

COMMITTEE REPORT

APPLICATION DETAILS

APPLICATION NO:	DM/17/03945/FPA
FULL APPLICATION DESCRIPTION:	Provision of beer garden on existing flat roof
NAME OF APPLICANT:	Mr Jon Randall, JD Wetherspoon
ADDRESS:	The Wicket Gate 193 Front Street Chester-le-Street
ELECTORAL DIVISION:	Chester-le-Street West Central Louisa Ollivere Planning Officer
CASE OFFICER:	Telephone: 03000 264878 louisa.ollivere@durham.gov.uk

DESCRIPTION OF THE SITE AND PROPOSALS

The Site

1. The application site is the Wicket Gate Public House which lies at the southernmost end of Chester-le-Street Front Street. The premises is mainly a two storey property but has a single storey element with a flat roof to the rear. A mini roundabout and the Front Street roadway lie immediately to the east. Adjacent to the property to the west is a petrol garage. To the north is another public house. Opposite the property are several commercial properties with offices and flats above. There are row of terraced residential properties 40m to the east and 115m to the west.

The Proposal

2. The application proposes the creation of an external area for customers (measuring approximately 405 square metres) on the flat roof over the single storey section that lies at the rear of the pub. Access to the area would be gained via the creation of a new staircase from the existing area below which will be covered and boxed in with a glass enclosure. The balcony area will include fixed seating (providing 118 covers) and a small area will be covered with a glass roof and canopy. The beer garden would be partially enclosed by a glazed balustrade and a timber fence designed to screen views of a bin storage area below. Current air conditioning units would be relocated to the corner of the roof and screened with timber fencing. Existing extraction equipment would be relocated to the rear of the main roof. A new external escape staircase would be installed to the rear of the balcony area. Two new fire exits from the existing pub would allow emergency access to/from this area. The plans initially included alterations to the front elevation to allow larger sliding doors and openable windows however in response to concerns from residents, the Police and Environmental Health these features have been deleted. Also in response to concerns in relation to opening hours of the balcony area the applicants have advised that they would be prepared to accept a condition that the use of this would

be restricted to prevent it being used between 9pm and 9am. The applicant has indicated that the increase in floor space would generate an additional 10 part time jobs at the pub.

3. This application is reported to Committee upon the request of Councillor Simon Henig on the basis of noise and disturbance to local residents.

PLANNING HISTORY

4. The site's planning history in the last 18 years mainly relates to minor applications relating to the building's current use as a public house, however the following are of some relevance to this application:
5. 08/00033/COU Proposed change of use of land to the side of building to form outside seating area for the placing of tables and chairs for use in connection with licensed premises (withdrawn).
6. 2/12/00089/FUL Creation of external beer garden and smoking area (Approved).

PLANNING POLICY

NATIONAL POLICY

7. 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.
8. The NPPF requires local planning authorities to approach development management decisions positively, utilising twelve 'core planning principles'.
9. In accordance with paragraph 215 of the National Planning Policy Framework, the weight to be attached to relevant saved local plan policy will depend upon the degree of consistency with the NPPF. The greater the consistency, the greater the weight. The relevance of this issue is discussed, where appropriate, in the assessment section of the report below.
10. The following elements of the NPPF are considered relevant to this proposal;
11. *NPPF Part 1 – Building a Strong, Competitive Economy* – reinforces the Government's commitment to securing economic growth to create jobs and prosperity, ensuring the planning system supports this aim – 'significant weight' is to be placed on this aim. Planning policies should seek to address potential barriers to investment, setting out clear economic vision and strategy which proactively encourages sustainable economic growth, identifies sites and inward investment, and identifies priority areas for economic regeneration. There is no specific advice on decision making.

12. *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.
13. *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. Planning policies and decisions must aim to ensure developments; function well and add to the overall quality of an area over the lifetime of the development, establish a strong sense of place, create and sustain an appropriate mix of uses, respond to local character and history, create safe and accessible environments and be visually attractive.
14. *NPPF Part 11 – Conserving and enhancing the natural environment*. The planning system should contribute to and enhance the natural environment by; protecting and enhancing valued landscapes, recognizing the benefits of ecosystem services, minimising impacts on biodiversity and providing net gains in biodiversity where possible, preventing new and existing development being put at risk from unacceptable levels of soil, air, water or noise pollution or land instability, and remediating contaminated and unstable land.

