

COMMITTEE REPORT

APPLICATION DETAILS

APPLICATION No: DM/21/02774/VOC

FULL APPLICATION DESCRIPTION: S.73 application for the removal of Condition No.3 (Outside seating) to permit outside seating within the rear garden on a permanent basis pursuant to DM/19/01789/VOC.

NAME OF APPLICANT: Rory Handy

ADDRESS: 57 Claypath, Durham, DH1 1QS

ELECTORAL DIVISION: Elvet and Gilesgate

CASE OFFICER: Leigh Dalby
(Senior Planning Officer)
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DESCRIPTION OF THE SITE AND PROPOSALS

The Site

1. The application site is an existing deli, café and bakery situated within Upper Claypath. The property appears to date from the early 19th Century and sits amongst a terrace of similarly aged and styled properties, most of which appear to be in residential use although towards the western end of Claypath towards the city centre the uses of properties on Lower Claypath become increasingly mixed / commercial in nature.
2. The property lies within Durham (City Centre) Conservation Area and although unlisted itself, lies adjacent to the Grade II listed house at no.56. The property is somewhat unusual in its remoteness from other non residential uses on this side of Claypath, with residential properties to all sides.

The Proposal

3. The application seeks the permanent consent to vary condition No.3 applied to consent DM/19/01789/VOC to permit outside seating within a section of the rear garden space. The application site was previously subject to a temporary 12-month trial use of the garden space to allow consideration as to whether the permanent use of the outdoor space is acceptable.
4. The previous consent also permitted extended opening hours of the premises, however that was not subject to a temporary consent period and as such this application purely relates to the use of the outdoor garden space.
5. The application is reported to Planning Committee at the request Councillor Ormerod (Local ward member) to be given consideration by the Committee due to complaints from residents in relation to noise and that due to COVID-19 restrictions the full 12-month trial period of actual business has not been possible.

PLANNING HISTORY

6. DRC/20/00272 - Discharge of condition No. 5 (Noise Management Plan) of planning application DM/19/01789/VOC. Approved 08.09.2020
7. DM/19/01789/VOC - Variation of conditions no. 3 (opening hours) to allow extended opening hours (0800 - 2100 Monday to Saturday and 1000 - 1800 Sunday), and no. 6 to permit outside seating within the rear garden of planning consent 4/10/00582/FPA. Approved 06.09.2019.
8. 4/10/00582/FPA - Change of use to delicatessen/cafe (mixed use A1/A3). Approved 11.10.2010.

PLANNING POLICY

NATIONAL POLICY

9. 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.
10. 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;
11. 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.

12. 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.
13. 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.
14. 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.
15. 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.
16. 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.
17. 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.
18. 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:

19. The following policies within the County Durham Local Plan are considered relevant in terms of this proposal:
20. Policy 1 (Quantity of Development) outlines the levels of employment land and housing delivery considered to be required across the plan period.
21. 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.

22. 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.
23. 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.
24. 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
25. 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'.

26. 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.

27. 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:

28. The following policies of the Durham City Neighbourhood Plan are considered relevant to the determination of this application.
29. 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.
30. 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
31. 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.
32. 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:

33. The following comments were received following consultation with Statutory and Internal consultees.
34. **City of Durham Parish Council** - The Parish Council is aware that this application follows a 12-month temporary trial period, in which the applicant has been permitted use of the outdoor area to their premises. During that time, the Parish Council is not aware of any statutory noise complaints relating to the outside use of this premises.

The Parish Council notes the concerns of local residents to this application and feels that, so long as outdoor noise levels are kept at normal conversation levels and the noise management plan is adhered to, this application should be accepted by the County Council..

