

COMMITTEE REPORT

APPLICATION DETAILS

APPLICATION NO:	DM/18/03785/FPA
FULL APPLICATION DESCRIPTION:	Erection of 4 dwellings
NAME OF APPLICANT:	Mr Lee Smurthwaite
ADDRESS:	Land To The Rear Of 63 Crossgate Durham DH1 4PR
ELECTORAL DIVISION:	Elvet and Gilesgate
CASE OFFICER:	Michelle Hurton Michelle.Hurton@durham.gov.uk 03000 261398

DESCRIPTION OF THE SITE AND PROPOSALS

SITE:

1. The application site is located directly to the rear of Crossgate Workingmen's Club on the north side of Crossgate, approximately 85 metres from the street's junction with North Road and Framwellgate Bridge. The site is not visible from the surrounding public realm and can only be seen in localized views from either the rears of No.57-59 Crossgate, the Working Men's Club (No's 60 to 63) or via the private side vennals.
2. The site is accessed by a pedestrian route from Crossgate which is shared with the Workingmen's Club and sits within a concentrated, tightly enclosed urban context where the original commercial/residential properties which bound the site have been heavily altered and extended to the rear over time.
3. The site itself contains no listed buildings, and no known heritage assets, it is however located within Durham (City Centre) Conservation Area, is firmly within the setting of numerous listed buildings within both Crossgate and North Road and can be considered within the inner urban setting of Durham Cathedral and Castle World Heritage Site (WHS), which is located approximately 200 metres to the east.

PROPOSAL:

4. Full planning permission is sought for the erection of four residential town houses, comprising of two and three storey properties. The townhouses incorporate one two bedroomed property, two three bedroomed properties and one four bedroomed property.
5. Bin storage and cycle storage provision has been provided onsite for all properties.

6. The application is referred to planning committee at the request of local member Councillor Freeman as local residents are concerned about the location of the site, effect on nearby properties and whether the properties will become HMOs.

PLANNING HISTORY

7. There is no planning history for this site.

PLANNING POLICY

NATIONAL POLICY:

National Planning Policy Framework

8. A revised National Planning Policy Framework (NPPF) was published in February 2019. The overriding message continues to be that new development that is sustainable should go ahead without delay. It defines the role of planning in achieving sustainable development under three overarching objectives – economic, social and environmental, which are interdependent and need to be pursued in mutually supportive ways.
9. In accordance with Paragraph 213 of the National Planning Policy Framework, existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given). The relevance of this issue is discussed, where appropriate, in the assessment section of the report. The following elements of the NPPF are considered relevant to this proposal.
10. NPPF Part 2 - Achieving sustainable development. The purpose of the planning system is to contribute to the achievement of sustainable development and therefore at the heart of the NPPF is a presumption in favour of sustainable development. It defines the role of planning in achieving sustainable development under three overarching objectives – economic, social and environmental, which are interdependent and need to be pursued in mutually supportive ways. The application of the presumption in favour of sustainable development for plan-making and decision-taking is outlined.
11. NPPF Part 4 - Decision-making. Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.
12. NPPF Part 5 - Delivering a sufficient supply of homes. To support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay.
13. NPPF Part 6 Building a Strong, Competitive Economy: The Government is committed to 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.

14. 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
15. NPPF Part 9 - Promoting sustainable transport. Encouragement should be given to solutions which support reductions in greenhouse gas emissions and reduce congestion. Developments that generate significant movement should be located where the need to travel will be minimised and the use of sustainable transport modes maximised.
16. NPPF Part 11 - Making effective use of land. Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously-developed or 'brownfield' land.
17. NPPF Part 12 - Achieving well-designed places. The Government attaches great importance to the design of the built environment, with good design a key aspect of sustainable development, indivisible from good planning.
18. NPPF Part 15 - Conserving and enhancing the natural environment. The Planning System should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, geological conservation interests, recognising the wider benefits of ecosystems, minimising the impacts on biodiversity, preventing both new and existing development from contributing to or being put at unacceptable risk from pollution and land stability and remediating contaminated or other degraded land where appropriate.
19. NPPF Part 16 - Conserving and enhancing the historic environment. Heritage assets range from sites and buildings of local historic value to those of the highest significance, such as World Heritage Sites which are internationally recognised to be of Outstanding Universal Value. These assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations.

The above represents a summary of those policies considered most relevant. The full text can be accessed at: <http://www.communities.gov.uk/planningandbuilding/planning/planningpolicyguidance/planningpolicystatements>

NATIONAL PLANNING PRACTICE GUIDANCE:

20. The Government has consolidated a number of planning practice guidance notes, circulars and other guidance documents into a single Planning Practice Guidance Suite. This document provides planning guidance on a wide range of matters. Of particular relevance to this application is the practice guidance with regards to; conserving and enhancing the historic environment; design; and use of planning conditions.

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

LOCAL PLAN POLICY:

City of Durham Local Plan 2004

21. Policy E3 (World Heritage Site) – Protection seeks to safeguard the site and setting from inappropriate development that could harm its character and appearance.

