

Committee Report

Application No:	DC/21/01245/COU
Case Officer	Rebecca Norman
Date Application Valid	6 December 2021
Applicant	Mr Mahfuz Ali
Site:	3-4 The Square Whickham NE16 4JB
Ward:	Whickham North
Proposal:	Change of use of public highway area and construction of glazed extension to south elevation of restaurant (amended plan 27.01.2022)
Recommendation:	REFUSE
Application Type	Change of Use

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

The application relates to an area of land approximately 66sqm in size that is located to the south of 3-4 The Square, Whickham. The premises are currently occupied by Jamdani Restaurant.

1.2 The area of land comprises an existing outdoor seating area associated with the restaurant (approx. 24sqm) and an area of adopted public footpath (approx. 42sqm).

1.3 The properties known as 'The Square' are arranged in a U-shape around a paved pedestrianised area, with an access from Front Street and a car park to the south. Units 3-4 The Square and the application site sit to the north eastern side of the pedestrianised area. The units are occupied by a variety of commercial uses; directly to the east of the application site and existing seating area is a pizza takeaway (Units 1-2), and to the north west and west are a public house (Unit 5), bookmakers (Unit 6), funeral directors (Unit 7) and an estate agents (Units 8-10). To the south of the site beyond the car park is Front Street and residential properties including three Grade II listed buildings.

1.4 The site is situated within Whickham Conservation Area and Whickham District Centre.

1.5 DESCRIPTION OF THE APPLICATION

The application seeks planning permission for the change of use of the public highway (part of the pedestrianised area) and erection of a glazed extension to the south elevation of the restaurant, incorporating and replacing the existing outdoor seating area.

- 1.6 The proposed extension would extend across the full width of Units 3-4 for 13m with a maximum depth of 6.3m to the eastern side, abutting the western elevation of Units 1-2. The proposed extension would then step inwards to a depth of 3.6m at the western side in order to accommodate an existing planter within the pedestrianised area.
- 1.7 The proposed extension would be formed from a rendered dwarf wall with white uPVC glazing above and a uPVC glazed shallow pitched sloping roof, with a grey uPVC door to the south elevation. The proposed plans indicate that the extension would provide additional dining space for the restaurant.
- 1.8 The application has been amended during its course to correct a discrepancy with the red line boundary.
- 1.9 **RELEVANT PLANNING HISTORY**
887/83 - Change of use from shop to coffee room for the sale of coffee and snacks. Planning permission granted 08.09.1983.

685/84 - Change of use from D.I.Y shop to Indian Restaurant. Planning permission granted 20.08.1984.

876/01 - Erection of single-storey extension at front of restaurant (use class A3) to provide enlarged dining area, new bar area, storeroom and new entrance lobby. Planning permission granted 18.09.2001.

DC/05/01099/COU - Change of use of paved forecourt area at front of restaurant to external sitting area (occasional use by restaurant customers only). Temporary consent granted 06.09.2005.

DC/05/01965/COU - Change of use from shop (Use Class A1) to restaurant (Use Class A3) in connection with existing restaurant at no 3 The Square. Planning permission granted 19.01.2006.

DC/06/00061/COU - Continued use of paved forecourt area at front of restaurant to external sitting area (occasional use by restaurant customers only). Temporary consent granted 07.03.2006.

DC/06/00494/CPE - CERTIFICATE OF LAWFULNESS: for use as restaurant with hot food takeaway facility. Approved 28.06.2006.

DC/06/01251/COU - Continued use of paved forecourt area at front of restaurant to external sitting area (occasional use by restaurant customers only). Temporary consent granted 25.09.2006.

DC/07/01214/COU - Continued use of paved forecourt area at front of restaurant to external sitting area (occasional use by restaurant customers only) (renewal permission). Temporary consent granted 17.09.2007.

DC/12/00127/COU - Change of use of paved forecourt area at front of restaurant to provide an external sitting area for patrons. Planning permission granted 18.04.2012.

DC/12/00753/COU - Change of use of paved forecourt area at front of restaurant to provide an external sitting area for patrons (occasional use by restaurant customers only) (resubmission). Planning permission granted 16.08.2012.

