



## Planning Services

# COMMITTEE REPORT

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### **APPLICATION DETAILS**

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Application No:	DM/21/02193/FPA
Full Application Description:	Erection of retail unit and associated parking court (amended plans received 07.03.22)
Name of Applicant:	Mr Amen Kareem and Mr Mohammad Sharifi
Address:	Land To The East Of Whitwell House, Front Street, New Durham, DH1 2EP
Electoral Division:	Belmont
Case Officer:	George Spurgeon (Senior Planning Officer) Tel: 03000 261 959 Email: george.spurgeon@durham.gov.uk

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### **DESCRIPTION OF THE SITE AND PROPOSAL**

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#### The Site

1. The application site relates to an open area of grassed land within the settlement of Gilesgate Moor and the defined District Centre of Dragon Lane. It lies north of, and adjacent to, Sherburn Road which is a main thoroughfare linking Durham City in the west to Sherburn village and beyond, to the east. A line of residential properties with front gardens known as Goodyear Crescent provide a frontage to the other side of the street. To the west of the site, a pair of semi-detached properties exists, the nearest of which is a residential dwelling with side garden overlooking the site. The attached property to this dwelling is a newsagent shop. Dragonville Retail Park is located to the north-east of the site with the rear elevation of Matalan store abutting the site.

2. To the north of the site beyond an existing timber fence, is a triangular shaped parcel of privately owned land thought to have previously been used as allotments but that has recently been covered with concrete and used to site a static caravan which is currently under investigation by the Council's Planning Enforcement Section. The application site is overgrown, having been left in an untidy state since the cessation of its former unauthorised use as a hand car wash. The site has been scraped to remove topsoil and grass, with a mound of earth remaining on site. Prior to this, the site was an open, mainly grassed unmanaged area.

### The Proposal

3. The application seeks full planning permission for the erection of a single storey retail unit and associated parking area. The unit is proposed to have an 'L' shaped form with a floor area of approximately 250m<sup>2</sup>, featuring a hipped roof measuring 3.5m to the eaves and 5.5m to the ridge. The unit is proposed to be finished in buff brick to the external walls and would be served by 10 car parking spaces to the west and a sheltered cycle store to its south. Bins would be stored to the north, divided from the parking area by a 3m high weldmesh fence. The exact end use of the unit is not known at this time although the applicant has indicated that it is likely to be a local convenience store or similar.
4. The application is being reported to planning committee at the request of Councillor Fletcher due to concerns over the lack of clarity as to the nature of the retail unit proposed, the questionable need for further retail in this location, and noise and disruption to nearby residents and traffic flow.

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## **PLANNING HISTORY**

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5. EN/21/01053 Clearance of former allotments, creating of hard standing, siting of a trailer / static caravan on site.
6. DM/20/00216/FPA Change of use to hand car wash including the erection of 2 No. buildings, cabin and storage container. Refused 25<sup>th</sup> June 2020.
7. DM/19/01160/FPA Proposed hand car wash business on vacant site. Refused 13<sup>th</sup> September 2019. Appeal Dismissed.
8. EN/19/01111 Unauthorised excavation works and erection of wooden fencing panels. Case closed, no breach
9. DM/19/01231/AD various adverts for hand car wash business on vacant site. Refused 13<sup>th</sup> September 2019.

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## **PLANNING POLICY**

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### **National Policy**

10. A revised National Planning Policy Framework (NPPF) was published in July 2018 (with updates since). The overriding message continues to be that new development that is sustainable should go ahead without delay. 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.
11. NPPF Part 2 Achieving Sustainable Development - The purpose of the planning system is to contribute to the achievement of sustainable development and therefore at the heart of the NPPF is a presumption in favour of sustainable development. It defines the role of planning in achieving sustainable development under three overarching objectives - economic, social and environmental, which are interdependent and need to be pursued in mutually supportive ways. The application of the presumption in favour of sustainable development for plan-making and decision-taking is outlined.
12. NPPF Part 4 Decision-making - Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.
13. NPPF Part 6 Building a Strong, Competitive Economy - The Government is committed to securing economic growth in order to create jobs and prosperity, building on the country's inherent strengths, and to meeting the twin challenges of global competition and a low carbon future.
14. NPPF Part 7 Ensuring the Vitality of Town Centres - Planning policies should be positive, promote competitive town centre environments and set out policies for the management and growth of centres over the plan period.
15. NPPF Part 8 Promoting Healthy and Safe Communities - The planning system can play an important role in facilitating social interaction and creating healthy, inclusive communities. Developments should be safe and accessible; Local Planning Authorities should plan positively for the provision and use of shared space and community facilities. An integrated approach to considering the location of housing, economic uses and services should be adopted.
16. NPPF Part 9 Promoting Sustainable Transport - Encouragement should be given to solutions which support reductions in greenhouse gas emissions and reduce congestion. Developments that generate significant movement should be located where the need to travel will be minimised and the use of sustainable transport modes maximised.

