

# COMMITTEE REPORT

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### APPLICATION DETAILS

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<b>APPLICATION No:</b>	DM/20/01124/FPA
<b>FULL APPLICATION DESCRIPTION:</b>	Retention of use of land for 2 car parking spaces.
<b>NAME OF APPLICANT:</b>	3R Ainsley Street Ltd
<b>ADDRESS:</b>	Land To South Of Flass Vale House Ainsley Street Durham DH1 4BJ
<b>ELECTORAL DIVISION:</b>	Neville's Cross
<b>CASE OFFICER:</b>	Lisa Morina Planning Officer Telephone: 03000 264877 <a href="mailto:Lisa.morina@durham.gov.uk">Lisa.morina@durham.gov.uk</a>

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### DESCRIPTION OF THE SITE AND PROPOSALS

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#### The Site

1. The application site is an area of land which is located within Ainsley Street which is within the City Centre and the Durham City Conservation Area. The area of land sits at the edge of a cul-de-sac location.
2. The status of the land is unclear and will be discussed further in the report however, an established historic route exists in this area.

#### The Proposal:

3. Retrospective consent is sought in this instance as the area of land has been altered to provide two parking spaces.
4. Gravel has been used for the surface of the site and a small fence has been erected around the area.
5. The application is referred to the Committee at the request of the City of Durham Parish Council and Councillor Brown given the negative impacts on the conservation area and the impact on a historic route.

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### PLANNING HISTORY

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6. There is no relevant planning history on this site.

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# PLANNING POLICY

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## NATIONAL POLICY

7. The following elements of the National Planning Policy Framework (NPPF) are considered relevant to this proposal:
8. NPPF Part 11 Making Effective Use of Land - Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously-developed or 'brownfield' land.
9. 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.
10. NPPF Part 15 Conserving and Enhancing the Natural Environment - Conserving and enhancing the natural environment. The Planning System should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, geological conservation interests, recognising the wider benefits of ecosystems, minimising the impacts on biodiversity, preventing both new and existing development from contributing to or being put at unacceptable risk from pollution and land stability and remediating contaminated or other degraded land where appropriate.
11. NPPF Part 16 Conserving and Enhancing the Historic Environment - Heritage assets range from sites and buildings of local historic value to those of the highest significance, such as World Heritage Sites which are internationally recognised to be of Outstanding Universal Value. These assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations.

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

## NATIONAL PLANNING PRACTICE GUIDANCE:

12. 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:

### County Durham Plan

13. Policy 21 (Delivering Sustainable Transport) requires all development to deliver sustainable transport by: delivering, accommodating and facilitating investment in sustainable modes of transport; providing appropriate, well designed, permeable and direct routes for all modes of transport; ensuring that any vehicular traffic generated by new development can be safely accommodated; creating new or improvements to existing routes and assessing potential increase in risk resulting from new development in vicinity of level crossings. Development to have regard to Parking and Accessibility Supplementary Planning Document.

14. Policy 22 (Durham City Sustainable Transport) seeks to reduce the dominance of car traffic, address air quality and improve the historic environment within the Durham City area
15. Policy 29 - Sustainable Design requires all development proposals to achieve well designed buildings and places having regard to SPD and sets out 18 elements for development to be considered acceptable, including: positive contribution to areas character, identity etc.;
16. Policy 31 - Amenity and Pollution sets out that development will be permitted where it can be demonstrated that there will be no unacceptable impact, either individually or cumulatively, on health, living or working conditions or the natural environment and that can be integrated effectively with any existing business and community facilities. Development will not be permitted where inappropriate odours, noise, vibration and other sources of pollution cannot be suitably mitigated against, as well as where light pollution is not suitably minimised. Permission will not be granted for locating of sensitive land uses near to potentially polluting development. Similarly, potentially polluting development will not be permitted near sensitive uses unless the effects can be mitigated.
17. Policy 26 – Green Infrastructure sets out that development will be expected to maintain and protect, and where appropriate improve, the county’s green infrastructure network. This will in turn help to protect and enhance the county’s natural capital and ecosystem services. Development proposals should incorporate appropriate Green Infrastructure (GI) that is integrated into the wider network, which maintains and improves biodiversity, landscape character, increases opportunities for healthy living and contributes to healthy ecosystems and climate change objectives.
18. Policy 44 - Historic Environment seeks to ensure that developments should contribute positively to the built and historic environment and seek opportunities to enhance and, where appropriate, better reveal the significance and understanding of heritage assets
19. Policy 45 - Durham Castle and Cathedral World Heritage Site seeks to ensure that developments within the world heritage site sustain and enhance the significance of the designated asset, are based on an understanding of, and will protect and enhance the outstanding universal value of the site in terms in relation to the immediate and wider setting and important view into, and out of the site.

