

# COMMITTEE REPORT

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### APPLICATION DETAILS

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| <b>APPLICATION No:</b>               | DM/18/02975/FPA   |
| <b>FULL APPLICATION DESCRIPTION:</b> | Extension and Conversion of the multi-level decked car park to form 4 No 1 bed apartments and 8 No. 2 bed apartments (C3 Housing)(resubmission) |
| <b>NAME OF APPLICANT:</b>            | Hillcrest NE Ltd  |
| <b>ADDRESS:</b>                      | William Robson House Car Park, Claypath, Durham, DH1 1SA  |
| <b>ELECTORAL DIVISION:</b>           | Elvet and Gilesgate   |
| <b>CASE OFFICER:</b>                 | Paul Hopper (Senior Planning Officer)<br>Tel: 03000 263 946<br>Email: paul.hopper@durham.gov.uk   |

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### DESCRIPTION OF THE SITE AND PROPOSALS

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#### The Site

1. The application site comprises a two-storey building which currently provides parking provision for an adjacent office complex and is situated to the rear of Claypath towards the commercial centre of Durham City. It is understood that the office building was originally used as a printing works but presently provides B1 office accommodation for several independent occupiers across all three floors excluding the roof void. However, it is noted that planning permission exists for the conversion of part of this building to residential accommodation through permitted development rights and that the remainder of the building is subject to an associated planning permission for conversion to residential accommodation.
2. The car park is framed by commercial properties to the north and west, by residential properties to the east and Leazes Road to the south. Both the car park and office building take a vehicular access from Claypath via a narrow vennel. The site also lies within the Durham City Conservation Area and to the rear of listed buildings at Claypath.
3. Planning permission was refused in 2018 for the extension and conversion of the existing car park to residential accommodation as it was considered that the proposal would have an unacceptable adverse impact upon the amenity of adjacent residential occupiers and existing trees and also failed to meet minimum internal space requirements. This application represents an amendment to that scheme which increases the amount of internal space available for each unit.

## The Proposal

4. Planning permission is sought for the extension and conversion to residential accommodation of an existing car park adjacent to William Robson House, Claypath, Durham City. The proposal seeks to create 4 No. 1 bed apartments and 8 No. 2 bed apartments and would require extension to the footprint of the existing building along with an increase to its height through the addition of an additional storey.
5. The result would be a structure approximately 16 metres deep by 15 metres wide with an overall height of 9.1 metres to the ridgeline. Residential accommodation would be spread over 3 floors with each unit providing approximately 40sqm of floor space. Windows would be provided predominantly to the northern, southern and western elevations with access gained via external doorways to the north and west. External surfaces would be finished in a mix of brick and render to the walls and natural slate to the roof with timber windows and doors. It is proposed to take vehicular access via the current arrangement from Claypath.
6. The application is reported to the Planning Committee as it constitutes a major development.

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## PLANNING HISTORY

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7. Planning Permission was refused in 2018 for the extension and conversion of the existing car park to residential accommodation. The LPA considered that the proposal would have an unacceptable adverse impact upon the amenity of adjacent residential occupiers and existing trees and also failed to meet minimum internal space requirements.

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## PLANNING POLICY

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### NATIONAL POLICY

8. The Government has consolidated all planning policy statements, guidance notes and many circulars into a single policy statement, the National Planning Policy Framework (NPPF), although the majority of supporting Annexes to the planning policy statements are retained. The overriding message is that new development that is sustainable should go ahead without delay. It defines the role of planning in achieving sustainable development under three topic headings – economic, social and environmental, each mutually dependent.
9. The presumption in favour of sustainable development set out in the NPPF requires local planning authorities to approach development management decisions positively, utilising twelve ‘core planning principles’. The following elements of the NPPF are considered relevant to this proposal;
10. *NPPF Part 5 Delivering a Wide Choice of High Quality Homes.* The Government advises Local Planning Authority’s to deliver a wide choice of high quality homes, widen opportunities for home ownership and create sustainable, inclusive and mixed communities
11. *NPPF Part 6 Building a Strong, Competitive Economy:* The Government is committed to ensuring the planning system does everything it can to support sustainable economic growth. Planning should operate to encourage and not act as an impediment to sustainable growth. Therefore significant weight should be placed on the need to support economic growth through the planning system.

12. *NPPF Part 7 Ensuring the Vitality of Town Centres*: Planning policies and decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation.
13. *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
14. *NPPF Part 9 Promoting Sustainable Transport*: Encouragement should be given to solutions which support reductions in greenhouse gas emissions and reduce congestion. Developments that generate significant movement should be located where the need to travel will be minimised and the use of sustainable transport modes maximised.
15. *NPPF Part 12 Achieving Well Designed Places*: The Government attaches great importance to the design of the built environment, with good design a key aspect of sustainable development, indivisible from good planning.
16. *NPPF Part 15 Conserving and Enhancing the Natural Environment*: Planning policies and decisions should aim to avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development and mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions.
17. *NPPF Part 16 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:**

18. The following policies of the City of Durham Local Plan (CofDLP) are considered relevant to the determination of this application.
19. Policy E3 (World Heritage Site – Protection) Durham Cathedral and Castle World Heritage Site and its setting will be protected by restricting development to safeguard local and long distance views to and from the cathedral and castle and Peninsula in accordance with policies E1, E5, E6, E10, E23 and E24 and applying policies E1, E5, E6, E10, E21, E22, E23 AND E24 relating to green belt, landscape setting, conservation areas, listed buildings, and archaeological remains; and seeking the conservation and management of buildings, Archaeological remains, woodland and open spaces which make up the world heritage site and its setting.
20. Policy E6 (Durham City Centre Conservation Area) The special character, appearance and setting of the Durham (city centre) conservation area will be preserved or enhanced.
21. 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.