17. NPPF Part 12 Achieving Well-Designed Places - The Government attaches great importance to the design of the built environment, with good design a key aspect of sustainable development, indivisible from good planning.
18. NPPF Part 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 - 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 Page 73 pollution and land stability and remediating contaminated or other degraded land where appropriate.

<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; noise; public rights of way and local green space; planning obligations; 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 (CDP)

21. *Policy 9 (Retail Hierarchy and Town Centre Development)* defines the retail hierarchy and states that proposals that would positively contribute to the evening economy will be supported provided they contribute to the vitality and viability of town centres, promote public safety and accord with this and other relevant policies in the Plan.

22. *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 should have regard to Parking and Accessibility Supplementary Planning Document.
23. *Policy 26 (Green Infrastructure)* states that development will be expected to maintain and protect, and where appropriate improve, the County's green infrastructure network. Advice is provided on the circumstances in which existing green infrastructure may be lost to development, the requirements of new provision within development proposals and advice in regard to public rights of way.
24. *Policy 29 (Sustainable Design)* requires all development proposals to achieve well designed buildings and places having regard to SPD advice and sets out 18 elements for development to be considered acceptable, including: making positive contribution to areas character, identity etc.; adaptable buildings; minimising greenhouse gas emissions and use of non-renewable resources; providing high standards of amenity and privacy; contributing to healthy neighbourhoods; and suitable landscape proposals.
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)* requires that where development involves such land, any necessary mitigation measures to make the site safe for local communities and the environment are undertaken prior to the construction or occupation of the proposed development and that all necessary assessments are undertaken by a suitably qualified person.
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.

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 wastewater 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 39 (Landscape)* states that proposals for new development will only be permitted where they would not cause unacceptable harm to the character, quality or distinctiveness of the landscape, or to important features or views. Proposals are expected to incorporate appropriate mitigation measures where adverse impacts occur. Development affecting Areas of Higher landscape Value will only be permitted where it conserves and enhances the special qualities, unless the benefits of the development clearly outweigh its impacts
30. *Policy 41 (Biodiversity and Geodiversity)* states that proposal for new development will not be permitted if significant harm to biodiversity or geodiversity resulting from the development cannot be avoided, or appropriately mitigated, or as a last resort, compensated for.
31. Residential Amenity Standards SPD (2020 Adopted version) – Provides guidance on the space standards that would normally be expected from new buildings and existing dwellings.

<https://www.durham.gov.uk/cdp>

#### **Neighbourhood Plan:**

32. The application site is not located within an area where there is a Neighbourhood Plan to which regard is to be had.

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## **CONSULTATION AND PUBLICITY RESPONSES**

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#### **Statutory Consultee Responses:**

33. *Belmont Parish Council* – Object to the application on the grounds that the proposal would generate additional traffic which would add to the traffic on Sherburn Road / Front Street, that the exact use has not been specified, and that the proposal is contrary to Policy 29 of the County Durham Plan.
34. *Highways Authority* – Considers the parking provision to meet the Council's standard of 1 space per 25sqm, with 10 spaces provided to serve a 250sqm unit, and the required 6m reverse distance from the spaces being provided. Advises that the proposed cycle parking is also proposed should be covered to allow for use in inclement weather. Advises that a new access is proposed, which would require the applicant to enter into a S184/S278 agreement with the Local Highway Authority to provide this on the existing Highway.

### **Non-Statutory Responses:**

35. *Landscaping* – Advise that a soft landscaping scheme to include the planting of trees and shrubs should be considered to create a green frontage to the development which would soften the appearance of the proposed building and hard surfaces.
36. *Design and Conservation* – Consider the principle of development and the design concept to be satisfactory, with development of the site considered to visually improve the street.
37. *Environmental Health Nuisance* – Recommends conditions to secure details of lighting, and to restrict opening hours and noise levels.
38. *Environmental Health Contamination* – Advise a conditional approach to land contamination.
39. *Ecology* – Confirm that no ecological surveys are required to support the application as the site has recently been cleared.
40. *Police Architectural Liaison Officer* – make several recommendations to help design out crime including the provision of a knee rail around the perimeter of public areas and a 3m high weld mesh fence around the bin store and service area. This is shown on the latest proposed plans.

### **Public Responses:**

41. The application has been advertised by way of a site notice and individual notification letters sent to neighbouring properties. A total of 8 representations were received, with 6 objecting to the application and 2 neither objecting nor supporting. The following concerns were raised:

#### Highways

- The proposal would generate an increase in traffic,
- There is an insufficient number of parking spaces, and delivery vehicles would restrict access to parking spaces encouraging on street parking on a busy road which would adversely affect highway safety,
- Reversing delivery vehicles would cause safety concerns for pedestrians,
- The turning area for vehicles in the service area is not large enough for HGV's,
- Deliveries into the retail park near the traffic lights at times already cause traffic issues due to the larger vehicles having to temporarily block the main road to gain entry to the rear of the retail premises.
- Nearby residential property would lose off road parking.

