



## Planning Services

# COMMITTEE REPORT

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### **APPLICATION DETAILS**

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| Application No:               | DM/21/01351/FPA   |
| Full Application Description: | Restore land to agricultural by removal of old house foundation, planting, hard standing and temporary demountable pens |
| Name of Applicant:            | Mr Paul Carter  |
| Address:                      | Land To The South Of Bradyll Street,<br>Kelloe, DH6 4PL   |
| Electoral Division:           | Coxhoe  |
| Case Officer:                 | George Spurgeon (Planning Officer)<br>Tel: 03000 261 959<br>Email: george.spurgeon@durham.gov.uk                        |

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### **DESCRIPTION OF THE SITE AND PROPOSAL**

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#### The Site

1. The application site relates to an area of brownfield land located on the former East Hetton Pit Village to the south east of the settlement of Kelloe. The site was previously occupied by residential housing, although this is understood to have been subsequently cleared as part of a housing regeneration scheme in the 1950's. Since this time the site has naturally revegetated, becoming reabsorbed into the countryside, and until recently hosted various scrub vegetation and some self-seeded trees/bushes. However, the land has been cleared of all naturally regenerated vegetation and levels modified to create three plateaus across the site. The site is bounded to the north, south and east by open space and to the west by agricultural fields and buildings that are currently used by the applicant. At further distance to the south the site is framed by Raisby Quarry.
2. Land immediately to the west of the site was granted planning permission in 2014 for reclamation works involving the removal of the remains of foundations from previous terraced housing and the importation of topsoil to facilitate an agricultural use. This permission included the erection of an agricultural building

and the temporary provision of steel storage containers at the site which have since been removed as required through planning condition. Works relating to that permission are now understood to be nearing completion, although the Council is currently investigating an alleged breach of planning control relating to the unauthorised use of the agricultural building for the operation of a paving stone business.

## The Proposal

3. Planning permission is sought for earthworks comprising the removal of remaining foundations and the importation of top and subsoil to facilitate an agricultural use across the site. The application is part retrospective as the land levels have already been modified to create three plateaus across the site, of which the northern and southern most areas would be used for grazing with the central area providing a level hardstanding finished in tarmac road plainings. The area of hardstanding was initially proposed to be 350m<sup>2</sup> but has since been reduced to 175m<sup>2</sup>, covering the lower northern section of the middle plateau. The application also refers to the use of temporary demountable pens to allow the treating and worming of goats, but as these would be temporary structures that would be regularly removed when not in use, they are not considered to constitute development, are not subject to planning control and as such do not form part of the current application.
4. The site is approximately 0.9 hectares in area and occupies a linear, north south layout and is 40 metres in width with a length of around 187 metres. Works proposed include the removal of old foundations which remain from the previous use as housing, and the importation of top and subsoils to fill the resulting void. The applicant has cited an intention to expand the existing agricultural use across the current application site should planning permission be granted and this would translate to an additional 20 goats.
5. The application is reported to the Planning Committee at the request of Councillor McKeon who considers that the application should be considered by planning committee due to concerns over the impact on highway safety and residential amenity.

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## **PLANNING HISTORY**

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DM/14/02796/FPA - Earthworks including infilling and levelling (part retrospective) to facilitate use of land for agriculture, erection of a general purpose agricultural building, timber screen fencing, temporary siting of 2 No. storage containers and retention of 1 No. caravan to provide site facilities (non-residential). Approved 11<sup>th</sup> December 2014

DM/16/01878/VOC - Application to vary condition 3 of Planning Permission DM/14/02796/FPA to allow an extended period for the removal of 2 No. storage containers. Approved 4<sup>th</sup> August 2016

EN/17/01038 - Unauthorised operation of a paving stone business within agricultural building and residential occupation of a static caravan. Pending consideration

EN/18/00277 (Operational development) – Unloading / deposition of materials. Case closed, no breach.