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 E24 (Ancient Monuments and Archaeological Remains) sets out that the Council will preserve scheduled ancient monuments and other nationally significant archaeological remains and their setting in situ. Development likely to damage these monuments will not be permitted. Archaeological remains of regional and local importance, which may be adversely affected by development proposals, will be protected by seeking preservation in situ.
28. 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.
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 Generation – General) The council will not grant planning permission for development that would generate traffic which would 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 Q1 (General Principles – Designing for People) states that the layout and design of all new development should take into account the requirements of users. It will be expected to incorporate the following as appropriate personal safety and crime prevention, the access needs of people with disabilities, the elderly and those with children.
33. Policy Q2 (General Principles – Designing for Accessibility) states that the layout and design of all new development should take into account the requirements of users. It will be expected to embody
34. 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.
35. 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.
36. 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.
37. Policy U11 (Development on Contaminated Land) sets out the criteria against which schemes for the redevelopment of sites which are known or suspected to be contaminated. Before development takes place it is important that the nature and extent of contamination should be fully understood.
38. Policy U13 (Development on Unstable Land) notes that development on unstable land will only be permitted if it is proven that there is no risk of the development or its intended occupiers from such instability or that satisfactory remedial measures can be undertaken.

EMERGING POLICY:

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.

Durham City Neighbourhood Plan

40. The Durham City Neighbourhood Plan is at an early stage of preparation and has not yet reached a stage where weight can be afforded to it.

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:

41. The City of Durham Parish Council objects to the proposed development and has raised concerns in regards of safeguarding listed buildings and their settings, impact on the character and appearance of the Conservation Area, does not provide a safe and satisfactory access and has inadequate parking provision.
42. Northumbrian Water raises no objections to the proposed development. Following the transfer of private drains and sewers in 2011, there may be assets that are the responsibility of Northumbrian Water that are not yet included in their records. Therefore, care needs to be taken prior and during the construction phase with consideration to the presence of sewers on site. Northumbrian Water actively promotes sustainable surface water management, the developer should develop their surface water drainage solution by working through the following, listed in order of priority: discharge into ground (infiltration); discharge to a surface water body; discharge to a surface water sewer, highway drain, or another drainage system; as a last resort, discharge to a combined sewer.
43. The Coal Authority raises no objections to the proposed development. The site is located within a high-risk area therefore, a planning condition is to be attached to any approval granted regarding the undertaking of a scheme of intrusive site investigations to properly assess the ground conditions and potential risks posed to the development by past shallow coal mining activity, submission of the findings and implementation of remedial works.
44. The Fire and Rescue Service has made no comment on the application.
45. The Highways Authority have raised no objections to the proposed development given that cycle provision has been provided as part of the scheme. A construction management plan condition is to be attached to any approval granted.

INTERNAL CONSULTEE RESPONSES:

46. Design and Conservation raises no objections given that the site is located in a concealed location which does not impact on the conservation area or surrounding listed buildings. A condition is to be attached to any approval granted regarding materials.
47. Ecology raises no objections subject to a S106 agreement being entered into between the applicant and the Council for the loss of biodiversity at the site.
48. Landscape raises no objections as it is considered that there are no visual impact issues on the enclosed site within the Conservation Area.
49. Landscape (Trees) raises no objections as the trees cannot be seen from any viewpoints and does not warrant tree preservation orders.
50. Environment, Health and Consumer Protection (Nuisance Action Team) raises no objections following the submission of the noise assessment report.
51. Environment, Health and Consumer Protection (Contaminated Land) – raises no objections, condition to be attached to any approval granted.

52. Archaeology raises no objections subject to a watching brief condition being attached to any approval granted

53. Spatial Policy raises no objections to the proposed development.

PUBLIC RESPONSES:

54. The application was advertised by means of site notice, press notice and by neighbour notification to 43 properties.

55. At the time of preparing this report 1 letter of objection had been received from the City of Durham Trust regarding the land being left over backland which includes semi-mature trees and a ten metre drop, the access to the site is by a long narrow alley, issues relating to construction machinery accessing the site, how will emergency services access the site and where will the wheelie bins be placed for collection given that there is a notice prohibiting bins being placed within the alley.

APPLICANTS STATEMENT:

56. Our consultant Ryder Architects has worked with planners and agents of Durham County Council and sought advice to establish a positive solution to proposed development on land to the rear of 63 Crossgate, Durham City.

57. The application site is free from major constraints and is available to develop in the short term. We understand the site has never been the subject of a planning application.

58. We are advised National Planning Policy framework [NPPF] has established a presumption in favour of sustainable development which means proposals should be approved unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in NPPF taken as a whole, or specific policies in NPPF indicate development should be restricted. There are no policies in NPPF, which would preclude development on land to the rear of 63 Crossgate.

59. Throughout the design process our agents have worked with Planners and Conservation Officers of DCC. We have developed their suggestions, and our agents have provided what we consider to be a well worked out development plan which provides a low-rise development of 4 No. town houses in a terraced formation to secure a development to sit well within the Durham City Conservation Area. The development also accords in every respect with 2015 Central Government space standards for rooms in residential dwellings.

60. Subject to the provision for cycle parking The Highways Authority have confirmed no objections will be raised to the development.

PLANNING CONSIDERATIONS AND ASSESSMENT

61. As identified in Section 38(6) of the Planning and Compulsory Purchase Act 2004 the key consideration in the determination of a planning application is the development plan. Applications should be determined in accordance with the development plan unless material considerations indicate otherwise.

62. The main considerations in regard to this application are the principle of the development, locational sustainability of the site, residential amenity, impact on the character and appearance of the conservation area and heritage assets, highway safety and access, ecology, and contaminated land and stability.

