

Web site: <http://www.DurhamCity.org>

2 February 2023

Mr Scott Henderson
Durham County Council
Planning Development
Central/East Room 4/86-102
County Hall
Durham DH1 5UL

Dear Mr Henderson,

DM/22/03232/FPA: Change Of Use from Class E 'Commercial, Business And Services' to a mixed-use comprising uses within use Class E and Sui Generis 'Drinking establishments and venues for live music performances and events' with ancillary facilities, alterations to the external elevations and provision of a roof-top terrace with external seating and associated facilities, 4 - 6 Silver Street Durham DH1 3RB

The City of Durham Trust opposes this planning application. It will create unacceptable noise pollution for adjacent residential properties. The proposals for escape in an emergency are dangerous. It lies within the immediate setting of the World Heritage Site but no proper assessment has been made of its impact.

There is a widespread general desire for Silver Street to have an injection of positive activity by the re-use of the several currently vacant retail premises, but this particular proposal would be harmful and is contrary to key development policies as set out in the County Durham Plan (adopted 21 October 2020) and the City of Durham Neighbourhood Plan (adopted 23 June 2021, and judged by an independent examiner to be consistent with the County Durham Plan).

Principle of development

County Durham Plan Policy 9 includes as its final paragraph

“Proposals that would positively contribute to the evening economy will be supported provided they contribute to the vitality and viability of town centres, promote public safety and accord with this and other relevant policies in the Plan.”

The supporting text says

“5.65 The Retail and Town Centre Uses Study identifies deficiencies in the evening and night time economy in many of the county's town centres. It will be important to support appropriate proposals that can improve the evening economy in these towns.”

There is no deficiency in the evening and night time economy in Durham. The city is already well-provided for at Walkergate, The Riverwalk, North Road, and now Milburngate is opening up.

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The City of Durham Neighbourhood Plan includes Policy E3, part (b) of which supports the change of use of ground floor premises to the following non-A1 uses as the predominant use:

- 1) entertainment
- 2) arts, culture and tourism
- 3) leisure, sport and recreation;

Note that only a ground floor change of use is supported, not upper floors.

The Neighbourhood Plan also includes Policy E4: *Evening Economy* which states

“All development proposals, including those for a change of use, that would promote and/or support the early evening and night-time economy activity related to food and drink, arts and cultural uses, including later trading, will be supported provided that they contribute to the vitality and viability of the City Centre and add to, and improve, the cultural and diversity offer.

Proposals should include a strategy regarding public safety and appropriate evidence that the development will have no significant adverse effect upon local amenity, including the amenity of local residents.”

The support of CDP Policy 9 and DCNP Policy E4 is conditional on the development contributing to the vitality and viability of the City Centre. The site is not vacant, it is currently occupied by a business which has successfully operated in Durham for decades. Larger retail stores such as the application site are very valuable in creating the critical mass for a successful retail destination. Redevelopment of Riverwalk removed a significant proportion of the large footprint retail space in the city. Further erosion of this capacity would be seriously detrimental to the vitality and viability of Durham town centre as one of the two sub-regional retail centres protected by Policy 9. Neither is the change of use likely to assist in bringing nearby vacant properties back into retail use. Landlords will instead conclude that higher rents can be obtained through change of use away from retail.

The Trust is of the view that the Planning Authority should robustly defend the Primary Shopping Area for retail use. Durham city centre is more accessible than alternative retail sites in terms of sustainable transport, and is a vital facility for people travelling in by bus from the surrounding villages. Carefully selected changes of use from retail are recognised as part of strategies for the regeneration of shopping centres, but Silver Street has long been identified as the prime shopping area of Durham City. There is no need to lose a major retail unit from Silver Street for the sake of adding to the early evening and night-time economy now that so much of the rest of the city centre is so well-provided with such premises.

The supporting text of Policy E4 includes

“4.161 Proposals for development of the early evening and night-time economy will require a supporting statement to be submitted with the planning application to address the issues of public safety concerns and the negative impact on local and residential amenity including mitigation for noise. Development should be designed to be accessible for all users, including access to public toilets.”

The Planning Statement does not address the important issues identified in this paragraph.

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Noise

The supporting text for CDP Policy 9 includes

“5.66 Proposals that relate to the development of the evening and night time economy (e.g. pubs, clubs, restaurants, shops and night-time entertainment) will be supported as valuable additions to the vitality and viability of Sub Regional and Large Town Centres, provided that the operation of such activities can be controlled to address amenity impacts (in accordance with Policy 32 (Amenity and Pollution)) and take into account public safety. Such developments will be resisted where they have a detrimental impact on other uses or areas or otherwise undermine town centres.”

(The reference here should be to Policy 31 as the removal of Policy 21 from the pre-submission draft has not been reflected in the wording.)

