

## COMMITTEE REPORT

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### APPLICATION DETAILS

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**APPLICATION No:** DM/20/01479/FPA

**FULL APPLICATION DESCRIPTION:** Erection of 1no. 4 storey building comprising of 3no. units (use class E (a)(b)(c) or Sui Generis (drinking establishment)) to ground floor, 1no. unit (use class E(d) to first and second floor and 4no. residential units (C3) ancillary to the commercial units to third floor. (amended description)

**NAME OF APPLICANT:** Mr David Gill

**ADDRESS:** Land To The North Of 28 North Terrace, Seaham, SR7 7EU

**ELECTORAL DIVISION:** Dawdon

**CASE OFFICER:** Leigh Dalby  
(Senior Planning Officer)  
Tel: 03000 261 389  
Email: Leigh.Dalby@durham.gov.uk

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### DESCRIPTION OF THE SITE AND PROPOSALS

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#### The Site

1. The application site consists of a parcel of disused land. The site is surrounded by existing development. North of the site is residential dwellings, to the east is open land. To the south is a mix of uses including a former gym, residential and other leisure uses.
2. The site is located within a highly accessible location near the centre of Seaham. The site is walking distance from local services and employment areas and is also accessible to public transport including bus services.

#### The Proposal

3. Planning permission was originally sought for the erection of 1no. 4 storey building comprising of 3no. units (use class A1/2/3 or 4) to ground floor, 1no. unit (use class D2) to first and second floor and 4no. residential units (C3) ancillary to the commercial units to third floor.
4. Whilst the application originally sought consent for the above use classes, following Government changes to the use classes order in September 2020, the above uses

classes have altered, and are no longer recognised. Therefore, the proposal has been considered in line with the current equivalent use class categories namely Class E (a), (b), (c) and (d) (formally A1/2/3 and D2) and Sui Generis (formally A4). This is considered necessary to align with the current legislative framework.

5. The application is reported to Planning Committee at the request of the Local Ward member to be given consideration by the Committee.

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## **PLANNING HISTORY**

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6. DM/20/01726/FPA Retrospective application for temporary site compound, including site hoarding, associated welfare and storage units and material storage – Pending consideration.

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## **PLANNING POLICY**

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### **NATIONAL POLICY**

7. 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.
8. 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;
9. NPPF Part 2 Achieving sustainable development. The purpose of the planning system is to contribute to the achievement of sustainable development and therefore at the heart of the NPPF is a presumption in favour of sustainable development. It defines the role of planning in achieving sustainable development under three overarching objectives – economic, social and environmental, which are interdependent and need to be pursued in mutually supportive ways. The application of the presumption in favour of sustainable development for plan-making and decision-taking is outlined.
10. NPPF Part 3 Plan-making. The planning system should be genuinely plan-led. Succinct and up-to-date plans should provide a positive vision for the future of each area; a framework for addressing housing needs and other economic, social and environmental priorities; and a platform for local people to shape their surroundings.
11. NPPF Part 4 Decision-making. Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.
12. NPPF Part 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.

13. NPPF Part 8 Promoting healthy and safe communities. The planning system can play an important role in facilitating social interaction and creating healthy, inclusive communities. Developments should be safe and accessible; Local Planning Authorities should plan positively for the provision and use of shared space and community facilities. An integrated approach to considering the location of housing, economic uses and services should be adopted.
14. 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.
15. 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.
16. 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.
17. 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.

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

18. The following policies within the County Durham Local Plan are considered relevant in terms of this proposal:

Policy 1 (Quantity of Development) outlines the levels of employment land and housing delivery considered to be required across the plan period.

Policy 2 (Employment Land) Policy 2 supports development of and extensions to B1, B2 and B8 developments within specified employment allocations, but also protects other existing employment sites from being changed to non-employment uses, unless appropriate marketing has been undertaken for employment uses, and that the use would not compromise the main use of the site for B class uses and would comply with retail Policy 9 where main town centre uses are being proposed. Specific further protection is outlined for land north of Netpark, Consett Project Genesis site and the Hownsgill Industrial Estate. Where a non-employment development will replace an employment use the jobs will need to be relocated.

Policy 6 (Development on Unallocated Sites) supports development on sites not allocated in the Plan or Neighbourhood Plan, but which are either within the built-up area or outside the built up area but well related to a settlement will be permitted provided it: is compatible with use on adjacent land; does not result in coalescence with neighbouring settlements; does not result in loss of land of recreational, ecological, or

heritage value; is appropriate in scale, design etc to character of the settlement; it is not prejudicial to highway safety; provides access to sustainable modes of transport; retains the settlement's valued facilities; considers climate change implications; makes use of previously developed land and reflects priorities for urban regeneration.

Policy 9 (Retail Hierarchy and Town Centre Development) seeks to protect and enhance the hierarchy of Sub Regional, Large Town, Small Town, District and Local retail centres in the county

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.

Policy 25 (Developer Contributions) advises that any mitigation necessary to make the development acceptable in planning terms will be secured through appropriate planning conditions or planning obligations. Planning conditions will be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Planning obligations must be directly related to the development and fairly and reasonably related in scale and kind to the development.

Policy 27 (Utilities, Telecommunications and Other Broadcast Infrastructure) supports such proposals provided that it can be demonstrated that there will be no significant adverse impacts or that the benefits outweigh the negative effects; it is located at an existing site, where it is technically and operationally feasible and does not result in visual clutter. If at a new site then existing site must be explored and demonstrated as not feasible. Equipment must be sympathetically designed and camouflaged and must not result in visual clutter; and where applicable it proposal must not cause significant or irreparable interference with other electrical equipment, air traffic services or other instrumentation in the national interest.

Any residential and commercial development should be served by a high-speed broadband connection, where this is not appropriate, practical or economically viable developers should provide appropriate infrastructure to enable future installation.

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.; adaptable buildings; minimising greenhouse gas emissions and use of non-renewable resources; providing high standards of amenity and privacy; contributing to healthy neighbourhoods; and suitable landscape proposals. Provision for all new residential development to comply with Nationally Described Space Standards, subject to transition period.

Provision for alterations and extensions to residential property to be sympathetic to existing building and character and appearance of area

Provision for signage, adverts, street furniture and public art to be appropriate and sympathetic to users and local setting and not detrimental to visual amenity or public highway safety

Provision for major developments to appropriately consider the public realm in terms of roads, paths, open spaces, landscaping, access and connectivity, natural surveillance, suitable private and communal amenity space that is well defined, defensible and designed to the needs of its users.

Provision for new major residential development to be assessed against Building for Life Supplementary Planning Document, to achieve reductions in CO2 emissions, to be built to at least 30 dwellings per hectare subject to exceptions. All new development to achieve BREEAM minimum rating of 'very good'.

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.

Policy 32 (Despoiled, Degraded, Derelict, Contaminated and Unstable Land) requires that where development involves such land, any necessary mitigation measures to make the site safe for local communities and the environment are undertaken prior to the construction or occupation of the proposed development and that all necessary assessments are undertaken by a suitably qualified person.

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.

