has not raised any objections but has requested that a phase 2 contamination report is submitted prior to works commencing on site. This issue can be adequately covered by a planning condition and a condition is subsequently recommended.
55. Overall, it is considered that the proposed development would not have an adverse impact on the residential amenities of existing and future occupiers of neighbouring properties and the proposed dwellings. The proposal would be in accordance with policies H13 and Q8 of the local plan.

#### Layout, design and visual amenity

56. Given the shape of the site, the layout of the proposed scheme is unusual as the estate road comes off the main highway from the north runs through the centre of the site, and then runs along the south boundary. This layout does allow for a built frontage onto Front Street. The proposed house types are all linked terraced properties but there is a mix of 2, 3 and 4 bedroom dwelling as well as apartments. The majority of trees and hedging on and around the site are to be retained although it is acknowledged that a section of hedgerow along the north boundary would be required to be removed to accommodate the proposed houses.
57. The Design and Conservation Officer has not raised any objections to the proposed scheme and has acknowledged that the reduction of the scheme from 19 houses to 14 provides more green space which enhances the development. Concerns have been raised from the Landscape and Tree Officers regarding the loss of hedgerow and the visual impacts the site would have from the north and west. The Parish Council have also raised concerns that the proposed scheme would not be in keeping with the surrounding area.
58. It is acknowledged that the site would be visible from the north and the west, however it is considered that this development would be viewed as part of the built environment of Witton Gilbert and therefore would not have an adverse impact on the surrounding landscape of the open countryside. Witton Gilbert have

a variety of different house types, particularly along Front Street, and it is considered that the proposed houses would not have an adverse impact on the visual appearance of the street scene or the surrounding area.

59. Details within the submitted design and access statement indicate that the properties would be constructed from a mix of stone and red brick with grey roof tiles. A condition is recommended for final details of the materials to be submitted and confirmed. Details of hard standing and landscaping should also be submitted for approval and a condition is recommended accordingly. A boundary treatment plan has also been submitted which indicates that the means of enclosures within the site will be a mix of railings and hedgerow, brick walling and timber fencing. These boundary details are considered appropriate and would not be visually intrusive.
60. Overall, it is considered that the layout, design and appearance of the proposed development would be acceptable. The visual amenity of the surrounding area would not be compromised and the landscape character of the surrounding area would not be adversely affected by the development. The proposal is considered to be in accordance with policies E14, E15, H13, Q5 and Q8 of the local plan.

#### Highway and access issues

61. The proposed development is to be accessed directly from the adopted highway to the north of the site. Visibility from this access can be adequately achieved and is therefore considered acceptable. The proposed layout of the estate is considered acceptable from a highways perspective and there is sufficient parking provision which would be in compliance with the Durham County Council's Residential Car Parking Standards. The County Highways Officer has not raised any objections to the proposed scheme.
62. Given the above it is considered that the proposed development would not have an adverse impact on highway safety and the proposal would be in accordance with policies T1 and T10 of the City of Durham Local Plan.

#### Section 106 contributions

63. Policies R1 and R2 of the local plan seek to ensure that the provision of open space for outdoor recreation is evenly distributed and is maintained at a level which meets the needs of its population. The scheme incorporates 687sqm of public open space which will be available for use by future occupants of the properties and the general public. This amount of open space would meet the requirements of 14 new properties in line with policy R1 of the local plan. It is also noted that the Durham County Council Open Space Needs Assessment (OSNA) identifies parks and gardens as a deficiency in this locality. The open space proposed in this scheme would be most likely used as extended garden areas for the proposed houses. The implementation of this public open space area would be secured through a section 106 legal agreement. Policy Q15 also encourages the provision of artistic elements in the design and layout of new development. To comply with policy Q15, developers can make financial contributions which can be used to provide public art within the locality. The developer has agreed to a financial contribution of £5000 for public art and this would be secured through a Section 106 legal agreement.
64. The above contributions would help to support and improve facilities within the surrounding locality for the benefit of occupiers of the additional properties and

also existing residents of the local community. The development would be in accordance with policies R1, R2 and Q15 of the local plan.

## Ecology

65. The presence of a European Protected Species (EPS) is a material planning consideration. The Conservation of Habitats and Species Regulations 2010 have established a regime for dealing with derogations which involved the setting up of a licensing regime administered by Natural England. Under the requirements of the Regulations it is an offence to kill, injure or disturb the nesting or breeding places of protected species unless it is carried out with the benefit of a licence from Natural England.
66. Notwithstanding the licensing regime, the Local Planning Authority must discharge its duty under the regulations and also consider these tests when deciding whether to grant permission for a development which could harm an EPS. A Local Planning Authority failing to do so would be in breach of the regulations which requires all public bodies to have regard to the requirements of the Habitats Directive in the exercise of their functions.
67. An Ecology Survey of the site has been submitted with the application. This survey concludes that the site has low ecological value. The submitted survey has been analysed by the County Ecologist. The County Ecologist has confirmed that there are no objections to the findings of the survey. Subsequently it is not considered that the proposed development would have an adverse impact on protected species or their habitats and would be in accordance with part 11 of the NPPF. Notwithstanding the above, a condition will be required which would ensure care is taken during construction in accordance with the recommendations in the submitted habitat survey. Subject to this mitigation, it is considered that the proposals would be in accordance with part 11 of the NPPF.
68. Overall it is considered that the proposed development would not have an adverse impact on protected species or habitats would not be compromised. The proposal would be in accordance with part 11 of the NPPF.
69. The Council's Ecologist has indicated that the site is within the Sacriston Subglacial Channels Local Geological Site. The Ecologist has indicated that the scheme cannot be supported as the development involves a considerable change of the ground level and is likely to destroy the features of the geological site. It is accepted that the existing levels of the site do differ by about 3 metres from the north to the south, and this proposal would involve backfilling the level the site. The Subglacial Channel Geological Site has already been impacted upon with the highway of Front Street crossing through it and more recently the A691 bypass which cuts through the Geological site. It is considered that the benefits that the development brings in terms of introducing a range of new housing stock into the village as well contributions towards open space/recreational facilities and public art would outweigh the potential harm to the local geological site.

## Other issues

70. Concerns have been raised by local residents regarding drainage of the site and flooding issues. The Environment Agency, Northumbrian Water and the Council's Drainage Officer have been consulted on the application and no objections have been raised. Northumbrian Water and the Council's Drainage Officer has requested that a condition is imposed for final details of the surface and foul water drainage to be confirmed prior to works commencing on site. A condition is

recommended accordingly. Given no objections have been raised by Environment Agency, Northumbrian Water and the Council's Drainage Officer it is considered that the proposed development would not adversely compromise the surrounding area in terms of drainage or flooding issues.

71. The Coal Authority was consulted on the proposals and they have indicated that the site lies within a development high risk area. To ensure the stability of the land a coal mining risk assessment is required to be submitted and approved by the Coal Authority. A condition is therefore recommended for a coal mining risk assessment to be submitted and approved prior to works commencing.

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## **CONCLUSION**

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72. The proposed development is considered to be within the built environment of the settlement of Witton Gilbert and would not encroach into the open countryside. The village has limited services and introducing further residential accommodation into the village would help support these services. It is therefore considered that the proposal can be considered sustainable development and would be in accordance with guidance contained within the NPPF.
73. Adequate separation distances are achieved between proposed properties and existing neighbouring dwellings, ensuring that there would be no loss of privacy or outlook and no adverse overbearing or overshadowing concerns would be created. Overall, the proposed development would not have an adverse impact on the residential amenities of existing and future occupiers of the proposed properties and existing neighbouring dwellings. The development is considered to be in accordance with policies H13 and Q8 of City of Durham Local Plan.
74. The proposed scheme would introduce a modern housing estate with the properties built from materials that would not appear out of place within the local area. The development provides a strong built frontage along the north boundary with Front Street. There are concerns from the Council's Landscape Officer as well as the Parish Council that the development would be visible and not in keeping with the surroundings. Whilst these concerns have been fully considered, it is not considered that these issues are sufficient to warrant refusal of the application. The proposals are considered to be in accordance with policies E14, E15, H13, Q5 and Q8 of the City of Durham Local Plan.
75. The proposed access to the site would provide adequate visibility splays. The proposed internal layout arrangement is acceptable and sufficient parking is provided. Overall, it is considered that highway safety would not be compromised as a result of the proposed development. The proposal therefore accords with policies T1 and T10 of the City of Durham Local Plan.
76. The proposed scheme provides 687sqm of public open space within the site which would meet the requirements of future occupiers of the development. A financial contribution of £5000 towards public art in the locality would be secured through a section 106 legal agreement.
77. Detailed ecology surveys have been submitted with the application and these surveys have found that no protected species would be adversely affected by the proposals, and ecology officers concur with this conclusion. The development would be in accordance with part 11 of the NPPF.



78. The site is within the Sacriston Subglacial Channels Local Geological Site and the development may impact on geological features. It is considered that the benefits that the development brings in terms of introducing a range of new housing stock into the village as well contributions towards open space/recreational facilities and public art would outweigh the potential harm to the local geological site.
79. The Environment Agency, Northumbrian Water and the Council's Drainage Officer have been consulted and they have not raised any objections to the proposed development. It is not considered that the proposal would create any flooding or drainage issues in the near locality.
80. It is acknowledged that the proposal has generated some opposition from local residents which live close to the site. These concerns have been considered in the report and notwithstanding the points raised it is felt that sufficient benefits and mitigation measures are contained within the scheme to render it acceptable in planning terms and worthy of support. It is also noted that there have been no substantial objections made from any statutory consultee bodies.

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## **RECOMMENDATION**

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That Members **APPROVE** the application subject to the completion of a Section 106 Legal Agreement to secure a financial contribution of £5000 towards public art in the locality; the provision of public open space within the site; and subject to the following conditions;

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

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

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

<b>Plan Ref No.</b>	<b>Description</b>	<b>Date Received</b>
02 A	Bin Store Plan and Elevations	27/04/2016
PL08A	Boundary Treatment Plan	27/04/2016
PL09A	Existing and Proposed Site Sections	27/04/2016
PL10B	Housetype A	27/04/2016
PL12B	Housetype B	27/04/2016
PL13B	Housetype C	27/04/2016
PL14B	Housetype D	27/04/2016
PL15A	Housetype E	27/04/2016
PL07G	Proposed Site Plan (showing Ground Floor Plans)	27/04/2016
PL06H	Proposed Site Plan (showing Roof Plans)	02/06/2016
PL16	Autotrack Drawing	28/04/2016
PL01A	Site Location Plan	02/06/2016

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

3. No development hereby permitted shall commence until details of the external walling and roofing materials have been submitted to and approved in writing by the local planning authority. Thereafter 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 H13 of the City of Durham Local Plan.*

4. No development hereby permitted shall commence until details of all hard standing areas have been submitted to and approved in writing by the local planning authority. Thereafter 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 H13 of the City of Durham Local Plan.*

5. No development hereby permitted shall commence until a coal mining risk assessment has been submitted to and approved in writing by the local planning authority. Thereafter the development shall be constructed in accordance with the approved details.

*Reason: In the interests of the stability of the site and to comply with policy U13 of the City of Durham Local Plan.*

6. The development hereby permitted shall not commence until a scheme to deal with contamination has been submitted to and agreed in writing with the Local Planning Authority. The scheme shall include the following

#### Pre-Commencement

- (a) A Phase 2 Site Investigation and Risk Assessment is required and shall be carried out by competent person(s) to fully and effectively characterise the nature and extent of any land and/or groundwater contamination and its implications.
- (b) If the Phase 2 identifies any unacceptable risks, remediation is required and a Phase 3 Remediation Strategy detailing the proposed remediation and verification works shall be carried out by competent person(s). No alterations to the remediation proposals shall be carried out without the prior written agreement of the Local Planning Authority. If during the remediation or development works any contamination is identified that has not been considered in the Phase 3, then remediation proposals for this material shall be agreed in writing with the Local Planning Authority and the development completed in accordance with any amended specification of works.

#### Completion

- (c) Upon completion of the remedial works (if required), a Phase 4 Verification Report (Validation Report) confirming the objectives, methods, results and effectiveness of all remediation works detailed in the Phase 3 Remediation Strategy shall be submitted to and agreed in writing with the Local Planning Authority within 2 months of completion of the development.

*Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risk to workers, neighbours and other offsite receptors in accordance with NPPF Part 11.*

7. No development shall take place until a detailed scheme for the disposal of surface and foul water from the development hereby approved has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

*Reason: In the interests of the amenity of the area and to comply with policy U8a of the City of Durham Local Plan.*

8. The development hereby approved shall be carried out in full accordance with all ecological mitigation measures, advice and recommendations within the Extended Phase 1 Habitat Survey prepared by AJT Environmental Consultants date received 3<sup>rd</sup> May 2016.

*Reason: To conserve protected species and their habitat in accordance with the objectives of part 11 of the NPPF.*

9. No development shall commence until a landscaping scheme has been submitted to and approved in writing by the local planning authority. The scheme shall identify those trees/hedges/shrubs scheduled for retention and removal; shall provide details of new and replacement trees/hedges/shrubs; detail works to existing trees; and provide details of protective measures during construction period. The development shall be carried out in accordance with the approved details.

*Reason: In the interests of the appearance of the area and to comply with policies E15 and H13 of the City of Durham Local Plan.*

10. All planting, seeding or turfing shall be carried out in the first planting and seeding seasons following the completion of the development and any trees or plants which within a period of 5 years from the completion die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

*Reason: In the interests of the appearance of the area and to comply with policies E1, E2, E2A, and H13 of the City of Durham Local Plan.*

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## **STATEMENT OF PROACTIVE ENGAGEMENT**

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In dealing with the application, the Local Planning Authority has worked with the applicant in a positive and proactive manner based on seeking solutions to problems arising during the application process. The decision has been in compliance with the requirement in the National Planning Policy Framework to promote the delivery of sustainable development.

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## **BACKGROUND PAPERS**

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- Submitted Application Forms and Plans.
- Design and Access Statement
- Environmental Statement
- City of Durham Local Plan
- National Planning Policy Framework
- Consultation Responses



**Planning Services**

**Erection of 14 residential properties,  
associated highways and landscaping  
works at Land adjoining Snook Acres,  
Front Street, Witton Gilbert, DH7 6SY  
Ref: DM/15/03779/FPA**

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**Date 14<sup>th</sup> June 2016**

# COMMITTEE REPORT

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## APPLICATION DETAILS

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<b>APPLICATION NO:</b>	<b>DM/16/00858/FPA</b>
<b>FULL APPLICATION DESCRIPTION:</b>	<b>12 no. residential apartments</b>
<b>NAME OF APPLICANT:</b>	<b>Mr W Adams</b>
<b>ADDRESS:</b>	<b>3-6 Front Street, Wheatley Hill, Durham, DH6 3NJ</b>
<b>ELECTORAL DIVISION:</b>	<b>Trimdon and Thornley</b>
	<b>Laura Eden</b>
	<b>Senior Planning Officer</b>
<b>CASE OFFICER:</b>	<b>03000 263980</b>
	<a href="mailto:laura.eden@durham.gov.uk">laura.eden@durham.gov.uk</a>

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## DESCRIPTION OF THE SITE AND PROPOSALS

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### The Site

1. The application site is situated within the built up limits of Wheatley Hill within a mixed commercial and residential area. The site is currently cleared having once been occupied by a two and three storey cinema building fronting the main street. It is enclosed to the front and rear with a birds mouth timber fence.
2. The site fronts onto B1279 Front Street, one of the main routes through Wheatley Hill. To the north, south and immediate east of the site lie residential properties, to the north-west is Wheatley Hill Industrial Estate and to the west there are various commercial premises that line Front Street.

### The Proposal

3. Planning permission is sought to construct no.12 residential units consisting of six 1 bedroom and six two bedroom apartments. Amended plans were received during the application process revising the overall design of the proposal to overcome concerns. The proposal is similar in appearance to the 2009 approval identified in the planning history section below.
4. The apartment block would be three storeys high set back 1.3 metres from the main road. The building would have an overall height of 11.4m, would be 20.8m wide by 12.3m deep. The building is orientated to face onto Front Street but the vehicle and pedestrian access is to the rear from Moor View with 16 car parking spaces provided. The plans include small amenity areas, shared bin store areas and landscaping provision.
5. This application is being referred to the planning committee as it constitutes a major planning application.

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## **PLANNING HISTORY**

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6. 99/217 – Outline development for residential approved
7. 05/721 – Outline permission for 8 dwellings approved
8. PLAN/2007/0813 – 10 residential apartments approved
9. 5/PL/2009/0219 - 12 no. Apartments approved
- 10.5/PL/2011/0346 - Alterations to elevations & internal alterations to apartments - non material amendment to planning application ref no. PL/5/2009/0219 for 12 no. Apartments

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## **PLANNING POLICY**

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### **NATIONAL POLICY:**

11. The Government has consolidated all planning policy statements, guidance notes and many circulars into a single policy statement, the National Planning Policy Framework (NPPF), although the majority of supporting Annexes to the planning policy statements are retained. The overriding message is that new development that is sustainable should go ahead without delay. It defines the role of planning in achieving sustainable development under three topic headings – economic, social and environmental, each mutually dependant.
12. The presumption in favour of sustainable development set out in the NPPF requires local planning authorities to approach development management decisions positively, utilising twelve 'core planning principles'.
13. The following elements are considered relevant to this proposal;
14. NPPF Part 4 – Promoting Sustainable Transport. Encouragement should be given to solutions which support reductions in greenhouse gas emissions and reduce congestion. Developments that generate significant movement should be located where the need to travel will be minimised and the use of sustainable transport modes maximised.
15. NPPF Part 6 – Delivering a Wide Choice of High Quality Homes. To boost significantly the supply of housing, applications should be considered in the context of the presumption in favour of sustainable development
16. NPPF Part 7 – Requiring Good Design. 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 8 – Promoting Healthy Communities. The planning system can play an important role in facilitating social interaction and creating healthy, inclusive communities. Developments should be safe and accessible; Local Planning Authorities should plan positively for the provision and use of shared space and community facilities. An integrated approach to considering the location of housing, economic uses and services should be adopted.
18. NPPF Part 10 – Meeting the Challenge of Climate Change, Flooding and Coastal Change. Planning plays a key role in helping shape places to secure Local Planning Authorities should adopt proactive strategies to mitigate and adapt to climate

change. Local Planning Authorities should have a positive strategy to promote energy from renewable and low carbon sources. Inappropriate development in areas at risk of flooding should be avoided.

