

COMMITTEE REPORT

APPLICATION DETAILS

APPLICATION NO:	DM/19/01369/FPA
FULL APPLICATION DESCRIPTION:	Change of use from clinic to hot food take-away at ground floor and office above.
NAME OF APPLICANT:	Mr Paul Bell
ADDRESS:	21 Church Street Coxhoe Durham DH6 4DD
ELECTORAL DIVISION:	Coxhoe
CASE OFFICER:	Lisa Morina Planning Officer Telephone: 03000 264877 Lisa.morina@durham.gov.uk

DESCRIPTION OF THE SITE AND PROPOSALS

The Site

1. The application site is a two-storey mid terraced property located within a group of commercial properties located on Church Street, which is on the main thoroughfare through Coxhoe. Other businesses include a butchers and a wedding dress shop. Residential properties are located to the other side of the main road and residential properties are also located either side of the host property. The building is located within a block with a mix of both residential and commercial properties and the site is located within a Local Centre. The property was previously used as a Clinic (use class D1) and is currently vacant.

Proposal

2. The proposal seeks full planning permission for the change of use of the property to a hot food takeaway with an office above. Changes to the front elevation are proposed in the form of the creation of a shop front and extraction is proposed to the rear of the site. The existing front door will remain as access to the office as proposed above.
3. The application is referred to Committee at the request of Cllr Jan Blakey on highway environmental impacts.

PLANNING HISTORY

4. 4/95/00299/FPA - Change of use from residential to Community Health Clinic. Approved 4/7/95.

PLANNING POLICY

NATIONAL POLICY

5. The following elements of the National Planning Policy Framework (NPPF) are considered relevant to this proposal:
6. 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.
7. NPPF Part 6 Building a Strong, Competitive Economy - The Government is committed to securing economic growth in order to create jobs and prosperity, building on the country's inherent strengths, and to meeting the twin challenges of global competition and a low carbon future.
8. NPPF Part 8 Promoting Healthy and Safe Communities - The planning system can play an important role in facilitating social interaction and creating healthy, inclusive communities. Developments should be safe and accessible; Local Planning Authorities should plan positively for the provision and use of shared space and community facilities. An integrated approach to considering the location of housing, economic uses and services should be adopted.

<https://www.gov.uk/guidance/national-planning-policy-framework>

NATIONAL PLANNING PRACTICE GUIDANCE:

9. 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

10. Policy T1 General Transport Policy requires all developments to protect highway safety and/or not have a significant effect on the amenity of occupiers of neighbouring properties.

11. Policy S1a Retail Hierarchy - seeks to protect and promote the vitality and viability of all centres in the local retail hierarchy of the City of Durham Area.
12. Policy S5 Local Centres, including Coxhoe, allows development falling within classes A1, A2 and A3 provided that it would not adversely affect the vitality and viability of any other local centre, it would not lead to a loss of existing community or recreational facilities, or in the case of A2 and A3 uses, it will not undermine the retail character of the centre.
13. Policy S10 Food and Drink - sets out that within settlement boundaries development for A3 food and drink uses will be permitted where there are no adverse effects on the amenities of neighbouring occupiers, achieve satisfactory access arrangements and is in scale with the character of the area.
14. Policy Q1 General Principles – Designing for people– requires that the layout and design of all new development should take into account the requirements of users in terms of personal safety and crime prevention; accessibility for people with disabilities and elderly and those with children.
15. Policy Q11 Shopfronts – Provision of new – new shopfronts will be permitted provided that they respect the scale, proportion, materials and character of the building and the area in which they are located

RELEVANT EMERGING POLICY:

16. Paragraph 48 of the NPPF states 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. Following consultation at 'Issues & Options', 'Preferred Options' and 'Pre Submission Draft' stages, the CDP was approved for submission by the Council on 19 June 2019. The CDP was submitted to the Planning Inspectorate on 27 June 2019. Although the CDP is now at a relatively advanced stage of preparation, it is considered that it 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>

CONSULTATION AND PUBLICITY RESPONSES

STATUTORY RESPONSES:

17. The Highways Authority raise no objections to the proposal given the site is served by a shared public parking layby area on the B6291 adjacent to the main Terraced Front Street where there are a mixture of commercial businesses and local facilities that use this area for shared public parking. This area of highway is well protected with single yellow parking restrictions. The fore court footway area is also protected with steel bollards. The site is well connected for pedestrian movements to the wider footway network and is conveniently located next to a public service bus stop for journeys by public transport.
18. Durham Constabulary have provided no comment.

