

Planning Committee

A meeting of Planning Committee was held on Wednesday, 9th November, 2016.

Present: Cllr Norma Stephenson O.B.E(Chairman), Cllr Stephen Parry(Vice-Chairman), Cllr Helen Atkinson, Cllr Carol Clark, Cllr Nigel Cooke, Cllr Gillian Corr, Cllr Philip Dennis, Cllr Lynn Hall, Cllr Paul Kirton, Cllr Mick Stoker, Cllr Tracey Stott, Cllr David Wilburn, Cllr Sally Ann Watson (Sub Cllr Elsi Hampton)

Officers: Simon Grundy, Andrew Glossop, Barry Jackson, Emma Leonard, Peter Shovlin, Colin Snowdon (EG&D), Julie Butcher(HR,L&C),Sarah Whaley (DCE)

Also in attendance: Applicants, Agents and Members of the Public

Apologies: Cllr Elsi Hampton, Cllr Mrs Sylvia Walmsley,

P Evacuation Procedure

81/16

The Evacuation Procedure was noted.

P Recording of Council Meetings

82/16

The Chair informed Members of the Committee and Members of the Public that the Planning Committee meeting was to be recorded as part of the Council's commitment to legislation permitting the public recording of public meetings, and in the interests of ensuring the Council conducted its business in an open and transparent manner. These recordings would be made available to the public via the Council's website. Members of the public present who preferred not to be filmed/recorded/photographed, were asked to make it known so that so far as reasonably possible, the appropriate arrangements could be made to ensure that they were not filmed, recorded or photographed.

P Declarations of Interest

83/16

Councillor Philip Dennis declared a personal prejudicial interest in item 16/1891/REV, 1 Abbeyfield Drive, Eaglescliffe, Stockton-On-Tees as Councillor Dennis had direct connections with the school next door to the proposed application site. Councillor Dennis explained he had been in legal negotiations with the Council's legal officers trying to protect the covenant on the building. Councillor Dennis did not vote however reserved the right to speak.

Councillor Sally Ann Watson declared a personal prejudicial interest in relation to item 16/2241/VARY Land at Sandgate, The Rings, Myton Way as the developer was a personal friend of Councillor Watson. Councillor Watson did not vote however reserved the right to speak.

P 16/1891/REV

84/16

**1 Abbeyfield Drive, Eaglescliffe, Stockton-on-Tees
Revised retrospective application for change of use from care home (C2)
to hotel (C1) and single storey rear extension (non retrospective).**

Consideration was given to planning application 16/1891/REV 1 Abbeyfield Drive, Eaglescliffe, Stockton-on-Tees.

The site was located within Eaglescliffe with the predominant surrounding use being residential and properties being located along Butterfield Drive to the west and to the south along Butterfield Close. The northern boundary was shared with Junction Farm Primary School.

Retrospective planning permission was sought for the change of use of the property from a care home (C2) use to a hotel (C1) use with a total of 14 bedrooms. In addition, the proposal sought consent for a single storey extension to the rear (north) which was not yet constructed. The unauthorised change of use took place in March 2015. However, an earlier application submitted in January 2016 (16/0032/FUL) was withdrawn as no sequential test information was provided, given that a hotel was a main town centre use and required justification through a sequential test.

A total of 132 objection letters had been received, which in the main, suggested that the proposed use was in an unsuitable location for a hotel given the site was within a residential area. Other objections included the close proximity to the school, safeguarding issues to the school due to the nature of the hotel use, the increase in traffic, congestion and parking issues: impact on pedestrian safety; anti-social behaviour and littering; devaluation of properties; a restrictive covenant on the property restricting the premise to over 55's; and, there being no requirement for the hotel use as there were existing hotels within the Yarm area.

As part of this revised application a sequential test had been submitted. It provided evidence that within the last two years there had been no alternative sites which could have provided a similar site for the proposed hotel use within any of the Boroughs town centres or within an edge of centre location. In addition, there were considered to be no other properties of the same scale which could be converted for the proposed use, the submitted sequential test was therefore considered to be acceptable.

The northern boundary was shared with Junction Farm Primary School with several of the existing first floor windows on the north elevation facing towards the school. Consideration had been given to safeguarding of the children at the school and as part of any approval it was recommended that a condition requiring that the first floor windows were obscurely glazed with restricted opening. Consideration was given to the potential impact of noise from the hotel use. In light of the fact the previous use was for a care home which would include visitors along with the fact the premise was set back from the main highway and from any neighbouring residential properties, the potential noise impact was not considered to be significant with no issues having been raised with the Environmental Health Officers in terms of noise since the commencement of the hotel use.

