

DELEGATED

**AGENDA NO
PLANNING COMMITTEE**

26 FEBRUARY 2014

**REPORT OF CORPORATE
DIRECTOR,
DEVELOPMENT AND
NEIGHBOURHOOD SERVICES**

13/3034/FUL

The Masham 87 Hartburn Village Stockton

Commercial bin storage to rear of premises removing part of existing boundary fence and installation of proposed access gate, to allow for access into proposed bin store area only.

Expiry Date 31 March 2014

SUMMARY

This application seeks planning permission for the installation of a proposed access gate to allow for access to the proposed bin store through the removal of part of the existing boundary fence of The Masham public house, Hartburn Village, Stockton on Tees. The main building is a Grade II Listed Building and is located within the Hartburn Village conservation area.

The proposed scheme would create an access into a proposed commercial waste storage area to/from Village Paddock (west) that would be sited within an established part of the commercial curtilage, and would be situated to the south west/rear of the main building and directly to the rear of No's 89 and 91 Hartburn Village. To facilitate the access of bins to/from the waste storage area, the adjacent strip of land (adopted highway) to the west of the site boundary (within Village Paddock) would need to be lowered by approximately 500mm and would create a ramp. This same level would also need to be reduced on the other side of the fence within the public house curtilage (where the waste storage bins are to be sited).

No objections have been received from the Environmental Health Unit. The Refuse and Street Cleansing Supervisor has confirmed that the relocation of the bin store will not increase vehicle movements on Village Paddock as the same vehicle collects both residential and commercial waste in one visit. No objections have been received from the Head of Technical Services, subject to a planning condition to restrict the access of the gate for waste collection only and for no pedestrian access of deliveries to the site. This condition has been assessed to ensure it meets the six tests for validity which are necessary; relevant to planning; relevant to the development to be permitted; enforceable; precise; and reasonable in all other respects. The Council's Principal Solicitor is satisfied that all six tests are met and is recommended to be imposed accordingly.

The Council's Conservation and Historic Buildings Officer has raised no objections to the scheme.

Six objections have been received to date which are summarised as; the public house does not have any access rights to Village Paddock and works would take place to land not owned by the applicant; the scheme would result in an adverse impact on highway and pedestrian safety (and contrary to a previous appeal decision); the scheme would result in

an adverse loss of amenity in terms of noise disturbance and odours/smells; the scheme is not suitable for area and the proposed works would be unsightly.

Subject to the imposition of the identified relevant planning conditions, the scheme as proposed is not considered to result in a significant adverse loss of highway and pedestrian safety, or have a significant adverse impact on the character and appearance of the area or lead to an unacceptable loss of amenity for neighbouring land users.

The planning application was first publicised in January 2014 however additional consultations have been undertaken due to the land ownership of the strip of land to which the proposed works relate. The new neighbour consultations now expire on 25th February 2014, the site notice consultation period will expire on Thursday 27th February 2014 and the press notice will expire on Thursday 6th March 2014. Therefore, it is recommended that the decision is delegated to the Head of Planning for approval subject to no new objections being received which raise material planning issues which have not been previously considered on the expiry of the consultation period to allow a timely decision to be issued.

RECOMMENDATION

It is recommended that the Planning Committee delegate the decision of application 13/3034/FUL to the Head of Planning for approval on the expiry of the consultation period subject to no new objections being received which raise material planning issues which have not been previously considered and the following conditions and informatives

01 The development hereby approved shall be in accordance with the following approved plan(s);

| <i>Plan Reference Number</i> | <i>Date on Plan</i> |
|-------------------------------------|------------------------------|
| <i>SBC001</i> | <i>7 January 2014</i> |
| <i>VV/347/01 REV B</i> | <i>7 January 2014</i> |

Reason: To define the consent.

Conditions to be Implemented

02. The proposed access gate hereby approved shall be solely used for access to the waste storage area associated with the public house as set out on plan VV/347/01 REV B (dated 7th January 2014) and shall only be opened and accessed for the removal of waste on waste collection days. The proposed access gate shall remain closed and locked at all other times and shall not be used for any deliveries to the public house or residential property or be accessed by members of the public or occupants of the public house and domestic property.

Reason; In the interests of residential amenity and highway safety.

03. The proposed access gate hereby approved shall be constructed in accordance with approved plan VV/347/01 REV B (dated 7th January 2014) and shall match the timber material and dark green stain colour of the existing, adjacent fence panels unless otherwise agreed in writing with the Local Planning Authority.

Reason; In the interests of the visual amenity of the surrounding area and to accord with the provisions of saved Policy EN24.

04. The works hereby approved to lower the existing level of the land to facilitate the waste storage area shall be completed in accordance with the levels specified on approved plan VV/347/01 REV B unless otherwise agreed in writing with the Local Planning Authority. The reduced level (where the waste storage area is to be sited within the public house curtilage) shall be constructed from a concrete material and provision made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the public house unless otherwise agreed in writing with the Local Planning Authority.

