

Allerdale Borough Council
Planning Application FUL/2021/0181

Development Panel Report

Reference Number: FUL/2021/0181
Valid Date: 21/06/2021
Location: Part Land to Rear of 51 High Street, Workington,
CA14 4ET
Applicant: W Younghusband & Son
Proposal: Change of use of part domestic garden to additional
storage area for existing roofing company including
the retrospective engineering works to lower the site
by up to 600mm

RECOMMENDATION

Approve subject to conditions

1. Summary

<u>Issue</u>	<u>Conclusion</u>
Principle of Development	The development as amended is considered to be compliant with Policies within the Allerdale Local Plan.
Amenity	Any detrimental effects arising from the development can be controlled by way of conditions.

2. Introduction

- 2.1.** The application has been called in by Councillor Mike Johnson.
- 2.2.** The application seeks permission for the change of use of land from domestic garden to a storage area to be used in connection with an adjacent roofing business. The application is considered to be limited to B8 storage use.

3. Proposal

- 3.1.** The Plans for consideration are:-

Location plan and block plan
Noise Assessment Report – RSA318/2020 dated 13 July 2020
Application Form

Details of reduction in levels
Design and Access Statement
Proposed Fence plan amended plan received 13 July 2021
Bollard details – amended plan received 15 September 2021

4. Site

- 4.1. 51 High Street has been recently purchased along with the garden area by Younghusband and Son, the property subject to this application is formally a garden area used in association with the residential property 51 High Street, Workington.
- 4.2. The yard area adjoins Younghusbands workshop and small yard area which operates as a roofing contractors and has operated from the Old Blacksmiths Shop building for a significant number of years.
- 4.3. A small area of ground adjacent to the northern boundary will be retained as residential use. The area is to be maintained as an area for chopping and storage of wood and pallets for domestic use which was previously undertaken on the wider site.

5. Relevant Site History

- 5.1. An application for a change of use of the residential property which adjoins the existing building occupied by Younghusbands has been recently approved under planning application FUL/2020/0087, the application allowed the change of use of the dwelling to office accommodation in connection with the existing business use of the site. The change of use application excluded the area of land to which this application relates.
- 5.2. The Council indicated that it considered that an application for a certificate of lawful use should be submitted on the basis that the applicant contested that the operations had been undertaken continuously on this area for a period of 10 years. If granted this would regularise the activities that were being undertaken on site. Given an application was not submitted an enforcement notice was served on the 28th July 2020 on the grounds that the authority considered that the development had been undertaken without planning permission and a material change of use of the land had occurred.
- 5.3. The enforcement notice was appealed on the grounds that the development had been in a continuous 10 year use as a builder's yard and not on the planning merits of the proposal. The Planning Inspector dismissed the appeal on the grounds that there was insufficient evidence submitted to demonstrate a continuous 10 year use as a builder's yard.
- 5.4. Further to the appeal decision the storage use of the former garden area has since ceased, with the applicants business use being confined to the area at the frontage of the site

6. Representations

6.1. **Town/Parish Council** - Workington Town Council Planning Committee would like to raise concerns with regards to the loss of privacy that could potentially be experienced by surrounding neighbours

6.2. **ABC Environmental Health** - Having considered the application submitted I raised concerns with the applicant/agent on the proposed activities. My main concerns were concentrated on noise generated from loading/unloading of materials, vehicle movements, engine noise radios being played loud within the vehicles, employees voices, movement of scaffolding poles and general site noise within the development area. Prior and during the submission we have received noise complaints which we have investigated, we have been able to witness disturbances on occasions due to the impact noise particularly when it involved scaffolding poles being moved when being loaded on a vehicles which is located at the front part of the site which does not form part of this application. This area I refer to has a long legacy as an existing unrestricted use in connection with the existing roofing business and does not form part of the application site. I have had a long debate and discussion with the agent and applicant stating my concerns as mentioned above, in response to this the agent has now suggested a number of mitigation measures to be adopted to minimise impact and disturbance to the neighbouring amenity. I now accept the mitigation measures which have been provided by the agent subject to these being endorsed by planning conditions . In view of this, I would strongly recommend the following conditions are applied if approval is granted:

