

COMMITTEE REPORT

APPLICATION DETAILS

APPLICATION No:	DM/21/01752/FPA
FULL APPLICATION DESCRIPTION:	Change of use of ground floor premises from Dental Surgery (Use Class E) to Hot Food Takeaway (Sui Generis) with associated internal alterations
NAME OF APPLICANT:	Mr Shahram Jaberzadeh
ADDRESS:	37 North Road Durham DH1 4SE
ELECTORAL DIVISION:	Elvet and Gilesgate
CASE OFFICER:	Leigh Dalby (Senior Planning Officer) Tel: 03000 261 389 Email: Leigh.Dalby@durham.gov.uk

DESCRIPTION OF THE SITE AND PROPOSALS

The Site

1. The application site is located within a small terrace of mixed-use properties characterised by commercial units to the ground floor with residential units above. The site is surrounded by a mix of commercial and residential properties.
2. The site is located within a highly accessible location approximately 18m from the boundary of the designated city centre as defined within the County Durham Local Plan. The site is within walking distance from local and city services, employment areas and is also accessible to public transport including bus and rail services.

The Proposal

3. Planning permission is sought for a change of use of the premises from a dental surgery (Use Class E) to a Hot Food takeaway (sui-generis) with associated internal alterations.
4. The application is reported to Planning Committee at the request of the Durham City Parish Council to be given consideration by the Committee due to the proximity of education facilities, an over proliferation of takeaways in the locality, adverse impact upon highway safety and residential amenity.

PLANNING HISTORY

5. No relevant site history

PLANNING POLICY

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 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.
9. 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.
10. 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.
11. NPPF Part 7 Ensuring the Vitality of Town Centres - Planning policies should be positive, promote competitive town centre environments and set out policies for the management and growth of centres over the plan period.
12. 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.

13. NPPF Part 9 Promoting sustainable transport. Encouragement should be given to solutions which support reductions in greenhouse gas emissions and reduce congestion. Developments that generate significant movement should be located where the need to travel will be minimised and the use of sustainable transport modes maximised.
14. NPPF Part 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.
15. NPPF Part 15 Conserving and enhancing the natural environment. Planning policies and decisions should contribute to and enhance the natural and local environment.
16. 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:

17. The following policies within the County Durham Local Plan are considered relevant in terms of this proposal:
18. Policy 1 (Quantity of Development) outlines the levels of employment land and housing delivery considered to be required across the plan period.
19. 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.
20. 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.
21. 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.
22. Policy 22 (Durham City Sustainable Transport) seeks to reduce the dominance of car traffic, address air quality and improve the historic environment within the Durham City area

23. 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'.

24. Policy 30 (Hot Food Takeaways) advises that proposals within Sub-Regional, Large Town, Small Town, District and Local Centres will be refused should an unacceptable impact upon the vitality and viability of those centres result. Outside of such centres, proposals within 400 metres of an entry point of an existing or proposed school or further education college will not be permitted. The specific amenity impacts of each takeaway proposal must also be acceptable.
25. 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.
26. 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.

NEIGHBOURHOOD PLAN:

27. The following policies of the Durham City Neighbourhood Plan are considered relevant to the determination of this application.

28. Policy E3 - Retail Development states that development will be supported where it contributes to the lively and vibrant City Centre and enhance the character and attractiveness of the City Centre. It further states that development that provides residential accommodation in upper floors of commercial properties will be supported as long as they do not have a negative impact on retail, commercial and tourism activities and the general amenity of neighbouring properties and residential amenity including noise impact.
29. Policy H2 - The Conservation Areas expects development within the City Centre Conservation Area to sustain and enhance its special interest and significance identified within the conservation area character appraisal taking account of sustaining and enhancing the historic and architectural qualities of buildings, continuous street frontages, patterns, boundary treatments, floorscape and roofscapes, avoiding loss or harm of an element that makes a positive contribution to its individual significance and surrounding area, using appropriate scale, density, massing, form, layout and materials, using high quality design sympathetic to the character and context, its significance and distinctiveness
30. Policy S1 - Sustainable Development Requirements of all Development and Re-development Sites Including all New Building, Renovations and Extensions seeks to sets out the economic, social and environmental criteria that development proposals will be required to meet.
31. Policy T1 - Sustainable Transport Accessibility and Design seeks to ensure that development proposals will be required to demonstrate best practice in respect of sustainable transport accessibility and design

