

## COMMITTEE REPORT

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### APPLICATION DETAILS

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<b>APPLICATION No:</b>	DM/22/03456/FPA
<b>FULL APPLICATION DESCRIPTION:</b>	Conversion of first and second floors to form two 5-bed HMOs (Use Class C4) including window changes to lightwell elevation.
<b>NAME OF APPLICANT:</b>	Hillcrest NW Ltd
<b>ADDRESS:</b>	First Floor And Second Floor 84 Claypath Durham DH1 1RG
<b>ELECTORAL DIVISION:</b>	Elvet and Gilesgate
<b>CASE OFFICER:</b>	Lisa Morina Senior Planning Officer Telephone: 03000 264877 <a href="mailto:Lisa.morina@durham.gov.uk">Lisa.morina@durham.gov.uk</a>

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### DESCRIPTION OF THE SITE AND PROPOSALS

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#### The Site

1. The application site is located within the commercial centre of Durham City as defined by the County Durham Plan and is also located within the Durham City Centre Conservation Area. Consequently, the area is characterised by a mix of uses including both commercial and residential with the ground floor of the application site currently occupied for retail purposes falling within Class E of the Town and Country Planning Uses Classes Order. Whilst also occupied for commercial purposes the ground floors of other properties within the locality are used as public houses in some cases and as hot food takeaways. The floors above in several of these cases are understood to be occupied as houses in multiple occupancy (HMO's). Opposite the application site is a former office complex (William Robson House) which benefits from planning permission for conversion to student accommodation. There is also a residential block of flats in close proximity of the application property.
2. The host property is of brick construction with four bays over three floors and has a slate roof. At ground level the building is divided into two commercial as already noted (Durham Food Store and Tia's, a Mexican restaurant) the latter also occupying part of the first floor.
3. The remainder of the first and second floors are currently vacant but are understood to have been last occupied by the County Durham Probation Service. These benefit from their own access independent from the lower floors.

## The Proposal:

4. Planning permission is sought for the conversion of the first and second floors of the existing building to form two 5-bed HMOs (Use Class C4) including window changes to the lightwell elevation whilst also retaining the commercial uses to the ground floor. One HMO unit is proposed to each floor and both would comprise 5 bedrooms with the second-floor property consisting of all en-suite bedrooms. Redecoration works are also proposed.
5. The application is reported to planning committee at the request of The City of Durham Parish Council who consider that the proposal raises significant issues in relation to noise and associated disturbance and concern regarding limited space available for bin storage, such that the application should be considered by the Planning Committee.

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## **PLANNING HISTORY**

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6. There is no relevant planning history on this site.

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## **PLANNING POLICY**

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### **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 5 Delivering a Sufficient Supply of Homes* - To support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay.
11. *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.

12. *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.
13. *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.
14. *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.
15. *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.
16. *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.
17. *NPPF Part 16 Conserving and Enhancing the Historic Environment* - Heritage assets range from sites and buildings of local historic value to those of the highest significance, such as World Heritage Sites which are internationally recognised to be of Outstanding Universal Value. These assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations.

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

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

18. 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:**

### County Durham Plan

19. 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.
20. 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.
21. Policy 16 (Durham University Development, Purpose Built Student Accommodation and Houses in Multiple Occupation) seeks to provides a means to consider student accommodation and proposals for houses in multiple occupation in ensure they create inclusive places in line with the objective of creating mixed and balanced communities.
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 22 (Durham City Sustainable Transport) seeks to reduce the dominance of car traffic, address air quality and improve the historic environment within the Durham City area
24. 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.
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 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.
28. Policy 44 (Historic Environment) seeks to ensure that developments should contribute positively to the built and historic environment and seek opportunities to enhance and, where appropriate, better reveal the significance and understanding of heritage assets. The policy advises on when harm or total loss of the significance of heritage assets can be accepted and the circumstances/levels of public benefit which must apply in those instances.
29. Policy 45 (Durham Castle and Cathedral World Heritage Site) seeks to ensure that developments within the world heritage site sustain and enhance the significance of the designated asset, are based on an understanding of, and will protect and enhance the outstanding universal values (OUVs) of the site in relation to the immediate and wider setting and important views into, and out of the site. Any harm to the OUVs will not be permitted other than in wholly exceptional circumstances.
30. Residential Amenity Standards SPD (2020 Adopted version) – Provides guidance on the space/amenity standards that would normally be expected where new dwellings are proposed.

