



## Planning Services

# COMMITTEE REPORT

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### APPLICATION DETAILS

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Application No:	DM/23/01165/OUT
Full Application Description:	Detailed application for landscaping at Green Spine 2 pursuant to condition 3 of DM/15/02911/RM; and outline application with all matters reserved except for access for up to 96 dwellings at Residential Plot 1 with associated open space at Green Spine 3
Name of Applicant:	DurhamGate Limited
Address:	Site Of Former Black And Decker, Green Lane, Spennymoor, DL16 6JG
Electoral Division:	Tudhoe
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 area of undeveloped grassed land measuring 4.1ha at the site of the former Black and Decker to the east of Spennymoor. The wider site was redeveloped for a mix of uses originally approved to comprise 40,878sqm of office space, up to 376 dwellings, 883sqm retail space, 1982sqm restaurant space, a public house with a floorspace of 1442sqm, and a 1380sqm floorspace care home. This redevelopment became known as Durham Gate.
2. The original planning approval for Durham Gate was granted in 2008 on the basis that the dwellings would cross subsidise the delivery of infrastructure and employment space across the site, including offices and a retail hub. This was following a detailed financial appraisal of the development as a whole, where it

was also accepted that the provision of affordable housing on the site would make the site unviable.

3. This permission was amended in 2015 to allow the increase of the residential area of the site, to allow the developer to deliver the same amount of homes but with a reduced density that had been provided on other schemes. This was balanced out by a proposed increase in density of the commercial element. Almost all of the housing approved has now been built or is under construction, while two of the commercial units and a public house have been also constructed. The highways infrastructure, such as estate roads and roundabouts, have also been completed. With the exception of two stand alone commercial units none of the commercial space proposed in the original scheme has been delivered.
4. The site in question is allocated as employment land In the County Durham Plan for B1, B2 and B8 uses. The site is surrounding by residential properties to the west, separated by a distributor road Arlington Way. The A167 is sited directly to the east, industrial units are located to the north, and the A688 to the south.

#### The Proposal

5. The application seeks outline planning permission with access (all other matters reserved) for the erection of up to 96 dwellings.
6. The application is supported by an indicative masterplan which shows access to be taken via two new junctions from Arlington Way, with dwellings arranged in clusters. Those located along the northern and eastern boundaries are shown to be orientated so as to face outwards towards the perimeter of the site. A landscape buffer is indicated along the eastern boundary of the site, with a wetland grass verge and a swale along the northern perimeter. A footpath connection from the north west corner of the site onto Arlington Way is also shown. These details (apart from the access points) are indicative only at this stage but would be expected to come forward in the event of any subsequent reserved matters application.
7. In addition to the 96 dwellings a new landscaped Green Spine is proposed to run east to west at the south western part of the site. This would not connect directly with an existing green spine within Durham Gate due to the intervening highway, Arlington Way.
8. The application also seeks full planning permission to agree the details regarding the landscaping scheme for the proposed Green Spine. Phase 1 related to the Green Spine running from north to south and details were approved under condition 3 of application DM/15/02911/RM under application DRC/16/00175. This application seeks to provide the details relating to Green Spine 2, which runs from east to west. The previously indicated outdoor gym equipment has been omitted from Green Spine 2, with fitness facilities separately proposed to be provided elsewhere in a newly proposed Green

Spine 3. This is in light of the land to the south of Green Spine 2 being developed for bungalows to serve the over 55's.

9. The application is being reported to strategic planning committee in accordance with the Council's Scheme of Delegation as it constitutes a major housing development with a site area of more than 4ha.

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## **RELEVANT PLANNING HISTORY**

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10. Outline application 7/2008/0488/DM for business accommodation (Use Class B1) and associated car parking to include ancillary facilities including retail units (Classes A1, A3 and A5), Public House (Use Class A4), Hotel (Use Class C1), Day Nursery (Use Class D1) and Health and Fitness Centre (Use Class D2) and Health Centre (Use Class D1) with associated car parking, residential development, detailed design of means of access and associated highway works was approved on the 6<sup>th</sup> of March 2009.
11. Condition 25 of this consent stated that '*The submission of all reserved matters and the implementation of development shall be carried out in substantial accordance with the amended Indicative Masterplan (Drawing No. PL(9) 1003 Rev.B) and the Revised Design and Access Statement*'. The Indicative Masterplan Drawing showed the site which is the subject of this application to be occupied by commercial units.
12. As part of this planning approval, the provision of affordable housing was waived on the basis that the residential element of the scheme would fund the first phases of the Business Park. A Section 106 agreement was secured which required the landowner to submit a Reserved Matters application for the Phase 1 Floor Space when 50% of the residential land had been sold or 50% of the dwellings occupied. This trigger has been met, in breach of the S106 agreement. With the exception of the Livin offices, none of the first phases of the business park has been brought forward.
13. Application DM/15/02341/VOC sought to vary conditions 3 (approved plans) and 25 (Indicative Masterplan) of the outline approval to allow changes to the masterplan and site layout. This increased the amount of land for housing (9.3ha to 11ha) by reducing the density of the residential area, thereby reducing the amount of land for business but increasing the density of the eastern business area. This relates to the land immediately to the west of Arlington Way and represented the loss of up to 6987sqm potential office floor space. This application was approved on the 18<sup>th</sup> of November 2015.
14. Since the approval of the original outline application, development under the following applications have been approved:
  - An office building occupied by Livin was approved under application 7/2010/0201/DM on the 9<sup>th</sup> of August 2010. This has been constructed and is located to the south of the current application site.

- A public house (The Fox Club) was approved under application 7/2010/0263/DM on the 2<sup>nd</sup> of November 2010. This has been constructed and is located to the south of the current application site, beyond the roundabout connecting Durham Gate, Arlington Way, and Eves Lane.
  - 76 dwellings were approved on Plot A under application 7/2010/0309/DM on the 8<sup>th</sup> of December 2010, although this consent was never implemented.
  - 66 dwellings were later approved on Plot A under application 7/2011/0409/DM on the 29<sup>th</sup> of November 2011.
  - 70 dwellings by Taylor Wimpey were approved under application 7/2011/0230/DM on the 3<sup>rd</sup> of August 2011.
  - 66 dwellings by Yuill Homes were approved under application 7/2011/0409/DM on the 29<sup>th</sup> of November 2011.
  - 30 dwellings by Taylor Wimpey were approved under application 7/2013/0309/DM on the 26<sup>th</sup> of September 2013. However, only 78 dwellings were built in combination with Yuill under application 7/2011/0409/DM.
  - 8 Residential Self Builds dwellings were approved under application 7/2011/0025/DM and DM/14/01877/RM, approved on the 14<sup>th</sup> of March 2011 and the 15<sup>th</sup> of August 2014 respectively.
  - 23 dwellings on Eve Lane were approved under application DM/15/00060/RM on the 30<sup>th</sup> of April 2015.
  - 131 dwellings by Taylor Wimpey and CAST were approved on Plot C under application DM/15/02911/RM on the 13<sup>th</sup> of November 2015.
  - 39 bungalows by Livin were approved on Plot D at Eve Lane under application DM/20/03758/RM on the 18<sup>th</sup> of May 2021.
15. The total number of dwellings with reserved matters approval therefore equates to 349. In their Planning Statement, the applicant states that at the time of submission 299 dwellings had been delivered.
16. A further separate application for full planning permission for a 3-storey 66no. bed residential care home for the elderly was approved in April 2022 (reference DM/21/03473/FPA). This construction of this building has largely been completed and is expected to open this year.

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## **PLANNING POLICY**

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### **National Policy**

17. A revised National Planning Policy Framework (NPPF) was published in September 2023. 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.

18. *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.
19. *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.
20. *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.
21. *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.
22. *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.
23. *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.
24. *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.

25. *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.
26. *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:**

27. 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)

28. *Policy 1 (Quantity of Development)* outlines the levels of employment land and housing delivery considered to be required across the plan period.
29. *Policy 2 (Employment Land)* Supports business, general industrial and storage and distribution development within specified employment allocations and also protects other existing employment sites from being changed to non-employment uses, unless appropriate marketing has been undertaken or that the use would not compromise the main employment use and would comply

with retail Policy 9 where main town centre uses are being proposed. Where a non-employment development is proposed on the protected employment sites, any existing jobs on site must be relocated.

30. *Policy 15 (Addressing Housing Need)* establishes the requirements for developments to provide on-site affordable housing, the circumstances when off-site affordable housing would be acceptable, the tenure mix of affordable housing, the requirements of developments to meet the needs of older people and people with disabilities, and the circumstances in which the specialist housing will be supported.
31. *Policy 19 (Type and Mix of Housing)* advises that on new housing developments the council will seek to secure an appropriate mix of dwelling types and sizes, taking account of existing imbalances in the housing stock, site characteristics, viability, economic and market considerations and the opportunity to facilitate self build or custom build schemes.
32. *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.
33. *Policy 25 (Developer Contributions)* advises that any mitigation necessary to make the development acceptable in planning terms will be secured through appropriate planning conditions or planning obligations. Planning conditions will be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Planning obligations must be directly related to the development and fairly and reasonably related in scale and kind to the development.
34. *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.
35. *Policy 27 (Utilities, Telecommunications and Other Broadcast Infrastructure)* requires all residential and commercial development to be served by a high-speed broadband connection, where this is not appropriate, practical or economically viable developers should provide appropriate infrastructure to enable future installation.
36. *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. Provision for all new residential development to comply with Nationally Described Space Standards.

37. *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.
38. *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.
39. *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.
40. *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.
41. *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



42. *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.
43. *Policy 43 (Protected Species and Nationally and Locally Protected Sites)* development proposals that would adversely impact upon nationally protected sites will only be permitted where the benefits clearly outweigh the impacts whilst adverse impacts upon locally designated sites will only be permitted where the benefits outweigh the adverse impacts. Appropriate mitigation or, as a last resort, compensation must be provided where adverse impacts are expected. In relation to protected species and their habitats, all development likely to have an adverse impact on the species' abilities to survive and maintain their distribution will not be permitted unless appropriate mitigation is provided or the proposal meets licensing criteria in relation to European protected species.
44. Residential Amenity Standards SPD (2023 Adopted version) – Provides guidance on the space/amenity standards that would normally be expected where new dwellings are proposed.

