

LAND ADJACENT SAINSBURY'S STORE, LIVERPOOL ROAD, NEWCASTLE
MARSTONS INN AND TAVERNS & WILDGOOSE CONSTRUCTION **13/00807/FUL**

The application is for full planning permission for the erection of a pub/restaurant including ancillary manager accommodation. In addition the application seeks the removal of condition 5 of planning permission 06/01180/OUT, as varied by application 11/00312/OUT, which requires that offices referred to in that outline permission are available for occupation within 4 years of the Sainsbury's superstore opening to paying customers (which was 3 November 2010).

The site measures 0.97 hectares and is an undeveloped fairly steeply sloping parcel of land, on the former site of Newcastle College, adjacent to A34 Liverpool Road.

The proposed building is, in part, two storeys with a single storey element to the front and side. An external play area is proposed. A single access is proposed off the internal access road to the Sainsbury's store and the petrol filling station. A parking area of 47 spaces (including 2 disabled spaces) is proposed. The proposals involve a significant retaining structure on the petrol filling station side of the site, and a cut and fill exercise across a large part of the site, with other retaining structures on part of the Liverpool Road frontage.

The site lies within the urban area as defined on the Local Development Framework Proposals Map and within the Northern Gateway as defined in the Newcastle-under-Lyme Town Centre Supplementary Planning Document (SPD).

The application has been called-in to the Committee for determination by two councillors due to concerns of residents as follows:-

- Loss of amenities
- Loss of privacy
- Quality of life
- Anti social behaviour
- Design poor for the security of residents.
- Parking in streets will occur as only limited parking applied for.

The 8 week period for the determination of this application expires on the 11th April 2014.

RECOMMENDATION

Subject to consideration of the response of the applicant to the issue of the provision of direct pedestrian access between the proposal and the footway on Liverpool Road (A34), permit subject to conditions concerning the following matters:

1. Commencement within three years.
2. Approved plans.
3. Prior approval of materials.
4. Levels to be in accordance with approved plans unless otherwise agreed.
5. Provision of a fence or other barrier to prevent access between the proposed development and the rear of properties on Ashfields New Road in accordance with details to be agreed.
6. Hard and soft landscaping to be carried out in accordance with the approved details.
7. Provision of access, parking, servicing and turning areas before the development is brought into use.
8. Prior approval of surfacing materials, surface water drainage, and delineation of parking and servicing areas.
9. Any gates to be a minimum of 10m rear of the Sainsbury's access road and shall open away from the highway.
10. Prior approval of a Construction Method Statement to include details of the site compound; access for construction vehicles; the parking of vehicles of site operatives and visitors; loading and unloading of plant and materials; storage of plant and materials; and wheel wash facilities.
11. Prior approval and provision of secure weatherproof cycle parking.
12. Implementation of noise mitigation measures as set out in the submitted Noise Assessment, and/or as recommended by the Environmental Health Division.

Reason for Recommendation

The development is acceptable in principle as whilst it involves a main town centre use no sequentially preferable site has been identified and although the site would be lost for office development the proposal is for economic development that would generate employment. The proposal has an acceptable design and layout and achieves adequate amenity levels for the occupiers of the adjoining properties. Confirmation of this is expected to be received from the Environmental Health Division prior to the meeting of the Committee and their recommendations will be reported, which may include a recommendation that hours of opening are restricted in addition to other noise mitigation measures. The development provides adequate parking provision and access other than the possible inclusion of pedestrian link into the site from the A34.

Proposed Statement as to how the Local Planning Authority has worked with the applicant in a positive and proactive manner in dealing with this application

This is considered to be a sustainable form of development and so complies with the provisions of the National Planning Policy Framework.

