

COMMITTEE REPORT

APPLICATION DETAILS

APPLICATION NO:	DM/18/02118/FPA
FULL APPLICATION DESCRIPTION:	Construction of apartment block comprising 27 No. one and two bedroom apartments
NAME OF APPLICANT:	Mr Paul Thapar
ADDRESS:	Land to the North East of Holly Street, Durham DH1 4ER
ELECTORAL DIVISION:	City of Durham
CASE OFFICER:	Paul Hopper (Senior Planning Officer) Tel: 03000 263 946 Email: paul.hopper@durham.gov.uk

DESCRIPTION OF THE SITE AND PROPOSALS

The Site

1. The application site is an area of land located between Holly Street and John Street within Durham City Centre known locally as Nelson's Yard. The site is a redundant parcel of land broadly triangular in layout and is understood to have been vacant for some considerable time.
2. The site lies within the Durham City Centre Conservation Area and within close proximity of Durham Castle and Cathedral UNESCO World Heritage Site. The site is framed by terraced properties at Holly Street to the west and John Street to the east which is set at a lower level, although it is noted that there is also a bungalow and church set within the latter. The site is bounded by the railway line, its embankment, trees and shrubbery to the north and to the south by terraced properties at Hawthorn Terrace and Colpitts Terrace which are Grade II Listed buildings.

The Proposal

3. Planning permission is sought for the erection of a complex of 27 self-contained apartment/flats comprising a mix of 1 and 2 bedroom units on land to the north of Holly Street, Durham City.
4. The proposed building would present a principal elevation to Holly Street and a secondary elevation to John Street. When viewed from Holly Street the development would be two and half storey with dormer windows in the roof and on John Street (which is set at a lower level) the development would be three and a half storey in height. The proposed materials would predominately be red facing brick with a slate roof to match the surrounding local style. Elements of stonework and render would also be utilised on some sections of the building.
5. Each residential unit proposed would be self-contained and served by pedestrian access points from both Holly Street to the south west and John Street north east.

Whilst no in curtilage parking would be provided a single disabled space would be provided to the rear of the building.

6. This application is referred to the Planning Committee as it constitutes major development in accordance with the Council's Scheme of Delegation.

PLANNING HISTORY

7. Whilst the site was historically used as a builder's yard there is some more recent planning history relevant to the current application. This relates to planning permissions in 2007 and 2008 for residential development which although granted have since lapsed and an application in 2016 for purpose built student accommodation which was refused and an appeal against this decision dismissed.

PLANNING POLICY

NATIONAL POLICY

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

14. *NPPF Part 14 Meeting the Challenge of Climate Change, Flooding and Coastal Change.* Planning plays a key role in helping shape places to secure Local Planning Authorities should adopt proactive strategies to mitigate and adapt to climate change. Local Planning Authorities should have a positive strategy to promote energy from renewable and low carbon sources. Inappropriate development in areas at risk of flooding should be avoided.
15. *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
16. *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.
17. *NPPF Part 15 Conserving and Enhancing the Natural Environment:* Planning policies and decisions should aim to avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development and mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions.
18. *NPPF Part 16 Conserving and Enhancing the Historic Environment:* Working from Local Plans that set out a positive strategy for the conservation and enjoyment of the historic environment, LPA's should require applicants to describe the significance of the heritage asset affected to allow an understanding of the impact of a proposal on its significance.

LOCAL PLAN POLICY:

City of Durham Local Plan

19. Policy E3 (World Heritage Site) Protection seeks to safeguard the site and setting from inappropriate development that could harm its character and appearance.
20. 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.
21. Policy E14 (Trees and Hedgerows) sets out the Council's requirements for considering proposals which would affect trees and hedgerows. Development proposals will be required to retain areas of woodland, important groups of trees, copses and individual trees and hedgerows wherever possible and to replace trees and hedgerows of value which are lost. Full tree surveys are required to accompany applications when development may affect trees inside or outside the application site.
22. Policy E15 (Provision of New Trees and Hedgerows) encourages tree and hedgerow planting in urban areas. This policy is consistent with the NPPF, it is up to date and not time limited. Full weight can be given to this policy.
23. 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.

24. Policy E18 (Sites of Nature Conservation Importance) seeks to safeguard such sites from development that would be detrimental to their nature conservation interest. These sites as well as being important for their wildlife and geological interest are also a valuable resource for amenity, recreation, education and research.
25. 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.
26. Policy E23 (Listed Buildings) seeks to safeguard listed buildings and their settings.
27. Policy H2 (New Housing in Durham City) seeks to direct new development to the most sustainable locations. It states that windfall housing development of previously developed land (PDL) and conversions will be permitted within settlement boundary of Durham City.
28. Policy H7 (City Centre Housing) seeks to encourage appropriate residential development and conversions on sites conveniently located for the City Centre.
29. Policy H13 (Residential Areas - Impact upon Character and Amenity) states that planning permission will not be granted for new development or changes of use which have a significant adverse effect on the character or appearance of residential areas, or the amenities of residents within them.
30. Policy T1 (Traffic - General) states that the Council will not grant planning permission for development that would generate traffic likely to be detrimental to highway safety and / or have a significant effect on the amenity of occupiers of neighbouring property.
31. Policy T10 (Parking - General Provision) states that vehicle parking should be limited in amount, so as to promote sustainable transport choices and reduce the land-take of development.
32. Policy T20 (Cycle facilities) seeks to encourage appropriately located, secure parking provision for cyclists.
33. Policy T21 (Safeguarding the Needs of Walkers) states that the Council will seek to safeguard the needs of walkers by ensuring that: existing footpaths and public rights of way are protected; a safe, attractive and convenient footpath network is established throughout the City; that the footpath network takes the most direct route possible between destinations; and the footpath network is appropriately signed. Wherever possible, footpaths should be capable of use by people with disabilities, the elderly and those with young children. Development which directly affects a public right of way will only be considered acceptable if an equivalent alternative route is provided by the developer before work on site commences.
34. Policies Q1 and Q2 (General Principles Designing for People and Accessibility) states that the layout and design of all new development should take into account the requirements of all users.