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

#### **Neighbourhood Plan:**

45. 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:**

46. *Spennymoor Town Council* – No response received.
47. *Environment Agency* – No response received.
48. *Coal Authority* – Advise that the application site falls marginally within the defined Development High Risk Area but raise no objections.
49. *Highways Authority* – Raise no objections to the proposed accesses to the site but advise that no trees be planted within the junction visibility splays.
50. *Lead Local Flood Authority* – Object to the application as the approach to the management of surface water runoff has not been designed to form an intrinsic part of the development layout and it has not been demonstrated that effective drainage measures and sustainable principles are adhered to with regards to water quality.

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

51. *Spatial Policy* – Advise that the application does not demonstrate a lack of demand for the allocated employment uses on the site, contrary to CDP Policy 2. It is also advised that the proximity of the site to existing industrial uses is also a key consideration in the determination of the application.
52. *Business Durham* – Object to the application, as they consider it is exaggeration to say that office development is not possible at Durham Gate. Advise that in their experience the market for smaller office units remains strong and that demand for industrial units has outstripped supply in recent years, citing recent examples of industrial units that have successfully come forward on other employment sites within the County. Also raise a concern regarding new housing in this location placing restrictions on existing nearby businesses.
53. *Design and Conservation* – Raise concerns through the Design Review process, particularly regarding the gables and fence lines of the dwellings to the west of the site facing onto Arlington Way.
54. *Landscape Section* – Raise concerns through the Design Review process, particularly regarding the scheme appearing as piecemeal development that does not integrate well with the rest of the masterplan and the lack of connectivity between the different landscaped Green Spines.
55. *Tree Section* – Whilst it is acknowledged that layout and landscaping are reserved matters, they advise that there should be suitable distances between proposed tree planting and the proposed access roads.
56. *Public Rights of Way Section* – Raise no objections.
57. *Ecology* – Raise no objections subject to a condition to secure a detailed habitat creation, management and monitoring plan.
58. *Environmental Health Nuisance* – Raise concerns over the principle of developing this site for residential uses due to the close proximity to existing industrial and commercial uses. Advise that they have investigated noise complaints concerning the Boots distribution depot in the past and that it is difficult to quantify dog barking and tonal noises such as reverse vehicle alarms.
59. *Environmental Health Air Quality* – Raise no objections but request a condition to secure details of a suitable Construction and Environmental Management Plan, to incorporate a suitable Dust Management Plan.
60. *Environmental Health Contamination* – Advise a conditional approach to contaminated land.
61. *School Places Manager* – Advise that the proposed development of 96 dwellings would produce 29 pupils of primary school age and 11 pupils of Secondary age but that these additional pupils could be accommodated within existing schools. Therefore, no financial contributions are requested in this instance.

62. *Affordable Housing Team* – Advise that information from Durham Key Options waiting lists, discussions with additional Registered Providers within the County, and Estate Agents and Developer Sales Staff indicates that there is high demand for affordable homes in the area.

### **External Consultees**

63. *Police Architectural Liaison Officer* – Provide general advice on designing out crime, which would be expected to be addressed as part of a reserved matters application.
64. *NHS North East and North Cumbria Integrated Care Board* – Confirm the requirement for financial contributions of £45,885 to mitigate the impact of the development and provide additional capacity for Local GP's.
65. *Northumbrian Water Ltd* – No response received.

### **Public Responses:**

66. The application has been advertised by way of a site notice, press notice and individual notification letters sent to neighbouring properties.
67. Six letters of support have been received, including one from the Durham Gate Residents Association who consider that residential uses would be more appropriate than industrial on this site in terms of noise and visual amenity, and citing the benefits of existing residents being able to use the additional open space proposed. Two letters also consider that further residential dwellings would enable further commercial opportunities through additional footfall helping to support existing business to the eastern side of Thinford roundabout. Learning Curve consider the proposals to provide a mix of homes for their employees with the potential to bring new talent to the area who would be able to walk or cycle to work. Adore Care Homes raise concerns that employment uses coming forward on the site will not be beneficial to their future residents.
68. One comment has been received considering that dedicated lighting and CCTV should be provided as part of the Green Spine proposals.
69. Councillor Molloy opposes the application advising there to be a good argument to keep the land for employment uses within close proximity of the new build commercial development off the A167 at Thinford, which has attracted national companies such as Screwfix and Toolstation, and considers the site to provide an option for existing local businesses looking to expand.

### **Applicants Statement:**

70. The Proposed Development seeks detailed planning permission for Green Spine 2 ('GS2'); and outline planning permission with all matters reserved apart from access for up to 96 dwellings at Residential Plot 1 with associated open space at Green Spine 3.

71. The Proposed Development strives to deliver a high-quality residential scheme on land which remains to be developed, and which is currently part of the wider DurhamGate masterplan which was granted outline planning permission in 2009. The Proposed Development seeks to refresh the masterplan for an area of land which has not yet been developed as part of the wider DurhamGate masterplan, in response to changes in the employment and housing market in the North-East.
72. A significant amount of green infrastructure development has been completed on site since the original planning application, including significant public infrastructure and open space. A total of 5,874 sqm of green infrastructure was delivered in Green Spine Phase 1. A further 3, 152 sqm is proposed to be delivered as part of Green Spine 2, and 1,768 sqm (plus 400 sqm of footpath/cycleway) in Green Spine Phase 3. This will deliver significant public benefits to both existing and future residents of DurhamGate.
73. Whilst the Site is not allocated solely for office use in the CDP, the original planning permission at DurhamGate (ref: 7/2008/0488/DM) was for 'business accommodation (Use Class B1)' with the submitted masterplan and Design and Access Statement outlining the vision for the site to deliver Grade A office space. Therefore, from submission of the original application 15 years ago, it was never the intention for industrial uses to be located at DurhamGate. The site has therefore been marketed on the basis of the approved masterplan for a significant period of time with a view to delivering the permitted office uses on site, in accordance with the masterplan and associated s106 requirements. Unfortunately, only the Livin office HQ has managed to come forward in the last 15 years despite marketing efforts.
74. DurhamGate Ltd are committed to delivering employment at DurhamGate and are currently reviewing the office market to ensure that the commercial element of the scheme is designed and marketed in the optimal way to attract occupiers. The acquisition of DurhamGate North (over 14 acres) also shows the applicant's ongoing commitment to the development of new employment space especially with the retention of Stanley Black and Decker (in over 250,000sqft) which will retain an important, high profile employer in the locality.
75. DurhamGate North currently consists of existing employment uses, some of which are occupied by Learning Curve Group (which supports circa 780 jobs), Black and Decker (and others – which supports 120 jobs) and was recently granted planning permission for the development of a new Police Custody Suite in March 2021 (which, although is not a specific employment use, supports 299 jobs). As such, DurhamGate Limited endeavour to continue to secure job creating employment uses at DurhamGate North. Turning to the requirement for non-employment uses on employment allocations to '*comply with the other relevant policies in the Plan and any existing jobs located on the site must be relocated*', it should be noted that there are currently no jobs located on land to the east of Arlington Way as indeed this is currently a vacant plot of land within the DurhamGate masterplan.

76. The site is more than capable of providing an attractive and well laid out residential scheme, with appropriate connections and landscaping. The application is in outline and the Council would have the opportunity to review and comment upon detailed design matters at reserved matters stage. The proposed development will be consistent with the local character of DurhamGate and wider Spennymoor, as an established neighbourhood which contains an approved design code. The proposed development will be firmly in accordance with this design code and will therefore be consistent with the local character of DurhamGate and wider Spennymoor.
77. The application has received support from DurhamGate Residents' Association, amongst other public comments made in support including One Gym at Thinford Park and Adore Care Homes, Learning Curve. The Proposed Development fulfils all three strands of sustainable development (social, economic and environmental) in accordance with the NPPF and as such we invite the LPA to respond positively to this application and grant planning permission without delay.

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## **PLANNING CONSIDERATION AND ASSESSMENT**

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78. 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, Locational Sustainability, Residential Amenity, Highway Safety, Design, Flooding/Drainage, Ecology, Ground Conditions, Open Space and Infrastructure, Affordable Housing, Carbon Emissions, and Other Matters.

### Principle of Development

79. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF is a material planning consideration. The County Durham Plan (CDP) is the statutory development plan and the starting point for determining applications as set out in the Planning Act and reinforced at NPPF Paragraph 12. The CDP was adopted in October 2020 and provides the policy framework for the County up until 2035 and is therefore considered up to date.
80. NPPF Paragraph 11c requires applications for development proposals that accord with an up to date development plan to be approved without delay. NPPF Paragraph 12 states that where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.

