

# COMMITTEE REPORT

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## APPLICATION DETAILS

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<b>APPLICATION NO:</b>	DM/18/01043/FPA
<b>FULL APPLICATION DESCRIPTION:</b>	Demolition of existing residential dwelling and construction of four residential dwellings
<b>NAME OF APPLICANT:</b>	Mr Martin Hawthorne, Bright Ideas Development Ltd
<b>ADDRESS:</b>	Garden Villa, Newcastle Road, Crossgate Moor, Durham DH1 4AG
<b>ELECTORAL DIVISION:</b>	Neville's Cross
<b>CASE OFFICER:</b>	Paul Hopper (Senior Planning Officer) Tel: 03000 263 946 Email: paul.hopper@durham.gov.uk

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## DESCRIPTION OF THE SITE AND PROPOSALS

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### The Site

1. The application site comprises a parcel of land approximately 0.14 hectares in area situated within the residential framework of Durham City adjacent to the A167. It currently hosts a single two storey dwelling known as Garden Villa which is a large detached property served by considerable private curtilage including gardens and an area of hardstand
2. Access is taken via Newcastle Road from the A167 and the site is framed by residential properties to the south and east, by the A167 to the west and Durham Johnston School and associated playing fields to the north. Planning permission was granted for a development of 3 dwellings in a small paddock to the west of the site in 2016 and whilst construction works have yet to commence it is noted that several pre commencement conditions have recently been discharged.

### The Proposal

3. Planning permission is sought for the demolition of the existing dwelling and the construction of 4 No. dwellings across the site on land at Garden Villa, Durham. The proposed dwellings would comprise a short row of 3, 2 ½ storey properties (with habitable space within the roof void) that would present principal elevations to the south. A fourth detached property would occupy the northern half of the site, present a principal elevation to the south east and also provide habitable space within the roof void.
4. The 3 units to the south of the site would provide 3 bedrooms with the detached dwelling to the north providing 4 bedrooms and be of 2 ½ storey height. The properties would be of contemporary design with external surfaces finished in a mix of white and off white render supplemented by timber cladding to the walls and dark grey roof tiles.

5. Landscaping would be limited to shrub and tree planting to the southern elevations of the 3 properties to the south of the site which it is noted would have an open aspect to the front gardens
6. The application is being reported to the planning committee at the request of Cllr Elizabeth Brown who considers the access and egress arrangements to be such that there is significant potential for the development to exacerbate existing parking and highway safety issues with the proposals amounting to the overdevelopment of the site.

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## **PLANNING HISTORY**

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7. A Planning application was previously submitted for the demolition of Garden Villa and the construction of 5 dwellings at the site in 2017 but was subsequently withdrawn.

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## **PLANNING POLICY**

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### **NATIONAL POLICY**

8. A revised National Planning Policy Framework (NPPF) was published in July 2018. 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 213 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 this 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 5 Delivering a Wide Choice of High Quality Homes.* The Government advises Local Planning Authority's to deliver a wide choice of high quality homes, widen opportunities for home ownership and create sustainable, inclusive and mixed communities
11. *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.
12. *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
13. *NPPF Part 9 Promoting Sustainable Transport:* Encouragement should be given to solutions which support reductions in greenhouse gas emissions and reduce congestion. Developments that generate significant movement should be located where the need to travel will be minimised and the use of sustainable transport modes maximised.

14. *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.
15. *NPPF Part 15 Conserving and Enhancing the Natural Environment*: Planning policies and decisions should aim to avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development and 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.
16. *NPPF Part 16 Conserving and Enhancing the Historic Environment*: Working from Local Plans that set out a positive strategy for the conservation and enjoyment of the historic environment, LPA's should require applicants to describe the significance of the heritage asset affected to allow an understanding of the impact of a proposal on its significance.

## **LOCAL PLAN POLICY:**

### **City of Durham Local Plan**

17. Policy E14 (Trees and Hedgerows) sets out the Council's requirements for considering proposals which would affect trees and hedgerows. Development proposals will be required to retain areas of woodland, important groups of trees, copses and individual trees and hedgerows wherever possible and to replace trees and hedgerows of value which are lost. Full tree surveys are required to accompany applications when development may affect trees inside or outside the application site.
18. Policy E15 (Provision of New Trees and Hedgerows) states that the Council will encourage tree and hedgerow planting.
19. Policy E16 (Protection and Promotion of Nature Conservation) is aimed at protecting and enhancing the nature conservation assets of the district. Development proposals outside specifically protected sites will be required to identify any significant nature conservation interests that may exist on or adjacent to the site by submitting surveys of wildlife habitats, protected species and features of ecological, geological and geomorphological interest. Unacceptable harm to nature conservation interests will be avoided, and mitigation measures to minimise adverse impacts upon nature conservation interests should be identified.
20. Policy E24: Ancient Monuments and Archaeological Remains states that the Council will preserve scheduled ancient monuments and other nationally significant archaeological remains and their setting in situ.
21. Policy H2: New Housing in Durham City. States that new housing development comprising windfall development of previously developed land will be permitted within the settlement boundary of Durham City where the is included in Policy H1 or that the proposal does not contravene policies E3, E5 and E6 of the CofDLP, and is not allocated or safeguarded for alternative uses and the development accords with policies Q8, R2, T10 and U8A.
22. Policy H13 (Residential Areas – Impact upon Character and Amenity) states that planning permission will not be granted for new development or changes of use which have a significant adverse effect on the character or appearance of residential areas, or the amenities of residents within them.

