



**DARLINGTON**

Borough Council

# Planning Applications Committee Agenda

1.30 pm, Wednesday, 12 July 2023

Council Chamber, Town Hall, Darlington DL1 5QT

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

1. Introductions/Attendance at Meeting
2. Declarations of Interest
3. To Approve the Minutes of the Meeting of this Committee held on 14 June 2023 (Pages 5 - 12)
4. Introduction to Procedure by the Assistant Director, Law and Governance's Representative (Pages 13 - 14)
5. Applications for Planning Permission and Other Consents under the Town and Country Planning Act and Associated Legislation (Pages 15 - 16)
  - (a) Dinsdale Golf Club, Neasham Road, Middleton St George (Pages 17 - 36)
  - (b) Land at the Entrance of Faverdale Industrial Estate, Darlington (Pages 37 - 86)
6. 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
7. Questions

## **PART II**

8. Notification of Decision on Appeals -

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

Allowed the appeal by David Williams against this Authority's decision to refuse permission for the construction of a carport within front boundary (Retrospective Application) at 26A Gate Lane, Low Coniscliffe, Darlington DL2 2JY (22/01064/FUL) (Copy of Inspector's decision enclosed).

Allowed the appeal by Mr Clive Davies against this Authority's decision to refuse permission for Removal of 2 No. radio masts (non-retractable) and erection of 1 No. (retractable) telescopic sliding radio mast to rear (amended plans received 8 December 2022) at 28 Neville Road, Darlington, DL3 8HY (22/01121/FUL) (Copy of Inspector's decision enclosed).

**RECOMMENDED** – That the report be received.  
(Pages 87 - 92)

### **PART III**

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

9. 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.

10. Complaints Received and Being Considered Under the Council's Approved Code of Practice as of 30 June 2023 (Exclusion Paragraph No. 7) –  
Report of Director of the Chief Executive  
(Pages 93 - 102)
11. 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
12. Questions



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

**Tuesday, 4 July 2023**

**Town Hall**

## **Darlington.**

### **Membership**

Councillors Ali, Allen, Anderson, Bartch, Cossins, Haszeldine, Kane, Laing, Lawley, Lee, McCollom, Robinson, Tostevin and Wallis.

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

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## PLANNING APPLICATIONS COMMITTEE

Wednesday, 14 June 2023

**PRESENT** – Councillors Ali, Allen, Anderson, Cossins, Haszeldine, Kane, Laing, Lawley, McCollom, Robinson, Tostevin and Wallis.

**APOLOGIES** – Councillors Bartch and Lee.

**ALSO IN ATTENDANCE** – Councillor Walters.

**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).

**PA1 APPOINTMENT OF CHAIR FOR THE MUNICIPAL YEAR 2023/2024**

**RESOLVED** - That Councillor Haszeldine be appointed Chair of this Committee for the Municipal Year 2023/24.

**PA2 APPOINTMENT OF VICE CHAIR FOR THE MUNICIPAL YEAR 2023/2024**

**RESOLVED** - That Councillor Allen be appointed Vice Chair of this Committee for the Municipal Year 2023/24.

**PA3 TO CONSIDER THE TIMES OF MEETINGS OF THIS COMMITTEE FOR THE MUNICIPAL YEAR 2023/2024 ON THE DATES AGREED IN THE CALENDAR OF MEETINGS BY CABINET AT MINUTE C258/FEB/23**

**RESOLVED** – That meetings of this Committee for the Municipal Year 2023/24, be held at 1.30 p.m. on the dates, as agreed on the calendar of meetings by Cabinet at Minute C258/Feb/2023.

**PA4 DECLARATIONS OF INTEREST**

There were no declarations of interest reported at the meeting.

**PA5 TO APPROVE THE MINUTES OF THE MEETING OF THIS COMMITTEE HELD ON 22 MARCH 2023**

**RESOLVED** – That the Minutes of this Committee held on 22 March 2023, be approved as a correct record.

**PA6 APPLICATIONS FOR PLANNING PERMISSION AND OTHER CONSENTS UNDER THE TOWN AND COUNTRY PLANNING ACT AND ASSOCIATED LEGISLATION**

|    |  |
|----|--|
| A3 | Implementation Limit (Three Years)<br>The development hereby permitted shall be commenced not later than the expiration of three years from the date of this permission. |
|----|--|

|  |  |
|--|--|
|  | <b>Reason</b> - To accord with the provisions of Section 91(1) of the Town and Country Planning Act, 1990. |
|--|--|

**PA7 COPSE HAVEN, ROUNDHILL ROAD (22/01194/FUL)**

**22/01194/FUL** - Application submitted under Section 73 of the Town and Country Planning Act 1990 for the variation of condition 5 (appointments/clients) attached to planning permission 20/00910/CU (Change of Use from private field to commercial dog exercise area) to permit a change in wording to allow only one booking at any one time, and to set out the number of adults and dogs permitted in the park at any one time.

(In making its decision, the Committee took into consideration the Planning Officer’s report (previously circulated), the views of the Council’s Highways Engineer, the Council’s Environmental Health Officer, three letters of objection received, and the views of the Applicant, two Objectors and the two Ward Councillors, whom the Committee heard).

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

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

Site Location Plan

**REASON** – To define the consent

2. This permission shall be personal to Miss Fiona Lennox and family only and shall not enure for the benefit of the land. In the event of their vacating the premises the use shall revert to the use for agricultural purposes.

**REASON** - In granting this permission the Local Planning Authority has had regard to the special circumstances of the case and wishes to have the opportunity of exercising control over subsequent use in the event of Miss Fiona Lennox and family vacating the premises.

3. The use hereby permitted, shall operate from the site only between the hours of 08:00-18:00 Monday to Sunday (including Bank and Public Holidays).

**REASON** – In the interests of residential amenity.

4. There shall be no kennelling of dogs overnight on the application site.

**REASON** - In the interests of residential amenity.

5. Use of the facility shall be restricted to one booking/appointment at any one time, during the permitted hours of operation, and complying with the following rules:-

- 3 Adults maximum can bring 1-6 dogs.
- 2 Children maximum (under the age of 14) can attend with each booking only if

accompanied with adults.

**REASON** - In the interests of residential amenity.

6. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking or re-enacting that order), no development within Schedule 2, Part 4, Classes A to B of that order shall take place without the prior written consent of the Local Planning Authority.

**REASON** – In the interests of visual and residential amenity.

7. The existing customer parking and boundary treatment shall be permanently retained and maintained unless otherwise agreed in writing by the Local Planning Authority.

**REASON** - In the interests of visual and residential amenity.

**PA8 COPSE HAVEN, ROUNDHILL ROAD (22/01160/FUL)**

**22/01160/FUL** - Construction of an open front timber shelter (retrospective) within northeast corner of dog walking field together with the provision of a movable bench, dog house (both retrospective) and dog agility ramp.

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

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

1. Implementation Limit (3 years)
2. The development hereby permitted shall be carried out in accordance with the approved plan(s) as detailed below:

Site Location Plan

**REASON** – To define the consent.

**PA9 4 KENDAL CLOSE**

**22/01122/FUL** - Removal of existing conservatory and rear laundry extension, erection of extension to rear with alterations and enlargement to roof including dormer extension to rear, partial conversion of garage and associated works (as amended by plans received 13/03/2023).

(In making its decision, the Committee took into consideration the Planning Officer's report (previously circulated), the views of the Council's Highways Engineer, four objections received in response to the initial scheme, and a further four objections received in response to the submitted amended scheme, and the views of an Objector, whom the Committee heard).

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

1. A3 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.

**REASON** - To accord with the provisions of Section 91(1) of the Town and Country Planning Act, 1990.

2. The development hereby permitted shall be constructed in accordance with the external materials/finishes as set out in the application, unless otherwise agreed, in writing, with the Local Planning Authority.

**REASON** - In the interests of maintaining the visual amenity of the development in accordance with the requirements of Policy DC1 of the Darlington Borough Local Plan 2016-2036.

3. The development hereby permitted shall be carried out in accordance with the approved plans, as detailed below:

Proposed Ground Floor Plan Drawing No. 2205 DBA XX XX GA Z 101 Rev B dated 24/02/2023

Proposed First Floor Plan Drawing No. 2205 DBA XX XX GA Z 102 Rev B dated 24/02/2023

Proposed Roof Plan Drawing No. 2205 DBA XX XX GA Z 104 Rev B dated 24/02/2023

Proposed Front & Rear Elevations Drawing No. 2205 DBA XX XX GA Z 202 Rev B dated 24/02/2023

Proposed Side Elevations Drawing No. 2205 DBA XX XX GA Z 203 Rev B dated 24/02/2023

Proposed 3D Views Drawing No. 2205 DBA XX XX GA Z 400 Rev B dated 24/02/2023

Proposed 3D Views Images Drawing No. 2205 DBA XX XX GA Z 401 Rev B dated 24/02/2023

3D Concept View Realistic Drawing No. 2205 DBA XX XX GA Z 402 Rev B dated 24/02/2023

3D Concept Views & Courtyard Plan Drawing No. 2205 DBA XX XX GA Z 403 Rev B dated 24/02/2023

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

**PA10 61 PINWOOD CRESCENT**

**23/00189/FUL** - Change of use of integral garage (Use Class C3) to a home working hairdressing business (Use Class E) including alteration to garage door and to regularise first-floor window to side elevation (part retrospective) (additional Planning Statement 13/03/2023 and amended plans and extractor fan details received 24/03/2023).



(In making its decision, the Committee took into consideration the Planning Officer's report (previously circulated), the views of the Council's Highways Engineer and the Council's Environmental Health Manager, the objections of the Parish Council, sixteen letters of objection received, and five letters of representation received).

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

1. The development hereby permitted shall be commenced not later than the expiration of three years from the date of this permission.

**REASON** – To accord with the provisions of Section 91(1) of the Town and Country Planning Act, 1990.

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

- Existing & Proposed Floor Plans & Elevations Drawing Number 2819-1F dated 24/03/2023
- Proposed Parking Plan and Building Regulations Drawing Number 2819-2C dated 24/03/2023

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

3. This permission shall be solely operated for the benefit of the applicant, Mrs Kim Gibson I and shall not run with the land. Mrs Gibson should be the sole employee of the business. In the event of Mrs Gibson vacating the premises the integral garage shall revert to residential use.

**REASON** – In granting this permission the Local Planning Authority has had regard to the special circumstances of the case and wishes to have the opportunity of exercising control over subsequent use in the event of Mrs Kim Gibson vacating the premises.

4. The hair salon hereby approved shall not be open for business outside the hours of 9.00am – 6.00pm Monday to Friday, 9.00am – 2.00pm on Saturdays and there shall be no opening on Sundays or Bank Holidays.

**REASON** – In the interest residential amenity

5. The integral garage shall be used only as a hair salon and for no other purpose (including any other use in Class E of the schedule to the Town and Country Planning (Use Classes) Order 1987 or any Order revoking and re-enacting that Order).

**REASON** – The Local Planning Authority is satisfied that the use hereby approved would not result in detriment to adjoining properties but would wish to control future changes of use within the same class in the interests of amenity.

6. The use hereby approved shall not operate until the full width driveway has been provided in accordance with the details as shown on drawing number 2819-2C dated 24/03/2023 entitled 'Proposed Parking Plan and Building Regulations Drawing'.

**REASON** – In the interest of highway safety

7. The window formed in the first-floor side elevation (east) shall be obscure glazed and shall not be repaired or replaced other than with obscured glazing.

**REASON** - To prevent overlooking of the nearby premises.

#### **PA11 NOTIFICATION OF DECISION ON APPEALS**

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

Allowed the appeal by David Williams against this Authority's decision to refuse permission for the construction of a carport within front boundary (Retrospective Application) at 26A Gate Lane, Low Coniscliffe, Darlington DL2 2JY (22/01064/FUL)

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

#### **PA12 NOTIFICATION OF APPEALS**

The Chief Executive reported that:

Mr David Williams has appealed against this Authority's decision to refuse permission for Construction of a carport within front boundary (Retrospective Application) at 26A Gate Lane, Low Coniscliffe, Darlington.

Vivid Outdoor Media Solutions (B) Ltd has appealed against this Authority's decision to refuse permission for the Display of 1 no. free standing internally illuminated LED digital advertisement display unit at Harrowgate Sports and Social Club, Salters Lane North, Darlington, DL1 3DT.

Mr Nick Cooper has appealed against this Authority's decision to refuse permission for the Erection of porch to front elevation (re-submission) at 37 Leach Grove, Darlington DL3 0TW.

**RESOLVED** – That the reports be received

#### **PA13 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.

#### **PA14 COMPLAINTS RECEIVED AND BEING CONSIDERED UNDER THE COUNCIL'S APPROVED CODE OF PRACTICE AS OF 2ND JUNE 2023 (EXCLUSION PARAGRAPH NO. 7)**

Pursuant to Minute PA80/Mar/2023, the Chief Executive submitted a report (previously circulated) detailing breaches of planning regulations investigated by this Council, as at 2 June 2023.

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

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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 (to a maximum of **five** minutes);
- Members may question applicant/agent;
- Up to **three** objectors may speak (to a maximum of **five** minutes each);
- Members may question objectors;
- Up to **three** supporters may speak (to a maximum of **five** minutes each);
- Members may question supporters;
- Parish Council representative may speak (to a maximum of five minutes);
- Members may question Parish Council representative;
- Ward Councillor may speak (to a maximum of five minutes);
- 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 – 12 July 2023**

**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> |
|--|-------------------------|
| Dinsdale Golf Club, Neasham Road, Middleton St George              | 22/00875/FUL            |
| Land at the Entrance of Faverdale Industrial Estate,<br>Darlington | 20/00852/FUL            |

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## DARLINGTON BOROUGH COUNCIL

## PLANNING APPLICATIONS COMMITTEE

**COMMITTEE DATE: 12 July 2023**

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|                                 |   |
|---------------------------------|---|
| <b>APPLICATION REF. NO:</b>     | 22/00875/FUL  |
| <b>STATUTORY DECISION DATE:</b> | 28 <sup>th</sup> October 2022 (EOT 14 <sup>th</sup> July 2023)  |
| <b>WARD/PARISH:</b>             | HURWORTH  |
| <b>LOCATION:</b>                | Dinsdale Golf Club Neasham Road Brass Castle<br>MIDDLETON ST GEORGE DARLINGTON<br>DL2 1DW   |
| <b>DESCRIPTION:</b>             | Infilling of topographical depression with inert construction waste on land at 18th hole and formation of a bund around existing driving range (part retrospective) (Additional information received 28th February 2023 and 2 <sup>nd</sup> March 2023) |
| <b>APPLICANT:</b>               | DINSDALE GOLF CLUB  |

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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=RG5CD7FPN5200>

**APPLICATION AND SITE DESCRIPTION**

1. The application site is Dinsdale Golf Club, situated on the eastern side of Neasham Road between Neasham and Middleton St George. The application relates to two distinct areas within the Golf Course Grounds.
2. Part of the application relates to proposed development within the area of the driving range. In September 2020, planning permission was granted for a driving range and associated building to include a teaching studio, to the south side of the site adjacent to the car park at the front of the site with the range area lying to the south of the range

building (20/00270/FUL). A copse of trees lies on the southern edge of the range field which is identified in the Local Plan as a Local Wildlife site. Along the edges of the range field are lines of hedging, separating the range field from the main golf course area and the public highway.

3. The other part of the site area that this application relates to is the area of the golf course at the 18<sup>th</sup> hole. This sits some 300m to the northeast of the club house towards the northern boundary of the Golf Club. To the north of the site lies a private road and public footpath. The depressions within this area are not regularly shaped and are less than 2m deep. Stoned pathways run around the eastern and southern edges of the area, being free draining and designed to accommodate golf buggies. A small timber hut lies within the affected area which previously used to be used for shelter on the course. It is no longer in use and would be removed as part of these proposals.
4. This application seeks planning permission for two separate projects on the Golf Course site:
  - a) The infilling of a void on the surface of the Golf Course near the 18<sup>th</sup> hole; and
  - b) The creation of a bund around the existing driving range.
5. The application states that project (a) is retrospective in part as some parts of the existing surface water drainage have had their inspection covers raised to the proposed new levels adjacent to the 18<sup>th</sup> hole. The application confirms that the works were begun during lockdown without an appreciation of the need for permission for such engineering works and work was ceased once contact was made with the planning department. The application states that the two proposals are unrelated and would be carried out independently of each other.
6. In respect of project (a) the proposed infilling of the void on the surface of the golf course on and around the 18<sup>th</sup> hole would be carried out using locally derived clays from construction projects and once completed the area would be re-profiled, topsoiled and seeded to match the golf course. No trees or hedges would be affected by the proposals which the application states relate to course improvements sought by members as part of the ongoing investment and improvements at the club.
7. In respect of project (b), the application states that the driving range field, being flat with no physical boundary, suffers from confident golfers being able to hit their balls off the field and into the surrounding woodland and hedging. The proposed development involves the creation of an earth bund of some 4m in height around three sides of the field. The base of the bund would be some 9m wide arranged in a U shape with the open end facing the driving range building. The existing surface water drainage system installed in the field would be unaffected by the proposals.
8. The bund would be constructed out of clay, which the application confirms would be derived from local construction projects and topsoiled with seeding. Within the bund it is intended to create hibernacula for the site's Great Crested Newt population to help

with over wintering. The bund would be inset inside all existing vegetation around the field and would not affect any of the surrounding trees and hedging. Notwithstanding this, the application confirms that Dinsdale Golf Course have planted a significant number of new trees and hedging on the site as part of the recent and ongoing refurbishment program. Additional planting is also proposed as part of these proposals. The western side, adjacent to the highway would have a greater inset of approximately 20m from the existing hedging which is more established in this area. The bund will prevent the possibility of balls straying off the driving range and affecting either the adjacent highway or users of the main course.

9. As background, the application states the following:

*‘Dinsdale Golf Club became privately owned under the current applicant in 2018, since then it has embarked upon a successful programme of investment and redevelopment to attract new members to the club and turn around the fortunes of the club. The present proposals are two small parts of that continued investment, seeking to improve the operation of the newly constructed driving range and to further develop the course by smoothing out the topography to provide a course that’s safe and accessible to all’.*

*‘The proposed development will support an existing rural business which gives employment to local workers in an area where such opportunities are otherwise limited. Furthermore, it will provide a productive and beneficial place for clay from local construction projects in nearby villages to be deposited. It will make the course safer to play for those with ambulant challenges, by removing voids on the course which are not compatible with modern players, many of whom make use of buggies to get around on the course because of mobility issues.*

## **MAIN PLANNING ISSUES**

10. The relevant issues to be considered in the determination of this application are:

- (a) Principle of the proposed development
- (b) Impact on Visual amenity
- (c) Impact on residential amenity
- (d) Highway safety
- (e) Impact on Public Rights of Way
- (f) Biodiversity
- (g) Flood Risk

## **PLANNING POLICIES**

11. The following policies are relevant in the determination of this application:

- Policy SD1 reaffirms the presumption in favour of sustainable development set out in the National Planning Policy Framework (NPPF).