22. Policy E15 (Provision of New Trees and Hedgerows) states that the Council will encourage tree and hedgerow planting.
23. Policy E16 (Protection and Promotion of Nature Conservation) states that the Council will the council will protect and enhance the nature conservation assets of the district.
24. Policy E21 (Historic Environment) The council will preserve and enhance the historic environment of the district by requiring development proposals to minimise adverse impacts on significant features of historic interest within or adjacent to the site; and encouraging the retention, repair and re-use of buildings and structures which are not listed, but are of visual or local interest.
25. Policy E22 (Conservation Areas) The council will seek to preserve or enhance the character or appearance of the conservation areas within the City of Durham by not permitting development proposals which would detract from the character or appearance of the conservation area or its setting. All development proposals should be sensitive in terms of siting, scale, design and materials, reflecting, where appropriate, existing architectural details; not permitting the demolition of buildings which contribute to the area's character. Permission for the demolition of any significant building will not be granted until a detailed scheme for appropriate redevelopment of the site has been approved; protecting trees, hedgerows, landscape features, views and undeveloped areas which contribute to the character or appearance of the area and its setting; requiring a sufficient level of detail to accompany applications for development to enable an assessment to be made of its impact on the conservation area. In addition the council will also implement schemes for the enhancement of conservation areas where appropriate and as resources permit.
26. Policy H2 (New Housing In Durham City) New housing development comprising windfall development on previously developed land: and conversions will be permitted, within settlement the settlement boundary of Durham City. Provided either the site is included in policy H11 or that the proposal does not contravene policies E3, E5 and E6, and the site is not allocated or safeguarded for an alternative use; and the development accords with policies Q8, R2, T10 and U8A.
27. Policy H7 (City Centre Housing) the Council will encourage new housing development and conversions to residential use on sites within or conveniently close to the city centre provided; there is no conflict with any other policy or proposal of this plan, particularly those relating to the conservation area or world heritage site, and it is in scale and character with its surroundings.
28. 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.
29. 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.
30. 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.
31. Policy Q1 and Q2 (General Principles Designing for People and Accessibility) The layout and design of all new development should take into account the requirements of users and embody the principle of sustainability.

32. Policy Q5 (Landscaping General Provision) sets out that any development which has an impact on the visual amenity of an area will be required to incorporate a high standard of landscaping.
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 U11 (Development on Contaminated Land) Development on sites which are known to be, or suspected of being contaminated will only be permitted provided that: the nature and extent of contamination is first established; the development will not add to the level of contamination; proposals for development include remedial measures which address the actual or potential hazard of contamination identified; there is no detrimental affect on the environment as a result of the disturbance of contaminates during and after development.
37. 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.

#### **Durham City Neighbourhood Plan (DCNP):**

38. The DCNP is at an early stage of preparation and has not yet reached a stage where weight can be afforded to it.

#### **EMERGING COUNTY DURHAM PLAN:**

##### The County Durham Plan

39. Paragraph 213 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. An 'Issues & Options' consultation was completed in 2016 on the emerging the County Durham Plan (CDP) and the 'Preferred Options' was approved for consultation at Cabinet in June 2018. However, the CDP is not sufficiently advanced to be afforded any weight in the decision making process at the present time.

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

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## CONSULTATION AND PUBLICITY RESPONSES

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### STATUTORY RESPONSES:

40. Highway Authority notes that there has been considerable discussion with the applicant's Transport Consultant regarding the safe future use of the access to William Robson House from Claypath. During these discussions concern was expressed with particular regard to the potential increase in vulnerable road user numbers and possible conflict with vehicles entering a vennen onto Claypath which is only 2.6m wide and the potential conflict arising with pedestrians as a result.
41. However, notwithstanding this the Highway Authority note both the existing use and the fallback position which could see intensification of use as B1 office development over and above the level of use that the proposed residential accommodation would generate. In doing so it is conceded that if this fallback position was reached, the access may become less safe than the change of use situation.
42. In this context the Highway Authority does not consider an objection on highway safety grounds could be sustained and offer no objection to the application subject to the inclusion of a planning condition requiring the submission, agreement and implementation of a Construction Management Plan prior to commencement of development.
43. Northumbrian Water Limited offers no objection to the application subject to the inclusion of a planning condition requiring the submission and agreement of precise details of foul and surface water disposal prior to commencement of the development.

### INTERNAL CONSULTEE RESPONSES:

44. Spatial Policy Section confirms that the two limbed test set out in Paragraph 11 of the NPPF is, irrespective of the position on housing land supply, relevant to this application due to the fact that the local plan's housing requirement policy has expired. Paragraph 11 of the NPPF is therefore relevant and the application granted planning permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the NPPF taken as a whole; or specific policies in the NPPF indicate development should be restricted.
45. The proposals are for the redevelopment and conversion of a building within the centre of Durham City which is a highly accessible location well related to services, facilities and public transport and would support sustainable patterns of growth. The proposal would make a contribution to local housing supply, broaden housing choice and also support the local economy through construction and occupation. However, there remains a concern that the proposal is intended to be Purpose Built Student Accommodation (PSBA) on the basis that the proposed units are very small units, which are likely to appeal to purchasers for student accommodation rather than open market housing for the general population despite the applicant increasing the size of each unit proposed.
46. In addition, it is confirmed that a financial contribution of £22,924.50 would be required to improve open space facilities in the area. Calculated thus;  
  
11 x 1-bed apartments (assumed single occupancy) = 11 people  
8 x 2-bed apartments (based on 2011 census data of 2.2 persons per household) = 18 people. = 29 residents. 29 x £790.50 (Table 16) resulting in the **£22,924.50** contribution.