The Highways Transport and Environment Manager had considered the application and had no objections to the proposal as the parking provision accorded with the guidance set out in SPD3 -Parking For Developments. Further, due to the proximity of the site to the Orchard Parade Neighbourhood shops, there were good public transport links to Yarm High Street and being less than 1 mile to Yarm High Street, the proposal was considered to be accessible by foot and cycle and was therefore considered to be within a sustainable location.

The single storey extension to the side of the building was considered to be of a suitable scale to the original building and would match the existing modern design of the building and the character and appearance of the street scene. The extension was not considered to affect the privacy or amenity of the neighbouring land users.

Taking the above factors into consideration, the application site was considered to be located within a sustainable location with good public transport links and within walking distance of both the Orchard Road shopping centre and Yarm Town Centre, and was not considered to have a detrimental impact on the vitality or viability of Yarm. The applicant had demonstrated through the sequential assessment that no suitable properties of a comparable size were available to meet the businesses requirements when the use commenced operation and nor since the use commenced. The proposal was therefore considered to accord with the guidance set out in paragraph 24 of the National Planning Policy Framework (NPPF). Furthermore, having considered the previous commercial use of the property as a care home and the recommended condition for the first floor windows at the premises, the proposal was not considered to have any significant impact in terms of the amenity of the neighbouring land users or adversely affect highway safety.

The consultees that had been notified and the comments that had been received were detailed within the main report.

With regard to planning policy where an adopted or approved development plan contained relevant policies, Section 38(6) of the Planning and Compulsory Purchase Act 2004 required that an application for planning permissions should be determined in accordance with the Development Plan(s) for the area, unless material considerations indicated otherwise. In this case the relevant Development Plan was 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 required the Local Planning Authority to take local finance considerations into account, this section s70(2) Town and Country Planning Act 1990 as amended required in dealing with such an application [planning application] the authority should 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 planning policies that were considered to be relevant to the consideration of the application were contained within the main report.

The Planning Officers report concluded that whilst noting the application site was located outside of the main town centre and edge of centre, as required under the NPPF Guidance, the submitted sequential test provided evidence that since March 2015 there are had been no suitable premises in the centre or edge of Yarm which could be either converted or currently had planning permission for a 14 bedroom hotel use.

It was considered that the hotel was within a sustainable location within walking distance of Orchard Parade services and with good public transport links to

Yarm Town Centre and the location of the hotel with close proximity to Yarm High Street meant it was not considered to have a detrimental impact on the vitality or viability of Yarm.

There was no undue risk to highway safety with adequate parking provided within the curtilage of the site and the highway access being provided from a separate access road, Abbeyfield Drive. The separation distances which would be retained to both the residential properties and the school along with the condition regarding the obscure glazing and restrictive window opening meant there were considered to be no overlooking or loss of privacy issues. The previous commercial use of the property as a Care Home, the separation distances from the residential properties and the fact there had been no reports of any noise disturbances at the property meant on balance there was considered to be no significant noise impacts to the neighbouring premises.

In view of the above, it was considered that the proposal was in broad accordance with the Development Plan and National Planning Policy Framework and there were no material planning considerations which indicated otherwise. It was recommended that conditional planning permission be granted.

The Planning Officer presented the Committee with the report and associated diagrams, photographs and slides.

Objectors were in attendance at the meeting and given the opportunity to make representation. Their comments could be summarised as follows:

Prior to the commencement of the meeting a representative on behalf of the local school who had submitted objections to the application was given permission for a map showing the distances from the proposed site and the school to be distributed to Members.

The Head Teacher of Junction Farm Primary School addressed the Committee. It was explained that Junction Farm was an outstanding primary school which had recently been extended to a 2 form entry. The school was now the largest primary school in Eaglescliffe with space for 420 children. The Head Teacher informed the Committee she had a duty of care and was also the designated safeguarding lead who was personally accountable for the safeguarding of the children.

It was highlighted that the Head Teacher was also making representation on behalf of the some of the schools parents, as only a few had had the opportunity to object due to the application being submitted during the summer holiday. They strongly objected to the application on the grounds that it would undermine the safeguarding of the children.