NATIONAL PLANNING PRACTICE GUIDANCE:

15. The newly introduced National Planning Practice Guidance (NPPG) both supports the core government guidance set out in the NPPF, and represents detailed advice, both technical and procedural, having material weight in its own right. The advice is set out in a number of topic headings and is subject to change to reflect the up to date advice of Ministers and Government.
16. *Design -The importance of good design*. Good quality design is an integral part of sustainable development. The National Planning Policy Framework recognises that design quality matters and that planning should drive up standards across all forms of development. As a core planning principle, plan-makers and decision takers should always seek to secure high quality design, it enhancing the quality of buildings and spaces, by considering amongst other things form and function; efficiency and effectiveness and their impact on wellbeing.
17. *Noise* - Noise needs to be considered when new developments may create additional noise and when new developments would be sensitive to the prevailing acoustic environment. Consideration should be given to whether significant adverse effect or an adverse effect occurs or is likely to occur; or whether a good standard of amenity can be achieved. Paragraph 123 of the NPPF provides policy support to this aspect.

LOCAL PLAN POLICY:

18. There are no saved policies in the Chester-le-Street Local Plan 2003 relevant to the consideration of this application.

RELEVANT EMERGING POLICY:

19. Paragraph 216 of the NPPF says that 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. The County Durham Plan was submitted for Examination in Public and a stage 1 Examination concluded. An Interim Report was issued by an Inspector dated 15

February 2015, however that report was quashed by the High Court following a successful Judicial Review challenge by the Council. As part of the High Court Order, the Council has withdrawn the CDP from examination. In the light of this, policies of the CDP can no longer carry any weight at the present time.

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.cartoplus.co.uk/durham/text/00cont.htm>.

CONSULTATION AND PUBLICITY RESPONSES

STATUTORY RESPONSES:

20. *Highways* – No objection.

EXTERNAL CONSULTEE RESPONSES:

21. *Durham Constabulary* – Objected to the enlargement of the front windows as they considered they would be a safety hazard. They advised that the noise nuisance from the beer garden could be adequately mitigated by effective management and the installation of a substantial balustrade, securing the escape stair, the restriction on any external music and the closure of the beer garden at 9pm each evening.

22. *Fire Authority* – Consider that the application demonstrates suitable and sufficient measures to satisfy the requirements of Building Regulations 2010.

INTERNAL CONSULTEE RESPONSES:

23. *Environmental Health* - In terms of the rear terrace, the Officer concerns relate to the potential increased propagation of noise associated with the use of the outside area. The Officer advises that this is both associated with raised voices and potentially amplified music. Considering the location of the terrace and nature of the locale the Officer does not consider, assuming music is background only, that daytime noise arising is likely to lead to a significant impact. However should this progress into the evening/ night-time hours the Officer advises that this is likely to increase the potential for impact.

24. In terms of the front windows, the Officer advises that the opening of such would defeat the current lobby system and allow for outbreak of any internal noise. Again as with the terrace the Officer considers that this is unlikely to be significant during the day, assuming music is set at a level so as to be background only, however the potential for impact will increase into the evening and with the assumed rise in amplified music volume.

25. In terms of the external plant, although difficult to fully identify from the detail provided it appears that the existing plant will remain as current specification, however be relocated. As such the Officer does not have concerns in relation to this element.

26. The Officer is of the opinion that the granting of planning permission for the development may potentially result in a statutory nuisance being created due to the increased potential for the break out of noise associated with both the front windows and rear terrace area.

27. However the Officer advises that conditions restricting the hours of use of the beer garden and the opening of front windows to 9:00-21:00 and controls on music levels would be sufficient to mitigate the potential of a statutory nuisance and if affixed would remove the objection to the development.

