

DELEGATED

AGENDA NO  
PLANNING COMMITTEE

25 NOVEMBER 2015

REPORT OF CORPORATE DIRECTOR,  
DEVELOPMENT AND NEIGHBOURHOOD  
SERVICES

15/1562/COU

1 Balmoral Terrace, Stockton-on-Tees, TS18 4DD

Retrospective application for change of use from dog grooming salon to cafe.

Expiry Date 26 November 2015

**SUMMARY**

Retrospective planning permission is sought for the change of use of part of the ground floor of 1 Balmoral Terrace from a dog grooming salon (sui generis use) to a café (A3) with outside seating. The café's business plan is aimed at targeting dog walkers and Ropner Park visitors from Oxbridge and over the railway bridge from Parkfield. The business plan for the café aims to provide an additional café facility for visitors to Ropner Park with the Ropner Park café being only open limited hours. (Mon- Fri 10.30 am– 3pm and 10.30-4pm Sat-Sun). The proposed operating hours of the premises are detailed as between 9am and 3pm Monday-Friday with no weekend opening with the seating and tables stored within the premises when not in use.

7 letters of objection and an objection from Councillor Rose have been received following the publication of the planning application. The main objections include parking and highway issues, unsuitable location outside of a neighbourhood centre, alteration to the character of the area, noise and disturbance and loss of amenity for residents, no consultation prior to opening and the location of the bin storage.

The application is considered to be acceptable in planning policy terms and with the imposition of appropriate planning conditions would not have an adverse impact on the amenity of neighbouring properties. The application is also considered to be acceptable in highway terms and is therefore recommended for approval subject to conditions as set out below.

**RECOMMENDATION**

***That planning application 15/1562/COU be approved subject to the following conditions and informative:-***

***Approved Plans***

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

<b><i>Plan Reference Number</i></b>	<b><i>Date on Plan</i></b>
<b><i>W/351/01 A</i></b>	<b><i>4 August 2015</i></b>

***Reason: To define the consent.***

***Opening Hours***

**02** ***The premises to which this application relates shall not be open to customers outside the hours of 09:00 and 15:00 Monday to Friday with no Saturday and Sunday opening.***

**Reason: - In the Interests of the amenities of the neighbouring residential properties.**

**Noise disturbance from vehicles servicing the premises**

- 03 No deliveries shall be taken at or dispatched from the site outside the hours of 08:00Hrs and 17:00Hrs.**

**Reason: - In the interests of the amenities of the neighbouring residential properties**

**External Seating Area**

- 04 Notwithstanding the submitted plans, the number of external tables shall not exceed four and the number of outside seats shall not exceed fifteen. All external tables and chairs shall be stored within the café building outside of the opening hours.**

**Reason: In the interests of the amenities of the neighbouring residential properties.**

**Sale of Hot foods;**

- 05 Notwithstanding the Town and Country Planning (Use Classes) Order 19 (as amended) and the Town and Country Planning (General Permitted Development) Order 2015 (as amended) the premises shall be used solely as a café. No cooking shall take place on the premises other than for the heating of cakes, sandwiches, cooking sandwich fillings, breakfasts and limited hot food daily specials.**

**Reason: To ensure adequate ventilation and to prevent nearby residential premises being affected by odours from the premises.**

## **INFORMATIVE**

### **Informative: Working Practices**

The Local Planning Authority found the submitted details satisfactory subject to the imposition of appropriate planning conditions and has worked in a positive and proactive manner in dealing with the planning application

## **BACKGROUND**

W1154/68 - Change of use of part of the ground floor to a day nursery, approved November 1968

W1971/69 – Change of use of shop to day nursery, approved August 1969

02/0182/P- Change of use from first floor residential dwelling to after-school club, approved 15th March 2002

05/3482/FUL-Change of use to Dog Grooming Salon and Canine Day Centre, approved March 2006

10/2028/COU - Change of use of part of ground floor to residential 2 bedroom flat, approved October 2010

## **SITE AND SURROUNDINGS**

1. The application site is 1 Balmoral Terrace an end of terrace property situated at the junction of Balmoral Terrace and Marlborough Road.

2. Residential properties surround the application site to the west and north with Ropner Park located opposite (to the south).
3. The application site has residential flats on both the ground and first floor with access to the first floor flat located between the café and no.2 Balmoral Terrace.