#### **LOCAL NEIGHBOURHOOD PLAN POLICY:**

##### City of Durham Neighbourhood Plan

20. Policy S1: Sustainable Development Requirements of all Development and Re-development Sites Including all New Building, Renovations and Extensions
21. Policy H2: The Conservation Areas states that development proposals within or affecting the setting of the Durham City Conservation Area should sustain and enhance its special interest and significance as identified within the Conservation Area Appraisals.
22. Policy H4: Heritage Assets states that Development proposals affecting heritage assets should demonstrate an understanding of the significance of the asset and give details of how the development proposal will impact on the asset and, where relevant, its setting. Any harm to designated assets should require clear and convincing justification.

23. Policy G1: Protecting and Enhancing Green Infrastructure Protect states development proposals should maximise opportunities to connect to the network of footpaths, public rights of way and bridle paths in Our Neighbourhoods.
24. Policy T1: Sustainable Transport Accessibility and Design states that development proposals will be required to demonstrate best practice in respect of sustainable transport accessibility and design.
25. Policy T2: Residential Car Parking states that Development proposals incorporating or having an impact on car parking will be supported if they comply with relevant criteria.

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

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## **CONSULTATION AND PUBLICITY RESPONSES**

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### **STATUTORY RESPONSES:**

26. Highways – No objection
27. Northumbrian Water – No comments to make

### **INTERNAL CONSULTEE RESPONSES:**

28. Design and Conservation – The proposal would have a neutral impact.
29. Public Rights Of Way – Objects to the proposal.

### **PUBLIC RESPONSES:**

30. The application has been advertised by means of site notice, press notice and by notifying neighbouring residents by letter. To date, 13 letters of objection have been received including objections from the City of Durham Parish Council and a ward Councillor for the area. The following comments have been received:
  - Degradation/Destruction of a historic route-
  - Choice of materials
  - The Durham Conservation Area Appraisal talks at length about appropriate materials and the importance of retaining trees and vegetation and providing appropriate planting. None of these have been included.
  - Contrary to the Conservation Appraisal
  - Impact on listed buildings.
  - Impact on the Conservation Area
  - The developers do not own the site and have no right to the land.
  - It appears that at least half of the already established car park is within the curtilage of the DMA estate and no contact with the DMA has been sought and therefore has been illegally sequestered.
  - The pathway along the curtilage of the estate forms a wayleave to DMA property from Flass Vale and the adjoining streets. It is also an access to the Flass Well which, sited on DMA land, is one of the seven Holy wells of Durham City. Any obstruction to these routes and destinations should be carefully considered.
  - The DMA would be grateful if planning permission was refused for this car park.