Reason; In the interests of visual amenity of the surrounding area and to ensure a satisfactory form of development.

INFORMATIVE OF REASON FOR PLANNING APPROVAL

The Local Planning Authority has implemented the requirements of the National Planning Policy Framework.

Informative: The applicant should Direct Services regarding a highway license for works to the highway/construction of the dropped verge crossing.

BACKGROUND

1. 00/1965/P; A retrospective planning application for the erection of 1.82m high x 1.2m wide double gates to the existing closed boarded fence (facing onto Village Paddock) was refused by the Local Planning Authority on the 30th January 2001 for the following reason;

In the opinion of the Local Planning Authority the double gates and access onto Village Paddock will lead to unacceptable parking and manoeuvring of vehicles in the sub-standard residential street, to the detriment of the free flow of traffic and highway and pedestrian safety. The proposal will be contrary to Policies GP1 and EN24 of the Stockton on Tees Local Plan.

2. The refused plans are appended to this report as Appendix 8
3. Within the committee report, the case officer commented "the applicant has stated that the access will be used only for private use and emergency access, and consideration has to be given as to whether this can be adequately controlled by planning condition, and whether such a condition would fulfil the necessary tests of a condition as defined in Circular 11/95...in this case, a condition to prevent public access emergency use would create a problem for the Local Planning Authority in being able to distinguish customers of the pub from relations/friends of the manager. Another problem is that it would be difficult to distinguish between private deliveries and commercial deliveries. On this basis the provision of such a condition would appear to be unenforceable, the condition would fail the rest within Circular 11/95".
4. The applicant subsequently appealed the LPA's decision (appeal reference APP/H0738/A/01/1060153, decision dated June 2001), which was dismissed by the Planning Inspectorate, who in considering the applicant's case, commented

The submitted application indicates that the gates are used for emergency purposes, these not specified by the applicant...in any event, another access already exists to Fraser Road. Further, he does not tell me of the nature of his personal use of the gates. It would be

reasonable for me to consider that it includes his business...the continued use of the gates established would bring further vehicles onto Village Paddock. This is a residential cul de sac, of limited carriageway width, with no footpath to the side adjacent to the site and with dwelling accesses along it. Additional vehicle manoeuvring would take place within a restricted area of carriageway. This would adversely affect the safe movement and free flow of traffic and pedestrians on Village Paddock. Here, the stated intention to use the access for pedestrian purposes only, indicates a wider use than any by the applicant himself.

5. On the matter of a planning condition to address the identified harm, the Inspector commented "firstly, a restriction of parking on Village Paddock relating to the site would be on land outside the appellant's control. Secondly, a limitation of the use of the gates to private and emergency access would be difficult to enforce - bearing in mind the clear imprecision of the appellant's intentions for gates". The Inspector therefore concluded that "substantial harm would result to the safe and efficient movement of vehicles and pedestrians on Village Paddock...".

6. Other planning history

93/1982/P internal alterations and erection of two single storey extensions and conservatory to rear , refused 18th February 1994

93/1983/P listed building consent for internal alterations and erection of two single storey extensions and conservatory to rear, refused 18th February 1994

94/1409/P single storey detached garage with pitched roof to rear, refused 7th October 1994

95/2046/P ground floor alterations and extension to rear to provide new toilets, kitchen and lounge area for the pub and a part change of use of the ground floor of 89 hartburn village from residential to storage area in association with the pub use, refused 22nd March 1996

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95/2047/P listed building consent for extensions to rear and internal/external alterations, approved 22nd March 1996

96/1755/P listed building consent to remove skylights and re-roof, approved 29th November 1996

96/1820/P listed building consent for internal alterations to extend bar area, installation of new door and removal of internal staircase, approved 20th December 1996

99/1518/P erection of single storey extension to rear (to include demolition of store room), approved 18th November 1999

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99/1523/P listed building consent for the erection of a single storey extension to rear (to include demolition of store room) , approved 18th November 1999

03/2622/LBC Listed Building Consent for internal alterations, replacement windows to front elevation, erection of rear fire escape from first floor flat and erection of 3 no. 4m x 3m parasols in beer garden, approved 5th December 2003

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03/2623/FUL Erection of fire escape at rear of first floor flat, lowering of flat roof, installation of replacement windows to front elevation (to match existing) and erection of 3 no. 4m x 3m parasols in beer garden, approved 3rd December 2003

05/0342/LBC Revised application for listed building consent for erection of single storey extension to kitchen, approved 8th April 2005

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05/0353/REV Revised application for single storey extension to rear to form extension to kitchen, approved 8th April 2005

Previously Withdrawn applications;