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

CONSULTATION AND PUBLICITY RESPONSES

STATUTORY RESPONSES:

32. The following comments were received following consultation with Statutory and Internal consultees.
33. **DCC Highways** - Servicing would need to take place to the rear of the development. Given the central location, I would not object to the proposal on highway grounds.
34. **City of Durham Parish Council** - The Parish objects to this application citing concerns in relation to proximity of education facilities, a resulting over proliferation of takeaways in the locality, adverse impact upon highway safety and residential amenity. Consequently they consider the application to be contrary to Neighbourhood Plan Policy T1, County Durham Plan Policies 6, 29, 30 and 31, as well as NPPF paragraphs 127 and 180.

INTERNAL RESPONSES:

35. **DCC Env. Health** - 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,). 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.

The development would see the introduction of a noise and odour generating development, whilst there are several commercial establishments nearby there are also residential properties within close proximity, some adjoining the premises.

There is limited information provided in relation to the control of noise and odour, although the applicant recognises that these will be issues; no consideration appears to have been given in relation to the potential for disturbance from customers, particularly in relation to late at night, the requested hours of 0900 to 0300 on every day of the week are also of concern. Such operating times would also require a premises licence.

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 below.

Noise and odour from the cooking processes and noise from customers impacting upon NSRs.

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

- 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 premise.

-The premises subject to this permission shall not be open for business outside of the hours of 0900 to 2300hrs on any night of the week, with the exception of midnight on New Year's Eve.

NON-STATUTORY RESPONSES

36. The following comments were received following consultation with Statutory and Internal consultees:
37. **City of Durham Trust** – Objects to the proposal, on the basis that the proposal would be contrary to Policy 6 as a new take-away in this location will be prejudicial to highway safety. Policy 21 as this proposal would generate vehicular traffic (customers and delivery drivers) which cannot be safely accommodated on the local network. Policy 29 as the proposal is not in keeping with character, would create a highway safety hazard, increase litter, impact on residents through noise and odour, and increase the availability of unhealthy food offering. Policy 30 though an increase in noise and odour disturbance.

38. **Durham Constabulary (Architectural Liaison Officer)** – whilst offering no objection to the application note that there are already 34 licenced premises on North Road, which are a mixture of public houses, hot food takeaways, restaurants, and shops. Concerns have been raised by the local Licencing Sergeant around the planned closing times for the proposed hot food takeaway, which do not align with those set out in the Durham County Council’s Statement of Licencing Policy.

The framework provided in Durham County Councils statement of licencing (2019-2024) Appendix 2, states premises licenses primarily for the late-night refreshment should be open no later than 01:00am weekdays and 02:00am on a weekend. However, we would welcome timings for this proposal being capped at 23:00 seven days a week.

We would like to make the following recommendations in relation to this application:

- External doorsets are recommended to be certified to LPS 1175: Issue 7 SR2 (or similar).
- All ground floor and easily accessible glazing should incorporate one pane of laminated glass to a minimum thickness of 6.4mm or glass successfully tested to BS EN 256:2000 Glass in building. Security glazing- resistance to manual attack to category P1A unless it is protected by a roller shutter or grille.

If the planning application is approved, we recommend the following condition be included, to keep in line with Durham County Council’s Statement of Licencing Policy:

- The takeaway opening times to be no later than 23:00hrs 7 days a week.