Principle of Development

The Development Plan

63. 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 (CDLP) remains the statutory development plan and the starting point for determining applications as set out at Paragraph 12 of the NPPF. However, the CDLP was adopted in 2004 and was intended to cover the period to 2006 and, whilst the NPPF advises at Paragraph 213 that Local Plan policies should not be considered out-of-date simply because they were adopted prior to the publication of the NPPF, it is considered nonetheless that a policy can be out-of-date if it is based upon evidence which is not up-to-date/is time expired depending on the circumstances. In such circumstances the weight to be afforded to existing Local Plan policies should depend upon their degree of consistency with policies of the NPPF.
64. On this basis given the age of the CDLP 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. As such the weight to be afforded to these policies is reduced as a result and paragraph 11 of the NPPF is also engaged. However, this does not make out of date policies irrelevant in the determination of a planning application. Nor is it prescribed 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.
65. Policy H2 of the local plan supports the provision of new housing in Durham City providing it accords with other policies, including policies relating to the conservation area, open spaces and the World Heritage Site (WHS) and providing the development is on previously developed land. In this case the development is partly on previously developed land - as it would occupy part of the site on which an existing dwelling is located – but also relates to an area of garden, classed as greenfield land. In this regard the development would not be in compliance with Policy H2, however, this aspect of the policy does not accord with the NPPF which does not contain a sequential requirement and does not therefore preclude development on greenfield sites. Accordingly, less weight must be afforded to this policy due to the inconsistency with the NPPF.
66. With Policy H2 being a settlement boundary policy, informed by what is now an out of date evidence base, the policy is therefore considered to be an out of date policy for the purposes of engagement of paragraph 11 of the NPPF. This also affects the weight to be afforded to this policy.
67. Consequently, the application must be determined in accordance with Paragraph 11 of the NPPF.
68. Paragraph 11 of the NPPF establishes a presumption in favour of sustainable development. For decision taking this means (unless material considerations indicate otherwise);

- 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 the framework that protect areas or assets of particular importance provides a clear reason for refusing the development 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.

Five year Housing Land Supply

69. Paragraph 67 of the NPPF requires Local Planning Authorities (LPAs) to maintain a five-year supply of deliverable sites (against housing requirements) to ensure choice and competition in the market for land.

70. In September 2017, the Government published a consultation document entitled “*Planning for the Right Homes in the Right Places*”, which introduced a standard methodology for calculating housing need (OAN) which is now also reflected in paragraph 60 of the NPPF. Applying that methodology for County Durham, the housing need figure would be 1,368 dwellings per annum (dpa).

71. The Council’s position on 5-year housing land supply was publicly tested at a recent public inquiry (APP/X1355/W/17/3180108 – decision issued 10th May 2018) with the Inspector concluding that the use of the Government proposed standardised methodology for calculating land supply would be premature until it has formally come in to force or until the council has adopted a formal position in relation to its OAN. On the 13th June 2018, the ‘Preferred Options’ of the County Durham Plan (CDP) was presented to the Council’s Cabinet and endorsed for consultation. The CDP is aligned with the standardised methodology and formally endorses the use of 1,368dpa as the OAN figure. The Council is able to demonstrate in excess of 6 years supply of deliverable housing land against this figure.

72. Accordingly, the benefit of boosting housing land supply will need to be factored into the planning balance, whilst recognising that the benefits of delivering new housing would be less than if a shortfall in supply existed.

Location and Sustainability of the Site

73. Paragraph 103 of the NPPF states that the planning system should actively manage patterns of growth in support of focussing significant development in locations which are or can be made sustainable through limiting the need to travel and offering a genuine choice of transport modes.

74. In this respect the application site is situated within Durham City and is well related to a wide variety of shops, services, education and employment opportunities and as such, the provision of 4 dwellings within this area, close to existing facilities could be supported in principle subject to assessment against other local plan policies and material planning considerations.

Impact upon residential amenity

75. Policy Q8 of the City of Durham Local Plan provides detailed design advice for new residential development and policy H13 states that planning permission will not be granted for new development which would have a significant adverse effect on the character or appearance of residential areas or the amenities of residents within them. The former prescribes separation distances of 21 metres between windows of habitable rooms and 13 metres between gable elevations and windows to habitable rooms. These policies are considered to comply with the NPPF in particular paragraph 127 f) which seeks to achieve a high standard of amenity for existing and future users. Part 15 of the NPPF seeks to prevent both new and existing development from contributing to or being put at unacceptable risk from unacceptable levels of pollution and noise.
76. The proposed development is located to the north of Crossgate Club. To the west of the site lies a small terrace of residential properties which run parallel with the access lane which serves the properties as well as Crossgate Club and the application site. These residential properties are situated on an elevated position facing onto the application site. To the north of the site, lies North Road which is set at a much lower level and forms part of the City Centre High Street which includes a mix of commercial properties.
77. The layout of the four properties has been designed in such a way to ensure that the separation distances are met and that there will be no overlooking issues created for the existing residents as well as the future occupants of the proposed development. The proposed development is set back into the site enough to ensure that the properties which face onto the site do not look directly onto the blank gable elevation of the proposed development.
78. With regard to private amenity space it is considered that all 4 properties would incorporate adequate private external space to serve the size and type of dwellings proposed.
79. Paragraph 180 of the NPPF requires that planning decisions avoid noise from development giving rise to significant adverse impacts on health and quality of life; and mitigate and reduce to a minimum other adverse impacts through the use of conditions.
80. The application site is located behind a number of commercial properties, including hot food takeaways and night time music venues. As such it is expected that the proposed development will be exposed to noise in excess of that stated in the Technical Advice Notes (TANs). The information submitted initially was not considered adequate to allow the Environmental Health officer to fully consider the proposed development. A noise assessment report was requested to detail the noise climate in the local area to demonstrate the suitability of the site and if any noise mitigation measures would be required.
81. A noise assessment report has since been received and it is considered that the information submitted demonstrates that the application complies with the thresholds stated within TANs.
82. The development is considered to be noise sensitive and is located in an inner city area in close proximity to a number of varied noise sources. Due to the need to shorten the monitoring period, the weather and limited accompanied monitoring of the site has led to some uncertainties. However, following a visit to the site by the Environmental Health officer it is considered that the findings of the report are generally indicative and as such demonstrate that the site is suitable for development.

