

The application seeks full planning permission for change of use of the property from a nightclub to A1 retail and A3 café and restaurant uses at ground floor and basement levels. The change of use involves an internal floor area of approximately 1850 square metres (including floor area already permitted for A1 use).

The site is situated within the Urban Area of Newcastle as specified on the Local Development Framework Proposals Map. In addition it is within the Live-Work Office Quarter as defined in the Newcastle Town Centre Supplementary Planning Document.

**The 13 week period for the determination of this application expires on 29<sup>th</sup> February 2016.**

### **RECOMMENDATION**

**PERMIT subject to conditions relating to the following:-**

- 1. Time limit.**
- 2. Approved drawings.**
- 3. Refurbishment hours restricted to 7am and 6pm Monday to Friday and not at any time on Sundays Bank Holidays or after 1pm on any Saturday.**
- 4. Restriction of permitted waste collections and deliveries to between 7am and 6pm only on any day.**
- 5. Provision of ventilation system and odour control.**
- 6. Restriction of food types that may be cooked without adequate ventilation.**
- 7. Cessation of cooking in the event of ventilation problem.**
- 8. Prior approval of noise generating plant such as mechanical ventilation, refrigeration or air conditioning.**
- 9. Prevention of food and grease debris from entering the drainage system.**
- 10. Details of refuse storage and collection arrangements.**
- 11. Marking out the car park for loading/servicing and visitor/trader spaces.**
- 12. All loading/unloading takes place within a designated space within the car park.**

### **Reason for Recommendation**

The proposed change the use of the building has to be considered in the context of policies which seek to protect and enhance the vitality of the town centre. The proposal entails 'main town centre uses' in an 'edge of town centre' location inside an existing building which has historically operated as a nightclub – also a 'main town centre use'. The Zanzibar building has remained vacant for approximately 12 years in a prominent main road position leading into the Town Centre in a state of disrepair. There are clear substantial regeneration benefits in allowing the reuse of the building relating to improvement of its general appearance through general maintenance and repair works as well as the important economic benefits attached to attracting footfall to the vicinity in an 'edge of centre' location where linked trips are very likely. There is no significant detriment with respect to amenity levels of neighbouring uses being eroded. There are no highway safety objections to the proposal –the location is well served by public transport, public car parks and the building benefits from its own car park. Overall the positive elements of the proposal are considered to outweigh any negative factors.

### **Statement as to how the Local Planning Authority has worked in a positive and proactive manner in dealing with the planning application**

The proposal is considered to be a sustainable form of development in compliance with the provisions of the National Planning Policy Framework and no amendments were considered necessary.

### **Key Issues**

The application is for full planning permission to change the use of the property from a nightclub use (sui generis) to A1 retail and A3 (restaurant and café) uses at ground floor and basement levels. The property is three storeys in height. Planning consent was granted recently last year under application reference 15/00710/COU for change of use of the 1<sup>st</sup> and 2<sup>nd</sup> floor of the building covering 800 square metres to an antiques dealers centre with ancillary restaurant use.

It is anticipated by the applicant that 50 full time staff and 20 part time staff will be employed. The uses applied for are proposed to be operational between 9am to 5.30pm Monday to Saturday and 10am until 4pm on Sundays.

The applicants have indicated that the proposed retail use element now applied is likely to be for antiques and collectables to complement the use already permitted – with the overall aim of creating a niche retail experience attraction.

The applicant has confirmed A3 element applied for is anticipated as a guide to be around 33% of the internal floor area and submitted plans are kept deliberately approximate in order to allow flexibility should business needs change. It is also the case that repair works to the building—making internal spaces weather tight. No external alterations form part of the application proposal. The key issues to consider are:-

1. Is the broad principle of the change of use acceptable taking into account sequential test and retail impact considerations?
2. Is the impact on highway safety acceptable?
3. Would the development cause material harm to nearby uses?
4. An overall conclusion in relation to the positive and negative impacts of the proposal

1. Is the broad principle of the change of use acceptable taking into account sequential test and retail impact considerations?

#### Local Plan and National Planning Policy

Core Strategy Policy ASP4 (the Newcastle Town Centre Area Spatial Strategy) sets out a number of planning considerations which are designed to enhance the vitality and viability of the Town Centre. Amongst those considerations is the formulation of a spatial framework identifying distinct zones both within the primary shopping area and beyond, aimed at maintaining their distinctive characters and helping break through the perceived barrier of the ring road. It indicates that in the plan period proposals will provide for 25,000m<sup>2</sup> of additional gross comparison retail floor space to 2021 and a further 10,000m<sup>2</sup> to 2026; 60,000m<sup>2</sup> of additional gross office floor space within, or on the edge of the town centre.

