

COMMITTEE REPORT

APPLICATION DETAILS

APPLICATION NO:	DM/21/03809/FPA
FULL APPLICATION DESCRIPTION:	The erection of a fuel filling station, convenience store, canopy, petrol pumps, with associated access and car parking
NAME OF APPLICANT:	Mr Ali Rezaei
ADDRESS:	The Falcon Hilda Park South Pelaw Chester-le-Street DH2 2JP
ELECTORAL DIVISION:	Chester-le-Street North
CASE OFFICER:	Steve France Senior Planning Officer Telephone: 03000 264871 steve.france@durham.gov.uk

DESCRIPTION OF THE SITE AND PROPOSALS

The Site

1. The application site at South Pelaw is on the north-west edge of Chester-le-Street, fronting the main C183 to Pelton and the A693 leading to Stanley. With Victorian brick-built properties fronting the main road, the settlement is characterised by local-authority built residential estates north of the main road, and the 1960s private housing of Hilda Park, to the south of the main road, the latter including a large primary school.
2. There is a staggered junction serving the two estates around which there is a small local centre. The site sits north of the junction into Hilda Park, and was until recently occupied by a public house, built at the same time as the estate. Planning approval was granted in March 2020 of the demolition of the pub and the erection of 7 bungalows. The site was cleared, and development works in the form of a front boundary wall started. Within this boundary wall is a recess within which a bus shelter, serves an in-highway northbound bus stop. North of the site but separated by a pedestrian access to a court of residential flats and private garages is a commercial garage, this site originally having been a petrol filling station.
3. South of the access into the estate is a short run of shops, including a convenience store with Post Office, a hot food take-away and a beauty salon. These units have residential flats above. They are set back from the main road behind a hard surface forecourt which is part bollarded. There is an on-street parking layby along the front of the shops, which extends further, along the front of the Victorian terraces to the south-east, opposite which sits the southbound bus stop.

4. Facing the site across the C183 a 10m grass verge including tree planting and an estate road with footpath, separates the front gardens of the local-authority built dwellings from the site.
5. The site itself is a cleared rectangle of land with the aforementioned part-completed wall on the main roadside boundary. Flats in Rosewood Gardens overlook the north-west boundary of the site across a footpath, and the close-boarded wooden fence that defines the site boundary. The south-west boundary of the site is formed by the varied rear garden fences of a short residential cul-de-sac. Of the five dwellings whose curtilages' share the boundary, two present gable walls towards the site, one has a slightly unusual arrangement with first floor windows all obscured, and two present their full rear elevations towards the site, across gardens 9.7m in length. The western corner of the site is slightly lower than the adjacent gardens, exposed and evidenced in site clearance works. The former entrance to the public house, intended as the point of access to the approved scheme of bungalows is evident on the south-west boundary of the site, accessing the Hilda Park estate road opposite an on-street parking layby and the gable end of the retail units.

The Proposal

6. The application proposes a petrol filling station comprising four pump islands under a canopy and a retail building that will include a storage room and staff facilities. This building is proposed in the western corner of the site, presenting a mono-pitched gable between 3.5 and 5.2m in height to the flats at Rosewood gardens. The pump islands and canopy project forward from the building towards the bus-stop. Vehicular access and egress is proposed either side of the bus stop, and from the historic access point into the site, from Hilda Park. The southern part of the site is proposed left open for parking and the provision of EV charging points. The applicant has confirmed there will be no car washing facilities on-site.
7. The existing 1800mm pillars and wall on the front boundary will be replaced with a 900mm wall with 150mm capping, this carried around the Hilda Park frontage also. A 1800mm high close boarded acoustic standard fence will be reflected along the boundaries shared with residential dwellings in Hilda Park described above, and alongside the footpath that serves Rosewood Gardens.
8. This application is being considered by committee at the request of Cllr. Tracie Smith who has 'serious concerns that the erection of a filling station will have a detrimental impact on my residents quiet enjoyment' and will exacerbate complaints regarding sight lines at the junction of Hilda Park.

PLANNING HISTORY

9. DM/19/03874/FPA: Demolition of existing Public House and erection of 7no. bungalows with associated site works – Approved March 2020
DM/21/01322/VOC: Minor Amendments to house-types and layout of approval – Approved July 2021
DRC/20/00326: Discharge of conditions no.6 (contaminated land phases 2 & 3) in relation to previous planning application DM/19/03874/FPA – Approved July 2021

PLANNING POLICY

NATIONAL POLICY

10. The following elements of the National Planning Policy Framework (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 ensuring the planning system does everything it can to support sustainable economic growth. Planning should operate to encourage and not act as an impediment to sustainable growth. Therefore, significant weight should be placed on the need to support economic growth through the planning system.
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 14 – Meeting the challenge of climate change, flooding and coastal change.* The planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change. It should help to: shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and support renewable and low carbon energy and associated infrastructure.
19. *NPPF Part 15 - Conserving and enhancing the natural environment.* Planning policies and decisions should contribute to and enhance the natural and local environment.

