

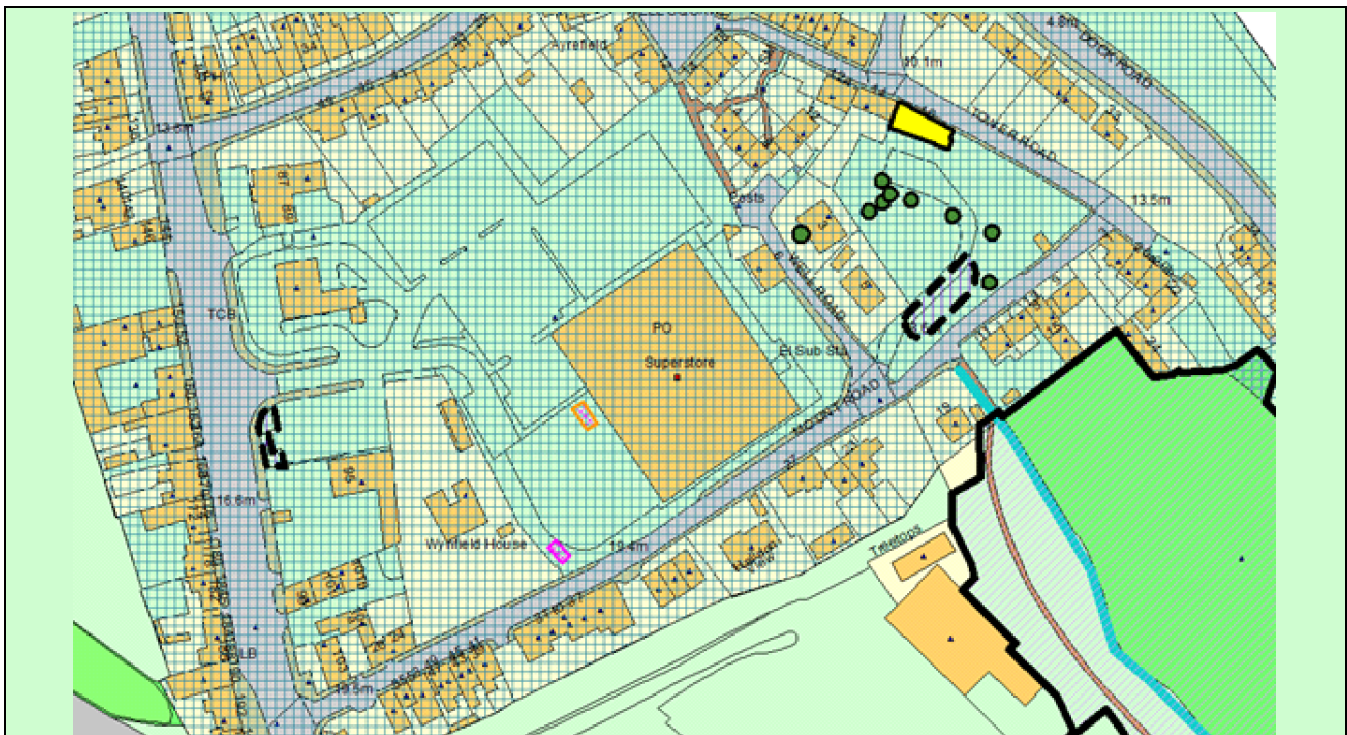


# Northumberland County Council

## North Northumberland Local Area Council 21 November 2019

<b>Application No:</b>	18/02684/VARYCO		
<b>Proposal:</b>	Variation of condition 2 (approved plans) in relation to planning application 17/02023/FUL		
<b>Site Address</b>	Asda, Main Street, Tweedmouth, Berwick-Upon-Tweed Northumberland TD15 2DS		
<b>Applicant:</b>	Asda Stores Ltd Asda House, South Bank, Great Wilson Street, Leeds LS11 5AD	<b>Agent:</b>	Mr Matthew Pratt Carrwood Court, Carrwood Road, Chesterfield, Derbyshire S41 9QB
<b>Ward</b>	Berwick East	<b>Parish</b>	Berwick-upon-Tweed
<b>Valid Date:</b>	25 July 2018	<b>Expiry Date:</b>	31 March 2019
<b>Case Officer Details:</b>	Name: Mr Jon Sharp Job Title: Planning Officer Tel No: 01670 623628 Email: Jon.Sharp@northumberland.gov.uk		

**Recommendation:** That this application be REFUSED permission



This material has been reproduced from Ordnance Survey digital map data with the permission of the Controller of Her Majesty's Stationery Office © Crown Copyright (Not to Scale)

## 1. Introduction

1.1 This application falls to be determined by the North Local Area Council following a request to call in the application from the local member Councillor Hill. It was originally presented to committee in November 2018 when it was deferred to enable further investigation into the noise levels of the unit and source. As no further information has yet been forthcoming to address these concerns, the application is now being brought back to committee with a recommendation of refusal.