#### Visual Impact

- The loss of the natural “green” break between the residential area and the retail area is in the view of the residents a noticeable and detrimental visual effect on the area.

#### Other Issues

- No detail of the type of retail or the opening hours proposed have been provided,
  - There are vacant sites in the retail area,
  - The site was cleared by the applicant depriving residents of well used and established amenity space,
  - The proposal would block access to the plots to its rear (north),
  - The applicant only owns half of the site with the other half being unregistered land,
  - The proposals would have an impact on the wider community outside of the present notification area where residents are possibly unaware of the application but who would also be affected.
42. Councillor Fletcher and Lattin both object to the application raising concerns regarding the creation of an additional access onto an already busy section of highway, that there is no need for further retail in this location, and the lack of clarity as to the proposed use. Concerns were also raised regarding the proposed development resulting in a loss of open space and a significant buffer between the residential areas of the Sherburn Road and the Commercial Centre in Dragonville, with comments made by the Inspector when dismissing the appeal against the refusal to grant planning permission to use the land as a hand car wash (reference DM/20/00216/FPA) cited.

#### **Applicants Statement:**

43. No statement received prior to report publication.

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### **PLANNING CONSIDERATION AND ASSESSMENT**

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44. Having regard to the requirements of Section 38(6) of the Planning and Compulsory Purchase Act 2004 the relevant Development Plan policies, relevant guidance and all other material planning considerations, including representations received, it is considered that the main planning issues relate to the principle of development, highway safety, residential amenity, design and visual impact, ecology, drainage, ground conditions, and other matters.

#### Principle of Development

45. The application site lies within the Dragon Lane District Centre as defined by Policy 9 of the County Durham Plan (CDP). Policy 9 seeks to protect and enhance the hierarchy of defined retail centres in the County. With reference to District Centres, the supporting text to Policy 9 advises that both of the defined District Centres have large mainstream convenience food store anchors and also a higher order non-food retail offer which reflects the origins of both centres as out of centre retail park developments.

The supporting text goes on to advise that the offer in the District Centres is predominantly retail orientated, and that support will be given to proposals that will diversify the range of facilities within the centres, providing other main town centre uses, allowing them to evolve over the Plan period to increasingly perform a town centre role. However, the policy does not preclude the addition of further retail uses, instead setting a threshold for which retail uses over a specified floor area (1500m<sup>2</sup> for convenience or 1000m<sup>2</sup> for comparison) require their impact on Durham City Centre to be considered.

46. This is in line with Paragraph 86 of the NPPF which advises that Local Planning Authorities (LPA) should define a network and 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 and reflects their distinctive characters.
47. The application proposes a retail unit within the defined District Centre with a floor area of 250m<sup>2</sup>, which is below the threshold where an impact assessment would be required. Therefore, the principle of the proposal is acceptable and in accordance with CDP Policy 9 and Part 7 of the NPPF.
48. Residents have raised concerns that the end use of the unit has not been provided and that there are vacant sites within the District Centre which indicates there is no further need for retail in this location. The unit proposed is stated to be for a retail use which would fall under Use Class E. Class E covers a broad range of uses that would generally be considered acceptable within defined centres. As the application site lies within a defined District Centre the principle of the unit operating as a retail unit is considered to be acceptable. However, as Class E covers a broad range of uses allowing the unit to potentially operate as a restaurant or light industrial use in the future without requiring any further planning approval, which may lead to greater impacts upon residential amenity than operating as a retail store, it is considered to be appropriate in this instance to impose a condition restricting the use to one falling under Class E (a) in order to protect the amenity of nearby residents.
49. Notwithstanding the above, the applicant has indicated that the likely future use of the unit would be as a local convenience store or similar. Whilst concerns have been raised by residents that there is no need for further retail in this location, with it noted that there is an existing convenience store nearby to the west, the planning system should not be used as a tool to restrict competition and as such this is not a material planning consideration to which weight can be afforded in determination of this planning application, and as such the concerns raised are not sufficient to sustain refusal of the application.

#### Residential Amenity

50. Parts 12 and 15 of the NPPF require that a good standard of amenity for existing and future users be ensured, whilst seeking to prevent both new and existing development from contributing to, or being put at unacceptable risk from, unacceptable levels of pollution.

