



Agenda

Planning Committee

Date:	Wednesday, 31 March 2021 at 10:00 am
Venue:	Remote meeting via Zoom
Committee members:	<p>Councillor Trevor Fiddler (Chairman) Councillor Richard Redcliffe (Vice-Chairman)</p> <p>Councillors Tim Armit, Chris Dixon, Kiran Mulholland, Jayne Nixon, Linda Nulty, Liz Oades, David O'Rourke, Heather Speak, Ray Thomas, Stan Trudgill.</p>

Please Note: This meeting is being held remotely via Zoom. To access the meeting please click on the link below.

Join Zoom Meeting <https://us02web.zoom.us/j/85039722292?pwd=UGp0N1BDV0RSL2VmZCt1aDNONUlnUT09>
Meeting ID: 850 3972 2292
Passcode: 136346

Public Speaking at the Planning Committee

Members of the public may register to speak on individual planning applications: see [Public Speaking at Council Meetings](#).

	PROCEDURAL ITEMS:	PAGE
1	Declarations of Interest: Declarations of interest, and the responsibility for declaring the same, are matters for elected members. Members are able to obtain advice, in writing, in advance of meetings. This should only be sought via the Council's Monitoring Officer. However, it should be noted that no advice on interests sought less than one working day prior to any meeting will be provided.	1
2	Confirmation of Minutes: To confirm the minutes, as previously circulated, of the meeting held on 10 March 2021 as a correct record.	1
3	Substitute Members: Details of any substitute members notified in accordance with council procedure rule 24.	1
	DECISION ITEMS:	
4	Planning Matters	3 - 48
	INFORMATION ITEMS:	
5	List of Appeals Decided	49 - 60

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<http://fylde.cmis.uk.com/fylde/DocumentsandInformation/PublicDocumentsandInformation.aspx>

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Planning Committee Index

31 March 2021

Item No:	Application No:	Location/Proposal	Recomm.	Page No.
1	20/0887	13b QUEEN STREET, LYTHAM ST ANNES, FY8 5LQ CHANGE OF USE FROM A WORKSHOP (USE CLASS E) TO A MIXED-USE INVOLVING A MICRO-BREWERY, A DRINKING ESTABLISHMENT (TAP ROOM) AND A TAILORS TOGETHER WITH EXTERNAL ALTERATIONS TO THE APPEARANCE OF THE BUILDING THROUGH ADDITIONAL WINDOWS, CURTAIN GLAZING AND REPLACEMENT WINDOWS.	Refuse	5
2	20/0921	EAST END BOWLING GREEN, LORNE STREET, LYTHAM ST ANNES FREE STANDING CANOPY TO THE FRONT ELEVATION OF THE EXISTING CLUB HOUSE	Grant	20
3	21/0059	FOUNDRY YARD, KIRKHAM ROAD, TREALES ROSEACRE AND WHARLES, PRESTON, PR4 3SD MINOR MATERIAL AMENDMENT TO PLANNING PERMISSION 17/0471 FOR ALTERATIONS TO DWELLING ON PLOT 12 INCLUDING: 1) REMOVAL OF REAR DORMER WINDOW; 2) ADDITION OF FRONT PORCH; AND 3) ADDITION OF SINGLE STOREY REAR EXTENSION	Grant	27
4	21/0103	CAFE, FAIRHAVEN LAKE AND GARDENS, INNER PROMENADE, LYTHAM ST ANNES, FY8 1BD REMOVAL OF EXISTING RAISED PLANTING BED AND ERECTION OF FREESTANDING, OPEN-SIDED CANOPY FOR USE AS OUTDOOR DINING AREA IN CONNECTION WITH CAFE, INCLUDING ASSOCIATED HARD AND SOFT LANDSCAPING WORKS	Grant	37

Background Papers

The background papers used in the compilation of reports relating to planning applications are listed below, except for such documents that contain exempt or confidential information defined in Schedule 12A of the Local Government Act 1972:

- Fylde Local Plan to 2032 Adopted Version (October 2018)
- Joint Lancashire Minerals and Waste Local Plan
- Bryning-with-Warton Neighbourhood Plan
- Saint Anne's on The Sea Neighbourhood Development Plan
- National Planning Policy Framework 2019
- National Planning Practice Guidance
- The Community Infrastructure Levy Regulations 2010 (as amended)
- Conservation of Habitats and Species Regulations 2010 (as amended)
- Other Supplementary Planning Documents, Guidance and evidence base documents specifically referred to in the reports.
- The respective application files
- The application forms, plans, supporting documentation, committee reports and decisions as appropriate for the historic applications specifically referred to in the reports.
- Any additional information specifically referred to in each report.

These Background Documents are available online at www.fylde.gov.uk/resident/planning

Planning Committee Schedule 31 March 2021

Item Number: 1

Committee Date: 31 March 2021

Application Reference:	20/0887	Type of Application:	Full Planning Permission
Applicant:	Carters Building Consultancy LTD	Agent :	Carter-Zub Building Consultancy LTD
Location:	13b QUEEN STREET, LYTHAM ST ANNES, FY8 5LQ		
Proposal:	CHANGE OF USE FROM A WORKSHOP (USE CLASS E) TO A MIXED-USE INVOLVING A MICRO-BREWERY, A DRINKING ESTABLISHMENT (TAP ROOM) AND A TAILORS TOGETHER WITH EXTERNAL ALTERATIONS TO THE APPEARANCE OF THE BUILDING THROUGH ADDITIONAL WINDOWS, CURTAIN GLAZING AND REPLACEMENT WINDOWS.		
Ward:	CLIFTON	Parish:	
Weeks on Hand:	11	Case Officer:	Ruth Thow
Reason for Delay:	Need to determine at Committee		
Click Here for application site on Google Maps		Click here for application on FBC website	

Summary of Recommended Decision: Refuse

Summary of Officer Recommendation

The application property is a 3 storey workshop building built from brick with a slated roof that is located in Lytham. It is in the defined town centre and conservation area but is located in a 'backland' location without any direct street frontage, being to the rear of properties on Queen Street, Henry Street and Market Square. Signage indicates it was last in use as a workshop associated with an embroidery business but is now vacant.

The application proposes that the building be used as a brewery with associated 'tap room' drinking establishment and as a tailors premises, with a series of alternations to the window arrangement included to facilitate that revised use.

The proposed uses accord with the general emphasis in Policy EC5 to promote commercial development that is located in a town centre location, but the specifics of the use relating to noise, odour and general amenity of neighbours are such that they lead to an unacceptable level of harm to neighbouring residential amenity. Policy EC5 requires that such harms are considered in the establishment of new town centre uses and in this case the information available with the application fails to provide satisfactory reassurance that the brewery and tap room use will not detract from the amenity of neighbouring occupiers, particularly those in The Homestead which is a complex of apartments focussed on the elderly and is immediately alongside the building. Accordingly the proposal will conflict with Policy EC5

and also elements of GD7 relating to design matters in general.

A further concern is that the external changes to the building will introduce window and door changes that fail to adequately reflect the character of the building and its contribution to the Lytham Town Centre Conservation Area., A reason for refusal relating to this aspect associated with the conflict with Policy ENV5 is therefore also justified.

Reason for Reporting to Committee

The Head of Planning and Housing has agreed to a request from a Ward Councillor (Cllr Blackshaw) for the application to be determined by the Planning Committee. That request was based on the level of community concern generated by the development and its nature, scale and so impact on residential amenity.

Site Description and Location

The application relates to 13b Queen Street, Lytham. In particular to a semi-detached three storey, brick built building situated to the rear of properties on Market Square and to the rear of those on Queen Street and to north of the apartment building at 'The Homestead' on Henry Street.

The building is accessed through an integral door leading to a passageway underneath the first floor accommodation of Caps Dunn (Fine Art Auctioneers) commercial premises on Queen Street. A secondary access to the rear from Green Street appears to be available but the red edge of the application site does not extend to any adopted highway and so the rights to utilise this are unclear.

The building has an authorised use as a workshop and is located in an area which is characterised by a mix of commercial and residential properties and is designated as part of the Town Centre of Lytham and within the Lytham Conservation Area.

Details of Proposal

The application relates to the whole building and proposes a change of use from its lawful workshop use and some physical works to facilitate the new use.

With regards the use the submitted plans indicate that the ground floor is to function as a brewery (which falls under Class B2 of the Use Classes Order), the first floor is to be a tap room (i.e. drinking establishment) associated with the brewery use which is now a 'sui-generis' use, and the second floor is to be a tailors shop (Class E).

The external alterations include:

- To the rear (east elevation) two first floor windows are to be bricked up.
- To the front (west elevation) at ground floor level a new entrance door is proposed and a window is to be bricked up. At second floor level three new windows are to be installed with a full height window spanning the first and second floor levels created

In addition to the plans and application form the application is supported with the planning statement, a noise assessment and an odour assessment relating to the brewery activity that is proposed.

Relevant Planning History

There is no relevant planning history to report.

Relevant Planning Appeals History

None

Parish/Town Council Observations

Not in parished area.

Statutory Consultees and Observations of Other Interested Parties

Lancashire County Council - Highway Authority

LCC Highways does not have any objections regarding the proposed change of use from a workshop (use class e) to a mixed-use including a micro-brewery, a drinking establishment (tap room) and a tailors, and are of the opinion that the proposed development will not have a significant impact on highway safety, capacity or amenity in the immediate vicinity of the site.

The site is access from Queen Street and from Green Street into a private shared area of the rear of a numbers of properties. Queen Street is within a 20mph area with waiting restrictions on the opposite side of the road (No Waiting 9am – 6pm). For the full length of Green Street the waiting restrictions are No Waiting at Any Time.

It commonplace for this stretch of road be in high demand for parking and it is requested that deliveries and collections are made aware of the Limited Parking bay on Dicconson Terrace (Limited Waiting 1 Hour No Return Within 1 Hour 9am-6pm) to ensure the safe passage of all highway users is not obstructed by vehicles.

It is requested that the door for the pedestrian access from Queen Street opens into the site and not into the highway as shown in Drawing No PR-GA-001 – Proposed Floor Plans. Clause 153 of the 1980 Highways Act restricts the opening of gates and doors over the adopted highway; as such the doors must not open onto the adopted highway for perpetuity of the approval. A suitable condition to be drafted to ensure the doors do not open onto the adopted highway for perpetuity of the approval.

It is also requested that patrons to the site are encouraged to use the courtyard area for smoking and waiting to enter the premises. This is to avoid congestion on the footway on Queen Street and for the safe passage of pedestrians.

Environmental Protection (Pollution)

This department is concerned that the proposed development will cause noise nuisance to nearby residential dwelling properties. Therefore, unless the following conditions are added, this department would object to this application.

1. The findings, recommendations and mitigations measures set out in the accompanying noise assessment must be implemented. Validation that these measures have been implemented must be sent to the Local authority upon completion and before use.

2. There shall be no live/amplified music-this has the potential to cause noise nuisance to nearby properties.

3. External areas shall not be used for any part of the business, including seating areas, smoking areas or congregation areas between the hours of 19.00-10.00.

4. Deliveries will only be permitted between 09.30-18.00 Monday to Friday. 09.30-1.30 Saturday and not on Sundays, as this has the potential to cause noise nuisance to nearby residential dwellings.

5. Glass bottle waste collections will only be permitted between 10.00 – 18.00 Monday to Saturday and not on Sunday, as this has the potential to cause noise nuisance to nearby residential dwellings.

6. General waste collections shall only be between 09.00 and 18.00 Monday to Saturday and not on Sunday. as this has the potential to cause noise nuisance to nearby residential dwellings.

Councillor Brenda Blackshaw

I fully support this application, as I feel it will be a asset for Lytham, especially those needing Gluten Free Products. I fully supported the licensing application which was granted, and my support still stands now for the planning permission.

I am aware of the few complaints but feel they are unjustifiable as the statements sent to me and the one posted on Social Media was completely incorrect information to what I have been informed by Mr Cuffe. However this micro brewery and Tap Bar (licensed until 9.00pm) wouldn't create any noise or nuisance as it's a completely different concept to the usual 'bar or pub'.

I fully support this application, again I reiterate it will be a great asset for Lytham.

Regeneration Team (Heritage)

No comments have been received.

Neighbour Observations

Neighbours notified:	14 January 2021
Amended plans notified:	25 January 2021
Site Notice Date:	26 January 2021
Press Notice Date:	21 January 2021
Number of Responses	1 letter of support and 33 letters received objecting to the scheme:
Summary of Comments	

The correspondence in support of the application explains that the proposed use would be beneficial to Lytham itself due to this bringing something unique to the town and community.

The letters raising objection to the scheme are summarised as:

- If allowed would be completely surrounded by drinking establishments
- Queen Street is a quiet residential street

- Average age of residents in The Homestead is 80 years
- residents had to suffer drunkenness, drug taking, vandalism, damage to property, urinating and being sick in the gardens,
- people fuelled with alcohol trying to gain entry to their building
- late night noise
- street becomes one way due to parking
- will fuel rowdy impact of drinking establishments
- will add to existing anti-social behaviour
- brewery will be unwelcome addition to pollution by way of noise and odour
- nuisance from brewery fumes, noise and traffic is just not acceptable
- better located in a commercial/ industrial area
- the principal purpose is to create a drinking establishment
- will have to up-grade The Homestead entry system at cost to residents
- the changes to the windows will not enhance the building
- applicant has no right of way the front door
- increase parking congestion & distress for residents
- Queen Street / Henry Street never designed to accommodate the density we now experience
- would surely be to the detriment of older established businesses in Lytham, such as The Taps struggling out of Lockdown.
- there were 4 crimes committed on/near Henry Street in December 2019 which consisted of 2 violence and sexual offences, one robbery and one anti-social behaviour
- Homestead fear the noise of deliveries from Green Street
- If bottling was permitted, fear noise of bottles rattling in crates and eyesore of crates of bottles stacked outside the building awaiting delivery or cleaning before re-filling
- building has been re-roofed (with no provision for a chimney penetration!)
- I note that the drawings which accompanied his successful application for a Drinks Licence bear no comparison to the application drawings
- Properties over licenced premises are harder to secure tenants

Relevant Planning Policy

Fylde Local Plan to 2032:

GD1	Settlement Boundaries
GD7	Achieving Good Design in Development
ENV5	Historic Environment
EC5	Vibrant Town, District and Local Centres
EC6	Leisure, Culture and Tourism Development

Other Relevant Policy:

NPPF:	National Planning Policy Framework
NPPG:	National Planning Practice Guidance

Site Constraints

Conservation area site

Environmental Impact Assessment

This development does not fall within Schedule 1 or 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017.

Comment and Analysis

Planning Legislation Background

This application seeks permission for a change of use of an existing building previously in a business use as a workshop which was in a B1 use of the Use Classes Order, to a mixed use as a brewery with a tap room to the ground and first floor with a tailors on the second floor.

Changes to the Use Classes Order were introduced in September 2020 which combine several of the former town centre uses (Class A1 Retail, Class A2 Financial Services, Class A3 restaurant, Class B1 offices and light industry) into a new 'Class E' use. This has implications for the proposal here as the current lawful use is as a workshop associated with an embroidery use which would have been a Class B1 use, and so is now a Class E use. As this falls within the same use class as a shop the tailors element of the proposal would not require planning permission if it were to be the sole use of the building. However it is only a part of the uses covered by this application, with the brewery being a Class B2 use and a drinking establishment now a 'sui-generis' use (formerly Class A4 use) with both of these therefore outside of the scope of the new Class E use class. It is for this reason that the use proposed in this application requires planning permission.

