



**DARLINGTON**

Borough Council

# Planning Applications Committee Agenda

1.30 pm, Wednesday, 13 July 2022

Council Chamber, Town Hall, Darlington DL1 5QT

**Members of the Public are welcome to attend this Meeting.**

1. Introductions/Attendance at Meeting
2. Appointment of Chair for the Municipal Year 2022/2023
3. Appointment of Vice Chair for the Municipal Year 2022/2023
4. To consider the times of meetings of this Committee for the Municipal Year 2022/2023 on the dates agreed in the Calendar of Meetings by Cabinet at Minute C100/Feb/2022
5. Declarations of Interest
6. To Approve the Minutes of the Meeting of this Committee held on 11 May 2022 (Pages 5 - 8)
7. Introduction to Procedure by the Assistant Director, Law and Governance's Representative (Pages 9 - 10)
8. Applications for Planning Permission and Other Consents under the Town and Country Planning Act and Associated Legislation (Pages 11 - 12)
  - (a) Five Acres, Lime Lane, Brafferton (Pages 13 - 38)
  - (b) Sainsburys Supermarket PLC, Darlington Road, Middleton St. George, Darlington, DL2 1JT (Pages 39 - 50)
9. SUPPLEMENTARY ITEM(S) (if any) which in the opinion of the Chair of this Committee are

of an urgent nature and can be discussed at this meeting

## 10. Questions

### PART II

## 11. Notification of Decision on Appeals –

The Chief Executive will report that, Inspectors, appointed by the Secretary of State for the Environment, have :-

Dismissed the appeal by Mr George Murray against this Authority's decision to refuse consent for works to 1 no. Willow tree (T1) protected under Tree Preservation Order (No.11) 2019 - crown reduce up to 2m and removal of deadwood at River View, Dinsdale Spa House, Church Lane, Middleton St George, Darlington DL2 1DJ (21/00303/TF) (Copy of Inspector's decision letter enclosed).

Dismissed the appeal by Mr Paul Furness against this Authority's decision to refuse consent for Erection of a two storey side extension to west elevation, re-location of 1.8m high side boundary fence, widening of existing drive to create extra off-street parking and the erection of a detached summerhouse in the rear garden (as amended by plans received 26.07.21 and 04.10.21) at 1 Hall View Grove, Darlington, DL3 9DN (21/00789/FUL) (Copy of Inspector's decision letter enclosed).

Dismissed the appeal by R Cunningham against this Authority's decision to refuse consent for change of use of land to Gypsy/Traveller site including erection of 5 no. amenity buildings, siting of 5 no. mobile homes, 5 no. touring pitches with car parking, access road and associated works (amended plan received 17 December 2020) at Land Opposite Sovereign House, Neasham Road, Hurworth Moor, Darlington (20/00889/FUL) (Copy of Inspector's decision letter enclosed).

Allowed the appeal by Mr Paul Million against this Authority's decision to refuse consent for Change of use from dwelling house (Class C3) to 8 person HMO (sui-generis) at 12 Vane Terrace, Darlington DL3 7AT in accordance with the terms of the application, Ref 21/01217/FUL, dated 4 October 2021, and the plans submitted with it, subject to the conditions set out in the attached schedule.  
(Copy of Inspector's decision letter enclosed)

**RECOMMENDED** – That the report be received.  
(Pages 51 - 68)

## 12. Notification of Appeals –

The Chief Executive will report that :-

CK Hutchison Networks (UK) Ltd has appealed against this Authority's decision to refuse permission for Prior Approval for the installation of 5G telecoms equipment including 15m high slim-line Phase 8 H3G street pole c/w wrap around cabinet, 3 no. cabinets and

ancillary works at Land Adjacent To Albert Hill Roundabout, Darlington,  
DL1 1JL (21/01189/PA)

Ms Pamela Fletcher has appealed against this Authority's decision to refuse permission for Demolition of lean-to to existing dwelling, erection of 1 no. two bed single storey dwelling to front and demolition of existing garage to accommodate erection of 1 no. two bed single storey dwelling to rear, with associated parking and landscaping works at 87 Barmpton Lane, Darlington, DL1 3HG (20/01126/FUL)

**RECOMMENDED** – That the report be received.

### **PART III**

#### **EXCLUSION OF THE PUBLIC AND PRESS**

13. To consider the Exclusion of the Public and Press –

**RECOMMENDED** - That, pursuant to Sections 100B(5) of the Local Government Act 1972, the public be excluded from the meeting during the consideration of the ensuing item on the grounds that it involves the likely disclosure of exempt information as defined in exclusion paragraph 7 of Part I of Schedule 12A of the Act.

14. Complaints Received and Being Considered Under the Council's Approved Code of Practice as of 1 July 2022 (Exclusion Paragraph No. 7) –  
Report of the Chief Executive  
(Pages 69 - 76)

15. SUPPLEMENTARY ITEM(S) (IF ANY) which in the opinion of the Chair of this Committee are of an urgent nature and can be discussed at this meeting

16. Questions



**Luke Swinhoe**  
**Assistant Director Law and Governance**

**Tuesday, 5 July 2022**

**Town Hall**  
**Darlington.**

**Membership**

Councillors Allen, Bartch, Cossins, Heslop, C L B Hughes, Johnson, Mrs D Jones, Laing, Lee, Lister, McCollom, Sowerby and Tait

If you need this information in a different language or format or you have any other queries on this agenda please contact Paul Dalton, Elections Officer, Operations Group, during normal office hours 8.30 a.m. to 4.45 p.m. Mondays to Thursdays and 8.30 a.m. to 4.15 p.m. Fridays E-Mail: [paul.dalton@darlington.gov.uk](mailto:paul.dalton@darlington.gov.uk) or telephone 01325 405805

**PLANNING APPLICATIONS COMMITTEE**

Wednesday, 11 May 2022

**PRESENT** – Councillors Mrs D Jones (Chair), Allen, Clarke, Cossins, Heslop, Laing, Lee, McCollom, Tait, Tostevin and Wallis.

**ABSENT** – Councillors Lister and Sowerby.

**OFFICERS IN ATTENDANCE** – Dave Coates (Head of Planning, Development and Environmental Health), Arthur Howson (Engineer (Traffic Management)), Andrew Errington (Lawyer (Planning)), Lisa Hutchinson (Principal Planning Officer) and Paul Dalton (Elections Officer).

**PA105 DECLARATIONS OF INTEREST**

Councillor Laing declared a non-pecuniary interest in Minute PA108 below, in terms of her employment, and left the meeting during consideration of the item.

**PA106 TO APPROVE THE MINUTES OF THE MEETING OF THIS COMMITTEE HELD ON 16 MARCH 2022**

**RESOLVED** – That the Minutes of this Committee held on 16 March 2022, be approved as a correct record.

**PA107 APPLICATIONS FOR PLANNING PERMISSION AND OTHER CONSENTS UNDER THE TOWN AND COUNTRY PLANNING ACT AND ASSOCIATED LEGISLATION**

A3	<p>Implementation Limit (Three Years) The development hereby permitted shall be commenced not later than the expiration of three years from the date of this permission.</p> <p><b>Reason</b> - To accord with the provisions of Section 91(1) of the Town and Country Planning Act, 1990.</p>
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**PA108 FIVE ACRES, LIME LANE, BRAFFERTON, DARLINGTON**

**21/00753/FUL** – Change of use of agricultural land to land to be used as community garden for post 16 yr school leavers with learning difficulties comprising of new vehicle access together with 1 no. day centre/barn with plant room, 3 no. polytunnels, raised walkways and decking, car parking, cycle storage, community and sensory gardens, animal areas with stable block and feed shed and other associated works (additional ecology information received 13 January 2022; amended Design and Access Statement; amended and additional plans received 16 March and 27 April 2022).

(In reaching its decision, the Committee took into consideration the Planning Officer's report (previously circulated), a total of 72 letters of support received (it was noted that a number of these letters were from parents of young adults at the facility), a total of 15 letters of objection received (it was noted that a number of objections were submitted from the same e-mail address), the advice provided by the Council's Transport Policy Officer, the views of

the Architectural Liaison Officer from Durham Constabulary, and the views of the Applicant's Agent and one Supporter, whom the Committee heard).

**RESOLVED** – That a decision be deferred to a future meeting of the Planning Applications Committee to allow a site visit to be undertaken by Members of the Committee.

**REASON** – To enable Members to obtain a better understanding of the site.

**PA109 309 WOODLAND ROAD, DARLINGTON, DL3 9AA**

**22/00113/FUL** – Change of use from retail shop (Use Class E) to hot food takeaway (sui generis) and installation of extraction equipment to rear.

(In reaching its decision, the Committee took into consideration the Planning Officer's report (previously circulated), three letters of objection, and the views of the Applicant, whom the Committee heard).

**RESOLVED** – That Planning Permission be granted subject to the following conditions:

1. A3 (Standard 3-year time limit)
2. The development hereby approved shall be carried out in accordance with the approved plans as detailed below:
  - (a) Existing and proposed ground floor plan, drawing number 2022/1
  - (b) Elevations proposed, drawing number 2022/1A

**REASON** – To ensure the development is carried out in accordance with the planning permission.

3. The use hereby approved shall not operate outside the hours of 11:00 – 23:00 Monday to Sunday, including Bank Holidays.

**REASON** – In the interests of amenity and to comply with the requirements of Darlington Borough Local Plan Policy DC4.

4. Details of ventilation and fume extraction, including a full technical specification by a suitably qualified technical person shall be submitted to and agreed in writing by the Local Planning Authority. The scheme shall specify the position of ventilation, fume or flue outlet points; the type of filtration or fume treatment to be installed and shall include details of noise levels generated and any noise attenuation structures to be incorporated. Thereafter the scheme shall be implemented in accordance with the details as approved prior to the use hereby approved commences and shall be maintained for the lifetime of the development.

**REASON** – In the interests of amenity and to comply with the requirements of Darlington Borough Local Plan Policy DC4.

5. In accordance with the EMAQ report dated 19/4/22 submitted as part of this

application a high level of odour control is required:

- Fine filtration or ESP followed by carbon filtration (carbon filters rated with a 0.2 – 0.4 residence time); or
- Fine filtration or ESP followed by a UV ozone system to achieve the same level of control as above.

The odour control shall be installed, operated and maintained in accordance with manufacturers recommendations including frequency of replacement filters, for so long as the use continues. No modifications to the approved scheme shall be undertaken without the prior approval of the Local Planning Authority.

**REASON** – In the interests of amenity and to comply with the requirements of Darlington Borough Local Plan Policy DC4.

6. The drainage system to the premises shall be provided with a suitable grease trap so as to prevent the discharge of grease into the public sewer.

**REASON** – In the interests of amenity and to comply with the requirements of Darlington Borough Local Plan Policy DC4.

7. A scheme for the secure storage of waste from the premises and the removal of refuse from the site shall be submitted to and approved by the Local Planning Authority in writing and implemented before the use hereby approved commences.

**REASON** – In the interests of amenity and to comply with the requirements of Darlington Borough Local Plan Policy DC4.

8. For the duration of the approved use, a temporary portable ramp shall be provided and made available for disabled customers to the takeaway, as set out on drawings entitled 'Proposed Floor Plan', received on 16 March 2022 and 'Ramp Details' received on 23 March 2022. The ramp shall be removed from the highway when not in use.

**REASON** – To provide disabled access to the premises and to comply with the requirements of Darlington Borough Local Plan Policy IN4.

9. Prior to the commencement of the use hereby approved, a sign shall be erected at the entrance of the premises informing any persons unable to enter the premises that a temporary portable ramp is available on request. The sign shall remain in situ unless otherwise agreed in writing by the Local Planning Authority.

**REASON** – To provide disabled access to the premises and to comply with the requirements of Darlington Borough Local Plan Policy IN4.

## **PA110 NOTIFICATION OF DECISION ON APPEALS**

The Chief Executive reported that, Inspectors, appointed by the Secretary of State for the Environment, had:

Dismissed the appeal by Mr and Mrs Tyers against this Authority's decision to refuse

permission for proposed is creation of 4 Gypsy/Traveller Pitches at Land off Neasham Road/Burma Road, Hurworth Moor, Darlington DL2 1PZ (20/00822/FUL).

Dismissed the appeal by Mr B Miller of Wynyard Homes against this Authority's decision to refuse permission for proposed erection of 25 no dwellings including 20% affordable (5 no. units) at Newton Grange Farm, Stockton Road, Sadberge, Darlington (20/00891/FUL).

**RESOLVED** – That the report be received.

#### **PA111 NOTIFICATION OF APPEALS**

The Chief Executive reported that :-

Mr Liam Coates has appealed against this Authority's decision to refuse permission for consent to carry out works to protected trees at 16 Cardinal Gardens, Darlington, DL3 8SD (20/01163/TF) (21/00789/FUL)

Mr Donald Jones has appealed against this Authority's decision to refuse permission for consent to carry out works to protected tree at 225 Carmel Road, North Darlington, DL3 9TF (21/00497/TF)

Mr Tim Paver has appealed against this Authority's decision to refuse permission for consent to carry out works to protected trees at Land Adjacent To 20 Freville Grove, Darlington, DL3 9QN (21/01208/TF)

**RESOLVED** – That the report be received.

#### **PA112 TO CONSIDER THE EXCLUSION OF THE PUBLIC AND PRESS**

**RESOLVED** - That, pursuant to Sections 100A(4) and (5) of the Local Government Act 1972, the public be excluded from the meeting during the consideration of the ensuing item on the grounds that it involves the likely disclosure of exempt information as defined in exclusion paragraph 7 of Part I of Schedule 12A to the Act.

#### **PA113 COMPLAINTS RECEIVED AND BEING CONSIDERED UNDER THE COUNCIL'S APPROVED CODE OF PRACTICE AS OF 29 APRIL 2022 (EXCLUSION PARAGRAPH NO. 7)**

Pursuant to Minute PA104/March/2022, the Chief Executive submitted a report (previously circulated) detailing breaches of planning regulations investigated by this Council, as at 29 April 2022.