51. CDP Policy 31 states that all new development that has the potential to lead to, or be affected by, unacceptable levels of air quality, inappropriate odours and vibration or other sources of pollution, either individually or cumulatively, will not be permitted including where any identified mitigation cannot reduce the impact on the environment, amenity of people or human health to an acceptable level.
52. The proposed retail unit is in a reasonably busy area, with both mixed commercial and residential uses nearby. The application is supported by a Noise Impact Assessment which has been reviewed by the Council's Environmental Health Officers (EHO). The report confirms relevant ambient noise levels for both night-time and daytime periods and identifies that fixed plant and machinery will be required, but that specific details of these are unknown at this stage. It is envisaged that air handling plant to provide background ventilation, external refrigeration plant (i.e. condenser unit) associated with chilled storage cabinets inside the store, and an extract fan serving a food preparation area/bakery may be required depending on the end users. As such, the EHO has recommended a condition relating to a threshold of acceptable noise levels that any fixed plant/machinery must not exceed. A condition is also recommended to secure details of any external lighting.
53. No details of proposed opening hours have been provided as part of the application. However, the Noise Impact Assessment suggests that these would be expected to be around 7am-11pm and it is noted that the opening hours of the local convenience store to the west are 6am to 10pm Sunday to Thursday and 6am to 11pm on Fridays and Saturdays. Accordingly, a condition is recommended to restrict the opening hours of the proposed unit in line with the existing convenience store.
54. The Council's Residential Amenity Standards SPD advocates separation distances of 21m between facing principal elevations and 18m between bungalows, 13m between principal and two storey gable elevations and 10m to a single storey. The side elevation of 5 Front Street to the west is blank and the properties on the opposite side of the road from the site at Goodyear Crescent are over 21m away. The north elevation of the unit is proposed to comprise two doors, with the rear gardens of the five dwellings on Frank Street either being over 21m away or orientated at an oblique angle such that any visual intrusion would be minimal.
55. A condition is recommended to secure details of a construction management plan to minimise disruption throughout the construction period.
56. Overall, the proposals are not considered to adversely affect the amenity of nearby residents, according with CDP Policy 31 and Part 12 and 15 of the NPPF.

## Highway Safety/Access

57. CDP Policy 21 outlines that development should not be prejudicial to highway safety or have a severe cumulative impact on network capacity, expecting developments to deliver well designed pedestrian routes and sufficient cycle and car parking provision. Similarly, Policy 29 advocates that convenient access is made for all users of the development together with connections to existing cycle and pedestrian routes. Specifically, the NPPF sets out at Paragraph 110 that safe and suitable access should be achieved for all users. In addition, Paragraph 111 of the NPPF states that development should only be refused on transport grounds where the residual cumulative impacts on development are severe.
58. Residents have raised concerns over the proposals generating an increase in traffic at an already busy section of road, there being insufficient parking to serve the unit, and the turning area for vehicles within the service area not being large enough.
59. Highways Officers have raised no objections to the proposals, confirming that the amount of parking proposed is sufficient and in accordance with the Council's Parking and Accessibility Standards 2019, at a rate of one car parking space per 25m<sup>2</sup> of floor area, with a distance of 6m between the access/egress point of the spaces allowing sufficient room to safely reverse into and out of the spaces. A covered cycle parking area is also proposed, allowing use in inclement weather. Whilst the proposal would generate additional traffic, given that the development is to be served by 10 car parking spaces this is not considered to have a significant impact on the surrounding road network.
60. The access point to the proposed service area is 3.8m wide for a length of approximately 7m, narrowing to a width of 3.1m at the 9m length point. Whilst this may not be large enough for some delivery vehicles, it is considered that it would be of a sufficient size for delivery vans or small lorries. Noting that the proposed use could reasonably be serviced by such vehicles and it being the responsibility of the operator to ensure appropriately sized delivery vehicles are used) the Highways Officers have raised no objection to the application in this regard.
61. Overall, the proposals are not considered to adversely affect highway or pedestrian safety and would accord with CDP Policy 21 and Part 9 of the NPPF.

## Design/Visual Amenity

62. CDP Policy 29 outlines that development proposals should contribute positively to an area's character, identity, heritage significance, townscape and landscape features, helping to create and reinforce locally distinctive and sustainable communities. In total, Policy 29 sets out 18 elements for development to be considered acceptable, including: buildings being adaptable; minimising greenhouse gas emissions and use of non-renewable resources; providing high standards of amenity and privacy; contributing to healthy neighbourhoods; and suitable landscape proposals.

63. CDP Policy 39 states that proposals for new development will be expected to incorporate appropriate measures to mitigate adverse landscape and visual effects.
64. The site currently comprises rough grass, informal areas of hardstanding, debris and soil. The current baseline visual environment is unattractive as the site appears derelict. The site lies within an urban area and its development as proposed would introduce buildings, parking and access areas which would be experienced at close range by residents, pedestrians and road users.
65. The application proposes a single storey 'L' shaped building featuring a hipped roof and finished in buff brick to the external walls. The dwellings to the south are finished predominantly in red brick and white render, with the shops to the east comprising of red brick and hipped roofs and the residential property to the west is finished in stone. A condition is recommended to secure further details/samples of the proposed materials to ensure their suitability with the surrounding area.
66. The submitted streetscenes show that the ridge of the roof would be comparable to the eaves of the Matalan store to the east and the residential property to the east. Glazing would be installed to the west facing entrance and the south elevation to provide an active frontage when travelling along Sherburn Road. Overall, the scale and appearance of the building is considered to be appropriate for its surroundings and to improve the current appearance of the site.
67. It is noted that when dismissing the appeal for the use of the land as a hand car wash, the Inspector considered that the site provides a visual and physical break between the residential area around Frank Street and the south of Front Street and the retail park, with the proposals including car parking, buildings/containers, and 3m high acoustic fencing having the effect of bringing the commercial area closer to the residential area and eroding the existing sense of a gap between the respective land uses.
68. The previous comments from the Inspector are acknowledged, although it is noted that this application proposes a very different type of development to that associated with the hand car wash and that the appeal was determined prior to the adoption of the CDP.
69. Similarly to the application for the hand car wash, the plans continue to show a landscaping strip to the edge of the parking areas, now proposed to the west of the site. However, an additional space to the south of the unit is now proposed to be retained as a green open area to help provide an attractive frontage from the main road and to retain an element of separation from the residential properties on the opposite side of the road. This application also proposes the erection of one larger permanent building in keeping with the retail uses already present to the east and that which would have a more positive visual appearance than the several smaller, less attractive temporary structures associated with the previous unauthorised hand car wash operation which was the subject of the planning appeal.