- Policy DC1 requires good design to create attractive and desirable places, including a requirement that the proposal reflects the local environment and creates an individual sense of place; takes account of the need to safeguard or enhance important views and vistas, that any associated landscaping has been developed to enhance both the natural and built environment retaining existing features of interest, and that the proposal provides safe and suitable vehicular access and suitable servicing and parking arrangements in accordance with Policy IN4.
- DC2 requires that all development proposals will be expected to be designed to mitigate and adapt to climate change.
- DC3 encourages development that supports improvements to health and wellbeing.
- DC4 requires new development to be sited, designed and laid out to protect the amenity of existing users of neighbouring land and buildings.
- E4 supports the sustainable growth and expansion of all types of business located in the open countryside.
- ENV3 seeks to protect and improve the character and local distinctiveness of the urban area, villages and rural area.
- Developments will be expected to minimise the impact on, and provide net gains for, biodiversity, including establishing coherent and resilient ecological networks (Policy ENV7) with the relevant measures that should be applied for assessing this set out in Policy ENV8. ENV7 states that development likely to result in significant harm to a local wildlife site should be avoided.

## **RESULTS OF TECHNICAL CONSULTATION**

12. No objections in principle have been raised by the Council's Highway Engineer and Environmental Health Officer or the Local Lead Flood Authority, subject to conditions. The Environment Agency has raised no objections.

## **RESULTS OF PUBLICITY AND NOTIFICATION**

13. Neasham Parish Council has objected to the application on the following grounds:

- Lack of information on the materials (inert construction waste) already on the site.
- Ecological and environmental impact.
- Heavy traffic; Highway safety; no information on mitigation.

14. Middleton St George Parish Council has objected to the application on the following grounds.

- Ecological impact.
- Impact on residential amenity.
- Lack of information on inert materials.
- Highway impact; Local roads not suitable for HGV's; Severe congestion and increased hazards.

15. 16 No. individual objections have been received from residents, and these raise the following issues:

- Highway safety concerns; Concerns regarding number of lorries and potential accidents from material spillage; Potential 2,340 HGV movements
- Village already suffers from congestion.
- Danger to pedestrians and cyclists.
- Roads not suitable for HGV's and surface likely to worsen.
- When previous works were undertaken the roads were left muddy and dangerous.
- Concerns that the material used will be contaminated.
- Impact on biodiversity, flora and fauna.
- Impact on landscape.
- Impact on amenity.
- Carbon emissions from vehicles.
- Mounds contributing to flooding on the road.
- The golf club causes light pollution.
- Impact on covering existing water pipes.
- Concerns regarding accuracy of employment opportunities to be created.

16. 25 No. letters of support have been received, raising the following points:

- Being developed to become one of the area's top golf courses; Significant investment is and has been made; Restaurant is also being enjoyed by golfers and members of the public; Membership continues to grow.
- Economic benefits and employment opportunities.
- Not completing the driving range will result in members going elsewhere.
- Having a profitable golf club is good for the area who utilise other local services.
- Enhance the playability of the course.
- Other works have included removal of dead trees and additional planting.
- Bund will further increase biodiversity and retain landscape.
- Proposals will make the area safer.
- Health benefits of allowing the growth and development of the facility.
- Long term sustainability outweighs increase in traffic in the short term.

## **PLANNING ISSUES/ANALYSIS**

### **a) Principle of the proposed development**

17. The proposal relates to an existing rural business for which policy E4 supports proposals for sustainable growth and expansion of, subject to proposals being sensitive to their surroundings, providing satisfactory access and not having an unacceptable impact on the local road network.

18. The proposal relates to the continued investment in the club, which seek to improve the operation of the driving range, and to smooth out part of the existing course for safety and accessibility.
19. In view of the above the proposal is considered to be acceptable in principle, subject to consideration of the relevant development management issues set out below.

**b) Impact on Visual Amenity**

20. In terms of project (a) the infilling of a void on the surface of the Golf Course near the 18<sup>th</sup> hole, this will have very limited visual impact at site level or beyond due to its location in a discrete section of the existing course and being seen in the context of existing features. This proposal will result in the removal of a small timber hut which was previously used for shelter on the course but is no longer in use.
21. Project (b) the creation of a bund around the existing driving range will be more visually apparent, however the main views would be from within the golf course. The bund would be visible from Neasham Road when passing on the highway, however this would be more apparent at the point of the road at the main entrance of the club due to the presence of mature trees and hedgerows along the highway edge for the majority of the remainder of the Neasham Road boundary of the site. Furthermore, being part of the new driving range, and associated development, this is very closely related to the built features of the club, including the clubhouse and driving range building and would be seen in the context of these existing features, which are a small and contained portion of the overall site. Visual impact will be further mitigated by seeding of the bunds and the associated landscaping scheme which includes further tree planting.
22. In view of the above, the proposal is considered to be acceptable in respect of its impact on the visual amenities of the locality and complies with policies DC1, ENV3 and E4 in this regard.

**c) Impact on residential amenity**

23. The physical proposals to the site are sufficiently distant from residential properties so as to not have a discernible impact on residential amenity in the long-term. The Environmental Health Officer has raised no objections but has recommended a planning condition to require submission and agreement of a Construction Management Plan (CMP) and for the standard construction / delivery times condition to be attached to any permission.
24. In terms of potential contamination, there is no information at this stage as to the source of the material to be deposited on the site however the application states that only inert material will be deposited, and a condition is recommended to require this. The development will be subject to control under the Agency's Waste Management Licensing Regulations and an informative should be included as part of any approval.

25. In view of the above, the proposed development is considered acceptable in terms of its impact on residential amenity subject to the conditions specified and is therefore in accordance with Policy DC4 in this regard.

**d) Highway safety**

26. The supporting information states that the work will be undertaken using inert imported construction waste, however the Highways Engineer has noted that it is difficult to quantify the amount/tonnage of material to be imported on to the site and hence the number and frequency of vehicle movements that are likely to be generated. As such, further information was sought regarding these issues.

27. The Highways Engineer has also noted that routes to the site are limited to roads which pass through local villages, where HGV movements are best avoided where possible. In this instance however this is not possible, and vehicles routed north will need to pass through Middleton St George or otherwise south via Neasham and Hurworth.

28. The applicant was therefore asked to confirm the predicted number of vehicle movements associated with the development as well as details of routes to site. Information on the expected duration of works was also requested along with the expected type and number of vehicles needed to visit the site during construction. Details of a robust means of wheel washing was also requested along with a regime of inspection and cleansing of the local highway network to mitigate and address any deposits of mud or other materials on the public highway.

29. In respect of the above, the agent has confirmed that at this stage, there is no specifically identified sourcing of material. This is not an uncommon scenario. They have noted that there are a significant number of housing and other development projects taking place in the surrounding villages and within the town within a 10-mile radius and the applicant is confident that there will be sufficient local sources of clean topsoil to form the bunds around the driving range and infill the hollow next to the 18<sup>th</sup> hole. The agent has also highlighted the following:

*'Until such times as we have secured planning permission for the project, it is not possible to enter into any contractual arrangement regarding precise details. I am sure you can appreciate the practicalities on this point. We would observe that the road haulage costs associated with the shipment of topsoil and other similar material are the key determining factors to sourcing arrangements. It is impractical to move topsoil etc over any significant distances and therefore we are sure that our material will be obtained from local projects'.*

*'We appreciate that during the short term of construction of the bunds etc, there is the potential for disruption to take place. We would wish to work with the Council and the local community to make sure that this is minimised. The Council will appreciate that the material we are sourcing is already likely to be moved locally – it represents the risings from approved construction projects, rather than new trip generation directly linked with our site. We are simply taking away spoil from already approved construction*

*projects. It is not therefore necessary to go into the trip generation in significant detail although we would expect a number of matters to be addressed specifically by condition to minimise the potential nuisance to local residents.*

*'Firstly, we would wish to reassure residents that movements will be restricted, and we envisage no movement until after 08.00 hours Monday to Friday and no movement after 18.00 hours similar days. There should be no movements on Saturdays, Sundays or Bank Holidays in the usual manner of all considerate contractor schemes. We would also expect there to be the need for wheel wash facilities on site if necessary to prevent any mud on the road, although the LPA will appreciate that there is little potential for this, given that the vehicles are coming from sites and the material is not being generated from the site itself. The material would simply be deposited on the site via road going HGVs and would be moved around on site by plant that are retained on site for the life of the project and taken off the site on HGV loaders at the end of the project having been suitably cleaned down on site. The potential for mud on the road is therefore extremely limited. In the unlikely event that any takes place, we would of course have contracts in place with road sweeping companies, a number of whom already support local development projects.*

*In terms of total vehicle movements, the amount of filled material is approximately 31,000m<sup>3</sup>. We estimate that this will take somewhere in the region of 1800-2000 lorry loads depending upon the nature of the fill/weight of material. Without knowing the specific details of the capacity of haulage companies etc, we envisage that the project might have an active phase of circa 4-6 months from start to finish in terms of materials being deposited on site. Obviously, the bund needs to be correctly formed, impacted and landscaped and there may well be activities taking place outside of the simple bulk shipment phase of the scheme. The applicant would very much like to complete the works during the drier summer months to minimise potential nuisance of mud tracking. The applicant would like to point out that if the bund is not consented, then alternative measures would have to be put in place to prevent golf balls straying off the driving range and this would most likely take the form of steel mesh fencing, erected as P.D (permitted development). This is not what the applicants wants to see on the site, and this has no benefit to on-site biodiversity, but would be the necessary fall-back position they would have to adopt'.*

30. The supporting statement above estimates that the amount of imported filled material is approximately 31,000m<sup>3</sup>. This would equate to approximately 49600 Tonnes of material, which would require 2480 loads based on a 20tonne capacity tipper truck. The application confirms that working hours are to be limited to a 10-hour working day 08.00 hours Monday to Friday and no movement after 18.00 hours similar days. There should be no movements on Saturdays, Sundays or Bank Holidays. The applicant estimates the total period of works to be between a 4 – 6-month period. To use a 5-month construction period as a medium average (5 working days x 5 months) this equates to 100 working days each of 10 hours. This therefore equates to 2480 loads averaging 24.8 movements per day, or 2.5 vehicle movements per hour.



31. Whilst it is noted that some objections raise concerns with increased construction traffic at morning and afternoon school time peaks, it is important to note that a 7.5 tonne Environmental Weight limit is in place to protect the safety and amenity of residents within Middleton St George. The limit extends from a point approximately 50m west of Pounteys Close on Neasham Rd and includes the village centre, with the limit to the north of the village commencing at The A67/Station Rd junction, Sadberge Rd/A67 Roundabout, and on Killinghall Row just west of The Beeches. The latter being strategically placed in order to enable access to the nearby haulage depot but prohibit movements through the village.
32. It is therefore important to understand that vehicles exceeding 7.5tonnes are prohibited from travelling though MSG village in order to access the golf course site, unlike large vehicles associated with the Grendon Gardens construction site, who are lawfully entering the restriction for purposes of access and not simply using a more direct route through the village centre as a convenient shortcut.
33. The Highways Inspector has confirmed that the concerns which objectors have raised related to mud on the highway are accurate and that a significant amount of material was spilt and tracked onto the highway when works were previously undertaken. Given that the source of the material is unknown, the Highways Engineer therefore considers it essential that a robust construction management plan is submitted and approved prior to commencement of any works or material movement to site. Where significant earthworks are proposed the focus must be on preventing mud or other material from becoming deposited on the public highway rather than relying on a reactive approach of sweeping and cleansing, because sufficient preventative measures were not secured. The exact requirements for wheel washing are ever changing owing to site conditions and weather, however robust measures must be secured to ensure that a repeat of previous incidents and complaints does not occur.
34. Based on anecdotal evidence, the previous operations at the golf club, using material from the Oak Meadows site, may have contravened the 7.5tonne weight limit. Whilst it is lawful to enter an environmental weight limit where no bridges or structures otherwise limit gross vehicle weight, there is an 'except for access' exception and as such it not lawful to drive through the village of MSG to gain access to the golf course as this is simply using it as a cut though. Reports have also been received that previously an agricultural vehicle was used for haulage purposes, using an unsuitable trailer which resulted in significant spillage of material on the highway. The location of the source material, routes to site and type of vehicle should therefore be confirmed prior to commencement of work or any material delivery to site.
35. Subject to the imposition of a planning condition requiring submission and agreement of a robust Construction Management Plan, it is considered that the concerns raised by both residents and the Highways Engineer can be satisfactorily addressed. The Highways Engineer has recommended wording for such a condition to ensure that it covers the relevant issues and concerns.

36. It should also be noted that whilst the above are valid concerns, they constitute the short-term construction impacts of the development in terms of highway impact, rather than any long-term highway impacts once the development is completed. It is considered that the proposed condition is proportionate to deal with these short-term impacts. In this context, the proposal is acceptable in respect of its impact on highway safety and complies with policy DC1, IN4 and E4 in this regard.

**e) Impact on public right of way**

37. There is a Public Footpath immediately to the east of the Driving Range - Low Dinsdale Footpath 11. It runs along the boundary but is separated from the driving range by a hedge. Whilst it is acknowledged that the works to project (b) the creation of a bund around the existing driving range, would be partially visible from the footpath, it would not hinder the use or appreciation of the footpath. The planting of trees as part of the proposed landscaping scheme dealt with elsewhere in this report, will also enhance the user experience.

38. The agent has provided the following additional information in terms of the wider network:

*'The applicant would also wish officers and members to be aware that following discussions with officers last year, the applicants have carried out a programme of clearance on the line of the public right of way where it passes through woodland close to the Golf Course, as discussed and agreed to promote the active use of the footpath. Promoting the use of the footpath brings with it a responsibility to make sure that the footpath users are safe from any stray golf balls. As the Council will appreciate, it is in the Club's interest for the disruption to be kept to an absolute minimum and for the works to be carried out as efficiently as possible. In that respect, the concerns of local residents and the Club are mutually aligned, and we would subscribe to all considerate construction company practices in respect of the shipment and handling of such material.'*

39. In all works, the Public Footpaths should remain open and fully available at all times and there should be no risk to members of the public using them, both during and post development. An informative to this effect is recommended to any permission granted. Overall, however, the proposed development would have no adverse impacts on Public Rights of Way.

**f) Biodiversity**

40. A Preliminary Ecological Appraisal (PEA) undertaken by Naturally Wild was submitted in support of the application. The PEA comprised two parts: a desktop study and a survey visit. The desktop study collated available public information regarding the biodiversity of the area, including the habitat structure of the site and surrounding area and the presence of any statutory or non-statutory designated sites. In addition, biological records within 1 km of the site were requested from the Environmental Records

Information Centre (ERIC). The survey visit consisted of an assessment of all habitats on site and in the surrounding area to determine their ecological value. The PEA concluded the following:

- The sites comprised amenity grassland, hedgerows, scattered trees, woodland, tall ruderal vegetation, and semi-improved grassland habitats.
- Overall, the site was deemed to be of low ecological value with the most valuable habitats being restricted to woodland, hedgerows, and tall ruderal along the boundary of the driving range survey area.
- The Driving range area was deemed of moderate value for badger foraging and sett creation.
- Reptile presence on site was deemed unlikely due to the exposure of the site and surrounding area.
- High suitability nesting space for birds was present within the woodland and hedgerow features.
- Additionally, high suitability roosting opportunities for bats were also noted within the woodland feature.
- Notwithstanding this, the potential impact to birds and bats was considered low as ecologically valuable features are expected to be retained.
- Two juvenile Great Crested Newt (GCN) individuals were located within habitats associated with the tall ruderal habitat of the driving range site and a pond close to the 18<sup>th</sup> hole. Due to the potential for harm to the local GCN population, A European Protected Species Licence (EPSL) or District Level Licence (DDL) from Natural England will be required to proceed with the proposed works.
- Due to the presence of records and suitable habitat for UK Biodiversity Action Plan (BAP) priority species within the site boundary, mitigation will be required during clearance works.

41. Following the site assessment and in review of the findings, a series of ecological mitigation, compensation and enhancement measures were recommended. These include the following:

- Application for a EPSL or DLL GCN licence.
- Mitigation for BAP species with a pre-start badger survey.
- removal of Invasive non-native species (INNS) in accordance with recommended guidelines.
- installation of Heras fencing around mature trees during construction works, supervision by an ECoW during clearance works, covering any excavations overnight and the implementation of a sensitive lighting scheme. Full details are provided in Section 5. Providing the recommendations of this report are implemented in full, Naturally Wild would conclude that there will not be a significant impact to protected species or habitats as a result of the proposed.
- Excavations to be covered at night to prevent wildlife becoming trapped.

42. In addition to the above, and to further address the requirement for biodiversity net gain, a Net Gain Assessment and accompanying metric was submitted in support of the

application. The purpose of this was to undertake a biodiversity baseline calculation and biodiversity net gain calculation for the development. The calculation was conducted using the information gained during the desktop study and the preliminary ecological appraisal. Habitats on site were classified and condition scored to enable accurate data input for the biodiversity baseline calculation.

43. The biodiversity net gain calculation was conducted in conjunction with the landscaping and planting schedule information also submitted in support of the application. The landscaping scheme includes the planting of 16 trees and wildflower and grass seed planting. Whilst it was noted that parts of the golf course have a low baseline value for ecology mainly due to grass being mown short to allow golf balls to be identified and handled, the bund does not have to be mown as short and can also provide new habitat.
44. This assessment concluded that, with the measures set out in the PEA and the proposed landscaping scheme, the proposals result in a net gain in biodiversity of 13.46% habitat units and 2.36% hedgerow units.
45. In view of the above, subject to the implementation of the proposed landscaping alongside the recommendations of the PEA, the proposal is considered to result in a net gain to biodiversity and meets the requirements of policies ENV7 and ENV8.

**g) Flood Risk**

46. Whilst, as a golf course is considered water compatible development and therefore unaffected by potential flood, it should be noted that both parts of the site lie within Flood Zone 1 and are not at risk of fluvial flooding (flooding by rivers or water courses).
47. The Local Lead Flood Authority (LLFA) requested information to demonstrate that the proposed bund will not compromise surface water flows from the adjacent highway. In response, the applicant submitted a plan to show a French drain along the western edge of the bund, which would be connected to the wider golf course drainage and would capture surface water flows between the proposed bund and the adjacent highway. The LLFA considers this to be an acceptable solution and subject to a condition requiring compliance with this detail, raise no objections. In this context, the proposal complies with policy DC2 in this regard.
48. An issue raised by objection was the presence of a water supply pipe in the driving range field, and the additional pressure that the earth bunds would put on the pipes. Whilst the granting of planning permission does not give consent to build over pipes (this consent would be sought under a separate consent regime with Northumbrian Water) the agent has confirmed that the pipe in question has already been diverted around the periphery of the site at the expense of the Golf Course and in conjunction with Northumbrian Water.

## THE PUBLIC SECTOR EQUALITY DUTY

49. 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.

## CONCLUSION AND RECOMMENDATION

50. The proposed development involves continued investment in an existing rural business. It complies with the relevant policies in the development plan and subject to conditions is acceptable in respect of highway safety, visual amenity, residential amenity, flood risk and biodiversity.

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

1. A3 (Standard 3-year time limit)
2. PL (Accordance with Plan)

A01 P04 Site Location Plan  
A05 P03 Driving range plan  
A03 - P01 18<sup>th</sup> Hole Proposed  
2245.01 REV A Biodiversity Enhancement Plan

3. All works must be carried out in strict accordance with the following approved document; - Driving Range Plan Proposed, Drawing Number A05, Rev P03, Dated 12/06/2022.

REASON – To ensure that the development does not increase the risk of surface water flooding.

4. No material other than inert material shall be deposited at the site.

REASON - Other waste materials raise environmental and amenity issues that would require consideration afresh.