04/3133/FUL Single storey extension to rear to form extension to kitchen, withdrawn 1st February 2005

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04/3134/LBC Listed Building Consent for single storey extension to kitchen, withdrawn 1st February 2005

07/2125/FUL Erection of conservatory to rear enclosing rear courtyard and bin store to front, withdrawn 26th September 2007

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07/2316/LBC Listed building consent for the erection of conservatory to rear enclosing rear courtyard and bin store to front, withdrawn 27th September 2007

11/2184/FUL Application to create new bin store to front of pub, increase fence height, replace existing wall to rear and to repaint both front and rear elevations of public house, withdrawn 1st December 2011

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11/2185/LBC Listed building consent to create new bin store to front of pub, increase fence height, replace existing wall to rear and to repaint both front and rear elevations of public house, withdrawn 1st December 2011

SITE AND SURROUNDINGS

7. The application site relates to The Masham public house within Hartburn Village (No 87), Stockton on Tees. The main building is a Grade II Listed Building and is located within the Hartburn Village conservation area. The public house is also adjoined to No 89, which is residential in use and is understood to be occupied by the landlord of the public house (and applicant). Beyond this, the application site is adjoined to No's 85 (east) and 91 (west), which are both residential. The public house curtilage extends to the south through a beer garden and this abounds 4 Fraser Road and the highway of Village Paddock (west) which serves several residential properties. No 93 Hartburn Village is present beyond the road to the west with 4 Village Paddock to the south west. The public house is served by an area of hard standing to the front.
8. Beyond the western part of the public house curtilage is a strip of adopted highway. The actual land ownership however is unknown; the applicant has undertaken the relevant steps to obtain details of the land ownership through a Land Registry search (which did not confirm who the land owner is), and has subsequently advertised the proposed works (with respect to the land ownership) in the local press as required by the planning process.

PROPOSAL

9. This application seeks planning permission for the installation of a proposed access gate through the removal of part of the existing western boundary fence, adjacent to Village Paddock. The proposed scheme would create an access into a proposed commercial waste storage area that would be sited in place of an existing storage area (forming part of the commercial curtilage), which is situated to the south west/rear of the main building and

directly to the rear of No's 89 and 91 Hartburn Village. This part of the site currently features some storage 'sheds' and is accessed from the pub's kitchen extension.

10. The Head of Technical Services requested that the initially proposed 2.6m wide gate be reduced to 1.6m to prevent any potential for vehicular access into the site. As such the proposed access gate would measure approximately 1.6m in width x 2.2m in height. The proposed gate would be inward opening and the submitted Design Statement confirms that the gate is to be constructed from materials to match that of the adjacent fence panels (which is stained a dark green colour).
11. To facilitate the easy access of bins to/from the bin store area, the adjacent strip of land to the west of the site boundary (within Village Paddock) which is approximately 1.6m in depth and presently features an increased gradient rising up from the road level, would need to be lowered by approximately 500mm to create a ramp (measuring approximately 1.6m in width x 1.6m in length) to facilitate easier manoeuvrability of the bins. These works to the adopted highway will require a highway license, which is separate to the current planning application. This same level would also need to be reduced on the other side of the fence within the public house curtilage (where the waste storage bins are to be sited) as illustrated on photo iii of Appendix 7. The applicant's agent has indicated that the reduced level would be constructed from a concrete material.
12. The original submitted proposed plans indicated that the existing storage 'sheds' would be re-sited into the existing rear garden curtilage of No 89 (also occupied by the landlord of the public house/87). As this would constitute a change of use (and would not be considered acceptable), the applicant has been advised to re-site the proposed commercial activity back to the original storage area beyond the rear curtilage of 89 and 91. The submitted plans have been amended accordingly. The correct street name has also been updated on the submitted plans for Village Paddock (as opposed to 'The Paddock').

CONSULTATIONS

13. The following Consultees were notified and comments received are set out below:-

Conservation and Historic Buildings Officer

The application relates to the installation of a new access gate to the rear of the Masham Public House a grade II listed building situated within the Hartburn Conservation area. The style and design of the gate will appear much as the existing close boarded fence within the street scene and I do not consider that the application raises any specific conservation or listed building issues. I therefore have no adverse comments.

Head of Technical Services

General Summary

The Head of Technical Services raises no objections.

Highways Comments

It is proposed to install a gate to the side of 91 Hartburn Village to provide access to a bin store at The Masham, 87 Hartburn Village. The gate would be accessed from Village Paddock. Village Paddock is an adopted road (4.3m wide) with a footway on the western side and a narrow verge on the eastern side.

The Refuse and Street Cleansing Supervisor has confirmed that the relocation of the bin store will not increase vehicle movements on Village Paddock as the same vehicle collects both residential and commercial waste in one visit.