The above represents a summary of the NPPF considered most *relevant the full text may be accessed at:*

<http://www.communities.gov.uk/publications/planningandbuilding/nppf>

## **LOCAL PLAN POLICY:**

### **Easington Local Plan**

19. Policy 1- Due regard will be had to the development plan when determining planning applications. Account will be taken as to whether the proposed development accords with sustainable development principles while benefiting the community and local economy. The location, design and layout will also need to accord with saved policies 3, 7, 14-18, 22 and 35-38.
20. Policy 35 - The design and layout of development should consider energy conservation and efficient use of energy, reflect the scale and character of adjacent buildings, provide adequate open space and have no serious adverse effect on the amenity of neighbouring residents or occupiers.
21. Policy 36 - The design and layout of development should ensure good access and encourage alternative means of travel to the private car.
22. Policy 66 - Developers will be required to make adequate provision for children's play space and outdoor recreation in relation to housing development of 10 or more dwellings. Provision may be secured elsewhere if it is inappropriate to make provision at the development site.
23. Policy 67 - Housing development will be approved on previously developed sites within settlement boundaries of established towns and villages provided the proposal is appropriate in scale and character and does not conflict with specific policies relating to the settlement or the general policies of the plan.

## **RELEVANT EMERGING POLICY**

### **The County Durham Plan**

24. Paragraph 216 of the NPPF says that decision-takers may give weight to relevant policies in emerging plans according to: the stage of the emerging plan; the extent to which there are unresolved objections to relevant policies; and, the degree of consistency of the policies in the emerging plan to the policies in the NPPF. The County Durham Plan (CDP) was submitted for Examination in Public and a stage 1 Examination concluded. An Interim Report was issued by an Inspector dated 18 February 2015, however that Report was quashed by the High Court following a successful Judicial Review challenge by the Council. In accordance with the High Court Order, the Council has withdrawn the CDP and a new plan being prepared. In the light of this, policies of the CDP can no longer carry any weight. As the new plan progresses through the stages of preparation it will begin to accrue weight.

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## **CONSULTATION AND PUBLICITY RESPONSES**

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### **STATUTORY RESPONSES:**

25. Northumbrian Water - No objection in principle however recommend a condition in relation to foul and surface water drainage.

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

26. Design – Consider that the amendments to the scheme are a significant improvement and the traditional design concept is similar to the previously approved plan. Recommend the imposition of conditions relating to materials and opening details.

27. Highways – Following the submission of amended plans no objection is raised subject to the imposition of a condition and informative relating to the off-site improvement works

28. Landscape – No objection however consider the scheme could be enhanced through a landscaping scheme

29. Contaminated Land – Require the imposition of a condition

30. Environmental Health - No objection to the development subject to the imposition of conditions

31. Archaeology - There are no known archaeological objections to this scheme

32. Sustainability – Condition relating to sustainability is required to be imposed

33. Police Architectural Liaison Officer – No objection

34. Drainage – Further details are required in relation to surface water drainage.

#### **PUBLIC RESPONSES:**

35. The application has been advertised on site and in the local press. Neighbouring residents were also notified individually of the proposed development. One letter has been received from a local resident querying three aspects of the development including surface water drainage, the capacity of the network to accommodate foul sewerage and waste collection.

#### **APPLICANTS STATEMENT:**

36. This planning statement is submitted in support of a planning application on land at 3,4,5,&6 Front Street Wheatley Hill. The application seeks permission for the construction of twelve one bedroom and two bedroom flats, to include car parking and some landscaped areas. The development will provide for affordable homes within the area and the statement is prepared on behalf of Mr W Adams the applicant in this matter.

37. The site benefits from a previously approved scheme that has now lapsed for a similar density development of twelve flats.

38. In addition to the planning statement and application revised plans the application is also supported by the following;

- i) design and access statement
- ii) environmental noise survey
- iii) phase one desk top study



39. The site is located adjacent to Front Street Wheatley Hill to the south and a site location plan is submitted with the application.
40. The site is rectilinear with dimensions of approximately 22.000m wide and 35.000m deep. There is a general fall north to south and the site is currently vacant.
41. The site is an infill plot between two residential dwelling to the east and commercial retail shops and first floor accommodation to the west.
42. The site is served from Moor View to the south an existing adopted road and this is the proposed access position for both pedestrian and vehicular traffic.
43. A more detailed description of the site and proposal is contained within the design and access statement.
44. The site benefits from a previously approved scheme of similar design and scale.
45. This proposal provides a comprehensive approach to the redevelopment of the site, which is currently vacant.
46. The proposal accords with national and local planning policies for the site redevelopment.
47. The proposal is recommended to the council for approval of the revised scheme.

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## **PLANNING CONSIDERATIONS AND ASSESSMENT**

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48. Having regard to the requirements of Section 38(6) of the Planning and Compulsory Purchase Act 2004 the relevant Development Plan policies, relevant guidance and all other material planning considerations, including representations received, it is considered that the main planning issues in this instance relate to principle of development, impact on surrounding land uses, visual impact, highway issues, S106 contributions and other considerations.

### Principle of development

49. The application site is located within the defined built up limits for Wheatley Hill and relates to a former brownfield site that has now been cleared. Policy 67 advocates support for housing proposals provided they lie within the settlement limits and relate to previously developed land. The current proposal would therefore be in accordance with this policy being former brownfield land and within the settlement limits.
50. In accordance with paragraph 215 of the National Planning Policy Framework, the weight to be attached to relevant saved local plan policies will depend upon the degree of consistency with the NPPF. Greater weight would need to be afforded to the guidance contained within the National Planning Policy Framework which is more up to date than the policies of the local plan. The NPPF advocates a presumption in favour of sustainable development and seeks to provide additional housing.
51. The County Durham Settlement Study identifies Wheatley Hill as a local service centre. Although such areas are less self-contained than larger villages and smaller towns the facilities they do have reduce a significant amount of trip generation between settlements. Wheatley Hill would therefore be regarded as a suitable and

sustainable location for new housing development. The application site is considered to fit well within the village form being an infill site in the row.

52. In assessing the sustainability of the site, it is considered that it performs particularly well, being located within walking distance of services, amenities and sustainable transport links. Future residents would therefore have ready access to these facilities without the need to utilise the private motor car. The NPPF applies a presumption in favour of sustainable development which this proposal is considered to represent.

#### Impact on surrounding land uses

53. In terms of neighbouring amenity policy 35 of the local plan aims to ensure that developments have no serious adverse effect on the amenity of people living and working in the vicinity of the development site and the existing use of land or buildings in terms of privacy, visual intrusion, noise, other pollutants and traffic generation. The policy is in accordance with the NPPF as it too seeks to secure a good standard of amenity for all existing and future occupants of land and buildings.
54. Distancing standards outlined in the local plan recommend that a minimum of 21 metres is achieved between opposing elevations containing habitable windows. These distancing standards are comfortably achieved in relation to the development and the properties to the south of the site located off Moor View. With regards to the properties to the north on the opposite side of Front Street the distances fall short of the standards recommended due to the established street pattern and are around 17m. Given the clear benefits to the street scene in terms of redeveloping the site and that the distance does not fall significantly short of those recommended it is not considered to be a reason to refuse the application.
55. Both the adjacent properties have windows in their side elevations overlooking the development however these serve non-habitable rooms. It is acknowledged that the three storey building would sit adjacent to no.2 Front Street, a dormer bungalow. Despite the clear differences in their overall height given the orientation of the buildings and that they would have similar front and rear build lines it is not considered that the proposed apartment block would have a significant overbearing impact or result in issues of overshadowing.
56. Environmental health officers have been consulted on the scheme. They note the site is a high street location therefore the surrounding area is in mixed use. With regards to noise disturbance they have no specific concerns given that the nearby Rock Cliff Dairies are no longer operating and properties would be set back from Front Street which is limited to 30mph. Although they do not object to the scheme they do recommend conditions relating to considerate construction practices are imposed however it is considered that this could be dealt with by means of an informative.
57. Overall, it is considered that the proposals detailed in this application would not have an adverse impact on surrounding uses and the proposals would be in accordance with policies 1 and 35 of the local plan.

#### Visual Amenity

58. The NPPF and in particular Section 7 deals with good design as it requires proposals to respect neighbouring properties and the local area more generally. At a local level Policy 35 of the Easington Local Plan requires the design and layout of developments to reflect the scale and character of adjacent buildings and the area

generally, particularly in terms of site coverage, height, roof style, detailed design and materials.

59. The proposal would introduce a three storey building in an area that is typically characterised by two storey properties. The former building on the site was part three storey and there are variations in ridge height along the frontage albeit the properties are two storey. The site occupies a prominent position within the front street and the cleared site is an uncharacteristic void in the developed frontage therefore there are clear advantages in seeing the site redeveloped. The design officer has assessed the proposal and following the submission of the amended plans offers no objection to the more traditional design approach that reflects the 2009 approval. The detailed design incorporates features such as heads and cills which is considered to be acceptable however lacks detail regarding materials and openings. These matters can be dealt with by means of planning conditions.
60. The plans indicate areas of landscaping however no specific details have been provided. A landscaping scheme is therefore required to agree these details.
61. Overall it is considered that the proposals are acceptable in visual terms and would be in accordance with policies 1 and 35 of the local plan.

## Highways

62. The twelve apartments would be served by sixteen on-site car parking spaces therefore would comply with Durham County Council's residential car parking standards. Cycle storage arrangements are also shown on plans which is also welcomed.
63. The proposed new access for the development off Moor View will require the creation of a new footway type vehicular access crossing in conjunction with the removal of the existing access. A condition and informative are proposed to agree the details of these works and ensure they are completed prior to the occupation of the properties.
64. The highways officer has also queried what will happen to the surface water drainage of the car parking area as this would not be permitted to discharge on public highway. This matter would be dealt with by a surface water planning condition.
65. Subject to the above it is considered that the proposed development would not compromise highway safety.

## S106 contributions

66. Policy 90 of the local plan as well as evidence within the Council's Open Space Needs Assessment (OSNA) requires new housing development to contribute to the provision and enhancement of outdoor sports facilities. In this instance a developer contribution can be made towards the enhancement and upgrade of recreational facilities in the locality. The amount of these contributions would be determined pro-rata on the final number of dwellings approved, but would equate to £500 per unit the established rate for the former Easington District Council area. This contribution would help to support and improve facilities within the surrounding locality for the benefits of the additional properties and also existing residents of the local community. Adequate on site provision is not being provided therefore the applicant would be required to enter into a Section 106 Legal Agreement to secure a financial contribution of £6000 for off-site play/recreation provision.

## Other issues

67. The Contaminated Land Officer has assessed the available information and historical maps. Due to the fact that this development proposes a more sensitive end use a contaminated land condition should be imposed.
68. The Council's Drainage Officer and Northumbrian Water have been consulted on the proposed application. No objections have been raised however a condition has been requested for details of foul and surface water drainage to be submitted prior to works commencing on site. A condition is recommended accordingly. It is therefore considered that the proposal would not have an adverse impact in terms of drainage or flooding.
69. The Council's Sustainability Officer has not raised any objections however a condition is recommended for further information to be submitted in relation to sustainability embedded into the development. A condition is recommended accordingly.
70. The Council's Archaeology Team have not raised any objections to the proposed scheme as the site does not lie within a recording area. The site does not lie in a high risk coal mining referral area.
71. One letter has been received from a neighbouring property querying aspects of the development. In relation to foul and surface water drainage a condition has been imposed to agree these details. Shared bin store areas have been shown on the plans however detailed plans have not been submitted therefore a condition is proposed.

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## CONCLUSION

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72. In conclusion, the location of the proposed development is considered sustainable as it is well related to the existing settlement. It is considered that the site has the potential to be developed without causing a significant adverse impact to residential and visual amenity in addition to highway safety. It is considered that all other matters can be dealt with by means of Conditions and Informatives. As a result, it is considered that the proposal is in accordance with the intentions of the National Planning Policy Framework and saved Policies of the current Local Plan.

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## RECOMMENDATION

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That the application be **APPROVED** subject to the completion of a Section 106 Legal Agreement to secure a financial contribution of £6000 for off-site play/recreation provision, and to the following conditions;

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

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

2. The development hereby approved shall be carried out in strict accordance with the following approved plans: Application form and Design and access statement

received 10/05/2016, site location plan received 24/03/2016, Drg. no. 1A and Drg. no. 2A received 10/05/2016.

Reason: To define the consent and ensure that a satisfactory form of development is obtained in accordance with saved policies 1 and 35 of the Easington Local Plan.

3. Notwithstanding any details of materials submitted with the application no development shall commence until samples of the external 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 saved policies 1 and 35 of the Easington Local Plan.

4. Notwithstanding the details shown on the approved plans precise details of all new fenestration including door openings, glazing, heads and cills shall be submitted to and approved in writing by the Local Planning Authority, prior to the commencement of the development. The scheme shall be implemented in accordance with the approved details.

Reason: In the interests of the appearance of the area and to comply with saved policies 1 and 35 of the Easington Local Plan.

5. Prior to the commencement of the development details of the surface treatment and construction of all hardsurfaced areas shall be submitted to and approved in writing by the Local Planning Authority. The development shall be undertaken in accordance with the approved details.

Reason: In the interests of the appearance of the area and to comply with saved policies 1 and 35 of the Easington Local Plan.

6. Prior to the commencement of the development details of means of enclosure shall be submitted to and approved in writing by the Local Planning Authority. The enclosures shall be constructed in accordance with the approved details prior to the occupation of the dwelling to which they relate.

Reason: In the interests of the appearance of the area and to comply with policies 1 and 35 of the District of Easington Local Plan.

7. Prior to the commencement of the development details of the design and appearance of the bin stores shall be submitted to and approved in writing by the Local Planning Authority. The bin stores shall be constructed and available for use prior to the occupation of the building.

Reason: In the interests of the visual amenity of the area and to comply with saved policies 1 and 35 of the Easington Local Plan.

8. Prior to the commencement of development full engineering details of the off-site highway improvement works to the Moor View public footway must be submitted to and approved in writing by the Local Planning Authority. None of the dwellings shall be occupied until the construction of the off-site highway improvement works to the Moor View public footway have been completed in accordance with the approved details.

Reason: In the interest of highway safety and to comply with saved policies 1 and 35 of the Easington Local Plan.

9. The development hereby permitted shall not commence until a scheme to deal with contamination has been submitted to and agreed in writing with the Local Planning Authority. The scheme shall include the following, unless the Local Planning Authority is satisfied that the site is suitable for the proposed use and dispenses of any such requirements, in writing:

#### Pre-Commencement

(a) A Phase 1 Preliminary Risk Assessment (Desk Top Study) shall be carried out by competent person(s), to identify and evaluate all potential sources and impacts on land and/or groundwater contamination relevant to the site.

(b) If the Phase 1 identifies the potential for contamination, a Phase 2 Site Investigation and Risk Assessment is required and shall be carried out by competent person(s) to fully and effectively characterise the nature and extent of any land and/or groundwater contamination and its implications.

(c) If the Phase 2 identifies any unacceptable risks, remediation is required and a Phase 3 Remediation Strategy detailing the proposed remediation and verification works shall be carried out by competent person(s). No alterations to the remediation proposals shall be carried out without the prior written agreement of the Local Planning Authority. If during the remediation or development works any contamination is identified that has not been considered in the Phase 3, then remediation proposals for this material shall be agreed in writing with the Local Planning Authority and the development completed in accordance with any amended specification of works.

#### Completion

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

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risk to workers, neighbours and other offsite receptors in accordance with NPPF Part 11.

10. Prior to the commencement of the development a scheme to embed sustainability and minimise carbon from construction and in-use emissions shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in complete accordance with the approved scheme and retained while the building is in existence.

Reason: In the interests of sustainable construction and energy generation in accordance with the aims of with saved policies 1 and 35 of Easington Local Plan and Part 10 of the NPPF.

11. No development shall take place until a detailed scheme for the disposal of foul and surface water from the development hereby approved has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

Reason: To prevent the increased risk of flooding from any sources and in accordance with Part 10 of the NPPF.

12.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 saved policies 1 and 35 of the Easington Local Plan.

13.All planting, seeding or turfing shall be carried out in the first planting and seeding seasons following the completion of the development and any trees or plants which within a period of 5 years from the completion die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

Reason: In the interests of the appearance of the area and to comply with saved policies 1 and 35 of the Easington Local Plan.