Policies and Proposals in the approved Development Plan relevant to this decision:-

Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy 2006-2026 (adopted 2009) (CSS)

Policy SP1	Spatial Principles of Targeted Regeneration
Policy SP2	Spatial Principles of Economic Development
Policy SP3	Spatial Principles of Movement and Access
Policy ASP4	Newcastle Town Centre Area Spatial Policy
Policy CSP1	Design Quality
Policy CSP3	Sustainability and Climate Change
Policy CSP10	Planning obligations

Newcastle-under-Lyme Local Plan 2011 (NLP)

Policy T16 Development – General Parking Requirements
Policy T18 Development – Servicing Requirements

Other material considerations include:

National Planning Policy

National Planning Policy Framework (NPPF) (March 2012)

Planning for Town Centres: Practice Guidance on need, impact and sequential location

National Planning Practice Guidance (March 2014)

Community Infrastructure Levy Regulations (2010) as amended and related statutory guidance

Supplementary Planning Guidance/Documents

Space Around Dwelling SPG (2004)

Newcastle-under-Lyme and Stoke-on-Trent Urban Design Guidance SPD (2010)

Developer Contributions SPD (September 2007)

Newcastle-under-Lyme Town Centre SPD (January 2009)

Newcastle (urban) Transport and Development Strategy (NTADS)

Waste Management and Recycling Planning Practice Guidance Note (January 2011)

Newcastle-under-Lyme Retail & Leisure Study 2011

Relevant Planning History

Outline planning permission for a new college, sports facilities, superstore, petrol filling station, offices, housing, parking, landscaping and associated engineering works was issued in 2007 (06/01180/OUT). Reserved matters approval was granted, in 2009, for the superstore (08/00865/REM)

There have been a number of applications to vary and remove conditions on the above permissions, the only relevant one to this application being :-

2011 11/00312/OUT Permit – variation of condition 5 of planning permission 06/01180/OUT which requires that the offices are available for occupation within 4 years of the opening of the superstore.

Views of Consultees

The **Highway Authority** has no objections to this proposal subject to conditions relating to the following:-

- Provision of access, parking, servicing and turning areas before the development is brought into use.
- Prior approval of surfacing materials, surface water drainage, and delineation of parking and servicing areas.
- Any gates to be a minimum of 10m rear of the Sainsbury's access road and shall open away from the highway.
- Prior approval of a Construction Method Statement to include details of the site compound; access for construction vehicles; the parking of vehicles of site operatives and visitors; loading and unloading of plant and materials; storage of plant and materials; and wheel wash facilities.

- Prior approval and provision of secure weatherproof cycle parking.

The HA have confirmed that they have considered whether a contribution towards NTADS would be justified, and that their view is that it would not, given that the site has an extant planning permission for office development with a floor area of 1890 sq.m and when the proposal is compared with this extant proposal there will be no intensification of traffic in the pm peak and accordingly no NTADS contribution is sought by them

The **Environmental Health Division** has indicated that it has concerns relating to noise, light and cooking odours and is unable to provide a comprehensive response until such time as the following information has been received and assessed:

- A noise assessment relating to the potential impacts of noise arising from patrons, deliveries, bottle disposal, waste collection, external plant and equipment, and the kitchen ventilation system.
- A lighting assessment showing the height, position and orientation of all luminaires and providing details of upward light ration of lighting, light intrusion into windows of surrounding premises, source intensity as viewed from neighbouring premises and ground level lux for up to 25m beyond the site boundary.
- Further details of the kitchen ventilation system to be used.

A noise assessment has been submitted and the further views of the Environmental Health Division are awaited.

The **Police Architectural Liaison Officer (PALO)** advises that the clear implication from the supporting documentation is that it is not the intention of the applicant for this to be or become a late night venue, something the Police would strongly resist. The hours of operation will need to reflect this and this is something that the Staffordshire Police Licensing Unit has already broached with representatives of the applicant and will seek to address in due course with regard to any subsequent premises license.

The PALO further advises that it is unfortunate that security is not mentioned in any of the supporting documentation however the presence of an onsite physical presence outside of operating hours (first floor manager accommodation) is one notable positive feature. Furthermore there appears to be an absence of recessed/hidden areas internally with the centrally located servery area directly overlooking the entrance and enabling staff to provide a good level of natural surveillance of the premises in general. Access to the first floor accommodation/office area is clearly segregated and private. The location is also one that is well overlooked by passing traffic.

The PALO would draw the attention of the applicant to the existence of Secured by Design Licensed Premises Design Guide.