Given previous inspector's decisions public access to the beer garden of The Masham from Village Paddock would not be supported as it would be likely to increase on-street parking on Village Paddock.

Given that this proposal will not increase the vehicle movements on Village Paddock and subject to a condition restricting the use of the proposed gate to access the bin store only, preventing public or general staff access, there are no highway objections.

Informative: The applicant should Direct Services regarding the construction of the dropped verge crossing.

Landscape & Visual Comments

The proposed gate will tie in with the existing fence, there are no landscape or visual objections.

Environmental Health Unit

I am satisfied with the proposed plans for the bin storage area. I have no objections in principle to the development, and would not recommend conditions be imposed should the development be approved.

Waste Management

Refuse and Street Cleansing Supervisor has confirmed that the waste collection round does both the domestic and the trade on the same day.

Ward Councillors

Councillor K A Lupton

Councillor T Laing

No comments received

PUBLICITY

14. Neighbours were notified and comments received are set out below :-

Mrs Mary Carmichael

4 Village Paddock Stockton-on-Tees

With the reference of many applications by Mr Eddy, this one to gain access to the rear of the Masham via Village Paddock. I refer you to the enclosed copy of the Appeal Decision by the SSE Inspector's comments in paragraph 7. Nothing has changed - we still have a limited carriageway - no pavement on one side and a rapidly deteriorating road surface. In Paragraph 9 the Inspector says that harm would result to the safe and efficient movement of vehicles and pedestrians in the Paddock. 2014 -nothing changes- and the appeal was dismissed.

In the present application, Mr Eddy states 'several neighbours have been 'spoke to' with positive response. No one in Village Paddock was approached.

At a planning meeting in the Masham a few years ago, Mr Eddy said he proposed to put 2 hinged (for access) screening round the bins - this never happened - why?

The 'unwelcome' odours referred to -does this mean that they should be transferred to the Paddock where we already endure unpleasant cooking smells every day from the Masham's kitchens.

The Inspectorate has already dismissed an appeal for access into the Paddock.

I ask that this one be refused too.

G Carmichael

4 Village Paddock Stockton-on-Tees

I have the following observations to make;

Commercial content - design statement, site details, proposal project

None of these documents confirm the property No.

Photo 1. Properties No 87, No 89, No 91 are shown in this exhibit.

Front elevations are omitted from the plans/the plan shows property 89 is now within the curtilage of No 97 (its use commercial) serving the interests of No 87.

Photo 2. Commercial bins are shown in their correct location respecting previous application within the forecourt area.

Private content

Photos 3, 4, 5. Property No 91 Hartburn Village, privately owner occupied residence. This house is outside the curtilage of No 87. Showing narrow single carriageway with limited access. Lack of pavement along east site of Village Paddock. Domestic bin on roadside, normally behind screen. Woven wicker basket screen for storage of domestic bin. Plant pot/landscaping further screening for domestic bin.

Commercial content

No 87s curtilage has no access to Village Paddock, vehicle access was via Fraser Road for servicing, maintenance via double gates.

Summary

I do not support this application. Interested parties should refer to APPEAL REF APP/H0738/A/01/1060153, dated 1st June 2001.

Mr Kenneth Jones

6 Village Paddock Stockton-on-Tees

I totally object to this application for the following reasons:

This will create access problems for the residents of Village Paddock. Village Paddock is too narrow to have this access point. We already have the issues of Masham users parking along Village Paddock. I can also envisage the bins being left on the road after being emptied.

As residents of Village Paddock we do not want the source of the odour problem covered in the application moved closer to our houses.

The noise of bottles being thrown into the bins is bad enough at the current bin location. It will be significantly worse at the proposed location.

I believe this will invariably lead to access from the beer garden to Village Paddock

Kathleen Tart

8 Village Paddock Stockton-on-Tees

No doubt you have noticed the following inaccuracies in the proposal submitted by Mr. J. Eddy.

1. The tiny amount of space gained by removal of the bins next to the hedge would not possibly create an extra car parking space.
2. The road into which he is seeking access is incorrectly named.
3. The proposed concrete ramp would be constructed on land not owned by Mr Eddy, and would be unsightly and necessitate the removal of plants and shrubs
4. The 'tool sheds' are part of the existing commercial operation, so their re-siting would require a separate planning application.
5. Access to Village Paddock is not as described: it is a narrow road with a footpath to the west site only, suitable for single file traffic.
6. The domestic refuse vehicles currently serving Village Paddock do not collect commercial waste; this development would mean an increase in large vehicles in a narrow road.

In addition Mr Eddy states in his proposal that the bins 'give off unwanted odours', which obviously we would not want moved nearer our property. As you will be aware there is a long history of applications by Mr Eddy to gain access to the rear of the Masham pub through the boundary to Village Paddock. All of which have been refused by Stockton

planning and higher authorities. To grant an access way would contradict all previous decisions made by yourselves and the Planning Appeals Court (2001). All past reasons for refusal still remain valid for this application. I would therefore request that planning application 13/3034/FUL is rejected. If Mr Eddy wishes to improve the streetscape I suggest he camouflages the bins in their existing position.

