

# COMMITTEE REPORT

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## APPLICATION DETAILS

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APPLICATION NO:	CE/13/01300/FPA
FULL APPLICATION DESCRIPTION:	Groundworks and associated landscaping
NAME OF APPLICANT:	Peveril Securities (Dalton Park Retail) Ltd
ADDRESS:	Land at Dalton Park, Murton, SR7 9HU
ELECTORAL DIVISION:	Murton
CASE OFFICER:	Barry Gavillet, <a href="mailto:barry.gavillet@durham.gov.uk">barry.gavillet@durham.gov.uk</a> , 03000 261958

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## DESCRIPTION OF THE SITE AND PROPOSALS

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### Site:

1. This application site is to the south of the built up area of Dalton Park and is located directly to the east of Murton, approximately 3 miles south west of Seaham and 5 miles north of Peterlee. The site is in close proximity to Hesledon Moor East, Hesledon Moor West, Stoney Cut Cold Hesledon and Hawthorne Dene Sites of Special Scientific Interest (SSSI).
2. The site, which is currently used as parkland and informal recreation involves a series of manmade earth mounds. These existing mounds were the subject of a major earth works remediation scheme in 2000 as part of the phase 1 development works at Dalton Park. The majority of the earth removal (over half a million cubic metres) was to facilitate the future phase two works, however in order to protect the substrate a sacrificial layer of material was retained over the whole of the phase two area.
3. The whole Dalton Park site area extends to 10.3 ha (25.4 acres) of previously developed land, formerly used as a site for the siting of colliery waste and other related activities. The site is occupied by an Outlet Shopping Park, restaurants and associated car parking, which comprises 15,164 sq m of retail floorspace with over 80 outlets ranging from 67 sq m to 1020 sq m. Outline planning permission has recently been granted for a foodstore, hotel, cinema, food and drink units and a petrol filling station on the phase two area to the north of this application site.

### Proposal:

4. As part of the Phase II development at Dalton Park it is necessary to form a development plateau for the foodstore, hotel, cinema and food and drink units. In order to create this plateau a large amount of existing material will need to be

relocated to create a stable development area. These proposals involve the relocation of extracted material to areas of existing landscaping mounds to the south east corner of the wider Dalton Park site.

5. Planning permission was granted in July 2013 for the relocation of a portion of this material to existing mounding and landscape areas adjacent to the current application area. The previous application suggested that there was a surplus of material and consideration was being given to where additional material could be accommodated. Moreover, at the time of the previous application the amount of additional material excavation required was unknown.
6. A proportion of this material is proposed to be distributed within the area of the site currently subject to the reserved matters application. It is proposed that the remainder would overlay existing landscaping mounds and this is the basis for this application.
7. The existing mounds which would be remodelled sit outside the profile of larger landscaping mounds at the southern boundary of the site. The mounds to which this application relates are 94 metres and 103 metres. By overlaying the ground material it would increase the mounds by 18 metres and 24.5 metres to 112 metres and 127.5 metres respectively.
8. This application is being reported to committee as the site area of land over which the material is to be distributed classifies it as a major development.

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## **PLANNING HISTORY**

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9. Since the opening of the shopping outlet at Dalton Park there have been numerous minor planning applications for the change of use from A3 (Food and Drink) units to A1 units (factory outlet retail), advertisement consents and other minor alterations. However, the most relevant planning history relates to the development of the factory outlet site itself.
10. The site is a former colliery spoil heap located on the edge of Murton, which was subject to a coal recovery and remediation exercise in the mid 1990's. On 23rd November 1998 planning permission was granted by the District of Easington Development Services Committee for a mixed use development comprising of factory outlet shopping, a multiplex cinema, ten-pin bowling, a hotel, petrol station and car showroom, a pub and restaurants. As a major departure to the development plan, the application was referred to Government Office North East who decided to call the application in for a public local inquiry. This inquiry took place between the 18th and 23rd May 1999, the Inspector's decision was to refuse planning permission on the basis that there would be adverse impacts on town centres and there were sequentially preferable sites available.
11. However, the Secretary of State did not agree with the Inspector's conclusions and recommendation and decided to grant outline planning permission. In deciding this application, the Secretary of State considered that, on that particular occasion, the primary considerations were the exceptional economic and social characteristics of East Durham, and there was a consistency with the proposal with the then government's commitment to the regeneration of the coalfields. The Secretary of State's view was that this constituted very special circumstances, which justified the grant of permission in that case.

