

## **DEVELOPMENT PLAN**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that “where in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material consideration indicates otherwise.

### **Unitary Development Plan - current status**

The Unitary Development Plan for Sunderland was adopted on 7th September 1998. In the report on each application specific reference will be made to those policies and proposals, which are particularly relevant to the application site and proposal. The UDP also includes a number of city wide and strategic policies and objectives, which when appropriate will be identified.

## **STANDARD CONDITIONS**

Sections 91 and 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004 require that any planning application which is granted either full or outline planning permission shall include a condition, which limits its duration.

## **SITE PLANS**

The site plans included in each report are illustrative only.

## **PUBLICITY/CONSULTATIONS**

The reports identify if site notices, press notices and/or neighbour notification have been undertaken. In all cases the consultations and publicity have been carried out in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015.

## **LOCAL GOVERNMENT ACT 1972 – ACCESS TO INFORMATION**

The background papers material to the reports included on this agenda are:

- The application and supporting reports and information;
- Responses from consultees;
- Representations received;
- Correspondence between the applicant and/or their agent and the Local Planning Authority;
- Correspondence between objectors and the Local Planning Authority;
- Minutes of relevant meetings between interested parties and the Local Planning Authority;
- Reports and advice by specialist consultants employed by the Local Planning Authority;
- Other relevant reports.

Please note that not all of the reports will include background papers in every category and that the background papers will exclude any documents containing exempt or confidential information as defined by the Act.

These reports are held on the relevant application file and are available for inspection during normal office hours at the City Development Directorate at the Customer Service Centre or via the internet at [www.sunderland.gov.uk/online-applications/](http://www.sunderland.gov.uk/online-applications/)

Peter McIntyre

Executive Director City Development

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**Reference No.:** 19/01301/FU4 Full Application (Reg 4)

**Proposal:** **Erection of two drive-thru restaurants (A3/A5), three commercial units (A1/A3) and associated access, parking, drainage and landscaping. (Amended description 18.12.2019)**

**Location:** Land Off Salterfen Road, Sunderland

**Ward:** Ryhope

**Applicant:** Ailsa3 Developments Ltd

**Date Valid:** 12 August 2019

**Target Date:** 11 November 2019

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## PROPOSAL

Planning permission is sought to develop the site for the purposes of 2no drive thru restaurants (Use Class A3/A5) and 3no commercial units (Use Classes A1 and A3) complete with associated access, parking drainage and landscaping. (Note, use Class A5 has been removed as a proposed use of 1-3 as per email from agent dated 17 December).

The application site was formerly utilised for the purposes of light industry but is currently vacant and comprises wide areas of hardstanding and coarse grassland. A semi mature tree belt runs along sections of the western and southern curtilage of the site.

The land is predominantly level but rises notably into the embankments located to the northern and eastern most sections of the site which are bound by the classified Salterfen Road and Southern Radial Relief Road respectively. Access to the site is achieved from the classified Ryhope Road which bounds the site to the west the west.

Outside the confines of the host site presents a mix of land uses with established residential located to the west on the opposing side of Ryhope Road whilst a recently completed residential scheme of 46no homes is located to the immediate south. Commercial sites housing a furniture store (Home Living), a drive thru restaurant (McDonalds), a supermarket (Lidl), a Public House/Restaurant (Harvester) and discount store (B&M Home Store) are all within close proximity and located beyond Salterfen Road and Toll Bar Road to the north and north west of the site.

As the land is currently in the ownership of Sunderland City Council the applicant has served notice on the Council as land owner.

The application proposes to redevelop the land to facilitate the erection of 2no drive thru restaurants and 3no commercial units. The drive thru restaurants, set out within the submission as serving a single storey unit (KFC, unit 4) and a two-storey unit (Burger King, unit 5), would be positioned close to the western perimeter of the site adjacent to Ryhope Road. The respective drive thru units would be designed as per the livery and branding specifications of the occupiers.

The 3no commercial units would be sited closer to the eastern perimeter of the site with the smaller units 1 and 2, comprising a floor area of 130sqm and 92.9sqm respectively. A larger

standalone building, unit 3, presents a floor area of 464sqm and would be positioned closer to the southern perimeter of the site. The retail buildings would be constructed out of red brickwork on the main elevations, with dark grey metal cladding sitting just below the lighter grey cladded roofs. Further areas of light grey cladding, glazing and 'signage zones' would be applied to the front elevation.

Parking would largely be provided centrally between the respective buildings but will be also be dispersed around the units with 99 spaces provided throughout, including provision for disabled parking and electric charging. Pedestrian routes will be marked out within site. Vehicular access and egress would be achieved via the existing spur from Ryhope Road with an improved site-specific access point provided.

The application form advises that the opening hours for the units would be between 07:00 and 23:00 seven days a week and that in the region of 83 people would be employed as a result of the development.

A raft of supporting documentation has been submitted with the application including a Design and Access Statement, a Planning Statement, a Retail Impact Assessment, a Transport Assessment, an Odour/Air Quality Assessment, a Noise Assessment, a Drainage Report incorporating Sustainable Urban Drainage (SUDS), an Ecological Report/Information to support Habitats Regulation Assessment and a Desk Top Study.

Members may recall that an application to relocate the Home Living furniture store and erect a new KFC drive thru restaurant on the site was approved at the Sunderland South Sub Committee on 14 July 2016 (Planning ref: 15/02436/FU4).

#### **TYPE OF PUBLICITY:**

Press Notice Advertised  
Site Notice Posted  
Neighbour Notifications

#### **CONSULTEES:**

Environmental Health  
Ryhope - Ward Councillor Consultation  
Northumbrian Water  
Southern Area Command - Police  
Environment Agency  
Business Investment  
Flood And Coastal Group Engineer  
Network Management

Final Date for Receipt of Representations: **11.12.2019**

#### **REPRESENTATIONS:**

##### **Public consultation**

The Local Authority has carried out public consultation for the application in the form of notifications issued to Ward Cllrs and neighbouring properties and a public notice posted to the

front of the site and within the confines of the recently constructed housing development to the south. As a result of the consultation carried out, a total of 3no representations have been received.

- o Concerns over increased litter within the area;
- o Increase in rodents within the area;
- o The site is a gateway in to the city. Is the development of at least three fast food outlets in this area really an impressive introduction to Sunderland?
- o The Council has recently approved residential development adjacent to the site, is it appropriate to build two fast food outlets next to these properties?
- o Concern over noise emanating from the new development (such as cars waiting in the drive thru queue);
- o Food smells emanating from the drive thru restaurants;
- o Increased traffic levels, pollution and fumes;
- o Highway safety concerns at the Toll Bar Junction;
- o Light pollution in the area resulting from businesses leaving their lights on overnight.
- o The development will impact on nearby house value.

With regard to the final point, it is noted that representation has been made over the potential devaluation of nearby properties. In respect of property values, the planning system does not exist to protect the private interests of one person against the activities of another, although private interests may coincide with the public interest in some cases. The basic question is not whether owners and occupiers of neighbouring properties would experience financial or other loss from a particular development, but whether the proposal would unacceptably affect amenities and the existing use of land and buildings which ought to be protected in the public interest. Thus, the potential devaluation of property as a result of a planning decision is not considered to be material in the determination of a planning application, but any loss of amenity to a property as a result of a proposed development, would be.

The remaining concerns will be addressed within the main body of the report below.

**Environmental Health** - As a result of specific points being addressed during the course of the applications consideration, no objections have been offered subject to the imposition of conditions. These points will be discussed below.

**Network Management** - The Council's Highways engineers have concurred with the findings of the Transport Assessment which advises that the traffic likely to be generated by the proposed development can be satisfactorily accommodated on the local highway network and that sufficient onsite parking would be proposed. Revisions to the access point in respect of Unit 5 was suggested to ensure that queuing back to Ryhope Road was avoided. This has been addressed and therefore no objection has been offered subject to the imposition of conditions.