**RESOLVED** - That the report be noted.



When the time comes for the application to be considered, the Chair will use the following running order:

[This order may be varied at the Chair's discretion, depending on the nature/complexity of the application. The Chair will endeavour, however, to ensure that the opportunity to make representations are made in a fair and balanced way.]

- Chair introduces agenda item;
- Officer explains and advises Members regarding the proposal;
- Applicant or agent may speak;
- Members may question applicant/agent;
- Up to 3 objectors may speak
- Members may question objectors;
- Up to 3 supporters may speak
- Members may question supporters;
- Parish Council representative may speak;
- Members may question Parish Council representative;
- Ward Councillor may speak;
- Officer summarises key planning issues;
- Members may question officers;
- Objectors have right to reply;
- Agent/Applicant has right to reply;
- Officer makes final comments;
- Members will debate the application before moving on to a decision;
- Chair announces the decision.

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**BOROUGH OF DARLINGTON**

**PLANNING APPLICATIONS COMMITTEE**

**Committee Date – 13 July 2022**

**SCHEDULE OF APPLICATIONS FOR CONSIDERATION**

**Background Papers used in compiling this Schedule:-**

- 1) Letters and memoranda in reply to consultations.**
- 2) Letters of objection and representation from the public.**

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**Index of applications contained in this Schedule are as follows:-**

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<b>Address/Site Location</b>	<b>Reference Number</b>
Five Acres Lime Lane, Brafferton, Darlington	21/00753/FUL
Sainsburys Supermarket PLC Darlington Road, Middleton St George Darlington DL2 1JT	22/00397/FUL

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## DARLINGTON BOROUGH COUNCIL

### PLANNING APPLICATIONS COMMITTEE

**COMMITTEE DATE: 13 July 2022**

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<b>APPLICATION REF. NO:</b>	21/00753/FUL
<b>STATUTORY DECISION DATE:</b>	18 May 2022
<b>WARD/PARISH:</b>	Heighington And Coniscliffe
<b>LOCATION:</b>	Five Acres, Lime Lane Brafferton
<b>DESCRIPTION:</b>	Change of use of agricultural land to land to be used as community garden for post 16 yr school leavers with learning difficulties comprising of new vehicle access together with 1 no. day centre/barn with plant room, 3 no. polytunnels, raised walkways and decking, car parking, cycle storage, community and sensory gardens, animal areas with stable block and feed shed and other associated works (additional ecology information received 13 January 2022; amended Design and Access Statement; amended and additional plans received 16 March and 27 April 2022)
<b>APPLICANT:</b>	Five Acres Community Garden

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**RECOMMENDATION: GRANT PERMISSION SUBJECT TO CONDITIONS**

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Application documents including application forms, submitted plans, supporting technical information, consultations responses and representations received, and other background papers are available on the Darlington Borough Council website via the following link: <https://publicaccess.darlington.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=Q82CFLFPLCD00>

Members will recall that this application was deferred at the Planning Applications Committee on 11 May 2022 to enable Members to visit the site prior to determination. The report below is identical to the one that Members considered previously.

## APPLICATION AND SITE DESCRIPTION

1. The application site is a triangular piece of land consisting of five small fields of horse-grazed pasture, separated by overgrown hedgerows. Lime Lane runs along the northern boundary; the A1(M) runs along the east boundary and the East Coast Main Line railway abuts the western boundary. There are existing trees and hedges on the boundaries and within the site and there is an existing field access gate off Lime Lane. A small, wooden stable block with corrugated sheet metal roof and an existing track and hardstanding area sit within the centre of the site.
2. The River Skerne is approximately 90m to the south-west, beyond the East Coast Main Line and beneath the A1(M). Surrounding land use is largely agricultural, with large fields of grazing pasture and arable land. Isolated farmsteads and residential dwellings can be found scattered through the fields, whilst the village of Brafferton itself is located 775m to the south-east. Aycliffe Quarry, an active limestone quarry and waste disposal site is situated 500m to the north and the industrial complex at Newton Aycliffe, extends to within 650m of the site.
3. The site is within the ownership of the applicant and the planning application has been submitted in order to redevelop it into a day centre for school leavers with special needs. The facility would seek to benefit the young adults in different ways using therapeutic horticulture and animals and agriculture. The intentions of the project is to establish a centre which will encourage all the young people to flourish, learn practical and new skills while socialising and embracing the outdoors. Five Acres would focus in work skills in preparation for adulthood from the basics of gardening, growing flowers and harvesting edible crops. The Centre would also provide work experience for students whilst still in education. The day centre would operate during the following hours
  - Monday to Friday 0800 to 1800
  - Saturday 0900 to 1800
  - Sundays and Bank Holidays 1000 to 1600
4. The proposal involves the erection of a new modular building, "The Barn", which will be the social area of the site including a working kitchen. This building would be the centre for craft and art and woodwork sessions. Three polytunnels will ensure that the site can be used during bad weather and used all year round. Animals will play a role and will be introduced at the site with an associated stable block and feed shed. There will be areas for chickens, ponies, goats and small animals along with community gardens and sensory gardens. The centre would be operated by experienced and correctly qualified and trained staff and volunteers.
5. In support of the planning application, the applicant has submitted a statement. The following information has been extracted from the Statement:

*"My family have operated a Coach Company in Newton Aycliffe since 1975 and have transported the Special Needs Sector to various Schools, Day Centres and Colleges*

*throughout County Durham to this present day. We have seen the decline and closure of many day respite facilities in both Darlington & County Durham and felt we needed to do something drastic to rectify this situation. We have the utmost respect for Parents and Carers who look after a loved one with Learning and Physical Difficulties or Special Needs, it is very hard and exhausting carrying out their daily routine and supporting them. This is why we wanted to help and create a network to support and offer an alternative day respite experience”*

*“The members could enjoy looking after the animals and growing their own vegetables whilst learning about ‘field to fork’ and preparing for their adult life”*

*“We approached John & Julie Finley from ROF 59 Activity Centre in Newton Aycliffe, and they kindly allowed us to open using their venue on what was initially a temporary basis. As a matter of urgency, we opened Five Acres Community Garden in May 2021, we took a ‘Leap of Faith’ and we hit the ground running. We opened with two staff members and two Service Users – We call them our ‘CHAMPIONS’. Nine months on and Five Acres is flourishing – we now have 30+ Champions, 6 Full Time Members of Staff, an Apprentice and Volunteers.”*

*“This site will allow us to diversify into planting and growing crops and teach our Champions the ‘field to fork’ process, being self- sufficient, using the land in an appropriate way. This new Centre would allow us to give more opportunities to more Champions in our area. We will do our Members proud. We will create more employment opportunities too – Five Acres is now a vital service”*

6. Vehicular access would be via the existing field gate and car and cycle parking spaces would be provided within the site.
7. The applicant has advised that the ROF59 premises are an excellent facility for them at the moment and a decision will be made as to whether this proposed facility would run alongside the existing premises or otherwise depending upon need and capacity

#### **MAIN PLANNING ISSUES**

8. The main planning issues to be considered here are whether the proposed development is acceptable in the following terms:
  - a) Planning Policy
  - b) Sustainable Location and Connectivity
  - c) Highway Safety and Parking
  - d) Amenity and Site Security
  - e) Impact on Visual Appearance and Character of the Area
  - f) Ecology
  - g) Impact on Trees
  - h) Drainage and Flood Risk
  - i) Contaminated Land
  - j) Archaeology

k) Nutrient Neutrality

**PLANNING POLICIES**

9. The following policies are relevant:

**National Planning Policy Framework (2021)**

**Darlington Local Plan 2016 – 2036**

- SD1: Presumption in Favour of Sustainable Development
- DC1: Sustainable Design Principles and Climate Change
- DC2: Flood Risk and Water Management
- DC3: Health & Wellbeing
- DC4: Safeguarding Amenity
- H3: Development Limits
- E4: Economic Development in the Open Countryside
- ENV1 - Protecting, Enhancing and Promoting Darlington's Historic Environment
- ENV3: Local Landscape Character
- ENV4 - Green and Blue Infrastructure
- ENV7: Biodiversity and Geodiversity and Development
- ENV8: Assessing a Development's Impact on Biodiversity
- IN1: Delivering a Sustainable Transport Network
- IN2: Improving Access and Accessibility
- IN10: Supporting the Delivery of Community and Social Infrastructure

**RESULTS OF TECHNICAL CONSULTATION**

10. The Council's Public Rights of Way Officer; Environmental Health Officer, Highways Engineer, Ecology Consultant have raised no objections to the proposed development
11. The Council's Transport Policy Officer has provided advice on the public transport and accessibility matters which will be considered in detailed elsewhere in the report
12. National Highways; British Transport Police, Darlington Association on Disability, Network Rail, Northern Gas Networks, Northumbrian Water and Northern Powergrid has raised no objections to the principle of the proposed development and planning conditions have been requested.
13. The Architectural Liaison Officer from Durham Constabulary has commented that the site should be secure, possibly with an access barrier to the vehicular access point
14. The Durham County Council Archaeology Team have no archaeological objection to the development



## RESULTS OF PUBLICITY AND NOTIFICATION

15. The local planning authority has received 71 letters of support and 4 letters of objection to the planning application.

16. The majority of the letters of support have been submitted by people who directly use, work and benefit from the existing facilities provided by Five Acres Community Garden at ROF59 in Newton Aycliffe or have family members who use and benefit from the enterprise. The comments highlight and highly praise their objectives, services, staff and qualities and how essential the services are for the people that use them. Other comments include:

- *The proposal is sympathetic to the environment and will enhance the local space*
- *The facility will offer endless possibilities for these “champions” including animal care, horticulture*
- *The proposal will bring environmental benefits to the site*
- *Five Acres will be able to continue to provide an invaluable service to further enhance the lives of these young adults*
- *This will be very therapeutic for people with special needs*
- *There is nothing else like this proposal elsewhere in Darlington*
- *To be able to access a site within a natural rural setting would be beneficial to the social skills, cognitive skills and enhance the mental health of these young adults*
- *The plans will create a great deal of attention for Darlington*
- *This will lead to job opportunities for staff and the young people*
- *The proposal will present opportunities to enhance the lives of the young adults and give them skills for increased independence*
- *The site on Lime Lane will further promote the good working ethics of Five Acres*
- *Darlington is already under served with facilities for young adults with learning difficulties and Five Acres is one of the very few trying to correct this imbalance. This will allow them to grow their offer and provide further opportunities to deserving adults in our communities*
- *This is a wonderful opportunity for so many people with special needs*
- *The uptake for the service, which is temporarily based at ROF, has been very popular, indicating a need for this kind of modern and purpose built provision*
- *This is an excellent opportunity for an inclusive town like Darlington*
- *Excellent location for such a venture*
- *It will not affect anyone, spoil anyone’s view, block out anyone’s light*
- *Darlington needs this facility*
- *The development is sympathetic to its surroundings*
- *The applicant has access to community transportation and therefore access for foot, bicycle and public transport would not be necessary*
- *Young adults will get the opportunity to experience nature*
- *Post COVID, this facility should be embraced and welcomed as a community based opportunity*

- *This will allow more people with disabilities to socialise, develop skills and engage in life enhancing opportunities*

17. Included within the above, are letters of support from the Executive Leader of Pioneering Care Centre (PCP), the Darlington Borough Council's Mentor and Career Guidance Advisor (People Group); a Durham County Councillor, Town Councillors from Newton Aycliffe, and from the Chairman and Chief Executive of County Durham and Darlington NHS Foundation Trust

18. The four objections to the planning application can also be summarised as follows:

- *The site is on a busy road, close to a quarry/Council tip entrance and will be of detrimental use to an agricultural area*
- *The applicant already has premises that could be used for the proposed purposes*
- *The proposal would be out of character to the surrounding area*
- *Inappropriate location on a busy road, especially at peak times*
- *Detrimental use to an agricultural area*
- *I would be concerned over the safety of the residents due to the close proximity of the A1 motorway and the main line railway*
- *There are no amenities at the site*
- *Close proximity to access for quarry. Dustbin lorries and other large HGVs use the access from early hours of the morning until 6pm*
- *How will residents be transported to the site as there will be a concern over an increase in traffic*
- *No public transport links and poor pedestrian links and therefore all attendees and visitors will have to use the car*
- *Lime Lane will be used for parking which is dangerous*

## **19. PLANNING ISSUES/ANALYSIS**

### **a) Planning Policy**

20. Planning law (S.38(6) of the Planning and Compulsory Purchase Act 2004) requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The National Planning Policy Framework (2021) supports the plan led system providing that planning decisions should be "genuinely plan-led" (NPPF para 15).

21. The application site is located outside the development limits identified on the Policies Map of the Darlington Local Plan and therefore the proposal is classified as taking place in the open countryside (Policy H3). The development limits help to protect the open countryside between settlements and preserve the countryside's intrinsic character and beauty.

22. Economic development is generally not acceptable in principle outside the development limits unless said development has regard to criteria set out in Policy E4 (Economic Development in the Open Countryside) of the Local Plan. As a charitable community development, the proposed development does not fit easily within the parameters of

Policy E4 but Section C of the policy states that proposals for outdoor leisure uses will be supported in appropriate locations, provided their impact on the open countryside is minimised, and they provide satisfactory access arrangements and protect amenity. Furthermore, Policy IN10 (Supporting the Delivery of Community and Social Infrastructure) states that proposals for new community services and facilities will be supported in accessible locations providing that the scale of development is appropriate to the area in which it is proposed.

23. Additionally, Paragraph 85 of the NPPF (2021) states that planning policies and decisions should plan positively for the provision of community facilities and other local services. Paragraph 85 of the NPPF (2021) also states that planning policies and decisions should recognise that sites to meet local community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport.
24. The fact that the proposal is for a community garden/training facility, specifically for the learning and respite needs of post 16-year-old school leavers with learning difficulties, which would require and benefit from a countryside location, is a material planning consideration which carries weight in the determination of this planning application. This consideration has been taken into account as part of the officer recommendation in accordance with S.38(6) of the Planning and Compulsory Purchase Act 2004.

