

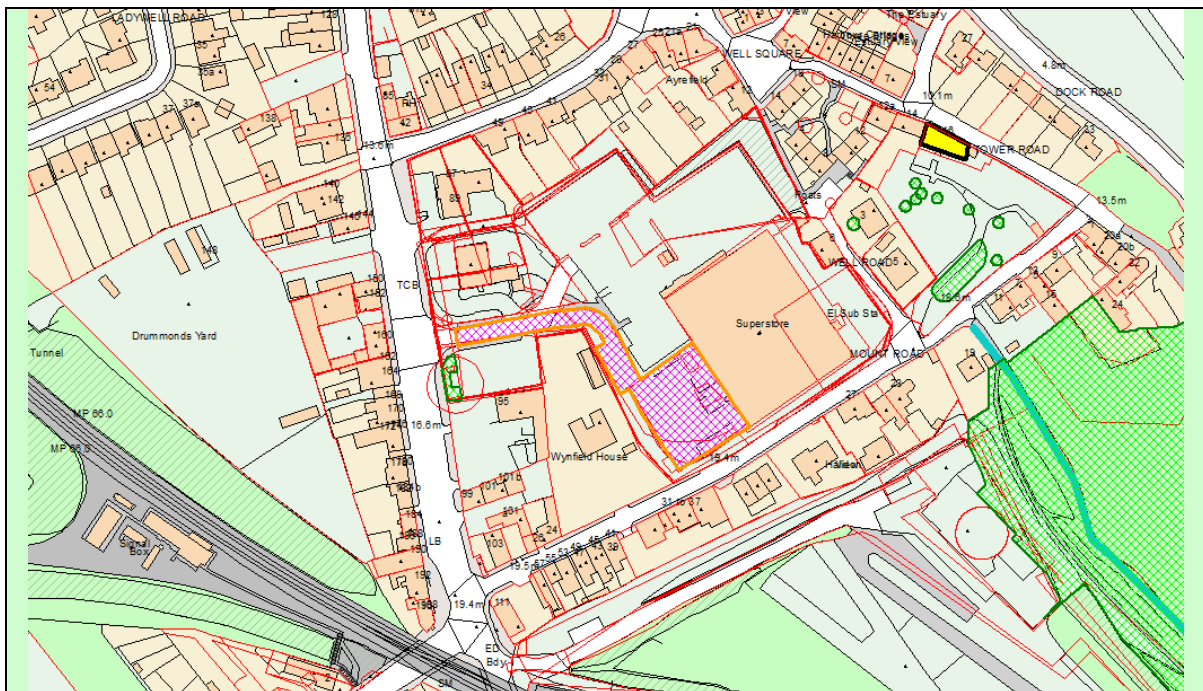


Northumberland County Council

North Northumberland Local Area Council 18th May 2023

Application No:	22/03112/FUL		
Proposal:	Retrospective: Installation of Air Handling Unit within supermarket service yard. (note: the AHU has been re-programmed to not operate between 22.00 and 07.00 hours unless the internal temperature in the store drops below 10 degrees which will only occur under exceptional winter circumstances).		
Site Address	Asda, Main Street, Tweedmouth, Berwick-Upon-Tweed Northumberland TD15 2DS		
Applicant/ Agent	Miss Rebecca Dennis Queens House, Queen Street, Manchester, M2 5HT		
Ward	Berwick East	Parish	Berwick-upon-Tweed
Valid Date	9 September 2022	Expiry Date	26 May 2023
Case Officer Details	Name: Mr. Ben MacFarlane Job Title: Planning Officer Tel No: 07814075197 Email: Ben.MacFarlane@northumberland.gov.uk		

Recommendation: That this application be GRANTED permission.



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1. Introduction

1.1 This application falls to be determined by the North Northumberland Local Area Council Planning Committee after it was called in by Councillor Georgina Hill.

1.2 This application was previously heard by the North Northumberland Local Area Council Planning Committee on 23rd March 2023. Members voted to defer the application and asked that the case officer and Environmental Health Officers visit an objecting neighbour's property at 1 Mount Road.

1.3 The case officer, accompanied by Environmental Health Officers, have visited the site and met with objecting neighbours at 1 Mount Road. Neighbours raised their concerns. Concerns raised have been taken into consideration. The recommendation that permission is granted is maintained.

2. Description of the Proposals

2.1 The application seeks retrospective planning permission for the installation of an Air Handling Unit at ASDA Tweedmouth on Main Street.

2.2 This Air Handling Unit has been re-programmed and will not operate between 22.00 and 07.00 hours unless the internal temperature in the store drops below 10 degrees. This is in order to try and mitigate concerns of noise nuisance.

