

# COMMITTEE REPORT

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### APPLICATION DETAILS

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<b>APPLICATION NO:</b>	4/12/00913
<b>FULL APPLICATION DESCRIPTION:</b>	Infilling of open access to a café and residential development to form a separate A2 office for student lettings.
<b>NAME OF APPLICANT:</b>	Q Students.
<b>ADDRESS:</b>	81 - 82 New Elvet, Durham, DH1 3AQ.
<b>ELECTORAL DIVISION:</b>	Durham.
<b>CASE OFFICER:</b>	Susan Hyde, Planning Officer, 03000 263961 susan.hyde@durham.gov.uk

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### DESCRIPTION OF THE SITE AND PROPOSALS

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- 1. SITE:** The application site relates to a three storey building which is not listed but is of some historic significance within Durham (City Centre) Conservation Area. The building occupies a prominent corner position on the east side of New Elvet at the end of a cluster of commercial properties following the route of Elvet Bridge where it turns the corner onto New Elvet. The application site marks the transition between the shopping area and the University Buildings which progress to the south along New Elvet. Within Old Elvet and New Elvet there is a great architectural diversity from simple 19<sup>th</sup> Century buildings to grand Georgian townhouses. To the rear of the application site (west) are modern apartments
- 2. PROPOSAL:** The application seeks planning permission for the conversion of the existing covered passage in to an A2 estate agents office. The wall on the side elevation already exists and is used as a display window for the estate agent. Physical works would involve installing a frameless glass screen on the front elevation with an entrance door. Internally a wall would be inserted to form a separate w.c from the office, and a blank rear wall. In addition the existing windows and door into the adjoining A3 café are proposed to be bricked up to form the side elevation of the A2 office.
- 3.** This scheme is being reported to the Planning Committee at the request of Councillor David Freeman.

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### PLANNING HISTORY

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- 4.** In 2001 planning permission was granted for the part demolition of the existing garage buildings, erection of 35 no. residential flats with basement car park area and formation of a Class A3 restaurant unit. Conservation area consent for the demolition of the garage was also granted in 2001.

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## **PLANNING POLICY**

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### **NATIONAL POLICY**

5. The Government has consolidated all planning policy statements, guidance notes and many circulars into a single policy statement, the National Planning Policy Framework (NPPF), although the majority of supporting Annexes to the planning policy statements are retained. The overriding message is that new development that is sustainable should go ahead without delay. It defines the role of planning in achieving sustainable development under three topic headings – economic, social and environmental, each mutually dependant.

6. The presumption in favour of sustainable development set out in the NPPF requires local planning authorities to approach development management decisions positively, utilising twelve 'core planning principles'

7. The following elements are considered relevant to this proposal;

8. NPPF Part 2 – 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.

9. *NPPF Part 7 – Requiring Good Design.* 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.

10. *NPPF Part 8 – Promoting healthy communities.* The planning system can play an important role in facilitating social interaction and creating healthy, inclusive communities. Developments should be safe and accessible, Local Planning Authorities should plan positively for the provision and use of shared space and community facilities. An integrated approach to considering the location of housing, economic uses and services should be adopted.

11. *NPPF Part 12 – Conserving and enhancing the historic environment.* Part 12 sets out the governments aims in relation to the conservation and enhancement of the historic environment and gives guidance in relation to matters concerning heritage assets.

### **REGIONAL PLANNING POLICY**

12. *The North East of England Plan - Regional Spatial Strategy to 2021 (RSS) July 2008,* sets out the broad spatial development strategy for the North East region for the period of 2004 to 2021. The RSS sets out the region's housing provision and the priorities in economic development, retail growth, transport investment, the environment, minerals and waste treatment and disposal. Some policies have an end date of 2021 but the overall vision, strategy, and general policies will guide development over a longer timescale.