The Council's Supplementary Planning Document (SPD) is the framework for the Newcastle Town Centre referred to by ASP4. The application site is within the Live Work Office Quarter as defined by the SPD. The SPD does not form part of the Development Plan but is an important material consideration.

Paragraph 23 of the National Planning Policy Framework (the Framework) sets out the broad aims to ensure the vitality of town centres. The aims include allocating appropriate edge of centre sites for main town centre uses that are well connected to the town centre where suitable and viable town centre sites are not available.

Paragraph 24 indicates that Planning Authorities 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 are also required to demonstrate flexibility on issues such as format and scale.

'Edge of Centre' locations are defined for retail purposes, as a location that is well connected and up to 300 metres of the Primary Shopping Area. The 'Primary Shopping Area' in the Framework is defined as the area where retail development is concentrated – generally comprising the primary and those secondary frontages which are adjoining and closely related to the primary shopping frontage.

The SPD defines the 'Primary Shopping Area' as the area within the inner ring road. This is the area where retail is the primary activity. It also adopts a similar but not identical definition of 'Edge of Centre' as set out in national policy in assessing retail uses beyond and immediately adjoining the inner ring road. It indicates that for retail purposes an edge of centre site is any site adjoining the Inner Ring Road or fronting the A34 within 250 metres of the inner ring road.

Paragraph 26 goes on to state that when assessing applications for retail, leisure and office development outside of town centres which are not in accordance with an up-to-date Local Plan, local planning authorities should require an impact assessment if the development is over a proportionate, locally set floor space threshold (if there is no locally set threshold, the default threshold is 2,500 square metres).

Paragraph 14 of the Framework states that decision taking means approving development proposals that accord with the development plan without delay; and where the development plan is silent or relevant policies are out of date, granting permission unless any impacts of doing so would significantly or demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole or specific policies in the Framework indicate that development should be restricted.

It has previously been concluded that the site is 'Edge of Centre' in accordance with the provisions of the Framework which is the most up to date position when also acknowledging the provisions of the Councils Town Centre SPD. It is within a short walking distance from the full complement of services offered by the Town Centre Primary Shopping Area.

A sequential and retail impact assessment has been prepared by the applicant in support of the proposal.

### Sequential Test and Retail Impact

#### *i) Sequential Test*

Guidance on how to adopt a sequential approach is set out in Planning Practice Guidance (PPG). It advises that the sequential test guides main town centre uses towards town centre locations first, then, if no town centre locations are available, to edge of centre locations, and, if neither town centre locations nor edge of centre locations are available, to out of town centre locations, with preference for accessible sites which are well connected to the town centre. It supports the viability and vitality of town centres by placing existing town centre foremost in both plan-making and decision-taking.

PPG provides a checklist of considerations that should be taken into account in determining whether the proposal complies with the sequential test:-

- with due regard to the requirement to demonstrate flexibility, has the suitability of more central sites to accommodate the proposal been considered? Where the proposal would be located in an edge of centre or out of centre location, preference should be given to accessible sites that are well connected to the town centre. Any associated reasoning should be set out clearly.
- is there scope for flexibility in the format and/or scale of the proposal? It is not necessary to demonstrate that a potential town centre or edge of centre site can accommodate precisely the scale and form of development being proposed, but rather to consider what contribution more central sites are able to make individually to accommodate the proposal.
- if there are no suitable sequentially preferable locations, the sequential test is passed.

It is for the applicant to demonstrate compliance with the sequential test. The submission includes reference to a 2012 Supreme Court decision *Tesco Store v Dundee City* which indicates that the question is whether the site is suitable for the development proposed by the applicant and not whether the proposed development can be altered or reduced so that it can be made to fit an alternative site. The submission assesses the potentially sequentially preferable sites, that are identified within the Newcastle under Lyme Retail and Leisure Study (2011), in light of the findings of the Tesco case, as follows:-