EN/18/00270 (Deposit of waste)– Unloading / deposition of materials. Notice issued

EN/19/00718 - Alleged unauthorised importation of soils to the site and extraction and export of aggregate mineral from the site. Pending consideration

EN/20/01242 - Complaint against the site subject to DM/20/02429/FPA (consisting of the modification of land levels to create three plateaus across the site). Pending consideration

DM/20/02429/FPA - Proposed excavation & regrading of existing ground & new lambing & stable block. Refused 12<sup>th</sup> March 2021

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## **PLANNING POLICY**

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### **National Policy**

6. 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.
7. 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;
8. *NPPF Part 4 - Decision-making.* Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.
9. *NPPF Part 6 Building a Strong, Competitive Economy:* The Government is committed to securing economic growth in order to create jobs and prosperity, building on the country's inherent strengths, and to meeting the twin challenges of global competition and a low carbon future.
10. *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.

11. *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.
12. *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.

### **Local Plan Policy:**

13. The following policies of the County Durham Plan are considered relevant to the determination of this application.
14. *Policy 10 Development in the Countryside* will not be permitted unless allowed for by specific policies in the Plan or Neighbourhood Plan or unless it relates to exceptions for development necessary to support economic development and infrastructure development such as: agricultural or rural land based enterprise; undertaking of non-commercial agricultural activity adjacent to applicant's residential curtilage; essential infrastructure, provision or enhancement of community facilities or other countryside based recreation or leisure activity. All development to be of design and scale suitable to intended use.
15. *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.
16. *Policy 26 Green Infrastructure* sets out 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.
17. *Policy 29 Sustainable Design* details general design principles for all development stating that new development should contribute positively to an

areas' character, identity, heritage significance, townscape and landscape features, helping to create and reinforce locally distinctive and sustainable communities.

18. *Policy 31 Amenity and Pollution* states that new 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 should be integrated effectively with any existing business and community facilities.
19. *Policy 32 Despoiled, Degraded, Derelict, Contaminated and Unstable Land* states [in part] that development will not be permitted unless the developer can demonstrate that the site is suitable for the proposed use, and does not result in unacceptable risks which would adversely impact on the environment, human health and the amenity of local communities.
20. *Policy 35 Water Management* requires all development proposals to consider its effect on flood risk, both on-site and off-site, commensurate with the scale and impact of the development, taking into account the predicted impacts of climate change for the lifetime of the proposal.
21. *Policy 39 Landscape* advises that proposals for new development will not be permitted that would result in the loss of, or damage to, trees, hedges or woodland of high landscape, amenity or biodiversity value unless the benefits of the scheme clearly outweigh the harm. Proposals for new development will be expected to retain existing trees and hedges or provide suitable replacement planting. The loss or deterioration of ancient woodland will require wholly exceptional reasons and appropriate compensation.
22. *Policy 41 Biodiversity and Geodiversity* restricts development that would result in significant harm to biodiversity or geodiversity and cannot be mitigated or compensated. The retention and enhancement of existing biodiversity assets and features is required as are biodiversity net gains. Proposals must protect geological features, have regard to Geodiversity Action Plans and the Durham Geodiversity Audit and where appropriate promote public access, appreciation and interpretation of geodiversity. Development proposals where the primary objective is to conserve or enhance biodiversity or geodiversity will be permitted if they comply with other local plan policy. Development proposals which are likely to result in the loss or deterioration of irreplaceable habitats will not be permitted unless there are wholly exceptional reasons and a suitable compensation strategy exists.

### **Neighbourhood Plan:**

23. The application site is not located within an area where there is a Neighbourhood Plan to which regard is to be had.

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## **CONSULTATION AND PUBLICITY RESPONSES**

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### **Statutory Consultee Responses:**

24. *The Coal Authority*: confirm that the application site falls within the defined Development High Risk Area; therefore within the application site and surrounding area there are coal mining features and hazards which need to be considered in relation to the determination of this planning application. The Coal Authority records indicate that fissures, associated with past coal mining activity, are present on the site. Where fissures are present, they pose a potential risk to surface stability and users of the site. They request a pre commencement condition requiring a scheme of intrusive site investigations and remedial work as a consequence.

### **Internal Consultee Responses:**

25. *Highways*: offers no objections to the application.

26. *Landscape*: notes that the site is in a prominent elevated location, visible in numerous distant viewpoints in and around Kelloe across the valley to the north and in closer views from the PROW's which surround the site.