Policy 43 (Protected Species and Nationally and Locally Protected Sites) development proposals that would adversely impact upon nationally protected sites will only be permitted where the benefits clearly outweigh the impacts whilst adverse impacts upon locally designated sites will only be permitted where the benefits outweigh the adverse impacts. Appropriate mitigation or, as a last resort, compensation must be provided where adverse impacts are expected. In relation to protected species and their habitats, all development likely to have an adverse impact on the species' abilities to survive and maintain their distribution will not be permitted unless appropriate mitigation is provided or the proposal meets licensing criteria in relation to European protected species.

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## CONSULTATION AND PUBLICITY RESPONSES

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### STATUTORY AND INTERNAL RESPONSES:

19. The following comments were received following consultation with Statutory and Internal consultees.

**DCC Highways** - The revised Ground Floor Layout Plan drawing number C101 Rev G includes the required parking space per flat which is welcomed.

There is a requirement to formalise parking restrictions to which the applicant must meet the costs of and which the applicant has requested to be conditioned. I would request a suitably worded condition requiring the applicant to arrange for the introduction of waiting restrictions on Back North Terrace and Tempest Road prior to the occupation of the property. This is in the interests of road safety.

The footpaths currently crossing the development land are not part of the public highway but would be deemed to possess public access rights which would need to be formally removed and as such Stopped Up under Section 247 of the Town and Country Planning Act 1990. I would request a suitably worded condition requiring the applicant to secure the stopping up of highway rights on the footpath which crosses the development site prior to occupation of the site.

As the footprint of the development does not follow the highway boundary there are locations to the frontage and Tempest Road side where paving will continue from the adopted footway to the property curtilage. There is reference to the provision of feature paving to these areas which should be extended to encompass the adopted footway area. There will need to be clear delineation of the highway boundary incorporated into the floorscaping design. I would request a suitably worded condition requiring the applicant to submit to and have approved by the LPA, a floorscape design prior to commencement of works.

The proposal makes reference in the Design and Access Statement to the site being in an accessible location however no provision has been made for cyclists. There is potential in the paved frontage area to make a provision for cycle parking which the applicant should incorporate into the floorscape design.

It will be necessary for the applicant to enter into an agreement under Section 278 of the Highways Act, to allow the required works within the existing highway to be carried out. The applicant should make contact with Phillip Thompson , Highways Adoptions Engineer, phillip.thompson@durham.gov.uk or tel. no. 03000 267106. Any non-standard highway construction would involve the payment of commuted sums as part of the development proposals.

The new vehicle access crossing to the 4 parking bays must be constructed in accordance with the requirements of Section 184(3) of the Highways Act 1980. It may be possible for this to be incorporated into the Section 278 Agreement.

Given the size and location of the development it would be essential that a condition is secured requiring a Construction Management Plan to be submitted and approved prior to commencement of the development.

There is nearby public parking space which may accommodate shoppers, however the proposal will inevitably increase on street demand in the area. Whilst the location is within walking distance of public transport services there will likely be an increase in

demand for parking. Whilst the proposed development makes very little provision to mitigate the parking issues it is not considered that there is sufficient road safety impact to withstand an appeal under NPPF Paragraph 109.

In summary, subject to the provision of the conditions identified and the requirements identified above I would offer no objection from a highways perspective.

Informative advice:

Developers undertaking works requiring access to the public highway must be made aware of the requirements of The County Council of Durham Road and Street Works Permit Scheme. This scheme permits access to the public highway and it is a legal requirement for developers to adhere to the scheme requirements. Permits will only be granted once a S278 agreement or S184 license is secured. Failure to adhere to the scheme will result in delay to development proposals and potential legal action by this highway authority. Scheme details can be found at <http://www.Durham.gov.uk/roadworks>

All correspondence relating to the scheme should be addressed to  
DCCstreetworkspermitscheme@durham.gov.uk

Developers undertaking works which require the occupation of highway space (carriageway, verge or footway) in connection with building work must obtain a licence from the Highway Authority. Further details can be found at the following website link: <http://www.durham.gov.uk/article/2155/Occupation-of-the-road-in-connection-with-building-work-licence>

**DCC Conservation** - Whilst the principle of redeveloping the site is welcomed and the applicant has responded to previous advice regarding the scale of the building, the proposed form of the building, in particular the corner detailing could better respond to the character and appearance of the conservation area.

Following the receipt of revised plans the following additional comments were received: The applicant has amended the proposed plans as requested and updated the information within the design and access statement. No further comments from a design and conservation perspective.

**DCC Ecology** - This proposal includes the creation of 4 new residential units within the 400-metre buffer and would normally be unacceptable under the current DCC Habitats Regulations Assessment (HRA) of new residential accommodation on the coast. However, I consider that providing the new units are tied to the operation of the commercial units and are not sub-let for any other residential use the creation of new units within the 400m buffer is likely to be acceptable and in accordance with the HRA.

The HRA concludes that residential accommodation can proceed up to 6km away from the coastal European Protected Sites provided certain mitigation measures are taken.

Mitigation measures can include alternative green space that meets the Natural England SANG guidelines or a financial contribution of either £662.00 (for sites allocated in the County Durham Plan) or £756.61 per dwelling (for non-allocated sites) towards specific Coastal Access Management Measures. The HRA mitigation is not restricted to new housing developments and applies equally to other developments, such as visitor accommodation and tourism proposals.

I consider that this development is acceptable under the HRA providing the financial contribution of £756.61 per new residential unit is applied. This should be secured through a Section 106 Agreement or Unilateral Undertaking.

The supplied Preliminary Ecological Appraisal report by EcoSurv is acceptable and if the application is approved the contents of section 6 (Conclusions and Recommendations) should be conditioned as it contains the provision of bat roost units and swift/swallow bricks in the new building.

**DCC Drainage** - No comment

**DCC Contaminated Land** - I would confirm that I have assessed the available information and historical maps with respect to land contamination. I have reviewed the following report:

GEOL Consultants Ltd. (30/03/2020) Phase 1 Preliminary Contamination Risk Assessment, Proposed Mixed-Use Development on land adjacent to 28 North Terrace, Seaham, Co. Durham, SR7 7EU

I am satisfied with the information provided in the phase 1 report and agree with the risk assessment. A phase 2 site investigation is recommended.

Given the above, the following contaminated land condition should apply.

Contaminated Land (Phase 2-3)

No development shall commence until a land contamination scheme has been submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall be compliant with the YALPAG guidance and include a Phase 2 site investigation, which shall include a sampling and analysis plan. If the Phase 2 identifies any unacceptable risks, a Phase 3 remediation strategy shall be produced and where necessary include gas protection measures and method of verification.

Reason: To ensure that the presence of contamination is identified, risk assessed and proposed remediation works are agreed in order to ensure the site is suitable for use, in accordance with Part 15 of the National Planning Policy Framework. Required to be pre-commencement to ensure that the development can be carried out safely.

Contaminated Land (Phase 4)

Remediation works shall be carried out in accordance with the approved remediation strategy. The development shall not be brought into use until such time a Phase 4 verification report related to that part of the development has been submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that the remediation works are fully implemented as agreed and the site is suitable for use, in accordance with Part 15 of the National Planning Policy Framework.