- i. Ryecroft – the submission considers that this site is not suitable or available given that no planning application has yet been submitted and the redevelopment would be a much larger and wider ranging scheme than proposed. The Council has previously concluded that the site is not available for town centre uses and circumstances have not materially changed since that decision. It is therefore accepted that this is not a sequentially preferable site.
- ii. Police Station, Merrial Street – the submission concludes this is not suitable or available as it remains occupied by Staffordshire Police. Whilst the building is not in use, to our knowledge, there is still some use of the car park and as such this conclusion is accepted
- iii. Complex on corner of High Street and Merrial Street (York Place) – although there are a number of units vacant, the submission concludes that they are much too small to accommodate the proposals and as such the site is not suitable. This conclusion is accepted.
- iv. Jubilee Baths – as the site has planning permission for student accommodation and the development has commenced on site the submission considered that it is not suitable, available or viable for the proposed development. The submission also concludes that it is not a sequentially preferable site as it is out of the Primary Shopping Area. Whilst it is not accepted that this could not be a sequentially preferable site compared to the application site given its closer proximity to the Primary Shopping Area, it is accepted that the site is not available.
- v. St Giles and St George's School, Barracks Road – the submission indicates that given the nature and status of the existing building and that the site has been identified for a new Civic Hub the submission concludes that the site is not suitable, viable or available. This is accepted.
- vi. Nelson Place, Barracks Road – this site contains Exercise for Less and other retail units. On the basis the units remain occupied and provide a large format retail offer different to that proposed. They conclude that the site is not suitable or available and this is accepted.
- vii. Bus Station, Barracks Road – as this remains a functioning bus station the submission concludes that it is neither suitable or available, and this is accepted.
- viii. Land in between Lower Street, Friars Street and High Street – this site includes the Square Shopping Arcade and the multi-storey car park. The buildings are in use and as such it is accepted that the site is not available.
- ix. Blackfriars Site, Lower Street – this is the site is now occupied by an Aldi foodstore and as such it is no longer available.

The remaining site identified in the Retail and Leisure Study if the application site.

In the submitted assessment it is concluded that none of the sites listed above are sequentially preferable. In addition some 13 additional properties currently on the open market, in and around the town centre, have also been considered by the applicant ranging in floor space between from about 50 to 400 square metres in floor space.

No sequentially preferable locations to the application building have been identified by the applicant through assessment therefore

#### *ii) Retail Impact*

The proposal involves a gross internal floor area of around 1850 square metres for consideration. Taking into account approved planning application for 15/00710/COU which permitted around 800 square metres of retail floor space the total amount of retail floor area within the building would

exceed the national retail impact threshold of 2500 square metres. The applicant contends that a retail impact assessment is actually required considering the proposal applied for in isolation. Notwithstanding that issue they have submitted a study to meet any policy concerns which may arise.

Local Authorities are advised to apply the retail impact test in a proportionate and locally appropriate way. The purpose of the test is to ensure that the impact over time (up to five years (ten for major schemes)) of certain out of centre and edge of centre proposals on existing town centres is not significantly adverse. If the Local Plan is based on meeting the assessed need for town centre uses in accordance with the sequential approach, issues of adverse impact should not arise.

Where evidence shows that there would be no likely significant impact on a town centre from an edge of centre or out of centre proposal, the local planning authority must then consider all other material considerations in determining the application, as it would for any other development.

The site is accessible through a variety of means of transport, in particular there are a number of bus stops nearby which provide access to several different bus services and routes. The site is also within short walking distance of the primary shopping area and in addition has its own large private car parking area. The site itself currently accommodates a lawful town centre use and benefits from consent for retail use of part of the floor area. It's identification in the 2011 Retail Study as a site suitable for redevelopment for retail and leisure use identifies the site as a potential growth opportunity.

The submission indicates that none of the other sites identified in the Retail and Leisure Study have been redeveloped to incorporate comparison floorspace (the Aldi is a convenience goods store) and as such the application site is well placed to help deliver some comparison floorspace growth in line with the increased capacity identified. In addition the proposed floorspace forms less than one third of the comparison floorspace capacity identified in the Study. The submission concludes that the proposed development will not have an adverse impact on existing, committed or planning investment therefore.

The submission indicates that the application site is in a prominent and accessible edge-of-centre location, with good links to the Primary Shopping Area and has a lawful use which is also an acknowledged town centre use (nightclub). The submission goes on to say buildings current appearance, in a prominent, gateway location, has a significant negative impact on the vitality and viability of the surrounding area due to its absence of active use and poor contribution to the street. The applicant considers that the active re-use of the building can only result in a positive impact on the vitality and viability of the Town Centre. Your Officer is in agreement with that finding.

### *Summary*

It is considered that the proposal passes the sequential and impact tests and is acceptable in principle.