Policy Background

Paragraph 38 (6) of the Planning and Compulsory Purchase Act 2004 indicates that development proposals should be determined in accordance with the development plan unless material considerations indicate otherwise. The Fylde Local Plan to 2032 is the up-to-date development plan for Fylde and so the policies of the plan can be afforded full weight in decisions.

Policy GD1 refers to 'Settlement Boundaries' and the site is within the defined settlement boundary of Lytham St Annes where development is encouraged by the Plan subject to compliance with all relevant local plan policies.

Policy GD7 - 'Achieving Good Design in Development' - Policy GD7 sets out an expectation that all development will achieve a high standard of design, taking account of the character and appearance of the local area, and provides a detailed list of considerations. This includes but is not limited to ensuring that development meets the following requirements:

- *c) ensuring that amenity will not be adversely affected by neighbouring uses, both existing and proposed*;
- *d) ensuring the siting, layout, massing, scale, design, materials, architectural character, proportion, building to plot ratio and landscaping of the proposed development, relate well to the surrounding context*;
- *f) conserving and enhancing the built and historic environment*;

- *h) being sympathetic to surrounding land uses and occupiers, and avoiding demonstrable harm to the visual amenities of the local area”;*
- *“(makes) a positive contribution to the character and local distinctiveness of the area the high-quality new design that responds to context,” and;*
- *i) taking the opportunity to make a positive contribution to the character and local distinctiveness of the area through high quality new design that responds to its context and using sustainable natural resources where appropriate.”*

Policy EC5 refers to 'Vibrant Towns, District and Local Centres'. In regards to premises in Secondary Shopping Frontages *proposals for main town centre uses will be permitted at ground and upper floor levels. Uses that involve operational hours in the evening or night should not create unacceptable disturbance to residents or other users of the centre and surrounding areas.*

Policy EC6 refers to 'Leisure, Culture and Tourism'. Criterion e) *Encouraging daytime and evening business, leisure, cultural and heritage based tourism facilities, such as hotels, restaurants, cinemas, theatres, museums, swimming pools and leisure centres within town centres in Key Service Centres and in Local Service Centre.*

Policy ENV5 refers to the historic environment and states '*Proposals for development should conserve, protect and, where appropriate, enhance the character, appearance, significance and historic value of Fylde’s designated and undesignated heritage assets*'.

Principle of the development

The application building is located within the defined town centre and the proposed change of use would repurpose a vacant building which has previously been used as a workshop. The use as a tailors shop falls within the new Use Class E and so could be carried out without the need for a change of use although the other elements require planning permission

The NPPF supports the role that town centres play at the heart of local communities by taking a positive approach to their growth, management and adaptation. The Fylde Local Plan to 2032 reinforces this by defining Lytham town centre as one of the three main centres at the top of the borough’s retail hierarchy, and then stating that retail and other main town centre uses are encouraged in those areas. The list of uses quoted in the policy obviously relates to the old Use Classes Order but includes the retail and drinking establishment elements of this proposal, although it excludes the general industrial brewery use.

The postal address to the property links it to Queen Street which is at that point defined as a Secondary Shopping Frontage area where Policy EC5 permits main town centre uses providing that operational hours in the evening or night do not create unacceptable disturbance to residents or other users of the centre and surrounding areas. Further support for the principle of developing town centre uses that attract visitors to the area is provided by element e) of Policy EC6 which refers to encouraging daytime and evening business activities in the town centre location.

There is no local policy that supports the establishment of general industrial uses in town centre locations, as these are most properly located on one of the designated employment areas across the borough.

The national and local policy position is therefore one where some of the uses proposed in this application are supported providing there is compliance with other aspects of the Plan, with the key considerations being those related to the amenity of the area and its residents.

Impact on amenity (Noise)

This impact is primarily related to the brewing and tap room element. The application has been submitted with a supporting statement that advises that *“the applicant will be operating the proposed micro-brewery to produce specialist gluten-free beer, with the associated Tap Room primarily functioning as a tasting room. The production process will focus on off-site sales, with limited on-site consumption proposed.”*.

The scope of the brewery operation are not entirely clear from the submitted floor plans and those floor plans do not reflect the above statement. The plans indicate that the ground floor of the building will accommodate the brewery element and some customer seating, with the first floor providing additional seating. Unusually the applicant has already secured a Premises Licence for the sale of alcohol which was granted by the council’s Licensing Panel in September 2020. The hours of operation proposed in this planning application are similar to those approved by the Licensing Panel in that the tap room would be open 9 am to 9 pm Monday to Saturday and 10 am to 6 pm on Sundays. The application indicates that the tailors shop would open 9 am to 5 pm Monday to Saturday and 9 am to 2 pm on Sundays.

The majority of the neighbour comments have referred to the potential for noise to be generated by the proposal. These mainly relate to the potential for noise and disturbance arising from the consumption of alcohol on the premises and to the potential to noise arising from deliveries, collections, operation, and outside storage of bottles and other elements required for the brewing process.

The application is accompanied by an Acoustic Assessment to address the issue of noise which advises that the surveyor has *‘previously undertaken monitoring of internal sound levels at similar micro-pubs across the Fylde coast. One such establishment located in Kirkham is double the size of the proposed development although only on one floor. Monitoring here was undertaken before on what resulted in one of the busiest days of the year when the venue was full to capacity. Sound levels ranged from 69-81dB LAeq,30mins over the course of the night. For the purpose of this assessment the higher figure of 81dB(A) will be used to determine the impact on the neighbouring properties. Standard double-glazed windows (6-12-6) provide a 33dB Rw Attenuation. With the rest of the building structure offering a greater level of attenuation. The windows are to remain closed’*.

Given a 15dB attenuation¹ for an open window the sound levels to be experienced by the neighbouring properties will be 21dB(A) internal, well below the night-time recommended figure (by the World Health Organisation) of 30dB(A)

The report also advises on other *‘Typical noisy activities associated with the brewing process include the cleaning of cask’s, involving the washing out of the casks with pressurised water, and the barrelling process, this involves the filling of the casks and sealing them by hammering a plug into the full barrel*. The report advises that this operation will be undertaken inside the premises and concludes that the tasks *‘will not result in any adverse impact on the neighbours’*.

The above report takes account of the noise arising from the operation of the business from inside the building, but does not reference the external activity such as the comings and goings to the premises by customers or the storage and bottling out associated with the brewery and drinking establishment operation. Crucially it also relates to a different type of operation as the Kirkham site is in a main street location whereas this proposal is in a backland location. Moreover, this backland location is entirely surrounded by residential properties.

- The only available access to the property from Queen Street to the west utilises a passageway that is underneath a first floor residential flat with its windows facing immediately to the courtyard area that this use will use for its external customer, storage and refuse needs.
- This courtyard area is between 2m – 4m from habitable windows serving flats in the Homestead elderly accommodation to the south which also has its shared private amenity space similarly close to the rear of the building where it is inevitable that the customer activity within the building will be evident
- There is a dwelling 1m from the rear eastern elevation of the building known as 'The Cottage' on Green Street
- There are first floor flats above town centre premises fronting Market Square immediately to the north of the building
- Any use of Garden Street to the rear would impact on other properties located slightly further from the building itself as the remainder of the Homestead flats and other accommodation in the area abut this road and the access passageway to the building.

Clearly these premises are all located in the town centre area and so their occupiers will be accustomed to, and should expect, higher levels of noise than that experienced by the occupiers of properties in an entirely residential area. However, they should still be protected from undue disturbance and officers cannot accept that this will be the case whatever management and other measures are introduced given the incredibly close relationships that exist at the site.

Whilst the number of customers proposed to be accommodated in the building will be limited by its size, and the proposed trading hours terminating at 9 pm is not unduly late for a town centre use, the number of customers could potentially be increased by standing customers and the opening hours extended to allow for drinking up time, (as permitted by the licence). In addition, the applicant also intends to provide off sales which would further increase the number of visitors to the building. Further the undertaking of the brewery use along with deliveries, staff activity, cleaning, etc would be undertaken at any time and could not reasonably be controlled to reflect this close relationship.

The council's Environmental Protection team have raised concerns with the potential for noise nuisance for occupiers of residential properties associated with the drinking establishment use, but have not offered comments on the brewery element. In respect to the drinking establishment use they require more restrictive opening hours to day-time only on weekdays and no use on Sundays or Bank Holidays, and whilst this could be the subject of a planning condition relating to the drinking establishment use it would not address the impact of the brewery use. They also highlight a number of other matters that would need to be controlled by condition and the number and restrictive nature of these conditions highlights the depth of their concerns over the elements of the business being undertaken in this location that they have reviewed.

Whilst the position of the environmental protection team is respected, it is not clear that they have fully considered the scope of uses and the practicalities of the operation in its location. Customers entering and leaving the application building from Queen Street will do so via the narrow alleyway to the rear of the Caps Dunn premises. Due to the confined nature of the application building and the close proximity to residential properties the inevitable noise and disturbance from customers will be concentrated in the alleyway which is directly alongside the windows of the residential properties and is therefore likely to result in unacceptable levels of noise nuisance for those occupiers of 'The Homestead' and the flat at the rear of 'Caps Dunn' beyond which they should expect to enjoy. The inevitable external storage of brewery items, refuse storage, bottling out operations, etc are not clarified in the submission. With the limited space available within the building, and that this is

seemingly almost entirely devoted to customer seating, it is highly likely that these activities will occur outside and so within very close proximity to the neighbours.

Whilst the Environmental Protection comments focus on whether the noise that is likely to be generated to the degree that it causes a statutory noise nuisance, the planning assessment is a lower test relating to undue harm on residential amenity. In this case it seems likely that the environmental protection officers are satisfied that the use of the premises as a drinking establishment can be adequately controlled to avoid a statutory noise nuisance by the imposition of hours of use conditions, albeit these are significantly more restrictive than the hours sought in the application. However, the planning assessment is that even with these controls the close proximity of the site to the range of residential properties that surround it and the inevitable extensive use of the external space around the building for access and operational purposes by customers to the drinking establishment and the use of the brewery will be such that it is overly harmful to that amenity.

The existing lawful use of the premises as a Class B1 workshop use is by definition a use that can be undertaken in a residential area without causing disturbance. The proposed use as a brewery and drinking establishment is one that creates the potential for greater levels of disturbance and in this case it is considered that the circumstances are such that the disturbance will be at an unacceptable level. This creates a conflict with the requirements of Policy EC5 relating to town centre uses and to Policy GD7 relating to the need for any development to sit comfortably alongside its neighbours to avoid unduly harming their amenity.

Impact on amenity (Odour)

Alongside for the potential for the uses to generate noise impacts the brewery element is a use that can generate odour concerns. The application has also been submitted with an odour assessment. This is in the form of a supporting letter which advises that the method of brewing will be in two fermenting vessels which has a maximum capacity of 800 Litres per week. The brew is boiled in these vessels and steam is vented out via a chimney which is to be fitted with a condenser.

The letter advises that 'The condenser that I will be fitting is a nozzle mounted in the stainless steel chimney that has to be connected to a water supply and then the water is 'atomised' into the steam as it passes through this wall of water. There is no data as to this equipment's effectiveness as the amount of condensing can be dependent upon the amount of water used. My experience is that if the customer uses a lot of water that near 100% can be achieved, but this obviously uses a lot of water, which is expensive to supply a brewery. Normal use will consume 50-150L of water, for the duration of the boil.'

Given the lack of quantifiable data and the lack of a plan to demonstrate the location of the proposed chimney there is a justified and on-going concern that the brewing process has the potential to cause nuisance for residents by way of odour emission.

Having regard to the occupiers of the adjacent residential properties and the close proximity of the application building to these residents it is considered that the proposed use has the potential to result in a loss of amenity by way of odour also. As with noise this is contrary to the requirements of Policy EC5 relating to town centre uses and to Policy GD7 relating to the need for any development to sit comfortably alongside its neighbours to avoid harming their amenity.

Impact on amenity (Privacy)

It has already been explained that the building is close to neighbouring properties on all sides. There are windows in the east and west elevations that allow direct views to the flat over Caps Dunn at a 2m separation and to the Garden Cottage at a 1m separation, with close but angled views available to windows and the communal private amenity space at The Homestead. These proximities obviously bring significant levels of overlooking and limited privacy to the users of these areas from the existing arrangement.

The actual impact of this is reduced to a degree as the current lawful use of the application building as an employment use means that there is some staff and visitors use, but by virtue of its size will be limited in number. The proposal under this application is clearly designed to increase the number of visitors to the premises through the introduction of the tap room operation. This will bring customers into the building at ground and first floor and bring additional use of the external areas if access is to be gained from Green Street.

Each of these will create a significantly greater level of potential for overlooking and privacy loss to the occupiers of these flats and the users of the Homestead garden area. This increased scale of activity is compounded by the proposal to increase the number and size of window openings in the building with new windows inserted at second floor level to serve the tailors element which will look down onto these areas.

This level of overlooking is harmful to a degree that will unacceptably reduce the levels of amenity that the occupiers of these properties can reasonably expect to enjoy and so is also contrary to the requirements of Policy EC5 relating to town centre uses and to Policy GD7 relating to the need for any development to sit comfortably alongside its neighbours to avoid harming their amenity.

Impact on visual amenity and character of the Conservation Area

The building is a three storey, brick built building of a simple and functional design which has previously been used as a workshop for Lytham Embroiders. The building is situated to the rear of the Caps Dunn premises and is accessed through a side door forming part of this property. It is enclosed to the south side by a fence with the residential apartments at 'The Homestead' on the other side, the commercial properties and flats on the Market Square are situated to the north side and commercial properties and flats situated on Green Street to the east side. The building is not listed but is within a conservation area and so forms part of that designated heritage asset which requires appropriate consideration of the physical changes.

Externally the building is proposed to be altered by the bricking up of the existing windows situated on the east side and the insertion of additional windows to the second floor on west facing elevation. The new windows are intended to replicate the design of the existing windows on the first floor with the frames proposed in upvc, as are the existing windows, although these do not appear to have received planning approval. An element of curtain wall glazing is proposed with an aluminium frame.

The original windows would, most likely, have been timber sliding sash windows. The use of this traditional material makes a vital contribution to the appearance and character of period buildings. Whilst some more modern materials can replicate the finer architectural features of timber, the design of the proposed windows proposed in this application include frames and transom bars which if in upvc will result in bulkier frames with a greater percentage of upvc material covering the opening. The use of timber would be preferable or suitably designed frames in aluminium could be

acceptable. However, given the objection to the use for the reasons set out above this has not been raised as an issue with the applicant. The proposed insertion of unsympathetic modern windows in upvc will be detrimental to the overall character and appearance of the original building as they neither conserve, protect or enhance the character and appearance of the host building and the wider conservation area.

Accordingly the proposal is detrimental to the aims of Policies GD7 and ENV5 of the Local Plan and the objectives of the National Planning Policy Framework in particular to paragraph 196 which advises that *'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, security its optimum viable use'*. In this instance the proposed use provides little public benefit to off set the harm to the character of the conservation area arising from the use of inappropriate materials

Highway matters

The application refers to a building in the town centre. Whilst no dedicated parking is provided for the site its visitors and staff will have good access to alternative forms of transport. As a result there are no objections on highway capacity or parking grounds. Having said that it must be noted that both Queen Street and Green Street both have waiting restrictions and a restricted in width and by parked vehicles. There is a resultant likelihood that delivery and other vehicles associated with the proposed use will cause nuisance to residents either parking on the derestricted residential side of Queen Street, or potentially illegally on the pavement or on Green Street. However, this is an impact that is not considered to be of sufficient concern to warrant a reason for refusal given the lawful employment use of the building which means that deliveries are an inherent part of that lawful use.