Policy 31 includes:

“Development which has the potential to lead to, or be affected by, unacceptable levels of air quality, inappropriate odours, noise and vibration or other sources of pollution, either individually or cumulatively, will not be permitted including where any identified mitigation cannot reduce the impact on the environment, amenity of people or human health to an acceptable level.”

The Noise Impact Assessment from Apex Acoustics Ltd relies on measurements made in June 2019 at 34 Saddler Street (Estate House), in connection with application DM/19/01935/FPA. This is 3½ years ago and while it does avoid the period of the Covid lockdown there has been considerable change. Since then there have been seven approvals to convert the upper floors of shops in Silver Street to flats (for details see the appendix). The need to protect the amenity of these residents is not acknowledged in the assessment from the County Council’s Spatial Policy Team.

The Assessment considers three sources of noise: entertainment noise breakout, patron noise on the roof terrace and background music also on the roof terrace. There is a fourth source which is not considered: noise from patrons exiting onto Silver Street at the end of the night’s entertainment.

We do not challenge the measures proposed to contain entertainment noise breakout providing, should permission be granted, that these measures are conditioned, monitored, and if necessary enforced.

There are other residential buildings closer to the roof terrace than the NSR receptor at The Beauty Spot, Saddlers Yard, now with permission for a 4-bed HMO following approval of application DM/22/00139/FPA. These are 1-5 Moatside Mews and 1-6 Castle View, which is within 20 metres of the outside seating area on the roof terrace. Numbers 3-6 Castle View are not on the neighbour consultation list.

Also, notably, 7-8 Silver Street (above The Works) is separated from the development site only by the width of Moatside Lane. These upper floors were approved to be converted into two small (Class C4) HMOs in March 2021. The application reference is DM/21/00104/FPA. The case file includes a report, also from Apex Acoustics Limited, which recommended sound insulation for the side to Moatside Lane where additional windows have now been fitted (these may be

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seen in the right-hand photograph on the following page). This was on the basis that 4-6 Silver Street was to be retail on the ground floor with student accommodation above. We are surprised that Apex did not select this neighbouring property, which they must have known about, as the NSR receptor. Its sound insulation has not been designed to meet the requirements of having the STACK rooftop terrace adjacent. Paragraph 5.35 of the report for 7-8 Silver Street says that the maximum noise level in the night-time “was caused by pedestrians”. Although 7-8 Silver Street is on the neighbour consultation list, the letter will have gone to The Works, and the managing agent for the two HMOs will not have been notified.

The roof terrace is also within 60 metres of the student accommodation in the Norman Gallery of Durham Castle. The Assessment recommends that “*speakers playing background music to the rooftop terrace should be placed on the façade of the gaming room, facing away from the Silver Street NSR*”. This means that they will be facing Durham Castle. We note that the “background” speakers are assumed to have a volume of 88 dB. This is in fact quite loud. The Noise Contour map at Appendix B does not include Durham Castle.

Given the proximity of residential properties on three sides, the roof must not be used as a terrace for patrons.

The licensing application seeks to stay open until midnight on Monday to Thursday, and 1am on Friday to Sunday. We note that STACK Seaburn is scheduling entertainment up till midnight at weekends¹. It was stated at the licensing hearing that the total capacity of the premises is 1,548. That number emerging on to Silver Street will create extra noise in the late evening and early hours, particularly if there is entertainment. STACK Seaburn is on the sea front with wide spaces around so emerging crowds can move away easily and any sound diffuses. Silver Street is a narrow canyon. Crowds cannot move as quickly and the sound reflects between the faces of the buildings. There are now seven residences on the upper floors of shops in Silver Street (see the appendix).

We conclude that this proposal has the potential to lead to unacceptable levels of noise in Silver Street. No mitigation has been identified to reduce to an acceptable level the impact on the amenity of local residents or their health. Consequently Policy 31 requires that this development must not be permitted, as does Neighbourhood Plan Policy E4 which has similar concerns.

Safety

CDP Policy 9 requires proposals to promote public safety. CDP Policy 29 requires development proposals to “include appropriate and proportionate measures to reduce vulnerability, increase resilience and ensure public safety and security;” NP Policy E4 says that proposals should include a strategy regarding public safety. There is no such strategy.