35. Policy Q3 (External Parking Areas) requires all external parking areas to be adequately landscaped, surfaced, demarcated, lit and signed. Large surface car parks should be subdivided into small units. Large exposed area of surface, street and rooftop parking are not considered appropriate.
36. 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.
37. 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.
38. Policy U5 (Pollution Prevention) states that development that may generate pollution will not be permitted where it would have unacceptable impacts upon the local environment, amenity of adjoining land and property or cause a constraint the development of neighbouring land.
39. 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.
40. 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.
41. Policy U13 (Development on Unstable Land) will only be permitted if it is proved there is no risk to the development or its intended occupiers, or users from such instability, or that satisfactory remedial measures can be undertaken.
42. Policy U14 (Energy Conservation - General) states that the energy efficient materials and construction techniques will be encouraged.

EMERGING COUNTY DURHAM PLAN:

The County Durham Plan

43. 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 28 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:

44. *The Highway Authority* offers no objection to the application subject to a condition which requires the resurfacing of the lanes leading to Holy Street and Hawthorn Terrace prior to first occupation and in accordance with a scheme to be submitted to and approved by the Local Planning Authority.
45. *Northumbrian Water Limited* has no objection to the application subject to a condition which requires the development to be carried out in accordance with the requirements of the *Flood Risk and Drainage Impact Assessment* dated "April 2018".
46. *Drainage and Coastal Protection* offers no objection to the application.
47. *Coal Authority* has no objection to the application.
48. *Environment Agency* has not commented on the application.

INTERNAL CONSULTEE RESPONSES:

49. *Spatial Policy Section* confirms that the two limbed test set out in Paragraph 11 of the NPPF is, irrespective of the position on housing land supply, relevant to this application due to the fact that the local plan's housing requirement policy has expired. Paragraph 11 of the NPPF is therefore relevant and the application granted planning permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the NPPF taken as a whole; or specific policies in the NPPF indicate development should be restricted.

The proposals are for the redevelopment and conversion of a building within the centre of Durham City which is a highly accessible location well related to services, facilities and public transport and would support sustainable patterns of growth. The proposal would make a contribution to local housing supply, broaden housing choice and also support the local economy through construction and occupation.

In addition, it is confirmed that 25% affordable housing provision is required along with a financial contribution of £36,363 to improve open space facilities in the area. Calculated thus;

16 x 2.2 = 35 persons.

11 x 1 = 11 persons

46 x £790.50 (Table 16) resulting in the £36,363 contribution

50. Notwithstanding the above concern is raised that the proposal would also be attractive to purchasers, who would then let the apartments to students rather than the properties being used as open market housing for the general population.
51. Despite the above concern, in policy terms it is noted that the key matters which need to be considered are the suitability of the proposed site for Use Class C3 residential development.
52. *Environmental Health Section (Noise Action Team)* raises no objection to the application subject to the inclusion of a planning condition requiring the implementation of the noise mitigation measures included in the supporting noise assessment and the

submission, agreement and implementation of a noise management plan prior to the commencement of development.

53. *School Places and Admissions Manager* has advised that the development falls in the pupil place planning area of Durham Central for Primary aged pupils within which there are no spare places at these schools to accommodate pupils from this proposed development and there a financial contribution for additional teaching accommodation is required of £132,327.
54. *Contaminated Land Section* has no objections subject to a condition which states that, if during the development works any contamination is identified that has not been considered, it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must subsequently be undertaken and where remediation is necessary, then remediation proposals for this material shall be agreed in writing with the Local Planning Authority and the development completed in accordance with any amended specification of works.
55. *Design and Conservation Section* offers no objection to the application noting that the proposed scheme provides an effective residential use of the derelict site with the layout, scale, bulk and design considered a significant improvement on the previous applications, taking on-board previous consultee design advice. Notwithstanding the above, conditions are advised to secure the submission and agreement of details and samples relating to external materials, windows, doors, rainwater goods, boundary treatment and external lighting.
56. *Landscape Section* has no objection to the application but notes the requirement to provide a detailed landscaping scheme to include planting to the eastern and western boundaries which could be secured through planning condition.
57. *Arborist* has no objections to the application.
58. *Public Rights of Way Section* has no objection to the application subject to a planning condition requiring details of the resurfacing of the routes, leading to Holly Street and Hawthorn Terrace, to be submitted and approved by DCC following which resurfacing must be complete prior to occupation of the development.
59. *Archaeology* has no objection to the application.
60. *Ecology* has no objection to the application but notes that as the development would result in a net loss to biodiversity value a commuted sum payment of £1334.90 would be required to be secured through Section 106 legal agreement.

NON-STATUTORY CONSULTÉES:

61. Durham Constabulary Crime & Community object to the application raising concerns that the density of the development, the lack of outside amenity space and parking provision will deter the type of occupancy suggested by the Planning Policy Statement submitted in support of the application resulting in short term tenancies which will eventually have a detrimental impact on the area.
62. City of Durham Parish Council although supporting the principle of residential redevelopment at the site suggest a range of conditions to restrict the precise nature and occupancy of the units proposed.

PUBLIC RESPONSES:

63. The application has been publicised by way of site notice, press notice and notification letters to neighbouring properties. In response 6 letters of objection have been received (including one from Durham Spiritualist Church) and 1 letter of support.

64. Objections cite the following concerns;

Design and Impact upon the Conservation Area – The proposed building would be of excessive height and depth and as such would dominate the surrounding area having an overbearing impact upon the character and appearance of the surrounding conservation area.

Parking and Highway Safety – Insufficient parking is incorporated within the development and an increase in vehicles would have an adverse affect of highway safety given the narrow and congested nature of the John Street and its junction with the A690 at Sutton Street and Alexandria Crescent.

Impact upon Residential Amenity – Adverse impact from overbearing and overshadowing and an increase in antisocial behaviour.

Impact upon an adjacent footpath – The footpath to the north of the site would be adversely affected by the development.