The lawful Class B1 use of the building will generate movements for operational and delivery purposes and the limited scale of the brewing activity is unlikely to dramatically change them to a point where a severe highway impact could be created. Accordingly, there are no highway related objections to the development.

Other matters

The pavement to the front of 13 Queen Street is Grade II listed which is a *section of pavement formed of multi-coloured pebbles, predominantly dark grey, pink, white and blue, running along part of the east side of Queen Street and considered to be of early-mid-C19 date with later repairs. It is composed of beach pebbles laid thin side up on sand and inlaid with various patterns.* It is listed for its intactness and its national rarity.

Comments have been raised in regards to the proposed impact of the use and the potential for damage. It is considered unlikely that the change of use being proposed would bring about such an increase in footfall to the premises to the extent that the pavement would be damaged. However, vans etc making deliveries and collections and pulling onto the pavement would potentially damage the cobble (as is evidenced elsewhere in Lytham on Bath Street) and measures to prevent vehicles driving onto the pavement would potential be required if the application was to be approved.

Conclusions

The applicant's proposed business would bring a unique facility to the Town Centre which would provide a tailors, brewery and offer additional services in the form of a 'Tap room' where customers can sample the applicant's gluten free beer and such a proposal would revitalise a disused building and enhance the economic benefits of the town centre.

Residents have objected to the scheme however, they should expect a certain level of noise and disturbance living in the town centre and in a part of the town which contains a number of hospitality venues.

Notwithstanding this these venues are predominantly orientated towards Henry Street which is at the front of the apartment block. The siting of the proposed building will result in hospitality venues to the front and rear of 'The Homestead' and with the buildings lack of a street frontage and confined location it is considered that, the use would result in a level of noise and disturbance and loss of privacy for a significant number of older residents which would be detrimental to their amenity.

On balance, the detrimental impact for residents, for the reasons outlined above, outweighs the limited benefits arising from the proposed use for the viability of the town centre.

Consequently the proposal is contrary to the requirements of Policies GD7, EC5 of the Fylde Local Plan to 2032 in respect of its impact on neighbours and Policy ENV5 in regard to the external changes to the building and fails to comply with the requirements of the National Planning Policy Framework, in particular paragraphs 127 and 196.

Recommendation

That Planning Permission be REFUSED for the following reasons:

1. Whilst the application building is located in the defined town centre where retail and some commercial uses are supported, it has an enclosed and confined backland location with residential premises alongside it in the form of the Homestead residential accommodation on Henry Street, Garden Cottage on Green Street, and various flats above premises to Queen Street and Market Square. The occupiers of these will inevitably suffer increased harm to their residential amenity as a consequence of the proposed establishment of a brewery and associated drinking establishment in such close proximity.

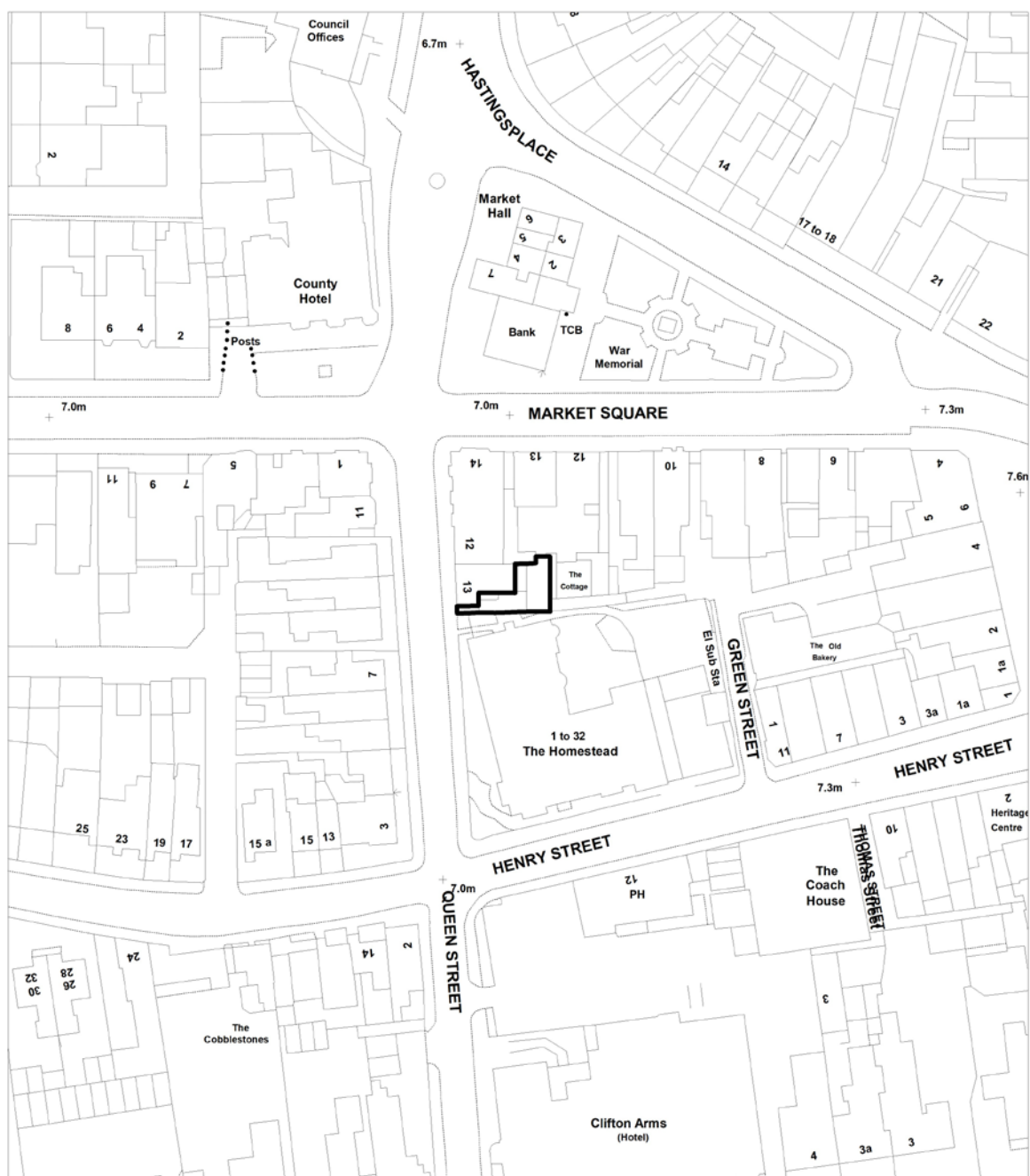
This harm will be generated by the noise from increased level of activity associated with these uses, the noise and odours associated with the brewery, the noise associated with the drinking establishment, and the loss of privacy to some properties from the internal and external use of the building. Collectively and individually these impacts will be unduly harmful to the residential amenity of the occupiers of these properties, and cannot be reasonably mitigated by the imposition of conditions or other measures.


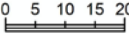
As a consequence the proposal would be contrary to the Policy EC5 of the Fylde Local Plan to 2032 which requires that uses do not create unacceptable disturbances to residents, to criteria c) and h) of Policy GD7 of the Fylde Local Plan to 2032 relating to residential amenity, and the aims of the National Planning Policy Framework in particular paragraphs 127 and 180.

2. The application proposes alterations to the external facade of a building within the Lytham Town Centre Conservation Area, primarily through the introduction of new and replacement windows. These alterations are to be undertaken using uPVC and aluminium and are considered to create a

design and use of materials that are unsympathetic to the building and which will detract from its appearance and the contribution it makes to the Conservation Area.

As these works fails to preserve or enhance the character and appearance of the conservation area they are contrary to that requirement of Policy ENV5, criteria d), f). h) and i) of Policy GD7 of the Fylde Local Plan to 2032 and the aims of the National Planning Policy Framework in particular paragraphs 127, 130, 192 and 196.



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Application No. 5/20/0887	Address 13b Queen Street, Lytham St Annes	Grid Ref. E.3364 : N.4271	Scale 0 5 10 15 20 m 

Item Number: 2

Committee Date: 31 March 2021

Application Reference:	20/0921	Type of Application:	Full Planning Permission
Applicant:	Mr Harrison	Agent :	
Location:	EAST END BOWLING GREEN, LORNE STREET, LYTHAM ST ANNES		
Proposal:	FREE STANDING CANOPY TO THE FRONT ELEVATION OF THE EXISTING CLUB HOUSE		
Ward:	ST JOHNS	Parish:	
Weeks on Hand:	9	Case Officer:	Ruth Thow
Reason for Delay:	Need to determine at Committee		
Click Here for application site on Google Maps		Click here for application on FBC website	

Summary of Recommended Decision: Grant

Summary of Officer Recommendation

The application site is an existing bowling club that is located off Lorne Street in Lytham and is in Fylde Council ownership. The development proposed is a small scale, open sided canopy structure which is intended to provide shelter to members and visitors to the bowling club. It is to be located to the front of the brick pavilion building alongside two similar structures.

The proposal will provide an enhancement to the existing facilities on the site and so is complies with the requirements of Policies EC6, HW2 and HW3. Its scale and design is lightweight and functional and as a consequence of this and its siting alongside the larger brick pavilion will not result in a detriment to the visual or neighbour amenity. Nor will it be likely to increase the visitors numbers to the site to a degree that could cause amenity harm in the area.

Whilst the site is within Flood Zone 3 it benefits from flood defences and this together with the nature of the canopy result in a development that will not be at risk of flooding or result in flooding elsewhere and so complies with Policies CL1 and CL2 of the Fylde Local Plan to 2032 and the aims of the National Planning Policy Framework.

Reason for Reporting to Committee

The application site is part of a bowling green in the ownership of Fylde Borough Council, and under the council's Scheme of Delegation such applications are required to be determined by members of the Planning Committee.

Site Description and Location

The application site is the East End Bowling Green, Lorne Street, Lytham. In particular to the north site of the existing pavilion which forms part of the wider bowling green and recreation ground on the north side of Lorne Street.

The site is within the settlement of Lytham St. Annes as designated on the Fylde Local Plan to 2032.

Details of Proposal

The application proposes the erection of an open sided canopy measuring 9 metres in overall length by 2.3 metres in width which has been designed with a mono pitched roof to an overall height of 2.8 metres, which is designed for use in association with the bowling green.

The structure is proposed to be constructed in plasticol coated metal sheeting and is to provide shelter for club members and visitors.

Whilst the application refers to the structure as 'temporary' there is no time limit put forward for its removal. The canopy is to be fixed into the ground and is not one which is removed from the site after use and so the development is considered to be 'permanent' development.

Relevant Planning History

Application No.	Development	Decision	Date
05/0741	SIX SHELTERED SEATING AREAS	Granted	16/09/2005

Relevant Planning Appeals History

None

Parish/Town Council Observations

Non relevant to this site.

Statutory Consultees and Observations of Other Interested Parties

Lancashire CC Flood Risk Management Team

They confirm that the standing advice should be applied.

Environment Agency

Confirm that they have no objection to this application, but refer to their standing advice on developments that are in Flood Zone 3, and the potential need for an Environmental Permit due to the proximity to Liggard Brook which is designated as main river at that point.

Neighbour Observations

Neighbours notified:	28 January 2021
Site Notice Date:	04 February 2021
Number of Responses	None received

Relevant Planning Policy

Fylde Local Plan to 2032:

GD1	Settlement Boundaries
GD7	Achieving Good Design in Development
EC6	Leisure, Culture and Tourism Development
HW2	Community Facilities
HW3	Protection & Provision of Indoor & Outdoor Sports Facilities
CL1	Flood Alleviation, Water Quality and Water Efficiency
CL2	Surface Water Run-Off and Sustainable Drainage

Other Relevant Policy:

NPPF:	National Planning Policy Framework
NPPG:	National Planning Practice Guidance

Environmental Impact Assessment

This development does not fall within Schedule 1 or 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017.

Comment and Analysis

Policy Background

Paragraph 38 (6) of the Planning and Compulsory Purchase Act 2004 indicates that development proposals should be determined in accordance with the development plan unless material considerations indicate otherwise. The Fylde Local Plan to 2032 is the up-to-date development plan for Fylde and so the policies of the plan can be afforded full weight in decisions.

Policy GD1 refers to 'Settlement Boundaries' and the site is within the defined settlement boundary of Lytham St Annes where development is encouraged by the Plan subject to compliance with all relevant local plan policies.

Policy GD7 - 'Achieving Good Design in Development' - Policy GD7 sets out an expectation that all development will achieve a high standard of design, taking account of the character and appearance of the local area, and provides a detailed list of considerations. This includes but is not limited to ensuring that development meets the following requirements:

- *c) ensuring that amenity will not be adversely affected by neighbouring uses, both existing and proposed”;*
- *d) ensuring the siting, layout, massing, scale, design, materials, architectural character, proportion, building to plot ratio and landscaping of the proposed development, relate well to the surrounding context”;*
- *f) conserving and enhancing the built and historic environment”;*
- *h) being sympathetic to surrounding land uses and occupiers, and avoiding demonstrable harm to the visual amenities of the local area”;*
- *“(makes) a positive contribution to the character and local distinctiveness of the area the high-quality new design that responds to context,” and;*
- *taking the opportunity to make a positive contribution to the character and local distinctiveness of the area through high quality new design that responds to its context and*

using sustainable natural resources where appropriate.”

Policy EC6 refers to 'Leisure, Culture and Tourism'. Criterion f) *Protecting tourism, cultural, heritage and leisure assets, such as golf courses and the seaside resort facilities, with a view to helping them to adapt to new challenges by the use of development briefs*'.

Policy HW2 seeks to protect community facilities and Policy HW3 to protecting indoor and outdoor sports facilities and requires in all cases: d) *The proposal would not result in the loss of an area important for its amenity or contribution to the character of the area in general*

Policies CL1 and CL2 refers to flood alleviation and surface water run off.

Principle of the development

The application site is located within the defined settlement and forms part of an established outdoor bowls facility. The development is clearly designed to enhance the operation of that facility and so is acceptable in principle subject to compliance with other policies of the plan. The NPPF supports open space and recreation, particularly at paragraph 96.

Impact on visual amenity

The development proposed in this instance is a lightweight, open sided canopy type frame to provide a shelter at the bowling club.

It is proposed to site the structure to the north side of the existing pavilion and so views of the canopy will, in the main, be screened by this building and the existing mature vegetation when looking from Lorne Street. Some views may be obtained of the structure from the access path to the club on the east side however, given the open design of the canopy and its scale these views will not represent a detriment to the visual amenity of the area.

Accordingly, the development is in accordance with the requirements of Policy GD7 of the local plan.

Residential amenity impact

The proposed canopy will be separated from the dwelling to the east side at 6 Byron Avenue by 33.5 metres and by the nearest dwelling to the west side at 85 Albert Street by 84.5 metres. Those properties to the south are no. 25 Wellington Road and no. 5 Lorne Street, these are located 45 and 50 metres respectively from the proposed structure.