83. The noise assessment report demonstrates that no specific noise mitigation measures are needed to obtain a reasonable degree of acoustic comfort. However, considering the nature of the site and surrounding uses it is strongly recommended that the specification of glazing/ventilation to sensitive rooms is increased. This is due to the surrounding uses and the potential for alterations of external plant/uses without the benefit of further planning consideration. Therefore, it is considered that a planning condition should be attached to any approval granted to agree the details.
84. Consequently, the Council's Environmental Health Section offers no objection to the application.
85. Concerns have been raised by Councillor Freeman regarding the dwellings becoming HMOs. The site is located within the boundaries of the Article 4 Direction (1) relating to HMOs which came into force on the 17th September 2016 and therefore to change the use of the dwellings from C3 use into C4 use would require a new planning application.
86. Overall, it is considered that the proposed scheme would comply with City of Durham Local Plan Policy Q8 and Part 15 of the NPPF and would not lead to a significant reduction in residential amenity for existing or future residents.

Impact upon character and appearance of the Conservation Area and Heritage Assets

87. Local authorities have a duty to preserve or enhance the Conservation Area as required by section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. This requires Local Planning Authorities in the exercise of their planning function with respect to any buildings or other land in Conservation Areas to pay special attention to the desirability of preserving or enhancing the character or appearance of that area. Local authorities also have a duty under Section 66 of the same legislation to pay special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses.
88. Policies E22 and E23 of the Local Plan reflect these legislative requirements and are also deemed to be consistent with the NPPF. Within the policies there is a requirement that development be refused where it would detract from the character of the area or the setting of a listed building and that all development should be sensitive in terms of siting, scale, design and materials, reflecting where appropriate existing architectural details. In addition, the policy requires that trees, hedgerows, views and undeveloped areas which contribute to the character or appearance of the area should be protected.
89. Objections have been received from the City of Durham Parish Council because of concern that the proposed development would cause a significant adverse effect on the character and appearance in the immediate location of the Conservation Area. The Parish have also objected because they consider the development conflicts with Policy E23 which is designed to safeguard listed buildings and their settings, however, the objection letter does not explain how the proposed development does not comply with this policy.
90. The site itself contains no listed buildings, and no known heritage assets, it is however located within Durham (City Centre) Conservation Area, is within the setting of numerous listed buildings within both Crossgate and North Road and can be considered within the inner urban setting of Durham Cathedral and Castle World Heritage Site (WHS), which is approximately 200 metres to the east.

91. The site is very distinct from the linear historic pattern of development in the area and was essentially created in the mid-20th century when what was historically a range of linear rear garden plots was built upon. As such the land today holds no value in terms of the historic layout and plan form of the area, or its understanding or evolution, while providing no functional or visual amenity attributes. The development would therefore result in the development of a site which makes no positive contribution to the significance of this part of the conservation area. The development proposal would in fact be considered to have a beneficial impact by the loss of the existing poor-quality back land environment replaced with a well-designed urban development displaying a contemporary take on the local vernacular.
92. In relation to the impact on surrounding listed buildings. There are a number of listed buildings in close proximity to the site namely No's 15, 16 & 17 North Road (Grade II), 53, 54, 55 & 56 Crossgate (Grade II) and in views across the site, the Church of St Godric Durham (Grade II) and further out, not exclusively, No's 4, 7, 9, 10, 11 Crossgate (Grade II), 24 and 26 Allergate, Church of St Margaret of Antioch (Grade I) etc.
93. The development proposal would have no direct physical impacts on any of the above listed buildings ensuring that their significance would be conserved. In terms of setting, there would be a general absence of intervisibility between the site and such designated heritage assets generated by the topography, street patterns, and surrounding existing built development. This means that it would not impact upon now the heritage values of any of these heritage assets are experienced, understood or appreciated as referenced by public views, and would not affect any significant non-visual factors such as their historic interest, relationships or the understanding of their past and their time-depth. Overall, the rear environment of a multi-period secondary townscape developed fortuitously and of limited quality provides a poor wider setting to surrounding listed buildings; as such the permanent change that the development proposal would bring can again be described as positive.
94. In terms of the impact on the setting of the WHS, the site's location, topography and the existing dense built development enclosing the site restricts intervisibility between the site and the designated heritage asset. As such the development proposal would have a neutral impact within its setting.
95. In design terms, the terraced format, narrow footprints and vertical emphasis, breakdown of scale and mass by the inclusion of building line, height and materials variants, the simple and balanced fenestration and simple detailing would be considered an acceptable contemporary take on the local vernacular.
96. In turn, the Design and Conservation officer has raised no objection to the proposed development given that the development is considered to enhance the area. It is considered that a planning condition should be attached to any approval granted requesting samples of materials proposed which would be required to be agreed by the LPA.
97. Originally the roof tiles were proposed to be red pantiles. However, as the predominant roofing material in the area is natural slate, concerns were raised regarding the introduction of this material, and amendments were sought. Amended plans were submitted which omitted the red pantiles and replaced them with natural slate which is welcomed.
98. In relation to archaeology it is noted that the application site lies within the historic core of Durham City, in an area where historic mapping shows the site has been variously used over time. Whilst some areas may have been disturbed it is probable that remains associated with some of the earliest uses will still survive, therefore a scheme of work will be necessary.

