

John Slater Planning

Cockermouth Neighbourhood Development Order

Submission Draft Version

A Report to Allerdale Borough Council on the Examination of the
Cockermouth Neighbourhood Development Order

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Introduction

Neighbourhood Planning is a new process introduced by the Localism Act 2011 which will allow local communities to shape the areas where they live and work. There are a number of powers that communities can choose to use which include the ability to prepare a neighbourhood development plan or to grant planning permission for specific developments via a community right to build order. The third power is the Neighbourhood Development Order, which grants a blanket planning permission for specific types of development within a designated area.

It is this latter provision that Cockermouth Town Council, which is a “qualifying body” for the purpose of the legislation, has decided to promote. They applied to Allerdale Borough Council to designate the civil parish as a neighbourhood area which Allerdale Borough Council agreed to designate on 23rd November 2012. Cockermouth Town Council has been successful in becoming a front runner in the use of neighbourhood planning powers. It is understood that this is the first Neighbourhood Development Order in the country which has reached the examination stage.

This report is the outcome of my examination of the draft Order. My report will include a recommendation as to whether the Order should proceed to a Referendum and if over 50% of those who vote are in favour the Order will be made by Allerdale Borough Council, the Local Planning Authority.

The Examiners role

I was appointed by Allerdale Borough Council with the consent of Cockermouth Town Council, in February 2014 to carry out this examination. My appointment was secured through the Neighbourhood Planning Independent Examiners Referral Service.

To allow me to be appointed as an Independent Examiner I am required to be appropriately experienced and qualified. I have over 35 years’ experience as a planning practitioner, primarily working in local government, including serving 8 years as a Head of Planning in a unitary authority, but now working as a self-employed planning consultant. I am independent of Allerdale Borough Council and Cockermouth Town Council and I have no interest in any land within the town and in particular within the areas that would be subject to the Order.

Under the terms of the neighbourhood planning legislation I am required to make one of three possible recommendations:-

1. The draft order should be submitted to referendum

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2. That modifications are made, as set out in my report, and the draft order as modified, is submitted to a referendum
3. That the proposal for the Order is refused.

Furthermore I am required to assess whether the area covered by the Referendum should extend beyond the areas covered by the Order.

My consideration of the Order must look at the following matters

- Whether the draft Order meets the “basic conditions“
- Whether the draft Order complies with a range of legislative requirements including whether it sets out what development or class of use is to be granted by the Order, establishing clearly the land and buildings that are to be covered by the Order’s provisions and does not grant planning permission for, what is known as “excluded development”, which includes mineral applications and nationally important projects. It must not cover more than one neighbourhood area although the Order can cover part of the designated area. It must also consider whether the planning permission to be granted by the order should be granted unconditionally or subject to conditions. It must also consider whether the period within which development must be commenced is appropriate.

The Examination Process

The presumption laid down in legislation is that neighbourhood planning examinations should be carried out by way of the consideration of written evidence only. As examiner I could decide to hold a public hearing to explore in more detail particular aspects of the matter under consideration.

I am required to give reasons for any of my modifications and also give a summary of my main conclusions.

I have been provided with a body of evidence supporting the draft Order including the Consultation Statement and Statement of Reasons. This included copies of all representations which I have read. I have also been provided with a copy of the Allerdale Local Plan 1999.

I am satisfied that I can properly examine the draft Neighbourhood Development Order without the need for a public hearing. I did however conduct a number of visits to the parts of the Town Centre covered by the Order on 26th and 27th February. These were carried out at different times of the day including an early evening visit to the Market Square area between 7pm and 9pm, when I was able to see the existing bars and restaurants in operation. At the time there was little evidence of the “outdoor usage“ of the area which is being promoted, which is perhaps unsurprising

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considering the weather and the time of year. However I am confident, having visited the area and seen the layout of the roads and the pavement areas, that I can visualise how the area would be used on a balmy summer evening.

Whilst I was on my site visits' I asked for and received a plan identifying the listed buildings within the areas affected by the different parts of the Order.