- The existing public footpath has been narrowed and diverted by the parking bays: it now looks crooked.
- Use of such a historic route is a way of enjoying and connecting with the history of the area. The parking bays impinge upon this enjoyment.
- Two new local sources of pollution will be introduced.
- In their original planning permission the developers themselves accepted only 10 parking spaces were necessary, on grounds of environmental sustainability.
- Reducing carbon emissions is more important than ever. Two additional parking bays are therefore inconsistent.
- The community already had a plan to improve the amenity and biodiversity of the land, and to restore the nearby well which had agreement from PROW team this should be prioritised over the application.
- Contrary to the Heritage Statement submitted by the applicant the appearance of the two parking bays is in fact quite striking, and they do impact on the surroundings, including on views to and from the adjacent listed Miners' Hall.
- Plans to better manage the woodland around the Hall will in time probably increase the visibility of the area on which the parking bays currently sit.
- The Parking bays would destroy this section of the historic route.
- The Parking bays block access via Flass Lane necessary for the tree work planned as part of the restoration and for the repair and maintenance of Flass Well.
- The construction of the parking bays shows a cynical disregard for the expressed concerns of local people regarding the history of their area and their desire for improvements
- The process by which developers have built on this land - first to accommodate a skip and then to claim retention of land so as to construct the parking bays, and only then seeking Planning permission manipulates the Planning Procedure.
- The proposal is in direct contravention of City of Durham Saved Policy T21 which says that the Council will seek to safeguard the needs of walkers by ensuring that existing footpaths and public rights of way are protected...
- This policy has its equivalent in the new County Durham Plan - Policy 27 therefore, protecting the public right of way.
- The site is a public highway and remains that to this day.
- An application under S247 of the Town and County Planning Act to stop up the highway will be necessary, and this has not been lodged as far as we know;
- Any such application will be resisted
- The remaining width is not adequate for pedestrians; and the full width of the highway is needed for maintenance vehicles.
- Given climate change, air pollution and DCCs hope to be carbon neutral by 2050 surely it would be folly to encourage more cars onto Durham's roads.
- According to some authorities this land is part of the Neville's Cross Battlefield site and would thus be protected by Saved Policy E25.
- Impact on listed building.
- County Council management of the maintenance of the steep steps from Flass Lane up to Red Hills as part of the continuation of the right of way. This path is used regularly by school children as part of their physical education.
- Maintenance of the main drain which runs the length of Flass Lane (under the parking bays)

- Maintenance of the properties abutting Flass Lane object to these bays on health and safety grounds. If the developer wishes to put in extra parking (although that in itself is contentious) the materials used should be in keeping with the surroundings. The back streets in this area originally had a surface of granite cobs or stone cobbles (not block paving). The incongruous fencing which impedes the passage of residents using the footpath should be removed and any policing to ensure that only residents use the parking area and do not block access for pedestrians should take place via a parking enforcement firm.
- The development is inappropriate intrusion into the conservation area
- It is not clear how, given that the applicant does not own the land, they persuaded the developer of the Village@The Viaduct to pay them for the use of the land.
- The character of the Conservation Area was impacted by the unauthorised use of the highway, to such an extent that the Crossgate Community Partnership complained to the Highways Authority and secured the removal of the container. It would be a retrograde step to authorise this continued blight
- The developers state that they have taken all steps to find the owner however, they have not approached anyone within the nearby vicinity.
- The proposal is a badly thought out and designed application which adds nothing to this part of the City and should therefore be refused

#### **APPLICANT'S STATEMENT:**

31. The application seeks retrospective approval for two car parking spaces on land previously used by the applicant and their predecessor in title to the adjacent land and building now known as Flass Vale House.
32. Documentary evidence for the beneficial use of the land as vehicle parking and 'portakabin type' accommodation dating back to 2002 is provided in the Heritage Statement including an existing dropped kerb that provided vehicle access on to the site however the title of the land is unregistered.
33. The applicant completed Certificate D, as required by the T&CP (Development Management Procedure) (England) Order 2015 and the application was advertised in the Northern Echo. In response to the advert the applicant received a letter and supporting documents from the Clerk to City of Durham Parish Council suggesting the site was part of a highway in the ownership of the highways authority, Durham County Council.
34. The evidence was presented to the applicant's solicitor who found the Council's records do not show the area in question to form part of the adopted highway and although the land may have historically belonged to the Surveyors of Highways for the Township of Crossgate and the Mayor Aldermen and Citizens of the City of Durham the evidence was not sufficient to establish actual legal ownership of the land.
35. Consultee comments from the Public Rights Of Way officer confirmed that there was no public right of way along the route nor was it shown as part of the adopted highway. The PROW Officer did however consider the land to be part of the highway and required a stopping up order under the Highways Act 1980.
36. The applicant took the advice of a planning barrister who found that the Council had not discharged the burden on them of establishing that the site is highway land and this was not a justifiable reason to refuse permission. The barrister's Opinion was forwarded to the Case Officer for consideration.

