

# COMMITTEE REPORT

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### APPLICATION DETAILS

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<b>APPLICATION NO:</b>	DM/21/02227/FPA
<b>FULL APPLICATION DESCRIPTION:</b>	Change of use of upper floors to a 5 bed HMO (use class C4), retail to remain at ground floor and installation of new access door in existing shop front.
<b>NAME OF APPLICANT:</b>	Mr Harper - Spoils Pension Fund
<b>ADDRESS:</b>	12 Silver Street Durham DH1 3RB
<b>ELECTORAL DIVISION:</b>	Elvet and Gilesgate
<b>CASE OFFICER:</b>	Lisa Morina Planning Officer Telephone: 03000 264877 <a href="mailto:Lisa.morina@durham.gov.uk">Lisa.morina@durham.gov.uk</a>

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### DESCRIPTION OF THE SITE AND PROPOSALS

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#### The Site

1. The property relates to a four storey, terraced building located on the eastern side of Silver Street which is one of the City's oldest and most historically important streets that connects the medieval Market Place to the outer borough of Crossgate. The ground floor of the property is currently in use as an A1 retail shop and the upper floors are used for ancillary storage, staff room, office accommodation.
2. The property is grade II listed and the street includes a number of listed buildings and others whilst not listed, remain of historic and architectural interest. The application site is 4-storeys to the front that is carried back as a wing with a gable onto Moatside Lane to the rear. The site is located within the commercial centre of Durham City and also within the Durham City Conservation Area as well as being within the setting of the UNESCO World Heritage Site (WHS) at Durham Castle and Cathedral.

#### Proposal:

3. Planning Permission is sought for the change of use of the upper floors to a 5 bed HMO falling into use class C4 as defined by the Town and Country Planning Use Classes (Amendment) (England) Regulations 2020. Whilst the main thrust of the proposed alterations would take place internally, a new access door is proposed to the existing shop front in order to allow access to the HMO whilst retaining the current retail use to the ground floor.

4. The application is referred to the Committee at the request of the City of Durham Parish Council as they consider that the proposal should be refused unless improvement works are carried out to Moatside Lane which frames the application building to the rear.

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## **PLANNING HISTORY**

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5. DM/21/02228/LB Listed building consent to allow internal alterations for the change of use of upper floors to a 5 bed HMO (use class C4), retail to remain at ground floor and installation of new access door in existing shop front.
6. DM/18/02734/FPA Conversion of second and third floors into a flat for a house in multiple occupation C4 including external alterations to form a door on the second floor to the rear. Approved 12th November 2018
7. DM/18/02735/LB Internal and external alterations to facilitate the conversion of the 2nd and 3rd floors into a flat including a rear access at second floor level. Approved 12th November 2018

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## **PLANNING POLICY**

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### **NATIONAL POLICY**

8. The following elements of the National Planning Policy Framework (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 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.
11. NPPF Part 5 – Delivering a wide choice of high quality homes. The Government advises Local Planning Authority's to deliver a wide choice of high quality homes, widen opportunities for home ownership and create sustainable, inclusive and mixed communities.
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 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.

14. 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.
15. 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.
16. NPPF Part 11 - Making Effective Use of Land. Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously-developed or 'brownfield' land.
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 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.
19. NPPF Part 16 Conserving and Enhancing the Historic Environment - Heritage assets range from sites and buildings of local historic value to those of the highest significance, such as World Heritage Sites which are internationally recognised to be of Outstanding Universal Value. These assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations.

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

#### **NATIONAL PLANNING PRACTICE GUIDANCE:**

20. The Government has consolidated a number of planning practice guidance notes, circulars and other guidance documents into a single Planning Practice Guidance Suite. This document provides planning guidance on a wide range of matters.

<https://www.gov.uk/government/collections/planning-practice-guidance>

## LOCAL PLAN POLICY:

### County Durham Plan

21. Policy 6 Development on Unallocated Sites states that the development of sites within the built up area that are not allocated in the plan or in a neighbourhood plan will be permitted provided they accord with all relevant development plan policies and meet specific criteria in relation to existing permitted uses, coalescence of settlements, loss of land with identified value such as in relation to ecology or recreation, is appropriate, is not prejudicial to highway safety, has good access to sustainable modes of transport to relevant services and facilities, does not result in the loss of the settlements last community building, minimises vulnerability and provides resilience to impacts resulting from climate change, maximises the effective of previously developed land and where appropriate 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.
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 32 Despoiled, Degraded, Derelict, Contaminated and Unstable Land states [in part] that development will not be permitted unless the developer can demonstrate that the site is suitable for the proposed use, and does not result in unacceptable risks which would adversely impact on the environment, human health and the amenity of local communities.