**Natural Heritage/Landscape Architects** - Initial concerns over a lack of onsite bio-diversity net gain and loss of trees from the site have been remedied through the provision of a good quality landscaping scheme. No objection offered subject to the imposition of conditions.

**Drainage** - It is considered that sufficient detail has been provided to recommend approval of the development. It will however be necessary to attach a condition to the application to ensure that all sustainable drainage systems have been constructed as per the agreed scheme.

**Northumbrian Water** - Initially NW advised that the planning application did not provide sufficient detail with regards to the management of foul and surface water from the development. On this respect, it was requested that a condition be placed on the application with regard to scheme for

the disposal of foul and surface water from the development. However, NW has since confirmed that the applicant has submitted a sewerage point of connection enquiry to them which has been agreed. Consequently, NW has confirmed that the condition is no longer required.

## **POLICIES:**

In the Unitary Development Plan the site is subject to the following policies;

B2 - Scale, massing layout and setting of new developments  
EC4 - Retention and improvement of existing business and industrial land  
EC5 - Sites for mixed uses  
EN5 - Protecting sensitive areas from new noise/vibration generating developments  
EN14 - Development on unstable or contaminated land or land at risk from landfill/mine gas  
CN7 - Measures to protect/ enhance the urban fringe  
CN14 - Landscaping schemes and developments prominent from main transport routes  
CN16 - Retention and enhancement of existing woodlands, tree belts and hedgerows  
CN17 - Tree Preservation Orders and replacement of trees  
CN18 - Promotion of nature conservation (general)  
CN19 - Development affecting designated / proposed SAC's, SPAs and RAMSAR Sites  
CN22 - Developments affecting protected wildlife species and habitats  
EN12 - Conflicts between new development and flood risk / water resources  
S1 - Provision of enhanced shopping service, including local provision, based on existing centres.  
S7 - Design and requirements for new retail development  
B19 - Creation of a "user friendly" environment  
T14 - Accessibility of new developments, need to avoid congestion and safety problems arising  
T22 - Parking standards in new developments

## **COMMENTS:**

### **Policy Backdrop**

By virtue of section 38(6) of the Planning and Compulsory Purchase Act, 2004, the starting point for consideration of any planning application is the saved policies of the development plan. A planning application must be determined in accordance with the development plan unless material considerations indicate otherwise.

However, since the publication of the National Planning Policy Framework (NPPF), which, as paragraph 2 therein makes clear, is a material consideration for the purposes of Section 38(6) of the Act, the weight that can be given to the development plan depends upon the extent to which the relevant policies in the plan are consistent with the more up to date policies set out in the NPPF. The closer the relevant policies in the development plan to the policies in the NPPF, the greater the weight that can be given to the development plan.

The NPPF provides the Government's planning policy guidance and development plans must be produced, and planning applications determined, with regard to it. At paragraph 7, the NPPF sets out that the purpose of the planning system is to contribute positively to the achievement of 'sustainable development' which is defined as 'meeting the needs of the present without compromising the ability of future generations to meet their own needs'. Meanwhile, paragraph 8 states that in order to achieve sustainable development, the planning system has three overarching objectives - an economic objective, a social objective and an environmental objective - and these are to be delivered through the preparation and implementation of plans and the applications of the policies within the NPPF.

Paragraph 11 of the NPPF sets out a presumption in favour of sustainable development and states that in respect of decision-making, this means authorities should:

- c) Approve applications that accord with an up to date development plan without delay; or
- d) Where there are no relevant development plan policies, or the policies which are most important for determining the application are out of date, granting permission unless:
  - i) The application of policies in the NPPF that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
  - ii) Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.

The Council's current adopted plan is the Unitary Development Plan from 1998 which sets out the future of how land is used within the City and is the land use development plan for the City up to the year 2006, however, on commencement of the Planning and Compulsory Purchase Act (September 2004) the policies in the UDP were automatically "saved" so that they would remain in force. The UDP therefore currently holds 'full weight' where the policies are consistent with the NPPF. The Council has now produced a draft Core Strategy and Development Plan which is designed to guide new development within the City up to the year 2033.

The National Planning Policy Framework (NPPF) (2019), sets out, at paragraph 48, the level of weight which can be attributed to emerging plans and policies, according to the following:

- a. The stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);
- b. The extent to which there are unresolved objections, to relevant policies (the less significant the unresolved objections, the greater the weight that may be given);
- c. and the degree of consistency of the relevant policies in the emerging plan to the NPPF (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).

With regards to above, the CSDP is considered to be in an 'advanced stage' of preparation. The Council submitted the CSDP for examination to the Secretary of State on the 21 December 2018 and the 'Examination in Public' hearings have now taken place. The Council anticipates adoption of the CSDP in early 2020. Consequently, the plan is considered to be at an 'advanced stage' and therefore its policies should be afforded significant weight based on the above criteria. Therefore, the CSDP is also considered to be relevant to the determination of this application.

## **Consideration**

The main issues to consider in the determination of the planning application are:

- 1) Principle of the development
- 2) Scale, layout, design and landscaping
- 3) Residential amenity
- 4) Highway issues
- 5) Ground Contamination
- 6) Ecology
- 7) Drainage and flood risk

## 1. Principle of the development

The site is currently allocated under UDP policy SA5.3 as an existing mixed-use site which will be retained and improved for a mixture of commercial and industrial uses. Such uses are defined as;

1. Food and Drink (A3)
2. Light industry, offices, research and development (B1)
3. Storage and distribution (B8)
4. Hotels (C1)
5. Bulky goods retailing
6. Transport related businesses

The text accompanying the UDP policy outlines that to protect the viability and vitality of nearby Grangetown Shopping Centre, further retailing will be restricted to bulky goods or retail warehouse extensions whilst the Glossary to the UDP defines Bulky Goods as "Goods requiring facilities not readily available in existing shopping centres due to the need for large storage and display areas and the generation of greater volumes of traffic. Bulky goods include DIY, furniture and carpets but exclude electrical goods, toys and clothing."

It should be noted however, that the Council intend to delete this policy (which includes the allocation of the application site) once the CSDP is formally adopted. Going forward, it is understood the site will not be formally allocated within the plan but will, in association with the opposing land to the north and north west, form part of an established out-of-centre retail park.

The policy (SA5.3), is also linked to UDP policies EC5 and S13. Policy EC5 sets out acceptable primary and ancillary uses. In addition, policy S13 states that retailing on land allocated for mixed use (inter alia) will be permitted only if it accords with policies EC4 and EC5.

With regard to the above it is evident that the proposals would broadly accord with the UDP land use policy in respect of the drive thru restaurants and the standalone A3 (cafe/restaurant uses) , as these would fall within the definition of food and drink uses and it is also noted that the principle of erecting a drive thru restaurant on the site was established relatively recently when consent was granted in 2016.

For the purposes of SA5.3, the introduction of retailing from the site is noted to be limited to 'bulky goods' and in this respect the applications proposal to carry out open retailing from units 1-3 causes a degree of conflict with current policy.

In addition to the above, UDP policy S1, to be taken forward by CSDP policy VC1, sets out that development of main town centre uses, will be focused within existing designated centres, as set out within the retail hierarchy. As set out at paragraph 8.8 of the CSDP (which forms background text to policy VC1), a sequential assessment approach is required when considering proposals for main town centre uses with priority being given to locations within designated centres, before considering accessible edge-of-centre locations. Out-of-centre proposals will only be supported where they can demonstrate that they have satisfactorily met the sequential test and that there are no sequentially preferable sites available to support the development. It should also be noted that when considering out-of-centre locations, criterion 7 of Policy VC1 makes it clear that established out-of-centre retail parks (including the Salterfen sites) will be considered to be sequentially preferable to other out-of-centre locations.

Further, CSDP Policy VC2, sets out that when assessing applications for edge or out-of-centre retail development (Use Class A1) the Council will require an impact assessment to be submitted where the development would exceed thresholds set out within the policy. In the case of the

application, as the application site is closest to Grangetown Local Centre, the threshold of 500sqm would apply.

