

**REPORT FROM: PLANNING, ECONOMIC DEVELOPMENT AND  
REGULATORY SERVICES MANAGER**

**TO: NELSON COMMITTEE**

**DATE: 2<sup>nd</sup> December 2019**

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## **PLANNING APPLICATIONS**

### **PURPOSE OF REPORT**

To determine the attached planning applications.

## REPORT TO NELSON COMMITTEE 02 DECEMBER 2019

**Application Ref:** 19/0629/FUL

**Proposal:** Full: Proposed change of use of first floor from Office (B1(a)) to Taxi business (Sui Generis) (Retrospective).

**At:** The Motor House, New Street, Nelson

**On behalf of:** Delta Taxis

**Date Registered:** 16/08/2019

**Expiry Date:** 19/11/2019

**Case Officer:** Alex Cameron

This application has been brought before Committee as more than two objections have been received.

### **Site Description and Proposal**

The application site is a storage / office building located within the settlement of Nelson, the lawful use of the building is for the storage of accident damaged vehicles with associated offices at first floor.

This application is to change the first floor of the building from offices to a taxi office, the use of the ground floor of the building would not be changed.

### **Relevant Planning History**

13/05/0696P - Full: Use building for the storage of accident damaged motor vehicles (10 in the building and 2 in the yard, plus 4 additional parking spaces in the yard)

### **Consultee Response**

LCC Highways – objections regarding the proposed development at the above location, subject to the following condition being applied to any formal planning approval granted. Condition:

The use hereby approved shall operate solely as a telephone and computerised booking office in association with a taxi/private hire vehicle business. At no time shall drivers employed for the purposes of operating the taxi/private hire vehicle business wait at, collect fares at, or be despatched from the application site/premises. The premises shall not be open to visiting members of the public. Reason: To protect the amenities of residents, and in the interests of access and highway safety.

Taxi Licencing - no objection provided the number of vehicles able to visit the office at any one time is conditioned.

Nelson Town Council

### **Public Response**

Nearest properties notified by letter. Objections received raising the following concerns:

- Traffic and parking issues

- Speeding and inconsiderate parking of taxi vehicles and resulting highway safety concerns.
- The road is too narrow and unsuitable for such an increase in traffic.
- Late night noise.
- Please consider erecting speed limit signs, reducing the speed limit and the possibility of double yellow lines.
- The use is retrospective and should not be allowed on those grounds.
- Happy for the application to go ahead as long as it is not too noisy, especially after 9pm, and that electronic equipment does not interfere with TV and radio signals.

## **Officer Comments**

### **Policy**

#### **Local Plan Part 1: Core Strategy**

Policy ENV4 (Promoting Sustainable Travel) requires new development to have regard to potential impacts that may be caused on the highway network. Where residual cumulative impacts cannot be mitigated, permission should be refused.

Policy WRK4 (Retailing and Town Centres) states that applications for retail and main town centre uses, should identify sites or premises that are suitable, available and viable by following the sequential approach, which requires them to be located in order of priority:

1. Town and local shopping centres, where the development is appropriate in relation to the role and function of the centre.
2. Edge-of-centre locations, which are well connected to the existing centre and where the development is appropriate to the role and function of the centre.
3. Out-of-centre sites, which are well serviced by a choice of means of transport and have a higher likelihood of forming links with a nearby centre.

#### **Replacement Pendle Local Plan**

Policy 25 'Location of Service and Retail Development' of the Replacement Pendle Local Plan states that new retail and service uses, including taxi bases, should be located in the following order of priority:

1. Within the boundary of a defined town centre, local shopping centre or local shopping frontage.
2. On the edge the town centre allocated site (being Clayton Street, Nelson)
3. Within 300m of the boundary of a defined town centre.
4. Elsewhere with preference given to sites that are close to a town centre and have good transport links to the centre.

Where existing commercial uses exist outside of a town centre they can be replaced by some other commercial use of the same scale.