28. Policy 36 Water Infrastructure. Advocates a hierarchy of drainage options for the disposal of foul water. Applications involving the use of non-mains methods of drainage will not be permitted in areas where public sewerage exists. New sewage and waste water infrastructure will be approved unless the adverse impacts outweigh the benefits of the infrastructure. Proposals seeking to mitigate flooding in appropriate locations will be permitted though flood defence infrastructure will only be permitted where it is demonstrated as being the most sustainable response to the flood threat.
29. 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.
30. Policy 45 - Durham Castle and Cathedral World Heritage Site seeks to ensure that developments within the world heritage site sustain and enhance the significance of the designated asset, are based on an understanding of, and will protect and enhance the outstanding universal value (OUV) of the site in relation to the immediate and wider setting and important views into, and out of the site. Any harm to the OUVs will not be permitted other than in wholly exceptional circumstances.

#### Neighbourhood Plan

31. The following policies of the Durham City Neighbourhood Plan are considered relevant to the determination of this application.
32. Policy S1 Sustainable Development Requirements of all Development and Redevelopment 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.
33. Policy H1 Protection and Enhancement of the World Heritage Site requires development proposals within the Neighbourhood to sustain, conserve, and enhance the setting of the WHS where appropriate, by carrying out an assessment on how the development will affect the setting, including views to and from the WHS, protect important views and take opportunities to open up lost views. its Outstanding Universal Value and to support the current adopted management plan.
34. 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.
35. 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.

36. 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.

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

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## **CONSULTATION AND PUBLICITY RESPONSES**

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### **STATUTORY RESPONSES:**

37. Durham Constabulary – make a number of recommendations in relation to door sets, access controlled system, preferred glazing and lighting.
38. Highways – raise no objection.
39. City of Durham Parish Council originally raised objection to the proposal for a variety of reasons although some of these issues were withdrawn following the submission of a revised heritage statement. However, concerns still remain regarding the steps to the rear of the development which are considered to be unsuitable as an emergency exit and concern regarding significant water ingress issue to the ground floor retail space which has not been addressed and must be so, prior to any works commencing.
40. The Parish also raised concern over the poor condition of Moatside Lane and feel that improving Moatside Lane would enhance the setting of the WHS and help meet the requirements of County Durham Plan Policy 45.

### **INTERNAL CONSULTEE RESPONSES:**

41. Environmental Health (Nuisance) Section – No objection subject to conditions
42. HMO Officers – No objection
43. HMO Data – 77.3% of properties are exempt within 100m.
44. Design and Conservation Section – No objection subject to conditions.

### **PUBLIC RESPONSES:**

45. The application has been advertised by means of site notice and by notifying neighbouring residents by letter.
46. To date, a single letter of objection has been received from the City of Durham Trust in that the trust are not satisfied that the proposed fire escape arrangements are safe and Moatside Lane needs improvements to its surface and lighting if it is to be used for this purpose.