47. Education Authority has advised that existing school places within the locality could accommodate the anticipated increase in the demand for primary and secondary school places.
48. Landscape Section whilst noting that adjacent trees may well be retained during the course of the development, raises concern that these would undoubtedly come under increased pressure from heavy pruning from future occupants given that they would restrict light into proposed windows. In responding they note that it is generally accepted that for good housing design dwellings should be no nearer than two thirds of the height of an adjacent tree in maturity. Mature height is predicted in the report as 30m (single poplar) 23m (sycamores and crack willow) and 20m (limes) and the proposed building would fall within this.
49. In summary, the Landscape Section advises that in recognition of the sensitivity of the location in the centre of the city and the physical dominance of the existing buildings, it is likely that the development would result in significant adverse landscape and visual effects post construction, and would potentially be in conflict with saved Policies E6 and E14 of the CofDLP as a result.
50. Arborist whilst noting that only minor works would be required to existing trees to the south in order to facilitate the development, notes the concerns of the Landscape Section as described above.
51. Design and Conservation Section in offering no objection to the application notes some concern with the level of extension proposed which would fundamentally change the buildings current size, scale and proportions.
52. Nevertheless, they consider that the resulting building would not be considered so excessive in relation to the surrounding built form as the properties in Claypath vary from two to three storeys with larger block developments to the rear and either side of the application site in particular. These are also constructed over different levels in response to the topography, and again vary in design. In this context, and subject to careful and sympathetic selection of external materials, the extended building is considered unlikely to appear as in incongruous or dominant addition and assimilate into this part of the townscape without any major detriment.
53. The rear of Claypath can be seen from various parts of the city including the riverside environment, New Elvet, and Old Elvet Bridge etc. but for the same reasons' as identified above the impacts would be considered mitigated by the built context surrounding the site. It would also represent a changing built component in the wider context of Durham World Heritage Site, but would not compete for attention, be intrusive, or harmful in any views towards the Cathedral and Castle.
54. Environmental Health Section has no objection to the application subject to the inclusion of a planning condition which requires the submission and agreement of details of sound attenuation to be incorporated into the scheme prior to commencement.
55. Contaminated Land Section has no objection to the application subject to the inclusion of a planning condition requiring the submission and agreement of a Contaminated Land Risk Assessment prior to the commencement of development and the implementation of intrusive site investigation, remediation, and verification where need is identified.

56. Ecology Section has no objection to the application subject to the inclusion of a planning condition requiring the implementation of the mitigation described in the ecological report supporting the application.
57. Archaeology Section has no objection to the application.

**NON STATUTORY RESPONSES:**

58. City of Durham Parish Council in principle welcomes C3 development in the area that provide residential accommodation for year-long occupation noting that the application site is an ideal location, especially suitable for elderly people because of its proximity to the city centre. Notwithstanding the above they raise several areas of concern, notably that;
- Essential provision to meet accessibility requirements do not appear to be shown.
  - Strict Conditions will need to be included should planning permission be granted to ensure the result is C3 accommodation and not C4 HMO use.
  - Arrangements for the collection of wheelie bins to ensure that these are not left on the public highway.
  - No provision is provided for car parking.
  - Operational conditions will be needed and enforced to manage the entry and exit of construction and building material lorries.

**PUBLIC RESPONSES:**

59. The application has been publicised by way of site notice, press notice and notification letters sent to neighbouring properties. Five letters of objection have been received which raises the following points of concern;
- Adverse impact upon residential amenity from overbearing and overshadowing given the excessive size and scale of the proposed development noting that in 1997 a three storey development was found to have an unacceptable impact upon adjacent residential occupiers.
  - Adverse impact as a result of noise given the scheme is likely to be occupied by students.

**APPLICANTS STATEMENT:**

60. This application is a resubmission following an application for 28no. 1-bed apartments (DM/18/00114/FPA) which was refused permission on 4 June 2018 through powers delegated to the Head of Planning.
61. The scheme presented for consideration by members of the planning committee significantly reduces the number of proposed apartments from the original submission with the proposed apartments designed to meet nationally accepted minimum space standards.
62. In addition a detailed response has been submitted to address concerns raised by officers regarding off-site trees.
63. In considering the current application the Design and Conservation section have referred to their previous comments. Both in their pre-application advice and their comments that informed the case officer's report for the original application, Design and Conservation Officers found: *"In this context, and subject to careful and sympathetic selection of external materials, the extended building would unlikely appear incongruous or dominant and assimilate into this part of the townscape without any major detriment."*

64. Approval was granted, subject to conditions, on 20 April 2018 for change of use of the vacant William Robson House from offices to 27no. 1-bed and 3no. 2-bed studio apartments.
65. The multi-level decked car park had been built for the use of the office tenants at William Robson House. Until recently it was being used by rough sleepers and drug users leading to vandalism and other ant-social behaviour. The car park has had to be secured to prevent access and it is proposed that, along with the conversion of William Robson House, this application can bring the entire site back into beneficial use.