23. Policy T1 (Traffic – 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.
24. Policy 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.
25. Policy Q1: General Principles – Designing for People states that the layout and design of all new development should take into account the requirements of users. It will be expected to incorporate the following as appropriate personal safety and crime prevention, the access needs of people with disabilities, the elderly and those with children.
26. Policy Q2: General Principles – Designing for Accessibility states that the layout and design of all new development should take into account the requirements of users. It will be expected to embody the principle of sustainability and to incorporate the following as appropriate.
27. Policy Q3 (External Parking Areas) requires all external parking areas to be adequately landscaped, surfaced, demarcated, lit and signed. Large surface car parks should be subdivided into small units. Large exposed area of surface, street and rooftop parking are not considered appropriate.
28. Policy Q5 (Landscaping General Provision) sets out that any development which has an impact on the visual amenity of an area will be required to incorporate a high standard of landscaping.
29. Policy Q8 (Layout and Design – Residential Development) sets out the Council's standards for the layout of new residential development. Amongst other things, new dwellings must be appropriate in scale, form, density and materials to the character of their surroundings. The impact on the occupants of existing nearby properties should be minimised.
30. Policy 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.
31. Policy U11 (Development on Contaminated Land) sets out the criteria against which schemes for the redevelopment of sites which are known or suspected to be contaminated. Before development takes place it is important that the nature and extent of contamination should be fully understood.
32. Policy U13 (Development on Unstable Land) notes that development on unstable land will only be permitted if it is proven that there is no risk of the development or its intended occupiers from such instability or that satisfactory remedial measures can be undertaken.

#### **EMERGING COUNTY DURHAM PLAN:**

The County Durham Plan

33. Paragraph 213 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. An 'Issues & Options' consultation was completed in 2016 on the emerging the County Durham Plan (CDP) and the 'Preferred Options' was approved for consultation at Cabinet in June 2018. However, the CDP is not sufficiently advanced to be afforded any weight in the decision making process 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>.*

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## **CONSULTATION AND PUBLICITY RESPONSES**

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### **STATUTORY RESPONSES:**

34. Highway Authority has no objection to the application but notes concern about the location of one of the proposed visitor parking spaces which is off highway in the rear garden of plot 3 and as such is unlikely to be used by visitors to plots 1-3, and as such there is potential that parking would occur in the access lane as a result. However, the Highway Authority do not consider these concerns to be sufficient to sustain refusal of the application.
35. Consequently, no objection is offered to the application subject to the inclusion of planning conditions requiring the submission and agreement of details relating to the upgraded of the rear lane of Neville Terrace which should include appropriate street lighting, an access restriction to be secured through designation as a one way system taking the access from Newcastle Road to Redhill's Lane through a Traffic Regulation Order, and that this be implemented prior to the commencement of development along with the submission and agreement of a construction management plan.
36. NWL has no objection to the application noting only that NWL promotes sustainable surface water management across the region and that the developer should develop their Surface Water Drainage Solution by working through the hierarchy of preference.
37. Drainage and Coastal Protection Section has no objection to the application but notes a requirement to apply the hierarchy of preference when disposing of surface water generated by the development.
38. Coal Authority originally objected to the application due to the lack of a Coal Mining Risk Assessment to adequately consider the risk posed from previous mine workings. The applicant has subsequently submitted a Coal Mining Risk Assessment which proposed foundation designs. The Coal Authority considers these measures to be sufficient to mitigate the risks posed by coal mining legacy and withdraws its objection subject to the inclusion of a planning condition which ensures the proposal be carried out in accordance with the stated detail.

### **INTERNAL CONSULTEE RESPONSES:**

39. Noise Action Team has no objection to the application subject to the inclusion of planning conditions to control the environmental impact of the development during the construction phase, hours of working and that noise mitigation measures are incorporated into the development to ensure that the following levels are achieved;

35dB LAeq 16hr bedrooms and living room during the day-time (0700 - 2300)

30 dB LAeq 8hr in all bedrooms during the night time (2300 - 0700)

45 dB LAmax in bedrooms during the night-time

55dB LAeq 16hr in outdoor living areas

40. Contaminated Land Section has no objections to the application subject to the inclusion of a planning condition which requires the submission and agreement of a risk assessment for land contamination, intrusive site investigations, remediation and verification where need is identified.
41. Landscape Section has no objection to the application noting that the development would not have any adverse landscape impacts.
42. Ecology Section has no objection to the application subject to the mitigation requirements stated in Section 7 of the submitted Ecological Assessment
43. Archaeology Section has no objection to the application subject to the inclusion of a planning condition requiring the implementation of a programme of archaeological work approved in writing by the Local Planning Authority. A further condition is advised requiring the recording of the programme of works within the County Durham Historic Environment record.

#### **NON STATUTORY RESPONSES:**

44. The City of Durham Trust objects to the application which they consider represents over-development, has parking and traffic problems, and includes a large 'focus dwelling' which occupies a disproportionately large part of the entire site.

#### **PUBLIC RESPONSES:**

45. The application has been publicised by way of site notice and notification letters to neighbouring properties. Eight letters of objection have been received. The reasons for objection are summarised as;

##### a) Highway Safety:

###### *Parking*

The development would exacerbate parking problems already present within the locale which includes a lack of sufficient parking provision for existing properties made worse by existing demand from students arriving at Durham Johnston School and parking in surrounding streets. Concern regarding the position of one of the visitor parking space which partially encroaches into the rear lane. Parking also takes place under the existing footbridge which would restrict access into the site.

###### *Increase in Traffic Movements*

The development would increase traffic volume in the locality, in particular causing vehicles turning into the site to reduce speeds and thereby increasing congestion on the A167 which is already heavily congested, to the detriment of highway safety. The proximity of a nearby access serving and adjacent residential development which benefits from an extant planning permission is also noted as a concern.

###### *Creation of a route avoiding existing traffic lights*

The connection of the A167 to the rear of Neville Terrace would create a route whereby the traffic lights at the junction of the A167 and Redhills Lane could be avoided. This would create a volume and speed of vehicles to the rear lane of Neville Terrace that would have a detrimental impact upon highway and pedestrian safety for residents of this terrace. There is also concerns that the one way system could not be appropriately enforced or traffic flows managed to the detriment of highway safety and that the width of the access from the Newcastle Road is not adequate.

