

CUMBERLAND COUNCIL DELEGATED PLANNING DECISION

1.	Reference No:	4/24/2205/0B1	
2.	Proposed Development:	VARIATION OF CONDITION 2 (PLANS - TO ALLOW DIRECT ACCESS FOR BAKERY CUSTOMERS) AND REMOVAL OF CONDITION 3 OF PLANNING APPLICATION 4/23/2174/0F1 CHANGE OF USE OF EXISTING SHOP TO INCLUDE RETAIL CAFE, BAKERY, SOFT PLAY & EXTERNAL IMPROVEMENTS TO BUILDING TO INCLUDE INSTALLATION OF CLADDING, NEW DOORS & PORCH RESTATEMENT/ALTERATIONS TO EXISTING DOORS & WINDOWS	
3.	Location:	10 - 11 SOUTH PARADE, SEASCALE	
4.	Parish:	Seascale	
5.	Constraints:	ASC;Adverts - ASC;Adverts, Flood Area - Flood Zone 2, Flood Area - Flood Zone 3, Safeguard Zone - Safeguard Zone, Coal - Off Coalfield - Data Subject To Change, Key Species - Potential areas for Natterjack Toads, DEPZ Zone - DEPZ Zone, Outer Consultation Zone - Drigg 3KM, Outer Consultation Zone - Sellafield 10KM	
6.	Publicity Representations & Policy	Neighbour Notification Letter	Yes
		Site Notice	Yes
		Press Notice	No
		Consultation Responses	See Report
		Relevant Policies	See Report

7.

Report:

Site and Location

This application relates to an existing commercial property which fronts onto South Parade, opposite the existing car park on the sea front at Seascale. The site is an end terrace property which is currently vacant but was previously operated as a convenience store before it closed at the start of 2023.

Relevant Planning History

4/23/2174/0F1 – Change of use of existing shop to include retail café, bakery, soft play & external improvements to the building to include installation of cladding, new doors & porch reinstatement/alterations to existing doors & windows – Approved.

Proposal

In May 2024, planning permission (ref: 4/23/2174/0F1) was approved to change the use of the existing shop to include a retail café, bakery, soft play, and for external improvements to the building to include installation of cladding, new doors and porch, and reinstatement/alterations to existing doors and windows.

This application seeks to vary the plans condition (condition 2) attached to this original planning approval (ref: 4/23/2174/0F1) to allow direct access to the bakery element of the property via a separate door to the main porch entrance.

The application also seeks to remove the following condition attached to the original planning approval (ref: 4/23/2174/0F1):

Prior to First Use/Occupation Conditions:

3. Prior to the first use of the property hereby approved the existing opening within the front elevation directly adjacent to 8 South Parade, must be reinstated from a door to a window opening in accordance with the following approved plan:

As Proposed Plans/Elevations (Amended), Scale 1:50 & 1:100, Dwg No: 10, Rev: C, received by the Local Planning Authority on the 16th May 2024.

The approved opening must be retained as a window for the lifetime of the development.

Reason

To minimise potential disturbance to nearby residences and to safeguard the amenities of the locality in accordance with the provisions of Policy ST1 of the

Copeland Local Plan 2013-2028.

Consultation Responses

Seascale Parish Council

Seascale Parish Council submit a no objection to the above application with the following condition, the door accessing the bakery is only open between 7.30am - 4.00pm.

Cumberland Council – Environmental Health

This entire development has seen considerable change and additions since its inception. This latest proposed amendment is to provide a door direct to the bakery on the front façade. The door would be sited just over a metre away from the front living room bay window of the residential dwelling adjacent on the terrace.

A site visit was made to the residential dwelling to provide some context to this proposal.

The age of the terrace is late Victorian, and the construction of the party wall between the bakery and residential dwelling is understood to be about one brick thick (two half bricks with a finger cavity between).

Noise transmission from the new commercial premises to the adjacent residential dwelling was always of some concern, though permission was ultimately granted, given the retail history of number 10-11 South Parade. However, the siting of a door almost on the party wall will cause unacceptable loss of amenity to the residential occupiers through noise disturbance and loss of privacy.

As such, Environmental Health must object to this proposal and request that the applicants find an alternative and less intrusive means of accessing / exiting the bakery.

Public Representation

This application has been advertised by way of a site notice, and neighbour notification letters issued to twenty-one properties.

Eleven representations have been received in objection. The issues raised comprise the following:

- I am requesting in the strongest possible terms that the Decision Notice and conditions dated 23 May 2024 are upheld and the window is reinstated at this property.
- Residents of the adjoining property will be directly affected by the location of this secondary access and exit door in such close proximity of their bay window, and the disruption this will cause have already been highlighted and acknowledged in the previous decision notice for this site.