INTERNAL RESPONSES:

35. **DCC Env. Health** - It is noted the business has been operating under temporary planning permission and we are not aware of any statutory nuisance complaints being made to date. We are aware the business is in a predominately residential area where there will be several noise sensitive receptors and the proposed hours of operation have been increased to a suggested as 0800 to 2100 Monday to Saturday and 1000 to 1800 Sunday. To help control noise when temporary planning permission was granted a noise management plan was submitted.
36. We would therefore advise we do have concerns regarding that the new suggested increased hours of operation, which may likely impact on amenity to what is a residential area. We would suggest if permanent planning permission is granted then the above noise management plan is adhered and the stated operational hours, being 10:00 to 20:00. Any remaining customers will be asked to move inside from 19.30.
37. **DCC Design and Conservation** - This variation of condition application seeks consent to permit the outdoor customer seating area within the rear garden to be used on a permanent basis. As no physical changes are required the impact upon the character and appearance of the surrounding conservation area and the setting of listed heritage assets within the vicinity of the site, would be neutral, consequentially sustaining and conserving. There will be a benefit by helping to improve the customer offer of the well-established local business allowing it to continue to grow and contribute positively to the retail offer in the mixed use key historic street. Based on the above, there are no objections from a heritage and design perspective. The main impact would appear to be one of residential amenity which is for the planning case officer to determine.

PUBLIC RESPONSES

38. The application has been publicised by way of site notice and 40no. notification letters sent to neighbouring properties, in response 5no. letters of support have been received, and 2no. letter of objection were received, a summary of the points of objection and support are as follows:

Objection

- Loss of privacy through overlooking of customers
- Noise and disturbance from customers
- Non compliance with Noise Management Plan

Support

- The temporary trial has proved no smell noise or other problems as a result of the use
- Wonderful addition to the business, providing outside space for meetings and gatherings
- Great place for the community to meet and relax, with no known issues having occurred, customer are polite and respectful
- The business is an asset to the community in Claypath and should be supported

APPLICANTS STATEMENT:

39. Claypath Deli's Garden is a peaceful space with customers using the space as a place to sit and enjoy a tea or coffee whilst reading a book or having a chat. Since opening, we have received no complaints from neighbours over noise complaints, or any other complaints of any nature.
40. Before the trial was granted, we had objections from a few neighbours who live bordering the garden, most of whom have not subsequently objected, proving that we have not caused a nuisance.
41. The objection from Mr Tomlinson that customers could see into his window from the seating area is quite simply not true. We have invited the Planning officer for this case to see the garden and there is no way of seeing into Mr Tomlinson's house from any area of the deli garden. The customers are not allowed in the northern part of the garden which is closest to his house, and we have deliberately planted trees and shrubs to increase privacy and reduce noise.
42. The other objection we have faced is from Mr Newton and his Wife, they objected to the business even opening in the first place back in 2010, and every subsequent planning application from ourselves has been met with resistance from The Newtons. We have received no complaints from any neighbours at any point, the fact that our closest neighbour, with whom we share the full boundary has not objected is also testament to the garden not being a nuisance.
43. To answer Mr Newtons objections
- The years trial has been a fair one as the garden has been busier than it usually would as we had periods where customers were left with no other option that to sit outside due to covid restrictions.
 - The garden has been in use for 71% of the year, this is more than adequate in our view to determine if a nuisance has been caused.
 - Mr Newton mentions small groups of people being noisy in the garden, yet no complaints were received by ourselves or from environmental health. On several occasions, the garden has been at capacity yet has always remained peaceful and quiet.
 - Contact numbers for the deli were not handed to local residents as many are elderly and therefor more vulnerable to Covid, this was peak pandemic, and we believe it would have been irresponsible to hand over bits of paper containing numbers that are easily available elsewhere. Our number is available via google, we are in the phonebook and are contactable via email and social media. We see most of our neighbours on the street daily, and to date have not received any complaints.
 - The boundary fence is 1.8m in height and is closed boards, this has been proven to the Local planning officer in person and via photo evidence.
44. The local Parish council support the application and have vouched for it being a peaceful and calm space, which is a community asset rather than a hindrance. Numerous other local residents are in support of this application, and many have written letters of support.

45. We are a family run business and live close by the deli, we are very much a part of the local community. We understand how important it is to have a family run café / bakery that is a hub for the community as there is not a great deal else around upper Claypath. We do not wish the deli garden to be a nuisance, but rather a haven for local people to meet in a safe covid secure environment.