## APPLICANT'S STATEMENT:

47. We have owned this store in equal partnership between Ms F Harper & Spoils Pension Fund since June 2001. In the past it was a well let store to a strong retail trader, Granada, in a thriving high street location. Unfortunately Durham City Centre has declined and our investment is under threat. We have had to consider our requirements as pensioners to ensure a future income from our building. Our plan is to invest and enable the retention of the small retail space at ground floor and introduce high quality residential accommodation to the upper floors, protecting the existing building fabric. This is the background as to why we have spent time, energy and money considering the use of our building and how best to bring it back to life. It is a beautiful building and one of the oldest stores in the City centre.
48. A retail occupier is required to pay rent and rates. Rates remain a significant overhead for anyone taking a store anywhere in the country and when that is added to the rent it is unlikely that we will find another tenant to take a lease of our complete building. Our tenant is a local trader called Moon Jewellery who we are keen to retain and protect. Their trade since Covid has been virtually non-existent and therefore we as landlords would like to realise a method to gain some income to enable us to accept a lower annual rent from Moon Jewellery and thus keep them trading on Silver Street.
49. Our property is a prominent small four storey building with a total area 208.42 sq m (2243 sq ft). The ground floor of 56.17 sq m (605 sq ft) is 27% of the total building. Since our ownership (20 years) the building has never traded on the upper floors, it has simply been a small shop fronting Silver Street. The upper floors are poorly maintained and not used. The new planning application submitted will enable the ground floor retail space to be retained with a reduced footprint by using a small section to provide access to the upper floors and residential above to utilise the complete building in use.
50. We did obtain planning consent in November 2018 for the upper floors to be converted to residential use with access from Moatside Lane at the rear. Whilst we have consent for the upper floors to be converted to residential, we are deeply concerned that the passage to the rear is potentially dangerous and unsafe, we would feel extremely uncomfortable letting our residential accommodation to any tenants, especially students. If the Council is not prepared to upgrade the alleyway significantly then we have no option but to seek consent for an access to the upper floors from Silver Street for safety reasons.
51. Our property agents, Harper Dennis Hobbs, have been marketing our store on and off since October 2013 seeking a permanent tenant since Accessorize (they replaced Granada) moved into the Prince Bishops shopping centre to share space with their sister company Monsoon. The retail market has been decimated by the rise of online shopping, the increase of out of town shopping and the over-provision of retail units within Durham City centre. This has directly resulted in more retail units being available to let on Silver Street than at any time in our knowledge over the last 35 years. At its peak the building commanded a rent in excess of £52,000pa and today we are receiving less than half that. Some Landlords on Silver street have stores on offer at nil rent! Today Silver Street is a shadow of its former self and the number of competent retail traders is tiny. There is a significant number of stores that are shut and successful brands like Pret A Manger, that did trade adjacent, tried Durham and then moved away. A lot of the loss of trade can be blamed on the Durham out of town retail parks and competing city centres.

52. No one wants to see Silver Street falling into disrepair with vacant stores and I hope we are doing our part by investing heavily into the refurbishment of the upper floors, thereby contributing to life returning to Silver Street, maybe one day it can regain its position in the retail hierarchy. We are a long term investor and owner in the centre of Durham. Our proposal has the obvious advantage that we are able to keep the lights on in the City centre, bringing people that spend money, helping our adjacent stores.
53. We believe that our planning application is in line with the aspirations of the Local Community, the Local Authority, the University and all those who live in Durham. By offering modern student accommodation it benefits the economy by the spend brought to the City centre. It also brings students to the City centre where they can reduce their carbon footprints and populate the local facilities. Bringing life back to the high street must be the most important decision of all councils at the current time-especially in Durham.
54. The building will also be preserved and by being occupied, will be looked after. We will meet with and appoint a competent letting agent to make sure that the standard is high and we would be delighted to reference our developments in Bath and Nottingham which are all of a high standard and work within tight City centre requirements. We do have a waste management plan in that it will be serviced and collected via a private management contract and we anticipate appointing a management company locally who manage other properties in the City Centre.
55. Finally you may, in common with others, think that we should provide bike racks. Our building is too narrow and bringing bikes into the building could cause damage to the fabric. There are ample public bike racks nearby in the City centre and as we are central we would argue there is no need for bike racks. Affordable accommodation cannot be provided as the economic return and size of the building do not allow such considerations.

*The above is not intended to list every point made and represents a summary of the comments received on this application. The full written text is available for inspection on the application file which can be viewed at <https://publicaccess.durham.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=P8X9C0GDL8J00>*

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## **PLANNING CONSIDERATIONS AND ASSESSMENT**

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56. As identified in Section 38(6) of the Planning and Compulsory Purchase Act 2004 the key consideration in the determination of a planning application is the development plan. Applications should be determined in accordance with the development plan unless material considerations indicate otherwise.
57. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF is a material planning consideration in this regard. The County Durham Plan is the statutory development plan and the starting point for determining applications as set out at Paragraph 12 of the NPPF. The NPPF advises at Paragraph 219 that the weight to be afforded to existing Local Plans depends upon the degree of consistency with the NPPF.
58. The County Durham Plan and the Durham City Neighbourhood plan are now both adopted and together are considered to represent the up-to-date Local Plan for the area. Consequently, consideration of the development should be led by the plan if the decision is to be defensible.



