

1. Introduction

- 1.1. This application was referred to the Director of Planning and Chairs of the relevant Local Area Council committee for a decision on how the application was to be determined due to the level of public interest. It was confirmed that the application should be referred to members for a Local Area Council committee decision.

2. Description of the Proposals

- 2.1 Planning permission is sought for the change of use of a vacant retail unit (class e) to a hot food takeaway (sui generis) with ancillary storage at first floor level at 104-106 Front Street, Newbiggin-By-The-Sea.
- 2.2 No external changes are proposed to the building frontage. An external flue would be installed to the rear of the premises, terminating 1m above eaves level.
- 2.3 The application site is located within Newbiggin-By-The-Sea Conservation Area.

3. Planning History

Reference Number: 79/F/88

Description: Erection of an illuminated shop fascia sign.

Status: Permitted

Reference Number: 87/0155

Description: ERECTION OF AN ILLUMINATED DOUBLE SIDED SHOP BOX SIGN

Status: Permitted

Reference Number: 94/0021

Description: RETENTION OF ILLUMINATED FASCIA SIGN AND PROJECTING SIGN (RETROSPECTIVE)

Status: Permitted

Reference Number: 15/00075/LIC

Description: Premises licence

Status: No objection.

4. Consultee Responses

Building Conservation	No objection.
Newbiggin-By-The Sea Town Council	Newbiggin by the Sea Town Council support the application for change of use and find it encouraging that a business is willing to invest in our local economy and bring employment opportunities when so many businesses have closed their doors in surrounding towns as a result of the Covid-19 pandemic.

	While we have concerns regarding the refuse and delivery arrangements in relations to the narrow entrance/egress to the Wilkie Terrace car park and the disabled bays within it we will be guided by the professional recommendations by County Highways Officers.
Highways	No objection subject to recommended condition.
Public Protection	No objection subject to recommended conditions.
Architectural Liaison Officer - Police	No objection.

5. Public Responses

Neighbour Notification

Number of Neighbours Notified	24
Number of Objections	38
Number of Support	20
Number of General Comments	0

Notices

Affecting Conservation

News Post Leader 28th May 2021

Summary of Responses:

38 objections were received against the application from neighbouring residents and members of the public. Concerns were raised regarding:

- Too many hot food takeaway's within Newbiggin;
- Noise concerns;
- Health and wellbeing of residents;
- Impacts on highway safety;
- Odour concerns;
- Increased litter;
- General amenity impacts;

20 support comments were submitted for the application. These comments recognised:

- Proposal would bring a vacant unit back into use;
- Increased option/choice within Newbiggin;
- Will attract visitors and increase tourism;

Material planning considerations will be assessed within the below appraisal.

The above is a summary of the comments. The full written text is available on our website at: <http://publicaccess.northumberland.gov.uk/online->

6. Planning Policy

6.1 Development Plan Policy

Wansbeck District Local Plan (2007) (WDLP)

Policy GP1 - Location of development
Policy GP4 – Accessibility
Policy GP18 – Conservation areas
Policy GP23 – Pollution and nuisance
Policy GP25 - Noise
Policy GP30 - Visual impact of development
Policy GP31 - Standards of urban design
Policy T3 - Provision for cyclists
Policy T4 - Provision for walking

6.2 National Plan Policy

National Planning Policy Framework (2021) (NPPF)
National Planning Practice Guidance (2020) (NPPG)

6.3 Other Documents/Strategies

Northumberland Local Plan - Publication Draft Plan (Regulation 19) (Jan 2019) as amended by proposed Main Modifications (June 2021)

Policy STP 1 - Spatial strategy
Policy STP 2 - Presumption in favour of sustainable development
Policy STP 3 - Sustainable development
Policy STP 4 - Climate change mitigation and adaption
Policy STP 5 - Health and wellbeing
Policy TCS 1 – Hierarchy of centres
Policy TCS6 – Hot food takeaways
Policy QOP 1 - Design principles
Policy QOP 2 - Good design and amenity
Policy QOP 6 - Delivering well designed places
Policy TRA 1 - Promoting sustainable connections
Policy TRA 4 – Parking provision in new development
Policy ENV 9 – Conservation areas

Newbiggin Conservation Area Management Strategy (February 2009)

7. Appraisal

7.1 In assessing the acceptability of any proposal, regard must be given to policies contained within the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework (NPPF) is a material consideration and states that the starting point for determining applications remains with the development plan, which in this case contains policies from the Wansbeck District Local Plan (WDLP). The main considerations in the assessment of this application are:

- Principle of development;
- Design and visual character;
- Heritage assets;
- Residential amenity;
- Highway safety;

Paragraph 48 of the NPPF states that weight can be given to policies contained in emerging plans dependent upon three criteria: the stage of preparation of the plan; the extent to which there are unresolved objections to policies within the plan; and the degree of consistency with the NPPF. The Northumberland Local Plan - Publication Draft Plan (Regulation 19) (NLP) was submitted to the Secretary of State for Ministry of Housing, Communities and Local Government on 29 May 2019, and is currently going through the examination process.