#### City of Durham Neighbourhood Plan

31. Policy S1 (Sustainable Development Requirements of all Development and Re-development Sites Including all New Building, Renovations and Extensions) seeks to sets out the economic, social and environmental criteria that development proposals will be required to meet.
32. Policy H1 (Protection and Enhancement of the World Heritage Site) requires development within the Durham Cathedral and Castle World Heritage Site to sustain, conserve and enhance its outstanding universal value and support the current adopted management plan. Development within the WHS must take account of the historical and present uses of the site, propose high quality design, use appropriate materials and seek balance in respect of scale, density, massing, form, layout, landscaping and open spaces. Development proposals within Our Neighbourhood will need to sustain, conserve, and enhance the setting of the WHS where appropriate, by carrying out an assessment on how the development will affect the setting, including views to and from the WHS, protect important views and take opportunities to open up lost views and create new views and vistas.
33. Policy H2 (The Conservation Areas) expects development within the City Centre Conservation Area to sustain and enhance its special interest and significance identified within the conservation area character appraisal taking account of sustaining and enhancing the historic and architectural qualities of buildings, continuous street frontages, patterns, boundary treatments, floorscape and roofscapes, avoiding loss or

harm of an element that makes a positive contribution to its individual significance and surrounding area, using appropriate scale, density, massing, form, layout and materials, using high quality design sympathetic to the character and context, its significance and distinctiveness.

34. Policy D4 (Building Housing to the Highest Standards) states all new housing, extensions and other alterations to existing housing should be of high-quality design relating to the character and appearance of the local area, aesthetic qualities, external and internal form and layout, functionality, adaptability, resilience and improvement of energy efficiency and the reduction of carbon dioxide emissions. New residential development should meet the Building for Life 12 standards provided for in County Durham Building for Life Supplementary Planning Document (2019)
35. Policy T1 (Sustainable Transport Accessibility and Design) seeks to ensure that development proposals will be required to demonstrate best practice in respect of sustainable transport accessibility, impact and design.
36. Policy T2 (Residential Car Parking) supports developments with or impacting on car parking provided that car parking is designed to reduce vehicle movements on residential streets and is in designated bays or small groups separated by landscaping or features and designed with safety in mind. Consideration should be given to communal off street parking for dwellings without garages. Any EV requirements should not hinder movement by pedestrians or disabled people and should be in keeping with area character. The policy supports the use of car clubs. Should the parking demand require parking controls these will need to be funded through developer contributions
37. Policy T3 (Residential Storage for Cycles and Mobility Aids) requires residential development including change of use to seek to provide storage facilities for cycles and, where appropriate mobility aids. Cycle parking should meet DCC standards and should be adaptable for other types of storage with access to electricity. Where there is communal storage and a travel plan this should be managed appropriately in terms of removal and capacity needs. Design and location of storage should accord with the style and context of the development

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

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## **CONSULTATION AND PUBLICITY RESPONSES**

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### **STATUTORY RESPONSES:**

38. Highway Authority – Raises no objection.
39. Police Architectural Liaison Officer – Has not responded.
40. City of Durham Parish Council – Indicates general support for the principle of re using the upper floors of commercial buildings for residential purposes. However, in this instance they have concerns regarding the impact of the development on the residential amenity of future occupants, resulting from noise. They also raise concern that the proposals for bin storage are unacceptable and that a suitable construction management plan should also be provided in the event that planning permission is granted.

## **INTERNAL CONSULTEE RESPONSES:**

41. HMO Licensing Section – Raise no objection but provide general advice on licencing requirements.
42. HMO Data Officer – Confirm that 85.4% of properties are currently class N exempt within 100m of the host site.
43. Environmental Health (Nuisance) Section – Raised initial concern with regards to the potential for the transfer of noise from the commercial units across the ground floor to the proposed residential accommodation above. However, upon receipt of additional information has subsequently advised that this impact could be satisfactorily mitigated through the use of planning conditions which are detailed elsewhere in this report.
44. Environmental Health (Contamination) Section – Raise no objection and confirm no requirement for any contaminated land condition.
45. Ecology – Raise no objection and confirm that Bat risk assessment is acceptable with no further survey or mitigation required.
46. Design and Conservation Section – Raise no objection
47. Spatial Policy Section – Raises no objection to the application and advises that the key policies for determination are policies 6, 9, 16, 21, 29 and 31 of the County Durham Plan and Policies H1, H2, S1, D6 and T1 of the Durham City Neighbourhood Plan. In summary conclusion the officer notes that whilst the proposal has scope to be compliant with the CDP and the CDNP the applicant will need to demonstrate that the policy requirements have been met in full. Specifically in relation to amenity, layout, car parking, cycle storage, refuse provision, safety and potential impact on existing residents and businesses.

