



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

**TO: POLICY AND RESOURCES COMMITTEE**

**DATE: 26<sup>th</sup> MAY, 2022**

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## **PLANNING APPLICATIONS**

### **PURPOSE OF REPORT**

To determine the attached planning applications.

## NELSON, BRIERFIELD & REEDLEY COMMITTEE REPORT 9<sup>th</sup> MAY 2022

**Application Ref:** 21/0055/CEA

**Proposal:** Lawful Development Certificate (Proposed Use): Use of premises for retail (Class E).

**At** Springbank Buildings 226 - 248 Every Street Nelson

**On behalf of:** Mr A khan

**Date Registered:** 02.03.2021

**Expiry Date:** 4/27/2021

**Case Officer:** NW

### **Site Description and Proposal**

The application is to establish if an A1 use is lawful in the building.

The application was deferred from the meeting in February to consider enforcement action at the premises. Committee is advised that the issue of this application and enforcement are not linked and that it would be unreasonable to defer consideration of this application to resolve a non-related matter.

### **Relevant Planning History**

No relevant planning history.

### **Consultee Response**

Highways

Parish/Town Council

United Utilities

Environment Agency

Environment & Conservation

### **Public Response**

Comments' received commenting on:

- A1 is not suitable for the building
- Refer to a previous application where there was an in-depth analysis of why this should be refused.

- There was a strong objection to the previous application from LCC.
- We will not rehearse what has previously been said as this is on record.
- The business has been operating as an A1 business for some time without pp and this proposes a further 334sqm.
- This would introduce a mixed B1 and A1 shop and cash and carry.
- Inadequate car parking
- Concerns about who the business is providing parking for.
- The building is being used for B1 and B8 uses.
- The application does not fit in with permitted development. The previous occupants were selling products online whereas this will be on site sales. This means traffic was at a minimum.
- The applicant indicates that the business will contribute to the sustainable development of mixed-use communities – what does this mean?
- Astonished that the Council is now trying to allow this application through a LDC.

### **Officer Comments**

This application is to determine whether the use of the building outlined on the application form would be lawful for retail purposes. Comments have been made regarding the merits of using the building for retail purposes. The merits of using it or not for retail are not at issue here. This application seeks to lawfully clarify whether a retail use of the building can or cannot happen in the building as a matter of law. This has to be assessed based on the balance of probability and the onus is on the applicant to provide information as to the basis of the application.

The basis for applying for a certificate of lawful development for an alternative use can be put forward on two grounds. The first is that the current use is allowed to be changed to another use through the provisions of the Town & Country Planning (General Permitted development) Order 2015 (“the GDPO”). The GDPO grants permission for development to occur automatically. The issue is whether the GDPO would grant permission for the change of the current use of this site to a retail use.

The second element is whether development occurs at all. The Town & Country Planning Use Classes Order 1987 (“the UCO”) sets out categories of uses for different forms of use. For example before being recently amended it contained a use class A1. This use class contained uses such as hairdressers, travel agents, retail shops etc. into a single use class. Under section 55 of the Town & Country Planning Act 1990 development occurs only if a change of use of a building or land occurs. Therefore if several uses of a building are contained in the same use class then they can interchange without constituting a change of use.

The UCO has been much amended in the last few years with the legislators intending to free up the use of many buildings by creating different use classes with an extended range of uses within them. Class E was created and this incorporated uses previously contained in other use classes such as A1 retail, D2 assemble and leisure and for the carrying out of any industrial process (that can be carried out in a residential area without causing a nuisance) which was formerly in use class B1.

The full class E is reproduced below:

## **Class E. Commercial, Business and Service**

*Use, or part use, for all or any of the following purposes—*

- (a) for the display or retail sale of goods, other than hot food, principally to visiting members of the public,*
- (b) for the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises,*
- (c) for the provision of the following kinds of services principally to visiting members of the public—*
  - (i) financial services,*
  - (ii) professional services (other than health or medical services), or*
  - (iii) any other services which it is appropriate to provide in a commercial, business or service locality,*
- (d) for indoor sport, recreation or fitness, not involving motorised vehicles or firearms or use as a swimming pool or skating rink, principally to visiting members of the public,*
- (e) for the provision of medical or health services, principally to visiting members of the public, except the use of premises attached to the residence of the consultant or practitioner,*
- (f) for a crèche, day nursery or day centre, not including a residential use, principally to visiting members of the public,*
- (g) for—*
  - (i) an office to carry out any operational or administrative functions,*
  - (ii) the research and development of products or processes, or*
  - (iii) any industrial process, being a use, which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.*

Regulation 4 of the Order states:

*“(4) Where land on a single site or on adjacent sites used as parts of a single undertaking is used for purposes consisting of or including purposes falling within—*

*(a) in relation to Wales, Classes B1 and B2 in Schedule 1, or*

*(b) in relation to England, the use described in Schedule 2, Class E, sub-paragraph (g) and Class B2 in Schedule 1 as modified by paragraph (1C)(b),*

*those classes may be treated as a single class in considering the use of that land for the purposes of this Order, so long as the area used for a purpose falling within Class B2, or Class B2 as modified, is not substantially increased as a result.”*

This means that if a building has within it uses falling within Class E as well as Class B2 (which is still in place) the premises shall be treated as a single class.

The premises has been used as storage, for manufacturing, as a gym and office space. There is no increase in any B2 use so it is not relevant whether the manufacturing was B1 or B2 as regulation 4 allows for it to be treated as a single unit.

There are internal alterations shown on the submitted plans. Internal works are excluded from being development under section 55 of the Act.

On balance the evidence is that the existing and proposed uses fall within Class E of the UCO and therefore it is recommended that the Certificate of lawful Development be issued.

**RECOMMENDATION: Issue the certificate of lawful development.**

## **LIST OF BACKGROUND PAPERS**

Planning Applications

**NW/MP**

**Date: 27th April 2022**