Additionally the PALO raises concern regarding the potential for undesirable access to and through the dead space at the northern end of the site. It is apparent that there are unofficial routes from the end of Ashfields New Road at the north-east corner of the site and behind the petrol filling station or directly towards the store via the filling station forecourt. This is not addressed in the application but such problems could be prevented by use of robust fencing.

The **Landscape Development Section** has no objection in principle to this development, but concerns are raised about screening to the rear of the properties on Ashfields New Road and would suggest some additional planting to help screen these houses from the development. It is also suggested that the area currently proposed for seeding at the rear of the development is planted to tie in to the existing vegetation behind the Sainsbury's garage site.

The **Environment Agency**, the **Waste Management Division**, and the **Economic Regeneration Section**, having been consulted and having made no comments by the deadline provided to them, must all be considered to have no comments to make upon the application

Representations

16 letters of objection have been received raising the following concerns:-

- The site is designated for office space.
- The service area will be located close to the rear of properties on Ashfields New Road resulting in disturbance unless an appropriate acoustic boundary fence and restrictions are in place on deliveries.
- The kitchen will result in nuisance from cooking smells.
- Insufficient parking is provided.
- There are many similar establishments in close proximity and there is no need for a further pub/restaurant.
- Would result in the loss of view to patrons of the Free Bird public house and residents of Ashfield New Road.
- It would result in security issues and potential for anti-social behaviour through the creation of a narrow passageway to the rear of houses on Ashfield New Road.
- The proposal would result in loss of privacy.
- Lighting would be disturbing to nearby residents and there is no report on its impact.
- The proposal will take trade away from the town centre.
- Comparison of the noise arising from the proposal to that of the railway is not appropriate as the railway line was removed many years ago and this is now a walkway and cycle track.
- The opening hours are a lot later than other local pubs.
- Residents experienced parking and noise problems when the College owned the site, and suffered noise and dust disturbance during the construction of the store. The new proposal will bring more disruption to local residents.
- If planning permission is granted conditions should be imposed relating to lighting; noise restrictions for fixed plant; and bottle disposal to take place in accordance with the method assumed in the Noise Assessment (i.e. with doors closed).
- The contention that 0700-2100 falls outside sleeping hours is strongly objected to, and deliveries should be restricted to at least 0800-2000.
- The noise level from deliveries will disturb residential amenity during the day time, and a condition should be imposed to prohibit vehicles with reversing sounders from using the rear yard to load and unload, and require them to use the front parking area only and if this is not considered acceptable the application should be refused.
- The closing time should be at the latest 0100 to mitigate the impact of customer departure on local residents. The impact of customers leaving on foot is the main cause of disturbance.
- The levels alterations proposed will mean that the south western edge of the development will be higher than the first floor windows of the adjacent properties and will be extremely dominant. The erection of a 3m high barrier will effectively be 4.5m, close to the roof heights of adjacent properties, at a short distance from the rear boundaries. This will block significant amount of light from gardens and cause severe interference with this important amenity space.

Applicant/agent's submission

The application is supported by a Planning Statement; a Design and Access Statement; a report on the availability of commercial offices in the North Staffordshire conurbation; a Noise Assessment; and a Desk Study and Ground Investigation Report which are available for inspection at the Guildhall and on www.newcastle-staffs.gov.uk/planning/MarstonsPHLiverpoolRd

KEY ISSUES

The main issues to address are:-

- Principle
- Residential Amenity
- Design
- Highway Safety and promotion of sustainable travel modes.

Principle

There are two aspects for consideration in respect of the issue of principle. Firstly it is necessary to assess whether the site is a suitable location for a public house/restaurant, having regard to town centre policies. Secondly the site has previously had permission for office development, and as such it is necessary to consider whether the loss of an office site to other development is acceptable.

1. Suitability of the site as a location for a public house

The NLP does not contain any saved policies that are relevant to the consideration of the principle of the proposed development. Policy SP1 of the CSS indicates that retail and office development will be focussed towards the City Centre and Newcastle Town Centre, but makes no reference to other town centre uses.

