



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

TO: SPECIAL BUDGET POLICY AND RESOURCES COMMITTEE

DATE: 11th FEBRUARY, 2021

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PLANNING APPLICATIONS

PURPOSE OF REPORT

To determine the attached planning application.

REPORT TO POLICY AND RESOURCES COMMITTEE ON 11 FEBRUARY 2021

Application Ref: 20/0613/FUL

Proposal: Full: Change of use from Use Class E (Commercial, Business and Service) to a mixed use of shop and cash and carry (Use Class E and B8 (Storage and Distribution)).

At: Springbank Buildings, 226 - 248 Every Street, Nelson

On behalf of: Mr A. Khan

Date Registered: 01/10/2020

Expiry Date: 26/11/2020

Case Officer: Alex Cameron

This application has been referred from Nelson Area Committee, the Committee resolved to refuse on the grounds of highway safety impact, parking impacts, residential amenity impacts and failure to demonstrate compliance with the sequential approach to retail development. Taking into account the fall-back position set out in the report refusal of the application on these grounds would result in a significant risk of costs being awarded against the Council at appeal.

Site Description and Proposal

The application site is an industrial building located on Every Street, Nelson within Whitefield Conservation Area. The first floor of the building is used as a gym and the ground floor is divided into industrial / business units. Part of the building fronting every street is also in use as a fruit and vegetable shop.

The proposed development is to change a 430m² area of the ground floor of the building to a mixed use of retail (now Use Class E as of 1st September 2020) and storage and distribution (Use Class B8).

The area currently used as a retail shop would be changed to storage and distribution use and the remaining area would be used a retail shop and wholesale cash and carry.

Whilst a cash and carry falls within Use Class B8, that use is defined by its sales being to retailers, caterers and other professional customers, not to the general public. The proposed element of retail use would allow general retail sales to the public.

Relevant Planning History

13/08/0385/P - Full: Change of use of part of first floor from manufacturing to gym (D2) – Approved

13/11/0251P - Full: Change of use of part of the ground floor and part of the first floor of the building from light industry (Use class B1) to a gym (D2) – Approved

Consultee Response

LCC Highways – objects to this application on highway safety grounds.

The development site is located within an area of terraced housing, where there is no associated off-road parking provision and consequently a high demand for parking on the surrounding highway network. At the time of the visit, approximately 12.50pm, a high level of parking was noted on the streets within the area, often only allowing single vehicle flows.

Further information regarding the extent of ownership and the forecourt parking was requested on 15 October, but no details have been provided to date.

In 2018 there was a collision on Hargreaves Street near its junction with Every Street resulting in a serious injury to a child pedestrian. Parked vehicles were considered to be one of the causations of the collision. The increase in traffic generated by the development, especially larger vehicles, around already congested streets could be detrimental to highway safety.

The proposal now submitted would introduce a mixed use shop and cash and carry (Use Class A1 and B8) to the site, which would be a significant change to the current on-site operations. The majority of customers are likely to arrive in cars or vans, which would be an intensification of the existing use.

The proposed parking arrangement is not within the red edge of the development and could not therefore be controlled by condition. It is also noted that planning permission granted for the use of another part of the building as a gym (Planning Permission 13/08/0693P) was conditional on off-road parking being provided.

Further planning permission for the gym was granted in July 2011 (ref 13/11/0251P), including the provision of seven off-road parking bays. The proposed parking for the development, as shown on the Proposed Site Layout Plan (Drawing No 03,) would be within the same area.

The proposed parking layout is not considered suitable as at least two spaces will not be available for general use during deliveries (which are likely to be frequent) as they will be blocked by the delivery vehicle. Also the delivery space should be dedicated and effectively removes a further space. It appears that the delivery space is unlikely to accommodate the size of vehicle an expanded business is reasonably expected to be serviced by. It is vital that deliveries take place within the site boundary and not from the highway, in the interests of public safety.

The parking space where it is proposed to store the bins on collection day will be unusable on that day as, contrary to the bins shown, it would be reasonable to expect the owners to be using trade bins which are significantly larger.

