

COMMITTEE REPORT

APPLICATION DETAILS

APPLICATION NO:	DM/23/02915/FPA
FULL APPLICATION DESCRIPTION:	Change of use of public house (Use Class Sui Generis) to retail (Use Class E), including demolition of existing lean-to canopy and rear patio, installation of a new compound, facade treatment alterations car park alterations, access alterations and landscaping works
NAME OF APPLICANT:	Mr Kavitha Thirumalai
ADDRESS:	The Beehive, Salters Lane, Fishburn, TS21 4AS
ELECTORAL DIVISION:	Sedgefield
CASE OFFICER:	Mark Sandford Planning Officer 03000 261156 mark.sandford@durham.gov.uk

DESCRIPTION OF THE SITE AND PROPOSALS

The Site

1. The application site relates to a vacant public house which is sited centrally within Fishburn. The building is not within any landscape or protected use designations and is located in a mixed commercial/service and residential area. Fishburn Primary school is located to the rear/east with its car parks abutting the site. The crossroads of Front Street/Butterwick Road and the B1278 are to the south and there is a small collection of retail/service shops on the south-west corner of the crossroads. The residential properties of 'Glebe Close' are located on the opposite side of the B1278 to the west and 'Park View' to the north.
2. A bus stop is located on the opposite side of the B1278 to this site, a pedestrian crossing to the south before the crossroads and the 'East View' access road which supplies the school is to the north. Vehicular access to the site would be from the existing access to the north of the building onto the B1278. The site is surrounded by a 1.5-2m mixed brick and stone wall. The site slopes downwards from north to south.

The Proposal

3. The application seeks full planning permission to change the use of the public house to Use Class E Retail unit including demolition of existing off-shoots, installation of a new plant compound, fascia and other fenestration alterations as well as alterations to the car park to the side/rear and landscaping works.
4. The application proposes opening hours of 06:00 until 23:00, Monday to Sunday. It is proposed to provide a variety of grocery products, frozen and fresh foods. Access arrangements would be altered from the doorway in the front of the property, to one in

the north side, further external alterations are proposed in the removal of a lean-to extension on the south side of the building and replacement with a plant compound, removal of a patio area to the rear to make space for additional parking and an internal refit to create a retail space and store rooms at ground floor and a management suite at first floor. The proposal would create 4no. full time jobs and 8no. part time jobs.

5. The application is reported to the Planning Committee at the request of Fishburn Parish Council who considered issues relating to highway safety and harm to the fabric of a historic building to be such that the application should be determined by the Planning Committee.

PLANNING HISTORY

6. The following summarises planning history at the site:
7. DM/22/03291/FPA – Erection of six dwellings (Use Class C3), formation of vehicular access, car and cycle parking and other associated and ancillary development - Withdrawn

PLANNING POLICY

NATIONAL POLICY

8. A revised National Planning Policy Framework (NPPF) was published in December 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.
9. In accordance with Paragraph 219 of the National Planning Policy Framework, existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with the Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given). The relevance of this issue is discussed, where appropriate, in the assessment section of the report. The following elements of the NPPF are considered relevant to this proposal.
10. *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.
11. *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.

12. *NPPF Part 6 - Building a Strong, Competitive Economy.* The Government is committed to ensuring the planning system does everything it can to support sustainable economic growth. Planning should operate to encourage and not act as an impediment to sustainable growth. Therefore, significant weight should be placed on the need to support economic growth through the planning system.
13. *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.
14. *NPPF Part 11 – Making effective use of land.* Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously-developed or 'brownfield' land.
15. *NPPF Part 12 – Achieving well-designed places* The Government attaches great importance to the design of the built environment, with good design a key aspect of sustainable development, indivisible from good planning.
16. *NPPF Part 15 - Conserving and Enhancing the Natural Environment -* Conserving and enhancing the natural environment. The Planning System should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, geological conservation interests, recognising the wider benefits of ecosystems, minimising the impacts on biodiversity, preventing both new and existing development from contributing to or being put at unacceptable risk from pollution and land stability and remediating contaminated or other degraded land where appropriate.
17. *NPPF Part 16 -* Conserving and enhancing the historic environment. Heritage assets range from sites and *buildings* of local historic value to those of the highest significance, such as World Heritage Sites which are internationally recognised to be of Outstanding Universal Value. These assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations.

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

18. The Government has consolidated a number of planning practice guidance notes, circulars and other guidance documents into a single Planning Practice Guidance Suite. This document provides planning guidance on a wide range of matters. Of particular relevance to this application is the practice guidance with regards to; determining a planning application; healthy and safe communities; noise and use of planning conditions.

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

LOCAL PLAN POLICY:

The County Durham Plan

19. *Policy 6 – Development on Unallocated Sites.* Supports development on sites not allocated in the Plan or Neighbourhood Plan, but which are either within the built up

area or outside the built up area but well related to a settlement will be permitted provided it: is compatible with use on adjacent land; does not result in coalescence with neighbouring settlements; does not result in loss of land of recreational, ecological, or heritage value; is appropriate in scale, design etc to character of the settlement; it is not prejudicial to highway safety; provides access to sustainable modes of transport; retains the settlement's valued facilities; considers climate change implications; makes use of previously developed land and reflects priorities for urban regeneration.