INTERNAL CONSULTEE RESPONSES:

19. Environment, Health and Consumer Protection (Nuisance Action Team) – Raise no objection to the proposal subject to a condition regarding the level of noise emitted from the extraction equipment.
20. Planning Policy states that the retail policies in the City of Durham Local Plan are based on out-of-date evidence and do not reflect more updated evidence in the NPPF. Therefore, the flexible approach in NPPF should be taken into consideration which would support the proposal, and in the context of para 11 of the NPPF the scheme should be permitted unless the adverse impacts demonstrably and significantly outweigh the benefits.

PUBLIC RESPONSES:

21. The application has been advertised by means of site notice and by notifying neighbouring residents by letter. 17 letters of objection have been received raising the following points:
 - The area does not require a further hot food takeaway there is already too many in the area and it is not needed or wanted
 - The proposal does not state opening hours or type of food
 - The proposal will sell the same as another business and affect this current local business.
 - The proposal would add to the existing problems of smell, litter, traffic and anti-social behaviour.
 - Obesity levels is also a concern
 - Will there be a delivery service
 - Parking is already an issue and this will make it worse
 - The proposal will result in smells to adjacent businesses and residential properties
 - What criteria is used for the approval of proposed additional takeaways
 - Anti-social behaviour is already a concern and this will increase
 - The proposal of the applicant to put used fat into the sewers is also of concern. The drains are bad enough as it is
 - Council should object to developments within close proximity to schools
 - The Council should follow Gateshead Council in respect of their SPD.
 - The applicant fails to demonstrate there would be no adverse impact on the amenity of neighbours
 - The smell would make stock in adjacent shops unsellable
 - The noise from extractor fans would prevent businesses from expanding into their courtyards.
 - If the development goes ahead then other businesses would have to close
 - The bin storage and waste disposal needs for this type of business cannot be met in this property and would cause significant impact on nearby residents and properties.
 - The proposal will result in increase in traffic using the private car park of the nearby church.

APPLICANT'S STATEMENT:

22. None received

PLANNING CONSIDERATIONS AND ASSESSMENT

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

Principle of development

24. 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 weight to be afforded to existing Local Plan policies will depend upon their degree of accordance with the NPPF.

25. 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.

26. On this basis, given the age of the CofDLP and information provided that informed the creation of specified shopping areas, the policies are considered out-of-date, and the weight to be afforded to the policies reduced as a result and paragraph 11 of the NPPF also engaged. 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.

27. Policy S5 of the City of Durham Local Plan states that food and drink uses will be permitted in local centres providing they do not affect the vitality and viability of the area. In addition to this, policy S10 states that proposals of this nature would be considered acceptable providing there is no significant impact on the amenity of nearby occupants.

28. Paragraph 80 of the NPPF states that significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. In addition to this, paragraph 79 promotes the re-use of redundant or disused buildings.

29. Paragraph 11 of the NPPF establishes a presumption in favour of sustainable development.

30. 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 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.

31. As such in this case planning permission should be granted unless doing so would significantly and demonstrably outweigh the benefits. Notwithstanding the above, the proposal needs to be determined in accordance with the Local Plan unless material considerations dictated otherwise including the National Planning Policy Framework 2018 (NPPF).

32. The site is located within a sustainable location within an established local centre. Whilst the background that formed the policy which created local centres is considered out of date, limited weight can still be given to this policy. The area in question is already an established mixed use area and as such these type of developments are supported in principle. The previous use of the property was a clinic (use class D1) which has already closed down, therefore the proposal does not result in the loss of an existing retail unit. In these circumstances, the vitality and viability of the shopping area is not considered to be negatively impacted upon.

33. In addition to this, the proposal would bring back into use a vacant property creating the potential for two businesses to be created with a hot food takeaway on the ground floor and an office at first floor level which is considered acceptable in principle. Objections have been raised that the proposal would result in too many hot food take-aways, however, it is not felt that the addition of a further hot food take-away would result in the over proliferation of hot food takeaways within this area.