- b) Residential Amenity: The development would result in an unacceptable level of overlooking and loss of privacy to adjacent dwellings which although not constructed are nevertheless subject to planning permission capable of implementation. Particularly concern that the minimum distances prescribed by policy Q8 of the City of Durham Local Plan would not be achieved.
- c) Bin/Refuse Collection: The new development could not be easily accessed by refuse collection services given the likely parking congestion caused by the development.
- d) Drainage: The proposal would create additional surface water run-off from proposed areas of additional hardstanding and concern is also raised with regard to the capacity of the existing sewer to accommodate additional flows.
- e) Land Ownership: Part of the rear lane to Neville Terrace is unclear and no details have been provided with regard to the maintenance of this route should planning permission be granted and no details as to the responsibilities for ongoing maintenance should planning permission be granted.

#### **APPLICANTS STATEMENT:**

46. The proposed scheme is to create four modern family homes in an area of Durham that is in great need of more family housing. The proposal also includes the demolition of the existing Garden Villa house to make room for the new housing which is now a dated property struggling to be sold. The applicant has made great efforts to design a scheme that meets the housing needs of the area by creating three and four bedroom family houses with private garden spaces rather than any other form of housing or accommodation.

This is particularly relevant when the proximity to the Durham Johnston School is considered, as more family housing of this size is required in this area. There has been a great amount of effort put into the design of the scheme to ensure that the houses and landscaping created will enhance the local area by their appearance, style and materials used.

The applicant has gone well beyond the 'average' to ensure the proposal has modern housing that the city of Durham and the new owners can be proud of.

In addition the applicant has worked tirelessly with the local authority planning department and associated departments such as highways as well as the many professionals he has employed to design and advise on the scheme. Together they have worked as a team to alter the design and layout where appropriate, and have fine tuned the scheme over many months to ensure the scheme is one that not only complies with legislation but also integrates with the surrounding housing and actually improves the local area.

Overall the applicant feels this is an exciting development that will help define the standards of new housing within this area in the future.

*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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47. Section 38(6) of the Planning and Compulsory Purchase Act 2004 sets out that if regard is to be had to the development plan, decisions should be made in accordance with the development plan unless material considerations indicate otherwise. In accordance with Paragraph 212 of the National Planning Policy Framework (NPPF), the policies contained therein are material considerations that should be taken into account in decision-making. Other material considerations include representations received. In this context, it is considered that the main planning issues in this instance relate to the principle of the development, locational sustainability of the site, highway safety, ecology, impact upon residential amenity, landscape and visual impact, drainage and land contamination and stability.

### Principle of Development

48. 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 in this regard. The City of Durham Local Plan (CofDLP) remains 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. However, the NPPF advises at Paragraph 213 that to the weight to be afforded to existing Local Plan policies will depend upon their degree of consistency with the NPPF.
49. The CofDLP was adopted in 2004 and was intended to cover the period to 2006. The NPPF Paragraph 213 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 or is time expired.
50. On this basis given the age of the CofDLP and housing supply figures that informed it, the housing supply policies therein do not reflect an up-to-date objective assessment of need, and must now be considered out-of-date. As such the weight to be afforded to these policies is reduced as a result and paragraph 11 of the NPPF is also engaged. However, this does not make out of date policies irrelevant in the determination of a planning application. Nor is it prescribed how much weight should be given to such policies in the decision, this being a matter for the decision maker, having regard to advice at Paragraph 213 of the NPPF.
51. Policy H2 of the local plan supports the provision of new housing within the settlement boundary providing it accords with other policies within the plan and that the development is on previously developed land. In this case the development is partly on previously developed land - as it would occupy part of the site on which an existing dwelling is located – but also relates to an area of garden, classed as greenfield land. The development is therefore not in complete compliance with Policy H2.
52. However, the NPPF which takes a more permissive approach to development on greenfield land and does not require such a sequential approach. In addition policy H2 is a settlement boundary policy which is informed by what is now an out of date evidence base, hence it can be considered to be an out of date policy for the purposes of engagement of paragraph 11 of the NPPF. Accordingly, only limited weight should be afforded to this policy.

53. Consequently, the application must be determined in accordance with Paragraph 11 of the NPPF.
54. Paragraph 11 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 an up to date development plan without delay; or
  - where there are no relevant development plan policies or the policies which are most important for determining the application are out-of-date, granting permission unless:
    - i) the application of policies in the framework that protect areas or assets of particular importance provides a clear reason for refusing the development or
    - ii) 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
55. There are no policies which protect areas or assets of particular importance which provide a clear reason for refusal and accordingly, the acceptability of the development rests on the planning balance of whether any adverse impact of approving the development would significantly and demonstrably outweigh the benefits.

#### Five year Housing Land Supply

56. Paragraph 67 of the NPPF requires Local Planning Authorities (LPAs) to maintain a five-year supply of deliverable sites (against housing requirements) to ensure choice and competition in the market for land.
57. In September 2017, the Government published a consultation document entitled *“Planning for the Right Homes in the Right Places”*, which introduced a standard methodology for calculating housing need (OAN) which is now also reflected in paragraph 60 of the NPPF. Applying that methodology for County Durham, the housing need figure would be 1,368 dwellings per annum (dpa).
58. The Council’s position on 5-year housing land supply was publically tested at a recent public inquiry (APP/X1355/W/17/3180108 – decision issued 10th May 2018) with the Inspector concluding that the use of the Government proposed standardised methodology for calculating land supply would be premature until it has formally come in to force or until the council has adopted a formal position in relation to its OAN. On the 13<sup>th</sup> June, the ‘Preferred Options’ of the County Durham Plan (CDP) was presented to the Council’s Cabinet and endorsed for consultation. The CDP is aligned with the standardised methodology and formally endorses the use of 1,368dpa as the OAN figure. The Council is able to demonstrate in excess of 6 years supply of deliverable housing land against this figure.
59. Accordingly, the benefit of boosting housing land supply will need to be factored into the planning balance, whilst recognising that the benefits of delivering new housing would be less than if a shortfall in supply existed.