99. Consequently, the Council's Archaeology Section raises no objection to the application subject to the inclusion of a planning condition requiring the implementation of a programme of archaeological work to be approved in writing by the Local Planning Authority and the results be recorded within the County Durham Historic Environment record. Subject to the inclusion of a planning condition in this regard the development is considered to accord with the requirements of policy E24 of the City of Durham Local Plan and paragraphs 197 and 199 of the NPPF.
100. In this respect it is considered that the proposed development would not cause a significant adverse effect on the character and appearance of the immediate location of the Conservation Area and will not adversely impact upon the nearby Heritage Assets, and therefore it is considered that the proposals comply with saved policy E3, E6, E22, E23 and E24 of the City of Durham Local Plan.

Highway Safety and Access

101. Policy T1 of the City of Durham Local Plan states that the Council will not grant planning permission for development that would generate traffic which would be detrimental to highway safety and/or have a significant effect on the amenity of occupiers of neighbouring property.
102. The application site is located to the rear of Crossgate Club with no vehicular access and is only accessible via one pedestrian route which is to be used for both entering and exiting the site. Objections have been raised by the City of Durham Parish Council regarding the proposed development not complying with Policy T10 as it does not provide safe and satisfactory access or adequate parking provision for the proposed dwellings.
103. By reason of the layout and location of the site, it would not be possible to include off road parking for the development. The Council's Highways team considered this fact and accepted that in curtilage parking could not be achieved, but further acknowledged that the city centre location of the application site would mean that no parking provision would be required from a highways point of view. The applicant has been advised that no parking permits to park within the Durham City controlled Parking Zone would be given for the new properties should approval be granted.
104. The lack of parking provision, whilst not ideal, is not considered a sufficient ground for refusal of planning permission, and in many respects, such a circumstance would be more likely to deter car owners from inhabiting the properties as well as encourage sustainable transport choices. Amendments to the scheme have been provided to include cycle storage for each of the properties in accordance with policy T10 of the City of Durham Local Plan.
105. In regards to the access, given that it will be accessed on foot or by bicycle only, the width of the access is considered to be of an acceptable standard given that it is a wider access path than the existing access arrangements available for the properties located to the west of the site.
106. Given the location of the application site, it is considered that a planning condition should be attached to any approval granted relating to a Construction Management Plan being submitted to the LPA and agreed in writing, to ensure that the building work takes due account of the constrained access.

107. In this respect no concerns are raised in relation to highway matters at the site, and therefore it is considered that the proposals comply with saved policy T1 and T10 of the City of Durham Local Plan.

Ecology and Trees

108. The presence of protected species is a material consideration, in accordance with Circular 06/2005 (Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System). In addition, under the requirements of the Conservation of Habitats and Species Regulations 2017 (referred to as the Habitats and Species Regulations hereafter) it is a criminal offence to (amongst other things) deliberately capture, kill, injure or disturb a protected species, unless such works are carried out with the benefit of a licence from Natural England. The Conservation of Habitats and Species Regulations require local planning authorities to have regard to the requirements of the Habitats Directive in exercising their functions. Case law has established that local planning authorities must consider whether the applicant might obtain a protected species licence from Natural England if one is likely to be required.

109. Paragraph 170 of the NPPF sets out the Government's commitment to halt the overall decline in biodiversity by minimising impacts and providing net gains where possible with Paragraph 175 stating that development should be refused if significant harm to biodiversity cannot be avoided, mitigated or, as a last resort, compensated for.

110. The site comprises of mature trees and scrub and it would appear that the extant habitats on site meet the criteria for North East England Nature Partnership Priority Habitat: Woodland Scrub, which have a biodiversity value that needs to be taken into account by the applicant as the proposed development would result in the loss of this habitat.

111. The original application did not include an ecological appraisal and given that the proposed development will result in a net loss of biodiversity, the Ecology officer considered that the proposal did not meet the requirements of the NPPF for either biodiversity or sustainability. Therefore, further information was required to be submitted in support of the application.

112. An amended arboricultural report and a habitat survey has since been received. The findings of the habitat survey show that the development of the site may result in the potential loss of approximately 510m² of non-native broadleaved secondary woodland and low risk destruction of an arboreal bat roost, although it was recommended that no further survey work of the site and surrounding was deemed necessary.

113. The application site is of such a small size that the felling of the woodland cannot be mitigated. However, those trees with a low risk of containing roosting bats are to be removed in a sympathetic manner, and by a competent and qualified arborist.

114. Due to the small size of the site, opportunities for on-site compensation are limited, therefore to calculate the level of off-site compensation for the loss of this habitat a biodiversity offsetting calculator was used. The calculations indicate a loss of 0.31 units of biodiversity, assuming full clearance of the site is achieved. Part 15 of the NPPF states that planning decisions should contribute to and enhance the natural environment by providing net gains for biodiversity. In order to meet this obligation, wildlife habitats to the value of at least 0.31 units will require creation off-site.

115. Therefore, the creation and establishment of 0.4ha of native broadleaved woodland is required as compensatory habitats. This would be provided as a financial contribution paid to the LPA via a S106 Agreement to deliver off site compensation. The amount of contribution is based on Direct Services costs for creating the habitat and establishing woodland over 3 years with the LPA absorbing the long-term management costs. The costs to the LPA would be £2,400. The S106 agreement of £2,400 should be paid prior to the commencement of works.
116. A bat risk assessment of the trees on the site revealed no evidence of roosting bats, however a small number of trees to the west of the site are clad with ivy, and therefore could not be comprehensively surveyed. These trees were considered to be at a low risk of containing roosting bats and therefore working methods for their removal are required.
117. To facilitate the proposed development the removal of the semi-mature trees will be required. The longevity of tree cover within a relatively small enclosed area means the trees are considered to have a limited life span. As the trees cannot be seen from any public vantage points, apart from within the site, it would be difficult to justify placing tree preservation orders on the trees. To the north of the site is a group of trees (G2) which are to be retained, a planning condition will be attached to any approval granted relating to tree protection measures. The Senior Tree officer has raised no objection to the proposed works.