The NPPF defines 'main town centre uses' as including leisure uses, entertainment facilities and the more intensive sport and recreation uses and indicates that restaurants, bars and pubs are included in that definition. As such the proposed use is considered to be a main town centre use and the advice of the NPPF, at paragraph 24, should be taken into consideration. It indicates that Local Planning Authorities (LPAs)

"should apply a sequential test to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan. They should require applications for main town centre uses to be located in town centres, then in edge of centre locations and only if suitable sites are not available should out of centre sites be considered. When considering edge of centre and out of centre proposals, preference should be given to accessible sites that are well connected to the town centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale."

The NPPF goes on to state, at paragraph 26, that where leisure development is outside of town centres, and which are not in accordance with an up-to-date Local Plan, LPAs should require an impact assessment if the development is over a proportionate, locally set floorspace threshold. Where there is no locally set threshold, as in the Borough, the NPPF indicates that the default threshold is 2,500 m². Given that the proposal here is for 671.5 m² an impact assessment is not required in this case.

The Town Centre SPD defines 'edge of centre' for retail and leisure development as those areas adjoining the Inner Ring Road, or fronting the A34 within 250m of the Inner Ring Road. As the site fronts the A34 and is within 250m of the ring road it is considered that it is an 'edge of centre' site. In light of this the sequential test should be applied.

Guidance on how to adopt a sequential approach is set out in a Practice Guidance document which remains valid notwithstanding that the Government Policy Document to which it related (PPS4) has been replaced by the NPPF. It defines availability as whether sites are available now or are likely to become available for development within a reasonable period of time (determined on the merits of a particular case, having regard to inter alia, the urgency of need). Suitability is defined as, with due regard to the requirements to demonstrate flexibility, whether sites are suitable to accommodate the need or demand which the proposal is intended to meet.

It is for the applicant to demonstrate compliance with the sequential test. The submission assesses two potentially sequentially preferable sites, as follows:-

Blackfriars Bakery Site – this site was considered to be a sequentially preferable site by the applicant. Discussions were entered into but it ultimately proved that the site was not capable of meeting the space and commercial requirements of the discount retailer that has control over the site (Aldi) and the public house. The applicant has therefore concluded that this site is not suitable, viable or available for the proposed development. In light of the decision on the recent planning application on this site (13/00712/FUL) your Officer accepts this conclusion.

Former Georgia Pacific Site, Lower Street - the applicant has acknowledged that the site is available but considers that it is not capable of supporting the scale of the proposed development, nor

any other smaller option which is considered commercially viable. Whilst the submission has not provided evidence of the detailed schemes that the applicant has indicated were drawn up for the site, it is accepted that remainder of the Georgia Pacific site which has not been developed would limit space around the building for suitable servicing and parking (although parking could in theory be shared as it is between the Travel Lodge and Lidl).

Your Officer nevertheless accepts the applicant's conclusions, that the site is not suitable and as such it is not an available sequentially preferable site that is suitable.

The submission also refers to the **former Cannons Gym site**, on Barracks Road. No detailed consideration has been paid to the site by the applicant as the unit has been re-let and is no longer available. Whilst it is considered that this site is better connected to the town centre than the application site (and therefore could be a sequentially preferable site) your Officer accepts that the site is not available and as such it is not a suitable sequentially preferable site that is available.

It is noted that the applicant has not considered the **Ryecroft site**, a town centre site, within the submission. Notwithstanding this omission it is considered that the Ryecroft site redevelopment proposals have not materially progressed to a point where it can be concluded that it is realistically available at this time. As such it is not a suitable sequentially preferable site that is available.

In the absence of any sites within the town centre, or which are on the edge of centre but better connected to the centre, which are both suitable and available it is concluded that the sequential test is passed.

2. Loss of an office development site

Outline planning permission was issued in 2007 for a new college, sports facilities, superstore, petrol filling station, offices, housing, parking, landscaping and associated engineering works. A condition of the permission required that the office development (which was to be undertaken on the part of the wider site which is the subject of this application) is available for occupation within 12 months of the opening of the superstore. This condition was subsequently varied to specify that the offices were to be available for occupation within 4 years of the opening of the superstore.