12. The factory outlet shopping element of the scheme which was initially meant to financially anchor the leisure developments was commenced and has been on site for some ten years; however the leisure developments of the approval were never commenced.
13. Since then, the applicant has successfully argued that a further food store was needed to anchor some of the leisure developments which were previously proposed. Hence an outline planning permission for a food store, hotel, cinema, food and drink units and a petrol filling station has recently been approved. Further to this, the application for reserved matters and various other related applications have been submitted but are still pending decisions.

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## **PLANNING POLICY**

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### **NATIONAL POLICY:**

14. 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.
15. 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’

The following elements are considered relevant to this proposal:

16. *Part 1* - 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 of a low carbon future.
17. *Part 7* - 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.
18. *Part 8* - 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.
19. *Part 10* - Planning plays a key role in helping shape places to secure radical reductions in greenhouse gas emissions, minimising vulnerability and providing resilience to the impacts of climate change, and supporting the delivery of renewable and low carbon energy and associated infrastructure. This is central to the economic, social and environmental dimensions of sustainable development.
20. *Part 11* - The planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, geological conservation interests and soils; recognising the wider benefits of ecosystem services; minimising impacts on biodiversity and providing net gains in biodiversity

where possible, contributing to the Government's commitment to halt the overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures; preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability; and remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.

## **LOCAL PLAN POLICY:**

### District of Easington Local Plan

21. *Policy 1* - Due regard will be had to the development plan when determining planning applications. Account will be taken as to whether the proposed development accords with sustainable development principles while benefiting the community and local economy. The location, design and layout will also need to accord with saved policies 3, 7, 14-18, 22 and 35-38.
22. *Policy 3* - Development limits are defined on the proposal and the inset maps. Development outside 'settlement limits' will be regarded as development within the countryside. Such development will therefore not be approved unless allowed by other policies.
23. *Policy 18* - Development which adversely affects a protected species or its habitat will only be approved where the reasons for development outweigh the value of the species or its habitat.
24. *Policy 35* - The design and layout of development should consider energy conservation and efficient use of energy, reflect the scale and character of adjacent buildings, provide adequate open space and have no serious adverse effect on the amenity of neighbouring residents or occupiers.
25. *Policy 90* - Development resulting in the loss of outdoor sports facilities will not be approved unless it would enable enhancement of the remaining land, alternative provision of equal or enhanced benefit is provided, development involves provision of new related outdoor facilities and there is an excess of such facilities in the area.
26. *Policy 92* - Amenity open space will be protected unless development would enable enhancement of the remaining play space or alternative provision of equal or enhanced benefit is provided.

*The above represents a summary of those policies considered most relevant in the Development Plan the full text, criteria, and justifications of each may be accessed at <http://www.durham.gov.uk/Pages/Service.aspx?ServiceId=7534>*

## **EMERGING POLICY:**

27. The emerging County Durham Plan is now in Pre-Submission Draft form, having been the subject of a recent 8 week public consultation, and is due for submission in Spring 2014, ahead of Examination in Public. In accordance with paragraph 216 of the NPPF, decision-takers may give weight to relevant policies in emerging plans according to: the stage of the emerging plan; the extent to which there are unresolved objections to relevant policies; and, the degree of consistency of the policies in the emerging plan to the policies in the NPPF. To this end, the following policies contained in the Pre-Submission Draft are considered relevant to the determination of the application:

28. *Policy 1 (Sustainable Development)* – States that when considering development proposals, the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework.
29. *Policy 18 (Local Amenity)* – Seeks to protect the amenity of people living and/or working in the vicinity of a proposed development in terms of noise, vibration, odour, dust, fumes and other emissions, light pollution, overlooking, visual intrusion, visual dominance, loss of light or loss of privacy.
30. *Policy 35 (Development in the Countryside)* – Sets out that new development will be directed to sites within built up areas, or sites allocated for development, whilst the countryside will be protected from inappropriate development.
31. *Policy 39 (Landscape Character)* – States that proposals for new development will only be permitted where they would not cause significant harm to the character, quality or distinctiveness of the landscape, or to important features or views, unless the benefits of the development clearly outweigh its impacts.
32. *Policy 41 (Biodiversity and Geodiversity)* – States that proposals for new development will not be permitted if significant harm to biodiversity and geodiversity, resulting from the development, cannot be avoided, or adequately mitigated, or as a last resort, compensated for.
33. *Policy 47 (Contaminated and Unstable Land)* – Sets out that development will not be permitted unless the developer can demonstrate that any contaminated or unstable land issues will be addressed by appropriate mitigation measures to ensure that the site is suitable for the proposed use, and does not result in unacceptable risks which would adversely impact upon human health, and the built and natural environment.