The proposed parking is also dependent on the business being able to prove it has access to the parking spaces which it is claiming, as another business is claiming they have rights to the spaces, as described above. Without access to the delivery and customer parking spaces the likely effect on Every Street would be unacceptable in terms of highway network efficiency and road safety.

There is already pressure on the local residential parking, which is demonstrated by regular requests for residents only parking schemes on Every Street and surrounding streets. Further pressures on this area will only increase support and demand for local parking schemes.

As the size and timings of deliveries is not controllable by the operators/owners, due to the site constraints it is likely that vehicles will unload from the carriageway, so restricting passage for other highway users. The movement of forklifts etc is also a safety concern as they will be operating across pedestrian areas.

There are currently no parking or loading restrictions on Every Street and the surrounding streets. Even if these were proposed there is no guarantee that they would receive support from local residents and would also be subject to a separate consultation process. The transient nature of deliveries would also make monitoring and enforcement of those restrictions difficult.

The Proposed Site Layout Plan (Drawing No 3) states that traffic generated by the development is not considered to have a significant impact on the local highway network. At the time of the site visit several vehicles were parked part way on the footway outside the site, so reducing the footway width and also obscuring the view of other highway users, including vulnerable ones.

Vehicles were also parked on both sides of Every Street, restricting the carriageway width. The Proposed Site Plan indicates that delivery vehicles would either reverse to or from the site off Every Street. This may not be possible given the on-street parking and so vehicles may park on the footway, or deliveries be made from Every Street itself, which is not acceptable.

Several letters on the borough council's planning portal appear to suggest that the cash and carry is already open to the general public and not just trade only.

Given the highway safety concerns outlined above the highway authority objects to this application and recommends refusal.

Updated response 18/11/2020: Although some further information has been provided this has not alleviated the highway safety concerns which the proposed development raises, and so the highway authority maintains its objection.

Canal and River Trust – No comment.

Lancashire Constabulary Architectural Liaison – Recommendations for crime reduction measures.

Lancashire Fire and Rescue Services – Recommendations relating to Building Regulations.

PBC Environmental Health - With regards to the above development, we have concerns with regards to noise from any chiller units that are fitted. Recommend a condition is attached for noise control measures.

Nelson Town Council

Public Response

Nearest properties notified. Responses received raising the following concerns:

- Increase in traffic.
- Impact on already congested on-street car parking in the area.
- Inconvenience cause by large delivery vehicles.
- Parking on the forecourt is shared with the Whitefield Youth Association Gym and other units at the premises.
- Highway safety impact.
- Noise and disturbance.
- The development would be contrary to planning policy requiring retail uses to be accommodated within the town centre.
- Increase in litter.

- Increase in rodents.
- Fire hazard from wooden pallets.
- Concerns relating to fumes emanating from burning at the adjoining unit within the building.
- There are existing shops within the vicinity and no real need for this business.

Responses received in support, including a petition with 116 signatures:

- The cash and carry is beneficial to our community.
- It is vital to keep this business open as it provides fresh and competitively low priced groceries in a convenient area.
- The store encourages healthy eating.
- There is no other shop or store within 500 yards.

Officer Comments

Policy

Local Plan Part 1:Core Strategy

Policy ENV2 of the Core Strategy part 1 (Achieving Quality in Design and Conservation) states that all new development should seek to deliver the highest possible standards of design, in form and sustainability.

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.

The proposed site is outside of the defined town centre boundary, but within 300m, therefore it falls within the 3rd order of priority above. The Policy goes on to define that development will only

be allowed in areas 3 or 4 if the application is accompanied by a statement which proves that the proposal would require extensive floor space which cannot be accommodated within the preferred town centre and the proposal cannot be met on the edge the town centre allocated site.

National Planning Policy Framework

Paragraph 90 of the Framework states that where an application fails to satisfy the sequential test it should be refused.