Policy E11 of the Local Plan refers to the development of employment land for other uses. It states that development that would lead to the loss of good quality business and general industrial land and buildings will be resisted where this would limit the range and quality of sites and premises available. The policy outlines the criteria for considering what constitutes 'good quality' including accessibility, size, condition, location and relationship to adjoining uses. The supporting text to the policy states that the overriding priority is to preserve the stock of land and buildings attractive to Class B users, so that opportunities for inward investment and for the modernisation of existing local businesses can be maximised. CSS Policy SP2 identifies Newcastle Town Centre as a focus for office development incorporated into mixed use schemes. These policies are considered to be consistent with the NPPF.

Paragraph 22 of the NPPF states that planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose. Where there is no reasonable prospect of a site being used for the allocated employment use, applications for alternative uses of land or buildings should be treated on their merits having regard to market signals and the relative need for different land uses to support sustainable local communities.

The owner of the site has undertaken a continued marketing exercise and has submitted a Commercial Office Availability report to support the current application. It details that a decrease in economic activity and increase in difficulty in securing funds from financial institutions has led to a significant decrease in demand for office space since the decision was issued in 2007. It is stated that this has led to an increase in supply of office space and a significant drop in rental values for office space.

The submission argues that speculative office development is not viable at this time nor is the construction of the office development for a single operator, as there is no known operation that requires such a facility and there are more attractive locations.

The submission does not provide any evidence of how the site has been marketed, or what interest, or lack of, there has been in the site for office development. Notwithstanding this it is accepted that there is little prospect that speculative office development will be undertaken on the site. It is also accepted that any business looking to construct new offices would have alternative and more attractive sites to consider first. It is therefore likely that the site will remain undeveloped for a further, significant, period if alternative uses are not considered. Such an approach would not accord with the guidance set out in the NPPF particularly when it is noted that the proposed development is itself defined, in the NPPF, as economic development. Whilst the site, if planning permission is granted, would be lost for its allocated use of office development it would still contribute jobs to the economy (up to 40 full time equivalent jobs).

In conclusion it is considered that the principle of development of the site as a pub/restaurant is acceptable.

Residential Amenity

The proposed pub/restaurant is located to the rear of residential properties on Ashfields New Road and activity associated with the use has the potential to adversely affect the occupiers of such properties. A Noise Assessment has been submitted which identifies the need to undertake acoustic mitigation to ensure that the noise levels at those properties is suitable and acceptable. Such mitigation measures include:-

- a fully enclosed compound within the service yard to address noise from the disposal of bottles into bins
- restrictions on bottle collection.
- Provision of a 3m high acoustic barrier adjoining the service yard to address noise from deliveries.

At the time that this report was prepared the views of the Environmental Health Division (EHD) were not known. The acoustic mitigation measures that have been recommended within the submitted Noise Assessment can be secured by condition. Therefore if the conclusions of the assessment are accepted by EHD, that with the mitigation measures installed the noise levels generated by the site will have no more than a minor impact on the nearest residents, the issue of noise would not be a sustainable ground to refuse the application.

The proposed building has a two storey element with a ridge height of 10.3m approximately 18-19m from the rear elevation of the nearest dwellings on Ashfields New Road. Ashfields New Road slopes downwards away from the A34, with the terraced properties stepping down to follow the slope. A brick wall and mature vegetation runs along to boundary between the site and the dwellings. The finished floor level as proposed is approximately 2m below the level of the A34, slightly below the level on which the brick wall has been constructed.

Guidance set out in the adopted Space Around Dwellings SPG, whilst addressing the relationship between new residential development and existing dwellings, provides a useful basis upon which to assess the acceptability of the impact of the building on the living conditions of the occupiers of the houses on Ashfields New Road. It indicates that 13.5m should be achieved between a principal window and a blank wall. The 19m separation distance that is achieved between the proposed building and the properties on Ashfields New Road, even taking the levels into consideration, exceeds that requirement and is sufficient to ensure that it will not have an overbearing impact on the occupiers of the properties. In addition it would not result in an unacceptable loss of light as an angle of 45° degrees measured from the mid point of the nearest windows of properties on Ashfield New Road (a criterion within the SPG) will not be breached.

