

Committee Report

Application No:	DC/16/01319/FUL
Case Officer	Andrew C Softley
Date Application Valid	13 December 2016
Applicant	Mr S Hakim
Site:	Former Bling Bling Car Wash Durham Road Birtley Birtley DH3 1LS
Ward:	Birtley
Proposal:	Erection of building to provide a shop and car valeting area on ground floor with storage above; Use of forecourt for parking and as a car wash
Recommendation:	REFUSE
Application Type	Full Application

1.0 The Application:**1.1 DESCRIPTION OF THE SITE**

The application site is the former ATS garage site on Durham Road, Birtley. The site is currently vacant following the demolition of the former garage buildings and is defined by 2m high hoardings. Prior to demolition, the site was most recently used unlawfully as 'Bling Bling Car Wash'. The site fronts onto Durham Road with the rear of the site looking onto the gable elevation of 2 Mitchell Street. Land levels drop from east to west towards Mitchell Street. The site is bounded by Durham Road to the east, 1 Esk Terrace and St Joseph's Roman Catholic Infant School to the north, 2 Mitchell Street to the west and Lion House to the south. The character of the streetscene is made up of a range of differing uses, including residential and commercial.

1.2 DESCRIPTION OF THE APPLICATION

This application proposes the erection of a building to house a car valeting area (sui generis) with ancillary retail and customer waiting area on the ground floor; storage at first floor and use of the forecourt for parking and as a car wash. The building would have a footprint of 21m by 9m, an eaves height of 3.6m-4m and a ridge height of 7.4m above ground level. The building would effectively be a storey and half in form, as the first-floor storage space is set within the roof space, with two dormer windows to the front elevation and roof light windows to the rear. The roof is also hipped and would include a centrally located gable feature that helps to provide the headroom for the staircase. The building is proposed close to the western edge of the site 1.4m from the boundary with 2 Mitchell Street.

1.3 To the east of the building, between the front elevation and Durham Road, is the forecourt to allow access to the car valeting area, the car hand wash area with canopy above and the parking area, which is along the southern boundary.

The site would be defined by a low level brick wall with higher pillars (800mm and 1000mm respectively) in between and a one way system would operate, with entry only from Mitchell Street and exit only onto Esk Terrace. The northern boundary towards Esk Terrace would also feature a 2.5m high timber acoustic fence and alongside Bay 1 within the site there would be a 2.5m high brickwork baffle wall. The eastern boundary with Durham Road is also intended to be planted with shrubs and plants.

- 1.4 The primary function of the proposal as a business is to provide car washing/valeting service, with a waiting area/shop that would be ancillary to the primary function.
- 1.5 The new application is a resubmission of the previously refused application reference DC/15/00571/FUL, with the first-floor changed from two flats to storage space, the addition of a 2.5m high acoustic fence along the northern boundary, a 2.5m high brickwork baffle wall within the site and a small reconfiguration of the layout of the forecourt.

1.6 **RELEVANT PLANNING HISTORY**

DC/15/00571/FUL: Planning permission refused for the erection of building to provide car valeting area on ground floor and ancillary customer waiting area/shop; two flats on first floor for employees and use of forecourt for parking and as a hand car wash (amended 12/11/15). Application was refused 26.01.2016. Subsequent appeal was dismissed on the 28.06.2016.

DC/10/00814/REM: Reserved Matters Application pursuant to DC/08/01971/OUT for layout, appearance, scale, means of access and landscaping (amended 11.11.2010). Application was granted. 15.11.2010.

DC/08/01971/OUT: Outline planning permission granted for the redevelopment of the former garage premises to provide a single-storey retail unit, associated car parking and repositioning of the existing canopy over the new petrol pumps. 30.07.2009.

DC/06/01090/COU: Planning application withdrawn for the change of use of the former garage to a hand car wash and valeting centre including the erection of a kiosk. 18.07.2006.

05/00002/ENF: Appeal against the serving of the enforcement notice stated below was dismissed by the Planning Inspectorate. 20.07.2005.

DC/04/01585/COU: Retrospective planning application refused for the change of use from a tyre garage to a car wash and valeting service. An enforcement notice was subsequently served. 11.11.2004.

2.0 Consultation Responses:

Environment Agency No objections.

Northumbria Water No objections.