PUBLIC RESPONSES:

28. Twenty four letters of consultation were sent out to surrounding residents and a Site Notice was posted. This has resulted in 29 letters of objection from local residents and the Chester-Le-Street Residents Association whose concerns are summarised as follows:

- Discrepancies in information as to the amount of additional floorspace.
- There may not be enough sanitary facilities for the additional customers leading to further problems with people urinating in the back lanes.
- The total amount of people that could be accommodated exceeds the total escape capacity of 650.
- The new windows to the front and side will create issues such as noise on the Front Street, obstructions to the highway from persons standing outside chatting to customers inside/smoking, people throwing cigarettes out the windows.
- There is already a smoking area so there is no need for a further one.
- People congregating at front will be a distraction to road vehicles on the front street.
- Antisocial behaviour on the street outside.
- Visibility of beer garden from residential properties.
- Noise from persons and music in the beer garden until late hours will harm quality of life.
- Planning permission for a similar proposal to the side was refused.

The above is not intended to list 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=P0LOOYGDIS300>

PLANNING CONSIDERATIONS AND ASSESSMENT

The Principle of the Development

29. 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 and the impacts upon residential amenity and the character of the area.

The Development Plan

30. 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 Chester-le-Street District Local Plan remains the statutory development plan and the starting point for determining applications as set out at Paragraph 12 of the NPPF. However, the NPPF advises at Paragraph 215 that the weight to be afforded to existing Local Plans depends upon the degree of consistency with the NPPF.

31. The Local Plan was adopted in 2003 and was intended to cover the plan period until 2006. However, NPPF Paragraph 211 advises that Local Plan policies should not be considered out-of-date simply because they were adopted prior to the publication of the NPPF. Notwithstanding this, it is considered that a policy can be out-of-date if it is based upon evidence which is not up-to-date/is time expired depending on the circumstances.

The NPPF

32. Paragraph 14 of the NPPF establishes a presumption in favour of sustainable development. For decision taking this means (unless material considerations indicate otherwise):

- approving development proposals that accord with the development plan without delay; and where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
 - i) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
 - ii) specific policies in this Framework indicate development should be restricted.

33. As the development plan is silent in respect of drinking establishments paragraph 14 is engaged. As there are no policies in the Framework which would restrict the development the assessment rests on a balancing exercise of adverse impacts against the benefits when assessed against NPPF policies.

Policy Principle

34. One of the overarching principles of the NPPF is to support sustainable economic development to deliver business that the country needs. The proposed beer garden would contribute positively to the daytime and early evening economy contributing to the vitality and viability of the commercial centre and when functioning will bring some part time jobs to the area. The proposal therefore gains support from the NPPF in these respects and is considered to be acceptable in principle.

Impact upon the Surrounding Area and Neighbouring Amenity

35. Paragraph 17 of the NPPF requires a good standard of amenity for all existing occupants of land and buildings. Paragraph 123 of the NPPF states that planning decisions should aim to avoid noise from giving rise to significant adverse impact on health and quality of life arising from noise from new development and should mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions. Paragraph 58 of the NPPF requires developments to create safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion.

36. It is generally accepted that occupiers of residential properties within Town Centres cannot expect the same level of peace and quiet as those who live in more distant and predominantly residential areas. Nevertheless it is considered that such residents are entitled to a reasonable degree of peace and quiet during the small hours when most people are asleep.

37. Concerns have been raised by local residents in relation to the originally proposed opening hours, noise and potential for increase to anti-social behaviour in the area.

The closest residential properties are 40 metres away from the site. Given the late opening hours of the current use and the proximity to residential properties, without suitable controls there would be significant impacts upon the neighbouring residential properties from noise and disturbance and the likelihood of a statutory nuisance. Concerns were initially raised by residents, the Police and Environmental Health in relation to the opening up of windows and the escape of noise and music from within and in relation to noise from people and music within the beer garden until late into the evening. In response to this the applicants have deleted the proposal for alterations to the frontage and have agreed to a restriction to the use of the beer garden preventing use between the hours of 21.00 to 09.00. Given that the beer garden is only accessed via one internal staircase which could be closed or cordoned off such a condition restricting such a use would be physically enforceable. A condition could also ensure that any music played externally during the hours of use is not of a level to disturb local residents. The Police and local residents have also raised concerns in relation to persons shouting down from the balcony to the smoking area below however a condition could ensure that the glass balustrade be raised in height to 2m to prevent this. With such conditions the proposal would not be considered to be harmful to residential amenity or cause a statutory nuisance. The day time/early evening use would not affect the acoustic character of the area to the extent that there would be a perceived change in quality of life to local residents.

