

DARLINGTON BOROUGH COUNCIL

PLANNING APPLICATIONS COMMITTEE

COMMITTEE DATE: 9 August 2023

APPLICATION REF. NO:	20/00852/FUL
STATUTORY DECISION DATE:	11 August 2023
WARD/PARISH:	Brinkburn And Faverdale
LOCATION:	Land At The Entrance Of Faverdale Industrial Estate Faverdale DARLINGTON
DESCRIPTION:	Demolition of existing building and erection of six commercial units (464sqm; 1858sqm; 836sqm; 650sqm; 464sqm and 464sqm) three Drive Through Restaurants (350sqm; 167sqm and 180sqm); one industrial unit (789sqm) and an EV Charging Station with associated access, parking, drainage and landscaping (Revised Description) (Amended and additional plans received 13 July 2021; Ground Contamination Risk Assessment received 15 July 2021; amended drainage design plan received 1 October 2021; additional retail information received 14 March 2022; additional Planning Policy Statement received 23 March 2022; Sequential Test Addendum received 5 July 2022; additional and amended plans and reports received 15 September 2022; Biodiversity Net Gain information received 16 and 21 September 2022; Tree Survey and Tree Constraints Plan received 4 October 2022; Drainage information received 6 October 2022)
APPLICANT:	Almscliffe Properties (Darlington) Ltd

Application documents including application forms, submitted plans, supporting technical information, consultations responses and representations received, and other background papers are available on the Darlington Borough Council website via the following link:

<https://publicaccess.darlington.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=QGRB4AFPFV00>

APPLICATION AND SITE DESCRIPTION

1. Members will recall that this planning application was considered at the Planning Applications Committee on 12 July 2023. The officers report recommended that planning permission be granted subject to a Section 106 Agreement and planning conditions, which took into account all material considerations. Members of the Planning Applications Committee, having considered the material planning considerations (set out elsewhere in this Report), deferred making a decision on the planning application and instructed officers to present the application at the next available Planning Application Committee, with a reason for refusal, for their consideration. Although the application was deferred to allow officers to prepare a reason for refusal, the Committee has not yet made a formal decision on the application.
2. A copy of the original report is appended to this update so that Members have all the information available to make an informed decision on the application.
3. The planning application site measures approximately 7.73 acres (3.13 hectares) and is located on the western edge of the Faverdale Industrial Estate. The site comprises primarily disused hardstanding areas but also includes earth bunding and banking on the south and west boundaries. The proposal would include the demolition of a building to the rear of the Blackett, Hart and Pratt offices located to the west of the site.
4. Access to the site is currently off a road known as "Faverdale" to the north; Faverdale Black Path (Bridleway No 19) is located to the south and West Auckland Road (A68), is to the west.
5. Planning permission (ref no 18/00694/FUL) has recently been granted to redevelop land on the opposite side (north) of "Faverdale" for a Lidl supermarket; Home Bargains retail store and a coffee drive thru unit. The Lidl store is operational, and the other units are under construction or to be constructed. The Faverdale Industrial Estate is located to the east; open space and allotments with dwellings beyond are to the south and more dwellings are located to the west and north west.
6. This planning application has been the subject to a number of amendments since it was originally submitted (see below) which have all been the subject to notification exercises by the local planning authority. This final amended scheme is a detailed planning application comprising:
 - a. Unit 1 – Costa Coffee Drive Thru (167sqm)
 - b. Unit 2 – McDonalds Drive Thru Restaurant (350sqm)
 - c. Unit 3 - Retail unit, including a Vets (unit 3C) and a tanning salon (Unit 3b) (464 sqm)

- d. Units 4a to 4e – Bulky Comparison Goods (1858sqm; 836sqm; 650sqm; 464sqm and 464sqm). Whilst the final occupier agreements are still to be agreed, the applicant has advised that Units 4a and 4b will be occupied by retailers such as Wickes and Jysk
 - e. Unit 5 – Taco Bell Drive Thru (180sqm)
 - f. Unit 6 - industrial unit (789sqm). The occupant of this unit is unknown
 - g. An 8 bay EV Charging Station.
7. The proposed development includes 314 car parking spaces (including disabled spaces and electric vehicle charging spaces), cycle parking, servicing areas, internal circulation routes and landscaping with access off “Faverdale”. The most recent revision to the scheme is for the relocation of the vehicular access into the site off Faverdale following comments made by the Council’s Highways Engineer.
 8. Darlington Borough Council are the landowners for part of the application site, namely the embankments along West Auckland Road and land to the north of Faverdale Black Path.