**b) Sustainable Location and Connectivity**

25. The Council's Transport Policy Officer has confirmed that development site is not accessible by public transport as the site is not within 400m walking distance of a bus stop. There is not a continuous, safe, lit footpath link to the site from the urban area and no formal cycle route and therefore, the site cannot be considered as being accessible on foot or by cycle. As a result, the site is not in a fully accessible and sustainable location and the proposal would not comply with policies IN1, IN2 and IN10 of the Darlington Local Plan
26. The applicant has advised that their "champions" are not capable of being able to use public transport as they are not independent enough to do so. They arrive at the existing premises at Newton Aycliffe via a taxi, parents/carers or via the applicant's transport service.
27. Information has been submitted in support of the planning application which states that a virtual bus stop for the Tees Flex bus service will be used as a way of getting people to and from the site. The location for the Tees Flex pick up and drop off is a safe option. Tees Flex is a publicly subsidised bookable service currently operating on a three year contract, which started in January 2020, and there is no guarantee that the service will continue once the three year contract comes to an end or it may be reduced in areas which may mean that this area may no longer be served. However, the applicant has advised that whilst the service is temporary and whilst not being able to give any guarantees, the Tees Valley Mayor hopes that the service will continue as it has been a needed and successful service. Stagecoach, who deliver the service, are also committed to it continuing due to its need and success.

28. Furthermore, the applicant operates their own coach company. It is a private transport service provided by Five Acres involving the use of two small coaches (8 seater and 8 seater with wheelchair accessible spaces). The coaches would be used to transport the "Champions" to and from the site between the hours of 09:15 and 1500 and one coach would be used for the transporting people from the Darlington area and one for County Durham.
29. The proposed development would include the provision of cycle parking, the precise details of which, can be secured by planning condition.
30. As stated above, the NPPF 2021 states that decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements and development limits, and in locations that are not well served by public transport. In these circumstances it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable (for example by improving the scope for access on foot, by cycling or by public transport).
31. This report will advise that there are no highway objections to the proposed development in terms of impact on local roads and the development would not adversely harm the character and appearance of the rural area. The applicant has provided information which means that access to the site will not be solely reliant on the use of private motor vehicles and other means of transport would be available through the TeesFlex booking system and their own private transport company. By its very nature and purpose, the proposal requires a countryside location for the educational and physical benefits of the users and their learning experiences rather than one which is within or on the edge of the urban area and this is a material planning consideration which carries weight in the determination process. Officers recognise that the proposal is not fully compliant with the local development plan in this particular regard, but in accordance with S.38(6) of the Planning and Compulsory Purchase Act 2004, other material planning considerations have been identified which carry weight and allow officers to support the principle of the proposed development subject to compliance with other relevant national and local planning policies.

**c) Highway Safety and Parking**

32. The site access is to be via an upgraded existing field access located on Lime Lane which is within a national speed limit (60mph) road. Whilst the site is to be accessed via an existing field access, this proposal is likely to be a significant intensification of use over the historic occasional vehicle movements associated with agricultural use and must therefore be proven to be safe for the life of the development
33. DMRB standards require that visibility splays in line with the speed limit are demonstrated, with 215m x4.5m being appropriate to 60mph speeds. Where the standard visibility requirements cannot be met, a reduction may be considered based

on lower actual travelling speeds being demonstrated to be lower, via a speed survey to determine 85th percentile speed, or where the local geometry/topography of the site otherwise governs speed.

34. The plans submitted in support of the planning application demonstrates available visibility splays of 4.5x143m westwards and 4.5x183m Eastwards. With regard to the reduced splay looking Westwards, this equates to a traveling speed of approximately 50mph which is considered to be robust when considering the local geometry of the highway, where the bend located 150m from the site access is sufficiently sharp to reduce speeds significantly below 60mph. The road forming the approach to the site is also on a significant uphill gradient again having a speed reducing impact on the travelling speed of vehicles heading east towards the site. With regard to the 4.5x183m splay looking east, this a minor reduction in the advised 60mph standard of 4.5x215m and would equate to a travelling speed of 55mph and falls above the DMRB 'one step below Desirable Minimum' of 160m. It is therefore considered acceptable within the context of Lime Lane.
35. The desirable junction spacing of the nearby access located opposite is substantially less than the Design Guide standard of 60m. However, this is considered acceptable as the access only serves a single farm/dwelling and vehicle movements will be limited. The major access of the John Wade site has suitable spacing at 75m and is not considered a highway safety concern.
36. The access location is somewhat fixed owing to the level difference between the site and highway. A properly formed access junction will be needed, constructed to standards required as part of the adopted highway. The submitted plans show an upgraded access with 10m radii kerbs which will ensure servicing vehicles are able to enter the site as well as making the junction more conspicuous within an unlit rural road. Given the steep level change through the access, some internal works will be needed to create an acceptable gradient with the first 12m measured back from the carriageway edge being formed in a sealed material. Gates are also set back from the highway in order for a vehicle to pull off fully of Lime lane for opening and closing. All works within the public highway require the prior approval and consent of the Highways Authority, in a process separate to planning approval. In this case as part of an Agreement under Section 184 of the Highways act 1980.
37. The proposal includes provision for vehicle parking with the submitted plans, indicating 14 spaces which will be used by staff and volunteers. Accessible parking would be delineated within the parking area to the ends of the parking bays nearest to The Barn building.
38. The site is considered sui generis with regard to parking standards and as such does not fit within any particular parking standard within the Tees Valley Design Guide.
39. Overspill parking within a rural high speed road would not be considered acceptable owing to road safety concerns. The number of spaces that are shown on the plan would

be acceptable and there appears to be sufficient internal space for vehicles to enter and exit the site in a forward gear.

40. The Council's Highways Engineer has advised that if the application was to be recommended for approval, a condition would need to be imposed to ensure that the upgraded access details submitted with the application are completed prior to the operation of the facility. It is also considered appropriate to secure planning conditions relating to the submission of details of the parking spaces, including accessible spaces, and that the first 12m of the internal road is constructed from a sealed material in order to prevent detritus spilling onto the public highway.
41. The proposed development would accord with policies. The proposed development would accord with policies DC1, IN1, IN2 and IN4 of the Local Plan in this regard.

**d) Amenity and Site Security**

42. The site is not located in close proximity to other residential properties and therefore the proposed use would not raise any concerns in residential amenity terms. A 2.1m high livestock/trespass proof fence would be erected along the boundary of the site alongside the A1(M) and the East Coast Railway line in accordance with advice from the the British Transport Police, Network Rail and National Highways who have not objected to the proposed development. A condition is recommended to secure the submission of the precise details of the fencing.
43. Due to the proximity of the proposed development to the operational railway boundary, the developer will need to liaise with the Asset Protection Team of Network Rail prior to any work taking place on site to ensure that the development can be undertaken safely and without impact to operational railway safety. Details to be discussed and agreed with the Team will include construction methodology, earthworks and excavations, use of crane, plant and machinery, drainage and boundary treatments. It may be necessary for the developer to enter into a Basic Asset Protection Agreement (BAPA) with Network Rail to ensure the safety of the operational railway during these works. A planning condition has been recommended for the submission of a Construction Management Plan which will include the need to confirm that the above matters have been discussed with Network Rail.
44. The proposal would accord with policies DC3 and DC4 in the regard.

**e) Impact on Visual Appearance and Character of the Area**

45. The main additions to the site would be The Barn building; the polytunnels; the stable and feed shed, the parking area and the fencing around the boundary of the site with the A1(M) and the railway line. There would also be a raised timber footpath and enclosures around the various fields
46. The Barn is a single storey elongated building which measures 19.5m long; 9.1m wide within an overall height of 4.9m under a dual pitch roof. The building would be located

in close proximity to the access and proposed parking area (north west corner). The building would be constructed from metal cladding painted green.

47. The polytunnels would be standard design tunnels measuring 12m long and 5.1m wide and would be located adjacent to the western boundary of the site.
48. The stable block would be single storey in height measuring 11m long; 5.1m wide with an overall height of 3.6m. The block would comprise of three stables. The feed store would measure 7.5m long; 3.5m wide with an overall height of 3.6m. These buildings would be sited adjacent to each other quite centrally within the site and be constructed from treated timber cladding that would be allowed to weather over time.
49. The trespass proof fencing would be 2.1m high weldmesh style and run alongside the boundary of the site with the A1(M) and the railway line.
50. The site is at a lower level than Lime Lane on the northern boundary and it is quite well screened from the A1(M) and the main railway line by existing trees and hedges on the boundaries. Also the trees and hedges within the site will provide further screening. The Barn building would be the most visible from Lime Lane as there is not as much existing tree and hedge coverage along this boundary.
51. Further landscaping would occur within the site which will enhance the visual appearance of the site as well the biodiversity of the site (see below) and this would be secured by a planning condition.
52. The buildings that would be located on the site would not have an adverse impact on the character or appearance of the site and they have been designed to respect the rural location. They are of a temporary nature and the type of building that would be found elsewhere in the countryside. Precise details of the fencing around the site and around the fields and paddocks can be secured by planning conditions. A planning condition has been imposed to secure the details of any external lighting for the site.
53. The proposed development would comply with policies DC1, E4 and IN10 of the Local Plan in this regard

#### **f) Ecology**

54. A Preliminary Ecological Appraisal has been submitted in support of the planning application which concluded that there would be no impacts on statutory and non-statutory nature conservation sites and no controlled invasive plant species were noted within the site. All buildings and trees within the site were assessed as holding negligible potential to contain roosting bats. The Appraisal advises that the proposals are of a type and scale such that adverse effects are likely to be minimal and whilst they may result in potential impacts on potential badger foraging along the western boundary of the site and by the use of external lighting, these matters can be controlled through mitigation and planning conditions.

55. The Appraisal advises that the railway embankment to the west of the site holds potential for sheltering badgers. Badger setts can extend some distance underground, onto neighbouring land. As a precautionary measure, no excavation of the site will be undertaken within a 30m buffer of the western fence line, so as to avoid the damage or destruction of an active badger sett, should such a structure exist beneath the site. It is understood that each of the buildings to be positioned within the site is a temporary structure (portacabin or similar) and will not require the digging of foundations. The community barn, which will be positioned within the buffer zone, is a prefabricated building, which is to be lifted onto the existing gravelled area from Lime Lane, without the need for heavy machinery to access the site.
56. The Appraisal also provides advice on an environmental lighting strategy for the site, which can be secured by a planning condition.
57. Projects should seek an overall Biodiversity Net Gain, in order to meet the emerging Environment Bill, which seeks to mandate a 10% biodiversity net gain (BNG), with a view to leaving the natural environment in a measurably better state following development. This is also echoed by local development plan policy. As part of this development, all hedgerows are to be retained in their entirety and hedgerows are to be gapped up (apart from two areas where footpaths cross the hedgerow using a mix of native hedgerow shrubs; there will be a sensory/community garden; the majority of the vegetation around the site will receive no management and therefore, with the cessation of grazing, will develop into neutral grassland and opportunities for further tree planting exist.
58. The Council's Ecology consultant has advised that the information provided is sufficient for the Local Planning Authority to determine that net gains for biodiversity can be achieved on the site. A 30 year management plan for the site will be required, alongside refinement of the landscape proposals which can be secured by planning conditions
59. The proposal would accord with policies ENV7 and ENV8 of the Local Plan in this regard.

**g) Impact on Trees**

60. An arboricultural Impact Assessment has been submitted in support of the planning application. The Assessment advises that the trees surveyed on site are a moderate and low quality species. None of the trees within or around the site are covered by a tree preservation order.
61. The Assessment confirms that no trees require removal to facilitate the development. Some trees may require pruning to facilitate the construction of The Barn but the level of pruning, if required, would not be significant. The Assessment includes a plan showing the root protection areas for the trees and these can be protected by fencing which can be secured by a planning condition.
62. The proposed development, subject to conditions, will accord with policy ENV4 of the Local Plan



#### **h) Drainage and Flood Risk**

63. The application site is within Flood Zone 1 and is at a very low level of fluvial flooding and surface water flooding which accords with the objectives of Policy DC2 of the Local Plan. The application was supported by a Flood Risk Assessment and Drainage Strategy which will need to be amended following the omission of the overnight accommodation from the scheme. However, the FRA stated that surface water from the polytunnels can be collected in water butts via guttering; the surface water from The Barn could be conveyed to the rain garden to the south west of the site; harvested rainwater could be used for the flushing of toilets and washing machines; with permeable materials to be used for the creation of the parking areas. Foul water would be disposed by a package treatment plant.
64. It is not envisaged that the proposals will impact on current flood risk and will have minimal increase on existing flood risk from any source with minimal impact on causing flooding elsewhere. A planning condition can be imposed which requests the submission of a revised Drainage Strategy prior to the commencement of the development.

#### **i) Contaminated Land**

65. The planning application has been supported by a Screening Assessment for Contamination. The Council's Environmental Health Officer has raised no objections to the proposed development. The proposal accords with Policy DC1 in this regard.

#### **j) Archaeology**

66. The Durham County Council Archaeology Team have no archaeological objection to the development. The development would accord with policy ENV1 of the Local Plan in this regard.

#### **k) Nutrient neutrality**

67. Natural England together with the Department for Levelling Up, Housing and Communities (DLUCH) announced on 16<sup>th</sup> March 2022 that the administrative area of Darlington Borough Council is now located within the catchment area of the Teesmouth and Cleveland Coast Special Protection Area. Under the Habitats Regulations, those planning authorities falling within the catchment area must carefully consider the nutrients impacts of any projects, including new development proposals, on habitat sites and whether those impacts may have an adverse effect on the integrity of the site that requires mitigation. This impacts on all planning applications, both existing and proposed, which relate to primarily all types of overnight accommodation, such as new dwellings, care homes, student accommodation, holiday accommodation etc. and impacts all developments for one dwelling upwards. It also affects other applications where development may impact upon water quality, including those seeking to discharge planning conditions relating to foul and surface water drainage for a range of development proposals.