13. In July 2010 the Local Government Secretary signalled his intention to revoke Regional Spatial Strategies with immediate effect, and that this was to be treated as a material consideration in subsequent planning decisions. This was successfully challenged in the High Court in November 2010, thus for the moment reinstating the RSS. However, it remains the Government's intention to abolish Regional Spatial Strategies. Both the RSS and the stated intention to abolish are material planning considerations and it is a matter for

each Planning Authority to decide how much weight can be attached to this stated intention, having regard to the evidence base which informs the RSS. Policies of particular relevance to this application are as follows:

**14. Policy 4 (The Sequential Approach to Development)** states that development priority should be given to previously developed land in order to identify the most appropriate development sites. Top priority is given to previously developed sites within urban areas, particularly those in close proximity to transport nodes.

**15. Policy 8 (Protecting and Enhancing the Environment)** seeks to promote measures such as high quality design in all development and redevelopment and promoting development that is sympathetic to its surroundings.

#### **LOCAL PLAN POLICY:**

16. E6 Durham City Centre Conservation Area states that the special character, appearance and setting of the Durham (City Centre) Conservation Area will be preserved or enhanced as required by section 72 of the Planning (Listed Building and Conservation Areas) Act 1990. The policy specifically requires proposals to use high quality design and materials which are sympathetic to the traditional character of the conservation area.

17. T1 Traffic Generation – General states that the Council will not grant planning permission for development that would generate traffic likely to be detrimental to highway safety and / or have a significant effect on the amenity of occupiers of neighbouring property.

18. T10 Parking – General Provision states that vehicle parking should be limited in amount, so as to promote sustainable transport choices and reduce the land-take of development.

19. Q1 and Q2 General Principles Designing for People and Accessibility states that the layout and design of all new development should take into account the requirements of all users.

20. Q4 Pedestrian Areas requires public spaces and such areas to be well designed and constructed with quality materials. Public realm and lighting to ensure community safety are referred to.

21. U5 Pollution Prevention General states that development that generates pollution will not be considered acceptable if it results in unacceptable adverse impacts upon the local environment, amenity of nearby land or property or would unnecessarily constrain development on neighbouring land.

22. U8A Disposal of Foul and Surface Water - requires developments to provide satisfactory arrangements for disposing foul and surface water discharges. Where satisfactory arrangements are not available, then proposals may be approved subject to the submission of a satisfactory scheme and its implementation before the development is brought into use.

23. S2B Permits professional and financial services (A2) and food and drink (A3) provided they do not undermine the retail character of the street.

24. T21 Walking seeks to safeguard the needs of walkers and pedestrians.

25. CC1 Vitality and Viability of Durham City Centre. Seeks to protect and enhance the vitality and viability of the city centre.

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## **CONSULTATION AND PUBLICITY RESPONSES**

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### **STATUTORY RESPONSES:**

26. Highways Development Management have considered the application and have put forward no objections on highways grounds.

### **INTERNAL CONSULTEE RESPONSES:**

27. Design and Conservation Officers have no objection to the application.

### **PUBLIC RESPONSES:**

28. The City of Durham Trust object to the planning application on the grounds that it will make the existing café darker, it forms an office in a secondary retail area of Durham City, and the fascia signs are not in keeping with the Conservation Area.

29. Sixteen letters of objection have been received from members of the public in relation to the applications. Objections are put forward on the basis that there are too many A2 estate agents in this area and not enough retail premises. In addition there are vacant A2 offices on New Elvet and new development should not be supported when there are existing empty properties. The estate agents would adversely affect the existing café by making it darker and removing the fire exit from the existing café making it harder for the café to operate effectively. In addition the café uses this area for outdoor seating and a smoking area which are appropriate uses.

30. The open access is used as the main pedestrian access to the apartments to the rear and although there is a footpath adjacent to the access this is too narrow for the volume of pedestrians. The application site is very well used as the main pedestrian access to the flats and also forms part of a covered walkway which runs along the full length of the apartments. The earlier planning application 01/0003 for the residential apartments included the open walkway as an integral part of the scheme. The loss of the walkway would be detrimental to the residential amenity of the flats as they would lose the covered access, walk through the bins when they are put out for collection 3 days a week and the remaining pavement is too narrow for safe disabled access and egress in the case of fire.

