



Area Planning Committee (Central and East)

Date Tuesday 11 October 2016
Time 1.00 pm
Venue Council Chamber, County Hall, Durham

Business

Part A

1. Apologies for Absence
2. Substitute Members
3. Minutes of the meeting held 13 September 2016 (Pages 1 - 12)
4. Declarations of Interest, if any
5. Applications to be determined by the Area Planning Committee (Central & East Durham)
 - a) DM/16/01957/FPA - Lloyds Bank Plc, 28 New Elvet, Durham, DH1 3AL (Pages 13 - 22)
Change of use of ground floor only from A2 to A5 hot food takeaway and delivery unit, installation of extraction and odour control system and ground floor extension to house external chiller and freezer rooms and new shop front (Amended plans).
 - b) DM/16/02285/FPA - Land at Kepier House, The Sands, Durham (Pages 23 - 38)
Erection of 35 apartments and associated external works.
 - c) DM/16/00152/OUT - Easington Village Workingmens Club, Seaside Lane, Easington Village (Pages 39 - 50)
Approx. 43 Dwellings (outline) all matters reserved.
6. 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
3 October 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 13 September 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, A Laing (Vice-Chairman), B Moir, J Robinson and K Shaw

Also Present:

Councillors J Chaplow and G Holland

1 Apologies for Absence

Apologies for absence were received from Councillors S Iveson and C Kay.

2 Substitute Members

No notification of Substitute Members had been received.

3 Minutes

The minutes of the meeting held on 12 July 2016 were confirmed as a correct record by the committee and signed by the Chairman, subject to an amendment to a typographical error in Minute 5h to read:

“Councillor P Conway moved that the application be refused; he was seconded by Councillor J Lethbridge”.

4 Declarations of Interest

There were no Declarations of Interest.

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

The Chairman noted that Item 5a, Land at Kepier House, The Sands, Durham had been withdrawn.

The Chairman noted that applications Items 5b - 32 Faraday Court, Durham and 5c - 28 Faraday Court, Durham were similar and asked if the Committee would be willing to receive a joint presentation as regards the application, then to make individual decisions upon each application, Members agreed.

a DM/16/02285/FPA - Kepier House, The Sands, Durham

The Chairman reiterated that this item had been withdrawn.

b DM/16/02359/FPA - 32 Faraday Court, Durham

c DM/16/02358/FPA - 28 Faraday Court, Durham

The Senior Planning Officer, Chris Baxter gave a detailed presentation on the report relating to the abovementioned planning applications, 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 sites that day and were familiar with the location and setting. The applications were for change of use from Class C3 Dwelling House to Class C4 House in Multiple Occupation including conversion of garage to habitable room and were recommended for approval subject to conditions.

The Committee noted that the Highways Section had stated they could not support the application in respect of the loss of garages and the potential increase in vehicles. It was added that the Planning Policy Team had noted that within a 100 metre radius of the properties, 15% of the properties were already Houses in Multiple Occupation (HMO) and that issues in terms of HMOs would be exacerbated by the changes of use. The Committee noted 6 letters of objection from the members of the public in respect of 32 Faraday Court and 8 letters of objection in respect of 28 Faraday Court. It was added that there were also objections from the City of Durham Trust and Neville's Cross Community Association with concerns including: deterioration of the visual amenity; traffic generation; highway safety and road access; adequacy of parking; loading and turning; noise and disturbance; contravening legal covenants; and conformity to planning policy.

The Senior Planning Officer noted that in terms of the principle of development, the applications were for conversion to 6 bedrooms and HMO, C3 to C4 use, and that the proposed floor plans were such that this would fall within permitted development.

Members were reminded of the Article 4 Direction that would come into force on 17 September 2016 that would withdraw those permitted development rights relating to the changes of use from C3 to C4 in Durham City, however, this was not yet in effect. In terms of the conversion of the garages to additional habitable rooms, it was explained that this did not require planning permission and therefore it was not considered that a refusal on highways grounds could be supported.

The Chairman asked the Local Member for Neville's Cross, Councillor G Holland to speak in relation to the Application.

Councillor G Holland noted it was paramount that the application was brought to Committee for consideration with the level of "studentification" in the city being highlighted by Mrs J Levitas in recent television and newspaper articles where it had been noted she was the last resident in her street, the rest having been converted to student properties.

Members were informed that some 90% of the City Centre was now occupied by student lets and residential occupancy continued to diminish with the city, which in effect was no more than a student dormitory. Councillor G Holland noted that as the housing in the city centre was consumed for student use, this use was spreading outwards into the suburbs, with new housing estates now falling victim to this debilitating trend. It was added that Sheraton Park was a new and evolving estate with an active and ambitious community association. Councillors heard that the estate had the potential to become an attractive residential area for families, unfortunately it was close to the University and houses were already being turned into student lets, possibly some without permission. Members noted that, in addition, a new purpose build student accommodation block was being constructed at the heart of the estate, which would bring in about 420 additional students, upsetting the balance of what, in essence is, or should be, a residential estate.

Councillor G Holland added that there were 3 other elements in this regard: the first being the belated introduction of an Article 4 Directive by the Council; the second was a letter sent to all the residents in Sheraton Park by a student landlord; and the third was the covenants that were established when this estate was first built and sold.

Councillor G Holland noted that as one of its intentions, the Article 4 Direction sought to achieve a balance between residents and students in Durham City and strived to avoid whole areas becoming "studentified", albeit too late for the city itself. It was added that the balance proposed was 10% although with the purpose build accommodation blocks at Sheraton Park that balance had already been exceeded. Councillor G Holland reminded Members that the Article 4 Direction did not come into force for another 2 days and added he could not understand why the Committee was being rushed into making a decision just 48 hours before the deadline was reached.

Councillor G Holland referred Members to a letter that had been circulated by a student landlord to residents in Sheraton Park to have the landlord, at a fee of £599 including VAT, to convert their houses from Class C3 to Class C4 and thereby avoid the constraints of Article 4. Councillor G Holland noted he would leave it to the Committee to decide on the integrity of that tactic adding that he had supplied the letter to Senior Planning Officers some weeks ago expressing his concerns, however that was the last he had heard about it.

Members were reminded of the issue of covenants imposed by the developer on the estate and Councillor G Holland asked whether they were binding or could they be simply cast aside a few years after they were introduced with their intention being to protect the structural and social integrity of the new estate. Councillor G Holland noted that according to the Land Registry in Schedule 4 all houses in Sheraton Park have the following restrictive covenant under 4.2 which reads: *“Not to use or suffer to be used the Property or any part thereof or any building thereof for any other purpose... than as a private residence for the use of one and not more than one family”*.

Councillor G Holland noted planning policies, both local and national and asked whether they favoured the piecemeal conversion of housing stock into ever more student lets or HMOs. He added that policy makers had not fully anticipated the surge of studentification over the last 15 years, nor had they envisaged the impact of studentification that had blighted not just Durham City but many other cities in this country, with experience showing that the impact was all but irreversible.

Councillor G Holland noted he felt the Officer’s report was rather thin on policy, and in terms of the National Planning Policy Framework (NPPF) was not convincing, touching on Parts 1, 6, 7 and 8 without any conviction. He added that the NPPF was all but silent in matters of studentification and this type of social imbalance, and certainly did not favour it.

Members were reminded that the City of Durham Local Plan (CDLP) was signed off in 2004, in the context of the experience in the City up until that time. It was explained that widespread commercially driven studentification was still in its infancy as the University was less dominant at the turn of the century. Councillor G Holland noted there were 3 local policies which recognised the potential for university expansion, C3, C4 and C5; however they were not mentioned in the report. Councillor G Holland added that these policies envisaged a partnership between the University and the then City Council and most certainly gave no approval of the whole scale commercial consumption of housing.

Councillor G Holland noted he felt housing policies could not be used to justify switching houses from Class C3 to Class C4 at a whim with Policy H9 indicating that such a switch in Class could only occur if: there was adequate parking, which formed part of Policy T1; it would not affect the amenity of nearby residents; and it would not result in a concentration of sub-divided dwellings to the detriment of the housing stock. Councillor G Holland noted that the intention of Policy H9 was to protect residential family housing.

Councillor G Holland explained that Policy H13 stated that planning permission would not be granted for changes of use that have a significant adverse effect on the character or appearance of residential areas or the amenities of residents within them. He added that the residents of Sheraton Park certainly argue that the applications would have an adverse effect on their community. Councillor G Holland added that Policy Q9 followed a similar theme with a similar conclusion.

Councillor G Holland noted that he felt the Local Plan policies gave no support to this application and on balance they gave a contrary indication sufficient to recommend refusal. He added that the evolving Durham Plan embeds Article 4 in relationship to Durham City and that it was for the Committee to decide how much weight they wished to give to Article 4 two days before its formal introduction, noting that in the past that level of proximity has been used by Officers to lend weight to their arguments.

Councillor G Holland concluded by noting that he believed that the applications should be refused as: the covenants imposed from the outset had not, to the best of his knowledge, been relinquished; the applications fail the test and intentions of Local Plan Saved Policies H9, H13 and Q9; and the applications did not meet the Article 4 Direction, first introduced in April 2015, to be embedded by the County Council in 2 days' time.

The Chairman thanked Councillor G Holland and asked Mr A Doig from the Neville's Cross Community Association to speak in relation to the Application.

Mr A Doig congratulated the Council for the introduction of the Article 4 Direction, noting it was crucial in being able to rebalance the split between students and residents, helping in terms of jobs and developers looking to build residential properties. Mr A Doig added that the covenants referred to by Councillor G Holland were in place, and this was a legal fact. In terms of the purpose build student accommodation (PBSA), it was explained that residents had fought to resist this development. Mr A Doig reiterated that a letter had been circulated from a local agent in terms of an offer to convert properties to HMO prior to the Article 4 Direction coming into effect. While it was acknowledged that there would be a demand by students, Mr A Doig highlighted that there was also the needs of the Neville's Cross residents to be addressed in addition. Mr A Doig noted that the student density was approximately 20%, with additional student properties this would increase to more like 30%, and that the worry was that the area would go the way of other areas in the city such as Hawthorn Terrace, and the streets near the viaduct. It was added that PBSA and HMOs were eating away at communities and the Article 4 Direction and Student Policy were essential in preventing this.