5. No construction activities, including the use of plant and machinery, as well as deliveries to and from the site, shall take place outside the hours of 08.00-18.00 Monday to Friday, without the prior written permission of the Local Planning Authority.

REASON – In the interests of amenity.

6. No development or movement of materials to the development site must commence until a Construction Management Plan has been submitted to and approved in writing by

the Local Planning Authority. Construction of the permitted development must be undertaken in accordance with the approved plan.

The Plan must include, but not be limited, to arrangements for the following in respect of each phase of the works:

- i. details of any temporary construction access to the site including measures for removal following completion of construction works.
- ii. wheel and chassis underside washing facilities on the development site and where relevant the site material is to be sourced from, to ensure that mud and debris is not spread onto the adjacent public highway.
- iii. the parking of contractors' site operatives and visitor's vehicles.
- iv. areas for storage of plant and materials used in constructing the development clear of the highway.
- v. measures to manage the delivery of materials and plant to the site including routing and timing of deliveries and loading and unloading areas.
- vi. details of the routes to be used by HGV construction traffic and highway condition surveys on these routes.
- vii. protection of carriageway and footway users at all times during demolition and construction.
- viii. details of site working hours.
- ix. means of minimising dust emissions arising from construction activities on the site, including details of all dust suppression measures and the methods to monitor emissions of dust arising from the development.
- x. measures to control and monitor construction noise.
- xi. a detailed method statement and programme for the building works; and
- xii. contact details for the responsible person (site manager/office) who can be contacted in the event of any issue.

REASON – In the interest of public safety and amenity

7. The landscaping scheme (drawing number 2245.01A) shall be fully implemented concurrently with the carrying out of the development, or within such extended period as 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 – To ensure a satisfactory appearance of the site and in the interests of the visual amenities of the area.

8. The development shall not be carried out otherwise than in accordance with the mitigation, compensation and enhancement measures set out in the submitted Ecological Impact Assessment 'Dinsdale Golf Club Darlington DSG-22-01 (Naturally Wild April 2022) unless otherwise agreed in writing by the Local Planning Authority.

REASON - To provide ecological protection and enhancement in accordance with the Conservation Regulations 2010, Wildlife & Countryside Act 1981, Policies ENV7 and ENV8 of the Darlington Local Plan 2016-2036.

## **INFORMATIVES**

### ENVIRONMENT AGENCY

Environmental Protection (Duty of Care) Regulations-advice to applicant The Environmental Protection (Duty of Care) Regulations 1991 for dealing with waste materials are applicable to any off-site movements of wastes. The code of practice applies to you if you produce, carry, keep, dispose of, treat, import or have control of waste in England or Wales. The law requires anyone dealing with waste to keep it safe and make sure it's dealt with responsibly and only given to businesses authorised to take it. The code of practice can be found here: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/506917/waste-duty-care-code-practice-2016.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/506917/waste-duty-care-code-practice-2016.pdf)

If you need to register as a carrier of waste, please follow the instructions here: <https://www.gov.uk/register-as-a-waste-carrier-broker-or-dealer-wales>

Use of waste materials on site (waste permit/exemption maybe required)- advice to applicant If materials that are potentially waste are to be used on-site, the applicant will need to ensure they can comply with the exclusion from the Waste Framework Directive (WFD) (article 2(1) (c)) for the use of, 'uncontaminated soil and other naturally occurring material excavated in the course of construction activities, etc...' in order for the material not to be considered as waste. Meeting these criteria will mean waste permitting requirements do not apply.

Where the applicant cannot meet the criteria, they will be required to obtain the appropriate waste permit or exemption from us.

Deposits of waste to land A deposit of waste to land will either be a disposal or a recovery activity. The legal test for recovery is set out in Article 3(15) of WFD as any operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or in the wider economy.

You can find more information on the Waste Framework Directive here: <https://www.gov.uk/government/publications/environmental-permitting-guidancethe-waste-framework-directive>

More information on the definition of waste can be found here: <https://www.gov.uk/government/publications/legal-definition-of-waste-guidance>

More information on the use of waste in exempt activities can be found here: <https://www.gov.uk/government/collections/waste-exemptions-using-waste> Use of materials non-waste activities are not regulated by us (i.e., activities carried out under the CL: AIRE Code

of Practice), however you will need to decide if materials meet End of Waste or By Products criteria (as defined by the Waste Framework Directive).

The 'Is it waste' tool, allows you to make an assessment and can be found here:

<https://www.gov.uk/government/publications/isitwaste-tool-for-advice-on-the-byproducts-and-end-of-waste-tests>

CL: AIRE Definition of Waste: Development Industry Code of Practice (DoW CoP) guidance can be found via the following link: <http://www.claire.co.uk/projectsand-initiatives/dow-cop/28-framework-and-guidance/111-dow-cop-maindocument>

The DoW CoP sets out the lines of evidence that are needed to demonstrate that the excavated materials are not or have ceased to be waste. These are based on four factors: • Protection of human health and the environment (acceptable risk assessment of pollution) • Suitability for use without further treatment (no further processing and/or treatment, as demonstrated by a specification and a site specific risk assessment including chemical, geotechnical properties and biological aspects); • Certainty of Use (outlined in the Remediation Strategy and Material Management Plan); • Quantity of Material (outlined in the Remediation Strategy and Material Management Plan); and

To demonstrate the factors a Materials Management Plan (MMP) needs to be produced to ensure all factors are considered and the correct determination is made. A Verification Plan needs to be set out in the MMP and must identify the recording method of materials being placed, as well as the quantity of materials to be used. It should also contain a statement on how the use of the materials relate to the remediation or design objectives.

In general, any material that has to be treated in order to render it suitable for its intended use is considered to be a waste and waste controls apply.

If you require any local advice or guidance, please contact your local Environment Agency office: Tyneside House, Skinnerburn Road, Newcastle Business Park, Newcastle upon Tyne, NE4 7AR, Telephone: 0370 850 6506.

#### Public Rights of Way

In all works, the Public Footpaths should always remain open and fully available and there should be no risk to members of the public using them, both during and post development.





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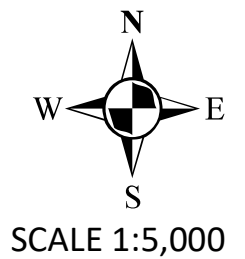


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DARLINGTON BOROUGH COUNCIL

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## DARLINGTON BOROUGH COUNCIL

### PLANNING APPLICATIONS COMMITTEE

**COMMITTEE DATE: 12 July 2023**

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|                                 |  |
|---------------------------------|--|
| <b>APPLICATION REF. NO:</b>     | 20/00852/FUL   |
| <b>STATUTORY DECISION DATE:</b> | 14 July 2023   |
| <b>WARD/PARISH:</b>             | Brinkburn And Faverdale  |
| <b>LOCATION:</b>                | Land At The Entrance Of Faverdale Industrial Estate<br>Faverdale DARLINGTON  |
| <b>DESCRIPTION:</b>             | Demolition of existing building and erection of six commercial units (464sqm; 1858sqm; 836sqm; 650sqm; 464sqm and 464sqm) three Drive Through Restaurants (350sqm; 167sqm and 180sqm); one industrial unit (789sqm) and an EV Charging Station with associated access, parking, drainage and landscaping (Revised Description) (Amended and additional plans received 13 July 2021; Ground Contamination Risk Assessment received 15 July 2021; amended drainage design plan received 1 October 2021; additional retail information received 14 March 2022; additional Planning Policy Statement received 23 March 2022; Sequential Test Addendum received 5 July 2022; additional and amended plans and reports received 15 September 2022; Biodiversity Net Gain information received 16 and 21 September 2022; Tree Survey and Tree Constraints Plan received 4 October 2022; Drainage information received 6 October 2022) |
| <b>APPLICANT:</b>               | Almscliffe Properties (Darlington) Ltd   |

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**RECOMMENDATION: GRANT PERMISSION SUBJECT TO A SECTION 106 AGREEMENT AND 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>

#### APPLICATION AND SITE DESCRIPTION

1. The planning application site measures approximately 7.73 acres (3.13 hectares) and is located on the western edge of the Faverdale Industrial Estate. The site comprises primarily disused hardstanding areas but also includes earth bunding and banking on the south and west boundaries. The proposal would include the demolition of a building to the rear of the Blackett, Hart and Pratt offices located to the west of the site.
2. Access to the site is currently off a road known as “Faverdale” to the north; Faverdale Black Path (Bridleway No 19) is located to the south and West Auckland Road (A68), is to the west.
3. Planning permission (ref no 18/00694/FUL) has recently been granted to redevelop land on the opposite side (north) of “Faverdale” for a Lidl supermarket; Home Bargains retail store and a coffee drive thru unit. The Lidl store is operational and the other units are under construction or to be constructed. The Faverdale Industrial Estate is located to the east; open space and allotments with dwellings beyond are to the south and more dwellings are located to the west and north west.
4. This planning application has been the subject to a number of amendments since it was originally submitted (see below) which have all been the subject to notification exercises by the local planning authority. This final amended scheme is a detailed planning application comprising:
  - a) Unit 1 – Costa Coffee Drive Thru (167sqm)
  - b) Unit 2 – McDonalds Drive Thru Restaurant (350sqm)
  - c) Unit 3 - Retail unit, including a Vets (unit 3C) and a tanning salon (Unit 3b) (464 sqm)
  - d) Units 4a to 4e – Bulky Comparison Goods (1858sqm; 836sqm; 650sqm; 464sqm and 464sqm). Whilst the final occupier agreements are still to be agreed, the applicant has advised that Units 4a and 4b will be occupied by retailers such as Wickes and Jysk
  - e) Unit 5 – Taco Bell Drive Thru (180sqm)
  - f) Unit 6 - industrial unit (789sqm). The occupant of this unit is unknown
  - g) An 8 bay EV Charging Station.
5. The proposed development includes 314 car parking spaces (including disabled spaces and electric vehicle charging spaces), cycle parking, servicing areas, internal circulation routes and landscaping with access off “Faverdale”. The most recent revision to the scheme is for the relocation of the vehicular access into the site off Faverdale following comments made by the Council’s Highways Engineer.

6. Darlington Borough Council are the landowners for part of the application site, namely the embankments along West Auckland Road and land to the north of Faverdale Black Path.

*Statement of Community Involvement*

7. Whilst the proposed scheme has significantly changed, in 2020, the developer did carry out an extensive Statement of Involvement exercise with the local community in accordance with the Council's adopted guidance on such matters

*Regulation 6 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017*

8. The applicant has submitted a Screening Opinion to the local planning authority in accordance with the above Regulations. Based on the details of the planning application, the supporting information and the responses from statutory consultees, the local planning authority has advised that no significant environmental effects are likely to be derived from the proposed development that cannot be controlled via the use of planning conditions and the development would not warrant the submission of an Environmental Impact Assessment (EIA).

**MAIN PLANNING ISSUES**

9. The main issues that to be considered here is whether the proposed development is acceptable is the following terms:

- a) Employment Land Policy
- b) Retail Planning Policy
- c) Economic Impacts
- d) Environmental Considerations
- e) Social Impacts
- f) Health Impacts
- g) Design and Layout and Impact on the Character and Appearance of the Area
- h) Residential Amenity
- i) Highways Matters
- j) Ecology
- k) Trees and Landscaping
- l) Flood Risk
- m) Air Quality
- n) Land Contamination
- o) Impact on Rights of Way
- p) Impact on Barnard Castle Trackbed
- q) Planning Obligations

**PLANNING POLICIES**

10. The relevant local development plan policies are:

**Darlington Local Plan 2016 – 2036**

SD1: Presumption in Favour of Sustainable Development

SH1: Settlement Hierarchy  
DC1: Sustainable Design Principles and Climate Change  
DC2: Flood Risk & Water Management  
DC3: Health & Wellbeing  
DC4: Safeguarding Amenity  
DC5: Skills & Training  
H3: Development Limits  
E1: Safeguarding Existing Employment Opportunities  
TC1: Darlington Town Centre  
TC3: Additional Site for Town Centre Uses  
TC4: District and Local Centres  
TC5: Retail Impact Assessment Threshold  
ENV3: Local Landscape Character  
ENV4: Green & Blue Infrastructure  
ENV5: Green Infrastructure Standards  
ENV7: Biodiversity & Geodiversity & Development  
ENV8: Assessing a Development's Impact on Biodiversity  
IN1: Delivering a Sustainable Transport Network  
IN2: Improving Access and Accessibility  
IN3: Transport Assessments and Travel Plans  
IN4: Parking Provision including Electric Vehicle Charging  
IN6: Utilities Infrastructure  
IN8: Broadband Infrastructure

**Other relevant documents**

The National Planning Policy Framework 2021.  
Design of New Development SPD (2011)  
Planning Obligations SPD (2013)  
Travel Plan Guidance (2022)

**RESULTS OF TECHNICAL CONSULTATION**

11. The Council's Public Rights of Way Officer, Environmental Health Officer, Environmental Health Manager (Commercial); Travel Planning Officer, Transport Policy Officer, Highways Engineer have raised no objections to the principle of the proposed development subject to the imposition of planning conditions where deemed necessary
12. The Council's Ecology consultant advised on the need to secure biodiversity net gain on site or offsite, if there is a justification.
13. The Lead Local Flood Authority, Environment Agency and Northumbrian Water have raised no objections to the principle of the development and requested the imposition of planning conditions and Informatives should the application be approved.
14. National Highways, Northern Gas Networks have raised no objections to the proposed development



## RESULTS OF PUBLICITY AND NOTIFICATION

15. The planning application has been the subject of significant amendments since it was originally submitted.
16. The scheme originally included a Tesco food store; a retail unit; two drive thru restaurants and a petrol filling station. In response to this proposal, the local planning received 11 comments; 16 letters of objection and 199 letters of support.
17. Following the confirmation by the Agent in March 2021, that Tesco were no longer the named operator for the foodstore, the scheme was amended by removing the petrol filling station; adding a further Drive thru unit and a vehicle charging station. The local planning authority repeated the notification exercise on this scheme and 3 letters of support, and 21 letters of objection were received. The three letters of support can be summarised as follows:
  - *Having a Taco Bell will bring revenue and visitors*
  - *It is better to have derelict land being used for something new to benefit the area and provide jobs. It's a better use than an industrial use*
  - *The site is an eyesore and I fully support the proposal. Housing in this area is ever increasing and there is a greater need for this development*
18. The twenty one letters of objection can be summarised as follows:
  - *I was in favour of the original application but I now strongly object on highway safety and access grounds and the number of hot food outlets which will lead to litter problems*
  - *This will lead to increased congestion like the McDonalds development on North Road*
  - *The site is better suited for housing*
  - *There should be more than 8 charging points*
  - *Increase in litter problems*
  - *This will attract antisocial behaviour, boy racers etc*
  - *This area does not need another McDonalds*
  - *We do not need fast food and coffee drive thru in this town*
  - *This will lead to traffic congestion*
  - *I wish to withdraw my previous support. The main focus should be a supermarket and petrol filling station*
  - *This will create nuisance problems for residents*
  - *Access in and out of the area will be difficult. Adverse impact on safety of children*
  - *Increase in traffic especially considering the site across the road; buses from the depot and traffic from industrial estate*
  - *I now have a major problem with the type of businesses being put forward*
  - *Hot food outlets should be in the town centre*
  - *This scheme will have no benefit to the area*

- *It will attract unwanted wildlife*
- *Traffic control measures need to be considered as West Auckland Road is already an extremely busy road*
- *The hot food outlets will create unnecessary queues leading to heavy congestion*
- *There are already enough food stores in the area*
- *The hot food outlets will impact on existing bistros and health of school children*
- *This will lead to an increase in noise*
- *Adverse impact on traffic movement in the local area*
- *This does not serve the elderly population in the area*
- *The Site is identified for employment uses in the Core Strategy (May 2011), It is not within or on the edge of any local or district centre. As such, it is not appropriate location for retail development and the proposed development will have a significant adverse impact on defined centres.*
- *There is even less justification for the proposed development which now amounts effectively to three drive through restaurants and two speculative retail units.*
- *The site is allocated for employment generating uses which include B2 and B8 uses which are not incorporated into Use Class E.*
- *The speculative development of a 'big box' retail unit, which was previously proposed for Tesco and the request that the sales floorspace be conditioned to non-food 'bulky goods' only partly dilutes our rationale for our original objection*
- *There is still the potential for impact on identified centres and our fear is that once the principle of retail development on this Site has been approved, a change in the retail sector could lead to a further application to vary a condition restricting the class of goods to be sold from within the Units*
- *The fact that that the proposed development is contrary to that allocation, our view is that the planning application should be refused.*
- *The offer of the applicant to invite a bulky goods condition does not in our view safeguard the defined centres within the catchment area from all impact*

19. In September 2022, the scheme was amended again. As stated above, the proposal is for the erection of six commercial units; three Drive Through Restaurants; one industrial unit and an EV Charging Station with associated access, parking, drainage and landscaping. Following a notification exercise with the residents that had previously commented, the local planning authority has received 8 letters of objection; 2 letters of support and 2 comments. The eight letters of objection can be summarised as follows:

- *We don't need three hot food outlets*
- *Increase in traffic congestion and antisocial behaviour*
- *No need for retail or fast food takeaways*
- *This will lead to environmental issues*
- *Resources should go towards town centre*
- *Adverse impact on Cockerton Village must not happen*
- *Increase in litter*
- *We have yet to see the impact of the Lidl development*

- *The principle of the proposed development is not in accordance with the development plan and this position has to be given full weight as a result of the recent adoption of the Local Plan and the examination of this allocation.*
- *The proposal does not accord with the sequential test policies of the Local Plan*
- *The proposal will complete even more closely with Cockerton District Centre and this will impact upon its vitality and viability*

20. The two letters of support do not include any comments other than registering the persons support for the application

21. The comments can be summarised as follows:

- *Great idea but concerned over the extra traffic on Brinkburn Avenue and Auckland Oval which are used as a route to West Park instead of Brinkburn Road*
- *Whilst more facilities are welcomed at this side of town I have concerns over the volume of traffic.*

22. Following receipt of plans showing amendments to the access arrangements, one letter of objection has been received. The comments can be summarised as follows:

- *Whilst we are encouraged by the expansion of the area, our main concern is the traffic along the Faverdale Est. road. Its always been a busy road and I have noticed a higher level of use since the Lidl has been open. This will rise again once the Starbucks and Home Bargains open.*
- *There are near misses daily with large lorries parking along the road, more often than not on the yellow lines that are there! There are not currently yellow lines on both sides of the road, so large delivery lorries park up, sometimes all day on both sides of the road, they also they often leave trailers disconnected from the cabins, quite literally 'abandoned', again all day.*
- *When the lorries are parked, it's very hard for pedestrians to cross the road safely, it really is a serious/fatal accident waiting to happen.*
- *These issues are only going to be heightened with further traffic being added by this new development. Please could you consider adding a speed camera and yellow lines the full length of the road, on both sides, from the roundabout to the Capita building as part of this development?*
- *Developing on this site will bring revenue and jobs to the area and we fully support this; our concerns just lie with the volume and speed of the vehicles using the area.*

#### **PLANNING ISSUES/ANALYSIS**

23. 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).