3.0 Representations:

3.1 Ward Councillor Neil Weatherley has objected to the application.

3.2 Six letters of objection have been received from five neighbouring occupiers and raise the following concerns:

- The previous development caused serious safety issues with parked cars, etc. and this new proposal raises similar worries.
- There is nowhere to park for cars waiting to go through.
- The footpath is very busy and can become dangerous for pedestrians when cars are parked on the footpath.
- Mitchell Street is used to access the neighbouring streets beyond and is narrow. This proposal could cause serious safety issues for people using the existing road.
- The previous car wash created undue noise and resulted in dirty water running down the neighbouring streets.
- The rear of the new building would create residential amenity issues to the properties beyond.
- Birtley already has 4 car washes.

3.3 A letter has been received from the local school that is in support of the retail aspect but is concerned about the car valeting and car washing elements. Specifically:

3.4 The redevelopment of the site for retail would significantly improve the appearance and environment of the local area and also improve safety.

3.5 However, the proposal to allow traffic to turn both ways onto Esk Terrace from the site will cause conflict and potential hazards to school children, staff, parents and other visitors accessing the school from Esk Terrace. The issue is exacerbated because the road narrows significantly at the school entrance and at the rear of residential properties on Mitchell Street. Road safety has improved significantly since the former filling station closed. When the site operated as a car wash previously there were significant problems and complaints with regard to poor drainage both on the site and within the surrounding area.

4.0 Policies:

NPPF National Planning Policy Framework

NPPG National Planning Practice Guidance

CS7 Retail and Centres

CS13 Transport

CS14 Wellbeing and Health

CS15 Place Making

CS17 Flood Risk and Waste Management

DC1C Landform, landscape and after-use

DC1H Pollution

DC1P Contamination, derelict land, stability

DC2 Residential Amenity

ENV3 The Built Environment - Character/Design

ENV61 New Noise-Generating Developments

5.0 Assessment of the Proposal:

5.1 ASSESSMENT

The main planning issues are considered to be the principle of the proposed development, design, residential amenity, contamination/coal mining, surface water/flooding, highway safety and refuse.

5.2 PRINCIPLE

The proposed use primarily comprises a car wash/valeting business, with an ancillary waiting area/shop for customers at ground floor and storage at first floor level. The application site is not allocated for a particular use in the Local Plan for Gateshead nor are there specific policies relating to the type of use proposed. The application is therefore to be considered on its merits and against the National Planning Policy Framework (NPPF), the Core Strategy and Urban Core Plan (CSUCP) and the saved policies of the Unitary Development Plan (UDP).

5.3 COMMUNITY INFRASTRUCTURE LEVY (CIL)

On 1st January 2017 Gateshead Council became a CIL Charging Authority. This application has been assessed against the Council's CIL charging schedule and the development is not CIL chargeable development, as it is not for qualifying retail or housing related. As such no CIL charge is liable.

5.4 DESIGN

The design and appearance of the building and the application site as a whole (with the exception of the 2.5m high acoustic fencing and the brickwork baffle wall) is considered to be acceptable and appropriate to its surroundings, which is mixed in terms of uses, styles and types of buildings. The proposed building would be subservient to the neighbouring buildings and the specified red brick and roof tiles are considered to be reasonable and not out of keeping with the area. The existing boundary wall is also built from the same brick (Ashington Red Multi) and so a consistent theme is welcomed.

- 5.5 The acoustic fencing/baffle wall would, however, appear overdominant and visually intrusive when viewed from the public domain. As a result, rather than appearing complementary, it would in fact be incongruous and out of character with the host property and its surroundings. Therefore, it is considered that the prominent location and appearance of the proposal would not make a positive contribution to the established character and identity of its locality and would result in an alien feature that would harm the amenity of the area. Therefore, it is considered that the acoustic fencing/baffle wall would harm visual amenity and hence, is contrary to the NPPF, policy CS15 of the CSUCP and saved policy ENV3 of the Unitary Development Plan (UDP).

5.6 RESIDENTIAL AMENITY

Noise

The NPPF states that planning decisions should "avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development" and that decisions should "mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions."