Contaminated Land and Stability

118. Paragraph 178 of the NPPF requires that planning decisions should ensure that the site is suitable for its new use taking account of ground conditions and land instability, including from natural hazards or former activities such as mining, pollution arising from previous uses and any proposal for mitigation including land remediation or impacts on the natural environment arising from that remediation.
119. The application site falls within a defined development high risk area; therefore, within the site and surrounding area there are coal mining features and hazards which need to be considered. The application is accompanied by a Phase 1 Desk Top Study Report which indicates that possible unrecorded mine workings within a number of coal seams pose a potential risk to the stability of the site.
120. The Coal Authority has confirmed that they do not hold any mine abandonment plans relating to shallow mine workings within the area, and the reason for the site being within the Development High Risk Area is due to the potential for the unrecorded mining of the outcropping Top Brass Thrill coal seam.
121. Therefore, The Coal Authority have requested that a planning condition be attached regarding the undertaking of a scheme of intrusive site investigations to properly assess the ground conditions and potential risks posed to the development by past shallow coal mining activity, the submission of the findings is to be submitted to the LPA as well as the implementation of remedial works. Subject to a planning condition being attached to any approval granted, they have raised no objection.
122. In turn, the Council's Contaminated Land Section has also raised no objection to the proposed development and considered that the Phase 1 report is generally acceptable, and the outcomes identify the need for a phase 2 assessment. The general scope of the Phase 2 investigation is considered appropriate; however, the Environmental Health officer has advised that asbestos should be included as a Potential Contaminant Of Concern although it is expected that this would be clarified within a specific detailed sampling and analysis plan which is to be agreed prior to works being carried out.

Drainage

123. Policy U8A of the City of Durham Local Plan states that development proposals will only be approved if they include satisfactory arrangement for disposing of 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.
124. Northumbrian Water have been consulted and following the transfer of private drains and sewers in 2011, there may be assets that are the responsibility of Northumbrian Water that are not yet included in their records. With this in mind, care needs to be taken prior to and during the construction phase with consideration to the presence of sewers on site. Northumbrian Water has assessed the proposed development and have raised no objection. Northumbrian Water actively promotes sustainable surface water management and therefore the developer should develop their surface water drainage solution in a sustainable manner.
125. It is considered that the proposed development accords with the requirements of policy U8A of the City of Durham Local Plan. However, the inclusion of a planning condition requiring the submission and agreement of precise details of the means of disposal of foul and surface water prior to the commencement of development is to be attached to any approval granted.

Other Matters

126. The City of Durham Parish Council and City of Durham Trust have raised concerns on a number of issues including the safeguarding of the nearby listed buildings and their settings, having a significant impact on the character and appearance of the Conservation Area, and the proposal not providing a safe and satisfactory access or adequate parking provision. All material issues are considered to have been addressed within the report. In regards to the access not being a safe arrangement, the Fire Authority was consulted during the course of the application, consulting in particular on the access arrangements, however, no comments were received.

Planning Balance

127. The acceptability of the application should be considered under the planning balance test contained within Paragraph 11 of the NPPF, which states that permission should be granted unless policies in the NPPF that protect areas or assets of particular importance provide a clear reason for refusal, or any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits. There are no such policies within the NPPF that provide a clear reason for refusal for this application.

Benefits

128. The application site is within a highly sustainable location within close walking distance to shops, services and public facilities. The principle of residential development in this location is considered acceptable and in accordance with the sustainable aims of the NPPF.
129. The development would provide some benefit in terms of providing a boost to housing supply although this could be considered limited at 4 dwellings, particularly in the context that the Council is currently able to demonstrate a 5 year supply of housing land and less weight should be afforded to the benefits of delivering new housing than would be the case if a shortfall in supply existed.

130. To a degree the development would provide direct and indirect economic benefits within the locality and 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 weight.

Adverse Impacts

131. In all other respects the applicant demonstrates that there would not be any adverse impact to which weight could be attached in determination of this application that could not be adequately mitigated through inclusion of planning conditions.

CONCLUSION

132. As the relevant City of Durham Local Plan policies are considered to be out of date, the presumption in favour of sustainable development is engaged. The residential development is therefore required to be considered in the context of Paragraph 11 of the NPPF, which states that the development should be approved without delay, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as a whole or specific policies indicate development should be restricted.

133. It is considered that the overall design, scale and layout of the proposal would not detract from the built form in the surrounding conservation area and will not have an adverse impact upon the nearby historic assets. In turn, the proposals would not have an adverse impact on residential amenity.

134. In this instance, it is accepted that there would be some adverse impact as a result of the development, primarily centring around the impact on the loss of biodiversity. However, as identified in the planning assessment, the impacts would not significantly and demonstrably outweigh the benefits associated with additional family dwellings within the area. Accordingly, planning permission should be granted.

135. The proposal has generated some interest from the City of Durham Trust and Durham City Parish Council, with letters of objection having been received. The objections and concerns raised have been taken into account and addressed within the report. On balance the concerns raised were not felt to be of sufficient weight to justify refusal of this application in light of the benefits of the scheme.