Consequently, with regards to the above, it is necessary to consider whether there are any sequentially preferable sites available for the development, or if the proposals would likely result in significant adverse impacts upon nearby designated centres. In this respect the applicant has submitted a retail impact assessment and a sequential test in support of the submission.

The sequential assessment considers the availability, suitability and viability of other sites within the main catchment area. For the purposes of methodology, the applicant has advised that the total gross floorspace required to facilitate the proposed development in terms of developed floorspace is 1,266sqm. In addition, a requirement of 96 parking spaces, would generating an additional requirement of 1,269sqm to accommodate parking whilst further internal infrastructure is required to provide access to the parking spaces and accommodate the drive-thru facilities of the restaurants. On this basis, it is advised that a total floorspace requirement of at least 3,670sqm would be required for the scheme.

With regard to the above, the following areas have been examined;

1. Ryhope
2. Grangetown
3. Silksworth
4. Hendon

In all identified areas, the available land/buildings were not considered to meet requirements of the proposed model with the majority of the sites being too small to accommodate the development whilst it is also acknowledged that the physical nature of the available buildings were generally not suitable for the national operators of Drive-Thru restaurants.

On the basis of the information provided the Council, as Local Planning Authority (LPA), are satisfied that the applicant has considered and appropriately assessed the availability and suitability of other premises and sites within more sequentially preferable locations, in line with the requirements of local and national policy. As such, it is considered appropriate to conclude that there are no more sequentially preferable sites which are, within reason, appropriate and suitable for the proposed development.

Paragraph 90 of the NPPF advises that retail applications outside of designated retail centres should be accompanied by a retail impact assessment if the proposed floorspace is greater than 2,500sqm, unless a locally set floorspace threshold is set. In this respect it is evident that the maximum area of A1 retail floor space that would be created by this development would equate to 687sqm. Whilst this falls substantially below the NPPF threshold, as is noted above, it would exceed the emerging local threshold of 500sqm.

The applicant has therefore provided a proportionate retail impact assessment which has again considered local centres sites in Ryhope, Grange Town, Hendon and Silksworth. The report advises that the centres were noted to have a limited comparison-shopping role, with a large number of the units exhibiting smaller specialty shops such as a kitchen and bathroom shop and computer shop in Ryhope, carpets, computers and kitchens and bedrooms in Silksworth and motor spares and TV shop in Grangetown. In this respect the assessment suggests that the current proposal would not present as direct competition to these types of stores.

In terms of convenience goods, the report concludes that most of the convenience shopping from within the primary catchment area is directed to the larger out-of-centre super markets such as



Asda and Lidl with the local centres primarily used for top-up shopping rather than main convenience destinations.

The report concludes that the proposed development will not have a significant adverse impact on the vitality or viability of any of the local centres within the Primary Catchment Area.

Overall, the level at which the proposed floor space exceeds the 500sqm threshold (187sqm) is considered to be marginal and it is further noted that there is a possibility that an A1 use would not predominate throughout all of units given that consent is also sought for A3 uses. The conclusions that have been reached within the Retail Assessment are considered to be reasonable and overall there is considered to be no grounds to suggest that the proposed development of the site would have a demonstrable adverse impact on the health of nearby local centres.

Paragraph 91 of the NPPF advises that Council's policies and decisions should aim to achieve healthy, inclusive and safe places, emphasising the enablement and support of healthy lifestyles, especially where this would address identified local health and well-being needs, including access to healthier foods.

It is noted that the proposal would introduce A5 uses, in part through the development of two mixed use A3/A5 drive thru restaurants and initially through a desire to potentially utilise any of the 3no individual units for standalone A5 uses. In this respect, emerging CSDP Policy VC4 is of relevance. This policy sets out, at criterion 2 that in order to promote healthier communities the Council will:

- i. prevent the development of hot food takeaways, (use class A5) within a 400-metre radius of entry points to all primary and secondary schools; and
- ii. prevent the development of hot food takeaways in wards where the prevalence of obesity is more than 21% for year six pupils or 10% for reception pupils.

With regards to part 1 of the policy, which prevents the development of hot food takeaways within 400 metre radius of schools, the site is not located within 400 metres of schools as indicated by the blue radiuses (map 1) which accompanies the policy. Consequently, the application would be in alignment with part 1 of criterion 2, of the policy.

The second part of criterion 2 of Policy VC4, sets maximum thresholds based on school year obesity levels within the applicable ward to the application site. It is noted that the site is located in Ryhope ward. With regards to the most recent evidence on obesity levels within Ryhope, it is identified, that obesity levels are 12.5% for reception school children. For year six, it stood at 21.8%. In this regard, it is evident that the latest obesity data is above both of the policy thresholds which results in the application failing on this policy test. As the policy sets out that development 'should be prevented' where these thresholds are breached, the introduction of an A5 use is considered to be contrary to the emerging CSDP.

In considering the policy content alongside the supporting text, it is evident that it appears to concentrate on typical standalone A5 takeaways with mixed uses (such as a drive thru) not specifically being brought into the equation. Nonetheless, given that A5 comprises a component of the overall mixed use, it is still considered appropriate to give some weight to the policy when considering the acceptability of the drive thru restaurants.

In this respect it is appreciated that policy VC4 has not yet been formally adopted and that the existing UDP land use allocation permits food and drink uses which was a material consideration

when granting consent for a drive thru restaurant on the site in 2016. It is further noted that the floor plans of the respective drive thru buildings demonstrate a substantial area of internal table covers which alludes to a good proportion of A3 (restaurant use ) being conducted from the two units, whilst appropriate weight must also be given to the economic regeneration benefits that would arise as a result of redeveloping a prominent brownfield site that has now lain vacant for a sustained period time. Overall and within the planning balance, it is considered that there is sufficient justification to accept the mixed-use drive thru restaurants within the host site on this occasion.

In turning to the standalone A5 uses that could potentially fill the remaining 3no units, concern was raised with the agent that the such a scenario, particularly when considered in combination with the drive thru restaurants, would not be appropriate. Unlike the mixed-use drive thru restaurants, these uses would sit firmly within the parameters of policy VC4 and would not, in the opinion of the Local Planning Authority, act as a driver, or provide the stimulus for the overall regeneration of the site. In light of the above and following further discussions with the developer, an agreement has been reached to remove the standalone A5 use(s) from the development description.

In summary, whilst the host site is currently allocated for Bulky Goods and Food and Drinks uses, this allocation will shortly be removed with the site forming part of the wider Salterfen out of town retail park going forward. The agent has appropriately demonstrated that there are no sequentially preferable sites within the catchment area for development of this type and that the proposed development will not have a significant adverse impact on the vitality or viability of any of the local centres within the Primary Catchment Area. In addition, the developer's agreement to remove the standalone A5 uses from the proposal dictates that there would now be no substantive conflict with the Council's emerging hot food Policy.

Taking the above into account, it is clear that the NPPF, at Para 80, states that planning decisions should help create the conditions in which businesses can invest and adapt with significant weight placed on the need to support economic growth, whilst Para 118, seeks to promote and support the development of underutilised brownfield land.

In this respect the proposal would see the economic regeneration of a vacant brownfield site which will lead to the creation of 83 new jobs and Members are therefore directed to give significant weight to the requirements of Para 80 and 118 when considering the physical and economic benefits of the proposed development.

However, in determining the overall acceptability of the proposal it would need to be ensured that the development satisfactorily addresses the following material planning considerations as outlined below.

## **2. Scale, design layout and landscaping**

Chapter 12 of the NPPF places emphasis upon achieving well designed places with paragraph 124 stating that 'the creation of high-quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and help make development acceptable to communities'.

Paragraph 127 of the NPPF continues that that development should function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development.

On a local level, UDP Policy B2 and the emerging CSDP Policy BH1 reflects this principle, stating that the scale, massing, layout and/or setting of new developments should respect visual amenity whilst UDP Policy S7 advises that new retail development should be of a high standard of design and relate well to its surroundings.