PUBLIC RESPONSES

39. The application has been publicised by way of site notice and notification letters sent to neighbouring properties, in response 7no. letters and a petition containing 18 signatures of objection were received, a summary of the points of objection are as follows:

- Highway safety issue
- Environmental Impact (odours) on nearby residents
- Drainage
- Parking issues
- Over proliferation of takeaways in the area
- Noise and air pollution
- Litter and rubbish generation
- Waste disposal
- Anti-social behaviour

APPLICANTS STATEMENT:

40. The application site is located outside of the defined area for Durham City Centre, where Policy 30 of the County Durham Plan seeks to control hot food takeaways within 400m of an entry point to an existing school or further education college.
41. The nearest entry points to existing schools and further education colleges in this case are located well in excess of 400m of the application site. The Parish Council have suggested that purpose-built student accommodation has been used as a temporary college in the past by Durham University. We are not aware of this having occurred, nor has any evidence been provided by the Parish Council to substantiate this, however any past temporary use is not sufficient for the premises to now constitute a further education college.

Were that the case, a material change of use requiring planning permission would have occurred. There is no record of this, and accordingly the premises should be regarded by Members as residential accommodation, purpose built for students at Durham University. In absence of any entry points to schools or further education colleges, the proposal complies with the locational requirement of Policy 30 and is considered to be acceptable in policy terms as a matter of principle.

42. Whilst no objections can be raised in principle to the proposed change of use of the existing premises to a hot food takeaway, Policy 30 of the County Durham Plan does make clear that when a proposed A5 use is considered locationally acceptable, as is the case here, consideration will need to be given to the impact that the development would have in terms of amenity, particularly in relation to noise and odours.
43. The applicants welcome the comments from the Council's consultees, none of whom raise any objections to the proposed development subject to conditions. The applicants are therefore pleased to see that the Council's technical experts agree that the proposal would not result in unacceptable impacts in respect of noise and odour, and that there would be no highways safety implications. The absence of an objection from Northumbria Police in relation to the application is also welcomed.
44. The concerns of those who have commented on the application have been noted and the applicant is committed to ensuring that the business operates without adverse impacts on neighbouring premises should planning permission be granted. This includes a commitment to installing high specification mechanical extraction equipment. Advances in modern technology now make it possible for noise generated by cooking equipment and extraction units to be eliminated and make odours from cooking unnoticeable. Should planning permission be granted by Members in accordance with conditions recommended by Officers and Consultees, the Council will retain control over the important aspects of the development and should take comfort in the knowledge that they will have the power to ensure the amenity of local residents is not harmed.
45. Subject to accordance with those conditions, this policy compliant proposal is capable of delivering small scale employment opportunities through the re-use of a vacant building in a sustainable location. Importantly, it can be done without adverse impact on occupants of neighbouring premises or amenity of local residents. The Applicants welcome the positive approach taken by Officers in respect of their application, and in absence of any objections from technical consultees it is hoped that Members of the Committee can reach a similar conclusion by granting planning permission for the proposed development, which we fully believe to be acceptable and in accordance with the development plan.

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>

PLANNING CONSIDERATIONS AND ASSESSMENT

46. 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, the impact on residential amenity, highway safety, the character and appearance of visual amenity and heritage assets.

Principle of Development

47. The County Durham Plan defines the Sub-Regional, Large Town, Small Town and District Centres across the County. As detailed above the site is located on an unallocated site outside of a designated shopping or retail area; however, it is located approximately 18m from the designated sub-regional commercial centre of Durham City.
48. 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, stating that such development will be permitted provided it is compatible with uses 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.
49. As detailed above policy 6 of the CDP permits development on unallocated sites provided it meets the criteria set out within the policy. In this regard it is considered that the proposal can draw in principle support from this policy given that the site is located within close proximity to compatible commercial uses and would not be prejudicial to any existing or permitted adjacent uses (criteria a), is within the existing built framework of Durham City and would not lead to coalescence with neighbouring settlements (criteria b), would not result in a loss of open land that has any recreational, ecological or heritage value (criteria c) and has easy access to sustainable transport and local facilities (criteria f). Consideration of criteria d, e, h of policy 6 is considered elsewhere within this report. It is not considered that criteria i and j are appropriate in relation to this proposal.
50. Policy 30 of the CDP is also relevant and relates to hot food takeaways. It advises that proposals for Hot Food Takeaways located within Sub-Regional, Large Town, Small Town, District and Local Centres will be refused should development result in an unacceptable impact upon the vitality and viability of those centres. Outside of such centres, proposals within 400 metres of an entry point of an existing or proposed school or further education college will not be permitted.
51. Objection to the application has been raised by residents, adjacent occupiers, the City of Durham Trust and the City of Durham Parish Council citing concern at the over proliferation of hot food outlets in the locality and the proximity of the use to existing schools such as St Leonard's and Durham Johnson.
52. However, with regard to policy 30 it is noted that the application site is not located within the designated sub-regional retail centre as defined by the Country Durham Plan and is not within 400m of a school or further education college, as such the principle of a proposed hot food takeaway in this location would not conflict with the aims of this policy. The policy does note that if considered locationally acceptable, consideration will need to be given to the impact that the development would have in terms of amenity, particularly in relation to noise and odours. The impact of the proposal upon noise and odour is considered in more detail elsewhere in this report.
53. It is therefore considered that the proposal is acceptable in principle subject to other material considerations as detailed below.