Mr Peter Crooks (duplicate objections received)
10 Village Paddock Stockton-on-Tees

Comment:-

I would like to object (to the) application on the following grounds:-

1a/ The Masham does not have any access rights to the Village Paddock.

1b/ Over the years there have been repeated applications to gain access to the rear of the Masham from Village Paddock. These have all been rejected.

1c/ Having discussed the present application with some of my neighbours we are concerned that if permission was to be granted, it would prove to be the thin end of wedge eventually leading to vehicle and public access planning applications,

1d/ The access to the rear of the Masham was traditionally via the gate at the end of the alley which was from Fraser Road behind what was the post office. Having looked yesterday this access would seem to have been developed over the years by the cottages backing onto it.

Finally it was interesting to note that in the design and access proposal the following comments were made.

2a/ The commercial bins give off unwanted odours at the entrance to the Masham.

Comment

I assume that these unwanted odours are seen as been acceptable to the Village Paddock residents

2b/ The same refuse wagon which services the Village Paddock would be used to collect the waste.

Comment

I believe that this is not the case at the present time. The current road surface is in a very poor condition and it will be further damaged if used by any additional heavy goods vehicles.

Mrs Christine Jones
The Ridings Village Paddock

I object to the proposal as follows:

Village Paddock is too narrow for regular commercial access and there is no footpath on the side of the road where the change will take place so there is also a safety issue.

There is already a parking issue with the Masham customers using Village Paddock to park and this will only make things worse. Freeing up the bin area at the front of the Masham will not help the car parking issue

The bins new location will bring noise and unpleasant odours much closer to the houses in Village Paddock.

This access will lead to general access from the Masham to Village Paddock and this is totally unacceptable.

Miss Amelia Bonner (x 2 representations indicating neither support nor objection)
93 Hartburn Village Stockton-on-Tees

No objections

Could not see any major objections but I would not support public access from Village Paddock.

PLANNING POLICY

15. Where an adopted or approved development plan contains relevant policies, Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that an application for planning permissions shall be determined in accordance with the Development Plan(s) for the area, unless material considerations indicate otherwise. In this case the relevant Development Plan is the Core Strategy Development Plan Document and saved policies of the Stockton on Tees Local Plan
16. Section 143 of the Localism Act came into force on the 15 Jan 2012 and requires the Local Planning Authority to take local finance considerations into account, this section s70(2) Town and Country Planning Act 1990 as amended requires in dealing with such an application [planning application] the authority shall have regard to a) the provisions of the development plan, so far as material to the application, b) any local finance considerations, so far as material to the application and c) any other material considerations

The following planning policies are considered to be relevant to the consideration of this application:-

National Planning Policy Framework

Paragraph 14. At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking;

For decision-taking this means:

approving development proposals that accord with the development without delay; and where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:

-any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or -specific policies in this Framework indicate development should be restricted.

Core Strategy Policy 3 (CS3) - Sustainable Living and Climate Change

Additionally, in designing new development, proposals will:

_ Make a positive contribution to the local area, by protecting and enhancing important environmental assets, biodiversity and geodiversity, responding positively to existing features of natural, historic, archaeological or local character, including hedges and trees, and including the provision of high quality public open space;

_ Be designed with safety in mind, incorporating Secure by Design and Park Mark standards, as appropriate;

_ Incorporate 'long life and loose fit' buildings, allowing buildings to be adaptable to changing needs. By 2013, all new homes will be built to Lifetime Homes Standards;

_ Seek to safeguard the diverse cultural heritage of the Borough, including buildings, features, sites and areas of national importance and local significance. Opportunities will be taken to constructively and imaginatively incorporate heritage assets in redevelopment schemes, employing where appropriate contemporary design solutions.

Saved Policy EN24 of the adopted Stockton on Tees Local Plan

New development within conservation areas will be permitted where:

- (i) The siting and design of the proposal does not harm the character or appearance of the conservation area; and
- (ii) The scale, mass, detailing and materials are appropriate to the character and appearance of the area