The Basic Conditions Test

One of the key lines of enquiry I am required to pursue is whether the Order would meet the "basic conditions" as set out in Part 8 of Schedule 10 of the Localism Act . This requires me to consider it appropriate to make the Order having regard to:-

- national policies and advice contained in guidance issued by the Secretary of State
- the desirability of preserving any listed building or its setting or any features of special architectural or historic interest.
- the desirability of preserving or enhancing the character or appearance of any conservation area
- whether making the Order will contribute to the achievement of sustainable development
- the general conformity with the strategic policies in the development plan
- whether it will lead to a breach in EU Obligations

If I do not consider that the Order meets the basic conditions test I cannot recommend that it moves to Referendum.

The Consultation Process

One of the preliminary matters I *need* to address is whether the consultation processes which accompanied the Order are satisfactory.

I am conscious that when the Town Council embarked on the consultation it was proposing 4 separate Neighbourhood Development Orders which have now been consolidated into a single Order, which has 4 Parts. I do not believe that this change brought about to secure compliance with legislation, has prejudiced any party.

There were 2 rounds of public consultations; the first round took place between 7th June 2013 and 2nd August 2013. This was advertised in error in the public notices as being a Regulation 14 consultation. There was subsequently a second period for making representations, which ran from 20th September 2013 until 1st November 2013.

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The Town Council used a variety of methods of drawing attention to the draft Orders, including the holding of a public exhibition, publication on the council's website and letter drops to all areas that fell within the boundaries of the proposed Orders. I am entirely satisfied that the legislative requirements to ensure that all those who live and work within the areas will have known what was being proposed and had an opportunity to make comments and representations if they had wished. It is apparent that some changes have been made to the Order as a result of the representations received. There was also coverage in publications distributed around the town.

Allerdale Borough Council carried out a further six week publicity period which ran between 11th November and 23rd December under Regulation 23 of the Neighbourhood Planning Regulations.

The Neighbourhood Development Order: An Overview

Cockermouth Town Centre was hit by a devastating flood in November 2009. One of the issues that many businesses faced, as they sought to recover, was the requirement to submit planning applications for replacement shopfronts. This resulted in what many felt were unnecessary extra cost and introduced delay into the recovery process and this has in part prompted the Town Council to embark on pursuing this Neighbourhood Development Order.

From my visit I can fully appreciate the magnitude of the task that the town faced in getting back in business and whilst I can understand the frustrations expressed at the time I found a town centre that appears to be confidently moving forward with further investment and only a limited number of vacant shop units. Cockermouth as a community, along with all the agencies involved, should be congratulated on the town centre's recovery. It appears to be a thriving market town once again.

By grasping the opportunities that neighbourhood planning offers, it will give certainty to owners of properties that they can carry out a range of developments without having to apply for planning permission. It is the Neighbourhood Development Order that grants the planning permission for alterations and uses which have been deemed acceptable. This is an example of positive, proactive planning which seeks to guide and influence the type of development the community wished to encourage, through a deregulation measure- removing the need for applying for planning permission for the life of the Order, namely 3 years from when it is made.

The consolidated Order comes in 4 separate parts, covering 3 different areas of the town centre which are clearly set out in maps which sit as Appendices to the Order. The four elements each seek to encourage particular forms of development by removing the need to apply for planning consent. I can confirm that the Order clearly sets out what development or class of use is approved. In fact, the Order goes

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further by stating explicitly what is not permitted. In some cases it goes beyond what is necessary by stating that the permitted change does not apply where the existing use is not in the use class that the Order grants consent to change away from. Whilst unnecessary, it does offer some additional clarity.

I can also confirm that the Order does not cover “excluded development”. It does not cover more than one Neighbourhood area. The Order lasts for 3 years from the date it is made and any works commenced before the Order is expired can be completed. I consider that this is an appropriate period. Alternative forms of development are not prevented - they just need to go through the normal planning process.

I will examine each element of the Order and assess whether individually and collectively they pass the basic conditions test.