- The doorway should be reinstated to the original window.
- The bakery was never part of the original submission and was previously to be a seating area.
- Throughout the whole planning process the applicant has not reflected the works to be carried out to the building, including the creation of the additional doorway.
- Given after the decision on the original application was made and required the reinstatement of the unauthorised door to a window, the applicant continued the construction of this additional access.
- The site already has a large entrance/exit point for the which includes a new large porch to provide access to the site, including the bakery and wheelchair access.
- The proposed secondary entrance will have customers entering and exiting the premises 7 days a week from 7am until 10pm, as well as using the main entrance and as an exit for those remaining on the premises after that time.
- People will be waiting outside the doors for the bakery to open at 7am. Any ques will be close to the adjacent bay window and will undermine residents privacy.
- It is not incumbent for the residents of 9 South Parade now and in the future to have their standard of living undermined and the amount of disruption likely to be caused by a secondary access and exit to the shop property when there is an adequate and large doorway already in place and which has been used for many decades. This secondary door is too close to existing residential windows.
- To reduce impact on café/retail shop floor is a ridiculous reason to ask for the original planning condition to be removed.
- It is not incumbent to adjacent residents living standards undermined due to failures to design the internal furniture to fit the dimensions of the floor space.
- Condition 3 is the only planning restriction imposed by the Planning Officer on the original approval to protect residents from distress and disruption. Giving approval for its removal would literally 'open the door' to disfigure and cause disruption to resident's lives to any of the properties along South Parade.
- This whole project has not been discussed properly at Seascale Parish Council level.
- The applicant has asked totally irresponsible during the demolition and reconstruction process.
- The applicant is abusing her position as a Town Council Member by posting a plea on facebook to create a petition to support for her secondary door. It would appear by what she is writing that Planning Applications put through Cumberland are approved as a result of petition. Those commenting as a result on the Facebook plea do not live



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near the site and will have no idea of the impact.

- The site is an eye sore. The amount of waste and rubbish left out on the pavement and spilling into the road is ridiculous. Now more work. Why not know the whole thing down and rebuild if you want such drastic changes.
- Do not allow anymore inconveniences for us all who live in this peaceful village.

859 representations have been received in support of this application. The comments raised comprise the following:

- Benefit to village as a tourist area.
- Great addition to community facilities.
- Improvement to the appearance of the existing building.
- Investment in the area is welcomed.
- The addition of the bakery is a good use for the building and will add to local amenities.
- Increase in local employment.
- Addition of a separate door to bakery will help to manage the flow of customers better.
- Not all customers will want to purchase ice cream so a separate entrance is more convenient.
- Door helps the appearance of the building and would make it look more balanced from outside.

Planning Policy

Planning law requires that applications for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise.

Development Plan

On 1st April 2023, Copeland Borough Council ceased to exist and was replaced by Cumberland Council as part of the Local Government Reorganisation of Cumbria.

Cumberland Council inherited the local development plan documents of each of the sovereign Councils including Copeland Borough Council, which combine to form a Consolidated Planning Policy Framework for Cumberland.

The inherited the local development plan documents continue to apply to the geographic area of their sovereign Councils only.

The Consolidated Planning Policy Framework for Cumberland comprises the Development Plan for Cumberland Council until replaced by a new Cumberland Local Plan.

Copeland Local Plan 2013 – 2028 (Adopted December 2013)

Policy ST1 – Strategic Development Principles

Policy ST2 – Spatial Development Strategy

Policy ER6 – Location of Employment

Policy ER7 – Principal Town Centre, Key Service Centres, Local Centres and other service areas: Roles and Functions

Policy ER9 – The Key Service Centres, Local Centres and other small centres

Policy ER10 – Renaissance through Tourism

Policy ER11 – Developing Enterprise and Skills

Policy SS4 – Community and Cultural Facilities

Policy T1 – Improving Accessibility and Transport

Policy ENV1 – Flood Risk and Risk Management

Policy ENV3 – Biodiversity and Geodiversity

Policy ENV5 – Protecting and Enhancing the Borough's Landscapes

Development Management Policies (DMP)

Policy DM10 – Achieving Quality of Place

Policy DM11 – Sustainable Development Standards

Policy DM22 – Accessible Developments

Policy DM21 – Protecting Community Facilities

Policy DM22 – Accessible Developments

Policy DM25 – Protecting Nature Conservation Sites, Habitats and Species

Policy DM24 – Development Proposals and Flood Risk

Policy DM25 – Protecting Nature Conservation Sites, Habitats and Species

Emerging Copeland Local Plan 2021 – 2038 (ELP):

Cumberland Council are continuing the preparation and progression to adoption of the ELP.