There are two fire escapes onto Moatside Lane. Their location is shown in the left-hand photograph on the next page. The plans show two exits from the second floor replacing the roller blinds. The plans accompanying the licensing application show 150 people escaping via

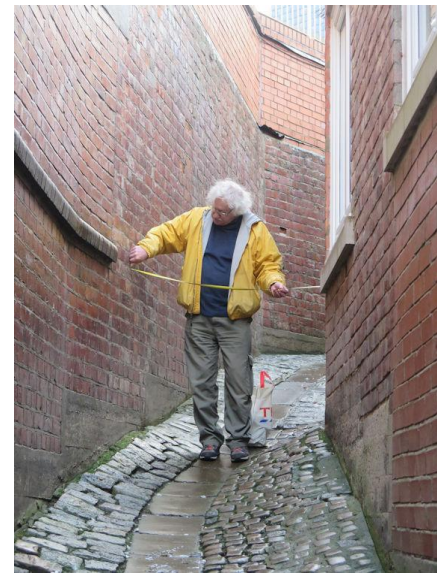
¹ <https://stackseaburn.com/whats-on/>

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the narrower further door, and 410 via the nearer door. There is a note 'Escape into narrow lanes to be reviewed by fire engineer.'

The width of Moatside Lane narrows to 118cm, on a corner. The right-hand-side photograph shows one of our Trustees measuring this. You will note that only the centre of the path is level. On either side the cobbles slope towards the middle.

From the Proposed Elevations sheet 1 it may be seen that there is a fall of 7.61m over the 41m from the exit to Silver Street. There is a bend so Silver Street cannot be seen from the exit. (This is clear from the left-hand photograph). There are steps. When we visited there was a lot of broken glass and also dog faeces. People escaping may not be sober. They may be wearing high heels. The path may be wet and slippery. Funnelling crowds into a confined space is a recipe for catastrophe, anybody falling may well be crushed and serious injury or death could result.



We do not see how the use of this route as a fire escape promotes public safety as CDP Policies 9 and 29 require. Nor is there a strategy regarding public safety as NP Policy E4 requires. The escape route via Moatside Lane is dangerous. The application should be refused on these grounds.

Impact on World Heritage Site

Paragraph 189 of the NPPF states

"Heritage assets range from sites and buildings of local historic value to those of the highest significance, such as World Heritage Sites which are internationally recognised to be of Outstanding Universal Value. These assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations."

The site boundary is separated from Durham Castle, part of the World Heritage Site, by only the width of Moatside Lane. The applicant's Heritage Statement does not acknowledge that distinction, and deals with the impact on the WHS in the same manner as the impact would be on a Grade II listed building.

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Disappointingly, the County Council's Spatial Policy Team's assessment totally fails to mention the County Durham Plan's Policy 45 and the Durham City Neighbourhood Plan's Policy H1 to protect the World Heritage Site, despite the Team's plan marking the WHS boundary.

The Neighbour Notification List does not include the World Heritage Site Coordinator, nor does it include University College Durham, which owns the Castle. We have already identified adverse impacts on the Castle from the roof terrace and there might be others which those authorities might identify. This application should not be determined until they have been consulted.

Design Issues

The Trust is concerned about the impact of two aspects of the proposals. These are the shop-front treatment, and the impact on the WHS and historic environment of the roof terrace lighting.

CDP Policies 29, 44, and 45 all reference the need to protect the historic environment, assets and their setting; additionally Policy 31 Amenity and Pollution specifically covers the need to avoid impact on the setting in Paragraph 5.325 of its supporting text. The Durham City Neighbourhood Plan similarly covers the need to avoid negative impact in more detail in Policies S1, H1 and H2.

The former Marks and Spencer frontage is difficult to deal with in this small scale historic street because of its discordant scale. The use in the proposal of supergraphics exacerbates this and it could be simply avoided by reducing the scale of the lettering and logo. The oversize scaling of the entrance detailing also needs reduction and avoidance of increased emphasis of its size through lighting. This will not affect entrance visibility – it will be very obvious to all passers-by.

Although there is a lighting impact assessment submitted, it fails to grasp the essential issues. The 'industrial' aesthetic of the STACK brand works well in the right location with re-used shipping containers and lighting festoons. However, this is a completely different setting and requires more refined detailing and awareness of its location. While the assessment makes much of the low impact down-lighting, it ignores the high impact of festoon lighting. This can be seen on the riverside at the Library rear terrace on Saddler Street, the rear garden of the Half Moon on New Elvet and The Boat Club.

A crucial point of the lighting strategy quoted was to ensure low light levels around the WHS buildings to draw emphasis to them when lit. There is the potential for the lighting as proposed to compromise this. It could also be simply avoided by a planning condition limiting the terrace lighting to down-lighters only.

The Trust is aware that additional information about the proposed development emerged in the course of the Licensing Committee hearing on 19 January 2023 into the Premises Licence application for STACK Durham. Any aspects of the proposal that STACK Durham are amending to reflect the discussions and assurances at that hearing, and any Premises Licence conditions that are imposed that affect noise, lighting, fire safety and emergency evacuations, will need to be carried into amendments to the Planning application and to any Planning conditions that might be decided.

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The Trust objects to this application based on its evident failures against the County Durham Plan and Neighbourhood Plan policies as discussed above, and the application should be refused.