## Locational Sustainability of the Site

60. Paragraph 103 of the NPPF states that the planning system should actively manage patterns of growth in support of focussing significant development on locations which are or can be made sustainable through limiting the need to travel and offering a genuine choice of transport modes.
61. In this respect the application site is situated within Durham City and is well related to a wide variety of shops, services, education and employment opportunities and immediately adjacent to a site previously granted planning permission for residential development in 2016. As such, the provision of 4 additional dwellings within this well-established residential area, close to existing facilities could be supported in principle subject to assessment against other local plan policies and material planning considerations.

## Impact upon Residential Amenity

62. Policy Q8 of the CofDLP provides detailed design advice for new residential development and policy H13 states that planning permission will not be granted for new development which would have a significant adverse effect on the character or appearance of residential areas or the amenities of residents within them. The former prescribes separation distances of 21 metres between windows of habitable rooms and 13 metres between gable elevations and windows to habitable rooms. These policies are considered NPPF compliant with a core planning principle at Paragraph 17 of the NPPF which states that planning should always seek to secure a good standard of amenity for existing and future occupants of land and buildings. Part 11 of the NPPF seeks to prevent both new and existing development from contributing to, or being put at unacceptable risk from unacceptable levels of pollution and noise.
63. The application represents the resubmission of a previously withdrawn application for the erection of 5 dwellings at the site which sees a reduction in the number of units from 5 to 4. This has allowed the revised proposal to achieve the minimum separation distances described in policy Q8 within the development itself most notably through the reorientation of the southern properties and the single detached dwelling to the north.
64. With regard to the proposed development to the west, as referred to in Paragraph 2 above, it is noted that a window positioned in the gable elevation of the proposed dwelling to the north of the application site, Plot 4, would be situated below the minimum separation distances from the proposed adjacent property as required by policy Q8 of the CofDLP at 15 metres, rather than 21 metres. This, along with separation distances between several other windows of both this property and the three dwellings across the southern part of the site are raised in objection by the owner of the adjacent site, citing a loss of privacy between windows and from overlooking of external private amenity areas.
65. However, it is noted that in all case the windows identified are not positioned in elevations which directly face one another and in this respect views would not be direct and limited as a result. Those views at ground floor between the window to the gable of plot 4 and the single dwelling to the west would also not be direct and screened by boundary treatment. Whilst there would be some adverse impact, this would be focussed on the proposed dwelling, with impact to the dwelling which already benefits from planning permission to the west considered within acceptable levels. Other windows in the rear elevation of the proposed adjacent property are not considered to be adversely affected due to the orientation and relationship of the proposed dwellings. Overall, any potential adverse amenity impacts are considered minimal and not sufficiently serious to justify refusal of planning permission.

66. The nearest residential properties to the east at Neville Terrace would have rear elevations with windows to habitable rooms approximately 12.5 metres from the gable elevations of the proposed property at Plot 3, which is marginally below the 13 metres required by text supporting policy Q8 of the CoDLP. However, this is not considered to have an unacceptable adverse impact upon residential amenity of the occupiers of these units in terms of overbearing, overshadowing or loss of privacy.
67. Whilst the development would have some adverse impact to existing properties in this regard in terms of rear outlook, this is not considered to be so significant as to sustain refusal of the application, which would otherwise accord with aims of policy Q8 of the City of Durham Local Plan.
68. With regard to private amenity space it is considered that all 4 properties would incorporate adequate private external space to serve the size and type of dwellings proposed.
69. With regard to noise it is noted that the dwellings would be located approximately 30 metres from the A167 road which is one of the main vehicular routes through Durham and is well trafficked as a result. Therefore, the occupiers of the proposed dwellings could be impacted by road noise.
70. Paragraph 180 of the NPPF requires that planning decisions avoid noise from development giving rise to significant adverse impacts on health and quality of life; and mitigate and reduce to a minimum other adverse impacts through the use of conditions.
71. Consequently, the Council's Environmental Health Section offers no objection to the application subject to the inclusion of planning conditions which require the applicant to demonstrate that appropriate sound insulation measures have been installed to ensure that recommended internal and external noise levels can be achieved, the restriction of working hours and the suppression of noise and dust during the construction phase.
72. Overall, it is considered that the scheme would comply with CofDLP Policy Q8 and Part 15 of the NPPF and would not lead to a significant reduction in residential amenity for existing or future residents.

#### Design and Visual Appraisal

73. The application site is framed by residential development to the south and east and is set back approximately 30 metres from the A167, to the rear of a site which benefits from planning permission for the erection of 3 dwellings comprising one detached unit and a pair of semi-detached units.
74. The City of Durham Trust raise objection to the application which it considers represents the overdevelopment of the site and the inclusion of a large detached property covering much of the site.
75. Policy H13 of the Local Plan is relevant in determination of the application and states that planning permission will not be granted for new development which has a significant adverse effect on the character or appearance of residential areas. This displays a broad level of accord with the approach contained within Parts 12 and 15 of the NPPF which seek to promote good design while protecting and enhancing local environments. Paragraph 127 of the NPPF also states that planning decisions should aim to ensure developments function well and add to the overall quality of the area and establish a strong sense of place, using streetscapes and buildings to create attractive and comfortable places to live, work and visit. Due to its compliance with the NPPF significant weight can be afforded to Policy H13 of the CofDLP in this respect.