The Local Plan Examination Hearing Sessions were completed in March 2023.

The appointed Planning Inspector issued their post hearing letter in June 2023, which identified the next steps for the examination.

The appointed Planning Inspector has now considered all representations and the discussions that took place during the Local Plan Examination Hearing Sessions in 2023 and has identified a number of amendments or 'modifications' that are required in order to ensure the ELP is sound i.e. positively prepared, justified, effective and consistent with national planning policy.

A six week public consultation seeking views on the proposed modifications to the ELP commenced on Wednesday 14th February 2024 and closed on the 28th March 2024. The Planning Inspectors Report is awaited.

As set out at Paragraph 48 of the National Planning Policy Framework (NPPF), Local Planning Authorities may give weight to relevant policies in emerging plans according to the stage of preparation of the emerging plan; the extent to which objections to relevant policies have been resolved; and the degree to which emerging policies are consistent with the NPPF.

Given the advanced stage of preparation of the ELP full weight can be attached to policies where no objections have been received or objections have been resolved. As the consultation on the main modifications to the ELP is now complete significant weight can also be afforded to the policies of the ELP where modifications are proposed.

Strategic Policy DS1PU: Presumption in favour of Sustainable Development

Strategic Policy DS2PU: Reducing the impacts of development on Climate Change

Strategic Policy DS3PU: Settlement Hierarchy Strategic

Policy DS4PU: Settlement Boundaries

Policy DS6PU: Design and Development Standards

Strategic Policy DS8PU: Reducing Flood Risk

Policy DS9PU: Sustainable Drainage

Policy SC5PU: Community and Cultural Facilities

Strategic Policy SC1PU: Health and Wellbeing

Policy SC2PU: Sporting, Leisure and cultural Facilities (excluding playing pitches)

Policy SC5PU: Community and Cultural Facilities

Strategic Policy N1PU: Conserving and Enhancing Biodiversity and Geodiversity

Strategic Policy N2PU: Local Nature Recovery Networks
Strategic Policy N3PU: Biodiversity Net Gain
Strategic Policy N6PU: Landscape Protection
Strategic Policy N9PU: Green Infrastructure
Strategic Policy R1PU: Vitality and Viability of Town Centres and villages within the Hierarchy
Policy SC5PU: Community and Cultural Facilities
Strategic Policy CO4PU - Sustainable Travel
Policy CO5PU - Transport Hierarchy
Policy CO7PU - Parking Standards and Electric Vehicle Charging Infrastructure

Other Material Planning Considerations

National Planning Policy Framework (2023)
National Design Guide (NDG)
Cumbria Development Design Guide
The Conservation of Habitats and Species Regulations 2017 (CHSR)

Assessment

Given the significant amount of public support received to this application which would be in direct contrast with Officer recommendation, it was considered that it may be in the public interest for the Planning Committee to determine the application. This application was considered at the Agenda Scheduling Meeting on the 16th August 2024. This meeting was attended by the Senior Planning Managers, the Council's Legal Advisor, and the Chair of the Planning Committee. Following consideration of the planning issues raised by the application it was resolved that there was not a specific reason why this application should be considered by the Planning Committee under the adopted Scheme of Delegation. On this basis the application will be determined at Officer Level under delegated powers.

Principle of Development

The planning permission approved under application reference 4/23/2174/0F1 remains.
The proposed variations fall within the scope of what is permitted under the provisions of Section 73 of the TCPA.

Planning Conditions Reconciliation



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Under Section 73 of the Town and Country Planning Act 1990, an application can be made to vary or remove a condition associated with a permission. The effect of an application under Section 73 is the issue of a new permission sitting alongside the original permission, which remains intact and unamended. The NPPG outlines that to assist with clarity it states that decision notices should also repeat the relevant conditions from the original permission unless they have already been discharged. As a Section 73 application cannot be used to vary the time limit for implementation this condition must remain unchanged from the original permission.

Impact on Residential Amenity

Policy ST1 of the Copeland Local Plan includes provisions requiring that development provides or safeguards good levels of residential amenity and security.

Policy DM10 of the Copeland Local Plan expects high standards of design and the fostering of quality places. It is required that development responds positively to the character of the site and the immediate and wider setting and enhance local distinctiveness. It is required that development incorporate existing features and address vulnerability to and fear of crime and antisocial behaviour.

Policy DS6PU of the Emerging Local Plan requires all new development to meet high-quality standards of design. This includes creating and enhancing locally distinctive places, the use of good quality materials that reflect the local character, including high quality and useful open spaces, providing high levels of residential amenity, adopting active travel principles, creating opportunities for social interaction, and effective use of land whilst maintaining amenity and maximising solar gain.