The site is situated within a relatively prominent location adjacent to a main arterial route into the city centre. The site is bound to the north by the elevated Southern Radial Route and will be one of the first non-residential sites visible to those travelling into the city centre from the south. Evidently, the site is currently vacant and presents as a low-quality environment within the context of the locality and when viewed in tandem with the recent regeneration of the adjacent site.

The nature of the proposed development, particularly in relation to the drive thru restaurants, is such that the general form and massing of the buildings is largely dictated by the standardised specifications of the operators. Nonetheless, the units, would be of a modern design, utilising contemporary materials in the build and would be very much viewed within the context of the mixed-use area with the large Home Living Building, McDonalds Drive Thru, Harvester Public House and Lidl all presenting a consistent commercial presence along the eastern side of Ryhope Road. The site is recessed notably below the Southern Radial route and all unit's bar unit 5, will be single storey.

In line with the requirements of UDP policies B19 and S7 the design layout has incorporated ease of access for pedestrians, people with impaired mobility and those with pushchairs and prams. Cycling racks are to be incorporated in to the scheme to promote sustainable modes of travel.

There is currently a tree belt located along the western and southern curtilage of the site which provides a significant degree of screening on the northern and southern approaches on Ryhope Road. These trees, whilst numerous and offering reasonable visual amenity to the street, appear poorly managed and are not considered to be of significant value in their own right. Nonetheless, their loss needs to be suitably mitigated through the provision of a high-quality managed landscaping scheme. Initially, only an indicative layout was provided, and this failed to offer any substantive assurances as to the quality of any landscaping scheme that may come forward in the future. In light of the concerns expressed a comprehensive landscaping scheme was thereafter provided which included a full layout, planting schedule and soft landscaping schedule.

The plan illustrates that a total of 25no trees are to be planted around the site ranging from Acer Campestre (Field Maple), Betula Pendula (Silver Birch), Betula Pendula Purpurea (Purple Birch), Prunus x Yedoensis (Yoshino Cherry) and Tila Cordata (Greenspire). Native hedging will also be planted around large sections of site perimeter and areas of amenity grass and wildflower grass are also proposed.

This scheme been the subject of consideration by the Councils Ecology Section and Landscape Architects and they have qualified that this will provide a requisite high-quality landscaping scheme that will suitably mitigation the visual loss of the existing trees on site.

A condition will be required to ensure that the planting scheme is implemented and continues to establish in the forthcoming years.

In conclusion, from a design, layout and landscaping perspective the LPA consider that the proposed development would serve to enhance the visual appearance of an existing redundant brownfield and would appear contextually appropriate to character of the area. Consequently, it is considered that the development accords with the provisions of national and local policy as detailed above.

### **3. Residential amenity -**

The NPPF is clear in requiring new development proposals to provide a high standard of amenity for existing and future users of land. This is echoed by UDP Policy B2 and emerging CSDP Policy BH1 which requires that the scale, massing, setting and layout of new development respects and enhances the best qualities of nearby properties and the locality and retains acceptable levels of privacy for neighbouring properties.

It is acknowledged that the site is allocated for commercial use and that the general area presents a mix of uses all within close proximity to a busy highway network. Notwithstanding, there are residential properties which directly oppose the site to the west whilst a recent planning consent on land to the south has resulted in a 46no dwelling scheme which is now nearing completion.

In light of the above, it is important to ensure that the proposed development would not have an unreasonable adverse impact on the residential amenity of the occupiers of properties within the vicinity of the site.

Consideration therefore needs to be given to the level of harm arising to residential amenity in respect of a potential loss of sun/daylight, outlook or privacy and /or whether an unreasonable increase in noise or disturbance to immediate residents would be created by the non-residential activities associated with the use.

The overall scale and massing of the drive-thru restaurants are generally considered to quite limited with the higher two storey unit positioned towards the south-western corner of the site thereby ensuring that there would be no direct interfacing with the opposing flats (Toll Bar House). Whilst unit 4 would interface with the flats, this unit is single storey and spacing of over 28m would be provided between the respective built forms.

With regard to the new build properties to the south, unit 5 would be located over 23m away from the gable end of the closest property whilst the larger span unit (unit 1) would be set at least 33m away from the elevations of the properties which rearwardly face into the site. These arrangements and spacing distances are considered to be more than sufficient to ensure that the proposed development would have no demonstrable adverse impact on levels of day light or sun light entering any nearby residential windows, or for the development to result in any prejudicial overshadowing, loss of outlook or privacy being unduly compromised.

Notwithstanding, the re-use of the vacant land will inevitably generate a level of activity in and around the site which currently doesn't exist and although the site is allocated for light industry/commercial use, it is still necessary for the developer to provide a level of comfort that the operations to be conducted from the site would not adversely impact on the amenity afforded to neighbouring occupiers in terms of noise, disturbance and odour. This approach is supported by UDP policy EN5, to be shortly superseded by emerging CSDP policy HS2 (point 3), which sets out that where development is likely to significantly increase ambient noise levels, the Council will expect an applicant to carry out an assessment of the nature and extent of likely problems and incorporate suitable mitigation measures in the design of the development.

The applicant has therefore submitted a noise assessment, an odour and air quality assessment and indicative details of the plant to be used within the new drive thru restaurants. These assessments and the conclusions drawn therein, have been subject to consideration by the Council's Environmental Health Section who have expressed broad agreement to the findings.

In terms of odour, the prescribed specification of the plant is considered to be sufficient to satisfactorily control the emission of fumes and smells arising from the proposed uses, however it has been advised that a condition be placed on any consent granted to ensure that the final details, incorporating a scheme of works, be submitted to the Council, as Local Planning Authority for agreement in writing.

With regard to air quality, the assessment outlines that a detailed dispersion modelling assessment of potential operational phase road traffic impacts has been undertaken and that the predicted pollutant concentrations indicate that road traffic attributable to the development will not have a significant adverse effect on local air quality. These findings have been accepted by Environmental Health. However, in order to suitably mitigate the construction phase impacts in respect of dust generation, it will be necessary for the developer to submit a Dust Management Plan. This will be expected to form part of a wider Construction Environmental Management Plan which will need to be conditioned.

The noise impact assessment considers three potential areas of conflict. These are identified as;

1. An assessment of noise from the fixed plant;
2. An assessment of noise from car park operations;
3. An assessment of noise from HGV deliveries.

The report identifies that the measurement of external noise levels has been completed for the proposed development to allow demonstration by calculation that suitable noise levels will be achieved at the facade of the most noise exposed dwellings.

In considering the methodology and findings of the report, the Council's Environmental Health Officer (EHO) requested that the noise levels for all fixed plant should not exceed the No Observed Effect Level (NOEL) Maximum Permissible Rating Noise Level when measured at the Nearest Sensitive Receptor as laid out in Tables 5.3 to 5.10 of the Noise Report (ref DC3171-R1v2). This can be conditioned.

With regard to car park operations, the report identifies that noise mitigation measures are required along the southern boundary adjacent to unit 5 in respect of the nearest noise receptor to the south (the new residential development). This would take the form of an acoustic noise barrier/fence between the new access road and the junction of Ryhope Road. The noise consultants advise that the height of the fence would need to be set at a minimum height of 1.8 but this may increase depending on the finished level of the site. The final specifications of the barrier will need to be agreed in writing with the Local Planning Authority and the barrier will need to be in situ prior to the commencement of the use. In all cases, the barrier must be of suitable construction to achieve the necessary noise reduction with no holes or gaps and qualification will also need to be provided to demonstrate that the structure will not unduly impact on the visual amenity of the street scene.

Notwithstanding the above and by way of providing assurance and comfort to the Council, as Local Planning Authority, that the predictions offered within the report are sound, the EHO has recommended that a facilitating mechanism be put into place via appropriately worded conditions. The effect of the conditions will allow the Local Planning Authority to consider any further mitigation measures that may be necessary to be provided on site following receipt of a substantiated noise complaint\* received within the first 6 months of the operation of the development. \*(A substantiated noise complaint will be one which has been investigated and verified on site by the City Council's EHO)

This mechanism would provide the scope for a further noise assessment to be carried out and, where the results of the assessment demonstrates that the noise criteria within BS 8233:2014 are exceeded or maximum noise events exceed those predicted within noise assessment at the Nearest Noise Sensitive Receptor, the operator shall be required to identify physical or managerial measures to reduce noise levels to comply with criteria above.