- The site shall solely be used for storage purposes and there shall be no material dressing or treatment operations undertaken within the application site.
- This permission shall relate solely to the use of the land for the storage of slates, tiles, ridge tiles and chimney pots and for no other storage purpose.(this will exclude metal materials and scaffolding poles).
- The storage use hereby permitted shall be restricted to the hours of operation between 08:00 and 17:30 on Mondays to Fridays, and not at all on Saturdays, Sundays or Bank Holidays.
- The existing timber fence to the eastern boundary of the site shall be retained prior to the commencement of the storage use hereby approved and shall thereafter be retained in situ and shall not be reduced in height or remain unaltered at all times for the lifetime of the development.
- There shall be no vehicular access to or egress from the development site
- Prior to the commencement of the use of the site for storage a physical barrier must be retained and maintained at all times for the lifetime of the development.(this will prevent any vehicle access to the development hereby approved)

- No power tools or machinery can operate at any time within the development area.

6.3. Cumbria County Highways – No objections.

The LLFA surface water maps show that the site is very close to an area of flooding and indicates that a 1 in 100 chance of flooding occurring close to the site each year.

6.4. Natural England – No comments

6.5. The application has been advertised on site notice and by neighbour letter.

6.6. There has been 26 letters of support, 6 letters stating no objection and 10 letters of objection.

6.7. The letters of support/no objections indicate:

- Existing family business having operated from High Street for a significant number of years
- No disturbance arises from the proposed in terms of amenity/noise/dust
- The company supports a local workforce
- Local businesses should be supported
- The applicant needs to have stock on site as there are shortages at present
- A section is being retained for residential use
- There is limited hours of use
- The area has been improved visually
- Provides secure storage
- Potential to park vehicles off high street which would help alleviate parking problems

6.8. The letters of objection state:

- An enforcement notice was upheld by planning inspectorate relating to the proposal
- The inspector required the land to be returned to its former use as a garden
- Privacy issues
- CCTV has been installed
- The site can look directly into first floor windows
- The storage of commercial materials in a domestic garden is unacceptable
- Other industrial sites are available within Allerdale
- Use not compatible with a residential area
- Dust is causing a nuisance
- Noise disturbance
- Excessive noise arising from the development 7.30am to 8am and 3.30pm – 4pm

- l. Noise from loading/unloading, radios, employees, scaffolding and general building site noise
- m. There is no quiet way to load/unload materials from the work vehicles
- n. Disturbance within garden areas and reduces the enjoyment of outside space
- o. Previous works on site carried out without gaining planning permission
- p. The area has always been a residential garden
- q. Alterations to the existing access onto the highway has allowed vehicular access of commercial vehicles to be gained to the application site
- r. No drainage details
- s. No details on any ground contamination
- t. No ecological surveys carried out before the site was cleared
- u. Some of the information within the application documents is factually incorrect
- v. The suggested conditions could not be independently managed, controlled or assessed
- w. Younghusbands previously occupied a site on Havelock Road until January 2020

7. Environmental Impact Assessment

- 7.1. The Town and Country Planning (Environmental Impact Assessment) Regulations 2017
- 7.2. The development does not within Schedule 1 nor 2 and, as such, is not EIA development.

8. Duties

- 8.1. The site doesn't contain, nor is it in close proximity to any listed buildings, nor is it within or affecting a conservation area or a Natura 2000 site.