59. In this context, it is considered that the main planning issues in this instance relate to the principle of the development, impact on the host property and the streetscene including any designated assets, the impact of the development upon residential amenity, highway safety and any other issues.

#### Principle of Development

60. The proposal relates to the change of use of the upper floors of the building to a 5 bed HMO. An area of retail will be retained on the ground floor.

61. Policy 16 of the CDP is relevant to the application and part 3 of that policy states that in order to promote create and preserve inclusive, mixed and balanced communities, and to protect residential amenity, applications for changes of use from any use to Class C4 (House in Multiple Occupation), where planning permission is required, will not be permitted if:

- a. including the proposed development, more than 10% of the total number of residential units within 100 metres of the application site are exempt from council tax charges (Class N Student Exemption);
- b. there are existing unimplemented permissions for Houses in Multiple Occupation within 100 metres of the application site, which in combination with the existing number of Class N Student exempt units would exceed 10% of the total properties within the 100 metres area; or
- c. less than 10% of the total residential units within the 100 metres are exempt from council tax charges (Class N) but, the application site is in a residential area and on a street that is a primary access route between Purpose Built Student Accommodation and the town centre or a university campus.

62. The policy goes on to clarify that a change of use to a House in Multiple Occupation would not be resisted in the following circumstance:

- h. where an area already has a concentration in excess of 90% of council tax exempt properties (Class N), that this is having an unreasonable impact on current occupiers and that the conversion of remaining C3 dwellings will not cause further detrimental harm to the residential amenity of surrounding occupants; or
- i. where an existing high proportion of residential properties within the 100 metres are exempt from council tax charges (Class N), on the basis that commercial uses are predominant within the 100 metre area.

63. In terms of the current application, 77.3% of properties within 100m of the site are in use as HMO's being Class N exempt from Council Tax and there is also a Halls of residence within 100m of the site. It should be noted, however, that the site falls within the town centre and as such commercial uses are predominant within the 100m area, therefore the exemption set out in criteria (i) of Policy 16 would apply in this instance. Development of student accommodation in this location is therefore unlikely to have a detrimental impact upon the balance of the existing locality and the principle of development considered acceptable in accordance with policy 16 of the CDP.

64. Policy 9 (Retail hierarchy and Town Centre Development) of the CDP is also relevant and defines a hierarchy of commercial centres in the County, with Durham City identified as a Sub Regional Centre. The Plan looks to support new town centre development across all of the county's centres that will improve choice and bring about regeneration and environmental improvements.

65. Within the Primary Shopping Areas, as shown on the policies map, A1 (retail) uses will be supported and other uses will be permitted where they preserve the vitality and viability of the Primary Shopping Areas.
66. The approach to defining a retail hierarchy is consistent with the guidance within paragraph 86 of the NPPF which states a need to define a hierarchy of town centres and promote their long-term vitality and viability - by allowing them to grow and diversify in a way that can respond to rapid changes in the retail and leisure industries, allows a suitable mix of uses (including housing) and reflects their distinctive characters. This paragraph also recognises that residential development often plays an important role in ensuring the vitality of centres and encourages residential development on appropriate sites.
67. In respect of the Durham City Neighbourhood Plan, it is considered that Policy E3 (Retail Development) of the Plan supports A1 (retail) (now falling within Class E of the 2020 Use Classes Regulations) as the predominant use within the Primary Frontage and development proposals that provide residential accommodation in upper floors of commercial properties, 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.
68. The proposal would retain the commercial use to the ground floor and as such would not undermine the commercial function of the City Centre in accordance with the aims of policy 9 of the CDP and policy E3 of the DCNP.
69. Therefore, the proposal to convert the upper floors of the existing building to student accommodation in a highly sustainable location, readily accessible to the university site would be deemed acceptable in principle in accordance with policies 9 and 16 of the County Durham Plan, policy E3 of the DCNP and Part 7 of the NPPF subject to other considerations below.