Policy 31 (Parking) states that new parking provision should be in line with the maximum car parking standards unless this would compromise highway safety.

### **Principle of the Development**

The use of taxi offices has traditionally been that they are places where calls are made to by the public, bookings are made, customers arrive at the premises to be picked up and taxis operate from the premises.

The proposal is to operate in a different way to that. Bookings will be made via apps with taxis being despatched using an automated system where the nearest vehicle to the customer that is available being despatched. This alters the traditional way in which a taxi base has operated.

The use of a premises solely as an office without any taxi operating from it would be classified as a B1 use. As the premises has a lawful use for storage under Use Class B8 there are permitted rights to change to a B1 with a limited floorspace.

The use has operated from the site for some time and there is evidence of how it is operating. The supporting information indicates that customers themselves will not be allowed on the premises. Taxis operated by drivers would however be allowed to the site and there is evidence to show that this happens albeit on a limited basis. As such the use is not a B1 use but is a Sui Generis use requiring planning permission.

Policy 25 of the RPLP requires that taxi bases are located in accordance with a sequential approach with town centres as the highest order of priority. Policy 25 is a policy that was included in the Local Plan prior to the National Planning Policy Framework being published. To that extent weight has to be given to that policy in accordance with how much it conforms to the Framework. The Framework itself advises on what uses are deemed to be town centre uses. Taxis and taxi booking offices are not referred to in the Glossary although offices are.

The purpose of this approach in policy 25 is to control the impact of how taxi uses generally operated in the past, that was with a fleet of taxis operating from and returning to the premises with customers often visiting the premises to book and be collected by taxis. It was also in an era where taxi booking offices were needed in town centres as the use of mobile phones and booking apps was limited.

Taking these into account, the proposed use is not required to meet the sequential approach set out in Policy 25, it would replace an existing commercial use of the same scale and is therefore acceptable in accordance with Policy 25 and WRK4.

## **Visual Amenity**

The proposed use raises no unacceptable visual amenity issues.

## **Highways**

There is parking available in the yard of the premises under the control of the applicant. A condition could be placed on any consent requiring an appropriate level of parking to be provided for operating staff and the occasional visit of a taxi.

Concerns have been raised by resident over the impact of the use of the site by vehicles. It is accepted that the use of the site for its current lawful use and by the proposed use would create vehicle movements. It is the nature, extent and impact of these that needs to be assessed in the context of both highway safety and impact on neighbours.

The way the taxi booking system operates is that drivers are booked via an automated system. That reduces the need for drivers to visit the site. There are vehicles that use the site but the levels and amount are not to a level that causes traffic problems nor to a level that causes a detrimental impact on neighbours over and above that which could be expected from the lawful use of the site. The potential impact could be controlled by adding conditions preventing any member of the public visiting the site and by preventing any taxi from being able to use the site between set hours of 8:00pm to 7:30am. Staff would need to be able to go to the site and work from the building.

The concerns of residents are noted over traffic and nuisance. However the evidence does not conclude that there is anything other than a low level of use that does not affect neighbours to an extent that could justify refusing the application.

The proposed use is therefore acceptable in terms of parking and highway safety in accordance with policies 31 and ENV4.

### **Reason for Decision**

Section 38 of the Planning and Compulsory Purchase Act 2004 requires that applications be determined in accordance with the development plan unless material considerations indicate otherwise. The proposed use is acceptable in accordance with the Replacement Pendle Local Plan and Local Plan Part 1: Core Strategy. The development therefore complies with the development plan. There is a positive presumption in favour of approving the development and there are no material reasons to object to the application.

### **RECOMMENDATION: Approve**

Subject to the following conditions:

1. The proposed development hereby permitted shall be begun before the expiration of three years from the date of this permission.