The following should be added as an informative:

If unforeseen contamination is encountered, the Local Planning Authority shall be notified in writing immediately. Operations on the affected part of the site shall cease until an investigation and risk assessment, and if necessary a remediation strategy is carried out in accordance with the YALPAG guidance and agreed with the Local

Planning Authority. The development shall be completed in accordance with any amended specification of works.

**DCC Statutory Nuisance** - The proposed development will be located on the northern end of North Terrace the properties on North Terrace are mixed residential and commercial properties, mainly café/bars, whilst in close proximity to the development on Tempest Road the properties are mainly residential and therefore sensitive receptors.

It appears that the development will be tied to 28 North Terrace, which appears to be commercial to the ground floor and residential to the first floor, both of which will be sensitive receptors.

The application is seeking multiple uses for the development over four floors, the ground floor will be divided into three units with the intention to have business uses of A1/A2/A3 and A4; the first and second floor is to be operated as a gym, Class use D2 and the third floor will be divided into four residential flats, Class C3.

With regard to any proposed hours of operation of the business classes of the development only D2 hours have been proposed, that is no times have been offered for the ground floor units but it is suggested that the first and second floor D2, Gym, will be operated 0800 to 2300hrs seven days a week, including Bank Holidays.

The development will be a noise generating development both during the construction phase as well as post development. There is also the potential for dust issues, during ground preparation and construction, and odour issues associated with any kitchen extraction plant which would be required in relation to the operation of a commercial kitchen.

Issues associated with the ground floor use:

As the application relates to several A Class Uses, I will consider that the uses with the potential to generate the most noise will be from the A3 and A4 uses. I would advise that these use classes do have the potential to cause noise disturbance to the adjacent residential premises due to the type of activity; customers using the facility, particularly the proposed outdoor amenity area, music being played in the premises, noise from any odour extraction system.

Issues associated with the first and second floor use:

The proposed use for the first and second floors is D2, the aim is to introduce a gym to both floors, and this may lead to a significant noise impact for the adjoining residential properties, as well as noise breakout for nearby sensitive receptors to the rear of the premises and residential properties on Tempest Road.

Acoustic Design Statement

The developer has submitted an Acoustic Design Statement - reference 20-51-743, produced by Northburn Acoustics dated 17 April 2020 and published 10 June 2020. Whilst it is acknowledged that the report has been carried out to appropriate methodologies and the monitoring locations are sufficient to demonstrate the existing noise climate, it is limited to the impact of noise from traffic and potential business class uses impacting upon future residents of the third floor of the development itself and does not consider the impact of the proposed uses of the development upon neighbouring sensitive receptors.

The assessment author recommends a planning condition which would benefit future occupants of the flats on the third floor in relation to attenuation from external noises, mainly related to traffic, however the recommendations of the report would be beneficial to the occupants in relation to externally sourced noise in general. The author also provides advice in relation to the requirement for the development to comply with Building Regulations Approved Document E - Resistance of the passage of Sound, as well as the siting of any odour extraction systems being ducted internally to the roof. However, in both instances the author suggests placing the onus on any future tenants of the business use elements of the development to ensure that noise from the activities will not negatively impact upon future occupants of the flats.

Information within the Design & Access Statement reference 2996/ACW dated June 2020 and published 23 June 2020 advises that the flats will only be leased to the commercial tenants of the building, although it does not indicate that the occupants of the flats will actually be the commercial tenants.

The information submitted indicates that the development is likely to breach the thresholds within the TANS, Noise TANS section 3.7 pg. 18, Odour TANS section 3.2 pg. 12, Dust TANS section 3 pg. 14 . This indicates that the development may, without further controls, lead to a significant impact. The planning officer should consider the following supporting detail for further clarification.

Should planners be minded to grant planning permission I would advise that the following conditions should be affixed in order to protect residential amenity and reduce the likelihood of statutory nuisance, consideration should also be given to entering into a legal agreement in order to ensure that occupation of the flats is limited to the tenants of the commercial aspects of the development:

1. Prior to the commencement of any part of the development or any works of demolition, hereby permitted, a Construction Management Plan shall be submitted to and approved in writing by the local planning authority. The Construction Management Plan shall include as a minimum but not necessarily be restricted to the following:

- o A Dust Action Plan including measures to control the emission of dust and dirt during construction

- o Details of methods and means of noise reduction

- o Where construction involves penetrative piling, details of methods for piling of foundations including measures to suppress any associated noise and vibration.

- o Details of contractors' compounds, materials storage and other storage arrangements, including cranes and plant, equipment and related temporary infrastructure;

- o Details of provision for all site operatives for the loading and unloading of plant, machinery and materials

- o Details of provision for all site operatives, including visitors and construction vehicles for parking and turning within the site during the construction period;

- o Details of the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;

- o Waste audit and scheme for waste minimisation and recycling/disposing of waste resulting from demolition and construction works.

oDetail 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.

2. 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.

3. To protect future occupiers of the four flats on the third floor from nearby external noise sources ensure the following noise levels are achieved:  
o35dB LAeq 16hr bedrooms and living room during the daytime (0700 - 2300)  
o30 dB LAeq 8hr in all bedrooms during the night time (2300 - 0700)  
o45 dB LAm<sub>ax</sub> in bedrooms during the night-time

Any noise mitigation measures required shall be installed prior to the beneficial occupation of the development and shall be permanently retained thereafter.

4. Before any part of the development hereby approved is commenced a scheme of sound proofing measures shall be submitted to and approved in writing by the local planning authority. The aim of the scheme shall be to ensure that the noise insulation of walls, floors, windows, roofs between the separate and adjoining properties shall be sufficient to prevent excessive ingress and egress of noise from the commercial elements of the development. The approved scheme shall be implemented prior to the beneficial occupation of the development and shall be permanently retained thereafter.

5. No hot food shall be prepared or served at the premises until details of the fume extraction system, to include a risk assessment, design schematic, details of any odour abatement measures, details of noise levels and any other documents considered necessary to demonstrate accordance with the current EMAQ/DEFRA guidance on the control of odour and noise from commercial kitchen exhaust systems shall have been submitted to and approved in writing by the Local planning authority. The approved scheme shall be installed prior to the use commencing and shall be operated at all times when cooking is being carried out on the premises.

6. The opening hours of the ground, first and second floors of the premises shall not exceed 08.00 - 23.00 on any day of the week.

7. The external area to the front of the ground floor part of the premises shall not be used by customers outside the hours of 0900-2000 hours on any day of the week.

In addition, I can confirm that I have assessed the environmental impacts which are relevant to the development in relation to their potential to cause a statutory nuisance, as defined by the Environmental Protection Act 1990 and would comment as follows:

Having considered the information submitted with the application I am of the opinion that the granting of planning permission for the development may potentially result in a statutory nuisance being created, as clarified above.

However, I consider that the above conditions are sufficient to mitigate the potential of a statutory nuisance and therefore if affixed will remove my objection to the development.