20. *Policy 9 (Retail Hierarchy and Town Centre Development)* seeks to protect and enhance the hierarchy of Sub Regional, Large Town, Small Town, District and Local retail centres in the county.
21. *Policy 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.
22. *Policy 29 – Sustainable Design.* Requires all development proposals to achieve well designed buildings and places having regard to SPD advice and sets out detailed criteria which sets out that where relevant development is required to meet including; making a positive contribution to an areas character and identity; provide adaptable buildings; minimise greenhouse gas emissions and use of non renewable resources; providing high standards of amenity and privacy; contributing to healthy neighbourhoods; providing suitable landscape proposals; provide convenient access for all users; adhere to the Nationally Described Space Standards.
23. *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.
24. *Policy 40 (Trees, Woodlands and Hedges)* states that proposals for new development will not be permitted that would result in the loss of, or damage to, trees, hedges or woodland of high landscape, amenity or biodiversity value unless the benefits of the scheme clearly outweigh the harm. Proposals for new development will be expected to retain existing trees and hedges or provide suitable replacement planting. The loss or deterioration of ancient woodland will require wholly exceptional reasons and appropriate compensation.
25. *Policy 41 (Biodiversity and Geodiversity)* restricts development that would result in significant harm to biodiversity or geodiversity and cannot be mitigated or compensated. The retention and enhancement of existing biodiversity assets and features is required as are biodiversity net gains. Proposals must protect geological features, have regard to Geodiversity Action Plans and the Durham Geodiversity Audit

and where appropriate promote public access, appreciation and interpretation of geodiversity.

Development proposals where the primary objective is to conserve or enhance biodiversity or geodiversity will be permitted if they comply with other local plan policy. Development proposals which are likely to result in the loss or deterioration of irreplaceable habitats will not be permitted unless there are wholly exceptional reasons and a suitable compensation strategy exists.

26. *Policy 42 (Internationally Designated Sites)* states that development that has the potential to have an effect on internationally designated sites, either individually or in combination with other plans or projects, will need to be screened in the first instance to determine whether significant effects on the site are likely and, if so, will be subject to an Appropriate Assessment.

Development will be refused where it cannot be ascertained, following Appropriate Assessment, that there would be no adverse effects on the integrity of the site, unless the proposal is able to pass the further statutory tests of 'no alternatives' and 'imperative reasons of overriding public interest' as set out in Regulation 64 of the Conservation of Habitats and Species Regulations 2017.

Where development proposals would be likely to lead to an increase in recreational pressure upon internationally designated sites, a Habitats Regulations screening assessment and, where necessary, a full Appropriate Assessment will need to be undertaken to demonstrate that a proposal will not adversely affect the integrity of the site. In determining whether a plan or project will have an adverse effect on the integrity of a site, the implementation of identified strategic measures to counteract effects, can be considered. Land identified and/or managed as part of any mitigation or compensation measures should be maintained in perpetuity.

27. *Policy 44 (Historic Environment)* seeks to ensure that developments should contribute positively to the built and historic environment and seek opportunities to enhance and, where appropriate, better reveal the significance and understanding of heritage assets. The policy advises on when harm or total loss of the significance of heritage assets can be accepted and the circumstances/levels of public benefit which must apply in those instances.
28. *County Durham Parking and Accessibility Standards (2023)* This document sets out the Council's approach to vehicle and cycle parking provision on new development and extensions to existing development which includes both residential and non-residential.

NEIGHBOURHOOD PLAN:

29. No neighbourhood plan is present in this location.

CONSULTATION AND PUBLICITY RESPONSES

STATUTORY RESPONSES:

30. Sedgefield Town Council – Objects to the application. Highway safety concerns as the nearby junction is already busy and the proposal would generate further significant volumes of traffic, thereby increasing the chances of an accident.

31. Highways Engineer – No objection, detailed comments contained within the main body of the report under the Highway Safety section.
32. *Fishburn Parish Council* – Objects to the application. That area of the village is a bottleneck, particularly at school (drop off and pick up) times and there have been many near-misses with cars using the East View road. The B1278 through the village has no traffic calming measures and cars speed through the village. Safety improvements are required so that vehicles could safely use the retail premises. Cars speeding through the village have caused several accidents and near-misses at the nearby crossroads and zebra crossing. Converting the building, which is of historical significance would significantly alter the façade of the building.

INTERNAL CONSULTEE RESPONSES:

33. *Environment Health (Nuisance Action)* – No objection. Hours of opening should be restricted to those stated on the application form.
34. *Environment, Health (Contaminated Land)* – With reference to the planning application, I would confirm that I have assessed the historical maps and available information with respect to land contamination. I have no adverse comments to make. There is no requirement for a contaminated land condition.
35. *Spatial Policy* – Advises on relevant policies within the County Durham Plan. They further comment that the proposal would see a town centre use come forward outside of the designated local centre location and would therefore be subject to a sequential assessment, being edge of centre. Assessment of the submitted sequential assessment was undertaken and found to be acceptable. Further comment provided in the report below. The other impacts of Policy 6 are to be further assessed by other consultees.

PUBLIC RESPONSES:

36. The application has been advertised by way of a site notice, press notice and individual notification letters to neighbouring properties.
37. 30 no. letters of objection as well as a petition with approximately 250 signatures have been received – the petition stating that the Community of Fishburn Small Village object to this over the concerns of child safety, parking issues, accidents and other small businesses etc. Summary of remaining objections as follows;
 - There are already two other similar shops in the village and further offerings in Sedgefield a short drive away. The village is not big enough to accommodate a further shop and the proposal could harm the business of other established shops.
 - The proposal would increase traffic to an already busy area, especially at school pick up and drop off times. There have been several accidents and near-misses here. This is exacerbated by being close to a primary school.
 - Fishburn Primary school caters for over 150 families who attend the site on a daily basis which causes traffic concern.
 - There is no traffic system in place on the main road and there is no crossing guard manning the crossing either in the morning or afternoon.
 - Parking around the area is heavily over-subscribed and the proposal would add to this.
 - It is believed that there is a covenant on the building which requires it to be retained as a pub.