## **PROPOSAL**

4. The applicant is seeking retrospective consent for the change of use of part of the ground floor from a sui generis (Dog Grooming salon use) to an A3 (café use). Access to the café is located at the corner of the premises (adjacent to Marlborough Road) with the main frontage towards Balmoral Terrace and Ropner Park.
5. The application includes a seating area for five tables and associated seating on the pavement area to the front of the property. With an enclosed timber bin store area sited to the front of the premises. Black steel arched posts are located between the seating area and the pedestrian pavement.

## **CONSULTATIONS**

6. The following Consultation responses were received and are set out below (in summary):-

**Environmental Health Unit** - no objection to this retrospective application although but have some concerns from noise which would include noise from vehicles servicing the café, general access and egress by customers and from the external seating area (where there are presently 15 seats). However, the café is an end terrace property and the entrance is on the corner facing the adjacent railway line so is likely to have less impact, these should cover the following matters;

### **Noise disturbance from access and egress to the premises and seating area**

The opening hours should be limited to the proposed hours of use Monday to Friday 9am - 3pm.

### **Noise disturbance from vehicles servicing the premises**

No deliveries shall be taken at or dispatched from the site outside the hours of 08:00Hrs and 17:00Hrs.

### **Odour Abatement**

The café is presently serving cold sandwiches and a small number of breakfasts and other hot food. There is a canopy in place with grease filters and passive extract ventilation, which adequately meets the requirements of odour abatement for A3 use. I would advise if there is a change in the types of food being prepared, there may be a need for additional odour abatement measures, which may include installation of a flue.

**Councillors David Rose – objects to** this retrospective planning application on a number of grounds, these include; the site being an unsuitable location for a café amidst densely populated terraced housing and considers the Oxbridge neighbourhood shopping centre more suitable; Questions the need for a sequential assessment; traffic and road safety; the impact on the amenity of neighbouring occupiers; and that the visual appearance of a café, including outside tables is detrimental to the residents.

**Highways Transport And Environment** - does not support this proposal on highway grounds as the dog grooming business would have been run on an appointment basis while the café clearly has morning and lunchtime peaks associated with its use. Whilst the COU does not increase this issue at the junction it does result in additional vehicles parking on Balmoral Road in close proximity to the café to the detriment of the residents of Balmoral Road and adjacent to Ropner Park. There are known parking issues in this area, particularly on weekends and school holidays, caused by visitors to Ropner Park. Given the extant commercial use and the potential for on-street

parking associated with that use there are insufficient grounds on which to object, however it is not supported.

### **Cleveland Police**

With regard this application I have carried out a search on the location for reported incidents to Police during the past 12 months which has revealed no anti-social reported that is directly linked to the premises in relation to use of a café. The proposed opening times would not normally cause any issues in relation to anti-social behaviour issues for Police.

### **PUBLICITY**

**Neighbours were notified and objection comments received from:-**

Mrs. Michaela Errington, 4 Balmoral Terrace, Mr. A K Barnes 5 Balmoral Terraces, Rachel Mason, 8 Balmoral Terrace , Mrs. J M Burdon 2 Balmoral Terrace, Alice Benson North Lodge Ropner Park, Findlayson 3 Balmoral Terrace, Anonymous comment received, Councilor David Rose

- Highway safety impacts from increase in traffic
- Parking issues
- Anti-social behaviour
- Noise issues
- Lack of consultation
- Location of bin store
- No requirement for the café with one in Ropner Park
- 

### **PLANNING POLICY**

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. 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

### **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.

### **Local Planning Policy**

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

**Core Strategy Policy 2 (CS2) - Sustainable Transport and Travel**

3. The number of parking spaces provided in new developments will be in accordance with standards set out in the Tees Valley Highway Design Guide.  
Further guidance will be set out in a new Supplementary Planning Document.

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

8. 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.

#### Core Strategy Policy CS5- Town Centres

4. Elsewhere, within the local shopping centres of Billingham Green in Billingham, Myton Way at Ingleby Barwick, Norton High Street and High Newham Court in Stockton, and the neighbourhood centres, development will be promoted and supported provided that it complements and does not adversely impact upon the regeneration of the town and district centres, and where it is in accordance with Planning Policy Statement 4: Planning for Sustainable Economic Growth.
5. The use of upper floors above shops and commercial premises, particularly for residential purposes, will be encouraged, to support the viability and vitality of the centres.
7. Should any planning application proposal for main town centre uses in edge or out-of-centre locations emerge, such proposals will be determined in accordance with prevailing national policy on town centre uses as set out in Planning Policy Statement 4- Planning for Sustainable Economic Growth or any successor to Planning Policy Statement 4.