<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. Of particular relevance to this application is the practice guidance with regards to; air quality; historic environment; design process and tools; determining a planning application; flood risk; healthy and safe communities; land affected by contamination; housing and economic development needs assessments; housing and economic land availability assessment; light pollution; natural environment; neighbourhood planning; noise; open space, sports and recreation facilities, public rights of way and local green space; planning obligations; travel plans, transport assessments and statements; use of planning conditions; and; water supply, wastewater and water quality.

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

LOCAL PLAN POLICY:

The County Durham Plan 2020

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* states that all development shall deliver sustainable transport by (in part) ensuring that any vehicular traffic generated by new development, following the implementation of sustainable transport measures, can be safely accommodated on the local and strategic highway network and does not cause an unacceptable increase in congestions or air pollution and that severe congestion can be overcome by appropriate transport improvements.

24. *Policy 29 Sustainable Design* Requires all development proposals to achieve well designed buildings and places having regard to SPD advice and sets out detailed criteria which sets out that where relevant development is required to meet including; making a positive contribution to an areas character and identity; provide adaptable buildings; minimise greenhouse gas emissions and use of non-renewable resources; providing high standards of amenity and privacy; contributing to healthy neighbourhoods; providing suitable landscape proposals; provide convenient access for all users; adhere to the Nationally Described Space Standards (subject to transition period).
25. *Policy 31 Amenity and Pollution* Sets out that development will be permitted where it can be demonstrated that there will be no unacceptable impact, either individually or cumulatively, on health, living or working conditions or the natural environment and that they 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 sensitive land uses near to potentially polluting development. Similarly, potentially polluting development will not be permitted near sensitive uses unless the effects can be mitigated.
26. *Policy 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.
27. *Policy 35 Water Management*. Requires all development proposals to consider the effect of the proposed development on flood risk, both on-site and off-site, commensurate with the scale and impact of the development and taking into account the predicted impacts of climate change for the lifetime of the proposal. All new development must ensure there is no net increase in surface water runoff for the lifetime of the development. Amongst its advice, the policy advocates the use of SuDS and aims to protect the quality of water.

CONSULTATION AND PUBLICITY RESPONSES

STATUTORY RESPONSES:

28. Highways Officers have carried out a detailed assessment of the proposals and advise the proposed 12 parking spaces with two accessible parking spaces is adequate parking provision, along with the 4 cycle parking spaces to be provided. A vehicular swept path tracking drawing has been submitted showing a delivery tanker can operate in and out of the site. No objection is offered to any element, subject to conditions requiring vehicular visibility splays be protected.

INTERNAL CONSULTEE RESPONSES:

29. Environmental Health (Air Quality) Officers advise: *'According to the design and access statement uploaded to the planning portal, the proposed development includes the redevelopment of a vacant plot into a 4-pump petrol station and convenience store. The submission documents do not include consideration of air quality-related impacts.'*

Petrol stations are a source of emissions to air, from VOCs associated with the fuel stored and sold, and combustion emissions associated with vehicles accessing the station.

According to Defra guidance LAQM TG(16), petrol stations that meet one of the following criteria may have the potential to constrain the relevant air quality objective for VOCs (benzene):

- 1) Petrol throughput > 2,000m³ or 2 million litres per year*
- 2) Near a busy road (>30,000 vehicles/day)*
- 3) Exposure within 10m from the pumps*

It is assumed that a 4-pump station would not meet item 1 listed above and that the number of daily vehicles on Pelton Lane and Hilda Park falls well below that referred to in item 2. The site plan uploaded to the portal demonstrates that item 3 is not exceeded with the nearest sensitive exposure (residential properties on Rosewood Gardens) over 10m away from the petrol pumps.

Professional experience of similar developments has suggested that they do not necessarily generate a lot of additional traffic, but instead draw in custom from existing traffic already using the adjacent roads. The number of petrol pumps and car parking spaces proposed suggest this is likely the case for the proposed development. As such, it is considered unlikely that additional vehicle emissions could have a significant effect on local air quality.