## **PUBLIC RESPONSES:**

48. The application has been advertised by means of site notice, press notice and by notifying neighbouring residents by letter.
49. To date, two letters of concern have been received from The City of Durham Trust and St Nicholas Community Forum with the following concerns:
  - General principle of upper floors being used for residential use is accepted
  - Concern regarding bin storage and collection
  - Concern regarding construction process and deliveries and consider that a CMP should be provided
  - Recent issues mentioned regarding a neighbouring development.
50. Following re-consultation, the City of Durham Trust confirmed their continued objection.

## **APPLICANT'S STATEMENT:**

51. The application site lies within the Durham (City Centre) Conservation Area and the City Centre boundary as defined by the policies map.
52. In this part of Claypath, the ground floors of properties are Class E retail, pubs and hot food takeaway uses with predominantly Class C4 HMO student letting accommodation

above. Immediately to the west of the site 85-88A Claypath comprises commercial units at ground floor and HMO student letting accommodation above converted from office accommodation in 2001. Opposite is the purpose built student accommodation operated by Student Castle and Christchurch, a grade II listed former United Reform Church. Immediately to the east is the archway entrance, part of the grade 2 listed Big Jug Public House, leading to Moody's Yard. Beyond the pub (currently closed for refurbishment) is the entrance to the Blue Coat Court residential development. Commercial uses continue to front southern side of Claypath until the Providence Row road junction which is the boundary of the defined City Centre.

53. The application site includes the car park and cobbled carriageway within Moody's Yard which is part of the title plan. William Robson House faces the car park and is also in the applicant's ownership and is currently undergoing redevelopment, including 28 bed student accommodation.
54. 84 Claypath is recognised as a non-designated heritage asset in the Council's Conservation Area Character Appraisal and the Durham City Neighbourhood Plan.
55. At street level the building is divided into two commercial uses. 84a is occupied by Durham Food Store trading as a small convenience store and 84b is Tia's, a Mexican restaurant which also occupies part of the first floor for customer and staff wcs. Both commercial units have 20<sup>th</sup> century fascia but elements of historic shopfronts remain. Between the two shopfronts is a panelled door providing independent access via a timber staircase to the first and second floors which were last occupied by the County Durham Probation Service and are currently vacant.
56. Policy 16 of the CDP applies and Part 3 is relevant to HMOs. The policy states that change of use would not be resisted where an existing high proportion of residential properties within 100 metres are exempt from Council Tax charges, on the basis that commercial uses are predominant within the 100 metre area. In this case the change of use is from vacant offices and there is no loss of C3 use. The supporting text for Part 3 also recognises that the conversion of the upper floors, above a retail unit, within the town centre, can be an appropriate location for HMO use as it can improve the vitality of an area and would not impact upon the character of predominantly residential areas. Consideration should be given to the design, size and layout of the accommodation, impact on the character of the area, amenity, security, cycle storage and storage for refuse and recycling.
57. Policy E3 of the DCNP states "Development proposals that provide residential accommodation in upper floors of commercial properties will be supported, as long as they do not have a negative impact on retail, commercial and tourism activities and the general amenity of neighbouring properties and residential amenity including noise impact".
58. The proposed conversion requires only minor external changes to the existing windows within the rear lightwell which is not visible from any view point.
59. The proposed apartments have 5 bedrooms with a dining/kitchen and a separate lounge. They are ideally suited to the student letting market in a highly sustainable location and exceed the requirements of the Nationally Described Space Standards and space requirements for shared student houses described in the Council's 'Standards For Houses In Multiple Occupation'. All rooms have high levels of daylight with no adverse privacy issues.
60. Details have been provided to demonstrate how the potential negative impact by way of noise and odour upon the amenity of future occupants from the commercial



premises, both below and adjoining, may be suitably mitigated and those measures can be secured by condition.

61. Provision has been made for the storage of refuse and recycling bins for both apartments away from Claypath within Moody's Yard where the existing bin storage for the commercial units is also located. Separate secure covered storage for 6no.cycles is also provided within Moody's Yard
62. The refuse will be removed and returned to the store by private contractor along with the refuse for the adjoining William Robson House development. The method of removal can be detailed in a management plan secured by a pre-occupancy condition and we note that the EHO has also recommended a tenancy management plan is in place to reduce the potential for noise and anti-social behaviour impacting upon neighbouring residential amenity.
63. The painted brickwork to the Claypath elevation will be refurbished and the decorative stone window surrounds highlighted in a complementary colour to enhance the appearance of the building and make a positive contribution to the street scene and thereby, the Conservation Area.
64. The applicant is a local company that owns, develops and manages student accommodation and commercial buildings throughout the City including many prominent and listed buildings. When investing in the City they are very aware that re-use and restoration are more sustainable ways of working and that adaptive re-use plays a role in preserving the history of the community.
65. The applicant has worked closely with officers during the consultation period and they are confident that the proposals will provide high quality student accommodation as a viable and sustainable use to preserve the character and appearance of this non-designated heritage asset and the surrounding Conservation Area.