Impact on the character and appearance of the World Heritage Site, Conservation Area, Listed Buildings and Non-Designated Heritage Assets (NDHA)

70. Local Authorities have a duty to preserve or enhance the Conservation Area as required by section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. Section 66 of the same Act requires a similar duty to have special regard to preserving Listed Buildings or their setting or any features of special architectural or historic interest which it possesses. This requires Local Planning Authorities in the exercise of their planning function with respect to any buildings or other land in Conservation Areas and Listed Buildings to pay special attention to the desirability of preserving or enhancing the character or appearance of that area.
71. 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.
72. Policy 45 of the CDP seeks to ensure that developments within the world heritage site sustain and enhance the significance of the designated asset, are based on an understanding of, and will protect and enhance the outstanding universal value of the site in terms in relation to the immediate and wider setting and important view into, and out of the site.

73. Policy 16 3f) of the CDP states that new HMO development will only be permitted where the design of the building or any extension would be appropriate in terms of the property itself and the character of the area.
74. Both approaches display a broad level of accord with the aims of Part 16 of the NPPF which states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be).
75. Policy 29 relating to sustainable design states that all proposals will be required to achieve well designed buildings and places having regard to supplementary planning documents and contribute positively to an area's character, identity, heritage significance, townscape and landscape features, helping to create and reinforce locally distinctive and sustainable communities; and create buildings and spaces that are adaptable to changing social, technological, economic and environmental conditions and include appropriate and proportionate measures to reduce vulnerability, increase resilience and ensure public safety and security.
76. The DCNP Policies H1, H2, and H4 seeks to ensure that proposals within the Durham Cathedral and Castle World Heritage Site, Durham City Conservation area, and affecting heritage assets should sustain, conserve, and enhance its Outstanding Universal Value, the significance of the Conservation Area and not have detrimental impact on the assets and their setting.
77. As already noted, the property is a listed building and the impact of the development on the host property needs to be considered. The development is subject to an associated listed building application which falls to be determined by the Council's scheme of delegation and the decision is being held in abeyance until the determination of this application.
78. In 2018 Listed Building Consent was granted for the conversion of the second and third floors into a flat for a house in multiple occupation including internal alterations. The main change between the previous and current applications relates to the installation of a new staircase within the front part of the building from ground floor to first floor in the location of the party wall with No 11 Silver Street. This part of the listed building is of high heritage significance.
79. The complete side elevation of No 11, visible in a series of cupboards etc, in No 12, is the remains of a medieval building (C15) that was demolished in the 1950s or 60s. The remains have been recorded as that of a double-jettied building of rubble and timber-frame. There are surviving construction elements such as the bracing, moulded beams, jetty bracket, and a timber mullioned window etc, and it was perhaps the home of a moderately wealthy merchant wanting a good "pitch" location close to the Market Place. The side wall must be untouched and preserved and further information was requested in response to concerns raised.
80. Amended drawings were submitted along with an updated Heritage Statement and these have alleviated those concerns, in particular the Heritage Statement presents a convincing argument that the significance of the listed heritage asset would be preserved. It recognises there are remnants of a former medieval building within the party wall with No 11 Silver Street, with historic fabric (masonry, timber framework, bracing, and timber mullioned window) visibly exposed in specific locations within No 12 Silver Street. It is stated that those presently contained within cupboard areas would be preserved as such with the main changes being within the ground and first floor levels.