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## **CONSULTATION AND PUBLICITY RESPONSES**

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### **STATUTORY RESPONSES:**

34. The Environment Agency has no objections to the proposals but has given informal advice and requested conditions relating to controlled waters as the site is underlain by the magnesian limestone principal aquifer.
35. Northumbrian Water does not object but offer informal advice to the applicant. They advise that a public sewer crosses the site and may be affected and hence diversion, relocation or protection measures may be required.

### **INTERNAL CONSULTEE RESPONSES:**

36. Pollution control officers have no concerns regarding any noise, odour or light issues.
37. Ecology officers have no objections to the proposals. However, officers have some concerns regarding the proposed landscaping scheme as it would have low ecological value. As such a landscaping condition has been suggested that would ensure a landscaping scheme of ecological benefit.
38. Landscape officers have not objected to the proposals in principle but have raised some concerns regarding the height and form of the new land formations.

## **PUBLIC RESPONSES:**

39. The application has been advertised by way of individual letters, a press notice and site notice. No responses have been received as a result of this consultation exercise.

## **APPLICANTS STATEMENT:**

40. The proposed works are required to relocate material extracted from the area of the foodstore and hotel under planning permission (LPA Ref: PL/5/2009/0548 as amended) to the adjoining land (application site). This is the most appropriate and sustainable way to deal with the redistribution of the material and does not give rise to adverse consequences.
41. Planning permission was granted in July 2013 (LPA ref: PL/5/2013/0202) for the relocation of a portion of this material to existing mounding and landscape areas adjacent to the current application area. The previous application acknowledged that there was a surplus of material and consideration was being given to where this material could be accommodated. In addition, at the time of the previous application the material excavation for drainage and foundation analysis was unknown.
42. A portion of the material will be distributed within the area of the site currently subject to a Reserved Matters application (LPA ref: PL/5/2013/0230) which is pertinent to the extant outline planning permission as amended.
43. The remainder, will overlay existing landscaping mounds (approved as part of planning permission LPA ref: HIST/1998/0385) which form part of this application.
44. The existing mounds to be remodelled sit outside the profile of larger landscaping mounds at the southern boundary of the site. The mounds to which this application relates are 94.00m and 103.00m. By overlaying the ground material it will increase the mounds by 18.00m and 24.50m to 112.00m and 127.00m respectively.
45. The landscaping for the remodelled areas will include "dry meadow" wildflower seed and grass, as agreed for the previous ground modelling application (LPA ref: PL/5/2013/0202). The Landscape Statement which supports this application sets out the dry meadow grass specification.
46. The "dry meadow" flower seed and grass will grow quickly which is evident from Phase 1 factory outlet development. The Landscape Statement includes a photograph taken in August 2003 which shows that the site was 'green' between 6 to 9 months after the planting and seeding had taken place.
47. The proposed works match the existing landscaping form and provide further screening to the development.
48. The proposals do not give rise to any effects in terms of ecology, flood risk or contamination.
49. This proposal is an integral part of the regeneration of the commercial development (Phase 2) at Dalton Park.

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## **PLANNING CONSIDERATIONS AND ASSESSMENT**

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50. Local planning authorities (LPA's) must determine planning applications in accordance with the statutory Development Plan, unless material considerations indicate otherwise. If the Development Plan contains material policies or proposals and there are no other material considerations, the application should be determined in accordance with the Development Plan. Where there are other material considerations, the Development Plan should be the starting point, and other material considerations should be taken into account in reaching a decision.

51. In this instance the main relevant considerations are the impact on the landscape, contaminated land issues and ecology.

### **Impact on landscape**

52. This application site is not within an area, or close to an area that has been designated for its landscape value. The proposed works are within an area which is currently used as parkland and informal recreation and involves a series of manmade earth mounds. These existing mounds were the subject of a major earth works remediation scheme in 2000 as part of the phase 1 development works at Dalton Park.