- 5.7 It gives guidance to local authorities on the use of their planning powers to minimise the adverse impact of noise and outlines the considerations to be taken into account in determining planning applications both for noise-sensitive developments and for those activities which will generate noise.
- 5.8 As a reflection of the national planning policies and specific guidance of noise generating development, UDP policy ENV61 (new noise-generating development) states that new noise generating development will not be permitted if it causes an unacceptable increase in noise levels.
- 5.9 It is considered that the proposed use has the potential to produce noise both from the comings and goings associated with the application site as well as the use itself (namely the use of jet washes and vacuum cleaners). In this case, the nearest existing noise sensitive receptors (NSR) beyond the site boundary are located approximately 20m to the north of the car washing element of the application site. There is the intervening land use of the road serving Esk Terrace in between and the properties in question front onto Durham Road, which is busy arterial route that provides a significant level of background noise. There is also a public house (Lion House) close by, which would also generate noise into evening hours. In terms of car valeting, the nearest existing sensitive receptor beyond the site boundary is to the west on Mitchell Street.
- 5.10 The previous refused application, of which the subsequent appeal was also dismissed, determined that the potentially intensive use of the site, in terms of comings and goings and the type of equipment required to operate the business, namely jet washers and vacuum cleaners together with the close proximity of residential properties, meant that the proposal would cause undue disturbance and negative impacts from noise on the residential amenity of the existing nearby properties. The closest of which, 2 Mitchell Street, would be

only 2 metres from the rear wall of the proposed building. Concern was also raised at the lack of information submitted to demonstrate that these concerns could be mitigated against. To address this the applicant has commissioned a noise assessment ref. - (NIA/6939/16/6868/V2/Birtley), which forms part of this revised planning application.

- 5.11 The noise assessment uses a BS4142 'Methods for rating and assessing industrial and commercial sound' methodology to assess the noise level of the proposed car wash against the existing background noise levels. This purpose is to assess the impact of the proposals on the existing noise sensitive receptors. The assessment breaks down the noise levels in to two sources, the noise from the vacuum cleaners in the garage area and the noise from the pressure washers in the external area. The report has been assessed by officers and it raises a number of concerns, which are set out in the following paragraphs.
- 5.12 Internal car valeting - the assumptions from the internal noise levels seem reasonable, and the calculated noise levels from this element appear satisfactory. However the noise levels are based around the garage shutter door being closed during the use of vacuum cleaners. As such to ensure noise levels are maintained in accordance with the noise assessment, the applicant would require to ensure the garage shutter doors are closed during any internal valeting. The assessment acknowledges this is an assumption and this may or may not be restrictive or realistic. This assumption would be very hard to enforce and thus it is not considered that it could be controlled through a condition, as it would not meet the tests set out in paragraph 206 of the NPPF.
- 5.13 External Pressure Washing 'jet wash bays' - There are a number of concerns around the calculation/prediction of this element, particularly in terms of the resultant noise level at the noise sensitive receptor (Esk Terrace), which are set out below:
- The source height is likely to be higher than 1m, especially when you consider that differing types/sizes of vehicles could be washed at once.
 - The acoustic barrier effectiveness is likely to be significantly limited as it is not continuous in nature (to allow cars to exit on to Esk Street) and consequently there will be noise over and around the proposed barrier. As such it seems excessive to assume that the screening attenuation can achieve a 15dB screening reduction to NSR1 on Esk Street. This position also applies for the property on Mitchell Street.
 - The receptor height seems low, for a first floor building height for NSR1 on Esk Street. Officers would expect it to be higher than 2m and along the lines of the 1st floor height taken for NSR2.
 - The source levels for the barrier calculation on appendix 3 are unclear as the measured jet wash levels on table 5 are significantly higher.
 - The author of the report uses a 3dB character correction for being audible at source, though officers consider it is most likely the noise from the operation will be clearly discernible and should represent a 6dB penalty taking in to account the concerns above.

5.14 Finally, the operating hours are not detailed to understand the full extent of the operation on a daily/weekly basis. Also, whilst not as sensitive a location there has been no consideration of the office accommodation at Lion House on the first floor which looks directly on to the proposed car wash and to a lesser extent the school offices/entrance. However, it is worth noting that the removal of the flats proposed at first-floor of the previous application means that the only consideration now is regarding the residential amenity of neighbouring residents.

