

COMMITTEE REPORT

APPLICATION DETAILS

APPLICATION No:	DM/22/03029/FPA
FULL APPLICATION DESCRIPTION:	Change of use from dwelling to mixed use as dwelling/café (use class sui generis).
NAME OF APPLICANT:	Mr Malcolm Robertson
ADDRESS:	1 Oxford Terrace Bowburn Durham DH6 5AX
ELECTORAL DIVISION:	Coxhoe
CASE OFFICER:	Lisa Morina Senior Planning Officer Telephone: 03000 264877 Lisa.morina@durham.gov.uk

DESCRIPTION OF THE SITE AND PROPOSALS

The Site

1. The application site comprises an end terraced property located at No 1 Oxford Terrace, Bowburn. It forms part of what is a long terrace of residential dwellings that sits parallel to, but set back from, Durham Road, which itself represents the main vehicular route through Bowburn when approaching from the east. Opposite the application site, and to the south of Durham Road, the route plays host to a wider variety of uses which although predominantly residential, also includes some commercial occupation such as a restaurant, tattoo studio and beauty salon, the frequency of which intensify as the route progresses west.
2. The property is currently in use as a 4 bed dwelling falling within class C3 of the Town and Country Planning Use Classes Order having been granted planning permission for a change of use from guest house in 2021.
3. Whilst the property benefits from a large garden area to the side of the dwelling there is currently no offstreet parking, although this is predominantly the case at the majority of the other properties along the terrace. The Co-op convenience store frames the site to the west. Residential properties are located to the north, south and east of the property.

The Proposal:

4. Planning permission is sought for a change of use from dwellinghouse (Class C3) to a mixed use that retains the existing residential use but also creates an area within the ground floor for use as a café.

Opening times of the café are proposed as being 10am to 4pm Monday to Saturday with some night time opening from 6pm to 9pm which the applicants have stated will be twice a month although no set days have been provided and the café would hold a maximum of 20 covers.

5. The application has been called to planning committee by Cllr Blakey in order that the committee can properly consider the highway safety impacts of the development.

PLANNING HISTORY

6. DM/21/03929/FPA - Change of use from guest house to dwelling. Approved 20/12/21.

PLANNING POLICY

NATIONAL POLICY

7. 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.
8. *NPPF Part 2 Achieving Sustainable Development* - The purpose of the planning system is to contribute to the achievement of sustainable development and therefore at the heart of the NPPF is a presumption in favour of sustainable development. It defines the role of planning in achieving sustainable development under three overarching objectives - economic, social and environmental, which are interdependent and need to be pursued in mutually supportive ways. The application of the presumption in favour of sustainable development for plan-making and decision-taking is outlined.
9. *NPPF Part 4 Decision-making* - Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.
10. *NPPF Part 6 Building a Strong, Competitive Economy* - The Government is committed to securing economic growth in order to create jobs and prosperity, building on the country's inherent strengths, and to meeting the twin challenges of global competition and a low carbon future.
11. *NPPF Part 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.

12. *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.
13. *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.
14. *NPPF Part 12 Achieving Well-Designed Places* - The Government attaches great importance to the design of the built environment, with good design a key aspect of sustainable development, indivisible from good planning.
15. *NPPF Part 15 Conserving and Enhancing the Natural Environment* - Conserving and enhancing the natural environment. The Planning System should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, geological conservation interests, recognising the wider benefits of ecosystems, minimising the impacts on biodiversity, preventing both new and existing development from contributing to or being put at unacceptable risk from pollution and land stability and remediating contaminated or other degraded land where appropriate.

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

NATIONAL PLANNING PRACTICE GUIDANCE:

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

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

LOCAL PLAN POLICY:

County Durham Plan

17. Policy 6 (Development on unallocated sites) states the 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.
18. 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
19. 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.

20. Policy 29 Sustainable Design details general design principles for all development stating that new development should contribute positively to an areas' character, identity, heritage significance, townscape and landscape features, helping to create and reinforce locally distinctive and sustainable communities.
21. 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.

Neighbourhood Plan

22. The application site is located within the Cassop-Cum-Quarrington Local Plan and the following policies are considered relevant:
23. Policy CCQ4 (Achieving Beautiful and Successful Development) seeks to deliver beauty and successful place-making and be efficient in terms of functionality and use of resources. To achieve this development should be appealing and foster a sense of delight and wellbeing for occupants, visitors and passers-by, have a positive and coherent identity and character, thereby creating or contributing to a distinct sense of place and belonging, enhance the positive qualities of the site and setting and improve negative ones, and be efficient in terms of functionality and resource use.