70. Knee rail fencing is proposed as the boundary treatment, as recommended by the Police Architectural Liaison Officer, which would help to retain some of the open character of the site and a condition is recommended to secure specific detail in this regard. A condition is also recommended to secure details of soft landscaping such as trees and shrubs to create a green frontage to the development which would soften the appearance of the proposed building and hard surfaces.
71. Overall, the design, layout and scale of the scheme is considered to be acceptable, subject to conditions, complying with CDP Policy 29 and Part 12 of the NPPF.

#### Drainage

72. Part 14 of the NPPF seeks to resist inappropriate development in areas at risk of flooding, directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.
73. CDP Policies 35 and 36 relate to flood water management and infrastructure. Policy 35 requires development proposals to consider the effects of the scheme on flood risk and ensure that it incorporates a Sustainable Drainage System (SuDs) to manage surface water drainage. Development should not have an adverse impact on water quality. Policy 36 seeks to ensure that suitable arrangements are made for the disposal of foul water.
74. The site is not located within a flood zone. The submitted application form states that surface water is proposed to be disposed of by way of a sustainable drainage system, although no details of this or the disposal of foul sewage have been provided. Therefore, a condition is recommended to secure further details prior to the commencement of works.
75. Subject to this condition, the proposals are considered to accord with CDP Policy 35 and 36 and Part 14 of the NPPF and would be unlikely to result in drainage problems.

#### Ecology

76. NPPF Paragraph 180 d) advises that opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate. In line with this, CDP Policy 41 seeks to secure net gains for biodiversity and coherent ecological networks.

77. The application is not supported by any ecological reports. The County Ecologist has confirmed that as the site was recently cleared it is considered to be of low ecological value and so no surveys of the site are necessary in this instance. A condition is recommended to secure a landscaping scheme and the inclusion of native species rich planting as part of this would be considered sufficient to achieve minor net gains in biodiversity. A condition is also recommended to secure details of the installation of bird and bat boxes to achieve biodiversity enhancements.
78. Subject to these conditions, the proposal is considered to accord with CDP Policy 41 and Part 15 of the NPPF.

#### Sustainability

79. Criterion c) of Policy 29 requires all development to minimise greenhouse gas emissions, by seeking to achieve zero carbon buildings and providing renewable and low carbon energy generation. Where connection to the gas network is not viable, development should utilise renewable and low carbon technologies as the main heating source.
80. Criterion d) of Policy 29 requires all development to minimise the use of non-renewable and unsustainable resources, including energy, water and materials, during both construction and use by encouraging waste reduction and appropriate reuse and recycling of materials, including appropriate storage space and segregation facilities for recyclable and non-recyclable waste and prioritising the use of local materials.
81. The applicant has not provided any details to demonstrate accordance with the above criteria of Policy 29. However, whilst it would be preferable to have some details prior to determination, it is considered that these details can be secured via a suitably worded planning condition in this instance.
82. Subject to such a condition, the proposal is considered to accord with the sustainability aims of CDP Policy 29 and Part 2 of the NPPF.

#### Responding to Objector's Concerns

83. It has been suggested that the site previously had some value as public open space. However, the site is privately owned and despite its previous uses the site does not have any formal status as public open space. Its contribution to the character and appearance of the area has been discussed above.
84. A concern has been raised by residents that the applicant only owns half of the site with the other half being unregistered land. However, because land is not registered at the Land Registry, does not mean that it does not have an owner. The applicant has signed ownership certificate A within the submitted application form declaring that they own all of the land to which the application relates. Disputes over land ownership would amount to a private legal issue and are not a material planning consideration in the determination of this application.