## **2. Description of the Proposals**

2.1 The application seeks permission to vary condition 2 (approved plans) of planning application 17/02023/FUL (approved 12/10/2017) for the installation of new air handling equipment within the service yard of the Asda supermarket at Main Street, Tweedmouth.

2.2 Permission is now sought to alter the approved layout of the equipment which was installed other than in accordance with the approved plans.

2.3 The application site is located to the east of Main Street and is bounded to the east by the supermarket, to the south by residential dwellings and to the north by the supermarket car park. It is located within the Tweedmouth Conservation Area.

## **3. Planning History**

**Reference Number:** 11/01219/ADE

**Description:** Replacement internally illuminated signs

**Status:** Permitted

**Reference Number:** 11/02520/FUL

**Description:** Installation of 3no. frostpacks within the service yard of supermarket

**Status:** Permitted

**Reference Number:** 13/00033/LIC

**Description:** Application to vary premises licence

**Status:** No Objection

**Reference Number:** 14/03174/TREECA

**Description:** Works to trees in a conservation area - Fell and remove one Leylandii

Cupressocyparis hedgerow

**Status:** No Objection

**Reference Number:** 15/02916/TREECA

**Description:** Works to trees in a conservation area: Fell 1no alder, crown lift/prune back 1no alder and crown lift 1no scots pine.

**Status:** Permitted

**Reference Number:** 17/02023/FUL

**Description:** Installation of 4 new plant in service yard

**Status:** Permitted

**Reference Number:** N/84/B/0047/P

**Description:** Construction of supermarket including storage, landscaped car park / service yard with 225 car spaces.

**Status:** Permitted

**Reference Number:** N/85/B/0136/P

**Description:** Proposed shop signage.

**Status:** Permitted

**Reference Number:** 17/03245/FELTPO

**Description:** Tree preservation order application : G1 - Group of 6 dead, dying Sycamores adjacent to the entrance from Main Street - Fell to ground level

**Status:** Permitted

**Reference Number:** 18/01446/DISCON

**Description:** Discharge of condition 3 (Noise. Mitigation. Paul Horsley Acoustic Report) in approved planning application 17/02023/FUL.

**Status:** Withdrawn

**Reference Number:** N/78/B/0278/P

**Description:** Temporary buildings as consulting rooms for veterinarian surgeon.

**Status:** Permitted

**Reference Number:** N/78/B/0148/P

**Description:** Change of use of vacant ground to parking area for private cars.

**Status:** Permitted

**Reference Number:** N/10/B/0479

**Description:** Provision of 3no temporary storage containers within yard.

**Status:** Permitted

**Reference Number:** N/10/B/0067

**Description:** Certificate of lawfulness for existing use as supermarket.

**Status:** Permitted

**Reference Number:** N/10/B/0022

**Description:** The installation of a cu-i and a cu-h unit to the existing secured services yard.

**Status:** Permitted

**Reference Number:** N/10/B/0014

**Description:** Replace existing co-op singage with asda branded signage. also the installation of additional customer/directional information signs on site.