Likely to be Used as Student Accommodation – The development is likely to be used student accommodation despite comments made in the application and as such should be considered against the requirements of the Council's Interim Student Policy.

65. Reason for support are summarised as;

Visual Amenity – The redevelopment of the site would facilitate a considerable improvement to the visual appearance of the site and enhance its contribution to the conservation area.

Public Safety Improvement – The redevelopment of the site would present a frontage to Holly Street thereby removing a current danger of falling given the significant change in levels.

66. Comments have also been received from Roberta Blackman-Woods who raises objection to the application as it;

- Is not in keeping with the existing properties on John Street in that it would create a dominant, overbearing 3.5 storey building.
- Would have an adverse impact upon residential amenity from overbearing and overshadowing.
- Would be attractive to Students and result in an over-concentration of student accommodation in an area which already has a high concentration of student occupancy.
- Result in an increase in traffic to the detriment of highway safety.

APPLICANTS STATEMENT:

67. The scheme is for mixed residential apartments in an accessible location which is suitable for a range of occupiers. Also it will contribute towards a more balanced community in the viaduct area. It therefore meets the social thread of sustainability.

68. This site is an eyesore in the Conservation Area and has been for over 30 years. It suffers from trespass and fly tipping which attracts vermin. In its present condition it blights the appearance of Holly Avenue, John Street and Hawthorn Terrace. The design is the culmination of a detailed and iterative process with the conservation and planning officers. It reflects the tight urban grain and strong uniform rhythm of the Victorian terraces and responds well to its surroundings. Overall it will be a positive contribution to the local townscape and in wider views from the railway. The high quality materials will also enhance the appearance of the conservation area.
69. This scheme will make efficient use of a fully service site which is presently a wasted asset. The substantial retaining wall to Holly Street is damaged and will be repaired and made safe as part of this scheme with local infrastructure upgraded. The scheme includes a new hammerhead and turning area which will improve highway safety for all users of John Street including the Church and refuse collection wagon. The foul drain under the site will be upgraded as a benefit to the area and the public footpaths around the site will be reinstated.
70. This scheme is a substantial investment in the local area which will provide local construction jobs and enhance the local community. The land is already serviced and its development will contribute to economic sustainability.
71. The scheme is accessible to the town centre services / facilities and will contribute towards a cleaner city by providing bike spaces for every apartment.

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

PLANNING CONSIDERATIONS AND ASSESSMENT

72. Section 38(6) of the Planning and Compulsory Purchase Act 2004 sets out that if regard is to be had to the development plan, decisions should be made in accordance with the development plan unless material considerations indicate otherwise. In accordance with Paragraph 212 of the National Planning Policy Framework (NPPF), the policies contained therein are material considerations that should be taken into account in decision-making. Other material considerations include representations received. In this context, it is considered that the main planning issues in this instance relate to the principle of development; the impact upon the character, appearance and setting of conservation area and listed buildings; impact on residential amenity; highway safety; public rights of way; drainage, ecology and contaminated land.

Principle of Development

73. 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 in this regard. 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 weight to be afforded existing Local Plan policies depends upon their degree of consistency with the NPPF.
74. 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.

75. On this basis, given the age of the CofDP and housing supply figures that informed it, the housing supply policies therein do not reflect an up-to-date objective assessment of need, and must now be considered out-of-date, and the weight to be afforded to the policies reduced as a result. However, this does not make out of date policies irrelevant in the determination of a planning application. Nor do they prescribe how much weight should be given to such policies in the decision, this being a matter for the decision maker, having regard to advice at Paragraph 213 of the NPPF.
76. In the first instance a number of concerns have been raised by local residents, interested parties and statutory and non-statutory consultees as to the precise nature of the proposed use with some citing a belief that the building would be occupied wholly as Purpose Built Student Accommodation (PBSA) and as such should be assessed against the requirements of the Council's Interim Policy on Student Accommodation. This point is noted by the Council's Spatial Policy Section which has provided both a response in relation to the application being offered on the open market as C3 dwellings and also as a PBSA.
77. With regard to the latter the Council's Interim Policy relating to Student Accommodation requires proposals for new PBSAs to demonstrate that there is a need for additional student accommodation that the proposal would not result in a significant negative impact on retail, employment leisure, tourism or housing use and that consultation has been undertaken with the relevant education provider. When assessed against the requirements of this policy the application fails to include sufficient information and in particular does not include an evidence of need for additional accommodation or consultation with a relevant education provider.
78. In light of these concerns the applicant has sought to clarify the position confirming that the units would be offered as C3 dwelling houses and not wholly as Student Accommodation and as such the development should be considered on the basis that the proposed units fall within Use Class C3 as defined by the Town and Country Planning (Use Classes) Order 1987.
79. Therefore, policy H2 is relevant and seeks to direct new development to the most sustainable locations. It states that windfall housing development of previously developed land (PDL) and conversions will be permitted within settlement boundary of Durham City, subject to amongst other things, not contravening saved Policy E3 (World Heritage Site Protection), E5 (Open Spaces within Durham City) and E6 (Durham City Conservation Area) and the development accords with policies Q2 (General Principles – Designing For Accessibility), R2 (Recreational and Amenity Space in New Residential Developments), T10 (Parking) and U8A (Disposal of Foul Water).
80. Given this policy's emphasis on PDL sites it is only partially consistent with the NPPF. There may be instances where a Greenfield site can be justified through NPPF. This policy should therefore not be used as a reason to refuse such sites on this basis. Notwithstanding this point, the site is Previously Developed Land and development would accord with this policy.
81. Policy H7 is also relevant and advises that the Council will encourage new housing developments and conversions to residential use on sites within or in close proximity to the city centre provided there is no conflict with any other plan policy or proposal and it is in scale and in character with its surroundings. This policy is consistent with the NPPF and it is up to date.