#### Saved Policy S14 of Alteration No 1 of the adopted Stockton on Tees Local Plan,

Proposals for use Class A3,A4 and A5 'Food and Drink' development will be permitted in defined retail Centres listed in Policy S1, where the proposal is in accordance with following retail locational policies:-

- 1) Within the Defined Stockton Town Centre, subject to Policies S4, S5 and S6
- 2) Within the defined District Centres except Yarm, subject to Policy S7
- 3) Within the defined Yarm District Centre, subject to Policies S8 and S10
- 4) Within the defined Local and Neighbourhood Centres, subject to Policies S12 and S13
- 5) Outside the defined retail Centres, proposal for A3, A4 and A5 uses will only be permitted if there are no suitable units available within the defined Centres, or there are justified exceptional circumstance that necessitate such a location.

Proposals for all Use classes A3, A4 and A5 uses will be considered against the following criteria:-

- i) the level of traffic generated and the provision of parking facilities, both in terms of highway engineering considerations and the general amenity of the area;
- ii) any adverse impact of proposals on residential amenity in terms of smell, noise, litter fumes and disturbance.
- iii) The provision of adequate and effective fume extraction and filtration equipment;
- iv) The secure provision of facilities for litter within and adjoining the premises
- v) The secure provision for trade waste, stored in and out of site location

- vi) Where appropriate, conditions limiting the late night opening may be applied.

### **MATERIAL PLANNING CONSIDERATIONS**

7. The main considerations of the application are the principle of the development, the effect of the change of use on the character and appearance of the area, the impacts on the neighbouring properties and highway safety issues.

#### **Principle of development**

8. The application site is outside any defined retail centre including the Oxbridge neighbourhood centre with the applicant seeking a change of use from an extant dog grooming salon (sui generis use) to an alternative commercial use, as a café (A3 use). Saved Policy S14 Alteration No 1 comments that outside of defined retail centres A3, A4 and A5 uses will only be permitted where there are no suitable units available within defined centres or there are justified exceptional circumstances.
9. The principle of a commercial use for the ground floor at the site has long been established with a retail (A1 use) prior to 1968 and then a day nursery until 2005. The site was granted planning permission for the change of use to a dog grooming salon in 2005 (05/3482/FUL).
10. The applicant has not submitted a sequential test for the application as they were unaware that planning permission was required for the change of use and have no details regarding whether there were other potentially suitable vacant units within the Oxbridge neighbourhood centre at the time when they occupied the premises in February 2015. Consequently consideration is given to the specific merits of the application in the context of its extant use. Specifically the applicant has submitted additional supporting information regarding the reasoning behind the choice of this specific site for the café. Historically, the site has been a commercial use and during the day time there is ample parking along Marlborough Road which is not available along Oxbridge Lane (which is a busy road with restrictions on parking).
11. The café's business plan is aimed at targeting dog walkers and Ropner Park visitors from Oxbridge and over the railway bridge from Parkfield. The business plan for the café aims to provide an additional café facility for visitors to the Park with the Ropner Park café being only open limited hours. (Mon- Fri 10.30 am– 3pm and 10.30-4pm Sat-Sun). The outside seating area aims to provide views of the park for customers and is targeted as being of a similar style to the Village Deli in Hartburn. Further justification for the café in this location is the low level of rent for the premises which would achieve a more sustainable business.
12. In addition, saved policy S14 sets out specific criteria under which proposals for A3 change of use should be considered. These are set out below:-
- i. the level of traffic generated and the provision of parking facilities, both in terms of highway engineering considerations and the general amenity of the area;
  - ii. any adverse impact of proposals on residential amenity in terms of smell, noise, litter fumes and disturbance.
  - iii. The provision of adequate and effective fume extraction and filtration equipment;
  - iv. The secure provision of facilities for litter within and adjoining the premises
  - v. The secure provision for trade waste, stored in and out of site location
  - vi. Where appropriate, conditions limiting the late night opening may be applied.