9. Development Plan Policies

9.1. Allerdale Local Plan (Part 1)

Policy S1 - Presumption in Favour of Development
 Policy S2 - Sustainable Development
 Policy S3 - Spatial Strategy and Growth
 Policy S4 - Design Principles
 Policy S5 - Development Principles
 Policy S6a - Area Based Workington
 Policy S12 - Land and Premises
 Policy S22 - Transport Principles
 Policy S29 - Flood Risk and Surface Water Drainage
 Policy S32 - Safeguarding Amenity
 Policy S33 - Landscape
 Policy S35 - Protecting and Enhancing Biodiversity and Geodiversity

Policy DM4 - Expansion and Intensification of Employment Sites
Policy DM14 - Standards of Good Design

These policies can be found here:-

<https://www.allerdale.gov.uk/en/planning-building-control/planning-policy/local-plan-part-1/>

9.2. Allerdale Local Plan (Part 2)

Policy SA34 – Employment Sites

<https://www.allerdale.gov.uk/en/siteallocations/>

10. Other material considerations

10.1. National Planning Policy Framework (NPPF) (2021)

10.2. Allerdale Borough Council Plan 2019-2023:

Strengthening our economy - Supporting the development of new homes where they are needed.

Tackling inequality

- Giving people skills, education and employment opportunities to help them improve their future, in particular through targeted community development projects in Workington and Maryport.

Enhancing our towns

- Assisting and supporting businesses by developing a new business welcoming and aftercare service.

11. Policy weighting

11.1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that, if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise. This means that the Allerdale Local Plan (Part 1) 2014 and the Allerdale Borough Local Plan (Part 2) 2020 policies have primacy.

12. Assessment:

Principle of development

12.1. Policy DM4 highlights the need to support existing businesses but specifies that proposals to expand or intensify existing employment sites will only be permitted

where the development will not have significant adverse effects on the site or surrounding uses. DM4 supports Policy S12 in the delivery of employment sites; however, states that “Where sites are located in primarily residential areas and proposals would cause overriding problems, the Council will seek to assist in identifying alternative sustainable locations with a preference for allocated employment sites and previously developed land that would be more appropriate for the resulting activity.

- 12.2.** Policy S12 of the Local Plan also advises that proposals outside of allocated employment land or that are currently used for employment uses will be discouraged and developments directed in sequence to existing allocations and then previously developed land within the settlement. Where proposals are able to demonstrate why they cannot be appropriately located, they will be considered on their merit taking into account local impacts and other Plan policies.

Residential Amenity

- 12.3.** This subject represents the primary key planning consideration. Policy S32 of the Local Plan is relevant in this regard and has consistency with Paragraph 185 of NPPF, the latter requiring that;-

“Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely affects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should:

- a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life;
- b) identify and protect tranquil areas which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason”

- 12.4.** Policy S32 specifically highlights that development will not be supported if the resultant pollutants cannot be overcome by appropriate mitigation measures. The policy also outlines the importance of the impacts on privacy in terms of overlooking.

- 12.5.** The nature and operations of the proposed use has the potential to cause nuisance to nearby residential properties in terms of noise and dust to cause harm to the residential amenity of nearby properties that are directly surrounding the site. (This is reflected in that the council considered the unrestricted unlawful storage use was harmful to its surrounding prompting the former issuing of the enforcement notice.)

- 12.6.** The site is located in a predominantly residential area and is bound on 3 sides by residential properties with the western boundary being adjacent to the existing yard area and buildings associated with the business.