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

CONSULTATION AND PUBLICITY RESPONSES

STATUTORY RESPONSES:

24. Highway Authority raises no objection to the proposal.
25. Cassop-Cum-Quarrington Parish Council express their concern regarding the highway safety implications of the development and ask for these to be fully evaluated as part of the application as it is felt that having a cafe at this location will worsen existing parking issues on the carriageway which is a particular parking risk near the junction.

INTERNAL CONSULTEE RESPONSES:

26. Environmental Health (Noise) – consider that in its current form the proposal is acceptable due to its limited scale subject to conditions restricting opening hours, method of food preparation, number of patrons and occupation of the associated dwelling.

PUBLIC RESPONSES:

27. The application has been advertised by means of site notice and by notifying neighbouring residents by letter.

28. To date, three letters of objection have been received raising concerns regarding highway safety including lack of parking and insufficient road width, as well as deliveries and visitors potentially blocking access for residents.

29. Bowburn and Parkhill Community Partnership has also submitted a letter of objection with the following concerns:

- Clarification on the use of the property and concerns over smells and if it is a bakery.
- The Partnership agrees that a café would be an asset in Bowburn but location is critical.
- Considers policy 6 relevant however concern is raised over parking and highway safety issues in that there is a lack of parking and no onsite provision is made for parking
- Concern is raised that access road between the property and the A177 is very narrow and regularly full of cars parked by residents.
- Parking along Crow Trees Lane is tight and there are numerous private accesses off it.
- There is no mention of the Coop car park on the opposite side of the road however this is privately owned and have restrictions.

APPLICANT'S STATEMENT:

30. Following our review of the objections sent to the council, it became clear that the main objection is centred on the possible shortage of parking spaces in the close vicinity of the proposed café at 1 Oxford Terrace. There is never an issue with parking within easy walking distance of the proposed café. Since our move into the local area 6 months ago, and our exploration of the immediate vicinity, we feel that there is never a shortage of the parking opportunities for residents as well as other visitors. This could be supported by the pre-application process, whereby the Highway Office did not have any concerns in respect of local traffic or parking. Furthermore, in line with our green ethos we will be encouraging customers to walk, cycle or take public transport to the café where possible. There is a bus stop next to the property and we will have racks for parking and securing bikes.

In case of the objecting letter disclosing the photograph of both of our cars in front of the front gate, we would like to clarify that it was very much a one-off situation when debris from house repairs were loaded into the car and moved to the recycling

centre. The car was moved to our back gate, where it is parked normally, immediately after completing the task.

31. Finally, as we not only work but reside at 1 Oxford Terrace we hope to build a happy relationship with all our neighbours and surrounding local residents, and wish to become positive addition to the local community.

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

PLANNING CONSIDERATIONS AND ASSESSMENT

32. As identified in Section 38(6) of the Planning and Compulsory Purchase Act 2004 the key consideration in the determination of a planning application is the development plan. Applications should be determined in accordance with the development plan unless material considerations indicate otherwise.
33. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF is a material planning consideration in this regard. The County Durham Plan is the statutory development plan and the starting point for determining applications as set out at Paragraph 12 of the NPPF.
34. The County Durham Plan is adopted and considered to represent the up-to-date Local Plan for the area. Consequently, consideration of the development should be led by the plan if the decision is to be defensible and paragraph 11(d) of the NPPF is not engaged.
35. In this context, it is considered that the main planning issues in this instance are as detailed below:

Principle of the Development

36. The site is located within the settlement of Bowburn and is surrounded by a mix of commercial and residential properties. Policy 6 of the CDP is therefore relevant and supports development within built up areas where they are, amongst other less relevant criteria, compatible with surrounding uses, appropriate in terms of design, not prejudicial to highway safety and sustainably located for transport. Consideration of the proposal against criteria is included in more detail elsewhere in this report.
37. The existing property is currently in use as a dwelling over both floors. The proposal relates to the conversion of part of the ground floor to a café with the remainder retaining a residential use. Concern has been raised over the exact use of the property given it discusses within the documentation of a café/shop/bakery.
38. Given that the property is currently located in a mixed-use area that includes both commercial and residential properties, the location is considered capable of accommodating a café use of the limited scale proposed, and as such is considered acceptable in principle. The site is also considered to occupy a sustainable location noting that there is a bus stop within close proximity to the west that provides links to other public transport services within Durham City.
39. Policy 9 of the CDP relates to town centre uses and seeks to protect and enhance the hierarchy of Sub Regional, Large Town, Small Town, District and Local retail centres in the county.