**Historic England** - we do not wish to offer any comments.

**Northumbrian Water** - We note a drainage report has been submitted with the application, however, the document states the surface water flows shall be discharged at a restricted rate of 5 l/sec. Because the proposed discharge rate exceeds the rate agreed through the pre-planning enquiry, NWL request the following condition:

CONDITION: Development shall not commence until a detailed scheme for the disposal of foul and surface water from the development hereby approved has been submitted to and approved in writing by the Local Planning Authority in consultation with Northumbrian Water and the Lead Local Flood Authority. Thereafter the development shall take place in accordance with the approved details.

REASON: To prevent the increased risk of flooding from any sources in accordance with the NPPF.

Any drainage scheme submitted to the Local Planning Authority should be in line with the comments included in Northumbrian Water's enquiry response.

Please note that the planning permission with the above condition is not considered implementable until the condition has been discharged. Only then can an application be made for a new sewer connection under Section 106 of the Water Industry Act 1991.

**Durham Constabulary – Architectural Liaison:** In assessing the likelihood of crime occurring at this development I have taken into account the specific nature of this development, the pattern of criminal activity in the immediate area, and the high incidence of assault in this locality and therefore assess the overall likelihood of crime risk as Possible to Likely.

Assessing Consequences however, can be a more subjective exercise, and taking into account that Catastrophic or Major consequences, such as loss of life or loss of the loss of the entire building are Unlikely or Rare; I assess that Commercial Burglary, Dwelling Burglary, and Vehicle Crime may have Moderate Consequences for the development and intended occupants.

Accordingly I assess the overall risk to this proposed development to be HIGH and have based the following observations and recommendations on this assessment.

Crime Prevention observations and recommendations

Under-croft Parking

From a designing out crime point of view the Force has serious concerns with the rear parking area for the proposed residential units. Under-croft areas are discouraged for a number of reasons, they can be more susceptible to crime than enclosed parking, they can also encourage ad hoc congregation and possibly anti-social behaviour, as well as providing a sheltered space for rough sleeping. There is also no natural surveillance within this area, making the cars parked here more vulnerable, which may also increase the fear of crime. If a fire is started within this under croft, especially so close to the refuse area it could have a detrimental impact on the residents and users of the building, with three means of escape leading out into this area.

We ask that this area is re-designed to remove the under-croft style parking, or introduce roller shutters to each of the parking bay areas to fully block the area off from public access.

#### Proposed A4 Use

Due to the high amount of assault within the locality of the proposed site, if A4 use is granted we request that the opening hours be restricted to 11pm at the latest.

#### Traffic management & Safety

As the need for parking is likely to increase as a result of this development, especially the gym, it is imperative that the safety of all road users is considered in this locality especially around safe pedestrian movements and free/unobstructed movements through the main junction areas. In consequence we would therefore suggest that parking restrictions in the form of a "No Waiting/ No Loading At Any Time" restriction be extended westwards on the south side of Tempest Road to and around the back lane junction to assist in safe and free traffic flow through the junction and keep the pedestrian crossing area clear and free from visibility obstruction.

#### Access Control

Access control should be used for access to the residential area within the stair core to restrict access to members of the public to the private floor.

Following the receipt of revised plans seeking to address the above, no further comments were received.

**Seaham Town Council:** On behalf of Seaham Town Council I write to formally object to the planning application for the erection of a four storey building on North Terrace in Seaham.

The lack of parking for the new development will cause even more problems on what are already very busy streets and will cause problems in the surrounding existing car parks which already struggle to meet the demand for car parking spaces.

We feel that a four storey development of this nature is not in keeping with the current style or character of North Terrace. In addition to this it is felt the property would be sited in such a way which could reduce vision on an already busy junction and could also negatively impact on the privacy of existing residents surrounding the property.

We also feel that there is a lack of public toilets to support the ever growing tourist offer in Seaham. Whilst tourism increases this could be impacting matters such as Council Tax rates as well as generating additional litter. Some businesses on North Terrace area already storing bins in the streets causing issues to those living in Hawthorn Square.

#### **PUBLIC RESPONSES:**

20. The application has been publicised by way of press advert, site notice and notification letters sent to neighbouring properties, in response 64no objections were received, a summary of the points of objection are as follows: the following comments were received:

- Scale of building is excessive and not in keeping with the area
- Proposal is out of character within this location and the Seaham Conservation area
- Lack of parking
- Additional traffic generation

- Highway and pedestrian safety
- Loss of privacy to existing residential properties
- No community benefits
- Detrimental impact on existing businesses within Seaham
- Noise disturbance and generation
- Loss of light and over shadowing

#### **APPLICANTS STATEMENT:**

21. The proposals comprise of 3 no. retail units at ground level, a gym at first floor level, and above residential apartments which would be available for occupation by the tenants of the commercial premises. We hope that these new businesses will bring more development and investment to Seaham and support its vitality and viability.
22. The architects have designed the proposals sympathetically and have used a palette of materials which exist in the immediate environs thus creating a building appropriate to its context.
23. The scale and style reflect the new development at 18, North Terrace, and the design intention was to provide two 'bookends' to the terrace.
24. The scheme will generate over eighty full-time and part-time jobs and positively contribute to the vibrant promenade which offers a wide variety of leisure and recreational facilities.
25. During the life of the application, the architects have worked closely with the Officers to refine the proposals.
26. We believe the proposals are acceptable in principle and in detail and that they should be supported. The Committee are therefore requested to grant planning permission subject to controlling conditions.

*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 <https://publicaccess.durham.gov.uk/online-applications/search.do?action=simple&searchType=Application>*

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## **PLANNING CONSIDERATIONS AND ASSESSMENT**

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27. 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 47 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 the development, impact on character and appearance of heritage assets, the design and impact upon visual amenity and the impact of the development upon residential amenity, and highway safety.

#### Principle of Development

28. The County Durham Plan defines the designed town centre boundaries across the County. Whilst the site is not located within the defined town centre for Seaham, it is considered to be edge of centre, given it is located within 300m of the town centre boundaries and is particularly well linked to the town centre.

29. Policy 6 of the County Durham Plan supports development on sites which are not allocated in the Plan or Neighbourhood Plan, but which are either within the built-up area or outside the built up area but well related to a settlement will be permitted provided it: is compatible with use on adjacent land; does not result in coalescence with neighbouring settlements; does not result in loss of land of recreational, ecological, or heritage value; is appropriate in scale, design etc to character of the settlement; it is not prejudicial to highway safety; provides access to sustainable modes of transport; retains the settlement's valued facilities; considers climate change implications; makes use of previously developed land and reflects priorities for urban regeneration.
30. As detailed above Policy 6 permits development on unallocated sites provided it meets the criteria set out within the policy. In this regard it is considered that the proposed site is acceptable in principle with this policy given that the site is a brownfield site having formally been the location of an infirmary (criteria i), located within close proximity to compatible uses that would not be prejudicial to any existing uses (criteria a), is within the existing built framework of Seaham that will not lead to coalescence with neighbouring settlements (criteria b), will not result in a loss of open land that has any recreational, ecological or heritage value (criteria c), has easy access to sustainable transport and local facilities (criteria f), subject to consideration of the criteria d, e, h in policy 6 which are considered elsewhere within this report. It is not considered that criteria j is appropriate in relation to this proposal.
31. Policy 9 of the County Durham Plan aims to protect and enhance a hierarchy of centres within the County. Seaham and Peterlee are defined as Large Town Centres. This policy states that proposals for town centre uses not located within a defined centre are required to provide a sequential assessment. Where an application fails the sequential test or would have a significant adverse impact on investment or the vitality and viability of a town centre, it will be refused.
32. The NPPF Section 7 provides guidance on how to assess applications for uses that would normally be located within a town centre and that could potentially impact on the vitality and viability of proposed centres.
33. Paragraph 88 confirms that when considering edge of centre and out of centre proposals, preference should be given to accessible sites which are well connected to the town centre. Applicants and LPAs are required to demonstrate flexibility on issues such as format and scale, so that opportunities to utilise suitable town centre or edge of centre sites are fully explored.
34. Paragraph 90 states that when assessing applications for retail and leisure development outside of town centres, which are not in accordance with an up to date plan, local planning authorities should require an impact assessment if the development is over a locally set floorspace threshold and if there is no locally set threshold, the default threshold is 2500sqm of gross floorspace. This should include assessment of:
- a) the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and
  - b) the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and the wider retail catchment (as applicable to the scale and nature of the scheme).
35. The application proposes 373sqm of retail floorspace and 887sqm of leisure floorspace and therefore an impact test is not required.