82. As the policies in the development plan which are most important for determining the application are out of date, then Paragraph 11 of the NPPF is engaged which establishes a presumption in favour of sustainable development. For decision taking this means;

- approving development proposals that accord with an up to date development plan without delay; or

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

i) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or

ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole

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

Five year Housing Land Supply

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

85. Within County Durham all the extant development plans are more than five years old and their housing figures need revising so the starting point for calculating land supply will be local housing need using the Government's standard methodology. The 'Pre Submission Draft' County Durham Plan (CDP) -was subject to consultation in January 2019 and was submitted for Examination in June 2019. The CDP sets out that housing need in County Durham is based on the minimum assessment of Local Housing Need adjusted for recent past delivery. The housing need for County Durham is therefore **1,308 dwellings per annum (dpa)**. At this time, the Council is able to demonstrate 6.37 years supply of deliverable housing land against this figure. The Council also has commitments of an additional supply beyond the deliverable 5-year supply period.

86. In a recent written representations appeal involving a site in Esh Winning, the Inspector took the view that housing supply had not been demonstrated by the Council in the terms of paragraph 74 of the Framework. However, the Planning Inspectorate have subsequently confirmed that the Inspector misapplied paragraph 74, as it was impossible for the Council to have an Annual Position Statement in place at the time of the appeal. In addition, in three further, more recent, written representation appeals, the

Inspector outlined that there are also the requirements of Paragraph 73 under which councils are required to identify annually a supply of housing sites to provide a minimum of 5YHLS, set against local housing needs where strategic policies are more than 5 years old. The Council's approach to demonstrating a 5YHLS is, therefore, considered to be appropriate in the circumstances, and in line with the requirements of the NPPF.

87. The Government has also recently published its Housing Delivery Test (HDT) results alongside the publication of the update NPPF in February 2019. The HDT outcome for the Council indicates that housing delivery has been above the requirement over the last three years, which is evidence that delivery of housing on the ground is on track and exceeding our housing targets.
88. To summarise, the Council's position remains that in line with paragraph 60 of NPPF and national planning guidance, the Housing Need in County Durham and as set out in the emerging CDP is 1,308 dpa and a supply of 6.37 years of deliverable housing can be demonstrated. Accordingly, the weight to be afforded to the boost to housing supply as a benefit of the development is clearly less than in instances where such a healthy land supply position could not be demonstrated.

Locational Sustainability

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

Impact upon the character, appearance and setting of conservation area, listed buildings and surrounding area

90. The site lies in the Hawthorn Terrace sub character area of the Durham City Conservation Area, a designated asset of considerable significance and as such any proposals would need to meet the statutory tests within Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. Such tests require Planning Authorities, in considering whether to grant planning permission for development which affects a listed building or conservation area, to have special regard to the desirability of preserving or enhancing its special architectural character or setting in the case of a listed building, or the character or appearance of the area in the case of a conservation area. It is characterised by tightly knit Victorian streets. The main access road Hawthorn Terrace is a wide terrace street framed by mainly two storey townhouses. Running at right angles to it, in a north south direction are Laburnum, Lawson, Mistletoe Street and Holly Street. John Street runs close by off the A690 in a westerly direction. All these streets are characterised by a tight grid of terraces with narrow frontages and strong building line. The red brick frontages feature key distinctive features, symmetrical fenestration patterns of sash windows and panelled doors and the Welsh slate roofs are punctuated by chimney stacks. The uniform character of the terraces extends to include back lanes, enclosed rear yards and brick built boundary walls. Other designated assets include the end of Hawthorn Terrace, Colpitt's Terrace dating back to 1856, this is a curving terrace of elegant two storey, two bayed properties constructed from coursed square sandstone. Their historic and architectural merit is reflected in the whole terrace being Grade II listed. At the end of the terrace is

Colpitts Hotel, a Grade II listed public house with its notable curved roof and elegant fenestration.

91. Policy E6 of the City of Durham Local Plan states that the special character, appearance and setting of the Durham (City Centre) Conservation Area will be preserved or enhanced and specifically requires proposals to use high quality design and materials which are sympathetic to the traditional character of the conservation area. In addition, policy E23 relates to Listed Buildings and seeks to safeguard listed buildings and their settings. Both display a broad level of accordance with the aims of paragraph 193 of the NPPF which notes that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be).
92. Both local plan policies and the aims of the NPPF as detailed display accordance with the aims of Sections 66 and 72 of the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990.
93. The Council's Design and Conservation Officer has commented noting that the development would present a frontage onto Holly Street that seeks to draw influence and cues from the adjacent historic properties and others that surrounding it through the adoption a terraced affect and modest domestic scale, orientated to complement the grid pattern, reflecting the shape, proportions and patterns of the openings, the simplicity of detailing, and through material choices. It is considered that the development achieves this successfully without being a direct copy presenting a scheme that would be considered in keeping with the predominant historic grain, character and distinctive architectural qualities of the area.
94. The design has been revised in comparison to the 2016 with the principal differences comprising that the end returns have been vastly improved, the dominant stone rotundas have been removed which did not reflect the historic precedent and have been replaced within a far simpler mono-pitched style brick return to the north end and a full-height traditional bay to the south end. These are considered to be more sympathetic to the surrounding character and will provide appropriate end detailing. The former front entrance that disfigured this elevation has been replaced appropriately to provide a completed residential frontage.
95. In John Street itself the increase in scale and massing in comparison to the existing buildings is noted which has been raised in objection by local residents. However, reducing the scale to the rear would significantly compromise and undermine the quality of the Holly Street elevation. The rear elevation also appropriately continues the theme of verticality and uniformity displayed in the Holly Street elevation. The inclusion of stepped blocks, projecting elements with strong gables, a varied roofscape, and materials changes create effective articulation to help break down the perceived scale and massing while at the same time adding visual interest.
96. In terms of materials, the Design and Conservation officer raises no objection to the proposed materials pallet but notes the requirement for the submission and agreement of external sample materials which could be secured through planning conditions.
97. The site is currently redundant and has been vacant for several years. The development presents opportunity for the visual improvement of the site which at present makes no positive contribution to, and to some extent could be considered to detract from the special historic character and appearance of the surrounding conservation area. Its redevelopment in this regard would significantly enhance the character and appearance of the Durham City Conservation Area as well as the

settings of nearby listed buildings in accordance with Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, Sections 12 and 16 of the NPPF and saved local planning policies E3, E6, E22, E23 and Q8 of the City of Durham Local Plan.