85. A concern was raised that the proposals would affect a greater number of residents than were directly notified of the application by way of a notification letter. However, the application was also advertised by way of a site notice. The Council has exceeded its minimum statutory duty to publicise the planning application by posting a site notice and notifying adjacent residents by notification letter.
86. Residents have also raised concerns that the proposal would block access to three allotment plots to the north of the site and result in the loss of off-street parking. The plans submitted with the previous retrospective application seeking consent to use the land as a hand car wash showed the land to the north to be divided into three plots each with their own individual access. The land to the north no longer appears to be divided into three plots or in use as allotments as it has since been covered in hardstanding. The land is privately owned and does not have formal status as an allotment. An objection was received by the owner of this land who confirmed that the land is divided for three members of the family. The fence dividing the application site from the land to the north comprises three gates to allow continued access to the land to the north. The left gate would allow continued unimpeded access after the development however the central and right gates would be blocked by the bin and service area serving the development. The right gate is currently blocked by the earth mound on the application site. It is unclear whether these access points are still required as the land no longer appears to be divided into three plots and access to this land from the south after the development would be possible through the left gate. Questions regarding the obstruction of the other two access points, and the potential for the owner of the land to the north to be allowed continued vehicular access to their land from the south (i.e., through the service area) raises matters relating to specific rights of access which are private legal matters between the parties involved and as such would not constitute a material planning consideration to which weight could be afforded in the determination of this application. In any event it would appear that some level of access to the land to the north via the application site would be maintained post development.
87. It is noted that whilst some of the land included within the application site may currently be used informally for car parking, the dwelling at No. 5 Front Street benefits from two in-curtilage car parking spaces and railings along the edge of the footpath to the front of this property and the adjoining convenience store prevent on-street parking along this stretch of the main road. The unadopted back lane to the north of 4 and 5 Front Street would remain fundamentally unaffected post development.

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## **CONCLUSION**

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88. The proposal relates to the erection of a new retail unit within the Dragon Lane District Centre. Whilst the exact end use of the retail unit has not been specified, the principle of a use falling under Class E in this location is acceptable and would accord with the requirements of CDP Policy 9.

89. It is concluded that this development would have an acceptable impact on the character and appearance of the surrounding area, represent high quality design, and would not adversely impact on the amenity of neighbouring residents. Conditions are recommended to secure further details regarding the disposal of foul and surface water and a scheme to minimise carbon emissions.
90. The proposal is therefore considered to accord with policies 9, 21, 26, 29, 31, 32, 35, 36, 39 and 41 of the County Durham Plan and Parts 6, 7, 8, 9, 12, 14 and 15 NPPF with no material considerations to indicate otherwise, and therefore the application is recommended for approval.

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## **RECOMMENDATION**

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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 following approved plans:

Location Plan C-00

Proposed Elevations C-102 B received 07.03.2022

Proposed Site and Ground Floor Plan C-101 A received 07.03.2022

Streetscenes C-110 A received 07.03.2022

*Reason: To define the consent and ensure that a satisfactory form of development is obtained in accordance with Policy(ies) 9, 21, 29, 31, 32, 35, 36, 39 and 41 of the County Durham Plan and Parts 2, 4, 6, 7, 8, 9, 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. No development shall commence until a detailed landscaping scheme has been submitted to and approved in writing by the Local Planning Authority.

No tree shall be felled or hedge removed until the landscape scheme, including any replacement tree and hedge planting, is approved as above.

Any submitted scheme must be shown to comply with legislation protecting nesting birds and roosting bats.

The landscape scheme shall include accurate plan based details of the following:

Trees, hedges and shrubs scheduled for retention.

Details of hard and soft landscaping including planting species, sizes, layout, densities, numbers.

Details of planting procedures or specification.

Finished topsoil levels and depths.

Details of temporary topsoil and subsoil storage provision.

Seeded or turf areas, habitat creation areas and details etc. Details of land and surface drainage.

The establishment maintenance regime, including watering, rabbit protection, tree stakes, guards etc.

The Local Planning Authority shall be notified in advance of the start on site date and the completion date of all external works.

Trees, hedges and shrubs shall not be removed without agreement within five years.

*Reason: In the interests of the visual amenity of the area and to comply with Policy 29 of the County Durham Plan and Part 12 of the National Planning Policy Framework.*

5. All planting, seeding or turfing and habitat creation in the approved details of the landscaping scheme shall be carried out in the first available planting season following the practical completion of the development.

No tree shall be felled or hedge removed until the removal/felling is shown to comply with legislation protecting nesting birds and roosting bats.

Any approved replacement tree or hedge planting shall be carried out within 12 months of felling and removals of existing trees and hedges.

Any trees or plants which die, fail to flourish or are removed within a period of 5 years from the substantial completion of the development shall be replaced in the next planting season with others of similar size and species.

Replacements will be subject to the same conditions.

*Reason: In the interests of the visual amenity of the area and to comply with Policy 29 of the County Durham Plan and Part 12 of the National Planning Policy Framework.*

6. Details of any external lighting shall be submitted to and approved in writing by the Local Planning Authority prior to the development hereby permitted being brought into use. The detail provided shall demonstrate adherence to the ILP guidance notes for the reduction of intrusive light. The external lighting shall be erected and maintained in accordance with the approved details thereafter.

*Reason: In order to minimise light spillage and glare, in accordance with Policy 31 of the County Durham Plan and Local Plan and Part 15 of the National Planning Policy Framework.*

7. No development shall commence until a land contamination scheme has been submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall be compliant with the YALPAG guidance and include a Phase 1 preliminary risk assessment (desk top study).