2.0 Consultation Responses:

The Coal Authority Objection

3.0 Representations:

3.1 Neighbour notifications were carried out in accordance with formal procedures introduced in the Town and Country Planning (Development Management Procedure) Order 2015, including the display of press and site notices.

3.2 One letter of objection has been received from Councillor Craig which can be summarised as follows:

- Highways issues
- The proposed extension would completely block off the pavement adjacent to the restaurant; the pavement to the south of the planters would then need to be used to accommodate all pedestrian movements however this is of insufficient width due to parked cars overhanging the footpath
- The removal of the existing planters to accommodate the proposed extension would not be supported

3.3 Two letters of objection have been received which raise the following matters:

- Additional/excessive noise
- Increase in traffic will reduce available parking
- Loss of privacy
- Out of character with streetscene/character of this area of Whickham
- Overdevelopment
- Overbearing impact
- The proposed reduction in the pavement area is inappropriate
- A glazed extension full of diners/partygoers would be incompatible with the adjacent use of the Funeral Directors and would impact upon the privacy of persons attending the Funeral Directors
- The business should look to relocate to other suitable premises in Whickham rather than extending

- The proposed extension would set a precedent for other businesses in The Square
- If a precedent were to follow then access to the adjacent Funeral Directors and William Hill Bookmakers would be restricted to steps only which would impact on disabled access
- Works will be required to address existing drainage channels
- How can a change of use of the pavement be allowed if the Council own this?

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

MSGP15 Transport Aspects of Design of Dev

MSGP17 Residential Amenity

MSGP18 Noise

MSGP20 Land Contamination/Stability

MSGP24 Design Quality

MSGP25 Conservation/Enhancement Heritage Assets

5.0 Assessment of the Proposal:

5.1 The main issues to be taken into consideration in the assessment of this application are the principle of the development, impacts upon visual amenity, heritage considerations, impacts upon residential amenity, highway safety and access, coal mining legacy, contaminated land, CIL and any other matters.

5.2 **THE PRINCIPLE OF THE DEVELOPMENT**
The application site is situated within Whickham District Centre, as defined by policy CS7 of the Local Plan for Gateshead. This policy seeks to maintain and enhance the vitality and viability of retail centres, which provide a focal point for uses, services and facilities to serve the surrounding population, as supported by Chapter 7 of the National Planning Policy Framework (NPPF).

- 5.3 The application proposes the change of use of an area of public footway and erection of an extension which would facilitate the expansion of an existing business. Officers consider that this would be acceptable in retail policy terms in accordance with the aims and objectives of the NPPF and Local Plan policy CS7. The principle of the proposed extension is therefore considered to be acceptable, subject to all other material planning considerations being satisfied.
- 5.4 IMPACTS UPON VISUAL AMENITY
NPPF Paragraph 126 makes clear that *“the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve”*. It goes on to state that *“good design is a key aspect of sustainable development...”*.
- 5.5 Paragraph 131 further states that *“development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides and codes”*.
- 5.6 Policy CS15 of the Local Plan for Gateshead refers to place making and the need for new development to demonstrate high and consistent design standards and requires development to contribute to good place making. This is supported by Local Plan policy MSGP24 which states that the design quality of proposals will be assessed with regards to criteria including: the proposal’s compatibility with local character including scale, massing, proportions and form; layout and access; and materials.
- 5.7 The Square is formed from an L-shaped single storey building with a two storey building to the western side, forming a U-shape around a central pedestrianised area. The building line of the units is clearly defined around the pedestrianised area; there is an existing outdoor seating area with glass/metal balustrades and planting to the eastern side of the pedestrianised area that is associated with 3-4 The Square, however owing to its small size and overall nature this has minimal visual impact upon the area and does not interrupt the established building line.
- 5.8 Officers consider that as a result of its form, scale, materials and position the proposed extension would appear as an incongruous, obtrusive and poorly designed addition, effectively amounting to a large uPVC conservatory, within its setting relative to its surroundings and would be out of keeping with the character, appearance and established arrangement and building line of units within The Square. Officers therefore consider that the development would have a detrimental impact upon the general character and appearance of the wider streetscene.