The Head Teacher stated that there wasn't any statutory guidance on locating hotels next to schools, as it was believed that there wasn't any other school in the UK that had been faced with the same situation. There were however a number of relevant statutory safeguarding documents which included the United Nations Convention of the Rights of Children, Keeping Children Safe in Education Statutory Guidance July 2015, Working Together to Safeguard Children 2015 and the Bichard Enquiry report which was written following the

murder of Jessica Chapman and Holly Wells by Ian Huntley who lived next door to their school.

All safeguarding documentation repeatedly stated that 'we all have the duty to protect our children and must do whatever we can to prevent any risk no matter how small'. There was an increase in evidence that hotels were used to groom children who would pose as family members, and sadly this was a very real concern in the Tees Valley. The Head Teacher stated that 'as elected Members you must do whatever you can to protect your constituents and the young vulnerable children in the community'.

A task and finish review of 2013/2014 identified 61 children at risk of being groomed in the Stockton Borough. The increased risks to children were worrying and the consequences of having unknown and uncontrolled people overlooking and living not just near to the school but effectively within the grounds, as Abbeyfield was built within the original grounds of the school.

When Abbeyfield was built the school was given the protection of a covenant that the building would only be used by over 55's, but this had been flouted since the new owner had taken over. The covenant gave the children protection in that residents were permanent and vetted by the housing association. In contrast a hotel did not have or need any measures to check any resident's history. It was a known fact the sexual predators found it difficult to get housing for obvious reasons due to safeguarding measures in place. An affordable hotel did not exert any control on who stayed, simply asking for an address that was not checked in any way offered no comfort. There was the potential for any known paedophile to book into the proposed hotel legitimately for any length of time, take a room and peer through windows at the school children, or hang around outside the school gates. Whilst it was understood the planning officer stated that there was no evidence to suggest that a hotel next to a school would increase the risk to children, this was because there was no hotels next to schools to show that evidence and unfortunately there had yet to be an incident, therefore the government hadn't had to undertake a serious case review.

A local architect who was also a governor of Junction Farm School and was responsible for the health and safety of children and its staff who was also a parent of children who attended the adjacent nursery addressed the Committee. It was highlighted that this was the second retrospective application for the hotel and was considered to be a totally inappropriate use of the building in the location that it was and that it was completely unnecessary. The following points were summarised to the Committee

1) USE. A hotel would bring 13 unknown and uncontrolled visitors to the educational and suburban location. Even if it was contractors visiting on business they would inevitably be travelling by car and probably departing rapidly around 8.30am when children would be walking to school.

2) CONTEXT. The School and nursery were located 18 metres away as could be seen on the plan which was handed to Members at the beginning of the meeting. This was 3 metres less than the recommended separation distances for habitable rooms between dwellings. The close relationship may have been missed in the application as the submitted drawings failed to show the context of either the adjacent nursery or the recent extension to the school. The

Planning Officer had stated that the close proximity was an issue and suggested a condition that if the application was approved then opaque windows would be specified with only a small opening. This however was totally unacceptable. The objectors understanding of an opaque window was that it was fixed otherwise it would not offer any protection of privacy. An opaque window opening a small amount would be even worse from a safeguarding perspective as no one would be able to see anyone standing at the window and leering through the gap. In planning terms it was hard to see how this was acceptable. Although officers had said that there was no evidence to say that hotels near schools had any significant impact on safeguarding and the reason for this was that it didn't exist.

The objector requested that If Members were minded to approve then the windows in the worst bedrooms were either completely fixed or removed.

The applicant had submitted a sequential study which stated that currently there were no hotels for sale within the Borough, however it was reported by the objector that there was in fact a hotel being marketed for sale in Eaglescliffe. The hotel was in need of investment however was in a much more appropriate location. If however the application was approved it would reduce demand and there would be the possibility of an application to demolish the hotel in Eaglescliffe. Surely it was better to support an existing hotel business in the correct location than force another near a school with all the safeguarding issues. The applicants' sequential study was incorrect and out of date and was fundamentally flawed as it did not include written statements from all of the estate agents in Yarm. It was therefore inconclusive and should be dismissed.