Due to the proximity of residential properties to the site boundary, it is recommended that the Council seek commitment to appropriate dust control measures during the construction phase to be set out within a Construction Management Plan, typically by way of planning condition. The dust control measures should be proportionate to the dust risk in line with Institute of Air Quality Management construction dust guidance'.

- 30. Environmental Health (Nuisance) Officers have undertaken a technical review of information submitted in relation to the likely impact upon amenity in accordance with the relevant TANs (Technical Advice Notes). Following a discussion regarding the detail of the proposals and supporting information and potential for nuisance, they have suggested restrictions for car washes and generators on site and a condition for acoustic fencing on boundaries shared with residential property.*
- 31. Environmental Health (Contamination) Officers have examined the submitted reports, concluding, 'made Ground and some contamination has been identified in the soils. Ground gas protection measures are not required. Given the information provided I agree with the observations and recommendations. There is no requirement for a contaminated land condition'.*
- 32. The Council's Petrol Officer has been consulted but has provided no response.*

PUBLIC RESPONSES:

- 33. A consultation exercise of 52 letters was undertaken, a site notice was posted on the main road and an advertisement placed in the press. 209 objections have been received in response, and one letter of support from a nearby resident.*
- 34. The main reasons for objection are summarised below. All correspondence is available on the Council's website for the detail of objections, with only some technical issues redacted:*

Highways

The proposal will attract extra traffic into the area and compromise road safety. Residents consider that Highway visibility at the junction into the Hilda Park Estate is poor and will be further compromised by the development and the traffic movements associated with it. Tankers and Delivery wagons will create risk to the elderly, the disabled dog walkers and exceptional risk to children accessing the nearby school along 'a small residential road'. Residents say the Council will be held accountable for accidents involving children. The Highway will be damaged by the weight of tankers.

If there are fuel shortages, panic buying would create chaos in the surrounding estates.

Sustainability

Electric vehicle demand will make the petrol filling station redundant. The development will attract cars to the area increasing pollution. The COP26 conference recently discussed the climate change implications of fossil fuels. With Council and Central Government initiatives to move away from reliance on fossil fuels for vehicles and domestic heating, approval of the proposals is contended to oppose the trends and be inconsistent with wider Council policies.

Demand

There are existing petrol stations within easy reach of residents, with variously 10 claimed within a three-mile radius, 2 claimed within a 5-mile radius. Existing petrol stations are claimed to operate under capacity. A trend for closing petrol stations is claimed, with the application claimed as focussed on the convenience store element and its future expansion. Other sites and uses are suggested.

Various figures are quoted for the ceasing of production of petrol and diesel cars, with some setting out this as an outright ban.

Competition

The competition that the proposed retail element will generate will compromise existing businesses. The owner of the nearest convenience store, now including a Post Office writes on this point in particular. Petrol Filling Stations struggle to remain viable. Others support him as a valued part of the local community, and the service he has provided during the Covid period.

Residential Amenity and Health

The light and noise pollution on the local residents would have a negative impact for people nearby. This includes the visual effects of a canopy and the likely signage that will follow. The operation will present light pollution to adjacent dwellings, with concerns for both the forecourt lighting and advertising. Local residents homeworking will be particularly affected.

Queuing cars with engines running for the proposed opening hours will destroy peaceful enjoyment of adjacent gardens – the basis and comparisons within the submitted noise reports are questioned for relevance. A wooden fence would not give protection for this relationship.

Residents' mental health will suffer if the proposals are allowed. Risk of fire and explosions will be a constant fear. Residents physical health will be affected with the use increasing the likelihood of cancer. Reference is made by a number of correspondents to at 2011 paper from a Spanish University considering the dangers

of airborne particulates from petrol filling stations, recommending a 50m buffer from petrol stations. Note is made that this research is used by Birmingham City Council. A study from Nigeria is also referenced.

The proposed canopy will result in loss of light for adjacent gardens.

There is a risk of fuel seeping into sewage systems and waterways.

The proposal will attract criminal activity and anti-social behaviour to the area.

The bin store is likely to attract vermin.

House prices and insurance will be negatively affected. Homes will be difficult to sell.

Residents suggest compensation in the event of an approval.

The proposal is considered contrary to Human Rights.

Land Stability

Excavations will cause disturbance for surrounding buildings.

Preferred

The scheme was recently approved for bungalows – this form of development is preferred in terms of scale, amenity and construction implications, as would affordable housing.

Ecology

The lighting of the site is claimed likely to be detrimental to the local bat population.

Archaeology

As a settlement with Roman connections, the site may have archaeological potential.