Impact upon Residential Amenity

54. 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. In addition, policy 31 specifically requires proposals for Hot Food Takeaways to have regard to the impact of the development upon residential amenity including noise and odour.
55. Both policies display broad accordance with paragraph 130 of the NPPF which 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.
56. The development is of a type which can give rise to additional noise and odour generated by the cooking process and also as a result of increased disruption from the comings and goings of customers and deliveries, usually outside of core business hours. Such matters have been raised in objection by residents, adjacent businesses, the Parish Council and the City of Durham Trust.
57. The Council's Environmental Health Officer has been consulted and confirms that the proposal is within a sensitive location and could cause odour and noise nuisance if sufficient controls are not in place. In this regard they advise the inclusion of planning conditions limiting the opening hours to no later than 23:00hrs and that the use itself shall not commence until details of an appropriate ventilation and fume extraction system have been submitted to and agreed in writing by the Local Planning Authority, and that thereafter the agreed systems be installed and retained at all times when hot food is prepared at the premises. Subject to the inclusion of conditions in this regard they are satisfied that the proposal can be considered acceptable in terms of noise, odour and statutory nuisance.
58. Similarly, The Police Architectural Liaison Officer (PALO) has raised no objection confirming that opening hours should be limited by condition to no later than 23:00 in order to align with licensing requirements. They also make suggestions in relation to door and glazing specification which although noted, are nevertheless matters related to building control legislation.
59. Notwithstanding the above, concerns have been raised from residents relating to the impact of the development upon residential amenity, specifically as a result of increased disturbance from noise and odour nuisance. Whilst it is understood that a neighbouring commercial unit includes a residential element to the upper floor, the main thrust of residential accommodation is situated 10 metres to the west of the site at Lambton Street. It is therefore acknowledged that there is potential for additional noise disturbance from customers and deliveries entering and leaving the premises. However, given the location of the site within an area characterised by commercial properties that already includes late night uses such as 2no. public houses and 1no. hot food takeaway, and being situated immediately adjacent to the commercial centre of the city on one of the main routes into the city centre where there is already significant noise from traffic and pedestrian movement, any increase in disturbance from the proposed development would not be so significant to sustain refusal of the application.

60. In terms of the potential for odour nuisance. Again, whilst it is noted that the proposed use has the potential to generate additional odour from the cooking process the Council's Environmental Health Section has confirmed that subject to the installation of appropriate ventilation and extraction equipment the proposal would not result in a statutory nuisance, as such it is considered that the proposal is acceptable subject to the inclusion of a planning condition in this regard.
61. With regard to antisocial behaviour residents have raised concern that there is already a significant problem with anti-social behaviour in the immediate vicinity where there are frequent instances of littering/fly-tipping, rough sleeping, drug use, and in street urination/defecation. They consider increased activity in the area arising from the proposed development would exacerbate these problems. Whilst these concerns are noted there it is considered that there is no direct association between the introduction of a single new hot food takeaway in the location proposed, to any tangible likely increase in antisocial behaviour given the commercial nature of this part of the city and its position adjacent to the designated commercial centre of the city. As noted, the Police Architectural Liaison Officer raises no objection to the application subject to the inclusion of a planning condition to limit opening hours.
62. Therefore, subject to the inclusion of a planning condition in this regard the development is considered to accord with the requirements of policy 29, 30 and 31 of the CDP and sections 12 and 15 of the NPPF.