53. This application proposes that part of the spoil from the development which has outline approval would be deposited on the existing landscaped spoil from the original Dalton Park development. It is proposed to regrade and reprofile the existing landscaping, increasing the height of the two earthworks mounds by 18 metres and 24.5 metres. Although the landscape officer has some concerns relating to the height of the mounds, and that they do not reflect the East Durham landscape generally, no objections have been put forward on landscape grounds. The applicant has responded to these concerns stating that the proposed gradients are almost identical to those recently approved adjacent to this application site and would be barely visible in views from the north and south. In addition to this, conditions have been suggested which would ensure that an agreed landscaping scheme is implemented. Such a landscaping scheme would include details of an appropriate planting scheme to be agreed with landscape officers and ecologists.

54. Furthermore, it is considered that further landscape mounding would help screen the built development within Dalton Park from both residents of the nearby East Moor Estate and from users of the A19, whilst using the material on site rather than transporting it elsewhere is seen as a more sustainable solution which would not harm the viability of the scheme, and indeed would save the costs of off-site disposal.

55. Overall, although it is accepted that there would inevitably be some short term disturbance, it is not considered that the remodeling of the existing mounds in order to accommodate the material from the site of phase 2 would have an adverse impact on the immediate or wider landscape given the height of existing mounds adjacent to this application site which are of similar size and the suggested landscaping conditions. Therefore it is considered that the proposals are in accordance with saved policies 1 and 35 of the District of Easington Local Plan and parts 7 and 11 of the National Planning Policy Framework.

## **Contaminated Land Issues**

56. A number of potentially contaminative land uses have previously been undertaken within the site boundary including coke ovens and associated gasworks wastes, colliery spoil heaps and mineral railways, the site itself was a former landfill site. The environmental setting of the site is considered to be sensitive given the presence of a culverted watercourse running through the site combined with the fact that the site falls within the zone of a public water supply and is underlain by the Magnesian Limestone principal aquifer.
57. The Environment Agency have stated that further evidence is required to ensure that the material to be moved across to the site from the Phase 2 development site is suitable for use and will not pose an unacceptable risk to controlled waters.
58. National Planning Policy Framework (NPPF) paragraph 109 states that the planning system should contribute to and enhance the natural and local environment by preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of water pollution. Government policy also states that planning policies and decisions should also ensure that adequate site investigation information, prepared by a competent person, is presented (NPPF, paragraph 121).
59. The Environment Agency have no objections in principle to the proposals as submitted, however, the risks posed by the material to be moved across from the Phase 2 development area to controlled waters are still being assessed. Notwithstanding this, they state that the proposed development is unlikely to increase the risk of contamination to the culverted surface water or underlying groundwater. Numerous reports relating to the Dalton Park site and proposed works have been previously assessed. Following the review of these reports, the Environment Agency consider that planning permission can be granted for the proposed development as submitted subject to a number of conditions.
60. It is considered that subject to these suggested conditions that the proposals would have no adverse impacts in terms of contaminated land or controlled waters and would be in accordance with part 11 of the National Planning Policy Framework.

## **Ecology**

61. This application site is in close proximity to Hesledon Moor East, Hesledon Moor West, Stoney Cut Cold Hesledon and Hawthorn Dene Sites of Special Scientific Interest (SSSI).
62. Ecology officers have no objections to the proposals in principle but are concerned about the landscaping proposals submitted. Therefore it is advised that an alternative new landscaping scheme would present an opportunity to create Durham Biodiversity Action Plan Priority Species and Habitats such as a low grassland sward suitable for Dingy Skipper butterflies. As such it is suggested that a suitable landscaping scheme is conditioned should the application be approved.
63. In light of the above it is not considered that the proposals would have any adverse impact on biodiversity or habitats and would be in accordance with saved District of Easington Local Plan policy 18 and part 11 of the NPPF both of which seek to enhance and protect the natural environment.



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## CONCLUSION

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64. It is considered that these proposals would enable the recently approved second phase of Dalton Park to proceed without delay and would serve to ensure that the jobs and regeneration benefits that the approved development would bring about are secured.
65. As concluded in the report it is considered that the proposals would not have any significant adverse impact on either the surrounding landscape or ecology that would warrant refusal of planning permission.
66. Therefore it is considered that the application is in accordance with both saved District of Easington Local Plan Policies, National Planning Policy Framework and emerging policies in the County Durham Plan which has a presumption in favour of sustainable development and which seeks to secure economic growth in order to create jobs and prosperity.