35. Letters In Support

The letter of support welcomes the use and notes the benefits of the employment use of the site.

APPLICANT'S STATEMENT:

36. The applicant has submitted the following statement to address concerns raised through the public consultation exercise:

'We have summarized and address the key points mentioned in public objections below'.

'Increase of traffic on the road and risk of road accident to children and elderly
The site is situated at top edge of the South Pelow (sic) on side of Pelton Lane connecting Pelton to Chester Le Street town centre and not considered as major road location and mostly used by local residents.

We do not believe extra traffic will be added to existing traffic or people drive from outside of the area to South Pelaw to get fuel or to use the convenience store,

therefore there will be no change to level of traffic and ultimately no change to level of risk to pedestrians specially children and elderly.

We believe proposed access and exit to the site will slow down the flow of the traffic on Pelton Lane as road users will slow down to enter the site and be more cautious on the Pelton Lane for vehicles exiting and entering the site.

Air quality and fumes of the fuel

There will be almost zero fumes or vapour of the fuel will be released in the air thanks to latest technology used in our fuel pumps which vacuums all the vapours from vehicle's tank into underground tanks as they fill up.

As well our underground tanks are equipped with vapour recovery setup which transfer the vapours back into the tanker as they getting filled up.

EV to take over fossil fuelled vehicles, local and global environmental impact

We will provide two ultrafast EV charging point on site to meet the demand of all road users and they will be expand as the demand increases.

Latest researches shows EVs are not completely environmental friendly as there are huge complications with disposal of their large battery. Below are example of recent researches on EVs battery disposal.

- Current EV batteries "are really not designed to be recycled," says Thompson, a research fellow at the Faraday Institution, a research centre focused on battery issues in the United Kingdom*
- Professor Andrew Abbott, of the University of Leicester said: "Electrification of just 2% of the current global car fleet would represent a line of cars that could stretch around the circumference of the Earth – some 140 million vehicles. Landfill is clearly not an option for this amount of waste.*
- "It's not just lithium that can contaminate soil and groundwater. Nickel, cobalt, manganese and other metals found in EV batteries pose an even greater threat than lithium to both human life and the ecosystem." "EV batteries will contaminate the environment and threaten public health. Nickel has been shown to cause lung and nasal cancers, reduce lung function, and cause bronchitis. Cobalt can cause serious health conditions such as asthma and pneumonia, and it is a possible carcinogen. Exposure to manganese can result in respiratory problems, loss of coordination, and other neurological problems.*

We believe local or global environment will not be effected by our operation of retailing fuel and this will not encourage road users to use fossil fuelled vehicles neither discourage EV users to switch to fossil fuelled vehicles.

Impact on existing nearby businesses

We believe there will be no impact on two other convenience stores nearby as our convenience store will be mostly used by road users who are purchasing fuel. We are going to have different customer base from other two shops which don't offer parking on site to their customers.

Noise and lighting pollution

We have provided and submit noise and lighting impact assessment to local council which indicate that the level of noise and lighting produced while the site is operational are in line with planning policies and Compliance has been achieved on both scheme of lighting and noise pollution level.

Location and suitability of the site for proposed use

The site of former falcon house located next to large Auto Services and MOT station which previously was a fuel filling station and the shop in late 90s.

We believe the proposed use for this site will match the characteristics of this stretch of Pelton Lane with a large Auto repair unit and row of shops situated on either side of the site.

Conclusion

We strongly believe there will be no adverse effect on the residential amenity of neighbours or on the character of the neighbourhood by our proposed development and 10 to 12 full and part time job opportunities will be created'.

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=R21E6LGDJ7H00>

PLANNING CONSIDERATIONS AND ASSESSMENT

37. 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 advice within 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, highway safety and access, residential amenity, and other matters.

The Development Plan

38. 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. The County Durham Plan (CDP) is the statutory development plan and the starting point for determining applications as set out in the Planning Act and reinforced at Paragraph 12 of the NPPF. The CDP was adopted in October 2020 and provides the policy framework for the County up until 2035.
39. Paragraph 11 of the NPPF establishes a presumption in favour of sustainable development. For decision taking this means:
- c. approving development proposals that accord with an up-to-date development plan without delay;

The Principle of Development

40. The application site is in a mixed-use area in a small local centre sited on a main road between two large residential estates. The site has until recently been occupied by a public house, now cleared, and has an approval for dwellings, which was commenced. The site may be considered 'brownfield'. Immediate neighbours are residential and commercial. In principle the site could accommodate a wide range of uses, with assessment led by the relevant criteria of Policy 6, as the land is not allocated for a specific use within the County Plan and is within the built-up area.