However, these predominately cover material planning considerations and are discussed in much greater detail below;

13. Whilst it is acknowledged that a sequential assessment has not been submitted, consideration is given to its extant use as a dog grooming salon and previous commercial uses. It is therefore considered in this instance that in principle the change of use is acceptable, subject to all other material planning considerations discussed in turn:

#### **Impacts on neighbouring properties.**

14. It is noted that residential flats are located to the rear and above the application site (1A & 1B Balmoral Terrace) along with residential properties to the west along Balmoral Terrace and that the café use includes an area of outside seating to the front providing four tables and fifteen seats. The proposed operating hours of the premises are detailed as between 9am and 3pm Monday-Friday with no weekend opening with the seating and tables stored within the premises when not in use.
15. The application site historically has been utilised as a commercial site with the previous use being a dog grooming salon which would have generated a degree of noise from the staff and customers. The previous dog grooming planning permission granted in 2005 restricted the opening hours to between 8.30 and 6 pm, compared to the café use which seeks opening times between 9am and 3pm Monday to Friday.
16. In addition, the park opposite the site along with the railway line to the east means there is considered to be an existing degree of background noise and nuisance within the area and the Environmental Health Unit have raised no objection to the application in terms of noise impact, subject to conditions being placed on the application in terms of the operating hours and delivery servicing hours. Such controls are recommended and it is considered this will ensure that neighbouring residents suffer from minimal noise and disturbance.
17. In terms of litter and waste disposal the applicant has installed a timber framed bin store to the front of the premises alongside the boundary with 2 Balmoral Terrace. Despite the objection received, the Environmental Health Unit have commented that they have no objections to the contained bin store or the location of the store.
18. Furthermore, the Environmental Health Unit have assessed the café use which primarily is for sandwiches and breakfasts and consider the metal extraction fan installed on the side elevation of the premises to be acceptable with no potential odour nuisance to the neighbouring properties. However, a planning condition is recommended to control the sale of products so that in the event the nature of product sold changes, a degree of control with regards to potential odour nuisance can be retained.

#### **Highways and car parking**

19. The Highway Transport and Environment Manager has commented that although he does not support the proposal he has no objections, based on the previous commercial use of the site. Whilst commenting that the café use will have morning and lunchtime peaks in visitors to the site. Nevertheless, the Highways Transport and Environment Manager has concluded that as both the previous dog grooming use and the café use results in an increase in vehicles parking close to the junction of Balmoral Terrace and Marlborough Road, whilst he does not support the application, he has no highway objections. In the absence of any objection from the Highways Transport and Environment Manager, the change of use is not considered to have a significant impact in terms of highway safety.

#### **Other matters**

20. Objection comments have been received that there was no planning consultation undertaken prior to the café opening. There is no legal requirement for pre publicity for applications of this

type and the planning application has been subject to the appropriate level of publicity. The applicant was unaware that planning permission was required for the change of use and was advised following an enforcement investigation which resulted in a retrospective planning application being submitted. This application must therefore be considered on its own merits and against the development plan.

21. Concerns have been raised regarding the change of character of the area with the change of use to a café. The site has historically been a commercial unit at the end of this row of residential properties and no external changes are proposed other than the provision of the external seating area. Given the historic use of the site as a commercial operation and the limited hours of the external seating area, the proposed café use is not considered to have a detrimental impact on the character and appearance of the street scene.
22. Comments have been received regarding potential anti-social behaviour from the café use. Cleveland Police have been consulted and commented that they have no evidence of anti-social behaviour at the café and the restriction on the operating hours of the café to between 9am and 3pm means the café use is not considered to have a significant impact on the neighbours in terms of anti-social behaviour.

### **CONCLUSION**

Given the planning history of the site with historical commercial use of the premise, the proposed change of use is considered to be acceptable in planning policy terms and will not have any adverse impacts on the amenity of neighbouring properties or highway safety subject to specific controls. It is recommended that the application be Approved subject to those conditions detailed within the report for the reasons specified above.

**Corporate Director of Development and Neighbourhood Services**  
**Contact Officer Miss Debra Moody Telephone No 01642 528714**

### **WARD AND WARD COUNCILLORS**

**Ward** Parkfield and Oxbridge  
**Ward Councillor(s)** Councillor M Javed  
**Ward Councillor(s)** Councillor David Rose

### **IMPLICATIONS**

**Financial Implications: N/A**

**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.

### **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

### **Background Papers**

Stockton on Tees Local Plan Adopted 1997  
Alteration Number 1 to the Adopted Local Plan – 2006  
Core Strategy – 2010

### **Emerging**

Regeneration and Environment Local Plan – Publication February 2015.