38. It is not anticipated by the Environmental Health Officer that there would be significant harm to residential amenity or a statutory nuisance from odours given the new location of the extraction equipment being proposed.

39. Admittedly the town centre and surrounding area suffer some anti-social behaviour issues however it is noted that the Police consider the management of the premises to be very pro-active and consider it a well-run establishment. The main element of concern to the Police and Local residents in relation to anti-social behaviour was the large windows/doors on the property frontage which have since been deleted from the proposal.

Design Considerations and Impacts upon character of the area

40. The NPPF attaches great weight to good design and seeks to ensure that developments address connections between people and places and the integration of the new development into the natural, built and historic environment.

41. The design is reflective of operational requirements, the inclusion of a glazed stairwell, glass canopy and balustrade present a modern aesthetic. Other functional features such as the timber fence screening and steel staircase are not particularly visually appealing, although essential. These design elements will mainly be viewed by customers within the beer garden as the rear area is well screened from wider public views by the garage building and garage canopy of the adjacent petrol station. Therefore there would be a negligible impact upon the visual amenity of the area.

Access/Parking/Highway Safety

42. The Highways Officer has no objections to the increase in floorspace and it is noted that many town centre uses do not necessitate car parking provision given the sustainable in town centre location.

Other Issues

43. Concerns raised in relation to sanitary facilities and safe capacities are issues that would be addressed under Building Regulations Legislation.
44. It is noted that there is already a smoking area as objectors have raised, however the main purpose of this is not to provide a smoking area but an additional seating/outdoor drinking area and need is not a consideration for such applications.
45. Reference has been made to planning permission being refused for a similar proposal to the site however planning records indicate that such an application was withdrawn in 2008 rather than refused and was substantially different to this application, that site being in a much more prominent location.

Conclusion

47. The NPPF outlines three dimensions to sustainable development, which needs to be considered together. These are economic, social and environmental roles. In respect of the balance of benefit versus harm for this application the following is noted. The application would support an existing town centre use contributing to the vitality and viability of Chester-le-Street Town Centre and local employment levels. Details that potentially would have had significant adverse impacts upon residential amenity (noise) and anti-social behaviour have now been amended and mitigated to the extent they have a neutral impact to the quality of life for local residents. Matters in relation to design and visual amenity are considered neutral and do not weigh in favour or against the proposals.
46. The nearest noise sensitive receptors are 40 metres away from the site and this distance together with conditions lead Officers to consider that there would be no significant adverse impacts from the proposal in terms of noise and anti-social behaviour therefore the economic benefits of the development weigh in favour of this proposal. Issues raised by local residents, whilst noted, do not alter the conclusion of this assessment.

CONCLUSION

47. The scheme brings some economic benefits, and with conditions to ensure no adverse impacts, the 'tilted balance' leads to a recommendation for approval of the proposals, subject to the identified conditions.

RECOMMENDATION

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 Reference No:	Date submitted:
Location Plan	07/12/2017
F1941-10 Rev D	07/12/2017
F1941-12 Rev B	26/02/2018
F1941-09 Rev E	26/02/2018
6261-01	26/02/2018

Reason: To define the consent and ensure that a satisfactory form of development is obtained in accordance with the NPPF.