Part 1 Market Place

This part of the Order would grant planning permission to change commercial properties to Class A3 restaurant or Class A4 drinking establishment use in the Market Place area as designated on the map attached as Appendix A .Secondly it grants planning consent for the use of highway land for the seated consumption of food and drinks linked to the adjacent premises with the placing of tables, chairs, non-advertising parasols, space heaters and barriers / enclosures within the particularly identified areas within the area marked on the map in Appendix B.

This initiative is a response to the moving of the main retail centre of gravity to Main Street and Station Street.

My visit revealed that there is a significant number of these A3 and A4 uses already established in this part of the town centre and they appear to be trading successfully. The Town Council are seeking to further consolidate this area as a location with a thriving evening economy and which will have a specialist role in terms of how it offers to the rest of the town centre. There is a positive attempt to put in place the ingredients that will create what many have described a café culture with outside eating and drinking at tables. This has been assisted by the environmental improvements which have already been carried out in the area. It is clear there is a desire to create a more continental ambience. This is an approach which many towns and cities have promoted for fringe trading areas through the use of planning policy rather than going the “extra mile” with the granting of a planning permission covering the whole area now being facilitated by the proposed Order.

The majority of the buildings within the Market Place are listed as well as all being in the Cockermouth Conservation Area. The existing bar and restaurant establishments demonstrate that their change of use has not adversely affected their character.

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Indeed securing economic uses of all the buildings and achieving a vibrant atmosphere will both preserve and enhance the area and the buildings.

The proposed Order would grant planning permission, subject to a number of conditions, in the same way that a bespoke planning permission can be granted conditionally. A number of these conditions require compliance before the commencement of the use. These are known as pre commencement conditions. A number of the proposed conditions signpost the occupier to the need to get other regulatory consents. I do have a number of concerns regarding the conditions as proposed and this goes to the heart of meeting the “basic conditions” tests, particularly with the need to have regard to Secretary of State policy and guidance. The Government sets very clear tests as to what matters can be covered by planning conditions. This is set out in the National Planning Policy Framework (Para 206) and in more detail in Circular 11/95 The Use of Conditions. It also appears in the beta version of the National Planning Policy Guidance but this has not been finalised so full weight cannot be given to its content.

All of the above sources of advice set out the six tests which a planning condition must pass before it can be imposed namely that it is a) necessary, b) relevant to planning 3) relevant to the development being permitted, 4) enforceable, 5) precise and 6) be reasonable in all other respects.

As the proposed Order will grant planning permission, I consider that any conditions attached to that permission needs to pass these tests. Non-compliance with the condition would remove the benefit of the planning permission granted by the Order. I use, as an example the proposed condition that requires a premise to be registered at least 28 days before opening under the Food Regulation Act 1991 before the use commences. Technically the breach of that requirement would mean that the change of the use was not authorised by the Order and could be liable for enforcement action. I am sure that is not what the promoters of the Order are really seeking to achieve which is an attempt to draw attention to other consents that may be required irrespective of the relaxation of the planning regime.

The National Planning Policy Guidance does say that a condition must not be used to control matters that are subject to separate control elsewhere in planning legislation and quotes advertisement control as an example. Under the test of relevance to planning it questions whether specific controls outside planning legislation may provide an alternative means of managing certain matters, quoting the example of works on the public highway requiring highways’ consent.

Whilst appreciating that the Town Council is trying to pull together and signpost the developer through the complexities of the regulatory regime, which is to be commended as an objective, the imposition of planning conditions that do not pass the six tests, would lead to the conclusion that the Order does not meet the basic conditions test. This is a shortcoming that relates to other conditions imposed in

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other parts of the Order and so I will have to return to this theme elsewhere in the report.

There is a clear value in providing comprehensive advice as to the range of other regulations that still apply notwithstanding the relaxation of this particular aspect of planning control. Often the submission of the planning application is used by other bodies and agencies to point alert the applicant to how their legislation will need to be complied with should planning permission be granted. This may be done by them writing separately to the applicant or by the inclusions of informatives on the decision notice.