81. Within the ground floor the photograph provided within the statement shows that the medieval party wall consists of a solid historic rubble stone construction. This would be conserved in situ and would be physically unaffected due to the proposed new staircase and stud wall, segregating the upper floor residential access, both standing independently from it. Regarding the cutting of timbers within the ground floor ceiling to create the new stair opening, the photograph provided shows that these are more modern timber joists and floorboards. Therefore, no important historic fabric that contributes to the significance of the listed heritage asset would be removed.
82. The existing staircase to the rear part of the ground floor is proposed to be removed and is stated in the heritage statement as being a modern intervention. While no photograph has been provided to show this staircase, the building is known to have been refurbished in the 1990s and officers have been inside the building in recent years. Therefore, its modern construction can be confirmed. Its removal would not therefore harm the significance of the listed heritage asset while providing a benefit by slightly enlarging the usable retail space. The upper floor staircases to be retained are thought to be older.
83. At first floor level the proposed removal works are identified as not relating to original or historic fabric or features, but rather 20th century fabric. The new service provisions would connect to the existing service runs minimising the impact. Again, all of the alterations in the areas of the party wall at this level are confirmed to have no physical impact on the medieval fabric. There would be changes to the building plan form, but the historic layout has already been altered and is not intact, so is more adaptable without causing harm. Some of the alterations would relate to re positioning existing stud wall interventions in different positions, the impact of this neutral compared to the existing impact.
84. Previous comments by the City of Durham Trust correctly stated that the interior of the building contains surviving historic timber panelled doors and as part of the listed building application it was confirmed that these were not proposed to be removed. In respect of new internal doors a condition has been added to the listed building consent which requires details to be provided prior to commencement of the development with the external doors subject to condition attached to this application.
85. The building is presently vacant, and the upper floors have been empty for some time. When historic buildings are left vacant, they are at greater risk of continued damage and decay. The best way to protect a historic building is to keep it occupied and in active use reducing the risks and in theory significantly increasing the chance of regular maintenance. Furthermore, vacant buildings are a blight on the locality and unattractive, and this one is within a medieval street at the heart of the conservation area and the main pedestrian approach to the WHS. As such securing the buildings full active sustainable re use would provide a benefit to the listed heritage asset itself and the surrounding historic environment amounting to an enhancement to the Conservation Area and the WHS in accordance with policies 44 and 45 of the CDP and H1 and H2 of the CDNP.
86. Regarding the external alterations. Even though the shop frontage is modern (C20) it is of a good quality design made from timber following a traditional model, that contributes positively to the listed building. The proposed new entrances appear naturally integrated into the existing shopfront design by virtue of the new retail entrance utilising the area of glazing in the short return elevation, and the new residential entrance using the existing main doorway. This essentially leaves the main shop front to the street untouched, while the difference in the styles of the respective doors helps to differentiate the two different uses in the same building.

This would ensure that the modifications proposed would conserve the positive contribution the shop frontage makes to the building and street scene with the reintroduction of a positive use the remainder of the building effecting an enhancement.

87. Overall, it is considered that the significance of the designated heritage asset would be enhanced in accordance with the principles of NPPF Section 16 and County Durham Plan Policy 44 subject to the conditions.
88. Taking all the above into consideration it is considered that the proposal would have an acceptable impact on the host property and the streetscene in accordance with policies 44 of the County Durham Plan and policy H2 and H4 of the Durham City Neighbourhood Plan. In relation to Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, the proposal is considered overall to preserve the character and appearance of the Conservation Area. It is also considered that the impact on the World Heritage Site is considered acceptable in accordance with policy 45 of the CDP and H1 of the Durham City Neighbourhood Plan in that it would deliver an enhancement.

#### Impact on Residential Amenity

89. Policy 31 of the CDP 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.
90. Policy 16-3e) states that development will only be permitted where they provide acceptable arrangements for bin storage and other shared facilities and consider other amenity issues.
91. Paragraph 130 of the NPPF requires that planning decisions avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development; and mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions.
92. The proposal is set within the context of a mixed use area framed by a variety of uses and activities. Therefore, any increase in noise or activity would be negligible against the background activity and noise level typical of a city centre location.
93. In terms of internal amenity space, the proposed HMO is considered to meet with licensing standards and also complies with the recently introduced space standards therefore, is considered acceptable.
94. With regard to the impact of existing uses upon future occupiers the Council's Environmental Health Officer has noted that the student accommodation would be situated above a commercial use and therefore noise from the commercial use could cause disturbance to the residential units proposed. However, it is considered that any impact in this regard could be mitigated to acceptable levels via a scheme of noise mitigation measures the submission and agreement of which could be ensured through planning condition.

