



Planning Services

COMMITTEE REPORT

APPLICATION DETAILS

Application No:	DM/23/02367/FPA
Full Application Description:	Change of use from industrial unit (B Class) to specialist pet food supplies (Retail) (Class E) (Retrospective)
Name of Applicant:	Mr Jason Blyth
Address:	Unit 40, Enterprise City, Green Lane, Spennymoor Industrial Estate, Spennymoor, DL16 6JF
Electoral Division:	Tudhoe
Case Officer:	Mark Sandford (Planning Officer) Tel: 03000 261 156 Email: mark.sandford@durham.gov.uk

DESCRIPTION OF THE SITE AND PROPOSAL

The Site

1. The application site relates to an existing industrial unit situated within Enterprise City, which is part of the wider Green Lane Industrial Estate area, north of the former Black and Decker site to the east of Spennymoor.
2. Enterprise City is formed from a mix of units of varying sizes and use, but primarily those which fall within 'Class B' of the Town and Country Planning (Use Classes) Order 1987, as amended. The whole site is covered by an Employment Land designation and therefore Policy 2 (Employment Land) of the County Durham Plan (CDP) applies which supports Class B uses in such locations, unless exemptions apply.
3. Unit 40 is one of the smaller units on the site, measuring approx. 90sqm in floorspace split between the ground and first floors, and is surrounded by other industrial units which are used for a variety of commercial and industrial purposes. The business use is primarily contained within the ground floor which

includes several commercial style fridge/freezers and various retail shelving and displays. The first floor contains some domestic style fridge/freezers and appears to be used for informal storage. The site is accessed from Meadowfield Avenue that runs alongside Enterprise City and continues through the industrial estate. The unauthorised retail use of the unit is current and has been on going since February 2023.

The Proposal

4. The application seeks retrospective planning permission for the change of use of the unit from B1/B2/B8 use to retail, which fall within Class E of the Town and Country Planning (Use Classes) Order 1987, as amended, on land allocated for employment uses by CDP Policy 2. The business supplies specialist pet food supplies directly to consumers and not to other retailers and this is an important consideration when determining the nature of the use and into which use class it falls. The application proposes retaining the current opening hours of between 9:00 until 19:00, Monday to Friday, 09:00 to 15:00 Saturday and 09:00 to 14:00 Sunday/Bank Holiday.
5. The application is reported to the Planning Committee at the request of County Councillor Billy McAloon who considers the nature of the use to be such that it could not be readily accommodated within a standard retail/town centre location due to potential nuisance from associated odour, and that as such the application should be considered by the Planning Committee.

RELEVANT PLANNING HISTORY

6. Full application DM/23/01026/FPA for change of use from industrial unit to retail shop was withdrawn at applicant request on the 23rd June 2023.

PLANNING POLICY

National Planning Policy Framework (NPPF):

The following elements are considered relevant to this proposal:

7. 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.
8. 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.

9. 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.
10. NPPF Part 7 Ensuring the Vitality of Town Centres - Planning policies should be positive, promote competitive town centre environments and set out policies for the management and growth of centres over the plan period.
11. 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.
12. 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.
13. NNPPF Part 15 Conserving and enhancing the natural environment - . The Planning System should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, geological conservation interests, recognising the wider benefits of ecosystems, minimising the impacts on biodiversity, preventing both new and existing development from contributing to or being put at unacceptable risk from pollution and land stability and remediating contaminated or other degraded land where appropriate.

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

Local Plan Policy:

County Durham Plan

14. *Policy 02 (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.
15. *Policy 09 (Retail Hierarchy and Town Centre Development)* seeks to protect and enhance the hierarchy of Sub Regional, Large Town, Small Town, District and Local retail centres in the county

16. *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
17. *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, subject to transition period.
18. Provision for signage, adverts, street furniture and public art to be appropriate and sympathetic to users and local setting and not detrimental to visual amenity or public highway safety.
19. *Policy 31 (Amenity and Pollution)* sets out that development will be permitted where it can be demonstrated that there will be no unacceptable impact, either individually or cumulatively, on health, living or working conditions or the natural environment and that they can be integrated effectively with any existing business and community facilities. Development will not be permitted where inappropriate odours, noise, vibration and other sources of pollution cannot be suitably mitigated against, as well as where light pollution is not suitably minimised. Permission will not be granted for sensitive land uses near to potentially polluting development. Similarly, potentially polluting development will not be permitted near sensitive uses unless the effects can be mitigated.