**Reason:** Required to be imposed by Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall be carried out in accordance with the following approved plans: TQRQM19227231105064, TQRQM19227230948552, Proposed Floor Plan

**Reason:** For the avoidance of doubt and in the interests of proper planning.

3. The premises, including the external parking area, shall not be open to visiting members of the public associated with the taxi business. No operational taxis shall be present on the premises, including the external parking area, outside of the hours of 7am to 6pm on any day.

**Reason:** In order that the Local Planning Authority can control the operation of the taxi office to protect the amenity of nearby residents and in the interest of highway safety.

4. A minimum of three car parking spaces within the parking area detailed on the drawing: Proposed Floor Plan shall at all times be maintained free from obstruction and available for use for staff parking associated with the taxi business use.

**Reason:** To ensure an adequate level of on-site car parking provision in the interest of highway safety.



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**On behalf of:** Delta Taxis

## REPORT TO NELSON COMMITTEE ON 2<sup>nd</sup> DECEMBER 2019

**Application Ref:** 19/0763/HHO

**Proposal:** Full: Erection of a single storey rear extension (Retrospective).

**At:** 2 St Pauls Road, Nelson.

**On behalf of:** Mr Mahmood Hussain

**Date Registered:** 10.10.2019

**Expiry Date:** 05.12.2019

**Case Officer:** Charlotte Pinch

### Site Description and Proposal

This application is to be decided at committee as it has been called in by a Councillor.

The application site is a semi-detached two storey dwelling, within the settlement boundary of Nelson. The area is predominantly residential, with no special designations.

The proposed single storey rear extension is partly retrospective, a large proportion of the extension has been completed. The extension would have a total depth of 6m, width of 6.9m and pitched roof height of 3.6m, adjacent to the boundary with No.4 St Pauls Road.

### Relevant Planning History

13/13/0351P

Full: Erection of single storey extension to side and rear. Approved with Conditions. 2013.

13/13/0526P

Full: Erection of part 2 storey, part single storey extension to side and rear of dwelling. Refused. 2014.

13/14/0031P

Full: Erection of part 2 storey, part single storey extension to side and rear of dwelling (Re-Submission). Refused. 2014.

### Consultee Response

#### LCC Highways

No objection.

#### Cadent Gas Network

No objection.

Cadent have identified operational gas apparatus within the application site boundary. This may include a legal interest (easements or wayleaves) in the land which restricts activity in proximity to Cadent assets in private land. The Applicant must ensure that proposed works do not infringe on Cadent's legal rights and any details of such restrictions should be obtained from the landowner in the first instance.

If buildings or structures are proposed directly above the gas apparatus then development should only take place following a diversion of this apparatus. The Applicant should contact Cadent's Plant Protection Team at the earliest opportunity to discuss proposed diversions of apparatus to avoid any unnecessary delays.

If any construction traffic is likely to cross a Cadent pipeline then the Applicant must contact Cadent's Plant Protection Team to see if any protection measures are required.

All developers are required to contact Cadent's Plant Protection Team for approval before carrying out any works on site and ensuring requirements are adhered to.

## **Public Response**

One letter of objection was received from a neighbouring occupier, their comments can be summarised as follows:

- Loss of light into neighbouring ground floor rear facing windows, including a kitchen and living room.
- Subsidence of garden into neighbouring properties.

## **Officer Comments**

### **Policy**

#### Pendle Local Plan Part 1: Core Strategy

Policy SDP1 (Presumption in Favour of Sustainable Development) takes a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework.

Policy ENV1 (Protecting and Enhancing Our Natural and Historic Environments) seeks to ensure a particularly high design standard that preserves or enhances the character and appearance of the area and its setting. It states that the impact of new developments on the natural environment, including biodiversity, should be kept to a minimum.

Policy ENV2 (Achieving Quality in Design and Conservation) identifies the need to protect and enhance the heritage and character of the Borough and quality of life for its residents by encouraging high standards of quality and design in new development. It states that siting and design should be in scale and harmony with its surroundings.