36. Paragraph 91 confirms where an application fails to satisfy the sequential test or is likely to have significant adverse impact on one or more of the considerations in paragraph 90, it should be refused.
37. The application has been accompanied by the requisite sequential test. This has considered a number of sites within Seaham and Peterlee and concludes that none of the sites is of a size to accommodate the proposed development. Of these sites however, only 2 are located within a defined centre (Blandford Place, Castledene). In relation to these sites, it is clear that they are not of a sufficient size to meet the developer's requirements.
38. Whilst the sequential assessment constitutes a limited search of the area, it is however considered that the site is highly accessible and is well linked to the defined town centre boundaries. It is also acknowledged that there are limited sites that would accommodate the proposed development, recognising that the proposal constitutes the erection of a new build property and also the unique location of the application site. Despite the limited information, it on balance is considered acceptable and Officers consider that the site represents a suitable location and would not undermine the aims of Policy 9 of the County Durham Plan to protect the vitality of existing town centres.
39. In addition to the commercial uses, the proposal includes residential uses to the upper floor, whilst the site is within the 400m new residential exclusion zone for the HRA, that would normally prevent any new residential development due to the impact on the coastal protected site, it has been considered that given it is proposed that the residential units are to be directly occupied by persons managing or working within the commercial units on the lower floors, this would not have a detrimental effect on the heritage coast. It is therefore considered that the principle of residential use is acceptable subject to a condition limiting the use of the residential units to the commercial units and not for sale or rent to any third parties.

#### Impact on Designated & Non-Designated Heritage Assets

40. When considering any application for planning permission that affects a conservation area, the Planning (Listed Buildings and Conservation Areas) Act 1990 s.66 requires the Local Planning Authority to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses; and s.72 requires a local planning authority to pay special attention to the desirability of preserving or enhancing the character or appearance of the area.
41. Section 16 of the National Planning Policy Framework (NPPF) goes further in seeking to enhance and sustain the significance of heritage assets and ensuring new developments make a positive contribution to local character and distinctiveness (para. 197), whilst requiring local planning authorities when considering the impact of a proposed development on the significance of a designated asset to give great weight to the asset's conservation irrespective of the level of any potential harm (Para. 199).
42. 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. The policy advises on when harm or total loss of the significance of heritage assets can be accepted and the circumstances/levels of public benefit which must apply in those instances.
43. The application property is located within the Seaham Conservation Area (a designated heritage asset), the Council's Design and Conservation team have provided the following appraisal of the area and its characteristics; "The Seaham Conservation Area was

designated in 1997 in recognition of its industrial heritage, retention of the historic plan form and surviving historic buildings. The proposed development site is within the historic core of the conservation area, in a mixed-use promenade facing onto a prominent and well used public open space with views out to the sea beyond. The site was formerly occupied by an L shaped infirmary built in 1844 according to historic maps and online sources, which was demolished in 1969.”

44. The proposed development is located on a prominent corner plot within the Seaham Conservation Area and part of the thriving promenade which is well used by residents and visitors. The site is currently vacant, grassed over with a footpath crossing to Back North Terrace. To the north and north-east is a group of attractive 19th century buildings, all two storey plus attic. Bath Terrace to the northeast is Grade II listed. To the east is a large public open space. Adjacent to the south is a snooker club which appears to be a later infill to the streetscene. North Terrace is predominantly two storey with only a small number of higher three storey properties. To the south, and acting as a dominant focal point, is the Grade II listed former Police Station.
45. The DCC Design and Conservation team have commented that “The proposed development site is a prominent gap site within the conservation area and opportunities to redevelop the site with an appropriate scale and form of development are supported in principle”, and have confirmed that following amendments to the scheme, they have no further comment or objection to the scheme.
46. It is therefore considered that the proposed development would make a positive contribution to the designed conservation area through the infilling of this prominent gap within the centre of the conservation area on the sea front that was historically previously occupied and would not result in any detrimental impact on the setting, appearance or significance of the conservation area or any nearby listed buildings it is therefore considered acceptable in line with Policy 44 and Section 16 of the NPPF and sections 66 & 72 of the Listed Building Act.

#### Impact on the character and appearance of the streetscene

47. Policy 29 (Sustainable Design) of the County Durham Plan requires all development proposals to achieve well designed buildings and places having regard to SPD advice and sets out 18 elements for development to be considered acceptable, including: making positive contribution to areas character, identity etc.; adaptable buildings; minimising greenhouse gas emissions and use of non-renewable resources; providing high standards of amenity and privacy; contributing to healthy neighbourhoods; and suitable landscape proposals. Provision for all new residential development to comply with Nationally Described Space Standards, subject to transition period.
48. It is considered that the proposed development is of an acceptable design, that reflects the character and appearance of the historic buildings and conservation area and would bring into a use a prominent site within the streetscene. The height of the building is of a similar scale to the existing buildings on Tempest Road and provides a ‘book-end’ to this section of North Terrace between to the newly constructed development at 18 North Terrace (former Harbour View Hotel).
49. It is therefore considered that the proposal is acceptable in line with Policies 29 and 6 of the CDP subject to a planning condition requiring the use of renewable energy resources.