Impact on residential amenity

98. Policy Q8 of the CofDLP 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 NPPF compliant particularly with regard to paragraphs 127 and 180 which require new development to function well and add to the quality of the overall area and prevent both new and existing development from contributing to or being put at unacceptable risk from unacceptable levels of pollution respectively.
99. Policy H13 relates to CofDLP 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.
100. Objection has been received from residents of neighbouring properties who consider that the development would have an adverse impact in terms of loss of privacy, overbearing and antisocial behaviour.
101. In this regard it is noted that the surrounding area is characterised by densely populated terraced properties where the typical separation distance achieved between windows to habitable rooms is 11 metres. In this context it is considered that the 11 metre separation distance proposed at Holly Street can be considered acceptable despite falling below those stated in text supporting policy Q8 of the CofDLP.
102. It is noted that in dismissing the previous appeal against the Council's refusal of planning permission for student accommodation at the site the Planning Inspector considered the relationship between the proposed development and No. 10 John Street to be such that it would have an adverse impact upon the residential amenity for the residents of this property. Consequently, the applicant has made amendment to the proposal repositioning windows to habitable rooms which now face east and west away from No.10 which is located to the north and would protect existing privacy levels.
103. Notwithstanding the above the separation distances achieved would fall below the minimum standard stated in Policy Q8 of the CofDLP. However, it should be noted that given the position of the site in a central location and the proximity of existing dwellings which frame it to north, south and east, to stringently apply the separation distances stated in policy Q8 would significantly reduce the developable area of the site and as such make it is unlikely that the site would be positively redeveloped. With this in mind it is considered that given position of the site towards the centre of the city in a densely populated location the proposed arrangement is not considered unusual or unacceptable and whilst there would be some limited impact upon residential amenity this would not be so significant or adverse so as to sustain refusal of the application.
104. There is also an existing bungalow to the north east of the site at John Street (named the Bungalow) which has habitable windows overlooking the application site and would be positioned 8 metres from a three storey projection. However, as this three storey projection would not have any windows directly overlooking the Bungalow it is not considered that there would be any substantial or unacceptable loss of privacy. When

considering the merits of the previous scheme for student accommodation the Planning Inspector concluded that given part of the proposal would be at an angle to The Bungalow, it would not have a significant impact on the outlook from those windows nor result in any harmful loss of light. This proposal subject of this application replicates that arrangement in terms of window position, form and massing, and for this reason it is not considered that the development would have any unacceptable impact in accordance with policies H13 and Q8.

105. With regards to noise the application has been accompanied by an Apex Acoustic noise assessment which assesses the impact of rail and road noise concluding that this should not cause an adverse impact on the residential amenity subject to mitigation. The Council's Environmental Health Section has reviewed the assessment and offers no objection subject to the implementation of the mitigation listed in the noise assessment being secured through planning condition along with the submission and agreement of a construction management plan. Subject to the inclusion of planning conditions in this regard the development would not have any adverse impact in terms of noise or disturbance.

Parking, Access, Highway Safety and Public Rights of Way

106. Policies T1 and R11 relate to access, parking and public rights of way respectively with policies T1 and T10 stating 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 affect on the amenity of occupiers of neighbouring property. With regard to public rights of way policy R11 seeks to safeguard and protect the existing network of public rights of way and other paths from development which would result in their destruction unless a suitable alternative route is provided. This is considered to display a broad level of accordance with the aims of paragraph 108 of the NPPF.
107. The development is supported by a transport statement which sets out accessibility of the site and concludes that the site has good accessibility. The proposed development is within an accessible location being close for pedestrians, cyclist and public transport users to city centre transport hubs and facilities. No parking spaces are to be provided for residents other than the provision of a disabled parking.
108. The Highway Authority has indicated that the development is within the City's controlled parking zone and that as such it is highly unlikely that residents would choose to own a car and meet charges or only park in adjacent streets outside the controlled periods vehicular impact would be minimal in the surrounding area.
109. With regard to refuse collection it is noted that this takes place with vehicles reversing from the A690 into John Street. An autotrack plan has been submitted with the application which shows that a refuse collection truck would be able to turn round at the end of John Street and therefore leave John Street in a forward motion. The Highway Authority is satisfied with this arrangement.
110. The developer has also offered as part of the scheme to improve the footpath areas around the development site which include the footway links from Holly Street to John Street at the north of the site and the footway link from Hawthorn Terrace to John Street to the south east of the site. Both these footways are unrecorded paths. The Highway Authority and the Council's Public Rights of Way Officer has commented indicating that the upgrade of these footway links are welcomed to be secured through planning condition. As such a planning condition is recommended for further details of the footway improvements to be submitted for agreement prior to development commencing.

111. Subject to the inclusion of a planning condition as described, the proposal would not result in any adverse impact in terms of highway safety or the adjacent public right of way and as such the proposal would accord with the aims of policies T1, T10 and R11 of the CofDLP and paragraph 108 of the NPPF.

Ecology

112. The presence of a European Protected Species (EPS) is a material planning consideration. The Conservation of Habitats and Species Regulations 2017 have established a regime for dealing with derogations which involved the setting up of a licensing regime administered by Natural England. Under the requirements of the Regulations it is an offence to kill, injure or disturb the nesting or breeding places of protected species unless it is carried out with the benefit of a licence from Natural England.
113. Notwithstanding the licensing regime, the Local Planning Authority must discharge its duty under the regulations and where the proposed development is likely to result in an interference with an EPS must consider these tests when deciding whether to grant permission. A Local Planning Authority failing to do so would be in breach of the regulations which requires all public bodies to have regard to the requirements of the Habitats Directive in the exercise of their functions.
114. An Ecology Survey has been submitted with the application which concludes that the risk to protected species and habitat is low to which the Council Ecologist objections. Subsequently it is not considered that the proposed development would have an adverse impact on protected species or their habitats and therefore there is no need to consider whether an EPS licence would be granted. The development would be in accordance with part 15 of the NPPF.
115. Notwithstanding the above, there would be some net loss to biodiversity which could not be offset by on site mitigation. As such the applicant has agreed to provide a commuted sum of £1,334.90 for offsite mitigation in accordance with the requirements of paragraph 175 of the NPPF which requires that if significant harm to biodiversity resulting from a development cannot be avoided through locating on an alternative site with less harmful impacts, adequately mitigated, or as a last resort, compensated for, then planning permission should be refused.