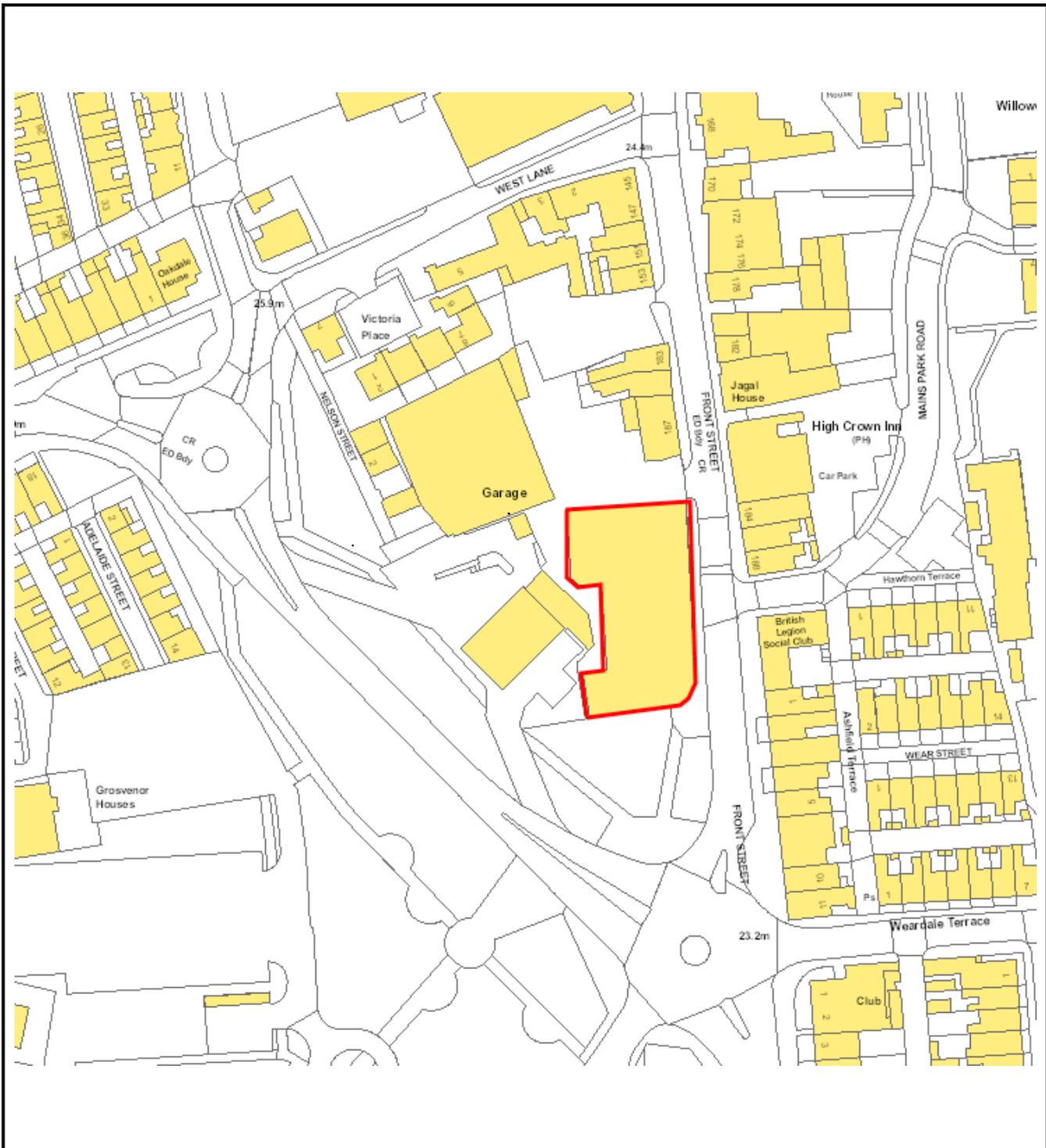
3. The beer garden hereby approved shall not be used by visiting members of public between the hours of 21.00 to 9.00 Mondays to Sundays inclusive.
Reason: In the interests of protecting residential amenity in accordance with the NPPF.
4. Whilst the beer garden is in use amplified music shall not be played within this area so as to be audible at residential properties on Adelaide Street or Front Street.
Reason: In the interests of protecting residential amenity in accordance with the NPPF.
5. Replacement windows in the front façade shall only be opened between the hours of 9.00 and 21.00. Whilst windows are open amplified music shall not be played at such a level so as to be audible at 5m from the façade.
Reason: In the interests of protecting residential amenity in accordance with the NPPF.
6. The glass balustrade to be installed to the rear shall be no lower than 2m in height.
Reason: In the interests of protecting residential amenity in accordance with the NPPF.

STATEMENT OF PROACTIVE ENGAGEMENT

The Local Planning Authority in arriving at its decision to approve the application 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. (Statement in accordance with Article 35(2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.)

BACKGROUND PAPERS

The National Planning Policy Framework (2012)
National Planning Practice Guidance Notes
Chester-le-Street Local Plan 2003 (saved policies)
Statutory, internal and public consultation responses
Submitted forms, plans and supporting documents



Planning Services

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Comments

Date 26.04.2018

Scale NTS