*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>*

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## **PLANNING CONSIDERATIONS AND ASSESSMENT**

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

### Principle of Development

67. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF is a material planning consideration. The City of Durham Local Plan (CofDLP) remains the statutory development plan and the starting point for determining applications as set out in the Planning Act and reinforced at Paragraph 12 of the NPPF. However, the NPPF advises at Paragraph 213 that the degree of weight to be afforded to existing Local Plan policies will depend upon their consistency with the NPPF.
68. The City of Durham Local Plan (CofDLP) was adopted in 2004 and was intended to cover the period to 2006. The NPPF Paragraph 213 advises that Local Plan policies should not be considered out-of-date simply because they were adopted prior to the publication of the NPPF. Notwithstanding this, it is considered that a policy can be out-of-date if it is based upon evidence which is not up-to-date/is time expired.
69. On this basis, given the age of the CofDP and housing supply figures that informed it, the housing supply policies therein do not reflect an up-to-date objective assessment of need, and must now be considered out-of-date, and the weight to be afforded to the policies reduced as a result. However, this does not make out of date policies irrelevant in the determination of a planning application. Nor do they prescribe how much weight should be given to such policies in the decision, this being a matter for the decision maker, having regard to advice at Paragraph 213 of the NPPF.

70. In the first instance a number of concerns have been raised by local residents, interested parties and statutory and non-statutory consultees as to the precise nature of the proposed use with some citing a belief that the building would be occupied wholly as Purpose Built Student Accommodation (PBSA) and as such should be assessed against the requirements of the Council's Interim Policy on Student Accommodation. This point is noted by the Council's Spatial Policy Section which has provided both a response in relation to the application being offered on the open market as C3 dwellings and also as a PBSA.
71. With regard to the latter the Council's Interim Policy relating to Student Accommodation requires proposals for new PBSAs to demonstrate that there is a need for additional student accommodation that the proposal would not result in a significant negative impact on retail, employment leisure, tourism or housing use and that consultation has been undertaken with the relevant education provider. When assessed against the requirements of this policy the application fails to include sufficient information and in particular does not include an evidence of need for additional accommodation or consultation with a relevant education provider.
72. In light of these concerns the applicant has sought to clarify the position confirming that the units would be offered as C3 dwelling houses and not wholly as Student Accommodation and as such the development should be considered on the basis that the proposed units fall within Use Class C3 as defined by the Town and Country Planning (Use Classes) Order 1987.
73. Therefore policy H2 of the CofDLP is relevant which relates to new housing within Durham City and seeks to direct new development to the most sustainable locations. It states that windfall housing development of previously developed land (PDL) and conversions will be permitted within settlement boundary of Durham City, subject to amongst other things, not contravening saved Policy E3 (World Heritage Site Protection), E5 (Open Spaces within Durham City) and E6 (Durham City Conservation Area) and the development accords with policies Q2 (General Principles – Designing For Accessibility), R2 (Recreational and Amenity Space in New Residential Developments), T10 (Parking) and U8A (Disposal of Foul Water).
74. Given the emphasis on PDL sites this policy is not consistency with the NPPF as there may be instances where a Greenfield site can be justified through NPPF. This policy should therefore not be used as a reason to refuse such sites on this basis and can therefore only be given some weight. However, as the evidence base which underpins this policy is out of date, then this policy must be regarded as out of date and paragraph 11 of the NPPF is therefore engaged.
75. Policy H7 is also relevant and advises that the Council will encourage new housing developments and conversions to residential use on sites within or in close proximity to the city centre provided there is no conflict with any other plan policy or proposal and it is in scale and in character with its surroundings. This policy is consistent with the NPPF and it is up to date.
76. As the policies in the development plan which are most important for determining the application are out of date, then Paragraph 11 of the NPPF is engaged which establishes a presumption in favour of sustainable development. For decision taking this means;
- approving development proposals that accord with an up to date development plan without delay; or

- where there are no relevant development plan policies or the policies which are most important for determining the application are out of date, granting permission unless:

- i) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
- ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole

77. Having regard to the above, the policies of the Development Plan which are most important for determining the application are considered to be out of date.. As a result, the acceptability of the development largely rests on planning balance of whether any adverse impacts of approving the development would significantly and demonstrably outweigh the benefits there being no policies in this Framework that protect areas or assets of particular importance and which provide a clear reason for refusing the application.

#### Five year Housing Land Supply

78. Paragraph 73 of the updated NPPF maintains the requirement for Local Planning Authorities (LPAs) to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old..

79. Within County Durham all of the extant development plans are more than five years old and their housing figures need revising so the starting point for calculating land supply will be local housing need using the Government's standard methodology. The 'Preferred Options' (June 2018) stage of the emerging County Durham Plan (CDP) is aligned with the standardised methodology and identifies a housing need figure of 1,368 dwellings per annum (dpa). The Council is able to demonstrate in excess of 6 years supply of deliverable housing land against this figure.

80. Although in a recent written representations appeal involving land to the south of Castlefields, Esh Winning, the Inspector took the view that supply had not been demonstrated by the Council in the terms of paragraph 74 of the Framework, the Council's view is that the Inspector applied paragraph 74 prematurely in this appeal because paragraph 74 does not allow for submission of an Annual position statement on 5 YHLS until April 2019 at the earliest. It was therefore impossible for the Council to have such an annual position statement in place at the time of the appeal.