37. The existing unmaintained path that extends from Ainsley Street to Flass Street (via steps) and provides access to Mowbray Street (again via steps) is a well-trodden path through an area overgrown with trees and vegetation and is not diverted by the application. The route, which has been formed by years of pedestrian use, is unaffected although the applicant did provide some woodland bark to improve the muddy section alongside the car spaces.
38. The two car spaces have been formed in a method that protects the surrounding tree roots and improves the appearance of an area that had been used by the applicant for many years and by others for fly-parking.

*The above is not intended to list every point made and 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 <https://publicaccess.durham.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=P8X9C0GDL8J00>*

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## **PLANNING CONSIDERATIONS AND ASSESSMENT**

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39. 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 impact on the visual amenity of the area including the conservation area in which the property is located, residential amenity issues, PROW/highways issues as well as any other issues.

Visual impact of the development on the conservation area/surrounding listed buildings

40. The area of land in question is an area of open space located within the Durham City Conservation Area which is also in close proximity to some listed buildings and non designated heritage assets and would be clearly visible to the main public domain.
41. The National Planning Policy Framework in Part 16 requires that the impact of the development is considered against the significance of the Heritage Asset which in this case is Durham City Conservation Area. Part 12 of the NPPF deals with good design generally advising that it is a key aspect of sustainable development, indivisible from good planning that can lead to making places better for people.
42. At a local level Policy 29, 44 and 45 of the County Durham Plan are also considered to be relevant. These policies state that proposals should achieve high quality sustainable development, which is respectful of historic interest, local distinctiveness and the conservation or enhancement of the asset and achieve well designed buildings and places.
43. The aforementioned policies and guidance require the local planning authority to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area and this would be entirely in accordance with section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
44. Objections have been raised that the proposal would have a detrimental impact on the conservation area and surrounding listed buildings being contrary to the conservation area appraisal and having an unacceptable impact given the choice of materials used.

45. With respect to the impact on the conservation area/streetscene. The route along Flass Lane has not been impeded as the parking spaces are passable with the lane still completely walkable. The development has not altered the historic course of the lane or its plan form and therefore, it is not considered that this proposal has harmed its heritage significance in this respect.
46. The work carried out has however, changed the lands appearance, but it would be considered that it is not so visually detrimental in its surroundings with residential development and the rear brick walls and close boarded timber fencing of the properties at Mowbray Street to the east, and the dense tree cover and vegetation on its west side. The use of cellular loose gravel and a low timber enclosure do not look so incongruous and have not fundamentally changed the lanes character as a whole nor harmfully impact upon the lanes intangible qualities. It is considered that the use of gravel is considered more appropriate in terms of the appearance of the area than tarmac or other more formal surfacing.
47. From within most of the lane only a very small part of the development can be seen, the rest being hidden by the trees and vegetation, and what is visible is not incongruous. The same is said from the highest point within the lane at the top of the steps leading to Flass Street, the development being recessive and not considered harmful in the background.
48. In wider terms, the car parking spaces only directly impact within two public viewpoints, these being the approach around the corner from Ainsley Street to Flass Lane and from the footpath opposite leading to Flass Vale. In these views, the proposal is not considered to be visually harmful.
49. They are only partially seen in the background from the junction at Waddington Street and from here are visually recessive in the background. They are fully concealed in views from the public realm around the adjacent terraces at Mowbray Street and Flass Street, and from around areas such as the Dunelm House, The Bowers, Kingsgate Lodge and County Hospital Site. In the middle and wider context of the townscape the development has no visual influence.
50. Overall, the development has changed the appearance of the site but the resulting impact on the designated heritage asset of Durham City Centre Conservation Area as a whole is negligible and not considered harmful and therefore preserves the setting and character of the area. The proposal is considered acceptable in respect of Policy 44 of the County Durham Plan.
51. Turning to the impact on nearby listed buildings and non designated heritage assets. Within the lane is Fram Well, a non-designated heritage asset identifiable on the c.1860 OS map, one of a series of surviving historic wells/springs within the city centre. By proximity the development falls within the physical surroundings informing the heritage assets setting. Due to the narrowness and enclosed nature within the lane, and the intervening trees and vegetation, along with some variation in terms of the route of the path, there is no direct intervisibility between the heritage asset and the development. In fact, the well is so overgrown it is difficult to find. The heritage asset, and the public experience of it, reads very much within the confined context of the historic lane itself in which the development causes no harm.