27. *Nuisance Action*: offers no objections to the application.

28. *Contaminated Land*: recommend a suitably worded informative in relation to unforeseen contamination.

29. *Public Rights of Way*: notes that a 2m wide strip for Kelloe Footpath 13 has been accounted for in the proposed site plan and that a small section of Kelloe Footpath 14 is within the red line boundary but not shown on the originally submitted proposed site plan. Offers no objections to amended proposed site plan showing the location of Footpath 14. Offers no objections to the application subject to these paths not being blocked by any building, barriers, building material, waste or fencing either for the duration of any works or once works are complete, any works carried out that impact or damage the surface of the footpath must be made good, and the safety of members of the public using the right of way being ensured at all times.

### **Public Responses:**

30. The application has been publicised by way of a site notice. No objections have been received.

### **Applicants Statement:**

31. The applicant requires to reclaim this land back from derelict street foundations to agriculture as well as restoring the derelict land left by the quarry when it ceased to use it and sold it off.

32. He currently rears goats, from which he sells the young stock fattened for meat. He also buys in lambs to finish and has grazing land in Weardale where he runs a small breeding flock of sheep, again fattening lambs for the meat trade, so this land will give him more pasture to finish his livestock on.

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## **PLANNING CONSIDERATION AND ASSESSMENT**

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33. 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, residential amenity, the impact on the character and appearance of the area and highway safety.

### Principle of Development

34. Policy 10(a) states that new development in the countryside will not be permitted unless allowed for by specific policies in the Plan or where the proposal meets other specific exceptions. These include, but are not limited to, instances where the development is necessary to support an existing agricultural or other existing rural land-based enterprise, including the provision of new hard surfaces required for the functioning of the enterprise.

35. As already noted the applicant has an interest in adjacent land for which planning permission was granted in 2014 for infilling and levelling works to facilitate its use for agriculture which also included the erection of an agricultural building that is now in situ. However, the Council has since established through investigation of enforcement complaints that this building is not currently solely in agricultural use and is being used for the manufacture of concrete paving. This amounts to a material change in use of the building for which planning permission is required and as such is presently unauthorised.

36. It appears that the applicant's existing agricultural enterprise is limited, particularly when compared to the aspirations as detailed in the 2014 planning application. At that time the intention was that the enterprise would comprise 100 hens, sheep, grazing horses and some arable activity. However, information submitted in support of the current planning application confirms the extent of the existing enterprise as being limited to 14 goats, 7 geese and 30 hens. The extent to which the proposed development is required to support the existing enterprise is therefore questionable noting that the site was considered of sufficient area to accommodate a more intense use with a greater number of livestock than current occupy the site. For example, three times fewer hens are presently reared at the site, and no sheep or horses appear to be included in the current livestock numbers. In response to this, the applicant

has explained that much of the grass seed planted on the back of the 2014 planning application had not taken due to poor weather conditions and as such it is not yet suitable for grazing, and this is the principal reason for the delay in building up livestock numbers, rather than the use being fundamentally unviable/unsuccessful. Taking this into account, it would appear that the additional land and hardstanding could reasonably be considered as being required for the functioning of the enterprise in accordance with Policy 10 a) of the County Durham Plan.