**a) Employment Land Policy**

24. The planning application has been supported by an Employment Land Report (2020) which concluded that the proposed development would bring clear and measurable employment opportunities for local people as well as regeneration benefits associated with the redevelopment of a long vacant industrial site. The assessment highlights there is an excess of employment land within a three mile radius of the site with land available further afield. The Report concludes that the site is not required to maintain a balanced portfolio of employment land for B1, B2 and B8 uses. The site is in a sustainable location and the proposed development has local community benefits.
25. The application site is located within an existing employment area designated by Policy E1 (Safeguarding Existing Employment Opportunities). These areas are promoted and safeguarded for existing and ongoing economic investment. Within these areas, planning permission will be granted on available land and for the change of use of existing buildings or developed land (subject to any permitted development rights) in line with the 'suggested uses' for each site. The application area is within Site Ref 343 Faverdale Industrial Estate which has suggested uses of B2, B8 and E(g).
26. Policy E1 goes on to state that proposals for other employment uses not falling within the 'suggested uses' of specific sites will only be permitted where the Borough Council is satisfied that they will not have a detrimental effect on the amenities of the occupiers of adjoining or nearby properties or prejudice the development of adjacent sites.
27. There is the issue of the potential loss of the employment land. This site is located on the edge of the Faverdale Industrial Estate and has been vacant for a significant period of time although demand is currently very high in the Borough for employment land for B2, B8 and E(g) uses. It is acknowledged that this location, in relatively close proximity to housing, is likely to limit its attractiveness for industrial uses to some degree. The uses proposed across the majority of the site whilst not directly traditional B and E(g) class employment uses will still generate a not insignificant amount of employment and other potential benefits to the community regarding the services and provision that will be available.
28. Policy E1 also sets out the net available land for development of site 343 which is 7.83ha. If this site was developed as proposed in addition to the area to the north where retail units are under construction (planning permission 18/00694/FUL) this would result in limited remaining land being available within the Industrial Estate for the suggested uses. Given the above context it is likely that the loss of this site would impact on the ability to provide land for B and E(g) use class employment in this safeguarded allocation site. However, through policies E1 and E2 a surplus of land is allocated and safeguarded for these uses meaning it is unlikely the proposed development would result in a shortfall in land availability for these uses across the Borough. The principle of the proposed development is considered to be acceptable.

## **b) Retail Planning Policy**

29. The Council have sought independent, expert advice from retail consultants Nexus Planning on the acceptability of the development(s) in retail planning policy terms. Nexus Planning have provided detailed responses to the various iterations of the planning application following extensive reviews of the submitted reports and up to date reviews of the Cockerton District Centre and town centre, including occupancy and vacancy rates working alongside Officers and the applicant's retail consultants.

### *The Sequential Test*

30. The National Planning Policy Framework 2021 (NPPF) emphasises the Government's commitment to securing economic growth and building a strong, responsive and competitive economy. With regard to the assessment of proposals for main town centre development, the revised NPPF provides two principal national policy tests relating to the sequential approach to development and to impact. In respect of the first of the two tests, paragraph 87 of the NPPF states that local planning authorities should apply a sequential test to planning applications for main town centre uses that are not in accordance with an up-to-date plan. Paragraph 87 goes on to state that:

*'Main town centre uses should be located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered.'*

31. Paragraph 87 of the NPPF sets out the order of preference in applying the sequential approach. The first preference is for main town centre use development to locate in town centres, followed then by edge of centre locations, and only if no other suitable sites are available should out of centre sites be considered.

32. Paragraph 88 identifies that:

*'When considering edge of centre and out of centre proposals, preference should be given to accessible sites which are well connected to the town centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale, so that opportunities to utilise suitable town centre or edge of centre sites are fully explored.'*

33. Paragraph 90 of the NPPF sets out a twin impact test, stating that:

*'When assessing applications for retail and leisure development outside town centres, which are not in accordance with an up-to-date plan, local planning authorities should require an impact assessment if the development is over a proportionate, locally set floorspace threshold (if there is no locally set threshold, the default threshold is 2,500 sq. m of gross floorspace). This should include assessment of:*

- a. the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal;*
- and*

*b. the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and wider retail catchment (as applicable to the scale and nature of the scheme).'*

34. Paragraph 91 indicates that, where an application fails to satisfy the sequential test or is likely to have a significant adverse impact on one or more of the above factors, it should be refused. However, this direction cannot extinguish the requirement set out in statute to first consider development plan policy and then all material considerations in assessing the 'planning balance' when making a decision.
35. Additional guidance on the application of the sequential approach is provided by the Town Centres and Retail Planning Practice Guidance ('the Town Centres PPG'), which was updated on 18 September 2020. Paragraph 011 of the Town Centres PPG provides a 'checklist' for the application of the sequential test in decision taking. It indicates the following considerations:
36. With due regard to the requirement to demonstrate flexibility, has the suitability of more central sites to accommodate the proposal been considered? Where the proposal would be located in an edge of centre or out of centre location, preference should be given to accessible sites that are well connected to the town centre. Any associated reasoning should be set out clearly.
37. Is there scope for flexibility in the format and/or scale of the proposal? It is not necessary to demonstrate that a potential town centre or edge of centre site can accommodate precisely the scale and form of development being proposed, but rather to consider what contribution more central sites are able to make individually to accommodate the proposal.
38. If there are no suitable sequentially preferable locations, the sequential test is passed.
39. Nexus Planning has provided a review on how the matter of 'flexibility' has been applied by the Courts, and to consider whether there is any need to 'disaggregate' constituent elements of the proposal when considering alternative sites. The 'suitability' of sequential alternatives should be considered with reference to the subject application proposal and whether the proposal could be accommodated at a sequentially preferable location. The concept of 'disaggregation' relates to the potential for different elements of an application proposal to be sub-divided onto different sites.
40. Nexus Planning advise that they do not believe that there is any persuasive argument which justifies a need for disaggregation in this instance. The application proposal relates to five broadly complementary operations, and there is some logic in respect of the uses being delivered at the same site (co-location will likely be attractive to prospective operators and generate some linked trips). Moreover, there is nothing to suggest that the proposal has been concocted and added to in order to circumnavigate the requirements of the sequential test. Accordingly, given the above, it is accepted by Nexus Planning and Officers that there is no need to disaggregate the proposal and that

an alternative site should be able to accommodate the application proposal in its entirety, allowing for appropriate flexibility in format and scale.

41. Policy TC1 of the Local Plan states that proposals for main town centre uses should be located within the town centre boundary identified on the Policies Map. Where main town centre uses are proposed outside of the town centre boundary a sequential test should be applied in accordance with national policy. Policy TC4 of the Local Plan also sets out this approach; where main town centre uses are proposed outside the district or local centre boundary a sequential test should be undertaken in accordance with national policy.
42. The Sequential Test Assessment submitted in support of the planning application considered sites within the town centre boundary (Commercial Street/Former M&S site/Sports Direct site); sites on the edge of the town centre boundary (Brunswick Street car park/Halfords Complex/Garden Street Car Park); Cockerton District Centre; North Road District Centre and West Park Local Centre. The Assessment concluded that having considered the sites, they were not available, suitable or viable for the proposed development.
43. An Addendum to the sequential Assessment was submitted in June 2022 which assessed the Commercial Street/Kendrew Street site in accordance with policy TC3 of the Local Plan. The Addendum highlights that fact that the sites are separated by the A68; the scale and layout of the site is not sufficiently appropriate to accommodate the proposed development in its entirety, even allowing for flexibility on format; the need to provide replacement parking provision and improve transport linkages was a barrier in the immediate and short term and the irregular shape of the site would not cater for the whole development and parking and servicing requirements.
44. Having considered the submitted information and the potential offered by all identified sites, Nexus Planning and Officers do not believe that there is a sequentially preferable site to accommodate the application proposal and find that the proposal accords with the requirements of the test as articulated by NPPF paragraphs 87 and 88.

#### *Retail Impact*

45. Paragraphs 90 and 91 of the NPPF indicate that application proposals for retail and leisure development should be refused planning permission where a significant adverse impact is likely to arise from development. In assessing the significance of impacts arising from development, it is necessary to reflect upon the advice set out in the Town Centres PPG. In this regard, paragraph 018 states that:

*'A judgement as to whether the likely adverse impacts are significant can only be reached in light of local circumstances. For example, in areas where there are high levels of vacancy and limited retailer demand, even very modest trade diversion from a new development may lead to a significant adverse impact.'*

46. It should also be recognised that impacts will arise with all retail developments, but that these will not always be unacceptable, not least because development often enhances choice, competition and innovation. It is therefore necessary to differentiate between those developments that will have an impact and those that will undermine the future vitality and viability of established centres, i.e. have a 'significant adverse' impact.
47. Paragraph 016 of the Town Centres PPG is also of some relevance in considering how the impact test should be applied. It states that:
- 'As a guiding principle impact should be assessed on a like-for-like basis in respect of that particular sector (e.g. it may not be appropriate to compare the impact of an out of centre DIY store with small scale town-centre stores as they would normally not compete directly). Retail uses tend to compete with their most comparable competitive facilities.'*
48. Policy TC5 of the Local Plan is relevant and states that proposals for retail (convenience and comparison) generating over 500sqm additional floorspace outside Darlington town centre and which are not identified in the Local Plan policies will be required to undertake an impact assessment.
49. There are two key impact tests identified by paragraph 90 of the NPPF. The tests relate to:
- a) the impact of the proposal on existing, committed and planned public and private sector investment in a centre or centres in the catchment area of the proposal; and
  - b) the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and wider retail catchment (as applicable to the scale and nature of the scheme).
50. With regard to the first strand, there has been significant investment in Darlington town centre in recent years which includes (but is not limited) to the DL1 leisure complex, the Town Hall redevelopment, the Feethams House office development and improvements to the Yards and shopping areas secured through the Town Centre Funds. These developments principally serve different needs or materially different catchment areas and will not be the subject of significant adverse impacts arising from the application proposal. Other developments include property and land acquisition around Northgate and other areas of the town centre; supporting Heritage Assets, the Linear Park along the River Skerne Corridor, the Rail Heritage Quarter, Victoria Road public realm improvements, works at Bank Top Station and former Cattle Market
51. In considering the above, it is important to first note that much of this proposed investment is located around the town of Darlington, rather than being located within a defined centre. Whilst there are a series of identified important interventions in Darlington town centre, the nature of proposed investment is generally different to the type planned at Faverdale Industrial Estate. In terms of proposed improvements to Skinnergate and The Yards, Officers and Nexus Planning do not believe that the grant of



planning permission for retail and food and drink uses of the type proposed at Faverdale would likely undermine the ability to bring forward this type of investment. The funding has been committed and the improvements are highly likely to be implemented irrespective of the determination of this application. The issue of impact as it applies to Darlington town centre is a more relevant consideration in respect of the second part of the NPPF impact test, which is addressed further and, in more detail, below.

52. Given all of the above, Officers and Nexus Planning find that the proposal accords with the requirements of the first strand of the NPPF impact test.
53. As stated, the redevelopment of the application site has taken different forms since it was originally submitted in 2020 and Nexus Planning have provided advice to officers on the various iterations with the last advice based on the proposals in their current form which was issued in April 2023. The impact consideration is set out below along with the final conclusion on the current scheme
54. Nexus Planning had previously advised Officers (October 2021) that, in terms of the second strand of the NPPF impact test (relating to town centre vitality and viability), the proposal would trade against Cockerton district centre and also, to some extent, Darlington town centre. In this report, Nexus Planning advised that the proposal would likely result in a significant adverse impact arising at Cockerton district centre. The October 2021 report found that the impacts arising at Darlington town centre would be more focused and that the matter of principal concern related to the comparison goods element of the proposal. In this regard, the report identified a concern about the proposed unrestricted comparison goods unit (Unit 3), which could be sub-divided into four separate units. They concluded that the unit could accommodate operators who would otherwise locate in Darlington town centre and that, given the vacancy rate apparent in the centre and the anticipated level of cumulative trade diversion, this centre would also be the subject of a significant adverse impact.
55. In March 2022, Nexus Planning provided further advice to the Council following receipt of further information from the Agent including that 50% of Unit 3 would be occupied by a vet. The conclusions of this advice was that the impact arising at Darlington was at an acceptable level (subject to the imposition of a restrictive condition, should planning permission be granted for the development) but in respect of Cockerton district centre, the application proposal would result in Faverdale supporting a comprehensive out of centre offer that would compete against the district centre in a number of ways.
56. The applicant submitted a revised scheme in September 2022, with additional supporting information subsequently being provided as part of the retail impact review. As stated above, the scheme now presented is as follows:
  - Unit 1 is a drive-thru coffee shop (to be operated by Costa Coffee), with a gross internal area of 167 sq. m;

- Unit 2 is a drive-thru restaurant (to be operated by McDonald's), with a gross internal area of 351 sq. m;
- Unit 3 has a gross internal area of 464 sq. m with 50% of this being occupied by a veterinary practice and 50% being occupied for unrestricted comparison goods sales;
- Unit 4 would be subject to a 'bulky comparison goods' restrictive condition and its gross floorspace of 5,850 sq. m would be subdivided for occupation by different retailers; and
- Unit 5 is a drive-thru restaurant (to be operated by Taco Bell), with a gross internal area of 180 sq. m.

57. Unit 4 would be sub-divided into five units and in comparison, to the proposal assessed by Nexus Planning in March 2022, it was noted that:

- the floorspace of the Unit 2 drive-thru has reduced by 9 sq. m; and
- the floorspace associated with the Unit 4 'bulky comparison goods' unit has increased by 2,098 sq. m.

58. Nexus Planning had confirmed to officers, its view that the additional comparison goods floorspace will trade to some degree against retailers located within Darlington town centre (as well as Darlington Retail Park and other locations). As their advice to Officers had previously identified, further trade diversion from the town centre is of some concern given the wider context and the fact that Scotch Corner Designer Outlet Centre is under construction. Scotch Corner will divert a material level of trade from the town centre and retail impact therefore needs to be considered with reference to the cumulative position. Scotch Corner Designer Outlet centre is currently the subject of a 'Phase 2' application which provides for a significant larger operation and it is an application that Darlington Council have formally submitted an objection against. In this context a Darlington Health Check report was submitted to Officers by the applicant and officers also carried out a survey of the town centre. In addition, to reviewing the current vitality and viability of the town centre, the Health Check also considered the number of retailers within the centre which sell bulky and household goods.

59. In their advice to officers, Nexus Planning do not agree with all the likely trade turnover assumptions of the retail floorspace associated with the application proposal that have been presented by the applicant. The consultants predict that the turnover of the current scheme is significantly higher than that previously assessed by Nexus Planning. It should also be noted that, in addition to the retail floorspace proposed as part of this application, Faverdale's offer will be further bolstered by the veterinary practice, the proposed leisure floorspace (to be occupied by Swim), and the retail development associated with planning permission reference 18/00694/FUL (which supports a Lidl food store, discount variety store and drive-thru at an adjacent site at Faverdale).

60. Nexus Planning reviewed the assumptions in respect of trade diversion and continue to be of the view that the amount of diversion that is likely to occur at Cockerton district centre has been underestimated. As a consequence of this, Nexus Planning provided

their own updated position in respect of retail impact accounting for both their revised estimate of the comparison goods turnover of the proposal, and the fact that they believe that a greater amount of expenditure will be diverted from Cockerton in practice.

61. Nexus Planning believe that the application proposal could divert in the order of £0.20m from various local shops in Cockerton district centre. However, once more, they believe that this impact would not be distributed equally across all operators and that the proposal could compete directly against key elements of Cockerton's offer. The application proposal could result in an 8.2% trade diversion from existing local shops in Cockerton, which equates to a 3.8% impact when all retail provision in the centre is considered. The cumulative impact across the centre as a whole is substantially higher (at around 11.2%), which reflects the nature of existing commitments across the Darlington area and beyond.
62. In terms of Darlington town centre, Nexus Planning estimate that the impact arising from the proposal could equate to around 2.1% of the centre's turnover, with the estimated cumulative impact reaching double figures (10.1%). Given the fact that the application proposal has grown in scale, the identified impacts have unsurprisingly also increased from those identified by Nexus Planning in reporting on the application in March 2022.
63. The applicant's Health Check report seeks to provide some assurance that the extended bulky goods element of the proposal will not trade directly against Darlington town centre. In this regard, it should first be noted that Nexus Planning's assumed level of trade diversion from Darlington town centre is broadly similar to that identified by the applicant. Accordingly, Nexus Planning and the applicant do not fundamentally disagree in terms of the proposal's ability to divert a substantial seven-figure sum from the town centre. Furthermore, in practice, the Health Check confirms that the town centre accommodates a substantial number of retailers selling bulky and household goods.
64. Nexus Planning believe that the Health Check confirms that there is a significant bulky goods and household goods offer within the town centre. Indeed, it is evident that the principal concentration of such operators in the Darlington area occurs within the centre itself. This is consistent with the Darlington Retail Study Update of 2017 which identified that Darlington town centre is most popular destination in the Borough in respect of trips to purchase both furniture goods and small household goods. Nexus Planning believe it to be clear that the proposed bulky goods element of the application proposal would trade to a substantial degree against competing provision in Darlington town centre.

*Impact on Cockerton District Centre*

65. Nexus Planning are concerned as follows:

- the centre's two Co-op stores and their ability to remain viable subsequent to the implementation of planning permission reference 18/00694/FUL at the Vantage Point site;
- the Wheeler's Hardware and Sliding Wardrobes & Fitted Bedroom Furniture units and their ability to withstand trade diversion arising from the current application proposal;
- the potential for a pharmacy to be provided at Faverdale which would also replicate a key element of Cockerton's offer;
- the potential for trade diversion and operators to be removed from Cockerton as a consequence of unrestricted comparison goods floorspace; and
- the proposed drive-thru uses, which will divert a material level of trade away from the substantial range of café and takeaway uses currently in Cockerton.

66. It is accepted that the impact in respect of the first of these matters primarily relates to that which will occur as a result of the Vantage Point application 18/00694/FUL, the other issues arise from the current proposal.

67. Cockerton continues to be a pleasant centre to visit, with a range of shops and services which are generally in a good state of repair. Cockerton continues to be a vital and viable centre. The critical issue remains that committed and proposed development at Faverdale would replicate a number of existing functions of the district centre at an out of centre site. Noting once again that the scale of the application proposal has increased, their view remains that the proposal would likely result in a significant adverse impact on Cockerton district centre.

#### *Impact on Darlington Town Centre*

68. In terms of Darlington town centre, the retail advice given by Nexus Planning in October 2021 found that the matter of impact was not just related to trade diversion but also to the potential of Unit 3 to poach operators from the town centre. Whilst this issue was partly addressed through the proposed use of some comparison goods floorspace as a veterinary practice, the additional floorspace now associated with the application results in a greater trade diversion impact arising at the town centre. Nexus Planning estimate that the solus impact of the proposal on Darlington town centre would be around 2.3% and the cumulative impact would be around 10.1%. These figures are broadly comparable to the applicant's estimated impacts (2.0% and 9.9% respectively).