31. The new office would be built over two drainage manholes.

### **APPLICANTS STATEMENT:**

32. The applicant has the opportunity to make better use of some under-utilised covered space in New Elvet. They seek an office for their student lettings business in a visible location which is frequented by students. This location is ideal as it adjacent to lecture theatres, close to the student union, and on a well walked route between the Science Site, City Centre and Colleges.

33. The applicant owns the unit and the site is appropriate for the proposed letting office. Indeed the site lends itself to the scheme as the alterations to the existing building are minimal. It is also relevant that the adjacent café bar does not have landlord consent to use the site for outdoor seating or smoking. In addition there is no formal right of way through

the site. The proposal will remove some of the potential nuisance caused by the outdoor seating area and smoking.

34. The proposal supports a local business and should help to secure their economic future and that of their staff.

*The above 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 <http://82.113.161.89/WAM/showCaseFile.do?action=show&appType=planning&appNumber=10/00955/FPA>*

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## **PLANNING CONSIDERATIONS AND ASSESSMENT**

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35. 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 development of the site, the scale, layout and design of the proposed A2 estate agents, the impact of the proposed scheme upon the City of Durham Conservation Area, and the impact on residential amenity / pedestrian safety.

### **Principle of development of the site**

36. The principle of the development on the site is the key material planning consideration. Planning Policy S2B supports A2 uses such as estate agents providing they do not undermine the retail character of the area. The justification for the policy provides further clarification about the balance between the Use Classes and states 'the Council considers a figure of 50% of the total street frontage is an appropriate maximum guideline for the occupation of the ground floor by non-retail uses in secondary retail areas identified in Policy S2B'.

37. In this case the secondary shopping area runs from the application site to Elvet Bridge on the west side of New Elvet only. The site is currently used as a pedestrian access for the residents of St Andrews Court to the rear and as an outdoor seating area for the adjacent café. (This external seating area does not appear to have the benefit of planning permission). A survey of the adjacent premises was undertaken as part of the planning application and there are no retail shops in this part of the secondary shopping area with cafes pubs and estate agents forming the present and historic ground floor business uses. As such the planning application for an A2 estate agent use would represent a further non-retail use and is in conflict with this Policy S2B.

38. It is also of relevance that the adjacent shopping area on Elvet Bridge does not allow any further development for A2 uses in local plan Policy S3. The Local Plan seeks to preserve the retail character of the City Centre and the application site forms an important visual corner site in the approach into the City from New Elvet. It is noted that the justification for the Policy states that 'A3 uses such as cafes and restaurants generally make a greater contribution to the vitality of town and city centres, particularly in the evening, and it is Government policy to encourage such vitality.' Although adopted in 2004 this statement is still considered relevant and the existing café 'The Establishment' that joins the application site is considered to fulfil this function. It is noted that the side elevation of the café is currently partly obscured by the

side window displaying estate agents details and this matter is being separately investigated to establish whether there has been any breach of planning control.

### **The scale, layout and design of the proposed A2 development.**

39. Although the building is not listed it is of some historical significance and is located in the Durham (City Centre) Conservation Area. The property occupies a prominent corner position on the west side of the street and is occupied by a café on the ground floor and residential flats above. It is considered by Conservation Officers that the building dates back to the 17<sup>th</sup> Century or early 18<sup>th</sup> Century but the entire ground floor was removed in the 20<sup>th</sup> Century and altered into a café following planning approval in 2001.

40. The proposed physical works in association with the conversion of the covered access would involve installing frameless glass screens to be contained within the existing opening in the building frontage and the insertion of walls to form a small w.c. and a store. These works are considered an acceptable form of built development in the Conservation Area as they would not compromise the buildings appearance and mirror the existing front elevation of the adjacent café. Indeed the building has a contemporary appearance at ground level with a simple fenestration pattern of large glazed windows set back behind prominent columns and the alterations as proposed would be in keeping with this treatment.

41. As such the built form of the development is considered in keeping with the Conservation Area.

### **Pedestrian Access to Apartments to the rear.**

42. The planning application 01/00803 granted consent for the part demolition of the existing garage buildings and erection of 35 residential flats with basement car park area and Class A3 restaurant unit. This consent has been implemented and the pedestrian access to the flats included the covered access that now forms this planning application. Indeed the layout of the flats includes a covered pedestrian access that links into this application site.