Land Contamination and Drainage

116. 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.
117. The applicant has provided a Phase 1 Desk Top Study and a Phase 2 Ground Investigation Report in relation to Land Contamination in support of the application which concludes that any risk from previous contamination is considered low. The Council's Environmental Health Section offers no objection to the application subject to a condition which requires investigation, risk assessment, remediation and verification should contamination be identified which has not been considered and that if soil is to be imported to the site a Phase 4 Verification Report (Validation Report) be submitted and approved within 2 months of completion of the development.

118. Subject to the conditions stated the application is considered to accord with the requirements of paragraph 178 of the NPPF and policy U11 of the CofDLP.
119. Policy U8A of the CofDLP states that development proposals will only be approved if they include satisfactory arrangement 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.
120. The development proposes disposal of foul and surface water to existing mains sewer to which NWL and the Council's Drainage Section raise no objection to the application subject to a condition which requires that the development be carried out in accordance with the Flood Risk and Drainage Impact Assessment April 2018, and that the scheme shall ensure foul and surface water flows discharge to the combined sewer at Manhole 7404 with surface water discharge rate not exceeding the available capacity of 5.0l/sec. The submission and precise detail of a scheme in this regard could be satisfactorily secured through planning condition.
121. Subject to the inclusion of a planning condition in this regard the application is considered to accord with the requirements of policy U8A of the CofDLP in this regard.

Planning Obligations

Affordable Housing

122. In order to deliver a suitable amount and variety of homes, local need should identify, among other things, affordable housing requirements for their area, whereby Paragraph 60 of the NPPF encourages the provision of affordable housing based on evidenced need. A Strategic Housing Market Assessment (SHMA) should identify full housing need including affordable housing and in this respect the up-to-date evidence in the SHMA establishes a requirement for 25% affordable housing provision in perpetuity for development in this location. For sites where it is not possible to provide affordable units within the development then a commuted sum should be sort for off-site provision, which in this case is calculated as a commuted sum of £214,822.
123. The applicant has contested that the viability of the development in relation to the affordable housing requirement of 25% and considers that this cannot be delivered. The required payments for open space, education and ecology as stated below however are not contested and the applicant has agreed to secure appropriate payment through Section 106 Agreement.
124. Development appraisals to demonstrate the various costs and revenues of the development have been submitted by the applicant in order to demonstrate their case in this regard. These appraisals have been scrutinised with the benefit of advice from the Council's Valuation Officers and Spatial Policy Section and have, where appropriate been amended to reflect adjustments to the inputs in line with requests from officers to ensure that revenues from sales prices and the costs associated with the development appear to officers as accurate as is practicable.
125. In terms of guidance Planning Practice Guidance (PPG) includes a chapter dedicated to matters of viability in both plan making and decision taking. Within the PPG local planning authorities are advised that where an applicant is able to demonstrate to the satisfaction of the local planning authority that the planning obligation would cause the development to be unviable, the local planning authority should be flexible in seeking planning obligations. Specific reference is made to affordable housing within the PPG

chapter where it is stated that affordable housing often represents the single most significant obligation within a development and that affordable housing contributions should not be sought without regard to individual scheme viability. Similarly, within the chapter on planning obligations, the PPG states that where affordable housing contributions are being sought, planning obligations should not prevent development from going forward. The PPG does state, however, that the NPPF makes it clear that where safeguards are necessary to make a particular development acceptable in planning terms, and these safeguards cannot be secured, planning permission should not be granted for unacceptable development.

126. For the developer to be incentivised to develop the site the applicant therefore considers that the planning obligation offer in relation to affordable housing (in this case a commuted sum of £214,822) must be removed in its entirety.
127. Various “rules of thumb” are widely quoted to inform the assessment of the viability of a development, including profit margins for developers which generally range just either side of 20% and build costs for which BCIS provide a benchmark.
128. Notwithstanding the above, this proposal appears unique in as much as the applicant is a private bespoke developer who acquired the site some time ago and has, since this time, explored a variety of possibility developments at the site to reintroduce a positive use, most recently student accommodation which was refused and subsequently dismissed at appeal. In order to positively develop the site which remains vacant, the applicant has sought to progress the private market housing which is the subject of this application. The viability assessment and subsequent updates and amendments satisfactorily demonstrate that the scheme is not viable in the first instance, even before the financial contribution planning obligations are applied and it is this element of the proposal which is considered unique in that respect, in that most cases developers would not seek to advance a scheme which was fundamentally not viable.
129. The applicant has therefore sought to provide additional information and explanation around this point and why there are particular reasons in this instance as to why he is willing to undertake the scheme. Firstly, he has already invested a substantial amount into the site comprising fees, planning applications and appeals which significantly reduces any future yields and secondly, that whilst it will be some time before the scheme is likely to break even (he intends to retain the development to generate a rental yield), he is willing to build the scheme and retain it as a long term capital investment for a number of personal reasons. It is noted that as a bespoke developer he can elect to take a low yield over a number of years as opposed to an outright loss.
130. In addition, evidence has been submitted to demonstrate that this scheme has relatively high abnormal costs, and unusually high build costs due to several site specific constraints including confined access and laydown space, specialised construction requirements given its split level nature, the requirement to underpin retaining walls, the use of pile foundations and the cost of materials given its position in a conservation area. It is also noted that the viability assessment provided does not include any loan interest payments and is therefore considered a conservative estimate of overall cost and yield.
131. National guidance to local planning authorities in respect to planning obligations and viability is to be as flexible as possible and essentially presents a presumption in favour of such flexibility of the planning obligations except in those circumstances where the safeguards of the planning obligations are necessary to make the development acceptable. The planning balance and conclusion sections to this report conclude on whether the reduced planning obligation offer is acceptable.