Highway and Pedestrian Safety

63. 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 and policy 22 seeks to reduce the dominance of car traffic, address air quality and improve the historic environment within the Durham City area
64. Policy T1 of the Durham City Neighbourhood Plan seeks to ensure that development proposals should be supported by evidence of how they contribute to sustainable transport accessibility and design where appropriate.
65. Objections have been received from the Parish Council, the City of Durham Trust and adjacent occupiers citing concerns that highway safety would be fundamentally undermined by the proposal as a direct result from an increase in visitors and an unsustainable demand for parking on the highway immediately in front of the premises. In objecting respondents cite previous instances where unauthorised parking has taken place along this section of North Road, various road traffic accidents and that access to the rear for servicing is limited due to a shallow, narrow archway.
66. In considering the application regard has been had to the site's central location and close proximity to the commercial centre of Durham City which itself is well served by public transport linkages. Whilst it is likely there will be some increase in vehicular movements to and from the premises compared to those currently experienced, the Highway Authority has confirmed that there would not be any unacceptable impact upon highway safety as a result, subject to servicing taking place to the rear. Whilst the presence of a narrow, shallow archway to the rear that currently restricts access is noted, it is not considered this would prohibit serving to any significant degree and that appropriately sized vehicles could be used to negate any restriction in this regard. It is also noted that it appears other existing commercial premises along North Road currently use this access effectively. A condition requiring that all servicing is undertaken via the rear access to the premises and delivery area could be included.

67. In light of the above it is considered that given the location of the application site, within close proximity to Durham city centre and access to sustainable travel facilities that the proposal would be acceptable in relation to Policy 22 of the CDP and T1 of the neighbourhood plan and that in relation to highway safety the proposal would accord with the requirements of Policy 21 of the CDP, and Part 4 of the NPPF.

Impact on Designated & Non-Designated Heritage Assets

68. The application site is located within the Durham City Centre Conservation Area and the setting of a Grade II* Listed Building. When considering any application for planning permission that affects a conservation area or the setting of a Listed Building, the Planning (Listed Buildings and Conservation Areas) Act 1990 s.66 is relevant and 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 in relation to conservation areas, s.72 of the Act requires a local planning authority to pay special attention to the desirability of preserving or enhancing the character or appearance of the area.
69. Section 16 of the National Planning Policy Framework (NPPF) states that planning decisions should take into account the desirability of sustaining and enhancing 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).
70. Policy 44 of the CDP 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.
71. Policy H2 of the Durham City Neighbourhood Plan states that "Development proposals within or affecting the setting of the Durham City Conservation Area should sustain and enhance its significance as identified within the Conservation Area Appraisals" and goes on set out requirements that proposals in the conservation should take account of, and meet (where relevant).
72. As noted the application property is located within the Durham City Conservation Area and in close proximity to the Grade II* Listed Viaduct. However, the proposal seeks consent for the material change of use of the property only which requires internal alterations retaining the external appearance of the building fundamentally unaltered – with the likely exception of replacement signage which does not form part of the current planning application. As such it is not considered that the proposal would have any negative material impact upon the character, appearance or setting of the designated heritage assets and would, through the reintroduction of a positive use to a currently vacant building, prevent it's further deterioration and deliver some limited enhancement to this part of the conservation area and the setting of the listed building.
73. It is therefore considered that the proposed development would make a modest positive contribution to the Durham City (Centre) conservation area and the setting of the Grade II* Listed Viaduct through the reuse of an empty building in accordance with Policy 44 of the CDP, Policy H2 of the DCNP, Section 16 of the NPPF and Sections 66 & 72 of the Planning (Listed Building and Conservation Areas) Act 1990.