69. The town centre has been the subject of retail losses from the high street in recent years and that its vacancy rate has generally increased over time. At September 2021 a survey by Nexus Planning identified a vacancy rate of 17.5% of commercial units. Information submitted by the applicant (February 2022) showed a vacancy rate of 16.8% whilst the Council conducted its own survey of Darlington town centre (March 2023) and found a modest improvement in respect of the number of vacant units and a vacancy rate of 16.2%. The identified vacancy rate of 16.2% is still well above the national average rate of 13.8%

70. Nexus Planning advise that Darlington town centre remains fragile and that there is a need to reduce the vacancy rate. The fragile nature of the centre is also identified by Darlington Council itself in its objection letter to Richmondshire Council in relation to the Scotch Corner Phase 2 development.
71. In their conclusions, Nexus Planning have advised that the proposal would result in a significant adverse impact at Cockerton district centre and is therefore contrary to the requirements of NPPF, which could merit the refusal of the application on retail impact grounds. Policy TC5 of the newly adopted Darlington Local Plan is also of relevance to the determination of the application as this requires a retail impact assessment to be submitted in association with planning applications of this type.
72. In respect of Darlington town centre, Nexus Planning estimate that the current scheme would result in a solus impact of 2.3% and a cumulative impact of 10.1%. The reduction in the vacancy rate to around 16.2% is a positive development, but vacancies remain a matter of concern. Furthermore, whilst some of the vacancies are in peripheral locations, a number are located in and around Darlington's 'prime pitch' and relate to substantial units (including the former Marks & Spencer unit on Northgate). In this context, they believe that the re-occupation of vacant floorspace should be a key objective to underpin the future vitality and viability of the town centre.
73. Noting the general health of Darlington town centre and the level of cumulative trade diversion impact associated with the proposal, Nexus Planning find that the town centre would be the subject of a significant adverse impact.
74. In response to the conclusions made by Nexus Planning, the applicant and their consultants do not agree with the some of the estimated turnover conclusions presented by Nexus Planning, they consider that not all the units selling bulky and household goods in the town centre would be in direct competition with the proposed development and also disagree that the development will directly compete with Cockerton District Centre.
75. The advice from both Nexus Planning and the applicant's consultants have been considered by Officers.
76. As stated, 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.
77. Nexus Planning and Officers recommend that the above matters are given careful consideration and afforded appropriate weight in determining this planning application. In terms of the weight to be afforded to the retail policy tests, Nexus Planning have directed officers to the findings of the *Asda Stores Limited v Leeds City Council & Anor [2019] EWHC 3578* High Court judgment and the *(Admin) Asda Stores Limited v Leeds City Council & Anor [2021] EWHC 3578 (Admin)* Court of Appeal judgment.

78. These judgments confirm that paragraph 91 of the NPPF does not necessarily mandate a refusal as a matter of policy when the tests are breached and does not give rise to a 'tilted balance' similar to that evident at paragraph 11 of the NPPF. Instead, in accordance with Section 38(6) of the Planning and Compulsory Purchase Act, the decision-taker is still required to consider other material considerations arising from a planning proposal and to undertake a balancing exercise in reaching its decision. In this respect, careful consideration should be given to the overall merits of the application relative to the consequences of retail planning policy being breached. It is recommended that Members determine the relative weight to be afforded to the retail impact test in this context.
79. In considering the application, it should also be noted that the Scotch Corner Phase 2 application remains undetermined, but that decision-makers should be aware of competing development in neighbouring authorities in considering development proposals. In particular, should planning permission be granted for Scotch Corner Phase 2 prior to the Faverdale application being determined by the Council, then it should be considered as a commitment of relevance to the cumulative impact position.
80. As recommended, and in accordance with Section 38(6) of the Planning and Compulsory Purchase Act, officers have considered other material considerations arising from the planning proposals which have also been presented by the applicant and undertook a balancing exercise in reaching its decision to support a recommendation for granting planning permission.
81. The material considerations are discussed in detail below and have been split into economic, social and environmental impacts in accordance with the NPPF's presumption in favour of sustainable development. These are matters are material planning considerations which show that the proposed development will bring substantial wider benefits to the area, providing an opportunity for inward investment, facilitating the provision of local jobs and aiding social and economic development. The proposed development falls within the definition of sustainable development, on which the NPPF encourages planning authorities to take a positive approach and having considered these matters Officers are recommending that whilst the retail impacts of the development on the town centre and Cockerton District are fully acknowledged and have been taken into account, the benefits and other material planning considerations outlined below outweigh the identified harm to the centres and that the principle of the proposed development can, in such circumstances, be supported in accordance with Section 38(6) of the Planning and Compulsory Purchase Act.
82. A further consideration is that planning conditions have been recommended which would give the local planning authority future controls over the occupation of the units in order to provide some retail impact safeguards to the Cockerton District Centre and the town centre.

### **c) Economic Impacts**

**83.** The site is allocated under Local Plan Policy E1 as a safeguarded employment site. The current employment allocation was carried over from the previous Local Plan and whilst the site was previously in employment use, it has been vacant since 2008 when the former use was demolished and has remained vacant ever since, making no contribution to the local economy. This report shows that the site is not required for the purposes of providing a balanced portfolio of land for employment purposes. Whilst the site has failed to come forward for employment use in the last 15 years, it is considered that the proposals will still result in a range of employment opportunities for the local area which is of significant benefit to the local economy. The applicant has stated within the planning application that the anticipated job creation is as follows:

- a) McDonalds Restaurant – 45 FTE or 65 full and part-time roles
- b) Taco Bell – 30 FTE
- c) Costa Coffee - 11 FTE or 15 full time roles
- d) Retail units – 210 FTE

**84.** Based on ONS data from the Annual Survey of Hours and Earnings (ASHE) for the North East (2022), food and beverage services have an average annual gross salary of £20,917 and retail traders have an average annual gross salary of £25,086. Applying these figures to the anticipated job creation figures above, the proposed development has the potential to generate annual salaries of circa £7.1m. It is anticipated that the majority of employees will live and spend money locally which will subsequently have a beneficial impact on the local economy. Additional jobs will also be created through the construction phase of the scheme which will provide jobs for local contractors and those in the supply chain

**85.** The proposal would bring a long time vacant, brownfield site back into an active use.

**86.** Consideration has also been given to the likelihood of the site being developed for other purposes or purposes which accord with its local plan allocation having taken into account the length of time that the site has been vacant, the cost of remediating the site and its site context and surroundings. It is unlikely that the site would be used for such purposes and no evidence has been presented to Officers to the contrary.

### **d) Social Impacts**

**87.** The job creation as a direct result of the proposed development provides significant social benefits for the local community in reducing unemployment and also providing opportunities for training and development. The proposed development will be occupied by some national retailers and they provide employment opportunities offered by these operators. Some further details provided by the key occupiers are set out below (information provided by the applicant)

**88. *McDonalds*** - *McDonald's employs around 125,000 people across the UK, with a mix of all ages and life stages. In 2017, the Guaranteed Minimum Hours Contracts (GMHC) was rolled out to all UK restaurants, following a pilot project in 2015. These contracts mean*

*that hourly paid employees are now offered a choice over whether they want to stay on a flexible contract, or swap it for a GMHC, where they would retain all their terms and conditions. The GMHCs currently guarantee a range of time commitments, from 4 to 40 hours with breaks factored in. Employees can top these hours up if they wish and the contracts are offered in line with normal working hours. McDonald's commitment to staff education incorporates both internal training programmes and externally recognised qualifications. McDonald's has an ambitious apprenticeship scheme and at the close of National Apprenticeship week 2020, McDonald's celebrated reaching 300 Apprentice graduates. In 2020 alone, there were over 700 apprentices in learning. As part of the global goal to remove the barriers to work for young people, McDonald's have been working closely with Youth Employment UK and in November 2018 were awarded the YEUK Youth Friendly Employer Award. This is a quality kitemark that assesses organisations against the best practice framework. The award supports organisations to embed a youth-friendly employment culture to help create a motivated and diverse future workforce. McDonald's have also been awarded at the School Leavers Awards 2019. These awards celebrate the top employers for school and college leavers who offer the best UK apprenticeships and school leaver programmes; as well as those who excel in areas such as job satisfaction, career progression, training and company culture.*

**89. Costa Coffee** - *Costa Coffee focuses on inclusivity within its workforce and has inclusivity groups including Shine (LGBTQ+ network) and Inside Out (focussed on mental wellbeing). Other key points include:*

- a. Costa Limited do not use zero hours contracts;*
- b. They are in full compliance with the European Working Time Directive;*
- c. There is a bonus scheme for all employees;*
- d. They have a high internal promotion rate; and*
- e. All employees are paid at least the minimum wage for 25 + year olds regardless of age*

**90. Taco Bell** *As a subsidiary of Yum! Brands, they are committed to diversity and inclusion from the top down of the organisation including the other franchisees such as KFC and Pizza Hut. Under Creed's leadership, the global franchisor is doubling its efforts to create an inclusive culture that unlocks potential in all types of people and fully leverages the diversity of thought that comes from our differences in gender, ethnicity race religion, age, sexual orientation, professional background, and even style of communication and leadership. In June 2020, Yum brands planned to invest \$100 million to fight inequality, with a global initiative to improve opportunities for frontline restaurant workers at its food brands such as Taco Bell to increase the diversity of the company's executive teams. In terms of employee benefits, key aspects include:*

- a. Bonus determined by the level in the organisation;*
- b. Year-round flex day Friday;*
- c. 4 weeks holiday per year*



- d. *Additional 2 weeks off during the calendar year for huge milestone anniversaries; and*
- e. *Comprehensive medical, dental, vision benefits*

91. **Fastned** *Although there are no employees onsite, the leading firm are committed to adhering to the remuneration policy providing different salary structures and a comprehensive pension plan as well as other benefits such as phones, computers and company cars. Furthermore, reward ratios are implemented in order to enhance transparency within the company.*

- *Occupiers who have strong ethical, environmental and social values and who will create in excess of 250 roles and training for local people as well as associated construction jobs as well*
- *Investment into the community through a variety of on-going and well-established community initiatives*
- *Provision of key local facilities for the new population and workforce associated with the planned Greater Faverdale Strategic Allocation to the north*

92. The proposed development will also provide retail facilities for residents of the local community, enhancing consumer choice within a sustainable and accessible location. The proposals will also complement other uses in the area, including the adjacent Lidl and Home Bargains. Also, given the extensive, planned residential use in the area, the proposals will provide local facilities which are highly accessible to serve the new residents.

#### **e) Environmental Impacts**

93. The proposed development has been designed to incorporate energy efficient design to reduce the overall energy consumption of the development. This includes high levels of insulation to the roof, walls and floor areas. Also, advanced glazing systems will be utilised to reduce heat loss and solar gain as appropriate to the buildings. Locally sourced materials will also be used where possible.
94. The proposed development incorporates a Fastned EV charging station which will increase availability and can assist in encouraging the uptake of electric vehicles and sustainable modes of transport. The application site is also situated in a sustainable and accessible location, close to specifically allocated public and private transport links and a large local walking catchment given the nearby recent and proposed housing allocations.
95. The site will also make use of previously developed land, one of the core planning principles contained within the NPPF contributing to environmentally sustainable patterns of development.
96. The proposed development will also deliver biodiversity net gains through offsetting via Durham Wildlife Trust which will secure the delivery of biodiversity credits in the Tees Lowlands area and will be secured by S106 agreement.

97. Finally, the proposed development will allow for any necessary mitigation measures to be undertaken to ensure the site is safe from contamination.

**f) Health Impacts**

98. The planning application has been supported by a Health Impact Assessment (HIA) in accordance with policy DC3 of the Local Plan. The Assessment reports that the proposal will involve a contribution towards biodiversity net gain offsetting schemes, has good, safe links to open spaces elsewhere in the locality; and includes a landscaping scheme. A Construction Management Plan would mitigate impacts on the local area during the construction phase and reports have been submitted relating to noise, once the development is operational. The development includes cycle storage and electric charging points and each unit will be subject to individual Travel Plan to promote the use of sustainable modes of transport. The applicant will consider the possibility of supporting training opportunities within the local community in accordance with policy DC5 of the Local Plan. These measures are welcomed
99. Objections have been received which relate to the addition of food outlets. There is currently no development plan policy which seeks to limit the number or location of food outlets within the Borough, rather each application is considered on its merits having regard to its impact on residential and visual amenity and highway safety, and any other material planning considerations. Obesity in an area has however been found to be a material consideration when deciding on applications for fast food outlets.
100. The HIA describes the poor levels of health experienced by many people living in Darlington including high levels of obesity and emergency hospital admissions for myocardial infarction and coronary heart disease. In 2021, 35.7% of adults (over 18) living in Darlington were classified as obese (this is significantly worse than the England average of 25.3%). Rates of childhood obesity in Darlington are also significantly higher than the England average with 26.2% of children aged 4-5yrs being classified as overweight or obese in 2021/22.
101. It is acknowledged that drive through units can provide unhealthy calorie-dense foods and evidence suggests this could result in negative impacts on the health of the local population who already have high levels of obesity and the associated disease and disability resulting from overweight and obesity. However, in the absence of any development plan policy relating to food outlets and their locations within the Borough and their impact on the health and wellbeing of an area, particularly in areas of high obesity, limited weight can be attached to this as a material consideration in the determination of this application

**g) Design and Layout and Impact on the Character and Appearance of the Area**

102. The industrial and commercial area within which the application site lies predominately comprises of vacant sites, such as the application site, two and single storey offices, warehouse and industrial buildings of varying ages and designs. The residential dwellings in the area are semi detached and detached properties. Planning

permission (ref no 18/00694/FUL) was recently granted for a Lidl supermarket, Home Bargains retail store and a Starbucks Drive Thru on the opposite side of Faverdale and therefore retail activity and buildings now also form part of the character of this part of the Faverdale Industrial Estate.

103. The proposed development is typical of retail developments with the buildings located along the boundaries of the site and car parking located primarily in the centre with landscaping taking place within and on the edges of the site. The active frontages of the buildings are generally facing inwards, towards the access road. The entrances of the buildings are directed towards the car parks. Active frontages can also be found on the outward facing sides of buildings allowing views over the site of the units from the surrounding transport network. The scale of the units varies depending on the operators and users on the scheme. The larger single storey units are set back to the more industrial east of the site, with the smaller single storey units in the more exposed and residential west. The development involves:

- Unit 1, a single storey building constructed from brickwork and render
- Unit 2, a single storey building constructed from dark grey brick and timber effect cladding.
- Unit 3, a single storey building with a mono pitch roof constructed from facing brickwork, metal cladding.
- Unit 4, a row of larger single storey units (4a to 4e) constructed from brickwork and cladding with entrances to each unit via a projected entrance features with canopies over the glazed entrances
- Unit 5, a single storey building constructed from cladding of varying design and colours
- Unit 6, a stereotypical industrial unit constructed from metal cladding
- The electric vehicle charging station is located on the west boundary and comprises an open, canopy area

104. The buildings are of a modern design with flat roof forms, contemporary modern curtain glazing and cladding systems; feature walls of brick. The proposal incorporates energy efficient design to reduce the overall energy consumption of the development. This includes high levels of insulation to the roof, walls and floor areas. In addition, advanced glazing systems will be utilised to reduce heat loss and solar gain as appropriate to the buildings. Local sourced materials where available will be utilised to help ensure a more sustainable construction.

105. The application site would be visible from West Auckland Road and Faverdale Black Path as well as along Faverdale, where the main access is located. The site lies within the employment zone (EZ) as outlined within the characterisation study for Council's Design SPD. The design and massing of the proposed layout is in keeping with the local vernacular and takes reference from the detailed characterisation guidance contained within the SPD.

106. Overall, it is considered that the development is acceptable in visual and design terms and would complement the retail development approved under 18/00694/FUL.
107. The proposal would accord with policy DC1 of the Local Plan in this regard.

**h) Residential Amenity**

108. The application site is bound to the north by a new retail development; to the east by commercial businesses, to the south by public open space and to the west by a Solicitors Office and West Park housing development. There are dwellings to the north west on Faverdale Road/West Auckland Road
109. It is considered the nearest dwellings would not be adversely impacted upon in terms of outlook or loss of privacy due to the proximity distances between them and the application site.
110. A planning condition has been imposed to secure the submission of a lighting assessment associated with any external lighting proposals (excluding signage on buildings which would be subject to separate applications for advertisement consent).
111. Other planning conditions have been imposed to safeguard the amenity of the area in terms of external plant and equipment on the buildings and hours of deliveries to the site.
112. With regard to the proposed industrial unit in the southeast corner of the site, the planning application states that this would be a 24/7 operation. The submitted noise assessment has considered noise associated with the industrial unit (including HGV manoeuvring and unloading) and concludes, based on modelling, a negligible or low impact on sensitive receptors in accordance with BS4142 during both daytime and nighttime periods. There is a need to impose planning conditions to control the hours of the deliveries to the unit and the installation of any external plant, equipment and machinery.
113. Other than the industrial unit, the applicant cannot confirm the operating hours of the proposed units but a worst case scenario was assessed for noise purposes in the submitted noise report, which has been considered by Environmental Health. Due to the location of the site and separation distance between the site and the residential dwellings, it is not considered reasonable to impose planning conditions restricting the hours of opening but as stated above, conditions on the hours of deliveries have been recommended.
114. A planning condition has been imposed to secure the submission of a Demolition and Construction Management Plan
115. It is considered that the proposed development is acceptable in amenity terms and would accord with policy DC4 of the Local Plan.

**i) Highways Matters**

*Impact on Local Highway Network*

116. *Following detailed comments from the Council's Highways Engineer, the location and design of the vehicular access off Faverdale has been amended and other key outstanding highway matters have been addressed.*

117. A plan of offsite highway works, and access locations has been submitted as which demonstrates that the minimum required opposite junction spacing of 40m from the recently opened retail development opposite can be achieved. The revised access location is therefore in accordance with Tees Valley design Guide standards for industrial development junction spacing.

118. The proposed ghost island right turn lane into the site should be designed in accordance with the latest DMRB guidance CD-123 and provide suitable turning length, deceleration length and queueing length (based on anticipated generated traffic from the TA and car park accumulation). The relocation of the access and revised pedestrian crossing arrangements facilitate addition queue length, and the design is broadly in line with advised standards. Additional design work required for S278 technical approval and submission of a road safety audit (RSA) can be secured by a planning condition. Given that the RSA may inform design changes it would be prudent to undertake this as soon as practicable.

119. A Junctions 9 capacity assessment of the staggered junction formed by Faverdale, the existing access road to Home Bargains/Lidl/Starbucks and the proposed site access road has been undertaken. The proposed development's traffic has then been added to the future baseline flows to obtain the Future Total Operational Case scenario. The results are presented demonstrate that the staggered junction will operate well within capacity without and with the predicted development traffic flows, and in both cases with the inclusion of the Home Bargains/Lidl/Starbucks traffic. The junction arm with the maximum ratio of flow to capacity (RFC) will be the Lidl access with an RFC of 0.37 in the 2026 Future Total Case weekend peak hour, whilst the maximum RFC experienced by the site access will be 0.20 in the 2026 Future Total Case weekday PM peak hour. Both RFCs will be well below the typical threshold of 0.85, generally considered to be the point beyond which a junction starts to approach capacity. It is therefore accepted that the assessment work demonstrates that the junction will operate within capacity within current and future assessment years.

120. Amendments have not been made to the site access internally where the right turn exit lane was not considered necessary and was detrimental to pedestrian and cycle movements east-west along Faverdale. The revised layout requires pedestrian and cyclist to deviate slightly into the site access to travel east west along Faverdale but is within permitted guidance to not require a central crossing refuge. The required crossing and footway cycleway must be included within a combined S278/38 Agreement to ensure that the crossing is included within the extent of public highway on completion.