- 5.9 Planning permission was previously granted under application 876/01 for the erection of a single storey extension to the south elevation of the restaurant. This permission was however not implemented and has therefore expired. Officers have assessed this application however consider that minimal weight can be afforded to this previous approval in considering this application, as this was of a considerably smaller size and alternative design, materials and position on the building than the scheme proposed by this application; as such, this would not justify the grant of permission in this instance.
- 5.10 It is therefore considered that the proposed development is unacceptable in terms of design and impact upon visual amenity and would be contrary to the NPPF and policies CS15 and MSGP24 of the Local Plan for Gateshead.
- 5.11 HERITAGE CONSIDERATIONS
The application site is located within Whickham Conservation Area. There are three Grade II listed buildings to the south of the site beyond Front Street (Salisbury House and nos. 69 and 67 Front Street) and locally listed buildings (3-5 Jasmine Villas) to the west beyond the modern commercial buildings. The application is not accompanied by a Heritage Statement.
- 5.12 NPPF Paragraph 197 states that *“in determining applications, local planning authorities should take account of:*
- a) *the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;*
 - b) *the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and*
 - c) *the desirability of new development making a positive contribution to local character and distinctiveness”.*
- 5.13 NPPF Paragraph 199 continues by stating that *“when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance”.*
- 5.14 As at NPPF Paragraph 202, *“where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use”.*

- 5.15 Local Plan policy CS15 requires development to contribute to the conservation and enhancement of the historic environment, and to take a proactive approach in supporting, safeguarding and sustaining the historic environment in a manner appropriate to the significance of the relevant heritage asset. This is supported by Local Plan policy MSGP25 which permits the alteration, extension or restoration of heritage assets where it sustains, conserves and, where appropriate, enhances the significance, appearance, character and setting of the identified heritage assets in a manner appropriate to their conservation, and the surrounding historic environment.
- 5.16 The Square is a mid to late c20th shopping precinct surrounded by a mix of late c20th developments and traditional c18th buildings, including listed and locally listed building. The application site is located to the western end of the Conservation Area which contains a number of inappropriate buildings, including The Square, which are not considered to reflect the prevailing historic character of the Conservation Area.
- 5.17 The proposed development would permanently extend a building in an architectural style which Officers consider to be inappropriate in its position within the Conservation Area. Whilst Officers consider The Square to represent an inappropriate building within the Conservation Area it is considered that this established inappropriateness would not justify the proposed extension. It is considered that the proposed development, by virtue of its location and appearance, would not sustain, conserve or enhance the significance, appearance and character of the Conservation Area and would not conserve and enhance the spaces between and around buildings. Officers therefore consider that the proposed development would result in less than substantial harm to the significance of the heritage asset.
- 5.18 In accordance with NPPF Paragraph 202 it is necessary to balance the harm against any public benefits from the proposal. No public benefits have been offered as part of the application and Officers consider that no such public benefits would arise.
- 5.19 It is therefore recommended that planning permission be refused for the proposal on the grounds of less than substantial harm to the Whickham Conservation Area which would not be outweighed by public benefits, contrary to the aims and objectives of the NPPF and policies CS15 and MSGP25 of the Local Plan for Gateshead.
- 5.20 **IMPACTS UPON RESIDENTIAL AMENITY**
The application site is located some distance from the closest residential properties which are around 30m to the south, beyond Front Street. Given the established commercial nature of the area and this distance it is considered that the proposed development would not give rise to any unacceptable impact upon residential amenity in

terms of any overlooking, loss of privacy, overbearing impact, loss of outlook, overshadowing or loss of light.