5.15 In conclusion, it is considered that the principal concern raised previously, namely that the potentially intensive use of the site, in terms of comings and goings and the type of equipment required to operate the business, namely jet washers and vacuum cleaners together with the close proximity of residential properties, means that the proposal would cause undue disturbance and negative impacts from noise on the residential amenity of the existing nearby properties remains valid and this new application would harm residential amenity. Therefore, the proposal would be contrary to the NPPF, policy CS14 of the CSUCP and saved policies DC2 and ENV61 of the UDP.

5.16 Acoustic fencing/baffle wall

It is considered that the introduction of these features would result in a visual intrusion and have a potentially overbearing impact upon the enjoyment of neighbouring residents. Therefore, they would harm residential amenity and hence would be contrary to the NPPF, policy CS14 of the CSUCP and saved policies DC2 and ENV61 of the UDP.

5.17 Physical Building

The scale, mass, height and location of the proposed building are such that it should not create any significant loss of light, visual intrusion, overshadowing or overlooking to neighbouring occupiers. This is because the building would be subservient to the neighbouring houses and the position of windows has been considered to prevent loss of privacy. In particular, the only windows to the rear elevation facing 2 Mitchell Street are roof light windows, and the two rear doors are set against the gable elevation of 2 Mitchell Street also. The separation distances to other residential properties are considered acceptable. However, this is not sufficient to outweigh the serious concerns raised above.

5.18 LAND CONTAMINATION/COAL MINING

The application site has previously been identified as contaminated based on its former use as a car repair and MOT garage. Furthermore, the subsequent fire, which resulted in the former garage having to be demolished, also created additional contamination concerns. As part of a previous outline planning permission ref. DC/08/01971/OUT a suite of conditions were attached requiring a Phase II Detailed Risk Assessment, Remediation Strategy and Validation of the site to bring the site up to a standard appropriate for redevelopment. In this case the majority of the site would be redeveloped for low risk commercial use and all the external areas are proposed to be hard surfaced to serve as the car wash and parking areas.

- 5.19 The discharge of condition submissions, for DC/08/01971/OUT, in respect of the Phase II Assessment and the Remediation Strategy were assessed by the Council's Reclamation Team and fundamentally were considered to be acceptable, save for two issues that required further attention. They related to the two petrol storage tanks underneath the forecourt and what ground gas protection measures would be included to safeguard the building.
- 5.20 With regard to the petrol storage tanks, there was initially concern raised about leaving empty tanks in the ground and consideration was given to removing them. However, the applicant confirmed that the tanks had previously been filled with concrete and thus the reclamation officer was comfortable that they no longer posed a concern and did not need to be removed. Furthermore, the fact the hardstanding to serve the car parking/car washing area would be located above the tanks would form a solid cap across the site.
- 5.21 In terms of choosing appropriate ground gas protection measures for the building, the site investigations highlighted that carbon dioxide and methane gases above the minimum thresholds had been encountered and therefore the site is considered to fall within "Characteristic Situation 2"; which for a building of this type the relevant British Standard BS8485:2007 states that gas protection measures should be either a Ground Bearing Slab or a Suspended Floor Slab. Ground gas protection forms part of the Building Regulations process and hence would be comprehensively addressed in order for approval to be issued and would not therefore need to be covered by a planning condition.
- 5.22 On the basis of the above, the reclamation officer was satisfied that the information submitted for the Phase II Assessment and the Remediation Strategy conditions attached to DC/08/01971/OUT was acceptable and could be discharged. However, following the remediation of the site the applicant is required to submit a Validation Report to confirm that the site has been cleaned in accordance with the approved strategy and this has yet to be submitted. As a result, should permission be granted it would be recommended that a Validation Report condition be imposed to ensure that the site can now be considered as clean prior to the commencement of any development.
- 5.23 In terms of the historic coal mining legacy, the application site falls within a defined low risk area. Therefore, the Coal Authority has prepared standing advice for development in such areas and asks that should planning permission be granted that their standing advice is attached as an informative.
- 5.24 Overall, should members be minded to approve this application, and subject to the condition cited above, the proposal would accord with the NPPF, policy CS14 of the CSUCP and policy DC1 (p) of the UDP in respect of land contamination/coal mining legacy.
- 5.25 **DRAINAGE/SURFACE WATER**
It is considered that providing sufficient drainage to deal with the surface water produced by the proposed car washing business is important, to ensure that

local flooding does not take place. This is especially important given the historical, unlawful use of the site as a car wash, which did cause surface water issues to the surrounding area.