Mr A Doig noted that in terms of the applications, 2 houses with 6 students each had the potential for more anti-social behaviour, would generate more rubbish and there would not be sufficient parking. Mr A Doig noted £28 million of cuts at the Council and added that the change of use would lead to a loss of income of £2,000 per property. Mr A Doig reiterated the points made by Councillor G Holland in terms of the applications being contrary to NPPF and saved CDLP policies, especially H9 and H13 and therefore asked that the Committee refuse the applications.

The Chairman thanked Mr A Doig and asked Mr B Heselink from the Sheraton Park Residents' Association to speak in relation to the Application.

Mr B Heselink noted that the Sheraton Park Residents' Association was a sister organisation to the Neville's Cross Community Association, consisting of 120 followers on Facebook and holding regular monthly open meetings. Mr B Heselink added that the Residents' Association objected to the applications for change of use to HMOs. It was added that there had been many HMOs prior to the Article 4 Direction and that there was a fear amongst residents as regards the effect on their amenity and property prices. Mr B Heselink reiterated the previous speakers' comments in terms of the letter that had been sent to residents offering conversion to HMO, prior to the Article 4 Direction coming into effect.

Mr B Heselink confirmed that he had checked his deeds and indeed the covenant as previously mentioned was in place, reminded the Committee that the deeds for the properties were signed legal documents and stated the properties were restricted to one family; therefore change of use to an HMO would not comply with this. Mr B Heselink noted that should there be encouragement to break rules, would this be an issue for a Judicial Review.

Mr B Heselink explained that he felt that there were issues in terms of noise, with no noise control being in place, contrary to NPPF Paragraph 123 and that there would also be issues in terms of CDLP Policies H3 and T1, with the applications being contrary to policies. It was added Members would have seen on site the situation as regards parking along the estate roads and footpaths, with only limited space on the existing driveways, leading to congestion and danger on the roads.

Mr B Heselink reiterated that the student density was already around 20% in the area and that on that basis, and the other points raised the application should be refused. Members were reminded that the PBSA would open in Autumn 2017, with 420 beds, and that already this development was having an impact on residents and that further student properties would tip the balance from a residential estate. Mr B Heselink concluded by reiterating that the Sheraton Park Residents' Association would ask for the applications to be refused for the reasons previous mentioned: the covenants in place; planning policies; and the impact of the increasing percentage of students on local residents.

The Chairman thanked Mr B Heselink and asked the Solicitor - Planning and Development, N Carter to address some of the points raised by the speakers.

The Solicitor - Planning and Development noted that the issue as regards any covenants in place, as raised by Councillor G Holland and the objectors was a private law matter and was not an issue for the Committee to afford weight to. The Solicitor - Planning and Development added that the issue in terms of enforcement of this that had been raised, and that it would not be for the Committee, rather for the developer of the estate or for the residents themselves to pursue. It was added that in terms of a Judicial Review, this would not provide a remedy to the residents as the covenants were matters of private, not public law.

The Chairman thanked the speakers and asked the Applicant, Mr P Smith to address the Committee.

Mr P Smith thanked the Chairman and Committee and noted that he had recently completed his Master's Degree dissertation on "The rise of student housing as an asset class and its effect the HMO market" and felt that he was able to speak on the issues with some knowledge. In terms of the Article 4 Direction, Mr P Smith felt that actually this was 6 years too late. It was explained that the area was the site of the former New College Durham campus and that properties were being repurposed, with the University having indicated that they wanted more students, around 5,700 by 2022, and the price of accommodation in PBSAs would be out of reach of the finances of many students. It was added that the good quality HMOs were popular with students and also popular with residents, and were full. Mr P Smith added that there was research that showed there was a gap of around 30% in house prices between those with C3 and C4 use.

Mr P Smith noted the Legal Officer had pointed out that the covenant issue was outside of the remit of the Committee and indeed there had been a High Court case in a similar vein regarding a property at Elvet Riverside. Mr P Smith explained that issues had been raised as regards 6 students per property not being able to park; however, only around 12% of student had a car and that many landlords offered cycles and bus passes in order to help students.

In terms of the Policies referred to by the objectors, Mr P Smith suggested that in respect of CDLP Policy H13, character of the area, "that ship had sailed" with the granting previous of the large PBSA. In terms of Policy T1, Mr P Smith noted that the Planning Officers were satisfied and that in respect of the Article 4 Direction it was not yet in place, being a simple case of a base-date cut-off. Mr P Smith added that many similar applications to those being considered would have been dealt with under Delegated Authority and that the only reason it was in front of Members was that the Local Member had asked for it to be considered by Committee. Mr P Smith concluded by asking Members to approve the applications.

The Chairman thanked Mr P Smith and asked Members of the Committee for their questions and comments on the application.

Councillor B Moir noted he was very much convinced by the comments made by Councillor G Holland and the objectors, however, he was also mindful of the Planning Officers report and the comments from the Legal Officer. Councillor B Moir noted that while the applications may not be considered within the "spirit of the law", meaning the Article 4 Direction, they were within the "letter of the law" as the Direction was not yet in effect. Councillor B Moir noted that properties owned by the applicant were all kept to a good standard, often greater than some private residences, and that Divisional Members were able to contact the landlord, unlike some other absentee landlords of other student properties. Councillor B Moir noted that he therefore would support the Officer's recommendation and move that the applications be approved.

Councillor D Freeman asked why these applications were at this meeting of the Committee, noting another meeting coming up later in September. Councillor D Freeman noted his disappointment that they were not being considered once the Article 4 Direction was in place and asked if they were refused today, would any appeal on the decision be based upon the policy at this time or at the time of the appeal. Councillor D Freeman added that Sheraton Park was a residential area and the PBSA that was approved by the Council was already impacting upon residents and these applications would add to this. Councillor D Freeman noted he had listened to the Ward Councillor on the possible grounds for refusal and noted Policy H9 clearly referred to a negative impact on the amenity of residents, and noted the subdivision of the properties. Councillor D Freeman added he was not minded to support the Officer's recommendation.

Councillor A Laing noted she formally seconded the recommendation for approval as set out in the report.

Councillor P Conway asked if the Committee was in a bit of a legal knot in terms of being in a position in a few days' time to be able to refuse the application with the Article 4 Direction being in place, and also in terms of the covenants, having listened to the advice from the Solicitor. Councillor P Conway added that he felt that it was clear that the development was originally intended for families and residents and was somewhat dismayed, albeit not surprised, that the system was being played by the private sector to try and circumvent the wishes of residents, with the Direction looking to produce balanced communities with the University, public and private all working together. Councillor P Conway noted the weight in terms of the legal issues and asked whether the issues highlighted by objectors in terms of Policies T1 and H9 gave enough to be able to refuse the application.

The Solicitor - Planning and Development noted that, as the Senior Planning Officer had stated in his report, the change of use was permitted under the General Permitted Development Order 2015 (GPDO), therefore robust reasons for refusal could not be based on saved policies T1 and H9 as planning permission for the change of use already exists. The Solicitor - Planning and Development added that in terms of the query from Councillor D Freeman, should the applications be refused and be appealed, then it would be looked at in terms of the policies in place at the time of the appeal, with the Student Policy being in place, and with the Article 4 Direction being in place.

Councillor B Moir moved that the applications be approved; he was seconded by Councillor A Laing.

(b) DM/16/02359/FPA - 32 Faraday Court, Durham

RESOLVED

That the application be **APPROVED** subject to the conditions detailed in the Officer's report.

(c) DM/16/02358/FPA - 28 Faraday Court, Durham

RESOLVED

That the application be **APPROVED** subject to the conditions detailed in the Officer's report.

d DM/15/03561/OUT - Land East of Ushaw Villas, Cockhouse Lane, Ushaw Moor

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. The application was an outline application will all matters reserved for care home development for up to 50 residents and staff and was recommended for approval subject to conditions.

The Senior Planning Officer noted that the site had been redundant for a number of years following the demolition of the existing public house in 2004, with outline permission for residential development having been granted together the permission for demolition. Members noted that while the application was an outline application, the applicant had provided some illustrative elevations to show how the building would sit across the changing level of the site. It was added there were no objections from the statutory consultees, though the Highways Section had noted issues in terms of the proximity of an existing bus stop to the proposed entrance to the site, though this could be addressed by relocation of the bus stop.

The Chairman asked the Local Member for Deerness, Councillor J Chaplow to speak in relation to the Application.

Councillor J Chaplow noted that the area needed a care home to help provide this vital facility locally, for local people. Councillor J Chaplow added that she would hope that development would "begin on site tomorrow" as it would help provide a care facility, tidy up a long derelict site and also have benefits in terms of employment for local people. Councillor J Chaplow concluded by asking that the Committee agree the Officer's recommendation and approve the application.

The Chairman thanked Councillor J Chaplow and asked Alderman P Stoddart to speak in relation to the Application, on behalf of the Brandon and Byshottles Parish Council.

Alderman P Stoddart thanked the Chairman for the opportunity to speak and noted that this was not an ordinary application, rather it would help with the regeneration of the village, bringing a derelict site back into use which currently was a disgrace to the Parish, County Council and Deerness Valley.

Alderman P Stoddart added that the development would bring forward a much welcomed facility, represent a vast visual improvement to the area and therefore he would appeal to the Members of the Committee to support and approve the application as set out in the Officer's report.

The Chairman thanked Alderman P Stoddart and asked Members of the Committee for their questions and comments on the application.

Councillor A Bell noted that when Local Councillors and Parish Councils speak in support of an application this carried weight and accordingly he would therefore move the recommendation that the application be approved.

Councillor A Laing asked if a number could be put on the jobs that would be created from this application and also seconded the approval of the application. The Senior Planning Officer noted that within full planning applications there was a section that would look to gather information in this regard; however, this was only an outline application.