Planning permission (ref: 4/23/2174/0F1) was granted in May 2024 to change the use of the existing shop to a mixed-use site including retail, café, bakery and soft play. This application did not originally include the proposed bakery element which was introduced during the application process. As part of the introduction of the bakery, the applicant amended the submitted plans to include an additional entrance door on the front elevation of the building, in place of an existing window to provide direct access to the proposed bakery. The additional entrance door was constructed on site without the relevant permissions. Concerns were raised during the original application regarding the detrimental impact that this door opening would have on the amenity of the occupiers of the adjoining neighbouring property. In response to these concerns the agent submitted amended plans to reinstate the original window opening to mitigate the impact.

As the entrance door had already been constructed at the site, a condition was included on the original permission to ensure the door was reinstated as a window as shown on the approved plans prior to the first occupation of the building. The inclusion of this condition was agreed by the applicant's agent. The approved scheme ensured that the mixed use site, encompassing a retail shop, café, soft play and bakery which are all to be operated by the applicant, are accessed through the main entrance to the building via a large external porch

which was also permitted by the original planning approval.

This current application seeks to vary condition 2 and remove condition 3 of the original planning approval (4/23/2174/0F1), to create an additional entrance door on the front elevation to allow direct access to the bakery element of the property.

The proposed additional entrance door is to be located directly adjacent to the neighbouring property, 0.78m from the boundary of the site. The front elevation of the neighbouring property includes a large bay window which serves their living space. The two sites are separated by a low boundary wall. The introduction of the additional entrance door would bring the use of the property closer to the adjacent residential dwelling and would significantly increase the potential for overlooking of the properties amenity space. and would result in a loss of privacy for the occupiers. The additional door within this location to serve the bakery would create additional footfall within close proximity to the residential property which would create noise disturbance which would also have a significant detrimental impact on existing residential amenity.

The Council's Environmental Health Officer has objected to this application and has requested the applicant find an alternative and less intrusive means of accessing/exiting the bakery. The Officer has confirmed that the siting of an access door almost on the party wall will cause unacceptable loss of amenity to the residential occupiers through noise disturbance and loss of privacy.

Objections to the construction and use of this additional entrance have also been received from members of the public, with concerns raised specifically regarding the impact on the existing neighbouring dwelling. Whilst a significant number of letters of support have been received to the application the vast majority these offers support to the business in general and the benefits that this brings to the community and overall area. Only a small majority of supportive comments reference the additional doorway entrance. The approved mixed use of the site and other approved external alterations to the property are not affected by this current application. The original planning permission has been implemented.

The justification provided by the applicant for these proposed changes is to allow direct access for bakery customers to reduce the impact on the café/retail floor area and circulation. Some old photographs have also been submitted to illustrate that there were door openings in this elevation in the past although it is unclear what they served in terms of the use of the building.

The minor benefits that the additional door would bring to the proposed business are however not considered to outweigh the detrimental harm the proposal would create for the existing residential amenity of the occupiers of the neighbouring property. On this basis the proposal is considered to be in conflict with Policies ST1 and DM10 of the Copeland Local Plan, Policy DS6PU of the Emerging Local Plan, and the provisions of the NPPF.

Conclusion



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	<p>The proposed variations fall within the scope of the provisions of Section 73 of the TCPA.</p> <p>In overall terms, it is considered that the direct conflicts with the provisions of the Copeland Local Plan and Emerging Local Plan and the adverse impacts on existing residential amenity, are sufficiently harmful to significantly and demonstrably outweigh the minor potential benefits of the development to the proposed business.</p>	
8.	<p>Recommendation:</p> <p>Refuse</p>	
9.	<p>Reason for Refusal</p> <p>Due to the siting and proximity of the proposed additional door entrance to the adjoining neighbouring property, the proposed development is considered to have a significant detrimental impact on the amenity of the occupiers of this residential dwelling through increased activity, noise disturbance, overlooking and loss of privacy. Consequently, this proposal would be in conflict with Policies ST1 and DM10 of the Copeland Local Plan, Policy DS6PU of the Emerging Local Plan, and the provisions of the NPPF.</p> <p>Statement</p> <p>The Local Planning Authority has acted positively and proactively in accordance with Copeland Local Plan policies and the National Planning Policy Framework in determining this application by identifying matters of concern with the proposal and raising those with the applicant/ agent. However, in this case it has not been possible to arrive at a satisfactory resolution for the reasons set out in the reason for refusal.</p>	
Case Officer: C. Burns		Date : 21.08.2024
Authorising Officer: N.J. Hayhurst		Date : 23.08.2024
Dedicated responses to:-		