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## **STATEMENT OF PROACTIVE ENGAGEMENT**

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The Local Planning Authority in arriving at its decision to approve the application has, without prejudice to a fair and objective assessment of the proposals, issues raised and representations received, sought to work with the applicant in a positive and proactive manner with the objective of delivering high quality sustainable development to improve the economic, social and environmental conditions of the area in accordance with the NPPF. (Statement in accordance with Article 35(2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

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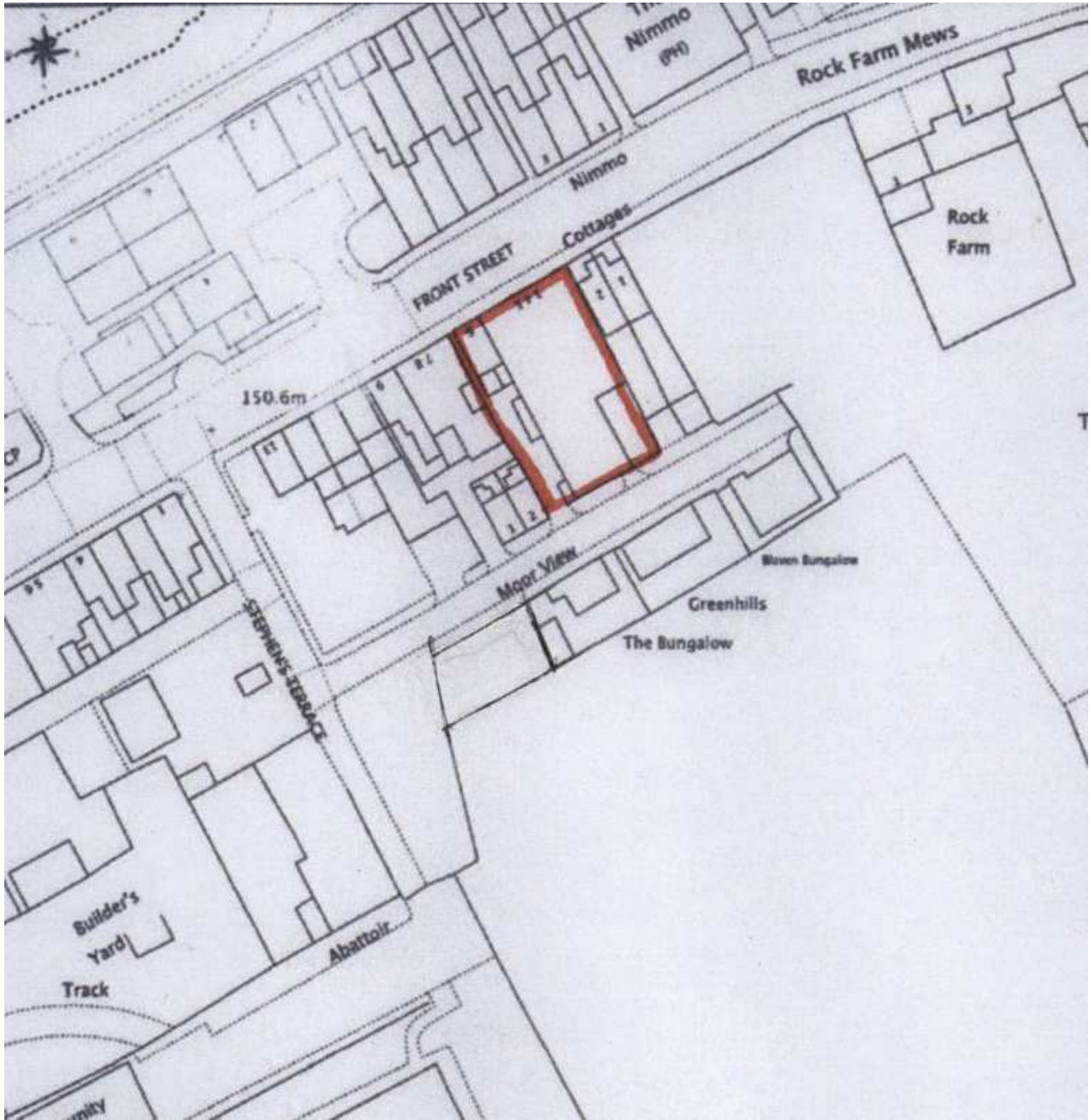
## **BACKGROUND PAPERS**

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Submitted Application Forms, Plans and supporting documentation  
Easington Local Plan  
National Planning Policy Framework

Internal consultee responses  
Public response  
Responses from statutory and other consultees  
National Planning Policy Guidance






**Durham**  
County Council

**Planning Services**

**12 no. residential apartments at 3-6  
Front Street, Wheatley Hill, Durham,  
DH6 3NJ Ref: DM/16/00858/FPA**

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**Date**  
**14<sup>th</sup> June 2016**

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# COMMITTEE REPORT

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## APPLICATION DETAILS

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<b>APPLICATION NO:</b>	<b>DM/16/00892/FPA</b>
<b>FULL APPLICATION DESCRIPTION:</b>	<b>Construction of two new residential care buildings</b>
<b>NAME OF APPLICANT:</b>	<b>Inclusion Housing</b>
<b>ADDRESS:</b>	<b>Land To The East Of 74 High Street South, Langley Moor</b>
<b>ELECTORAL DIVISION:</b>	<b>Brandon</b>
<b>CASE OFFICER:</b>	<b>Chris Baxter</b> <b>Senior Planning Officer</b> <b>03000 263944</b> <a href="mailto:chris.baxter@durham.gov.uk">chris.baxter@durham.gov.uk</a>

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## DESCRIPTION OF THE SITE AND PROPOSALS

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### The Site

1. The application site is a vacant parcel of land located east of 74 High Street South in Langley Moor. Immediately to the north west is to the A690 highway with amenity land and housing located beyond. To the north east is the retail store of Lidl with further commercial properties located north of the site along the main High Street. The property of No. 74 High Street South is located to the south west and this building is currently occupied by a laundrette known as Domestic Bliss. Beyond Domestic Bliss is the terraced street which appears to be predominantly occupied as residential properties. Industrial commercial buildings are located to the east and south of the site.

### The Proposal

2. Planning permission is sought for the erection of residential care buildings which will be divided into two separate buildings on the site. A sensory care unit will be located to the northern part of the site with a mental health recovery unit to the southern part of the site. Both buildings would be of two storey design with hipped style roofing. Two accesses are proposed into the site. One from the side lane of High Street South and the second from the industrial estate road to the east. Parking provision is proposed within the site as well as community garden areas.
3. This application is referred to the Planning Committee as it constitutes a major planning application.

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## PLANNING HISTORY

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4. Full planning permission was granted in June 2009 for a supermarket and housing; and in the same application outline permission was granted for a children's nursery.

The supermarket has subsequently been built as a Lidl and the housing was also constructed to the rear of the Lidl store. The children's nursery which was proposed to be located on the same site subject of this current application was not brought forward.

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## PLANNING POLICY

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### NATIONAL POLICY:

5. 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 dependant.
6. 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'.
7. The following elements are considered relevant to this proposal;
8. *NPPF Part 1 – Building a Strong and Competitive Economy.* The Government attaches significant weight on the need to support economic growth through the planning system. Local Planning Authorities should plan proactively to meet the development needs of business and support an economy fit for the 21<sup>st</sup> century.
9. *NPPF Part 4 – Promoting Sustainable Transport.* Encouragement should be given to solutions which support reductions in greenhouse gas emissions and reduce congestion. Developments that generate significant movement should be located where the need to travel will be minimised and the use of sustainable transport modes maximised.
10. *NPPF Part 6 – Delivering a Wide Choice of High Quality Homes.* Local Planning Authorities should use evidence bases to ensure that their Local Plan meets the needs for market and affordable housing in the area. Housing application should be considered in the context of the presumption in favour of sustainable development. A wide choice of homes, widened opportunities for home ownership and the creation of sustainable, inclusive and mixed communities should be delivered. Where there is an identified need for affordable housing, policies should be met for meeting this need unless off-site provision or a financial contribution of broadly equivalent value can be robustly justified and such policies should also be sufficiently flexible to take account of changing market conditions over time.
11. *NPPF Part 7 – Requiring Good Design.* The Government attaches great importance to the design of the built environment, with good design a key aspect of sustainable development, indivisible from good planning.
12. *NPPF Part 8 – Promoting Healthy Communities.* The planning system can play an important role in facilitating social interaction and creating healthy, inclusive communities. Developments should be safe and accessible; Local Planning Authorities should plan positively for the provision and use of shared space and community facilities. An integrated approach to considering the location of housing, economic uses and services should be adopted.

13. *NPPF Part 10 – Meeting the Challenge of Climate Change, Flooding and Coastal Change*. Planning plays a key role in helping shape places to secure Local Planning Authorities should adopt proactive strategies to mitigate and adapt to climate change. Local Planning Authorities should have a positive strategy to promote energy from renewable and low carbon sources. Inappropriate development in areas at risk of flooding should be avoided.

*The above represents a summary of the NPPF considered most relevant the full text may be accessed at:*

<http://www.communities.gov.uk/publications/planningandbuilding/nppf>

## **LOCAL PLAN POLICY:**

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

14. *Policy E16 (Protection and Promotion of Nature Conservation)* is aimed at protecting and enhancing the nature conservation assets of the district. Development proposals outside specifically protected sites will be required to identify any significant nature conservation interests that may exist on or adjacent to the site by submitting surveys of wildlife habitats, protected species and features of ecological, geological and geomorphological interest. Unacceptable harm to nature conservation interests will be avoided, and mitigation measures to minimise adverse impacts upon nature conservation interests should be identified.
15. *Policy H13 (Residential Areas – Impact upon Character and Amenity)* states that planning permission will not be granted for new development or changes of use which have a significant adverse effect on the character or appearance of residential areas, or the amenities of residents within them.
16. *Policy T1 (Traffic – General)* states that the Council will not grant planning permission for development that would generate traffic likely to be detrimental to highway safety and / or have a significant effect on the amenity of occupiers of neighbouring property.
17. *Policy T10 (Parking – General Provision)* states that vehicle parking should be limited in amount, so as to promote sustainable transport choices and reduce the land-take of development.
18. Policies Q1 and Q2 (General Principles Designing for People and Accessibility) states that the layout and design of all new development should take into account the requirements of all users.
19. Policy Q3 (External Parking Areas) requires all external parking areas to be adequately landscaped, surfaced, demarcated, lit and signed. Large surface car parks should be subdivided into small units. Large exposed area of surface, street and rooftop parking are not considered appropriate.
20. Policy Q5 (Landscaping General Provision) sets out that any development which has an impact on the visual amenity of an area will be required to incorporate a high standard of landscaping.
21. Policy Q8 (Layout and Design – Residential Development) sets out the Council's standards for the layout of new residential development. Amongst other things, new dwellings must be appropriate in scale, form, density and materials to the character of their surroundings. The impact on the occupants of existing nearby properties should be minimised.

22. *Policy U5 (Pollution Prevention)* states that development that may generate pollution will not be permitted where it would have unacceptable impacts upon the local environment, amenity of adjoining land and property or cause a constraint the development of neighbouring land.
23. *Policy U8a (Disposal of Foul and Surface Water)* requires developments to provide satisfactory arrangements for disposing foul and surface water discharges. Where satisfactory arrangements are not available, then proposals may be approved subject to the submission of a satisfactory scheme and its implementation before the development is brought into use.
24. *Policy U11 (Development on Contaminated Land)* sets out the criteria against which schemes for the redevelopment of sites which are known or suspected to be contaminated. Before development takes place it is important that the nature and extent of contamination should be fully understood.
25. *Policy U13 (Development on Unstable Land)* will only be permitted if it is proved there is no risk to the development or its intended occupiers, or users from such instability, or that satisfactory remedial measures can be undertaken.
26. *Policy U14 (Energy Conservation – General)* states that the energy efficient materials and construction techniques will be encouraged.

#### **RELEVANT EMERGING POLICY**

##### The County Durham Plan

27. Paragraph 216 of the NPPF says that decision-takers may give weight to relevant policies in emerging plans according to: the stage of the emerging plan; the extent to which there are unresolved objections to relevant policies; and, the degree of consistency of the policies in the emerging plan to the policies in the NPPF. The County Durham Plan was submitted for Examination in Public and a stage 1 Examination concluded. An Interim Report was issued by an Inspector dated 15 February 2015, however that report was Quashed by the High Court following a successful Judicial Review challenge by the Council. As part of the High Court Order, the Council has withdrawn the CDP from examination. In the light of this, policies of the CDP can no longer carry any weight at the present time.

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## **CONSULTATION AND PUBLICITY RESPONSES**

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#### **STATUTORY RESPONSES:**

28. *County Highways Authority* has not raised any objections to the proposal. Concerns would be raised if the building was to be used as standard C3 residential apartments.
29. *Northumbrian Water* has not raised any objections subject to a condition for details of foul and surface water to be submitted.
30. *Coal Authority* has confirmed that the site does not fall within a defined Development High Risk Area.
31. *Drainage* has not raised any objections to the proposed scheme.

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

32. *Landscape* has not raised any objections.

33. *Design and Conservation* has not raised any objections in principle to the proposed scheme.

34. *Environmental Management (Contamination)* has not raised any objections to the proposed development. A condition is required for further contamination assessments to be undertaken.

35. *Environmental Management (Noise/Odour/Dust)* has not raised any objections in principle to the proposed development.

36. *Ecology* has not raised any objections to the proposed development.

#### **PUBLIC RESPONSES:**

37. The application has been advertised on site and in the local press. Neighbouring residents were also notified individually of the proposed development. No letters of representation has been received from the general public.

#### **APPLICANTS STATEMENT:**

38. As indicated in the supporting letter from Durham County Councils Commissioning Policy and Planning Officer Fred Grand, there is significant demand for the housing we propose in this application.

39. This is the last parcel of land in a 3.5 acres site which we have taken on to redevelop over the last 8 years. It is the area that contained the inappropriately placed scrap yard which ceased operating as a result of our development plans. With it we hope to provide high quality affordable accommodation in a suitable location for people who require residential care. We aim to provide them with a safe environment to live whilst giving a feeling of independence.

40. The size and layout of the development are a result of consultation with the local authority and their service providers to best fit their housing needs. With the input of our architects we have endeavored to create something which will enhance the appearance of the surrounding area and make good use of a brown field site.

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## **PLANNING CONSIDERATIONS AND ASSESSMENT**

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41. Having regard to the requirements of Section 38(6) of the Planning and Compulsory Purchase Act 2004 the relevant Development Plan policies, relevant guidance and all other material planning considerations, including representations received, it is considered that the main planning issues relates to the principle of development; visual impacts; residential amenity and highway considerations.

#### Principle of development

42. The application site is a vacant parcel of land located on the main street running through Langley Moor. There is a mixture of different uses in the surrounding area, including commercial, industrial and residential and it is not considered a care home use would be out of keeping. The site is previously developed and is considered a suitable location for a care home development. The site is located within close walking distance to shops, public facilities and transport services and therefore the site is considered to be within a sustainable location.

43. The principle of development is acceptable and the proposal would be in accordance with the sustainable principles of the NPPF.

#### Visual impact

44. The development proposals a scheme of 2 blocks; the sensory unit would be positioned to the front of the site with the larger scaled mental health building set behind, providing 13 and 18 1-bed residential care units respectively with the surrounding spaces development as access, car parking and a community garden area.
45. In design terms the development has a number of strengths, the frontage blocks positioning and linear plan responds effective to the existing building line of the street and echoes the form of the terrace which once existed on the site, while the two storey scale is generally compatible to the surrounding built form, and the hipped roof echoes the end-terraced property adjacent to the site. It can therefore be considered to pay some regards to the domestic environment in which it would be located. The elevation fronting onto the A690 originally lacked articulation and appeared flat and monotonous. Amended plans have been submitted by the architect and this elevation now shows a projected bay and gives a dual pitched roof which breaks the flat frontage given it a more interesting appearance.
46. Overall it is considered that the proposed design and appearance of the proposed buildings are considered acceptable and would not have an adverse impact on the appearance of the street scene or surrounding area. Conditions are recommended in terms of details of materials and surface treatment to be submitted prior to works commencing which will ensure the finished appearance does not compromise the visual amenity of the surrounding area.

#### Residential amenity

47. In terms of impacts on existing residential properties, it is noted that the separation distances between the proposed buildings and the existing properties on High Street South exceed the separation distances detailed in planning policy. The proposed development would therefore not result in the loss of privacy to existing residential occupiers. The proposed buildings are to be of two storey design and given the location of the buildings, it is not considered that they would create any overbearing or overshadowing impacts which would compromise residential amenity.
48. The other surrounding uses in the area are commercial and industrial and given the nature of the proposed development it is not considered that the proposed use of the site would have an adverse impact on surrounding uses. Consideration has to be given however to the potential for disturbance on future occupiers of the proposed building from the surrounding uses. A noise assessment has been submitted with the application to demonstrate the potential impact of the noise on the proposed development. This assessment identifies the noise climate in the area and then identifies appropriate mitigation measures to ensure the noise climate does not significantly impact on future residents. The Noise Officer has been consulted on the proposed noise assessment and no objections are raised in principle. Further conditions are recommended for a specific scheme of noise measures to be submitted as well as details of any plant which would be required on the building. Conditions are recommended accordingly.



49. It is not considered that existing and future occupiers of neighbouring residential properties or the proposed scheme would be adversely compromised in terms of loss of residential amenity.