41. Whether the land is compatible with adjacent land uses for criteria 6a. will be considered below in assessment against Policy 31 for residential amenity. There has been extensive objection to the competition the retail unit proposed within the development will bring to existing businesses. For the retail element of the proposal, Policy 9 advises only that, 'the loss of essential shops and services will be resisted'. To seek to influence competition within the assessment of a planning application is not appropriate and therefore not material. For criteria 6c. the potential to affect archaeology has been mentioned – the site has been previously developed and is some distance from Chester-le-Street's Roman remains – there is no likelihood of the development affecting heritage assets or archaeology in the ground. For criteria 6d., the scale character and appearance will be assessed below against Policy 29 and Part 12 of the Framework. Highway safety is a consideration and a significant concern to the local community, so compliance with criteria 6e. will be assessed in detail against Policy 21 and part 9 of the Framework. Criteria 6f.'s requirement for good access to sustainable modes of transport is met by the site relationship to the main road, it's bus stops and close access to cycle paths, allowing staff to access the site without the use of private cars. For criteria h, a late concern regarding drainage will be addressed below and finally for criteria i., the proposal does make use of brownfield land.

Residential Amenity

42. There is concern raised by residential neighbours for the nature and operation of the proposed use, with a number of dimensions.
43. In terms of the physical relationship to the site, the dwellings at Pelaw Crescent are separated by 35m from the site, this including a main road, an estate road and a wide grass verge including trees. Whilst the proposal introduces a new access and egress, which will change the front elevation of these dwellings' relationship to vehicular movements, the separation distance and nature of the intervening land uses is such that it is considered acceptable.
44. North-west of the site, six flats at Rosewood Gardens overlook the land. Floorplans on a historic application indicate these dwellings are accessed from the front elevation, with the ground floor flat having access to a rear garden, the first floor flat having no private external amenity space. Environmental Health Officers have recommended a close boarded, 2m fence around the west boundaries of the site. This will directly protect the residents of the ground floor flats, whose historic relationship with the former public house has likewise been with a fence. Residents of the first-floor flats will look over the fence to the side of the proposed retail unit, across a bin compound, towards the forecourt. This relationship is concluded acceptable. Officers consider it relevant that there has been a historic relationship between these dwellings and a commercial operation, in particular the large formal car parks of a public house, operating to licencing hours. Aerial photography imagery indicates that whilst there has been flora on this boundary, it does not appear significant enough to screen this relationship. What flora there was cleared in preparation for the approved bungalow development.
45. The detailed relationship to the adjacent dwellings in the cul-de-sac to the west in Hilda Park is set out in the introduction. Five dwellings share a garden boundary with the site, two of which present gables to the site, one dwelling has all first-floor windows with obscure glazing, and two present two full floors of windows to the rear boundary. These two dwellings look over the open area of the proposed layout, with number 10 having an overlapping view of the rear of the proposed building – 1.5m of structure above the 2m high close boarded fence, 12m from the main rear elevation of that dwelling, 9.5m from its single storey rear extension. These two dwellings (and the two

adjacent) previously looked towards the rear of the public house, over the access road to the pub's car park, at a separation distance of around 17m. This access road serving the pub car park will have generated late night traffic movements. The close boarded acoustic standard wooden fence suggested by Environmental Health Officers will give the ground floors and gardens of the adjacent gardens in Hilda Park an appropriate level of protection for the physical implications of the proposed relationship.