In the interests of residential amenity, further conditions are also recommended which will require the submission of a construction method statement, the control of hours during the construction phase, details of construction plant and equipment during the construction process.

On a more general amenity point, the issue of litter and the attraction of rodents has been raised as a potential concern by a couple of the objectors.

As a broad principle, the planning system is concerned with the use and development of land and buildings and not the identity, background or behaviour of occupiers or patrons utilising land or buildings. Any perceptions, fears or concerns which may be held, have to be attributable to the proposed use of the land or building and inherent to the nature of the proposed use. Where fears or concerns primarily relate to the potential behaviour of occupiers of a building or land, they must have some reasonable or evidential basis. With regards to littering, this is clearly an offence which attracts a fine and there are other agencies such as the police which would be the responsible authority in this respect.

With regard to the attraction of rodents, this would be a matter for the individual operator of the business to address through ensuring that a robust waste management strategy is in place.

Based on the reasoning above and subject to the imposition of the conditions recommended above, the proposed development is considered to pose no demonstrable harm to the amenity of the nearby residential occupiers, in accordance with the requirements of the aforementioned policies.

#### **4. Highway issues**

Paragraph 108 of the NPPF advises that planning decisions should take account of whether opportunities for sustainable transport modes have been taken up, that safe and suitable access to the site can be achieved and whether improvements can be undertaken within the transport network that cost-effectively limit the significant impacts of the development.

Paragraph 105 advises that local parking standards for residential development should amongst other matters take into consideration the availability and opportunities for public transport, whilst paragraph 106 advises that maximum parking standards for residential and non-residential development should only be set where there is a clear and compelling justification that they are necessary for managing the local road network, or for optimising the density of development in city and town centres and other locations that are well served by public transport.

Paragraph 109 is clear in stating that development should only be refused on transport grounds where there would be an unacceptable impact on highway safety, or residual cumulative impacts of the development are severe.

On a local level, Policy T14 of the adopted UDP requires new development proposals to be accessible, to not cause traffic congestion or highway safety problems on existing roads, make appropriate access for the safe access and egress of vehicles and pedestrians and to indicate

how parking requirements will be accommodated. Policy T22 of the UDP, meanwhile, requires new development proposals to be afforded appropriate levels of dedicated parking.

Policy ST3 of the emerging CSDP outlines that development should provide safe and convenient access for all road users and should include a level of vehicle parking and cycle storage in accordance with the Council's parking standards.

The proposed application has been accompanied by a Transport Assessment (TA) and Road Safety Audit which has been subject to scrutiny by the City Council's Highway Engineers.

In terms of traffic generation, the layout and capacity of the Salterfen junction, the Engineers have concurred with the findings of the report which advises that the traffic likely to be generated by the proposed development can be satisfactorily accommodated on the local highway network.

In terms of vehicular access, the TA confirms that vehicular access to the site will be provided from the existing junction onto Salterfen Lane to the south of the site. The engineers noted that this would reduce the available right turn lane for the Ryhope Road approach at the signalised junction to the north. Although the engineers commented that this approach would generally be acceptable, it was requested that a Stage 1 Safety Audit, be carried out to ensure that road safety would not be compromised. This assessment has been undertaken and the engineers have now qualified that it is acceptable and that no objections are offered to the proposed alterations to the Ryhope Road/Salterfen Road junction.

Further clarification on the queuing capacity of drive-thru (unit 5) was requested to ensure that there would be no adverse impact in terms of queuing into the site and creating a backlog onto Ryhope Road. The site plan has been amended to remove potential for this scenario to arise and the engineers have confirmed their agreement to this revision.

Internally a total of 99 parking spaces will be provided including disabled bays and two electric charging points. This is deemed to provide ample on-site parking to serve the new development. Details of areas of tactile paving, cycle shelters, allocated staff parking and provision of litter bins will need to be conditioned.

It has also been confirmed that there are adopted highways within the site which will require stopping up whilst alterations to the adopted highway will be required to create a new access to the Drive-Thru restaurant under a Section 278 Agreement.

Based on the above, there are considered to be no overriding grounds to consider that the residual cumulative impacts of the development would be severe and therefore there are no reasonable grounds to recommend that planning permission is refused in respect of highway or pedestrian safety. The proposal therefore accords with the requirements of local and national policy.

## **5. Implications of development in respect of land contamination/ground conditions**

Paragraph 178 of the NPPF states that planning decisions must ensure that development sites are suitable for the new use, taking account of ground conditions and land instability, including from former activities such as mining and pollution.

Meanwhile, Policy EN14 of the UDP states that where development is proposed on land where there is reason to believe is contaminated or potentially at risk from migrating contaminants, the Council will require the applicant to carry out adequate investigations to determine the nature of

ground conditions below and, if appropriate, adjoining the site. Where the degree of contamination would allow development subject to preventative, remedial or precautionary measures within the control of the applicant, planning permission will be granted subject to conditions specifying the measures to be carried out.

Policy HS3 of the emerging CSDP states that development should identify any existing contaminated land and the level of risk that contaminants pose in relation to the proposed end use and it should be demonstrated that the developed site will be suitable for the proposed use without risk from contaminants to people, buildings, services or the environment.

A Phase 1 Desk based assessment and site inspection has been received and considered by the City Council's Environmental Health Section. The conclusions the assessment identify that an intrusive ground investigation be undertaken to verify the assumptions made in the preliminary report. Overall, it is considered that potential land contamination risks do not represent a significant constraint to the development of the site and it has been advised that planning permission can be granted subject to the imposition of the conditions recommended in relation to the undertaking of further detailed site investigations and the submission of a remediation strategy, verification and validation reports and a strategy for dealing with unexpected contamination.

Subject to the imposition of the recommended conditions, it is considered that the implications of the development in respect of land contamination are acceptable, in accordance with the requirements of Policy EN14 of the adopted UDP, Policy HS3 of the emerging CSDP and paragraph 178 of the NPPF.

## **6. Ecology and biodiversity**

As a member of the European Union (EU), the United Kingdom (UK) is bound by the terms of the Council Directive 79/409/EEC on the Conservation of Wild Birds (the Birds Directive) and the Council Directive 92/42/EEC on the conservation of natural habitats and wild flora and fauna (the Habitats Directive). These are implemented in the UK through the Conservation regulations which provide for the protection of areas of European importance for wildlife, in the form of Special Areas of Conservation (SAC's) designated under the Habitats Directive, and Special Protection Areas (SPA's) designated under the Birds Directive. Collectively, these are termed European sites, and overall network of European sites is termed Natura 2000. It is an offence under the legislation and regulations to carry out an act which may damage a qualifying species or habitat for which the site is designated.

A Habitat Regulation Assessment (HRA) is the mechanism to be implemented to ensure the above legislation is complied with and determines whether a plan or project would adversely affect the integrity of any European site in terms of its conservation objectives.

Where adverse effects are identified alternative solutions should be identified and the plan or project modified to avoid any adverse effects. The LPA, as the Competent Authority, can adopt the plan or approve the project only after having ascertained that it will not adversely affect the integrity of a European Site.

Regulations require that HRA's must consider in-combination effects cumulatively, with all relevant plans and projects. If it can be concluded that no likely significant effects will arise from the plan or project, including in combination then no further stages of the HRA are required (on the basis that the proposal is screened out and appropriate mitigation if required is provided).



There are two relevant designated sites within the vicinity of the proposal; the Northumbria Coast Special Protection Area (SPA) and the Durham Coast Special Area of Conservation (SAC). The potential source of impact in this case may be from increased recreational visits to the coastal areas as a result of the development and policy CN19 of the UDP requires the protection of designated and proposed European and Ramsar sites.