#### Highway considerations

50. The proposed development provides sufficient parking provision within the site to accommodate the proposed development and there are sufficient footways and links to existing footpaths to allow for movement around the site. The proposed accesses into the site are acceptable and sufficient visibility splays are achieved. Adequate manoeuvring space is provided within the site to allow vehicles to enter and exit the site in a suitable manner.

51. The Highways Officer has indicated that the parking provision proposed is adequate for the intended use as a care home. However if the use of the building was to change to standard apartments then objections would be raised in terms of lack of parking. A condition had been requested ensuring that the care home could not be converted into apartments. A care home falls under a C2 use and apartments fall under C3 use and there are no permitted rights to change from C2 to C3. Planning permission would be required if the care home building was to be converted into residential apartments therefore there is no requirement for a condition to be imposed on this application as the local planning authority would still have control over any proposed change of use.

52. Overall, it is considered that the proposed development is acceptable in highway terms and would not compromise highway safety.

#### Impact on surroundings

53. The Council's Landscape Officer and Ecologist has not raised any objections to the proposed scheme. A condition is recommended with regards to the submission of further details of landscaping.

54. Northumbrian Water and the Council's Drainage Officer have not raised any objections to the proposal however a condition is recommended for details of foul and surface water to be submitted. A condition is recommended accordingly.

55. No objections have been received from the Council's Environmental Management Team other than the inclusion of conditions relating to contamination.

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## **CONCLUSION**

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56. The proposed development is considered acceptable in principle as it is the redevelopment of a brownfield site sustainably located in an area which has a mix of residential, commercial and industrial use. The proposals are therefore considered to be in accordance with the presumption in favour of sustainable development as outlined in the NPPF.

57. The proposed buildings have been suitably designed and would not appear visually intrusive within the surrounding area. It is considered that the proposed development would not have an adverse visual impact on the appearance of the street scene or the surrounding area and would be in accordance with policies H13 and Q8 of the local plan.

58. Adequate separation distance would be achieved between existing properties and the proposed buildings, therefore there would be no loss of privacy and no adverse impacts created in terms of overbearing or overshadowing impacts. Sufficient information has been submitted which would ensure that future occupiers of the proposed buildings would not be adversely compromised by noise from adjacent uses. The proposed development is therefore considered to be acceptable and would not compromise residential amenity. The proposals would be in accordance with policy Q8 of the local plan.

59. The proposed accesses to the site are considered acceptable and sufficient parking provision and footpaths are provided within the site. The proposed development would not compromise highway safety and would be in accordance with policies T1 and T10 of the local plan.

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## **RECOMMENDATION**

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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 following approved plans:

<b>Plan Ref No.</b>	<b>Description</b>	<b>Date Received</b>
AL(0)001 A	Proposed General Site Arrangement	01/06/2016
AL(0)002	Sensory Unit Proposed Floor Plans	17/03/2016
AL(0)003	Sensory Unit Proposed elevations and Section	17/03/2016
AL(0)004	MHR Unit Proposed Floor Plans	17/03/2016
AL(0)005	MHR Unit Proposed Elevations and Section	17/03/2016
AL(0)006	Existing and Proposed Site Sections	17/03/2016
AL(0)007 A	Proposed Site Block Plan	01/06/2016
AL(0)008 B	Proposed Site Roof Plan	01/06/2016
AL(0)010	Site Location Plan	17/03/2016

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

3. Notwithstanding any details of materials submitted with the application no development shall commence until details of the external walling, roofing materials, means of enclosure and hardsurfacing have been submitted to and approved in writing by the Local Planning Authority. Thereafter 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 policies H13 and Q8 of the City of Durham Local Plan.*

4. The development hereby permitted shall not commence until a scheme to deal with contamination has been submitted and agreed in writing by the local planning authority. The scheme shall include the following:

#### Pre-commencement

- a) A Phase 1 Preliminary Risk Assessment (Desk Top Study) shall be carried out by a competent person(s) to identify and evaluate all potential sources and impacts on land and/or groundwater contamination;
- b) If the Phase 1 identifies the potential for contamination, a Phase 2 Site Investigation and Risk Assessment is required and shall be carried out by a competent person(s) to fully and effectively characterise the nature and extent of any land and/or groundwater contamination and its implications.
- c) If the Phase 2 identifies any unacceptable risks, remediation is required and a Phase 3 Remediation Strategy detailing the proposed remediation and verification works shall be carried out by a competent person(s). No alterations to the remediation proposals shall be carried out without the prior written agreement of the local planning authority. If during the remediation or development works any contamination is identified that has not been considered in the Phase 3, then remediation proposals for this material shall be agreed in writing with the local planning authority and the development completed in accordance with any amended specification of works.

#### Completion

- d) Upon completion of the remedial works (if required), a Phase 4 Verification Report (Validation Report) confirming the objectives, methods, results and effectiveness of all remediation works detailed in the Phase 3 Remediation Strategy shall be submitted to and agreed in writing with the local planning authority within 2 months of the first occupation of the development.

*Reason: To remove the potential harm of contamination in accordance with Policy U11 of the City of Durham Local Plan 2004.*

5. Prior to the commencement of development hereby approved a detailed scheme for the disposal of foul and surface water from the development shall be submitted to and approved in writing by the local planning authority. Thereafter the development shall be constructed in accordance with the approved details.

*Reason: To prevent the increased risk of flooding from any sources in accordance with the NPPF.*

6. Before the development hereby approved is occupied, a detailed noise impact assessment and scheme of sound attenuation and noise mitigation measures (including details of any proposed external machinery/plant) shall be submitted to and approved in writing by the local planning authority. The proposed machinery/plant shall thereafter be implemented and maintained in accordance with the approved details.

*Reason: In the interests of residential amenity and to comply with policy H13 of the City of Durham Local Plan.*

7. Prior to the commencement of development hereby approved a detailed landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be constructed in accordance with the approved details.

*Reason: In the interests of the amenity of the area and to comply with policies Q5 and H13 of the City of Durham Local Plan.*

8. All planting, seeding or turfing shall be carried out in the first planting and seeding seasons following the completion of the development and any trees or plants which within a period of 5 years from the completion die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

*Reason: In the interests of the appearance of the area and to comply with policy H13 of the City of Durham Local Plan.*

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## **STATEMENT OF PROACTIVE ENGAGEMENT**

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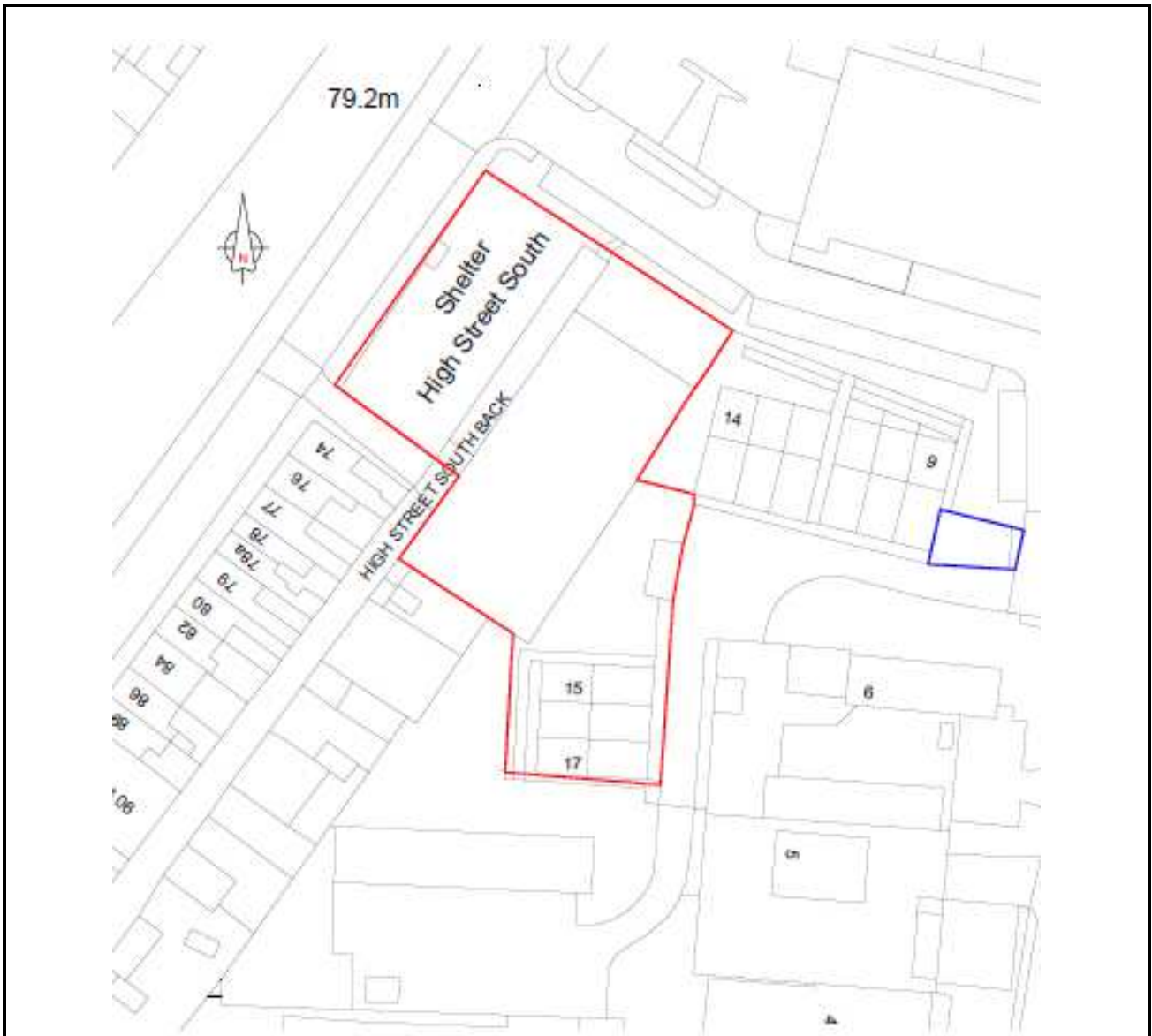
In dealing with the application, the Local Planning Authority has worked with the applicant in a positive and proactive manner based on seeking solutions to problems arising during the application process.


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## **BACKGROUND PAPERS**

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Submitted Application Forms, Plans and supporting documentation  
City of Durham Local Plan 2004  
National Planning Policy Framework  
Internal consultee responses  
Public responses  
Responses from statutory and other consultees  
National Planning Policy Guidance



 <p><b>Durham</b> County Council</p> <p><b>Planning Services</b></p>	<p><b>Construction of two new residential care buildings at Land to the East Of 74 High Street South, Langley Moor Ref: DM/16/00892/FPA</b></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>	<table border="1"> <tr> <td data-bbox="866 1514 1185 1554"></td> <td data-bbox="1185 1514 1449 1554"></td> </tr> <tr> <td data-bbox="866 1554 1185 1664"> <p><b>Date</b> <b>14<sup>th</sup> June 2016</b></p> </td> <td data-bbox="1185 1554 1449 1664"></td> </tr> </table>			<p><b>Date</b> <b>14<sup>th</sup> June 2016</b></p>	
<p><b>Date</b> <b>14<sup>th</sup> June 2016</b></p>					

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## Planning Services

# COMMITTEE REPORT

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### APPLICATION DETAILS

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<b>APPLICATION NO:</b>	<b>DM/16/01017/VOC</b>
<b>FULL APPLICATION DESCRIPTION:</b>	<b>Variation of Condition 5 (hours of operation) of planning permission 4/11/00713/FPA from 9am – 11pm Mon – Sun to 9am – 11pm Sun – Thurs and 9am – 3am Friday – Saturday.</b>
<b>NAME OF APPLICANT:</b>	<b>Ms L O Hama.</b>
<b>ADDRESS:</b>	<b>Wok Next, 97 Claypath, Durham. DH1 1RG</b>
<b>ELECTORAL DIVISION:</b>	<b>Elvet and Gilesgate</b>
<b>CASE OFFICER:</b>	<b>Susan Hyde Planning Officer 03000 263961 susan.hyde@durham.gov.uk</b>

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### DESCRIPTION OF THE SITE AND PROPOSALS

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#### The Site

1. The application site relates to an end terraced shop on Claypath that is currently in an A5 use and operating as a hot food takeaway called Wok Next. The site lies within the secondary shopping area within Durham and within the City of Durham Conservation Area. The existing building is a three storey modern property constructed of red brick with a slate roof. At ground floor level adjacent to the site are other commercial uses with an A2 shop immediately to the west. The upper floors are occupied as separate residential flats.
2. Claypath is characterised by the mixed commercial ground floor use and residential use on the north side of the road. The south side has more residential accommodation on the ground floor as well as above. A recent planning consent (DM/14/03842/FPA) has been granted for student accommodation to replace 18 - 29 Claypath to form a 440 bedroom student accommodation and work has commenced on site to demolish the existing buildings.
3. There are 3 other hot food takeaway premises nearby on Claypath that have current planning applications submitted to extend the opening hours of these premises to 3am.

## The Proposal

4. This application proposes the variation of Condition 5, which states:

5. The hours of operation of the A3 cafe shall be between 9am and 11pm only and at no other time.

Reason In the interests of residential amenity as there are residential properties adjacent to the planning application site in accordance with Policy S2b and S10 of the City of Durham Local Plan 2004.

The proposal is to alter the opening hours of the hot food takeaway from the current agreed closing time to extend the opening hours to 3am on Friday night and Saturday night only.

6. The application is reported to the Planning Committee at the request of Councillor David Freeman because of concerns about the impact on residential amenity.
7. The recent planning applications have been submitted following the Alcohol Harm Reduction Unit of the Police making representations to the County Councils Planning Enforcement section about the problems that the late night opening of the hot food takeaways was having on residential amenity and Police resources. Although Officers have not undertaken night time surveillance of the takeaway businesses it is put forward by residents and the Police and in the applicants supporting statement that the hot food takeaway is currently opening beyond the 11pm closure time specified on their planning approval.

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## **PLANNING HISTORY**

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8. Looking at the planning history on Claypath 92 Claypath is Pizza Uno and operates as a hot food takeaway pizza house with restricted hours of operation between 11am – 11pm. (09/00251). (12/0752) .
9. 57 Claypath has restricted opening hours of 8 – 18.30 Monday – Friday and 9.00-17.00 on Saturday and has consent for mixed A1(shop)/A3 (restaurant)use. (10/0582)
10. 85 Claypath has no hours condition attached to a consent to operate as a hot food takeaway (02/0578).
11. 86 Claypath which operates as a hot food takeaway with pizza and falafel house has consent to operate from 11am – 11pm Monday – Thursday and 11am – 3am Friday – Saturday. (09/088)
12. The United Reform Church has planning permission to operate as a restaurant with opening hours restricted to 11pm Sunday – Thursday and 12 midnight on Friday and Saturday. (08/0758)
13. 94 Claypath which operates a hot food takeaway has a condition which limits the opening hours from 9am to 11 pm. An application for a variation of condition to



allow opening to 3am was refused planning permission and a subsequent appeal was dismissed. An additional planning application in 2012 also refused planning consent for an extended opening time till 3am seven days a week.

14. With regard to this site planning permission was granted in 2011 to form a hot food takeaway with the hours of operation conditioned to be between 9am and 11pm. Two further applications were refused in 2012 for the variation of condition to allow a later closing time.

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## **PLANNING POLICY**

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### **NATIONAL POLICY:**

15. 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 dependant.
16. 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'.
17. The following elements are considered relevant to this proposal;
18. *NPPF Part 1 – Building a Strong and Competitive Economy.* The Government attaches significant weight on the need to support economic growth through the planning system. Local Planning Authorities should plan proactively to meet the development needs of business and support an economy fit for the 21<sup>st</sup> century.
19. *NPPF Part 4 – Promoting Sustainable Transport.* Encouragement should be given to solutions which support reductions in greenhouse gas emissions and reduce congestion. Developments that generate significant movement should be located where the need to travel will be minimised and the use of sustainable transport modes maximised.
20. *NPPF Part 7 – Requiring Good Design.* 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.
21. *NPPF Part 8 – Promoting Healthy Communities.* The planning system can play an important role in facilitating social interaction and creating healthy, inclusive communities. Developments should be safe and accessible; Local Planning Authorities should plan positively for the provision and use of shared space and community facilities. An integrated approach to considering the location of housing, economic uses and services should be adopted.