68. The planning application has been amended by the removal of four accommodation lodges which were originally proposed for the site, and therefore, the proposal no longer involves development which would generate wastewater from overnight accommodation or use. The hours of operation have been secured by a planning condition. Furthermore, the proposal will involve retaining part of the existing agricultural characteristics of the site and surface and foul water can be disposed of via various means other than into a watercourse. The need for a nutrient assessment in this instance is no longer a requirement.

#### **THE PUBLIC SECTOR EQUALITY DUTY**

69. In considering this application the Local Planning Authority has complied with Section 149 of the Equality Act 2010 which places a statutory duty on public authorities in the exercise of their functions to have due regard to the need to eliminate discrimination and advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. The proposed development is to provide young adults with learning difficulties with an outdoor centre to learn practical and new skills while socialising and embracing the outdoors. Five Acres would focus on work skills in preparation for adulthood from the basics of gardening, rowing flowers and harvesting edible crops. The Centre would also provide work experience for students whilst still in education. The development includes disabled parking spaces and the raised platforms have been designed to create safe access for persons with mobility issues. The buildings would be accessible in accordance with Part M of the Building Regulations. Darlington Association on Disability have been consulted on the planning application and have raised no objections. The proposal would accord with policy IN2 of the Local Plan in this regard.

#### **SECTION 17 OF THE CRIME AND DISORDER ACT 1998**

70. The contents of this report have been considered in the context of the requirements placed on the Council by Section 17 of the Crime and Disorder Act 1998, namely the duty on the Council to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area. It is not considered that the contents of this report have any such effect.

#### **CONCLUSION AND RECOMMENDATION**

71. The application site is not located within the development limits identified by the Policies Map of the Darlington Local Plan 2016 – 2036. The local development plan does support the principle of economic development proposals and outdoor leisure uses in appropriate sustainable locations, provided their impact on the open countryside is minimised, and they provide satisfactory access arrangements and protect amenity. The National Planning Policy Framework 2021 recognises that not all local business and community needs proposals in rural areas can be found adjacent to or beyond existing settlements and development limits and are in locations that are not well served by public transport.

72. The application site is not fully accessible by all modes of sustainable transport such as public transport, cycling or walking but those that would use the facility can access the site through the TeesFlex booking service, the applicant's private transport company as well as via private motor vehicles of parents/carers. The fact that a rural location is very beneficial for the proposed use and to the persons that would use the facility is a material planning consideration in this case and having considered all material planning considerations in accordance with S.38(6) of the Planning and Compulsory Purchase Act 2004, the principle of the development can be supported.
73. The proposal does not raise any highway safety objections and will not have an adverse impact on the character and appearance of the rural setting. There are no residential dwellings in the immediate locality of the site and measures can be put in place to secure the site as it is located in close proximity to the A1(M) and East Coast Main Railway line route. The principle of the proposal is acceptable in flood risk terms and biodiversity net gain has been demonstrated. The planning application is recommended for approval subject to the planning conditions listed below.

**THAT PLANNING PERMISSION BE GRANTED SUBJECT TO THE FOLLOWING CONDITIONS**

1. A3 – Three Years (Implementation Limit)
2. The development hereby permitted shall be carried out in accordance with the approved plans, as detailed below:
  - (a) Drawing Number 21-010\_X\_SP (00) 01\_XX Rev E Proposed Site Layout
  - (b) Drawing Number 21-010\_X\_GP (00) 03\_XX Proposed Day Care Centre/Barn & Plant Plan & Elevations
  - (c) Drawing Number 21-010\_X\_GP (00) 04\_XX Proposed Polytunnel Plans and Elevations
  - (d) Drawing Number 21-010\_X\_GP (00) 05\_XX Proposed Stable Plan and Elevations
  - (e) Drawing Number 21-010\_X\_GP (00) 06\_XX Proposed Feed Store Plan and Elevations
  - (f) Drawing Number 21-010\_X\_GP (00) 07\_XX Rev A Proposed Raised Walkway
  - (g) Drawing Number 21-010\_X\_GP (00) 08\_XX Rev A Proposed Livestock/Trespass Fencing

REASON – To ensure the development is carried out in accordance with the planning permission.

3. Prior to the commencement of the development, including demolition, a site specific Construction Management Plan shall be submitted to and approved in writing by the Local Planning Authority in consultation with Network Rail. The Plan shall include the following, unless the Local Planning Authority dispenses with any requirement[s] specifically and in writing:

- (a) Hours of construction and deliveries
- (b) Dust Assessment Report which assesses the dust emission magnitude, the sensitivity of the area, risk of impacts and details of the dust control measures to be put in place during the demolition and construction phases of the development. The Dust Assessment Report shall take account of the guidance contained within the Institute of Air Quality Management "Guidance on the assessment of dust from demolition and construction" February 2014.
- (c) Methods for controlling noise and vibration during the demolition and construction phase and shall take account of the guidance contained within
  - a. BS5228 "Code of Practice for noise and vibration control on construction and open sites".
- (d) Construction Traffic Routes, including parking areas for staff and visitors.
- (e) Details of wheel washing.
- (f) Road Maintenance.
- (g) Warning signage.
- (h) Submission of evidence that consultation with the Asset Protection Project Manager at Network Rail has been carried out and a construction methodology has been agreed with Network Rail

The development shall not be carried out otherwise in complete accordance with the approved Plan.

REASON - In the interests of highway safety; amenity and railway line safety.

- 4. Prior to the commencement of the development, a detailed drainage strategy plan shall be submitted to and approved in writing by the Local Planning Authority . The strategy must also ensure that surface water flows away from the adjacent East Coast Main Line railway; with no ponding of water taking place adjacent to the boundary and any attenuation schemes within 30m of the railway boundary must be approved by Network Rail. There must be no connection to existing railway drainage assets without prior agreement of Network Rail. The development shall not be carried out otherwise than in complete accordance with the approved Plan.

REASON - In the interests of preventing flood risk and the safety of the East Coast Main Line railway.

- 5. The use hereby approved shall not operate outside the hours of Monday to Friday 0800 to 1800; Saturday 0900 to 1800 and Sundays and Bank Holidays 1000 to 1600 unless otherwise agreed in writing by the Local Planning Authority.

REASON - In the interests of the amenity of the area.

- 6. Prior to the commencement of the development hereby approved, a scheme to protect the existing trees shown within the submitted Arboricultural Impact Assessment to be retained shall be implemented on site. The scheme shall comprise generally the specification laid down within BS 5837 2012 and shall include fencing of at least 2.3m

high, consisting of a scaffolding frame braced to resist impacts, supported by a weldmesh wired to the uprights and horizontals to dissuade encroachment. The fencing shall be erected along the root protection areas shown on Drawing Number Any0\_Lime Lane\_AIA.1DRAFT (Appendix 1 of the submitted Arboricultural Impact Assessment produced by Dendra). Notwithstanding the above approved specification, none of the following activities shall take place within the segregated protection zones in the area of the trees:

- (a) The raising or lowering of levels in relation to the existing ground levels;
- (b) Cutting of roots, digging of trenches or removal of soil;
- (c) Erection of temporary buildings, roads or carrying out of any engineering operations;
- (d) Lighting of fires;
- (e) Driving of vehicles or storage of materials and equipment.

REASON - To ensure that a maximum level of protection in order to safeguard the well being of the trees on the site and in the interests of the visual amenities of the area.

7. Prior to the commencement of the use, precise details for any external lighting scheme shall be submitted to and approved in writing by the Local Planning Authority. Any lighting scheme shall be carried out having full regard to Section 5.4.3 of the document entitled "Preliminary Ecological Appraisal of: Land to south of Lime Lane Brafferton Darlington" produced by Dendra Consulting Limited and dated April 2021 unless otherwise agreed in writing by the Local Planning Authority

REASON - In the interests of the visual appearance of the development and biodiversity of the site.

8. Prior to the commence of the use, precise details of the cycle parking and motor vehicle parking shall be submitted to and approved in writing by the Local Planning Authority. The details shall include the number and dimensions of vehicle parking spaces, the number and location of accessible parking spaces and details of cycle parking provision which accords with guidance contained within Cycle Infrastructure Design – Local Transport Note 1/20 dated July 2020. The agreed details shall be fully completed and available for use prior to the commencement of the use and retained thereafter for the lifetime of the development.

REASON - In the interest highway safety; securing accessible parking spaces and encouraging the use of sustainable modes of transport.

9. Notwithstanding the details shown on the approved plans and prior to the commencement of the use, precise details of the livestock/trespass fencing shall be submitted to and approved in writing by the Local Planning Authority. The details shall include the materials, colour scheme, depth of fence posts and confirmation that the fencing will not prevent access to land in the ownership of Network Rail and National Highways for maintenance purposes. The development shall not be carried out

otherwise than in complete accordance with the approved plans and the fencing shall be erected prior to the commencement of the use and retained thereafter for the lifetime of the development.

REASON - In the interests of the safety of occupants of the site, to allow continued unrestricted access to adjacent landowners and in the interests of the visual appearance of the site and local area.

10. Notwithstanding the details shown on the approved plans and prior to the commencement of the use, precise details of all other means of enclosure in and around the site shall be submitted to and approved in writing by the Local Planning Authority. The details shall include the location, design and materials, colour scheme, depth of fence posts. The development shall not be carried out otherwise than in complete accordance with the approved plans and the fencing shall be erected prior to the commencement of the use and retained thereafter for the lifetime of the development

REASON - In the interests of the visual appearance of the site and local area.

11. The development shall not be carried out otherwise than in approved accordance with the document entitled "Preliminary Ecological Appraisal of: Land to south of Lime Lane Brafferton Darlington" produced by Dendra Consulting Limited and dated April 2021 and the further information and guidance, including the "Biodiversity Metric 3:0 Lime Lane" spreadsheet also produced by Dendra Consulting Limited dated 13 January 2022 unless otherwise agreed in writing by the Local Planning Authority.

REASON - In the interests of the visual appearance of the development and biodiversity of the site.

12. Prior to the commencement of the development, precise details of a scheme for the storage and disposal of waste shall be submitted to and approved in writing by the Local Planning Authority. The development shall not be carried out otherwise than in accordance with the approved details. The agreed scheme shall be fully implemented and available for use prior to the commencement of the use.

REASON - In the interests of the amenity of the area.

13. Prior to the commencement of the use, a landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority in consultation with Network Rail. The scheme shall have full regard to the document entitled "Preliminary Ecological Appraisal of: Land to south of Lime Lane Brafferton Darlington" produced by Dendra Consulting Limited and dated April 2021 and the further information and guidance, including the "Biodiversity Metric 3:0 Lime Lane" spreadsheet also produced by Dendra Consulting Limited dated 13 January 2022. Any planting and landscaping scheme should not impact on operational railway safety with any trees and shrubs planted adjacent to the boundary positioned a minimum distance greater than their height at maturity from

the boundary and within no broad leaf deciduous species planted adjacent to the railway boundary. Any hedge planted adjacent to the railway boundary for screening purposes should be placed so that when fully grown, it does not damage the fencing, provide a means of scaling it or prevents Network Rail from maintaining its boundary fencing. The development should not be carried out otherwise than in complete accordance with the approved details.

REASON - In the interests of the visual appearance of the development, biodiversity net gain and the safety of the East Coast Main Line railway.

14. Prior to the commencement of the use a 30 Year Biodiversity and Landscape Management plan for the site shall be submitted to and approved in writing by the Local Planning Authority. The development shall not be implemented otherwise than in complete accordance with the agreed Plan.

REASON - In the interests of the visual appearance of the development and biodiversity net gain.

15. The access and visibility work as shown on Drawing Number 21-010\_X\_SP (00)05\_XX) (Proposed - Access & Visibility) must be fully completed prior to the commencement of the use and retained thereafter for the lifetime of the development.

REASON - In the interests of highway safety.

16. Notwithstanding the details shown on Drawing Number 21-010\_X\_SP(00)05\_XX ) (Proposed - Access & Visibility) the first 12m of the internal access road, measured back from the carriageway edge shall be formed in a sealed material and the access gates shall not open outward over the public highway.

REASON - In the interests of highway safety.

## **INFORMATIVES**

### **Highways**

#### **Section 184 Crossover**

The applicant is advised that works are required within the public highway, to widen an existing vehicle crossing. Contact must be made with the Assistant Director: Highways, Design and Projects (contact Mrs Lisa Woods 01325 406702) to arrange for the works to be carried out or to obtain agreement under the Highways Act 1980 to execute the works.

### **Environmental Health**

Environmental Health enforces Health and Safety legislation at this premises and the applicant is advised to contact this department prior to the undertaking of any work to ensure that all legislative requirements are met.

## **Network Rail Standard Informatives**

### **Fail Safe Use of Crane and Plant**

All operations, including the use of cranes or other mechanical plant working adjacent to Network Rail's property, must at all times be carried out in a "fail safe" manner such that in the event of mishandling, collapse or failure, no materials or plant are capable of falling within 3.0m of the nearest rail of the adjacent railway line, or where the railway is electrified, within 3.0m of overhead electrical equipment or supports.

With a development of a certain height that may/will require use of a crane, the developer must bear in mind the following. Crane usage adjacent to railway infrastructure is subject to stipulations on size, capacity etc. which needs to be agreed by the Asset Protection Project Manager prior to implementation.