121. Footway & cycleway connections are demonstrated extend across the site frontage as part of the offsite works, this will form part of Section 38/278 works as currently the adopted highway boundary is not sufficiently wide to enable the construction of a footway. Whilst the route will terminate at the eastern end of the site, a dropped crossing with tactile paving should be provided to enable pedestrians to cross to the footway located on the northern side of Faverdale. This should also include a pedestrian refuge given the width of Faverdale and provide a suitable detail to enable cyclists to pickup/drop off from the cycleway. Exact details of the cycleway/footway terminal points can be agreed as part of Section 278 works and secured by condition.
122. Whilst the applicant has confirmed that they do not intend to upgrade the separate service yard access, which is owned by the applicant. Further clarification has been provided as part of the Milestone Transport Technical Note submitted (June 2023). *“Pedestrians and cyclists will have a dedicated route along the south of Unit 4e, as shown on Drawing 1810-SK-53D produced by Ellis Healey Architecture. They will be able to access the site via the main access road on Faverdale. The dedicated internal footways and pedestrian crossings or the car park’s circulation lanes will then lead them to Unit 6. They will be actively discouraged from using the secondary service access road by the overarching Framework Travel Plan and the individual Travel Plan for Unit 6. This access road will be reserved for delivery and servicing vehicles serving either Units 4a-e or Unit 6, and employees and visitors of Unit 6 travelling by car only. Unless previously mentioned, no customers or other members of the general public will have a reason to access this part of the proposed development, and therefore it is not expected that any conflicts between vehicles, pedestrians and cyclists will arise within the two servicing areas located to the rear of the site”*. The above information is accepted and considered to fully address previous access concerns to the above units.
123. Vehicle parking is generally in accordance with Tees Valley Design Guide standards and therefore accepted. Additionally, a car park accumulation exercise has been undertaken and further demonstrates that sufficient provision is made to accommodate peak demand. Any risk of overspill parking on the public highway is therefore considered to be low.
124. Where servicing of the site is via the main entrance and public car park, (units 1, 2, 3a,3b 3c, & 5) a service management plan would be recommended to ensure that access for large servicing and delivery vehicles is practicable. This should be undertaken outside of trading/opening hours. The units located to the eastern side of the site (units 4a, 4b, 4c, 4d, 4e, & Unit 6) are serviced via a dedicated service access/route not open to the public, and a such could potentially be accessed at times when the site is open to the public. This information can be secured via a planning condition as agreed in the latest Milestone Technical Notes.
125. Whilst it is accepted that the traffic generation and diverted trips associated with the development do not demonstrate the ‘severe impact’ required to warrant refusal as

required under NPPF guidance, the site does nonetheless contribute towards cumulative impact on both the local and strategic highway network.

126. Local Plan Policy IN1 requires developers to mitigate the impact of development, including the cumulative impact of allocated sites on junctions and the strategic road network. The agreed generation and distribution should be put through the Systra Local Plan model to determine impact and apportion a cost proportionately to the cumulative impact of the site.
127. Although development identified within local plan is also considered not to have a 'severe impact,' this is based on successfully delivering the highway mitigation measures identified as part of the local plan infrastructure delivery plan (IDP). This details a range of measures required to maintain the safe and expeditious operation of the local and strategic highway network, which support economic growth and ensure reasonable journey times within both Darlington and the wider Tees Valley.
128. Mitigation measures identified within the IDP are likely to be funded by a variety of means, including financial contributions from developers secured as part of S106 obligations. The Local Highway Authority has therefore been working with the Highway Consultants Systra, to develop a contribution model to determine costs which developers will be required to pay which will ensure that obligations are sought in a way which is consistent, fair, and proportionate to the scale and impact of development.
129. Unfortunately, as the modeling work has yet to be completed, the developers cannot be presented with confirmation as to what their exact contribution would amount to. Following discussions between officers and the applicant, an agreement has been reached that a contribution of £50,000 will be made towards these offsite highway works in accordance with policy IN1 of the Local Plan. This agreement has therefore enabled this planning application to be progressed and considered by Members.
130. The Council's Highways Engineer has raised no objections to the planning application subject to the imposition of appropriate planning conditions.

#### *Impact on Strategic Road Network*

131. National Highways have reviewed the planning application at every stage. They have noted that each operator will implement their own Travel Plans and they have advised that their review of the supporting documents demonstrates that the impact at Junction 58 is likely to be less than 30 two way vehicles in the traditional weekday peaks and around 30 vehicles during the Saturday peak. National Highways have further advised that the revised scheme would result in a net reduction in the amount of traffic generated and they have raised no objections with regard to the impact of the development on the Strategic Road Network.

#### *Sustainable Transport*

132. The site has good public transport accessibility, which will provide easy sustainable access for workers and visitors. There are a number of bus services available within

close proximity of this site on West Auckland Road and Faverdale Road. The development site provides good pedestrian connectivity to the wider walking infrastructure, good crossing points are also noted throughout the site.

133. The development site is well facilitated by the cycle network with various cycle routes in the surrounding area that connect to the wider cycle network. Cycle parking is provided at each of the buildings and the design and number will need to accord with the most recent cycle guidance issued (Cycle Infrastructure Design - Local Transport Note 1/20 July 2020). This will be secured by a planning condition. It has been noted within the Amended Transport Assessment and Travel Plan that cycle parking will be monitored and additional facilities will be provided if necessary, which is welcomed.
134. The electric charging vehicles station is welcomed.

#### *Travel Plan*

135. A Framework Travel Plan has been submitted as part of a Transport Assessment which is designed to encourage customers, visitors and employees to travel sustainably and to consider their transport options when travelling to and from the development site. As set out in the Council's adopted Travel Plan Guidance Framework Travel Plans and subsequent occupier Travel Plans are to be submitted using the Modeshift STARS platform and the developer will be expected to pay for monitoring fees, personalised travel advice and a Travel Plan Implementation bond. The contributions would be secured via the Section 106 Agreement.
136. Overall, it is considered that following the submission of amended plans, the proposed development is acceptable in terms of matters such as traffic generation, highway safety, parking provision, cycle parking, connectivity and it would accord with policies DC1, IN1, IN2, IN3 and IN4 of the Local Plan

#### **j) Ecology**

137. The Site has previously been developed and then partially remediated, with former industrial units having been demolished. Large areas of hardstanding still remain, and beneath this will be made ground comprising various crushed aggregates. The underlying geology will therefore have little influence on the habitats currently present. The remainder of the site includes amenity grass, neutral grassland, mixed shrubs and trees. There are no ponds on the site.
138. The hardstanding areas have negligible ecological value and the grassed areas, trees and shrubs being considered as having low or moderate distinctiveness. The buildings contain no obvious potential bat roost features and no further survey works is required for Great Crested Newts, birds, badgers or reptiles.
139. The planning application was submitted prior to the adoption of the Borough of Darlington Local Plan which requires the need for a development to demonstrate biodiversity net gain (policy ENV8). The biodiversity impacts associated with the proposed development have been subsequently assessed using the DEFRA Biodiversity



Metric 3.1. The BNG assessment outlines that the site currently has a baseline score of 6.14 habitat units and 0.78 hedgerow units. Whilst the proposals will see an increase in hedgerow units of 0.92 units (118.52%) due to 105m of existing 'line of trees' habitat being retained and 321m of new native hedgerow being planted there is a loss in habitat units of 3.17 (-51.58%). The proposals require 2.95 ha of built development on the site which score 0 habitat units and in the remaining public open space areas flowering lawn, wildflower grassland, shrub and tree planting has already been included within the design to maximise the habitat units on site as far as possible. It is not possible to achieve any additional habitat units on the site and the applicant does not own any other land in the borough which could be used for offsetting. In order to demonstrate a net gain in biodiversity, a scheme to secure in excess of 3.17 BDU would be required.

140. The submitted net Gain Assessment outlines that this could be delivered off-site through an off-setting provider and the applicant has begun discussions with Durham Wildlife Trust. Local Plan Policy ENV8 states that whilst on-site provision will be the first priority, off-site compensatory measures will be permitted with adequate reasoned justification. The achievement of an on-site net gain on retail development can frequently be difficult due to the nature of the development and furthermore in this instance, the planning application was submitted and planned prior to the need to consider biodiversity net gain via the local development plan. In this case, the applicant does not control any land beyond the application site in the immediate surrounding area. Whilst the proposed landscaping and on-site biodiversity enhancements would provide some off-set, this would still result in a net-loss in biodiversity. In recognition of this, and the prevailing planning policy position, there is a commitment to compensating for this deficit by delivering biodiversity enhancements off-site to a level that achieves an overall biodiversity net gain.
141. Darlington Borough Council does not yet have a system in place for providing off-site mitigation on Council owned/managed land in lieu of financial contributions. As stated, the applicant has advised however that discussions have taken place with Durham Wildlife Trust to off-set the on-site losses. In view of the above considerations, in this instance it is considered that BNG can be provided off-site, and a suitably worded condition has been agreed with the applicant. Overall, the proposal is considered to comply with Local Plan Policies ENV7 and ENV8.

#### **k) Trees and Landscaping**

142. There are existing trees within the application site, primarily located on the embankment with West Auckland Road (A68) and on land to the north of Faverdale Black Path. There are also some individual trees on the Faverdale street frontage. None of the trees are covered by a Tree Preservation Order or located within a conservation area.
143. An Arboricultural Impact Assessment and Tree Survey has been submitted in support of the planning application. The tree survey revealed a total of forty-five individual trees and three groups of trees. Of these, twenty-seven trees/groups were identified as retention category 'B', nineteen trees were identified as retention category 'C' and two

trees were identified as retention category 'U'. There were no retention category 'A' trees identified.

144. Thirty-one individual trees plus one group are expected to be removed to facilitate the development. The tree removal equates to 17 category C trees; 12 category B trees; 2 category U trees and a group of Pines (category B). The trees to be removed are those on the Faverdale street frontage, on part of the land to the north of Faverdale Black Path and on the top of the A68 embankment.
145. The trees to be retained, which are those located elsewhere and lower down the A68 embankment would be protected during the construction phase by fencing as outlined in the Assessment which would be secured by a planning condition.
146. The Assessment advises that the proposed tree loss can be mitigated by replacement tree planting as part of a landscaping scheme. Due to the latest amendments to the access and layout of the scheme, there is a need to impose a planning condition to secure a landscaping scheme, planting schedule and soft landscape specification. Based on the previously submitted scheme (now superseded) the scheme would be a mix of extensive hedge planting on the boundaries and embankment; individual trees, flowering lawns and wildflower grass areas. The proposal would accord with policy DC1, ENV4 and ENV5 of the Local Plan in this regard

#### **I) Flood Risk**

147. The planning application has been supported by a Flood Risk Assessment which confirms that the site is located in Flood Zone 1 which has a low probability risk of experiencing flooding from fluvial sources. All potential sources of flood risk at the application site have been assessed as low; the implementation of the development will not interfere with any known flood paths for the 1 in 100 year flood event, the surface water drainage strategy will incorporate drainage techniques to reduce surface water run off rates from the site and the application site complies with the NPPF 2021.
148. The application includes enough information to satisfy the Local Lead Flood Authority that a surface water runoff solution can be achieved without increasing existing flood risk to the site or the surrounding area. However, a detailed design for the management of surface water runoff from the proposed development has not been provided but and information can be secured by condition.
149. Following the removal of the petrol filling station from the scheme and the submission of further Geo-Environmental Reports, the Environment Agency has no objections to the proposed development. The EA have requested the imposition of a list of Informatives to be added to any approval.
150. In making their responses to the local planning authority, Northumbrian Water assesses the impact of the proposed development on their assets and assesses the capacity within their network to accommodate and treat the anticipated flows arising

from the development. Northumbrian Water do not offer comment on aspects of planning applications that are outside of their area of control. Northumbrian Water has no objection to the principle of the development but advised that the planning application does not provide sufficient detail with regards to the management of foul water from the development for Northumbrian Water to be able to assess their capacity to treat the flows from the development. This can be secured via a planning condition.

151. The principle of the proposed development would accord with policy DC2 of the Local Plan in this regard.

**m) Air Quality**

152. The planning application has been supported by an Air Quality Assessment and a further Addendum in response to queries raised by the Environmental Health Officer. The Addendum concludes that the annual mean particulate matter (PM2.5) concentration as a result of the development is predicted to be negligible at the existing sensitive receptors. The Environmental Health Officer is satisfied with the conclusion of the reports and there are no further comments to make with regard to air quality. The application would accord with Policy DC4 of the Local Plan in this regard.

**n) Land Contamination**

153. The planning application has been supported by Contamination Risk Assessments and Ground Investigation Reports.

154. The Environment Agency initially objected to the application due to concerns over risks to controlled waters and insufficient information being provided in relation to former tanks, the site's geology and concerns around the proposed petrol filling station. This objection was removed (August 2021) following the removal of the petrol filling station from the proposed development. The EA has now advised that in terms of ground water contamination, the site is outside of any source of protection zones and therefore not within the highest risk environmental area. Whilst the site is in a lower environmental sensitive area, the EA has advised that the Local Planning Authority are responsible for ensuring the application appropriately investigates and addresses the risk to controlled waters, both surface and ground waters.

155. To ensure an up to date comprehensive review in relation to land contamination is undertaken, Environmental Health have recommended the imposition of all the standard conditions relating to land contamination.

156. The planning application would accord with policy DC1 of the Local Plan in this regard.

**o) Rights of Way**

157. The Faverdale Black Path is a Public Bridleway (No 19) and it runs along the south boundary of the application site. The Council's Public Rights of Way Officer has no

objections to the proposal in respects to the impact on the bridleway. The development would accord with Policy IN1 of the Local Plan in this regard.

**p) Impact on Barnard Castle Trackbed**

158. The Faverdale Black Path is also part of the historic Barnard Castle Trackbed. Policy ENV3 of the Local Plan seeks to ensure that historic routes are retained and enhanced. The Black Path is a tarmacked highway and footway which runs along, but outside the southern boundary of the application site. The Black Path provides vehicular access to other commercial buildings and pedestrian access to the wider area and housing developments. The section of the Path which is adjacent to the application site has landscaping, trees and vegetation on both sides, with the north section, which would be integrated into the application site, quite open with intermittent tree planting. There are hardstanding areas in this location following the demolition of buildings which have become overgrown and it is under the ownership of Darlington Borough Council.

159. As part of the development, a retaining wall will be erected along the length of the south boundary to create a level site. This wall would be augmented and overtime, screened by native species hedging. The precise details of the retaining wall, including design and materials, can be secured via a planning condition.

160. Whilst the route of the Black Path would remain unchanged, the proposal will change the character and appearance of the existing land to the north of the Black Path by introducing built development up to the edge of the existing highway. However, it is considered that this impact is acceptable. The planning application would accord with Policy ENV3 of the Local Plan in this regard.

**q) Planning Obligations**

161. Where a relevant determination is made which results in planning permission being granted for development, a planning obligation may only constitute a reason for granting planning permission for the development if the obligation is:

- a. Necessary to make the development acceptable in planning terms;
- b. Directly related to the development; and
- c. Fairly and reasonably related in scale and kind to the development.

162. The agreed Heads of Terms, based on the information submitted within the planning application, proposes the following

- a. A Travel Plan including a monitoring fee; a personalised Travel Advice fee and a Travel Plan Implementation bond equating to £47,250
- b. A financial contribution of £50,000 towards offsite highway improvement works to be identified in the Infrastructure Delivery Plan

**THE PUBLIC SECTOR EQUALITY DUTY**

163. 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. All buildings would include level access arrangements and disabled facilities and the wider layout includes appropriate crossings and parking provision for people with mobility issues. The proposal would accord with policy IN2 of the Local Plan in this regard.

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

164. 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. The proposal is accessible for everyone and comprises disabled parking for all units as well as bespoke surrounding landscaping with pedestrian walkways. The scheme would accord with policy IN2 of the Local Plan in this regard

#### **CONCLUSION AND RECOMMENDATION**

165. The application site is part of an area identified as employment land and therefore the proposed development is a departure from the local development plan. Furthermore, Nexus Planning, an expert and independent retail consultant has advised that the proposed development meets the sequential test but fails to conform to the requirements of the retail impact test as they have advised that the proposal will have a significantly adverse impact on both Cockerton District Centre and the town centre and the development would not accord with the National Planning Policy Framework 2021 or the local development plan which is clearly an important factor in determining the application

166. 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 (2019) supports the plan led system providing that planning decisions should be “genuinely plan-led” (NPPF para 15).

167. With regard to the use of employment land for the alternative proposed uses, it is clear that even taking into consideration the loss of such land to similar purposes on the opposite side of Faverdale (planning application ref no 18/00694/FUL) a surplus of employment land is allocated throughout the Borough and safeguarded for such uses meaning it is unlikely that this proposal will result in a shortfall in land availability for these uses across the Borough. The likelihood that the site will be an attractive option for B1, B2 or B8 operators is a material planning consideration and having taken into account the marketing history of the site including the length of time that it has been vacant, land contamination and viability issues, it is considered unlikely that the site would be brought forward for such purposes.

168. With regard to retail impact, the advice from Nexus Planning has been considered by officers alongside other material planning considerations as required by S.38(6) of the Planning and Compulsory Purchase Act 2004 and current planning case law. The material considerations are discussed in this report and have been split into economic, social and environmental impacts in accordance with the NPPF's presumption in favour of sustainable development. These are matters are material planning considerations which show that the proposed development will bring a vacant brownfield site in a sustainable location back into active use, create substantial wider benefits to the area such as opportunities for inward investment, local jobs and aiding social and economic development. The retail impacts of the development on the town centre and Cockerton District are fully acknowledged and have been taken into account, however Officers consider that there are other material planning considerations which outweigh the identified harm to the centres and therefore the principle of the proposed development can, in such circumstances, be supported in accordance with Section 38(6) of the Planning and Compulsory Purchase Act.

169. The access arrangements for the site have been amended following comments from the Council's Highways Engineer and it is considered that the proposal is acceptable in highway terms, visual and design terms and general amenity terms alongside other matters such a land contamination, drainage and air quality, subject to the imposition of appropriate planning conditions. Biodiversity net gain would be secured via an offsetting scheme in accordance with the local development plan and the necessary planning obligations would be secured via a Section 106 Agreement.

**THE DIRECTOR OF ECONOMIC GROWTH BE AUTHORISED TO NEGOTIATE AN AGREEMENT UNDER SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990 WITHIN SIX MONTHS TO SECURE PLANNING OBLIGATIONS THAT ARE APPROPRIATE FOR THE DEVELOPMENT COVERING:**

- a) A Travel Plan including a monitoring fee; a personalised Travel Advice fee and a Travel Plan Implementation bond equating to £47,250
- b) A financial contribution of £50,000 towards offsite highway improvement works to be identified in the Infrastructure Delivery Plan

**THAT UPON SATISFACTORY COMPLETION AND SIGNING OF THAT AGREEMENT, PLANNING PERMISSION BE GRANTED SUBJECT TO THE FOLLOWING CONDITIONS AND REASONS:**

**SHOULD THE 106 AGREEMENT NOT BE COMPLETED WITHIN THIS PRESCRIBED PERIOD WITHOUT WRITTEN CONSENT OF THE COUNCIL TO EXTEND THIS TIME, THE MINDED TO APPROVE STATUS OF THE PERMISSION SHALL BE CONSIDERED TO BE A REFUSAL ON THE GROUNDS THAT THE APPLICATION HAS FAILED TO PROVIDE ADEQUATE MITIGATION MEASURES TO PROVIDE A SATISFACTORY FORM OF DEVELOPMENT IN ACCORDANCE WITH THE REQUIREMENTS OF DARLINGTON LOCAL PLAN 2016-2036, WITHOUT ANY FURTHER REFERENCE TO THE PLANNING COMMITTEE**

1. The development hereby permitted shall be commenced not later than the expiration of three years from the date of this permission.