The application has been accompanied by a document 'Information to Support Habitats Regulations Assessment' (Dendra July 2019). The assessment suggests that there are no effects on European sites of the project in isolation, due to the nature of the development and a lack of access to European sites. In this respect and where there are no effects, the report advises that the project cannot conceivably contribute to the effects of other plans and projects and therefore, in this instance, in-combination effects must be ruled out. The report concludes that the competent authority (City Council as Local Planning Authority) could therefore conclude that the project will have no likely significant effect on Natura 2000 sites (European sites), either alone or in combination with other plans or projects. This conclusion has been accepted by the Council's Natural Heritage Section.

In terms of the impact of the development upon the biodiversity of the application site, the NPPF, Natural Environment White Paper and recently examined Core Strategy policies NE1 (Green Infrastructure) and NE2 (Biodiversity and Geodiversity) require development to contribute towards biodiversity net gain, as well as maintain and support the management of wildlife and strategic green corridors.

A Preliminary Ecological Appraisal and Arboricultural Impact Assessment has been undertaken (Dendra, July 2019) and in response to initial consultation the Natural Heritage Section noted that reports confirmed that the existing woodland was a suitable habitat for nesting birds and that evidence of disused nests were found. Further, the arboricultural impact assessment also suggested that the proposed tree planting scheme was unlikely to fully mitigate the site impacts.

In this respect, the Natural Heritage Section initially advised that as no compensation was being proposed the development would result in a negative impact on biodiversity at site level whilst impinging on a Green Infrastructure Corridor, as well as a Strategic Wildlife Corridor. To this end, policy NE2 (1. i) is of relevance and states that developers must demonstrate how it will provide net gains in biodiversity whilst NE2 (1.ii) states that developers must demonstrate how impacts on biodiversity will be avoided or minimised in accordance with the mitigation hierarchy. Further information was therefore requested from the developer to understand what mitigation measures were being proposed along with biodiversity net gain, in line policy requirements.

In response to the above the developer submitted a fully worked out landscaping scheme, planting schedule and soft landscaping submission along with a revised and updated Preliminary Ecological Appraisal.

The updated details advise that approximately 0.9ha of low value habitat will be removed to accommodate the development with compensation proposed in the form of a soft landscaping scheme containing scattered trees, semi-improved neutral grassland (Germinal Seeds Everyday Meadow WFG21), amenity grassland and native hedgerow creation, comprising of the following mix:

- o Hawthorn 40%
- o Blackthorn 15%
- o Field maple, Hazel, Dog rose, Guelder rose 10% each
- o Holly 5%

In terms of providing biodiversity gains on-site, the above scheme has been calculated on a before and after scenario utilising a biodiversity offsetting calculator. The calculations indicate an existing Habitat Biodiversity Value for the site of 0.39 units. These habitats will be replaced by grassland and trees with a value of 0.06 biodiversity units. However, 208m of native hedgerow will also be planted, with this feature carrying a Habitat Biodiversity Value of 1.18. In this respect and when considering the net change in biodiversity, an overall enhancement of 0.85 biodiversity units is shown to result from the proposed development. This assessment has been considered by the Natural Heritage Section who broadly concur with the findings. In this respect the landscaping scheme outlined as above and within Section 2 of this report, is considered to meet the requirements of national and local policy in terms of providing on-site bio-diversity net gains. A condition will be imposed to ensure that the landscaping scheme is implemented as shown and, as directed by Natural Heritage, over a five-year period there will also be a requirement to replace trees, hedgerow and shrubs which fail to establish at the end of each planting season.

In addition to the above, the reports identified the presence of *Cotoneaster horizontalis* growing within a narrow band of introduced shrubs along the northern and eastern site boundary. This plant is listed under Schedule 9 of the Wildlife and Countryside Act 1981, and as such it is an offence under Section 14(2)(a) of The Act to plant or otherwise allow this species to grow in the wild. It is not an offence for *Cotoneaster horizontalis* to be growing on the land, however allowing these plants to spread would constitute an offence. In light of the above, Natural Heritage has advised that it should be eradicated prior to works commencing on site to prevent the spread during construction works. In this respect, a condition, requiring the submission of a detailed method statement will need to be provided to and approved by the Local Planning Authority prior to any works commencing on site.

A condition will also be required to ensure any (ground level) voids are covered up each night and have a means of escape to avoid mammal and amphibian entrapment. A method statement demonstrating how this will be achieved will need to be submitted for approval in writing by the Local Planning Authority.

Overall, it is considered that the proposal has suitably considered the potential impacts of the development on the nearby Special Areas of Conservation whilst the identified planting and landscaping measures are considered to be sufficient to minimise potential adverse impacts and secure mitigation and enhancements to deliver a net increase in biodiversity.

## **7. Drainage and flooding**

Paragraph 155 of the NPPF states that when determining planning applications, Local Planning Authorities should ensure flood risk is not increased elsewhere and should only consider development to be appropriate in flood-risk areas where certain criteria are satisfied. Meanwhile, policy EN12 of the UDP states that in assessing development proposals, the Council will seek to ensure that the proposal will not materially impede the flow of flood water or increase the number of people or properties at risk of flooding.

Policy WWE2 of the emerging CSDP states that development will be required to demonstrate, where necessary, through an appropriate Flood Risk Assessment that development will not increase flood risk on site or elsewhere. Whilst Policy WWE3 outlines that development must consider the effect on flood risk, on and off-site commensurate with the scale and impact.

In terms of drainage Policy WWE4 of the emerging CSDP states that the quantity and quality of surface and groundwater bodies will be protected and Policy WWE5 states that development should utilise the drainage hierarchy.

The City Council is now the Lead Local Flood Authority (LLFA) in respect of major development proposals, with responsibility for matters pertaining to the management of surface water. A Ministerial Statement from the Department for Communities and Local Government (dated 18th December 2014), to be read in conjunction with the policies of the NPPF, sets out that the Government expects decisions on planning applications relating to major development to ensure that sustainable drainage systems (SuDS) for the management of run-off are put in place, unless this is demonstrated to be inappropriate.

In considering planning applications, the LLFA should be satisfied that the proposed minimum standards of operation are appropriate and ensure through the use of planning conditions or obligations that there are clear arrangements in place for ongoing maintenance over the lifetime of the development. Technical Guidance produced by DEFRA (March 2015) sets out non-statutory technical standards for SuDS and this should be used to inform the preparation of a SuDS scheme in association with a development proposal. In this regard, it is recommended that the surface water run-off rate for new development should not exceed the existing greenfield run-off rate for the site.

The application has been accompanied by a Flood Risk Assessment (FRA) and Drainage Strategy which concludes that the development site is located within Flood Zone 1 (at lowest risk of flooding) and that the finished floor levels will be at least 150mm above adjacent ground level to ensure that there will be no increase in flood risk.

The drainage strategy confirms that under SuDS guidance the first point of discharge for surface water is percolation via soakaway. In this respect the testing undertaken on site confirms that discharging surface water on the site via infiltration is not a viable proposition whilst no watercourses are located close to the site. In this respect the strategy proposes to discharge into the NW combined sewer on the site. This has been worked through with the Council's LLFA (REV G) who are satisfied with the approach taken. In this respect and subject to the submission of a verification report to be agreed in writing by the Local Planning Authority prior to first occupation of the development. The proposed development would incorporate SUD's and is not at risk of flooding, the development would therefore accord with paragraph 155 of the NPPF, Policy EN12 of the adopted UDP and Policies WWE2, WWE4 and WWE5 of the emerging CSDP.

## **Conclusion**

Overall, the principle of utilising the site for the development prescribed within the application description is considered to be acceptable in giving appropriate weight to the NPPF and the Council's existing UDP and emerging CSDP. In reaching this conclusion substantial weight is given to the urban and economic regeneration of a sustainable brownfield site.

In terms of layout and design the scheme is considered to be of good quality and would facilitate the economic regeneration of a vacant parcel of land at a prominent junction within the city. The relationship between the buildings and the nearest residential properties is considered to be appropriate without adversely impacting on levels of sun/daylight, privacy or outlook, noise or smells.