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

Neighbourhood Plan:

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

CONSULTATION AND PUBLICITY RESPONSES

Statutory Consultee Responses:

21. *Spennymoor Town Council* – No response received.

22. *Highways Authority* – (From withdrawn application DM/23/01026/FPA) - no objection

Internal Responses:

23. *Spatial Policy* – Advise that the proposed use would accord with Policy 2, provided a significant majority of the business is in bulk sales focused on trade or business to business customers.
24. Following subsequent information provided during the course of the application – the business does not operate in a mainly business to business/wholesale function, rather selling directly to customers and in essence similar to a pet store, and would therefore be considered to be a main town centre use, as per Annex 2: Glossary of the NPPF. In light of this the proposal is in conflict with Policy 9 and no sequential assessment has been made. The latest town centre survey (Summer 2023) identified 27 units within the defined town centre where a retail outlet of this nature could be located. Given the conflict with Policy 9, the proposal would not meet the criteria of Policy 2, and as the information has been provided showing the unit has not been vacant for a significant period of time it would also not comply with criteria a of Policy 2.
25. *Environmental Health (Nuisance)* – (From withdrawn application DM/23/01026/FPA) – Development falls outside the scope of TANS and no concerns or comments are raised.
26. *Environmental Health (Contamination)* – (From withdrawn application DM/23/01026/FPA) – No contaminated land condition required. Standard informative should be added.

External Responses:

27. *Business Durham* – No response received.

Public Responses:

28. The application has been advertised by way of a site notice and individual notification letters sent to neighbouring properties.
29. No comments/objections have been received save from Cllr McAloon.
30. Cllr McAloon highlighted that the unit has been empty for much of the last 5 years and the business owner has full support of the landowner to continue to trade from Enterprise City. It is the Cllr's opinion that the business would not be suited to a Town Centre location due to the distinctive odours the premises produces. The Cllr went on to say that the facility has operated successfully since it arrived and has had to purchase additional refrigeration units to keep up with demand, as well as there being an opportunity to expand in the current unit. The unit permits customers to collect their bulk supplies directly from the shutters access doors on the front of the building.

Applicants Statement:

31. Our business has operated for months without causing any problems, providing a specialist service to hundreds of dog owners and breeders across County Durham. Many dog owners believe that feeding their dogs with raw food is better for them and can assist with managing the increasing prevalence of allergies and intolerances.
32. Deciding to feed raw food is not easy and we provide comprehensive support to customers, including the ability to bring their dogs into the unit, have them weighed and receive specialist advice. We also sell natural treats -although we would admit that they can be very pungent and not everyone likes the distinctive aroma that goes with them.
33. Services like ours are few and far between, which means our customers don't just buy food for a few days -they buy for a month or more and store in their freezer. If you have several dogs, that's a lot of food. Its both heavy and needs to be kept frozen. Most of our customers bulk buy and we frequently assist customers who come up to our loading bay and we help them put boxes of heavy and frozen food into their boots. Breeders usually come in their vans.
34. It is regrettable that officers can't understand the nature of the business and think we are a normal shop, free to locate on the High Street. We simply aren't. The bulk purchase of food, the need to keep it frozen and the pungent aroma of dried treats all combine to require us to be located on an industrial estate or other remote location such as a converted barn or suchlike. We wouldn't want to locate next door to a butcher or greengrocer in the Town.
35. Over the last 5 years Unit 40 has been empty for more time than it has been occupied and its always been a hard to let unit. On the estate there are already a number of businesses that support those with dogs and we think we compliment those businesses and other operations. It seems bizarre to us that you bring your dog to the estate for care, but not buy food for it here. If our permission is refused, dog owners will be disappointed, but we won't be looking for a site on the High Street - its completely the wrong location for us and our unit goes back to being empty and unproductive for both the Council and the landlord.
36. We hope that Councilors don't let their policies be applied in a bizarre manner that defies both common sense and economic reality. I would invite members to consider two simple questions. What harm would be caused by approving this application and who would benefit from it being refused? I hope members are able to make the right decision.

PLANNING CONSIDERATION AND ASSESSMENT

37. 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, Amenity, Highway Safety and Other Matters.