There are a number of windows on the north elevation of the proposed building at first floor serving the manager's flat facing towards the rear of the properties on Ashfields New Road. The two first floor living room windows to the manager's flat in the elevation facing towards the rear of the dwellings which would be considered as principal windows (as defined in the SPG) and do not achieve the 21m separation distance as set out in the guidance within the SPG. Amended plans have been requested

to site the main window/s to that room on the western elevation of the building to address this concern.

In addition to the impact of the building upon the residential amenity of the occupiers of adjoining residents concern has also been expressed about the impact of the acoustic fence that is recommended in the Noise Assessment. The recommendation is that a 3m high acoustic barrier is erected around the northern boundary of the service yard and car park and along approximately 12.5m of the western boundary of the car park. The ground level of the car park in the north western corner is approximately at the current levels, which is similar to the levels of the properties on Ashfields New Road that directly backs on to the site boundary, and elevated above those properties further down the road, and further away from the site. The combination of the separation distance and the retention of the existing vegetation would ensure that the visual impact of the acoustic barrier would not be unacceptable.

Concern has also been raised by the Police Architectural Liaison Officer that an existing unofficial route from the end of Ashfields New Road at the north-east corner of the site and behind the petrol filling station or directly towards the store via the filling station forecourt has not been addressed in the application. It is suggested that such problems could be prevented by use of robust fencing. The construction of the proposed building and its service yard could exacerbate such problems and it is agreed that it would be appropriate to address this through a condition requiring the construction of a fence, although the issue of pedestrian accessibility is considered further below.

Design

The proposed development consists of a two storey element which is domestic in its scale and appearance, with a single storey section that wraps around two sides of the building. The full two storey section is pushed to the front of the site on its north eastern corner – so that it has the greatest visual impact in views approaching along the A34 from the north – an appropriate approach to take in the context of a site identified as a “Gateway” in the SPD. It is to be predominantly constructed in red brick with an artificial slate roof. In addition there is some limited use of render and horizontal wooden boarding.

The design, scale and massing would be in contrast to that of the adjoining supermarket and the dwellings on Ashfields New Road, but would not be out of keeping on the A34 close to the Town Centre. Overall the design is considered to be acceptable.

Highway Safety and promotion of sustainable travel modes

The point of access into the site has already been constructed off the access to the existing supermarket and petrol filling station and was designed to serve the permitted office development on the site. The access is considered to be acceptable to serve the pub/restaurant that is proposed.

In total 47 car parking spaces are proposed (including 2 disabled spaces). This is considered to be adequate for a development of this nature and scale.

Whilst not a matter of highway safety, it is noted that there is no pedestrian access from the site frontage onto the A34 and as such any pedestrian access would have to be via the vehicular access to the site. This is not ideal and may discourage people from accessing the site on foot. It is accepted, however, that the 2.5 metre levels difference between the site and the A34 make the provision of such a pedestrian access difficult to achieve however it is considered that the inclusion of a pedestrian route is desirable in the interests of securing an integrated and inclusive design. The applicant has therefore been asked to fully explore the possibility of providing a pedestrian link into the site from the A34 and further information will be reported on this issue.

The Highway Authority (HA) have indicated that an NTADS contribution is not required in this case on the basis that the site has an extant planning permission for office development with a floor area of 1890 sq.m and when the proposal is compared with this extant proposal there will be no intensification of traffic in the pm peak that justifies such a contribution. The HA are incorrect in their assumption that the outline permission for the office development remains extant. There is, however, condition 5 of 06/01180/OUT, as varied by application 11/00312/OUT, which requires that offices referred to in that

outline permission are available for occupation within 4 years of the Sainsbury's superstore opening to paying customers (which was 3 November 2010). As such there is currently a requirement to construct offices, albeit that no permission currently exists to do so, and on that basis it is reasonable to take this into consideration in assessing the need for an NTADS contribution. Therefore whilst your Officer does not agree with the reasons given by the HA it is agreed that an NTADS contribution is not required in this case, particularly if by the provision of a direct pedestrian access onto the A34 footway travel to and from the premises by foot and bus is promoted..

Background Papers

Planning file
Planning documents referred to

Date report prepared

18th March 2014