It is considered that there is sufficient capacity within the existing highway network to accommodate the predicted increase of vehicular movements in and around the site whilst sufficient parking would be accommodated within the site to cater for visitors.

Matters pertaining to land contamination, ecology and drainage have all been considered and are deemed to be acceptable.

In light of the above, the proposal is considered to be acceptable with due regard to relevant national and local planning policy.

### **EQUALITY ACT 2010 - 149 Public Sector Equality Duty**

During the detailed consideration of this application/proposal an equality impact assessment has been undertaken which demonstrates that due regard has been given to the duties placed on the LPA's as required by the aforementioned Act.

As part of the assessment of the application/proposal due regard has been given to the following relevant protected characteristics:

- age;
- disability;
- gender reassignment;
- pregnancy and maternity;
- race;
- religion or belief;
- sex;
- sexual orientation.

The LPA is committed to (a) eliminating discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

In addition, the LPA, in the assessment of this application/proposal has given due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. This approach involves (a) removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it; (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

The LPA has taken reasonable and proportionate steps to meet the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities, as part of this planning application/proposal.

Due regard has been given to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves. Particular consideration has been given to the need to:

- (a) tackle prejudice; and
- (b) promote understanding.

Finally, the LPA recognise that compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.

**RECOMMENDATION:**

To GRANT CONSENT under Regulation 4 of the Town and Country Planning General Regulations 1992 (as amended), subject to the provision of the conditions set out below:

**Conditions:**

1 The development to which this permission relates must be begun not later than three years beginning with the date on which permission is granted, as required by section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004 to ensure that the development is carried out within a reasonable period of time.

2 The development hereby granted permission shall be carried out in full accordance with the following approved plans:

The proposed elevations, floor plans and roof plan (unit 1 and 2) - Plan refs: 114A, 115, 116A, 117A, 01.08.2019;

The proposed elevations, floor plans and roof plan (unit 3) - Plan refs: 1717PL 118A, 119, 120B, 121B, received 01.08.2019;

The proposed elevations, floor plans and roof plan (unit 4 KFC) - Plan refs: 1717PL 122, 123, 124B, received 01.08.2019;

The proposed elevations, floor plans and roof plan (unit 5 Burger King) - Plan refs: 1717PL 126, 127, 128A, received 01.08.2019;

The proposed site plan as amended - Plan ref: 1717PL 113M, received 19.12.2019;

The proposed site sections (Plan ref: 1717PL 129) received 01.08.2019;

The proposed landscape plan (Plan ref: 802/LA1) received

In order to ensure that the completed development accords with the scheme approved and to comply with policy B2 of the adopted Unitary Development Plan and BH1 of the emerging Core Strategy Development Plan.

3 The development hereby approved shall not commence until a Construction Environmental Management Plan has been submitted to, and approved in writing by, the local planning authority. The approved Plan shall be adhered to throughout the construction period. The Plan shall provide full details in respect of:

1. provision and location of facilities for the parking of vehicles of site operatives and visitors;
2. provision and location of facilities for the loading, unloading and storage of plant and materials;
3. measures to control noise, dirt, dust and other airborne pollutants, vibration, smoke and odour during construction;
4. full details of any lighting required during the construction phase;
5. a method statement for the demolition and scheme for recycling/disposing of waste resulting from demolition and construction works;

Reason: In the interests of amenity and highway safety to accord with policies B2, EN1 and T14 of the Unitary Development Plan and policies BH2 and ST3 of the emerging Core Strategy Development Plan.

4 The development hereby approved shall not commence until a detailed method statement be produced for the removal and eradication of the *Cotoneaster horizontalis* has been submitted to and agreed in writing by the Local Planning Authority. For the avoidance of doubt, the method statement should be produced in line with Section 33 of the Waste Management Licensing Regulations 1994 as well as legislation set out in Part ii of the Environmental Protection Act 1990.

Thereafter, no development shall commence until the *Cotoneaster horizontalis* has been eradicated in accordance with the agreed method statement in order to prevent the spread of the invasive species.

Reason: The *Cotoneaster horizontalis* is an invasive Schedule 9 species within the Wildlife and Countryside Act 1981 and to comply with policy CN22 of the Unitary Development Plan and policy NE2 of the Draft Core Strategy.

5 The development hereby approved shall not commence until a method statement which details measures to be put in place to ensure that that any ground level voids are covered up each night and that a means of escape is provided to avoid mammal and amphibian entrapment, has been submitted to and agreed in writing by the Local Planning Authority. Thereafter, the agreed measures shall be adhered to throughout the course of the construction period.

Reason: To comply with policy CN22 of the Unitary Development Plan and policy NE2 of the Draft Core Strategy.

6 The development hereby approved shall not commence until full details of any required embankment grading works and retaining walls have been submitted to and agreed in writing by the Local Planning Authority. Thereafter, the development shall not be carried out other than in accordance with the agreed details.

Reason: In the interests of the amenity of the site and to comply with policies B2 of the adopted Unitary Development Plan and BH1 of the emerging Core Strategy Development Plan.

7 The landscaping scheme shall be carried out in full accordance with the 'Soft Landscaping Specification', 'Planting Schedule' Landscape Design Description' and 'Landscape Plan drwg 802/LA1)' and shall be completed no later than the end of the first planting season following the first occupation of the development. Thereafter the approved landscape works shall be maintained in accordance with the current version of the British Standard 4428 for a period of 5 years commencing on the date of Practical Completion and during this period any trees or plants which die or become diseased shall be replaced in the first available planting season with others of similar size and species and any grass which fails to establish shall be re-established.

Reason: In the interests of the ecological value of the site and visual amenity and to accord with policies B2, CN7 and CN14 of the adopted Unitary Development Plan and policies BH1 and NE2 of the emerging Core Strategy Development Plan.

8 The development shall not be brought into use until full details of all on-site refuse storage facilities and a refuse storage strategy have been submitted to and approved in writing by the Local Planning Authority. The approved refuse storage facilities shall be implemented before the development is brought into use. Thereafter, the refuse storage facilities and refuse storage strategy shall operate in accordance with the approved details. In order to protect the amenities of

the area and to comply with policies B2 of the adopted Unitary Development Plan and BH1 of the emerging Core Strategy Development Plan.

9 The development shall not be brought into use until the car parking area, including any disabled car parking, electric bays, loading bays and internal pedestrian routes contained therein, have been hard surfaced, sealed and marked out in accordance with the approved details. Thereafter, the car parking area, bays and pedestrian routes shall be retained for the lifetime of the development.

Reason: In the interests of highway safety and in accordance with Policy T22 of the adopted Unitary Development Plan and Policy ST3 of the emerging Core Strategy Development Plan.

10 Prior to the first occupation of the development, a verification report carried out by a qualified drainage engineer must be submitted to and approved by the Local Planning Authority, to demonstrate that all sustainable drainage systems have been constructed as per the agreed scheme, namely;

23881-D-CR-0100-G-Drainage Strategy (for drainage layout, flow control rates, pre-construction surface water management notes & location of full retention separators);  
Salterfen Road Drainage Letter and Maintenance Schedule (for a long-term maintenance strategy), and;  
23881-D-CR-0101-P3-Drainage Details (geocell tank details including raised outlet for source control & flow control details).

For the avoidance of doubt, this verification report shall include:

- o As built drawings for all SuDS components - including dimensions (base levels, inlet/outlet elevations, areas, depths, lengths, diameters, gradients etc) and in particular details of access arrangements to the geocellular tank to show that it can be maintained;
- o Construction details (component drawings, materials, vegetation);
- o Health and Safety file;
- o Details of ownership organisation/adoption details.

Reason: To ensure that all sustainable drainage systems are designed to the DEFRA non-technical standards and to accord with policies EN11 and EN12 of the adopted Unitary Development Plan and policies WWE2 and WWE3 of the Draft Core Strategy.

11 Prior to the installation of the equipment to control the emission of fumes and smell from the units, a scheme of works (to be installed in accordance with the manufacturer's instructions) shall be submitted to and approved in writing by the Local Planning Authority. All works shall then be installed in accordance with the agreed details before the use commences and maintained as such thereafter for the lifetime of the approved use.