43. Local and National Planning Policies seek to ensure a good quality of design and layout and protect pedestrian rights of way. The current layout provides two pedestrian access points on to New Elvet – with the application site providing a continuous covered access / egress, a wider access, and a clear view of New Elvet. The loss of the covered access would lead to residents having a partially uncovered access, a narrower pedestrian access which has a pinch point at the egress onto New Elvet as the pavement narrows and there is a pedestrian barrier due to the change in levels. Residents are also concerned that this access will be impeded three times a week as refuse bins will be collected and deposited on this narrow stretch of pavement.

44. Officers consider that the loss of the covered pedestrian access would detrimentally affect the quality of the layout of the original planning application. One of the integral features of the 2001 consent for 35 residential apartments was the covered pedestrian access which had a clear view onto New Elvet. Officers consider that this layout increases the perception of pedestrian safety, whereas the proposed partial closure introduces a blind corner which reduces the perception of safety for users of the access.

45. Objectors have also raised concerns about the impact of commercial bins on the pedestrian route – this would be the bins from the apartments, café and estate agents office which could transiently block the pavement. Whilst bin collections are transient the objectors' concerns are acknowledged as having a possible impact on the access and

gress as the pavement narrows and there is a difference in levels between the pavement and the vehicular access.

46. Policy T21 of the Local Plan is relevant and notes that the council will seek to safeguard the needs of walkers by ensuring that a safe, attractive and convenient footpath network be maintained in the city and that wherever possible footpaths should be capable of use by people with disabilities, the elderly and those with children. It is acknowledged that highways officers have offered no objections to the proposal. Whilst the diverted pedestrian route may achieve technical requirements, however, it is considered by planning officers to represent a significantly less satisfactory option.

47. The loss of the pedestrian access is therefore considered to detract from the pedestrian access of the residential apartments and be contrary to Local Plan Policies T21, Q2, and NPPF Part 8.

### **Other matters raised by Objectors**

48. The impact on the existing café which is now named 'Establishment' is also a relevant material consideration. The proposal involves blocking up the side windows and fire exit of the café to form the side elevation of the proposed Estate Agents Office. In addition the proposal involves the loss of the external seating area (which does not appear to have the benefit of planning permission) and an additional impact on the access to the cooling system and store. The leaseholder of the café has objected as he considers that the above will detrimentally affect the economic viability of the café through the loss of the outdoor seating area, the loss of the side window, the impact on the cooling system and the impact on the access to the store. These are mainly private legal issues, however, and not matters that have a bearing on whether or not planning permission should be granted.

49. In addition residents have raised concerns over whether the land is within the applicants' ownership. This issue has been clarified with the applicant and he has confirmed that the correct certificates have been served and that he is the owner of the land. This does not, however, have a bearing on whether or not planning permission should be granted.

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## **CONCLUSION**

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50. In summary, Officers object to the application as the development proposes an estate agents use which conflicts with Policy S2B as the secondary shopping centre does not support further A2 uses. In addition the development is considered to detrimentally affect the existing pedestrian access to the residential apartments to the rear of St Andrews Court which is contrary to Local Plan Policies T21, Q2, and NPPF Part 8.

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## **RECOMMENDATION**

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

1. The proposed development of an A2 estate agents office is considered to detract from the economic viability of the secondary shopping area in Durham City by detrimentally affecting the character of the retail area and the setting of an existing A3 café which is contrary to the City of Durham Local Plan Policy S2B.

2. The proposed development would detract from the residential amenity of the existing residential development to the rear of the application site by closing a section of the primary covered pedestrian access, resulting in an unsatisfactory and less attractive pedestrian route. This is considered to be contrary to the City of Durham Local Plan Policies T21, Q2, and NPPF Part 8.