REASON - To accord with the provisions of Section 91(1) of the Town and Country Planning Act, 1990.

2. The development hereby permitted shall be carried out in accordance with the approved plans, as detailed below:

- a) Drawing Number 1810 PL 102F – Proposed Site Layout
- b) Drawing Number 20 147/006 Rev A – Wider Site Context
- c) Drawing Number 20 147/TK11 Rev A – Swept Path Analysis Max Legal Articulated Vehicle
- d) Drawing Number 1810 PL 120A – Proposed Ground Floor Plan Unit 3
- e) Drawing Number 1810 PL 121A – Proposed Roof Plan Unit 3
- f) Drawing Number 1810 PL 122A – Proposed Elevations 1 & 2 Unit 3
- g) Drawing Number 1810 PL 123 – Proposed Elevations 3 & 4 Unit 3
- h) Drawing Number 1810 PL 115A – Proposed Ground Floor Plan Unit 2
- i) Drawing Number 1810 PL 116A – Proposed Roof Plan Unit 2
- j) Drawing Number 1810 PL 117A – Proposed Elevations 1 & 2 Unit 2
- k) Drawing Number 1810 PL 118A – Proposed Elevations 3 & 4 Unit 2
- l) Drawing Number 1810 PL 125B – Proposed GA Floor Plan Unit 4
- m) Drawing Number 1810 PL 126B – Proposed GA Roof Plan Unit 4
- n) Drawing Number 1810 PL 127B – Proposed Elevations 1 & 2 Unit 4
- o) Drawing Number 1810 PL 126C – Proposed Elevations 3 & 4 Unit 4
- p) Drawing Number 1810 PL 145 – Proposed GA Floor Plan Unit 6
- q) Drawing Number 1810 PL 146 – Proposed Roof Plan Unit 6
- r) Drawing Number 1810 PL 147 – Proposed Elevations 1 & 2 Unit 6
- s) Drawing Number 1810 PL148 – Proposed Elevations 3 & 4 Unit 6
- t) Drawing Number 1810 PL 135 – Proposed GA Floor Plan Unit 5
- u) Drawing Number 1810 PL 136 – Proposed GA Roof Plan Unit 5
- v) Drawing Number 1810 PL 137 – Proposed GA Elevations Unit 5 Elevations 1 & 2
- w) Drawing Number 1810 PL 138 – Proposed GA Elevations Unit 5 Elevations 3 & 4
- x) Drawing Number 1810 PL 140 – Proposed Charging Station
- y) Drawing Number 1810 PL 110 – Proposed Ground Floor Plan Unit 1
- z) Drawing Number 1810 PL 111 – Proposed Floor Plan Unit 1
- aa) Drawing Number 1810 PL 112 – Proposed Elevations 1 & 2 Unit 1
- bb) Drawing Number 1810 PL 113 – Proposed Elevations 3 & 4 Unit 1
- cc) Drawing Number 1810 PL 100 – Site Location Plan

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

3. Units 4a, 4b, 4c, 4d and 4e hereby permitted and shown on Drawing Number 1810 PL 102F – Proposed Site Layout shall be used for the retailing of non food sales only in bulky comparison goods normally found in retail parks which are DIY home and garden improvements, car maintenance and accessories, building materials and builders'

merchants goods furniture, carpets, electrical goods, garden items and such other trades goods as the Council may permit in writing and for no other purpose (including any other purpose in Class E of Schedule 2 to the Town and Country Planning (Use Classes) Order 1987 or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order)

REASON: In the interests of retail planning policy

4. Units 3c hereby permitted and shown on Drawing Number 1810 PL 102F – Proposed Site Layout shall be used as a veterinary practice and for no other purpose (including any other purpose in Class E of Schedule 2 to the Town and Country Planning (Use Classes) Order 1987 or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order)

REASON: In the interests of retail planning policy

5. Units 3b hereby permitted and shown on Drawing Number 1810 PL 102F – Proposed Site Layout shall be used as a tanning salon and for no other purpose (including any other purpose in Class E of Schedule 2 to the Town and Country Planning (Use Classes) Order 1987 or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order)

REASON: In the interests of retail planning policy

6. There shall be no internal sub-division of any unit hereby approved.

REASON: In the interests of retail planning policy

7. Prior to the first occupation of the development, a certificate confirming the agreement of an 'Off-Site Biodiversity Net Gain' or 'Offset' Provider to deliver a Biodiversity Offsetting Scheme totalling greater than 13.17 biodiversity units shall be submitted to and agreed in writing by the Local Planning Authority. The Biodiversity Offsetting Scheme which shall run for a period of not less than 30 years to be delivered by the 'Off-Site Biodiversity Net Gain Provider' or 'Offset' Provider should be located within the Darlington Borough Council administrative area or other location within the Tees Lowland Character Area, as defined by Natural England (that area recorded in DEFRA Magic Mapping, July 2022, and extending across Darlington, towards Richmond and Barnard Castle to the west and to the coast to the east, between Hartlepool and the northern edge of the North York Moors National Park) unless otherwise agreed in writing by the Local Planning Authority. The written approval of the Council shall not be issued before the certificate has been issued by the Off-Site Biodiversity Net Gain Provider or Offset Provider. The details of biodiversity enhancements, together with provision for future monitoring and reporting shall be documented by the Off-Site Biodiversity Net Gain Provider or Offset Provider and issued to the Council for their records.



REASON: To comply with Local Plan Policies ENV7 and ENV8

8. Prior to the commencement of the development except for investigative works, precise details of all required offsite highway works must be submitted to and approved in writing by the Local Planning Authority. Details shall include the proposed 'Ghost Island' Junction access to be designed in accordance with DMRB CD123. Details shall also include, footways and cycleway routes linking the development to existing infrastructure, crossing points, and associated signage and road markings. Details shall also include where appropriate' removal and reinstatement of existing access points, additional off-site parking restrictions, bus stop amendments and resurfacing works. The agreed works must be completed prior to occupation of the first unit, unless agreed otherwise in writing with the Local Planning Authority.

REASON: To ensure that the detailed design is appropriate, and that required infrastructure for safe access is delivered at the appropriate time, in the interests of the safety and convenience of all highway users.

9. Prior to commencement of works on site, except for investigative works, an independent Stage 2 Road Safety Audit (RSA) carried out in accordance with GG119 - Road Safety Audits or any superseding regulations must be included in the submission and the design proposals must be amended in accordance with the recommendations of the submitted Safety Audit prior to the commencement of works on site.

REASON; In the interests of highway safety.

10. Prior to occupation of the first unit, and each additional unit thereafter, a servicing and delivery schedule to control operations on site shall be submitted to and approved in writing by the Local Planning Authority. Details shall include but are not limited to; the type and maximum size of vehicle to be used, access and turning routes, drop off location, times, and frequency of deliveries. Deliveries and servicing arrangements must thereafter be in accordance with the agreed plan.

REASON; In the interests of highway safety.

11. Prior to the commencement of the development, precise details of the retaining boundary walls shall be submitted to and agreed in writing by the Local Planning Authority. The details shall include the height and design of the wall and the materials and the development shall not be carried out otherwise than in complete accordance with the approved details

REASON – In the interest of the visual appearance of the development and surrounding area

12. Prior to the commencement of the development including any demolition works, a site-specific Demolition and Construction Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The plan shall include the

following, unless the Local Planning Authority dispenses with any requirement[s] specifically and in writing:

- a. 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 construction phase 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.
  - b. Methods for controlling noise and vibration during the demolition and construction phase and shall take account of the guidance contained within BS5228 "Code of Practice for noise and vibration control on construction and open sites".
  - c. Construction Traffic Routes (including plant and machinery), including parking areas for staff and visitors,
  - d. Details of wheel washing
  - e. Details of site hoarding fencing (no less than 2m in height of a solid construction with no gaps or loose panels)
  - f. Road Maintenance.
  - g. Warning signage.
  - h. Details of any temporary construction access to the site including measures for removal following completion of construction works.
  - i. Areas for storage of plant and materials used in constructing the development clear of the highway
  - j. Details of the measures to be taken for the protection of trees; and
  - k. Contact details for the responsible person (site manager/office) who can be contacted in the event of any issue.
- l. The development shall not be carried out otherwise in complete accordance with the approved Plan.

REASON: In the interests of the amenity of the area and highway safety

13. Construction and demolition activities, including delivery of materials and external works in terms of fitting out the units, shall be limited to the hours of 08.00-18.00 weekdays, 08.00-13.30 on Saturdays and not at all on Sundays or Bank Holidays without prior consent of the Planning Authority

REASON: In the interests of the amenity of the surrounding area

14. Notwithstanding the approved plans, no individual building shall be constructed above damp proof course until precise details of all external materials to be used in the construction of that building has been submitted to and approved in writing by the Local Planning Authority. The development shall not be carried out otherwise than in complete accordance with the approved details unless otherwise agreed in writing by the Local Planning Authority

REASON: In the interest of the visual appearance of the development and surrounding area

15. The development hereby permitted shall be constructed to BREEAM 'Very Good' standard or better unless otherwise agreed in writing by the Local Planning Authority

REASON - To comply with the requirements of Local Plan Policy DC1

16. No building shall be constructed above damp proof course until precise details of the cycle parking and storage provision for both staff and visitors for that building has been submitted to and approved in writing, by the Local Planning Authority. The parking provision shall accord with guidance contained within Cycle Infrastructure Design – Local Transport Note 1/20 July 2020 unless otherwise agreed in writing by the Local Planning Authority. The development shall not be carried out unless than in complete accordance with the approved details which shall be available for use prior to occupation and retained in situ for the lifetime of the development.

REASON: To encourage the use of sustainable modes of transport

17. No building shall be constructed above damp proof course until a landscaping scheme, planting schedule and soft landscape specification has been submitted to, and approved in writing by, the Local Planning Authority and, upon approval of such schemes, it shall be fully implemented concurrently with the carrying out of the development, or within such extended period as 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 - To ensure a satisfactory appearance of the site and in the interests of the visual amenities of the area

18. Deliveries to the commercial and industrial premises hereby approved and collections of waste shall only take place between the hours of 07.00 – 21.00 Monday to Sunday unless otherwise agreed in writing by the Local Planning Authority

REASON: In the interests of the amenity of the surrounding area

19. Prior to occupation of the development as a whole or each unit, a full lighting impact assessment for the lighting proposals, undertaken by an independent qualified assessor shall take place and be agreed in writing with the Local Planning Authority. This should include:
  - i. A description of the proposed lighting units including height, type, angling and power output for all lighting

- ii. Drawing(s)/contour plans showing the luminance levels both horizontal and vertical of the lighting scheme to demonstrate that no light falls into the curtilage of sensitive neighbouring properties;
- iii. The Environmental Zone which the site falls within, in accordance with the Institution of Lighting Professionals Guidance on the Reduction of Obtrusive Light, to be agreed with the Local Planning Authority. The relevant light sensitive receptors to be used in the assessment to be agreed with the Local Planning Authority in advance of the assessment.
- iv. Details of the Sky Glow Upward Light Ratio, Light Intrusion (into windows of relevant properties) and Luminaire Intensity.
- v. The limits for the relevant Environmental Zone relating to Sky Glow Upward Light Ratio, Light Trespass (into windows) and Luminaire Intensity, contained in Table 2 (Obtrusive Light Limitations for Exterior Lighting Installations) of the Institute of Lighting Professionals Guidance on the Reduction of Obtrusive Light shall not be exceeded.

REASON: In the interests of residential amenity and the visual appearance of the locality

20. If piling is to be carried out, it shall be of the augured type unless prior approval is obtained from the Planning Authority. If an alternative method of Piling is to be used, then a noise and vibration impact assessment for this is to be submitted to and approved in writing by the Local Planning Authority before the commencement of any works

REASON: In the interests of the amenity of the surrounding area

21. No noise emitting fans, louvres, ducts or any other external plant associated with this permission shall be installed on the buildings, other than the industrial unit (see condition 22) until a scheme to reduce noise and vibration has been submitted and approved by the Local Planning Authority. The development shall not be carried out otherwise than in complete accordance with the approved details

REASON: In the interests of the amenity of the surrounding area

22. No external plant, equipment or machinery shall be installed on the industrial unit associated with the proposed development without the prior written approval from the Local Planning Authority. Where external plant, equipment or machinery is proposed details shall be submitted in writing to the Local Planning Authority prior to its installation and must include the type of plant, equipment or machinery to be installed, operational details and the proposed locations. If deemed necessary by the Local Planning Authority appropriate noise mitigation measures shall be implemented prior to the plant, equipment or machinery first becoming operational and thereafter shall be retained, operated and maintained in accordance with the approval for the life of the development

REASON: In the interests of the amenity of the surrounding area

23. Prior to the commencement of the development and any further site investigative works a Phase 1 Preliminary Risk Assessment shall be prepared by a "suitably competent person(s)" and submitted to and agreed in writing with the Local Planning Authority. The Phase 1 Preliminary Risk Assessment shall include a Site Inspection and a Conceptual Site Model (CSM) to identify and illustrate all potential contamination sources, pathways and receptors associated with the site and the surrounding environment.

REASON - The site may be contaminated as a result of past or current uses and/or is within 250 metres of a site which has been landfilled. To ensure that risks from land contamination to the future uses of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out without unacceptable risks to receptors, in accordance with the National Planning Policy Framework.

24. Prior to the commencement of the development and any site investigation works or at a time agreed in writing by the Local Planning Authority a Phase 2 Site Investigation Strategy (Sampling and Analysis Plan) shall be designed and documented by a "suitably competent person(s)" in accordance with published technical guidance (e.g. BS10175 and CLR11) and be submitted to and agreed in writing with the Local Planning Authority, unless the Local Planning Authority dispenses with the requirement specifically and in writing. The Phase 2 Site Investigation Strategy (Sampling and Analysis Plan) shall be sufficient to fully and effectively characterise and evaluate the nature and extent of any potential contamination sources, hazards and impacts. No alterations to the agreed Phase 2 Site Investigation Strategy or associated works shall be carried out without the prior written agreement of the Local Planning Authority.

REASON - The site may be contaminated as a result of past or current uses and/or is within 250 metres of a site which has been landfilled and the Local Planning Authority wishes to ensure that the proposed development can be implemented and occupied with adequate regard to environmental and public protection.

25. Prior to the commencement of the development or at a time agreed in writing by the Local Planning Authority a Phase 2 Site Investigation works shall be conducted, supervised and documented by a "suitably competent person(s)" and carried out in accordance with the approved Phase 2 Site Investigation Strategy (Sampling and Analysis Plan). A Phase 2 Site Investigation and Risk Assessment Report prepared by a "suitably competent person(s)", in accordance with published technical guidance (e.g. BS10175 and CLR11) and shall be submitted to and agreed in writing with the Local Planning Authority unless the Local Planning Authority dispenses with the requirement specifically and in writing.

REASON - The site may be contaminated as a result of past or current uses and/or is within 250 metres of a site which has been landfilled and the Local Planning Authority wishes to

ensure that the proposed development can be implemented and occupied with adequate regard to environmental and public protection

26. Prior to the commencement of the development or at a time agreed in writing by the Local Planning Authority a Phase 3 Remediation and Verification Strategy shall be prepared by a "suitably competent person(s)" to address all human health and environmental risks associated with contamination identified in the Phase 2 Site Investigation and Risk Assessment. The Remediation and Verification Strategy which shall include an options appraisal and ensure that the site is suitable for its new use and shall be submitted to and agreed in writing with the Local Planning Authority, unless the Local Planning Authority dispenses with the requirement specifically and in writing. No alterations to the Remediation and Verification Strategy or associated works shall be carried out without the prior written agreement of the Local Planning Authority. The Phase 3 Remediation and Verification works shall be conducted, supervised and documented by a "suitably competent person(s)" and in accordance with the approved Phase 3 Remediation and Verification Strategy.

REASON - The site may be contaminated as a result of past or current uses and/or is within 250 metres of a site which has been landfilled and the Local Planning Authority wishes to ensure that the proposed development can be implemented and occupied with adequate regard to environmental and public protection

27. Any contamination not considered in the Phase 3 Remediation and Verification Strategy but identified during subsequent construction/remediation works shall be subject to further risk assessment and remediation proposals agreed in writing with the Local Planning Authority and the development completed in accordance with any further agreed amended specification of works.

REASON - The site may be contaminated as a result of past or current uses and/or is within 250 metres of a site which has been landfilled and the Local Planning Authority wishes to ensure that the proposed development can be implemented and occupied with adequate regard to environmental and public protection

28. A Phase 4 Verification and Completion Report shall be compiled and reported by a "suitably competent person(s)", documenting the purpose, objectives, investigation and risk assessment findings, remediation methodologies and validation results obtained to demonstrate the completeness and effectiveness of all approved remediation works conducted. The Phase 4 Verification and Completion Report shall be submitted and agreed in writing with the Local Planning Authority within 2-months of completion of the development unless the Local Planning Authority dispenses with the requirement specifically and in writing. The development site or agreed phase of development site, shall not be occupied until all of the approved investigation, risk assessment, remediation and verification requirements relevant to the site (or part thereof) have been completed, reported and approved in writing by the Local Planning Authority.

REASON - The site may be contaminated as a result of past or current uses and/or is within 250 metres of a site which has been landfilled and the Local Planning Authority wishes to ensure that the proposed development can be implemented and occupied with adequate regard to environmental and public protection

29. The development hereby approved shall not be commenced on site, until a scheme for 'the implementation, maintenance and management of a Sustainable Surface Water Drainage Scheme has first been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details, the scheme shall include but not be restricted to providing the following details;

- a) Detailed design of the surface water management system;
- b) A build program and timetable for the provision of the critical surface water drainage infrastructure;
- c) A management plan detailing how surface water runoff from the site will be managed during the construction phase; Details of adoption responsibilities

REASON: To ensure the site is developed in a manner that will not increase the risk of surface water flooding to site or surrounding area, in accordance with the guidance within Policy DC2 of the Darlington Local Plan 2016 - 2036 and the National Planning Policy Framework.

30. The development permitted by this planning permission shall only be carried out in accordance with the approved Plan Drainage Drawing No 601-31, Revision P02 and Flood Risk Assessment (FRA) & Drainage Strategy dated September 2020 Project Ref 4499 and the following mitigation measures detailed within the FRA:

- a) Total Discharge rate must not exceed 17l/sec

The mitigation measures shall be fully implemented prior to the occupation and subsequently in accordance with the timing / phasing arrangements embodied within the scheme, or within any period as may subsequently be agreed, in writing, by the Local Planning Authority.

REASON: To prevent flooding by ensuring the satisfactory storage of / disposal of surface water from the site and to reduce the risk of flooding to the proposed development and future occupants.

31. The building hereby approved shall not be brought into use until: -

- a) Requisite elements of the approved surface water management scheme for the development, or any phase of the development are in place and fully operational to serve said building;

- b) A Management and maintenance plan of the approved Surface Water Drainage scheme has been submitted and approved in writing by the Local Planning Authority.

REASON: To reduce flood risk and ensure satisfactory long-term maintenance are in place for the lifetime of the development.