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

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## **PLANNING CONSIDERATIONS AND ASSESSMENT**

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66. 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.
67. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF is a material planning consideration in this regard. The County Durham Plan is the statutory development plan and the starting point for determining applications as set out at Paragraph 12 of the NPPF. The NPPF advises at Paragraph 219 that the weight to be afforded to existing Local Plans depends upon the degree of consistency with the NPPF.
68. The County Durham Plan is now adopted and is 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.

69. In this context, it is considered that the main planning issues in this instance relate to the acceptability of the principle of development including impact upon the commercial centre of the city, impact upon designated heritage assets, impact upon residential amenity, highway safety, contaminated land and ecology.

#### Principle of the Development

70. The application relates to the change of use of the upper floors of the application property to 2 HMOs falling into Class C4 of the Town and Country Planning (Use Classes) Order. As such Policy 16 of the CDP is relevant in determination of this application. Part 3 of that policy states that in order to promote create and preserve inclusive, mixed and balanced communities, and to protect residential amenity, applications for changes of use to Class C4 (House in Multiple Occupation), where planning permission is required, will not be permitted if:

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

In addition to the above applications will only be permitted where:

- d. the quantity of cycle and car parking provided has regard to the council's adopted Parking and Accessibility Supplementary Planning Document (SPD);
- e. they provide acceptable arrangements for bin storage and other shared facilities and consider other amenity issues;
- f. the design of the building or any extension would be appropriate in terms of the property itself and the character of the area; and
- g. the applicant has shown that the security of the building and its occupants has been considered, along with that of neighbouring local residents.

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

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

72. Within a 100m radius of, and including the host property, 85.4% of properties are Class N exempt student properties as defined by Council Tax records. The application property does not currently benefit from this exemption.
73. The site falls within the town centre boundary and as such commercial uses are considered predominant within the 100m area, therefore the exemption set out in criteria (i) of Policy 16 applies in this instance. As such, the principle of development is considered acceptable in this regard and can draw support from Policy 16(i) subject to compliance with other criteria of the policy (namely (d) to (g)) which is considered in more detail elsewhere in this report.
74. Given the application site is positioned within the commercial centre of the city, Policy 9 (Retail hierarchy and Town Centre Development) of the CDP is also relevant and defines a hierarchy of commercial centres in the County, with Durham City identified as a Sub Regional Centre. The Plan looks to support new town centre development across all of the county's centres that will improve choice and bring about regeneration and environmental improvements.
75. Within the Primary Shopping Areas, as shown on the policies map, the policy states that A1 (retail) uses (now falling within Class E of the revised Use Classes Order) will be supported and other uses will be permitted where they preserve the vitality and viability of the Primary Shopping Areas.
76. The approach to defining a retail hierarchy is consistent with the guidance within paragraph 86 of the NPPF which states a need to define a hierarchy of town centres and promote their long-term vitality and viability - by allowing them to grow and diversify in a way that can respond to rapid changes in the retail and leisure industries, allows a suitable mix of uses (including housing) and reflects their distinctive characters. This paragraph also recognises that residential development often plays an important role in ensuring the vitality of centres and encourages residential development on appropriate sites.
77. Policy E3 (Retail Development) of the Durham City Neighbourhood Plan (DCNP) is relevant and supports A1 (retail) (now falling within Class E of the 2020 Use Classes Regulations) as the predominant use within the Primary Frontage and development proposals that provide residential accommodation in upper floors of commercial properties, as long as they do not have a negative impact on retail, commercial and tourism activities and the general amenity of neighbouring properties and residential amenity including noise impact.
78. In this case the proposal would retain the commercial uses to the ground floor and their associated active frontage. As such the proposal would not undermine the viability or vitality of the commercial centre of the city and is considered acceptable in principle in this regard, subject to appropriate consideration of the other issues detailed below.