81. To summarise, the Council's position remains that the NPPF has confirmed the use of the standard method for calculating local housing need and as the emerging CDP is aligned with the figure derived from the standardised methodology (1,368dpa), a supply in excess of 6 years supply of deliverable housing can be demonstrated when measured against this.

## Locational Sustainability of the Site

82. Paragraph 103 of the NPPF states that the planning system should actively manage patterns of growth in support of focussing significant development on locations which are or can be made sustainable through limiting the need to travel and offering a genuine choice of transport modes. In this respect, it is noted that the site is located within Durham City Centre and as such has good access to a full and wide variety of shops, services and employment opportunities and is well served by public transport. As such the site is considered to represent a sustainable location.

## Impact upon Residential Amenity

83. Policies H7 and H13 of the CofDLP relate to city centre housing and the character of residential areas respectively. Together they seek to protect the amenity of adjacent users by resisting development which would have a significant adverse effect on the amenities of residents. This is considered to display a broad level of accord with the aims of the NPPF at paragraphs 127 and 180 which require new development to function well and add to the quality of the overall area and prevent both new and existing development from contributing to, or being put at unacceptable risk from, unacceptable levels of pollution respectively. Therefore significant weight can be afforded to these policies.

84. Works to facilitate the conversion and change of use of the building including the formation of two additional storeys above its current height and a considerable increase to its overall footprint. It includes the formation of a blank and featureless gable elevation fronting residential properties to the west at Blue Coat Court which would be approximately 9.1 metres in height by 16 metres wide positioned 2.3 metres from the principal elevation of No. 1 Blue Coat, Court which it is noted includes windows to habitable rooms.

85. Residents of Blue Coat Court have raised objection to the application in this regard noting concerns that the building as extended would have a significant adverse impact in terms of overbearing and overshadowing as a result of its excessive size, scale, height and positioning. In objecting residents note that a previous application in 1997 to extend the car park, (adding additional storeys), was withdrawn due to concerns relating to its impact upon residential amenity.

86. The application in question was considered by the LPA in 1997 and during the course of that application officers were minded to refuse the application in part, due to concerns regarding the impact upon residential amenity. However, it should be noted that the specific points of concern were that the upper floor of the proposed car park extension was open air and afforded users views overlooking adjacent dwellings into habitable rooms.

87. Nevertheless, policy H13 of the CofDLP states that planning permission will not be granted for new development where it would have a significant adverse effect on the amenity of nearby residents. Given the limited separation distances involved and the height of the structure proposed it is considered that the development would have an unacceptable and adverse impact upon the amenity of residential occupiers at Blue Coat Court in terms of overbearing and overshadowing, specifically in relation to No. 1 Blue Coat Court contrary to policies H7 and H13 of the City of Durham Local Plan and paragraph 180 of the NPPF.

88. With regard to noise it is noted that the adjacent residents have raised objection to the application noting that the development is likely to be occupied by students which would generate a significant level of noise.
89. The Council's EHO has been consulted and notes that it is expected that there would be a certain level of tolerance for noise arising from the night time economy given the position of the site within this city centre location, although it is anticipated that occupiers should be able to close windows to ensure a reasonable degree of acoustic protection is afforded. As such the inclusion of a planning condition which requires the submission and agreement of a scheme for noise mitigation within the build that achieves a noise level of NR20 or less within habitable rooms or the worst affected sensitive receptor with closed windows is advised. Subject to the inclusion of a planning condition in this regard this aspect of the development would accord with policies H7 and H13 of the CofDLP and paragraph 180 of the NPPF.
90. In order to limit the potential for disturbance during the construction phase the Council's Environmental Health Section (Noise Action Team) recommends that conditions be included to limit the hours of construction and to ensure the use of best practicable means of suppression of noise, dust and vibration during this time.

#### Impact upon the special character and appearance of Durham City Conservation Area and World Heritage Site

91. The application site is located towards the commercial centre of Durham City, within Durham City Conservation Area and to the east of Durham City World Heritage Site. The building whilst not listed is nevertheless considered to be a non-designated heritage asset for the purposes of paragraph 135 of the National Planning Policy Framework (NPPF) and in addition it is noted that policies E6 and E21 of the CofDLP are also relevant. As the site is framed by existing trees immediately to the south policy E14 of the CofDLP is also considered relevant.
92. Local residents and Durham City Parish Council raise objection to the application citing concerns regarding its impact upon the special historic character of Durham City Conservation Area.
93. Policy E6 of the CofDLP requires new development to preserve or enhance the special character of Durham City Conservation Area in accordance with the requirements of Section 72 of the Town and Country planning (Listed Buildings and Conservation Areas) Act 1990. In addition paragraph 132 of the NPPF requires great weight to be attached to the conservation of a heritage asset (including conservation areas) when considering the impact of a proposal on its significance.
94. The Council's Design and Conservation Section advises that at present the existing building is relatively low-lying and sits quietly on higher ground when viewed from the public environment around the Leazes Road area and that the proposal would generate a three storey building that would naturally increase the buildings presence and make it more dominant when compared to the existing situation in an area where there is a desirability to maintain its present scale. However, they go on to advise that the resulting structure would not be considered excessive in relation to the surrounding built form as the properties in Claypath vary from two to three storeys, with larger block developments present to the rear and either side of the application site that are constructed over different levels in response to the topography, and vary in design.