Reason: In order to protect the amenities of the area and to comply with policy S12 of the Unitary Development Plan and policy HS2 of the emerging Core Strategy Development Plan.

12 Noise levels for all fixed plant within the site shall not exceed the No Observed Effect Level (NOEL) Maximum Permissible Rating Noise Level when measured at the Nearest Sensitive Receptor in Tables 5.3 to 5.10 of the submitted Noise Impact Assessment (ref DC3171-R1v2).

Reason: To ensure that a satisfactory level of amenity is provided to residents of nearby dwellings and to accord with policies B2 and EN5 of the adopted Unitary Development Plan and policies BH1 and HS2 of the emerging Core Strategy Development Plan.

13 The development shall not be brought into use until a revised noise assessment and full details and technical specifications of the acoustic noise barrier to be installed adjacent to unit 5 have been submitted to and approved in writing by the Local Planning Authority. For the avoidance of doubt the submission shall include;

- o The exacting location, scaled elevations, materials used in the construction and any mitigation as may be required to soften its appearance;
- o A revised noise assessment for the development informed by the details and technical specifications of the acoustic barrier submitted relative to this condition.

Thereafter, the acoustic barrier shall be installed in full accordance with the agreed details before the use commences and shall maintained in an effective manner for the lifetime of the development.

Reason: The noise assessment qualifies that the overall height of the barrier will be dependent on final levels of the finished site therefore further details are required to ensure that a satisfactory level of amenity is provided to residents of nearby dwellings and to accord with policies B2 and EN5 of the adopted Unitary Development Plan and policies BH1 and HS2 of the emerging Core Strategy Development Plan.

14 During the initial 6 month period of operation of the extended opening hours, should the City Council, as Local Planning Authority, receive a substantiated complaint in respect of activities conducted within the site between the hours of 06:00 and 07:00, the operator shall, within 42 days of being notified of such by the City Council, submit a noise assessment designed to assess the impacts of the noise being generated at the site during the hours specified above. For the avoidance of doubt, the noise assessment must be undertaken in accordance with a methodology to be firstly agreed in writing with the City Council.

Reason: The assessment is required in the interests of minimising noise from operations at the site and to accord with policies B2 and EN5 of the adopted Unitary Development Plan and policies BH1 and HS2 of the emerging Core Strategy Development Plan.

15 In the event that the noise assessment submitted in respect of condition 14 demonstrates that the noise criteria within BS 8233:2014 are exceeded or noise rating levels exceed those predicted within noise assessment (ref DC3171- R1v2 ) at the Nearest Noise Sensitive Receptor, the operator shall identify physical or managerial measures as necessary to reduce noise levels to comply with the criteria above for approval in writing by the Local Planning Authority. Thereafter the approved attenuation/mitigation measures shall be implemented within a timescale to be agreed with the Local Planning Authority

Reason: In the interests of minimising noise from operations at the site and to accord with policies B2 and EN5 of the adopted Unitary Development Plan and policies BH1 and HS2 of the emerging Core Strategy Development Plan.



16 Within 28 days of the implementation of any physical or managerial measures identified within condition 15, an additional verifying noise assessment, designed to demonstrate that the noise levels referred to in noise assessment (ref DC3171-R1v2) are not exceeded, shall be undertaken and submitted to the City Council, as Local Planning Authority, for approval in writing. Subsequent to the receipt of such written approval, the attenuation/mitigation measures implemented pursuant of condition 15 shall be maintained in an effective condition for the lifetime of the approved development.

Reason: In the interests of minimising noise from operations at the site and to accord with policies B2 and EN5 of the adopted Unitary Development Plan and policies BH1 and HS2 of the emerging Core Strategy Development Plan.

17 In the event that the noise levels predicted in noise assessment (ref DC3171-R1v2) are exceeded following the assessment submitted pursuant to condition 16, a further mitigation programme developed in accordance with conditions 14, 15 and 16 shall be submitted for the written approval of the Local Planning Authority. The agreed mitigation measures shall then be implemented in accordance with a timetable to be agreed with the City Council and maintained in an effective condition thereafter for the lifetime of the development.

Reason: In the interests of minimising noise from operations at the site and to accord with policies B2 and EN5 of the adopted Unitary Development Plan and policies BH1 and HS2 of the emerging Core Strategy Development Plan.

18 The units shall not be operated for the purposes hereby approved between the hours of 23.00 and 07.00 in order to protect the amenities of the area and to comply with policies B2 of the adopted Unitary Development Plan and BH1 of the emerging Core Strategy Development Plan.

19 No deliveries shall be made, or refuse collected, from any unit outside the hours of 06.00 and 23.00 in order to protect the amenity of the area and to comply with policies B2 and EN5 of the adopted Unitary Development Plan and BH1 and HS1 of the emerging Core Strategy Development Plan.

20 No development shall commence until a Phase 2 investigation and assessment, in addition to any assessment and report provided with the planning application, has been completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:

- (i) a survey of the extent, scale and nature of contamination;
- (ii) an assessment of the potential risks to: human health property (existing or proposed) including building, crops, livestock, pets, woodland and service line pipes, adjoining land, groundwaters and surface waters, ecological systems, archaeological sites and ancient monuments.
- (iii) an appraisal of remedial options, and proposal of the preferred option(s). This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR11.'

Reason: The condition is required to ensure that the risks from land contaminated to the future users 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 safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with policy EN14 of the Unitary Development Plan and policy HS3 of the emerging Core Strategy Development Plan.

21 Where the LPA considers it necessary, development must not commence until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment, has been submitted to and approved in writing by the Council as LPA. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environment Protection Act 1990 in relation to the intended use of the land after remediation.

Reason: The condition is required to ensure that the risks from land contaminated to the future users 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 safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with policy EN14 of the Unitary Development Plan and policy HS3 of the emerging Core Strategy Development Plan.

22 Any remediation scheme approved pursuant to condition number 21 must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the LPA. The LPA must be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced and approved in writing by the LPA.

Reason: The condition is required to ensure that the risks from land contaminated to the future users 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 safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with policy EN14 of the Unitary Development Plan and policy HS3 of the emerging Core Strategy Development Plan.

23 In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the LPA. An investigation and risk assessment must be undertaken and when remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition number 21, which is subject to the approval in writing of the LPA. Following completion of measures identified in the approved remediation scheme a verification report must be prepared which is subject to the approval in writing of the LPA in accordance with condition number 22. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the LPA in writing until this condition has been complied with in relation to that contamination.

Reason: The condition is required to ensure that the risks from land contaminated to the future users 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 safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with policy EN14 of the Unitary Development Plan and policy HS3 of the emerging Core Strategy Development Plan.

24 Notwithstanding the submitted plans, the development shall not be brought into use until details of the scheme of external lighting have been submitted to and approved in writing by the Local Planning Authority. Thereafter the lighting shall be installed in full accordance with the agreed details prior to the commencement of the use hereby permitted.

Reason: In order to protect the ecology of the site and the amenities of the area and to comply with policies B2 and EN5 of the adopted Unitary Development Plan and policies BH1 and HS1 of the emerging Core Strategy Development Plan.

25 The development hereby approved shall not be brought into use until the location of cycle racks and areas of tactile paving to be installed within the site have been submitted to and agreed in writing by the Local Planning Authority. Thereafter, the cycle racks and tactile paving shall be installed in accordance with the agreed scheme prior to the development being brought into use and shall be maintained thereafter.

Reason: In the interests of the amenity of the site and to comply with policies B2, S7 and T14 of the adopted Unitary Development Plan and BH1 and ST3 of the emerging Core Strategy Development Plan.

26 For the avoidance of doubt, the materials to be used in the construction of the units hereby approved, shall be those specified on the approved plan drawings, unless the Local Planning Authority first agrees any variation in writing; in the interests of visual amenity and to comply with policy B2 of the Unitary Development Plan and BH1 of the emerging Core Strategy Development Plan.