37. In addition, the removal of foundations associated with the former residential housing site to allow the land to be restored to its former agricultural use would provide some benefit both in terms visual amenity and through the introduction of a rural business. This would consist of the removal and replacement of soil and the planting of vegetation to create new areas for grazing and wildflower meadows. The land currently consists of mostly unvegetated earth and the creation of a new large grazing area and wildflower meadow is considered to have a positive impact on the character and appearance of the area, reverting the land back to its former agricultural use and providing some net biodiversity gain. This positive contribution is considered to be a material planning consideration in the determination of this application that should be weighed in favour of the application.
38. In terms of the area of hardstanding, the application initially proposed the creation of a 350m<sup>2</sup> area of hardstanding which is required to enable the storage of approximately 125 hay bales (approximately 125m<sup>2</sup>), three tipping trailers that are presently stored further up the application site (60m<sup>2</sup>), and a small muck heap (approximately 30m<sup>2</sup>). The hay bales are stated to be required to feed the applicants goats and the tipping trailers are stated to be used to transport farm materials around the site. The hardstanding would provide some functional benefits in relation to the storage of these items: it would help to protect the hay bales from ground moisture; it would prevent the ground from being churned up by the trailers; and it would allow easier maintenance and cleaning of the muck heap. In addition, the hardstanding would allow the storage of these items in one place rather than spread across the site as is presently the case.
39. The amount of storage space required for these items was initially noted as being less than the 350m<sup>2</sup> proposed in the application particularly noting the amount of space required to store the hay bales could be reduced by stacking them. Furthermore, it was noted that the applicant already has an agricultural building that was granted planning permission in 2014, which has a floor area of 74.2m<sup>2</sup> and a cubic content of 285m<sup>3</sup>. It was considered that this building could accommodate many of the items intended to be stored on the area of hardstanding and so a 350m<sup>2</sup> area was not required for the functioning of the enterprise itself. In this regard, it is of note that the existing building is not currently used for agriculture. Therefore, any requirement to provide shelter for existing/proposed animals, or for the storage of feed and hay could be met by the existing building, as was intended as part of the previous planning application.

40. In light of the above, the amount of hardstanding proposed was considered to be more substantial than was required to meet the needs of the agricultural enterprise, although it is accepted that some area of hardstanding would be required for the trailers, muck heap and any hay bales that could not be accommodated by the existing building. The applicant was therefore invited to explore a reduction in the size of the area of hardstanding and an amended plan was submitted showing this to be half that initially proposed and limited to the lower northern part of the middle plateau. Given the above justification regarding the need for the items and their storage, this smaller area of hardstanding (which now measures approximately 160m<sup>2</sup> in area) is considered to be reasonably required for the functioning of the agricultural enterprise, and so the principle of the hardstanding broadly accords with CDP Policy 10(a). However, policy 10 also requires in all instances that the resulting development must be of a design, construction and scale which is suitable for and commensurate to the intended use and in this regard the impact of the hardstanding on the character and appearance of the area will be discussed below.

#### Landscape and Visual Impact

41. The application site is located on land to the south east of Kelloe in what is a prominent and elevated position visible in numerous distant viewpoints in and around Kelloe across the valley, and in closer views from the PROWs that surround the site.

42. As already noted, CDP Policy 10 lists exceptions where new development within the countryside can be supported. Criteria (o) of Policy 10 states that new development in the countryside must accord with all other relevant development plan policies and by virtue of their siting, scale, design and operation must not impact adversely upon the setting, townscape qualities, including important vistas, or form of a settlement which cannot be adequately mitigated against. In addition, Policy 39 of the CDP is relevant and states that proposal for new development will be permitted where they would not cause unacceptable harm to the character, quality or distinctiveness of the landscape, or to important features or views and will be expected to incorporate appropriate measures to mitigate adverse landscape and visual effects. Both approaches are considered to display a broad level of accord with the aims of Paragraph 127 of the NPPF which requires planning decisions to ensure that developments are visually attractive as a result of good architecture, layout and appropriate and effective landscaping.

43. The Council's Landscape Section has commented on the proposal and note that whilst the site is a brownfield site located on the former East Hetton Pit Village, it has been reabsorbed into the surrounding countryside over time despite works having commenced to clear the area of all naturally regenerated vegetation. Whilst the site is seen across the valley and in the context of other freestanding, industrial and residential buildings and other structures which collectively detract from the visual aesthetics of the landscape, the proposed area of hardstanding would inevitably be used as a storage area, adding to this visual clutter.

44. However, Landscape Officers indicated that if the proposal is considered to be acceptable in principle, then appropriate measures to mitigate adverse landscape and visual effects of the hardstanding would be expected, in line with CDP Policy 39. Therefore, native tree and hedgerow planting will be required around the hardstanding area, particularly to the north, to help assimilate the proposals into the surrounding countryside and screen associated visual clutter. As discussed above, the smaller section of hardstanding is considered to be acceptable in principle and a landscaping scheme would be able to adequately screen the proposed development. Two conditions (number 4 and 5) are recommended to secure the details and implementation of a landscaping scheme. With these conditions, the proposed area of hardstanding is not considered to adversely affect the character and appearance of the surrounding countryside.