Councillor J Clark echoed the comments made by Councillor A Bell and noted that should the application be approved that the large containers on the site should be moved as soon as possible and even if the application were refused, the landowners should be contacted as regards tidying up the site.

Councillor A Bell moved that the application be approved; he was seconded by Councillor A Laing.

RESOLVED

That the application be **APPROVED** subject to the Section 106 Agreement and conditions detailed in the Officer's report to the Committee.

e DM/16/01486/FPA - 13 Partnership Court, Seaham Grange Industrial Estate

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 application was for extension to existing factory and was recommended for approval subject to conditions.

Members noted there were no objections from statutory or internal consultees and all the additional development would be within the existing site area.

The Chairman noted there were no registered Speakers and asked Members of the Committee for their questions and comments on the application.

Councillor G Bleasdale noted she had spoken to a number of people from the area and there had been no indications of any objections to the application and therefore moved approval. Councillor K Shaw seconded the application.

Councillor G Bleasdale moved that the application be approved; she was seconded by Councillor K Shaw.

RESOLVED

That the application be **APPROVED** subject to the conditions detailed in the Officer's report to the Committee.

f DM/15/03402/FPA - Sheraton Hill Farm, Sheraton

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 application was for conversion and extension of existing equestrian and agricultural buildings to form 9 dwellings, a replacement bungalow and erection of new garage blocks and was recommended for approval subject to conditions.

Members noted there were no objections from statutory or internal consultees, although the Campaign to Protect Rural England (CPRE) had raised some concerns as regards the sustainability credentials of the development.

The Chairman asked the Agent for the Applicant, Mr C Stockley to speak in relation to the Application.

Mr C Stockley noted there had been no objections to the application and therefore he would simply wish to note that he and the Applicant had worked closely with the Planning Department in terms of ensuring the application was suitable, would help to retain a heritage asset and be of benefit to the local area.

The Chairman thanked Mr C Stockley and asked Members of the Committee for their questions and comments on the application.

Councillor A Laing noted no objections from the Local Members and Councillor J Clark noted that in Paragraph 37 of the Officer's report that the Council's Conservation Team considered the main building to be a non-designated heritage asset and that this application would secure and retain the architectural qualities of the building.

Councillor M Davinson noted he supported the Officer's recommendation, however, believed that a site visit to this application site would have been beneficial. The Chairman noted and agreed with Councillor M Davinson.

Councillor A Bell asked what the view of the Planning Policy Team was in this case as he could not see reference within the report. The Senior Planning Officer noted that nothing was recorded in terms of a response from Planning Policy, however, in speaking to colleagues within that Team, it had been noted that they were comfortable with the scheme.

Councillor A Laing moved that the application be approved; she was seconded by Councillor G Bleasdale.

RESOLVED

That the application be **APPROVED** subject to the conditions detailed in the Officer's report to the Committee.

Planning Services

COMMITTEE REPORT

APPLICATION DETAILS

APPLICATION No:	DM/16/01957/FPA
FULL APPLICATION DESCRIPTION:	Change of use of ground floor only from A2 to A5 hot food takeaway and delivery unit, installation of extraction and odour control system and ground floor extension to house external chiller and freezer rooms and new shop front. (Amended plans).
NAME OF APPLICANT:	Miss D Andre
ADDRESS:	Lloyds Bank Plc, 28 New Elvet, Durham DH1 3AL.
ELECTORAL DIVISION:	Elvet and Gilesgate
CASE OFFICER:	Susan Hyde, Planning Officer, 03000 263961 susan.hyde@durham.gov.uk

DESCRIPTION OF THE SITE AND PROPOSALS

1 SITE: The application site relates to an unlisted building within the eastern part of Durham (City Centre) Conservation Area. It occupies a prominent position fronting the busy street of New Elvet forming part of a short run of commercial properties situated between Court Lane and Elvet Crescent. This part of Elvet has a strong relationship to the World Heritage Site as Durham Cathedral provides a key visual focal point located to the west of the site.

2. PROPOSAL: This application seeks consent for the change of use of the ground floor of a former bank to a hot food takeaway which involves replacing the existing shop frontage, the construction of a rear extension to house a chiller unit and a freezer. In addition the proposal involves inserting wall mounted ventilation grilles and internal modifications at No.28 New Elvet, Durham City.

3. The application is brought before members of the Planning Committee at the request of Councillor David Freeman who wishes to support Elvet Residents Association and their concern about the introduction of shutters on the property and the hours of opening.

PLANNING HISTORY

4. 4/08/00734/FPA - Erection of replacement shopfront and erection of 3 no. air conditioning units to rear elevation of existing building – approved.

5. 4/13/00259/AD - Replacement signage scheme – approved.

6. DM/16/01028/FPA - Alterations to the ground floor retail unit (A2) including new shopfront. Alterations to existing 2 bed first floor flat to form a 4 bed flat (C3) including first floor extension to rear and 3 no. rooflights - approved

NATIONAL POLICY

6. The Government has consolidated all planning policy statements, guidance notes and many circulars into a single policy statement, the National Planning Policy Framework (NPPF), although the majority of supporting Annexes to the planning policy statements are retained. The overriding message is that new development that is sustainable should go ahead without delay. It defines the role of planning in achieving sustainable development under three topic headings - economic, social and environmental, each mutually dependant. 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. 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 21st century.

8. 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.

9. 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.

10. 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>

RELEVANT EMERGING POLICY**The County Durham Plan**

11. 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.

LOCAL PLAN POLICY:

12. Policy T1 (Traffic Generation - 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.

13. 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.

14. 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.

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 S10: (Food and Drink) states that development for class A3 food and drink uses will be permitted provided there are no adverse effects on nearby occupants, adequate parking is provided, it is in scale and character with surrounds and does not compromise other policies in the plan.

The above represents a summary of those policies considered most relevant in the Development Plan the full text, criteria, and justifications of each may be accessed at <http://www.cartoplus.co.uk/durham/text/00cont.htm>.

CONSULTATION AND PUBLICITY RESPONSES

STATUTORY RESPONSES:

17. County Highway Officer- Raises no objections to the application.

INTERNAL CONSULTEE RESPONSES:

18. Police Architectural Liaison Officer – considers the hot food takeaway will result in more anti social behaviour and be detrimental to residential amenity.

19. Environmental Health Officers – Raise an objection to the proposal on the impact of the hot food takeaway on the residential amenity of nearby residents.

20. Conservation Officers – Note the extension is to the rear of the property and considers the amended plan for a brick extension is an improvement on the original submission. A further amendment is required for a parapet on the flat roof extension to improve its appearance.

PUBLIC RESPONSES:

21. The application was advertised by means of a press notice, site notice and by letter to neighbouring properties within the area.

22. 11 letters of objection have been received from neighbours and from the Elvet Residents Association. The main concerns raised are:

- a) The hot food takeaway will generate noise and smells until late into the night.
- b) The proposal will lead to people congregating outside the premises which is close to residents flats and houses late at night, and this will be detrimental to residential amenity.
- c) There is an over age 55 development at Orchard House nearby that will be disturbed by all the noise at night.
- d) The proposed delivery vehicle adjacent to the building will disturb people with all the comings and goings with the deliveries until late into the night.
- e) Concerned about the increase in litter associated with the hot food takeaway.
- f) The proposal is contrary to NPPF Part 8 on Healthy Communities as the proposal will encourage the consumption of unhealthy food and the location opposite the student union is appealing to students in particular.
- g) Concerned about the impact of aluminium shutters on the shop front elevation of the property.
- h) Concerned that inadequate publicity has taken place for the application.

APPLICANTS STATEMENT:

23. We have submitted this change of use application to bring a unit which has been empty back into use, Our proposed changes from A2 to A5 and rear extension we feel are in keeping within the local area and will make use of the building for a long time as our client is taking on a 20 year lease, The business will be an international recognised brand who specialise in developing staff and have a strong staff development ethos employing local people in full and part time roles on permanent contracts, they promote from within and have whole depts. Set up within their head office for the sole purpose of staff development. The unit is in a run of mixed use shops and we are proposing a new shopfront to be in keeping with the local area and also comply with the equality act, we are not proposing shutters and only wish to trade till 23:00 hours daily which the unit could do under its present classification at this time. The extension we are working with the local planners and conservation officer and are happy to further develop the plans to suit their requirements and wishes, we will be replacing existing air conditioning condensers with new smaller more quiet units and also installing in line odour control to satisfy EHO requirements, the units are running at levels higher than the local EHO requirements with quarterly inspections by the brand excellence teams.

24. In summary we would like to bring the brand into Durham, we would like to employ and develop local staff and we would like to work with the local planners, conservation officers and EHO's in bringing an empty unit back into use and developing it to benefit the local area and the local people.

25. 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 development, residential amenity, layout and design and highway safety.

Principle of Development

26. The site lies within the established predominantly residential area of New Elvet within a small local parade of shops. The site is located outside the allocated primary or secondary shopping centre and the small parade of shops has no commercial allocation in the Local Plan. As such the proposed hot food takeaway falls to be considered against Policy S10 which supports hot food takeaways subject to specific criteria that are discussed below. It is acknowledged that there are various elements included within the Town and Country Planning (General Permitted Development) Order 2015 that would allow change of use of the site without planning permission to alternative uses including Class A1 retail. Some of the changes of use are subject to a prior approval procedure and are on a temporary basis only. In this case the potential alternative uses would not be considered to outweigh the detailed assessment as per below.

Residential Amenity

a) Noise

27. The hot food takeaway is proposed to be open to 11pm seven days a week and has a flat in separate ownership to the hot food takeaway above the shop, and residential properties close to the application site. Policy S10 requires there to be no adverse effects on the amenities of nearby occupants and Policy H13 does not support applications that have a significant adverse effect on the character and appearance of the residential area. Although the property is located within a small parade of commercial properties these are all quiet uses and do not open particularly late at night. The parade consists of estate agents, a general store and a bakers. As such the shopping parade is currently quiet in the evening.