### **Excavations/Earthworks**

All excavations/ earthworks carried out in the vicinity of Network Rail property/ structures must be designed and executed such that no interference with the integrity of that property/ structure can occur. If temporary works compounds are to be located adjacent to the operational railway, these should be included in a method statement for approval by Network Rail. Prior to commencement of works, full details of excavations and earthworks to be carried out near the railway undertaker's boundary fence should be submitted for the approval of the Local Planning Authority acting in consultation with the railway undertaker and the works shall only be carried out in accordance with the approved details. Where development may affect the railway, consultation with the Asset Protection Project Manager should be undertaken. Network Rail will not accept any liability for any settlement, disturbance or damage caused to any development by failure of the railway infrastructure nor for any noise or vibration arising from the normal use and/or maintenance of the operational railway. No right of support is given or can be claimed from Network Rails infrastructure or railway land.

### **Security of Mutual Boundary**

Security of the railway boundary will need to be maintained at all times. If the works require temporary or permanent alterations to the mutual boundary the applicant must contact Network Rail's Asset Protection Project Manager.

### **Demolition**

Any demolition or refurbishment works must not be carried out on the development site that may endanger the safe operation of the railway, or the stability of the adjoining Network Rail structures. The demolition of buildings or other structures near to the operational railway infrastructure must be carried out in accordance with an agreed method statement. Approval of the method statement must be obtained from Network Rail's Asset Protection Project Manager before the development can commence.

### **Vibro-impact Machinery**

Where vibro-compaction machinery is to be used in development, details of the use of such machinery and a method statement should be submitted for the approval of the Local Planning Authority acting in consultation with the railway undertaker prior to the commencement of



works and the works shall only be carried out in accordance with the approved method statement.

### **Scaffolding**

Any scaffold which is to be constructed within 10 metres of the railway boundary fence must be erected in such a manner that at no time will any poles over-sail the railway and protective netting around such scaffold must be installed.

### **Bridge Strikes**

Applications that are likely to generate an increase in trips under railway bridges may be of concern to Network Rail where there is potential for an increase in 'Bridge strikes'. Vehicles hitting railway bridges cause significant disruption and delay to rail users. Consultation with the Asset Protection Project Manager is necessary to understand if there is a problem. If required there may be a need to fit bridge protection barriers which may be at the developer's expense.

### **Abnormal Loads**

From the information supplied, it is not clear if any abnormal loads will be using routes that include any Network Rail assets (e.g. bridges and level crossings). We would have serious reservations if during the construction or operation of the site, abnormal loads will use routes that include Network Rail assets. Network Rail would request that the applicant contact our Asset Protection Project Manager to confirm that any proposed route is viable and to agree a strategy to protect our asset(s) from any potential damage caused by abnormal loads. I would also like to advise that where any damage, injury or delay to the rail network is caused by an abnormal load (related to the application site), the applicant or developer will incur full liability.

### **Two Metre Boundary**

Consideration should be given to ensure that the construction and subsequent maintenance can be carried out to any proposed buildings or structures without adversely affecting the safety of, or encroaching upon Network Rail's adjacent land, and therefore all/any building should be situated at least 2 metres from Network Rail's boundary. This will allow construction and future maintenance to be carried out from the applicant's land, thus reducing the probability of provision and costs of railway look-out protection, supervision and other facilities necessary when working from or on railway land.

### **ENCROACHMENT**

The developer/applicant must ensure that their proposal, both during construction, and after completion of works on site, does not affect the safety, operation or integrity of the operational railway, Network Rail and its infrastructure or undermine or damage or adversely affect any railway land and structures. There must be no physical encroachment of the proposal onto Network Rail land, no over-sailing into Network Rail airspace and no encroachment of foundations onto Network Rail land and soil. There must be no physical encroachment of any foundations onto Network Rail land. Any future maintenance must be conducted solely within the applicant's land ownership. Should the applicant require access to Network Rail land then must seek approval from the Network Rail Asset Protection Team. Any unauthorised access to Network Rail land or airspace is an act of trespass and we would remind the council that this is a criminal offence (**s55 British Transport Commission Act 1949**). Should

the applicant be granted access to Network Rail land then they will be liable for all costs incurred in facilitating the proposal.

### **Access to the Railway**

All roads, paths or ways providing access to any part of the railway undertaker's land shall be kept open at all times during and after the development.

### **Standard Drainage Requirements**

We ask that all surface and foul water drainage from the development area be directed away from Network Rail's retained land and structures into suitable drainage systems, the details of which are to be approved by Network Rail before construction starts on site.

Water must not be caused to pond on or near railway land either during or after any construction-related activity.

The construction of soakaways for storm or surface water drainage should not take place within 20m of the Network Rail boundary. Any new drains are to be constructed and maintained so as not to have any adverse effect upon the stability of any Network Rail equipment, structure, cutting or embankment.

The construction of soakaways within any lease area is not permitted.

The construction of surface water retention ponds/tanks, SuDS or flow control systems should not take place within 20m of the Network Rail boundary where these systems are proposed to be **below** existing track level. Full overland flow conditions should be submitted to Network Rail for approval prior to any works on site commencing.

The construction of surface water retention ponds/tanks, SuDS or flow control systems should not take place within 30m of the Network Rail boundary where these systems are proposed to be **above** existing track level. Full overland flow conditions should be submitted to Network Rail for approval prior to any works on site commencing.

If a Network Rail-owned underline structure (such as a culvert, pipe or drain) is intended to act as a means of conveying surface water within or away from the development, then all parties must work together to ensure that the structure is fit for purpose and able to take the proposed flows without risk to the safety of the railway or the surrounding land.

### **Wayleaves and or easements for underline drainage assets**

The position of any underline drainage asset shall not be within 5m of drainage assets, sensitive operational equipment such as switches and crossings, track joints, welds, overhead line stanchions and line side equipment, and not within 15m of bridges, culverts, retaining walls and other structures supporting railway live loading.

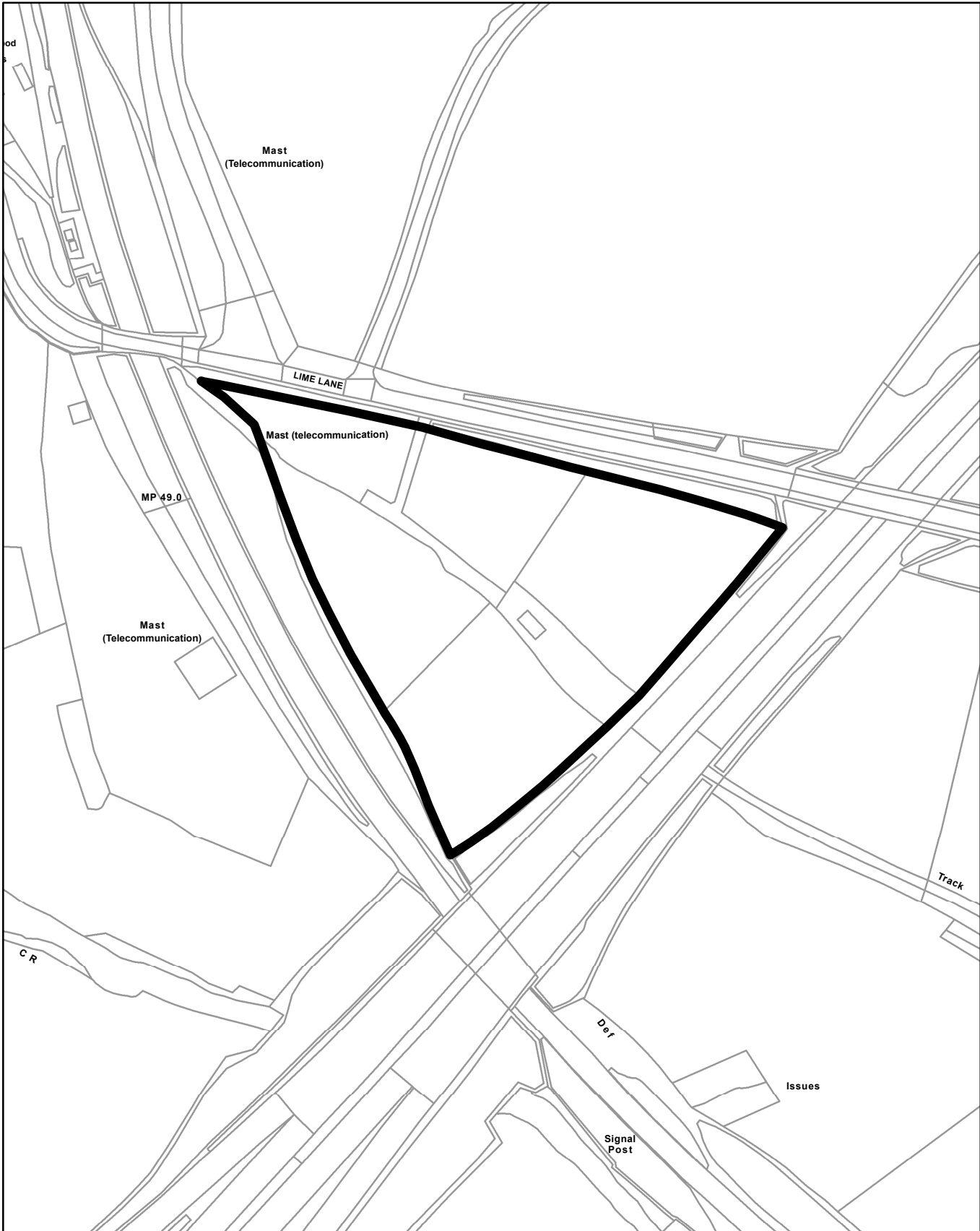
**Protection of existing railway drainage assets within a clearance area**

There are likely to be existing railway drainage assets in the vicinity of the proposed works. Please proceed with caution.

No connection of drainage shall be made to these assets without Network Rail's prior consent to detailed proposals. Any works within 5m of the assets will require prior consent. There must be no interfering with existing drainage assets/systems without Network Rail's written permission.

The developer is asked to ascertain with Network Rail the existence of any existing railway drainage assets or systems in the vicinity of the development area before work starts on site. Please contact Asset Protection ([assetprotectioneastern@networkrail.co.uk](mailto:assetprotectioneastern@networkrail.co.uk)) for further information and assistance.

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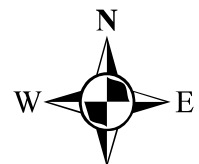


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**Planning Ref No: 21/00753/FUL**

DARLINGTON BOROUGH COUNCIL

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## DARLINGTON BOROUGH COUNCIL

### PLANNING APPLICATIONS COMMITTEE

**COMMITTEE DATE: 13 July 2022**

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<b>APPLICATION REF. NO:</b>	22/00397/FUL
<b>STATUTORY DECISION DATE:</b>	8 <sup>th</sup> June 2022 (EOT 14 <sup>th</sup> July 2022)
<b>WARD/PARISH:</b>	SADBERGE & MIDDLETON ST GEORGE
<b>LOCATION:</b>	Sainsburys Supermarket PLC Darlington Road MIDDLETON ST GEORGE DARLINGTON DL2 1JT
<b>DESCRIPTION:</b>	Application submitted under Section 73 of the Town and Country Planning Act 1990 for the variation of condition 18 (delivery times) attached to outline permission 21/00223/OUT dated 10 June 2021 (Outline application with details of access, appearance, layout and scale (landscaping reserved for future consideration) for the conversion, partial demolition and rear extension of public house (Sui Generis) to form convenience store (Use Class E) with car parking and associated works) to permit an extension in the delivery time by one hour from 08.00-18.00 to 07.00-18.00 (Mon-Sun)
<b>APPLICANT:</b>	SAINSBURY'S LIMITED

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**RECOMMENDATION: GRANT PERMISSION SUBJECT TO CONDITIONS** (see details below)

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Application documents including application forms, submitted plans, supporting technical information, consultations responses and representations received, and other background papers are available on the Darlington Borough Council website via the following link:

<https://publicaccess.darlington.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=RAA8C0FPH0100>

## APPLICATION AND SITE DESCRIPTION

1. The application site consists of the former Platform 1 Public House, located to the north of Middleton St George, on the corner of Sadberge Road and Darlington Road. There is housing to the west and east of the site.
2. Planning permission was granted in June 2021 (21/00223/OUT) for the conversion, partial demolition, and extension of the building to form a convenience store with a subsequent reserved matters application for landscaping approved in November 2021 (21/01130/RM1). Work is currently underway to implement the permission.
3. As part of the outline approval, both opening hours and delivery hours were limited by condition. The opening hours were limited to between 07:00 and 23:00 (Monday to Sunday) and the delivery hours to between 08:00 and 18:00 (Monday to Sunday). These limits were set in order to protect nearby residential amenity.
4. This applicant, Sainsbury's, seeks to vary the wording of condition no 18 of the original permission, to bring the morning hours of delivery into line with the morning opening hours of the store. Condition 18 currently states:

*Deliveries to the site shall be at the service access bay to the rear of the property and shall not take place outside of the hours of 08:00 to 18:00 Monday to Sunday unless otherwise agreed in writing by the Local Planning Authority.*

*REASON – In the interests of residential amenity.*

5. The proposed condition requested by Sainsbury's, which does not change the number of deliveries received at the site, the location that deliveries are to be received, or the end time for deliveries is as follows:

*Deliveries to the site shall be at the service access bay to the rear of the property and shall not take place outside of the hours of 07:00 to 18:00 Monday to Sunday unless otherwise agreed in writing by the Local Planning Authority.*

*REASON – In the interests of residential amenity.*

6. It should be noted that this application has been brought before the Planning Applications Committee as the original officer recommendation for 21/00223/OUT was for the delivery times to start at 07:00 as sought in this application, as recommended by the Environmental Health Officer. Members however requested that the condition be changed to a start time of 08:00 with a finish time of 18:00 as condition 18 currently states. The application therefore seeks to bring the start time for deliveries forward by one hour to 07:00. The agreed finish time of 18:00 would be unchanged.