- 5.21 Whilst significant impacts of such a nature are anticipated to be unlikely, were planning permission to be granted it is considered that conditions could be attached in respect of the hours of use of the proposed extension and to require the submission of a noise management plan for guests, in order to ensure that the proposed development would not give rise to detrimental impacts in terms of noise and disturbance to nearby occupiers.
- 5.22 Concerns have been raised that the proposed development would result in a loss of privacy to bereaved families attending the adjacent funeral directors at 7 The Square as they would be overlooked by diners from within the extension. These comments are acknowledged however in view of the nature of the existing site as outdoor public/private seating areas within an established commercial area it is considered that the proposed development could not be concluded to be incompatible, in principle, within this area or to result in such a significant detrimental impact upon privacy of those attending the funeral directors to warrant refusal of the application on these grounds. It is noted that the existing restaurant incorporates areas of obscure glazing to the windows within the south elevation; therefore, were planning permission to be granted it is also considered that conditions could be attached requiring the installation of obscure glazing were this considered to be necessary in the interests of privacy.
- 5.23 Subject to the recommended conditions the development would be acceptable in terms of impact upon amenity and would comply with the aims and requirements of the NPPF and policies CS14, MSGP17 and MSGP18 of the Local Plan for Gateshead.
- 5.24 **HIGHWAY SAFETY AND ACCESS**
The application site comprises an existing outdoor seating area which has previously been stopped up and part of a pedestrianised area which is adopted highway. The pedestrianised area includes a large permanent brick planter to the centre and a smaller planter to the western side which effectively split the area into two footways: one to the north of the planters and one to the south. There is also a bench adjacent to each planter and public recycling bins to the south of the central planter, between this and the car park.
- 5.25 The proposed extension would abut two sides of the central planter and would therefore remove the northern pedestrian route through the area. The remaining pedestrian route would therefore be the southern route, which passes between the recycling bins and parking bays. At this point the footway is approx. 1.4m wide; during visits to the site Officers have however observed parked cars overhanging this

footway which further reduces the usable footway width, and this is also cited in letters of representation that have been received.

- 5.26 Officers accept that the recycling bins could, in theory, be relocated. It is however considered that there is not an equally commodious alternative location for these to be moved to: the bins are intended to be a convenient facility for patrons of the adjacent shops which include food outlets, as well as people arriving to recycle by car, as observed by Officers during site visits. Furthermore, were the bins to be removed, the resulting footway width would only be 2.3m, which is still below the 3m desirable width in areas of higher pedestrian patronage, as referenced in Gateshead Council's Highway Design Guide, which includes The Square. It is acknowledged that the existing arrangement does not provide for a single clear footway width of 3m however this is offset by there being two pedestrian routes through the area.
- 5.27 The site is within a District Centre where it is important that pedestrian movements are prioritised. Officers consider that the northern pedestrian route through the area is important for pedestrians moving through a public realm area that is subject to paraphernalia such as bins, recycling bins, benches and planters. The removal of this route and thus an important part of the pedestrian circulatory space as a result of the proposed extension is therefore considered unacceptable in principle, as it would be detrimental to pedestrian movements and safety.
- 5.28 Having regard to the above the proposed development is considered to be unacceptable in highways terms as it would not provide for direct, safe, secure and continuous pedestrian links, as required by Local Plan policy CS13, and would have an unacceptable impact on the safe operation of the transport network. The application therefore fails to accord with the NPPF and Local Plan policies CS13 and MSGP15.
- 5.29 Concerns have been raised that the proposed development would result in an increase in traffic which would reduce available parking. Whilst the proposed extension would accommodate additional customers which has the potential to generate additional highway movements associated with the restaurant the site is located within a sustainable area which benefits from good pedestrian links and access to public transport and there are public car parks within the vicinity of the site; as such Officers do not consider that these concerns would represent a reason for the refusal of the application.
- 5.30 Were planning permission to be granted a Stopping Up Order would be required to be submitted to the Department for Transport for consideration, as part of which consideration would be given to any underground utility apparatus present within the area.