95. In this context, and subject to careful and sympathetic selection of materials, the Design and Conservation Section note that the extended building is unlikely to appear incongruous or dominant and assimilate into this part of the townscape without any major detriment. Whilst the rear of Claypath can be seen from various parts of the city including the riverside environment, New Elvet, and Old Elvet Bridge etc, the potential impacts would be mitigated by the built context surrounding the site. The development would also represent a changing built component in the wider context of Durham World Heritage Site and listed building to the north, but would not compete for attention, be intrusive, or harmful in any views towards the Cathedral and Castle and views of the listed building. In this respect the Council's Design and Conservation Section offer no objection to the application and it is considered that the application is compliant with Section 72 of the Listed Building Act and policy E6 in that it would (have a neutral impact on the character and appearance of the conservation area and the setting of the Grade II Listed Building to the north at Claypath).
96. Notwithstanding the above it is noted that a number of mature trees are located immediately to the south of the site which are not within the application site itself and are under the ownership of the County Council. Their crown spread currently comes into conflict with the existing building and it is noted that they are subject to protection due to their position within Durham City Conservation Area. However, the Council's Arborist advises that minor works would resolve any conflict in this regard in the short term. Policy E14 of the CofDLP is nevertheless relevant and requires new development to retain important groups of trees, copses and individual trees and hedgerows wherever possible.
97. The application is supported by an Arboricultural Impact Assessment (AIA) which confirms that the proposed works to extend and convert the existing building could be achieved with only minor works to these specimens which would be retained post development subject to appropriate protection. However, both the Council's Landscape Section and Arborist note that the submitted AIA fails to address the seasonal absence of sunlight penetration into restricted living rooms, daylight reduction that the heavy crown coverage of sycamores and limes would create and concerns over the chance of structural failures during high winds. They consider that given the proximity of these specimens to the proposed building it is likely that there would be considerable pressure from future residents to fell these trees as they would likely restrict natural light into these rooms with external windows to the southern elevation. The importance of natural light into these units is considered especially important as they would be the only source of natural light to those rooms. In summary, the Council's Landscape Section considered that in recognition of the sensitivity of the location and the physical dominance of the existing buildings, development could result in significant adverse landscape and visual effects post construction.
98. The applicant has provided additional information in response to the concerns raised and considers that the established 'building to treescape' relationship in the locality has not resulted in any evident increase in pressure to remove the trees, and that the proposed development is not likely to result in a sudden increase in requests for wholesale removal of the trees in this location, particularly given the Conservation Area status and provisions set out within the Council's Tree Management Policy.
99. Nevertheless the concerns raised by the Council's Landscape Section remain and it is considered that whilst existing trees to the south of the site could be retained post construction, it is likely that there would be significant long term pressure from future residents to remove these specimens which would likely restrict daylight to some of the windows situated in the buildings southern elevation. The trees make a positive contribution to the conservation area and their removal would have a negative impact upon the visual amenity of the area contrary to the requirements of policy E14 of the City of Durham Local Plan.

## Parking, Access and Highway Safety

100. At present the office and car park benefit from an existing vehicular and pedestrian access directly from Claypath to the north via a narrow vennel approximately 2.6 metres wide and it is proposed to retain this arrangement to serve the development.
101. Policy T1 of the City of Durham Local Plan states that planning permission will not be granted for development that would generate traffic which would be detrimental to highway safety and/or have a significant affect on the amenity of occupiers of neighbouring property and policy T10 requires new development to provide adequate car parking. This is considered to display a broad level of accord with the requirements of paragraph 32 of the NPPF which requires new development to provide safe and secure access to the new development.
102. The Highway Authority has been consulted and whilst concern was initially raised with regard to the use of the existing arrangement, given the narrowness of the vennel access, nevertheless raise no objection to the application with regards to highway safety. In doing so the Authority noted the fall-back position with regard to the current use which could see an unrestricted intensification of the B1 office use over and above that resulting from the proposed residential use. In this instance the Authority notes that should this fall-back position be reached, the access may become less safe than that proposed through the change of use. However, the inclusion of a planning condition requiring the submission and agreement of a Construction management plan to be approved by the LPA prior to the commencement of development is advised. In this regard concerns raised by City of Durham Parish Council are noted in relation to the management of construction traffic which would be included in the management plan.
103. Whilst the Parish Council also raise concern at the extent of proposed parking provision, it is noted that the site occupies a city centre location and that the Highway Authority raises no objection to the scheme in this regard.
104. Subject to the inclusion of a planning condition in this regard the development is considered to accord with the aims of policies T1 and T10 of the CofDLP and paragraph 32 of the NPPF.

## Ecology

105. The proposal is supported by a Preliminary Ecological Appraisal and Bat Risk Assessment which concludes that the building has limited potential to support small numbers of crevice roosting bats at times during the bat activity season. The Council's Ecologist has been consulted and offers no objection to the application subject to the inclusion of a planning condition ensuring the mitigation advised in the report is implemented.
106. Subject the inclusion of a condition in this regard the proposal is considered to accord with the requirements of paragraph 175 of the NPPF in that it would not have any unacceptable impact in terms of biodiversity or protected species.