46. There is a single first floor gable window on the gable of the arcade facing the site over the main estate road and layby at the entrance to Hilda Park, a distance of some 50m from the nearest proposed structure. Given the separation distance and the intervening highway, the relationship to this window is considered acceptable.
47. The detailed physical relationships surrounding residential property is considered acceptable for reasonable expectations of residential amenity as protected by Policy 31 of the County Plan and part 15 of the Framework.
48. For the physical relationship to other adjacent land uses, the proposal is not considered to have an inappropriate physical relationship to either the short arcade of shops to the south, nor the commercial garage on the former petrol station site to the north.
49. The operation of the petrol filling station and the potential for actual and mental disturbance to local residents from airborne pollutants for health and odour, from noise and from light pollution are all concerns raised in detail. The application was supported by specialist reports, and whilst some objectors questioned the underpinnings and comparisons set out within them, these were assessed by the Council's specialist teams in Environmental Health to inform the Planning assessment. The responses are set out above and conclude that the relationships between the proposed petrol pumps operation and dwellings is acceptable.
50. For the aspect of potential noise pollution, this is subject to conditions restricting certain operations and the installation of an acoustic fence.
51. For airborne particulates objectors rely heavily on an academic report from a Spanish University in 2011 – pointing out that this document is included in the evidence base of Birmingham City Council's Development Plan. It is this and another similar document that caused the redaction issues in objections noted above.
52. Notwithstanding the use of the document by others, it is heavily copyrighted and qualified as to how it should be used. Weight should not be afforded to it just because it is part of the evidence base of another LPA's development plan. Environmental Health Officer's assessment is based upon the guidance set out Local Air Quality Management Technical Guidance (TG16), published in April 2021 by Defra – the Department for Environment, Food and Rural Affairs. The response identifies the nearest sensitive receptor as the flats at Rosewood Gardens and finds the relationship meets the required standards. This will take into account the nature of the apparatus used in the vapour retrieval systems and modern standards for operation. Quite how comparable the operation described by the Spanish academic report and the systems and regulations currently in use in this country is open to question. The relevant guidance is that contained in TG16, not the Spanish academic report.
53. Light implications are set out in a report accompanying the submission, with the illumination concentrated to the front of the retail unit and under the canopy. Those lighting units most likely to directly affect adjacent residents are on the sides of the building – serving the service yard to the north and the car parking area to the south. A condition to agree the detailed nature of these, which could be motion sensor is

proposed in the interests of residential amenity, likewise the level of illumination when the business is closed. Again, noting that the operation of the public house would have given a degree of night-time use, in particular for car headlights, and again that the proposed close boarded fence will protect this aspect at ground-floor level, the relationship between the proposed use and residential properties is considered capable of appropriate mitigation.

54. Potential effects to mental health and anxiety are stated concerns of many objectors, and difficult to quantify. Officers note that a petrol filling station on a main road in an urban area, immediately surrounded by houses is not an unusual historic arrangement, being apparent in many towns and cities. In such circumstances, whilst the fears may be real, there is no proper evidence upon which to afford this issue significant weight and in any event, it is considered to be appropriately mitigated by the operation of the proposal to modern safety standards. This issue is not considered one capable of sustaining a refusal. This has been considered both in terms of the direct effects stated, and implications for Human Rights, as discussed later in this report.
55. Environmental Health Officers have further identified the potential for dust generated during the construction process to have an adverse effect on neighbours, suggesting a condition be imposed to ensure this is controlled.

Highways Safety and Access

56. The County Highways Officer has assessed the proposals in detail and offers no objection subject to a condition ensuring visibility at the front of the site. The condition may slightly affect the applicant's front boundary marker proposals, so a condition is proposed to agree this detail.
57. Whilst there is significant objection and anecdotal evidence of highways issues from the consultation exercise, Officers must be led in their assessment of the proposals by the professional and qualified opinion of the Highways Department. The specifications and capacities of the main C183 road that forms the site frontage, the junction with that from Hilda Park, that forms a side boundary and its relationship with the staggered junction into Conyers Avenue and the residential estates to the east, the position of bus stops, laybys and adjacent businesses have all been inspected on-site. The vehicular and pedestrian environment is established, and the implications of the introduction of two new connections onto the main road and reuse of the side access considered. It appears the proposal is likely to rely on passing trade, rather than generating significant new vehicle movements. The convenience store is well located for the existing bus stops and is within walking distance of a large number of dwellings. Secure cycle parking facilities are shown on the layout. The proposal is safely and sustainably located in highways terms and is therefore compliant with the relevant elements of Policy 21 of the County Plan and part 12 of the Framework. In the absence of an objection from the Council's Highways Department, it is not considered that a highway safety refusal reason could be sustained.

Sustainability

58. Much has been written in the consultation exercise about climate change issues, and the Government and County Council's commitment to a reduction in carbon-based fuel use. This is presented as a matter of principle against which the proposals should be refused. Whilst electric car ownership is increasing, with 11.6% of new vehicles sold in 2020 were battery powered vehicles, and a further 7% were plug-in hybrids, the

number of available public charging points for such motorists in the north-east of England is 32 per 100,000 population (source DfT). Therefore, whilst take-up of private non-fossil fuel transport is increasing in popularity, it is not until 2030 that the Government currently plan to prohibit sales of new petrol and diesel cars (not including hybrids). The change is therefore proposed to be phased, with the use and sale of used of fossil fuel driven cars extending beyond this date.