*The above represents a summary of the NPPF considered most relevant the full text may be accessed at: <http://www.communities.gov.uk/publications/planningandbuilding/nppf>*

## **LOCAL PLAN POLICY:**

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

22. *Policy H13 (Residential Areas – Impact upon Character and Amenity)* states that planning permission will not be granted for new development or changes of use which have a significant adverse effect on the character or appearance of residential areas, or the amenities of residents within them.
23. *Policy T1 (Traffic – General)* states that the Council will not grant planning permission for development that would generate traffic likely to be detrimental to highway safety and / or have a significant effect on the amenity of occupiers of neighbouring property.
24. *Policy T10 (Parking – General Provision)* states that vehicle parking should be limited in amount, so as to promote sustainable transport choices and reduce the land-take of development.
25. Policy E22 (Conservation Areas)
26. Policy E6 Durham City Centre Conservation Area
27. Policy S2B A2 and A3 uses within the Secondary Retail Area.
28. Policy S10 Food and Drink

## **EMERGING POLICY:**

29. Paragraph 216 of the NPPF says that decision-takers may give weight to relevant policies in emerging plans according to: the stage of the emerging plan; the extent to which there are unresolved objections to relevant policies; and, the degree of consistency of the policies in the emerging plan to the policies in the NPPF. The County Durham Plan (CDP) was submitted for Examination in Public and a stage 1 Examination concluded. An Interim Report was issued by an Inspector dated 18 February 2015, however that Report was quashed by the High Court following a successful Judicial Review challenge by the Council. In accordance with the High Court Order, the Council has withdrawn the CDP and a new plan being prepared. In the light of this, policies of the CDP can no longer carry any weight. As the new plan progresses through the stages of preparation it will begin to accrue weight

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## **CONSULTATION AND PUBLICITY RESPONSES**

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### **INTERNAL CONSULTEE RESPONSES:**

30. Environment, Health and Consumer Protection: Raises an objection as she has concerns over the increase in noise levels as a result of greater activity within the Claypath area should this extension of hours variation be granted planning approval. An extension of hours will change the noise climate in the Claypath area

during the early hours of the morning and due to Claypath having residential premises close by she feels that this increase in noise activity will have a significant adverse impact on the occupants of the residential premises and potentially cause a statutory nuisance under the Environmental Protection Act 1990. Therefore she would recommend refusal of this application.

31. Highways Development Management: Claypath operates a no access restriction in the evenings Fri – Sunday. 9:00pm to 4:00am. No additional vehicles could gain access as a result of an extension of time of the business use and as such no objection is raised to the proposal.
32. Police: The Police are not making objections against the management of individual premises but do object to the underlying effect these premises have on public safety and amenity.
33. The drinking establishments on nearby Walkergate are licensed until 2.00 am with closure for 2.30 am, the operation of the late night refreshment houses on Claypath to 3.00am effectively extends late night activity in the area to 3.30 - 4.00 am this creates serious Policing issues as a key strategy for the Police is to clear the area as quickly as possible.
34. At first sight this area of Claypath appears to be commercial in nature however there is a surprising number of residential properties in the immediate vicinity and this will increase with the completion of the 400 bed student accommodation which has been approved. The operation of late night refreshment houses into the early hours of the morning is in direct conflict with residential amenity.

#### **PUBLIC RESPONSES:**

35. The application was advertised by means of a site notice and by letter to 28 neighbouring properties within the area. Twenty seven letters of objection have been received from local residents raising concerns and 2 letters from a residents group and the City of Durham Trust. The following is a summary of the points raised:
36. St. Nicholas Community Forum, which is the residents' group whose area includes Claypath raises concerns that the atmosphere in Claypath, especially at weekends, is already threatening and unpleasant. There is so much rowdy and anti-social behaviour that the road has had to be closed from 9 pm until 4 am on Fridays and Saturdays. The rowdy "revellers" disturb Claypath residents, who are NOT all students and NOT "an integral part of the late night culture" and are NOT "quite happy with the late opening".
37. City of Durham Trust – Objects on the grounds that during hours when most people are asleep, Lower Claypath constitutes what might be classified as an unfortunate 'character area' within the city's Conservation Area. To extend until 3am the unacceptable nuisance to which residents of Claypath are subjected is highly undesirable and clearly contrary to Local Plan policy S10.

Individual letters from local residents raise the following concerns:

- The area is unpleasant for residents to walk through late at night.
- On Sunday mornings on the way to Church residents have to navigate themselves through the vomit and grease on the streets outside these takeaway businesses.
- Additional student accommodation has been granted at Chapel Heights and Kepier Court in addition to the new accommodation on Claypath. The increase in hours on the takeaways on Claypath will lead to the existing noise, mess and bad behaviour getting even worse with the additional students and the late night opening to the detriment of residents.
- Elderly people live near the businesses and already suffer from the rowdy behaviour on Claypath late at night. This application will make this situation worse.
- Claypath provides a bad impression to visitors to the city at night which detracts from the historic core of the City.
- A landlord who is also a University Lecturer objected as students occupy a lot of flats on Claypath and wishes to point out they also need sleep at night to operate effectively.
- The hot food takeaways already stay open beyond their planning consent hours and already create problems with noise and anti-social behaviour.
- On a positive note one resident noted that the movement of the Taxis away from Claypath has greatly improved the residential amenity of Claypath.
- The food served by hot food takeaways tends to be unhealthy and extending the hours will detract from people's health.

#### **APPLICANTS STATEMENT:**

38. Wok Next's main trading hours are late night on weekends, as the pubs and bars close from 11pm onwards and customers head towards the nearby taxi ranks. If the opening hours of Wok Next are not altered to reflect the opening hours of the surrounding businesses, there will be a severe adverse effect on the business with a real risk to its viability.
39. Wok Next already has a late opening licence granted by the Council which allows opening hours of 11pm -3am Monday – Sunday. As impact on residential amenity is a major consideration in granting late opening licences it must be assumed that the Council's Environmental Health Department considered that there was no adverse impact on residential amenity from late opening as was also the Environmental Health Officer's view of this application (see below).
40. Notwithstanding the above the planning application to extend opening hours has been specifically restricted to Friday and Saturday nights when pubs and bars in this area (and some takeaway businesses) are open through to 3.00 am. There is

therefore already a lot of activity in the area and the extension to opening hours will not increase noise levels and there will therefore be no additional disturbance to residents a point noted by the Council's Environmental Health Officer in her comments of 25<sup>th</sup> April on the application as set out below.

41. *"The main potential environmental impact with this application is noise from customers using the premises on a Friday and Saturday night. I have considered the surrounding area and I have noted that there are bars open until this time within this area as well as one other hot food takeaway; Falafel Al Hana. Therefore there is already activity within this area from customers using bars and one other hot food takeaway. The applicant has not requested an extension to hours Sunday – Thursday, when the area is quieter; the nights requested are nights when there is already activity until 3am. Therefore I do not consider that this extension of hours within this area will specifically increase noise levels. Therefore I have no objections to this application."*

42. Officer's note that the Environmental Health Officer updated their comments to the ones reviewed in this application following the submission of the additional 3 planning applications for the variation in hours on the hot food takeaways.

### **43. PLANNING CONSIDERATIONS AND ASSESSMENT**

44. Having regard to the requirements of Section 38(6) of the Planning and Compulsory Purchase Act 2004, the relevant Development Plan policies, relevant guidance and all other material planning considerations, including representations received, it is considered that the main planning issues in this instance relate to the impact on residential amenity and highway and access issues.

#### **Impact on residential amenity.**

45. The main planning issue in this case relates to Policy S10 and S2b which permits food and drink outlets providing there are no adverse effects on the amenities of nearby occupants and Policy H13 that seeks to protect the character or appearance of a residential area. In addition paragraph 17 of the NPPF seeks to ensure a good standard of amenity for all existing and future occupants of land and buildings. In this case the application site lies within the secondary retail area on a street with a mixture of shops, A2, restaurants, hot food takeaways and residential flats, houses and recent planning consents for student accommodation. The planning issues raised with increasing the opening hours are the same issues as was considered on the earlier refusal in 2011 for the extension in operating hours with regard to noise and disturbance to residential amenity.

46. Residential flats are above the application site and above the adjacent buildings. The existing hours of opening of the hot food takeaways are from 11.00am till 11.00pm every day. The site is located at the western end of Claypath close to the cinema, theatre, bars and a night club. As such there will already be some noise and disturbance from the existing night time activities. However the use of the building will bring clients into the building late at night with the associated noise from people talking and congregating outside. Given the opening hours are till 11pm this is consistent with the nearby hot food takeaways at 92 and 94 Claypath. As this is a City Centre location these times are considered reasonable

to allow residents some peace at night whilst reflecting the lively nature of the area.

47. Officers consider that the situation is similar to that in 2011. It is acknowledged that the existing environment is likely to be noisier than in a predominantly residential area because of the activity associated with the nearby night club, pubs, cinema, restaurant, and other nearby hot food takeaways. It is accepted that, because of this, occupants of the flats above the host property may be likely to tolerate higher levels of noise and disturbance than they would elsewhere.
48. However, notwithstanding this and even assuming that the other establishments open until the early hours of the morning, it is considered that the additional activity likely to be generated as a result of the proposed extended opening hours would significantly add to the noise and disturbance experienced by the residents of the flats above this hot food takeaway. The comings and goings of customers would have a particularly marked effect on the noise levels experienced by nearby residents in the late evenings and in the early hours of the morning. These are times when residents would have a reasonable expectation of a quieter environment and of achieving uninterrupted sleep.
49. It is also noted that the residential flats above have a separate entrance to the hot food take away and are occupied independently from the business. This area of Claypath has a good proportion of residential flats – many of which are above ground floor commercial uses.
50. As the planning permission runs with the land it is also relevant that the good management that the existing operator employs would not necessarily be repeated with a different owner. The County Environmental Health Officer has carefully considered the application and has concluded that the increased hours would be detrimental to residential amenity and is likely to cause a statutory nuisance to the residents.
51. It is also noted that the residents groups and local residents complain about the noise and disturbance and anti-social behaviour residents already suffer from the existing customers to the hot food takeaways. Residents make reference to the Police being aware of the existing problems and this is reflected in the Police Officers consultation response. The Police have raised concerns that the hours of operation lead to people leaving the late night clubs and drinking establishments at about 2 – 2.30am and then congregating in Claypath which extends the late night activity in the area of Claypath until 3.30 – 4.00am. This creates serious Policing issues as a key strategy for the Police is to clear the area as quickly as possible.
52. The outcome of the appeal that was dismissed on a nearby application site (94 Claypath) in March 2012 is also relevant where the Inspector concluded :
53. 'It is clear that, simply because of the location, the occupiers of the flats above no. 94, and those nearby, must have to tolerate higher levels of noise and disturbance than they would in a normal residential area. That, however, does not deny them the expectation of reasonable quiet during night-time hours. The comings and goings of customers at the appeal premises would be bound to cause noise and have a marked and harmful impact on the quality of the residential environment in

the very late evening and in the early hours of the morning. In addition, any waiting restrictions notwithstanding, there could be the noise from car doors shutting and engines starting. Accordingly the proposed extended opening hours would inevitably conflict with what is sought by saved Local Plan Policy S10.1 and H13.'

54. It is noted that since 2012 restrictions on the highway access have occurred on Claypath on Friday – Sunday 9pm – 4am which has reduced some of the noise and disturbance for residents over the weekend from car doors slamming, vehicles starting etc. However officers are also concerned that there will be noise and disturbance from the people congregating on the street after being in the nearby nightclubs and bars and from doors opening and closing from the comings and goings of customers. This would be detrimental to the quality of the residential environment through the night and early morning as described above.

#### Conservation Area

55. The site lies within the City of Durham Conservation Area and no external alterations are proposed on the building. As such the proposal has no additional impact on the Conservation Area and the proposal raises no additional issues under s72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

#### Highways

56. The County Highway Officer has raised no objection to the increased hours of the hot food takeaway and commented that Claypath has restricted vehicular access Fri – Sunday. 9:00pm to 4:00am.

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## **CONCLUSION**

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57. The site is located within a secondary shopping area where there are residential flats above the shop units. The extension to the opening hours of the hot food takeaway to 3am on Fridays and Saturdays is considered to detrimentally affect the residential amenity of the flats above and nearby residential properties at a time of night when people would expect uninterrupted sleep. This is considered to be contrary to Policy S10, S2b and H13 of the City of Durham Local Plan and Paragraph 17 of the NPPF.

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## **RECOMMENDATION**

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That the application be REFUSED for the following reason:

The alteration of the hours of operation to 3am on Fridays and Saturdays would detrimentally affect the residential amenity of the independent living accommodation above the host property and nearby residents. This would be

contrary to saved Policy S10, S2b and H13 of the City of Durham Local Plan 2004 and Paragraph 17 of the NPPF.

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## **ADDITIONAL MATTERS**

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N/A

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## **STATEMENT OF PROACTIVE ENGAGEMENT**

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

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## **BACKGROUND PAPERS**

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- Submitted Application Forms and Drawings
- Supporting statement
- City of Durham Local Plan
- National Planning Policy Framework
- Consultation Responses





**Planning Services**

Wok Next  
97 Claypath  
Durham  
DH1 1RG

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**Date June 2016**

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## Planning Services

# COMMITTEE REPORT

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### APPLICATION DETAILS

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<b>APPLICATION NO:</b>	<b>DM/16/01268/VOC</b>
<b>FULL APPLICATION DESCRIPTION:</b>	<b>Variation of Condition 4 (hours of operation) of planning permission 4/09/00251/FPA to extend opening hours from 11pm to 3am seven days a week.</b>
<b>NAME OF APPLICANT:</b>	<b>Mr Khidir Babakir.</b>
<b>ADDRESS:</b>	<b>Pizza Uno 92 Claypath, Durham. DH1 1RG</b>
<b>ELECTORAL DIVISION:</b>	<b>Elvet and Gilesgate</b>
<b>CASE OFFICER:</b>	<b>Susan Hyde Planning Officer 03000 263961 susan.hyde@durham.gov.uk</b>

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### DESCRIPTION OF THE SITE AND PROPOSALS

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#### The Site

1. The application site relates to a mid-terraced shop on Claypath that is currently in an A5 use and operating as a hot food takeaway called Pizza Uno. The site lies within the secondary shopping area within Durham and within the City of Durham Conservation Area. The existing building is a three storey traditional Victorian building constructed of red brick with a slate roof and a first floor bay window. At ground floor level adjacent to the site are other commercial uses with a public house immediately to the west and a sandwich shop to the east. The upper floors are occupied as separate residential flats.
2. Claypath is characterised by the mixed commercial ground floor use and residential use on the north side of the road. The south side has more residential accommodation on the ground floor as well as above. A recent planning consent (DM/14/03842/FPA) has been granted for student accommodation to replace 18 - 29 Claypath to form a 440 bedroom student accommodation and work has commenced on site to demolish the existing buildings.
3. There are 3 other hot food takeaway premises nearby on Claypath that have current planning applications submitted to extend the opening hours of these premises to 3am.

## The Proposal

This application proposes the variation of Condition 4.

4. The use of the property as a retail shop and a café and hot food takeaway shall be open to the public between Monday and Sunday 9am to 11pm and at no other times unless otherwise agreed in writing by the Local Planning Authority.

Reason In the interests of amenity in accordance with Policy S2B and S10 of the City of Durham Local Plan 2004

The proposal is to alter the opening hours of the hot food takeaway from the current agreed closing time to extend the opening hours to 3am on seven days a week.

5. The application is reported to the Planning Committee at the request of Councillor David Freeman because of concerns about the impact on residential amenity.
6. The planning applications have been submitted following the Alcohol Harm Reduction Unit of the Police making representations to the County Councils Planning Enforcement section about the problems that the late night opening of the hot food takeaways was having on residential amenity and Police resources. Although Officers have not undertaken night time investigations of the takeaway businesses it is put forward by residents and the Police and in the applicants supporting statement that the hot food takeaway is currently opening beyond the 11pm closure time specified on their planning approval.

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## **PLANNING HISTORY**

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7. Looking at the planning history on Claypath this application is for 92 Claypath which is Pizza Uno and operates as a hot food takeaway pizza house with restricted hours of operation between 11am – 11pm. (09/00251). (12/0752) .
8. 57 Claypath has restricted opening hours of 8 – 18.30 Monday – Friday and 9.00- 17.00 on Saturday and has consent for mixed A1(shop)/A3 (restaurant)use. (10/0582)
9. 85 Claypath has no hours condition attached to a consent to operate as a hot food takeaway (02/0578).
10. 86 Claypath which operates as a hot food takeaway with pizza and falafel house has consent to operate from 11am – 11pm Monday – Thursday and 11am – 3am Friday – Saturday. (09/088)
11. The United Reform Church has planning permission to operate as a restaurant with opening hours restricted to 11pm Sunday – Thursday and 12 midnight on Friday and Saturday. (08/0758)

- 12.94 Claypath which operates a hot food takeaway has a condition which limits the opening hours from 9am to 11 pm. An application for a variation of condition to allow an opening time to 3am was refused planning permission and a subsequent appeal was dismissed. An additional planning application in 2012 also refused planning consent for an extended opening time till 3am seven days a week.
- 13.97 Claypath was granted consent for a hot food takeaway in 2011 with the hours of operation conditioned to be between 9am and 11pm. Two further applications were refused in 2012 for the variation of condition to allow a later closing time.

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## **PLANNING POLICY**

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### **NATIONAL POLICY:**

14. 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 dependant.
15. 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’.
16. The following elements are considered relevant to this proposal;
17. *NPPF Part 1 – Building a Strong and Competitive Economy.* The Government attaches significant weight on the need to support economic growth through the planning system. Local Planning Authorities should plan proactively to meet the development needs of business and support an economy fit for the 21<sup>st</sup> century.
18. *NPPF Part 4 – 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.
19. *NPPF Part 7 – Requiring Good Design.* 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.
20. *NPPF Part 8 – Promoting Healthy Communities.* The planning system can play an important role in facilitating social interaction and creating healthy,

inclusive communities. Developments should be safe and accessible; Local Planning Authorities should plan positively for the provision and use of shared space and community facilities. An integrated approach to considering the location of housing, economic uses and services should be adopted.