#### Impact on Residential Amenity

79. CDP Policy 31 seeks 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.

80. 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.
81. Policy 16 further states that in all cases changes of use to HMOs will only be permitted where: provision of acceptable arrangements for bin storage and other shared facilities and consideration of other amenity issues; and the security of the building and its occupants has been considered, along with that of neighbouring residents.
82. Concern has been raised that the proposal could result in unacceptable noise to surrounding neighbours, in particular those at Claypath Court, which is understood to house more elderly residents. Whilst these concerns are noted, it is nevertheless considered that any increase in noise would be limited and due to the high concentration of commercial properties within the area is unlikely to have any significant change given the current noise climate in this city centre location. The Council's EHO raises no objection to the application in this regard.
83. In respect of internal arrangements, officers consider that the proposed arrangements in the case of both HMOs would provide appropriate internal amenity space for occupants, which accord with HMO regulations. In addition, the proposals also meet the minimum requirements of the Nationally Described Space Standards (NDSS). All rooms are provided with sufficient daylight, and whilst in some cases outlook would be limited, this is not considered unacceptable given the sites city centre location, where buildings have been historically tightly designed. Similarly, the city centre location is such that opportunity for the provision of external amenity space is extremely limited and as such the lack of any provision in this regard is considered acceptable in this context.
84. As already noted, the ground floor is currently used for commercial purposes, specifically a supermarket and restaurant, and this would be retained post development. As such there is potential for conflict between this and the proposed residential use to the upper floors in terms of the transfer of noise between floors.
85. Paragraph 187 of the NPPF considers this further and states that planning policies and decisions should ensure that new development can be integrated effectively with existing businesses and community facilities (such as places of worship, pubs, music venues and sports clubs). Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use) in its vicinity, the applicant (or 'agent of change') should be required to provide suitable mitigation before the development has been completed.
86. In order to allay concerns relating to the potential for noise to impact upon future occupants the applicant has commissioned a noise impact assessment prepared by a suitably qualified consultant and has been reviewed by the Council's Environmental Health Section. Concern was initially raised in relation to the potential for the transference of sound between the ground and upper floors, although the applicant has since provided subsequent information which included confirmation of a willingness to provide a baseline sound test for the existing construction and to modify mitigation in order to demonstrate how the required threshold would be achieved (that threshold being established by the baseline test result). Once completed the applicant

would provide a post construction test to demonstrate compliance with the established threshold prior to first occupation of the HMOs and this would be secured through planning condition.

87. Concern has been raised by Durham City Parish Council regarding the potential for odour from the commercial uses to the ground floor to impact upon occupiers of the proposed HMOs. The applicant has subsequently provided further information in relation to odour control and made amendments to the floor plans in order to mitigate any impact in this regard. The Council's EHO is satisfied that this has demonstrated that any negative impact from odour upon the amenity of future occupiers could be suitably mitigated provided the measures described in the supporting documents are adhered, and this could be controlled via planning condition.
88. Durham City Parish Council and the City of Durham Trust have identified requirement for the submission and agreement of a facility management plan should planning permission be granted. However, given the limited scale of the accommodation proposed it is not considered that any condition in this regard would meet the required tests of being necessary or reasonable, and in this respect, it is noted that the Council's EHO has not indicated any requirement in this regard.
89. Objections have been received with regard to waste disposal, specifically that the provision identified is not sufficient and that as a result bins would obstruct the footway along Claypath. Provision of adequate bin storage is a requirement of policy 16 of the County Durham Plan and as such the applicant has identified a compound to the rear of the existing public house within the application site with capacity for the storage of 2 waste bins and 2 recycling bins and that waste would be collected by private contractor servicing the student accommodation which is under construction/conversion and over which the applicant also has control. Precise details for the means of refuse removal in that case is by private contractor who would move the bins to Claypath in line with the method previously employed for the offices and collected weekly or as frequently as required which is considered acceptable and this could be secured via planning condition. Whilst it is noted that there are ongoing concerns regarding bins from premises along Claypath obstructing the highway, this is not a material planning consideration and is a management issue for the properties involved.
90. Taking all the above into consideration, it is considered that the proposal would not have any adverse impact upon the amenity of existing or future occupiers in accordance with policies 16, 29 and 31 of the County Durham Plan and Part 15 of the NPPF.

#### Impact upon Designated Heritage Assets

91. Local Authorities have a duty to preserve or enhance the character or appearance of the Conservation Area as required by section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. This requires Local Planning Authorities in the exercise of their planning function with respect to any buildings or other land in Conservation Areas and Listed Buildings to pay special attention to the desirability of preserving or enhancing the character or appearance of that area.
92. Policy 44 of the CDP seeks to ensure that developments should contribute positively to the built and historic environment and seek opportunities to enhance and, where appropriate, better reveal the significance and understanding of heritage assets.
93. Policy 45 of the CDP seeks to ensure that developments within the world heritage site sustain and enhance the significance of the designated asset, are based on an

understanding of, and will protect and enhance the outstanding universal value of the site in terms in relation to the immediate and wider setting and important view into, and out of the site.