#### Residential Amenity

45. The nearest residential properties to the site are No.1 and No. 2 Bradyll Street. These properties have a view over the site and associated access road. The side elevation of 2 Bradyll Street is approximately 48m away from the application site

46. Paragraph 127 of the NPPF advises that planning decisions should create places that have a high standard of amenity for existing and future users. CDP Policy 10 requires that new development in the countryside should not impact adversely upon residential or general amenity and this is mirrored by CDP Policy 31 which states that all new development that has the potential to lead to, or be affected by, unacceptable levels of air quality, inappropriate odours and vibration or other sources of pollution, either individually or cumulatively, will not be permitted including where any identified mitigation cannot reduce the impact on the environment, amenity of people or human health to an acceptable level.

47. In this regard the local councillor has raised objection to the application citing concerns that the development would have a detrimental impact upon the residential amenity of nearby residents and citing previous issues with the adjacent reclamation work undertaken by the applicant at the adjacent site, particularly with regards to noise and disturbance generated from vehicle movements during the importation of materials.

48. In terms of the proposed earthworks it is not considered that these are likely to cause any unacceptable impact to residential amenity and the agricultural use of the site itself is not subject to planning control. Whilst there may be some disruption as a result of increased vehicle movements during the earthworks themselves, these would be over a limited duration. The Council's Environmental Health Officer has been consulted and raises no objection to the application, although it is still considered appropriate to limit the times at which delivery vehicles access the site should planning permission be granted (condition number 6). A condition requiring details of a construction management plan (number 11) is also recommended to minimise disruption for

surrounding residents during the works. Therefore, with these conditions it is not considered that the levels of increased activities and movements to and from the site would be to such a level as to warrant refusal of the application.

49. In relation to the nearest residential property at No. 2 Bradyll Street, this property benefits from a side window which overlooks the site. However, given the nature of the physical development proposed, it is not considered that the proposals would have any unacceptable impact on the occupants of this property.
50. In light of the above it is not considered that the development would have any unacceptable adverse impact upon residential amenity in accordance with the requirements of Policy 10 and 31 of the County Durham Plan and Paragraph 180 of the NPPF.

#### Highway Safety and Public Rights of Way

51. CDP Policy 10 states that development in the countryside will only be permitted where it is not prejudicial to highway safety. In addition, CDP Policy 21 relates to the delivery of sustainable transport and states that the transport implications of development must be addressed as part of any planning application and [in part] that all development should deliver sustainable transport by ensuring that any vehicular traffic generated by the development, following the implementation of sustainable transport measures, can be safely accommodated on the local strategic highway network.
52. The development would generate an increase in large HGV vehicles accessing the site but these would be limited to periods during works to remove old foundations and import fill material and topsoil. The applicant has provided basic cross sections of this work and details of the final site levels that would be achieved post development. The number of vehicle movements likely to be associated with the works as described are not considered excessive and it is anticipated that in all the works would be completed expeditiously by the applicant in order to realise the final agricultural use of the site. Consequently, it is not considered necessary to seek to limit or control the duration of these works through planning conditions.
53. Access to the site is via an adopted highway which is considered capable of carrying traffic to and from the site and whilst the local councillor has raised concerns regarding the suitability of the surrounding road network to accommodate the type and frequency of vehicles required for the earthworks, the Highway Authority offers no objection to the application.
54. Therefore, in relation to matters of highway safety it is considered that the development could be satisfactorily accommodated in this regard subject to the conditions described in accordance with the aims of Policy 10 and 21 of the CDP and Paragraph 108 of the NPPF.
55. With regards to public rights of way, Kelloe Footpath No. 13 crosses the site east to west, at a point to the south of the proposed access. In addition, a small

section of Kelloe Footpath No. 14 crosses the site east to west along the northern edge which is shown on the amended proposed site plan. Policy 26 of the CDP is therefore relevant and 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. Where diversions are required, new routes should be direct, convenient and attractive, and must not have a detrimental impact on environmental or heritage assets.