76. In this regard it is noted that the proposal would not appear prominent from the A167 with only fleeting views available when travelling northbound, and although more exposed views are possible when approaching from the south, these would be partially screened by the 3 properties when the adjacent site is fully developed. As such the Council's Landscape Section has no objection from a landscape impact perspective.
77. With regard to design it is noted that this displays a contemporary approach which residents feel is not in keeping with the more traditional terraced character of surrounding development. However, it is considered the scale and layout of the proposal would not detract from the built form in the surrounding area and that the development would be set back from the most public vantage point at the A167. In this context the application of a more contemporary approach is considered acceptable and the use of external materials including render and timber cladding appropriate. However, it is noted that the submission and agreement of sample materials in this regard could be secured through planning condition, as should the submission and agreement of precise means of enclosure and landscaping plan.
78. Overall, subject to the inclusion of a planning condition in this regard, the proposal is considered to accord with the requirements of policy H13 and Parts 12 and paragraph 127 of the NPPF.

#### Parking, Access and Highway Safety

79. The development proposes the use of an existing access from Newcastle Road and the A167 to the west along with the implementation of a one way system taking vehicles away from the site via the rear Lane of Neville Terrace connecting to Redhills Lane. The applicant has proposed a number of improvements to this section of road including resurfacing and installation of street lighting.
80. Policy T1 and T10 of the City of Durham Local Plan require new development to provide safe and secure access and sufficient parking provision respectively. This is considered to display a broad level of accord with the aims of the NPPF at paragraph 108 of the NPPF.
81. Several residents and the City of Durham Trust have raised objection to the application citing an adverse impact upon highway safety as a concern, particularly the likely use of the route as a means of avoiding the traffic lights at the junction of the A167 and Redhills Lane, the potential conflict between vehicles and pedestrians along this route, and the impact of slow moving vehicles into the site from the A167, noting in particular that a speed survey has been undertaken along this part of the A167. They have also raised concerns regarding the amount of car parking included within the development and the impact of the proposal upon demand for parking in the wider area which is already an issue.
82. In addition, objection is raised by occupiers of properties at Neville Terrace citing land ownership concerns relating to the rear lane, in particular the applicant's ability to undertake the works required to upgrade this route and querying responsibility for ongoing maintenance should planning permission be granted. Similarly, these concerns are also raised should improvements be required to the existing access from Newcastle Road which is understood to be in third party ownership and over which the application site is understood to benefit from a right of access.
83. Disputes with regard to land ownership and rights of access and responsibilities pertaining to maintenance are civil matters between those parties involved and not material considerations in determination of planning application to which any weight can be attached and the planning system is not the arbitrator of any disputes in this regard.

84. With regard to the rear lane behind Neville Terrace it is understood that this is unregistered. Government guidance regarding the use of planning conditions states that works to land not controlled by the applicant can be required using a negatively worded planning condition which prohibits the development authorised by the planning permission from taking place, until such time as agreement to undertake the works specified (in this case improvements to the site access and rear lane) has been secured. The guidance also states that such conditions should not be imposed if there are no prospects of the actions being undertaken within the lifetime of the planning permission. Whilst some of the access land appears to be in third party ownership, it is considered that sufficient improvement works could be achieved outside of this land to satisfy highway requirements. On this basis, there is no reason to suggest the required works could not be completed.
85. Consequently, it is considered that the application is supported by sufficient information to allow an appropriate consideration of its likely impact in accordance with the requirements of policies T1 and T10 of the CofDLP.
86. The Highway Authority has commented and although noting concerns regarding the position and likely underuse of a visitor space to the north of the site, raises no objection to the application noting that in relation to parking the development would meet the Council's Parking Standards and that subject to the upgrade works would provide safe and adequate means of access. Notwithstanding this a number of conditions are advised, these requiring the submission and agreement of details relating to the upgrading of the vehicular areas within the site including installation of appropriate street lighting, that no vehicles leave the site directly onto the A167 (to be secured through the implementation of a one way system subject of a Traffic Regulation Order) with access taken from Newcastle Road and the submission of a construction management plan.
87. Objection has also been raised by residents with regard to bin storage and collection. In this regard submitted plans show an area for bin storage serving the 3 southernmost dwellings positioned to the south west corner of the site and a separate arrangement to the north for plot No. 4. The Highway Authority has been consulted on the proposal and raises no objection to this arrangement which is considered adequate.
88. Subject to the inclusion of planning conditions as stated the development is considered to accord with the requirements of policies T1 and T10 of the CofDLP and paragraph 108 of the NPPF in that it would provide adequate means of access and sufficient parking provision.

## Ecology

89. The presence of protected species is a material consideration, in accordance with Circular 06/2005 (Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System). In addition under the requirements of the Conservation of Habitats and Species Regulations 2017 (referred to as the Habitats and Species Regulations hereafter) it is a criminal offence to (amongst other things) deliberately capture, kill, injure or disturb a protected species, unless such works are carried out with the benefit of a licence from Natural England. The Conservation of Habitats and Species Regulations require local planning authorities to have regard to the requirements of the Habitats Directive in exercising their functions. Case law has established that local planning authorities must consider whether the applicant might obtain a protected species licence from Natural England if one is likely to be required.

90. Paragraph 170 of the NPPF sets out the Government's commitment to halt the overall decline in biodiversity by minimising impacts and providing net gains where possible with Paragraph 175 stating that development should be refused if significant harm to biodiversity cannot be avoided, mitigated or, as a last resort, compensated for.
91. The development requires the demolition of an existing detached dwelling and as such there is a requirement for the application to be supported by an appropriate assessment of the impact of the development upon protected species, in particular bats. Whilst the application was not originally supported by a Bat Risk Assessment it is noted that a full bat risk assessment has since been submitted in support of the application which includes appropriate surveys, undertaken by an appropriately qualified Ecologist, which found no evidence of bats using the existing building and therefore concludes that the risk to bats is low. It does however advise some mitigation in the form of a minimum of 2 bat bricks incorporated into the proposal.
92. The Council's Ecologist has been consulted on the submitted information and raises no objection to the application subject to the inclusion of a planning condition to ensure the development is carried out in accordance with the mitigation proposed in the submitted Preliminary Ecology Appraisal. Subject to the of a planning condition in this regard it is considered that the proposal would not have an unacceptable impact upon protected species and biodiversity in accordance with Part 15 of the NPPF. As there will not be any interference with a EPS, there is no need to consider the prospects of obtaining a licence.