Given these separation distances, the intervening building and landscaping the proposal will not result in a detriment for the occupiers of these properties by way of loss of light or privacy. The facility will improve the facilities available to spectators at the site, but is unlikely to dramatically increase their number so parking, disturbance or 'crowd noise' issues are unlikely to be a factor of concern.

Accordingly, the proposal is acceptable having regards to the requirements of Policy GD7 of the Local Plan.

Flooding and surface water

The application site is adjacent to Liggard Brook and is within Flood Zone 3.

Paragraph 155 of the NPPF advises *“Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.”*

Policy CL1 of the Fylde Local Plan to 2032 advises that *'Planning decisions should follow the sequential, risk-based approach to the location development, as required by the Framework. All new development is required to minimise flood risk impacts on the environment, retain water quality and water efficiency, and mitigate against the likely effects of climate change on present and future generations'.....*

Policy CL2 requires that *'Development must utilise Sustainable Drainage Systems (SuDs) whenever practical, and reduce discharge to greenfield run-off rates wherever feasible'.*

The bowling green site is located in an area which is in Flood Risk Zone 3 which benefits from flood defences, as shown on the Environment Agency maps and therefore is at a low risk of flood from rivers or the sea. Although areas protected by flood alleviation schemes may be at a low risk of flooding, if these failed, the consequences could be high and the NPPF still requires an evaluation of this risk as part of the FRA for any development planned in a defended area. The applicants have submitted a site specific Flood Risk Assessment, in accordance with the requirements of the NPPF.

This confirms that the proposed development is an open canopy structure with a low level, perforated timber floor to provide a covered viewing area to the bowling green. The nature of the development means that in the event of a flood the structure would not be occupied accommodation. As the proposed location for the new canopy is already hardstanding (tarmac) any possible flooding of the site would result in surface water gradually discharging into Liggard Brook which runs along the site boundary. As a consequence of the open design of the canopy and the hardsurfacing surface that exists the addition of the proposed structure will not affect the accumulation and discharge of flood water from its current state.

This development can therefore certainly be classified as less vulnerable and a water compatible development in accordance with the NPPF classifications. Application of the Sequential Test in NPPF concludes that the development is appropriate because it is classed as low risk, or less vulnerable, even without flood defences. However this area does have the benefit of flood defence and as such is considered acceptable having regard to the requirements of local plan policies and the requirements of the NPPF.

The two drainage consultees have referred to their standing advice on this matter and so this assessment has been undertaken using that advice and concludes that there are no flood risk implications from the development. The EA highlight the possible need to comply with the Environmental Permitting regulations due to the proximity to Liggard Brook and this has been brought to the applicant's attention and will be added as an informative to any decision.

Conclusions

The development proposed is a small scale, open sided canopy structure which is intended to provide shelter to members and visitors to the bowling club.

The proposal will provide an enhancement to the existing facilities on the site and so is complies with the requirements of Policies EC6, HW2 and HW3. Its scale and design is lightweight and

functional and as a consequence of this and its siting will not result in a detriment to the visual or neighbour amenity.

Whilst the site is within Flood Zone 3 it benefits from flood defences and this together with the nature of the canopy result in a development that will not be at risk of flooding or result in flooding elsewhere and so complies with Policies CL1 and CL2 of the Fylde Local Plan to 2032 and the aims of the National Planning Policy Framework.

Recommendation

That Planning Permission be GRANTED subject to the following conditions:

1. The development must be begun not later than the expiration of three years beginning with the date of this permission.

Reason: To comply with the requirements of section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. This permission relates to the following plans:

- Location Plan - Drawing no. UK Planning Maps produced on 04 December 2020
- Proposed floor Plans - Drawing no.SK1A
- Proposed Elevations - Drawing no. SK2B


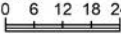
Except as provided for by other conditions to this permission, the development shall be carried out in complete accordance with the approved drawings.

Reason: For the avoidance of doubt and to ensure that the development is carried out in accordance with the approved plans in the interests of proper planning in accordance with the policies contained within the Fylde Local Plan to 2032 and National Planning Policy Framework

3. Unless alternative details have first been submitted to and approved in writing by the Local Planning Authority, the development shall be constructed in accordance with the materials detailed on the application form and / or approved plans listed in condition 2 to this planning permission.

Reason: To ensure use of appropriate materials which are sympathetic to the character of surrounding buildings and the street scene in the interests of visual amenity in accordance with Policy GD7 of the Fylde Local Plan to 2032.



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Application No. 5/20/0921	Address East End Bowling Green, Lorne Street, Lytham St Annes	Grid Ref. E.3375 : N.4275	Scale 0 6 12 18 24 m 

Item Number: 3

Committee Date: 31 March 2021

Application Reference:	21/0059	Type of Application:	Variation of Condition
Applicant:	Mr S Tickle	Agent :	
Location:	FOUNDRY YARD, KIRKHAM ROAD, TREALES ROSEACRE AND WHARLES, PRESTON, PR4 3SD		
Proposal:	MINOR MATERIAL AMENDMENT TO PLANNING PERMISSION 17/0471 FOR ALTERATIONS TO DWELLING ON PLOT 12 INCLUDING: 1) REMOVAL OF REAR DORMER WINDOW; 2) ADDITION OF FRONT PORCH; AND 3) ADDITION OF SINGLE STOREY REAR EXTENSION		
Ward:	NEWTON WITH TREALES	Parish:	Treales, Roseacre and Wharles
Weeks on Hand:	9	Case Officer:	Jennifer Simpson
Reason for Delay:	Need to determine at Committee		
Click Here for application site on Google Maps		Click here for application on FBC website	

Summary of Recommended Decision: Grant

Summary of Officer Recommendation

The application site relates to a detached dwelling that is currently under construction on a small housing development on the edge of the built-up village area of Treales. The wider site has planning permission for 12 dwellings, with 8 of these constructed and mainly occupied. The application site forms part of a separate planning permission for the remaining 4 plots which has been implemented with the construction of their foundations but has not progressed beyond that for a couple of years. At the time of the drafting of this report work on this property (which forms plot 12 of the wider development) was advancing.

In addition to the residential properties on this development, which are to the east and west of it, there is planning permission for further, as yet unimplemented, residential development to the north, and open agricultural land to the south. As is the case for the whole of the village the application site forms part of the Countryside as designated by Policy GD4.

The application is submitted as a minor material amendment to the approved planning permission for the four dwellings but relates to one of these only which is Plot 12 of the whole development. The changes proposed to this plot are the addition of a porch, revision of window to the side element, and inclusion of a single storey element to the rear. The Parish Council have expressed objection to the rear extension element due to the implications for a protected tree that stands in the rear garden of the property.

The tree in question is a Sycamore that is protected by TPO 1989 No. 12 and has been the subject of a 'tree works' application under the TPO legislation. The tree has been assessed

on site by the council's tree officer who confirms that there are several safety and health issues with the tree which means it has limited life expectancy and that it presents an immediate potential safety issue. The council's Tree Officer has therefore supported the application to remove the tree and replace it with a further Sycamore in the same location. This tree therefore cannot constitute a justifiable reason for refusing the application to alter the property.

The scope of the proposed alterations to the property and their resultant alterations to its overall design do not raise any planning concerns and will accord with the requirements of Policy GD4 and GD7. It is therefore recommended that permission be granted subject to conditions, which will include a requirement to plant a replacement tree as a 'belt and braces' approach to the decision on the tree works application.

Reason for Reporting to Committee

The officer recommendation for approval conflicts with the views of the Parish Council and so it is necessary to present the application to the Planning Committee for a decision.

Site Description and Location

The application site is Foundry Yard, Kirkham Road, Kirkham, which is now known as 'Foundry Court'. In particular this application relates to a dwelling located on 'plot 12' previously approved under planning application ref. 17/0471, which sought permission for the erection of 4 detached residential dwellings. The site is located to the rear of Smithy Farm and to the south side of Kirkham Road.

The approved dwelling has not yet been fully constructed and it is noted that there is a protected tree within the curtilage of the plot that is part of the protected group G3 of TPO 1989 No. 12. Matters relating to the tree will be discussed in more detail within the analysis section of the report.

There is no designated settlement in Treales and so the application site is designated as Countryside Area on the Fylde Local Plan to 2032.

Details of Proposal

This application seeks permission for a minor material amendment to the permission previously granted on this site, specifically in relation to the dwelling on 'plot 12'. The alterations involve:

- Removal of a rear dormer window serving a first floor bathroom above the proposed garage. The submitted plans demonstrate that a Velux style roof light would be installed to replace the dormer window.
- The construction of a front porch canopy feature. The canopy would surround the entrance door and would extend 1.05m beyond the main frontage of the dwelling. It would have a pitched roof which would measure approximately 2.5m to the eaves and have a maximum height of 3.2m
- The addition of a single storey rear extension to form a sunroom. The additional ground floor extension would measure 3m in depth and 3.6m wide. It would have a sloping roof which would measure approximately 2.5m to the eaves and it would have a maximum height of 3.6m. The sunroom would be constructed in materials to match the proposed dwelling.

It should be noted that the proposed alterations could be carried out under permitted development, following completion and occupancy of the dwelling.

Relevant Planning History

Application No.	Development	Decision	Date
19/0783	APPLICATION TO VARY CONDITIONS 2 AND 8 OF PLANNING PERMISSION 17/0471 TO ALLOW: 1) THE SUBSTITUTION OF HOUSE TYPES ON PLOTS 9, 10 AND 11; AND 2) THE USE OF FORMER GARAGE FLOORSPACE FOR PLOTS 9, 10 AND 11 AS LIVING ACCOMMODATION	Granted	20/12/2019
18/0035	APPLICATION TO DISCHARGE DETAILS ASSOCIATED WITH CONDITIONS ON PLANNING PERMISSION 17/0471 CONDITION 3 - MATERIALS, CONDITIONS 4 AND 5 - DRAINAGE CONDITION 6 - LEVELS, CONDITION 7 - CONSTRUCTION MANAGEMENT PLAN, CONDITION 11 - BOUNDARY TREATMENT, CONDITION 12 - LANDSCAPING	Granted	04/04/2018
17/0634	APPLICATION FOR NON MATERIAL AMENDMENT TO RESERVED MATTERS APPROVAL 16/0217 - AMENDMENT TO HOUSE TYPE DESIGN OF PLOTS 4-8 INCLUSIVE.	Granted	13/09/2017
17/0640	APPLICATION TO DISCHARGE DETAILS ASSOCIATED WITH CONDITIONS ON RESERVED MATTERS APPROVAL 16/0217 FOR CONDITION 4 - BOUNDARY TREATMENT AND CONDITION 6 - MATERIALS	Advice Issued	19/12/2017
17/0579	APPLICATION FOR NON-MATERIAL AMENDMENT TO PLANNING PERMISSION 15/0450 TO HOUSE TYPE DESIGN FOR PLOTS 4-8 INCLUSIVE FROM APPROVED MATTERS APPLICATION 16/2017 AS APPROVED.	Withdrawn by Applicant	27/07/2017
17/0471	ERECTION OF 4 RESIDENTIAL DWELLINGS	Granted	19/10/2017
16/0217	APPLICATION FOR APPROVAL OF RESERVED MATTERS OF APPEARANCE, LANDSCAPING, LAYOUT AND SCALE PURSUANT TO OUTLINE PLANNING PERMISSION 15/0450 FOR DEVELOPMENT OF 7 DWELLINGS	Granted	05/10/2016
15/0450	OUTLINE APPLICATION FOR DEMOLITION OF EXISTING WORKSHOP BUILDINGS AND ERECTION OF UP TO 8 DWELLINGS (USE CLASS C3) INCLUDING ASSOCIATED WORKS (ACCESS APPLIED FOR WITH OTHER MATTERS RESERVED)	Granted	04/09/2015
12/0090	DEMOLITION OF EXISTING WORKSHOPS AND CONSTRUCTION OF 3 DETACHED DWELLINGS AND ACCESS ROAD.	Granted	23/05/2013
10/0261	PROPOSED ERECTION OF 8 TWO STOREY B1 WORKSHOP / OFFICE UNITS AND 3 DETACHED TWO STOREY HOUSES TOGETHER WITH ASSOCIATED INTERNAL ACCESS ROADS AND PARKING AREAS.	Granted	23/05/2013

Relevant Planning Appeals History

None

Parish/Town Council Observations

Treales, Roseacre & Wharles Parish Council were notified on 26 January 2021. The Parish Council object to the application and the comments can be summarised as followed:

- The trees to the north east and along the eastern side of plot 12 are protected under Tree Preservation Order 1989 12 (Treales) and are designated as group G3. Following a site inspection and discussions with Council Officers it is apparent that the original TPO Order is not actually reflected by the trees now on the ground.
- There has been further reinforcing landscaping established on the eastern boundary as part of the earlier development of the site. These features are not represented on the site plan of this application.
- Reference is made to a nearby proposed development site (application ref: 20/0324) and includes comments raised by FBC's Tree Officer relating to the impact on protected trees. There is concern that the Council will be pressured into giving consent to having these trees removed because of the presumed increased risk, given plot 12 is within an unsafe distance from the protected tree.
- The single storey rear extension would compromise the sustainability of the tree at the north east boundary of this plot and would create pressure on the owners of plot 12 to remove this significant tree, in conflict with Policy ENV1.
- The Parish Council would be minded to support the application if the proposed rear extension was relocated to a distance that was not in conflict with the protected trees and existing landscaping and that Fylde Borough Council imposed a condition for the conservation and maintenance of the trees and landscaping at the north east and east boundaries of plot 12 in accordance with ENV1 of the FLP to 2032.
- The Parish Council support the proposal to remove the rear dormer window together with the addition of the front porch.
- It is noted that the submitted drawings appear not to reflect the orientation and location of the boundary fence and wall on the eastern side of the plot. The boundary fence/wall is closer to the south eastern corner of the dwelling.

Statutory Consultees and Observations of Other Interested Parties

N/A

Neighbour Observations

Neighbours notified:	26 January 2021
Site Notice Date:	02 February 2021
Number of Responses	None

Relevant Planning Policy

Fylde Local Plan to 2032:

GD4	Development in the Countryside
GD7	Achieving Good Design in Development

Other Relevant Policy:

NPPF:	National Planning Policy Framework
NPPG:	National Planning Practice Guidance
JHE	Joint House Extensions SPD

Site Constraints

Tree Preservation Order

Environmental Impact Assessment

This development does not fall within Schedule 1 or 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017.

Comment and Analysis

The application seeks a variation of condition no. 2 (approved plans) on planning permission 17/0471. The variation relates to minor alterations to a previously approved dwelling on 'plot 12' of the approved scheme which is a full planning permission for the erection of 4 dwellings forming part of the 12 overall that have permission on this development and which are the only properties yet to be completed. The amendments seek to remove a rear dormer window and also includes the addition of a front porch canopy feature and add a rear sunroom.

This application has been submitted to amend the above condition under Section 73 of the Town and Country Planning Act 1990. The effect of an application under this section is the issue of a new planning permission, sitting alongside the original permission, which remains intact and unamended.

Principle of development

The principle of the development of this site for 4 dwellings has already been established by the granting of the planning permission in 2017 under application no. 17/0471, and the implementation of that permission through the construction of the foundations to these dwellings.

Given that the issues in respect of the erection of the dwellings on the site has previously been examined and agreed, they will not be revisited in this report. Therefore, the issues for consideration in this application relate to the scale of the dwelling, visual amenity, impact on neighbours and issues relating to the protected tree situated to the rear of the plot.