56. Submitted plans show the existing route of the PROW to be retained post development and that these would be protected for the duration of the earthworks by harris fencing to be removed upon completion of the works. The planning agent has confirmed that styles will be put at either end at the fence line crossing points to allow continued access to the footpath from the existing track and to reach the field boundary and a suitably worded condition (number 10) is recommended to secure this. The position of the Footpaths would therefore remain unaffected by the proposal and as such the Council's Public Rights of Way Section raises no objection to the application, but does note that any damage sustained during this period should be made good by the applicant. In addition, the applicant would require a S147 authorisation from the PROW team to install the styles but this would be dealt with under other legislation and general advice in relation to PROWs can be communicated to the applicant through a suitably worded informative should planning permission be granted.
57. The development is therefore considered to accord with the aims of CDP Policy 26 in that it would not have a detrimental impact upon existing public rights of way.

## Ecology

58. Policy 41 of the CDP states that proposal for new development will not be permitted if significant harm to biodiversity or geodiversity resulting from the development cannot be avoided, or appropriately mitigated, or as a last resort, compensated for.
59. The site has recently been cleared of vegetation which itself was not subject to planning control although nevertheless disappointing as no assessment of the biodiversity or ecological value of the site appears to have been undertaken at this time. Nevertheless, the current application must be assessed on its own merits and the Council's Ecologist raises no objection to the application in light of the above. Based on the existing situation (which comprises a site with little or no vegetation across it's entirely) the creation of a wildflower meadow would deliver some net biodiversity gain and the development would accord with the requirements of CDP Policy 41 and Paragraph 174 of the NPPF in this regard.

## Land Contamination and Stability

60. Policy 32 of the CDP states that development will not be permitted unless the developer can demonstrate that the site is suitable for the proposed use, and does not result in unacceptable risks which would adversely impact on the environment, human health and the amenity of local communities and all investigations and risk assessments have been undertaken by an appropriately qualified person. This displays a broad level of accord with Paragraph 178 of the NPPF, which 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.
61. The site lies within an area identified by the Coal Authority (CA) at high risk of been subject to previous coal mining features and hazards which need to be considered in relation to the determination of this planning application. The CA commented that the current proposal is not supported by a Coal Mining Risk Assessment or other relevant information but acknowledge their previous comments on proposals on this site, under reference DM/20/02429/FPA refused earlier this year, to address the risks posed by the recorded fissures investigatory and remedial works were proposed. These works are still considered relevant to the current submission, which includes provision of hardstanding and installation of pens, albeit that these are demountable. Any intrusive site investigations carried out should be designed and undertaken by competent persons and should be appropriate to assess the ground conditions on the site and the risks posed by past coal mining activity to the works proposed and to inform any remedial works and/or mitigation measures that may be necessary. Two suitably worded conditions (number 7 and 8) are recommended in line with the comments received from the CA. if the application is to be granted, a suitably worded informative could also be added in line with Environmental Health's comments regarding unforeseen contamination.

## Drainage

62. Policy 35 of the CDP relates to the management of surface water runoff, advising that this must be managed at source wherever possible and disposed of in the following order: 1. to an infiltration or soak away system; 2. to a watercourse open or closed; 3. to a surface water sewer; and 4. to a combined sewer. The application proposes that all surface water generated by the hardstanding would be discharged to soak away, although the precise detail of the proposed arrangement has not been provided. However, the Council's Drainage and Coastal Protection Section previously raised no objection to the application noting only that should there be concern that the development would lead to significant discharge of surface water to adjacent land, then a statement detailing how the development would meet appropriate drainage law should be provided. Notwithstanding the above, it is nevertheless considered that a suitably worded planning condition (number 9) requiring the submission and agreement of precise detail as to the means of disposal of surface water prior to the commencement of development, would satisfactorily mitigate any potentially adverse impact in this regard.

63. Subject to such a condition, the development is considered to accord with the aims of CDP Policy 35.

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## **CONCLUSION**

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64. The long-term agricultural use of the site does not require planning permission although those engineering works required to reclaim the land for this purpose are subject to control, as is the creation of the area of associated hardstanding. Policy 10 of the CDP is therefore the principal policy against which the application must be assessed, although Policy 21, 29, 35, 39 and 41 are also relevant.