28. In this case the Environmental Health Officer has raised an objection to any application for a late night A5 use with residential properties above or in close proximity due to the inherent uncontrollable noise associated with this use due to late night visitors/commercial operations. The 11pm closing time would result in customers arriving and leaving the premises up until 11pm and with the possibility of congregating outside the shop after this time to consume the hot food purchased with associated noise disturbance. This will include vehicles parking with car doors slamming, and the takeaways delivery vehicles coming and going. This type of noise is difficult to control and there are no mitigation measures that can be put in place to reduce this noise impact. As there are residential properties in close proximity to the proposed site and due to the likely potential for noise disturbance Environmental Health Officers object to the application.

29. The Police and planning officers have noted at other hot food takeaways in the City Centre that the busiest period of operation for the hot food takeaway is in the late hours in the evening. As this also coincides with customers leaving public houses or other establishments the customers tend to be noisier and the Police have noted from the closing time of the takeaway until when the street is clear of people consuming hot food takeaways on the street is around one hour. So although the closing time of the hot food takeaway may be at 11pm the consumption of the hot food and dispersal of people may take significantly longer.

30. A second noise issue is raised about the transfer of noise from the shop into the residential flat above. The applicant has advised that they would be willing to carry out sound insulation works between the proposed site and the residential property above. This would reduce the direct noise transmission from the shop to the residential property. In addition the applicant has advised that they would install plant/machinery that will produce lower noise levels than the existing units. Again this would assist with the direct noise transmission to the residential property above and surrounding residential properties to the rear of the premises. If consent is granted then these two issues can be addressed by a planning condition.

b) Odour

31. With regard to odour the applicant has provided additional information in relation to odour at the request of the Environmental Health Officer. The applicant has advised that they would not be installing an external flue and would therefore ensure that odour treatment facilities are included within the odour extraction system in order to ensure that dispersal of odours is not required. This system does seem appropriate for this location however there is a requirement to ensure that these systems are appropriately maintained to guarantee continued satisfactory odour control. No objection is therefore raised with regard to odour and if consent was granted the continued management of the odour system could be conditioned.

Layout and Design

1 Proposed shop front

32. No objection is raised to removing the existing shop frontage as this is a modern introduction approved in 2008. As such there is no desirability for its retention. The submitted plan of the shop front lacks detail and would appear to be modelled with the existing plinth and end pilasters retained and the new door position and amount of glazing consistent with others in the parade. While the use of aluminium is generally resisted in favour of timber in the conservation area, the use of this modern material would not be contentious in this location with the dark colouring (RAL 7021) and matt finish neutralising the modern materials impact. The Conservation Officer requested an amendment to alter the main areas of glazing as these are presently too square and could be improved to have a stronger vertical emphasis by sub-dividing the same window space into 3 with the use of glazing bars. This would provide cohesion with the format of the glazing with that adjacent to the door. The agent has submitted an email agreeing in writing this alteration. This is a matter that could potentially be controlled through a planning condition in the event of planning permission being granted. However as no plan has been received and the application is recommended for refusal then this is included as a reason for refusal.

2 Proposed rear extension

33. The external alterations are assessed in accordance with the requirement in Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, Paragraph 131 of the NPPF and Policy E22 of the Local Plan that endorse the desirability to preserve and enhance heritage assets within the City of Durham Conservation Area. The flat roof extension is located to the rear on a site that is enveloped by existing built form of a far greater scale on three sides. As such in the context of views in the Conservation Area it would not be intrusive in any notable view and from the public perception of the heritage values of the area there would be little noticeable difference compared to the existing situation from the surrounding main streets of New Elvet, Court Lane, and Elvet Crescent.

34. The rear extension is 3.6 metres deep and set in from the existing rear elevation which would lead to 1 metre of the retaining wall being moved back into the site. This would take the form of a single-storey box-like structure with an amended plan showing this clad in brick. This would be attached to the ground floor of the existing building with consent recently having been granted for a first floor pitched roofed extension over the existing ground floor extension, approved under the provisions of DM/16/01028/FPA, yet to be implemented. A further amendment was requested for the brick single storey extension to include some detailing and a parapet to improve the appearance of the flat roof in the City of Durham Conservation Area. The agent has provided an email saying that he accepted this could be provided but no plans have been received. As with the shop front, this is a matter that could have been controlled by condition. However as no plan has been received and the application is recommended for refusal, and a flat roof extension without parapet detailing in the Conservation Area is not supported then this is included as a reason for refusal.

Highways and Parking

35. The County Highway Officer has raised no objection to the application. Parking within this area is controlled and there is a small car park to the front of the parade of shops.

Comments on neighbours objections:

36. Neighbours raised concerns about the height, scale and design of the proposed property, residential amenity and overshadowing. These issues are considered to be addressed above.

37. The concerns raised by residents about the noise and odour from the premises are also addressed above.

38. Residents raise concern that a property that specialises in the accommodation of people over the age of 55 is located close to the site. Planning Officers are aware that Orchard House which is located to the north of the site is for people within that age group. The planning issue here relates to the impact on residential amenity more generally, and this is considered to be addressed earlier in the report.

39. There is a concern that litter associated with the hot food takeaway would increase in the locality. There are litter bins outside the hot food takeaway that can accommodate local litter, and this is not considered to be an issue that would justify refusal of planning permission.

40. Residents also raise a concern that the proposal is contrary to NPPF Part 8 on Healthy Communities. This section of the NPPF does cover Healthy Communities and includes green spaces, schools and footpaths but does not specifically mention hot food takeaways.

41. Concern has also been raised about new aluminium shutters. However no aluminium shutters are proposed on the plan. The confusion may have arisen from the internal grilles being annotated on the plan.

42. Residents have also raised concerns about inadequate publicity having been undertaken; however a press notice, site notice and letters to neighbours have been sent and second letters to neighbours following the receipt of amended plans and additional information. The publicity undertaken has been in accordance with statutory requirements and also the Council's usual good practice on notification on applications.

CONCLUSION

43. In conclusion the planning application proposes change of use of the ground floor only from an A2 bank use to an A5 hot food takeaway and delivery unit, installation of extraction and odour control system and ground floor extension to house external chiller and freezer rooms and new shop front. The proposed alterations to the building including the new shop front are lacking in detail on the plans with regard to revisions to the glazing, and the single storey extension to the rear also lacks the detail of a parapet and brick detailing. As well as being contrary to Local Plan policies because of this, the development would also fail to satisfy the requirement in Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, as it would not be considered to preserve or enhance the character or appearance of the Conservation Area. Although such matters could normally be controlled through planning condition in the event of permission being granted, they are considered to constitute a reason for refusal in the context of an unacceptable proposal. ,

44. The principal issue in this case relates to the impact on residential amenity from the comings and goings to the hot food takeaway on foot and by vehicle, particularly at late hours. The Environmental Health Officer and the Police have carefully considered the proposals and raise concerns that the noise generated could not be controlled and have recommended that the application is refused planning consent. Planning officers consider these to be valid concerns to a degree that is unacceptable in the context of this location. The application is therefore recommended for refusal.

RECOMMENDATION

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

1. The proposed A5 hot food takeaway with a closure time of 11pm 7 days a week would detract from the residential amenity of the area, and particularly the flat above the premises that is unrelated to the business, due to the noise and disturbance generated by the comings and goings from people, vehicles and delivery mopeds during late evening hours. This is considered to be contrary to the saved Policies S10 and H13 of the City of Durham Local Plan 2004.
2. The proposed single storey flat roof rear extension and replacement shop front are not considered to protect or enhance the character of the City of Durham Conservation Area due to the lack of satisfactory detail on the shop front plans and the glazing pattern and the lack of detailing of the parapet wall on the single storey rear extension. For these reasons the proposals are considered to be contrary to Policy S10 and E22 of the City of Durham Local Plan and Part 7 and Part 12 of the NPPF.

STATEMENT OF PROACTIVE ENGAGEMENT

45. 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. Unfortunately a positive outcome has not been achieved on this application. (Statement in accordance with Article 35(2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015

BACKGROUND PAPERS

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

The National Planning Policy Framework (2012)

National Planning Practice Guidance Notes

City of Durham Local Plan 2004

Statutory, internal and public consultation responses



Planning Services

Change of use of ground floor only from A2 to A5 hot food takeaway and delivery unit, installation of extraction and odour control system and ground floor extension to house external chiller and freezer rooms and new shop front. (Amended plans).

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Comments

Date October 2016

COMMITTEE REPORT

APPLICATION DETAILS

APPLICATION NO:	DM/16/02285/FPA
FULL APPLICATION DESCRIPTION:	Erection of 35 apartments and associated external works
NAME OF APPLICANT:	Persimmon Homes
ADDRESS:	Land at Kepier House, The Sands, Durham Elvet & Gilesgate
ELECTORAL DIVISION:	
CASE OFFICER:	Barry Gavillet Senior Planning Officer 03000 261958 barry.gavillet@durham.gov.uk

DESCRIPTION OF THE SITE AND PROPOSALS

The Site

1. This application site is located to the North East of the city centre and is immediately adjacent to and overlooks the south bank of the River Wear. The site slopes toward the river from north to south and is separated from the river bank by the Providence Row and a substantial area of accessible green open space known as The Sands; which forms the South Bank. The site is located within the Durham City Conservation Area.
2. The site is currently vacant and surrounded by security fencing. A previously approved residential development has been progressed on the Northern part of the site. The progress of these works includes excavations for a basement car park and extensive piling to suit that scheme, various spoil heaps from those excavations remain on site. The southern elevated section of the site is more attractive and remains landscaped with a series of mature protected tree canopies. It is the intention to utilise some of these excavations and piling within the amended proposal.
3. The surrounding area is predominantly residential in character; and these properties are on the whole fairly modern; mostly dating from the 1950's onwards. The area has been developed in a piecemeal manner as a series of smaller estates. Further west along Providence Row the scale of buildings increases on the approach to Claypath and the city centre.
4. In 2004 the erection of 16 no. residential apartments and 4 no. townhouses and change of use and conversion of existing student hostel to 2 no. dwellings was approved and partly commenced. More recently, planning permission was granted in 2015 for a scheme for 35 apartments on this site. The difference between this application and the previous approval is that the car parking has been reduced to 34 spaces and is now located around the building rather than being located in an undercroft car park and there are minor elevational changes.