## Impact upon Residential Amenity

50. Policy 31 of the County Durham Plan 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.
51. Paragraph 130 of the NPPF requires that planning decisions should ensure that developments will create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.
52. The Police Architectural Liaison Officer (PALO) raised a number of concerns in relation to the proposal and requested that the garage doors/shutters were provided to the rear parking areas, waiting restriction are imposed, opening hours were restricted to 2300hrs, and access code doors were imposed. The latest revised plans have provided doors to the parking area, and planning conditions are proposed to impose parking waiting restrictions and restricting the opening hours of the business to 2300hrs. The PALO was consulted on the amendments, and whilst no response was received it is considered that the amendments and conditions are sufficient to meet the majority of the requests of the PALO for the scheme to be acceptable in accordance with Para. 130 of the NPPF. The issue of the access code entrance is considered to be a management issue and not something that could be controlled via planning controls.
53. The primary access to the retail units will be taken from North Terrance to the Front with the leisure (gym) and residential uses accessed via Tempest Road. It is considered that the retail units and gym will sit within the existing context of a mixed uses within this area framed by a variety of uses and activities. Therefore, any increase in noise or activity would be negligible against the existing activity and noise level typical of this edge of town centre location and busy sea front.
54. In terms of internal amenity space, the proposed C3 uses are considered adequate for a development of this nature, and will provide well-appointed living space with natural light and ventilation to all habitable rooms.
55. The Council's Environmental Health Officer has confirmed that the proposal is within a noise sensitive location. However, with the appropriate conditions the proposal will be acceptable in terms of noise and statutory nuisance.
56. Concerns from local residents have been raised in relation to noise and disturbance resulting from this proposal, this is mainly in relation to the increased activity at the site. Whilst it is acknowledged that there will be an increase in movements near the site, the property is located on a busy corner location, where there are already significant traffic and pedestrian movement, it is therefore considered that any increase in movement to and from the site will not be significant enough to warrant refusal of the application.
57. Significant concern has been raised in relation to loss of privacy by the adjacent residents on Tempest Road by users of the gym on the first and second floors. The Council's Residential design SPD requires a minimum of 21.0m between habitable room plus an additional 3.0m for each storey above a 2 storey development. In this regard the proposal would need to achieve 27.0m to create a satisfactory separation and privacy distance. The submitted details show that the separation distance between the proposed building and the residential building to the North on Tempest Road is between 28.0 -29.0m, and as such is considered to be sufficient to protect the amenity and privacy of the dwelling to the North.

58. However, it is considered that whilst the proposal can achieve a satisfactory distance, due to the commercial nature of the first and second floor and the likely high frequency of users accessing these windows that a perceived surveillance over these dwellings would have a detrimental impact on the residential amenity and enjoyment of the neighbouring properties to the North. Therefore, it is considered that the windows to the Northern Elevation serving the first and second floors should be obscure glazed and controlled by a planning condition to ensure they are kept as such for the lifetime of the building.
59. Therefore, subject to the inclusion of a planning condition in this regard the development is considered to accord with the requirements of policy 29 and 31 of the CDP and section 12 of the NPPF.

### Highway and Pedestrian Safety

60. Policy 21 of the CDP requires that all development ensures that any vehicular traffic generated by new development can be safely accommodated and have regard to Parking and Accessibility Supplementary Planning Document.
61. A number of objections have been received in relation to lack of parking, loss of current parking provision, highway safety and additional traffic generation.
62. The site proposes 4no. dedicated in curtilage parking space to the rear of the development for use in association with the additional residential units. Given the location of the proposal site on the edge of the town centre it is anticipated that the users of the businesses will utilise the existing parking provision within the town centre.
63. The Council's Highway section have reviewed the proposal and although note that the development would generate an increase in demand which is not mitigated by any additional on site provision, nevertheless consider that the application would not have an unacceptable impact upon highway safety sufficient to sustain refusal of the application subject to planning conditions. It is therefore considered that the proposal will accord with the requirements of Policy 21 of the CDP, and Part 4 of the NPPF.

### Ecology

64. Policy 41 (Biodiversity and Geodiversity) of the CDP 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.
65. 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.
66. Policy 42 (Internationally Designated Sites) states that development that has the potential to have an effect on internationally designated sites, either individually or in combination with other plans or projects, will need to be screened in the first instance to determine whether significant effects on the site are likely and, if so, will be subject to an Appropriate Assessment.
67. Development will be refused where it cannot be ascertained, following Appropriate Assessment, that there would be no adverse effects on the integrity of the site, unless the

proposal is able to pass the further statutory tests of 'no alternatives' and 'imperative reasons of overriding public interest' as set out in Regulation 64 of the Conservation of Habitats and Species Regulations 2017.

68. Where development proposals would be likely to lead to an increase in recreational pressure upon internationally designated sites, a Habitats Regulations screening assessment and, where necessary, a full Appropriate Assessment will need to be undertaken to demonstrate that a proposal will not adversely affect the integrity of the site. In determining whether a plan or project will have an adverse effect on the integrity of a site, the implementation of identified strategic measures to counteract effects, can be considered. Land identified and/or managed as part of any mitigation or compensation measures should be maintained in perpetuity.
69. The Council's Ecologist has considered and screened the proposal and provided the following comments "This proposal includes the creation of 4 new residential units within the 400-metre buffer and would normally be unacceptable under the current DCC Habitats Regulations Assessment (HRA) of new residential accommodation on the coast. However, I consider that providing the new units are tied to the operation of the commercial units and are not sub-let for any other residential use the creation of new units within the 400m buffer is likely to be acceptable and in accordance with the HRA".
70. The HRA concludes that residential accommodation can proceed up to 6km away from the coastal European Protected Sites provided certain mitigation measures are taken.
71. Mitigation measures can include alternative green space that meets the Natural England SANG guidelines or a financial contribution of either £662.00 (for sites allocated in the County Durham Plan) or £756.61 per dwelling (for non-allocated sites) towards specific Coastal Access Management Measures. The HRA mitigation is not restricted to new housing developments and applies equally to other developments, such as visitor accommodation and tourism proposals.
72. Given the constrained nature of the site and limited footprint it is not considered that mitigation could be provided on site and as such it is considered appropriate to secure mitigation through commuted sum of £3026.44 to which the applicant has agreed, to be secured through S106 Agreement or Unilateral Undertaking. The development is therefore considered to accord with policy 42 of the CDP, the habitat regulations and the Council's developer contributions guidance. .
73. The Council Ecology has also confirmed that "The supplied Preliminary Ecological Appraisal report by EcoSurv is acceptable and if the application is approved, the contents of Section 6 (Conclusions and Recommendations) should be conditioned as it contains the provision of bat roost units and swift/swallow bricks in the new building."
74. Therefore, it is considered that the proposal is acceptable in line with Policy 41 and 42 of the County Durham Plan, and section 15 of the NPPF subject to the conditions as detailed and securing the necessary HRA payment.

#### Connectivity

75. Policy 27 of the CDP requires new residential and commercial development to be served by a high speed broadband connection unless it can be demonstrated that this is not appropriate. As the development would be located within the centre of Seaham within close proximity existing infrastructure and as such it does not appear that there any significant constraints to delivering the connectivity in accordance with the requirements of policy 27. However, the submission and agreement of precise detail in this regard could

be secured through planning condition in accordance with the aims of policy 27 of the CDP.

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## CONCLUSION

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76. The proposed development is considered acceptable in principle and would not have any significant adverse impact upon the vitality and viability of Seaham Town Centre and the associated works proposed could be satisfactorily accommodated in terms of mass, scale, layout, design and materials and would not have an unacceptable impact upon residential amenity, ecology, highway safety, land contamination and drainage in accordance with the requirements of policies 6, 9, 21, 25, 27, 29, 31, 32, 41 and 42 of the County Durham Plan and sections 2, 4, 7, 9, 12 and 15 of the NPPF 2021.
77. In addition, it is considered that the proposal would enhance the character and appearance of Seaham Conservation area and would preserve the setting of adjacent listed buildings in accordance with policy 44 of the County Durham Plan, section 16 of the NPPF (2021) and Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 subject to the inclusion of appropriate planning conditions.