Principle of Development

38. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF is a material planning consideration. The County Durham Plan (CDP) is the statutory development plan and the starting point for determining applications as set out in the Planning Act and reinforced at 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.
39. 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.
40. NPPF Paragraph 86 requires planning policies and decisions to support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation. Where suitable and viable town centre sites are not available for main town centre uses, allocate appropriate edge of centre sites that are well connected to the town centre. If sufficient edge of centre sites cannot be identified, policies should explain how identified needs can be met in other accessible locations that are well connected to the town centre.
41. CDP Policy 2 states that undeveloped land and plots at the employment sites listed in Table 3 are allocated for B1 (Business), B2 (General Industrial) and B8 (Storage and Distribution) uses unless specifically stated. The application site comprises of a 90sqm unit within the Enterprise City site, part of the wider Green Lane Industrial Estate, which is included as an employment land allocation in Table 3 within Policy 2.
42. The application seeks retrospective planning permission for the change of use of the unit from Classes B1/B2/B8 to a retail use falling within Class E. CDP Policy 2 seeks to protect certain sites throughout the County for employment generating uses and businesses. CDP Policy 2 states that development for non-employment uses on employment allocations (as identified in Table 3) will not be permitted unless: a) 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 b) the proposed use would not compromise the main use of the site for employment uses and would comply

with CDP Policy 9 (Retail Hierarchy and Town Centre Development) where main town centre uses are proposed.

43. A statement was provided within the Planning Statement from the freehold owners/managers of the site, LCP Management Ltd (Ian Briggs), with regard to the rental history of Unit 40. Information was provided that the unit has been difficult to rent in the past, and this resulted in it being unoccupied between 2016 and 2020. In November 2020 it was successfully leased and remained with that tenant until February 2022, at which point the applicant began their occupation. As the unit has been occupied for the last 3 years, it does not meet the exemption given in criteria a) of CDP Policy 2.
44. In relation to criteria b) of CDP Policy 2 this is linked to the requirement of CDP Policy 9 which seeks to protect and enhance retail centres in the County by ensuring town centre uses, as identified by the NPPF, are contained within town centre locations. Spennymoor is identified within CDP Policy 9 as a Large Town Centre. The site is located approximately 1.85km from the Spennymoor Town Centre and as such is not within, or well related to a defined centre.
45. Where a town centre use is not contained within the defined centre CDP Policy 9 requires that a sequential assessment be undertaken in support of the application to demonstrate that there are no appropriate units/premises that could be occupied for that use within the town centre. It is noted that no sequential test has been submitted as part of this application.
46. The latest town centre survey undertaken in Summer 2023 identified 27 vacant and available units within the town centre, including Festival Walk, Cheapside and High Street that could accommodate the use proposed to be retained at Enterprise City. Locating a business of this type within a town centre would increase diversity and enhance its attractiveness as a commercial and retail destination. Given that no sequential test has been submitted, and there are readily identifiable vacant units available in the nearest designated centre, the proposal does not comply with CDP Policy 9, and as consequence also fails to meet the exemption provided in b) of CDP Policy 2.
47. Notwithstanding the above, the applicant has sought to demonstrate that the nature of the use is such that it produces odours which mean that it is unsuitable for a normal retail/town centre location given this would impact on adjacent uses and visitors to the centre.
48. As the use of the unit has already commenced, the impact of the use in this regard can more easily be assessed. It is noteworthy that the majority of the produce sold is in cold storage, either refrigerators or freezers, which naturally suppresses odours, and much of it is contained in sealed airtight packaging, (to prevent soiling), which further minimises the escape of odour. Some other items are however stored on open retail shelving and have lesser, or no packaging.
49. The case officer visited the premises on three occasions, including a visit to the inside of the shop. During all visits the shop entrance was closed and appears

to be operated by an automatic closing device, a method common with many retail outlets.