- It is believed that the pub has Listed status and any alterations to the façade would not be possible.
- The building should be retained as a pub or restaurant as that is what the village needs.
- The litter around the village is already an issue and a further shop will add to this.
- Dust and debris caused during the construction could be harmful to the children at the school.
- Several complaints regarding lack of notification.

The above is not intended to repeat every point made and represents a summary of the comments received on this application. The full written text is available for inspection on the application file which can be viewed at: <https://publicaccess.durham.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=QU6BIIGD0BK00>

APPLICANTS STATEMENT:

This Statement has been prepared to support the application at Beehive Public House for the Change of Use from Public House (Use Class Sui Generis) to Retail (Use Class E) and associated amendments to the building and car park.

Following the submission of the application in September 2023, we have been working closely with Durham County Council to bring forward a proposal which accords with local planning policies and which will provide a positive contribution to the village of Fishburn.

The Spatial Policy department has confirmed that the proposal is acceptable in principle, as it meets the requirements of the sequential site assessment, and given the small scale nature of the proposal, it falls below the retail impact threshold for Fishburn Local Centre. As such, it is concluded that the change of use is acceptable in retail planning policy terms and that it will not harm the vitality or viability of Fishburn Local Centre.

Following feedback from the Design and Conservation Officer, we have made amendments to the plans to maintain the front façade of the building, implement a stallriser to the front façade and relocate the entrance to the northern elevation. The Officer has confirmed that the revised proposals are much improved and could have a positive impact on the historical significance of the building. As such, the proposal is considered to conserve and enhance the local heritage asset.

Finally, Durham County Council's Highways Department have requested a secure cycle compound to be installed within the site (which is now included in the latest plans) and for no waiting/no loading restrictions to be provided in front of the building between the zebra crossing and the East View road to the north. The applicant is happy to work with the Highways Department to provide these measures to ensure the proposed development does not give rise to any road safety issues. The number of car parking spaces proposed are above the minimum requirements for a retail development, thus minimising any chance of overflow parking on the local highway.

There are also a number of clear tangible benefits of the proposal which should be noted:

- The proposal will bring a disused building back into beneficial use, which represents sustainable development in its truest sense;
- The scheme represents a significant investment in Fishburn by the applicant;
- 12 new job positions will be created once the site is up and running, the majority of which will be staffed by local people;
- The site will provide a local shopping facility in an accessible location, which will allow residents living nearby to shop locally and sustainably;

- It will improve the retail offer within the settlement, helping to keep prices competitive to the benefit of residents; and
- It will ensure the longevity and conservation of a local heritage asset.

In conclusion, we are strongly of the view that the proposal should be supported. The amendments made through the planning process demonstrate the applicant's willingness to work with the Council and stakeholders to mitigate any potential impacts from the development.

On this basis, we respectfully request that the application is approved.

PLANNING CONSIDERATIONS AND ASSESSMENT

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) forms the statutory development plan and the starting point for determining applications as set out in the Planning Act and reinforced at Paragraph 12 of the NPPF. The CDP was adopted in October 2020 and provides the policy framework for the County up until 2035.
39. 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 in this instance relate to the principle of the development, impact upon a Non-Designated Heritage Asset, impact on amenity, highway safety, ecology and arboriculture.

The Principle of the Development

40. CDP Policy 6 (Development on Unallocated Sites) supports development on sites not allocated in the Plan or Neighbourhood Plan, but which are either within the built-up area or outside the built up area but well related to a settlement will be permitted provided it:
- a. is compatible with, and is not prejudicial to, any existing, allocated or permitted use of adjacent land;
 - b. does not contribute to coalescence with neighbouring settlements, would not result in ribbon development, or inappropriate backland development;
 - c. does not result in the loss of open land that has recreational, ecological or heritage value, or contributes to the character of the locality which cannot be adequately mitigated or compensated for;
 - d. is appropriate in terms of scale, design, layout, and location to the character, function, form and setting of, the settlement;
 - e. will not be prejudicial to highway safety or have a severe residual cumulative impact on network capacity;
 - f. has good access by sustainable modes of transport to relevant services and facilities and reflects the size of the settlement and the level of service provision within that settlement;
 - g. does not result in the loss of a settlement's or neighbourhood's valued facilities services unless it has been demonstrated that they are no longer viable; or
 - h. minimises vulnerability and provides resilience to impacts arising from climate change, including but not limited to, flooding;
 - i. where relevant, makes as much use as possible of previously developed (brownfield) land; and

j. where appropriate, it reflects priorities for urban regeneration.