On 9 June 2021, the Council published for consultation, a Schedule of proposed Main Modifications to the draft Local Plan which the independent Inspectors examining the plan consider are necessary to make the plan 'sound'. As such the plan is at an advanced stage of preparation, and the policies in the NLP - Publication Draft Plan (Regulation 19) (Jan 2019) as amended by proposed Main Modifications (June 2021), are considered to be consistent with the NPPF. The NLP is a material consideration in determining this application, with the amount of weight that can be given to specific policies (and parts thereof) is dependent upon whether Main Modifications are proposed, and the extent and significance of unresolved objections.

Principle of development

- 7.2 Policy GP1A of the WDLP stipulates that providing proposals are in accordance with other policies of the Plan, development on previously-developed sites and buildings within settlement limits, as defined on the Proposals Map, will be permitted. The application site is located within the defined settlement for Newbiggin and would bring a vacant unit back into use.
- 7.3 The principle of development is therefore acceptable in accordance with both local and national planning policy.

Design and visual character

- 7.9 Policy GP30 of the WDLP states *'all proposed development will be assessed in terms of its visual impact'*. The NPPF at paragraph 126 recognises good design as a 'key aspect of sustainable development'. Paragraph 130 goes on to note that developments should be *'visually attractive as a result of good architecture, layout and appropriate and effective landscaping'* whilst being *'sympathetic to local character'*.
- 7.10 No external changes are proposed to the building frontage other than repainting of the external elevation. Whilst the submitted details indicate the installation of an external flue to the rear of the application site, the proposal would fall below the ridge of the existing roof. The proposed addition would not cause harm to the visual character of the application site or the wider

surrounding area. Any external advertisements proposed upon the premises would be subject to a separate advertisement consent application and therefore does not form part of this application assessment.

Heritage assets

- 7.11 The application site is located within the designated heritage asset recognised as Newbiggin-By-The-Sea Conservation Area. Consultation was undertaken with the local authority's Building Conservation team as the proposal has potential to impact the character and appearance of the designated heritage asset.
- 7.12 The application premises appears to date back to the late 1950s. Whilst located within the Conservation Area, it lacks the architectural finesse and detailing of the period buildings which exist within the heritage asset. In this respect, its contribution to the Conservation Area is limited and primarily relates to its height, scale and envelope of brick and slate which takes cue from the established building form on Front Street.
- 7.13 The proposed development consists of the change of use of a modern premises with minimal external changes. As such, the development does not have an adverse effect on the character of appearance of the Conservation Area.

Residential amenity

- 7.14 Policy GP23 of the WDLP states that *'when determining planning applications, the authority will consider whether a proposed development has the potential to cause pollution or nuisance. Planning permission will not be granted for development liable to cause significant harm to either:*
- a) human health and safety*
 - b) the amenity of local residents and other land users*
 - c) the quality and enjoyment of all aspects of the environment'*
- 7.15 Policy GP25 is also relevant within this assessment and seeks to reduce or mitigate any potential noise impacts caused by a development that may impact upon residents living in the area.
- 7.16 Paragraph 130, part f) of the NPPF states that developments should *'create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users'*.
- 7.17 Policy POL 2 of the emerging NLP is also relevant within this assessment and states that *'Development proposals in locations where they would cause, or be put at unacceptable risk of harm from, or be adversely affected by pollution by virtue of the emissions of fumes, particles, effluent, radiation, smell, heat, light, noise or noxious substances will not be supported'*.
- 7.18 Whilst the site is located within Newbiggin-By-The-Sea town centre, residential use is prevalent within the immediate and wider area. The proposed site is situated immediately adjacent to residential dwellings (flats) at 100 and 102 Front Street. A site visit was undertaken as part of the

application assessment with consultation also undertaken with the local authority's Public Protection team.

- 7.19 A noise risk assessment and odour risk assessment form part of the submitted documents and were appropriately assessed by Public Protection. Following the submission of additional information, clarifying that the external plant that served the retail unit has been removed, Public Protection confirmed no objection to the application proposals subject to recommended conditions. The inclusion of such conditions would ensure the proposals would not have a significant adverse impact upon neighbouring residents whilst also allowing the LPA control over operations undertaken on site.

Highway safety

- 7.20 Paragraph 111 of the NPPF states *'Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe'*.
- 7.21 Consultation was undertaken with Highways DM who, following clarification on refuse storage provision, raised no objection to the application proposals. Whilst a condition is recommended stating that *'No external refuse or refuse container shall be stored outside of the approved refuse storage area except on the day of refuse collection'*, such a condition is unenforceable by the LPA and does not meet the 6 tests as set out within paragraph 56 of the NPPF. This should therefore be included as an informative upon any approval.
- 7.22 It is likely that the traffic generated by the proposed development, whilst having differing peak hours, will not be significantly different to the traffic generated by the extant permitted use of the site. The deliveries and servicing strategy for the site is in keeping with those of neighbouring and adjacent commercial buildings. Appropriate parking provision is located to the front of the site and also to the rear.
- 7.23 The proposal therefore accords with relevant local and national planning policy in relation to highway safety.