2.3 The application site, ASDA, is a large supermarket centrally located in Tweedmouth, immediately to the north of Mount Road and the East Coast Mainline, and to the east of the A1167 Northumberland Road. The Air Handling Unit has been constructed to the south-west of the main building. The application site is located within the Tweedmouth Conservation Area

2.4 Site constraints include:

Conservation Areas: Tweedmouth

Coastal Mitigation Zone: 1

Impact Risk Zone SSSI - Infrastructure

3. Planning History

Reference Number: 11/01219/ADE

Description: Replacement internally illuminated signs

Status: PER

Reference Number: 11/02520/FUL

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

Status: PER

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: PER

Reference Number: 17/02023/FUL

Description: Installation of 4 new plant in service yard

Status: PER

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: PER

Reference Number: 18/01446/DISCON

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

Status: WDN

Reference Number: 18/02684/VARYCO

Description: Variation of condition 2 (approved plans) in relation to planning application 17/02023/FUL

Status: WDN

Reference Number: 19/04660/FUL

Description: New external plant.

Status: REF

Reference Number: 20/01713/ADE

Description: Advertisement Consent: Alterations and upgrade of the existing store entry totem sign

Status: PER

Reference Number: 22/02791/FUL

Description: Installation of Air Handling Unit within supermarket service yard (retrospective).

Status: APPRET

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

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

Status: PER

Reference Number: N/03/B/0404

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

Status: PER

Reference Number: N/02/B/0329

Description: Retention of 1.0m diameter satellite dish.

Status: PER

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

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

Status: PER

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

Description: Illuminated superstore sign.

Status: PER

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

Description: Erection of illuminated projecting sign.

Status: PER

Appeals

Reference Number: 21/00040/REFUSE

Description: New external plant.

Status: DISMIS

4. Consultee Responses

Berwick-upon-Tweed Town Council	No objection
Building Conservation	No objection
Public Protection	No objection. Recommend the imposition of conditions.

5. Public Responses

Neighbour Notification

Number of Neighbours Notified	12
Number of Objections	3
Number of Support	0
Number of General Comments	0

Notices

Site Notice - Affecting Listed Building, 6th September 2022

Summary of Responses:

3 letters of objection have been received from local residents. The following concerns are raised:

- The Air Handling Unit (AHU) creates a noise nuisance
- The proposal to not operate the AHU at night does not overcome concerns of noise nuisance during the day
- The proposals fail to account for AHU operation in hot weather
- The building is poorly insulated and so the AHU may operate almost constantly
- The proposals have the aim of reducing costs rather than reducing noise
- The AHU does not have permission
- Objectors are suffering from Tinnitus

These concerns have been given regard in the determination of this application.

6. Planning Policy

4.1 Development Plan Policy

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

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

ENV 7 - Historic environment and heritage assets

ENV 9 - Conservation Areas

4.2 National Planning Policy

NPPF - National Planning Policy Framework (2021)

NPPF - National Planning Policy Framework (2021)

Planning (Listed Buildings and Conservation Areas) Act 1990

4.3 Other Documents

Environmental Protection Act 1990

7. Appraisal

7.1 In accordance with Section 38 (6) of the Planning and Compulsory Purchase Act 2004, applications should be determined in accordance with the development plan, unless material considerations indicate otherwise. In this case the development plan comprises the Northumberland Local Plan 2016-2036 (NLP) (2022). The National Planning Policy Framework (NPPF) (2021) and National Planning Practice Guidance (NPPG) are material considerations in determining this application.

Principle of the development

Design and visual impact

Impact on residential amenity and health and wellbeing

Historic environment and heritage assets

Principle of the development

7.2 Policy STP 1 of the Northumberland Local Plan aims to deliver sustainable development which enhances the vitality of communities across Northumberland, supports economic growth and which conserves and enhances the County's unique environmental assets. The application site is within the settlement boundary of Berwick-upon-Tweed, which is a 'Main Town' where the main focus is on employment, housing, retail and services.

7.3 Policy STP 3 applies the presumption in favour of sustainable development in Northumberland and aims to deliver economic, social and environmental benefits. Proposed development is expected to contribute to building a strong, responsive and competitive economy across Northumberland, support more and better jobs, protect and enhance the vitality and viability of Northumberland's town centres and other important economic sectors, while minimising their impact on local amenity for existing residents. The proposals accord with the requirements set out above and are therefore considered to be acceptable in principle, in accordance with Policies STP 1 and STP 3 of the Northumberland Local Plan.

Design and visual amenity

7.4 The proposed development is considered to be of appropriate design which would not have a significant adverse impact on the character or visual amenity of the surrounding area. Therefore, the proposed development is considered acceptable in terms of design in accordance with Policies QOP 1 and QOP 2 of the Northumberland Local Plan and the NPPF.