- 12.7.** The existing use of the adjacent yard directly behind the existing workshop building has not been considered in connection with the amenity of nearby properties. This area has a long legacy as an existing unrestricted use in connection with the existing roofing business and does not form part of the application site; therefore, any storage or disturbance arising from this area cannot be considered under the current application. (Officers acknowledge that the introduction of such an industrial use in its entirety in this sensitive residential area would not normally likely be supported, but acknowledge it represents a long established landuse inherited from the past evolution of the town). Some weight has to be attributed to the existing operational use as its represents the locational reasoning behind the applicant's pursuit of extending the existing premises.
- 12.8.** However as highlighted in the policy context, it is for members to judge whether any such expansion at this location is acceptable and whether it would cause overriding problems, especially given the proximity of other residential properties to the site. If so the criteria of policy DM4 the council should seek evidence of alternative preferential allocated / brownfield sites which would be more appropriate for the activity. Officers highlight they would not support the unrestricted use of the site which would be unacceptable to the amenity of the neighbouring properties. Therefore fundamental to this issue, is whether members consider it does have an unsatisfactory impact on the residential amenity of its surroundings.
- 12.9.** This sensitivity was acknowledged by the applicant who submitted a supporting noise survey to the application which evaluated the extent of this impact.
- 12.10.** The noise report has been conducted over a short period of time and includes an assessment of very limited activities loading and unloading and may not reflect the different materials being loaded onto the vehicle. The report concludes that there would not be a significant increase in noise levels above background sound levels and the loading and unloading of materials is for a very short period of time with noise also arising from the A596 therefore they believe the use as a storage yard would be appropriate. The report could not be considered to provide an accurate reflection of the activities that would take place under everyday circumstances and the report does not sufficiently demonstrate that the activities taking place would not cause undue harm in terms of noise emanating from within the site. The Environmental Health department have also verbally concurred with officers opinions on this matter.
- 12.11.** Officers in assessing the key planning amenity representations and policy considerations associated with the former unlawful use sought to identify the pathways that would result in material environmental harm and indeed if unrestricted would represent grounds for refusal of the application. These details were discussed in depth with the council's environmental health officer who undertook site inspections of the site, to evaluate and assess the likely impact of the development. As a consequence a range of the main likely sources of disturbance were identified. These were subsequently discussed with the applicant to explore whether there was any means of mitigation under planning

conditions which could satisfactorily address and mitigate these concerns to ensure a satisfactory standard of amenity to surrounding properties. (Any such measures would solely apply to the application site and not the applicants existing unrestricted building and yard premises as this was perceived as being unreasonable and onerous.)

12.12. The potential pathways of environmental disturbance can be summarised as followed:

12.13. (i) Levels ; In implementing the unauthorised use of the application site, it has been reduced in level by approximately 600mm, and its surface finished in a compact gravel finish. Officers consider that no harm has arisen from the reduction in site levels.

12.14. (ii) Noise levels: The applicant initially suggested a number of conditions and in particular to reduce the impacts on residential amenity by turning off vehicles when loading and unloading no radios/music/horn being used from the vehicles when within the yard area. Officers consider that this would be difficult to enforce under a generic noise level threshold condition and therefore not considered as an adequate measure in controlling noise arising from operations on site. Given this would be unenforceable it does not pass the six test criteria applicable to planning conditions.

12.15. (iii) Vehicle movements: The original submission also proposed to allow the vehicles to load and unload within the proposed yard. Concerns were raised by the council's environmental health department in relation to vehicle movements giving rise to unacceptable levels of disturbance to the residential amenity of adjoining dwellings; however, the applicant has indicated that they are willing to accept conditions to prevent vehicular movement within the area. This would be further enforced through the construction of two bollards on the dividing boundary between the original yard and the application site. Officers are satisfied that the proposed bollards are sufficient to permanently excluded vehicles from the area but still allowing pedestrian access to store the materials on site. In preventing vehicular access to the area there is likely to be a reduction in noise, dust and overlooking arising from the use of the site for storage.

12.16. (iv) Materials: The applicant has suggested that the storage of materials would be restricted to slate, tiles, ridge tiles and chimney pots. A condition can ensure that the area is used for the storage of these materials only which would also prevent any items such as metal ladders, scaffolding and other scaffolding fixings being stored in the area which have the potential for significant noise disturbance. Officers consider given the restricted use is acceptable solely in connection with a specific limited storage of items solely in connection with the adjacent business premises, it is necessary to impose a restriction to the proposed use only and for no other use within the B8 storage use class as this would allow the council to examine any alternative future commercial storage use of the site.

12.17. (v) Storage only: Officers also similarly consider it appropriate to recommend a condition to prevent the dressing operations of any stored materials on the

application site, given this activity could give rise to noise to detriment to the amenity of the area.