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## RECOMMENDATION

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

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

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

2. The development hereby approved shall be carried out in strict accordance with the following approved plans. Plan References; Earth Mounding – Additional area – Site Location Plan AL(D)108, Additional Stockpile Mounding Sections 99334/2006 rev B, Additional Stockpile Mounding 99334/2005 Rev B

Reason: To define the consent and ensure that a satisfactory form of development is obtained in accordance with saved policies 1 & 35 of the District of Easington Local Plan and parts 7, 8 10 and 11 of the NPPF.

3. No development shall commence until a detailed landscaping scheme shall be submitted to, and approved in writing by, the Local planning authority. No tree or shrub shall be removed until the landscape scheme, including any replacement tree and shrub planting, is approved as above. The landscape scheme shall include accurate plan based details of the following:
  - The existing distribution of trees and shrubs: annotated on plan and schedule to show quantities, species, size, vigour & growth characteristics.
  - Groups & species, or percentages of groups and species, scheduled for retention or translocation.
  - Details including planting, species, sizes, layout, densities, numbers.
  - Details of planting and translocation procedures or specification.
  - Finished subsoil, topsoil & manure levels, depths, distribution and specification details

- Grass & wildflower seeded areas, varieties, percentages & rates of application.
- Details of seat design and reinstated paths profile.
- 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 phase of works.

Reason: In the interests of the amenity of the area in accordance with saved policies 1 and 35 of the District of Easington Local Plan.

4. All planting, seeding and habitat creation in the approved details of the landscaping scheme shall be carried out in the first available planting & seeding seasons following the practical completion of the bulk material spreading exercise. Any trees, shrubs or seeded areas that die or fail to flourish are removed within a period of 5 years from the practical completion of the scheme shall be replaced in the next planting season with others of similar size and species, unless the planning authority gives written consent to any variation. Replacements will be subject to the same conditions.

Reason: In the interests of the amenity of the area in accordance with saved policies 1 and 35 of the District of Easington Local Plan.

5. No development approved by this planning permission shall take place until a scheme that includes the following components to deal with the risks associated with contamination of the site shall each be submitted to and approved, in writing, by the local planning authority:

- 1) A preliminary risk assessment which has identified: all previous uses, potential contaminants associated with those uses, a conceptual model of the site indicating sources, pathways and receptors, potentially unacceptable risks arising from contamination at the site.

- 2) A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.

- 3) The results of the site investigation and detailed risk assessment referred to in (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.

- 4) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action. Any changes to these components require the express written consent of the local planning authority. The scheme shall be implemented as approved.

Reason: To ensure the development does not harm controlled waters in accordance with part 11 of the National Planning Policy Framework.

6. The application site shall not be made open to the public until a verification report, demonstrating completion of works set out in the approved remediation strategy and the effectiveness of the remediation, shall be submitted to and approved in writing, by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any

plan (a "long-term monitoring and maintenance plan") for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan. The long-term monitoring and maintenance plan shall be implemented as approved.

Reason: To ensure the development does not harm controlled waters in accordance with part 11 of the National Planning Policy Framework.

7. If, during development, contamination not previously identified is found to be present at the site then no further development shall be carried out until the developer has submitted a remediation strategy to the local planning authority detailing how this unsuspected contamination shall be dealt with and obtained written approval from the local planning authority. The remediation strategy shall be implemented as approved.

Reason: To ensure the development does not harm controlled waters in accordance with part 11 of the National Planning Policy Framework.

8. In relation to the development hereby permitted, no machinery shall be operated, no development shall be carried out and no construction traffic shall enter or leave the site outside the hours of 0800 hours to 1800 hours Mondays to Fridays (excluding bank holidays) and 0800 hours to 1300 hours on Saturdays.

Reason: In the interests of residential amenity and to comply with saved policies 1 and 35 of the District of Easington Local Plan.