MAIN PLANNING ISSUES

9. The officer’s report set out the main issues to be considered in the following terms:
 - a. Employment Land Policy
 - b. Retail Planning Policy
 - c. Economic Impacts
 - d. Environmental Considerations
 - e. Social Impacts
 - f. Health Impacts
 - g. Design and Layout and Impact on the Character and Appearance of the Area
 - h. Residential Amenity
 - i. Highways Matters
 - j. Ecology
 - k. Trees and Landscaping
 - l. Flood Risk
 - m. Air Quality
 - n. Land Contamination
 - o. Impact on Rights of Way
 - p. Impact on Barnard Castle Trackbed
 - q. Planning Obligations

PLANNING POLICIES

10. The relevant local development plan policies are:

Darlington Local Plan 2016 – 2036

SD1: Presumption in Favour of Sustainable Development

SH1: Settlement Hierarchy

DC1: Sustainable Design Principles and Climate Change

DC2: Flood Risk & Water Management

DC3: Health & Wellbeing
DC4: Safeguarding Amenity
DC5: Skills & Training
H3: Development Limits
E1: Safeguarding Existing Employment Opportunities
TC1: Darlington Town Centre
TC3: Additional Site for Town Centre Uses
TC4: District and Local Centres
TC5: Retail Impact Assessment Threshold
ENV3: Local Landscape Character
ENV4: Green & Blue Infrastructure
ENV5: Green Infrastructure Standards
ENV7: Biodiversity & Geodiversity & Development
ENV8: Assessing a Development's Impact on Biodiversity
IN1: Delivering a Sustainable Transport Network
IN2: Improving Access and Accessibility
IN3: Transport Assessments and Travel Plans
IN4: Parking Provision including Electric Vehicle Charging
IN6: Utilities Infrastructure
IN8: Broadband Infrastructure

Other relevant documents

The National Planning Policy Framework 2021.
Design of New Development SPD (2011)
Planning Obligations SPD (2013)
Travel Plan Guidance (2022)

RESULTS OF TECHNICAL CONSULTATION

11. The officers report advised that there were no objections to the principle of the proposed development by the Council's Highways Engineer, Public Rights of Way Officers, Environmental Health Manager, Environmental Health Officer, Ecology Officer, Sustainable Transport Officer, Travel Planning Officer subject to the imposition of appropriate planning conditions and Section 106 contributions, if the application was to be approved. There were also no objections from the statutory bodies that have been consulted on the planning application, subject to the imposition of planning conditions, if planning permission was granted.

RESULTS OF PUBLICITY AND NOTIFICATION

12. The officers report confirmed that overall 46 letters of objection and 204 letters of support had been submitted over the course of the determination of the planning application. The majority of the letters of support were received when the proposal included a Tesco foodstore and a petrol filling station. Following the publication of the officer's report, a further two letters of support and ten letters of objection were received.

PLANNING ISSUES/ANALYSIS

13. The officers report highlighted that the application site is located within an existing employment area designated by Policy E1 (Safeguarding Existing Employment Opportunities). These areas are promoted and safeguarded for existing and ongoing economic investment. Within these areas, planning permission will be granted on available land and for the change of use of existing buildings or developed land (subject to any permitted development rights) in line with the 'suggested uses' for each site. The application area is within Site Ref 343 Faverdale Industrial Estate which has suggested uses of B2, B8 and E(g). The report continued that through policies E1 and E2 of the Local Plan, a surplus of land is allocated and safeguarded for these uses meaning it is unlikely the proposed development would result in a shortfall in land availability for these uses across the Borough. The principle of the proposed development is considered to be acceptable in terms of employment land policy.
14. The officers report outlined the economic that the proposed development was acceptable in general development management terms (items f – p, listed above).
15. Members were advised that the Council had sought advice from an external retail consultant, Nexus Planning, on whether the proposed development would have any impact upon the existing town centre and local and district shopping centres in the Borough and their conclusions and advice, which had been provided following extensive discussions with the applicant and their retail consultants and consideration of their submissions made at various points during the determination period, was clearly set out in the officers report and presented to Members.
16. With regard to the impact on Cockerton District Centre, the Nexus Planning report stated and concluded:

The critical issue remains that committed and proposed development at Faverdale would replicate a number of existing functions of the district centre at an out of centre site. Noting once again that the scale of the application proposal has increased, our view remains that the proposal would likely result in a significant adverse impact on Cockerton district centre

We conclude that the proposal would result in a significant adverse impact at Cockerton district centre and is therefore contrary to the requirements of NPPF paragraph 91, which could merit the refusal of the application on retail impact grounds. Policy TC5 of the newly adopted Darlington Local Plan is also of some relevance to the determination of the application as this requires a retail impact assessment to be submitted in association with planning applications of this type.

17. With regard to the impact on the town centre, the Nexus Report stated that in respect of Darlington town centre, Nexus Planning estimate that the impact arising from the proposal could equate to around 2.1% of the centre's turnover, with the estimated cumulative impact reaching double figures (10.1%). The reduction in the vacancy rate to around 16.2% is a positive development, but vacancies remain a matter of concern. Furthermore, whilst some of the vacancies are in peripheral locations, a number are

located in and around Darlington's 'prime pitch' and relate to substantial units (including the former Marks & Spencer unit on Northgate). In this context, they believe that the re-occupation of vacant floorspace should be a key objective to underpin the future vitality and viability of the town centre. Noting the general health of Darlington town centre and the level of cumulative trade diversion impact associated with the proposal, Nexus Planning find that the town centre would be the subject of a significant adverse impact.