MATERIAL PLANNING CONSIDERATIONS

17. The main planning considerations with respect to this application are the impact on highway and pedestrian safety, the impact on the character and appearance of the existing building and surrounding conservation area and the impact on the amenity of neighbouring properties. These and any other matters are considered below.
18. As set out in full above, 6 objections have been received to date from the following properties within Village Paddock; No's 4 (2 objections received from the same household but with individual names), 6, 8, 10 and The Ridings. The objections are summarised as follows;
- *the public house does not have any access rights to Village Paddock
 - *works would take place to land not owned by the applicant
 - *the scheme would result in an adverse impact on highway and pedestrian safety due to the narrow width of Village Paddock
 - *there are existing car parking problems within Village Paddock as a result of the public house
 - *there have been repeated applications to gain access to the rear of the public house from Village Paddock including a refused application and dismissed appeal decision in 2001
 - *if approved, the scheme would lead to vehicle and public access into the site
 - *historically the rear of the public house was accessed via a gate and the end of an alley served from Fraser Road
 - *the Design Statement states that the commercial bins give off unwanted odours at the entrance to the Masham - these unwanted odours are not acceptable to the Village Paddock residents either
 - *the scheme would result in an increase in noise and odours
 - *the existing road surface would be damaged by any additional heavy goods vehicles
 - *the objections from No's 8 and 10 Village Paddock states that the same refuse wagon which services the Village Paddock does not collect commercial waste.
 - *scheme not suitable for area
 - *the plans are inaccurate
 - *the scheme, including the proposed ramp/works to adopted highway verge would be unsightly
19. Representations have also been received from 93 Hartburn Village, which neither support nor raise objections to the application providing that the proposed gate does not create a public access from Village Paddock.

Impact on highway and pedestrian safety

20. As detailed above, planning application 00/1965/P was refused in 2001 on the grounds that the installed double gates and access onto Village Paddock would lead to "*unacceptable parking and manoeuvring of vehicles in the sub-standard residential street, to the detriment of the free flow of traffic and highway and pedestrian safety*". It was considered that a planning condition would not provide satisfactory control over the use of the access and on this basis the provision of such a condition did not appear to be enforceable, thereby failing the tests within Circular 11/95. With reference to Circular 11/95, this states that planning conditions must be
- i. necessary;
 - ii. relevant to planning;
 - iii. relevant to the development to be permitted;
 - iv. enforceable;
 - v. precise; and
 - vi. reasonable in all other respects.

21. The subsequent appeal was also dismissed by the Planning Inspectorate as set out in the Background of this report. As such, the above refusal and associated appeal decision are therefore material considerations in the assessment of the current application.
22. The Head of Technical Services (HoTS) has assessed the current scheme and has commented that Village Paddock is an adopted road (approximately 4.3m wide) with a footway on the western side and a narrow verge on the eastern side. The Council's Refuse and Street Cleansing Supervisor (Waste Management) has confirmed that the relocation of the bin store will not increase vehicle movements on Village Paddock as the same vehicle collects both residential and commercial waste in one visit. As a result, the HoTS has raised no highway objections to the scheme *"given that this proposal will not increase the vehicle movements on Village Paddock and subject to a condition restricting the use of the proposed gate to access the bin store only, preventing public or general staff access..."*.
23. As set in the Background to this report in regard to refused application 00/1965/P, it was considered that a planning condition to prevent public access (and associated car parking problems in Village Paddock) would fail the tests of Circular 11/95. With respect to the current scheme, one of the notable differences between the current application and the previously refused scheme for access gates in the western boundary, is that the current proposal would relate to a single access gate that would only serve/create an access to the commercial waste storage area, which is restricted in size by the boundary enclosures to the south (adjacent to the beer garden) and to the north (adjacent to the rear garden curtilages of No's 89 and 91 Hartburn Village). A small access gate from the beer garden leads to the rear of the kitchen extension and into the proposed waste storage area however this is indicated as being for staff use only. In comparison, it is understood that the previously refused application for double gates opened directly into the beer garden.
24. In view of the above considerations, it is considered necessary to ensure, by way of a planning condition, that the proposed access gate is only opened and accessed on waste collection days only and that the gate is locked at all other times with no access permitted to occupiers of the public house (or No 89), members of the public or any deliveries to the site. The recommended condition has been considered and agreed by the Council's Principal Solicitor, as being necessary, relevant to planning and the development permitted (from a highway and residential amenity perspective), enforceable, precise and reasonable. As such, and subject to this condition, it is considered that the proposal would address the reason for the refusal of the previous scheme and accord with the requirements of Circular 11/95.
25. Concerns are raised within residents' objections regarding the future pedestrian and vehicular access into the site. As detailed above, the proposed access gates would serve a much smaller area (specifically for waste storage) as opposed to opening into a larger and more accessible area, which was considered to be the case for the refused application in 2001.
26. Notwithstanding the above, should the access gate be used outside of the approved operation/purposes, the applicant would be in breach of a planning condition whereby a Breach of Condition Enforcement Notice could be served and for which there is no right of appeal to the Secretary of State. The breach of condition notice is mainly intended as an alternative to an enforcement notice for remedying a breach of control arising from failure to comply with any planning condition or limitation. But it may also be served in addition to the issue of an enforcement notice, as an alternative to a stop notice, where the Local Planning Authority consider it expedient to stop the breach quickly and before any appeal against the enforcement notice is determined, because, for example, it is causing serious environmental harm, or detriment to amenity or public safety. It is particularly apt for use where a valid planning condition has clearly been breached and the salutary experience of

summary prosecution (or the threat of prosecution) seems likely to compel the person responsible to comply with the condition.