*The above represents a summary of the NPPF considered most relevant the full text may be accessed at:*

<http://www.communities.gov.uk/publications/planningandbuilding/nppf>

## **LOCAL PLAN POLICY:**

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

21. *Policy H13 (Residential Areas – Impact upon Character and Amenity)* states that planning permission will not be granted for new development or changes of use which have a significant adverse effect on the character or appearance of residential areas, or the amenities of residents within them.
22. *Policy T1 (Traffic – General)* states that the Council will not grant planning permission for development that would generate traffic likely to be detrimental to highway safety and / or have a significant effect on the amenity of occupiers of neighbouring property.
23. *Policy T10 (Parking – General Provision)* states that vehicle parking should be limited in amount, so as to promote sustainable transport choices and reduce the land-take of development.
24. Policy E22 (Conservation Areas)
25. Policy E6 Durham City Centre Conservation Area
26. Policy S2B A2 and A3 uses within the Secondary Retail Area.
27. Policy S10 Food and Drink

## **EMERGING POLICY:**

28. Paragraph 216 of the NPPF says that decision-takers may give weight to relevant policies in emerging plans according to: the stage of the emerging plan; the extent to which there are unresolved objections to relevant policies; and, the degree of consistency of the policies in the emerging plan to the policies in the NPPF. The County Durham Plan (CDP) was submitted for Examination in Public and a stage 1 Examination concluded. An Interim Report was issued by an Inspector dated 18 February 2015, however that Report was quashed by the High Court following a successful Judicial Review challenge by the Council. In accordance with the High Court Order, the Council has withdrawn the CDP and a new plan being prepared. In the light

of this, policies of the CDP can no longer carry any weight. As the new plan progresses through the stages of preparation it will begin to accrue weight

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## **CONSULTATION AND PUBLICITY RESPONSES**

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### **INTERNAL CONSULTEE RESPONSES:**

29. Environment, Health and Consumer Protection: Raises an objection as she has concerns over the increase in noise levels as a result of greater activity within the Claypath area should this extension of hours variation be granted planning approval. An extension of hours will change the noise climate in the Claypath area during the early hours of the morning and due to Claypath having residential premises close by she feels that this increase in noise activity will have a significant adverse impact on the occupants of the residential premises and potentially cause a statutory nuisance under the Environmental Protection Act 1990. Therefore she would recommend refusal of this application.
30. Highways Development Management: Claypath operates a no access restriction in the evenings Fri – Sunday. 9:00pm to 4:00am. No additional vehicles could gain access as a result of an extension of time of the business use and as such no objection is raised to the proposal.
31. Police: The Police are not making objections against the management of individual premises but do object to the underlying effect these premises have on public safety and amenity.
32. The drinking establishments on nearby Walkergate are licensed until 2.00 am with closure for 2.30 am, the operation of the late night refreshment houses on Claypath to 3.00am effectively extends late night activity in the area to 3.30 - 4.00 am this creates serious Policing issues as a key strategy for the Police is to clear the area as quickly as possible.
33. At first sight this area of Claypath appears to be commercial in nature however there is a surprising number of residential properties in the immediate vicinity and this will increase with the completion of the 400 bed student accommodation which has been approved. The operation of late night refreshment houses into the early hours of the morning is in direct conflict with residential amenity.

### **PUBLIC RESPONSES:**

34. The application was advertised by means of a site notice and by letter to 25 neighbouring properties within the area. Twenty four letters of objection have been received from local residents raising concerns and 2 letters from the City

of Durham Trust and a local residents group. The following is a summary of the points raised:

35. St. Nicholas Community Forum, which is the residents' group whose area includes Claypath, raises concerns that the atmosphere in Claypath, especially at weekends, is already threatening and unpleasant. There is so much rowdy and anti-social behaviour that the road has had to be closed from 9 pm until 4 am on Fridays and Saturdays. The rowdy "revellers" disturb Claypath residents, who are NOT all students and NOT "an integral part of the late night culture" and are NOT "quite happy with the late opening".
36. City of Durham Trust – Objects on the grounds that during hours when most people are asleep, Lower Claypath constitutes what might be classified as an unfortunate 'character area' within the city's Conservation Area. To extend until 3am the unacceptable nuisance to which residents of Claypath are subjected is highly undesirable and clearly contrary to Local Plan policy S10.

Individual letters from local residents raise the following concerns:

- The area is unpleasant for residents to walk through late at night.
- On Sunday mornings on the way to Church residents have to navigate themselves through the vomit and grease on the streets outside these takeaway businesses.
- Additional student accommodation has been granted at Chapel Heights and Kepier Court in addition to the new accommodation on Claypath. The increase in hours on the takeaways on Claypath will lead to the existing noise, mess and bad behaviour getting even worse with the additional students and the late night opening to the detriment of residents.
- Elderly people live near the businesses and already suffer from the rowdy behaviour on Claypath late at night. This application will make this situation worse.
- Claypath provides a bad impression to visitors to the city at night which detracts from the historic core of the City.
- A landlord who is also a University Lecturer objected as students occupy a lot of flats on Claypath and wishes to point out they also need sleep at night to operate effectively.
- The hot food takeaways already stay open beyond their planning consent hours and already create problems with noise and anti-social behaviour.
- On a positive note one resident noted that the movement of the Taxis away from Claypath has greatly improved the residential amenity of Claypath.
- The food served by hot food takeaways tend to be unhealthy and extending the hours will detract from people's health.



## **APPLICANTS STATEMENT:**

37. The Agent acting on behalf of the Applicant was invited to submit a statement in support of this application. At the time of report preparation, no statement has been received.

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## **PLANNING CONSIDERATIONS AND ASSESSMENT**

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38. Having regard to the requirements of Section 38(6) of the Planning and Compulsory Purchase Act 2004, the relevant Development Plan policies, relevant guidance and all other material planning considerations, including representations received, it is considered that the main planning issues in this instance relate to the impact on residential amenity and highway and access issues.

### **Impact on residential amenity.**

39. The main planning issue in this case relates to Policy S10 and S2b which permits food and drink outlets providing there are no adverse effects on the amenities of nearby occupants and Policy H13 that seeks to protect the character or appearance of a residential area. In addition paragraph 17 of the NPPF seeks to ensure a good standard of amenity for all existing and future occupants of land and buildings. In this case the application site lies within the secondary retail area on a street with a mixture of shops, A2, restaurants, hot food takeaways and residential flats, houses and recent planning consents for student accommodation. The planning issues raised with increasing the opening hours are the same issues as was considered on the earlier refusal in 2011 for the extension in operating hours with regard to noise and disturbance to residential amenity.
40. Residential flats are above the application site and above the adjacent buildings. The existing hours of opening of the hot food takeaways are from 11.00am till 11.00pm every day. The site is located at the western end of Claypath close to the cinema, theatre, bars and a night club. As such there will already be some noise and disturbance from the existing night time activities. However the use of the building will bring clients into the building late at night with the associated noise from people talking and congregating outside. Given the opening hours are till 11pm this is consistent with the nearby hot food takeaways at 94 and 97 Claypath. As this is a City Centre location these times are considered reasonable to allow residents some peace at night whilst reflecting the lively nature of the area.
41. Officers consider that the situation is similar to that in 2011. It is acknowledged that the existing environment is likely to be noisier than in a predominantly residential area because of the activity associated with the nearby night club, pubs, cinema, restaurant, and other nearby hot food

takeaways. It is accepted that, because of this, occupants of the flats above the host property may be likely to tolerate higher levels of noise and disturbance than they would elsewhere.

42. However, notwithstanding this and even assuming that the other establishments open until the early hours of the morning, it is considered that the additional activity likely to be generated as a result of the proposed extended opening hours would significantly add to the noise and disturbance experienced by the residents of the flats above this hot food takeaway. The comings and goings of customers would have a particularly marked effect on the noise levels experienced by nearby residents in the late evenings and in the early hours of the morning. These are times when residents would have a reasonable expectation of a quieter environment and of achieving uninterrupted sleep.
43. It is also noted that the residential flats above have a separate entrance to the hot food take away and are occupied independently from the business. This area of Claypath has a good proportion of residential flats – many of which are above ground floor commercial uses.
44. As the planning permission runs with the land it is also relevant that the good management that the existing operator employs would not necessarily be repeated with a different owner. The County Environmental Health Officer has carefully considered the application and has concluded that the increased hours would be detrimentally to residential amenity and is likely to cause a statutory nuisance to the residents.
45. It is also noted that the local residents complain about the noise and disturbance and anti-social behaviour residents already suffer from the existing customers to the hot food takeaways. Residents make reference to the Police being aware of the existing problems and this is reflected in the Police Officers consultation response. The Police have raised concerns that the hours of operation lead to people leaving the late night clubs and drinking establishments at about 2 – 2.30am and then congregating in Claypath which extends the late night activity in the area of Claypath until 3.30 – 4.00am. This creates serious Policing issues as a key strategy for the Police is to clear the area as quickly as possible.
46. The outcome of the appeal that was dismissed on a nearby application site (94 Claypath) in March 2012 is also relevant where the Inspector concluded :
47. 'It is clear that, simply because of the location, the occupiers of the flats above no. 94, and those nearby, must have to tolerate higher levels of noise and disturbance than they would in a normal residential area. That, however, does not deny them the expectation of reasonable quiet during night-time hours. The comings and goings of customers at the appeal premises would be bound to cause noise and have a marked and harmful impact on the quality of the residential environment in the very late evening and in the early hours of the morning. In addition, any waiting restrictions notwithstanding, there could be the noise from car doors shutting and engines starting. Accordingly the

proposed extended opening hours would inevitably conflict with what is sought by saved Local Plan Policy S10.1 and H13.’

48. It is noted that since 2012 restrictions on the highway access have occurred on Claypath on Friday – Sunday 9pm – 4am which has reduced some of the noise and disturbance for residents over the weekend from car doors slamming, vehicles starting etc. However officers are also concerned that there will be noise and disturbance from the people congregating on the street after being in the nearby nightclubs and bars and from doors opening and closing from the comings and goings of customers. This would be detrimental to the quality of the residential environment through the night and early morning as described above.

#### Conservation Area

49. The site lies within the City of Durham Conservation Area and no external alterations are proposed on the building. As such the proposal has no additional impact on the Conservation Area and the proposal raises no additional issues under s72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

#### Highways

50. The County Highway Officer has raised no objection to the increased hours of the hot food takeaway and commented that Claypath has restricted vehicular access Fri – Sunday. 9:00pm to 4:00am.

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## **CONCLUSION**

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51. The site is located within a secondary shopping area where there are residential flats above the shop units. The extension to the opening hours of the hot food takeaway to 3am seven days a week is considered to detrimentally affect the residential amenity of the flats above and nearby residential properties at a time of night when people would expect uninterrupted sleep. This is considered to be contrary to Policy S10, S2b and H13 of the City of Durham Local Plan and Paragraph 17 of the NPPF.

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## **RECOMMENDATION**

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That the application be REFUSED for the following reason:

The alteration of the hours of operation to 3am seven days a week would detrimentally affect the residential amenity of the independent living accommodation above the host property and nearby residents. This would be contrary to saved Policy S10, S2b and H13 of the City of Durham Local Plan 2004 and Paragraph 17 of the NPPF.

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## **ADDITIONAL MATTERS**

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N/A

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## **STATEMENT OF PROACTIVE ENGAGEMENT**

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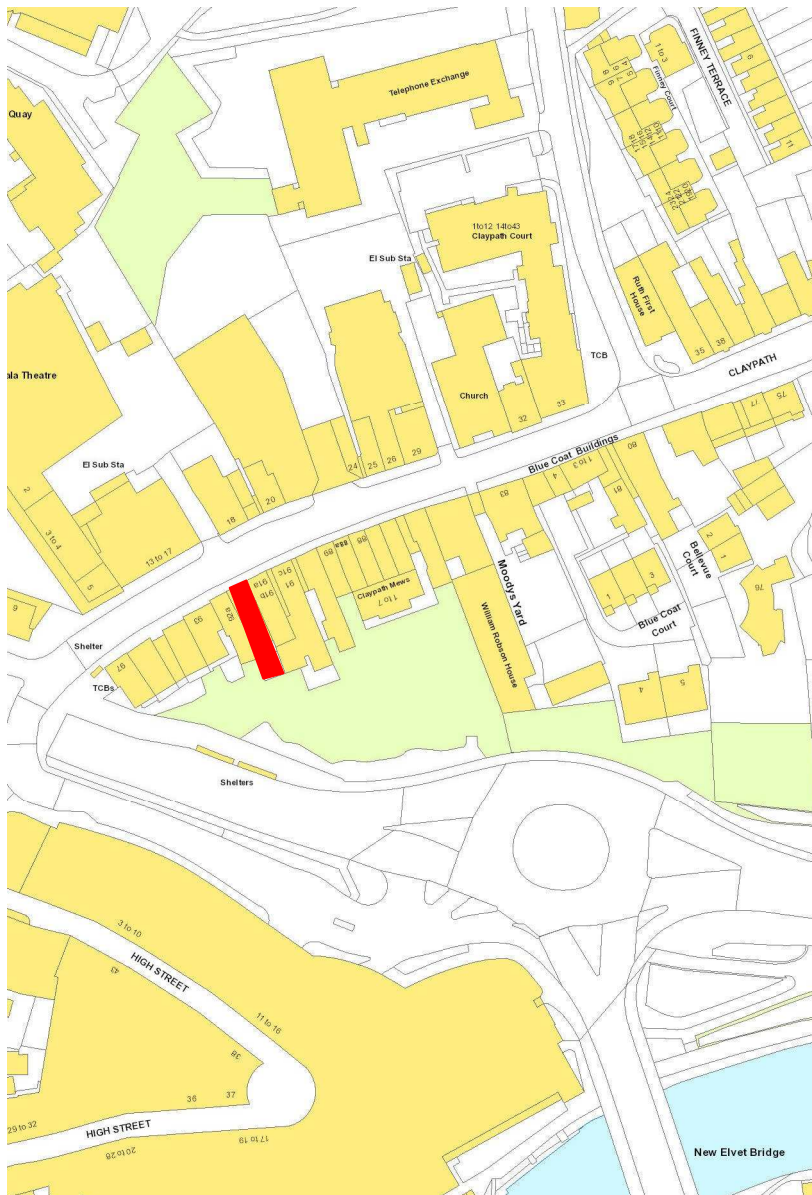
The Local Planning Authority in arriving at its decision to approve the application has, without prejudice to a fair and objective assessment of the proposals, issues raised and representations received, sought to work with the applicant in a positive and proactive manner with the objective of delivering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

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## **BACKGROUND PAPERS**

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- Submitted Application Forms and Drawings
- Supporting statement
- City of Durham Local Plan
- National Planning Policy Framework
- Consultation Responses



**Planning Services**

Pizza Uno  
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**Date June 2016**

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## Planning Services

# COMMITTEE REPORT

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### APPLICATION DETAILS

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<b>APPLICATION NO:</b>	<b>DM/16/01331/VOC</b>
<b>FULL APPLICATION DESCRIPTION:</b>	<b>Opening hours to be extended from 11pm to 3 am seven days a week.</b>
<b>NAME OF APPLICANT:</b>	<b>Mr Sadeck Amin.</b>
<b>ADDRESS:</b>	<b>Urban Oven, 94 Claypath, Durham. DH1 1RG</b>
<b>ELECTORAL DIVISION:</b>	<b>Elvet and Gilesgate</b>
<b>CASE OFFICER:</b>	<b>Susan Hyde Planning Officer 03000 263961 susan.hyde@durham.gov.uk</b>

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### DESCRIPTION OF THE SITE AND PROPOSALS

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#### The Site

1. The application site relates to a mid terraced shop on Claypath that is currently in an A5 use and operating as a hot food takeaway called Urban Oven. The site lies within the secondary shopping area within Durham and within the City of Durham Conservation Area. The existing building is a three storey modern property constructed of red brick with a slate roof. At ground floor level adjacent to the site are other commercial uses with an A1 shop immediately to the east and an A2 estate agent immediately to the west. The upper floors are occupied as separate residential flats.
2. Claypath is characterised by the mixed commercial ground floor use and residential use on the north side of the road. The south side has more residential accommodation on the ground floor as well as above. A recent planning consent (DM/14/03842/FPA) has been granted for student accommodation to replace 18 - 29 Claypath to form a 440 bedroom student accommodation and work has commenced on site to demolish the existing buildings.
3. There are 3 other hot food takeaway premises nearby on Claypath that have current planning applications submitted to extend the opening hours of these premises to 3am.

## The Proposal

4. This application seeks the variation of condition 5 and 6 on planning permission 10/00697/FPA to alter the opening hours of the hot food takeaway from 9am till 11pm to 9am till 3am seven days a week.

The conditions on the 2010 planning consent state:

5. The hours of operation of the A5 hot food takeaway shall be between 9am and 11pm only and at no other time.

Reason In the interests of residential amenity as there are residential properties adjacent to the planning application site in accordance with Policy S2b and S10 of the City of Durham Local Plan 2004.

6. The development shall be erected in strict accordance with the approved plan elevation and floor plans at a scale of 1:100 validated on the 22<sup>nd</sup> September 2010, the detail of the cladding of the external flue with the chimney received on the 18<sup>th</sup> October 2010, and the details of the revised opening time to 11pm only received on the 12<sup>th</sup> November 2010.

Reason To define the consent and ensure a satisfactory standard of development in accordance with Policies E6, E22, S10 and S2b of the City of Durham Local Plan 2004.

The proposal is to alter the opening hours of the hot food takeaway from the current agreed closing time of 11pm to 3am in the morning seven days a week.