#### Drainage

93. Policy U8A of the CofDLP states that development proposals will only be approved if they include satisfactory arrangement for disposing of 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.
94. Residents have raised concerns regarding the impact of surface water run-off from the proposal and the ability of the existing sewer to accommodate additional flows generated by the development.
95. Notwithstanding these concerns the Council's Drainage and Coastal Protection Section have been consulted and raise no objection to the application which is considered to accord with the requirements of policy U8A of the CofDLP subject to the inclusion of a planning condition requiring the submission and agreement of precise detail of the means of disposal of foul and surface water can prior to the commencement of development.

#### Contaminated Land, Land Stability and Archaeology

96. Paragraph 178 of the NPPF requires that planning decisions should ensure that the site is suitable for its new use taking account of ground conditions and land instability, including from natural hazards or former activities such as mining, pollution arising from previous uses and any proposal for mitigation including land remediation or impacts on the natural environment arising from that remediation.
97. It is noted that the site currently hosts a single dwelling and the Council's Contaminated Land Section has no objection to the application subject to the inclusion of a planning condition requiring a contaminated land risk assessment and intrusive site investigations, remediation and verification where a need is identified.

98. With regard to land stability and previous mine workings it is noted that the site lies within an area at high risk of previous workings as identified by the Coal Authority and a Coal Mining Risk Assessment did not accompany the original submission. Whilst this initially attracted objection from the Coal Authority as a result, a full risk assessment has since been provided in this regard which proposed foundation design. The Coal Authority has subsequently withdrawn their objection subject to the inclusion of a planning condition to ensure that the development is carried out in accordance with the stated foundation design. Subject to the inclusion of a planning condition in this regard the development is considered to accord with the requirements of paragraph 178 of the NPPF and policy U13 of the CofDLP.
99. In relation to archaeology it is noted that this area lies within the suspected area of the battle of Nevilles cross and as such it is possible that finds or remains relating to this battle could be encountered. Consequently, the Council's Archaeology Section raises no objection to the application subject to the inclusion of a planning condition requiring the implementation of a programme of archaeological work to be approved in writing by the Local Planning Authority and the results be recorded within the County Durham Historic Environment record. Subject to the inclusion of a planning condition in this regard the development is considered to accord with the requirements of policy E24 of the CofDLP and paragraphs 197 and 199 of the NPPF.

#### Planning Balance

100. The acceptability of the application should be considered under the planning balance test contained within Paragraph 11 of the NPPF.

#### *Benefits*

101. The application site is within a highly sustainable location within close walking distance to shops, services and public facilities. The principle of residential development in this location is considered acceptable and in accordance with the sustainable aims of the NPPF.
102. The development would provide some benefit in terms of providing a boost to housing supply although this could be considered limited at 4 dwellings, particularly in the context that the Council is currently able to demonstrate a 5 year supply of housing land and less weight should be afforded to the benefits of delivering new housing than would be the case if a shortfall in supply existed.
103. To a degree the development would provide direct and indirect economic benefits within the locality and from further afield in the form of expenditure in the local economy. This would include the creation of construction jobs, as well as further indirect jobs over the lifetime of the development. A temporary economic uplift would be expected to result from the development and expenditure benefits to the area. Such benefits can be afforded weight.

#### *Adverse Impacts*

104. Whilst the development would have some adverse impact in that it would alter the outlook for those occupiers of properties at Neville Terrace, any impact in this regard would likely be limited.

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## CONCLUSION

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105. As the relevant CofDLP policies are considered to be out of date, the presumption in favour of sustainable development is engaged. The residential development is therefore required to be considered in the context of Paragraph 11 of the NPPF, which states that the development should be approved without delay, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as a whole or specific policies indicate development should be restricted.
106. In this instance, it is accepted that there would be some adverse impact as a result of the development, primarily centring around the impact on neighbouring residents. However, as identified in the planning assessment, the impacts would not significantly and demonstrably outweigh the benefits associated with additional family dwellings within the area. Accordingly, planning permission should be granted.
107. The proposal has generated some public interest, with a number of letters of objection having been received. The objections and concerns raised by local residents have been taken into account and addressed within the report. On balance the concerns raised were not felt to be of sufficient weight to justify refusal of this application in light of the benefits of the scheme.

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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:

Drawing No.	Description	Date Received
	Location Plan	06/04/2018
P100-02 (REV E)	Proposed Site Plan	06/04/2018
J240-P50-01 (REV B)	VARIOUS 3 BED HOUSE PLANS	29/05/2018
P51-01 (REV C)	VARIOUS 4 BED HOUSE PLANS	29/05/2018

*Reason: To define the consent and ensure that a satisfactory form of development is obtained and to meet the objectives of saved Policies Q1 and Q2 of the City of Durham Local Plan.*

3. Notwithstanding any details of materials submitted with the application no development shall commence until samples of the external 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: To protect the character and appearance of the surrounding area in accordance with the requirements of Policy H13 of the City of Durham Local Plan as amended by Saved and Expired Policies September 2007.*

4. No development shall commence until details of all means of enclosure have been submitted to and agreed in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the agreed details.