The Proposal

5. This application proposes the erection of 35 apartments. The proposal in scale and design terms is almost identical to the previously approved application, the building would be split level mainly three storeys in height rising to four storeys as the site rises to the south. The apartments would be located in two blocks and would consist of a main apartment block which is three storeys in height which would step down through the site to reflect the natural change in the site topography. There is a small section at four storeys where the change in level occurs.
6. The proposals now include 8 surface level car park spaces accessed off The Sands and a further 16 accessed off Ferens Close. A further 10 spaces are accessed at the south end of Ferens Close with a footpath link to the development (34 spaces in total). This differs from the previously approved undercroft car parking arrangement.
7. The presence of mature trees on the site means that a large part of the site is undevelopable; although this has provided an opportunity to develop a scheme incorporating a considerable area of landscaping. The existing tree canopy and proposed additional landscaping would also provide context and soften the appearance of the proposed building which would be constructed from brick and render with grey anthracite windows as per the previous approval.
8. This application is being referred to Committee as it is classed as a major application.

PLANNING HISTORY

9. On 5th February 2004 two applications were submitted; one for Full Planning Consent (04/00165/FPA); one for Conservation Area Consent (04/00142/CAC). Both seeking consent for; “The erection of 16 no. residential apartments and 4 no. townhouses and change of use and conversion of existing student hostel to 2 no. dwellings”. These applications were approved on 2nd June 2004 and subsequently commenced, although this development later ceased on site due to viability issues.
10. In 2014 the demolition of Kepier House and erection of 35 no. apartments including all associated external works was approved, but again this has never commenced due to viability and potential flooding issues to the undercroft car park. More recently, an application to vary the approved plans was made invalid due to discrepancies relating to the application site boundary.

PLANNING POLICY

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. In accordance with paragraph 215 of the National Planning Policy Framework, the weight to be attached to relevant saved local plan policy will depend upon the degree of consistency with the NPPF. The greater the consistency, the greater the weight. The relevance of this issue is discussed, where appropriate, in the assessment section of the report below.

The following elements of the NPPF are considered relevant to this proposal;

14. *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 21st century.
15. *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.
16. *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 applications 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.
17. *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.
18. *NPPF Part 8 -* 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.
19. *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.

20. *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.
21. *NPPF Part 12 – Conserving and Enhancing the Historic Environment.* Working from Local Plans that set out a positive strategy for the conservation and enjoyment of the historic environment, LPA's should require applicants to describe the significance of the heritage asset affected to allow an understanding of the impact of a proposal on its significance.

LOCAL PLAN POLICY:

22. Policy E6 (Durham City Centre Conservation Area) states that the special character, appearance and setting of the Durham (City Centre) Conservation Area will be preserved or enhanced as required by section 72 of the Planning (Listed Building and Conservation Areas) Act 1990. The policy specifically requires proposals to use high quality design and materials which are sympathetic to the traditional character of the conservation area.
23. 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.
24. 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.
25. Policy E21 (Conservation and Enhancement of the Historic Environment) requires consideration of buildings, open spaces and the setting of these features of our historic past that are not protected by other legislation to be taken into consideration.
26. Policy E22 (Conservation Areas) seeks to preserve or enhance the character or appearance of conservation areas, by not permitting development which would detract from its setting, while ensuring that proposals are sensitive in terms of scale, design and materials reflective of existing architectural details.
27. Policy H2 - (New Housing within Durham City) states that new residential development comprising windfall development of previously developed land will be permitted within the settlement boundary of Durham City provided that the proposals accord with Policies E3, E5, E6, Q8, R2, T10 and U8A.

28. Policy H12 - Affordable Housing seeks the provision of an element of affordable housing on schemes where over 25 units are provided or where the site area would exceed 1.0ha. Affordable housing should meet the needs of eligible households including availability at low cost and should include provision for the homes to remain affordable in perpetuity.
29. 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.
30. 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.
31. 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.
32. 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.
33. 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.
34. 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.
35. 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.
36. Policy U15 - Energy Conservation – Renewable Resources permits the generation of energy from renewable resources provided there is no adverse effect on the visual appearance of the landscape, nature conservation, amenity of residents or an archaeological or historic interest.

RELEVANT EMERGING POLICY:

37. 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.

The above represents a summary of those policies considered most relevant in the Development Plan the full text, criteria, and justifications of each may be accessed at <http://www.cartoplus.co.uk/durham/text/00cont.htm>.

CONSULTATION AND PUBLICITY RESPONSES

STATUTORY RESPONSES:

38. The Environment Agency has no objections subject to the mitigation in the submitted Flood Risk Assessment being conditioned.

INTERNAL CONSULTEE RESPONSES:

39. Design and Conservation officers initially did not support the amended application given the changes to the car park arrangements. However, conditions are suggested which would require additional landscaping around the car parking area.

40. Highways officers have no objections to the location of the car park or level of car parking provision.

41. Ecology officers have no objection subject to the mitigation outlined in the submitted ecology report being conditioned.

42. Education officers have no objections.

43. Tree officers have no objections to the proposals given that the proposals do not involve more tree loss than that of the previously approved application.

PUBLIC RESPONSES:

44. Northumbrian Water have no objections subject to conditions.

45. 11 letters of objection have been received from addresses in the vicinity of the site as a result of the consultation process. The main reasons for objection include an increase in traffic, lack of car parking spaces and the location of the car park which would result in noise and disturbance. Concerns also include the loss of trees, flood risk and the appearance of the development. These concerns will be discussed later in the report.

46. Cllr Ormerod has also previously raised concerns relating to the proposed car parking arrangements.

APPLICANTS STATEMENT:

47. This development offers the opportunity to create a new sustainable residential development within Durham City. The proposal for 35 apartments provides an excellent range and choice of dwellings to satisfy current and future residential requirements for Durham City and also provides a type and size of dwelling which is currently under provided within the locality.
48. We have engaged with the Council throughout the planning process and are satisfied that the scale and form of development, as well the proposed housing mix is appropriate within this locality. The proposals shall develop an urban brownfield infill site within the development limits of Durham, creating a new, attractive residential development for the city.
49. The site's location within an existing residential area of Durham city and close to the city centre ensures that the site is highly sustainable in relation to local amenity with a wide variety of services, facilities, open space, recreational facilities, and local schools within close proximity to the development. Furthermore, the proximity to bus routes and the train station provide a high level of sustainable transport options for future residents.
50. Both public and statutory consultation has been carried out through which a number of concerns were raised. Through adaption of the proposal in responses to these concerns we are confident that there are no outstanding issue regarding the development.
51. Finally, the impacts of the development have been mitigated via a planning gain package which includes an offsite Play Space Contribution and a percentage for art contribution.

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

PLANNING CONSIDERATIONS AND ASSESSMENT

52. Having regard to the requirements of Section 38(6) of the Planning and Compulsory Purchase Act 2004 the relevant Development Plan policies, relevant guidance and all other material planning considerations, including representations received, it is considered that the main planning issues in this instance relate to the principle of the development and accordance with the Governments recently published National Planning Policy Framework (NPPF), and the saved policies from the City of Durham Local Plan. Other material considerations are the scale, layout and design of the amended development, car parking issues, Section 106 issues and the concerns raised by local residents.

Principle of the development

53. Firstly, it should be noted that the planning permission which was approved in 2004 has been partly implemented through the erection of four townhouses, creation of hardstandings, pile foundations and other associated groundworks. In addition a development of 35 apartments was approved in 2015. Therefore a fall-back position exists which would enable the previously approved scheme to be implemented. This scheme was of similar design to the one currently being proposed and was also three storeys in height. Therefore the principle of the development has already been established.

Scale, layout and design of the development

54. The NPPF's twelve core planning principles states that the planning process should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings. Good design, the NPPF states, is "indivisible from good planning."
55. Policy H13 of the LP states that planning permission will not be granted for new development that would have a significant adverse effect on the character or appearance of residential areas, or the amenities of residents within them. Policies Q1, Q2 and Q8 list design features which will be encouraged within residential areas. In addition, saved Policy Q8 of this plan 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. These policies are reflected in part 7 of the NPPF which also requires good design and the protection of residential amenity.
56. In addition to the above, saved Local Plan Policies E6, E21 and E22 all require the character of conservation areas to be preserved or enhanced. Policy E6 is particularly relevant to this application as it relates to the Durham City Centre Conservation Area. It states that the special character, appearance and setting of the Durham City Centre Conservation Area will be preserved or enhanced as required by section 72 of the Planning (Listed Building and Conservation Areas) Act 1990.
57. As previously noted, planning permission was approved in 2004 and implemented thereafter for a scheme which was of similar design to the one currently being proposed and is almost identical to that which was approved in 2015. It is considered that the proposal would result in a modern and attractive development that would be appropriate to its river side context. The brick and render elevations would give a contemporary appearance and would respect the scale and context of the locality. It is considered that the proposals would enhance this part of the Durham City Conservation Area which at present is in an untidy derelict state in accordance with saved policies E6, E21 and E22 of the Local Plan.
58. The main difference in this application is that the car parking will now be external and would not be located in an undercroft car park. Whilst the undercroft car park was desirable in visual terms, it was not required to make the development acceptable. Subject to a condition which would ensure a scheme for additional landscaping around the car parking areas is provided, it is not considered that the current proposal for external car parking and hedgerow screening would have any significant adverse impact on surrounding occupiers or the street scene which would warrant refusal of planning permission. .
59. Overall, the development in terms of scale, design and layout is considered to be appropriate for this particular location. It is considered that the scale and layout of the development is acceptable and the design is of a high standard, therefore the proposals are considered to be in accordance with saved City of Durham policies H13 and Q8 and NPPF part 7.