81. As set out above, the original planning approval for Durham Gate was granted in 2008 on the basis that the dwellings would cross subsidise the delivery of infrastructure and employment space across the site, including offices and a retail hub. This was following a detailed financial appraisal of the development as a whole, where it was also accepted that the provision of affordable housing on the site would make the site unviable.
82. This permission was amended in 2015 to allow the increase of the residential area of the site, to allow the developer to deliver the same number of homes as envisaged in the original outline, but with a reduced density reflective of that has been provided on other schemes. This reduced density has allowed the delivery of a high proportion of larger detached dwelling across the site. The reduction in the commercial area of the site was balanced out by a proposed increase in density of the commercial element. This relates to the main part of the site in question.
83. As a result of this extant permission and based on a demonstration of need identified in the County Durham Employment Land Review, undertaken in the preparation of the County Durham Plan, the site in question has been allocated as employment land within the County Durham Plan.
84. CDP Policy 2 states that such undeveloped land at employment sites are allocated for B1 (Business), B2 (General Industrial) and B8 (Storage and Distribution) unless specifically stated. CDP Policy 2 states that development for non-employment uses on employment allocations will not be permitted unless: there is documented evidence of unsuccessful active marketing for employment use with at least one recognised commercial agent at local market levels over a continuous period of at least 2 years for the development of an allocated site below 10ha; or the proposed use would not compromise the main use of the site for employment uses and would comply with Policy 9 (Retail Hierarchy and Town Centre Development) where main town centre uses are proposed.
85. The applicant has attempted to demonstrate compliance with this policy through the submission of supporting information, including a letter from BNP Paribas Real Estate, dated the 28<sup>th</sup> November 2022 and an Office Demand Study dated April 2022 undertaken by Cushman and Wakefield.
86. The letter from BNP Paribas Real Estate details the marketing initiatives that have been undertaken. These are stated to include: brochures sent to surrounding occupiers and similar sized organisations close to the subject premises on comparable business parks, advertising boards located around the site, online advertising on the Durham Gate and other estate agents' websites, and through Aiden Barkers LinkedIn account. The letter sets out that since May 2015 they have received interest from 5 companies, none of which have gone ahead with an acquisition.
87. The Office Demand Study asserts that *“the scheme has been actively marketed through established letting agents, including Cushman & Wakefield, and whilst speculative development has taken place, demand has proven to have been*

*poor, and certainly below the levels projected at the time of the initial Planning Application”.*

88. In reviewing the submitted information, Business Durham have advised that in their experience the market for smaller office units remain strong and cite several recent examples. These include Council owned sites such as Salvus House (Aykley Heads) and Dabble Duck (Shildon) which are both fully occupied, Tanfield Lea Business Centre (Stanley), as well as Derwentside Business Centre and Viewpoint Business Centre where occupancy sits at 90%. This also includes sites in private ownership, for example those at Fern Court at Peterlee; Lumley Court at Chester le Street; Flexspace at Newton Aycliffe; The Old Brewery Business Centre at Castle Eden; and Traynor Way development at Novus Business Centre which let over 4,600sqm of space in Peterlee. In addition, it is noted that the office units which have been built at the nearby Durham Gate North site are occupied. Consequently, Business Durham advise that it would be an exaggeration to say that office development is not possible at Durham Gate as a matter of principle.
89. Notwithstanding the above, the submissions by BNP Paribas and Cushman & Wakefield are both from office agents and no evidence from light industrial experts has been provided. As set out by CDP Policy 2 the allocation at Green Lane Industrial Estate is not solely for office uses and also encompasses light industrial uses and warehousing. There is no evidence that any B2 or B8 uses have ever even been explored by the applicant.
90. The applicant contends that the site was never intended to be developed for industrial uses as the original planning permission (7/2008/0488/DM) was for 'business accommodation (Use Class B1)', with the submitted masterplan and Design and Access Statement outlining the vision for the site to deliver Grade A office space. It is also noted that the original S106 agreement that the applicant entered into required the landowner to submit a Reserved Matters application for the Phase 1 Floor Space when 50% of the residential land had been sold or 50% of the dwellings occupied. This trigger has been met, and exceeded, in breach of the S106 agreement. It is considered that has a reserved matters development for the commercial officers been submitted and secured it may have provided some market confidence to come forward for elements of the commercial portion of the site.
91. The Council's Spatial Policy team have advised that the approved 2008 scheme represented one form of development which was found to be acceptable on the land, but that other employment uses would still also be appropriate for the site. That was the position of the Council for the Examination in Public (EiP) of the current County Durham Plan which took place in 2018/19 and the position was accepted by the Government appointed Inspector in ratifying that Green Lane should be a protected employment site and suitable for employment uses. It is therefore not accepted that approval for business accommodation in 2008, in any way "closed the door" to other employment uses being suitable on the site. Therefore, for the purposes of this application, the site is allocated for employment uses by CDP Policy 2 and this includes B2 and B8 uses. The

failure to explore options aside from office uses represents conflict with CDP Policy 2.

92. The applicant also makes the argument that given the proximity of the residential uses to the west and the development of the care home on Hey Lane to the southwest that light industrial and warehouse uses would not be appropriate on this site. However, the development of small scale light industrial or warehouse uses, or such uses to the eastern part of the site furthest away from the nearby residential uses, would not necessarily be prejudicial to the living conditions of these residents depending on the exact use to come forward, mindful of surrounding commercial uses.
93. Business Durham contend that the industrial market is strong advising that demand for industrial units has outstripped supply in recent years. Business Durham let seven units at Jade Business Park (ranging from 1,000m<sup>2</sup> to 5,100m<sup>2</sup>) within a year of project completion and its portfolio of (mainly small) industrial units are above 95% occupancy (excluding the recently opened Station Place development). They also note that occupancy within private sector portfolios is strong. They conclude that no evidence has been produced to suggest that future development in this sector is not feasible and advise that if the site were to be developed for small units, they would likely be occupied due to pent up latent demand.
94. Whilst it is acknowledged that there are inflationary pressures that make viability of commercial property development a problem in the short term, property development is a cyclical business and based on the advice from Business Durham and the information submitted with the application it is disputed that the development of this site for employment uses will never be possible. However, this would certainly be the case should the site be developed for housing.
95. Furthermore, display boards which have been erected at the site have never advertised the availability of employment land. Those which have been sited over the years have only referred to housing. The board to the south of the application site facing the A167 shows housing and makes reference to 'Bespoke Executive Homes', with no mention of land being available for office accommodation. The advertising boards shown in the letter from BNP Paribas letter relate to the former Wellsprings site (located further to the north of Durham Gate) which was acquired by the applicant and rebranded as 'Durham Gate North'. Following acquisition of that mothballed site, the half-finished office units which had sat empty for years were finally completed and let straight away to Learning Curve. This provides evidence that there was demand for the accommodation once it was finished and available, with this accommodation located only a short distance from the application site.
96. In addition, the Durham Gate website contains a page showing the masterplan for the wider site (Masterplan – Durham Gate), however the application site, denoted by the number 31, is shown as housing with the corresponding key referring this area being for '113 new homes in planning'.



97. The applicant's position is that the site has been marketed for office uses between 2015-2022. However, given the advertisement of the site for housing both by display boards at the site and online through the Durham Gate website it is not considered that the site has been actively marketed for employment uses as required by CDP Policy 2.
98. It is also noted that the applicant fought against the employment allocation within the CDP through the Examination in Public (EiP) into the withdrawn version which took place in 2014/15. It is therefore readily apparent that housing on this land has been coveted for a considerable period and the veracity with which employment uses have been explored is therefore challenged.
99. In summary, the land has been identified for housing for a number of years on the applicant's Masterplan contained on their Durham Gate website, and it has not been demonstrated that all employment uses have been seriously explored. The submissions by both BNP Paribas and Cushman and Wakefield only cover the office market, but the land is also suitable for both light industrial and warehousing as part of its employment allocation within the CDP, indicating that neither of these uses have been explored. Therefore, it is considered that the proposed scheme falls far below the requirements of CDP Policy 2 in that it has not been demonstrated that there is no demand for employment uses on the site. Consequently, the principle of developing this allocated employment land for up to 96 dwellings is unacceptable.
100. The are now proposed for housing forms a large part (3.74ha) of a wider parcel of land (4.9ha) that is allocated for employment uses by CDP Policy 2 and which was originally identified to provide 11,368sqm of office space in the Durham Gate masterplan. The only offices to come forward since the original 2008 approval consist of the Livin offices to the south east of the application site which comprise 0.55ha of land. Therefore, the loss of this land to housing would only result in the potential delivery of up to 1.71ha of employment land compared to the 8.2ha promised in the original planning approval, as shown on the indicative phasing plan PL(9)1004 submitted with application 7/2008/0488/DM, while all of the houses and other development intended to cross subsidise the employment uses has been delivered.
101. It is also noted that the original S106 agreement that the applicant entered into required the landowner to submit a Reserved Matters application for the Phase 1 Floor Space when 50% of the residential land had been sold or 50% of the dwellings occupied. This trigger has been met, and exceeded, in breach of the S106 agreement. It is considered that has a reserved matters development for the commercial officers been submitted and secured it may have provided some market confidence to come forward for elements of the commercial portion of the site.
102. Overall the developemnt of the site would result in the loss of employment land without robust, documented evidence of this allocated employment site having been actively and unsuccessfully marketed for a range of potential employment uses over a continuous period of 2 years. Therefore, the proposals are contrary to Policy 2 of the of the County Durham Plan.

## Locational Sustainability

103. CDP Policy 21 requires all developments to deliver sustainable transport by providing appropriate, well designed, permeable and direct routes for walking, cycling and bus access, so that new developments clearly link to existing services and facilities together with existing routes for the convenience of all users.
104. NPPF Paragraph 105 advises that significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. NPPF Paragraph 110 states that appropriate opportunities to promote sustainable transport modes should be taken, whilst Paragraph 112 amongst its advice seeks to facilitate access to high quality public transport.
105. In terms of distances to services and amenities, in general, a walking distance of around 800m or a 10 minutes' walk is considered to represent an appropriate range, with a walking distance of 1650-2000m or a 20-minute walk at the upper end of what future residents could be expected to walk, taking into account topography and desirability of routes. These distances are based on good practice guidance set out in the Chartered Institute of Highways and Transportation (CIHT) documents including 'Guidelines for Providing for Journeys on Foot' and 'Planning for Walking', The Department for Transport's 'Manual for Streets'.
106. The County Durham Settlement Study 2018 is an evidence-based document which seeks to provide an understanding of the number and range of services available within the settlements of County Durham. The site lies within the Spennymoor Cluster which comprises Middlestone Moor, Spennymoor and Tudhoe. Historically, Tudhoe, Middlestone Moor and Spennymoor were separate settlements in their own right, however due to growth they have effectively merged and operate as part of the same town. This cluster was rated as having a settlement score of 328.7 (9<sup>th</sup> out of 230), reflecting the broad range of services and public transport available.
107. The closest edge of Spennymoor town centre, as defined by CDP Policy 9, lies approximately 2km away from the site entrance, accessed along continuous lit roadside footpaths. Tudhoe Moor Nursery lies 1.5km away, St Charles Primary 1.9km away and Whitworth Park Academy 4.3km away to the west. Miller Pharmacy lies 2.3km away. An Asda superstore and Home Bargains lie 2.2km and 2.4km away respectively. Spennymoor Leisure Centre is 2.5km away. On the whole, these amenities are located towards or in excess of the upper threshold of what would be considered a reasonable walking distance. These distances would increase further when taken between the western edge of the town centre and the dwellings located to the outer eastern edges of the site. However, all of these amenities lie within the average cycle distance of 4.3km set out by a National Travel Survey undertaken as part of the CIHT 'Guidelines for Providing for Journeys on Foot' document for those who are able and prefer to cycle.