## **MAIN PLANNING ISSUES**

7. The main issues for consideration are:

- (a) Impact on residential amenity
- (b) Highway safety

## **PLANNING POLICIES**

8. The principle of the development has been established by the original planning permission (21/00223/OUT). Relevant policies in the Darlington Borough Local Plan 2016 – 2036 relating to the proposed variation of the delivery hours (condition 18) include those that state:

- New development should protect the amenity of neighbouring users and must be acceptable in terms of noise and disturbance (DC4)
- New development provides suitable and safe vehicular access and suitable servicing and parking arrangements (DC1 and IN4).

9. Guidance in the National Planning Policy Framework, 2021 is also relevant which advises that:

- Planning decisions should contribute to and enhance the natural and local environment by preventing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution (para. 174(e))
- Planning decisions should seek to mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development and avoid noise giving rise to significance adverse impacts on health and quality of life (para. 185(a))

## **RESULTS OF TECHNICAL CONSULTATION**

10. The Council's Environmental Health Officer and Highways Engineer have raised no objections to the proposal.

## **RESULTS OF PUBLICITY AND NOTIFICATION**

11. A total of two letters of objection have been received from local residents which raise the following points:

- Earlier than 8am for deliveries would not be in the interests of surrounding residents and would significantly impact residential amenity and well-being.

12. Middleton St George Parish Council has made no comments on the proposal.

## PLANNING ISSUES/ANALYSIS

### (a) Impact on residential amenity

13. The application states, as per the original application, that the store will receive four to six deliveries per day. All deliveries will be taken in the main delivery and servicing area to the rear of the sales area which is accessed by a dedicated delivery access bay. Vehicular access to this area is via the store car park which is accessed off Darlington Road. The purpose of the application is not to increase deliveries but to bring the starting time for delivery in line with the approved store opening time of 7am. In this context, it is noted that there will already be some activity on the site at this time, both in the store and in the car park area with staff and potential customers.
14. The application site is surrounded by residential properties at varying distances on its north, east, west and southern sides. Approximate distances from the delivery area to the nearest residential properties are set out below:
  - 34 Cheltenham Court – approximately 45 metres to the north west of the delivery area
  - 1 Orient Villas – approximately 75 metres to the north
  - 18 Avro Close – approximately 45 metres to the east
  - 1 Sadberge Road – approximately 32 metres to the east
  - 20 Palm Tree Villas – approximately 105 metres to the south
15. A noise report, prepared by Tetra Tech (February 2022), specifically in regard to the extension to delivery time to include 07:00 daytime deliveries to the store has been undertaken and submitted with the application. The assessment has been undertaken to compare worst-case representative noise levels from 'existing ambient noise levels' during the 07:00 – 08:00 hour period to the 'proposed scheme noise' at identified existing receptors. A total of 9 receptors were identified for the purpose of the noise assessment, which include those properties listed above.
16. The report presents the findings of the noise assessment and advises that the noise from a delivery event is below the BS8233:2014 and WHO guideline criteria during the daytime at all nearby sensitive receptors, assuming a windows open scenario. An assessment of the change in overall ambient noise levels during this period shows that there is expected to be a negligible change to ambient noise levels. Based on this assessment, the proposed extension to delivery hours would result in a low noise impact and noise levels would fall within the Lowest Observed Adverse Effect Level (LOAEL).

17. The Environmental Health Officer has considered the noise assessment and raised no objection to the proposed variation of the delivery hours on this basis. It has been demonstrated that the proposed extension of the delivery hours from 08:00 to 07:00 will fall within acceptable levels with a negligible change to ambient noise levels. Furthermore, given that the store is already open at 07:00 and there will be a degree of activity associated with staff and customers arriving at the store and using the store car park, it is not considered that the variation to the condition proposed would result in an unacceptable impact on residential amenity. The proposal is therefore considered to accord with Policy DC4, and the advice set out in the NPPF relating to noise.

**(b) Highway safety**

18. The proposed extended delivery times do not pose any highway safety concerns given that the proposed earlier servicing is off-peak. On this basis, the Highways Engineer has raised no objections. The proposal therefore accords with policies DC1 and IN4 in this regard.

**THE PUBLIC SECTOR EQUALITY DUTY**

19. In considering this application the Local Planning Authority has complied with Section 149 of the Equality Act 2010 which places a statutory duty on public authorities in the exercise of their functions to have due regard to the need to eliminate discrimination and advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. There is no overt reason why the proposed variation to condition 18 would prejudice anyone with the protected characteristics.

**CONCLUSION AND RECOMMENDATION**

20. The proposed variation of condition 18 does not raise any significant highway safety or residential amenity issues, as the updated noise report demonstrates, and accords with Local Plan Policies DC1, DC4 and IN4 and the requirements of the NPPF in this regard. As this is an application under Section 73 and has the effect of issuing a new planning permission, all relevant planning conditions are reiterated and set out below:

**THAT PLANNING PERMISSION BE GRANTED SUBJECT TO THE FOLLOWING CONDITIONS:**

1. The development hereby approved shall be commenced not later than 23<sup>rd</sup> November 2023.

REASON - To accord with the provisions of Section 73 of the Town and Country Planning Act 1990.

2. The development hereby permitted shall be carried out in accordance with the approved plan(s) as detailed below:

- 2165-P200 Rev E Site location plan
- 2165-P204 Rev G Site Layout plan
- 2165-P206 Rev C Proposed elevations
- 2165-P205 Rev D Proposed Ground Floor Layout
- 2165-P207 Demolition Plan

REASON - To ensure the development is carried out in accordance with the planning permission.

3. The submitted landscaping scheme, agreed through application reference number 21/01130/RM1 (Drawing number S2 Rev B) dated 23<sup>rd</sup> November 2021 shall be fully implemented concurrently with the carrying out of the development, or within such extended period which may be agreed in writing by, the Local Planning Authority and thereafter any trees or shrubs removed, dying, severely damaged or becoming seriously diseased shall be replaced, and the landscaping scheme maintained for a period of five years to the satisfaction of the Local Planning Authority.

REASON - In the interests of the visual amenities of the area.

4. The external materials (to include parapet detail) to be used in the carrying out of the development, shall be in accordance with those details submitted and approved within application reference 21/01129/CON dated 30<sup>th</sup> November 2021 as part amended by application 22/00141/NMA dated 14<sup>th</sup> March 2022, unless otherwise agreed in writing by the Local Planning Authority.

REASON - In the interests of visual amenity.

5. The archaeology work shall be carried out in accordance with the programme of archaeological work and the approved scheme of works set out in the submitted Written Scheme of Investigation and post investigation assessment ('Platform 1 Darlington Road Middleton St George Darlington, An Archaeological Written Scheme of Investigation' LS Archaeology (July 2021, amended November 2021)) approved under application reference number 21/01129/CON dated 30<sup>th</sup> November 2021, and ('Platform 1 Middleton St George: A Report on an Archaeological Watching Brief' (LS Archaeology March 2022)) approved under planning application reference number 22/00297/CON dated 25<sup>th</sup> May 2022 unless otherwise agreed in writing by the Local Planning Authority.

REASON - To safeguard any Archaeological Interest in the site, and to comply with part 16 of the National Planning Policy Framework. Required to be a pre-commencement condition as the archaeological investigation/mitigation must be devised prior to the development being implemented.

6. The development shall not be undertaken otherwise than in complete accordance with the approved Construction Management Plan ('Construction Management Plan: Proposed alteration to Platform 1 Darlington Road to form a convenience store' Rev. 1, (PH Land, October 2021)) approved under application reference number 21/01129/CON dated 30<sup>th</sup> November 2021, unless otherwise agreed in writing by the Local Planning Authority.

REASON – In the interests of highway safety and residential amenity.

7. Construction and demolition work shall not take place outside the hours of 08.00 -18.00 Monday - Friday, 08.00 -14.00 Saturday with no working on a Sunday and Bank/Public Holidays without the prior written permission from the Local Planning Authority.

REASON - In the interests of residential amenity.

8. The development shall not be carried out otherwise than in complete accordance with the approved Tree Survey and Arboricultural Method Statement ('Platform 1 public house Middleton St George; Tree Survey and Arboricultural Method Statement for PH Land and Developments', (Enviroscope Consulting, September 2021)) approved under application reference number 21/01129/CON dated 30<sup>th</sup> November 2021, unless otherwise agreed in writing by the Local Planning Authority.

REASON - To ensure a maximum level of protection in order to safeguard the well-being of the trees on the site and in the interest of the visual amenities of the area.

9. Prior to the occupation of the development hereby approved, details of the size, type, and location of the proposed interpretation panels, and details of the seating area shall be submitted to, and approved in writing by, the Local Planning Authority. These shall be in place prior to the occupation of the development hereby approved and shall be retained as such thereafter.

REASON - To recognise the significance of the site to the Stockton and Darlington Railway in line with the aims and objectives of the Heritage Action Zone.

10. Prior to the occupation of the development hereby approved, two litter bins shall be provided (one to be situated to the seating area to the rear) in accordance with details to be submitted to, and approved in writing by, the Local Planning Authority and one in accordance with details already approved under planning permission reference number 22/00297/CON, part discharge of condition, dated 25<sup>th</sup> May 2022. The litter bins shall be in place prior to the occupation of the building and shall be retained thereafter.

REASON - In the interests of residential amenity.

11. The development shall not be carried out otherwise than in complete accordance with the terms of the approved Travel Plan ('Travel Plan; Sainsbury's supermarkets: Proposed convenience store Middleton St George' (Vectos, February 2022)) approved under planning permission reference number 22/00231/CON dated 24<sup>th</sup> March 2022, unless otherwise agreed in writing by the Local Planning Authority.

REASON - To encourage the reduction of journeys made to and from the development by private motor vehicles by the promotion of more sustainable forms of transport.

12. The external lighting shall be completed in accordance with the details approved under planning permission reference number 22/00249/CON (Luminaire Schedule and Drawing reference 'Proposed Lighting Layout – DWG-01') dated 16<sup>th</sup> May 2022 and maintained as such thereafter, unless otherwise agreed in writing by the Local Planning Authority.

REASON - In the interests of residential amenity.

13. Cycle parking /storage shall be provided prior to the occupation of the development in accordance with details approved under planning permission reference number 22/00249/CON ('Cycle Hoop Plan', 'Sheffield Cycle Stand details' and 'details of staff cycle parking') dated 16<sup>th</sup> May 2022 and retained as such thereafter.

REASON - To encourage more sustainable modes of transport.

14. Two electric vehicle charging points shall be provided prior to the occupation of the development in accordance with details approved under planning permission reference number 22/00231/CON (Drawing ref. 'Proposed Car Charging - No. S3 Rev; Drawing ref. 'Wallpod Mounting Post: Ground Mounted Galvanised Stee – No. IEVFP0020 Rev -' ; and Catalogue extract with product details for 'WallPod:EV – Socket') dated 24<sup>th</sup> March 2022.

REASON - To make provision for sustainable means of transport

15. The opening hours of the premises shall be restricted to between 07:00 and 23:00 unless otherwise approved in writing by the Local Planning Authority.

REASON - In the interests of residential amenity.

16. Deliveries to the site shall be at the service access bay to the rear of the property and shall not take place outside of the hours of 07:00 and 18:00 Monday to Sunday unless otherwise agreed in writing by the Local Planning Authority.

REASON - In the interests of residential amenity.

17. The external plant as approved under planning permission reference number 22/00297/CON (Drawing ref. 'Proposed Refrigeration Plant Layout - XA-0236-1841-AIR-ZZZ-00-DR-N-0555'; and Drawing ref. 'Proposed A/C & Ventilation Layout - XA-0236-1841-AIR-ZZZ-00-DR-M-0572') dated 25<sup>th</sup> May 2022 shall be installed fully in accord with the details approved prior to the commencement of the use and retained as such thereafter.

REASON - In the interests of residential amenity.

## **INFORMATIVES**

The Environmental Health Team enforces Food Safety and Health and Safety legislation at this premises and the applicant is advised to contact this department prior to the undertaking of any work to ensure that all legislative requirements are met.

The applicant is advised that contact be made with the Assistant Director: Highways, Design and Projects (contact Mrs. P. McGuckin 01325 406651) to discuss naming and numbering of the development.

The adjacent bridleway must be kept safe and free from obstruction during and after construction.

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## Appeal Decision

Site visit made on 12 April 2022

**by Richard McCoy BSc MSc DipTP MRTPI IHBC**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 03 May 2022**

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**Appeal Ref: APP/TPO/N1350/8562**

**River View, Dinsdale Spa House, Church Lane, Middleton St George, Darlington DL2 1DJ**

- The appeal is made under regulation 19 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 against a refusal to grant consent to undertake work to a tree protected by a Tree Preservation Order.
  - The appeal is made by Mr George Murray, Dinsdale Spa Management Ltd against the decision of Darlington Borough Council.
  - The application Ref: 21/00303/T, dated 10 March 2021, was refused by notice dated 30 April 2021.
  - The work proposed is trim and remove dead branches and reduce crown up to 2 metres.
  - The relevant Tree Preservation Order (TPO) is No. 11 2019 (adjacent to The Lodge, Dinsdale Spa House, Church Lane, Middleton St George, Darlington), which was confirmed on 10 December 2019.
- 

### Decision

1. I dismiss the appeal.

### Main Issues

2. The main issues are the effect of the proposed crown reduction on the visual amenity of the surrounding area and whether the reasons given for the works to the tree justify that course of action.

### Reasons

#### *The First Issue - Character and appearance*

3. The mature Willow, identified as T1 in the TPO, stands on the riverbank, next to Dinsdale Spa House. The Willow has a large crown spread which covers a seating area, belonging to the Octagon, a dwelling within Dinsdale Spa House, and part of the adjacent parking area and riverbank footpath. While the tree displays a large split limb, it appeared to be in good health and vigour, and there is nothing before me, or that I saw on site, to indicate that the tree is suffering from any decay or disease that would foreshorten its long-life expectancy.
4. The tree's riverside location gives it significant public amenity value as it is prominently seen, particularly from the nearby public footpath on the bank of the river. Its attractive form and riparian setting result in the tree making a significant contribution to the character and appearance of the area. It is an

integral part of the historic landscape setting of the area, contributing an important element of its skyline.