27. Subject to this condition and given that the HoTS has raised no objections to the scheme, it is considered that the proposal will not result in an adverse loss of highway and pedestrian safety or result in a significant increase in vehicular activity within Village Paddock, or result in an increase in on street car parking in Hartburn Village and Village Paddock.
28. With respect to the required works to the adopted highway, the requirement to obtain a highway license is a matter under separate legislation. With respect to the objections from 4 and 10 Village Paddock regarding resultant damage to the road/the existing poor state of the road, the applicant has submitted a scheme detailing works to the adopted highway with the provision of a ramp at a suitable level. The Head of Technical Services raises no objection to this. As such, should any damage occur, this would be considered under separate highway legislation.
29. With regard to the objection from 6 Village Paddock in respect to the commercial waste bins being left on the footpath after collection, obstruction to adopted highways would be controlled by highway legislation. This applicant is also required to comply with the above referenced planning condition.

Character and appearance of listed building and surrounding conservation area

30. The modest scale and design of the proposed access gate is considered to respect the proportions of the existing boundary fence (the proposal would be of the same height as the existing fence). A planning condition can ensure that the materials and stain colour also match those of the existing fence (a dark green colour unless otherwise agreed in writing).
31. Consideration is also given to the established commercial curtilage of the public house, including the area where the proposed waste storage/refuse bins are to be sited, subject to works to lower the ground level of the area. An existing tree stump, which is of no amenity value and storage 'shed' is to be removed as part of the scheme to allow space for the moveable waste bins to be sited in this area.
32. The Council's Historic Buildings and Conservation Officer has raised no objections to the scheme.
33. The objection from 8 Village Paddock has commented that the works to the strip of adopted highway (to lower the level and create a ramp) would be unsightly. The works would require the removal of existing shrub (and potted) planting, which is not formally protected and is considered to be of limited amenity value. The proposed works would also require a highway license and would need to be constructed/completed to the satisfaction of the Council. The Council's Landscape Officer has no objections to the scheme from a landscape and visual perspective.
34. In view of the above considerations, it is considered that that the design, scale and siting of the proposed works would not result in an adverse impact on the character and appearance of application site (including the setting of the Listed Building) and the wider conservation area. It is considered that the proposal will not adversely affect existing landscape features. The proposal is therefore considered to accord with the provisions of saved Policy EN24 and Core Strategy Policy CS3 (8).

Amenity of neighbouring land users

35. As detailed above, the proposed access gate would open inwards and would be of a matching height and siting to that of the existing fence. The proposal would not adversely affect separation distances to surrounding properties as a result; the proposed gate (and waste storage area) would be sited within the established curtilage of the public house, directly adjacent to the rear boundary of No's 89 and 91 Hartburn Village, as per the existing site layout with a separation distance of approximately 12m from the proposed waste storage area to the two storey main rear elevations of these properties.
36. The proposed works would also be sited approximately 14m from the southern boundary to No 4 Fraser Road (and approximately 20m from the actual property) with the existing beer garden in between. The proposal would be sited approximately 7m from the boundary to No 93 High Street to the north west (and 19m from the rear of this property) and at an oblique separation distance of approximately 20m from No 4 Village Paddock (south west). In view of the above, it is considered that the proposal will not result in an adverse loss of amenity in terms of outlook, overbearing and overshadowing for neighbouring properties.
37. The Refuse and Street Cleansing Supervisor has confirmed that the commercial waste is collected on the same day and same collection round as domestic waste collection. The moveable waste bins would also be sited in an established curtilage of the site where the identified storage 'sheds' are presently located and the area would be sited no closer to adjacent residential properties than the existing layout/relationship.
38. As set out above, the scheme is recommended for approval subject to a restrictive planning condition to limit/control access to the bin storage area from the proposed gate to the waste collection day only and to prevent access by any members of the public, deliveries or occupiers of the public house. This is considered to minimise any adverse unacceptable impact on residential amenity in terms of noise disturbance.
39. The Council's Environmental Health Unit has raised no objections to the proposed scheme and has not recommended any condition be imposed. Any controls over times for the disposal of bottles (and any other waste) into the waste bins would be considered/controlled by separate environmental and licensing legislation.
40. The works to lower the level of the strip of adopted highway land and the area for the proposed waste storage area by approximately 0.5m are considered to be modest and are not considered to adversely affect the amenity of neighbouring properties in view of the established curtilage of the public house, distances to surrounding properties and the existing enclosed nature of the proposed waste storage area.
41. In view of the above considerations, including the recommended condition to control access to the commercial waste storage area, it is considered that on balance, the proposed scheme will not result in an unacceptable loss of amenity for surrounding residential properties in terms of noise disturbance and an increase in odours/smells.