*Reason: In the interest of visual amenity in accordance with the requirements of policies H13 of the City of Durham Local Plan.*

5. No development shall commence until such time as a scheme for the upgrading of the lane to the rear of Neville Terrace, site access from Newcastle Road and vehicle areas within the development site, as identified on Approved Drawing No. P100-02 (REV E) entitled Proposed Site Plan received 06 April 2018 has been submitted to and agreed in writing by the Local Planning Authority. The scheme shall include, but not be limited to, the installation of street lighting, appropriate resurfacing and the imposition of a one way system of access from Newcastle Road through a Traffic Regulation Order. Thereafter the development shall be carried out in accordance with the approved details and completed prior to the first occupation of any of the dwellings hereby approved.

*Reason: To protect highway safety in accordance with the requirements of policies T1 and T10 of the City of Durham Local Plan as amended by Saved and Expired Policies September 2007.*

6. No development shall commence until such time as a scheme detailing the noise attenuation measures to be incorporated into the development has been submitted to and agreed in writing by the Local Planning Authority. The agreed scheme shall achieve the following noise levels;

35dB LAeq 16hr bedrooms and living room during the day-time (0700 - 2300)  
30 dB LAeq 8hr in all bedrooms during the night time (2300 - 0700)  
45 dB LAmax in bedrooms during the night-time  
55dB LAeq 16hr in outdoor living areas

The development shall be thereafter be carried out in accordance with the approved details.

*Reason: To protect the amenity of future occupiers in terms of the impact from road noise in accordance with the aims of policy H13 of the CofDLP and Part 15 of the NPPF.*

7. No development shall commence until a Construction Management Plan has been submitted to and approved in writing by the local planning authority. The Construction Management Plan shall include as a minimum but not necessarily be restricted to the following:
  - An assessment of the potential for dust emissions from the site and the mitigation measures that will be used to minimise any emission taking into account relevant guidance such as the Institute of Air Quality Management "Guidance on the assessment of dust from demolition and construction" February 2014.
  - An assessment of the likely noise (including vibration) emissions from the site and the mitigation measures that will be taken to minimise noise disturbance taking into account relevant guidance such as BS5228 'Code of practice for noise and vibration control on construction sites' 2014.

- Where construction involves penetrative piling, details of methods for piling of foundations including measures to suppress any associated noise and vibration.
- Detail of any planned measures for liaison with the local community and any procedures to deal with any complaints received.
- Details of whether there will be any crushing/screening of materials on site using a mobile crusher/screen and the measures that will be taken to minimise any environmental impact.
- Details of delivery and parking operations. The management strategy shall have regard to BS 5228 “Noise and Vibration Control on Construction and Open Sites” during the planning and implementation of site activities and operations. The approved Construction Management Plan(s) shall also be adhered to throughout the construction period and the approved measures shall be retained for the duration of the construction works.

*Reason: To protect the residential amenity of existing and future residents from the development to comply with Part 15 of the National Planning Policy Framework. This is required as a pre commencement condition in order to mitigate potential impact on residential amenity which needs to be considered before site works commence.*

8. No development shall commence until a landscaping scheme has been submitted to and approved in writing by the local planning authority. The scheme shall identify those trees/hedges/shrubs scheduled for retention and removal; shall provide details of new and replacement trees/hedges/shrubs; detail works to existing trees; and provide details of protective measures during construction period. The development shall be carried out in accordance with the approved details.

*Reason: To protect existing trees and the character and appearance of the surrounding area in accordance with the aims of policies E14 and H13 of the City of Durham Local Plan as amended by Saved and Expired Policies September 2007.*

9. 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: To protect existing trees and the character and appearance of the surrounding area in accordance with the aims of policies E14 and H13 of the City of Durham Local Plan as amended by Saved and Expired Policies September 2007.*

10. The development hereby permitted shall not commence until a pre-commencement scheme to deal with contamination has been submitted to and agreed in writing with the Local Planning Authority. The full scheme, both pre-commencement and completion shall include the following, unless the Local Planning Authority confirms in writing that any part of sub-sections a, b, c or d are not required. Throughout both the pre-commencement and completion phases of the development all documents submitted relating to Phases 2 to 4 as detailed below shall be carried out by competent person(s) and shall be submitted to and agreed in writing with the Local Planning Authority.

### **Pre-Commencement**

(a) A Phase 2 Site Investigation and Risk Assessment is required to fully and effectively characterise the nature and extent of any land and/or groundwater contamination and its implications. Prior to the Phase 2 a Sampling and Analysis Plan is required.

(b) If the Phase 2 identifies any unacceptable risks, a Phase 3 Remediation Strategy detailing the proposed remediation and verification works is required. If gas protection measures are required a verification plan is required detailing the gas protection measures to be installed, the inspection regime and where necessary integrity testing programme. The installation of the gas membrane should be carried out by an appropriately qualified workforce and the verification of the installation should be carried out by an appropriately competent, experience and suitably trained person(s) (preferably independent to the installer) to ensure mitigation of the risk to the buildings and the people who occupy them. No alterations to the remediation proposals shall be carried out without the prior written agreement of the Local Planning Authority.

### **Completion**

(c) During the implementation of the remedial works (if required) and/or development if any contamination is identified that has not been identified pre-commencement, it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment shall be carried out in accordance with part b of the condition and where necessary a Phase 3 Remediation Strategy shall be prepared in accordance with part c of the condition. The development shall be completed in accordance with any amended specification of works.

(d) Upon completion of the remedial works (if required), a Phase 4 Verification Report (Validation Report) confirming the objectives, methods, results and effectiveness of all remediation works detailed in the Phase 3 Remediation Strategy shall be submitted to and agreed in writing with the Local Planning Authority within 2 months of completion of the development. If integrity testing of the membrane(s) was required a verification pro forma should be included.

*Reason: The site may be contaminated as a result of past or current uses and/or is within 250m of a site which has been landfilled and the Local Planning Authority wishes to ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems in accordance with NPPF Part 15.*

11. The development hereby approved shall only be carried out in accordance foundation details stated in the letter from Ian Nicholson of Solmek Ltd dated 30 July 2018 and comprise the use of raft foundations where coal workings are believed to be present at depths greater than 100mbgl .