95. Residential amenity is considered reasonable but below the current policy standards identified in Council's Residential Amenity SPD. The front elevation of the building looks across Silver Street to the upper floors of other commercial premises on Silver Street and the historic street layout on Silver Street leads to a separation distance of 5.4 metres which is below the current standards for separation distances but one that has historically been accepted in the city centre to bring upper floors back into residential use. On the rear elevation the existing windows are utilised on the side elevation that look towards other commercial properties on Silver Street which again falls below the minimum separation distance identified in the SPD. However, living within the established dense urban framework of buildings and narrow streets, future occupiers would have an expectation of this as opposed to the openness associated with suburban areas, and seeking to rigidly apply the guidance set out in the SPD would not be a pragmatic approach in this context. The disbenefit of this would be outweighed by the convenience associated with this city centre location and ready access to University buildings, services and night time economy. In addition, there is some benefit to reintroducing a positive use to the upper floor of the listed property and this would outweigh the shortfall in the distances advised by the Council's SPD.
96. Therefore, the proposed development is considered to accord with the requirements of policy 31 of the CDP, and paragraph 130 of the NPPF in respect of impact on residential amenity. Soundproofing conditions as identified were requested as part of the Listed Building application and it is not considered that it is necessary to add this to this application due to this.

#### Highway Safety

97. Paragraph 34 of the NPPF which requires that plans and decisions ensure developments which generate significant vehicle movements are located where the need to travel will be minimised and the use of sustainable transport modes maximised.
98. Policy 21 of the CDP requires 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.
99. In addition, Policy T1 of the DCNP seeks to ensure that development proposals will be required to demonstrate best practice in respect of sustainable transport accessibility and design.
100. The proposed residential development sits in a central highly accessible and sustainable location within the City's controlled parking zone. No car parking provision is therefore considered to be required due to this. No parking permits would be issued to residents and therefore, they would be subject to car parking charges and as such car ownership is unlikely. In respect of servicing provision this would be subject to existing restrictions on Silver Street.
101. Given the above, no objection has been raised from the Councils highway team and as such the proposal will accord with Policy 21 of CDP, Policy T1 of the DCNP and Part 4 of the NPPF.

#### Other Issues

102. Concern has been raised regarding the condition of the steps to the rear of the property which have been identified as an emergency exit. The plans do state that the steps will be repaired and a condition to reflect this has been added.

103. Concern was also raised regarding water ingress to the ground floor commercial property. No alterations are proposed to this part of the building and it is noted that there is no requirement to undertake any works to resolve this perceived issue. Whilst essentially a maintenance issue outside of the scope of the this application the applicant has advised that steps have since been undertaken to satisfactorily resolve the issue.
104. Request was received from an interested party that a Section 106 Agreement be included which requires the submission and agreement of a scheme to improve Moatside Lane. However, it is not considered that the development would result in any significant increase in the use of this lane given it would not include any direct access to it, with the exception of the emergency access ,which itself is unlikely to be used in cases other than an emergency. In addition, it is noted that the highways officer has previously confirmed in response to other similar applications in the locale, that the existing vennel was not lit and historically had not been lit. There are no reported accidents on the vennel, even though it was not lit, and noted the public highways of Silver Street and Saddler Street were both lit to public highway standards P4 and P6 which are the Council's standard for lighting. It is therefore not considered that this is necessary or appropriate to request as part of this application.

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## **CONCLUSION**

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105. The proposed development is considered acceptable in principle and would not have any adverse impact upon the vitality and viability of Durham City Centre. The proposal would also not have an unacceptable impact upon residential amenity or highway safety in accordance with the requirements of policies 9, 16, 21, 29 and 31 of the County Durham Plan.
106. In addition, it is considered that the proposal would enhance the character and appearance of Durham City Conservation Area, the host property being a listed buildings and World Heritage Site in accordance with policies 44 and 45 of the County Durham Plan and Paragraph 132 of the NPPF and Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 subject to the inclusion of appropriate planning conditions.
107. Whilst the concerns raised by the City of Durham Parish Council and the City of Durham Trust are noted, it is not considered that a refusal of the planning application for this reason could be sustained. The proposal is therefore recommended for approval.

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## **RECOMMENDATION**

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

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 16, 29 and 31 of the County Durham Plan and policies 9, 12, 15 and 16 of the NPPF.

3. Prior to the commencement of the development, full details, including cross sections at a scale of 1:20 and details of colour finish of the proposed external doors shall be submitted to and approved in writing by the Local Planning Authority. The doors shall thereafter be installed in accordance with the approved details.

Reason: In the interests of the visual amenity of the surrounding areas in accordance with Policies 29 and 44 of the County Durham Plan and Parts 12 and 16 of the National Planning Policy Framework.