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 the area 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. The site is located on an unallocated site outside of a designated shopping or retail area; however, it is located approximately 120m 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. The principle of the use of the site has been established by way of the original extant planning approval (4/10/00582/FPA), and therefore the use is considered acceptable in this location subject to consideration of the other material considerations as detailed below.

Impact upon Residential Amenity

50. 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.

51. 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 states “Development will not be permitted where inappropriate odours, noise, vibration and other sources of pollution cannot be suitably mitigated against”
52. 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.
53. The proposal is of a type which could give rise to additional noise and disturbance generated by users of the outside seating area. Such matters have been raised in objection by 2no. nearby residents. The closest residential properties are situated to abut the seating area to either side of the premises (being a terraced property).
54. As such, in order to assess the appropriateness of the use of the garden space as outdoor seating and the potential impact it may have on neighbouring residential properties, the outdoor seating area has been the subject of a temporary 12-month consent, (which included separate hours of operation of the outdoor seating area to the main premises), which following the expire of the trial period this application seeks the permanent retention of the outdoor seating area.
55. Concern has been raised by an objector and the City of Durham Parish Council that due to national and local COVID-19 restrictions imposed during the 12 month period it has not been possible to fully assess the proposal.
56. In response the applicant has provided details in relation to the period in which they were open for the consumption of food and drink within the rear garden as permitted by National and Regional restrictions. The applicant has confirmed that the rear garden space was in operation between 8th September 2020 – 5th November 2020, and 12th April 2021 – 8th September 2021 (end of 12 month period), this equates to 259 days of potential operation out of a possible 365 days.
57. In light of the above records, it is considered that the proposal has been in operation for a sufficient period of time to allow the use to be adequately assessed, and for any obvious significant nuisance to have been noted and recorded. Indeed, it is noted that the premises were mainly closed during the winter / early spring months when it would be expected that the outdoor area would not be regularly in use due to weather conditions, and during a period April – May 2021, when only outdoor seating was permissible and as such is likely to have seen greater usage than would usually have been expected, within normal operating periods
58. The Council's Environmental Health Officer has been consulted and confirmed that “the business has been operating under temporary planning permission and we are not aware of any statutory nuisance complaints being made to date....We would suggest if permanent planning permission is granted then the noise management plan is adhered and the stated operational hours (being 10:00 to 20:00)”. There was some confusion in relation to the opening hours in the comments from the Env. Health Officer, the application form gives the opening hours for the business, and not the outdoor seating area, the application does not seek to extend the hours of the outdoor seating area, but to remain as previously agreed (10:00-20:00). This will be controlled by a planning condition to ensure that the outdoor area is only in use between that period.

59. In addition to the above, concerns have been raised from local residents relating to the impact of the development upon residential amenity, specifically as a result of increased disturbance from noise nuisance and overlooking. Objectors have stated that there have been a number of occasions where small groups have caused noise which has disturbed the enjoyment of gardens. However, as confirmed by the Council's Env. Health section, and the applicant's own records no complaints in relation to noise were received in relation to any incidents.
60. It is therefore considered that any incidents that did occur were isolated and sporadic incidents that are not archetypal of the behaviour of users of the outdoor seating space over the trial period, and as such it is not considered that the proposal for the permanent use of the outside seating area will cause sufficient noise disturbance to a sufficient degree to warrant refusal of the application in relation to Policy 31 of the County Durham Plan.
61. In terms of the overlooking of neighbouring properties, the proposed seating area is separated from the neighbours to the side by close boarded fence of approx.. 1.8m in height and separated from the adjacent property to the rear (3 Hillcrest Mew) by mature dense landscaping, existing boundary treatment, and a separation distance of approx. 26m. It is therefore not considered that the degree of overlooking available (if any) from the seating area to neighbouring properties is sufficient to create a sufficiently detrimental impact on the occupants residential amenity to warrant refusal of the proposal.
62. Therefore, subject to the inclusion of a planning condition in relation to opening times of the outdoor garden space it is considered that the development accords with the requirements of policy 29, 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. Due to the location of the proposal within the rear garden and the existing use of the building that the proposal is acceptable in this regard given the 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

66. 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 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.