#### Replacement Pendle Local Plan

Saved Policy 31 sets out the maximum parking standards for development.

The Design Principles Supplementary Planning Document (SPD) applies to extensions and developments, setting out the requirements for good design and protecting residential amenity.

#### National Planning Policy Framework

The Framework states that the purpose of the planning system is to contribute to the achievement of sustainable development. It states that there are three dimensions to sustainable development: economic, social and environmental. The policies in the Framework, taken as a whole, constitute the Government's view of what sustainable development in England means in practice for the planning system.



## **Design**

The single storey rear extension would not be visible from the front elevation of the dwelling or dominant from any public vantage points. The dual pitched roof and external materials consisting of render and concrete roof tiles, would be in keeping with the main dwellinghouse.

The design and materials of this development are acceptable in this location and as such comply with Policies ENV1, ENV2 and the Design Principles SPD.

## **Residential Amenity**

The Design Principles SPD states that a single storey rear extension located on, or immediately adjacent to, the party boundary with a neighbouring property will normally be acceptable if it does not project more than 4m from the rear elevation of the existing dwelling.

The SPD further advises that a single storey extension of greater depth will normally only be permitted if it does not breach a 45 degree angle. The 45 degree line is a measure of the impact a development would have on the living environment of adjoining properties.

The proposed single storey rear extension has a total depth of 6 metres, with no separation distance from the south eastern side boundary with No.4.

No.4 has ground floor rear facing windows in close proximity to the proposed development. When a 45 degree line is drawn from the closest window, which serves a lounge the extension significantly breaches the 45 degree line. The 45 degree line serves to illustrate situations that are likely to have a detrimental impact on the adjoining property due to scale and proximity. In this case the development would appear large and dominate the adjoining property. The development would have a significant overbearing impact and be detrimental to the living conditions of the adjoining occupier. As such the proposal would be significantly detrimental to the living conditions of the occupants of the adjoining property and fails to comply with adopted guidance within the SPD and Policy ENV2.

## **Highways and Parking**

No objection.

## **RECOMMENDATION: Refuse**

The proposed development, by virtue of its depth and proximity to the adjoining property would result in a significant detrimental impact on the living conditions of the occupants of that property. The application thereby fails to accord with Policy ENV2 of the Pendle Local Plan Part 1: Core Strategy and guidance within the adopted Design Principles SPD.

## **Enforcement Action**

The development has substantially been completed. As the conclusions are that it has a detrimental impact on the living conditions of the occupiers of the adjoining property and is contrary to the development plan the Committee need to consider whether or not enforcement action is necessary and proportionate to the situation.

The development would have a significant impact on the quality of life and living conditions of the occupants of the adjoining property. There are strong planning grounds therefore to take enforcement action.

In determining if enforcement action should be taken the impact it would have on the applicants need to be considered.