59. Planning decisions must be determined against the Policies in the County Durham Plan, informed by appropriate National Guidance. Whilst wider County Council policies can be material in considering an application, they cannot carry the same weight as the Development Plan and National Planning guidance. The Council have declared a Climate Emergency and committed to reduce carbon emissions from Durham County Council's operations by 80% from 2008/09 levels by 2030, making significant progress towards making Durham County Council and County Durham as a whole carbon neutral. Various initiatives encourage sustainable behaviour.
60. There is a specific initiative to integrate sustainability within planning and this is reflected in the requirements of Policy 29 of the Plan, and specifically a fabric-based approach to new building works and energy and resource management.
61. The applicant has offered installation of two EV charging points at the site, and it is accepted that this will increase the sustainability offer of the site.
62. There are no Planning Policies precluding the development of petrol filling stations and given that during the transition period to alternate technologies will take some time, to propose refusal on the grounds suggested is considered both unreasonable and unsustainable.

Layout and Design

63. The proposal is for a small petrol filling station and convenience store of modern functional appearance, complimentary to the smart and modern appearance of the adjacent commercial garage. The shallow roof pitch reduces potential effects on surrounding houses and gardens to a minimum – i.e., with 1.5m of building appearing above the required 2m boundary fence. The presence of the building will screen direct views of the illuminated under-canopy to the nearest dwellings. A separate planning application will be required for signage and any illumination on the canopy faces. An informative reminds the developer of this requirement.
64. There are large areas of the site laid out for parking, without development planned. The applicant has confirmed that there will be no car washing operation in this area and this will be subject to a condition. This is in order to protect the visual appearance of this part of the site along with potential residential amenity implications that this type of operation, whether mechanical or hand-wash, could bring.
65. The proposals are considered compliant with the relevant requirements of Policy 29 of the Development Plan and part 12 of the Framework.

Ecology

66. With the previous buildings cleared from the site – subject to investigation for the presence of bats by the previous landowner, the potential for the presence of protected species on the site was removed. The proposed lighting scheme will not have an effect on bats – as objectors claim – that would require mitigation.

Flooding and Drainage

67. The development is below the thresholds where drainage information is required to accompany an application, or where the Council's Drainage Team as Strategic Flood Risk Authority is required to be consulted. Nonetheless with a large area of hardstanding proposed and given the nature of the use, a condition to ensure that surface water run-off is properly handled, and any filtration of the water required is put in place is proposed to address this technical issue.

Other Considerations

68. The application forms set out an intention to provide 4 full time and 10 part time jobs (equating to 9 full time jobs overall) on the site. This is of positive material weight in the planning assessment.
69. Environmental Health (Contamination Officers) concur with the submitted reports and do not suggest a condition – requesting only a standard 'informative' to cover the potential for unexpected contamination
70. The site is not within the Coalfield Development High Risk Area and not affected by records of historic mining activity. Other aspects of land stability and groundworks are within the remit of the Building Regulation process. Where there are specialist implications for the works, such as for the installation, and if necessary, the removal or decommissioning of the fuel tanks that would serve the pumps, there is legislation outside the Planning process to regulate and control this, which it would be inappropriate of any planning approval to seek to duplicate.
71. Concerns for the proposal to attract anti-social behaviour are predominantly the purview of the Police, but in any event, there is no evidence that such would be the case.
72. There is no reason why a properly maintained service area and bin-store should attract vermin as suggested. Environmental Health powers are available to the Council if this does become an issue.
73. Local residents offer concerns for the effect of the proposal on house prices and insurance. These are not considered of significant material weight in a planning assessment and are not protected by Planning Policies.
74. Breaches of the Human Rights Act 1998 and the European Convention on Human Rights are claimed for the proposed effects on residential amenity. However, in so far as there would be any interference with human rights, the proposals have been assessed as acceptable under the required planning legislation and also necessary and proportionate. Likewise, consideration as to whether the proposals involve any issues for equality and diversity have been part of the process Officers have used to arrive at their recommendation. There are no aspects of the proposals in conflict with the Equalities Act 2010 that would compromise residents with protected characteristics.
75. Objector's preferences for the extant consent for bungalows and other potential uses for the land are not relevant to the assessment.

CONCLUSION

76. Section 38(6) of the Planning and Compulsory Purchase Act 2004 sets out that planning applications be determined in accordance with the development plan unless material considerations indicate otherwise.
77. The application site is considered an appropriate location for the uses proposed when compared against the relevant Policies in the Development Plan. Whilst the proposals are contentious in the local area, it is considered that where concerns are material to the planning assessment they can be mitigated by an appropriate suite of conditions.