41. The property is located centrally within the Fishburn settlement and it is considered criterion a), d), e), f), g), i) and j) of CDP Policy 6 are the most relevant. The building is not listed but is considered to be a Non-designated Heritage Asset (NDHA) and as such alterations must be sympathetic to the building. The site is not within any landscape designations and none of the trees nearby are covered by Tree Preservation Orders.
42. The proposal would see a former public house changed to a Use Class E retail unit, creating 152sqm of Net Sales Area, and a total gross internal area of 223sqm. The property is reasonably well separated from nearby neighbouring properties and the change from pub to retail premises would be considered compatible with the surrounding area.
43. Taking into consideration the NDHA nature of the property, the proposal has gone through several design iterations with the final version acceptably retaining the character of the premises, specifically the unique street side windows which provide the most architectural and aesthetic merit. The property is not being extended to facilitate the change of use and in fact some of the redundant structures which are obvious modern additions are being removed. Further discussion in relation to criterion d) of CDP Policy 6 is provided below, but in general, the design approach is considered consistent with the requirements of this part of the policy.
44. The proposal would use the existing vehicular access point to the north side of the building which leads into an existing car park. The proposal would see an opening up of the rear of the site and additional car parking spaces provided for patrons, as well as a cycle storage area. This would be in line with requirements of criterion e) of CDP Policy 6, although further discussion on highway safety and access is provided in relevant section below. In terms of criterion f) of CDP Policy 6, there are several bus stops within 100m of the site which provide regular services to Sedgfield, Durham and beyond, so the site is considered to have good access to sustainable modes of transportation.
45. The former Beehive public house has been closed for a significant period and a Viability Report has been submitted which concludes it would not be financially viable to continue the use of the premises as a public house. The addition of a Use Class E retail/convenience unit could be considered a substitution of one service facility for another. In this regard, it is not considered that there is any conflict with CDP Policy 6 g).
46. The proposal would bring back into use an otherwise vacant commercial unit which has started to show signs of disrepair through lack of maintenance and vandalism, and as such would see the reuse of a brownfield site and the preservation of a NDHA, in line with urban regeneration aims as outlined in criterion i) and j) of CDP Policy 6.
47. CDP Policy 9 (Retail Hierarchy and Town Centre Development) seeks to protect and enhance the hierarchy of Sub Regional, Large Town, Small Town, District and Local retail centres in the county. The site is located outside of the defined local centre for Fishburn as set out on the CDP Policies Map. It constitutes an 'edge of centre' location. CDP Policy 9 sets out a retail hierarchy, with Fishburn recognised within the lowest tier (local centres). The CDP seeks to protect and enhance these retail centres and supports new town centre development across all of the county's centres that will improve choice and bring about regeneration and environmental improvements. The proposed retail unit/use are a main town centre uses under the Annex 2: Glossary of the National Planning Policy Framework (NPPF) (December 2023). CDP Policy 9

requires proposals for town centre uses not within a defined centre to provide a sequential assessment (this reflects advice within the NPPF, paragraphs 91 and 92), and also (depending on the scale of floorspace) an impact assessment.

48. As part of this planning application, the applicant has set out in Section 5 of the 'Planning and Retail Statement' the justification and rationale behind the proposal, in terms of an assessment of sites/premises within the local centre (sequential assessment). There are no in centre premises identified as being available/suitable, with only one edge of centre premises identified. The proposal only includes 223sqm (gross) of retail floorspace and this is part of the wider proposal to productively reuse this building. Given the small scale nature of the local centre, together with residential uses occupying a significant number of the premises within it, the findings in respect of the sequential assessment are acceptable.
49. Para 94 of the NPPF advises that retail schemes which are outside of town centres and not in accordance with an up-to-date Local Plan should be accompanied by an impact assessment if the development is over a proportionate, locally set floorspace threshold (if there is no locally set threshold, the default threshold is 2,500sqm). CDP Policy 9 specifies that proposals for retail in excess of 1,500 sqm (gross) convenience floorspace or 1,000 sqm (gross) comparison floorspace, proposed outside of a defined centre, and that could impact on a Sub Regional, Large Town or District Centre, will be required to provide an impact assessment in accordance with the guidance within the NPPF and the PPG. Where there could be an impact on a Small Town or Local Centre the threshold reduces to 400 sqm (gross). Based on the floorspace of this scheme (223sqm GIA / 152sqm NSA) the scheme falls below this threshold for a local centre. An assessment of the impact of this proposal is therefore not required.
50. Numerous objections to the application were received from members of the public with comments made that Fishburn already has two convenience type premises, as well as there being similar businesses a short drive away in Sedgefield. It is noted there is a 'Co-op Food' shop on Butterwick Road 150m to the south-east and a 'Go-Local' shop on the corner of the B1278 and Moorside Crescent 200m to the south, however, the CDP and NPPF do not specify a number, or otherwise seek to specifically limit the number, of retail/convenience units within a given area and note the importance of providing a range of uses and services to offer the local population, which includes traditional retail such as this.
51. Given the above, and as there is no policy limiting factor in terms of numbers of retail properties offering similar goods, it is considered, subject to the assessment under other relevant CDP Policies, that the principal of the development is acceptable and in compliance with Policies 6 and 9 of the County Durham Plan.

Impact on the Character and Appearance of the NDHA and Surrounding Area

52. CDP 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.

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.