32. Prior to the commencement of the development, a detailed scheme for the disposal of foul water from the development hereby approved shall be submitted to and approved in writing by the Local Planning Authority in consultation with Northumbrian Water and the Lead Local Flood Authority. Thereafter the development shall take place in accordance with the approved details.

REASON: To prevent the increased risk of flooding from any sources in accordance with the National Planning Policy Framework 2021.

33. Prior to the first occupation of the development hereby approved, a Framework Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. Subsequent multiple occupier Travel Plans shall be submitted to and approved in writing by the Local Planning Authority within three months of the occupations of the buildings. All Travel Plans shall be added to the ModeshiftStars Community / Modeshift Stars Business site and the Travel Plans shall be continued in accordance with the details contained therein, including attaining Bronze Standard with 12 months of the commencement of the use unless otherwise agreed in writing by the Local Planning Authority.

REASON: To accord with the policy IN2 of the Local Plan and the Council's Travel Plan Guidance Note.

34. The electrical vehicle charging points as shown on the approved plans shall be in place and shall be operational prior to the first occupation of the development hereby approved and shall be maintained in accordance with approved details for the lifetime of the development.

REASON: To ensure provision of electric vehicle charging infrastructure in accordance with Local Plan Policy IN4

35. The development hereby approved shall not be carried out otherwise than in complete accordance with the document entitled "Arboricultural Impact Assessment Plus Tree Survey – Land at Entrance of Faverdale Industrial Estate, Darlington" dated September 2022 and produced by Brooks Ecological unless otherwise agreed in writing by the Local Planning Authority

REASON: In the interests of the visual appearance of the development.



36. The development hereby approved shall not be carried out otherwise than in complete accordance with the document entitled "Preliminary Ecological Appraisal Report – Faverdale Darlington" dated March 2021 and produced by Brooks Ecological unless otherwise agreed in writing by the Local Planning Authority

REASON: In the interests of the visual appearance of the development.

## **INFORMATIVES**

### **Highway Matters**

Applicants are reminded that in addition to securing planning permission, other permissions may be required from Darlington Borough Council acting as the Local Highway Authority. These additional permissions can include but are not limited to: Agreements under Sections 278, 38, and 184 of the Highways Act 1980; Section 38 of the Commons Act 2006, permissions through New Roads and Streetworks Act 1991 and Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996 (as amended and including all instruments, orders, plans, regulations, and directions). Further information on these matters can be obtained from the Local Highway Authority. Other permissions may also be required from third parties. It is the applicant's responsibility to ensure all necessary permissions are in place.

The Developer is required to enter into an agreement under Section 59 of The Highways Act 1980 prior to commencement of the works on site. Where Darlington Borough Council, acting as the Highway Authority, wish to safeguard The Public Highway from damage caused by any Construction Traffic serving your development. Contact must be made with the Assistant Director: Highways, Design and Projects (contact Mr Steve Pryke 01325 406663) to discuss this matter

Notwithstanding any valid planning permission for works to amend the existing highway, there must be no works in the existing highway until an Agreement under Section 278 of the Highways Act 1980 has been entered into between the Developer and Darlington Borough Council as the Local Highway Authority. To carry out works within the highway without a formal Agreement in place is an offence. Contact must be made with the Assistant Director: Highways, Design and Projects (contact Mr Steve Pryke 01325 406663) to discuss this matter. Street

Prior to the commencement of the development 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.

### **Environment Agency**

#### ***Environment Agent Model procedures and good practice***

The Environment Agency recommend that developers should:

- a) Follow the risk management framework for dealing with land contamination detailed in Land Contamination Risk Management which is found on Gov.uk and which now supersedes CLR 11, Model Procedures for the Management of Land Contamination;

- b) Refer to the Environment Agency Guiding principles for land contamination for the type of information that we require in order to assess risks to controlled waters from the site - the local authority can advise on risk to other receptors, such as human health;
- c) Consider using the National Quality Mark Scheme for Land Contamination Management which involves the use of competent persons to ensure that land contamination risks are appropriately managed.
- d) Refer to the contaminated land pages on gov.uk for more information

***The Environment Agency's approach to groundwater protection***

The Environment Agency would like to refer the applicant/enquirer to our groundwater position statements in 'The Environment Agency's approach to groundwater protection', available from gov.uk. This publication sets out their position for a wide range of activities and developments, including:

- a) Discharge of liquid effluents;
- b) Land contamination;
- c) Ground source heat pumps;
- d) Cemetery developments;
- e) Drainage.

Good practice should be followed in the location, design, construction and maintenance of petrol stations and other fuel dispensing facilities. Due regard should be given to 'The Environment Agency's approach to groundwater protection' document, in particular the position statements and guidance in the section on the storage of pollutants (chapter D).

The developer should also refer to the following pollution prevention and mitigation guidance including:

- a) Guidance on Environmental Management at Petrol Filling Stations – Energy Institute;
- b) Design, construction, maintenance and decommissioning of filling stations (also known as the Blue Book (APEA/EI) – Energy Institute – 2018;
- c) Groundwater Protection Code – Petrol stations and other fuel dispensing facilities involving underground storage tanks – Defra Code of Practice;
- d) CIRIA C736: Design of Containment Systems for the Prevention of Water Pollution

The Blue Book provides detailed information on the decommissioning (and investigation) of redundant tanks, risk assessment, the design and construction criteria and maintenance procedures which we expect to be implemented. Please note that the Environment Agency comments are only in relation to environmental issues. Others may need to be consulted with respect to Health and Safety or amenity issues. Further guidance can be found on the water management pages of gov.uk.

***Waste on site***

The CL:AIRE Definition of Waste: Development Industry Code of Practice (version 2) provides operators with a framework for determining whether or not excavated material arising from

site during remediation and/or land development works is waste or has ceased to be waste.  
Under the Code of Practice:

- a) Excavated materials that are recovered via a treatment operation can be reused on-site providing they are treated to a standard such that they are fit for purpose and unlikely to cause pollution;
- b) Treated materials can be transferred between sites as part of a hub and cluster project;
- c) Some naturally occurring clean material can be transferred directly between sites.

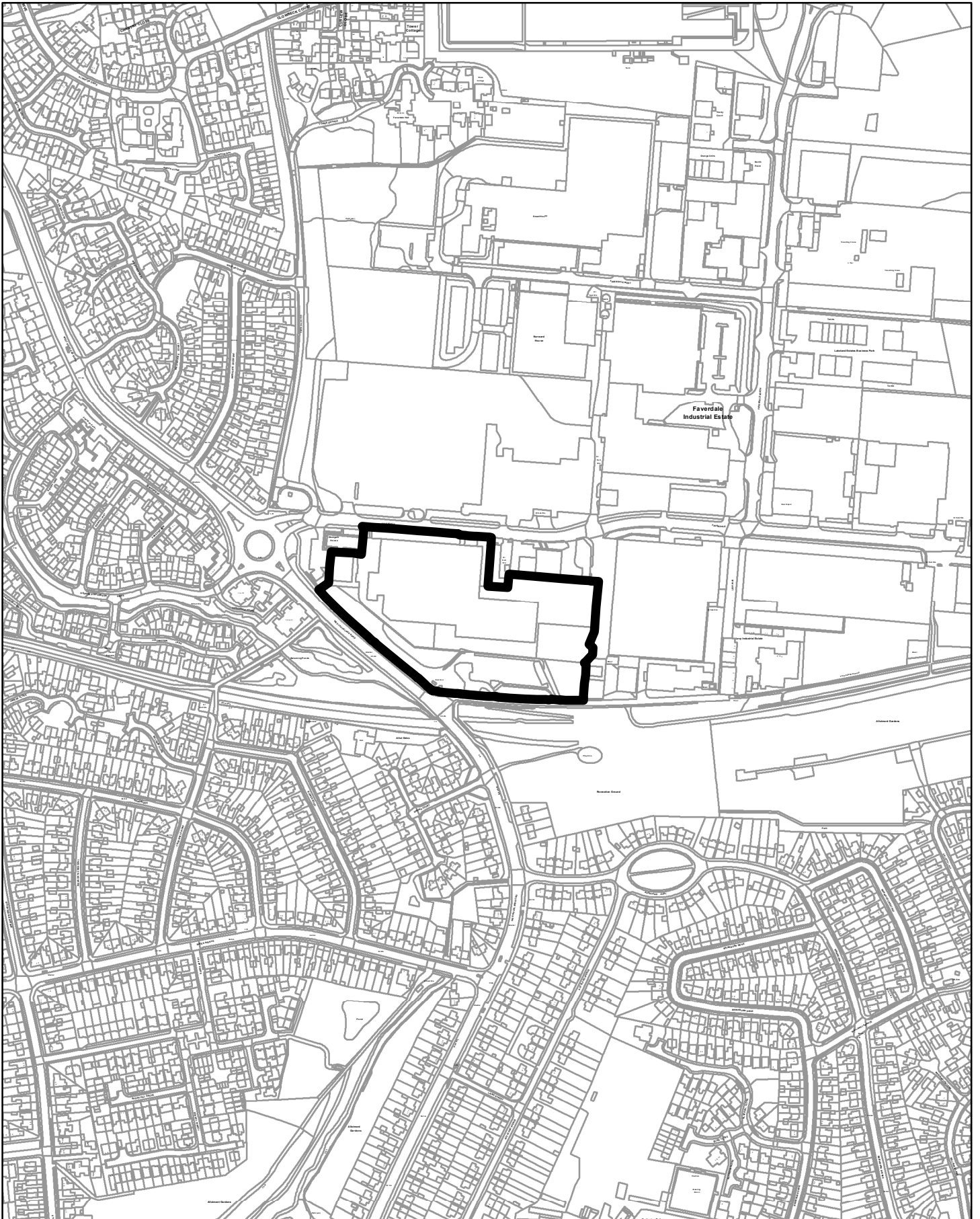
Developers should ensure that all contaminated materials are adequately characterised both chemically and physically, and that the permitting status of any proposed on-site operations are clear. If in doubt, the Environment Agency should be contacted for advice at an early stage to avoid any delays. We recommend that developers should refer to:

- a) The position statement on the Definition of Waste: Development Industry Code of Practice;
- b) The waste management page on GOV.UK.

**Environmental Health (Commercial)**

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

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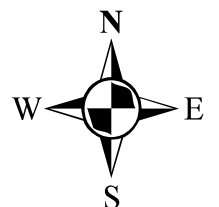


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**Planning Ref No: 20/00852/FUL**

DARLINGTON BOROUGH COUNCIL

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## Appeal Decision

Site visit made on 6 June 2023

**by A Caines BSc (Hons) MSc MRTPI**

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

**Decision date: 13<sup>th</sup> June 2023**

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**Appeal Ref: APP/N1350/D/23/3319198**

**26a Gate Lane, Low Coniscliffe, Darlington DL2 2JY**

- 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 David Williams against the decision of: Darlington Borough Council.
  - The application Ref 22/01064/FUL, dated 26 September 2022, was refused by notice dated 9 January 2023.
  - The development proposed is a car port to the front elevation.
- 

### Decision

1. The appeal is allowed and planning permission is granted for a car port to the front elevation at 26a Gate Lane, Low Coniscliffe, Darlington DL2 2JY in accordance with the terms of the application Ref 22/01064/FUL, dated 26 September 2022, and the details submitted with it, subject to the following condition:
  - 1) The roof of the car port hereby permitted shall be finished externally in reclaimed slate as specified on the application form.

### Procedural Matters

2. No scaled drawings were provided with the application, but it is clear that the application was submitted retrospectively. At the time of my site visit, the car port was largely complete apart from the final roof covering. I have therefore determined the appeal on the basis that permission is being sought for the development already carried out plus the details of the roof covering.

### Main Issue

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

### Reasons

4. Gate Lane is a pleasant residential street characterised by two-storey houses that are set back from the street behind front gardens enclosed by low walls and hedges. Despite a generally consistent building line found in some parts of the street, there are also some notable garages and forward extensions which do not respect the building line. This includes a prominent double garage extension at the front of No 26, immediately to the east of the appeal site.
5. Whilst the car port is located at the front of No 26a, it is a modest, open-sided structure with a lightweight appearance. This is in contrast to the nearby garage extension at No 26. Moreover, the Council acknowledges that it is not highly visible from the street due to the screening provided by the ivy-covered

enclosure that surrounds the public notice board outside the site. As such, the development has minimal impact on the building line and overall spatial qualities of the area.

6. In terms of the materials used, I do consider that the current plastic roof covering is unacceptable, but this appears to be a temporary measure while construction has been halted. The application form specifies that the roof is to be covered in reclaimed slate. This would satisfactorily address the appearance of the most visible part of the development and could be secured by a planning condition. The suggestion to grow ivy over the roof is not an appropriate alternative to its proper completion and is not the development applied for. Landscaping should not be used to hide poor development and it can also die or be removed at any time.
7. The Council also raised concerns over the white timber frames, but given the limited visibility of this part of the development and the variety of materials in the area, I find no harm in this regard. The suggestion to paint the posts green is therefore not necessary, although green would also be acceptable.
8. In conclusion, subject to completion of the roof as stated, I find that the development is not harmful to the character or appearance of the area. As such, the development complies with Policy DC1 of the Darlington Local Plan (2022) and Policy LCM8 of the Low Coniscliffe & Merrybent Parish Neighbourhood Plan (2019), which together seek appropriately designed development that responds to local context and character.

### **Other Matters**

9. I have noted the appellant's concerns over the Council's handling of the application and other Parish Council matters, but these are not matters which fall within the scope of this appeal, and so, have not influenced my assessment of the planning merits of the scheme.
10. Furthermore, given the appeal outcome, it has not been necessary to consider any potential benefits of the scheme.

### **Conditions**

11. As the development is retrospective, it is not necessary to impose a condition requiring implementation within a specific timescale. I am also unable to impose an approved plans condition. However, a condition relating to the roof materials is necessary to ensure a satisfactory appearance of the development.

### **Conclusion**

12. For the reasons given above, I conclude that the appeal should succeed.

*A Caines*

INSPECTOR





## Appeal Decision

Site visit made on 6 June 2023

**by K L Robbie BA (Hons) DipTP MTP MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 28 June 2023**

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**Appeal Ref: APP/N1350/D/23/3318020**

**28 Neville Road, Darlington, Durham DL3 8HY**

- 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 Clive Davies against the decision of Darlington Borough Council.
  - The application Ref 22/01121/FUL, dated 7 October 2022, was refused by notice dated 5 January 2023.
  - The development proposed is provision of retractable telescopic radio mast at rear with removal of two existing radio masts (non-retractable).
- 

### Decision

1. The appeal is allowed, and planning permission is granted for the provision of retractable telescopic radio mast at rear with removal of two existing radio masts (non-retractable) at 28 Neville Road, Darlington, Durham DL3 8HY in accordance with the terms of the application, Ref 22/01121/FUL, dated 7 October 2022, and the plans submitted with it, subject to the conditions set out in the attached schedule.

### Preliminary Matter

2. During the course of the planning application the appellant submitted amended plans to the Council. The planning application was determined on the basis of these amended plans and therefore I shall determine the appeal on that basis.

### Main Issues

3. The main issues are the effect of the proposed development on the:
  - Character and appearance of the surrounding area; and
  - The living conditions of the occupiers of neighbouring properties with regard to outlook.

### Reasons

#### *Character and Appearance*

4. The appeal property is a detached house situated within an established residential area. The property currently has two radio masts, one on the side elevation and one on the rear. Both are fixed in position with guy wires. It is agreed by both parties that the masts are lawful by virtue of the passage of time.
5. The existing masts are visible from Neville Road. Longer range views are restricted by the presence of street trees and established vegetation in surrounding gardens. The rear garden of the appeal property and surrounding

properties contain mature trees limiting views of the existing masts from properties on Elton Road behind.

6. The proposal involves the erection of a telescopic radio mast with large antennae on the rear elevation of the property. When in its fully extended position it would be approximately 5 metres higher than the ridge of the house. In its upright and retracted position, it would be approximately 1.9 metres above the ridge. However, it would be a relatively slim form, the bulk of which, due to its telescopic design would reduce as it gains height. The antennae element though wide would, due to its slender form have minimal mass, and would allow visibility between its various parts.
7. Although the proposed mast would be high when in its fully extended position, it would be retracted when not in use. In its retracted and upright position, its antennae would remain visible above the ridge of the appeal property. Even though the antennae and part of the mast would be visible from the public realm, I do not consider that, as a whole, it would look unduly incongruous or industrial in this residential area where there are a number of visible television aerials attached to, for example, chimneys. The mast would be relatively thin, and the antennae would have a skeletal appearance, not unlike a television aerial. Whilst not common in residential areas it is not unusual for such structures to be seen occasionally as they are a necessary adjunct to a hobby activity that is carried out by many in their homes throughout the country.
8. Accordingly, the proposal would not result in harm to the character or appearance of the area. It would therefore accord with Policy DC1 of the Darlington Local Plan 2022 (DLP) which seek to prevent the visual dominance of development, to ensure that development reflects the local environment, and that development responds positively to local context.

#### *Living Conditions*

9. Nearby residents of properties on Neville Road would be aware of the mast, whether retracted or not, when using their rear gardens or in the road. It would be visible from windows to the front of properties opposite. However, the relatively insubstantial form of the mast and its antennae, and its similarity to domestic television aerials leads me to conclude that it would not create a sense of enclosure or oppressiveness which would dominate the views or be overbearing for nearby residents. The separation distance from buildings in Elton Road would be very approximately 53m which I consider to be sufficient to prevent any loss of outlook or overbearing effect from this particular proposal. Neither would the structure be likely to cast significant shadows which would cause any undue loss of daylight or sunlight.
10. Whilst I acknowledge that the appearance of the structure may not be to everyone's taste, equally I do not consider that it would result in harm to their living conditions. I therefore conclude that the proposal would not unduly harm the living conditions with regard to the outlook, of nearby residents. Accordingly, the proposal would be in keeping with DLP Policy DC4 which seeks to protect the amenity of neighbouring residents.

#### **Other Matters**

11. Concern has been raised with regard to the television interference. However, concerns of this nature would need to be investigated by an alternative agency

and are not for my deliberations in this appeal. I have also considered the concerns raised regarding the safety of the structure. I have not been provided with any substantive evidence that the structure would pose any undue risks to neighbouring properties or that any necessary maintenance of the mast would cause noise which would not be otherwise normally acceptable and expected in a residential environment.

### **Conditions**

12. I have considered the Council's suggested conditions in the light of the tests in the National Planning Policy Framework and the advice in Planning Policy Guidance. I have attached a condition which requires the development to comply with the submitted plans, in the interests of certainty.
13. I have considered the Council's suggested condition that the mast be retracted when not in use. However, as the Council point out in their officer report, this would not pass the tests of enforceability, neither would it be necessary to make the proposal visually acceptable. Therefore, it would be unreasonable to impose such a condition.

### **Conclusion**

14. For the reasons given above, having considered the development plan when read as a whole and all other issues raised, I conclude that the appeal should be allowed subject to the conditions set out in the attached schedule.

*K L Robbie*

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: 001 Block Plan; 002 Existing Elevations; 003A Proposed Elevations: Fully Extended; 004A Proposed Elevations: Retracted; 005A Site Location Plan; 006A Proposed Front Elevations.
- 3) Prior to the installation of the retractable telescopic sliding radio mast hereby approved, the two existing non-retractable radio masts shall be removed from the dwelling.

**End of Schedule**

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of the Local Government Act 1972.

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of the Local Government Act 1972.

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