18. In the officer's report, it was highlighted that Nexus Planning recommended that the above matters are given careful consideration and afforded appropriate weight in determining this planning application. In terms of the weight to be afforded to the retail policy tests, Nexus Planning have directed officers to the findings of the *Asda Stores Limited v Leeds City Council & Anor [2019] EWHC 3578* High Court judgment and the *(Admin) Asda Stores Limited v Leeds City Council & Anor [2021] EWHC 3578 (Admin)* Court of Appeal judgment.
19. These judgments confirm that paragraph 91 of the NPPF does not necessarily mandate a refusal as a matter of policy when the tests are breached and does not give rise to a 'tilted balance' similar to that evident at paragraph 11 of the NPPF.
20. Instead, in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 the decision-taker is still required to consider other material considerations arising from a planning proposal and to undertake a balancing exercise in reaching its decision. The officer's report highlighted the material planning considerations that had been taken into account when arriving at the original recommendation.
21. At the Planning Applications Committee, Members debated the application at length. Members considered the potential impact of the proposed development upon the town centre and the Cockerton District Centre and had regard of Section 38(6) of the Planning and Compulsory Purchase Act 2004
22. Having done so, Members deferred the planning application and instructed Officers to present the application at the next available Planning Application Committee, with a potential reason for refusing the planning application on retail impact grounds. Although the application was deferred to allow officers to prepare a reason for refusal the Committee has not yet made a formal decision on the application.
23. If Members were to decide on balance that the material considerations set out in the appended report do not outweigh the potential impact of the proposed development upon the town centre and the Cockerton District Centre and had regard of Section 38(6) of the Planning and Compulsory Purchase Act 2004 officers suggest that the refusal be worded in the following terms:

PLANNING PERMISSION BE REFUSED FOR THE FOLLOWING REASON

1. In the opinion of the local planning authority, the planning application has failed to demonstrate that there would be no significant adverse impact on the viability and vitality of Darlington town centre or Cockerton District Centre which are defined by policies TC1 (Darlington Town Centre) and TC4 (District and Local Centres) of the Darlington Local Plan 2016 - 2023. Furthermore, the local planning authority consider that there are no other material planning considerations which would outweigh the significantly adverse impact that has been identified and therefore the proposal is contrary to the National Planning Policy Framework 2021 (paragraphs 90 and 91)

THE PUBLIC SECTOR EQUALITY DUTY

24. In considering this application the Local Planning Authority has complied with Section 149 of the Equality Act 2010 which places a statutory duty on public authorities in the exercise of their functions to have due regard to the need to eliminate discrimination and advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. All buildings would include level access arrangements and disabled facilities and the wider layout includes appropriate crossings and parking provision for people with mobility issues. The proposal would accord with policy IN2 of the Local Plan in this regard.

SECTION 17 OF THE CRIME AND DISORDER ACT 1998

25. The contents of this report have been considered in the context of the requirements placed on the Council by Section 17 of the Crime and Disorder Act 1998, namely the duty on the Council to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area. It is not considered that the contents of this report have any such effect.

RECOMMENDATION:

For the reasons set out in the appended report, Officers' Recommendation remains: GRANT PERMISSION SUBJECT TO A SECTION 106 AGREEMENT AND CONDITIONS AS SET OUT IN THE APPENDED REPORT AND

THE DIRECTOR OF ECONOMIC GROWTH BE AUTHORISED TO NEGOTIATE AN AGREEMENT UNDER SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990 WITHIN SIX MONTHS TO SECURE PLANNING OBLIGATIONS THAT ARE APPROPRIATE FOR THE DEVELOPMENT COVERING:

- a) A Travel Plan including a monitoring fee; a personalised Travel Advice fee and a Travel Plan Implementation bond equating to £47,250
- b) A financial contribution of £50,000 towards offsite highway improvement works to be identified in the Infrastructure Delivery Plan

THAT UPON SATISFACTORY COMPLETION AND SIGNING OF THAT AGREEMENT, PLANNING PERMISSION BE GRANTED SUBJECT TO THE CONDITIONS AND REASONS SET OUT IN THE APPENDED REPORT

SHOULD THE 106 AGREEMENT NOT BE COMPLETED WITHIN THIS PRESCRIBED PERIOD WITHOUT WRITTEN CONSENT OF THE COUNCIL TO EXTEND THIS TIME, THE MINDED TO APPROVE STATUS OF THE PERMISSION SHALL BE CONSIDERED TO BE A REFUSAL ON THE GROUNDS THAT THE APPLICATION HAS FAILED TO PROVIDE ADEQUATE MITIGATION MEASURES TO PROVIDE A SATISFACTORY FORM OF DEVELOPMENT IN ACCORDANCE WITH THE REQUIREMENTS OF DARLINGTON LOCAL PLAN 2016-2036, WITHOUT ANY FURTHER REFERENCE TO THE PLANNING APPLICATIONS COMMITTEE