7. The application is reported to the Planning Committee at the request of Councillor David Freeman because of concerns about the impact on residential amenity.
8. The planning applications have been submitted following the Alcohol Harm Reduction Unit of the Police making representations to the County Councils Planning Enforcement section about the problems that the late night opening of the hot food takeaways was having on residential amenity and Police resources. Although Officers have not undertaken night time investigations of the takeaway businesses it is put forward by residents and the Police and in the applicants supporting statement that the hot food takeaway is currently opening beyond the 11pm closure time specified on their planning approval.

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## **PLANNING HISTORY**

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9. In 2008 planning permission was granted for the change of use from an A1 shop to an A2 use with a Legal Agreement which linked the application to a change of use on 92B Claypath for a change of use from sui generis use to an A1 shop.



10. In 2010 a planning application for a hot food takeaway was withdrawn following concerns expressed about the lack of a suitable flue, the hours of opening and the principle of the use.
11. A further application in 2010 was granted planning consent with conditions 5 and 6 restricting the hours of use to 11pm.
12. Advert consent was granted for an advert on the property in 2011.
13. Planning application 11/0592 for the variation of conditions 5 and 6 on planning permission 10/00697 to alter the opening hours of the hot food takeaway from 11am to 3am 7 days a week was refused consent in September 2011 and was dismissed on appeal in March 2012.
14. Looking at the planning history on Claypath 92 Claypath is Pizza Uno and operates as a hot food takeaway pizza house with restricted hours of operation between 11am – 11pm. (09/00251). (12/0752) .
15. 57 Claypath has restricted opening hours of 8 – 18.30 Monday – Friday and 9.00-17.00 on Saturday and has consent for mixed A1(shop)/A3 (restaurant)use. (10/0582)
16. 85 Claypath has no hours condition attached to a consent to operate as a hot food takeaway (02/0578).
17. 86 Claypath which operates as a hot food takeaway with pizza and falafel house has consent to operate from 11am – 11pm Monday – Thursday and 11am – 3am Friday – Saturday. (09/088)
18. The United Reform Church has planning permission to operate as a restaurant with opening hours restricted to 11pm Sunday – Thursday and 12 midnight on Friday and Saturday. (08/0758)

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## **PLANNING POLICY**

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### **NATIONAL POLICY:**

19. 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.
20. 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’.
21. The following elements are considered relevant to this proposal;

22. *NPPF Part 1 – Building a Strong and Competitive Economy*. The Government attaches significant weight on the need to support economic growth through the planning system. Local Planning Authorities should plan proactively to meet the development needs of business and support an economy fit for the 21<sup>st</sup> century.
23. *NPPF Part 4 – 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.
24. *NPPF Part 7 – Requiring Good Design*. 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.
25. *NPPF Part 8 – Promoting Healthy Communities*. The planning system can play an important role in facilitating social interaction and creating healthy, inclusive communities. Developments should be safe and accessible; Local Planning Authorities should plan positively for the provision and use of shared space and community facilities. An integrated approach to considering the location of housing, economic uses and services should be adopted.

*The above represents a summary of the NPPF considered most relevant the full text may be accessed at:*

<http://www.communities.gov.uk/publications/planningandbuilding/nppf>

## **LOCAL PLAN POLICY:**

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

26. *Policy H13 (Residential Areas – Impact upon Character and Amenity)* states that planning permission will not be granted for new development or changes of use which have a significant adverse effect on the character or appearance of residential areas, or the amenities of residents within them.
27. *Policy T1 (Traffic – General)* states that the Council will not grant planning permission for development that would generate traffic likely to be detrimental to highway safety and / or have a significant effect on the amenity of occupiers of neighbouring property.
28. *Policy T10 (Parking – General Provision)* states that vehicle parking should be limited in amount, so as to promote sustainable transport choices and reduce the land-take of development.
29. Policy E22 (Conservation Areas)
30. Policy E6 Durham City Centre Conservation Area
31. Policy S2B A2 and A3 uses within the Secondary Retail Area.

## 32. Policy S10 Food and Drink

### **EMERGING POLICY:**

33. Paragraph 216 of the NPPF says that decision-takers may give weight to relevant policies in emerging plans according to: the stage of the emerging plan; the extent to which there are unresolved objections to relevant policies; and, the degree of consistency of the policies in the emerging plan to the policies in the NPPF. The County Durham Plan (CDP) was submitted for Examination in Public and a stage 1 Examination concluded. An Interim Report was issued by an Inspector dated 18 February 2015, however that Report was quashed by the High Court following a successful Judicial Review challenge by the Council. In accordance with the High Court Order, the Council has withdrawn the CDP and a new plan being prepared. In the light of this, policies of the CDP can no longer carry any weight. As the new plan progresses through the stages of preparation it will begin to accrue weight.

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## **CONSULTATION AND PUBLICITY RESPONSES**

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### **INTERNAL CONSULTEE RESPONSES:**

34. Environment, Health and Consumer Protection: Raises an objection as she has concerns over the increase in noise levels as a result of greater activity within the Claypath area should this extension of hours variation be granted planning approval. An extension of hours will change the noise climate in the Claypath area during the early hours of the morning and due to Claypath having residential premises close by she feels that this increase in noise activity will have a significant adverse impact on the occupants of the residential premises and potentially cause a statutory nuisance under the Environmental Protection Act 1990. Therefore she would recommend refusal of this application.
35. Highways Development Management: Claypath operates a no access restriction in the evenings Fri – Sunday. 9:00pm to 4:00am. No additional vehicles could gain access as a result of an extension of time of the business use and as such no objection is raised to the proposal.
36. Police: The Police are not making objections against the management of individual premises but do object to the underlying effect these premises have on public safety and amenity.
37. The drinking establishments on nearby Walkergate are licensed until 2.00 am with closure for 2.30 am, the operation of the late night refreshment houses on Claypath to 3.00am effectively extends late night activity in the area to 3.30 - 4.00 am this creates serious Policing issues as a key strategy for the Police is to clear the area as quickly as possible.

**38.** At first sight this area of Claypath appears to be commercial in nature however there is a surprising number of residential properties in the immediate vicinity and this will increase with the completion of the 400 bed student accommodation which has been approved. The operation of late night refreshment houses into the early hours of the morning is in direct conflict with residential amenity.

**PUBLIC RESPONSES:**

39. The application was advertised by means of a site notice and by letter to thirty six neighbouring properties within the area. Twenty four letters of objection have been received from local residents raising concerns and 2 letters from a residents group and the City of Durham Trust. The following is a summary of the points raised:

**40.** St. Nicholas Community Forum, which is the residents' group whose area includes Claypath, raises concerns that the atmosphere in Claypath, especially at weekends, is already threatening and unpleasant. There is so much rowdy and anti-social behaviour that the road has had to be closed from 9 pm until 4 am on Fridays and Saturdays. The rowdy "revellers" disturb Claypath residents, who are NOT all students and NOT "an integral part of the late night culture" and are NOT "quite happy with the late opening".

41. City of Durham Trust – Objects on the grounds that during hours when most people are asleep, Lower Claypath constitutes what might be classified as an unfortunate 'character area' within the city's Conservation Area. To extend until 3am the unacceptable nuisance to which residents of Claypath are subjected is highly undesirable and clearly contrary to Local Plan policy S10.

Individual letters from local residents raise the following concerns:

- The area is unpleasant for residents to walk through late at night.
- On Sunday mornings on the way to Church residents have to navigate themselves through the vomit and grease on the streets outside these takeaway businesses.
- Additional student accommodation has been granted at Chapel Heights and Kepier Court in addition to the new accommodation on Claypath. The increase in hours on the takeaways on Claypath will lead to the existing noise, mess and bad behaviour getting even worse with the additional students and the late night opening to the detriment of residents.
- Elderly people live near the businesses and already suffer from the rowdy behaviour on Claypath late at night. This application will make this situation worse.
- Claypath provides a bad impression to visitors to the city at night which detracts from the historic core of the City.

- A landlord who is also a University Lecturer objected as students occupy a lot of flats on Claypath and wishes to point out they also need sleep at night to operate effectively.
- The hot food takeaways already stay open beyond their planning consent hours and already create problems with noise and anti-social behaviour.
- On a positive note one resident noted that the movement of the Taxis away from Claypath has greatly improved the residential amenity of Claypath.
- The food served by hot food takeaways tend to be unhealthy and extending the hours will detract from people's health.

#### **APPLICANTS STATEMENT:**

42. The Agent acting on behalf of the Applicant was invited to submit a statement in support of this application. At the time of report preparation, no statement has been received

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### **PLANNING CONSIDERATIONS AND ASSESSMENT**

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43. Having regard to the requirements of Section 38(6) of the Planning and Compulsory Purchase Act 2004, the relevant Development Plan policies, relevant guidance and all other material planning considerations, including representations received, it is considered that the main planning issues in this instance relate to the impact on residential amenity and highway and access issues.

#### **Impact on residential amenity.**

44. The main planning issue in this case relates to Policy S10 and S2b which permits food and drink outlets providing there are no adverse effects on the amenities of nearby occupants and Policy H13 that seeks to protect the character or appearance of a residential area. In addition paragraph 17 of the NPPF seeks to ensure a good standard of amenity for all existing and future occupants of land and buildings. In this case the application site lies within the secondary retail area on a street with a mixture of shops, A2, restaurants, hot food takeaways and residential flats, houses and recent planning consents for student accommodation. The planning issues raised with increasing the opening hours are the same issues as was considered on the earlier refusal in 2011 for the extension in operating hours with regard to noise and disturbance to residential amenity.

45. Residential flats are above the application site and above the adjacent buildings. The existing hours of opening of the hot food take away are from 11.00am till 11.00pm every day. The site is located at the western end of Claypath close to the cinema, theatre, bars and a night club. As such there will already be some noise and disturbance from the existing night time activities. However the use of the building will bring clients into the building late at night with the associated noise from people

talking and congregating outside. Given the opening hours are till 11pm this is consistent with the nearby hot food takeaways at 92 and 97 Claypath. As this is a City Centre location these times are considered reasonable to allow residents some peace at night whilst reflecting the lively nature of the area.

46. Officers consider that the situation is similar to that in 2011. It is acknowledged that the existing environment is likely to be noisier than in a predominantly residential area because of the activity associated with the nearby night club, pubs, cinema, restaurant, and other nearby hot food takeaways. It is accepted that, because of this, occupants of the flats above the host property may be likely to tolerate higher levels of noise and disturbance than they would elsewhere.
47. However, notwithstanding this and even assuming that the other establishments open until the early hours of the morning, it is considered that the additional activity likely to be generated as a result of the proposed extended opening hours would significantly add to the noise and disturbance experienced by the residents of the flats above this hot food takeaway. The comings and goings of customers would have a particularly marked effect on the noise levels experienced by nearby residents in the late evenings and in the early hours of the morning. These are times when residents would have a reasonable expectation of a quieter environment and of achieving uninterrupted sleep.
48. It is also noted that the residential flats above have a separate entrance to the hot food take away and are occupied independently from the business. This area of Claypath has a good proportion of residential flats – many of which are above ground floor commercial uses.
49. As the planning permission runs with the land it is also relevant that the management that the existing operator employs would not necessarily be repeated with a different owner. The County Environmental Health Officer has carefully considered the application and has concluded that the increased hours would be detrimental to residential amenity and is likely to cause a statutory nuisance to the residents.
50. It is also noted that the residents groups and local residents complain about the noise and disturbance and anti-social behaviour residents already suffer from the existing customers to the hot food takeaways. Residents make reference to the Police being aware of the existing problems and this is reflected in the Police Officers consultation response. The Police have raised concerns that the hours of operation lead to people leaving the late night clubs and drinking establishments at about 2 – 2.30am and then congregating in Claypath which extends the late night activity in the area of Claypath until 3.30 – 4.00am. This creates serious Policing issues as a key strategy for the Police is to clear the area as quickly as possible.
51. The outcome of the appeal that was dismissed on this application site (94 Claypath) in March 2012 is also relevant where the Inspector concluded :
52. 'It is clear that, simply because of the location, the occupiers of the flats above no. 94, and those nearby, must have to tolerate higher levels of noise and disturbance than they would in a normal residential area. That, however, does not deny them the expectation of reasonable quiet during night-time hours. The comings and goings of

customers at the appeal premises would be bound to cause noise and have a marked and harmful impact on the quality of the residential environment in the very late evening and in the early hours of the morning. In addition, any waiting restrictions notwithstanding, there could be the noise from car doors shutting and engines starting. Accordingly the proposed extended opening hours would inevitably conflict with what is sought by saved Local Plan Policy S10.1 and H13.'

53. It is noted that since 2012 restrictions on the highway access have occurred on Claypath on Friday – Sunday 9pm – 4am which has reduced some of the noise and disturbance for residents over the weekend from car doors slamming, vehicles starting etc. However the remainder of the week vehicles would have access to Claypath and the noise and disturbance from vehicle doors and engine noise would occur. Officers are also concerned that there will be noise and disturbance from the people congregating on the street after being in the nearby nightclubs and bars and from doors opening and closing from the comings and goings of customers. This would be detrimental to the quality of the residential environment through the night time until 3am in the morning.

#### Conservation Area

54. The site lies within the City of Durham Conservation Area and no external alterations are proposed on the building. As such the proposal has no additional impact on the Conservation Area and the proposal raises no additional issues under s72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

#### Highways

55. The County Highway Officer has raised no objection to the increased hours of the hot food takeaway and commented that Claypath has restricted vehicular access Fri – Sunday, 9:00pm to 4:00am.

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## **CONCLUSION**

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56. The site is located within a secondary shopping area where there are residential flats above the shop units. The extension to the opening hours of the hot food takeaway to 3am seven days a week is considered to detrimentally affect the residential amenity of the flats above and nearby residential properties at a time of night when people would expect uninterrupted sleep. This is considered to be contrary to Policy S10, S2b and H13 of the City of Durham Local Plan and Paragraph 17 of the NPPF.

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## **RECOMMENDATION**

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That the application be REFUSED for the following reason:

The alteration of the hours of operation to 3am seven days a week would detrimentally affect the residential amenity of the independent living accommodation above the host property and nearby residents. This would be contrary to saved Policy S10 and H13 of the City of Durham Local Plan 2004 and Paragraph 17 of the NPPF.

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## **ADDITIONAL MATTERS**

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N/A

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## **STATEMENT OF PROACTIVE ENGAGEMENT**

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

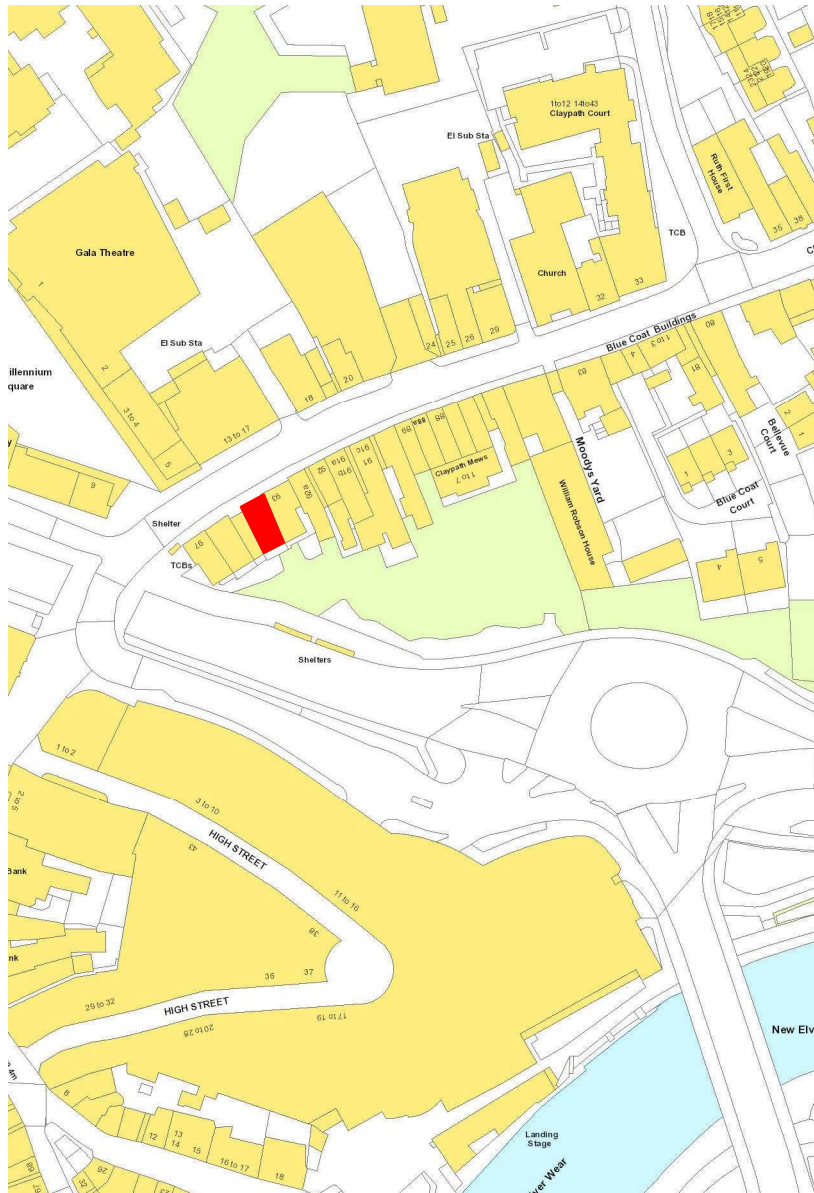
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## **BACKGROUND PAPERS**

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- Submitted Application Forms and Drawings
- Supporting statement
- City of Durham Local Plan
- National Planning Policy Framework
- Consultation Responses





**Planning Services**

**Urban Oven  
94 Claypath  
Durham  
DH1 1RG**

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**Date June 2016**

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## Planning Services

# COMMITTEE REPORT

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### APPLICATION DETAILS

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<b>APPLICATION NO:</b>	<b>DM/16/01372/VOC</b>
<b>FULL APPLICATION DESCRIPTION:</b>	<b>Variation of Condition 4 (hours of operation) on planning permission 4/09/00088/FPA to extend opening hours to 3am 7 days a week (existing consent allows Friday and Saturday till 3am only with remainder of week till 11pm).</b>
<b>NAME OF APPLICANT:</b>	<b>Mr Sardar Hassan.</b>
<b>ADDRESS:</b>	<b>86 Claypath, Durham. DH1 1RG</b>
<b>ELECTORAL DIVISION:</b>	<b>Elvet and Gilesgate</b>
<b>CASE OFFICER:</b>	<b>Susan Hyde Planning Officer 03000 263961 susan.hyde@durham.gov.uk</b>

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### DESCRIPTION OF THE SITE AND PROPOSALS

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#### The Site

1. The application site relates to a mid terraced shop on Claypath that is currently in an A5 use and operating as a hot food takeaway. The site lies within the secondary shopping area within Durham and within the City of Durham Conservation Area. The existing building is a three storey traditional Victorian building constructed of red brick with a slate roof . At ground floor level adjacent to the site are other commercial uses with a hot food takeaway immediately to the east and a hair and beauty salon to the east. The upper floors are occupied as separate residential flats.
2. Claypath is characterised by the mixed commercial ground floor use and residential use on the north side of the road. The south side has more residential accommodation on the ground floor as well as above. A recent planning consent (DM/14/03842/FPA) has been granted for student accommodation to replace 18 - 29 Claypath to form a 440 bedroom student accommodation and work has commenced on site to demolish the existing buildings.
3. There are 3 other hot food takeaway premises nearby on Claypath that have current planning applications submitted to extend the opening hours of these premises to 3am.