53. The building is not listed, but is considered to be a non-designated heritage asset (NDHA). CDP Policy 44 (Historic Environment) requires development to sustain the significance of designated and non-designated heritage assets, including any contribution made by their setting. Development proposals should contribute positively to the built and historic environment and should seek opportunities to enhance and, where appropriate, better reveal the significance and understanding of heritage assets whilst improving access where appropriate. Para 209 of the NPPF requires the LPA to take into account the effect of proposals on the significance of NDHAs and provide a balanced judgement of the scale of any harm or loss which may occur.
54. The property's significance as a NDHA is derived from its architectural features on the front elevation and its social significance from its use as a pub. There are no listed structures in its vicinity and it is not within a conservation area. The initial proposal sought to entirely sanitise the front elevation of the property, removing all features including the two large and unique arched windows, whilst installing full height glazed sliding doors in the front elevation. An initial redesign saw one of the windows retained while the other was removed and the sliding glazed doors inserted in its place.
55. As one of the few buildings of architectural merit within Fishburn and in a prominent location, the Design team considered that the proposals initial design to be harmful to the architectural significance of the building by removing the well-proportioned frontage, panelled stallrisers and the distinctive arched headed panels above the windows. The applicant was encouraged to incorporate design solutions that allow the arched window pattern to be retained by placing the entrance door on the north side of the building to allow the architectural features of the NDHA to remain legible.
56. The proposal was amended in line with the Design teams recommendations and further refined by carrying a matching stallriser across the defunct front doorway which was proposed to be a full height window, as well as reducing the thickness of a canopy over the new entrance proposed to the north side elevation.
57. Objections have been received with concerns relating to the impact of the proposal on character and appearance of the building, including from the Town Council, however it is the LPA's opinion that these have been addressed through the successive design alterations as detailed above and as such those objections are no longer supported. As the property is not listed, the retention of internal fixtures could not be controlled by the LPA and no request of a listing of them has been requested by the Design team.
58. The proposal also includes the demolition of a lean-to canopy to the south side of the building and a raised patio area to the rear. Neither of these elements carry any architectural, historical or visual interest and their loss is not considered to be harmful to the character or appearance of the building.
59. Whilst it is recognised that the retail unit would require some form of signage should planning permission for the change of use be granted, a satisfactory arrangement could be achieved, and in any event, this would be subject to a separate application for the display of Advertisements.
60. Overall it is considered the proposal would preserve the special interest of the NDHA, bringing it back into use as well as retaining the main architectural interest of the building, and therefore there would be no harm caused in terms of the character and appearance of the property, or the surrounding area, and thereby compliance with Policies 6 and 29 of the County Durham Plan as well as the NPPF would be achieved.

Impacts on Amenity and Pollution

61. CDP Policy 31 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.
62. NPPF Part 15 states that decisions should ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development.
63. The closest residential properties to the proposed development are located on the opposite side of the B1278 in 'Glebe Close' at approx. 25m from the frontage of the property, and no. 1 Park View to the north approx. 32m from the building. Although it is acknowledged that the public house use of the property has been ceased for some time, it is relevant that such a use would have been generally considered significantly more noise generating than a retail use.
64. No objections were received with regard to potential amenity harm and the Council's Environmental Health (Nuisance Action) team raised no objections to the proposal. They have assessed the application, including the proposed opening hours (06:00 to 23:00 Mon-Sun), and considered the scale of the development and subsequent construction phase to be relatively brief, however they did recommend a condition to control those hours, which is considered appropriate and would address the objection concerns in regard to the construction works.
65. A comment was received that the proposed use would add to an existing littering issue in the locality. It was noted during the site visit that there is not a litter bin at the property or nearby. It is considered reasonable that a shop which would likely provide readily consumable goods makes such a provision and therefore it is considered appropriate to include a condition to achieve this.
66. Overall it is considered the proposal would not be harmful to amenity and would comply with the requirements of Policy 31 of the County Durham Plan.

Highways Safety and Access

67. CDP 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 (SPD).
68. The NPPF sets out at Paragraph 110 that safe and suitable access should be achieved for all people. In addition, Paragraph 111 of the NPPF states that development should only be prevented or refused on highways grounds if there would be an unacceptable

impact on highway safety, or the residual cumulative impacts on the road network would be severe.

69. The application has been called to committee with concerns raised regarding traffic generation, highway safety and the existing parking issues of the area in relation to the nearby school.
70. Numerous objections were received, including from the Parish and Town Councils and nearby Fishburn Primary School, with concerns raised over the proposals potential to exacerbate existing parking problems around the area at school drop off and pick up times. Anecdotal evidence was provided that there have been several accidents and near-miss type accidents in the area which an increase in traffic could worsen, as well as drivers speeding passing through the village.
71. The proposal would use the same vehicle access point to the north of the building that the former pub utilised which feeds to the car park and increase the current 12no. space car park to 20no. spaces, primarily achieved by replacement of the beer garden and patio area to the rear. Two of the parking spaces would be set aside for disabled users and four reserved for future EV bays. This would exceed the requirements of the DCC Parking & Accessibility standard set out in the SPD. A later iteration of the proposal included a bicycle shelter, which is considered appropriate.
72. The DCC Highways team have considered the accident history of the highway network in the vicinity and a number of incidents have occurred within the standard search period (previous three full years plus current year). Analysis of the incidents and their causation factors indicates that none are associated with the existing property.
73. It is however noted that there are currently no parking restrictions to the front of the building, however those associated with the nearby zebra crossing do cover part of the boundary to the south. The proposed change to a retail store has the potential to increase the likelihood of vehicles parking on the main road to the front of the building. The proximity of the building to the existing zebra crossing could potentially create a road safety issue due to pedestrians using this facility being obscured by parked vehicles for approaching motorists. To mitigate this issue, the applicant has agreed to install no waiting/no loading restrictions between the zebra and the East View side road to the north. This would be secured by a traffic management scheme condition, which would require details to be submitted to, and approved by, the LPA in a further application.
74. With regard to concerns that the proposal would increase the presence of parked vehicles within surrounding streets, it is noted that given the increase of in curtilage parking as described above and the indicated restrictions, the proposed use would not increase on street parking to an extent that it would adversely impact upon existing network capacity or road safety. In instances where vehicles presently obstruct the adopted footway this is subject to legislative control via the Highways Act 1980 and cannot be afforded weight in determination of this application.
75. The application is supported by a Traffic Statement (TS) which the Highways team have assessed. They note that the data modelling indicates a Peak Hour increases of 20 in the morning peak and 12 in the afternoon peak. Whilst the TS has provided this information the Highways team note that it does not consider that many of these are likely to be from passing vehicles and are therefore not additional trips on the highway network, and the Highways team considered the capacity of the existing highway network being capable of accommodating the additional number of trips generated by the proposed change to the establishment.