52. The development sits on the edge of the grounds of the grade II listed Red Hills Miners Hall, and therefore forms part of the physical surroundings of the designated heritage asset. In views from the end of Ainsley Street looking across the development towards the heritage asset, it features in an unplanned view where the Hall cannot be seen. This is due to the relevant positions in relation to geography, and the density of the trees and vegetation. Only part of the side elevation of the Hall is visible, filtered between the trees and vegetation, from further within the lane at which point the development is behind the viewer. As such the site does not have a strong relationship with the heritage asset, and prior to the car parking spaces being created was not a site of intentional intervisibility or a particularly positive contributor to the heritage assets setting.
53. By far the best place to experience and understand the heritage values of the heritage asset is from the entrance to the Miners Hall at the end of Flass Street and from within the front part of the grounds. Here the Halls special historic and architectural merits are on full display, and it is seen commanding in its spacious landscape grounds and seen in relation to the associated grade II listed statues. In this context the development has no intervisibility.
54. Within 400-500meters of the site are several other listed buildings such as The Railway Viaduct (grade II\*), Durham Railway Station (grade II), North Road Methodist Church (grade II), Coalpitts Terrace (grade II), and the Battery at Wharton Park (grade II) etc. There is no intervisibility between the development and such heritage assets due to the distance between them, the intervening topography, street pattern, existing built development, and tree coverage.
55. The site is within the townscape that forms the inner setting of Durham Cathedral and Castle World Heritage Site. In view of the sites secluded back land position, where it is completely enclosed and shielded in the wider townscape by geography, trees and existing built development, the development has caused no adverse effects in the context of the World Heritage Site and does not harm its setting/views or any of its outstanding universal values.
56. Overall it is considered that the impact on the setting of both non designated heritage assets and designated heritage assets would be considered either nil or neutral and the proposal therefore, is considered acceptable in respect of policy 45 of the County Durham Plan. It is also considered to preserve the character and appearance of the Conservation Area, in accordance with the requirements of Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

#### Residential amenity

57. Policy 31 of the CDP states that development will be permitted where it can be demonstrated that there will be no unacceptable impact, either individually or cumulatively, on health, living or working conditions or the natural environment and that can be integrated effectively with any existing business and community facilities.
58. The proposal given its position and nature as parking spaces would not result in a detrimental impact in respect of neighbouring properties, and while views would be visible of the proposal from surrounding neighbours windows, it is not considered that any significant loss of amenity would occur.
59. The proposal therefore is considered to have an acceptable impact on surrounding properties in accordance with policy 31 of the County Durham Plan.