5. I note the appellant's argument that the amount of crown to be removed has been reduced from 4 to 2 metres under this proposal and that he would accept a reduction of "up to 1 metre". Nevertheless, under the proposal of this appeal, the extent of the proposed crown reduction would, in my judgement, be likely to disfigure the Willow by causing it to lose its natural well-balanced shape. The proposed works would detract from the tree's attractive profile and would reduce the amount of foliage cover, to the detriment of the area's wider amenity. In which case, the proposed works to the tree would reduce the significant contribution the tree makes to the visual amenity of the area, resulting in significant harm to the character and appearance of the area.

*The second issue – the justification for the proposed works to the tree*

6. The appellant claims that the works are necessary to reduce the radius of the overhanging lowest branches which encroach over the Octagon seating area, car parking area and public footpath, and to prevent risk of damage to telephone wires. I observed that the seating area decking has been erected directly beneath the tree and the car parking is also partly within its crown spread. Within such an area it would be reasonable to expect a tree such as a Willow to have branches which sweep downwards.
7. Moreover, while covering the seating and parking areas, and part of the footpath, it did not appear that the lower branches of the tree were impinging to such an extent that the intended use of these areas was being prevented, or that members of the public were endangered by the tree when using the footpath. Furthermore, the removal of any deadwood from the tree would reduce the likelihood of danger from branch shedding. In terms of the specific branches identified for pruning, there is nothing before me by way of an assessment from a suitably qualified person such as an arboriculturist, to demonstrate that these branches require cutting back as they pose an imminent danger to those using the footpath.
8. Consequently, I am unable to conclude that the tree is harming the living conditions of the occupiers of the dwellings at Dinsdale Spa House, or is posing a danger to users of the footpath, in such a way that can only be remedied by the reduction of its crown.

**Conclusion**

9. The Willow makes a significant contribution to the visual amenity of the area. It has not been demonstrated that crown reduction is necessary in the interests of safeguarding the living conditions of local residents. Accordingly, the works would be contrary to saved policy E13 of the adopted Borough of Darlington Local Plan which seeks to ensure that works to protected trees consider their public amenity value.

For the reasons given above, I conclude that the proposed works would not be justified.

*Richard McCoy*

INSPECTOR



# Appeal Decision

Site visit made on 17 May 2022

**by Mr M Brooker DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 23 May 2022**

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**Appeal Ref: APP/N1350/W/21/3287887**

**1 Hall View Grove, Darlington DL3 9DN**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Paul Furness against the decision of Darlington Borough Council.
  - The application Ref 21/00789/FUL, dated 5 August 2021, was refused by notice dated 1 November 2021.
  - The development proposed is two storey side extension.
- 

## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. I saw at the site visit that construction work had already commenced at the site. Nonetheless, I have determined the appeal on its planning merits based on the evidence before me.
3. I note that the appellant has signed certificate B on the application form and indicated on the site location plan that they are not the owner of part of the appeal site. An appellant does not have to own a site to seek planning permission and the granting of planning permission does not grant or suggest ownership of the land.
4. Since the determination of the planning application from which this appeal results, the Darlington Local Plan was adopted on 17 February 2022, replacing the 'saved' policies of the Borough of Darlington Local Plan 1997 (updated 2001) and the Darlington Core Strategy (2011). The Council's decision notice did not refer to a specific policy and the appellant has not made detailed references to specific policies. I am satisfied that no party would be prejudiced if I determined the appeal on the basis of the evidence before me.

## Main Issue

5. The main issue is the effect of the proposed development on the character and appearance of the area.

## Reasons

6. The appeal site consists of 1 Hall View Grove, a detached property typical of the area. To the side of the property a narrow pedestrian walkway provides access to the reasonably sized rear garden. The site is bound to the side and rear by open space.

7. The appeal scheme consists of the enclosure of some of the open space to the side of the property into the residential curtilage by way of the erection of a fence, a two-storey side extension and the creation of additional car parking to the front of the property.
8. The open space to the side and rear of the appeal site accommodates a public footpath that provides a car free, if short route, through this part of the housing estate. The open space includes a number of trees protected by tree preservation orders. The open space and trees are a prominent and positive feature in the area, contributing to the intrinsically verdant and suburban character and appearance of the area.
9. The submitted plans show that the size of the land proposed to be enclosed is modest. Nonetheless, the loss of part of this valuable open space would erode the value of the open space, without mitigation or public benefit this loss would harm the character and appearance of the area.
10. Furthermore, I saw at the site visit that the materials used in the partly constructed side extension appeared to be a very poor match to the appeal dwelling, such that the extension would appear as a prominent and incongruous addition, harming the character and appearance of the area.
11. Turning to the matter of precedent, while each planning proposal is determined on its own merits, I saw at the site visit that there were a number of other properties with boundaries, either side or rear, to the open space that may seek to progress a similar proposal if approval were to be granted in this instance. If this were to occur, the cumulative effect of these developments would result in notable loss of open space resulting in significant harm to the character and appearance of the area. This is a material consideration which I give some weight to.
12. The appellant has referred to the approval of the change of use of land in March 2017. I have not been provided with any substantive details of this permission, the land it refers to or the circumstances and policies that applied at the time that permission was granted. I therefore afford this material consideration very limited weight and it does not outweigh the harm I have identified previously.
13. As such, I find that the appeal scheme would harm the character and appearance of the area contrary to policy DC1 of the Darlington Local Plan that, amongst other matters, seeks to ensure that new development complements and enhances the character of the local area, including the natural and built environment.

## **Conclusion**

14. For the reasons given above I conclude that the appeal should be dismissed.

*Mr M Brooker*

INSPECTOR



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## Appeal Decision

Site visit made on 1 February 2022

by **K A Taylor MSC URP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 26 May 2022

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**Appeal Ref: APP/N1350/W/21/3266635**

**Land Opposite Sovereign House, Hurworth Moor, Darlington DL2 1PZ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by R Cunningham against the decision of Darlington Borough Council.
  - The application Ref 20/00889/FUL, dated 29 September 2020, was refused by notice dated 22 December 2020.
  - The development proposed was originally described as 'application for the creation of five Gypsy-Traveller units'.
- 

### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The site address on the application form refers to '*land to the east of Neasham Road, Hurworth Moor*'. Therefore, for precision I have taken the site address from the Council's decision notice, which is the same as Section D on the appeal form.
3. Notwithstanding the description of development set out above, which is taken from the application form, it is clear from the plans and accompanying details that the development comprises '*change of use of land to Gypsy/Traveller site including erection of 5 no. amenity buildings, siting of 5 no. mobile homes, 5 no. touring pitches with car parking, access road and associated works*'. The Council dealt with the proposal on this basis and so shall I.
4. The existing plan shows the stationing of a static caravan within the site. At the time of the site visit, the site was vacant. I shall therefore deal with the proposal on this basis.
5. s70(2) of the TCPA 1990<sup>1</sup> and s38(6) of the Planning and Compulsory Act 2004, requires that the determination must be made in accordance with the development plan unless material considerations indicate otherwise. Since the appeal was lodged, the Council have adopted the Darlington Local Plan (2016-2036), adopted 17 February 2022, (DLP) which replaces policies cited on the original decision notice. In the interests of natural justice, the main parties have had the opportunity to make representation. Therefore, I have determined the appeal on this basis.

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<sup>1</sup> The Town and Country Planning Act 1990 (as amended)

6. A revised version of the National Planning Policy Framework (the Framework) was published on 20 July 2021. In reaching my decision I have had regard to the revised Framework.
7. Following the appeal submissions, a Written Ministerial Statement (WMS) on river basin catchments and relevant watercourses beyond those previously identified as being in 'unfavourable' condition due to high nutrient levels, and protected sites under the Habitat Regulations<sup>2</sup> was issued on 16 March 2022. Natural England updated the conservation status of the Teesmouth & Cleveland Coast Special Protection Area (SPA) / Ramsar in the Borough of Darlington, in regard to unfavourable nutrient levels. In the interests of natural justice, both main parties have had the opportunity to make representation. In coming to my conclusion, I have had regard to those.

### **Main Issues**

8. The main issues are (i) whether the appeal site is a suitable location for the proposed development; (ii) the effect of the proposal on the character and appearance of the area; and (iii) whether the proposed use would adversely affect the integrity of the European designated nature conservation sites.

### **Reasons**

#### *Suitability of Location*

9. The Government's Planning Policy for Traveller Sites (PPTS) states that Local Planning Authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas in the development plan. The appellant has referred to ODPM Circular 01/2006, however this has been superseded by the PPTS.
10. Policy H9 of the DLP allows new gypsy and traveller sites where the site has satisfactory access to local schools and other amenities. Policy DC1 sets out the sustainable design principles, including that good design will help to reduce carbon emissions and increase the resilience of developments to the effects of climate change. Policy IN1 focuses on delivering a sustainable transport network, encourages greater use of sustainable modes, identifying priorities and actions that all new developments will provide permeability and connectivity for pedestrians and cyclists being the first choice for short journeys.
11. The appeal site lies outside of any defined settlement boundary. The nearest villages would be Hurworth or Neasham. The DLP identifies the settlement hierarchy including that Hurworth is a service village that offers a range of essential facilities and services and the rural village of Neasham, which offers limited-service provision.
12. There is an absence of formal footways linking the site with the wider area along Neasham Road, with the highway being devoid of any street lighting. The site is near to an advisory cycle route with connectivity to a wider cycle network. There is a bus stop further along Neasham Road, which operates during the daytime and includes Saturday and Sundays, serving Hurworth.

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<sup>2</sup> The Conservation of Habitats and Species Regulations 2017



13. I acknowledge the appellant's accessibility map and that there is a public footpath linking through to Hurworth village and a bridleway to Darlington. Despite this, access and navigation would be difficult by either walking or cycling, given the road conditions, distances and that this would be unrealistic throughout the year, particularly in winter months. Neither am I satisfied that the Tees Flex Service would be readily available to future occupants.
14. As such, the opportunities to use sustainable modes of transport are restricted. I consider that most journeys to and from the appeal site for either employment or to reach essential services would be made by private motor vehicles, whether to nearby villages of Hurworth or Neasham, or to the larger urban centres of Darlington. However, these journeys to reach facilities and services within the nearby villages would not be unduly long and Hurworth offers a range of facilities including shops and schools.
15. I am mindful that paragraph 105 of the Framework explains that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. In any event, the provision of a settled base for 5 gypsy households would facilitate access to local facilities, services and schooling, and reduce the likely extent of long-distance travelling, in line with paragraph 13 of PPTS.
16. The appeal site is not in a location away from settlements where traveller sites should be very strictly limited in accordance with PPTS, and it would enable reasonable and satisfactory access to local schools and other amenities. Necessary utilities are capable of provision within the appeal site. On this basis, I conclude that the appeal site is a suitable location for gypsy and traveller accommodation and would accord with DLP policies H9, DC1 and IN4, in locational terms.

#### *Character & Appearance*

17. DLP Policy DC1, requires proposals to reflect the local environment and create an individual sense of place with distinctive character, and is supported by Policy ENV3. The policy seeks to protect the character and local distinctiveness of villages and rural areas, and states that development should positively respond to the landscape setting and protect and enhance the natural quality of the rural landscape.
18. DLP Policy H9 allows new sites to be provided for gypsy and traveller sites where, amongst other things, the site is clearly demarcated with pitch boundaries using appropriate boundary treatment and landscaping sympathetic to, and in keeping with the surrounding area.
19. The appeal site comprises of a small parcel of land some 0.37ha to the east of Neasham Road with an existing access point to the west. The land was former grazing land and is relatively flat, enclosed by existing fencing. The appellant confirms the site has been previously subject to unauthorised residential occupation prior to them purchasing the land in 2020, and it was evident from the site visit that fly tipping had previously taken place.
20. There were large quantities of building materials, rubble and other commercial and domestic paraphernalia, which offered little visual merit to the sites existing appearance in the landscape. Towards the northern boundary is an existing gypsy and traveller site and to the south is an agricultural paddock

with grazing animals. I acknowledge that one of the existing sites is unauthorised, but this is not determinative to this appeal.

21. Nevertheless, the appeal site is currently free from built form, open in nature and it adjoins extensive areas of open fields and the wider countryside to which the site relates closely to it. As such, I consider the site's open nature makes a minor contribution to the overall rural setting.
22. The proposal would alter the character of the area through the introduction of mobile homes. In contrast with the existing site use, it would introduce residential use with a new shared private access road and provision of five plots each with a static unit and associated parking / hardstanding. Each of the plots would have its own supporting utility / amenity building constructed of brick, and the site would feature a secure cycle store. However, the site layout is relatively compact, and the plots would be demarcated. Additional planting is proposed, and it is not unusual to see caravans in the countryside, and mobile homes are stationed nearby.
23. In support of the proposal, the appellant has provided a 'Landscape Appraisal' (LA). This acknowledges that there are short distance views of the appeal site, including when approaching by foot on Neasham Road. Medium views were unachievable where vegetation would be at its highest in the summer months, and there were no long-distance views. The LA concludes that the site would be seen in context with the existing gypsy traveller pitches within the surrounding area and would have a negligible impact. Mitigation is put forward which would see new buffer planting around the boundaries and would provide effective screening with management of vegetation at the access/egress point for visibility.
24. Although the site would be screened to some degree, when viewed in combination with the existing sites it would result in further intrusion, creating some negative cumulative impact on this part of the rural landscape. The site would still be viewed from immediate public views along Neasham Road and the layout would result in some erosion of this open part of the countryside between Darlington and the outlying villages. Nevertheless, it would be seen as a relatively small development, in context to the sporadic development within the wider landscape, with limited wider views. Moreover, the additional landscaping, and retention of the front hedges would go some way to further screen the site, and could be secured by condition.
25. For the reasons given above, I conclude that the proposal would cause some limited harm to the character and appearance of the area. This would be in conflict with Policies DC1, ENV3 and H9 of the DLP, as I have already set out.