65. The planning application proposes development within the countryside within which agricultural uses are considered suitable and the LPA is satisfied that the additional land and hardstanding are required for the functioning of the existing enterprise and as such the development accords with policy 10a) of the CDP. The proposed area of hardstanding has been reduced in size and is limited to the lower northern part of the middle plateau. The applicant has provided justification as to why this is required for the functioning of the enterprise in broad accordance with CDP Policy 10(a), and with conditions requiring details of a landscaping scheme the visual impact of the area of hardstanding is considered to be limited to a level where it would not adversely affect the character and appearance of the surrounding area, according with CDP Policy 39.

66. In addition, the creation of a grazing area and wildflower meadow and the removal of former foundations are would provide net biodiversity gain in accordance with paragraph 175 of the NPPF, to which weight should be attributed in support of the application.

67. Notwithstanding the above, conditions are recommended to secure details relating to previous coal mining and land stability, drainage and finished topsoil levels and depths, as well as conditions restricting the hours of works and ensuring the protection of PROWs during the works. Subject to such conditions, the proposals are considered to accord with Policy 10, 21, 26, 29, 31, 32, 35, 39 and 41 of the County Durham Plan and Parts 4, 6, 9, 12 and 15 of the NPPF and so approval is recommended.

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## **RECOMMENDATION**

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That the application be **APPROVED** for the following reason(s)

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

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

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

Reason: To define the consent and ensure that a satisfactory form of development is obtained in accordance with Policy(ies) 10, 21, 26, 29, 31, 32, 35, 39 and 41 of the County Durham Plan and Parts 4, 9, 12 and 15 of the National Planning Policy Framework.

3. Notwithstanding the details shown on the submitted application, no earth removal, tipping of imported material or laying of hardstanding shall commence until a section drawing showing details of finished topsoil levels and depths is submitted to and approved in writing by the Local Planning Authority. Thereafter, the works shall take place in accordance with these details.

Reason: In the interests of the visual amenity of the area and to comply with Policy 10, 29 and 39 of the County Durham Plan and Part 12 of the National Planning Policy Framework.

4. No earth removal, tipping of imported material or laying of hardstanding shall commence until a detailed landscaping scheme has been submitted to and approved in writing by the Local Planning Authority.

No tree shall be felled or hedge removed until the landscape scheme, including any replacement tree and hedge planting, is approved as above.

Any submitted scheme must be shown to comply with legislation protecting nesting birds and roosting bats.

The landscape scheme shall include accurate plan based details of the following:

Trees, hedges and shrubs scheduled for retention.

Details of hard and soft landscaping including planting species, sizes, layout, densities, numbers.

Details of planting procedures or specification.

Seeded or turf areas, habitat creation areas and details etc.

The establishment maintenance regime, including watering, rabbit protection, tree stakes, guards etc.

The Local Planning Authority shall be notified in advance of the start on site date and the completion date of all external works.

Trees, hedges and shrubs shall not be removed without agreement within five years.

Reason: In the interests of the visual amenity of the area and to comply with Policy 10, 29 and 39 of the County Durham Plan and Part 12 of the National Planning Policy Framework.

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

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

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

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

Replacements will be subject to the same conditions.

Reason: In the interests of the visual amenity of the area and to comply with Policy 10, 29 and 39 of the County Durham Plan and Part 12 of the National Planning Policy Framework.

6. In undertaking the development that is hereby approved:

No external construction works, works of demolition, deliveries, external running of plant and equipment shall take place other than between the hours of 8000 to 1800 on Monday to Friday and 8000 to 1400 on Saturday.

No internal works audible outside the site boundary shall take place on the site other than between the hours of 8000 to 1800 on Monday to Friday and 0800 to 1700 on Saturday.

No construction works or works of demolition whatsoever, including deliveries, external running of plant and equipment, internal works whether audible or not outside the site boundary, shall take place on Sundays, Public or Bank Holidays.

For the purposes of this condition, construction works are defined as: The carrying out of any building, civil engineering or engineering construction work involving the use of plant and machinery including hand tools.