## Highway/PROW issues:

60. Policy 21 and 22 of the CDP relate to providing sustainable transport in which the council is committed to delivering a high quality integrated and sustainable transport network which supports our aspirations for a strong economy, a vibrant tourism offer and improved quality of life for all of our residents, including reducing air pollution and emissions of CO<sub>2</sub>. In particular in Durham City, it looks to support sustainable networks.
61. Objections have been raised that the proposal would not be a sustainable option and that it would result in increased levels of CO<sub>2</sub>. In addition to this, that the developer also accepted the reduced number of parking spaces as part of the previous application for the dwellings.
62. The development site is in a highly sustainable location with good access to public transport and within walking distance of local amenities. The proposal creates two additional parking spaces which would be read in conjunction with a nearby development site for residential development and provides additional parking.
63. No objection has been raised from a highways viewpoint to the proposal, whilst policy 21 and 22 of the CDP seeks to provide alternative forms of transport, it is considered that the addition of two parking spaces would not have a significant detrimental impact on the aims and objectives of these policies. It does not result in the loss of existing sustainable options and provides limited additional traffic in respect of two parking spaces. The proposal is therefore considered acceptable from a highway's viewpoint.
64. In respect of PROW issues. Objections have been received that the proposal would have a detrimental impact on a historic route including some loss to this and that the proposal would result in the stopping up of a public highway and should not be supported.
65. Policy 26 of the County Durham Plan states that development will be expected to maintain or improve the permeability of the built environment and access to the countryside for pedestrians, cyclists and horse riders. Proposals that would result in the loss of, or deterioration in the quality of, existing Public Rights of Way (PROWs) will not be permitted unless equivalent alternative provision of a suitable standard is made.
66. The Public Rights of Way team have commented and states that there is no recorded public right of way along this route nor is it shown as part of the adopted highway network. However, it is established that this area does provide an historic route. They provide further comment regarding historic documents which have been provided from objectors as well as information they have also established.
67. The history of Ainsley Street in terms of its status as highway is complicated. It does appear that a length of Ainsley Street was stopped up in 1854 and again in 1912 (although the part over which the parking spaces have been constructed was not stopped up in 1912). It is therefore unclear why there are two stopping ups however, lack of documentation makes it very difficult, if not impossible, to establish what happened between 1854 and 1912. Equally, it may be reasonable to conclude that public rights will have been acquired through long use (Highways Act 1980 Section 31) over this 166 year period since the stopping up in 1854 which would mean that Ainsley St has highway rights over it and a status which is unrecorded.

68. In summary, the public rights of way team consider that highway rights are likely to exist over all of Ainsley St in one form or another although as the evidence is currently insufficient to positively assert that it is highway, the status is unclear. Furthermore, the applicant has provided a surfaced 1.4m wide path alongside two fenced off parking bays as part of this retrospective application on land which they believe to have highway rights but with status currently unclear. Nevertheless, the proposal cannot be supported and the development should be removed.
69. Further legal advice was taken and it was eventually established that there is currently insufficient evidence, at this stage, to accurately determine the extent, width or status of highway at Ainsley Street. There is strong circumstantial evidence of public highway status however the public rights of way team are not in a position to assert the status of the application site as highway at this time.
70. The PROW team will carry out further research into the status of Ainsley Street particularly in light of the 1st January 2026 cut off for Definitive Map Modification Order. Investigations based on historical evidence will be carried out but unfortunately this research is not likely to take place in the short-term and it is also possible that the public may present them with evidence of use under Section 31 of the Highways Act 1980 or further historic documentary evidence. If pertinent evidence of public highway status is uncovered, then they may return to further request a stopping up order or seek removal of the parking bays through enforcement action however at present are unable to do so.
71. Officers have taken their own Legal advice and this is considered an unusual situation in that there is strong circumstantial evidence that the land is highway, however, the strict legal position is that the Council don't have enough evidence to prove it at the moment. Further evidence may or may not be forthcoming in the future. Therefore, any development will be at the developer's risk in that regard.
72. Essentially the onus is on the Council to discharge the burden of proof upon us to demonstrate that it is highway land and we are unable to do this. Therefore, whilst there is a question mark as to the status of the land, it is not for the planning system to resolve that and a refusal of the application cannot be sustained on this basis.
73. There is a process outside of the planning system for resolving that with the Highway Authority if they are able to do so, just as in the same way that if the land was very definitely highway, that would not prevent planning permission being granted, it just means that the developer would need to go through another process (stopping up) before he could implement it.
74. On balance, it is therefore considered that very little weight can be given to the disputed highway status of the site. In addition to this, the loss of any public access to the site must be given very limited weight because highway status has not been established and there will still be provision for pedestrian access as the whole of the route has not been lost.

#### Other Issues

75. Issues have been raised regarding the ownership of the site and prior situations that have been carried out which have resulted in land grabbing in respect of the placement of a container that was eventually removed by the Council, and this was underhand. Concerns have also been raised that the proposal has been carried out on land owned by other people and access to land is restricted and is on a retrospective basis.