108. Whilst there are some services to the east of the site on the other sides of Thinford Roundabout which are closer, these are limited in scope and would not provide for resident's everyday needs. It is noted that the area to the south west of the site was shown to be developed with retail, cafes and various other services, however no detailed application has come forward to date.
109. In terms of public transport, there are bus stops located on Durham Gate approximately 400m away to the south, serviced by the Arriva no.7 (Durham City to Darlington) which runs at 15 minute intervals and the 8a (Spennymoor to Darlington) which runs at hourly intervals. The no.7 also provides an hourly service on a Sunday.
110. Overall, whilst the range of services available are towards or in excess of the upper threshold of what could be considered a reasonable walking distance, they are within the average cycle distance and the site is well served by more than one bus service. Therefore, the future residents of the proposed development would not be reliant upon the private car for access to amenities, according with the aims of NPPF Paragraph 105.

#### Compatibility of Residential Uses in the Context of Nearby Uses

111. 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.
112. 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. Specifically, NPPF Paragraph 174 e) advises that planning decisions should prevent new development from being put at unacceptable risk from, or being adversely affected by, unacceptable levels of noise pollution.
113. NPPF Paragraph 187 also advises that planning decisions should ensure that new development can be integrated effectively with existing businesses and community facilities. 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.
114. Planning Practice Guidance advises that noise needs to be considered when new developments would impact upon the acoustic environment. Factors to consider whether noise may be a concern includes whether any adverse internal effects can be completely removed by closing windows and, in the case of new residential development, if the proposed mitigation relies on windows

being kept closed most of the time (and the effect this may have on living conditions). In both cases a suitable alternative means of ventilation is likely to be necessary. Consideration should be given to whether or not a significant observed adverse effect would occur and whether or not a good standard of amenity could be achieved. This is defined as above a level where noise is noticeable or disruptive, causing a material change in behaviour, attitude or other physiological response, such as keeping windows closed for most of the time or avoiding certain activities during periods when the noise is present, resulting in significant adverse effects on health and quality of life. This can also include where there is no alternative ventilation, having to keep windows closed most of the time to avoid noise being audible inside, and the potential for sleep disturbance including difficulties getting to sleep, and being woken prematurely and experiencing difficulty in getting back to sleep. The guidance advises that if exposure to noise is beyond a level where quality of life would be diminished due to changes to the acoustic environment, the development should be avoided.

115. The submitted Noise Assessment identifies that the main sources of noise are from the Boots distribution centre and Police dog training school to the north of the site, and noise from road traffic travelling along the A167 to the east. It establishes a low to medium risk from road traffic noise from the A167, with a buffer indicated on the submitted plans between the A167 and the dwellings. Whilst layout is not being considered as part of this outline application it is expected that an appropriate solution could come forward as part of a subsequent reserved matters application in terms of noise generated from road traffic on the A167.
116. The Boots distribution centre is understood to operate 24 hours a day and the Noise Assessment identifies that ambient noise levels generated from the operations undertaken include loading and unloading activities, HGV and forklift movements during the daytime and by HGV movements and alarms during night time hours. The dog training school has an external area where noise would be generated from up to 10 dogs barking. Paragraph 5.10 of the Noise Assessment states that during the measurements of ambient noise levels, "*the dogs were not let out into the small fenced area adjoining the kennel building during the days of the measurement as it was hot outside.*" Instead, measurements were taken from "*the external area of another existing kennel...on 15<sup>th</sup> of August 2015*".
117. The Noise Assessment identifies that there would be a below significant risk, however Environmental Health Officers (EHO) have advised that this needs to be considered in the context of the site's location and the type and nature of noise generated. In this instance, concerns are raised regarding the siting of residential properties in an area which is sandwiched in between a busy road and commercial/industrial premises of which the depot is understood to operate 24 hours a day.
118. To mitigate against adverse noise impacts, a 4m high barrier is proposed along the northern boundary of the site, as well as additional individual garden barriers to reduce the impact to that which falls below a significant adverse impact in

the external amenity areas. This includes 11no. 1.8m high barriers, 3no. 2m high barriers, and 2no. 2.5m high barriers. Gardens are proposed to be located to the south of the dwellings so that the buildings themselves provide some acoustic screening. The Noise Assessment concludes that with the proposed acoustic barriers and design measures, the noise impact arising from the distribution centre and the dog training school would be reduced to a below significant adverse impact at all external amenity areas and ground floor levels of the development.

119. EHO have confirmed that they have received and investigated complaints concerning the distribution depot in the past, with the proposed dwellings to be located in closer proximity to the depot than the dwellings built to the west of the application site. They have also advised that in their experience it is difficult to quantify dog barking and tonal noises such as reverse vehicle alarms, and that where there is a lot of sound energy at a specific frequency range, which is designed to be audible to the human ear, a single decibel level is not always representative nor does it fully allow for the perceived annoyance in a given situation, especially during late evening/night-time hours.
120. It is identified by EHO that although the Noise Assessment concludes that noise from commercial practices is unlikely to significantly impact on the proposed development, it should be acknowledged that there are limitations of this approach. The monitoring period carried out is a snapshot in relation to noise and therefore cannot take into account all possible noise sources associated with an industrial estate. The principle of an industrial estate is that commercial practices are not compatible with residential uses which is why they are typically sited away from residential premises. In addition, the nearby industrial uses could change at any point without further consent and therefore introducing a sensitive noise receptor into close proximity to an industrial estate, where none currently exists, potentially limits the future use of the industrial estate for its intended purpose and could lead to greater impacts on residential uses.
121. Whilst acknowledging that layout is a reserved matter, to be able to grant outline planning permission for dwellings on this site it must be robustly demonstrated that a suitable layout could come forward which would enable the future occupants to benefit from acceptable living conditions and that the proposed residential use is compatible with existing business uses nearby without placing unreasonable restrictions upon them. This is necessary in order to comply with CDP Policy 31.
122. The applicant states in a letter from their noise consultants dated the 1<sup>st</sup> of September that, "*The highest feasible barrier heights have been incorporated in the design and it is not possible to reduce the impact any further through site layout considerations.*" Given this and the close proximity of the Boots distribution centre which operates 24 hours a day and the type of noise generated from this use and the dogs at the Police dog training school, it is considered that it would not be possible to ensure the future residents of dwellings in this location would benefit from acceptable living conditions or that unreasonable restrictions would not be placed upon these existing businesses as a result of the proposed development.

123. The erection of a 4m high acoustic barrier is not considered suitable or sufficient to adequately mitigate against noise generated from the uses immediately to the north of the site, due to concerns over the tonality of the noise generated and the required upkeep and maintenance of the barrier itself. EHO have advised that acoustic barriers do not typically exceed a height of 3m and raise concerns regarding the practicality of having a 4m high barrier in relation to the occurrence of strong winds. In addition, concerns are raised over the appearance and visual impact of the barrier.
124. In addition, the Noise Impact Assessment identifies that, *'With all possible site layout and barrier considerations it has not been possible to reduce the noise impact due to the distribution centre and dog training school at the nearest ground floor and majority of first floor facades of the dwellings to below a significant adverse impact.'* Although a mechanical extract ventilation system is proposed to mitigate against this and provide ventilation whilst windows are shut, the occupants of these dwellings being unable to open the windows of their house without being subject to a significant adverse noise impact is considered to represent an adverse impact on their amenity. The installation of a mechanical ventilation system is not considered comparable to, nor capable of fully mitigating against being unable to access, the benefits of being able to open windows to access fresh air.
125. The applicants noise consultants have advised that, *"The proposed dwellings (have been) designed such that the occupants do not have to rely on open windows for background and purge ventilation or overheating mitigation (which) would mean opening windows would then be an occupant choice, but not a requirement for ventilation or thermal comfort."* Planning Practice Guidance advises that the impact of residents having to keep windows closed most of the time should be considered. CDP Policy 29 e) also requires all new development to provide high standards of amenity. Paragraph 5.303 of the supporting text to this policy advises that a high quality built environment should consider the amenity of both existing and future residents and consideration should be given to matters of privacy, outlook, natural lighting, ventilation, as well as local climatic conditions. By virtue of the close proximity of the site to noise generating uses, whilst the windows would not be sealed and so the future occupants would be able to open them, doing so would expose them to unacceptably high noise levels. It is not considered possible for a layout to come forward that would provide high standards of amenity for the future occupants of new dwellings on this site in terms of ventilation given the close proximity of the noise generating uses to the north of the site.
126. Overall, given the above it is not considered that there are any suitable mitigation measures to ensure future residents would benefit from acceptable living conditions and high levels of amenity, or to prevent unreasonable restrictions being placed upon existing noise generating uses. Consequently, the principle of introducing noise sensitive dwellings in close proximity to an existing industrial estate is considered unacceptable and contrary to CDP Policies 29 and 31, as well as Parts 12 and 15 of the NPPF.