Impact on the character and appearance of the streetscene

74. 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.
75. With regard to the impact of the development upon the character and appearance of the surrounding locality and streetscene it is considered that the proposed development is acceptable in that it does not propose any material alteration to the external appearance of the host property. As such the development is considered to accord with policy 29 in this regard.
76. However, objections have been received in relation to increased litter generated by the proposal which cite concerns regarding similar issues with the existing hot food takeaway already operating from this short section of properties north of the Viaduct. Whilst it is acknowledged that the nature of the use will result in customers leaving the premises with associated packaging that will require disposal, the area is well served by existing litter bins (3 bins being located within a 100m of the site, and 12no. with approx. 200m of the site). The applicant has also confirmed that bins will be provided within the premises for customer use. There is understood to be no provision to consume food within the premises and as such food will be taken away and consumed offsite. As such it is considered that the proposal is located within an area whereby any customers arriving on foot will have opportunity to dispose of their waste appropriately.
77. With regard to the requirement to contribute to healthy neighbourhoods, Policy 29 requires that proposals contribute towards a healthy neighbourhood and consider the health impacts of developments, whilst section 8 of the National Planning Policy Framework (NPPF) acknowledges the role of planning in improving health.
78. In this regard, it is acknowledged that whilst significant high levels of hot food takeaways within an area can have a detrimental impact on the physical health of residents within communities within this location it is not considered that there is an over proliferation of hot food takeaways in the immediate vicinity to a level that could be considered to have a direct detrimental impact on the physical health of the neighbourhood, to a level that could warrant refusal of the application.
79. Whilst the precise nature of the hot food offer is unknown at this time, the type of food is not a material consideration, and that the re-use of the vacant building is considered to contribute to the neighbourhood in enhancing the vitality and viability of the area bringing back into use a vacant property, adequate distance from sensitive locations as set out in Policy 30 of the CDP.
80. It is therefore considered that the proposal is acceptable in line with Policies 29 and 30 of the CDP.

CONCLUSION

81. The proposed development is considered acceptable in principle and would not have an unacceptable impact upon the character and appearance of the area, residential amenity or highway safety in accordance with the requirements of policies 1, 6, 21, 22, 29, 30, 31 and 44 of the County Durham Plan, E3, H2, S1 and T1 of the Durham City Neighbourhood Plan and sections 2, 4, 6, 7, 8, 9, 12, 15 and 16 of the NPPF 2021.
82. In addition, it is considered that the proposal would enhance the character and appearance of Durham City Conservation area through the reuse of a vacant building 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.

RECOMMENDATION

That the application (DM/21/01752/FPA) be **APPROVED** subject 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) 1, 6, 21, 22, 29, 30, 31 and 44 of the County Durham Plan, E3, H2, S1 and T1 of the Durham City Neighbourhood Plan and sections 2, 4, 6, 7, 8, 9, 12 and 16 of the NPPF 2021

3. The premises shall not be open to customers outside the hours of 10:00 to 23:00 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.

4. All deliveries and servicing (including those being despatched and received) shall be undertaken from the delivery area at the rear of the property. No deliveries shall be received or despatched from the site outside the hours of 1000 and 2300.

Reason: In order to ensure the highway safety in accordance with Policy 21 of the County Durham Plan.

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 and any other details necessary to demonstrate accordance with the current EMAQ/DEFRA guidance on the control of odour and noise from commercial kitchen exhaust systems) 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 premise.

Reason: To ensure adequate ventilation and extraction to prevent a statutory nuisance, in accordance with Policy 29 and 31 of the County Durham Plan.