I intend proposing modifications which will remove a number of conditions but I would suggest a note or document that could be appended to the Order but clearly marked as not part of the Order or a separate leaflet sent to all the properties pointing out the need to need to get additional consents. I will be recommending the deletion of all the conditions with the exception of condition (g), which is a noise performance condition which I believe, does pass the tests. However, the technical nature of the definition would benefit from a layperson's explanation setting out how the noise levels would be measured and assessed and likely measures that would be required to secure compliance. This could be included in the accompanying note or leaflet described above.

Similar considerations relate to the conditions proposed to be imposed on the external seating areas set out in Part B of the Order. The specific conditions that do not meet the Circular 11/95 tests relate to (d)the need for a premises license, (h) the need to get a street café license and (k) the need to do a risk assessment for space heaters under the Management of Health and Safety at Work Regulations 1992. As an alternative to the planning conditions including this information in an advisory leaflet would be helpful.

To date I have concentrated on the questions on how the proposed conditions comply with national guidance but I also have to address how the proposed change of use and the permission for the external areas complies with national planning policy set out in the National Planning Policy Framework. To this end I conclude that it is entirely consistent with the objectives for "Ensuring the Vitality of Town Centres" as set out in the Framework. Equally it will not conflict with the strategic policies as set out in the adopted development plan which in this case is the somewhat dated Allerdale Local Plan 1999. Indeed Policy CRG2 gave encouragement to restaurants and cafes as part of a mix of uses in Market Place.

Subject to the modifications deleting a number of conditions I am happy to confirm that Part 1 (class A and B) meet the basic conditions test.

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Recommendation

Delete all conditions in A2 except condition g

Delete conditions B2 d, h, and k. Renumber the remaining conditions.

Part 2 Creation of Residential Flats above Commercial Premises

This section of the Neighbourhood Development Order grants planning permission for the upper floors, above shops and financial and professional services premises, to be converted into up to 4 flats. This is subject to a limit of 2 flats per individual floor.

The Town Council's objective is to encourage the residential use of upper floors of properties in Main Street and Station Street. On my site visit I saw a number of upper floors already in residential use but there were a considerable number that appear to be under used and especially the three storey buildings could be easily converted into four units. Such uses would be entirely consistent with the Governments' aims set out in para 23 of the National Planning Policy Framework, of encouraging more residential units in town centres, to add to their viability outside shopping hours as well as meeting the overall objective of increasing housing supply. It is entirely consistent with the principles of sustainable development and accords with the objectives of Policy RG10 of the Local Plan.

The Town Council has recognised that the current permitted development rights to allow the creation of two flats may not make sufficient use of underutilised upper floors and this relaxation should prove attractive to developers and building owners alike. A large majority of the buildings, particularly in Main Street are listed. However the Order allows the change of use only and listed building consent will still be required for such works as required by the Planning (Listed Building and Conservation Areas) Act 1990. The change of use will have a positive effect upon the character and appearance of upper floors of the buildings in the Conservation Area by ensuring the buildings will be put to a beneficial use. Equally planning control will be maintained for external alterations such as outside staircases as well as Building Regulations approval being required. However as previously referred to, the imposition of conditions seeking to secure regulatory approval for other consents before the use is commenced would be contrary to Secretary of State advice and so would fail the basic conditions test unless modified. Subject to the deletion of the three conditions I can confirm that Part 2 Class A provisions meet the basic conditions test.

Recommendation

Delete all conditions

Part 3 Replacement Shopfronts

The intention of this part of the Order is to allow the replacement of existing shopfronts, so long as they replicate the design templates and incorporate the design criteria, set out in Appendix F of the Order – the Replacement Shop Front Design Guide. It was obvious from my site visit that a large number of shops have had new shop fronts installed since the 2009 floods. They were excellent examples of what the Design Guidance is promoting. The guidance provides design clarity and requires the use of materials that will preserve and enhance the Conservation Area. The removal of the need for planning permission does not remove the need for getting listed building consent which will protect the listed building from any inappropriate alteration.