If the Phase 1 assessment identifies that further investigation is required a Phase 2 site investigation shall be carried out, which shall include a sampling and analysis plan. If the Phase 2 identifies any unacceptable risks, a Phase 3 remediation strategy shall be produced and where necessary include gas protection measures and method of verification.

*Reason: To ensure that the presence of contamination is identified, risk assessed and proposed remediation works are agreed in order to ensure the site suitable for use, in accordance with Policy 32 of the County Durham Plan and Part 15 of the National Planning Policy Framework. Required to be pre-commencement to ensure that the development can be carried out safely.*

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

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

9. No development shall commence until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Construction Management Plan shall include as a minimum but not necessarily be restricted to the following:

1. A Dust Action Plan including measures to control the emission of dust and dirt during construction.
2. Details of methods and means of noise reduction/suppression.
3. Where construction involves penetrative piling, details of methods for piling of foundations including measures to suppress any associated noise and vibration.

4. Details of measures to prevent mud and other such material migrating onto the highway from all vehicles entering and leaving the site.
5. Designation, layout and design of construction access and egress points.
6. Details for the provision of directional signage (on and off site).
7. Details of contractors' compounds, materials storage and other storage arrangements, including cranes and plant, equipment and related temporary infrastructure.
8. Details of provision for all site operatives for the loading and unloading of plant, machinery and materials.
9. Details of provision for all site operatives, including visitors and construction vehicles for parking and turning within the site during the construction period.
10. Routing agreements for construction traffic.
11. Details of the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate.
12. Waste audit and scheme for waste minimisation and recycling/disposing of waste resulting from demolition and construction works.
13. Management measures for the control of pest species as a result of demolition and/or construction works.
14. Detail of measures for liaison with the local community and procedures to deal with any complaints received.

The management strategy shall have regard to BS 5228 "Noise and Vibration Control on Construction and Open Sites" during the planning and implementation of site activities and operations.

The approved Construction Management Plan shall also be adhered to throughout the construction period and the approved measures shall be retained for the duration of the construction works.

*Reason: To protect the residential amenity of existing and future residents from the development in accordance with Policy 31 of the County Durham Plan and Part 15 of the National Planning Policy Framework. Required to be pre commencement to ensure that the whole construction phase is undertaken in an acceptable way.*

10. Prior to the commencement of development, details of a scheme to minimise greenhouse gas emissions, with the aim of achieving as close as possible a zero carbon building, shall be submitted and approved in writing by the Local Planning Authority. The scheme shall include, but not be limited to, provision of renewable and low carbon energy generation and electric car charging points. The renewable and low carbon energy measures shall be installed in accordance with the approved details thereafter.

*Reason: To comply with requirements to minimise greenhouse gas emissions in line with details set out in policy 29c) of the County Durham Plan.*

11. No development other than ground clearance or remediation works shall commence until a scheme for the provision of foul and surface water drainage works have been submitted to and approved in writing by the Local Planning Authority. The scheme shall be developed in accordance with the Councils Sustainable Drainage Systems (SuDS) Adoption Guide 2016. The development thereafter shall be completed in accordance with the details and timetable agreed.

*Reason: To ensure that surface and foul water are adequately disposed of, in accordance with Policies 35 and 36 of the County Durham Plan and Parts 14 and 15 of the National Planning Policy Framework.*

12. No development shall be commenced until details of the surface treatment and construction of all hard surfaced areas has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be undertaken in accordance with the approved details and the car parking spaces made available for use prior to the first occupation of the development.

*Reason: In the interests of the visual amenity of the surrounding areas in accordance with Policy 29 of the County Durham Plan and Parts 12 and 15 of the National Planning Policy Framework.*

13. The rating level of noise emitted from fixed plant/machinery on the site shall not exceed the background (LA90) by more than 5dB LAeq (1 hour) between 07.00-23.00 and 0dB LAeq (15 mins) between 23.00-07.00. The measurement and assessment shall be made according to BS 4142: 2014+A1: 2019. On written request by the planning authority the operator shall, within 28 days, produce a report to demonstrate adherence with the above rating level. In the event that the stated limits are exceeded then the affected plant and machinery shall cease to operate until such time as it has been demonstrated to the LPA that the required limits have been met.

*Reason: In the interests of the amenity of neighbouring residents in accordance with Policy 31 of the County Durham Plan and Part 12 of the National Planning Policy Framework.*

14. Prior to the first occupation the development hereby approved, details of all means of enclosure of the site 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.

*Reason: In the interests of the visual amenity of the area and to comply with Policy 29 of the County Durham Plan and Parts 12 and 15 of the National Planning Policy Framework.*

15. Prior to the first occupation the development hereby approved, details of bat and bird boxes to be installed on the elevation(s) of the unit shall be submitted to and approved in writing by the Local Planning Authority. The bat and bird boxes shall be installed in accordance with the approved details thereafter and retained for the lifetime of the development.