- 12.18.** (vi) Visual impact/privacy : Policy S32 requires development to ensure that there is not an unacceptable effect on residential amenity in terms of loss of privacy as a result of overlooking, or increased sense of enclosure as a result of overbearing development. The original submission had the potential for loss of privacy; although the site level is lower than the surrounding residential properties and screened by vegetation and the newly erected fencing; unloading from flatbed vehicles could take place within the site which give the opportunity to work from an elevated position and has the potential to have an unacceptable effect in terms of overlooking and loss of privacy given the rear of the dwelling on Stanbeck Meadows facing onto the site is approximately 7m from the boundary. If vehicles are restricted from this area given the screening to the boundaries and lowering of the site levels the degree of overlooking is reduced to a sufficient degree to minimise issues of overlooking and privacy.
- 12.19.** Given the total screening height from within the application site with Stanbeck Meadows would be approximately 2.3-2.6m the loss of privacy would not be considered to be excessive when stood at ground level within the site itself. However, this fence detail's retention needs to be secured by condition.
- 12.20.** (vii) Hours of operation: The applications initial 7:30 am start time was considered unacceptable, exceeding that imposed on building sites. The applicant has agreed that they are willing to accept a time restriction on activities within the yard area subject to this application. In discussions with environmental health it is proposed that the hours of use of the site are 08:00 – 17:30 Monday – Friday with no use of the application area on a Saturday, Sunday or on Bank Holidays. These hours of operations are similar to that found set out within construction management statements on larger scale developments such as housing development sites and are therefore considered to be acceptable; particularly, as the applicant proposes that there would be no use of the area over the weekend.
- 12.21.** Officers consider that appropriately worded conditions can mitigate any harmful effects on nearby residential properties and consider that the use could be undertaken in compliance with Policies S12, S32 and DM4 of the Allerdale local plan.

Design and appearance

- 12.22.** In terms of the external appearance would be limited changes the gravel area was put down on the area subject to this application and given the use of gravel is common within residential settings there was no requirement to reinstate the area to grass under the enforcement notice.
- 12.23.** A fence was installed 2m in height to the boundary with Stanbeck Meadows on the height of the former garden area, it was considered that this did not require planning permission given the small strip of garden remains at its original height. There is also a small section of hedging planted adjacent to the boundary which also did not require permission.

12.24. The applicant would not propose any further alterations to the area; but, has suggested a condition to retain and maintain the fence to the rear boundary.

Highways and Parking

12.25. Inevitably with the use of the area there is implications that the vehicular movements are likely to increase given there was previously no vehicular access to this area.

12.26. The increase in traffic has the potential to increase the use of the access onto the highway by way of the existing vehicular access which has been widened to allow larger vehicles to access the rear of the property.

12.27. At present the vehicles connected with the existing business park on the public highway to the front of the site. If the condition to restrict vehicular access to this area is imposed it would prevent vehicles being parked in the area on a permanent basis.

Other considerations

12.28. As the development is considered to be acceptable subject the imposition of conditions no examination of alternative sites is required by the applicant.

12.29. The existing foul and surface water would remain unchanged from the existing arrangement and given the permeable nature of the surfacing there would not be an increase in surface water drainage arising from the site.

12.30. No protected species or habitats have been highlighted with the area that would have required an ecological survey to be undertaken.

12.31. The applicant indicates that they would accept a condition that storage would not be higher than 2m in height and a restriction on the operating hours.

12.32. The CCTV that has been installed is considered to be permitted development and would not require planning permission.

12.33. As there are no planning restrictions on the existing business premises and yard to the front and directly to the rear of the building, any disturbance from the existing areas would have to be pursued through environmental health in terms of whether it fell within the parameters of a statutory nuisance.

12.34. The removal of the wall between the rear yard and garden area prior to the levelling of the ground would not have required planning approval from the local planning authority.