Car Parking Issues

60. Highways officers have noted that this application compares to the original application which contained 46 spaces, 35 of which were undercroft parking. It should be noted that development within 400m of the city centre would not require any parking space to be allocated to residents. This development is approximately 500m from Claypath. This has been considered in highways deliberations regarding this application.

61. The Councils parking and accessibility guidelines states 1 space should be provided per 2 bed residential unit and further visitor space at 1 space per 3 units. However, within city and town centre accessible areas guidelines state this standard may be reduced and a maximum standard is applied. This is to take account of the requirement to promote sustainable transport options. The minimum standard would suggest 46 spaces would be required. However given the accessible location and the parking controls within the area, highways officers consider it is reasonable to relax the standard.
62. The development is located within the Citys Controlled parking Zone. Ferens close is controlled with permits and pay and display parking is available on The Sands. There would be no free areas for residents within the public highway. No parking permits would be issued to residents or their visitors who would have to meet Pay and Display Charges if they choose to park on street. They would not be permitted to park on Ferens Close. Given that the development is within close proximity to the City Centre and its public transport, reliance on the car for travel will be less than a more remote development. It is therefore considered reasonable given the inconvenience of the parking restrictions that some residents and visitors will not travel by car but will instead choose sustainable travel modes. Whilst the parking provision for the development is less than 1 space per unit it is considered that 34 spaces for 35 units will be acceptable. Space would be available for visitors should they choose to travel by car through use of Pay and Display at The Sands. Highways Officers do not consider the demand for parking if it arose in the Pay and Display areas could be considered to have a severe impact.
63. In light of the above it is considered that the proposals are in accordance with saved policies T1 and T10 of the City of Durham Local Plan and part 4 of the NPPF.

Section 106 Agreement

64. The application approved in 2015 included a Section 106 legal agreement which secured £35,000 towards the provision or improvement of recreational facilities in the Electoral Division and a public art contribution of £30,000 for a public art installation in the Electoral Division. These contributions are still necessary and therefore will need to be secured by a further Section 106 agreement before this permission can be granted. It should be noted that previously approved applications have not included affordable housing on the site. The applicant has provided a development appraisal which officers have assessed and it has been previously agreed that given the site conditions and other constraints that the scheme would not be viable with affordable housing.

Letters of concern from nearby residents

65. As previously mentioned, 11 letters have been received in response to the consultation exercise. The main reasons for objection include an increase in traffic, lack of car parking spaces and the location of the car park which would result in noise and disturbance. Concerns also include the loss of trees, the appearance of the development and flood risk.

66. In terms of traffic congestion, parking and access, these issues have been assessed by the council's Highways Officers and have found to be acceptable; officers also consider that the level of car and cycle provision is acceptable. In addition, it is not considered that the location of the car parking along with the proposed hedgerow screening would cause any significant harm to residential amenity that would warrant refusal of planning permission. With regard to the scale and design of the building, it is noted that the building is of the same scale and design as the two developments' previously approved and officers still consider this to be acceptable. The building would replace a previously derelict building on an untidy site and would enhance the Durham City Conservation Area. In terms of loss of trees, the level of tree removal is the same as the previously approved application and is acceptable. Finally, in terms of flood risk, the applicant has submitted a flood risk assessment in accordance with the requirements of the NPPF, both the Environment Agency and Northumbrian Water have confirmed that the assessment is acceptable and should be conditioned.

67. In light of the above, all of the issues raised by residents have been fully assessed either within this report or during consideration of the two previous planning approvals and their impacts are not considered to warrant refusal of planning permission.

CONCLUSION

68. Overall it is considered that the proposals are in accordance with the development plan and the National Planning Policy Framework. The proposed residential development is in a highly sustainable location near the city centre with good access to public transport, local shops, healthcare providers, schools and other community facilities.

69. The scale, layout and design of the amended development are considered to be appropriate for this location and would visually enhance the Durham City Conservation Area. The proposals would deliver a high quality development whilst vastly improving what is an untidy and derelict site. In addition, the developer has previously agreed to contribute £35,000 toward recreational facilities in the Electoral Division along with a £30,000 contribution toward public art which has already been secured through a Section 106 legal agreement in connection with the previous planning permission. A new S106 Agreement will be entered into to secure these in connection with this application. All other issues such as ecology, flood risk, landscaping etc are acceptable subject to appropriate conditions.

70. On the basis of the above, officers recommended that the amendments to the previously approved application be approved and the removal of conditions agreed.

RECOMMENDATION

That the application be **APPROVED** subject to the following conditions and subject to entering into a Section 106 legal agreement to secure the provision of:

- £35,000 towards the provision or improvement of recreational facilities in the Electoral Division
- £30,000 towards public art in the Electoral Division

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. Plan References;

Location Plan TSD-000

Elevations Sheet 1 DSE-001

Elevations Sheet 2 DSE-002

Elevations Sheet 3 DSE-003

Proposed Site Layout DSL-001

Ground Floor Plan DSP-001

First Floor Plan DSP-002

Second Floor Plan DSP-003

Third Floor Plan DSP-004

Roof Plan DSP-005

Proposed drainage 12042 C-GA-05 Rev T14 received on 5/9/2016

Reason: To define the consent and ensure that a satisfactory form of development is obtained in accordance with saved policy Q8 of the City of Durham Local Plan.

3. In relation to the development hereby permitted, no machinery shall be operated, no development shall be carried out and no construction traffic shall enter or leave the site outside the hours of 0800 hours and 1800 hours Mondays to Friday, 0800 hours and 1300 on Saturdays and not at all on Sundays and Bank Holidays.

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

4. Prior to the commencement of any part of the development hereby permitted, a Construction Management Plan shall be submitted to and approved in writing by the local planning authority. The Construction Management Plan shall include as a minimum but not necessarily be restricted to the following:

- Overall strategy for managing environmental impacts which arise during construction;
- Measures to control the emission of dust and dirt during construction;
- Contractors' compounds, materials storage and other storage arrangements, cranes and plant, equipment and related temporary infrastructure;
- Designation, layout and design of construction access and egress points;
- Provision for emergency vehicles;
- Provision for all site operatives, visitors and construction vehicles loading and unloading plant and materials
- Provision for all site operatives, visitors and construction vehicles for parking and turning within the site during the construction period;
- Details of measures to prevent mud and other such material migrating onto the highway from construction vehicles;
- Storage of plant and materials used in constructing the development;

- Enclosure of phase or development parcel development sites or development parcels and the erection and maintenance of security hoarding including decorative displays where appropriate;

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

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

5. No development shall take place unless in accordance with the mitigation detailed within the contents of Section D4 (Mitigation Requirements) of the 'Ecological Surveys of The Sands, Durham' written by E3 Ecology Ltd and received Revision 4 dated 19.6.14

Reason: In the interests of protected species and to comply with the National Planning Policy Framework part 11.

6. 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 works agreed to shall be carried out within the first planting season following completion of development of the site and shall thereafter be maintained for a period of 5 yrs following planting. Any trees or plants which die, fail to flourish or are removed within a period of 5 years from the substantial completion of the development shall be replaced in the next planting season with others of similar size and species.

Reason: In the interests of the amenity of the area in accordance with saved policy Q8 of the City of Durham Local Plan.

7. The development permitted by this planning permission shall only be carried out in accordance with the approved Flood Risk Assessment (FRA) by CK21 of February 2016.

The mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the timing / phasing arrangements embodied within the scheme.

Reason: To ensure appropriate drainage is maintained in accordance with saved policy U8a of the City of Durham Local Plan.

8. The development hereby approved shall be carried out in accordance with tree protection measures in accordance with BS 5837 2012 and which are contained within the submitted Tree Protection Plan SSD-005 Rev B.

Reason: In the interests of the appearance of the area and to comply with part 7 of the National Planning Policy Framework.

9. The development hereby approved shall be carried out in accordance with the measures contained within the submitted Sustainability Statement received on 14.07.2016.

Reason: In the interests of sustainable construction and energy generation in accordance with the aims of Part 10 of the National Planning Policy Framework.

10. 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 further 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.

11. Development shall be implemented in line with the drainage scheme contained within the submitted document entitled "*Flood Risk and Surface Water Drainage Strategy*", plan reference - proposed drainage 12042 C-GA-05 Rev T14 received on 29/9/2016. The drainage scheme shall ensure that foul water will discharge to manhole 7003 or 7001. Surface water will discharge at a restricted rate of 8 Litres per second to manhole 7003 or restricted to 5 Litres per second downstream of manhole 8004.

Reason: To prevent the increased risk of flooding from any sources in accordance with part 11 of the NPPF.

12. Notwithstanding any details of materials submitted with the application no development shall commence until samples of the external walling, roofing materials and retaining wall 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 policy Q8 of the City of Durham Local Plan.

13. No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a mitigation strategy document, including a timetable for the investigation, which has been submitted by the applicant and approved in writing by the Local Planning Authority. The Scheme shall provide for:

- i) the proper identification and evaluation of the extent, character and significance of archaeological remains within the application area in accordance with the approved strategy,
- ii) an assessment of the impact of the proposed development on any archaeological remains identified in the trial trench evaluation phase;
- iii) Measures to ensure the preservation in situ, or for the investigation, recording and recovery of archaeological remains and the publishing of the findings, it being understood that there shall be a presumption in favour of their preservation in situ wherever feasible;
- iv) sufficient notification and allowance of time to archaeological contractors nominated by the developer to ensure that archaeological fieldwork as proposed in pursuance of (i) and (iii) above is completed prior to the commencement of permitted development in the area of archaeological interest;and
- v) notification in writing to the County Durham Archaeology Section of the commencement of archaeological works and the opportunity to monitor such works.
- vi) Post-fieldwork methodologies for assessment and analyses.
- vii) Report content and arrangements for dissemination, and publication proposals.
- viii) Archive preparation and deposition with recognised repositories.
- ix) A list of all staff involved in the implementation of the strategy, including subcontractors and specialists, their responsibilities and qualifications

The development shall then be carried out in full accordance with the approved details.

Reason: To comply with Policy E25 of the former City of Durham District Plan as the site has archaeological potential.