Procedural Matters

42. As set out above, the applicant's agent has undertaken the necessary publication of the land ownership notification to ascertain the unknown owner in the local press. Following receipt of this and the requisite signed certificate (Certificate D indicating that the land owner is unknown but that reasonable steps have been undertaken to ascertain the land owner), the Local Planning Authority has carried out additional statutory consultations including neighbour consultations. Of these consultations, the two placed site notices 21 day period for comment will expire on the 27th February 2014 and the press notice 21 day period for comment will expire on 6th March 2014. As such, the application is recommended for approval with the decision delegated to the Head of Planning should no

further objections be received which raise new material planning consideration issues during this consultation period.

Residual Matters

43. The objection from No 4 Village Paddock (M. Carmichael) has queried why a scheme for the enclosure of the existing bins to the front of the site has never been pursued. Whilst this proposal does not form part of the current application, the referenced application was withdrawn in 2011 (reference 11/2184/FUL) as the Local Planning Authority considered that the partial removal of the existing hedge and erection of the proposed closed boarded fence design would introduce incongruous features into the surrounding area, to the detriment of the character and appearance of the Conservation Area. A revised scheme has never been submitted.
44. The objection from 4 Village Paddock (G. Carmichael) states that the submitted plans are inaccurate and do not show the front elevation of the public house. In response, the proposal relates to the western boundary of the Public House curtilage and the front elevation is not considered to be relevant to the current application and the plans are therefore considered to be acceptable. The defined red line site boundary is also considered to be acceptable for the purposes of the current application.
45. With respect to land ownership of the strip of adopted highway, as detailed above, the applicant has undertaken the necessary steps to ascertain the land owner of this parcel of land (which is also adopted highway). The applicant has also served notice on the Council's Technical Services department as the strip is also adopted highway (but not owned by the Council). This is considered to be in accordance with the statutory requirements to enable the planning application to be validated and determined. Any other matters relating to the land ownership would be civil matters between the applicant and any land owner. With respect to access rights to Village Paddock, the scheme is considered to be acceptable for the reasons set out above. Any matters relating to access rights are also civil matters.
46. With respect to the comments from No's 4 and 10 Village Paddock regarding the public house's right of access from Fraser Road (east), the applicant's agent has advised in writing that the gate/access in question has remained locked. The Inspector in 2001 also commented that the access from Fraser Road was closed and locked and the time of the site visit and "*it did not appear to me to have been used for some time*". As the proposed access gate would only serve the waste storage area in the western part of the site, any right of access from Fraser Road is not considered to be a material consideration in the assessment of the application.
47. With respect to previous applications seeking to gain access from Village Paddock, whilst each application is assessed on its own individual merits, refused application 00/1965/P and the associated dismissed appeal have formed material considerations of the current application, which is considered to be acceptable for the reasons set out above.

CONCLUSION

48. It is considered that the scheme will not adversely affect highway or pedestrian safety or the character and appearance of the existing listed building and the surrounding conservation area. The proposal is therefore considered to accord with the provisions of saved Policy EN24 and Core Strategy Policy CS3 (8).
49. The scheme will not lead to an unacceptable impact on the amenity of neighbouring residents. The proposal is therefore considered to be in accordance with the relevant Development Policies and is considered to be an acceptable form of development.

50. In light of the above, and the outstanding site notice and press notice publications, it is recommended that Planning Committee delegate the decision of application 13/3034/FUL to the Head of Planning for approval on the expiry of the consultation period subject no objections being received as a result of these consultations to allow a timely decision to be issued.

Corporate Director of Development and Neighbourhood Services

Contact Officer Mr Daniel James Telephone No 01642 528551

WARD AND WARD COUNCILLORS

| | |
|-----------------|------------------------|
| Ward | Hartburn |
| Ward Councillor | Councillor Laing |
| Ward | Hartburn |
| Ward Councillor | Councillor K.A. Lupton |

IMPLICATIONS

Financial Implications: As report.

Legal Implications: As report

Environmental Implications: As report

Human Rights Implications:

The provisions of the European Convention of Human Rights 1950 have been taken into account in the preparation of this report. The detailed considerations within this report take into account the impacts on neighbouring properties, visitors to the area, pedestrians and other relevant parties responsible for; or with interests in the immediate surrounding area. Consideration has been given to the level of impact and mitigating circumstances with conditions being recommended to reduce the impacts of the scheme where considered to do so.

Community Safety Implications:

The provisions of Section 17 of the Crime and Disorder Act 1998 have been taken into account in the preparation of this report