#### *Nature Conservation*

26. Nutrient neutrality requires that competent authorities under the Habitat Regulations carefully consider the nutrient impacts of projects on Habitats sites, and whether those impacts may have an adverse effect on the integrity of a Habitats site that requires mitigation. The appeal site falls within the catchment of the Teesmouth and Cleveland Coast Special Protection Area (SPA)/Ramsar site.
27. The proposal for new residential accommodation has the potential to lead to an increase in additional nutrients reaching the SPA due to the requirement for

foul and surface water drainage systems. Consequently, based on the evidence before me, it is likely that, in the absence of mitigation measures, the proposal would have a significant adverse effect on the integrity of the SPA.

Accordingly, therefore, I have carried out an Appropriate Assessment, including consultation with Natural England.

28. The Appellant has set out that they currently own and operate a number of existing gypsy and traveller sites similar to the proposals. They have a good track record of managing the disposal of both foul and surface water from sites where it is not possible to connect to the existing sewerage network due to the often semi-rural location of gypsy and traveller sites.
29. The appeal site does not adjoin or contain any existing watercourse, and the appellant intends to install cess pits. One cess pit would collect all household and foul waste, with the second collecting all surface water. Both cess pits would be emptied on a regular basis by a professional registered water and foul sewerage management company via tanker and driven out of the area to a treatment plant for full processing.
30. I have taken into consideration all the representations of the main parties, NE and that the appeal should be determined in a timely manner in response to achieving nutrient neutrality within the catchment. However, while a double cess pit, with one collecting household and foul waste, and a second collecting surface water could assist with addressing additional nutrients reaching the Habitats sites. I do not have certainty on this matter, and there are no final designs. It may be that other schemes or processes would be necessary to ensure, for example, that the cess pit would be maintained and emptied by a suitably qualified contractor, or that the collected foul sewage would be treated and discharged at a water treatment works located outside of the River Tees catchment.
31. Given the lack of clarity as to what may be required and uncertainty on the time it may take to have a strategy or contracts in place with practical solutions to resolve this matter long term and for the lifetime of the development, I am not satisfied that it would be reasonable to impose a Grampian condition.
32. The details of the mitigation proposed do not provide sufficient certainty to ensure nutrient neutrality would be achieved and there is insufficient assurance that this could be secured by condition. Therefore, following an Appropriate Assessment, there is insufficient information or certainty to enable adverse effects on the integrity of the European designated nature conservation site to be ruled out. As a result, it would not accord with Policy ENV7 of the DLP, which ensures that sites and features of biodiversity and geodiversity importance are given full and appropriate recognition and protection. Moreover, it would also be at odds with the Framework, in regard to conserving and enhancing the natural environment.

#### *Other Considerations*

33. The DLP makes provision for travelling groups at the existing larger council owned sites together with other smaller sites in the Borough to accommodate gypsy and travelling groups. The Gypsy and Traveller Accommodation Needs Assessment (2017) and addendum (2020), (GTAA) was carried out and identified in total 162 pitches. The GTAA concluded that the Borough was well

catered for with an annual need of 1 pitch per annum between 2017-2022. Further need for pitches between 2022-2037 has a calculated projection of 46 pitches, with an annual need of 3 pitches.

34. The DLP sets out there are three existing larger council owned sites at Honeypot Lane and Rowan East & West, which are safeguarded to provide for accommodation needs. In addition, there are a significant number of unimplemented planning permissions on private land within the Borough.
35. The Council have set out they have a 5-year rolling supply, including the supply of 25 pitches coming from the Rowan East extension, and recent developments. There are still transit pitch availability on Honeypot Lane, with the caravan count due to take place again within the year. I have also had regard to a recent appeal decision<sup>3</sup> that the Council has drawn my attention to, which relates to an additional pitch on the nearby site.
36. The appellant disagrees with the Council's assessment, and contends that it has a shortfall but that the site is a windfall site. The proposal would provide a settled base for future occupants with 5 pitches. Limited evidence has been provided on where these individuals currently reside and whether their needs would be addressed by any alternative sites. Nonetheless, the proposal would contribute to the supply of gypsy and traveller pitches, which I attach weight to. The proposal is also likely to improve the current general untidy site appearance.
37. From the evidence before me, the five-year requirement is 13 pitches, which can be met at the current time through opportunities to use vacant and allocated pitches on existing sites. Nevertheless, the proposal would make a material contribution to the future supply of pitches that weighs in favour of the appeal. It would also not be of a scale that would dominate the settled community, including in combination with other nearby sites.
38. I note that nearby residents and third parties have raised additional concerns regarding the development. The proposal would not cause any harm to highway safety, and the site layout would allow sufficient space to enable a vehicle to enter and exit in a forward gear safely. I further note that the Highway Authority has not objected to the development on safety grounds. In respect of flooding, the site is within flood zone 1 and would not increase flooding elsewhere. The matter of present unauthorised sites in the Borough, does not justify withholding permission in this case.

### **Planning Balance**

39. I have found harm would be caused by the development to the character and appearance of the area, however this would be limited in my view. I attach substantial weight to my finding that mitigation cannot be assured to achieve nutrient neutrality and that consequently there is no certainty that the proposal would not adversely affect the integrity of the European designated nature conservation site. The proposal would be contrary to the development plan in these respects.

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<sup>3</sup> APP/N1350/C/21/3266271

40. In the overall planning balance, the benefits of the proposal, including the development would contribute to the supply of gypsy and traveller pitches in the Borough, and would provide a settled base for 5 additional households, are not sufficient in this case by virtue of the Habitat Regulations to outweigh the adverse effects on the integrity of the Teesmouth and Cleveland Coast Special Protection Area (SPA)/Ramsar site. This on its own is sufficient for me to conclude that the proposed development is unacceptable.
41. In coming to that view, I have had due regard to the Human Rights Act 1998 (HRA) and the Public Sector Equality Duty (PSED) under the Equality Act 2010. The appellants and extended family, who intend to occupy the site have protected characteristics for the purposes of the PSED. However, after having regard to all material considerations, I am satisfied that the aim of avoiding adverse effects to the European designated nature conservation site can only be adequately addressed by dismissal of the appeal, which is therefore necessary and proportionate.

### **Conclusion**

42. There are no other material considerations that would indicate that the proposed development should be determined other than in accordance with the development plan.
43. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

*KA Taylor*

INSPECTOR

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# Appeal Decision

Site visit made on 17 May 2022

**by Mr M Brooker DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 29 June 2022**

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**Appeal Ref: APP/N1350/W/22/3290187**

**12 Vane Terrace, Darlington DL3 7AT**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Paul Million against the decision of Darlington Borough Council.
  - The application Ref 21/01217/FUL, dated 4 October 2021, was refused by notice dated 16 December 2021.
  - The development proposed is described as the change of use from dwelling house (Class C3) to 8 person HMO (sui-generis).
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## Decision

1. The appeal is allowed and planning permission is granted for Change of use from dwellinghouse (Class C3) to 8 person HMO (sui-generis) at 12 Vane Terrace, Darlington DL3 7AT in accordance with the terms of the application, Ref 21/01217/FUL, dated 4 October 2021, and the plans submitted with it, subject to the conditions set out in the attached schedule.

## Preliminary Matters

2. At the site visit I saw that various buildings works had commenced at the property. The appellant states that these works are "to convert the building to a 6 person House in Multiple Occupancy" (HMO) under permitted development rights. I have determined the appeal on this basis and on the basis of the evidence before me.
3. The Darlington Local Plan (DLP) was adopted on 17 February 2022, replacing the 'saved' policies of the Borough of Darlington Local Plan 1997 (updated 2001) and the Darlington Core Strategy (2011). Consequently, the DLP is part of the development plan to be considered in the determination of this appeal.

## Costs

4. The appellant has submitted an application for an award of costs from the Council. This application is subject of a separate decision.

## Main Issue

5. The main issue is the effect of the proposed development on the living conditions of the occupiers of neighbouring properties.

## Reasons

6. Policies H8 and DC4 of the DLP are relevant to the proposals and amongst other matters the policies seek to resist the loss of smaller family housing and



to protect the living conditions of the occupiers of properties next to new development.

7. An additional requirement of policy H8 of the DLP over and above the provisions of the superseded policy H18 is that that “the subdivision of existing properties of less than 4 bedrooms will not be permitted”. The application form clearly states that the dwelling accommodates 4 or more bedrooms and while the plans submitted by the appellant showing the existing layout of the property are not labelled, this does appear feasible. As such the appeal scheme is not contrary to this specific provision of Policy H8 of the DLP.
8. With regards the effect of the appeal scheme on the living conditions of the occupiers of neighbouring properties, the Officer’s report refers to two specific matters, an increase in activity at the site including comings and goings, and on-street car parking.
9. The officer’s report does not dispute the potential to convert the appeal property into a 6 person HMO using permitted development rights and on the basis of the evidence before I find no substantive reason to conclude otherwise. Thus, the conversion of the property to a 6 person HMO forms a valid fall-back position for the appellant and I saw at the site visit that works in this regard had already commenced. This is a material consideration to which I afford great weight to.
10. The appeal scheme would increase the occupancy of the appeal property by two additional persons to the fall-back position. Consequently, it is clear that the appeal scheme would result in a more intensive occupation of the property.
11. However, there is little substantive evidence before me to suggest that two additional persons, specifically a 8 person house as opposed to a 6 person house, would result in material harm to the living conditions of occupiers of the neighbouring properties or the existing occupiers of the appeal property, with particular regards to noise and disturbance.
12. The appeal scheme would increase the occupancy of the appeal property and therefore potentially car use and demand for car parking. I saw at the site visit, undertaken during the afternoon of a typical weekday, that on street carparking was clearly in demand in the area, with many streets being subject to parking controls.
13. The appeal scheme includes the creation of on site car parking to the satisfaction of the Council’s Highways Engineer, the provision of which can be controlled by condition. Furthermore, I have no substantive evidence to show that there is no capacity to absorb the very limited potential increase in demand for on-street car parking resulting from the proposed development.
14. I accept that one consequence of additional demand for on-street car parking is that existing and future residents of the area would to some extent be inconvenienced by an increased competition for the available spaces. This would manifest itself in terms of taking longer to find a parking space, or residents having to park further away from their homes. Whilst I acknowledge that this would be an inconvenience to local residents, I do not find that this would amount to an unacceptable impact on their living conditions.



15. Consequently, I find that while the proposed development could potentially lead to a very limited increase in demand for on street car parking, this would not have an unacceptable impact on the living conditions of local residents.
16. It is not at dispute between the parties that the appeal scheme makes appropriate provision for servicing, objectors have nonetheless raised concerns, particular regarding bin storage. I note that the submitted plans show bin storage areas within the site, in addition to garden space, cycle and car parking. I am therefore satisfied that the appeal scheme makes appropriate provision for servicing.
17. To conclude this main issue, I find that on the basis of the evidence before me the appeal scheme would not harm the living conditions of the occupiers of the appeal property and neighbouring properties, with particular regards to noise and disturbance and is not therefore contrary to Policy H8 and DC4 of the DLP.

### **Other Matters**

18. The issue of crime and antisocial behaviour has been raised by a number of local residents. I have no substantive evidence before to show that the appeal scheme would result in an increase in antisocial behaviour or crime. While I do not doubt that the concerns raised by residents are genuine, without a reasonable evidential basis for this concern, I afford this material consideration only some weight. It is my planning judgement that the dismissal of the appeal on this basis is not justified.
19. The application is described as a change of use but also involves some external alterations. Furthermore, the appeal property is situated within a Conservation Area (CA). Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires that special attention be paid to the desirability of preserving or enhancing the character or appearance of a CA.
20. The CA derives significance as a heritage asset partly from the architectural and historic quality of some of the buildings in the area. Of particular importance are the period properties preserved in the streetscapes. Whilst I noted the presence of some less sympathetic buildings in the area, the appeal site and similar such properties, contribute positively to the character and appearance of the Conservation Area.
21. The removal of the windows and doors is identified on the 'existing' drawings, but no specific detail of the replacement door and windows are provided. The proposed drawings appear to show largely identical doors and windows to the existing. The officer's report details that the use of timber in the replacements would be appropriate. However, I have no evidence before me that an Article 4 Direction is in force regarding the Conservation Area and I note that the Council has not proposed such a condition in the Statement of Case. As such it is my planning judgement that a condition controlling the detail of replacement windows would not be reasonable.
22. Alterations are also proposed to the rear garden area to create the car parking spaces, cycle and bin storage areas. At the site visit I saw that the rear gardens of the appeal and neighbouring properties have been subject to earlier alterations, and it is my planning judgment that, subject to appropriate conditions, the appeal scheme represents an improvement that will preserve and enhance the character and the appearance of the Conservation Area.

### **Conditions**

23. With regards conditions, I have considered Paragraph 55 of the Framework and the Planning Practice Guidance. A commencement condition and a condition requiring that the development is carried out in accordance with the approved plans are necessary in the interest of certainty. A condition regarding the provision of car parking, cycle storage and refuse storage is necessary in the interests of highway safety and the living conditions of the occupiers of neighbouring properties.

### **Conclusion**

24. For the reasons given above I conclude that the appeal should be allowed.

*Mr M Brooker*

INSPECTOR

### Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:  
PROPOSED SITE PLAN-P006; PROPOSED SOUTH ELEVATION-P401, PROPOSED SECOND FLOOR PLAN-P202 revision A, PROPOSED GROUND FLOOR PLAN-P200, PROPOSED FIRST FLOOR PLAN-P201, PROPOSED EAST & WEST ELEVATIONS-P400, LOCATION PLAN-P001.
- 3) The car parking, cycle storage and refuse storage arrangements, as shown on PROPOSED SITE PLAN-P006 shall be completed prior to any part of the accommodation hereby permitted being occupied and retained as such thereafter.

End of Schedule

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