67. 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).
68. 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.
69. 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).
70. As noted the application property is located within the Durham City Conservation Area and in close proximity to the Grade II Listed buildings at 56 Claypath (adjoining property) and 64, and 66 Claypath (directly adjacent to front) along with various other listed buildings within Claypath. However, as the proposal seeks consent for the use of the enclosed rear garden which would not require any significant physical alterations to the building or its appearance within the conservation area. As such it is not considered that the proposal would have any material impact upon the character, appearance or setting of the designated heritage assets and would, through the introduction of a positive use to an otherwise vacant area of the site that will deliver enhanced vitality and viability to this part of the conservation area and the setting of the listed building. This view is supported by the Councils Conservation and Design team as detailed above.
71. 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 buildings through the reuse of otherwise underutilised area that will provide greater vibrancy and vitality to the area 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) Act 1990.

Impact on the character and appearance of the streetscene

72. 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.
73. 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.

74. It is therefore considered that the proposal is acceptable in line with Policies 29 and 30 of the CDP.

Other Matters

75. As detailed above the application has been the subject of a temporary 12-month consent to allow the trial use of the outside area to assess its appropriateness and whether the proposal will cause a significant nuisance, concern has been raised by an objector and the City of Durham Parish Council that due to national and local COVID-19 restrictions imposed during the 12 month period it has not been possible to fully assess the proposal.
76. In response to the above the applicant has provided details in relation to the period in which they were permitted to be open for the consumption of food and drink within the rear garden as permitted by National and Regional restrictions. The applicant has confirmed that the rear garden space was in operation between 8th September 2020 – 5th November 2020, and 12th April 2021 – 8th September 2021 (end of 12 month period), which equates to 259 days of potential operation out of a possible 365 days.
77. In light of the above records, it is considered that the proposal has been in operation for a sufficient period of time to allow the use to be adequately assessed, and for any obvious significant nuisance to have been noted and recorded.
78. Indeed, it is noted that the premises were mainly closed during the winter / early spring months when it would be expected that the outdoor area would not be regularly in use due to weather conditions, and during a period April – May 2021, when only outdoor seating was permissible and as such is likely to have seen greater usage than would usually have been expected, within normal operating periods.

CONCLUSION

79. 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.
80. In addition, it is considered that the proposal would enhance the character and appearance of Durham City Conservation area through the reuse of an underused area 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/21/02774/VOC) be **APPROVED** subject the following conditions;

1. The use of the external rear seating area (as detailed on Proposed Outdoor Changes plan as part of DM/19/01789/VOC) for the sale and consumption of goods shall be in accordance with the agreed Noise Management Plan submitted as part of DRC/20/00272.

Reason: In the interests of residential amenity, in accordance with the objectives of Policy 29 and 31 of the County Durham Plan.

2. The external rear seating area shall not be open to customers outside the hours of 10:00 to 20:00 on any day of the week.

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

3. No music shall be played in, or relayed to, any external area of the property

Reason: In the interests of residential amenity, in accordance with the objectives of Policy 29 and 31 of the County Durham Plan.

4. The premises shall not be open to customers outside the hours of 08:00 to 21:00 Monday to Saturday and 10:00 to 18:00 on Sundays, Public and Bank Holidays.

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

5. The only method of heating food employed in the premises shall be a microwave oven or other sealed unit. No other form of cooking and/or heating of food shall be utilised within the premises.

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

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.