76. The previous servicing to the public house has been taken into consideration and the Highways team consider the proposed servicing arrangement, which is on private land, to be acceptable. The dray would utilise the cellar hatch to the north side of the building within the car park and therefore the proposed servicing is considered to be similar to previous use.
77. An observation was made by an objector that the zebra crossing near the site is not manned and that the safety of the locality could be improved by rectifying this. DCC operates a policy under the School Crossing Patrol Guidelines (June 2012) whereby members of the public can request/suggest a site has a school crossing patrol. It should be noted that this is not a statutory duty. The assessment calculates the number of pedestrians and vehicles which use the proposed patrol site and uses a formula to determine whether the necessary threshold has been met. It is not clear whether there has been such an application made, however if it has not, contact should be made with the DCC Road Safety Team.
78. On the basis of the above and with compliance with the suggested conditions there are insufficient road safety grounds on which to sustain a refusal under NPPF paragraph 115.

Ecology and Nutrient Neutrality

79. CDP Policy 41 (Biodiversity and Geodiversity) restricts development that would result in significant harm to biodiversity or geodiversity and cannot be mitigated or compensated. The retention and enhancement of existing biodiversity assets and features is required as are biodiversity net gains. Proposals must protect geological features, have regard to Geodiversity Action Plans and the Durham Geodiversity Audit and where appropriate promote public access, appreciation and interpretation of geodiversity.

Development proposals where the primary objective is to conserve or enhance biodiversity or geodiversity will be permitted if they comply with other local plan policy. Development proposals which are likely to result in the loss of deterioration of irreplaceable habitats will not be permitted unless there are wholly exceptional reasons and a suitable compensation strategy exists.

80. CDP Policy 42 (Internationally Designated Sites) states that development that has the potential to have an effect on internationally designated sites, either individually or in combination with other plans or projects, will need to be screened in the first instance to determine whether significant effects on the site are likely and, if so, will be subject to an Appropriate Assessment.

Development will be refused where it cannot be ascertained, following Appropriate Assessment, that there would be no adverse effects on the integrity of the site, unless the proposal is able to pass the further statutory tests of 'no alternatives' and 'imperative reasons of overriding public interest' as set out in Regulation 64 of the Conservation of Habitats and Species Regulations 2017 ("Habitat Regulations").

Where development proposals would be likely to lead to an increase in recreational pressure upon internationally designated sites, a Habitats Regulations screening assessment and, where necessary, a full Appropriate Assessment will need to be undertaken to demonstrate that a proposal will not adversely affect the integrity of the site. In determining whether a plan or project will have an adverse effect on the integrity of a site, the implementation of identified strategic measures to counteract effects, can be considered. Land identified and/or managed as part of any mitigation or compensation measures should be maintained in perpetuity.

81. The application is supported by a Preliminary Bat Roost Assessment which the Councils Ecology team have assessed. The Ecologist has determined that its findings are acceptable, and that with the provision of a condition to ensure the development is carried out in accordance with the requirements of the report's Conclusion and Recommendations section, that the proposal would not be harmful to ecological concerns.
82. Under the Habitat Regulations, the Local Planning Authority must consider the nutrient impacts of any new plans and projects (including new development proposals) on habitat sites and whether those impacts may have an adverse effect on the integrity of a habitats site that requires mitigation, including through nutrient neutrality. Only certain development types are impacted, but as the application site falls within the Tees catchment area, there may be a requirement for the potential impacts of this development to be considered in terms of nutrient neutrality.
83. In general, commercial development, schools and retail can be exempted. This is because it is generally accepted that people tend to work and live in the same catchment, therefore additional wastewater is already accounted for by existing and new housing. The proposed retail unit would not result in an increase in overnight stays in the area and the use itself would not result in a subsequent increase in human wastewater/nitrogen and as such there is no requirement to address Nutrient Neutrality impacts of the development any further.

Arboriculture

84. CDP Policy 40 (Trees, Woodlands and Hedges) states that proposals for new development will not be permitted that would result in the loss of, or damage to, trees, hedges or woodland of high landscape, amenity or biodiversity value unless the benefits of the scheme clearly outweigh the harm. Proposals for new development will be expected to retain existing trees and hedges or provide suitable replacement planting. The loss or deterioration of ancient woodland will require wholly exceptional reasons and appropriate compensation.

The proposal would require the removal of several trees which the Councils Arborist has classified as low quality, and as such it is considered this would be of low impact.

85. It is proposed to extend the hard standing area through a considerable portion of the root protection area (RPA) of a large mature tree which borders the site, labelled as T1. The application is supported by an Arboricultural Impact Assessment (AIA) which has recommended the use of a no dig method of construction which would include a cellular confinement system.
86. The Councils Arborist has assessed the proposed method of construction and considers this would be essential in order to maintain the integrity of the tree's RPA and ensure its health and vitality. With this in mind, the Arborist has requested that further details with regards to the method of removing existing hard surface and the construction of the additional hardstanding are provided by way of an Arboricultural Method Statement (AMS). A condition to this end is considered appropriate.