Traffic movements would increase, the covenant would be undermined, the safeguarding of children would be undermined, the separation distances would be compromised, the restricted opening of opaque windows would be unsafe and the sequential study seemed to be incorrect

The owner of the Butterfield Pre-school addressed the Committee explaining that she was also a governor of Junction Farm School. The nursery currently had 91 children enrolled from 2 to 12 years. When the business was purchased with a view to expand the nursery services for the local area it was known that the Abbeyfield home was there with a covenant for over 55's. As soon as the new owner bought the home it was changed into a bed and breakfast and also changed the existing fence lines. There had been numerous occasions where the nursery had complained in relation to noise and rubbish in the area linked to the bed and breakfast. Cigarette ends had to be constantly cleaned up from the nursery pathway. Parents and staff of the nursery had concerns in relation to the fact the nursery was overlooked by the proposed hotel and its car park. At certain times during the day the nursery felt they had to lower the blinds at the windows of some rooms, as rooms from the hotel could see directly into them. Safeguarding was a huge concern the owner explained she had a duty of care to the children and to ensure their safety, however she did not feel the children would be safe if the hotel was approved.

The Applicant was in attendance at the meeting and given the opportunity to make representation. His comments could be summarised as follows:

The Planning Officers report had considered all the relevant planning issues, and as the Planning Committee was already aware, the decision could only be

made on material planning considerations. The report made it clear that the change of use was on balance acceptable with regards character, any impact on visual residential amenity with regards to the relationship to the school and with regards to the principle of the use itself.

Safeguarding was to be ensured through the proposed 'obscured glazing and limitations' on the windows. The current operation had received no complaints of any nature since it had commenced in March 2015.

With regards to objectors comments there had been no evidence of any unacceptable safeguarding issues and there was certainly no policy or guidance to prevent hotel use in residential areas or adjoining schools. Planning Officers themselves had considered all the relevant policies, all the relevant frameworks and legislation.

All development and change had some risk / impact associated with it; however the decision had to be made in a reasonable manner. The duty to protect had to be applied reasonably, objectively, proportionately and fairly to all parties involved in the process.

This was a change of use and not a new build. The objectors concerns were noted and had been addressed with discussions with the case officer and by the proposed planning conditions. All issues had been explored within the officers' report.

The Applicant could not respond to issues raised concerning separation distances as he had not had sight of the plan which had been distributed earlier to the Committee Members.

Where comments had been made by an objector relating to a hotel in the area currently being marketed for sale. The Applicant could not comment who the agent or which hotel it was as the information remained confidential to the objector.

Regarding the sequential test, the applicant stated that not all estate agents could be contacted, a sample was made and the sequential test had been accepted as successful by the Planning Officer.

The Planning Officer and the Councils Solicitor would make it clear that any refusal would be extremely difficult for the Council to have any real chance to successfully defend at appeal. Therefore as detailed within the officers' recommendation it was respectfully requested that the application be approved.

Officers addressed the Committee in response to some of the concerns/issues raised. Their comments could be summarised as follows:

Where concerns had been raised relating to safeguarding issues, all comments had been noted and considered within the report, Members were referred to the consultation with Cleveland Police who had made no objections and had no report of any issues since the hotel commenced operation in March 2015.

There was no evidence that the hotel would increase risk to children. The school themselves had safeguarding measures in place. Any member of the

public could pose a risk from the public highway. There was no justifiable reason to refuse the application from a planning perspective.

In terms of the separation distances, The officers' report at paragraph 28 showed a slight discrepancy as it stated the separation distance between the hotel and the school to be 19 metres as appose to 18 metres shown on the objectors plan. This may have been due to where the measurement was taken. Officers were relatively satisfied that the report was accurate in terms of its consideration on amenity.

Where concerns had been raised regarding the opening of windows and the ability for hotel users to view school children form those windows, it was explained to the Committee that the obscured windows would prevent overlooking and the suggested small opening was to allow for ventilation of the hotel rooms therefore the restrictions in terms of opening would allow ventilation without offering views to the neighbouring school.

Members were given the opportunity to ask questions/make comments on the application and the could be summarised as follows:

Clarity was sought as to how many windows were required to have obscured glazing.

Members sought clarification as what was meant by the application being in 'broad accordance' as referenced at paragraph 53 within the main report.

Why was the application retrospective, why was this not submitted legitimately at the first instance?

This was the second application submitted by the applicant. Members asked for the reasons why the first application was unsuccessful.

Questions were raised in relation to the timing of the sequential test where it was stated that there were no suitable hotels for sale at the time of the test, however as mentioned by an objector earlier there was a hotel for sale currently which was local. There was also a hotel for sale at the time the applicant purchased the proposed hotel in Eaglescliffe. It was felt that the sequential test should have been based on what was the case at the time the property was purchased not what was the case now.