- 5.26 Furthermore, in terms of car wash liquid waste, this is classed as trade effluent. Before discharging it to a sewer the operator is required to get a trade effluent consent or enter into a trade effluent agreement with the water and Sewerage Company or authority. This is separate from the remit of planning and the onus is placed very much upon the applicant.
- 5.27 With regard to ground water, The Environmental Permitting Regulations (as amended) make it an offence to cause or knowingly permit a groundwater activity unless authorised by an Environmental Permit, which are issued by the Environment Agency. A groundwater activity includes any discharge that will result in the input of pollutants to groundwater.
- 5.28 In this case the applicant is proposing to install a drainage channel to the west of the car washing area, which is at a lower gradient, would be engineered to draw water in and therefore water would naturally flow towards the channel. Furthermore, the applicant is proposing to install a "Wash-down Silt Separator", which is an appropriate and recognised filtration system that is designed to remove oil and other contaminants from surface water before allowing the water to pass into the main sewerage network. The submitted site plan identifies the assumed location of the main sewer, where the drainage channel would be installed and the type of filtration system proposed. The principle of this proposal is considered to be acceptable and no objection has been raised by Northumbrian Water Ltd.
- 5.29 As a result, should members be minded to approve this application, and subject to conditioning the final details of the proposed surface water drainage, the proposed development should be able to manage water adequately to prevent flooding and pollution issues. Therefore, subject to the conditions, it is considered that the proposed development would accord with the NPPF, policy CS17 of the CSUCP and saved policy DC1(h) in that regard.
- 5.30 It is also worth noting that the historical use of the site as a car wash was unlawful and operated purely within the constraints of the site layout and buildings as was. Therefore, the drainage was wholly inadequate and resulted in significant harm being caused. However, the site is now cleared and this is a bespoke scheme where the development can be designed to work in unison with the site and the surrounding area. This includes installing the appropriate and necessary drainage.
- 5.31 **HIGHWAY SAFETY**
The proposed development is ostensibly considered to be safe from a highway safety perspective, as was established during the appeal decision, notwithstanding the fact the appeal was dismissed. This new application is essentially a resubmission of the previously approved scheme with the residential flats removed and the addition of sound deadening fencing/etc. The omission of the flats reduces the level of demand the site would encounter but

the addition of the acoustic fencing at the northern end of the site would impact upon visibility. However, it is considered that should consent be granted this issue could be addressed via condition, albeit this would be at odds with the aim of reducing noise. Notwithstanding that, it is considered that highway safety can be safeguarded and thus the proposal would accord with the aims and objectives of the NPPF and policy CS13 in that regard.

6.0 CONCLUSION

- 6.1 Taking all the relevant issues into account, it is recommended that planning permission be refused, as the proposal would result in increased noise and activity to the detriment of residential amenity and the applicant has failed to submit sufficient supporting information that would outweigh officers concerns. Furthermore, the physical measures intended to act as noise mitigation are themselves visually obtrusive and would harm residential amenity also, which means they are unacceptable. Therefore, it is considered that the proposed development does not accord with the relevant national and local planning policies and the recommendation is made taking into account all material planning considerations including the information submitted by the applicant and third parties.

7.0 Recommendation:

That permission be REFUSED for the following reason(s):

1

The car valeting and hand car washing activities wall would cause undue disturbance and negative impacts from noise on the residential amenity of the existing nearby properties and the proposed acoustic measures would not sufficiently mitigate the harm caused. The development is therefore contrary to the National Planning Policy Framework, policy CS14 of the Core Strategy and Urban Core Plan and saved policy DC2 of the Unitary Development Plan.

2

The acoustic fencing/baffle wall would appear overdominant and visually intrusive when viewed from the public domain. As a result, rather than appearing complementary, it would in fact be incongruous and out of character with the host property and its surroundings. It would also form a visual intrusion and have a potentially overbearing impact upon the enjoyment of neighbouring residents. Therefore, it is considered that the acoustic fencing/baffle wall would harm visual and residential amenity and hence, is contrary to the National Planning Policy Framework, policies CS14 and CS15 of the Core Strategy and Urban Core Plan and saved policies ENV3 and DC2 of the Unitary Development Plan.



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