RECOMMENDATION

That the application be **APPROVED** subject to the following conditions and subject to the completion of a S106 legal agreement to secure the provision of:

- i. The sum of £2400 Indexed to be used by the Council towards biodiversity enhancements in accordance with the framework identified in Durham County Council's Local Biodiversity Compensation Strategy document.*
1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

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

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

Plan	Drawing No.	Date Received
Site Plan		11/12/18
Topographical Survey		11/12/18
Amenity space layouts	5	28/05/19
Amenity Space Layouts	4	28/05/19
Site location plan		01/04/19
Proposed plans	1	01/04/19
Section A - A	3	01/04/19

Reason: To define the consent and ensure that a satisfactory form of development is obtained in accordance with Policies E22 E23 E26 R18 T1 Q1 & Q2 of the City of Durham Local Plan

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

Reason: To ensure that a satisfactory form of development is obtained in the interests of visual amenity of the Durham City Conservation Area accordance with the provisions of policies E6, E21, E22 and Q8 of the Durham City Local Plan.

4. No development shall commence until a scheme for the provision of foul and surface water drainage has been submitted to and approved in writing by the Local Planning Authority. The drainage shall be completed in accordance with the approved details.

Reason: To prevent pollution of the water environment in accordance with policy U8a of the City of Durham Local Plan.

5. No development shall commence until details of all means of enclosure have been submitted to and agreed in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the agreed details.

Reason: In the interest of visual amenity in accordance with the requirements of policies H13 of the City of Durham Local Plan.

6. No development shall take place until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation that has been approved in writing by the Local Planning Authority. The Scheme shall provide for:

- i; Measures to ensure the preservation in situ, or the preservation by record, of archaeological features of identified importance.
- ii; Methodologies for the recording and recovery of archaeological remains including artefacts and ecofacts.

- iii; Post-fieldwork methodologies for assessment and analyses.
- iv; Report content and arrangements for dissemination, and publication proposals.
- v; Archive preparation and deposition with recognised repositories.
- vi; A timetable of works in relation to the proposed development, including sufficient notification and allowance of time to ensure that the site work is undertaken and completed in accordance with the strategy.
- vii; Monitoring arrangements, including the notification in writing to the County Durham Principal Archaeologist of the commencement of archaeological works and the opportunity to monitor such works.
- viii; A list of all staff involved in the implementation of the strategy, including subcontractors and specialists, their responsibilities and qualifications.

The archaeological mitigation strategy shall be carried out in accordance with the approved details and timings.

Reason: To comply with paragraph 197 and 199 of the NPPF because the site is of archaeological interest.

7. Prior to the occupation of the development, a copy of any analysis, reporting, publication or archiving required as part of the archaeological mitigation strategy shall be deposited at the County Durham Historic Environment Record.

Reason: To comply with paragraph 199 of the NPPF which ensures information gathered becomes publicly accessible.

8. Prior to the commencement of any part of the development or any works of demolition, 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:

- A Dust Action Plan including measures to control the emission of dust and dirt during construction
- Details of methods and means of noise reduction/suppression.
- Where construction involves penetrative piling, details of methods for piling of foundations including measures to suppress any associated noise and vibration.
- Details of measures to prevent mud and other such material migrating onto the highway from all vehicles entering and leaving the site;
- Designation, layout and design of construction access and egress points;
- Details for the provision of directional signage (on and off site);
- Details of contractors' compounds, materials storage and other storage arrangements, including cranes and plant, equipment and related temporary infrastructure;
- Details of provision for all site operatives for the loading and unloading of plant, machinery and materials
- Routing agreements for construction traffic.
- Details of the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- Waste audit and scheme for waste minimisation and recycling/disposing of waste resulting from demolition and construction works.
- Detail of measures for liaison with the local community and procedures to deal with any complaints received.

The management strategy shall have regard to BS 5228 "Noise and Vibration Control on Construction and Open Sites" during the planning and implementation of site activities and operations.

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

Reason: To protect the residential amenity of existing and future residents from the development to comply with Part 15 of the National Planning Policy Framework. This is required as a pre-commencement condition in order to mitigate potential impact on residential amenity which needs to be considered before site works commence.

9. The development hereby permitted shall not commence until a pre-commencement scheme to deal with contamination has been submitted to and agreed in writing with the Local Planning Authority. The full scheme, both pre-commencement and completion shall include the following, unless the Local Planning Authority confirms in writing that any part of sub-sections a, b, c or d are not required. Throughout both the pre-commencement and completion phases of the development all documents submitted relating to Phases 2 to 4 as detailed below shall be carried out by competent person(s) and shall be submitted to and agreed in writing with the Local Planning Authority.

Pre-Commencement

(a) A Phase 2 Site Investigation and Risk Assessment is required to fully and effectively characterise the nature and extent of any land and/or groundwater contamination and its implications. Prior to the Phase 2 a Sampling and Analysis Plan is required.

(b) If the Phase 2 identifies any unacceptable risks, a Phase 3 Remediation Strategy detailing the proposed remediation and verification works is required. If gas protection measures are required a verification plan is required detailing the gas protection measures to be installed, the inspection regime and where necessary integrity testing programme. The installation of the gas membrane should be carried out by an appropriately qualified workforce and the verification of the installation should be carried out by an appropriately competent, experience and suitably trained person(s) (preferably independent to the installer) to ensure mitigation of the risk to the buildings and the people who occupy them. No alterations to the remediation proposals shall be carried out without the prior written agreement of the Local Planning Authority.

Completion

(c) During the implementation of the remedial works (if required) and/or development if any contamination is identified that has not been identified pre-commencement, it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment shall be carried out in accordance with part b of the condition and where necessary a Phase 3 Remediation Strategy shall be prepared in accordance with part c of the condition. The development shall be completed in accordance with any amended specification of works.

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

Reason: The site may be contaminated as a result of past or current uses and/or is within 250m of a site which has been landfilled and the Local Planning Authority wishes 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 in accordance with NPPF Part 15.