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## **BACKGROUND PAPERS**

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Submitted Application Forms, Plans and supporting documents

National Planning Policy Framework

North East of England Plan Regional Spatial Strategy to 2021 (RSS) July 2008

Saved District of Easington Local Plan

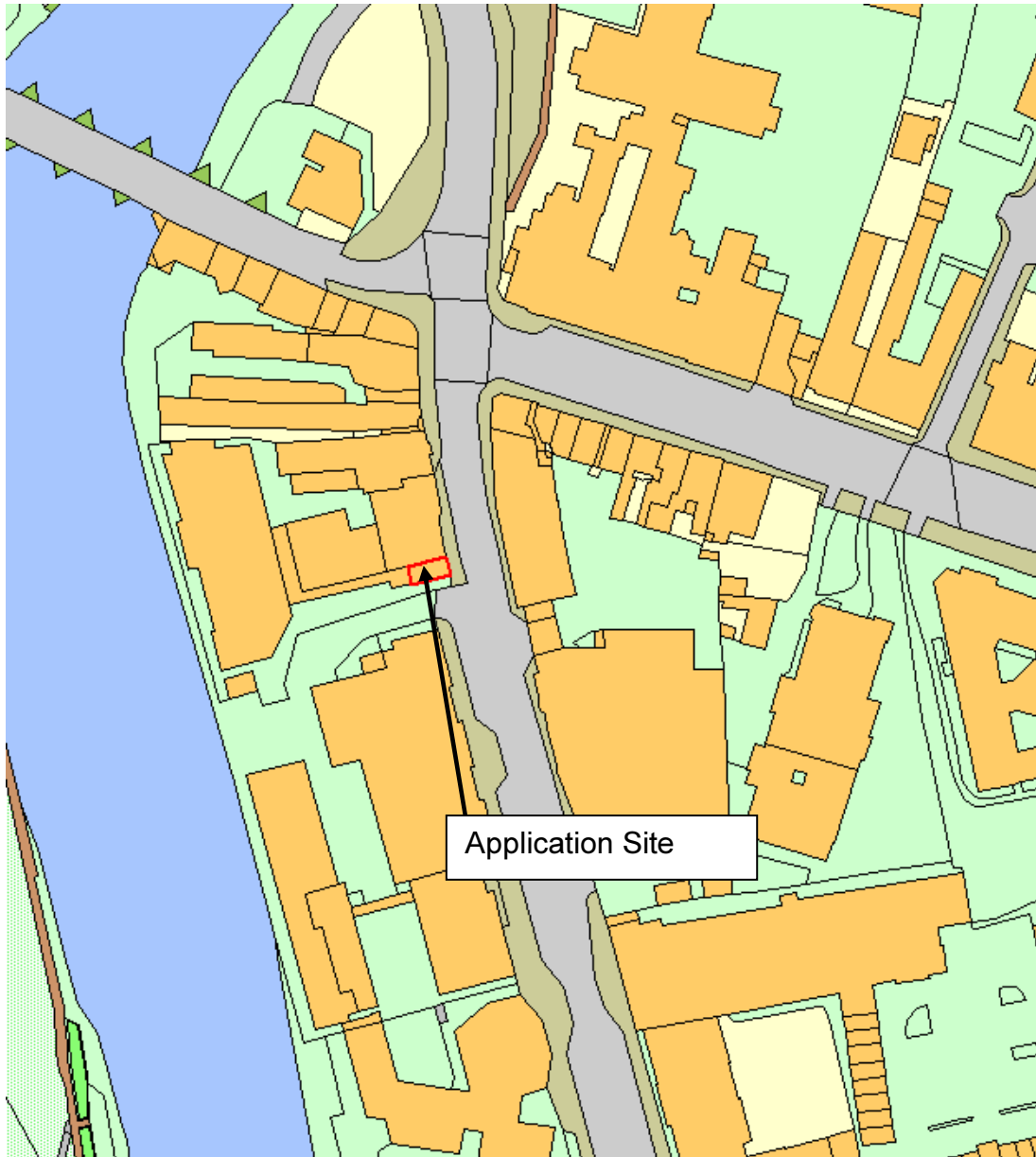
Responses from Objectors

Response from the City of Durham Trust

Response from Highways Development Management

Response from Design and Conservation Section





Application Site



**Planning Services**

Infilling of open access to a café and residential development to form a separate A2 office for student lettings.

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**Comments**

**Date 1<sup>st</sup> February 2013**

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