With a condition to obtain a detailed AMS, it is considered that the proposal would not be significantly harmful to arboriculture and would comply with Policy 40 of the County Durham Plan.

Other matters

87. Comments/objections were made which were not considered to be material planning considerations and/or were factually inaccurate;
- It is believed that there is a covenant on the building which requires it to be retained as a pub.
 - It is believed that the pub has Listed status and any alterations to the façade would not be possible.
 - The building should be retained as a pub or restaurant as that is what the village needs.
 - Several complaints regarding lack of notification.
88. If there is a restrictive covenant on the property this would be a civil matter and would need to be addressed separately to the planning process. The property is not a Listed Building, and even if it were this would not preclude an application to alter it, rather a Listed Buildings Consent application would need to be submitted in addition to a planning permission submission. While it is evident from comments submitted that several locals would prefer the use of the building as a pub and/or restaurant, no applications for such uses have been submitted for consideration. The determination of this application would not prevent such applications or uses coming forward in the future.
89. 53 direct letters of notification were generated and posted out, a site notice was installed on the telegraph pole to the front of the property and the application was advertised on the DCC Weekly List, as such it is considered that the LPA has discharged its duty to inform nearby residents of the application's submission.

CONCLUSION

90. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The development plan in this case relates to the County Durham Plan. Paragraph 11 of the NPPF establishes a presumption in favour of sustainable development. For decision taking this means approving development proposals that accord with an up to date development plan without delay (paragraph 11 c).
91. The details of the scheme have been assessed against relevant policies and are considered to accord with appropriate criteria and requirements, and subject to conditions would not have any unacceptable impact upon the character and appearance of the surrounding area, local amenity or highway safety in accordance with Policies 6, 9, 21, 29 and 31 of the County Durham Plan and Parts 2, 4, 5, 6, 7, 8, 9, 11, 12 and 15 of the NPPF.
92. The proposal has generated significant public interest, including a petition, however whilst the objections and concerns raised have been taken into account, they would not warrant a refusal in this case for the reasons detailed in this report. On balance, it is therefore considered that the proposals are acceptable and the application is recommended for approval.
- Public Sector Equality Duty
93. 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.

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

RECOMMENDATION

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

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: Required to be imposed pursuant to Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. The development hereby approved shall be carried out in strict accordance with the approved plans listed in Part 3 - Approved Plans.

Reason: To define the consent and ensure that a satisfactory form of development is obtained in accordance with Policies 6, 9, 21, 29, 31, 40, 41, 42 and 44 of the County Durham Plan and Parts 2, 4, 6, 7, 11, 12, 15 and 16 of the National Planning Policy Framework.

Plan	Drawing No.	Date Received
Proposed Layout	230699-04E	17/01/24
Proposed Building Plans and Elevations	230699-07F	25/01/24
Proposed Elevations	230699-05G	25/01/24
Location Plan	230699-01	29/10/23

3. Notwithstanding any details of materials submitted with the application no development shall commence until details of the make, colour and texture of all walling and roofing materials have been submitted to and approved in writing by the Local planning authority. The development shall be constructed in accordance with the approved details.

Reason: In the interest of visual amenity and to preserve the appearance of a Non-Designated Heritage Asset and to comply with the Policies 6, 29 and 44 of the County Durham Plan.

4. Notwithstanding details submitted with the application the development hereby approved shall not be occupied/operated until a traffic management scheme has been submitted to and approved in writing by the Local planning authority. The development shall be undertaken in accordance with the approved details.

Reason: In the interest of highway safety and to comply with the Policy 21 of the County Durham Plan.

5. Prior to the commencement of the development a scheme for the management of litter associated with the premises to include additional litter bins, anti-litter signage and a litter-picking regime shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be operated in accordance with the agreed details.

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

6. The development shall be carried out in strict adherence to Section 4 of the Preliminary Bat Roost Assessment by Tyler Grange 16/11/23 (received 17/11/23).

Reason: In the interests of ensuring no protected species are adversely affected by the development and habitats are retained and improved in accordance with Policies 41 and 43 of the County Durham Plan and Part 15 of the National Planning Policy Framework.

7. Prior to the commencement of works a detailed Arboricultural Method Statement shall be submitted to and approved in writing by the Local planning authority. The development shall be constructed in accordance with the approved details.

Reason: In the interest of visual amenity and to preserve existing trees and to comply with the Policy 40 of the County Durham Plan.

8. No external construction works, works of demolition, deliveries, external running of plant and equipment shall take place other than between the hours of 0800 to 1800 on Monday to Friday and 0800 to 1400 on Saturday.

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

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

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

Reason: In the interest of residential amenity and to comply with Policy 31 of the County Durham Plan.

9. The retail premises hereby approved shall only be open 06:00-23:00 Monday-Sunday.

Reason: In the interest of residential amenity and to comply with Policy 31 of the County Durham Plan.

10. No development shall commence until a detailed landscaping scheme has been submitted to and approved in writing by the Local Planning Authority.

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

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

- Trees, hedges and shrubs scheduled for retention.
- Details of hard and soft landscaping including planting species, sizes, layout, densities, numbers.
- Details of planting procedures or specification.
- Finished topsoil levels and depths.
- Details of temporary topsoil and subsoil storage provision.
- Seeded or turf areas, habitat creation areas and details etc. Details of land and surface drainage.
- The establishment maintenance regime, including watering, rabbit protection, tree stakes, guards etc.

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

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

Reason: In the interest of the visual amenity of the area and to comply with Policy 29 of the County Durham Plan.

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

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

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

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

Replacements will be subject to the same conditions.