Scale of development within the Countryside

Policy H7 imposes strict restrictions on the scale and design of extensions (and replacement dwellings) compared to the original dwelling on the site with the aim of preserving the stock of smaller rural dwellings in the borough. The justification for this Policy explains that the evidence behind the preparation of the Fylde Local Plan to 2032 found that not only have many of these smaller rural dwellings been lost in recent years, but this is a type of property for which there is a strong need. The justification also highlights that the establishment of large dwellings in rural areas can often be overbearing on the landscape and can dominate it with the result it gains a suburban character. Policy H7 takes a two pronged approach to assessing applications such as this, by requiring firstly that the extensions are no more than a 33% increase in the footprint of the property compared to its original scale (criterion a)), and secondly that the appearance of the extended home respects the character of the original building and the surrounding rural area

(criterion b)).

In this instance the proposed amendments would include the addition of a single storey rear extension which would increase the overall footprint of the proposed dwelling. However, the additional sunroom would be minor in scale and would sit comfortably within the garden area without breaching the quantitative scale restriction, or altering the character of the dwelling. In addition, the extension would be constructed in materials to match those of the proposed dwelling. Therefore, it is considered that the single storey rear extension would not result in harm to the character or appearance of the proposed dwelling itself or impact upon this particular countryside location.

As the above, the extension would be designed in a manner that is appropriate for the approved dwelling and its surroundings. Accordingly, the proposal complies with the requirements of Policy H7 of the Fylde Local Plan to 2032. It is also the case that each element of the work could be constructed as permitted development as the property would benefit from those rights once it is constructed and occupied. This application is therefore only required as the developer is intending to actually construct the property to include these changes which means that they are not permitted development as those rights are only enacted on first occupation.

Impact on visual amenity

The submitted drawings demonstrate the changes that are proposed which include the removal of a rear dormer, the addition of a front porch canopy feature and a single storey rear extension.

The proposals are modest and do not significantly alter the external appearance of the approved dwelling. The proposed extension would be to the rear of the dwelling and would be largely screened from public vantage points by the dwelling itself and the approved boundary treatment. As such, it is considered that the scheme is acceptable and appropriate for its setting. The loss of the dormer and the addition of the porch are sensitively designed to retain the rural aspect of the dwelling and do not conflict with the design approach on the development as a whole.

Therefore, the proposal would not be detrimental to the character and appearance of the countryside in this area. Accordingly, the proposal complies with the requirements of Policy GD7 in this regard.

Impact on residential amenity

Policy GD7 criterion requires that *'amenity will not be adversely affected by neighbouring uses, both existing and proposed.'*

The dwelling on 'plot 12' is situated to the end (east) of the row of the 4 approved detached dwellings. The proposed rear extension would be located to the east side of the rear elevation of the dwelling. It would be distanced approximately 10m from the nearest shared boundary with 'plot 11'. It is considered that the extended part of the proposed dwelling would be sufficiently distanced insofar it would not adversely impact upon the residential amenities of any future occupiers of 'plot 11'.

There is an unimplemented development to the rear of the property under reference 19/0300 which features the rear of a bungalow garden running across the rear of this application property. The proposed changes make no impact on the amenity available in that dwelling when built.

Landscape planting and fencing is also proposed to separate individual plots from each other and the changes proposed in this application will not impact on occupier amenity as a consequence of the changes proposed in this application.

As such the revised development accords with the requirements of Policy GD7 in regard to neighbour amenity.

Tree Implications

There is a protected tree which stands to the rear of the plot, that is a Sycamore that is protected individually and stands at the end of a group of trees protected under TPO 1989 No. 12. The development as originally designed respects the position of this tree, but the single storey extension to the rear of the dwelling that is now proposed will encroach into its root protection area and so the views of the council's Arboricultural officer have been sought.

He was aware of the circumstances at the site as he had received a tree works application (ref : 21/0147) for the removal of the tree on arboricultural grounds. This application refers to the applicant having sought professional advice over the condition of the tree which explained it had health issues which meant it was a health and safety risk. The council's tree officer has visited the site to consider that application and agrees with that assessment. He believes that the tree suffers from:

- Significant number of necrotic limbs within the canopy
- Poor historic pruning and limb failure
- A small cavity about 3m up the main stem
- Large basal flare root that has been crudely cut, probably done when the boundary wall was installed
- Large amount of epicormic growth at the base of the tree (reaction growth from the tree needing to grow leaves to produce energy due to lack of canopy foliage)

The arboricultural officer has advised that due to the age and condition of the tree it is highly unlikely to recover, and it is trying to hang on to life by sending out the reactive growth. He believes it is fighting a losing battle, as it will take a significant amount of energy to counteract the extensive issues it already has. This leaves the tree vulnerable to pest and disease that will take advantage of the situation, and at some point large limbs will fail and potentially hit targets that are within striking distance. Due to the number of necrotic limbs he feels this could happen at any stage and so believes that the tree should be felled and replaced at this point so that effective replacement can be secured.

It is noted that the Parish Council express objection to the loss of the tree, but given that the council's tree officer advises that it has a limited life expectancy even without a sudden failure it is logical that its removal is permitted at this stage. That removal is subject to a suitable replacement being planted, with that secured both through a replanting notice to the tree works application and a condition to this planning permission. This will lead to a short term reduction in the tree cover in the village, but will lead to longer term benefits as a healthy tree will result and will obviously have a longer life expectancy than the current arrangement. It would also improve the position over the 'do nothing' option as if the tree were to fail then it could be removed under the 'dead, dying or dangerous' exception in the tree protection legislation and so there would be no obligation for the land owner to plant a replacement.

Conclusions

This application seeks approval for a variation of condition no 2 (approved plans) imposed on application 17/0471 which granted permission for the erection of 4 new dwellings.

The proposed amendments refer to minor external alterations to the approved dwelling on 'plot 12' and are each of a design and scale that could be constructed using the 'permitted development rights' that will exist when the property has been occupied. The changes are acceptable and will not result in any harm to the visual amenity or character of the area and will not harm the amenity of neighbours or other planning interest. Accordingly, the proposal complies with PolicyH2 and Policy GD7 of the Fylde Local Plan to 2032. With a s73 application it is necessary to list the conditions from the original permission that remain relevant to this decision, so that will be the case here with an additional condition relating to the replacement tree.

Recommendation

That Planning Permission be GRANTED subject to the following conditions:

1. This permission relates to the following plans:
 - Location Plan - ADS Design Job 1350 drawing 1 rev c
 - Proposed site layout - ADS Design Job 1388 drawing 51 rev o
 - Proposed floor plans and elevations - ADS Design Job 1388 drawing 57 rev e

Except as provided for by other conditions to this permission, the development shall be carried out in complete accordance with the approved drawings.

Reason: For the avoidance of doubt and to ensure that the development is carried out in accordance with the approved plans in the interests of proper planning in accordance with the policies contained within the Fylde Local Plan to 2032 and National Planning Policy Framework

2. The dwelling hereby approved on Plot 12 shall be constructed in Hampton Rural Blend' brick with 'Marshalls PM86' colour mortar, Lakeland Slate Devenish roof covering, together with the use of Parex 'Off white G20' render as approved under Discharge of Conditions application no. 18/0035, relating to the approval of the finished materials of the development as required by conditions to planning permission 17/0471 relating to the rest of the development.

Reason: To ensure a satisfactory and consistent finished appearance to the dwelling that reflects the character and appearance of the remainder of the Foundry court development in accordance with Policy GD7 of the Fylde Local Plan to 2032 and the aims of the National Planning Policy Framework.

3. The surface water drainage of the site shall be carried out in accordance with that indicated on drawing no. C-50 REV. A and approved under Discharge of Conditions application no. 18/0035, relating to the approval of the surface water drainage of the development as required by conditions to planning permission 17/0471 relating to the rest of the development.

Reason: To ensure a satisfactory means of drainage is provided and that there is no increase in the volumes of surface water discharged from the site. In accordance with Policies GD7, CL1 and CL2 of the Fylde Local Plan to 2032 and the aims of the National Planning Policy Framework.

4. The foul water drainage of the site shall be carried out in accordance with that indicated on drawing no. C-50 REV. A and approved under Discharge of Conditions application no. 18/0035 relating to the approval of the foul water drainage of the development as required by conditions to planning permission 17/0471 relating to the rest of the development. .

Reason: To ensure a satisfactory means of drainage is provided and that there is no increase in the volumes of surface water discharged from the site. In accordance with Policies GD7, CL1 and CL2 of the Fylde Local Plan to 2032 and the aims of the National Planning Policy Framework.

5. The development hereby approved shall be carried out in accordance with the Construction Management Plan approved under application no. 18/0035 (Discharge of Conditions application).

Reason: To ensure that the development is implemented whilst minimising the opportunities for safety and nuisance issues to be caused to neighbouring dwellings and the wider highway network in accordance with Policy GD7 of the Fylde Local Plan to 2032.

6. Prior to the first occupation of the dwelling hereby approved the northern (rear) and western (side) boundary of the site edged red shall be secured through the erection of a 1.8m high timber fence, with the southern (front) boundary remaining open, and the side (eastern) boundary retaining the existing brick wall with fence panel detail to the extent and location shown on plan '20-0059 Wall 1' only. These respective boundary treatments shall be retained in place at all times thereafter.

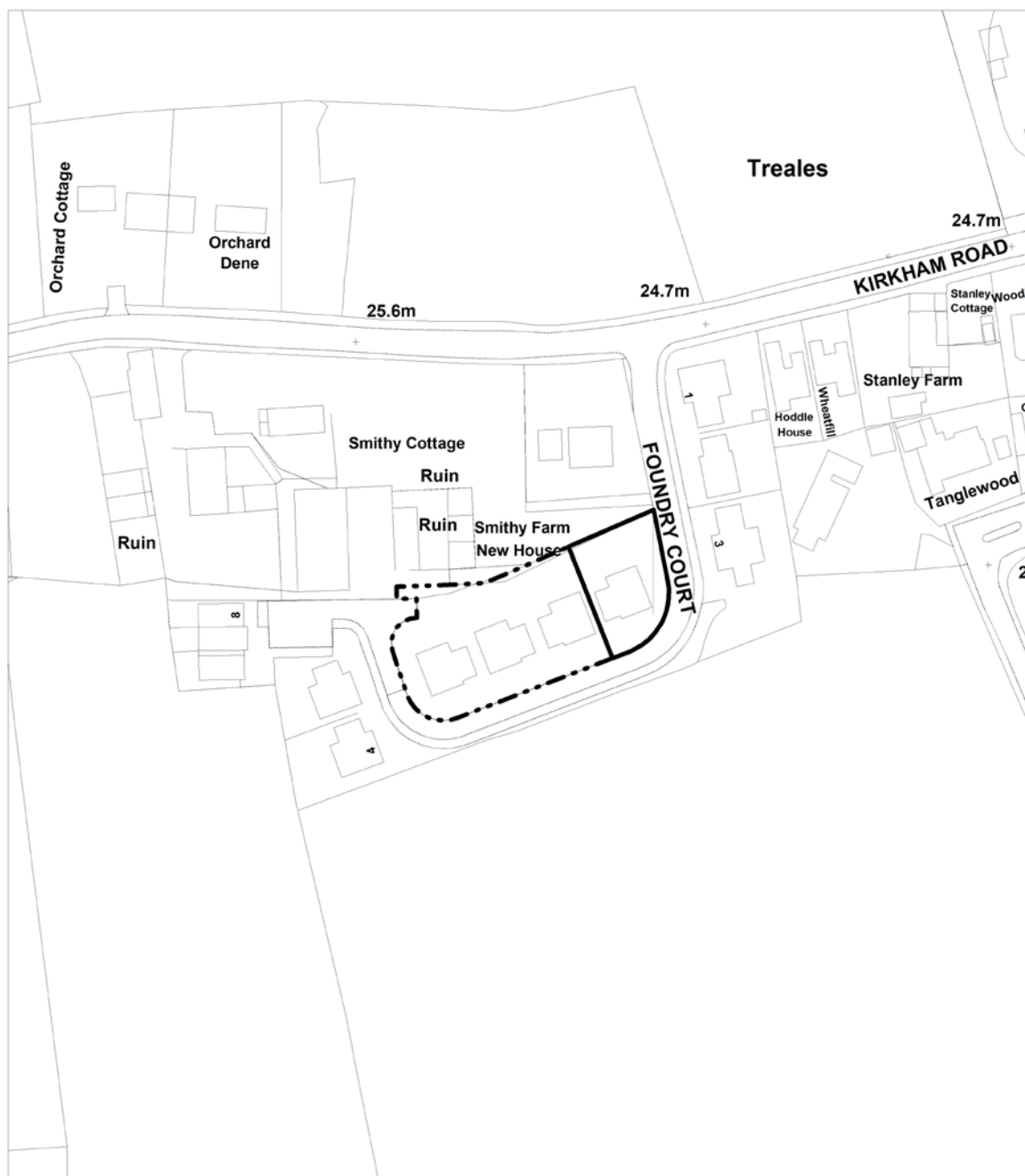
Reason: To provide security to the property without compromising the overall character and appearance of the Foundry Court development and to provide consistent approach to boundary treatments across the site in accordance with Policy GD7 of the Fylde Local Plan to 2032 and the aims of the National Planning Policy Framework.


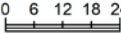
7. No later than the conclusion of the first planting season following the first occupation of the dwelling hereby approved on Plot 12, the following tree planting works shall have been undertaken:

- a replacement Sycamore (*Acer pseudoplatanus*) of a heave standard with a girth of 12-14 cm and a height of at least 3.5m- 4m which shall be planted in a similar location to replace the tree protected under TPO 1989 No. 5 within the site
- the 5 trees indicated for the plot on drawing ADS001 as approved under condition discharge application 18/0035 to planning permission 17/0471 which are of the species and size listed in T17 to that drawing

Any trees, hedges or shrubs removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced by trees, hedges or shrubs of similar size and species to those originally required to be planted.

Reason: To ensure appropriate landscaping of the site in the interests of visual amenity, to enhance the character of the street scene and to provide biodiversity enhancements in accordance with the requirements of Fylde Local Plan to 2032 policies GD7, ENV1 and ENV2, and the National Planning Policy Framework.



		(c) Crown Copyright and database right (2021). Ordnance Survey (100006084).	
Application No. 5/21/0059	Address Foundry Yard, Kirkham Road, Treales	Grid Ref. E.3440 : N.4328	Scale 0 6 12 18 24 m 

Item Number: 4

Committee Date: 31 March 2021

Application Reference: 21/0103		Type of Application: Full Planning Permission	
Applicant:	Fairhaven Cafe Ltd	Agent :	Warwick Consultancy
Location:	CAFE, FAIRHAVEN LAKE AND GARDENS, INNER PROMENADE, LYTHAM ST ANNES, FY8 1BD		
Proposal:	REMOVAL OF EXISTING RAISED PLANTING BED AND ERECTION OF FREESTANDING, OPEN-SIDED CANOPY FOR USE AS OUTDOOR DINING AREA IN CONNECTION WITH CAFE, INCLUDING ASSOCIATED HARD AND SOFT LANDSCAPING WORKS		
Ward:	FAIRHAVEN	Parish:	
Weeks on Hand:	8	Case Officer:	Matthew Taylor
Reason for Delay:	Not applicable		
Click Here for application site on Google Maps		Click here for application on FBC website	

Summary of Recommended Decision: Grant

Summary of Officer Recommendation

The application relates to an irregularly-shaped parcel of land extending to *circa* 227 square metres to the front (northeast) of the lakeside café at Fairhaven Lake and Gardens. The café – an early 20th century building – is presently undergoing a programme of extension and refurbishment in connection with the ongoing Heritage Lottery Fund works at the lake. This application involves the area of land immediately to the front of the café, part of which is currently occupied by a raised, lozenge-shaped planting bed, with the remainder comprising hardstanding with a tarmac surface.