## Drainage

107. The application proposes disposal of both foul and surface water to main drainage to which NWL offer no objection subject to the inclusion of a planning conditions requiring the submission and agreement of precise details of foul and surface water disposal prior to commencement of the development.
108. Subject to the inclusion of a planning condition in this regard the development would accord with the requirements of U8A of the CofDLP which requires new development to provide adequate means of foul and surface water drainage.

## Contaminated land

109. The proposed C3 use is considered a more sensitive receptor and as such the Council's Contaminated Land Section has confirmed requirement for a Contaminated Land Risk Assessment and for intrusive site investigations, remediation and verification where a subsequent need is identified. This could be secured through planning condition and as such, subject to the inclusion of a condition in this regard, the proposal is considered to accord with the requirements of policy U11 of the CofDLP and paragraph 178 of the NPPF.

## Planning Obligations

### *Open Space*

110. CofDLP policy R2 requires developers to provide adequate provision for children's play space and outdoor recreation space in new major new housing developments. These targets have been revised under the Council's Open Space Needs Assessment (OSNA) 2018, which is considered the most up to date assessment of need for the purposes of Paragraph 96 of the NPPF. Paragraph 96 states that access to a network of high quality open spaces and opportunities for sport and physical activity is important for the health and well-being of communities, and that policies should be based upon robust and up-to-date assessments of provision.
111. The OSNA sets out the requirements for public open space on a population pro rata basis, and this development would be expected to provide provision for six typologies, either within the site, or through a financial contribution towards offsite provision, in lieu.
112. Given the constrained nature of the site within the City Centre the application does not include the provision of any on site open/play space provision. In this context it is considered that in lieu of any on site provision a commuted sum would be payable secured through Section 106 Agreement to which the applicant has agreed. The calculated figure in this regard would be £22,924.50.

### *Affordable Housing*

113. There is no policy within the CofDLP with regards to the provision of affordable housing, however paragraph 64 of the NPPF states that major development involving the provision of housing should include a provision of at least 10% dwellings available for affordable ownership. Furthermore, NPPF defines affordable housing as "housing for sale or rent, for those whose needs are not met by the market. It further sets out that affordable housing includes a variety of products comprising affordable housing for rent, starter homes, discounted market sales housing, and other affordable routes to home ownership including shared ownership, equity loans, and rent-to-buy. It also states that exemptions to the 10% may be appropriate where a proposed development provides specialist accommodation for the elderly.

114. The evidence base which has informed the County Durham Plan Preferred Options, identifies that the site lies within an area where 25% affordable housing should be achievable without adversely affecting the viability of developments. With regards to this, the applicant has agreed to provide the stated level of provision which would amount to 3 units (tenure mix of 80% affordable rented housing to 20% immediate products) which could be secured by means of a Section 106 legal agreement.

#### Other Matters

115. The City of Durham Parish Council advise that strict conditions will need to be included should planning permission be granted to ensure the result is C3 accommodation and not C4 HMO use. However, the application is for C3 dwellings, not C4 HMOs, so it is considered that such a condition in this regard would not meet the test of reasonableness which all planning conditions are required to meet.
116. In addition, the Parish Council also raises concerns at the arrangements for the collection of wheelie bins which will need to ensure that these are not left on the public highway. Means of bin storage are shown on the submitted plans and considered satisfactorily. The Highway Authority raise no objection to the application in this regard.

#### Planning Balance

117. As the relevant policies of the CofDLP are considered to be out of date, the presumption in favour of sustainable development as contained in paragraph 11 of the NPPF is engaged. There are no policies which protect areas or assets of particular importance which would provide a clear reason for refusing the application and therefore balancing exercise of benefits and adverse impacts must be undertaken. In this regard a summary of the benefits and adverse impacts of the proposal are considered below;

##### *Benefits*

118. The development would provide some benefit in terms of a boost to housing supply, although it is noted that this would be considered very limited at 12 dwellings in the context that the Council's ability to demonstrate a 5 year supply of housing land. Less weight should therefore be afforded to the benefits of delivering new housing in this regard as such than would otherwise be the case if any shortfall in supply existed.
119. To a limited degree the development would provide direct and indirect economic benefits within the locality and from further afield in the form of expenditure in the local economy. This would include the creation of construction jobs, as well as further indirect jobs over the lifetime of the development. A temporary economic uplift would be expected to result from the development and expenditure benefits to the area. Such benefits can be afforded some limited weight.

##### *Adverse Impacts*

120. The development would, by reason of its size, scale, height and proximity to the nearest residential occupiers result in an unacceptable and adverse impact upon residential amenity in terms of overbearing and overshadowing contrary to policies H7 and H13 of the CofDLP and paragraph 180 of the NPPF.

121. In addition, it is likely that whilst existing trees to the south of the site would survive the construction phase of development, should planning permission be granted, it is likely that there would be considerable pressure from future occupants to fell these trees. As they make a valuable and positive contribution to the visual amenity of the surrounding locale their loss would have a detrimental impact in this regard contrary to the requirements of policy E14 of the City of Durham Local Plan.

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## **CONCLUSION**

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122. When applying the planning balance contained in paragraph 11 of the NPPF it is considered that the adverse impacts of the development would significantly and demonstrably outweigh the benefits, in particular that the proposal would have a significant detrimental impact upon the residential amenity of surrounding occupiers from overbearing and overshadowing and would result in the loss of several trees to the south of the site which would have a detrimental impact upon the visual amenity of the area.
123. The development would therefore be contrary to the aims of policies H7, H13 and E14 of the City of Durham Local Plan and paragraphs 11, 127 and 180 of the NPPF.