## Highway Safety/Access

127. 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.
128. The NPPF sets out at Paragraph 110 that safe and suitable access should be achieved for all users. In addition, NPPF Paragraph 111 states that development should only be refused on transport grounds where the residual cumulative impacts on development are severe.
129. The application is supported by plans showing the junction visibility splays for the two new proposed access points from Arlington Way. The Highways Authority have confirmed that these details are acceptable but advised that the trees shown in the verges along Arlington Way outside the red line boundary of the site must not impede the visibility splays. The position of the trees shown on the indicative layout plan is outside the red line boundary denoting the application site and on land comprising adopted highway. A condition could be imposed to secure the creation and retention of the visibility splays, specifying no planting to take place within the visibility splays.
130. The Highways Authority have advised that the traffic generated from 96 dwellings would be significantly less than the traffic generated by the consented office use, and that details regarding the internal highway infrastructure and parking would be considered as part of the layout of the scheme as part of a reserved matters application.
131. Overall, the applicant has demonstrated that the site would be served by a safe and suitable access according with CDP Policy 21 and Part 9 of the NPPF.

## Design

132. 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.
133. CDP Policy 40 states that proposals for new development will be expected to retain existing trees where they can make a positive contribution to the locality or to the development, maintain adequate stand-off distances between them and new land-uses, including root protection areas where necessary, to avoid future conflicts, and integrate them fully into the design having regard to their future management requirements and growth potential. Where trees are lost, suitable replacement planting, including appropriate provision for maintenance and management, will be required within the site or the locality.

134. Parts 12 and 15 of the NPPF also seek to promote good design, while contributing to and enhancing the natural and local environment by (amongst other things) recognising the intrinsic character and beauty of the countryside and optimise the potential use of the site. Specifically, NPPF Paragraph 130 states that planning decisions should aim to ensure developments function well and add to the overall quality of the area, are visually attractive as a result of good architecture, layout and appropriate and effective landscaping, are sympathetic to local character and the surrounding built environment and landscape setting, and establish or maintain a strong sense of place, using streetscapes and buildings to create attractive and comfortable places to live, work and visit.
135. The application is supported by an Arboricultural Impact Assessment which identifies the need to remove five trees (T6,7,89,90, 93) due to significant decay within the stem and three trees (T9, 65, 66) to accommodate a new access footpath. The loss of these trees is not considered significant. The Council's Arborist has raised concerns that the landscape plan shows numerous new trees planted across the site but that their location is too close to access roads. If appropriate distances cannot be achieved, then consideration should be given to enlarging these green areas or rethinking the use of tree planting. As layout and landscaping are reserved matters these issues would be expected to be addressed as part of a reserved matters application if this outline application were to be approved.
136. A Building for Life Supplementary Planning Document (2019) (BfL SPD) has been adopted by the Council. In recognition of national planning advice and to achieve high quality housing developments the Council has adopted an in-house review process to assess schemes against the Building for Life 12 (BfL 12) Standards. The BfL SPD formalises the review process and establishes the guidelines and standards for its operation and is linked to the Sustainable Design Policy (29) in the County Durham Plan. The scoring is based on a traffic light system with the aim of the proposed new development to secure as many "greens" as possible, minimise the number of "ambers" and avoid "reds". The more "greens" achieved the better the development will be, "ambers" are usually concerns that can be raised to "green" with revisions, whereas a "red" gives a warning that a particular aspect needs strong reconsideration. CDP Policy 29 states that schemes with one or more red scores will not be acceptable and will be refused planning permission unless there are significant overriding reasons.
137. As this application seeks outline application with only access to be considered the application was assessed against six key questions. At the consideration of the application by the internal Design Review Panel, the scheme received 4 "reds", 1 "amber" and 1 "green" score. "Red" scores related to the following issues:
138. Concerns were raised over the principle of introducing residential development in this location as the site is allocated for employment uses by CDP Policy 2 and previous housing on the wider site was approved without any affordable housing provision on the basis that the monies generated would be cross



subsidised to fund the Business Park to come forward on this site. Concerns were also raised regarding the living conditions of the future residents given the close proximity of existing industrial and commercial uses, with it noted that Environmental Health have in the past received complaints from existing residents regarding noise from the industrial unit to the north, and it considered that a 4m acoustic barrier is not sufficient or appropriate to adequately mitigate noise levels and suggestive that the site is not suitable to develop for residential uses. In addition, a 4m high acoustic barrier is considered to have an overbearing visual impact that represents poor design.

139. In terms of connections, concerns were raised regarding how the proposed development would connect with its surroundings with no connection proposed to the A167 to the east. A connection from the south east of the site to an extended footpath leading from the traffic lights to the north of Thinford Roundabout would provide a more direct walking and cycling route for residents to access the amenities to the eastern side of the roundabout. Access, including pedestrian and cycle access is a matter under consideration in this application.
140. In addition, there would be no continuity from the existing landscaped Green Spines (1 and 2) and the proposed Green Spine 3 which would be separated by the Arlington Way highway and the car park to be associated with offices yet to come forward as shown on the approved and proposed indicative masterplans. This is due to the infrastructure for the wider site having been constructed on the expectation that the site is to be developed for employment uses rather than dwellings. In order to access Green Spine 2 from Green Spine 3, residents would need to cross Arlington Way and walk around 58-61 Dalton Wynd which prevent a direct walking route. The applicant has indicated a willingness to install pedestrian crossing points, however these would not overcome the lack of a direct walking route to Green Spine 2 from the application site.
141. In terms of character, limited information in regard to built character has been provided, although it is accepted that appearance and scale are reserved matters and the applicant has indicated their agreement to a condition to secure details of a design code. Of greater concern is with regard to disjointed nature of the landscape character in relation to the wider masterplan, including the lack of connectivity between the Green Spines, with it again noted that the infrastructure for the wider site has been constructed on the expectation that the site is to be developed for employment uses rather than dwellings. Overall, the submitted information does not suggest a place with locally inspired or otherwise distinctive character.
142. With regards to creating well defined streets and spaces, concerns were raised regarding the western edge of the site poorly addressing the street resulting in both sides of Arlington Way being addressed by dwelling gables and boundary fence lines; the proposals appearing as piecemeal development that doesn't integrate well with the masterplan for the wider site due to the lack of connectivity between Green Spines and turning heads which do not provide vehicular access from Arlington Way onto Dalton Wynd; that the tree lined frontage to Arlington Way lies outside of the red line boundary representing the

application site with it noted that the trees to opposite side of Arlington Way haven't been planted as required by condition 4 pursuant to approval DM/15/02911/RM which required details of a landscaping scheme to be submitted and agreed with the LPA prior to any dwelling being occupied, with the Officers Report specifically referencing the need for the tree planting to screen and soften the appearance of the 2.2m high acoustic fence along this boundary; and insufficient information relating to SUDs and how the management of surface water would be designed to form an intrinsic part of the layout.

143. Whilst it is accepted that this application is in outline, with details of layout, appearance, scale and landscaping to come forward at reserved matters stage, Officers are of the view that it would not be possible for a suitable layout to come forward to address all of the concerns raised at the Design Review. This is particularly given the proximity of the site to noise generating uses to the north and the need for a visually overbearing 4m high acoustic barrier; as well as due to the infrastructure that has already been constructed and the way in which it separates the application site from the wider site, due to the expectation that it would be developed for employment uses.
144. An "Amber" score was received in relation to facilities and services as those existing within Spennymoor are slightly beyond a reasonable walking distance and those in close proximity to the east are limited in variety. It is also unclear whether the retail and leisure units indicated in the masterplan to be provided within the wider site (to the south west of the application site) will be delivered.
145. A "Green" score was received in relation to the presence of bus stops in close proximity to the site with good onward connections.
146. In line with CDP Policy 29, as 4 "reds" are awarded to the scheme it is considered there are significant areas where the design and layout is not appropriate for the development proposed and that the development does not represent a good standard of design. This policy advises that if any "reds" are scored the application should be refused unless there are significant overriding reasons otherwise. In this regard, the benefits of the proposed development should be weighed against the conflict with CDP Policy 29, and Part 12 of the NPPF.

#### Drainage

147. 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. Paragraph 167 advises that when determining planning applications, Local Planning Authorities should ensure that flood risk is not increased elsewhere and that where appropriate applications should be supported by a site-specific flood-risk assessment. Paragraph 169 goes on to advise that major developments should incorporate sustainable drainage systems unless there is clear evidence that this would be inappropriate.

148. 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. Surface water run-off must be managed at source wherever possible and disposed of in accordance with the hierarchy of preference: to an infiltration or soak away system; to a watercourse; to a surface water sewer; lastly to a combined sewer. 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.
149. The site is not located within a flood zone or an area identified as being at high risk of surface water flooding. The application is supported by a Drainage Strategy which identifies that the site is underlain by Glacial Till which is unsuitable for infiltration. There are no watercourses on or near the site and so in line with the hierarchy of preference surface water is proposed to be discharged to a surface water sewer running within Hay Lane which connects to those at Eves Lane and Arlington Way that serve the residential development on the wider Durham Gate site. Whilst they have not provided any formal comments in relation to this application, the Drainage Strategy states that Northumbrian Water have agreed to a restricted surface water flow of 10 l/s into the surface water public sewer to the west of the site via manhole 6809, with any excess in flows to be attenuated on-site.
150. CDP Policy 35 d) states that for major developments the management of water must be an intrinsic part of the overall development. In addition, Paragraph 7.8 of the Council's Building for Life SPD 2019 advises that, "Sustainable drainage techniques are frequently required on major schemes. Attenuation ponds need to be planned alongside the open space provision for the site to ensure a cohesive and efficient site layout."
151. The LLFA have advised that developments should be designed to include a Green and Blue Infrastructure; with SUDS features such as basins, swales, filtration strips / drains, rain gardens etc. throughout the site. Developments should provide a design incorporating sustainable drainage solutions together with green space areas to provide a surface water management train to treat water as close as to where it falls and transmit it through the site, mimicking the natural process of the water cycle.
152. To achieve this, developments are expected to: reduce the quantity of surface runoff by reducing the quantity of impermeable area; control the amount of runoff that is generated at the source of runoff by designing areas to collect surface water (such as permeable paving); manage runoff by dividing impermeable areas into sub-catchments such as soakaways, filter drains, and basins or swales to transport and attenuate water through the site; and to manage surface runoff on a site wide basis typically in a retention basin or wetland area.
153. The originally submitted drainage strategy proposed to discharge surface water to the surface water sewer via permeable paving, oversized pipework, and an

underground cellular storage structure. Other than permeable paving, no above ground SUDs were proposed to be provided within the site layout, resulting in the proposed scheme failing to achieve the third and fourth stage of the surface water management train. In addition, pollution levels for estate roads with fewer than 300 traffic movements per day require treatment in the form of filter strips or drains and a swale.

