
From: Environmental Health
Sent: 03 June 2025 15:56
To: Development Control
Cc: Sarah Papaleo
Subject: PLANNING APP 4/25/2159/0F1 - 71 LOWTHER STREET, WHITEHAVEN

Follow Up Flag: Follow up
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Change of use of upper floors to House in Multiple Occupation (HMO)

Thank you for the above planning consultation.

Environmental Health do have concerns over noise with this development.

Planners will recall that a change of use to a café / wine bar on the ground floor of this premises was recently approved (ref 4/24/2426/0F1).

The opening hours of the café / wine bar were conditioned as 09.00 – 22.00 (Monday to Wednesday) and 09.00 – 00.00 (Thursday to Sunday).

Dialogue between the café / wine bar owners and Environmental Health and Cumbria Police are ongoing to determine the details of the Premises Licence, though it is possible that both live and recorded music may be provided, together with a Pavement Licence for outside tables and chairs. The issue of noise transmission, both structure-borne and air-borne, from the café / wine bar to the occupants of the HMO directly above is likely.

Whilst Environmental Health take on board the comments of colleagues in the Housing Team regarding the need for town centre flats, that need should not be at the cost of providing poor quality residential accommodation or accommodation which adversely affects amenity.

Although the approval of the ground floor café / wine bar is very recent, it is debatable whether any subsequent approval of a HMO on its upper floor may constitute an 'agent of change' as introduced by principles laid out in updates to the National Planning Policy Framework in 2018. That is to say, where a residential development is subsequently approved near to an existing noise source the liability for noise disturbance should (partly) rest with the residential developer. It is unclear if and how this liability may interplay with the principle of statutory nuisance under the Environmental Protection Act 1990 or common law nuisance – noise amounting to a nuisance is usually the responsibility of the person/s causing the noise through act, default or sufferance (the café / wine bar in this instance).

Given this, Environmental Health would have to object to this development at present.

In order to overcome this objection, the developer should provide a full scheme of sound insulation measures to demonstrate that its residents will not be adversely affected by noise from the ground floor café / wine bar:

- Sound Insulation – Submission of scheme and retention thereafter.

No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority a detailed scheme of noise insulation measures for all residential accommodation, the scheme should also include details of ventilation.

The scheme of noise insulation measures shall take into account the recommendations detailed in the noise assessment submitted with the application and the provisions of BS 8233 2014 (and any subsequent update) 'Guidance on Sound Insulation and Noise Reduction for Buildings'.

The approved details shall be implemented in full prior to the commencement of the use permitted and be permanently maintained.

Reason: In order to safeguard the amenities of adjoining residential occupiers and the details are needed prior to the start of work so that measures can be incorporated into the build.

Regards

Environmental Health

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