50. No odour was detectable outside of the premises during these visits, either on the nearby footpath, or immediately outside of the unit's entrance. Whilst there was an odour within the shop, it was not especially offensive or pungent and typical of a regular pet shop.
51. In addition, the applicant has advised that a town centre location would not be suitable given the nature of the use in that it requires specialist equipment in order to function which only this unit/type of premises offers, although no specifics details have been provided in this regard.
52. The only observable equipment within the unit during the officer's visit were commercial style fridge/freezers and a standard till area. There appears no obvious reason why this equipment could not be accommodated within a more traditional town centre unit and were not of an industrial style or scale.
53. The application has indicated that the use represents a 'wholesale' operation and selling 'bulk' goods. Whilst a wholesaler could be potentially considered a B8 use, and as such would be compliant with the aims and objectives of CDP Policy 2, no evidence has been presented that the business operates in such a way, i.e. supplying to other retailers in bulk, or engaged in business to business transactions, where the product is sold to other providers in substantial amounts, for subsequent sale to customers. The information supplied within the application and the sales information available publicly, suggests that the business supplies direct to the end consumers, and whilst some customers may choose to buy comparatively large amounts, this is not considered to amount to a wholesale use and falls within Class E.
54. In summary, the application site is located within a protected employment area as defined by CDP Policy 2 of the CDP which only supports new development within these areas falling within Class B of the Town and Country Planning (Use Classes) Order 1987, as amended. As the use proposed to be retained falls within Class E (which includes retail) criteria a) and b) of CDP Policy 2 are also relevant. The unit has not been vacant and unsuccessfully marketed for the 2 years contrary to criteria a) of CDP Policy 2. In addition, the development does not comply with the requirements of CDP Policy 9 in that it is a town centre use located outside of a town centre location, with no evidence presented as to why it would not be feasible for the business to occupy a unit within the defined town centre. Therefore, it is considered that the development has no support or exemption from the requirements of CDP Policy 2 and consequently, the principle of development is unacceptable.

Highway Safety and Sustainability

55. CDP Policy 21 requires all development 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. 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.

56. 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.
57. Enterprise City is an out of town employment site where the majority of persons located there are attending a place of work, as opposed to a retail location where the majority of people are there as customers, as such there are limited public transport options. However, there are two bus stops within short walking distance of the site which provide a single, but regular service to Spennymoor town centre and the wider area (7 Sapphire).
58. A 50+/- space public car park is provided near the entrance of Enterprise City, which is a short walk from the application site.
59. The Highway Authority has offered no objection, and given the above, it is considered that the development complies with CDP Policy 21 in that it would not result in any unacceptable highway safety impact.

Compatibility with Nearby Uses

60. 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.
61. 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.
62. 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.

63. The nature of the business is not considered to be noise generating and whilst customers may attend the premises with their pets, and this may produce some level of noise, it is considered that the industrial/commercial location is such that it could be satisfactorily accommodated. In addition, it is not considered that the presence of industrial processing and the potential noise associated with this, is likely to have an adverse impact upon the retail use. In addition, it is noted that the Council's Environmental Health Section raised no objection to the former application and there has been no alterations to the current use since then, and as there have been no objections to the development from any of the surrounding units, it is considered the business is not harmful to amenity and is in compliance with CDP Policy 31.

Other Matters

64. The business has installed signage to the front of the unit in the form of a fairly small, diamond shaped fascia sign with the business name (JKB Raws) with dogs paw print emblem in gold and black. This requires separate consent for the display of advertisements and as such is currently unauthorised. It has not been considered appropriate to seek its removal until the use of the unit has been determined to be acceptable or not.

Public Sector Equality Duty

65. 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.
66. In this instance, officers have assessed all relevant factors and do not consider that there are any equality impacts identified.

CONCLUSION

67. 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.
68. For the reasons detailed in this report it is considered that the retention of the proposed use is unacceptable in principle in that it would conflict with Policies 2 and 9 of the County Durham Plan and Parts 6 and 7 of the National Planning Policy Framework.