40. The proposed use is one that is considered to be a town centre use as defined by the NPPF and as such should, as a preference, be directed to existing centres. In this regard it is noted that the site does not sit within an existing town or village centre but does lie close to a village centre and within an area where there are some existing commercial uses.
41. There is requirement through policy 9 to provide a sequential assessment to demonstrate that there are no, more centrally located units available which could accommodate the use. An assessment of available units was carried out during Officers site visit and information has been provided in support of the application which Officers are satisfied demonstrates that there are no available units in this regard and the applicant highlighted the application proposes the reintroduction of a commercial use to the property which has historically had a mixed use as a dwelling and shop, and more recently as a guest house.
42. In addition, it is also noted that given the limited size and scale of the proposed café, it is unlikely to fundamentally undermine the vitality and viability of the nearest local or district centre and that commercial units of this type are often found in the small clusters of retail/commercial properties that are not of a scale classified by the retail hierarchy.
43. Officers also need to consider whether there would be any potential permitted change to the use which could have an impact going forward and whether a level of control should be exercised. In this instance however, the proposal has been considered as a mixed use development thereby occupying a sui generis use and as such this prevents any permitted change to an alternative use without further control from the Local Planning Authority.
44. In respect of comments made regarding the use of the proposal, it is proposed to be used for consumption of food on the premises and seating has been provided in this respect therefore, is it considered that the use would be as a café. This would allow for food to be bought and consumed off the premises on a limited scale. Issues regarding smells/type of food will be discussed in the residential amenity section below.
45. In light of the above it is considered that the development is acceptable in principle and would not have any adverse impact upon the vitality and viability of the nearest town centres in accordance with policies 6 and 9 of the CDP and part 7 of the NPPF subject to the material considerations discussed below.

Parking, Access and Highway Safety

46. The proposal would introduce a mixed use at the existing property that would include a small café falling within Class E of the Town and Country Planning Use Classes Order. Paragraph 34 of the NPPF requires that plans and decisions ensure developments which generate significant vehicle movements are located where the need to travel will be minimised and the use of sustainable transport modes maximised. In addition, paragraph 111 of the NPPF states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
47. Policy 21 of the CDP displays of broad level of accordance with this approach and requires all development to ensure that any vehicular traffic generated can be safely

accommodated and has regard to Parking and Accessibility Supplementary Planning Document.

48. At present the property does not benefit from any in curtilage parking, with the previous uses as a dwelling and guest house being served solely by on street provision. This arrangement is proposed to continue as part of the change of use to café.
49. Objections have been raised by nearby residents and the Local Councillor who consider that there is insufficient parking available within the locality to serve the proposed use and that the road width is too narrow for parking and to safely accept deliveries and customers, with vehicles ultimately blocking access for residents. In this regard many of the objections cite existing problems with parking provision in the locality and that the proposed change of use would only exacerbate these issues.
50. The Highway Authority raises no objection to the application and noted that limited scale and footprint of the proposed cafe and the availability of on-street parking to the opposite side of the road. Double yellow lines are also located on one side of the road which would help to prevent/discourage indiscriminate parking.
51. It is acknowledged that there appears to be existing issues regarding the level of parking provision available within the area. However, it is not considered that given the limited scale of the proposal this would generate such an increase in vehicle movements that would have a material impact upon highway safety sufficient to sustain refusal of the application noting the requirements of paragraphs 34 and 111 of the NPPF or Policies 6 and 21 of the CDP.
52. Given the above, it is not considered that the development would have any severe adverse impact upon the capacity of the surrounding network or unacceptable impact upon highway safety and as such would accord with policies 6 and 21 of the CDP and paragraphs 34 and 111 of the NPPF.