### 2. What is the impact on highway safety?

The most up to date planning advice on highway safety matters is contained within the Framework. The Framework advises that development should only be prevented or refused on transport grounds where the residual cumulative impacts of the development are severe.

The site has its own car parking area which can accommodate around 100 vehicles with access off Hassell Street. The building is also within a short walking distance of several town centre public parking areas and nearby bus stops. The Highway Authority has no objections subject to conditions relating to the clear marking out of the car park for visitors, traders and services. They also want to encourage loading and unloading on the car park rather than the highway. Such matters can be addressed through conditions

Overall it is considered that the proposal will not result in any material highway safety concerns.

### 3. Would the development cause material harm to nearby uses?

There are both commercial and residential uses in the vicinity. The Environmental Health Division has no objections subject to conditions. Subject to appropriately worded conditions the proposal is compatible with existing neighbouring uses and is unlikely to result in nuisance problems or other significant detriment to neighbouring amenity.

#### 4. Overall conclusion

There are no sequentially preferable sites for the development and that the impact on the town centre investment, its vitality and viability is not deemed to be harmful. The principle of reusing this large redundant building (which has previously operated as a nightclub –a main town centre use) is a positive change and one which carries significant weight. The fact that the proposal is a form of economic development which allowing would carry significant benefits in attracting more footfall to the immediate vicinity and also to the town centre through linked visits also carries significant weight. Overall there are no adverse impacts anticipated which would significantly or demonstrably outweigh the benefits of allowing the application.

## APPENDIX

### Policies and proposals in the approved development plan relevant to this decision:-

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

Policy SP1:	Spatial Principles of Targeted Regeneration
Policy SP2:	Spatial Principles of Economic Development
Policy SP3:	Spatial Principles of Movement and Access
Policy ASP5:	Newcastle and Kidsgrove Urban Neighbourhoods Area Spatial Policy
Policy CSP1:	Design Quality
Policy CSP3:	Sustainability and Climate Change

#### Newcastle-under-Lyme Local Plan (NLP) 2011

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

### Other Material Considerations include:

National Planning Policy Framework (NPPF) (2012)  
Planning Practice Guidance (PPG) (2014)

#### Supplementary Planning Guidance/Documents

Newcastle Town Centre Supplementary Planning Document (adopted 2009)

#### Newcastle-under-Lyme Retail & Leisure Study 2011

#### Relevant Planning History

There have been numerous applications over the years showing the development of this site, but only the most recent one has been implemented.

2015	15/00710/COU	Change of use to antiques dealers centre with ancillary restaurant use	Permitted
2010	05/00902/EXTN	Extension to the time limit to implement planning permission Ref 05/00902/OUT for residential flats, commercial accommodation, gym/fitness suite and on-site parking	Refused
2007	05/00902/OUT	Residential flats, commercial accommodation, gym/fitness suite and on-site parking	Permitted
2004	04/01309/OUT	101 residential flats with 137 on-site parking spaces	Refused.

### Views of Consultees

**Police Architectural Liaison Officer** has no objections and encourages the appropriate level of intruder prevention security is installed.

**Urban Design and Conservation Service** has no observations.

**Highway Authority** has no objections to the proposal subject to condition relating to:-

1. The parking area being clearly marked for visitors, traders and servicing in accordance with details first submitted to and approved in writing to the Planning Authority.
2. All loading/unloading and servicing of the development will take place from the designated area within the car park and not from the highway.

**Environmental Protection** has no objections subject to conditions relating to:-

1. Refurbishment hours restricted to 7am and 6pm Monday to Friday and not at any time on Sundays Bank Holidays or after 1pm on any Saturday.
2. Restriction of permitted waste collections and deliveries to between 7am and 6pm only on any day.
3. Provision of ventilation system and odour control.
4. Restriction of food types that may be cooked.
5. Cessation of cooking in the event of ventilation problem.
6. Prior approval of noise generating plant such as mechanical ventilation, refrigeration or air conditioning.
7. Prevention of food and grease debris from entering the drainage system.
8. Details of refuse storage and collection arrangements.

#### Representations

None received.

#### Applicant's/Agent's submission

Application forms and indicative plans have been submitted along with a Retail Statement covering a sequential assessment and impact. These documents are available for inspection at the Guildhall and on the website that can be accessed by following this link <http://publicaccess.newcastle-staffs.gov.uk/online-applications/PLAN/15/01061/COU>

#### Background papers

Planning files referred to  
Planning Documents referred to

#### Date report prepared

16<sup>th</sup> February 2016