RECOMMENDATION

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

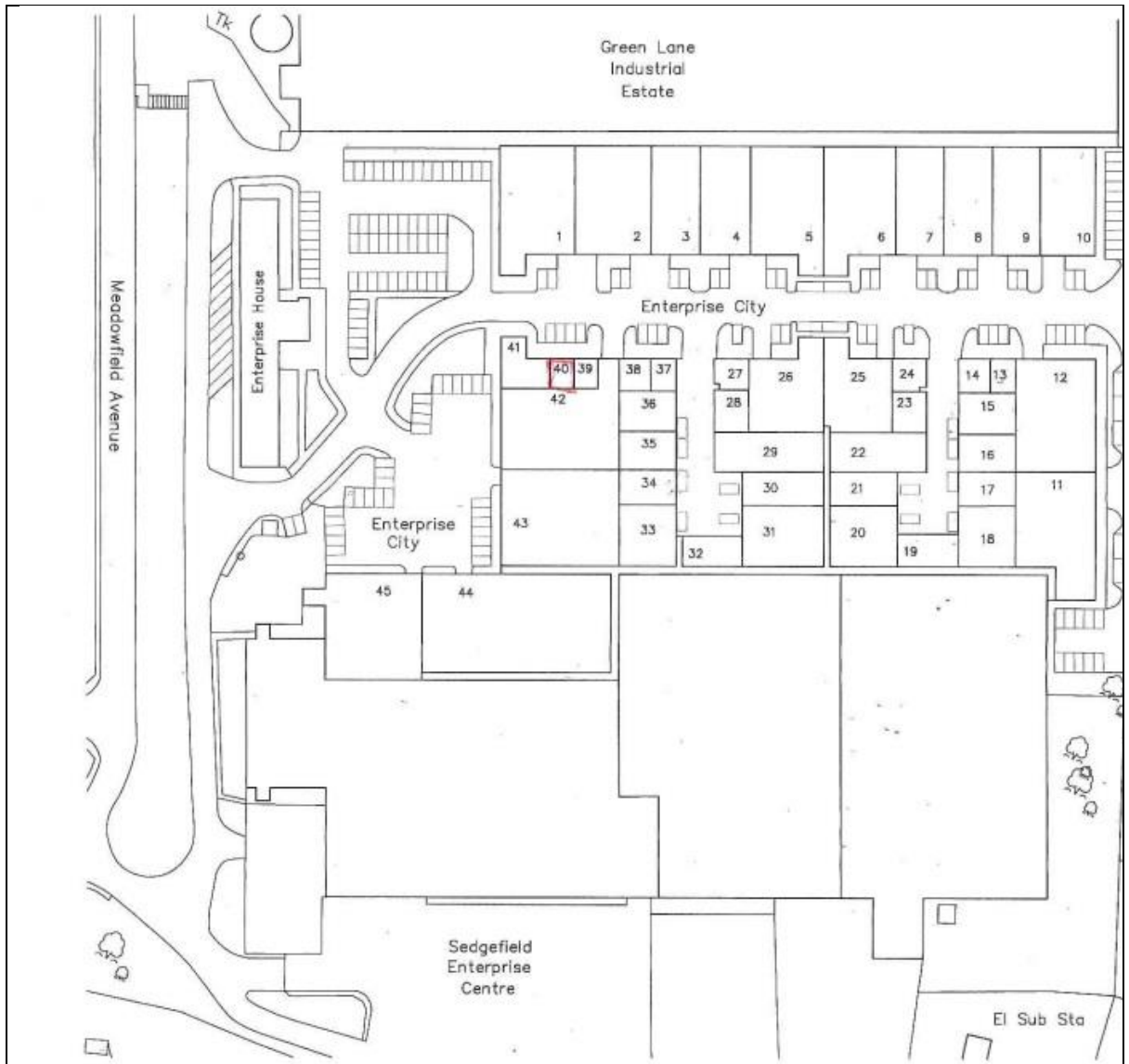
69. The development would compromise the main use of the site for employment uses without robust, documented evidence of the property having been actively and unsuccessfully marketed for a range of potential employment uses over a continuous period of 2 years having been provided. Therefore, the proposal is contrary to Policy 2 of the County Durham Plan.
70. The developments use is considered to be a town centre use located outside of a designated centre and no sequential assessment has been provided which demonstrates that the use could not be accommodated in a town centre premises. As such, the proposal is contrary to Policy 9 and therefore Policy 2 also, of the County Durham Plan.

STATEMENT OF PROACTIVE ENGAGEMENT

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

BACKGROUND PAPERS

Submitted Application Forms, Plans and supporting documents
National Planning Policy Framework
The County Durham Plan (CDP) 2020
County Durham Town Survey 2023
County Durham Parking and Accessibility Standards 2023
Statutory consultation responses
Internal consultation responses



<p>Planning Services</p>	<p>Change of use from industrial unit (B Class) to specialist pet food supplies (Retail) (Class E) (Retrospective)</p>	
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