## The Proposal

This application proposes the variation of Condition 4 on planning permission 4/09/00088/FPA.

4. Notwithstanding the details submitted within the application the mixed use of A1(shop) and A5(hot-food takeaway) hereby approved shall not be open to customers outside the hours of 11am - 11pm Monday to Thursday, 11am-3am Friday to Saturday and 11am - 11pm on a Sunday.

Reason: In the interests of residential amenity and to comply with Policy S10 of the City of Durham Local Plan 2004.

The proposal is to alter the opening hours of the hot food takeaway from the current agreed closing time to extend the opening hours to 3am on seven days a week rather than on Friday and Saturday night only.

5. The application is reported to the Planning Committee at the request of Councillor David Freeman because of concerns about the impact on residential amenity.
6. The planning applications have been submitted following the Alcohol Harm Reduction Unit of the Police making representations to the County Councils Planning Enforcement section about the problems that the late night opening of the hot food takeaways was having on residential amenity and Police resources. Although Officers have not undertaken night time investigations of the takeaway businesses it is put forward by residents and the Police and in the applicants supporting statement that the hot food takeaway is currently opening beyond the 11pm closure time specified on their planning approval.

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## **PLANNING HISTORY**

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7. Looking at the planning history on Claypath this application is for 86 Claypath which operates as a hot food takeaway with pizza and falafel house and has consent to operate from 11am – 11pm Monday – Thursday and 11am – 3am Friday – Saturday. (09/088)
8. 92 Claypath which is Pizza Uno and operates as a hot food takeaway pizza house with restricted hours of operation between 11am – 11pm. (09/00251). (12/0752) .
9. 57 Claypath has restricted opening hours of 8 – 18.30 Monday – Friday and 9.00- 17.00 on Saturday and has consent for mixed A1(shop)/A3 (restaurant)use. (10/0582)

10. 85 Claypath has no hours condition attached to a consent to operate as a hot food takeaway (02/0578).
11. The United Reform Church has planning permission to operate as a restaurant with opening hours restricted to 11pm Sunday – Thursday and 12 midnight on Friday and Saturday. (08/0758)
12. 94 Claypath which operates a hot food takeaway has a condition which limits the opening hours from 9am to 11 pm. An application for a variation of condition to allow an opening hour to 3am was refused planning permission and a subsequent appeal was dismissed. An additional planning application in 2012 also refused planning consent for an extended opening hour till 3am seven days a week.
13. 97 Claypath was granted consent for a hot food takeaway in 2011 with the hours of operation conditioned to be between 9am and 11pm. Two further applications were refused in 2012 for the variation of condition to allow a later closing time.

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## **PLANNING POLICY**

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### **NATIONAL POLICY:**

14. 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 dependant.
15. 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’.
16. The following elements are considered relevant to this proposal;
17. *NPPF Part 1 – Building a Strong and Competitive Economy*. The Government attaches significant weight on the need to support economic growth through the planning system. Local Planning Authorities should plan proactively to meet the development needs of business and support an economy fit for the 21<sup>st</sup> century.
18. *NPPF Part 4 – 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.

19. *NPPF Part 7 – Requiring Good Design*. 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.
20. *NPPF Part 8 – Promoting Healthy Communities*. The planning system can play an important role in facilitating social interaction and creating healthy, inclusive communities. Developments should be safe and accessible; Local Planning Authorities should plan positively for the provision and use of shared space and community facilities. An integrated approach to considering the location of housing, economic uses and services should be adopted.

*The above represents a summary of the NPPF considered most relevant the full text may be accessed at:*

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

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

21. *Policy H13 (Residential Areas – Impact upon Character and Amenity)* states that planning permission will not be granted for new development or changes of use which have a significant adverse effect on the character or appearance of residential areas, or the amenities of residents within them.
22. *Policy T1 (Traffic – General)* states that the Council will not grant planning permission for development that would generate traffic likely to be detrimental to highway safety and / or have a significant effect on the amenity of occupiers of neighbouring property.
23. *Policy T10 (Parking – General Provision)* states that vehicle parking should be limited in amount, so as to promote sustainable transport choices and reduce the land-take of development.
24. Policy E22 (Conservation Areas)
25. Policy E6 Durham City Centre Conservation Area
26. Policy S2B A2 and A3 uses within the Secondary Retail Area.
27. Policy S10 Food and Drink

#### **EMERGING POLICY:**

28. Paragraph 216 of the NPPF says that decision-takers may give weight to relevant policies in emerging plans according to: the stage of the emerging plan; the extent to which there are unresolved objections to relevant policies; and, the degree of consistency of the policies in the emerging plan to the policies in the NPPF. The County Durham Plan (CDP) was submitted for

Examination in Public and a stage 1 Examination concluded. An Interim Report was issued by an Inspector dated 18 February 2015, however that Report was quashed by the High Court following a successful Judicial Review challenge by the Council. In accordance with the High Court Order, the Council has withdrawn the CDP and a new plan being prepared. In the light of this, policies of the CDP can no longer carry any weight. As the new plan progresses through the stages of preparation it will begin to accrue weight

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## **CONSULTATION AND PUBLICITY RESPONSES**

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### **INTERNAL CONSULTEE RESPONSES:**

29. Environment, Health and Consumer Protection: Raises an objection as she has concerns over the increase in noise levels as a result of greater activity within the Claypath area should this extension of hours variation be granted planning approval. An extension of hours will change the noise climate in the Claypath area during the early hours of the morning and due to Claypath having residential premises close by she feels that this increase in noise activity will have a significant adverse impact on the occupants of the residential premises and potentially cause a statutory nuisance under the Environmental Protection Act 1990. Therefore she would recommend refusal of this application.
30. Highways Development Management: Claypath operates a no access restriction in the evenings Fri – Sunday. 9:00pm to 4:00am. No additional vehicles could gain access as a result of an extension of time of the business use and as such no objection is raised to the proposal.
31. Police: The Police are not making objections against the management of individual premises but do object to the underlying effect these premises have on public safety and amenity.
32. The drinking establishments on nearby Walkergate are licensed until 2.00 am with closure for 2.30 am, the operation of the late night refreshment houses on Claypath to 3.00am effectively extends late night activity in the area to 3.30 - 4.00 am this creates serious Policing issues as a key strategy for the Police is to clear the area as quickly as possible.
33. At first sight this area of Claypath appears to be commercial in nature however there is a surprising number of residential properties in the immediate vicinity and this will increase with the completion of the 400 bed student accommodation which has been approved. The operation of late night refreshment houses into the early hours of the morning is in direct conflict with residential amenity.

## **PUBLIC RESPONSES:**

34. The application was advertised by means of a site notice and by letter to 74 neighbouring properties within the area. Twenty five letters of objection have been received from local residents raising concerns and 2 letters from the City of Durham Trust and a local residents group. The following is a summary of the points raised:
35. St. Nicholas Community Forum, which is the residents' group whose area includes Claypath, raises concerns that the atmosphere in Claypath, especially at weekends, is already threatening and unpleasant. There is so much rowdy and anti-social behaviour that the road has had to be closed from 9 pm until 4 am on Fridays and Saturdays. The rowdy "revellers" disturb Claypath residents, who are NOT all students and NOT "an integral part of the late night culture" and are NOT "quite happy with the late opening".
36. City of Durham Trust – Objects on the grounds that during hours when most people are asleep, Lower Claypath constitutes what might be classified as an unfortunate 'character area' within the city's Conservation Area. To extend until 3am the unacceptable nuisance to which residents of Claypath are subjected is highly undesirable and clearly contrary to Local Plan policy S10.

Individual letters from local residents raise the following concerns:

- The area is unpleasant for residents to walk through late at night.
- On Sunday mornings on the way to Church residents have to navigate themselves through the vomit and grease on the streets outside these takeaway businesses.
- Additional student accommodation has been granted at Chapel Heights and Kepier Court in addition to the new accommodation on Claypath. The increase in hours on the takeaways on Claypath will lead to the existing noise, mess and bad behaviour getting even worse with the additional students and the late night opening to the detriment of residents.
- Elderly people live near the businesses and already suffer from the rowdy behaviour on Claypath late at night. This application will make this situation worse.
- Claypath provides a bad impression to visitors to the city at night which detracts from the historic core of the City.
- A landlord who is also a University Lecturer objected as students occupy a lot of flats on Claypath and wishes to point out they also need sleep at night to operate effectively. A student has also raised this issue.
- A student that occupies a flat near the application site says the noise from the hot food takeaway from music is so loud his floorboards vibrate and this would be unbearable if carried on through the whole week.



- The hot food takeaways already stay open beyond their planning consent hours and already create problems with noise and anti-social behaviour.
- On a positive note one resident noted that the movement of the Taxis away from Claypath has greatly improved the residential amenity of Claypath.
- The food served by hot food takeaways tend to be unhealthy and extending the hours will detract from people's health.

- **APPLICANTS STATEMENT:**

37. The Agent acting on behalf of the Applicant was invited to submit a statement in support of this application. At the time of report preparation, no statement has been received

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## **PLANNING CONSIDERATIONS AND ASSESSMENT**

---

38. Having regard to the requirements of Section 38(6) of the Planning and Compulsory Purchase Act 2004, the relevant Development Plan policies, relevant guidance and all other material planning considerations, including representations received, it is considered that the main planning issues in this instance relate to the impact on residential amenity and highway and access issues.

### **Impact on residential amenity.**

39. The main planning issue in this case relates to Policy S10 and S2b which permits food and drink outlets providing there are no adverse effects on the amenities of nearby occupants and Policy H13 that seeks to protect the character or appearance of a residential area. In addition paragraph 17 of the NPPF seeks to ensure a good standard of amenity for all existing and future occupants of land and buildings. In this case the application site lies within the secondary retail area on a street with a mixture of shops, A2, restaurants, hot food takeaways and residential flats, houses and recent planning consents for student accommodation. The planning issues raised with increasing the opening hours are the same issues as was considered on the earlier refusal in 2011 for the extension in operating hours with regard to noise and disturbance to residential amenity.

40. Residential flats are above the application site and above the adjacent buildings. The existing hours of opening of the hot food takeaways are from 11.00am till 11.00pm every day. The site is located at the western end of Claypath close to the cinema, theatre, bars and a night club. As such there will already be some noise and disturbance from the existing night time activities. However the use of the building will bring clients into the building late at night with the associated noise from people talking and congregating

outside. Given the opening hours are till 11pm this is consistent with the nearby hot food takeaways at 92,94 and 97 Claypath. As this is a City Centre location these times are considered reasonable to allow residents some peace at night whilst reflecting the lively nature of the area.

41. Officers consider that the situation is similar to that in 2011. It is acknowledged that the existing environment is likely to be noisier than in a predominantly residential area because of the activity associated with the nearby night club, pubs, cinema, restaurant, and other nearby hot food takeaways. It is accepted that, because of this, occupants of the flats above the host property may be likely to tolerate higher levels of noise and disturbance than they would elsewhere.
42. However, notwithstanding this and even assuming that the other establishments open until the early hours of the morning, it is considered that the additional activity likely to be generated as a result of the proposed extended opening hours would significantly add to the noise and disturbance experienced by the residents of the flats above this hot food takeaway. The comings and goings of customers would have a particularly marked effect on the noise levels experienced by nearby residents in the late evenings and in the early hours of the morning. These are times when residents would have a reasonable expectation of a quieter environment and of achieving uninterrupted sleep.
43. It is also noted that the residential flats above have a separate entrance to the hot food take away and are occupied independently from the business. This area of Claypath has a good proportion of residential flats – many of which are above ground floor commercial uses.
44. As the planning permission runs with the land it is also relevant that the good management that the existing operator employs would not necessarily be repeated with a different owner. The County Environmental Health Officer has carefully considered the application and has concluded that the increased hours would be detrimentally to residential amenity and is likely to cause a statutory nuisance to the residents.
45. It is also noted that the local residents complain about the noise and disturbance and anti-social behaviour residents already suffer from the existing customers to the hot food takeaways. Residents make reference to the Police being aware of the existing problems and this is reflected in the Police Officers consultation response. The Police have raised concerns that the hours of operation lead to people leaving the late night clubs and drinking establishments at about 2 – 2.30am and then congregating in Claypath which extends the late night activity in the area of Claypath until 3.30 – 4.00am. This creates serious Policing issues as a key strategy for the Police is to clear the area as quickly as possible.
46. The outcome of the appeal that was dismissed on a nearby application site (94 Claypath) in March 2012 is also relevant where the Inspector concluded :

47. 'It is clear that, simply because of the location, the occupiers of the flats above no. 94, and those nearby, must have to tolerate higher levels of noise and disturbance than they would in a normal residential area. That, however, does not deny them the expectation of reasonable quiet during night-time hours. The comings and goings of customers at the appeal premises would be bound to cause noise and have a marked and harmful impact on the quality of the residential environment in the very late evening and in the early hours of the morning. In addition, any waiting restrictions notwithstanding, there could be the noise from car doors shutting and engines starting. Accordingly the proposed extended opening hours would inevitably conflict with what is sought by saved Local Plan Policy S10.1 and H13.'
48. It is noted that since 2012 restrictions on the highway access have occurred on Claypath on Friday – Sunday 9pm – 4am which has reduced some of the noise and disturbance for residents over the weekend from car doors slamming, vehicles starting etc. However officers are also concerned that there will be noise and disturbance from the people congregating on the street after being in the nearby nightclubs and bars and from doors opening and closing from the comings and goings of customers. This would be detrimental to the quality of the residential environment through the night and early morning as described above.

#### Conservation Area

49. The site lies within the City of Durham Conservation Area and no external alterations are proposed on the building. As such the proposal has no additional impact on the Conservation Area and the proposal raises no additional issues under s72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

#### Highways

50. The County Highway Officer has raised no objection to the increased hours of the hot food takeaway and commented that Claypath has restricted vehicular access Fri – Sunday. 9:00pm to 4:00am.

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## **CONCLUSION**

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51. The site is located within a secondary shopping area where there are residential flats above the shop units. The extension to the opening hours of the hot food takeaway to 3am seven days a week is considered to detrimentally affect the residential amenity of the flats above and nearby residential properties at a time of night when people would expect uninterrupted sleep. This is considered to be contrary to Policy S10, S2b and H13 of the City of Durham Local Plan and Paragraph 17 of the NPPF.

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## **RECOMMENDATION**

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That the application be REFUSED for the following reason:

The alteration of the hours of operation to 3am seven days a week would detrimentally affect the residential amenity of the independent living accommodation above the host property and nearby residents. This would be contrary to saved Policy S10, S2b and H13 of the City of Durham Local Plan 2004 and Paragraph 17 of the NPPF.

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## **ADDITIONAL MATTERS**

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N/A

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## **STATEMENT OF PROACTIVE ENGAGEMENT**

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In dealing with the application, the Local Planning Authority has worked with the applicant in a positive and proactive manner based on seeking solutions to problems arising during the application process. The decision has been made in compliance with the requirement in the National Planning Policy Framework to promote the delivery of sustainable development.

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## **BACKGROUND PAPERS**

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- Submitted Application Forms and Drawings
- Supporting statement
- City of Durham Local Plan
- National Planning Policy Framework
- Consultation Responses



**Planning Services**

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**Date June 2016**

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