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## RECOMMENDATION

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That the application (DM/20/01479/FPA) be **APPROVED** subject to a s106 agreement to secure the following;

- £3,026.44 to be used towards the CAMMs Tier 2 Beachcare and Wardening programme.

And the following conditions;

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) 6, 9, 21, 25, 27, 29, 31, 32, 41 and 42 of the County Durham Plan and Parts 2, 4, 7, 9, 12 and 15 of the National Planning Policy Framework.

3. No development shall commence until a land contamination scheme has been submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall be compliant with the YALPAG guidance and include a Phase 2 site investigation, which shall include a sampling and analysis plan. If the Phase 2 identifies any unacceptable risks, a Phase 3 remediation strategy shall be produced and where necessary include gas protection measures and method of verification.

Reason: To ensure that the presence of contamination is identified, risk assessed and proposed remediation works are agreed in order to ensure the site is suitable for use,

in accordance with Part 15 of the National Planning Policy Framework. Required to be pre-commencement to ensure that the development can be carried out safely.

4. Remediation works shall be carried out in accordance with the approved remediation strategy. The development shall not be brought into use until such time a Phase 4 Verification report related to that part of the development has been submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that the remediation works are fully implemented as agreed and the site is suitable for use, in accordance with Policy 32 of the County Durham Plan and Part 15 of the National Planning Policy Framework.

5. No development 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. A Dust Action Plan including measures to control the emission of dust and dirt during construction.
2. Details of methods and means of noise reduction/suppression.
3. Where construction involves penetrative piling, details of methods for piling of foundations including measures to suppress any associated noise and vibration.
4. Details of measures to prevent mud and other such material migrating onto the highway from all vehicles entering and leaving the site.
5. Designation, layout and design of construction access and egress points.
6. Details for the provision of directional signage (on and off site).
7. Details of contractors' compounds, materials storage and other storage arrangements, including cranes and plant, equipment and related temporary infrastructure.
8. Details of provision for all site operatives for the loading and unloading of plant, machinery and materials.
9. Details of provision for all site operatives, including visitors and construction vehicles for parking and turning within the site during the construction period.
10. Routing agreements for construction traffic.
11. Details of the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate.
12. Waste audit and scheme for waste minimisation and recycling/disposing of waste resulting from demolition and construction works.
13. Management measures for the control of pest species as a result of demolition and/or construction works.
14. 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.

6. Notwithstanding any details of materials submitted with the application no development shall commence above damp proof course until precise details of the make, colour and texture of all walling, window and roofing materials have been submitted to and approved in writing by the Local Planning Authority. 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 Policy 29 of the County Durham Plan and Part 12 of the National Planning Policy Framework.

7. The commercial premises shall not be open to customers outside the hours of 0800 to 2300 on any day of the week.

Reason: In the interests of the residential amenity of surrounding properties in accordance with Policy 31 of the County Durham Plan and Part 15 of the National Planning Policy Framework.

8. 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 0800 to 1800 on Monday to Friday and 0800 to 1300 on Saturday.

No internal works audible outside the site boundary shall take place on the site other than between the hours of 0730 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.

9. Prior to the occupation of any part of the building hereby permitted, details of appropriate cycle parking shall be submitted to and approved in writing by the Local Planning Authority and thereafter shall be implemented and maintained in accordance with the agreed details.

Reason: To ensure acceptable levels of cycle parking and to promote sustainable transport methods in accordance with Policy 21 of the County Durham Plan.

10. Before any part of the development hereby approved is commenced a scheme of sound proofing measures shall be submitted to and approved in writing by the local planning authority. The aim of the scheme shall be to ensure that the noise insulation of walls, floors, windows, roofs between the separate and adjoining properties shall be sufficient to prevent excessive ingress and egress of noise from the commercial elements of the development and shall protect future occupiers of the residential units on the third floor from any nearby external noise sources ensuring the following noise levels are achieved:

- 35dB LAeq 16hr bedrooms and living room during the day-time (0700 - 2300)
- 30 dB LAeq 8hr in all bedrooms during the night time (2300 - 0700)
- 45 dB LAmax in bedrooms during the night-time

Any noise mitigation measures required and agreed shall be installed prior to the beneficial occupation of the development and shall be permanently retained thereafter.

Reason: In the interest of the amenity of existing and future occupants in accordance with Policy 31 of the County Durham Plan and Part 15 of the National Planning Policy Framework. Required as a pre commencement condition to ensure that an appropriate scheme is agreed and can be implemented.

11. No hot food shall be prepared or served at the premises until details of the fume extraction system, to include a risk assessment, design schematic, details of any odour abatement measures, details of noise levels and any other documents considered necessary to demonstrate accordance with the current EMAQ/DEFRA guidance on the control of odour and noise from commercial kitchen exhaust systems shall have been submitted to and approved in writing by the Local planning authority. The approved scheme shall be installed prior to the use commencing and shall be operated at all times when cooking is being carried out on the premises.

Reason: In the interest of the amenity of existing and future occupants in accordance with Policy 31 of the County Durham Plan and Part 15 of the National Planning Policy Framework. Required as a pre commencement condition to ensure that an appropriate scheme is agreed and can be implemented.

12. Development shall not commence until a detailed scheme for the disposal of foul and surface water from the development hereby approved has been submitted to and approved in writing by the Local Planning Authority in consultation with Northumbrian Water and the Lead Local Flood Authority. Thereafter the development shall take place in accordance with the approved details.

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

13. The occupation of the residential units hereby approved shall be limited to person(s) solely or mainly working in the businesses contained within the building hereby approved. The residential units shall not be sold, let, sub-let, or used for holiday accommodation.

Reason: In order to comply with Policy 41 and 42 of the County Durham Plan and Part 15 National Planning Policy Framework.

14. Prior to commencement above damp proof course details of the ecology mitigation measures in accordance with Section 6 of the hereby approved Preliminary Ecological Appraisal by Ecoserve (dated 28th Feb 2020) shall be submitted to and approved in writing by the Local Planning Authority. The agreed measures shall thereafter be implemented prior to the first occupation of any part of the building, and maintained in accordance with the agreed details for the lifetime of the development.

Reason: To ensure a satisfactory form of development in accordance with Policies 41 and 42 of the County Durham Plan and Section 15 of the NPPF (2021).

15. The external areas to the ground floor on North Terrace of the premises shall not be used by customers outside the hours of 0900-2000 hours on any day of the week, and there shall be no use of any external areas on Tempest Road at any time.

Reason: To ensure a satisfactory form of development, and to protect the residential amenity of nearby residential units in accordance with Policies 29 and 31 of the County Durham Plan and Section 12 of the NPPF (2021).

16. Prior to the occupation of any part of the building hereby permitted details of a scheme for the formalising of parking / waiting restrictions on Back North Terrace and Tempest Road shall be submitted to and agreed in writing by the Local Planning Authority. The agreed scheme shall thereafter be implemented in accordance with the agreed scheme at the expense of the developer.