76. The applicants have served the required notice as part of the application process as they were unable to identify who the owner is and also a land registry search has been carried out by officers. The land is classed as unregistered however the ownership of the land again is not a material planning consideration and therefore, a refusal reason cannot be sustained in this instance. Concern regarding whether the proposal would encroach onto other land would be a Civil issue however, as part of the planning application, the applicant has shown they have taken the relevant steps by serving a notice in the press. In addition to this no evidence has been provided to show that the proposal is on land owned by any other person.

77. The way in which this process of obtaining possession of the land has been carried out is also not a material planning consideration and cannot affect the determination of the planning application. Equally, whilst the application is put forward on a retrospective basis, this is not a reason in itself for refusal. The legislation provides for such retrospective applications to be made and it is of note that the Council would always seek the submission of an application to try and regularise a proposal which is considered acceptable in planning terms, prior to taking any enforcement action. Whilst there may be no known owner, the applicants would have to ensure that all relevant legal obligations were met.

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## **CONCLUSION**

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78. The impact upon the visual amenity of the area including the conservation area and heritage assets as well as the impact on residential amenity is considered to be acceptable.

79. The application is considered to meet the requirements of the National Planning Policy Framework and Policies 21, 22, 29, 31, 44 and 45 of the County Durham Plan, as well as satisfying the requirements of Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as it is considered to preserve the character and appearance of the Conservation Area.

80. The objections and concerns raised have been taken into account and addressed within the report. On balance the concerns raised were not felt to be of sufficient weight to justify refusal of this application.

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## **RECOMMENDATION**

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

1. As approval is being sought on a retrospective basis, no conditions are required in this instance albeit subject to the statutory requirement that development must be begun no later than three years from the grant of planning permission.

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## **STATEMENT OF PROACTIVE ENGAGEMENT**

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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.)