The proposal involves the removal of the existing raised planting bed and subsequent erection of a freestanding, open-sided canopy occupying a rectangular footprint within the area of hardstanding to the northeast of the café building. The canopy would be used as an outdoor dining area in connection with the café and would comprise a hip-roofed structure supported by a collection of steel posts overlaid in timber. The plinth of the canopy would be enclosed by a timber-spindled balustrade, with decorative soffit-level boarding spanning between the supporting posts. The scheme also includes the introduction of a block-paved pathway in a herringbone pattern between the front entrance of the café and the opening on the west side of the canopy, along with a 2m wide L-shaped planting buffer wrapping round the south and east of the canopy.

The size, siting, materials and design of the canopy, together with the hard and soft landscaping works associated with it, would ensure a scale, massing and style of development which is sympathetic to the character of surrounding buildings and their significance as non-designated heritage assets. The canopy would assimilate comfortably with its surroundings in the wider parkland and would contribute to the enhancement of its immediate setting through the proposed hard and soft landscaping works. The use of the canopy as an outdoor seating area in connection with the café would also bring economic benefits to the site by extending the provision and offer of tourism and leisure facilities which

contribute to the vibrancy of Fairhaven Lake without the loss of any existing recreational open space.

The canopy would occupy a lakeside position within the heart of the parkland a significant distance away from neighbouring residential uses and, by virtue of its relationship with surrounding buildings and uses, would have no adverse effects on the amenity of neighbouring occupiers by reason of scale, noise, siting or appearance. There are no other technical issues concerning access, ecology, flood risk or impacts of utility apparatus associated with the proposed development which would give rise to any significant and demonstratable harm that would outweigh the scheme's benefits. Therefore, the proposal is considered to represent sustainable development in accordance with the provisions of the Fylde Local Plan to 2032 and the National Planning Policy Framework.

Reason for Reporting to Committee

The land upon which the site is located is owned by the Council and so the application must be referred to the Planning Committee for determination in accordance with the Council's Scheme of Delegation.

Site Description and Location

The application concerns the site of Fairhaven Lake and Gardens to the south of Inner Promenade, Lytham St Annes. A programme of public realm enhancement and building refurbishment works have been permitted at Fairhaven Lake as part of a Heritage Lottery Fund (HLF) grant. These works were granted planning permission pursuant to application reference 18/0500 and are ongoing at the site.

This application relates to an irregularly-shaped, *circa* 227 square metre area of land located to the front and northeast of the lakeside café. The café – an early 20th century building – is one of three lakeside buildings presently undergoing a programme of extension and refurbishment in connection with the ongoing HLF works. Specifically, this application includes the area of land immediately to the east of the café which is currently occupied by a raised planting bed enclosed by a stone retaining wall and surrounded by hardstanding in tarmac. The site sits between pitch-roofed, single storey buildings providing an operational boathouse (to the northeast) and public conveniences (to the northwest), and is backed by a raised planting border along its north side.

Two bowling greens beyond the planting border to the north of the site separate it from the highway of Inner Promenade which occupies an elevated position retained by a steeply sloping banking to the perimeter of the parkland. The closest dwellings on Inner Promenade are located approximately 120m to the north of the site. The land is designated as 'Existing Open Space' on the Fylde Local Plan to 2032 Policies Map and falls within flood zone 1 on the Flood Map for Planning.

Details of Proposal

The application seeks permission for the removal of the existing lozenge-shaped raised planting bed within the forecourt to the front of the café and the subsequent erection of a freestanding, open-sided canopy upon the hardstanding area to the northeast of the café building.

The canopy would occupy a rectangular footprint measuring 8m in length and 5m in width, and would be topped by a hipped roof reaching 2.4m to the eaves and 4.25m to the ridge. The canopy

includes a 1m high timber-spindled balustrade enclosure to the perimeter of its plinth (with a single opening on the west side facing the café) and its roof would be supported by a collection of equidistantly-spaced supporting steel posts overlaid in timber. Decorative timber boarding would sit beneath the soffit between each supporting column. The external materials of the canopy would comprise white painted timber to the balustrade, supporting posts, soffit-level boarding and fascia boards, with the roof covering to comprise natural grey slates with contrasting red ridge and hip tiles to verges. The canopy would be used as an outdoor dining area in connection with the adjacent café.

The scheme also includes the introduction of a block-paved pathway in a herringbone pattern running diagonally over an area of approximately 56 sqm between the front entrance of the café and the opening on the west side of the canopy (a distance of some 17m), along with a 2m wide soft planting border in an L-shaped pattern wrapping round the south and east facing elevations of the canopy.

Relevant Planning History

Application No.	Development	Decision	Date
18/0500	PUBLIC REALM ENHANCEMENT WORKS ASSOCIATED WITH RESTORATION OF FAIRHAVEN LAKE AND GARDENS INCLUDING: (1) REFURBISHMENT AND EXTENSION OF PAGODA AND PAVILION CAFE; (2) REFURBISHMENT OF BOATHOUSE TO CREATE WATERSPORT CENTRE; (3) FORMATION OF BOAT STORAGE AREA TO REAR OF WATERSPORT CENTRE; (4) ERECTION OF SHELTER FOR BOWLING GREENS; (5) REFURBISHMENT OF TENNIS COURTS; (6) RELOCATION OF ADVENTURE GOLF COURSE; (7) CREATION OF PLAY AREA WITH ASSOCIATED EQUIPMENT; AND (8) ASSOCIATED HARD AND SOFT LANDSCAPING WORKS INCLUDING FORMATION OF LAKESIDE FOOTPATHS, STAIRCASE TO VIEWING PLATFORM TO SOUTHERN EDGE OF LAKE AND CREATION OF JAPANESE GARDEN	Granted	17/12/18

Relevant Planning Appeals History

None

Parish/Town Council Observations

N/A. Non-parish Area.

Statutory Consultees and Observations of Other Interested Parties

Cadent Gas – Comments dated 09.02.21 as follows:

- There is apparatus in the vicinity of the site which may be affected by the activities specified. This apparatus includes low or medium pressure (below 2 bar) gas pipes and associated equipment running across the hardstanding area to the northern edge of the site. As a

result, it is highly likely that there are gas services and associated apparatus in the vicinity. Due to the presence of Cadent and/or National Grid apparatus in proximity to the specified area, the contractor should contact Plant Protection before any works are carried out to ensure the apparatus is not affected by any of the proposed works.

LCC Highways – Comments as follows:

- LCC Highways does not have any objections regarding the proposal and are of the opinion that the proposed development will not have a significant impact on highway safety, capacity or amenity in the immediate vicinity of the site.

Neighbour Observations

Neighbours notified:	8 February 2021
Site notice posted:	10 February 2021
Press notice:	N/A
Amended plans notified:	N/A
No. Of Responses Received:	None
Nature of comments made:	N/A

The appropriate neighbouring properties were notified of the application by letter. Additional publicity has been undertaken through the display of a notice near the site. No representations have been received in response to this publicity.

Relevant Planning Policy

Paragraph 38 (6) of the Planning and Compulsory Purchase Act 2004 requires that development proposals are determined in accordance with the development plan unless material considerations indicate otherwise. This requirement is reinforced in paragraph 2 of the National Planning Policy Framework.

The Fylde Local Plan to 2032 (the 'FLP') was formally adopted by the Council at its meeting on Monday 22 October 2018 as the statutory, adopted development plan for the Borough. Therefore, the FLP should guide decision taking for the purposes of paragraph 38 (6) of the Planning and Compulsory Purchase Act 2004 and paragraph 2 of the National Planning Policy Framework.

Fylde Local Plan to 2032:

DLF1	Development Locations for Fylde
GD1	Settlement Boundaries
GD7	Achieving Good Design in Development
ENV1	Landscape
ENV2	Biodiversity
ENV3	Protecting Existing Open Space
ENV5	Historic Environment

Other Relevant Policy:

NPPF:	National Planning Policy Framework
NPPG:	National Planning Practice Guidance

Environmental Impact Assessment

The development is of a type listed within Schedule 2 of the Town and Country Planning

(Environmental Impact Assessment) Regulations 2017, but does not exceed the threshold in Column 2 of the table relating to category 10(b) developments. Accordingly, it is not Schedule 2 development and is not EIA development.

Comment and Analysis

Policy context and main issues:

Paragraph 38 (6) of the Planning and Compulsory Purchase Act 2004 requires that development proposals are determined in accordance with the development plan unless material considerations indicate otherwise. This requirement is reiterated in paragraph 2 of the NPPF. The statutory development plan for Fylde comprises the FLP.

As outlined in paragraphs 10 and 11 of the NPPF, at the heart of the Framework is a presumption in favour of sustainable development. In terms of decision taking, criteria c) and d) of paragraph 11 indicate that this means:

- c) approving development proposals that accord with and up-to-date development plan without delay; or
- d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
 - (i) The application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
 - (ii) Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

Paragraph 12 of the NPPF makes clear that “the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.”

Having regard to the nature of the development proposed, its location and the planning history of the site, the main issues in this case are:

- The principle of development.
- The development’s effects on the character and appearance of the area.
- The scheme’s impact on the amenity of surrounding occupiers.
- Other material considerations relating to effects on highway safety, ecology, flood risk and utility infrastructure.

Principle of development:

The site falls within the settlement boundary of Lytham St Annes as defined on the FLP Policies Map. Policy GD1 of the FLP is permissive of development within settlement boundaries providing that it complies with other relevant policies of the local plan.

The wider site of Fairhaven Lake and Gardens is designated as a ‘Park and Garden’ under policy ENV3 which seeks to preserve the Borough’s areas of Existing Open Space (EOS). Specifically, policy

ENV3 indicates that “the areas of Existing Open Space provide a critically important part of the Green Infrastructure network within Fylde. Existing Open Space will be protected from inappropriate development, having particular regard to the multi-functional benefits of open spaces” in accordance with six criteria (a-f)).

The EOS designation in the FLP covers the wider area of Fairhaven Lake and Gardens as a whole and so includes areas without any specific recreational form or function (e.g. car parks) rather than picking out the specific areas of recreational open space within the parkland. In this case, the application site falls to the northern edge of a wide, hardstanding pedestrian forecourt between the front of the café and the lake which, aside from the raised lozenge-shaped planting bed (which is to be removed and paved over as part of the hard landscaping works associated with the HLF project), is finished in tarmac. Accordingly, the forecourt acts as a throughfare for pedestrians rather than fulfilling a function in providing recreational open space that is part of the green infrastructure network which policy ENV3 seeks to protect from inappropriate development.

Given the nature and use of the application site, the proposed erection of the modest-sized canopy within a limited area of the forecourt would not result in any loss of EOS and/or green infrastructure within the park and garden which would conflict with the objectives of FLP policy ENV3. Moreover, the provision of the covered outdoor seating area within the forecourt would enhance the use of this space for recreational activities by extending the provision and offer of tourism and leisure facilities which contribute to the vibrancy of Fairhaven Lake and benefit its users, as well as providing soft landscaped borders to the edges of the canopy to mitigate against the loss of the planting bed.

Accordingly, the principle of development is considered to accord with the provisions of the development plan and the remainder of the assessment is concerned with the scheme’s detailed design and any associated technical considerations which are material to the decision.

Character and appearance:

FLP policy GD7 requires that development proposals demonstrate a high standard of design in accordance with 15 guiding principles (criteria a) – o)). Criteria d), f), h) and i) of the policy are of greatest relevance in this case as follows:

- Ensuring the siting, layout, massing, scale, design, materials, architectural character, proportion, building to plot ratio and landscaping of the proposed development, relate well to the surrounding context.
- Conserving and enhancing the built and historic environment.
- Being sympathetic to surrounding land uses and occupiers, and avoiding demonstrable harm to the visual amenities of the local area.
- Taking the opportunity to make a positive contribution to the character and local distinctiveness of the area through high quality new design that responds to its context and using sustainable natural resources where appropriate.

FLP policy ENV1 requires developments to have regard to their impact on landscape character and includes additional expectations in relation to soft landscaping principles that developments should embrace.

FLP policy ENV5 indicates that “proposals for development should conserve, protect and, where appropriate, enhance the character, appearance, significance and historic value of Fylde’s designated and undesignated heritage assets.” The subheading “locally important heritage assets” identifies Fairhaven Lake as one of “a number of assets of historic interest, which whilst not

statutorily protected, make an important contribution to the distinctive character of the area.” The policy indicates that “development which would remove, harm or undermine the significance of a locally important heritage asset, or its contribution to the character of the area, will only be permitted where robust evidence can demonstrate that the public benefits of the development would outweigh the harm based on a balanced judgement.”

Paragraph 127 of the NPPF sets out six general principles of good design (a) – f)). Of particular relevance in this case are criteria a) – d) which require that developments:

- will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;
- are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;
- are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);
- establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;

In addition, paragraph 197 of the NPPF indicates that “the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.”

The application site is located to the front of the café (an early 20th century building) to the west, the side of an operational boathouse (a plain *circa* 1950s building) to the northeast and to the east of a small, *circa* 1960s building containing public conveniences. The café is presently undergoing a programme of extension and refurbishment associated with the HLF works approved by application 18/0500. Given the canopy’s position directly to the front of the café and its operational relationship with that use, it would be seen most prominently in conjunction with that early 20th century building – and particularly in the foreground of its front elevation when approached along the lakeside pedestrian forecourt.

The refurbishment works to the café’s front (east facing) include the enlargement of its roofspace to extend two facing gables up to the front of the building which would sit to either side of a protruding pitch-roofed front porch forming a shallow, open-sided veranda supported by slender posts and enclosed by a low timber-spindled balustrade (a design replicated by a wider veranda to the rear of the café). The upper sections of the facing gables and porch would be clad in white timber boarding and the building’s roof finished in grey slate with red ridge tiles to verges.

The external appearance of the proposed canopy has, with respect to its elevational treatment, detailing and materials, been designed to replicate the character and features of the porch/verandas approved to the front and rear elevations of the café building. In particular, the plinth of the canopy would be enclosed by the same timber-spindled balustrade, its roof would be supported by slender posts overclad in timber, the same decorative soffit-level boarding would be used and its hipped roof would be finished in grey slate with red verge and ridge tiles. The canopy would form a rectangular structure of modest size in an offset position to the front of the café. Its scale would be subservient to surrounding buildings with a shallow, hipped roof avoiding a top-heavy appearance to the structure and decorative features finished in sympathetic materials to its elevations. Accordingly, the proposed canopy, while forming a prominent lakeside feature within the park, would appear as

an attractive and sympathetic addition that would be readily compatible with and complement the character and appearance of the associated café building.

The application includes external hard and soft landscaping works involving:

- The formation of a block-paved pathway following a diagonal route between the main entrance of the café and the opening on the western side of the canopy.
- The introduction of a 2m wide, L-shaped soft planting border flanking the southern and eastern elevations of the canopy.

The block paved pathway between the café and canopy would be distinct from the tarmac surfacing which characterises the remainder of the forecourt and would introduce contrasting surface materials to create a pedestrian desire line demarcating a route between the two buildings and defining their association with one another. Furthermore, the use of block paving in a herringbone pattern would provide an aesthetically pleasing contrast to the tarmac surfacing which presently characterises this area of the public realm.