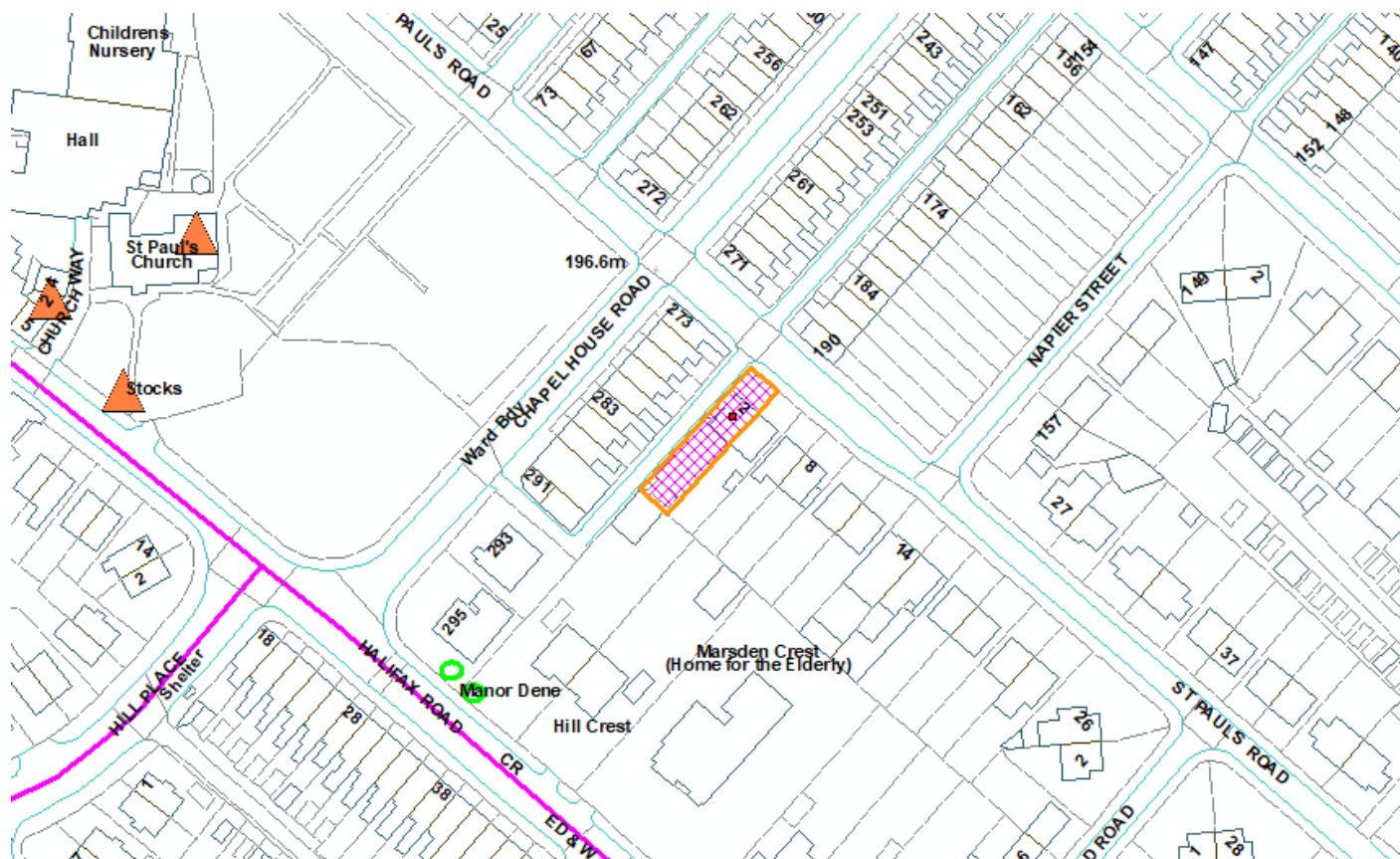
Under the Human Rights Act 1998 fundamental rights are granted to people in the UK. Under Article 8 everyone has the right to respect of his private life, his home and his correspondence. There shall be no interference with that by a public authority unless in accordance with the law and is necessary in a democratic society for, amongst other things public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Under Article 1 of the First Protocol every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

Taking enforcing action would be lawful as it would be in accordance with the Town & Country Planning Act 1990. The development is unlawful and less weight would be given to the protection of the rights of the applicant due to it being unlawful. The development would have a significant impact on the living conditions of the adjoining occupiers and this would interfere with their freedom to enjoy there dwelling. If developments of this nature were allowed across the country it would affect property prices and hence the economic well-being of the country.

Taking enforcement action would therefore be in accordance with the law, necessary to remedy an unacceptable development and proportionate to the situation. There would also be a right of appeal.

It is therefore recommended that enforcement action be authorised requiring the development to be brought back to a lawful position.



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## LIST OF BACKGROUND PAPERS

Planning Applications

**NW/CPB**

**Date: 21<sup>st</sup> November 2019**