*Reason: In the interest of land stability and to ensure that the land is suitable for the proposed use in accordance with the requirements of policy U13 of the City of Durham Local Plan as amended by Saved and Expired Policies September 2007 and part 15 of the NPPF.*

12. No development shall take place unless in accordance with section 7 (Ecological Constraints and Opportunities) of the Preliminary Ecological Appraisal Report All About Trees dated August 2018.

*Reason: In the interests of preserving protected species in accordance with Part 15 of the NPPF.*

13. No development shall commence until such time as a detailed scheme for the disposal of foul and surface water from the development hereby approved has been submitted to and approved in writing by the Local Planning. Thereafter the development shall take place in accordance with the approved details.

*Reason: In the interest of the adequate disposal of foul and surface water in accordance Part 14 of the National Planning Policy Framework*

14. No construction/demolition activities, including the use of plant, equipment and deliveries, which are likely to give rise to disturbance to local residents should take place before 0800 hours and continue after 1800 hours Monday to Friday, or commence before 0800 hours and continue after 1300 hours on Saturday. No works should be carried out on a Sunday or Bank Holiday.

*Reason: In the interests of residential amenity in accordance with requirements of policy Q8 of the City of Durham Local Plan as amended by Saved and Expired Policies September 2007.*

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## **STATEMENT OF PROACTIVE ENGAGEMENT**

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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.

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## **BACKGROUND PAPERS**

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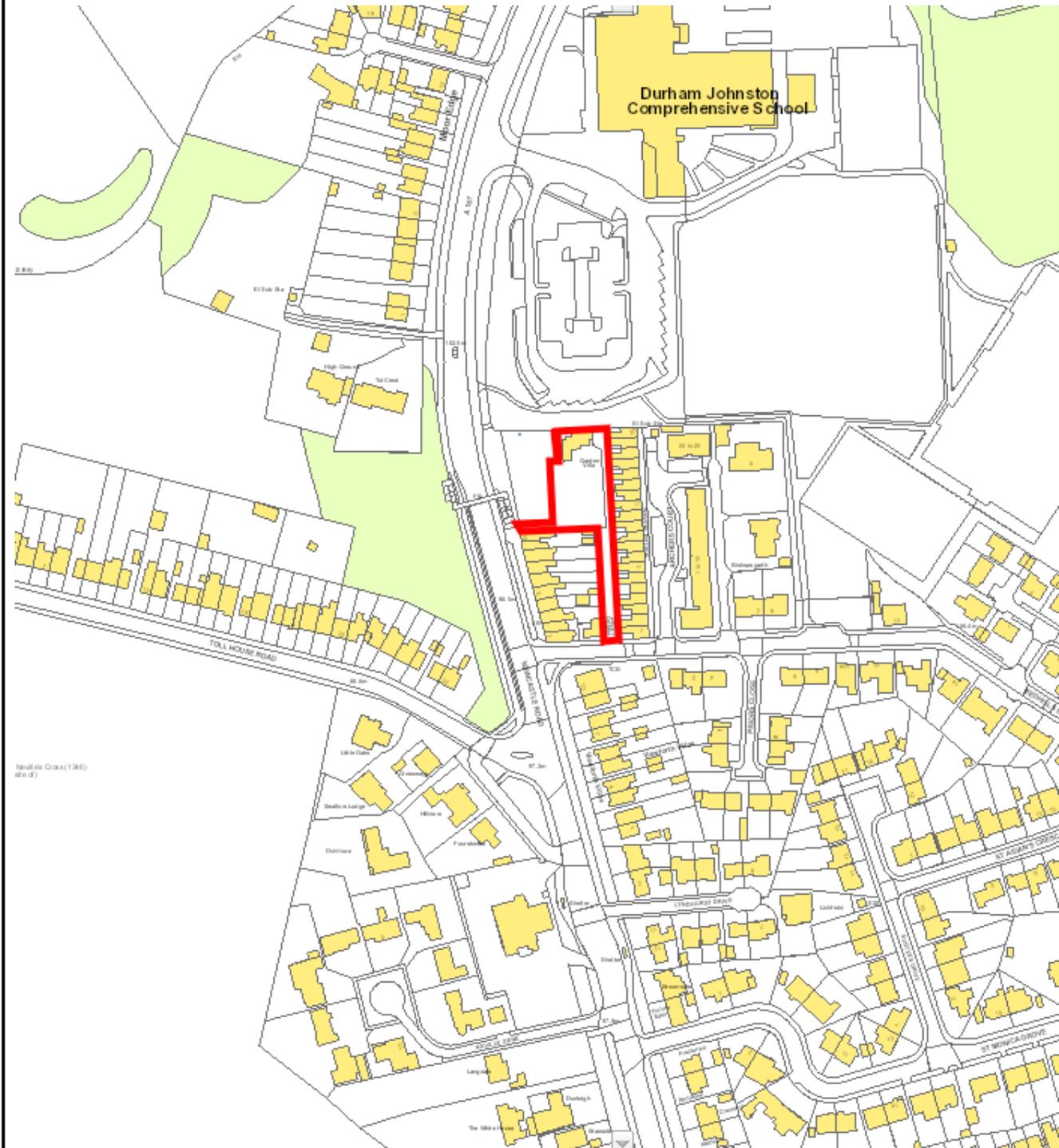
Submitted application form, plans supporting documents and subsequent information provided by the applicant.

The National Planning Policy Framework (2018)

National Planning Practice Guidance Notes

City of Durham Local Plan 2007

Statutory, internal and public consultation responses



**Planning Services**

Erection of Detached 4 No Dwellings

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**Comments**

**Date** 11 September 2018