- 5.31 The area of public footway contains a number of existing highway drainage channels and gullies. Were planning permission to be granted a highway drainage scheme would also be required to be designed around the proposed extension to accommodate changes to the existing highway drainage visible within the pavement and any associated pipes/sewers below ground level. A section 278 legal agreement would be required and all design work and physical works on site would be required to be completed at the applicant's expense.
- 5.32 **COAL MINING LEGACY**
The application site is located within a Coal Authority Development High Risk Area. There are therefore coal mining features and hazards which need to be considered in relation to the determination of the application.
- 5.33 The Coal Authority has been consulted and has identified that a Coal Mining Risk Assessment (or equivalent report) is required to accompany the application. Based on the Coal Authority records the site is indicated to lie in an area of probable unrecorded underground coal mine workings at shallow depth, which may pose a potential risk to surface stability and public safety. The application does not include a Coal Mining Risk Assessment to support the proposed development, in the absence of which the Coal Authority has raised an objection to the application.
- 5.34 As such, it is considered that insufficient information has been submitted with the application to demonstrate that the application would not pose a potential risk to surface stability and public safety. The application therefore fails to comply with the NPPF and policies CS14 and MSGP20 of the Local Plan for Gateshead in this respect.
- 5.35 **CONTAMINATED LAND**
Officers have assessed the proposed development and based on the works proposed consider that the level of contamination potentially being a hazard to site operatives and future site users is low. As such, there is no requirement for the provision of a land contamination Preliminary Risk Assessment in this instance.
- 5.36 It is possible that the development area may be affected by ground contamination; therefore, should planning permission be granted it is considered reasonable that conditions be imposed requiring that further ground contamination investigations only be undertaken in the event that previously undiscovered contamination is found during construction.
- 5.37 Subject to the above condition the development would comply with the aims and requirements of the NPPF and policies CS14 and MSGP20 of the Local Plan for Gateshead in respect of land contamination.

- 5.38 **COMMUNITY INFRASTRUCTURE LEVY**
On 1st January 2017 Gateshead Council became a Community Infrastructure Levy (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 qualifying retail or housing related development. Therefore, this proposal would not be charged.
- 5.39 **ANY OTHER MATTERS**
One letter of objection has queried how a change of use can be allowed if the Council owns the land; the ownership of the land does not however preclude the submission of an application for planning permission or to remove highway rights over land.
- 5.40 Concerns have been raised in letters of objection that the proposed development would set a precedent for similar developments; this is not however a reason for refusal and any application is to be considered on the basis of its own merits.
- 5.41 One letter of objection has suggested that the business should relocate to other suitable premises rather than extending; whilst this view is acknowledged the LPA must determine this application on its merits, rather than suggesting alternative measures to the applicant.

6.0 CONCLUSION

- 6.1 Taking all the relevant issues into account including the representations received it is considered that the application is unacceptable as the proposed development would result in harm to the visual amenity of the surrounding area and would result in less than substantial harm to the designated heritage asset, in this case the Whickham Conservation Area, which would not be outweighed by public benefits.
- 6.2 Furthermore, Officers consider that the proposed development would be detrimental to pedestrian movements and safety. Insufficient information in the form of a Coal Mining Risk Assessment has also been submitted in order to assess the risks posed to the proposed development.
- 6.3 It is therefore considered that the proposed development is unacceptable and is contrary to the aims and objectives of both national and local planning policies and it is therefore recommended that planning permission be refused.

7.0 Recommendation:

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

By virtue of its form, scale and location and materials the proposed extension would appear as incongruous, obtrusive and poorly designed addition within its setting relative to its surroundings and would be out of keeping with the character, appearance and established arrangement and building line of The Square. The development would therefore have a detrimental impact upon the general character and appearance of the wider streetscene, contrary to the NPPF and policies CS15 and MSGP24 of the Local Plan for Gateshead.

2

The proposed development would result in less than substantial harm to the Whickham Conservation Area which would not be outweighed by public benefits, contrary to the aims and objectives of the NPPF and policies CS15 and MSGP25 of the Local Plan for Gateshead.

3

The proposed development would be detrimental to pedestrian movements and safety as it would impede the footway and remove an important part of the pedestrian circulatory space and cause pedestrian movements through The Square to be directed via of footway of substandard width. The development therefore fails to accord with the NPPF and policies CS13 and MSGP15 of the Local Plan for Gateshead.

4

The application site falls within the Coal Authority defined Development High Risk Area and insufficient information in the form of a Coal Mining Risk Assessment has been submitted in order to fully assess the risks posed by probable unrecorded underground coal mine workings at shallow depth. The development therefore fails to comply with the requirements of the NPPF and policies CS14 and MSGP20 of the Local Plan for Gateshead.



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