Equality Duty

- 7.24 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

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

Human Rights Act Implications

- 7.26 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.
- 7.27 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.
- 7.28 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 proposal represents an acceptable form of development in accordance with both local and national planning policy. The application is therefore recommended for approval subject to recommended conditions.

9. Recommendation

That this application be GRANTED permission subject to the following:

Conditions/Reason

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

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 (as amended)

02. The development hereby permitted shall be carried out in complete accordance with the approved plans. The approved plans for this development are:-

- 1) Location plan (received 20th April 2021)
- 2) Proposed elevations drawing no. JR181-07a (received 3rd August 2021)
- 3) Proposed roof plan drawing no. JR181-05A (received 3rd August 2021)
- 4) Proposed floor plans drawing no. JR181-04A (received 3rd August 2021)

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

03. No cooking appliances may be used at any time which burn charcoal, wood or wood containing material.

Reason: To protect residential amenity and provide a commensurate level of protection against odour.

04. During the construction / renovation period, there should be no noisy activity, i.e. audible at the site boundary, on Sundays or Bank Holidays or outside the hours:

Monday to Friday - 0800 to 1800, Saturday 0800 to 1300.

Reason: To protect residential amenity and provide a commensurate level of protection against noise.

05. No noise emitted from a radio, television or any other electronic entertainment device shall be audible beyond the site boundary when the customer door leading to the Customer area as shown on the Floor Plans is closed. The aforementioned door shall remain closed at all times except for the explicit purpose of entry to or exit from the premises.

Reason: To protect residential amenity and provide a commensurate level of protection against noise.

06. The applicant shall maintain and use a kitchen extraction system which shall provide a Very High level of odour control, as defined in the EMAQ document "Control of Odour and Noise from Commercial Kitchen Exhaust Systems". The system must include Fine filtration or an ESP (electrostatic precipitator) followed by carbon filtration or an Ultraviolet ozone system (with either system being rated with a minimum 0.4 – 0.8 second residence time).

Reason: To protect residential amenity and provide a commensurate level of protection against odours which may be greasy or are otherwise considered offensive by the average person.

07. The premises shall only operate between the hours of 1200 to 2400 hours.

Reason: To protect residential amenity and provide a commensurate level of protection against noise.

08. The rating level of sound emitted from any flue, duct and external plant at the use hereby approved shall not exceed background sound levels by more than 3dB(A) between the hours of 0700 - 2300 (taken as a 5 minute LA90 at the

façade of the nearest sound-sensitive premises) and shall not exceed the background sound level between 2300 - 0700 (taken as a 5 minute LA90 at the façade of the nearest sound sensitive premises). All measurements shall be made in accordance with the methodology of BS4142 (2014) (Methods for rating and assessing industrial and commercial sound) and/or its subsequent amendments. Where access to the nearest sound-sensitive property is not possible, measurements shall be undertaken at an appropriate location and corrected to establish the noise levels at the nearest sound sensitive premises. Any deviations from the LA90 time interval stipulated above shall be agreed in writing with the local planning authority. A sound sensitive premises is defined as a residential dwelling.

Reason: To protect the amenities of nearby residents.

Informatives

- 1) Prior to the Odour Extraction System being put into service for the first time, the business should ensure that the System is inspected by a competent person to ensure that it is installed correctly and is safe to operate (Regulation 6 of The Provision and Use of Work Equipment Regulations, 1998)
- 2) The food business has a legal duty under EC 852/2004 to ensure that the cafe has suitable and sufficient means of natural or mechanical ventilation at all times – any alteration to the food for purchase at any time will need to consider the sufficiency of the on-site ventilation. Mechanical airflow from a contaminated area to a clean area is to be avoided. Ventilation systems are to be so constructed as to enable filters and other parts requiring cleaning or replacement to be readily accessible.
- 3) The Food Business Operator (FBO) must register with Northumberland County Council as a Food Business at least 28 days prior to the first day of operation. The following web-page has further information and the relevant application form:

<https://www.northumberland.gov.uk/Protection/Environmentalhealth/Businesses.aspx>
- 4) External refuse and refuse containers shall be stored within the approved refuse storage area except on the day of refuse collection.
- 5) This permission does not give consent to any advertisement(s) intended to be displayed on the site for which separate Express Consent may be necessary under the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as Amended/Revoked).
- 6) Building materials or equipment shall not be stored on the highway unless otherwise agreed. You are advised to contact the Streetworks team on 0345 600 6400 for Skips and Containers licences
- 7) In accordance with the Highways Act 1980 mud, debris or rubbish shall not be deposited on the Highway.

Date of Report: 3rd August 2021

Background Papers: Planning application file(s) 21/01624/COU