94. Both approaches display a broad level of accord with the aims of Part 16 of the NPPF which states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be).
95. Policy 29 relating to sustainable design states that all proposals will be required to achieve well designed buildings and places having regard to supplementary planning documents and contribute positively to an area's character, identity, heritage significance, townscape and landscape features, helping to create and reinforce locally distinctive and sustainable communities; and create buildings and spaces that are adaptable to changing social, technological, economic and environmental conditions and include appropriate and proportionate measures to reduce vulnerability, increase resilience and ensure public safety and security.
96. The DCNP Policies H1 and H2 seek to ensure that proposals within the Durham Cathedral and Castle World Heritage Site, Durham City Conservation area, and affecting heritage assets should sustain, conserve, and enhance its Outstanding Universal Value, the significance of the Conservation Area and not have detrimental impact on the assets and their setting.
97. As identified in the applicant's heritage statement No 84 Claypath is a non-designated heritage asset (NDHA) within Durham City Conservation Area (CA). To add further, it is likely to date from the late C19 and comprises of three stories and four bays to the street with a long wing to the rear constructed from brick that is painted with 4-pane sashes in lugged and keyed or segmental keyed architraves above modern shop fronts.
98. The proposal relates to the conversion of the upper floors to create two 5-bed apartments. While ultimately the internal modifications cannot be controlled, the heritage statement identifies that the surviving fireplaces, panelled window reveals and decorative plaster cornices are all to be retained which is considered appropriate.
99. Secondary glazing is proposed which again is supported by the Council's Design and Conservation Section and would have the result of improving the buildings acoustic performance while allowing the existing sashes to be retained. The only external alteration identified would involve infilling an existing window at first floor and the replacement of two existing horizontal pivot windows at second floor with uPVC double glazed units. The proposed works would not be considered harmful based on their location within the unseen lightwell side elevation. Despite the general preference for traditional timber windows, the use of uPVC in the location proposed would not impact upon the visual appearance of the buildings primary elevation most commonly viewed from the public realm that contributes the most to the character and appearance of the CA. Details of the secondary glazing have been received and is considered acceptable.
100. It is proposed to refurbish the Claypath elevation by re-decoration with the decorative window surrounds highlighted in a complementary colour. Whilst painting does not require planning permission, the submitted visualisation demonstrates that this work would have a positive effect on the external visual appearance of the main elevation, that would result in a slight enhancement to the streetscene and thereby the

Conservation Area to which the Council's Design and Conservation Section raise no objection.

101. In conclusion, the proposal would not result in harm to the significance of the NDHA or that of the surrounding Conservation Area. The external redecoration works would provide a slight visual enhancement in accordance with the principles of NPPF Section 16, CDP Policy 44, Neighbourhood Plan Policy H2 and Section 72 of the Town and Country Planning (Listed Building and Conservation Area Act 1990).
102. Claypath is a fundamental part of the historic inner townscape setting of Durham Castle and Cathedral World Heritage Site. Given the minor nature of the external works proposed that do not affect a prominent elevation where intervisibility with the WHS occurs, there would be no harm to its setting nor to any attribute of its outstanding universal values. Accordingly, there is considered to be no conflict with CDP Policy 45 or policy H1 of the Neighbourhood Plan.

#### Highway Safety

103. CDP Policy 21 states that any vehicular traffic generated by new development, following the implementation of sustainable transport measures, must be able to be safely accommodated on the local and strategic highway network; that car parking at residential developments should ensure that a sufficient level is provided for both occupants and visitors to minimise potential harm to amenity from footway parking, and that appropriate provision for electric vehicle charging, including charge points and laying of cables, should be made on both residential and non-residential development where parking is provided. In addition policy 16 states that new HMO accommodation will be supported where the quantity of cycle and car parking provided has regard to the council's adopted Parking and Accessibility Guidelines.
104. The site is considered to occupy a sustainable location close to the centre of Durham and within walking distance of the train and bus stations. The development proposes covered cycle parking, and provision of 8 parking spaces, which is an acceptable level of provision given the location.
105. Concern has been raised in relation to the constrained nature of the site which is set within the city centre, and as such the Parish Council and City of Durham Trust consider that there is requirement for a construction management in order to mitigate the impact of the development during the construction phase, should planning permission be granted. However, it is noted that the proposal relates to a limited conversion with minimal external alteration. Consequently, it is not considered that a Construction Management Plan is required in this instance and any condition requiring the submission and agreement of a plan in this regard would not meet the required tests of being either necessary or reasonable. Whilst it is noted that an adjacent development was granted planning permission subject to condition requiring the submission and agreement of a construction management plan, it should be noted that this was categorised as major development and was of significant scale. As such the inclusion of a construction management plan condition was considered necessary to mitigate the impact of the proposals during the construction phase.
106. The proposal is therefore considered acceptable in accordance with policies 16 and 21 of the County Durham Plan and part 9 of the NPPF.