154. Therefore, the drainage strategy as originally proposed would have resulted in the proposed development adversely affecting water quality by failing to sufficiently treat pollutants from surface water runoff before leaving the site, thereby causing a pollution risk downstream. This is contrary to the requirements of CDP Policy 35 which state that new development will be required to incorporate appropriate water pollution control measures.
155. The applicant initially attempted to justify the failure to include a basin, swales, and filter strips. Their arguments centred around the size of the basin required restricting the amount of space allowed for social and habitat enhancement or requiring the number of dwellings to be reduced; the acoustic and landscape requirements at the north of the site restricting the ability to incorporate a swale to this area; and that filter strips would require frequent maintenance to ensure they are working appropriately all year round. These arguments are not accepted and not considered to justify the downstream pollution risk that would be caused by the proposed development and the failure to meet the requirements of CDP Policy 35.
156. The applicant also asserted that the drainage strategy proposed was in keeping with that for the wider Durham Gate scheme. However, the scheme was originally approved in 2009 on the basis that the current application site would be developed for employment uses. NPPF Paragraph 153 advises that planning should take a proactive approach to mitigating and adapting to climate change, taking into account the long-term implications for flood risk from rising temperatures. The application is required to comply with the national standards and planning policies in place at the time of its determination and it is not considered appropriate to rely on a drainage approach for industrial units which are no longer being proposed.
157. Following the concerns raised by the LLFA, the applicant indicated that a swale could be provided to the north of the site along with filter drains throughout the site. Proposed Drainage Strategy Rev D (included at Appendix E of the Drainage Strategy 03 document) indicates the position of filter drains within the curtilage of individual private plots and soft landscaped areas. The applicant states that filter drain features would not form a part of the private plots and as such the maintenance of these features would be carried out by a private maintenance company in line with the maintenance schedule provided within Appendix H of the Drainage Strategy 03. However, the submitted drawing clearly identifies the presence of filter drains within the curtilage of numerous private plots and the LLFA have raised concerns regarding the practicalities of their maintenance, with it noted that filter drains are typically located within highway verges.

158. The applicant has also advised that surface water runoff would be discharged into the gravel surrounds of the filter drain rather than directly into the perforated pipe. The LLFA have raised concerns that the filter drains would not discharge surface water runoff to other SUDs features, thereby effectively substituting filter drains for standard pipework across awkward routes which would fail to provide the treatment benefits intended by their inclusion. Overall, the LLFA advise that insufficient measures to treat pollutants in surface water runoff are proposed, contrary to CDP Policy 35.
159. Criterion f) of CDP Policy 35 states that part of the development site should be set aside for surface water management, supplementing green infrastructure networks and thereby contributing to mitigation of climate change, water quality and flooding as an alternative to, or complementary to, hard engineering. In this instance, it is clear that no consideration was given to sustainable drainage when designing the indicative site layout which has led the applicant to attempt to retrofit SUDs features. As a result, SUDs do not form an intrinsic part of the overall development and it would not be possible to adequately address this given the number of dwellings proposed.
160. Whilst layout is a reserved matter, Officers are not satisfied that an appropriate layout for up to 96 dwellings could come forward whilst satisfying the requirements of CDP Policy 35 and NPPF Paragraph 169. A reduction in the number of dwellings proposed would be required to achieve the implementation of an appropriate sustainable drainage strategy.
161. No Construction Phase Surface Water Management Plan has been submitted with the application but could be secured via a suitably worded condition if the application were to be approved.
162. Overall, the proposed development has not demonstrated that pollutants from surface water runoff would be sufficiently treated before leaving the site, thereby causing a pollution risk downstream. This is contrary to the requirements of CDP Policy 35 which state that new development will be required to incorporate appropriate water pollution control measures. This policy conflict is required to be weighed in the planning balance.

## Ecology

163. 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. Policy 43 relates to protected species and nationally and locally protected sites. Part 15 of the NPPF seeks to ensure that developments protect and mitigate harm to biodiversity interests, and where possible, improve them.
164. The application is supported by an Ecology Survey which identifies that the site provides very limited habitat for any protected species. Improved grassland may provide very limited feeding habitat for birds such as starling that are

tolerant of disturbance and there is a small possibility that some trees could be used as bat foraging habitat, although the high level of night time artificial lighting from street lights and security lights and the high level of air pollution are likely to influence and restrict bat use. The Survey concludes that the proposed development would have a negligible risk of any direct or indirect impact on any species.

165. The survey recommends the inclusion of native shrubs and trees, and plants that provide a good nectar source, into any landscape schemes, and the installation of integral bat boxes to the properties adjacent to Green Spine 3 with lighting to be kept to a minimum in these areas. A condition could be imposed to secure adherence to these recommendations, with it noted that landscaping is a reserved matter.
166. The submitted Biodiversity Net Gain metric calculator identifies that the proposed development would achieve biodiversity net gains of 2.33%. The County Ecologist has confirmed their agreement to a using pre-commencement condition to secure a detailed habitat creation, management and monitoring plan based on the submitted Biodiversity Net Gain Defra metric to ensure that all semi-natural habitats to be provided will be managed over a minimum of 30 years, and that target habitats are deliverable.
167. Overall, the proposed development is not considered to adversely affect protected species and to be capable of achieving biodiversity net gains, according with CDP Policies 41 and 43, and Part 15 of the NPPF.

#### Ground Conditions

168. CDP Policy 32 requires sites to be suitable for use taking into account contamination and unstable land issues. NPPF Paragraph 183 requires sites to be suitable for their proposed use taking account of ground conditions and any risks arising from land instability and contamination.
169. The Coal Authority have confirmed that the application site falls marginally within the defined Development High Risk Area. Therefore, within the application site and surrounding area there are coal mining features and hazards which need to be considered in relation to development proposals.
170. More specifically, the Coal Authority's information indicates that the very south eastern corner of the application site encroaches marginally into an area where historic unrecorded underground coal mining is likely to have taken place at shallow depth. Such workings can pose a risk of ground instability and may give rise to the emission of mine gases.
171. The application is accompanied by a Phase 1 Environmental Preliminary Risk Assessment & Coal Mining Risk Assessment (January 2023, WSP), which reviews coal mining and geological information, including BGS borehole records and previous reports relating to the wider site area.

172. Section 9.1 of the report concludes that whilst there are no recorded shallow mines beneath the application site, two coal seams are expected to underlie the site at shallow depth, and it advises that unrecorded mine workings with these seams cannot be ruled out. Given the low but potential risk of shallow unrecorded coal mine workings, the report goes on to recommend that rotary boreholes should be drilled in order to confirm the depth and condition of the shallow coal seams beneath the site.
173. The Coal Authority note from the submitted indicative Masterplan drawing that the only part of the application site which actually falls within the defined Development High Risk Area will be the south eastern tip of the band of landscaping running adjacent to the A167, although they accept that only outline consent is being sought with layout a reserved matter.
174. However, in this instance the Coal Authority raises no objection to the proposed development but recommends adding an informative to the decision notice if the application is approved to advise the applicant to contact them if any coal mining feature is unexpectedly encountered during construction works.
175. The application is also supported by a Phase 1 Desk top study which has been reviewed by the Council's Contaminated Land Officer. They have indicated their satisfaction with the findings of the report and the conclusions drawn. The Phase 1 report recommends that further site investigation is required and so a condition to secure this would be required if the application were to be approved.
176. Subject to such a condition, the proposed development is not expected to adversely affect the stability of surrounding land, according with to CDP Policy 32 and NPPF Paragraphs 183.

#### Open Space and Other Infrastructure

177. CDP Policy 26 outlines that new residential developments will be required to make provision for open space to meet the needs of future residents having regard to the standards of open space provision set out in the Open Space Needs Assessment (OSNA). Where it is determined that on-site provision is not appropriate, the Council will require financial contributions to be secured through planning obligations towards the provision of new open space, or the improvement of existing open space elsewhere in the locality. Paragraph 98 of the NPPF highlights that access to a network of high-quality open spaces and opportunities for sport and physical activity is important for the health and well-being of communities. Paragraph 130 requires amongst other things that developments function well and optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space).
178. The Council's Open Space Needs Assessment (OSNA) 2018 is considered the most up to date assessment of need. It identifies the five typologies (allotments; amenity/natural greenspace; parks, sports and recreation grounds; play space (children) and play space (youth)), and sets out requirements for public open

space on a population pro rata basis and whether provision should be either within the site, or through a financial contribution towards offsite provision, in lieu taking into consideration factors such as the scale of the development, existing provision within suitable walking distances and the level of contribution sought.