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## **STATEMENT OF PROACTIVE ENGAGEMENT**

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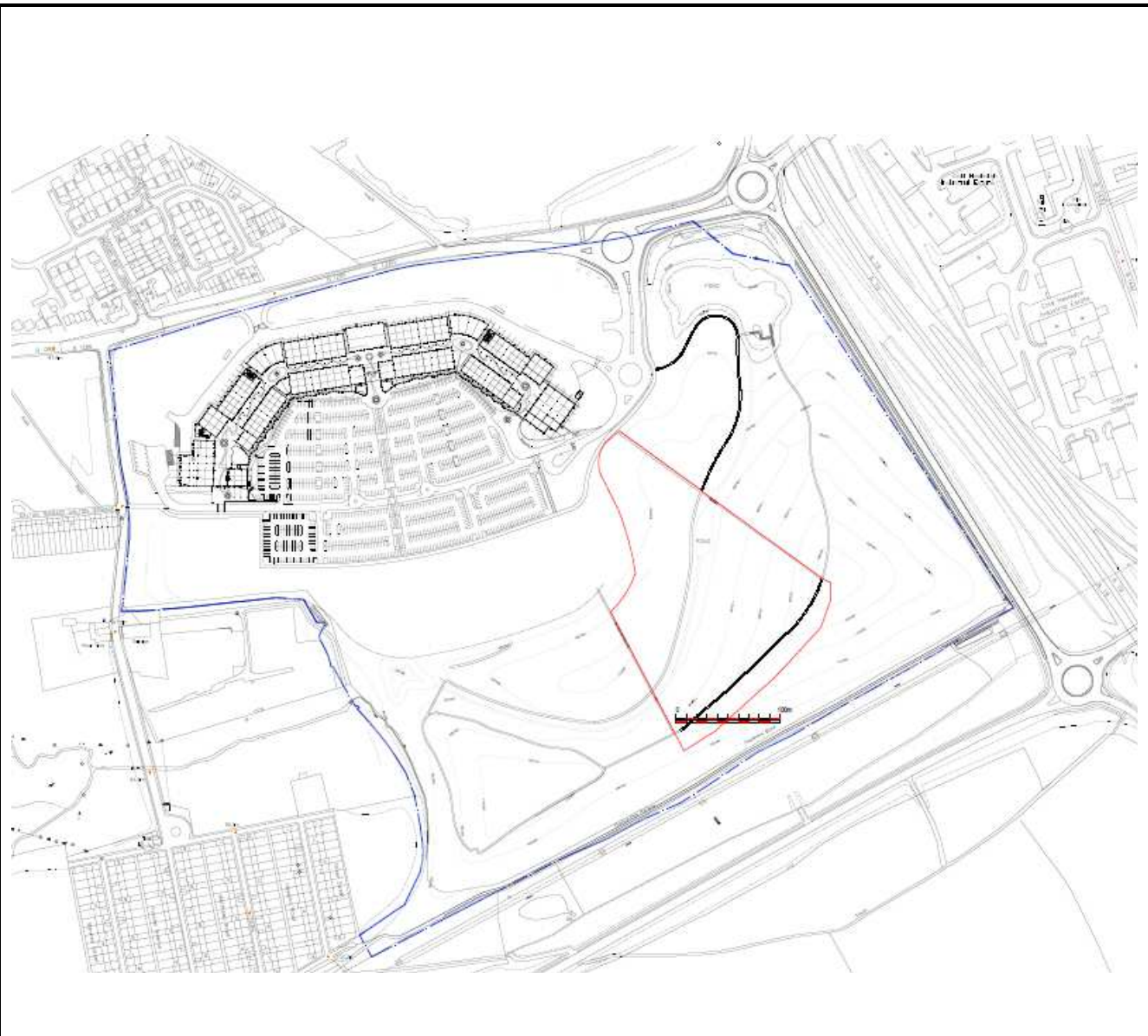
In dealing with the application, the Local Planning Authority has worked with the applicant in a positive and proactive manner based on seeking solutions to problems arising during the application process. The decision has been made within the target provided to the applicant on submission and in compliance with the requirement in the National Planning Policy Framework to promote the delivery of sustainable development.

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## **BACKGROUND PAPERS**

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- Submitted Application Forms and Plans.
- District of Easington Local Plan 2001
- National Planning Policy Framework
- County Durham Plan Preferred Options
- Consultation Responses



**Planning Services**

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**Proposed Groundworks and Landscaping at Dalton Park, Murton**

**Comments**

**Date** January 2014