**Status:** Permitted

**Reference Number:** N/07/B/0347

**Description:** Installation of new corporate signage.

**Status:** Permitted

**Reference Number:** N/05/B/0106

**Description:** Erection of signage in new corporate logo.

**Status:** Permitted

**Reference Number:** N/94/B/0369/P

**Description:** Installation of a.t.m. & depository machine.

**Status:** Permitted

**Reference Number:** N/95/B/0422/P

**Description:** Erection of cafe extension.

**Status:** Permitted

**Reference Number:** N/95/B/0422/A

**Description:** Erection of cafe extension - details in compliance with condition 3 rec. 22.08.95.

**Status:** Permitted

**Reference Number:** N/03/B/0404

**Description:** Erection of temporary training room with link to existing building.

**Status:** Permitted

**Reference Number:** N/02/B/0329

**Description:** Retention of 1.0m diameter satellite dish.

**Status:** Permitted

**Reference Number:** N/92/B/0437/P

**Description:** Proposed entrance lobby-revised plans rec. 27.07.92.

**Status:** Permitted

**Reference Number:** N/96/B/0721/P

**Description:** Illuminated superstore sign.

**Status:** Permitted

**Reference Number:** N/97/B/0091/P

**Description:** Erection of illuminated projecting sign.

**Status:** Permitted

#### 4. Consultee Responses

Berwick-upon-Tweed Town Council	Members would agree with any comments and observations submitted as part of the Environmental Impact Assessment.
Public Protection	Public Health Protection object to this proposal on the grounds of noise.
Public Protection (reconsult)	Insufficient information provided
Public Protection (reconsult 2)	No further comment
Public Protection (reconsult 3)	No objection subject to condition and informative in respect of noise and statutory nuisance

#### 5. Public Responses

##### Neighbour Notification

Number of Neighbours Notified	9
Number of Objections	5

Number of Support	0
Number of General Comments	0

## Notices

Site Notice - Affecting Conservation, posted 17th August 2018

Press Notice - Berwick Advertiser, published 9th August 2018

## Summary of Responses:

3no objections received raising concerns about noise and residential amenity

The above is a summary of the comments. The full written text is available on our website at:

<http://publicaccess.northumberland.gov.uk/online-applications//applicationDetails.do?activeTab=summary&keyVal=PCIMJTQS0K400>

## **6. Planning Policy**

### 6.1 Development Plan Policy

Berwick upon Tweed Local Plan (1999)

F1 Environmental Wealth

F5 Berwick-upon-Tweed

F31 Social and Economic Welfare

### 6.2 National Planning Policy

National Planning Policy Framework (2019)

Planning Practice Guidance (2019, as updated)

### 6.3 Emerging Planning Policy

Northumberland Local Plan - Publication Draft Plan (Regulation 19) and proposed minor modifications as submitted 29th May 2019

STP 1 Spatial strategy (Strategic Policy)

STP 3 Principles of sustainable development (Strategic Policy)

STP 5 Health and wellbeing (Strategic Policy)

QOP 1 Design Principles (Strategic Policy)

QOP 2 Good Design and Amenity

TRA 1 Promoting Sustainable Connections (Strategic Policy)

TRA 2 Effects of Development on the Transport Network

TRA 4 Parking Provision in New Development

ENV 1 Approaches to assessing the impact of development on the natural, historic and built environment (Strategic Policy)

ENV 9 Conservation Areas

### 6.4 Other Documents/Strategies

## **7. Appraisal**

7.1 The application has been assessed against national policy and guidance, development plan policies and other material planning considerations, and the advice of statutory consultees. In assessing this application the key considerations are;

Emerging Policy,  
Scale, Design and Visual Impact, and  
Residential Amenity.

Matters relating to the principle of development and heritage assets were considered in detail during the assessment of application 17/02023/FUL. As such do not need to be revisited in the determination of this application.

### Emerging Policy

7.3 Since the determination of the previous application the emerging Northumberland Local Plan has been submitted to Government for examination. Paragraph 48 of the NPPF states that weight may be given to policies in emerging plans, depending on the stage of preparation of the plan, the extent to which emerging policy aligns with the NPPF and the extent of unresolved objections to the emerging plan. The policies contained within this document carry minimal weight in the determination of planning applications at this stage.

### Scale, Design & Visual Impact

7.2 Policy F5 of the BLP sets out the criteria against which new development shall be assessed. This includes the impact on adjacent land uses in terms of scale, massing, materials, etc and sets out locational requirements for development.

7.3 Paragraph 124 of the NPPF attaches great importance to the design of the built environment and states that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.

7.4 Notwithstanding the fact that the equipment approved under application reference 17/02023/FUL, was not installed in accordance with the approved plans, it is considered that the equipment as installed, remains contained within the enclosed service yard and as such is largely hidden from public view. It is considered therefore that the equipment as installed does not have any greater impact upon the character or appearance of the property or the surrounding area than it would have had it been installed in accordance with the previously approved plans.