Impact on residential amenity and health and wellbeing

7.5 Policy STP 5 of the Northumberland Local Plan requires development proposals to demonstrate that they are safe, comfortable and prevent negative impacts on amenity. Furthermore, proposals are required to protect and alleviate risk to people and the environment, support wider public safety and must not have a negative impact on noise pollution. The proposed development has been assessed and is not considered to have a significant impact on residential amenity, nor the health and wellbeing of adjacent neighbours.

7.6 The application site has been subject to several refused planning applications seeking approval for the installation of various items of plant and equipment. The applicant has previously been unable to demonstrate that either the noise levels being emitted by the Air Handling Unit (AHU) did not adversely affect residential amenity, or that the noise was being created by different equipment. This application once again seeks permission for the installation of an AHU, now with a restriction preventing operation of the unit between 22:00 and 07:00 unless internal store temperatures drop below 10 degrees centigrade.

7.7 The main refrigeration plant and the AHU were systematically shut down to allow assessment of the noise from individual plant items to be assessed. Background sound levels were measured at 42 dB LA90 during the day and 36 dB LA90 at night. The noise assessment has concluded that the rating level of the AHU does not exceed the background noise levels either during the day or night.

7.8 While it is understood that neighbours to the site have experienced noise nuisance in the past, it has now been demonstrated that the proposed AHU would not cause any unacceptable noise levels. The Environmental Protection Team have been consulted on this application and have no objection subject to the imposition of conditions. The proposals are therefore acceptable in this respect, in accordance with Policies STP 5 and QOP 2 of the Northumberland Local Plan.

Historic environment and heritage assets

7.9 The application site is located within the Tweedmouth Conservation Area where section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 imposes a duty on a local planning authority to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area.

7.10 There is an adopted character appraisal for the Tweedmouth Conservation Area which states, "*the main negative areas are the Co-op (now ASDA, the application site) superstore and the spaces and buildings around it.*" The AHU, like the ASDA store itself, displays few if any of the values that render the area worthy of its designated status. While the supermarket with its additions continues to be the main negative in the area, that is not to say that the proposals make the situation materially worse.

7.11 The AHU is considered to have a neutral impact on the character and appearance of the conservation area. Built Heritage and Design have been consulted on this application and have no objection. The proposals are therefore considered to be acceptable in this respect, in accordance with Policies ENV 7 and ENV 9 of the Northumberland Local Plan.

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 The main planning considerations in determining this application have been set out and considered above, stating accordance with the relevant Development Plan Policy. The application has also been considered against the relevant sections within the National Planning Policy Framework (NPPF) and there is not considered to be any conflict between the NLP and the NPPF on the matters of relevance in this case.

8.2 The concerns raised by local residents are noted, however, it has been demonstrated that the proposals are not causing unacceptable levels of noise. The proposal has addressed the main considerations and would accord with relevant policy and is considered to be acceptable.

9. Recommendation

That this application be GRANTED planning permission subject to the following:

Conditions/Reason

01. The development hereby permitted shall be carried out in complete accordance with the following approved plans:

1. Drawing title 'Site Location Plan'
2. Drawing title 'Proposed Site Plan'
3. Drawing title 'Proposed Ground Floor Plan'
4. Drawing no. FL-3197-01 'Air Handling Unit 1 Sales Floor'
5. Drawing no. FL-3197-02 'Air Handling Unit 1 Sales Floor Showing Silencers'

Reason: To ensure the development is carried out in accordance with the approved plans.

02. The air handling unit hereby approved shall not be operated between the hours of 22:00 and 07:00 hours unless the internal temperature of the store drops below 10 degrees centigrade.

Reason: To protect residential amenity by providing a commensurate level of protection against noise, in accordance with Policy STP 5 of the Northumberland Local Plan.

03. The rating level of sound emitted from the Air Handling Unit located in the service yard shall not exceed:

- 42 dB LAeq(1 hour) between 0700 - 2300 hours, and
- 36 dB LAeq (15 mins) between 2300-0700 hours

... at the boundary of the site. All measurements shall be made in accordance with the methodology of BS4142 (2014 + A1:2019) (Methods for rating and assessing industrial and commercial sound). On written request by the planning authority the operator shall, within 28 days, produce a report to demonstrate adherence with the above rating level.

Reason: To protect residential amenity by providing a commensurate level of protection against noise, in accordance with Policy STP 5 of the Northumberland Local Plan.

Informatives

1. The granting of planning permission does not in any way indemnify against statutory nuisance action being taken should substantiated complaints within the remit of part III of the Environmental Protection Act 1990 be received.

EIA

The proposal has been assessed and is not considered to fall under any category listed within Schedules 1 or 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011. The proposal is not considered to be EIA development and therefore does not require screening.

Background Papers: Planning application file(s) 22/03112/FUL