Reason: In the interest of highway safety in accordance with Policy 21 of the County Durham Plan and Section 9 of the NPPF (2021)

17. Prior to the occupation of any part of the building hereby permitted details of a hard landscaping / paving scheme shall be submitted to and approved in writing by the Local Planning Authority. This scheme shall incorporate and provide a design to clearly delineate the areas of public highway and areas of private ownership. The agreed scheme shall thereafter be implemented in accordance with the agreed scheme at the expense of the developer.

Reason: In the interest of highway safety in accordance with Policy 21 of the County Durham Plan and Section 9 of the NPPF (2021)

18. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and/or re-enacting that Order) the proposed windows within the first and second floor of the North elevation shall be obscured to level 3 or higher of the Pilkington scale of privacy or equivalent and shall be maintained thereafter in perpetuity.

Reason: In the interests of the residential amenity of neighbouring properties in accordance with Policies 29 and 31 of the County Durham Plan and Part 12 of the National Planning Policy Framework.

19. No development shall commence until such time as a scheme detailing the precise means of broadband connection to the site has been submitted to and agreed in writing by the local planning. Thereafter, the development shall be carried out in accordance with the agreed detail.

Reason: To ensure a high quality of development is achieved and to comply with the requirements of policy 27 of the County Durham Plan.

20. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development Order) 2015 (as amended) (or any revocation and re-enactment of that order), the ground floor units shall be used only for uses contained within Use Classes E (a),(b),(c) or Sui-Generis (drinking establishment), the first and second floor unit shall be used only for uses contained within Class E (d) of the Town and Country Planning (Use Classes) Order 1987 (as amended) (or any revocation and re-enactment of that order) and for no other use.

Reason: In the interests of the amenity of the area in accordance with Policies 29 and 31 of the County Durham Plan and Part 15 of the National Planning Policy Framework.

21. Prior to the commencement of the development above damp proof course of the development hereby approved details of how the building shall ensure that the proposal can achieve a Building Research Establishment Environmental Assessment method (BREEM) minimum rating of 'very good' (or any future national equivalent), shall be submitted to and approved in writing by the Local Planning Authority and thereafter the development shall be implemented wholly in accordance with those details as agreed.

Reason: To ensure that the development achieves a sustainable form of development in line with Policy 29 of the County Durham Plan.

22. Notwithstanding any details of shutters submitted with the application the premises shall not be occupied until precise details of any security shutters or grilles have been submitted to and approved in writing by the Local Planning Authority. 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 Policy 29 of the County Durham Plan and Part 12 of the National Planning Policy Framework.

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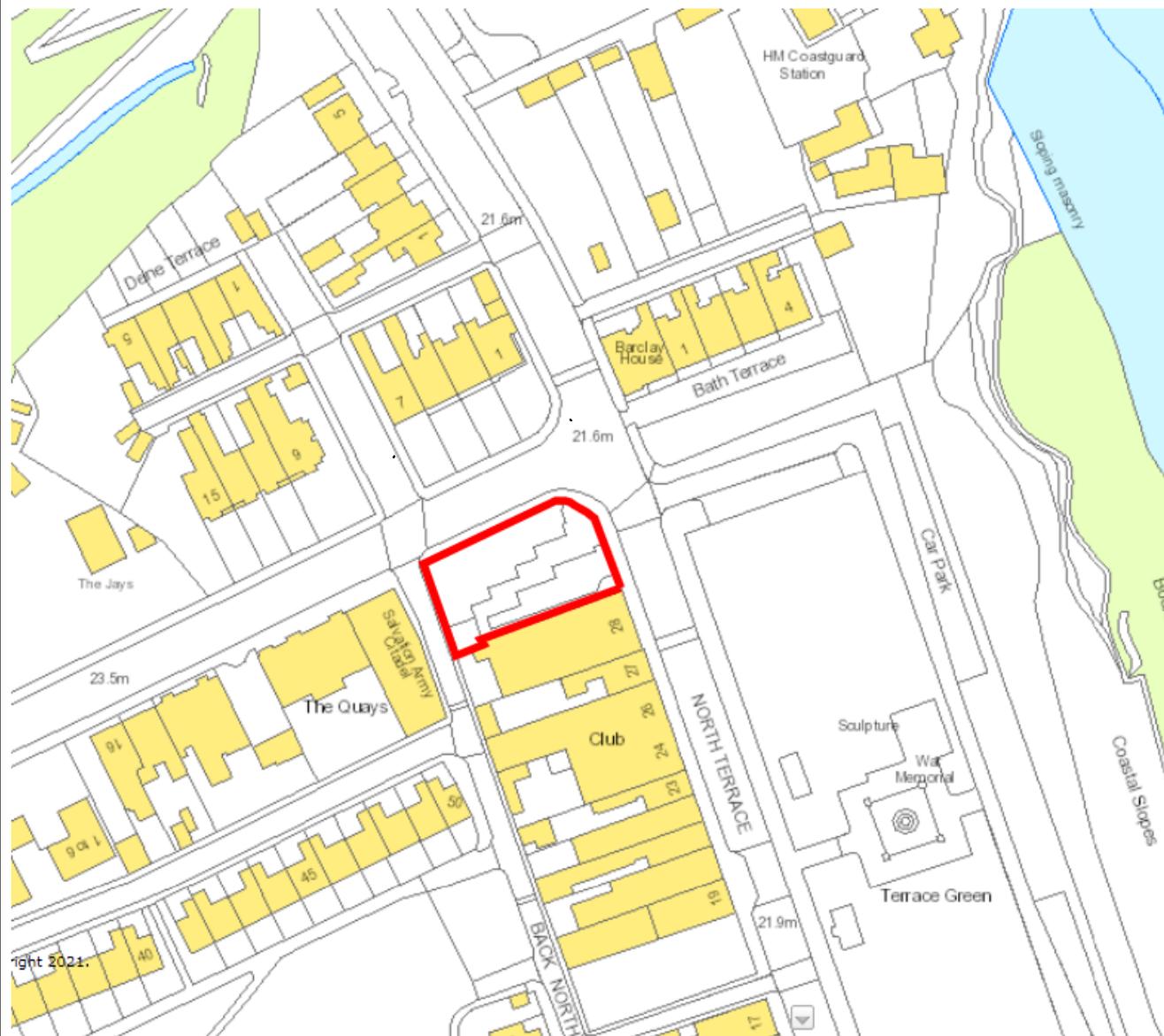
Submitted application form, plans supporting documents and subsequent information provided by the applicant.

The National Planning Policy Framework (2021)

National Planning Practice Guidance Notes

County Durham Plan (2020)

Statutory, internal and public consultation responses



**Planning Services**

**DM/20/01479/FPA**

**Erection of 1no. 4 storey building comprising of 3no. units (use class E (a)(b)(c) or Sui Generis (drinking establishment)) to ground floor, 1no. unit (use class E(d) to first and second floor and 4no. residential units (C3) ancillary to the commercial units to third floor. (amended description)**

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**Date 14 September 2021**

**Scale NTS**