Residential Amenity

53. CDP Policies 6, 29 and 31 seek to prevent development that would have an unacceptable impact upon the amenity of existing neighbouring residents and only allow development where adequate amenity for future occupiers is provided. Section 11 Paragraph 119 of the NPPF requires planning decisions to ensure healthy living conditions and paragraph 124 emphasises the importance of securing healthy places. Paragraph 174 of section 15 requires decisions to prevent new development from being put at unacceptable risk from, or being adversely affected by, unacceptable levels of pollution such as noise pollution.
54. Paragraph 185 seeks to ensure that new development is appropriate for its location taking into account the likely effects of pollution on health and living conditions. In terms of noise, paragraph 185 advises that planning decisions should mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development - and avoid noise giving rise to significant adverse impacts on health and the quality of life.
55. As already noted, the premises is currently in residential use as a dwelling. The addition of a café would have the potential to generate noise and odours beyond that likely from its current use, with noise generated from patrons within the premises such as conversational noise and music, and also from additional comings and goings.

56. It is noted that prior to December 2021 the property was operated as a Guest House and that during this period the Council's Environmental Health Section did not receive any complaints regarding its use.

57. In terms of the current submission the applicant sought pre application advice and the current application responds to comments regarding noise and odour suppression raised by the Council's EHO in that they have confirmed the number of patrons, the type of foods and information has been provided regarding music etc. Consequently, the proposal would be considered acceptable in principle and would not cause significant adverse impact to the amenity of nearby residents subject to the imposition of planning conditions. These conditions relate to a restriction on the number of patrons and opening hours, the type of equipment used on site and also restricts the addition of extraction which will essentially restrict the type of food that can also be prepared on the site. It is also considered necessary to restrict the consent to the occupiers of the property only.

58. Therefore, subject to the conditions stated above, the proposal would be considered to have an acceptable impact on the residential amenity of surrounding neighbours and the amenities of the residential occupiers of the property in its proposed form, in accordance with policy 31 of the County Durham Plan.

Scale/Design

59. Policy 29 of the CDP requires all development to achieve well designed buildings and contribute positively to an area's character. Section 12 of the NPPF requires a high standard of design.

60. No external alterations are proposed therefore, the impact on the streetscene would not be compromised. It has been confirmed that no signage is required however, should signage be required in the future then this would be controlled under separate advertisement legislation and an informative will be added in this respect.

61. The proposal, therefore, is considered acceptable in respect of policy 29 of the CDP and part 12 of the NPPF.

Public Sector Equality Duty

62. Section 149 of the Equality Act 2010 requires public authorities when exercising their functions to have due regard to the need to i) the need to eliminate discrimination, harassment, victimisation and any other prohibited conduct, ii) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and iii) foster good relations between persons who share a relevant protected characteristic and persons who do not share that characteristic.

63. In this instance, officers have assessed all relevant factors and do not consider that there are any equality impacts identified.

CONCLUSION

64. The proposed development is considered to be acceptable in principle and would not undermine the vitality and viability of the nearest town centre and would be positioned in a sustainable location capable of supporting further commercial development of the modest scale proposed.

65. In addition, the proposed development would not have any unacceptable impact upon residential amenity, the character and appearance of the streetscene or highway safety in accordance with the requirements of policies 6, 9, 21, 29 and 31 of the County Durham Plan and Parts 6, 9, 12 and 15 of the NPPF.

66. The proposal is therefore recommended for approval subject to conditions.

RECOMMENDATION

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

1. The development hereby approved 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, 29 and 31 of the County Durham Plan and Parts 12 and 15 of the National Planning Policy Framework.

3. The appliances used within the café for the preparation of both hot and cold food and beverages shall be restricted to domestic ovens, microwaves, sandwich toasters, kettles and griddle/Panini makers, waffle grills and coffee machines.

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

4. Excluding provision contained within condition 5, the opening hours of the Café use hereby approved shall be restricted to the hours of 10:00 to 16:00 Monday to Saturdays. The Café shall not be open for use on Sundays or Bank Holidays.

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.

5. The Café use hereby approved is permitted to open between the hours of 18:00 to 21:00 on a maximum of 2 (two) occasions per calendar month, excluding Sundays and Bank Holidays. The applicant shall keep a record of all evening events held in this regard and shall make that record available to the Council within 21 days of the receipt of such a request.

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.

6. The total number of covers served within the Café hereby approved shall not exceed 20 (twenty) at any one time.

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.

7. There shall be no amplified sound or live music played at the property in association with the café use hereby approved.

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.

8. The use hereby permitted shall be operated only by persons occupying the premises known as 1 Oxford Terrace.

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.