The planting border wrapping round the east and south elevations of the canopy would provide a soft landscaped setting and definition to the foreground of the canopy which serves separate functions by softening the appearance of the canopy and providing a degree of compensation for the loss of the lozenge-shaped raised planting bed which presently occupies part of the site.

Accordingly, the associated external works would have a positive effect in enhancing the character and appearance of the site and its surroundings. While the canopy would occupy a prominent position within the parkland and in relation to the lakeside, views of the structure from outside Fairhaven Lake on Inner Promenade would be restricted by the canopy's modest height, its separation from the elevated roadside and the presence of intervening buildings. Distant views of the canopy would be available across the bowling greens from vantage points on Inner Promenade to the north, but the canopy would appear as a modest, lightweight and open-sided structure which would have no harmful effects on the street scene. Therefore, the proposed development is considered to accord with the objectives of FLP policies GD7 and ENV5, and the NPPF.

Impact on amenity:

Criterion c) of FLP policy GD7 requires that development proposals facilitate good design by "ensuring that amenity will not be adversely affected by neighbouring uses, both existing and proposed."

Furthermore, paragraph 127 (f) of the NPPF indicates that planning decisions should ensure developments "create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users."

Within the parkland, the closest neighbouring buildings are located to the northeast (the operational boathouse), west (the public convenience block) and southwest (the café). The operational boathouse has a blank elevation facing the canopy and the structure would be offset in relation to the neighbouring café and public conveniences over a minimum distance of 7m. Given the canopy's relationship with neighbour buildings, its open-sided profile and shallow hipped roof, it would not appear as a dominant or imposing feature in the outlook from adjacent buildings within the park.

The closest neighbouring properties outside Fairhaven Lake are on Inner Promenade to the north, a minimum of approximately 120m to the north. Given this degree of spacing, the change in levels between the site and neighbouring dwellings, the screening provided by intervening buildings and

the canopy's modest size and visually-permeable appearance – along with the fact that it would be seen in conjunction with the established lakeside building cluster – the development would have no undue effects on the amenity of neighbouring residents through loss of outlook, overshadowing or overlooking. The canopy would provide extended outdoor dining facilities for the café similar to those in place at the rear of the building. Accordingly, its use for these purposes would be intrinsically linked to the café (including its opening hours) and so would not generate any perceptible increase in noise above and beyond that associated with the wider use of the parkland. Accordingly, the amenity requirements of FLP policy GD7 and the NPPF would be satisfied.

Other matters:

Highways:

The proposed canopy would have the effect of narrowing the pedestrian forecourt to the front of the café, leaving a minimum gap of approximately 9.6m between the southeast corner of the proposed planting bed and the enclosed boat launching station to the lakeside. It is, however, noted that the current lozenge-shaped planting bed already has the effect of splitting the forecourt into two 'spurs' with a narrow point of 3.6m between its southern edge and the lakeside. Comparatively, therefore, the narrowing of the forecourt arising from the construction of the canopy and its external landscaping would be much less than the current scenario in terms of any potential obstruction to pedestrian traffic and so would not adversely impact upon this circulation space.

The Local Highway Authority have raised no objections to the application on highway safety grounds and given the modest scale of the proposal there is no requirement for a separate condition relating to the submission of a construction method statement to be imposed for logistical reasons.

Ecology:

The application land does not form part of any designated nature conservation site, but is close to the Ribble and Alt Estuary Ramsar and Site of Special Scientific Interest (SSSI). The nature and scale of the scheme is such that the erection of the canopy would not give rise to any likely significant effects on the SSSI and so any such impacts can be screened out without the need to proceed to the Appropriate Assessment stage of the Conservation of Habitats and Species Regulations (2017).

Flood Risk:

While part of Fairhaven Lake and Gardens falls within flood zones 2 and 3, the application site itself is in flood zone 1 as identified on the Flood Map for Planning. Accordingly, it is at the lowest risk from fluvial and tidal flooding and the proposal represents an appropriate use of land within flood zone 1. The minor scale of the proposed development would not result in an increased risk of flooding either to the development itself or elsewhere.

Effects on utility infrastructure (gas pipelines):

Cadent gas have identified the presence of a low-medium pressure gas pipe beneath the hardstanding area flanking the northern edge of the canopy (within a narrow strip of land between the north side of the canopy and the raised planting bed that lies behind). A plan provided by Cadent showing the position of the gas pipe indicates that this is located *circa* 0.5m to the north of the canopy's north-facing elevation and so this would be the approximate standoff distance achieved between the northern edge of the canopy and the gas pipe.

This relationship between the canopy and the gas pipe (including any easement around it) has been queried with Cadent Gas in order to determine whether any re-positioning of the canopy is required, and a response is awaited. It is, however, noted that Cadent's current response does not raise an objection to the present siting of the canopy in principle and so an informative note setting out the measures which Cadent require to be implemented during the construction phase has been included.

Conclusions

The application relates to an irregularly-shaped parcel of land extending to *circa* 227 square metres to the front (northeast) of the lakeside café at Fairhaven Lake and Gardens. The café – an early 20th century building – is presently undergoing a programme of extension and refurbishment in connection with the ongoing Heritage Lottery Fund works at the lake. This application involves the area of land immediately to the front of the café, part of which is currently occupied by a raised, lozenge-shaped planting bed, with the remainder comprising hardstanding with a tarmac surface.

The proposal involves the removal of the existing raised planting bed and subsequent erection of a freestanding, open-sided canopy occupying a rectangular footprint within the area of hardstanding to the northeast of the café building. The canopy would be used as an outdoor dining area in connection with the café and would comprise a hip-roofed structure supported by a collection of steel posts overclad in timber. The plinth of the canopy would be enclosed by a timber-spindled balustrade, with decorative soffit-level boarding spanning between the supporting posts. The scheme also includes the introduction of a block-paved pathway in a herringbone pattern between the front entrance of the café and the opening on the west side of the canopy, along with a 2m wide L-shaped planting buffer wrapping round the south and east of the canopy.

The size, siting, materials and design of the canopy, together with the hard and soft landscaping works associated with it, would ensure a scale, massing and style of development which is sympathetic to the character of surrounding buildings and their significance as non-designated heritage assets. The canopy would assimilate comfortably with its surroundings in the wider parkland and would contribute to the enhancement of its immediate setting through the proposed hard and soft landscaping works. The use of the canopy as an outdoor seating area in connection with the café would also bring economic benefits to the site by extending the provision and offer of tourism and leisure facilities which contribute to the vibrancy of Fairhaven Lake without the loss of any existing recreational open space.

The canopy would occupy a lakeside position within the heart of the parkland a significant distance away from neighbouring residential uses and, by virtue of its relationship with surrounding buildings and uses, would have no adverse effects on the amenity of neighbouring occupiers by reason of scale, noise, siting or appearance. There are no other technical issues concerning access, ecology, flood risk or impacts of utility apparatus associated with the proposed development which would give rise to any significant and demonstratable harm that would outweigh the scheme's benefits. Therefore, the proposal is considered to represent sustainable development in accordance with the provisions of the Fylde Local Plan to 2032 and the National Planning Policy Framework.

Recommendation

That Planning Permission be GRANTED subject to the following conditions:

1. The development must be begun not later than the expiration of three years from the date of this permission.

Reason: To comply with the requirements of section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. This permission relates to the following plans:

Drawing no. D426/P01 – Location plan.

Drawing no. D426/P05 – Proposed site plan.

Drawing no. D426/P06 – Proposed floor and roof plan.

Drawing no. D426/P07 – Proposed elevations.

Except as provided for by other conditions to this permission, the development shall be carried out in complete accordance with the approved drawings.

Reason: For the avoidance of doubt and to ensure that the development is carried out in accordance with the approved plans in the interests of proper planning in accordance with the policies contained within the Fylde Local Plan to 2032 and National Planning Policy Framework.


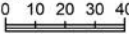
3. No above ground works of development shall take place until samples or full details of all materials to be used: i) on the external surfaces of the canopy; and ii) in the construction of the pathway between the café building and the canopy (the extent of which is identified on drawing no. D426/P05), have been submitted to and approved in writing by the Local Planning Authority. Such details shall include the type, colour and texture of the materials. The development shall thereafter be implemented in accordance with the duly approved details.

Reason: To ensure the use of appropriate materials which are sympathetic to the character of neighbouring buildings (including non-designated heritage assets) and the surrounding area in the interests of visual amenity in accordance with the requirements of Fylde Local Plan to 2032 policies ENV5 and GD7, and the National Planning Policy Framework.

4. Before the development hereby approved is first brought into use a soft landscaping scheme for the planting bed bordering the eastern and southern elevations of the canopy (the extent of which is identified on drawing no. D426/P05) shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of the number, size, species, siting, planting distances/densities and the programme of planting of trees, hedges and shrubs. The duly approved soft landscaping scheme shall be carried out during the first planting season after the development is first brought into use and the areas which are landscaped shall be retained as landscaped areas thereafter. Any trees, hedges or shrubs removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced by trees, hedges or shrubs of similar size and species to those originally required to be planted.

Reason: To ensure appropriate landscaping of the site in order to soften the visual impact of the development, to enhance the canopy's setting and to compensate for the loss of existing soft landscaped areas within the site arising from the development in accordance with the requirements of Fylde Local Plan to 2032 policies GD7, ENV1 and ENV5, and the National Planning Policy Framework.



		(c) Crown Copyright and database right (2021). Ordnance Survey (100006084).	
Application No. 5/21/0103	Address Cafe, Fairhaven Lake and Gardens, Inner Promenade, Lytham St Annes	Grid Ref. E.3340 : N.4273	Scale 0 10 20 30 40 m 

INFORMATION ITEM

REPORT OF	MEETING	DATE	ITEM NO
DEVELOPMENT SERVICES DIRECTORATE	PLANNING COMMITTEE	31 MARCH 2021	5
LIST OF APPEALS DECIDED			

PUBLIC ITEM

This item is for consideration in the public part of the meeting.

SUMMARY OF INFORMATION

The Council received the following appeal decisions between 19/2/21 and 19/3/2021.

SOURCE OF INFORMATION

Development Services

INFORMATION

List of appeals decided attached

WHY IS THIS INFORMATION BEING GIVEN TO THE COMMITTEE?

To inform members of the appeals that have been decided during the period.

FURTHER INFORMATION

Contact Andrew Stell, Development Manager, 01253 658473

Appeal Decisions

The council received the decision on the following appeals in the period 19 February 2021 to 19 March 2021. The appeal decision is attached as an appendix.

Rec No: 1			
22 July 2020	18/0223	25A NORTH CLIFTON STREET, LYTHAM ST ANNES, FY8 5HW CERTIFICATE OF LAWFULNESS FOR EXISTING RESIDENTIAL USE OF MAISONETTE AND ANCILLIARY FIRST FLOOR ROOF TERRACE	Informal Hearing Case Officer: AS
Fylde Dec. Level	DEL		
Appeal Decision:	Allowed: 03 March 2021		



Appeal Decision

Hearing Held on 26 January 2021

Site visit made on 27 January 2021

by M Madge DipTP, MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd March 2021

Appeal Ref: APP/M2325/X/19/3242331

25A North Clifton Street, Lytham St Annes FY8 5HW

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mrs L Simkin of Freezewell Ltd against the decision of Fylde Borough Council.
 - The application Ref 18/0223, dated 18 March 2018, was refused by notice dated 22 October 2019.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is residential use of the maisonette and ancillary first floor roof terrace.
-

Application for costs

1. At the Hearing an application for costs was made by Mrs L Simkin of Freezewell Ltd against Fylde Borough Council. This application is the subject of a separate Decision.

Decision

2. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the extent of the existing use which is considered to be lawful.

Preliminary matters

3. The appellant claims that the residential use of the maisonette and use of the ancillary roof terrace commenced on 31 December 2003. While someone may have 'lived over the shop' at some point prior to that date, there is no evidence to demonstrate that any residential use of the first and second floors consisted of a single dwellinghouse before 31 December 2003.
4. Planning legislation contains no definition of a dwellinghouse and Gravesham¹ states that whether a building was or was not a 'dwellinghouse' is a question of fact. It goes on to confirm that 'a distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities required for day-to-day private domestic existence', which the maisonette does.
5. A garden or other outside residential amenity space is not a facility required for day-to-day private domestic existence. The ancillary first floor roof terrace is not therefore a necessary facility for the maisonette to be a dwellinghouse.

¹ Gravesham BC v Secretary of State for the Environment (1982) 47 P & CR 142

Background

6. The building containing the maisonette is occupied by 2 retail units on the ground floor, 51 and 51A Clifton Street. The first and second floors are occupied by the maisonette, 25A North Clifton Street. Both shop units have single storey rear extensions.
7. Planning permission 92/0431 ("the 1992 PP") proposed the erection of a flat roofed extension to No 51, which incorporated an external staircase and walkway across its roof to provide access to what would become No 25A. On the approved plans for the 1992 PP, No 51A is shown to have an existing pitched roof single storey rear extension. The 1992 PP was not implemented.
8. Planning permission 02/0754 ("the 2002 PP") again proposed the erection of a flat roofed extension to No 51, incorporating an external staircase and walkway across its roof to provide access to what would become No 25A. The approved plan, dated 12 September 2002, shows that the pitched roof on No 51A's single storey rear extension had been replaced with a flat roof.
9. The 2002 PP was implemented in 2003. As per the approved plans, the flat roofed extension was physically attached to the rear projections that existed at No 51A and incorporated the external staircase and walkway across its roof. The walkway is shown having balustrades to both sides. Photographs of the balustrades show that the ones installed were of a simple metal post and horizontal rail design, rather than the vertical spindle design shown on the approved plan.

Reasons

10. S191 of the 1990 Act enables any person to apply to the Local Planning Authority for a Certificate to the effect that, relevant to this appeal, any existing use of buildings or other land is lawful. S191(2)(a) sets out that uses and operations are lawful at any time if no enforcement action may be taken. The enforcement expiry time for a material change of use to a single dwellinghouse, as with operational development, is 4 years, but for any other material change of use it would be 10 years. Whichever period is relevant, it would need to have expired at least by the date that the application for the LDC was made, which in this case was 18 March 2018 (hereinafter referred to as "the material date").
11. The burden of proof rests with the appellant and the evidence must be sufficiently precise and unambiguous to justify the grant of an LDC. While the appellant's own evidence does not have to be corroborated by independent evidence, there should be no evidence that contradicts the appellant's version of events.
12. The **main issue** is whether the Council's refusal to issue an LDC is well founded. This turns on whether the appellant can show, on the balance of probability, that the residential use of the maisonette and ancillary first floor roof terrace has become immune from enforcement action.
13. The Council confirmed at the Hearing that the evidence shows, on the balance of probability, that the maisonette has been occupied as a single dwellinghouse for more than 4 years and that the use as a single dwellinghouse has been substantially uninterrupted. There is therefore no dispute that the use of the maisonette as a single dwellinghouse is lawful.