14. Prior to the development being occupied, a copy of any analysis, reporting, publication or archiving required as part of the mitigation strategy shall be deposited at the County Durham Historic Environment Record. This may include full analysis and final publication.

Reason: To comply with Para. 141 of the NPPF, making the information generated publicly accessible.

STATEMENT OF PROACTIVE ENGAGEMENT

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

BACKGROUND PAPERS

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

The National Planning Policy Framework (2012)

National Planning Practice Guidance Notes

Statutory, internal and public consultation responses



Planning Services

Proposed Erection of 35 apartments

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Comments

Date October 2016

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COMMITTEE REPORT

APPLICATION DETAILS

APPLICATION NO:	DM/16/00152/OUT
FULL APPLICATION DESCRIPTION:	Approx. 43 Dwellings (outline) all matters reserved
NAME OF APPLICANT:	Planning Gain Ltd
ADDRESS:	Easington Village Workingmens Club, Seaside Lane, Easington Village
ELECTORAL DIVISION:	Easington
CASE OFFICER:	Barry Gavillet, Senior Planning Officer, 03000 261958, barry.gavillet@durham.gov.uk

DESCRIPTION OF THE SITE AND PROPOSALS

Site:

1. This application site is approximately 1.08 hectares in size and is located within the Electoral Division and partly within the settlement boundary of Easington. The site lies close to local services including public transport links, shops, schools and other community facilities.
2. The site is a cleared area of land which until recently was occupied by the derelict Easington Workingmens Club and the adjacent car parking along with some open land to the north, it is therefore a part brownfield and part greenfield site. To the east, south and west are existing residential properties and directly to the south of the site is Seaside Lane, the main road which runs east to west between the settlements of Easington Village and Easington Colliery.

Proposal:

3. This application seeks outline planning consent for approximately 43 dwellings, all matters are reserved including details of the access, layout, appearance, scale and landscaping. However an indicative plan has been submitted which shows an access which would be off a new mini roundabout on Seaside Lane. Indicative drawings show a large proportion of the dwellings being small, two bedroomed properties, all with garden areas and off-street parking. It is also suggested that the site would deliver an element of affordable housing.
4. This application is being reported to committee as it is classed as a major development.

PLANNING HISTORY

5. A proposal for 43 dwellings was refused in 2011 on the basis that part of the site was outside of the settlement boundary as defined in the District of Easington Local Plan 2001.

PLANNING POLICY

NATIONAL POLICY

6. The Government has consolidated all planning policy statements, guidance notes and many circulars into a single policy statement, the National Planning Policy Framework (NPPF), although the majority of supporting Annexes to the planning policy statements are retained. The overriding message is that new development that is sustainable should go ahead without delay. It defines the role of planning in achieving sustainable development under three topic headings – economic, social and environmental, each mutually dependant.
7. The presumption in favour of sustainable development set out in the NPPF requires local planning authorities to approach development management decisions positively, utilising twelve ‘core planning principles’.
8. In accordance with paragraph 215 of the National Planning Policy Framework, the weight to be attached to relevant saved local plan policy will depend upon the degree of consistency with the NPPF. The greater the consistency, the greater the weight. The relevance of this issue is discussed, where appropriate, in the assessment section of the report below.

The following elements of the NPPF are considered relevant to this proposal;

9. *Part 1* - The Government is committed to securing economic growth in order to create jobs and prosperity, building on the country's inherent strengths, and to meeting the twin challenges of global competition and of a low carbon future.
10. *Part 4* - Transport policies have an important role to play in facilitating sustainable development but also in contributing to wider sustainability and health objectives. Smarter use of technologies can reduce the need to travel. The transport system needs to be balanced in favour of sustainable transport modes, giving people a real choice about how they travel. However, the Government recognises that different policies and measures will be required in different communities and opportunities to maximise sustainable transport solutions will vary from urban to rural areas.
11. *Part 6* - To boost significantly the supply of housing, applications should be considered in the context of the presumption in favour of sustainable development.
12. *Part 7* - 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.
13. *Part 10* - Planning plays a key role in helping shape places to secure radical reductions in greenhouse gas emissions, minimising vulnerability and providing resilience to the impacts of climate change, and supporting the delivery of renewable and low carbon energy and *associated* infrastructure. This is central to the economic, social and environmental dimensions of sustainable development.

LOCAL PLAN POLICY:

District of Easington Local Plan

14. *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.
15. *Policy 3* - Development limits are defined on the proposal and the inset maps. Development outside 'settlement limits' will be regarded as development within the countryside. Such development will therefore not be approved unless allowed by other policies.
16. *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.
17. *Policy 36* - The design and layout of development should ensure good access and encourage alternative means of travel to the private car.
18. *Policy 37* - The design and layout of development should seek to minimise the level of parking provision (other than for cyclists and disabled people).
19. *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.
20. *Policy 67* - Housing development will be approved on previously developed land within settlement boundaries of established towns or villages provided the proposal is of appropriate scale and character and does not conflict with other policies in the plan.

RELEVANT EMERGING POLICY:

21. 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.

The above represents a summary of those policies considered most relevant in the Development Plan the full text, criteria, and justifications of each may be accessed at <http://www.cartoplus.co.uk/durham/text/00cont.htm>.

CONSULTATION AND PUBLICITY RESPONSES

STATUTORY RESPONSES:

22. Natural England do not object on the basis that suitable mitigation is agreed in relation to European Protected Sites on the coast.
23. Northumbrian Water have no objections subject to a foul and surface water drainage condition.

INTERNAL CONSULTEE RESPONSES:

24. Environmental Health have no objections subject to both noise mitigation relating to the nearby car repair business and contaminated land conditions being attached.
25. Ecology have no objections on the basis that suitable mitigation is agreed in relation to European Protected Sites on the coast.
26. Design officers have no objections but comment that the site should form part of a larger scheme in the future.
27. Landscape officers have no objections.
28. Highways officers have no objections subject to a condition which requires the access to the car repair business to close on the completion of the mini roundabout.

PUBLIC RESPONSES:

29. No responses have been received from nearby residents.

APPLICANTS STATEMENT:

30. Outline planning permission is sought for a residential development comprising around 43 no. dwellings, the proposals would also deliver affordable housing. There are a number of material considerations that weight in favour of development at the site, the main one being that the site was allocated for residential use within the *County Durham Plan*. The site has therefore already been through a degree of scrutiny.
31. It is considered that the previously-developed element of the site sits very comfortably with current and past planning policy (the element within the settlement boundary). It is the northerly, greenfield part of the site that requires further justification.
32. Since the 2011 application which was refused planning permission, it is considered that there has been a significant policy 'shift' that warrants further consideration of the site in question. The publication of the NPPF in 2012 is the most significant shift as it contains policies that could support development at the site. The 2011 decision by the LPA was issued prior to this advice being published.

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

PLANNING CONSIDERATIONS AND ASSESSMENT

33. 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 given the application is outline with all matters reserved, the only planning issues to be considered in this instance are the principle of the development and ecology issues. Issues such as highways, impact on surrounding residents and the street scene etc will all be considered under the reserved matters application. Of particular relevance are the accordance with the saved policies from the District of Easington Local Plan and the Governments recently published National Planning Policy Framework (NPPF).

Principle of the development

34. At the heart of the NPPF is 'the presumption in favour of sustainable development'. In terms of pursuing sustainable development the NPPF sets out five positive improvements to be sought which include;
- Moving from a net loss of bio-diversity to achieving net gains for nature
 - Improving the conditions in which people live, work, travel and take leisure; and
 - Widening the choice of high quality homes
35. It is considered that the development of the land in question has the potential to deliver these improvements. In addition to the above, the NPPF encourages the reuse of brownfield land such as (part of) this application site and saved Policy 3 of the District of Easington Local Plan advises that development within settlement boundaries such as proposed should be favoured over development in the countryside. Policy 67 of the Local Plan also advocates support for housing proposals provided they lie within the settlement limits and relate to previously developed land. The current proposal would therefore not be in strict accordance with this policy being considered a part greenfield site albeit largely within the settlement limits.
36. The local planning authority accept that ELP housing supply figures are based on historic supply figures and as such are considered to be 'out of date' in the context of paragraph 49 of the NPPF, therefore reduced weight can be afforded to policy 67 and policy 3. Furthermore, the County Council is currently unable to demonstrate a 5 year land supply. Accordingly, the application must be assessed in the context of Paragraph 14 of the NPPF.
37. Paragraph 14 of the NPPF states that 'At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development' and for decision makers this means that where relevant policies are 'out of date' that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies the NPPF. Consequently, it is considered that in this instance, the proposal should be subject to the planning balance test as contained within Paragraph 14 of the NPPF. Clearly, whether any benefits of the proposed development are significant and demonstrably outweighed by adverse impacts can only be considered following an examination of all of the issues within the planning balance.
38. The proposed development site is considered to be a highly sustainable location for residential development given its location in the settlement of Easington Village with good access to community facilities such as schools, healthcare provision, shops and public transport links.

39. The site is well related to the settlement and residents would have access to a reasonable level of services and facilities within the village. This site (together with the field parcel to the west) was earmarked as a housing allocation within the County Durham Plan (CDP). However, as the CDP has been withdrawn, no weight can be attributed to this. It does though give an indication that the Council viewed the site as suitable for housing development.
40. Development of this site will help to boost the supply of housing within the County. Although only in outline, the indicative layout shows an access to enable the land to the west to come forward at a later date. This is considered essential to ensure a comprehensive and co-ordinated form of development and this will be secured at the reserved matters stage.
41. In principle, the approval of this application for residential development is considered acceptable. It is well related to the existing village which has a range of local services and community facilities. The development would also bring about an improvement to what is currently a partly derelict and brownfield site. It should be noted that a car repair business operates near the access to the site, however any noise coming from this site could be adequately addressed by suitable noise mitigation measures which should be conditioned.