179. In this case, these 96 units are not being considered in isolation, and the proposal seeks to firm up the green infrastructure proposals across the wider Durham Gate site. These are shown on the submitted drawing (L-1487-GAP-011\_03 – Green Spine – Phase 1-3 Overview) which shows the location of the proposed play areas to serve all the houses on the wider Durham Gate site. It is located to the north of the Livin Homes site which is to the west of Arlington Way. Green Spine 1 includes the provision of two outdoor table tennis tables, timber logs and climbing boulders and associated trail, children's bike area, sculptural mounds, and several benches / seating areas with various planting and either 1.2m or 1.8m high timber post and rail fencing. Green Spine 2 is proposed to incorporate a play mound with slides and climbing features, and features including a bridge, stepping stones, balance beams, and fallen logs. The total area of Green Spines 1 and 2 equates to approximately 12,410m<sup>2</sup>. The wider Durham Gate site already has approval for 349 dwellings which would equate to a requirement to provide 11,517m<sup>2</sup> of amenity space and 383.9m<sup>2</sup> of children's play space on site (a total of 11,900.9m<sup>2</sup>).
180. To the south of this application site the proposed plans indicate the position of a pathway, although it is not easily apparent how this would connect into the proposed open space at Green Spine 2 to the west of Arlington Way as there are severed connections caused by the car parking to serve the parade of shops and 4 residential units at Dalton Wynd which have been built immediately to the north of it. The infrastructure in-situ was installed at the time when business uses were anticipated to the west of Arlington Way, but housing was subsequently permitted under application DM/15/02341/VOC. The lack of connectivity between the Green Spines is likely to deter the future residents of the dwellings proposed in this application from using the facilities in Green Spines 1 and 2, and the existing residents from using those proposed to be introduced at Green Spine 3.
181. The indicative site layout provided demonstrates that large areas of green space (equating to around 3,328m<sup>2</sup>, including 1,768m<sup>2</sup> of space at Green Spine 3) could be provided on site fulfilling the open space/natural green space requirement (the policy requirement is for 3,168m<sup>2</sup>). In addition, there is a requirement to provide 105.5m<sup>2</sup> of non-equipped children's play space on site. This is indicated to be provided within Green Spine 3. Management of the open space is stated to be carried out by a management company or a commuted sum payable to the LPA. A condition could be imposed to secure an appropriate maintenance and management plan.
182. The OSNA identifies a shortfall in the amount of open space falling within the parks and recreation and youth play space typologies in the Mid Durham area in which the application site lies. In terms of allotments, whilst there is a sufficient supply within the surrounding area the closest to the application site



are the Green Lane Allotment located approximately 1.1km away which exceeds the distance of 480m recommended by the OSNA. Based on the current indicative proposed layout for 96 dwellings, it would be undesirable to provide allotments on site due to the position of nearby industrial uses and the proximity of the A167. Therefore, it is considered appropriate and necessary to secure financial contributions of £142,137.60 as part of a Section 106 agreement to improve existing local public open spaces in these typologies to mitigate the impacts of use by additional residents.

183. Subject to a Section 106 agreement and a condition, the proposed development would be capable of providing a sufficient quantity and quality of public open space, according with the requirements of CDP Policy 26 and Part 8 of the NPPF.
184. The application also seeks to agree the details of the landscaping scheme for Green Spine 2. Phase 1 related to the Green Spine running from north to south and was approved under condition 3 of approval DM/15/02911/RM for 131 dwellings under application DRC/16/00175. This application seeks to provide details relating to phase 2, which runs from east to west.
185. The submitted details indicate that Green Spine 2 will include an area of interactive play in the western area including stepping stones, balance beams and fallen logs, and a play mound with slides and climbing features, as well as a community garden and flexible lawn area to the east. The previously indicated outdoor gym equipment has been omitted from Green Spine 2 to create a less prescriptive community garden and flexible lawn area, with fitness facilities instead now proposed to be provided elsewhere in a newly proposed Green Spine 3. This is in light of the land to the south of Green Spine 2 being developed for bungalows to serve the over 55's. Overall, notwithstanding the above concerns regarding the lack of connectivity between the Green Spines, these details relating to Green Spine 2 are on the whole in line with those approved at Green Spine 1 and are considered to be acceptable.

### *Education*

186. NPPF Paragraph 93 recognises the need for planning decisions to ensure an integrated approach when considering the location of new housing and to plan positively for the provision and use of community facilities and local services. It is important that a sufficient choice of school places is available to meet the needs of existing and new communities. Paragraph 95 goes on to advise that it is important that a sufficient choice of school places is available to meet the needs of existing and new communities. In addition, Paragraphs 55-57 explain the circumstances when it is appropriate for planning obligations to be used to mitigate the impacts of the development. This provides policy justification to seek mitigation in respect to essential services, including the provision of education and health facilities, where a deficit would result or be exacerbated by the proposed development.

187. In terms of education infrastructure, the School Places Manager has advised that the proposed development of 96 dwellings would produce 29 pupils of primary school age and 11 pupils of secondary age.
188. In relation to primary school pupils the development is located within the Spennymoor local school place planning area, of which King Street Primary, North Park Primary, Ox Close Primary, Rosa Street Primary, and Tudhoe Colliery primary could serve the development based on a 2 mile safe walking distance.
189. In relation to secondary schools, the development is located within the West Durham local school place planning area. The closest schools to the proposed the development consist of Whitworth Park Academy.
190. Based on the projected rolls of the schools, taking into account the likely implementation of the development, build out rates and other relevant committed development it is anticipated that there will be sufficient space to accommodate the pupils generated by the development in primary and secondary schools and so no further mitigation is required in this instance.

#### *Health Care*

191. The closest GP practices to the site are the Bishops Close Medical Practice and St Andrew's Medical Practice both 2.7km and away from the entrance to the site. The NHS North East and North Cumbria Integrated Care Board have confirmed that this practice falls within the Durham West Primary Care Network which are at full capacity and would require additional space to deliver their services to an increased number of patients. Therefore, they recommend that a financial contribution of £45,885 would be required to provide additional / extended accommodation to mitigate the impact of the development and provide additional capacity for local GP surgeries. This figure is calculated using the NHS Property Service build cost rate of £3,000 per square metre.

#### *Summary*

192. Overall, subject to a Section 106 agreement to secure financial contributions of £151,113.60 to go towards the provision of public open space off site and £45,885 to go towards the provision of additional GP surgery capacity, and a condition to secure details of the management and maintenance of the open place to be provided on site, the proposed development accords with CDP Policies 25 and 26, and Part 8 of the NPPF. This would need to be secured through a S106 agreement.

#### *Affordable, Adaptable, and Accessible Housing*

193. NPPF Paragraph 65 sets out that planning policies and decision should require major residential development to provide at least 10% of the total number of homes to be available for affordable home ownership.

194. In line with this, CDP Policy 15 states that affordable housing will be sought on sites of 10 or more units, for 25% of units in the highest value areas to 10% in the lowest. On sites of 10 or more units, 10% of the homes provided should be for affordable home ownership (starter homes, discount market sale housing and other affordable routes to home ownership). Any contribution above 10% should be provided as affordable housing for rent. As this site is within a medium value area, this development would require a total of 14no. affordable units in the form of 10no. Discounted Market Value homes (including 4no. First Homes), plus 4no. affordable homes for rent.
195. The application did not initially propose to provide any affordable housing, however the applicant has since confirmed in their letter dated the 8<sup>th</sup> of September 2023 their acceptance of a planning obligation to secure the amount and mix of affordable housing required by CDP Policy 15.
196. Therefore, subject to a Section 106 agreement, the application accords with CDP Policy 15 and NPPF Paragraph 65.
197. CDP Policy 15 also states that in order to meet the needs of older people and people with disabilities, on sites of 5 units or more, 66% of dwellings must be built to Building Regulations Standard M4(2) (accessible and adaptable dwellings) standard. This equates to 63no dwellings in this instance. The applicant confirms in their Planning Statement that they will seek to comply with this policy requirement and a condition could be imposed to secure details of a verification report to ensure that at least 66% of the dwellings are built to the M4(2) standard.
198. Policy 15 also sets out that on sites of 10 units or more a minimum of 10% of the total number of dwellings on the site will be required to be of a design and type that will increase the housing options of older people. This equates to 10no. units in this instance. As the application is in outline, details demonstrating compliance with this part of the policy have not been provided but could be secured via a suitably worded condition. The provision of affordable housing on the site would need to be secured by a S106 agreement.

#### Carbon Emissions

199. 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.
200. In addition, criterion o) of Policy 29 requires all major residential development to achieve reductions in CO<sub>2</sub> emissions of 10% below the Dwelling Emission Rate (DER) against the Target Emission Rate (TER) based on current Building Regulations.
201. 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.

202. In the submitted Planning Statement the applicant confirms that measures including the installation of air source heat pumps and solar panels, use of enhanced building fabric and accredited construction detailing, and energy efficient double glazing will be considered.
203. Since the adoption of the CDP, the Building Regulations have been updated and now require all new homes to produce 31% less CO2 emissions than what was previously acceptable in the Part L regulations. There have also been changes to parts F (ventilation) and new regulations in respect of overheating and electric vehicles charging. The development would now need to comply with these new requirements and as this is covered under separate legislation there is no need for a condition to reflect this. However, a condition could be imposed to secure further details regarding the specification and location of the air source heat pumps and solar panels in relation to criterion c) of this policy.
204. Given the above, the proposal is considered to accord with the sustainability aims of CDP Policy 29 and Part 2 of the NPPF.

#### Other Matters

205. The EHO raises no concerns regarding the impact of the proposed development on air quality, subject to a condition to secure details of a Construction and Environmental Management Plan, to include a Dust Management Plan.
206. Layout is a reserved matter and so any future application would need to demonstrate that the relevant separation distances and garden lengths could be achieved, and parking standards met. A condition could be imposed to secure details of Electric Vehicle Charging Points.
207. CDP Policy 29 states that all new residential development will be required to comply with the Nationally Described Space Standards (NDSS). The Planning Statement confirms the house types will be designed to comply with the NDSS and a condition could be imposed to secure this.
208. CDP Policy 27 requires all new residential development to be served by a high speed broadband connection. This will need to be directly accessed from the nearest exchange and threaded through resistant tubing to enable easy access to the cable for future repair, replacement and upgrading. Where it can be demonstrated that this is not appropriate, practical or economically viable, developers will be encouraged to provide appropriate infrastructure to enable future installation. No details of how the dwellings will be served by a high speed broadband connection have been submitted with the application, but it is considered that these details could be secured via a suitably worded condition in this instance.