Education Contributions

132. The NPPF at Paragraph 72 sets out that the Government attaches great importance to ensuring sufficient availability of school places to meet the needs of existing and new communities. The School Places and Admissions Manager advises that a development of 16 No.2 bedroom apartments and 11 one bedroom apartments could produce additional primary school pupils and that based on projected school rolls, taking into account the likely implementation timeframe of the development there are insufficient primary school places to accommodate the development in this regard. Whilst originally it was advised that a commuted sum of £132,327 was required this has been revised to exclude the 11 one bedroom flats from the calculation noting that these are unlikely to generate any demand for school places given their tenure. Consequently, a commuted sum of £70,574.40 is required to mitigate the impact of the development to which the applicant has agreed and could be secured through section 106 Agreement.

Open Space

133. Policies R1 and R2 of the local plan seek to ensure that the provision of open space for outdoor recreation is evenly distributed and is maintained at a level which meets the needs of its population. While this policy is consistent with the general aims of NPPF, the NPPF requires standards to be based on up to date assessments, therefore the last published OSNA (2018) will need to be taken into consideration rather than the standards set out in this policy. The OSNA sets out the most up to date position in respect to open space provision across the county and provides a formula for calculating requirements on a site-specific basis. This is a relevant material consideration in conjunction with Policy R2 of the CofDLP and paragraph 96 of NPPF.
134. Based on the OSNA and an average occupancy of 2.2 people per 2 bed dwelling and single occupancy per one bed dwelling (Co. Durham average household size, 2011 Census), a development of the type proposed would generate a population of 46 people. A Section106 contribution to improving existing facilities would amount to £36,363 (46 x £790.50) to be secured by legal agreement and the applicant has agreed to this requirement.
135. These contributions would be in accordance with policies R1 and R2 of the City of Durham Local Plan.

Public Art

136. CDLP Policy Q15 seeks to ensure that public art is secured with development schemes wherever possible. This policy is considered to be only partially consistent with NPPF as it makes no allowance for how such installations would impact upon the viability of developments. As a result, it can only be afforded reduced weight.
137. In this instance, whilst it has not been claimed by the developer that the viability of the proposed development would be likely to be unreasonably reduced as a result of providing public art within the development no details are available at the present time as to how public art could be incorporated within the overall development. However, the submission and assessment of precise detail in this regard could be secured through appropriately worded planning condition.

Planning Balance

138. 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

139. Enhancement of the Character and Appearance of the City of Durham Conservation Area - Redevelopment of the site would represent a positive impact in redeveloping a site which has little likelihood of redevelopment and currently detracts from the character and appearance of City of Durham Conservation Area.
140. Highways - The development also brings highway benefits as surrounding footways would be improved and John Street would be reconfigured at the development site end to allow refuse trucks to turn and exit John Street more safely in a forward direction.
141. Contribution to housing land supply - The provision of the 27 apartments would boost housing supply. However, the weight to be afforded to the boost to housing supply as a benefit of the development is clearly less than in instances where a shortfall in supply could not be demonstrated.
142. Broadening housing choice - The proposal would increase the supply and range of housing in the area and help rebalance the housing stock in an area which is dominated by student housing in the form of Houses of Multiple Accommodation.
143. Contribution to the local economy - Paragraph 8 of the revised NPPF considers the three dimensions of sustainability and in this application, the development of the site would contribute to the economy through the delivery of the apartments, both during its construction but also via new residents supporting local services.
144. Supporting sustainable patterns of growth - The location of this site near to the centre of Durham, and Durham Bus and Rail Station is such that it provides opportunities for residents to access services and travel by modes other than the private car, thereby contributing positively to the locational sustainability of the scheme. This can be considered as a benefit.

Adverse Impacts

145. In terms of adverse impacts the development is not providing the full suite of planning obligations that would be expected in relation to the development. Most notably no affordable housing is being provided in area where 25% affordable housing provision is normally required on viability grounds. Paragraph 61 of the NPPF requires authorities to deliver a wide choice of high quality homes, creating sustainable, mixed communities and identifying the size, type, tenure and range of housing required in particular locations. The application is proposing less affordable housing delivery than the SHMA identifies is required and is therefore deficient in this regard, accepting however the need to consider viability.
146. Impact upon Residential Amenity - There is a separation distance between a habitable window in No. 10 John Street and the proposed development which falls short of the minimum required by policy Q8 of the CofDLP. Whilst this arrangement would not compromise privacy levels it would have some impact on residential amenity in terms of overbearing and overshadowing to which weight should be attached.

CONCLUSION

147. As the CofDLP is silent in relation to the development the presumption in favour of sustainable development is engaged. The development is therefore required to be considered in the context of paragraph 11 of the NPPF, which states that the development be granted planning permission, the application of policies in the NPPF that protect areas or assets of particular importance provides a clear reason for refusing the development or any adverse impacts of doing so would significantly or demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as a whole.
148. The acceptability of the proposed scheme requires careful consideration and needs to be a balanced decision taking account of all the benefits and adverse impacts of the scheme.
149. In terms of those adverse impacts it is noted that the key impact in his respect would be the absence of planning obligation provision in relation to affordable housing and that there would be some detrimental impact upon residential amenity given the 6 metres and 8 metre separation distance to properties from at John Street this would not be significant.
150. With regard to planning obligations and viability national guidance to local planning authorities is to be as flexible as possible with the exception being in certain circumstances where the safeguards of the planning obligations are necessary to make the development acceptable. The acceptability of the development in the absence of any affordable housing centres on whether in the planning balance the obligations are such an essential prerequisite to enable the site to be developed, that a scheme without them would result a development where the adverse impacts significantly and demonstrably outweigh the benefits.
151. The proposal presents some significant benefits such as the positive redevelopment of a locally important and centrally located site within the city which is currently vacant and has been so for some time. The redevelopment of the site therefore represents an enhancement to the character and appearance of Durham City Centre Conservation Area to which weight can be afforded in the planning balance. The scheme also proposes several highway improvements including the upgrading of footways surrounding the site which are benefits to which weight can be attached.
152. Other benefits include contribution housing land supply and to the range of housing available within the city centre, associated contribution to the local economy and its support of sustainable patterns of growth.
153. Therefore, in a finely balanced proposal, officers consider that the adverse impacts do not significantly and demonstrably outweigh the benefits of the scheme as detailed above. Furthermore, there are no specific policies within the NPPF which indicate that the development should be restricted.
154. The proposal has generated public interest with representations reflecting the issues and concerns of local residents affected by the proposed development. Whilst mindful of the nature and weight of public concerns it is considered that these are insufficient to outweigh the planning judgement in favour of the proposed scheme.