34. In principle therefore, it is considered that the use of the premises as a mixed use commercial development of a hot food takeaway at ground floor with an office above is acceptable in principle subject to suitable consideration of the detailed issues below.

Impact on visual amenity of the area

35. Policy Q11 of the Local Plan states that new shopfronts will be permitted provided that they respect the scale, proportion, materials and character of the building and the area in which they are located.

36. The proposal includes the addition of a new shop front to serve the take away which is considered to be an appropriate addition similar to others within the area and therefore, would not have a detrimental impact on the character or appearance of the street scene. The office use would be accessed via the existing entrance door retaining its own entrance thereby being a separate business from the take-away.

37. The proposal therefore, is considered acceptable in respect of policy Q11 of the City of Durham Local Plan.

Residential amenity

38. Objections have been raised regarding smells, litter, anti-social behaviour and general disturbance being created as a result of the proposal.

39. As stated above, policy S10 states that proposals of this nature would be considered acceptable providing there is no significant adverse impact on the amenity of nearby occupants. In addition to this, Paragraph 127 (f) of the NPPF states that decisions should ensure developments create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

40. No opening hours have been submitted as part of the planning application, however the proposal is to be located between two existing residential properties. Given this, it is considered that care needs to be taken to ensure that the residential amenity of these neighbours is not significantly impacted upon. Takeaways tend to generate activity during evening hours through comings and goings of customers on foot and in cars, with some associated noise and disturbance. It is noted that other hot food takeaways are located in the area with one being positioned within the next block of properties to the south of the host property located to the opposite side of the entrance to the Church, therefore, existing night time uses are already in existence in the vicinity. This was granted planning approval in 1991 and has consent to be open until 11.30pm.

41. It is noted that the previous clinic use was predominantly a day time use, however, given there are other night time uses nearby, the area will already be subject to some evening activity, and it is not considered that an additional hot food takeaway would result in a significant increase in noise and disturbance that would justify a refusal of this application. In addition to this, the property is located on a main thoroughfare where some noise will currently be generated from traffic and pedestrian movements.

42. Details of the extraction system have been submitted as part of the proposal and have been assessed by the environmental health officers. They are satisfied that the equipment proposed would suitably protect amenities of the area and neighbouring occupiers. The details would form part of the approved plans condition and would be subject to a condition regarding noise levels to not exceed a certain level.

43. The creation of the office above the hot food take-away is not considered to result in significant adverse impacts on the neighbours. Offices are usually considered under Class A2 which are those visited by the public, such as professional and financial services, estate agents and banks or Class B1(a), which are offices not within an A2 use, for example a consulting agency or architects firm. Both of these use classes are considered acceptable and are not considered to cause a significant loss of amenity given the nature of the area. It is considered appropriate however to attach a condition restricting the use to either A2 or B1a to ensure the amenity of residents is protected, as other business uses within the general B1 use class may not be appropriate.

44. Given there are residential properties on either side of the host property, it is considered appropriate to impose a condition restricting the opening hours of the takeaway to no later than 11pm. Subject to this restriction, and the noise condition mentioned above, the proposal would be considered to accord with the requirements set out in policy S10 of the local plan as it is not considered that the proposals would adversely affect the amenities of nearby occupants to a degree that would justify refusal of planning permission.

Highway Issues

45. The county highway officer has confirmed that they have no objection to the proposal from a highways view point. Objections have been raised that the proposal would result in an increase in parking problems which already occur.

46. The proposal does not provide any parking, however the site is served by a shared public parking layby area on the B6291 adjacent to the main terraced Front Street where there are a mixture of commercial businesses and local facilities that use this area for shared public parking. The area of highway is considered well protected with single yellow parking restrictions. The fore court footway area is also protected with steel bollards.

47. In addition to this, the site is well connected for pedestrian movements to the wider footway network and is conveniently located next to a public service bus stop for journeys by public transport.

48. Concern has also been raised that the proposal would result in the use of the private car park for the church nearby to the proposed development, however, the Council are unable to control who parks in this area and this would need to be controlled by the owners of the site.