7.5 Policy QOP1 of the emerging Northumberland Local Plan (NLP) echoes this and seeks to support development which respects its surroundings. Policy ENV1 of the same document states that the character and significance of Northumberland's distinctive and valued natural, historic and built environments, will be conserved, protected and enhanced by taking an ecosystem approach to understanding the

significance and sensitivity of the natural resource. The proposals are in general accordance with these policies, however little weight can be applied to them at this stage.

### Residential Amenity

7.6 Policy W6 of the BLP seeks to ensure that development that could be reasonably expected to adversely affect surrounding land uses can be suitably mitigated in order to safeguard other land users and the wider community.

7.7 Paragraph 127 of the NPPF seeks to ensure that developments will create places with a high standard of amenity for existing and future users.

7.8 In the assessment of application reference 17/02023/FUL, it was noted that the residential dwellings to the south of the site are particularly susceptible to noise emanating from the service yard and this remains the case.

7.9 The three objections received in respect of this application are all from properties on Mount Road. The properties border the site to the south, but are raised up some 10 metres from the ground level of the service yard. It is alleged that noise emanating from the site is being carried upwards and is adversely affecting the residential amenity of these properties.

7.10 Notwithstanding the above, the applicant has submitted an acoustic assessment which concludes that the noise from the air handling unit will not impact on residential amenity. However, following site visits, it is evident that there is an impact to the properties on Mount Road and the applicant has been asked to carry out further testing. So far no results of this testing have been received and whilst it is understood that engineers have been back to the site and options for alternative equipment and/or mitigation are being considered, no information has yet been supplied to the Authority in this respect and it is therefore considered appropriate to recommend the application for refusal. On this basis it is considered that the proposal is not in accordance with Policy W6 of the BLP or paragraph 127 of the NPPF.

7.11 Policy QOP2 of the emerging NLP seeks to ensure that development would not result in unacceptable adverse impacts on the amenity of neighbouring land uses. It is considered that the proposal is not in accordance with this, however little weight can currently be given to this policy.

### Equality Duty

7.12 The County Council has a duty to have regard to the impact of any proposal on those people with characteristics protected by the Equality Act. Officers have had due regard to Sec 149(1) (a) and (b) of the Equality Act 2010 and considered the information provided by the applicant, together with the responses from consultees and other parties, and determined that the proposal would have no material impact on individuals or identifiable groups with protected characteristics. Accordingly, no changes to the proposal were required to make it acceptable in this regard.

### Crime and Disorder Act Implications

7.13 These proposals have no implications in relation to crime and disorder.

### Human Rights Act Implications

7.14 The Human Rights Act requires the County Council to take into account the rights of the public under the European Convention on Human Rights and prevents the Council from acting in a manner which is incompatible with those rights. Article 8 of the Convention provides that there shall be respect for an individual's private life and home save for that interference which is in accordance with the law and necessary in a democratic society in the interests of (inter alia) public safety and the economic wellbeing of the country. Article 1 of protocol 1 provides that an individual's peaceful enjoyment of their property shall not be interfered with save as is necessary in the public interest.

7.15 For an interference with these rights to be justifiable the interference (and the means employed) needs to be proportionate to the aims sought to be realised. The main body of this report identifies the extent to which there is any identifiable interference with these rights. The Planning Considerations identified are also relevant in deciding whether any interference is proportionate. Case law has been decided which indicates that certain development does interfere with an individual's rights under Human Rights legislation. This application has been considered in the light of statute and case law and the interference is not considered to be disproportionate.

7.16 Officers are also aware of Article 6, the focus of which (for the purpose of this decision) is the determination of an individual's civil rights and obligations. Article 6 provides that in the determination of these rights, an individual is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal. Article 6 has been subject to a great deal of case law. It has been decided that for planning matters the decision making process as a whole, which includes the right of review by the High Court, complied with Article 6.

## **8. Conclusion**

8.1 On the basis of the above assessment it is considered that the proposal would be contrary to both national and local planning policies and as such is being recommended for refusal. There are no material considerations that indicate a decision should be made otherwise.

## **9. Recommendation**

That this application be REFUSED permission subject to the following:

### Reason

#### 01. Lack of Information

The application has been submitted with insufficient information to demonstrate that the proposed development would be acceptable in relation to matters of neighbouring amenity in terms of noise. The proposal is therefore contrary to Policy W6 of the Berwick Local Plan and paragraph 127 of the National Planning Policy Framework.



**Background Papers:** Planning application file(s) 18/02684/VARYCO