14. The matter in dispute is the use of the ground floor extensions' roofs as an ancillary first floor roof terrace, hereinafter referred to as the 'roof area'.
15. The appellant claims that the roof area has been used by residents as a garden and not just as a means of access. The primary use of the roof area, according to the appellant, forms part of the maisonette's planning unit. As the use of the roof area has always been integral to the residential occupation of the maisonette, a single dwellinghouse, the appellant contends that the relevant immunity period of 4 years lapsed on 18 March 2014.
16. The Council claim however that the primary use of the roof area has always been as the roof to the single storey rear extensions at No 51 and No 51A. While access to the maisonette had been provided by the staircase and walkway, the Council claim that the balustrades prevented any use of the remaining roof area for ancillary residential purposes. The Council claims that the removal of the balustrades in 2013 facilitated the regular use of the roof area for ancillary residential purposes, which represented a material change of use. The Council contend that the relevant period for immunity from enforcement action is 10 years, and as, in their opinion, the material change of use occurred in 2013 at the earliest, immunity from enforcement had not been achieved at the material date.
17. The appellant has provided a sworn declaration, which sets out their recollection of the history of the site and activities at the property since Freezewell Ltd purchased it in 1983. This confirms that, while not living at the property until early 2013, she visited regularly to check on tenants and saw the roof area being used for purposes incidental to the residential occupation of the maisonette. Her evidence also confirms her ancillary residential use of the roof area throughout her occupation of the maisonette and provides details of the refurbishment of the roof area in 2015. Plans, photographs, and aerial images are provided within the document to corroborate assertions in the appellant's evidence.
18. The appellant has also provided a considerable number of witness statements, produced by former tenants of the maisonette, neighbouring residents and retail workers, as well as people that have carried out work at the maisonette and visitors. These statements also include plans, photographs, and aerial images. Mr Billington also gave evidence at the Hearing. While the individual statements may only cover parts of the relevant period, collectively they cover the whole period, and these corroborate the appellant's version of events.
19. The Council's evidence consists of the plans approved by the 2002 PP, an assumption that the balustrades prevented any regular use of the roof area for ancillary residential use purposes and the lack of formal enclosure of the roof area would make its residential use un-safe. In their opinion, the primary purpose of the roof is to enclose the single storey rear extensions. The Council accept that the roof area may have been used intermittently by residents and visitors to the maisonette. In their opinion, the level of activity set out in the witness statements, is insufficient to demonstrate that a material change of use of the roof area occurred before the appellant removed the balustrades in 2013 and carried out the refurbishment in 2015.
20. Evidence provided by the occupiers of 25 North Clifton Street confirms that, since moving into their home in early 2014, they have seen the appellant use the roof area for sitting out, growing plants, etc. They contend however that

the refurbishment of the roof area in 2015 has adversely affected their living conditions due to loss of daylight and privacy. As their concerns amount to planning merits, they are not relevant to the determination of this appeal.

Assessment of the evidence

21. The period of immunity starts from the date the development occurred and it must have lapsed by the material date. The development for which this LDC is sought is claimed to have commenced on 31 December 2003 and the period of immunity must have lapsed by 18 March 2018.
22. Normally the roof area of a building, or part thereof, would be said to have the same use as the building below it. The flat roof area associated with No 51A is shown to exist on the 2002 PP approved plan. This part of the roof area therefore existed before the 2002 PP was implemented. Regardless of its subsequent physical connection to the single storey rear extension to No 51, any use of No 51A's roof area as an ancillary first floor roof terrace would represent a material change of use, for which the relevant period of immunity would be 10 years.
23. In respect of the 2002 PP, the evidence confirms that this approved development provides the only means of access to the undisputed dwellinghouse. As such, this part of the roof area was intended to and has always served 2 purposes: the roof of the single storey rear extension and the means of access to the maisonette. Neither purpose is less significant than the other and I find that this development was therefore for a mixed-use, which occurred from completion of the works in 2003. The design of the approved balustrades would not have readily facilitated access to the wider roof area and as such, I find the ancillary residential use only applied to the walkway and not the whole roof approved under the 2002 PP.
24. The evidence provided in the various statements refers to the roof area being used for ancillary residential purposes following occupation of the maisonette. Council Tax records provided in the appellant's sworn declaration² confirm that the maisonette was not occupied until 1 April 2005. It is therefore reasonable to conclude that the wider use of the roof area did not occur until or after the occupation of the maisonette commenced, some considerable time after the 2002 PP development had been completed. The residential use of the whole roof area above the single storey rear extension at No 51 would therefore represent an expansion of the residential purposes envisaged under the 2002 PP. As the 2002 PP included ancillary residential use of part of the extension's roof, and conditions were not imposed to prevent the residential use of the roof area or to require the permanent retention of the balustrades, I do not find the expansion of the ancillary residential use approved under the 2002 PP to be a material change of use.
25. While balustrades were provided to both sides of the walkway, these had an open form and would have allowed people to access the whole roof area without any significant difficulty. Specific reference is made to the roof area above No 51A being a 'sun trap'. Witness statements and photographs confirm that the wider roof area was used by residents of the maisonette for a variety of ancillary residential purposes, including sitting out, storage of domestic paraphernalia and hanging out washing. This evidence demonstrates that the

² Sworn Declaration of Lesley Simkin dated 20 February 2018 Exhibit 21

- roof area was used for purposes akin to a 'garden' and was therefore more than just the means of access to the maisonette. I find the statements of Mr Ben Cuffe, Mr Jamie Milnes and Mrs Ellie Milnes, former occupiers of the maisonette, to be particularly relevant. These recollections of former residents are corroborated by neighbouring residents and employees of the ground floor retail units. I give this evidence and that of the appellant substantial weight.
26. The Council claims that several aerial images show the wider roof area to be clear of people and domestic paraphernalia and therefore serving no purpose other than to provide the roof to the single storey rear extensions. If the roof area was being used similarly to a residential garden, I find it unlikely that events such as washing being hung out to dry or social gatherings would occur all the time. The lack of evidence of such activity in these images, which portray a snapshot in time, does not confirm that they never took place. I find that these images do not outweigh the version of events set out in the appellant's sworn declaration or the other witness statements. I give this evidence limited weight.
27. The roof area is enclosed on 3 sides by the maisonette and built development at the adjoining properties to either side. The end of the roof area adjacent to No 25 has not been provided with any permanent means of enclosure. This lack of enclosure does not however prove that the roof area cannot be used for ancillary residential purposes. I give this evidence limited weight.
28. While the roof area may not have been used every day by residents or others for ancillary residential purposes, this would be no different from the use of any other domestic garden. Given that the only 'outside' space available to residents and visitors is the roof area, I find that its use, in the manner identified in the evidence, to be more than probable.
29. The removal of the balustrade in 2013 did not materially change the use of the roof area, as the evidence confirms that the ancillary residential use was already occurring. Furthermore, the refurbishment of the roof area in 2015, may have changed the visual appearance of the ancillary first floor roof terrace, but that of itself does not amount to a material change of use.
30. The evidence fails to show that the use of the ancillary roof terrace commenced on 31 December 2003. However, I find that the appellant's evidence precisely and unambiguously shows that, on the balance of probability, the use of the ancillary first floor roof terrace commenced concurrently with the occupation of the maisonette on 1 April 2005. That use has continued without substantial interruption up to and beyond the material date. The use of the ancillary first floor roof terrace is therefore immune from enforcement action.

Conclusion

31. For the reasons given above I conclude, on the evidence available, that the Council's refusal to grant a certificate of lawful use or development in respect of the residential use of the maisonette and ancillary first floor roof terrace was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

M Madge

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 18 March 2018 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

No enforcement action may be taken as the date for immunity has passed.

Signed

M Madge

Inspector

Date: 3rd March 2021

Reference: APP/M2325/X/19/3242331

First Schedule

The residential use of the maisonette and ancillary first floor terrace

Second Schedule

Land at 25A North Clifton Street, Lytham St Anne's FY8 5HW

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan

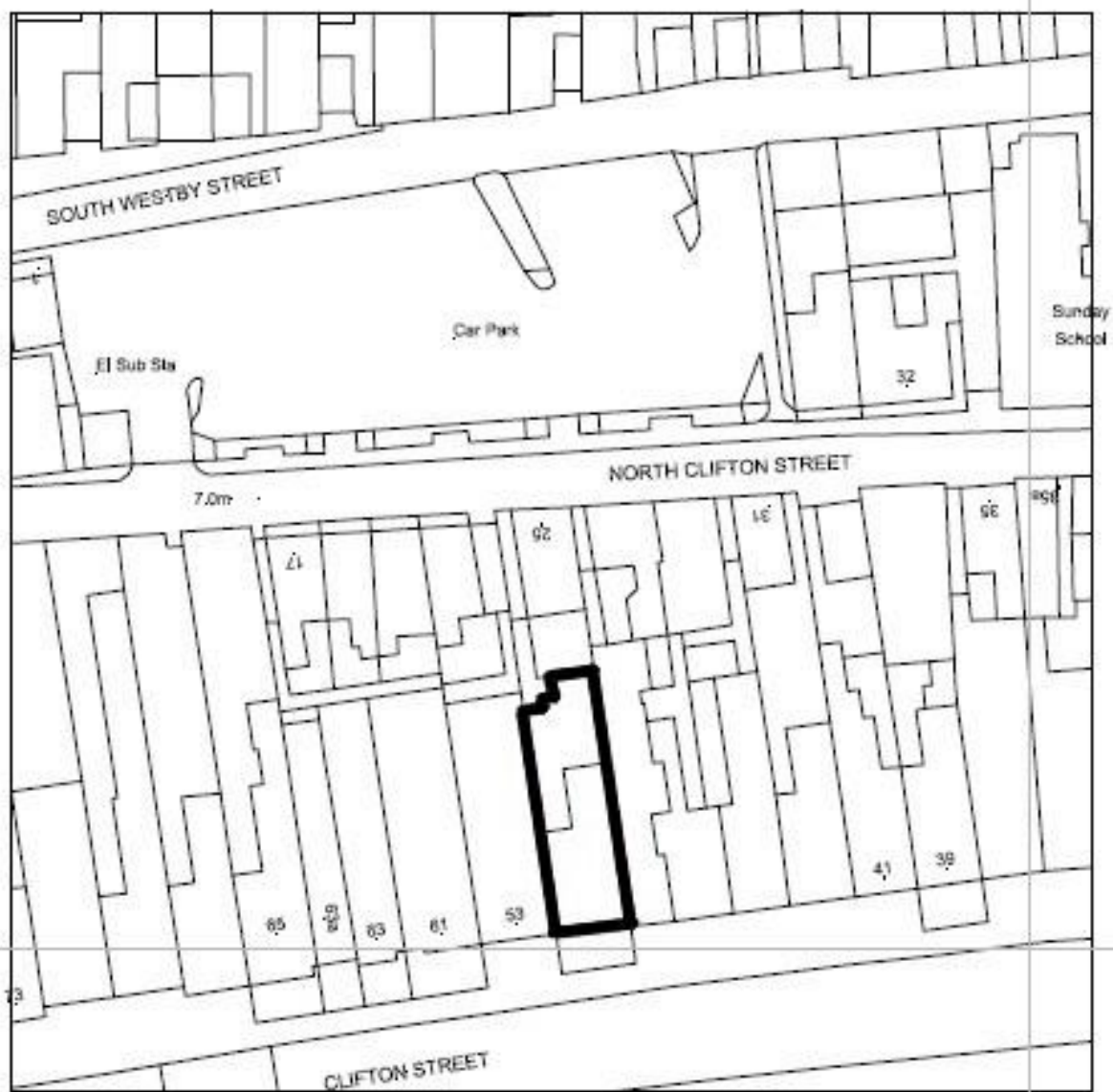
This is the plan referred to in the Lawful Development Certificate dated:

by M Madge MA DipTP MRTPI

Land at: 25A North Clifton Street, Lytham St Anne's FY8 5HW

Reference: APP/M2325/X/19/3242331

Not to Scale



APPEARANCES

FOR THE APPELLANT:

Miss Jane Fox	Fox Planning Consultancy
Mrs Lesley Simkin	Freezewell Ltd
Mr Ted Billington	

FOR THE LOCAL PLANNING AUTHORITY:

Mr Andrew Stell	Development Manager, Fylde Borough Council
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INTERESTED PERSONS:

Miss Elaine Davis

Mr John Johnston



Costs Decision

Hearing Held on 26 January 2021

Site visit made on 27 January 2021

by M Madge DipTP, MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd March 2021

Costs application in relation to Appeal Ref: APP/M2325/X/19/3242331 25A North Clifton Street, Lytham St Annes FY8 5HW

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mrs L Simkin of Freezewell Ltd for a full award of costs against Fylde Borough Council.
 - The hearing was in connection with an appeal against the refusal of a certificate of lawful use or development for residential use of the maisonette and ancillary first floor roof terrace.
-

Decision

1. The application for an award of costs is refused.

The submissions for Mrs L Simkin of Freezewell Ltd

2. The appellant argues that the Council has acted unreasonably in that they failed to apply the correct definitions of 'dwellinghouse' and 'planning unit', which resulted in the application of the wrong immunity period being applied. Furthermore, the Council failed to have proper regard to the submitted evidence, failed to correctly apply the 'balance of probability' test, showed bias in giving weight to an alleged absence of evidence and failed to justify its reason for refusal.
3. In addition, the applicant claims that the Council's cost rebuttal demonstrates how they were unduly influenced by the alleged impact of the development on the neighbouring occupiers' residential amenity. This led to factual evidence being misrepresented and/or disregarded. The applicant has therefore been put to the additional and wasted expense of the appeal.

The response by Fylde Borough Council

4. The Council argues that, in LDC applications and appeals, the burden of proof rests with the applicant/appellant. The alleged failings of the Council raised by the applicant relate to areas of disagreement between the parties and these have been addressed in the written submissions and contributions to the hearing. It is the quality of evidence, and not the quantity, that is the determining factor when applying the balance of probability test.
5. The Council has coherently and consistently applied the definition of dwellinghouse set out in the GPDO¹ and DMPO². While the maisonette is located within a building, the roof terrace falls outside that building. As such

¹ Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

² Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended)

the use of the roof terrace cannot form part of the maisonette's planning unit and the 10 year period is applicable.

Reasons

6. The Planning Practice Guide ("the PPG") advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
7. The PPG provides a list of behaviours which, while not exhaustive, may give rise to a substantive award against the Council. The list includes 'providing information that is shown to be manifestly inaccurate or untrue', which succinctly sums up the applicant's assertions relating to the Council's assessment and interpretation of the evidence submitted with the LDC application.
8. There was no dispute that the residential use of the maisonette was immune from enforcement action. The dispute relates to when the use of the 'ancillary roof terrace' first occurred and what period of immunity should be applied.
9. The definition of 'dwellinghouse' made no significant contribution to the determination of the appeal. While the extent of the 'planning unit' could have had a bearing on the period of immunity, the evidence provided with the appeal demonstrates that the 'roof terrace' was brought into use after the maisonette was occupied for residential purposes. As such, I found that the extent of the maisonette's planning unit had been enlarged to encompass the 'roof terrace'. The Council correctly identified the immunity period.
10. The Council provided clear and concise reasoning for their decision. While I have not agreed with that reasoning, it left the appellant in no doubt as to why the Council refused to issue an LDC.
11. The Council's rebuttal sets out how they continued to work with the appellant to find a solution, which included the suggestion that an application be made to regularise the development. An integral part of that application is suggested to be the provision of screening to provide neighbours a degree of privacy. I found no suggestion within the Council's appeal documentation or evidence given at the Hearing that their decision on the LDC was influenced by planning merits.
12. I find the Council's case to be clearly set out and their position has remained consistent throughout the appeal period.
13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guide, has not been demonstrated.