49. Taking all the above into consideration, the proposal is considered acceptable from a highways viewpoint in respect of both the take-away and office use and is considered to be in accordance with policies T1 and T10 of the City of Durham Local Plan in respect of highway safety and parking issues.

Other matters

50. Concern has been raised that the proposal would result in an increase in anti-social behaviour which is already an issue in the village. Durham Constabulary have been consulted, however, no response has been received. It is not felt that the addition of a hot food take-away would result in a significant increase in anti-social behaviour that would provide sufficient justification to refuse an application, given this would be dealt with under other legislation.

51. Concerns have been raised that the proposal would result in competition for other hot food takeaways within the area and that shops would be forced to close due to smells. However, competition is not considered to be a material planning consideration and as stated above the proposal has been assessed in respect of noise and smells and is considered appropriate.

52. Information has been submitted regarding policies that another Council have in respect of the amount of hot food take-aways. Durham County Council does not yet have a policy like this; whilst similar style policies are being considered within the emerging local plan this is not at a stage where weight can be given.

53. Bin storage is proposed to be located to the rear of the site which is considered acceptable in this regard.

Planning Balance

54. As the relevant policies of the City of Durham Local Plan are considered to be out of date, the presumption in favour of sustainable development as contained in paragraph 11 of the NPPF is engaged and in this regard a summary of the benefits and adverse impacts of the proposal are considered below;

Benefits

55. The development would bring back into use a redundant building within an established mixed use area with a use which is typical of this type of area.

56. The development would provide direct and indirect economic benefits within the locality in the form of expenditure in the local economy and will provide 3 full time jobs. In addition, construction jobs will be created whilst the development works are carried out. 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

57. The application demonstrates that there would be potential for adverse impacts on the amenity of surrounding neighbours, for example, additional activity generating noise and disturbance during evening hours. However, it is considered that this can be appropriately mitigated and controlled through the inclusion of conditions as indicated, and is not considered to be at a level that would justify refusal or outweigh the benefits of the scheme.

CONCLUSION

58. When applying the planning balance contained in paragraph 11 of the NPPF it is considered that the adverse impacts of the development would not significantly and demonstrably outweigh the benefits and as such planning permission should be granted.

59. The site occupies a sustainable location within the local shopping area of Coxhoe and would bring back into use a redundant property whilst not having a significant detrimental impact on the surrounding area or the vitality and viability of the local centre.

60. The proposal is considered acceptable in respect of the aims of policies T1, S1a, S5, S10, Q1 and Q11 of the City of Durham Local Plan and the NPPF subject to appropriate conditions.

RECOMMENDATION

That the application be **APPROVED**, subject to the conditions detailed below:

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

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

2. The development hereby approved shall be carried out in strict accordance with the approved plans listed in Part 3 – Approved Plans.

Reason: To define the consent and ensure a satisfactory form of development is Obtained in accordance with Policies T1, S1a, S5, S10, Q1 and Q11 of the City of Durham Local Plan 2004.

3. The rating level of noise emitted from all fixed plant/machinery on the site shall not exceed the background (LA90) by more than 5dB LAeq (1 hour) between 07.00-23.00 and 0dB LAeq (15 mins) between 23.00-07.00. The measurement and assessment shall be made according to BS 4142: 2014.
(On written request by the planning authority the operator shall, within 28 days, produce a report to demonstrate adherence with the above rating level).

Reason: In order to protect neighbouring amenities in accordance with Policy S10 of the City of Durham Local Plan.

4. The hot food takeaway hereby approved shall not be open for business outside the hours of 11am to 11pm on any day.

Reason: In order to protect neighbouring amenities in accordance with Policy S10 of the City of Durham Local Plan.

5. Notwithstanding the provisions of the Town and Country Planning (Uses Classes) Order 1987, (or any Order revoking or re-enacting that Order with or without modifications), the premises shall be used for use class A2 or use class B1a only and for no other purpose

Reason: In the interests of the amenity of the area in accordance with Policy S10 of the City of Durham Local Plan.