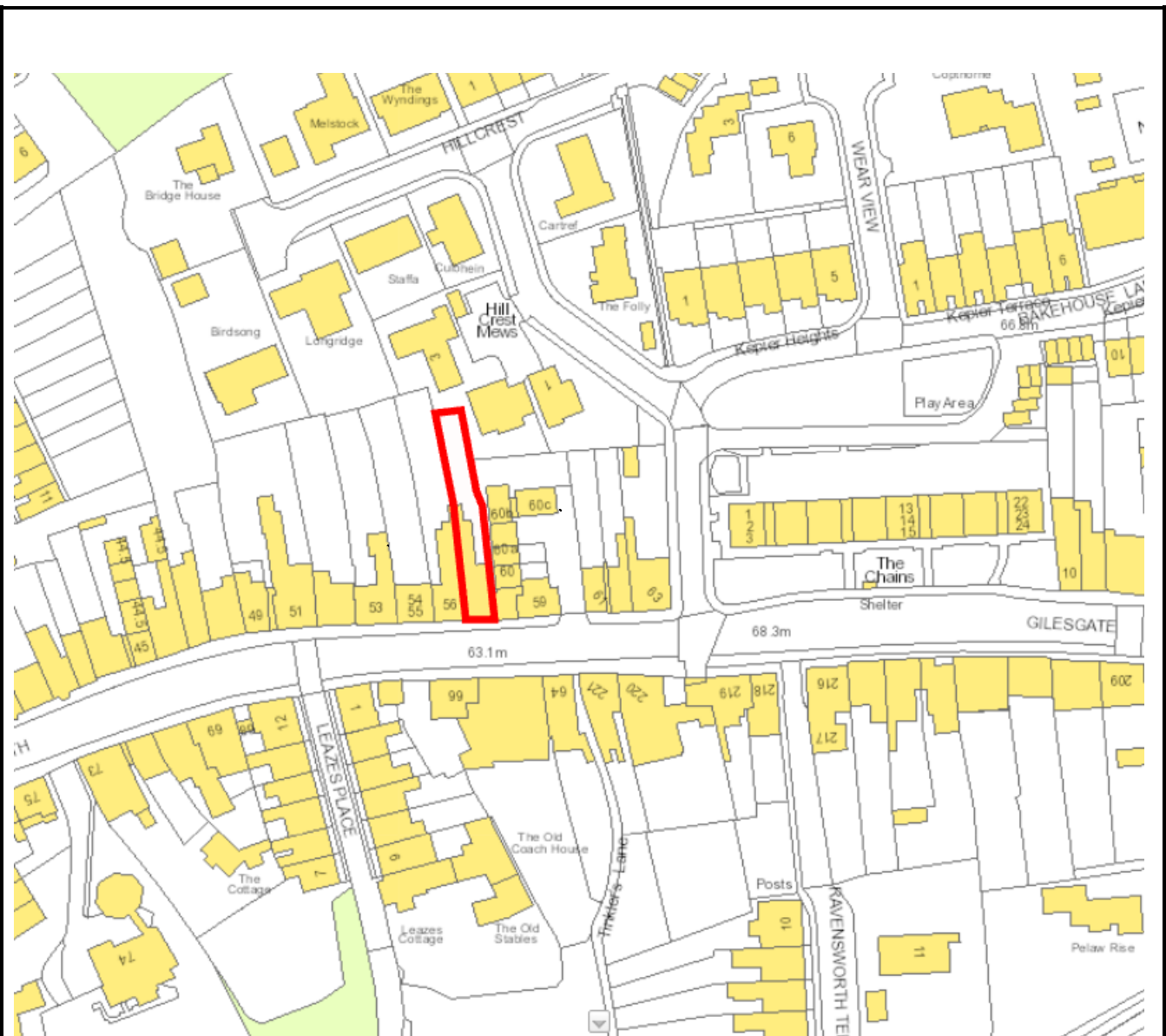
The National Planning Policy Framework (2021)

National Planning Practice Guidance Notes

County Durham Plan (2020)

City of Durham Neighbourhood Plan (2021)

Statutory, internal and public consultation responses



Planning Services

S.73 application for the removal of Condition No.3 (Outside seating) to permit outside seating within the rear garden on a permanent basis pursuant to DM/19/01789/VOC.

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Date 06.10.2021

Scale NTS