STATEMENT OF PROACTIVE ENGAGEMENT

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

BACKGROUND PAPERS

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

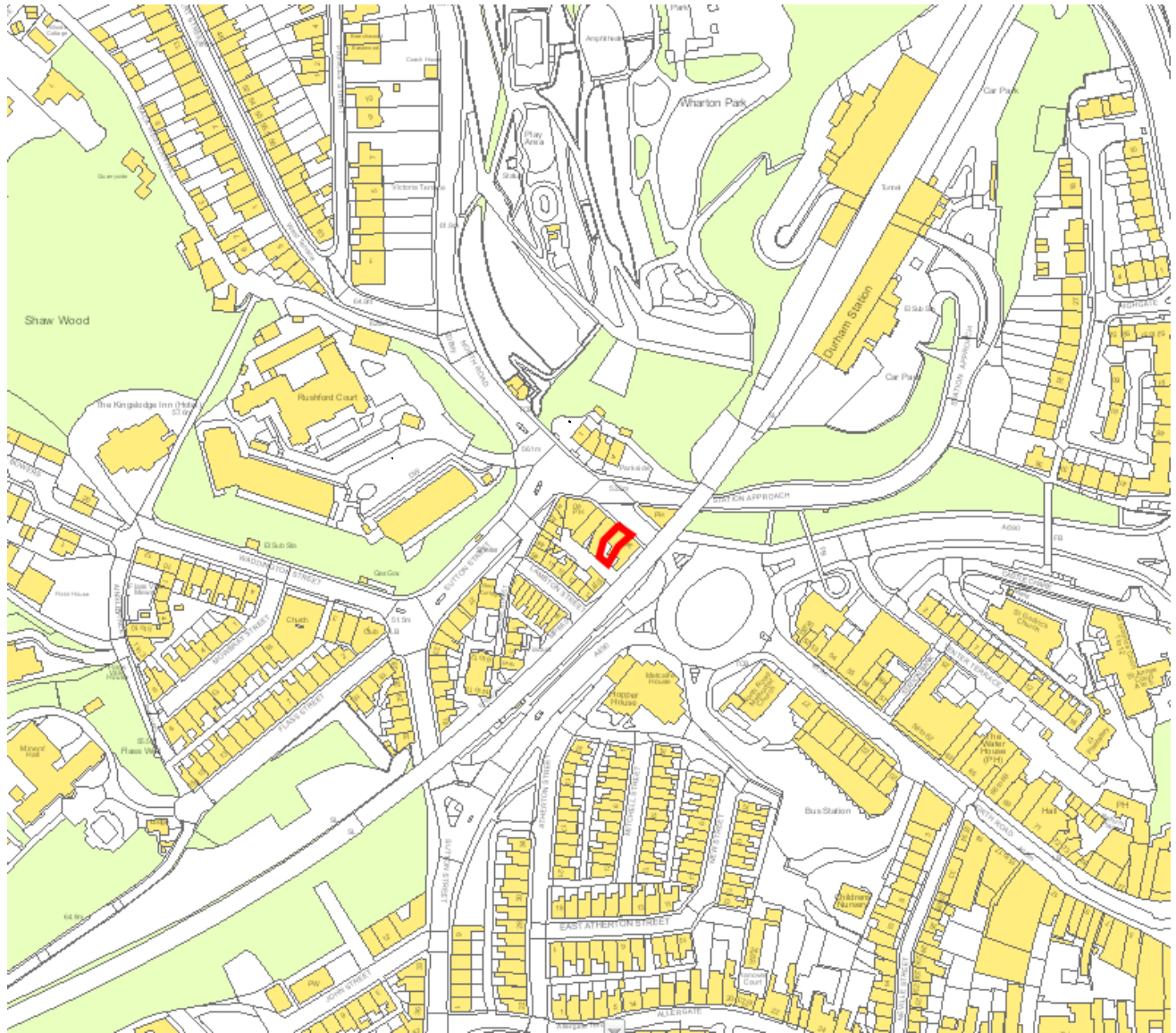
The National Planning Policy Framework (2021)

National Planning Practice Guidance Notes

County Durham Plan (2020)

City of Durham Neighbourhood Plan (2021)

Statutory, internal and public consultation responses



Planning Services

DM/21/01752/FPA Change of use of ground floor premises from Dental Surgery (Use Class E) to Hot Food Takeaway (Sui Generis) with associated internal alterations

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Date 12 October 2021

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