RECOMMENDATION

That the application be **APPROVED** subject to the following conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
Reason: Required to be imposed pursuant to Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.
2. The development hereby approved shall be carried out in strict accordance with the approved plans listed in Part 3 - Approved Plans.
Reason: To define the consent and ensure that a satisfactory form of development is obtained in accordance with Policy(ies) 6, 21, 29, 31, 34 and 35 of the County Durham Plan and Parts 2, 4, 6, 8, 9, 11, 12, 14 and 15 of the National Planning Policy Framework.
3. Notwithstanding any details of materials submitted with the application no development shall commence until details of the make, colour and texture of all walling and roofing materials have been submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the approved details.
Reason: In the interests of the appearance of the area and to comply with Policy 29 of the County Durham Plan and Part 12 of the National Planning Policy Framework.
4. A close-boarded Acoustic Fence 2m in height to a detailed specification to be agreed in writing with the Local planning authority must be erected along the north-west and south-west boundaries of the site before the petrol filling station hereby approved comes into operation and thereafter retained in perpetuity whilst the use is in operation.
Reason: In the interest of residential amenity to ensure compliance with Policy 31 of the Durham County plan 2020 and part 15 of the Framework.
5. Prior to the first operation of the development hereby approved, details of all means of enclosure of the site on roadside boundaries shall be submitted to and approved in writing by the Local Planning Authority. The enclosures shall be constructed in accordance with the approved details thereafter and retained without alteration.
Reason: In the interests of the visual amenity of the area and highway safety, to comply with Policies 6, 29 and 21 of the County Durham Plan 2020 and Parts 12 and 9 of the National Planning Policy Framework.
6. Before the development is brought into use the 'in' and 'out' one way system access needs to be built and constructed to DCC highway standards in accordance with the

approved plan. The site visibility cords plotted in both directions at 2.4 x 43 metres must be clear to visibility to under 1 metre in height from ground level before the site is brought into use at both accesses and retained thereafter whilst the use is in operation.

Reasons: in the interests of highway safety, as required by Policy 21 of the Durham County Plan 2020 and part 9 of the Framework.

7. Two EV charging points must be erected in a location to be agreed in writing with the Local planning authority and along with the secure cycle parking shown on the approved plans, made available when the use is brought into operation.

Reason: In the interests of sustainable development and to comply with policy 21 of the Durham County Plan 2020 and part 9 of the Framework.

8. Notwithstanding the information shown on the submitted plans, a scheme of surface water drainage, prepared by a competent and appropriately qualified person, with treatment of water where shown to be required must be submitted to and agreed in writing with the Local Planning Authority before the surfacing of the site commences.

Reason: In the interests of sustainable drainage as required by policies 6 and 35 of the Durham County Plan 2020 and part 14 of the Framework

9. Before the development hereby approved is brought into operation a detailed scheme for the operation of lighting proposed on the site including hours of use must be submitted to and approved in writing by the Local planning authority and thereafter operated in full accordance with said written agreement.

Reason: In the interest of residential amenity to ensure compliance with Policy 31 of the Durham County plan 2020 and part 15 of the Framework.

10. Before the development hereby approved is implemented, the applicant must submit a written scheme of dust control measures to be operated during the construction phase set out within a Construction Management Plan, proportionate to the dust risk in accordance with Institute of Air Quality Management construction dust guidance for approval by the Local planning authority in writing, the building works being thereafter undertaken in full accordance with this agreement.

Reason: In the interest of residential amenity to ensure compliance with Policy 31 of the Durham County plan 2020 and part 15 of the Framework.

11. No additional structures, plant or equipment may be erected within the development site, and no car washing facility, whether mechanical or hand-wash may be erected, sited or operated on the site without the express consent of the Local planning authority.

Reason: In the interest of residential amenity to ensure compliance with Policy 31 of the Durham County plan 2020 and part 15 of the Framework.

12. All elements of the development hereby approved must only be operated within the hours 0600hrs until 2300hrs inclusive, 7 days a week.

Reason: In the interest of residential amenity to ensure compliance with Policy 31 of the Durham County plan 2020 and part 15 of the 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
- Statutory, internal and public consultation responses
- The National Planning Policy Framework 2021
- National Planning Practice Guidance Notes
- County Durham Plan 2020
- Residential Amenity Standards SPD (2020)
- DfT – Low Emission and Electric Vehicles (Website)
- DeFRA - Local Air Quality Management Technical Guidance (TG16), April 2021
- Human Rights Act 1998
- Equality Act 2010



Planning Services

DM/21/03809/FPA

The erection of a fuel filling station, convenience store, canopy, petrol pumps, with associated access and car parking

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Date 24th February 2022

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