9. No externally located mechanical extraction equipment shall be installed at the premises until such time as full details have been submitted to and approved in writing by the Local Planning Authority.

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.

STATEMENT OF PROACTIVE ENGAGEMENT

In accordance with Article 35(2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015, the Local Planning Authority has, without prejudice to a fair and objective assessment of the proposals, issues raised and representations received, sought to work with the applicant in a positive and proactive manner with the objective of delivering high quality sustainable development to improve the economic, social and environmental conditions of the area in accordance with the NPPF.

BACKGROUND PAPERS

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

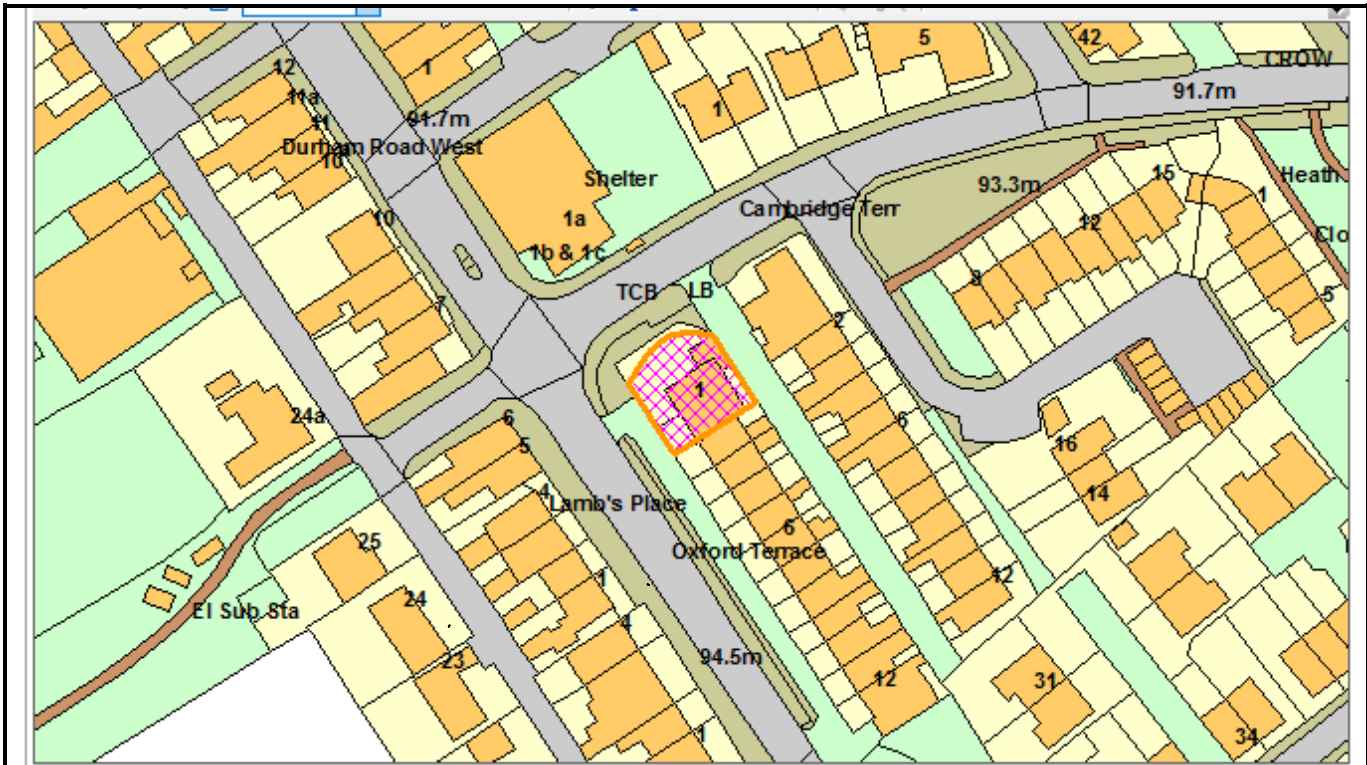
The National Planning Policy Framework (2021)

National Planning Practice Guidance Notes

County Durham Plan

Cassop-Cum-Quarrington Neighbourhood Plan

Statutory, internal and public consultation responses



Planning Services

Change of use from dwelling to mixed use as dwelling/café at 1 Oxford Terrace, Bowburn, Durham, DH6 5AX

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Date: December 2022

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