4. No development shall take place until a scheme of noise mitigation measures has been submitted to and approved in writing by the Local Planning Authority. The aim of the scheme shall be to protect future occupiers from road traffic/commercial noise and should ensure 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

55dB LAeq 16hr in outdoor living areas

The approved scheme shall be implemented 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.

5. No development shall commence until a scheme detailing the scheme of improvement/repair works to the rear access steps have been submitted to and agreed in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved plans.

Reason: In the interest of residential amenity and to provide safe and adequate means of access to the development in accordance with policy 29 of the CDP and paragraph 105 of the NPPF.

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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

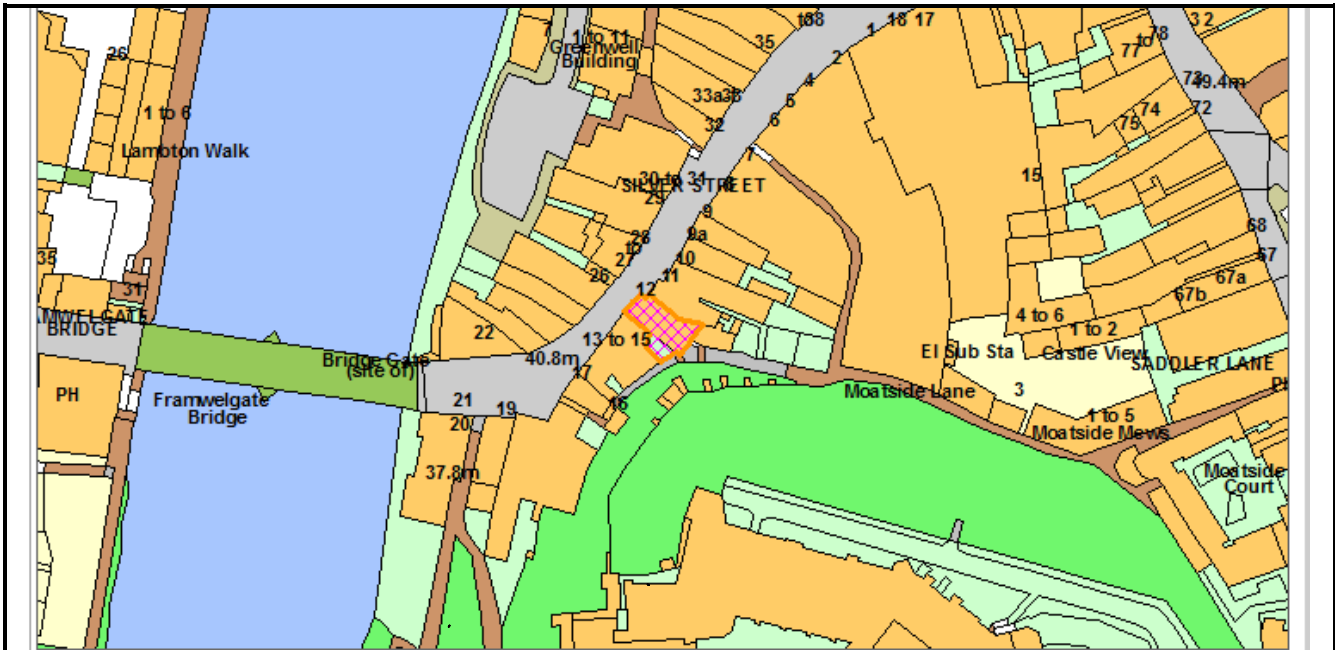
The National Planning Policy Framework (2021)

National Planning Practice Guidance Notes

County Durham Plan

Statutory, internal and public consultation responses





<p><b>Planning Services</b></p>	<p>Change of use of upper floors to a 5 bed HMO (use class C4), retail to remain at ground floor and installation of new access door in existing shop front at 12 Silver Street          Durham, DH1 3RB          Application Reference: DM/21/02227/FPA</p>	
<p>This map is based upon Ordnance Survey material with the permission of Ordnance Survey on behalf of Her Majesty's Stationary Office © Crown copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceeding.          Durham County Council Licence No. 100022202 2005</p>	<p><b>Date:</b> 25 November 2021</p>	<p><b>Scale</b> NTS</p>