#### Contaminated Land

107. Policy 32 relates to despoiled, degraded, derelict, contaminated and unstable land and requires developers to demonstrate that any land subject to this can be satisfactorily

addressed by appropriate mitigation measures prior to the construction and occupation of the proposed development as well as the site being suitable for the proposed use and that all the necessary investigations and risk assessments have been undertaken.

108. The Council's Contaminated Land section have been consulted on the proposal and considers there is no requirement for any further conditions. The proposal therefore, is considered acceptable in respect of Policy 32 of the County Durham Plan.

## Ecology

109. Part 15 of the NPPF seeks to ensure that when determining planning applications, Local Planning Authorities seek to conserve and enhance biodiversity. Policy 41 of the CDP seeks to resist proposals for new development which would otherwise result in significant harm to biodiversity or geodiversity, which cannot be avoided, or appropriately mitigated, or, as a last resort, compensated for. Proposals for new development will be expected to minimise impacts on biodiversity by retaining and enhancing existing biodiversity assets and features and providing net gains for biodiversity including by establishing coherent ecological networks. CDP Policy 25 seeks to ensure that new development is only approved where any mitigation necessary to make the development acceptable in planning terms are secured through appropriate planning conditions or planning obligations.
110. The Bat risk assessment submitted is considered sufficient to inform the proposal and no further surveys or mitigation is required. The proposal is therefore, considered acceptable in respect of policy 41 of the CDP.

## Public Sector Equality Duty

111. 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.
112. In this instance, officers have assessed all relevant factors and do not consider that there are any equality impacts identified.

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## **CONCLUSION**

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113. In summary, whilst 85.4% of properties within 100m radius of the application property are currently exempt from Council Tax as being wholly occupied by students, the site is located within the centre of the city where commercial uses are predominant. In this respect the proposal can draw support from policy 16(i) of the CDP.
114. In other respect the introduction of 2 HMOs within this location could be accommodated without adverse impact upon the residential amenity of existing or future residents, highway safety, ecology and land contamination in accordance with policies 16, 21, 29, 31, 32 and 42 of the County Durham Plan, parts 5, 12 and 15 of the NPPF and policies D4 and T1 of the City of Durham Neighbourhood Plan.
115. In addition, it is considered that the proposals would preserve and have some limited enhancement to the character and appearance of the Conservation Area and would maintain the setting of the World Heritage Site in accordance with policies 44 and 45



of the CDP, Policies H1 and H2 of the Durham City Neighbourhood Plan and Section 72 of the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990.

116. Whilst concerns raised by the Parish Council, City of Durham Trust and residents association are noted regarding noise, odour, bin storage and disturbance during the construction phase, it is considered that any impact in this regard is insufficient to sustain refusal of the application or could be adequately mitigated to within acceptable levels through planning conditions for the reasons detailed within the report. The proposal is therefore 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 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 and 31 of the County Durham Plan and Parts 12 and 15 of the National Planning Policy Framework.

3. Prior to the first occupation of either of the HMOs hereby approved, a baseline sound test relating to the existing construction shall be completed by an appropriately qualified person to identify appropriate noise level thresholds and the results thereafter submitted to and agreed in writing by the Local Planning Authority.

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.

4. Upon completion of the baseline sound test a detailed scheme of mitigation sufficient to ensure that noise transfer from the existing commercial units to the upper floors is limited to acceptable levels, shall be submitted to and agreed in writing by the Local Planning Authority. The HMOs hereby approved shall not be occupied until a verification report has been submitted to and agreed by the LPA sufficient to demonstrate that the thresholds identified in the baseline test have been achieved. Thereafter the mitigation measures shall be retained in perpetuity.

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.

5. All domestic waste generated by the HMOs hereby approved shall be stored in the area identified for bin storage on Drawing No. 315-005-01 entitled 'Proposed Site Plan' until such time it is removed from the site.

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.