RECOMMENDATION

That the application be APPROVED subject to the following conditions and to the completion of a Section 106 Legal Agreement to secure the provision of:

- i) ££36,363 contribution towards enhancement or provision of play provision in the Neville's Cross Electoral Division.
- ii) £70,574.40 contribution towards the provision of school places within the Neville's Cross Electoral Division.
- iii) £1,334.90 contribution towards biodiversity enhancements in line with the framework identified in Durham County Council's Biodiversity Compensation Strategy document.

1. The development hereby approved 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:

Drawing No	Description	Date Received
(9-)03	Proposed Site Block Plan	13 July 2018
(9-)01	Location Plan	13 July 2018
(2-)01 PB	Lower Ground Floor Plan	13 July 2018
(2-)02 PA	Ground and First Floor Plans	13 July 2018
(2-)03 PA	Second Floor and Roof Plan	13 July 2018
(2-)04	Elevations	13 July 2018
(2-)05	Sections	13 July 2018
(2-)06	Lower Ground	13 July 2018

Reason: To define the consent and ensure that a satisfactory form of development is obtained and to meet the objectives of saved Policies Q1 and Q2 of the City of Durham Local Plan.

3. No development above damp proof course level shall take place until details of a scheme for the resurfacing of the lanes to the east and west of the application site linking Holly Street and John Street has been submitted to and approved in writing by the local planning authority. The building shall not be occupied until the completion of approved scheme.

Reason: In the interests of highway safety and to accord with policy T1 of the City of Durham Local Plan.

4. No development shall take place unless in full accordance with all sound attenuation measures detailed in the noise assessment [Apex Acoustic noise assessment ref 6560.1 dated 12/7/18 Version E]. The measures stated shall be fully installed prior to the first occupation of the development hereby approved and permanently retained thereafter.

Reason: In the interests of residential amenity in accordance with the requirements of policies H7 and H13 of the City of Durham District Local Plan and part 15 of the NPPF.

5. The development shall not be occupied until precise details of boundary treatment has been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be constructed in accordance with the approved details.

Reason: In the interests of the appearance of the area and to comply with policies E6 and E22 of the City of Durham Local Plan.

6. Notwithstanding any details of materials submitted with the application no development (except demolition, groundworks and levelling) shall commence until details of the external walling, roofing materials, windows details and hardsurfacing have been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be constructed in accordance with the approved details.

Reason: In the interests of the appearance of the area and to comply with policies E6 and E22 of the City of Durham Local Plan.

7. Notwithstanding the details submitted with the application:

- (a) If during the development works any contamination is identified that has not been considered it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken and where remediation is necessary, then remediation proposals for this material shall be agreed in writing with the Local Planning Authority and the development completed in accordance with any amended specification of works.
- (b) If soil is to be imported to site for landscaping for example, a Phase 4 Verification Report (Validation Report) shall be submitted to and agreed in writing with the Local Planning Authority within 2 months of completion of the development.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risk to workers, neighbours and other offsite receptors in accordance with NPPF Part 14.

8. No development hereby approved shall take place unless in accordance with the drainage scheme detailed within the "Flood Risk and Drainage Impact Assessment Revision A" by Portland Consulting Engineers Ltd dated April 2018.

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

9. Prior to the commencement of development above damp proof course level a detailed landscaping scheme shall submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be constructed in accordance with the approved details.

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

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

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

11. No development above damp proof course level shall commence until a scheme of public art to be incorporated within the development has been submitted to and agreed in writing by the Local Planning Authority, and installed in accordance with the approved details.

Reason in the interest of the character and appearance of the development and to comply with Policy Q15 of the City of Durham Local Plan.

12. No development shall commence until a Construction Management Plan has been submitted to and approved in writing by the local planning authority.

The agreed plan shall include as a minimum (but not necessarily be restricted to) the following:

- An assessment of the potential for dust emissions from the site and the mitigation measures that will be used to minimise any emission taking into account relevant guidance such as the Institute of Air Quality Management “Guidance on the assessment of dust from demolition and construction” February 2014.
- An assessment of the likely noise (including vibration) emissions from the site and the mitigation measures that will be taken to minimise noise disturbance taking into account relevant guidance such as BS5228 ‘Code of practice for noise and vibration control on construction sites’ 2014.
- Where construction involves penetrative piling, details of methods for piling of foundations including measures to suppress any associated noise and vibration.
- Details of the operating hours during which construction/demolition works are to be undertaken. Durham County Council’s accepted hours for construction/demolition activities that generate noise are 8am – 6pm Monday – Friday, 8am – 1pm Saturday and no noisy working on a Sunday or Bank Holiday.
- Detail of any planned measures for liaison with the local community and any procedures to deal with any complaints received.
- Details of whether there will be any crushing/screening of materials on site using a mobile crusher/screen and the measures that will be taken to minimise any environmental impact.

The management plan 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(s) 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 residents from the development and to comply with policy C8 of the CofDLP and Part 15 of the NPPF. 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.

13. 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.

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 2007

Statutory, internal and public consultation responses



Application Site



Planning Services

Construction of apartment block comprising 27 No. one and two bedroom apartments

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Comments

Date 10 September 2019