10. No construction/demolition activities, including the use of plant, equipment and deliveries, which are likely to give rise to disturbance to local residents should take place before 0800 hours and continue after 1800 hours Monday to Friday, or commence before 0800 hours and continue after 1300 hours on Saturday. No works should be carried out on a Sunday or Bank Holiday.

Reason: In the interests of residential amenity in accordance with requirements of policy Q8 of the City of Durham Local Plan as amended by Saved and Expired Policies September 2007.

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

Reason: To protect existing trees and the character and appearance of the surrounding area in accordance with the aims of policies E14 and H13 of the City of Durham Local Plan as amended by Saved and Expired Policies September 2007.

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

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

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

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

Replacements will be subject to the same conditions.

Reason: To protect existing trees and the character and appearance of the surrounding area in accordance with the aims of policies E14 and H13 of the City of Durham Local Plan

13. No development shall commence until such time as a scheme of intrusive site investigation, (adequate to properly assess the ground conditions and the potential risks posed to the development by past shallow mine coal mining activity) has been submitted to and agreed in writing by the Local Planning Authority. The submitted scheme shall include a report of findings arising from the intrusive site investigation and a scheme of appropriate remediation. Thereafter the development shall be carried out in accordance with the agreed details.

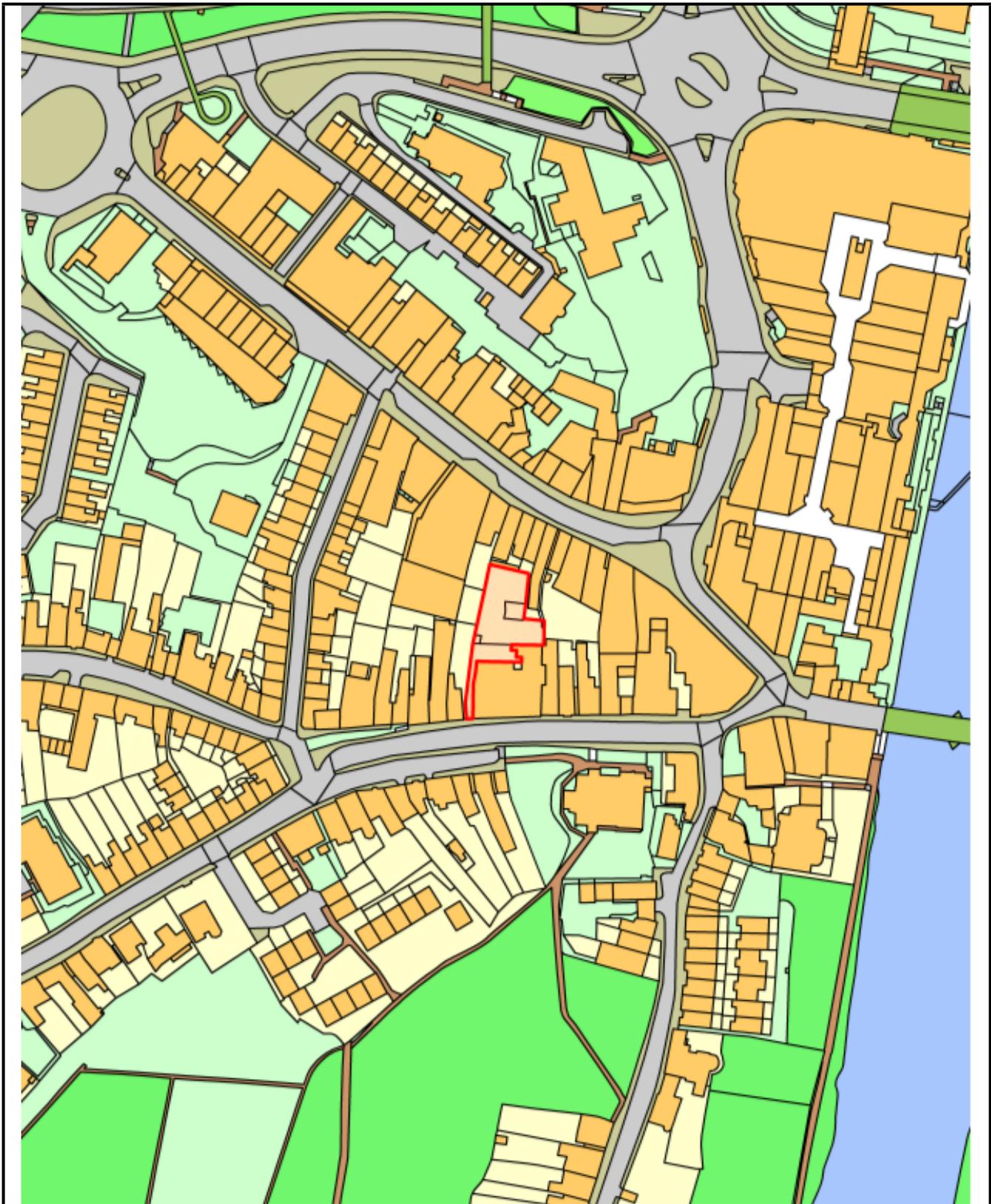
Reason: To ensure the site is capable of accommodating the proposed use in terms of ground stability in accordance with the aims of policy U13 of the City of Durham Local Plan and paragraphs 178 and 179 of the NPPF

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 Forms and Plans.
- Durham City Local Plan 2004
- National Planning Policy Framework
- National Planning Practice Guidance
- Consultation Responses
- Objection Letters



Planning Services

Erection of 4 dwellings at Land To The Rear Of
63 Crossgate, Durham, DH1 4PR

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Comments

Date. 11th June 2019

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