Reason: In the interest of the visual amenity of the area and to comply with Policy 29 of the County Durham Plan.

12. No external windows and doors shall be installed unless full details including plans at a scale of 1:20, including cross sections and details of colour finish, of the proposed windows and doors have first been submitted to and approved in writing by the Local Planning Authority. The windows and doors shall thereafter be installed in accordance with the approved details.

Reason: In the interests of the visual amenity of the surrounding areas in accordance with Policies 29 and 44 of the County Durham Plan and Parts 12 and 16 of the National Planning Policy Framework.

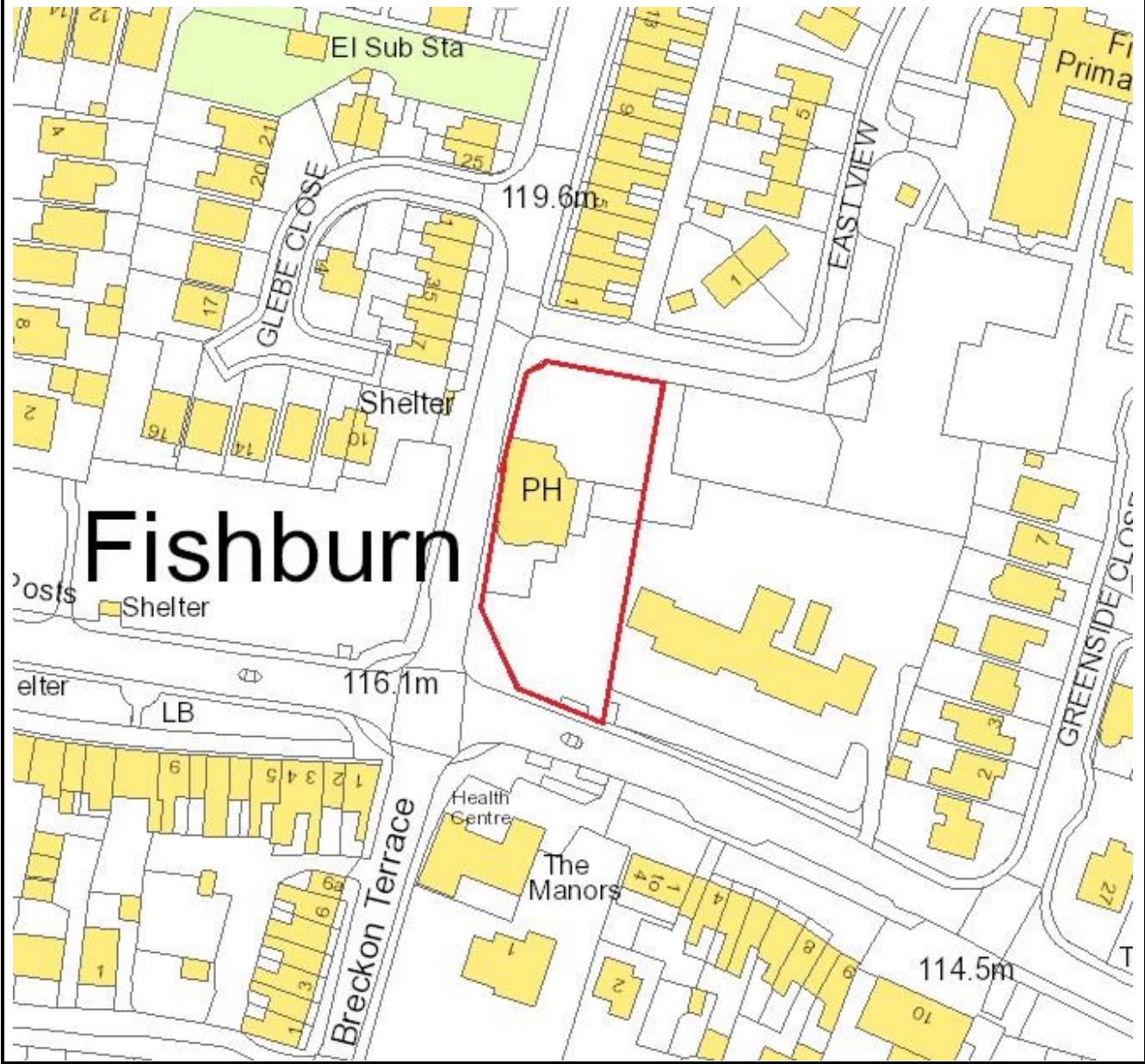
STATEMENT OF PROACTIVE ENGAGEMENT

In accordance with Article 35(2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015, the Local Planning Authority has, without prejudice to a fair and objective assessment of the proposals, issues raised and representations received, sought to work with the applicant in a positive and proactive manner

with the objective of delivering high quality sustainable development to improve the economic, social and environmental conditions of the area in accordance with the NPPF.

BACKGROUND PAPERS

- Submitted application form, plans supporting documents and subsequent information provided by the applicant.
- The National Planning Policy Framework (2021)
- National Planning Practice Guidance notes.
- County Durham Plan 2020
- Statutory, internal and public consultation responses
- County Durham Parking and Accessibility Standards 2023



Planning Services

Change of use of public house (Use Class Sui Generis) to retail (Use Class E), including demolition of existing lean-to canopy and rear patio, installation of a new compound, facade treatment alterations car park alterations, access alterations and landscaping works
 The Beehive, Salters Lane, Fishburn, TS21 4AS
 Ref: DM/23/02915/FPA

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Comments

Date 21 March 2024

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