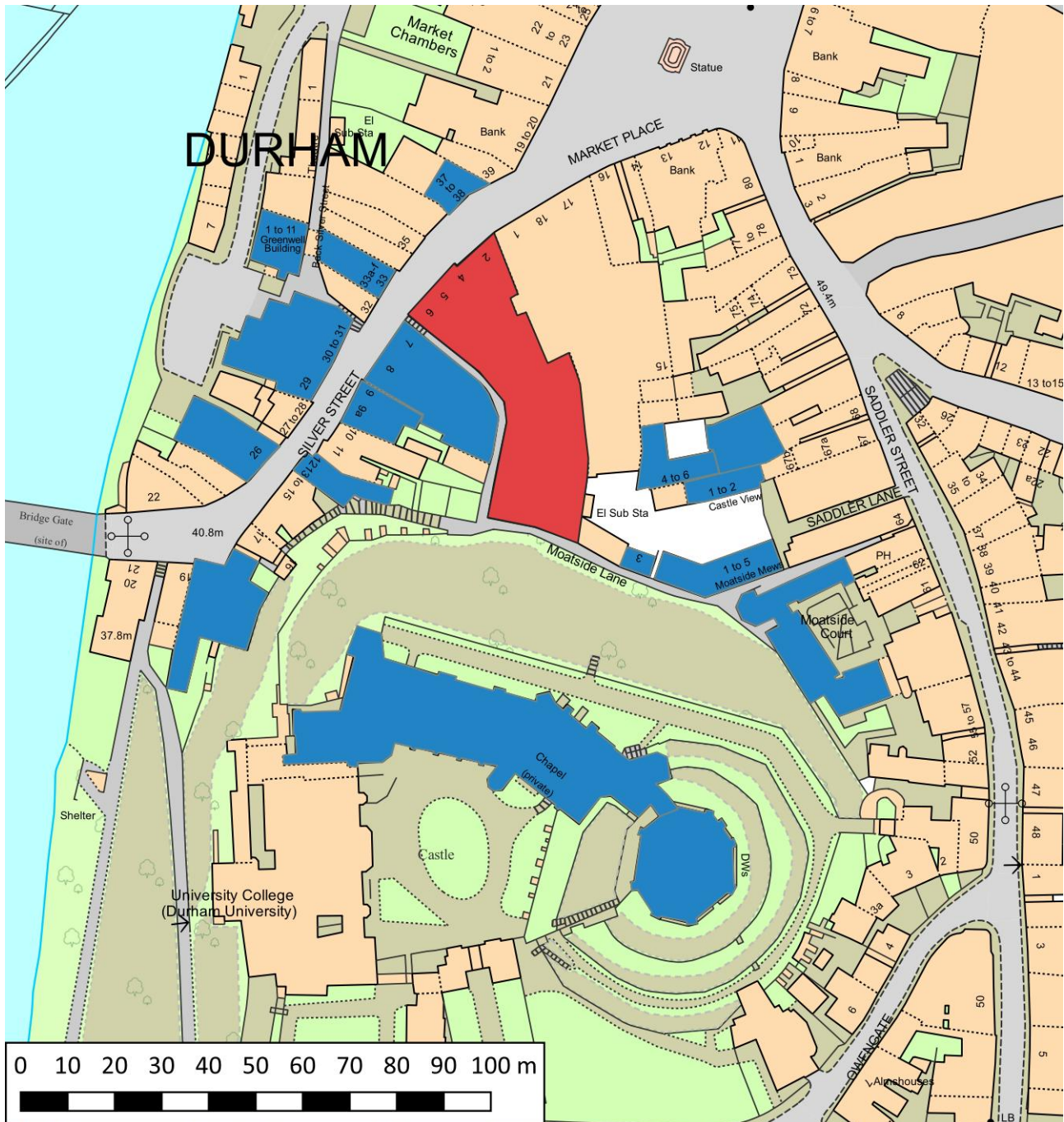
Yours sincerely,

John Lowe,

Chair, City of Durham Trust

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Appendix



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The map shows residential property (blue) in the vicinity of 4 - 6 Silver Street (red). Some are still under construction. Those approved in the past five years are

- 18 Silver Street (Former Top Shop / Top Man) DM/22/01421/PNC
- 29 & 30-31 Silver Street (was Superdry and Mountain Warehouse) DM/22/01316/FPA
- 12 Silver Street (was Moon Jewellery) DM/21/02228/LB and DM/21/02227/FPA
- 25-26 Silver Street (ex-Vodafone and Select) DM/21/01636/FPA
- 7-8 Silver Street (above The Works) DM/21/00104/FPA
- 9 And 9A Silver Street (next to The Works) DM/20/00911/FPA
- 33 Silver Street (former Post Office, now The Mint) DM/17/01555/FPA
- 37 to 38 Silver Street (above former Clinton cards) DM/21/02271/FPA