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## **RECOMMENDATION**

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

124. The proposal would have a significant detrimental impact upon the residential amenity of surrounding occupiers from overbearing and overshadowing and would result in the loss of several trees to the south of the site which would have a detrimental impact upon the visual amenity of the area. The development would therefore be contrary to policies H7, H13 and E14 of the City of Durham Local Plan and paragraphs 11, 127 and 180 of the NPPF.

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## **STATEMENT OF PROACTIVE ENGAGEMENT**

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The Local Planning Authority in arriving at its decision to refuse the application has, without prejudice to a fair and objective assessment of the proposals, issues raised and representations received, sought to work with the applicant in a positive and proactive manner with the objective of delivering high quality sustainable development to improve the economic, social and environmental conditions of the area in accordance with the NPPF. Regrettably, a positive recommendation has not been possible in this instance. (Statement in accordance with Article 35(2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

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## **BACKGROUND PAPERS**

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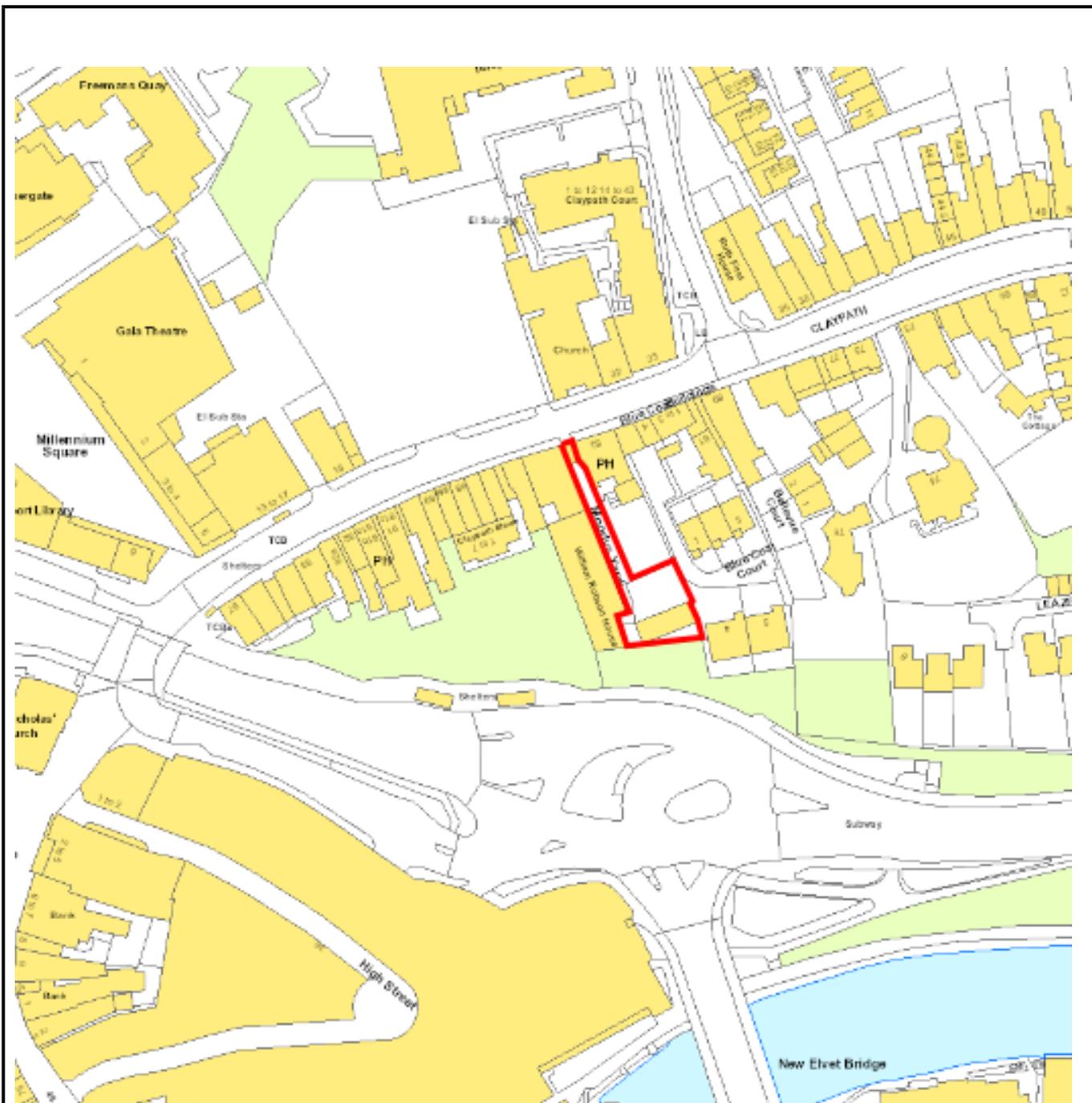
Submitted application form, plans supporting documents and subsequent information provided by the applicant.

The National Planning Policy Framework (2018)

National Planning Practice Guidance Notes

City of Durham Local Plan 2007

Statutory, internal and public consultation responses



**Planning Services**

Extension and Conversion of the multi-level decked car park to form 4no. 1-bed apartments and 8no. 2-bed apartments (C3 housing) (Resubmission)

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**Comments**

**Date** 12 March 2019