Affordable Housing

42. The NPPF states that, in order to ensure a wide choice of high-quality homes, Local Planning Authorities should “plan for a mix of housing”, “identify the size, type and tenure of housing that is required in particular locations”, and “where affordable housing is needed, set policies for meeting this need on site”.
43. The County Durham Strategic Housing Market Assessment (SHMA) report was updated in 2016 and supplies the evidence base for 10% affordable housing across the East Durham Delivery Area (on sites of 15 dwellings/0.5 hectares), while the NPPF (Para 159) makes plain the importance of the SHMA in setting targets.
44. The SHMA and the NPPF therefore provide the justification for seeking affordable housing provision on this site, which should be secured via S106 agreement.
45. The applicant has agreed to provide 10% affordable housing on site in the form of 2 units and therefore the proposals are considered to accord with the requirements of the SHMA and the NPPF.

Ecology

46. This application site is in close proximity to Durham Coast Site of Special Scientific Interest (SSSI) and Special Area of Conservation (SAC) Natura 2000 site and the Northumbria Coast SSSI, Special Protection Area (SPA) and Ramsar site, all of which are designations of significant importance.
47. In order to take pressure from additional visitors away from the coastal designations of significant importance, the applicant has proposed to provide a financial contribution toward the provision and upgrading of footpaths at the former Easington Colliery pit site, designed to attract more visitors by providing an enjoyable natural environment for recreation as an alternative to the designated sites on the coast. This contribution of £24,225 is to be secured through a S106 Agreement.

48. As such, it is considered that the proposed development would be in accordance with saved policy 18 of the District of Easington Local Plan and part 11 of the NPPF, both of which seek to protect and enhance biodiversity and the natural environment.

CONCLUSION

49. The National Planning Policy Framework advises that there should be a presumption in favour of sustainable development such as this identified allocation which is a part brownfield site and is partly within the settlement boundary of Easington. Officers consider that the development constitutes sustainable development; the key theme running through the NPPF and accords with paragraph 14 of the NPPF and therefore the principle of the development can therefore be accepted.
50. The scheme is considered to be in a sustainable location for residential development which would involve the improvement of a derelict site. The proposal would provide affordable housing as well as enhanced play and footpath provision, improving the recreational offer for existing and future residents. The benefits of the scheme would significantly and demonstrably outweigh any dis-benefits in accordance with the NPPF and on this basis it is recommended that the application is approved.

RECOMMENDATION

That the application be **APPROVED** subject to the following conditions and subject to the entering into of a Section 106 legal agreement to secure the provision of:

- i. 10% affordable housing on site.
- ii. A contribution of £24,225 towards the provision and upgrading of footpaths at the former Easington Colliery site.
- iii. Contribution of £500 per dwelling toward enhancement or provision of play facilities in the Easington Electoral Division.

Conditions:

1. Application for approval of reserved matters must be made not later than the expiration of three years beginning with the date of this permission and the development must be begun not later than the expiration of two years from the final approval of the reserved matters, or in the case of approval on different dates, the date of approval of the last of the reserved matters to be approved.

Reason: Required to be imposed pursuant to Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. Approval of the details of the access, layout, scale, appearance and landscaping of the site (hereinafter called "the reserved matters") shall be obtained from the Local Planning Authority in writing before any development is commenced.

Reason: Required to be imposed pursuant to Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

3. The development hereby approved shall be carried out only in accordance with the approved plans and specifications contained within:

Site Location Plan received 15th January 2016.

Reason: To meet the objectives of saved Policies 1, 35 and 36 of the Easington District Local Plan and parts 1 and 4 of the NPPF.

4. No development shall take place until a site investigation and Desk top Study has been carried out in accordance with Part IIA of The Environmental Protection Act 1990. The results of the site investigation shall be submitted and approved in writing by the local planning authority. As a minimum requirement, the Desk Top Study should include the following information in relation to the study site:

- Historic Land Use
- Former contaminative site uses
- Typical contaminants from former industrial uses
- Watercourses, major underground aquifers, water source protection zones, at or close to the site
- Ground water, perched ground water
- Adjacent land uses and their historical land use, and potential to affect the study site
- All former holes in the ground on or close to the study site

If the desk top study determines there is no historical land use which may cause contamination of the site, no further action is required in relation to the contaminated land risk assessment. If any historical land use which may cause contamination of the site is found from the desk top study site investigation, a 'Phase 2 Report' will be required as detailed below.

Phase 2 Report

A further report shall be submitted to and approved in writing by the local planning authority. This report shall take into consideration the relevant aspects of the desk top study and discuss remediation measures in accordance with appropriate legislative guidance notes. If, during the course of development, any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority

Phase 3 – Validation Report

After remediation measures are implemented at the site, a final validation statement shall be submitted in accordance with the remediation recommendations of the above 'Phase 2' report.

Reason: To ensure that the application site is safe for the approved development, as required by paragraph 121 of the National Planning Policy Framework and in accordance with saved Policy 1 of the Easington District Local Plan and part 11 of the NPPF.

5. Development shall not commence until a scheme for the disposal of surface and foul water from the development hereby approved has been submitted and approved by the Local Planning Authority. Thereafter the development shall take place in accordance with the approved details.

Reason: To prevent flooding by ensuring the satisfactory storage of/disposal of surface water from the site and in accordance with saved Policy 1 of the Easington District Local Plan and part 10 of the NPPF.

6. Prior to the commencement of development a scheme to minimise energy consumption in relation to that phase shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall consist of energy from renewable or low carbon sources provided on-site, to a minimum level of at least 10% of the total energy demand from the development, or an equivalent scheme that minimises carbon emissions to an equal level through energy efficient measures. Thereafter the development shall be carried out in complete accordance with the approved scheme.

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

7. No development shall commence until a scheme of noise mitigation measures has been submitted to and approved in writing by the Local Planning Authority. The scheme shall protect future occupiers from road traffic and commercial noise and should ensure the following noise levels are achieved.

Traffic (BS 8233:2014)

35dB LAeq 16hr bedrooms and living room during the day-time (0700 - 2300)

30 dB LAeq 8hr in all bedrooms during the night time (2300 - 0700)

45 dB LAmax in bedrooms during the night-time

55dB LAeq 16hr in outdoor living areas

Industrial (BS 4141:2014)

A noise rating level of 5dB LAeq (1 hour) (07.00-23.00) and 0dB LAeq (15 mins) (23.00-07.00) above the background noise level (LA90), at 3.5m from the façade of the proposed development, commensurate with the methodology defined in BS 4142:2014

The approved scheme shall be implemented prior to any occupation of the development and shall be permanently retained thereafter.

Reason: In the interests of residential amenity in accordance with the aims of Policies 1 and 35 of the District of Easington Local Plan.

8. All planting, seeding or turfing and habitat creation in the approved details of the landscaping scheme as part of the reserved matters, shall be carried out in the first available planting season following the practical completion of the development. No tree shall be felled or hedge removed until the removal/felling is shown to comply with legislation protecting nesting birds and roosting bats. Any approved replacement tree or hedge planting shall be carried out within 12 months of felling and removals of existing trees and hedges.

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

Reason: In the interests of residential amenity in accordance with the aims of Policies 1 and 35 of the District of Easington Local Plan.

9. Prior to the commencement of any part of the development hereby permitted, a Construction Management Plan shall be submitted to and approved in writing by the local planning authority. The Construction Management Plan shall include as a minimum but not necessarily be restricted to the following:
- Overall strategy for managing environmental impacts which arise during construction;
 - Measures to control the emission of dust and dirt during construction;
 - Contractors' compounds, materials storage and other storage arrangements, cranes and plant, equipment and related temporary infrastructure;
 - Designation, layout and design of construction access and egress points;
 - Provision for emergency vehicles;
 - Provision for all site operatives, visitors and construction vehicles loading and unloading plant and materials
 - Provision for all site operatives, visitors and construction vehicles for parking and turning within the site during the construction period;
 - Details of measures to prevent mud and other such material migrating onto the highway from construction vehicles;
 - Storage of plant and materials used in constructing the development;
 - Enclosure of phase or development parcel development sites or development parcels and the erection and maintenance of security hoarding including decorative displays where appropriate;

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

Reason: In the interests of residential amenity in accordance with the aims of Policies 1 and 35 of the District of Easington Local Plan.

STATEMENT OF PROACTIVE ENGAGEMENT

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

BACKGROUND PAPERS

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

The National Planning Policy Framework (2012)

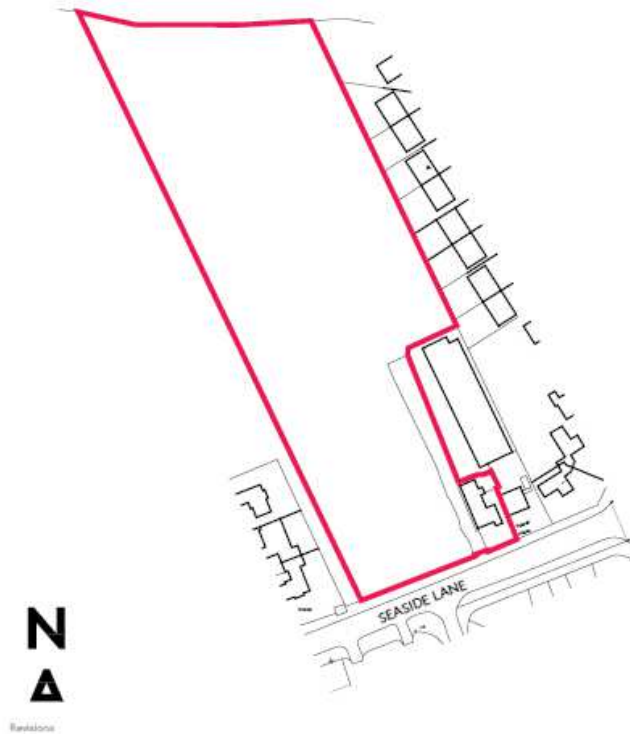
National Planning Practice Guidance Notes

District of Easington Local Plan

The County Durham Strategic Housing Land Assessment

The County Durham Strategic Housing Market Assessment

Statutory, internal and public consultation responses



Planning Services

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Residential development (outline)

Comments

Date September 2016

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