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## **BACKGROUND PAPERS**

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

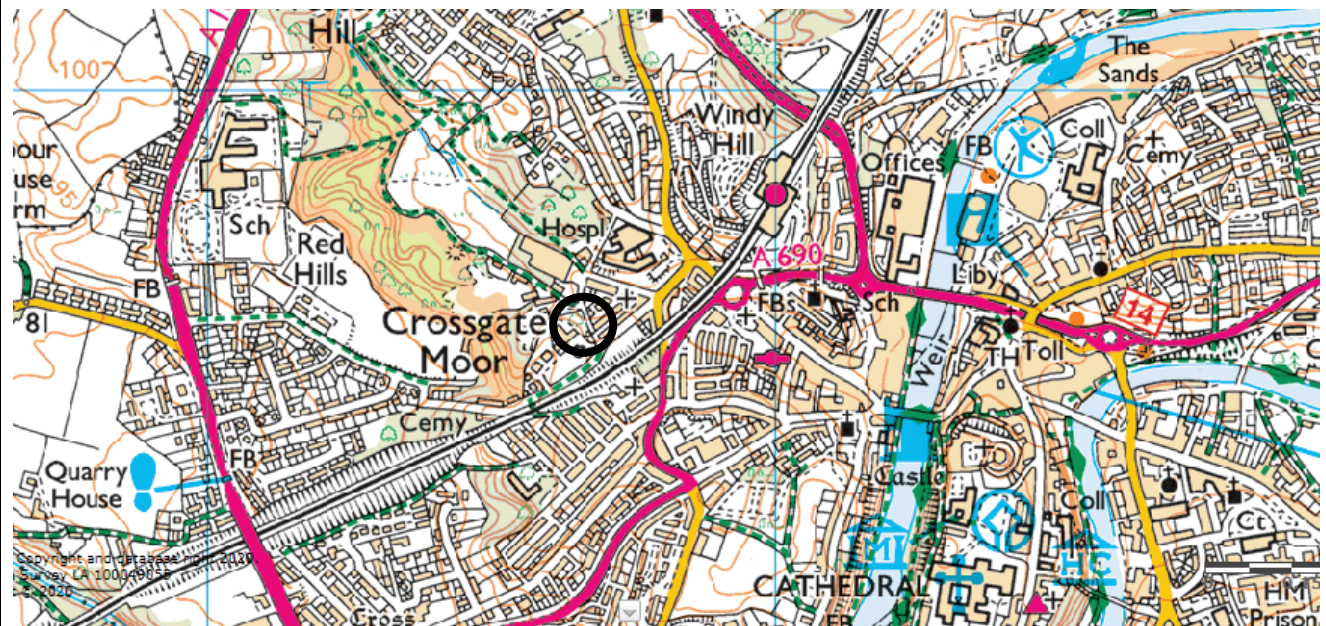
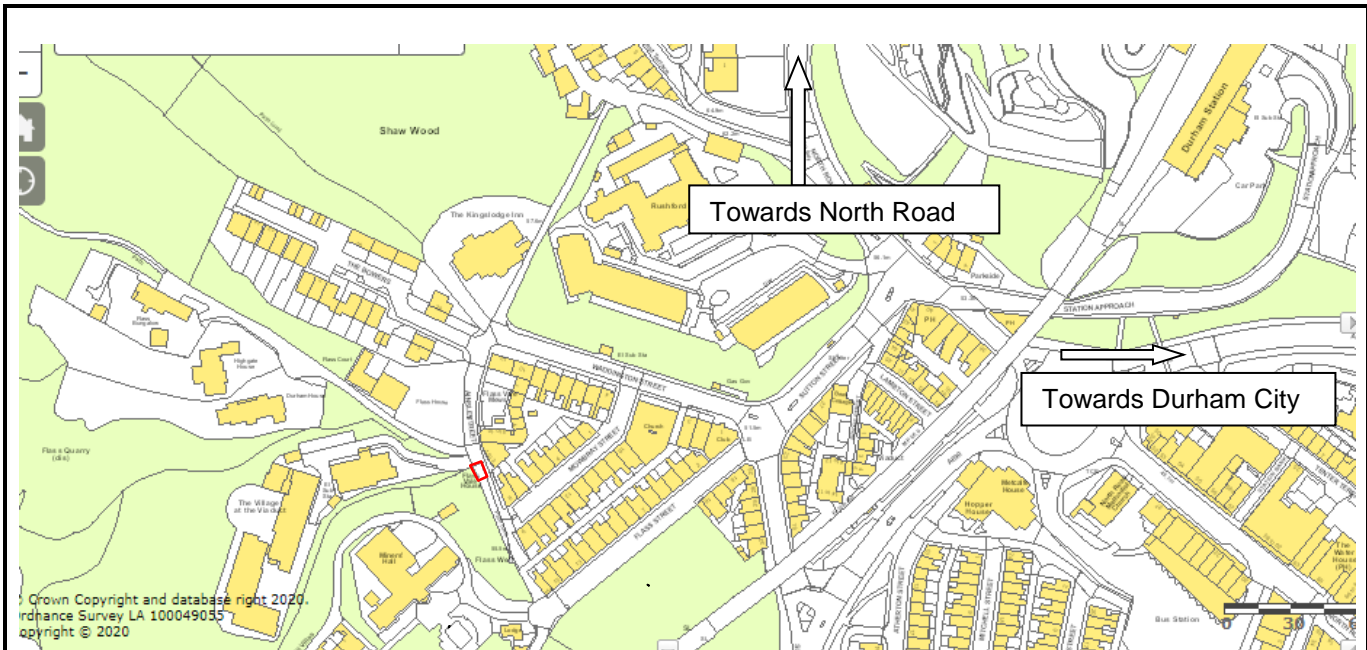
The National Planning Policy Framework (2018)

National Planning Practice Guidance Notes

County Durham Plan

Durham City Neighbourhood Plan

Statutory, internal and public consultation responses



**Planning Services**

Retention of use of land for 2 car parking spaces at Land To South Of Flass Vale House, Ainsley Street Durham DH1 4BJ  
Application Reference DM/20/01124/FPA

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**Date** November 2020

**Scale** NTS