*Reason: To achieve biodiversity enhancements in accordance with Policy 41 of the County Durham Plan and Part 15 of the National Planning Policy Framework.*

16. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development Order) 2015 (as amended) (or any revocation and re-enactment of that order), the premises shall be used only for uses contained within Use Class E (a) of the Town and Country Planning (Use Classes) Order 1987 (as amended) (or any revocation and re-enactment of that order) and for no other use.

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

17. The premises shall not be open to customers outside the hours of 7am to 10pm on Sunday to Thursday and 7am to 11pm on Fridays and Saturdays.

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

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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 Forms, Plans and supporting documents

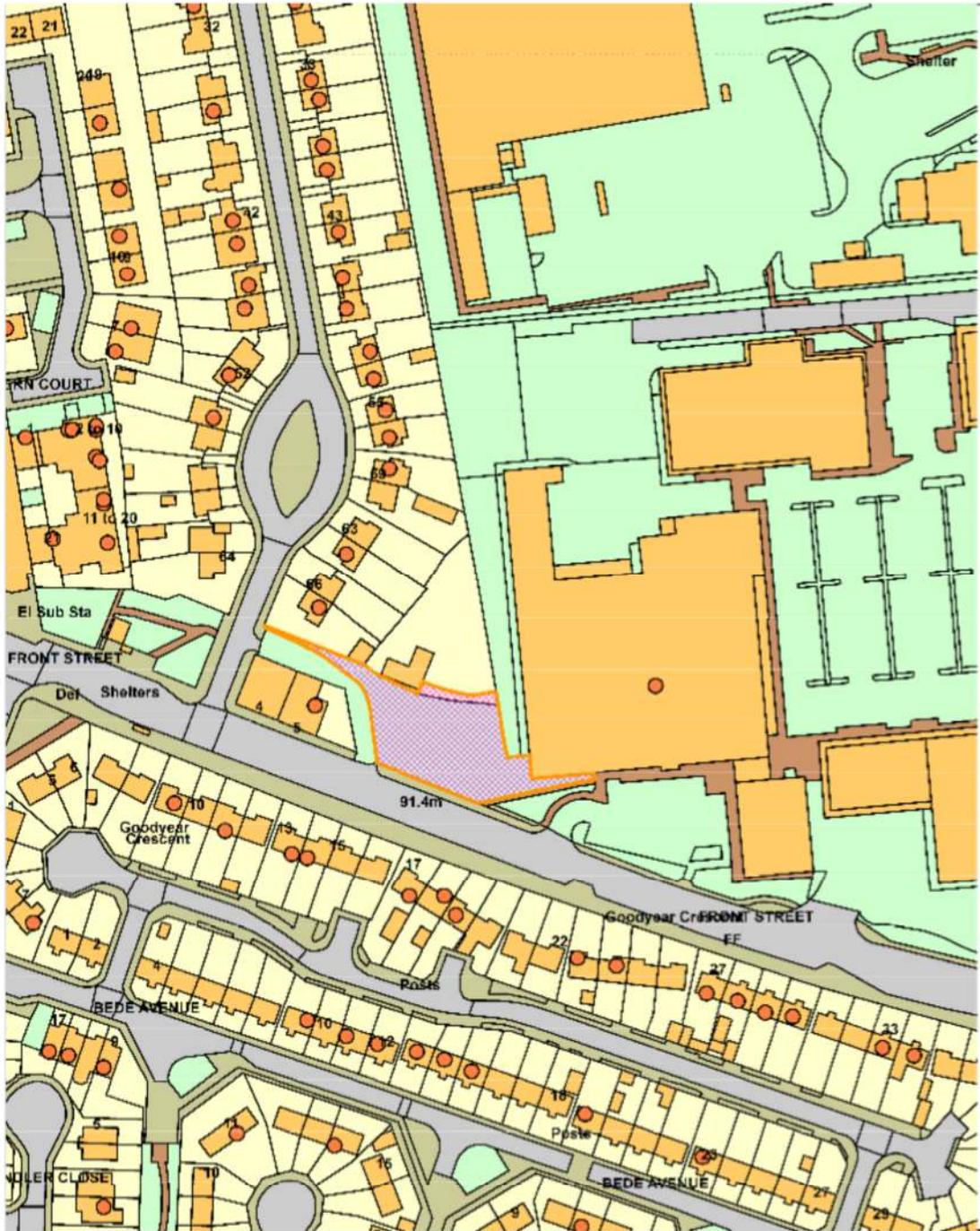
National Planning Policy Framework

The County Durham Plan (CDP)

Statutory consultation responses

Internal consultation responses

External consultation responses



 <b>Durham County Council</b>	Location	Land To The East Of Whitwell House, Front Street, New Durham, DH1 2EP DM/21702193/FPA	
	Comments		
<small>This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office Crown copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. Durham County Council, Licence No. 100049055 (2014)</small>	Date	26 April 2022	Scale 1:1319