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## CONCLUSION

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209. NPPF Paragraph 12 states that where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.
210. In this instance, it is concluded that developing 3.74ha of allocated employment land for up to 96 dwellings is unacceptable in principle.
211. The application site forms a large part (3.74ha) of a wider parcel of land (4.9ha) that is allocated for employment uses by CDP Policy 2 and which was previously identified to provide 11,368sqm of office space in the Durham Gate masterplan. The only offices to come forward since the original 2008 approval consist of the Livin offices to the south east of the application site which comprise 0.55ha of land. Therefore, the loss of this land to housing would only result in the potential delivery of up to 1.71ha of employment land compared to the 8.2ha promised in the original planning approval, while all of the houses and other development intended to cross subsidise the employment uses has been delivered.
212. It has not been demonstrated that all employment uses, including light industrial and warehousing, have been seriously explored. Advice from Business Durham indicates that the market for smaller office units remains strong and that there is pent up latent demand for small industrial units, citing numerous recent examples of office and industrial uptake across the County. In addition, the half empty office units at Durham Gate North, a mere 400m to the north of the application site, were let straight away to Learning Curve upon their completion which demonstrates there is demand for office units in the area. Furthermore the land has been identified for housing for a number of years on the applicant's Masterplan contained on their Durham Gate website and advertised for executive housing by display boards at the site and so it is not considered that the site has been actively marketed for employment uses.
213. Therefore, it is considered that the proposed scheme falls far below the requirements of CDP Policy 2 in that the site has not been actively marketed for employment uses for a continuous period of at least two years and as such it has not been demonstrated that there is a lack of demand for employment uses on the site.
214. The site lies within close proximity to noise generating uses to the north in the form of the Boots distribution centre and a Police dog training school. Given the proximity of these noise generating uses, it is not considered that a suitable layout could come forward which would enable the future occupants of the dwellings to benefit from acceptable living conditions without placing unreasonable restrictions upon these existing businesses. The proposed

mitigation measures are considered to be impracticable and incapable of ensuring suitable living conditions for future residents for the lifetime of new dwellings on this site. Therefore, developing this site for residential uses is not considered to be compatible with the noise generating uses to the north and the proposed development is in conflict with CDP Policies 29 and 31 and NPPF Paragraphs 174 and 187.

215. It is also concluded that the proposed development does not achieve high quality design, achieving 4 “reds” and 1 “amber” during the Design Review process when assessed against the Building for Life Standards, contrary to CDP Policy 29. Whilst layout is a reserved matter, it is considered that it would not be possible to overcome concerns over the proximity of the site to noise generating uses to the north and the need for a visually overbearing 4m high acoustic barrier; as well as due to way in which the infrastructure that has already been constructed separates the application site from the wider site, due to the expectation that it would be developed for employment uses.
216. The scheme does not propose sufficient treatment measures for to manage pollutants within surface water runoff from the highway. Consequently, the proposed development would adversely affect water quality by failing to demonstrate that pollutants from surface water runoff would be sufficiently treated before leaving the site, thereby causing a pollution risk downstream. As a result, the proposed development is in conflict with CDP Policy 35 which states that new development will be required to incorporate appropriate water pollution control measures.
217. In terms of the benefits of the proposed development, the weight that could be afforded to a boost to housing supply, should be limited as the Council can demonstrate a 5 year supply of deliverable housing land without the development of this site. Economic benefits delivered through the construction period are considered to fall significantly short of a level capable of outweighing the extent of the harm and policy conflict identified, particularly when taking into account the loss of employment land.
218. The proposed development is considered to be acceptable in terms of Locational Sustainability, Residential Amenity, Highway Safety, Design, Flooding/Drainage, Ecology, Ground Conditions, Open Space and Infrastructure, Affordable Accessible and Adaptable Homes, Carbon Emissions, and Other Matters, and in accordance with Policies 15, 25, 26, 29, 32 and 40, and Parts 5, 8 and 9 of the NPPF in this respect.
219. It is therefore concluded that the application is unacceptable and in conflict with Policies 2, 29, 31, and 35 of the County Durham Plan and Parts 6, 12, 14 and 15 of the National Planning Policy Framework. There are no material considerations which indicate a decision should be otherwise and therefore the application is recommended for approval.

Public Sector Equality Duty

220. 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.
221. In this instance, officers have assessed all relevant factors and do not consider that there are any equality impacts identified.

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## **RECOMMENDATION**

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That the application be **REFUSED** for the following reasons:

1. The proposed use would result in the loss of employment land without robust, documented evidence of this allocated employment site having been actively and unsuccessfully marketed for a range of potential employment uses over a continuous period of 2 years. Therefore, the proposals are therefore contrary to Policy 2 of the County Durham Plan.
2. Due to the proximity of the site to existing industrial and noise generating uses, future occupants of the proposed dwellings would suffer from unacceptable living conditions and substandard levels of residential amenity, whilst it is also likely that unreasonable restrictions would be placed upon adjacent industrial uses in the future. This development therefore conflicts with policies and 31 of the County Durham Plan and Parts 12 and 15 of the National Planning Policy Framework.
3. The proposed development is considered to represent poor design when assessed against the County Durham Plan Building for Life Supplementary Planning Document, contrary to Policy 29 of the County Durham Plan and Part 12 of the National Planning Policy Framework.
4. It has not been demonstrated that the proposals have been designed to incorporate the management of water as an intrinsic part of the overall development, nor that pollutants from surface water runoff would be sufficiently treated prior to leaving the site to avoid causing a pollution risk downstream. Therefore, the proposed development conflicts with Policy 35 of the County Durham Plan and Paragraph 169 of the National Planning Policy Framework.

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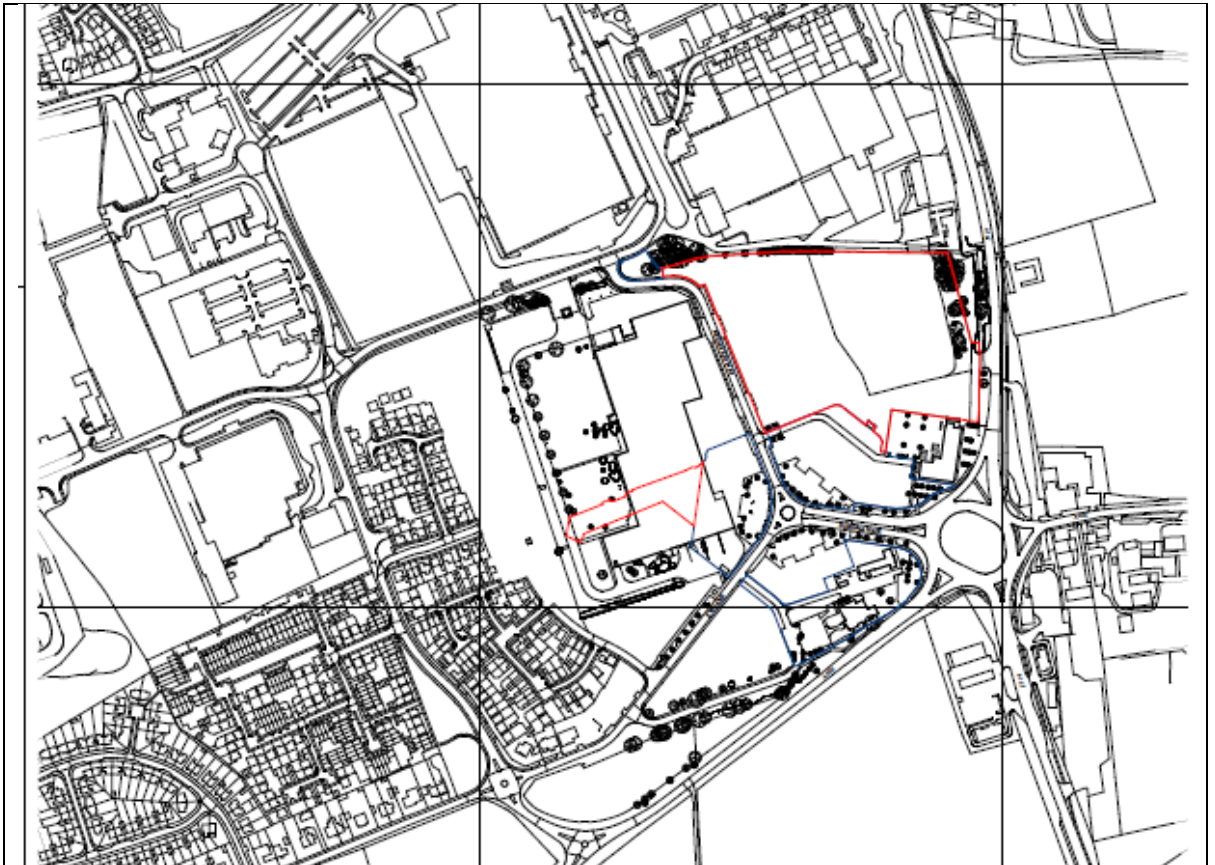
## **BACKGROUND PAPERS**

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Submitted Application Forms, Plans and supporting documents  
National Planning Policy Framework  
The County Durham Plan (CDP)  
County Durham Plan Settlement Study 2018  
County Durham Parking Standards 2023

County Durham Building for Life SPD 2019  
Residential Amenity Standards Supplementary Planning Document 2023  
Statutory consultation responses  
Internal consultation responses  
External consultation responses





<p><b>Planning Services</b></p>	<p>Detailed application for landscaping at Green Spine 2 pursuant to condition 3 of DM/15/02911/RM; and outline application with all matters reserved except for access for up to 96 dwellings at Residential Plot 1 with associated open space at Green Spine 3</p>	
<p>This map is based upon Ordnance Survey material with the permission of Ordnance Survey on behalf of Her Majesty's Stationary Office © Crown copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceeding. Durham County Council Licence No. 100022202 2005</p>	<p>Comments</p>	
	<p>Date: 2<sup>nd</sup> of October 2023</p>	