Local Financial Considerations

12.35. Having regard to S70 (2) of the Town and Country Planning Act, Local Financial Considerations relate to Business Rates Revenue

13. Conclusions

- 13.1.** The merits of the proposal remain finely balanced as albeit it relates to an existing business it is acknowledged the site does occupy a sensitive location in a predominantly residential area. The primary concern therefore remains whether the proposal as amended includes sufficient mitigation measures as to avert any substantial loss of amenity to neighbouring properties. This would not necessarily mean there would be zero noise from the development, but whether the combined mitigation amendments to the scheme are considered to reduce the impacts on residential amenity to a degree that is acceptable and any harm has been satisfactorily been removed from the proposal to ensure disturbance and loss of amenity are not considered to be significant.
- 13.2.** The use of the site solely for storage purposes only is considered acceptable subject to the inclusion extensive list of mitigation conditions recommended (each of which are essential) and would comply with local and national planning policies and the benefits of the expansion of an existing business would not have a significant harm to the residential amenity of nearby properties and therefore approval is recommended.

14. RECOMMENDATION

Grant permission

Annex 1

Conditions

- 1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.**
Reason: In order to comply with Section 91 of the Town and Country Planning Act 1990.
- 2. The development hereby permitted shall be carried out solely in accordance with the following plans:**
Location Plan
Proposed Fence plan amended plan received 13 July 2021
Bollard details – amended plan received 15 September 2021
Reason: In order to ensure that the development is carried out in complete accordance with the approved plans and any material and non-material alterations to the scheme are properly considered.
- 3. Storage of any goods or materials at the site shall at no time exceed two metres in height.**
Reason: In the interests of preserving the amenity of neighbouring residents, in compliance with the National Planning Policy Framework and Policy S32 of the Allerdale Local Plan (Part 1), Adopted July 2014.
- 4. The site shall solely be used for storage purposes and there shall be no material dressing or treatment operations undertaken within the application site.**
Reason: In the interests of preserving the amenity of neighbouring residents, in compliance with the National Planning Policy Framework and Policy S32 of the Allerdale Local Plan (Part 1), Adopted July 2014.
- 5. Notwithstanding the provisions of the Town and Country Planning (Uses Classes) Order 1987 (as amended), (or any Order revoking or re-enacting that Order with or without modifications), this permission shall relate solely to the use of the land for the storage of slates, tiles, ridge tiles and chimney pots and for no other storage purpose, including any other activity within the same class of the schedule to that Order.**
Reason: The Local Planning Authority wishes to re-assess any change of use and to maintain control over any development.
- 6. The storage use hereby permitted shall be restricted to the hours of operation between 08:00 and 17:30 on Mondays to Fridays, and not at all on Saturdays, Sundays or Bank Holidays.**
Reason: In the interests of preserving the amenity of neighbouring residents, in compliance with the National Planning Policy Framework and Policy S32 of the Allerdale Local Plan (Part 1), Adopted July 2014.
- 7. There shall be no use of powered tools or machinery within the application site.**

Reason: In the interests of preserving the amenity of neighbouring residents, in compliance with the National Planning Policy Framework and Policy S32 of the Allerdale Local Plan (Part 1), Adopted July 2014

- 8. The existing timber fence to the eastern boundary of the site shall be retained prior to the commencement of the storage use hereby approved and shall thereafter be retained in situ and shall not be reduced in height and shall remain unaltered at all times for the lifetime of the development**

Reason: To safeguard the residential amenity of the occupiers of neighbouring dwellinghouses, in compliance with the National Planning Policy Framework and Policy S32 of the Allerdale Local Plan (Part 1), Adopted July 2014.

- 9. There shall be no vehicular access to or egress from the site, unless otherwise agreed by the Local Planning Authority.**

Reason: In the interests of preserving the amenity of neighbouring residents, in compliance with the National Planning Policy Framework and Policy S32 of the Allerdale Local Plan (Part 1), Adopted July 2014.

- 10. The approved plan Bollard details – amended plan received 15 September 2021 outlining the technical details, fixed positions and height shall be implemented prior to the commencement of the use of the site. The bollards as approved shall thereafter be retained and maintained at all times for the lifetime of the development hereby approved.**

Reason: To safeguard the residential amenity of the occupiers of neighbouring dwellinghouses, in compliance with the National Planning Policy Framework and Policy S32 of the Allerdale Local Plan (Part 1), Adopted July 2014.

Other:

Advisory Note