Principle of the Development

The building is outside of the boundary of Nelson town centre and the retail element of the application is a main town centre use. Local and national policy prescribe that retail uses must be accommodated within town centres as the first order of preference.

The Use Classes Order was revised on 1st September 2020, this replaces and combines a number of use classes, including Use Class A1 (retail) and B1 (business). A1 and B1 uses which were existing on 31st August 2020 are now part of Use Class E (Commercial, business and service) and no permission is required to change between the uses within that class. Therefore, uses that fell wholly within B1 on 31st August can now be used for retail without permission or restriction.

The area proposed to be used for retail and cash and carry use was last used by Provectus Medical, a manufacturer / supplier of orthopaedic medical products. That use of the building will have fallen within Use Class B1 and therefore that was the existing lawful use on 31st August.

As such the lawful use of the that part of the building is Class E as of 1st September. This allows retail use without the need for planning permission.

B8 (storage and distribution) uses remain separate from Class E, however, permitted development rights enabling the change of use of up to 500m² of floorspace from what was B1 to B8 use remain.

The fallback position is therefore that either the retail or cash and carry use proposed could be implemented without the need for a planning application. However, this application is for a mixed use of both, which does require permission.

Taking into account this fallback position, that the retail use of this building could be implemented without needing to apply for permission, as could the cash and carry use, it would not be reasonable to require that the applicant undertake a sequential assessment demonstrating that the use cannot be accommodated within the town centre.

The proposed use is therefore acceptable in principle.

Visual Amenity

The proposed development is for change of use only with no external alterations and would not result in any unacceptable visual amenity impacts.

Highways

Concerns have been raised in relation to parking and highway safety, including by LLC highways who have objected to the application.

The retail use of the building would be likely to result in a greater number of visits by customers. The parking standard in the RPLP set a maximum of 1 space for every 16m² of floorspace for retail uses 1:35 for B1, 1:40 for B2 and 1:200 for B8 uses. The parking requirement for the shop floor area shown on the proposed plans would be 21 spaces.

The area for parking and servicing on the forecourt would allow for off street parking for significantly fewer vehicles, seven or fewer depending on serving and manoeuvring arrangements, which are also shared with other units within the building. However, as detailed above, under the changes to the Use Classes Order introduced in September 2020 a retail use could be implemented without the need for planning permission.

This application includes an element of mixed use, which does require planning permission. This enables the Council to impose conditions to control parking and servicing arrangements and mitigate the additional impacts the mixed use would have over the fallback position of the uses that could be implemented without permission and therefore without any such mitigation.

With a condition to require details of acceptable parking and servicing arrangements, within the constraints of the site the proposed development is acceptable in terms of highway safety.

Amenity

Retail uses are common alongside residential uses and do not generally result in unacceptable residential amenity impacts in principle. The proposed use is a mixed use, the B8 element together with retail may result in more activity, particularly in terms of goods vehicles and collections at unsocial hours than a pure retail use. This additional impact would be acceptably mitigated by a condition restricting the opening hours to those proposed of 9am to 8pm.

Other Matters

Concerns have been raised relating to the impacts of fumes from the flue of the adjoining unit, litter, vermin and fire safety. These matters are not material to the determination of this planning application, they are also controlled under other legislation.

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 development is acceptable in all relevant regards. 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: 01 Rev B, 03 Rev A.

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

3. Notwithstanding any indication on the approved plans, the use hereby approved shall not commence unless and until details of parking, servicing and manoeuvring arrangements have been submitted to and approved in writing by the Local Planning Authority. The parking, servicing and manoeuvring areas shall be marked out in accordance with the approved plans and made available for parking, servicing and manoeuvring purposes prior to the commencement of the use hereby approved and maintained at all times thereafter free from obstruction and available for parking, servicing and manoeuvring purposes.

Reason: To ensure acceptable parking, servicing and manoeuvring arrangements for the mixed use in the interest of highway safety.

4. The retail and cash and carry use hereby approved shall not be open to customers outside of the hours of 9am to 8pm on any day.

Reason: In the interest of residential amenity.

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