6. In undertaking the development that is hereby approved:

No external construction works, works of demolition, deliveries, external running of plant and equipment shall take place other than between the hours of 0730 to 1800 on Monday to Friday and 0730 to 1400 on Saturday.

No internal works audible outside the site boundary shall take place on the site other than between the hours of 0730 to 1800 on Monday to Friday and 0800 to 1700 on Saturday.

No construction works or works of demolition whatsoever, including deliveries, external running of plant and equipment, internal works whether audible or not outside the site boundary, shall take place on Sundays, Public or Bank Holidays.

For the purposes of this condition, construction works are defined as: The carrying out of any building, civil engineering or engineering construction work involving the use of plant and machinery including hand tools.

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.

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## **STATEMENT OF PROACTIVE ENGAGEMENT**

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

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## **BACKGROUND PAPERS**

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

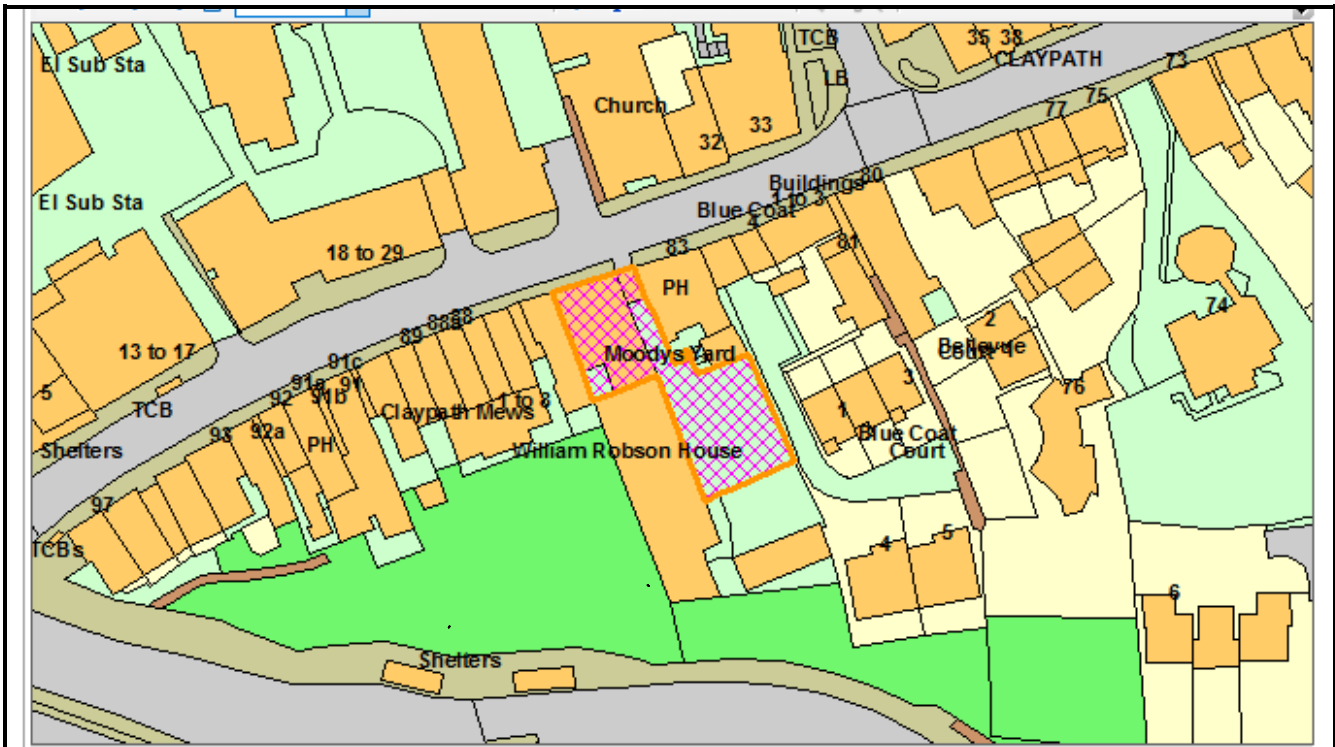
The National Planning Policy Framework (2021)

National Planning Practice Guidance Notes

County Durham Plan

The Councils Residential Amenity SPD

Statutory, internal and public consultation responses



<p><b>Planning Services</b></p>	<p>Conversion of first and second floors to form two 5-bed HMOs (Use Class C4) including window changes to lightwell elevation at First Floor And Second Floor, 84 Claypath, Durham, DH1 1RG Application Reference: DM/22/03456/FPA</p>	
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	<p><b>Date:</b> March 2023</p>	<p><b>Scale</b> NTS</p>