STATEMENT OF PROACTIVE ENGAGEMENT

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

BACKGROUND PAPERS

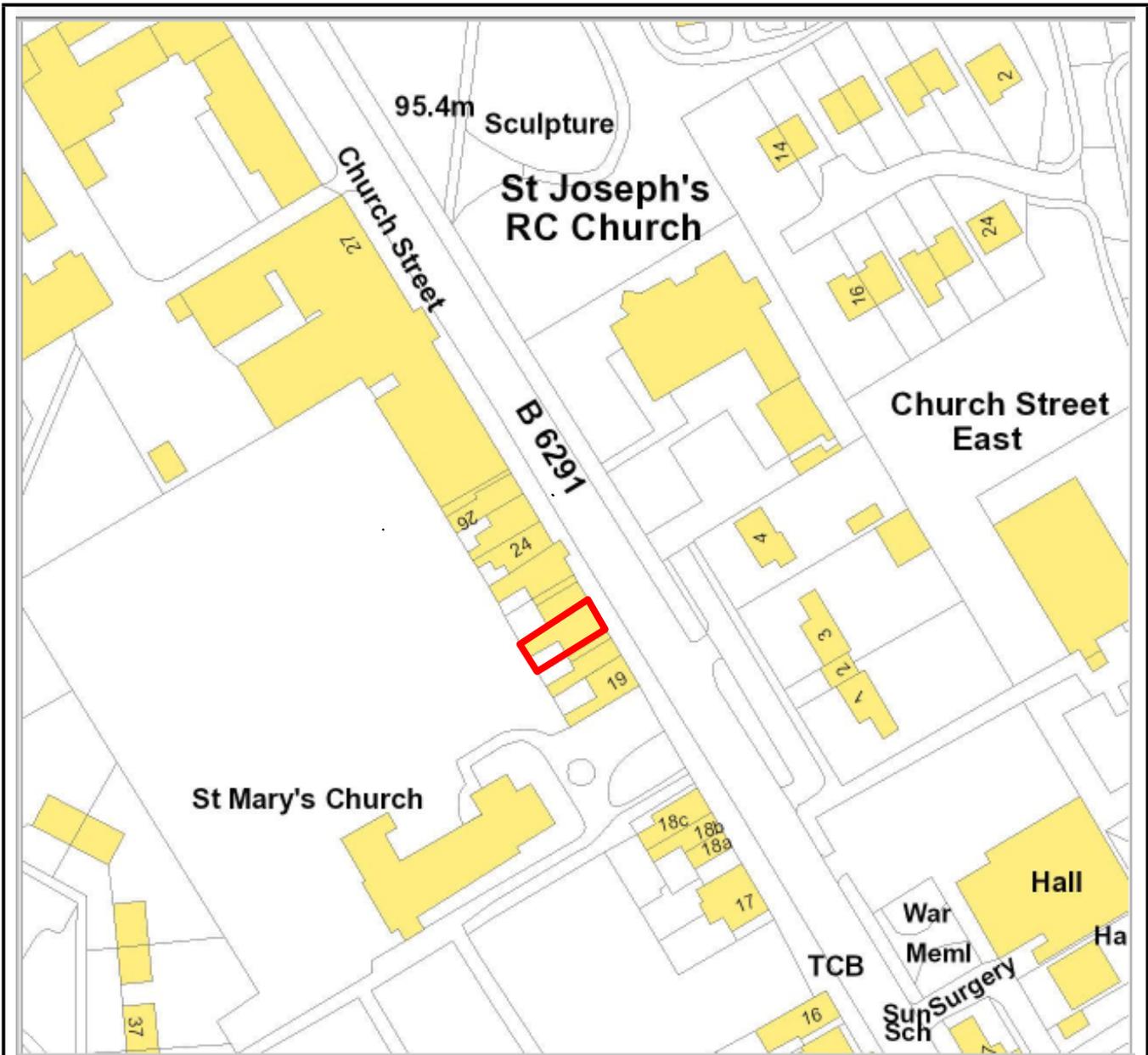
Submitted application form, plans, supporting documents and subsequent information provided by the applicant

The National Planning Policy Framework (2018)

National Planning Practice Guidance Notes

City of Durham Local Plan

Statutory, internal and public consultation responses



<p>Planning Services</p>	<p>Change of use from clinic to hot food take-away at ground floor and office above at 21 Church Street, Coxhoe Application Reference DM/19/01369/FPA</p>	
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