Reason: To protect the residential amenity of existing and future residents from the development in accordance with Policy 31 of the County Durham Plan and Part 15 of the National Planning Policy Framework.

7. No development shall take place until intrusive site investigations have been undertaken to assess the ground conditions and the potential risks posed to the development by past shallow coal mining activity. The intrusive site

investigations shall include the locating and assessing of fissures. A report shall thereafter be submitted to and agreed in writing by the Local Planning Authority confirming the methods used and the findings arising from the intrusive site investigations. This report shall include a scheme of remedial work where required, incorporating a remediation strategy for any fissures identified, including any foundation designs which may be required for building over the fissures to address land instability arising from coal mining legacy. Thereafter the development shall take place in full accordance with the agreed details. The intrusive site investigations and remedial works shall be carried out in accordance with authoritative UK guidance.

Reason: The undertaking of intrusive site investigations, prior to the commencement of development, is considered to be necessary to ensure that adequate information pertaining to ground conditions and coal mining legacy is available to enable appropriate remedial and mitigatory measures to be identified and carried out before building works commence on site. This is in order to ensure the safety and stability of the development, in accordance with County Durham Plan Policy 32 and Paragraphs 178 and 179 of the National Planning Policy Framework.

8. Prior to the site being taken into beneficial use, a signed statement or declaration prepared by a suitably competent person confirming that the site is, or has been made, safe and stable for development shall be submitted to the Local Planning Authority for approval in writing. This document shall confirm the completion of any remedial works and/or mitigation necessary to address the risks posed by past coal mining activity.

Reason: To ensure the safety and stability of the development, in accordance with County Durham Plan Policy 32 and Paragraphs 178 and 179 of the National Planning Policy Framework.

9. No earth removal, tipping of imported material or laying of hardstanding shall commence until precise detail of the proposed means of the disposal of surface water have been submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall take place in accordance with the agreed details.

Reason: To ensure the appropriate discharge of surface water in accordance with Policy 35 of the County Durham Plan.

10. No earth removal, tipping of imported material or laying of hardstanding shall commence until public footpath No. 13 is protected by the erection of 1.8m high fencing to either side, located 2m apart. The fencing shall be erected along the entire length of the footpath that lies within the application site, with the exception of a style to be installed at either end of footpath crossing points into / out of the site to allow continued access during the works. The fencing and styles shall remain in place for the duration of the works and be removed upon completion of the works.

Reason: In the interests of protecting the Public Right of Way for the duration of the works in accordance with Policy 26 of the County Durham Plan.

11. No earth removal, tipping of imported material or laying of hardstanding shall commence until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Construction Management Plan shall include as a minimum but not necessarily be restricted to the following:
  1. Details of measures to prevent mud and other such material migrating onto the highway from all vehicles entering and leaving the site.
  2. Details of contractors' compounds, materials storage and other storage arrangements, including cranes and plant, equipment and related temporary infrastructure.
  3. Details of provision for all site operatives for the loading and unloading of plant, machinery and materials.
  4. Details of provision for all site operatives, including visitors and construction vehicles for parking and turning within the site during the construction period.
  5. Waste audit and scheme for waste minimisation and recycling/disposing of waste resulting from demolition and construction works.
  6. Detail of measures for liaison with the local community and procedures to deal with any complaints received.

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

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

Reason: To protect the residential amenity of existing and future residents from the development in accordance with Policy 31 of the County Durham Plan and Part 15 of the National Planning Policy Framework. Required to be pre commencement to ensure that the whole construction phase is undertaken in an acceptable way.

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## **STATEMENT OF PROACTIVE ENGAGEMENT**

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In accordance with Article 35(2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015, the Local Planning Authority 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.

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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 (2020)

Statutory, internal and public consultation responses



**Planning Services**

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|                  |   |                     |
|------------------|---|---------------------|
| Not Set          | Restore land to agricultural by removal of old house foundation, planting, hard standing and temporary demountable pens |                     |
| <b>Comments:</b> | Not Set   |                     |
| <b>Date</b>      | 14 June 2021  | <b>Scale</b> 1:2443 |