Following on from my previous comments I do not believe the imposition of conditions requiring compliance with other legislation or consents is compatible with Secretary of State advice and accordingly, I will be recommending the deletion of these conditions to allow this part of the Order to pass the basic conditions test

Recommendation

Delete all conditions

Part 4 Modification of Article 4 Direction

This part of the Order relates to a series of residential streets at the western end of the Town Centre. The streets covered are Crown Street (south side), New Street, Derwent Street, Fletcher Street and Horsman Street as shown in Appendix G of the Order. They were the subject of an Article 4 Direction made in 1976, which removed permitted development rights to make certain alterations to the houses, in particular the ability to install replacements windows and doors.

It was evident to me on my site visit that a large number of doors and windows were of a modern design with many examples using UPVC despite the existence of the Article 4 Direction. The effect of the proposed Order will be to allow the replacement of windows and doors, so long as they are timber sliding sash windows and timber panelled front doors within existing openings. They will need to be designed in a manner that replicates the design templates and incorporates the design criteria set out in the Design Guide – attached as Appendix G of the Proposed Order.

This proposal has been the subject of an objection from English Heritage, which has been maintained despite an attempt by Allerdale Borough Council to achieve a resolution to their objection. Their view is that by allowing standardised window types on all properties, does not allow them to have regard to the individual character of

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properties. I have to say that when I visited the area I was struck by the diversity of windows and doors within the area covered by the Article 4 Direction. I did not see any building within the whole area that would not have been able to use the style and construction of the types being promoted by the Design Guide. English Heritage objects to the Design Guide as it does not exclude the use of double glazed timber sash sliding windows as they do not have the same historic character as original windows. Their advice is to expect residents to adopt draught proofing and install secondary glazing.

I am required to have special regard to whether the adoption of the measures would preserve and enhance the Conservation Area. My conclusion is that it would and indeed could encourage those properties which have already had replacement doors and windows may now replace them with those that are built in timber and comply with the design guidance. To my mind, it is the style of opening and the material used that has the biggest impact on the character and appearance of the Conservation Area. I am also conscious that there are no listed buildings in the area covered by this part of the Order. I believe that it would be unreasonable to require home owners, who are investing in the improvement of their properties, to replace their windows with single glazed units only or only to look at the repair option. Following my visit I have concluded that the Neighbourhood Development Order should allow for the use of double glazed units and I believe that the English Heritage objection is not so compelling as to require an amendment to the Order and I am satisfied that all elements pass the Basic Conditions Test.

As previously mentioned I have reviewed the need for conditions and my previous conclusions equally apply, especially appertaining to the condition requiring the listed building consent to be sought because, as previously mentioned, there are no listed buildings in the designated area. The condition to prevent the installation of doors opening outwards across the pavement is justified.

Recommendation

Delete Conditions A2 a and b

Compliance with EU Obligations and Human Right Legislation

I am satisfied that nothing in this Order will contravene EU obligations, European Convention rights or Human Rights legislation.

The Referendum Area

I have concluded that there is no overriding reason to extend the areas covered by the Referendum and that the Referendum should be limited to the properties within areas covered by the Order which are shown on the maps attached as Appendices A, C and E

Conclusions

Cockermouth Town Council should be applauded for grasping the opportunities offered by neighbourhood planning and have come up with proposals to remove the need for making planning applications for a range of developments, which it is seeking to encourage within different areas of the town centre. As a front runner authority it has had to break new ground. I have had to make recommendations that will remove conditions that do not pass the tests set out by the Secretary of State on what can be controlled by planning conditions, although I am confident that the objective of pointing business owners and residents to the needs to comply with other regulations can be realised by advice and information that could be produced to accompany the order. **I can confirm that subject to my proposed modifications the Order does pass the “basic conditions test”.**

The Order is a practical and proactive initiative that will assist the further improvement of the Cockermouth Town Centre by encouraging and guiding new development through the relaxation of the normal requirements to apply for planning permission. Both the Town Council and Allerdale Borough Council should be commended for their initiative in taking advantage of these new powers and for the way they have approached this process.

I am delighted to report that I am satisfied that the Cockermouth Neighbourhood Development Order, as modified by my recommendations can now be submitted to Referendum