At paragraph 41 of the report there was reference to the covenant which was on the property which limited the users of the hotel to age over 55 only. This would limit the commercial viability of the hotel.

The hotel was considered to be out of character in the area as it was a residential area and it was felt that the property fell outside of the limits of development. Users were predominantly felt to be contractors which would upset the quiet nature of the area with constant opening and closing of van doors at differing times of the day.

It was noted that there were 6 windows which directly overlooked the school, however there was also an elevation which overlooked the new car park where there were additional windows to the side which directly overlooked the nursery

and they had not been taken into account in relation to obscured glazing and restricted opening.

Safeguarding children may not have been a material planning consideration however it should be put before anything else. As corporate parents the fact could not be ignored that the types of residents expected to use the hotel were not the best types of neighbours for a nursery which was only 11 metres away and a primary school which was only 18 metres away.

Although members of the public and some members of the Committee had raised safeguarding issues, which, although not a material planning consideration were taken very seriously, it was noted that there had not been any concerns raised by Cleveland Police who were statutory consultees in the planning process. In addition the school had highlighted that they had really robust safeguarding measures which was sure to safeguard the children going forward as indeed they had safeguarded the children up until now. Therefore any safeguarding issues could not be considered as a reason to refuse the application.

It seemed to one Member that the local Police had been extremely negligent in relation to the report submitted. Should a risk assessment not have been done regarding allowing itinerants that close to a school? It was felt that the Police should have taken their duty far more seriously.

Should the covenant not be enforced?

In relation to safeguarding and as a corporate parent the application should not go ahead.

It was highlighted that there was to be 16 car parking spaces provided for 14 bedrooms, however questions were raised as to the provision of staff car parking spaces.

The impact of the proposed hotel on neighbouring residents was of grave concern. 132 residents had objected to the application therefore highlighting their concerns.

It was hoped that the hotel car park would allow parents to use the car park during drop off and pick up times alleviating some of the car parking issues parents encountered during those peak times.

It was felt there were reasons to refuse the application based on the impact on the community and highways issues.

It was concerning that the applicant put forward the sequential assessment. An applicant would tailor their submission in the best light possible for themselves, surely it should be up to officers to make the assessment and ensure the test was passed.

A request was made by Members that the windows on the side elevation have obscure glazing and also that should the application be approved the use would be restricted to that of a hotel only and any further changes of use would have to come back to the Planning Committee for consideration.

Officers addressed the Committee in response to some of the concerns/issues raised. Their comments could be summarised as follows:

It was confirmed that 6 first floor windows would require obscured glazing.

Where reference had been made stating the application was in broad accordance with planning policy, it was explained to Members that the officers had a duty to weigh up all material planning considerations and planning policies of the development plan. It may well have been that the development was not in complete accordance with all of the policies however on the whole it was in broad accordance with the vast majority of those policies and material planning considerations and in this case it had weighed in favour of the recommendation to approve.

In terms of the retrospective application, officers could not insist that all planning applications were submitted at the very first instance. The duty to apply for planning permission rested with the applicant, landowners.

The issues surrounding the first application were related to the sequential assessment which had not been submitted with the first application.

Concerns which were raised around the original submission and the sequential test, officers had already explained that the original submission was lacking a sequential assessment and therefore was not successful; however there was a submitted sequential assessment to support the current proposal. The nature of a sequential assessment was to look at a catchment area and those centres within the catchment area and only if a development was of a scale which would mean that it would need to be considered by a higher order centre for example, a large scale hotel would not be considered appropriate for Yarm as a district centre but would be more appropriate to go to Stockton Town Centre due to the scale. The current proposal was a very small scale hotel and therefore may be appropriate that its catchment area was in and around Yarm district centre. The developer had carried out the sequential assessment which officers considered acceptable. Although an objector had highlighted the latest views from an estate agent that information was not before planning officers. The sequential assessment was robust enough and considered up to date at the time it was submitted and officers were satisfied with the information contained within it and that there were no available sites to relocate the hotel. Therefore the sequential test had been passed and addressed and it would not form any reason for refusal of the application.

In terms of the covenant this was not a material planning consideration. The developer would have to deal with the covenant issues separately. The Council did control the issues with the covenant which would be down to colleagues in the Land and Property Section and the Legal Team to consider if the covenant could be removed and under what terms.

Issues which had been raised relating to the residential character of the area, officers had noted it was predominantly a residential area; however there were some commercial activities further to the west where there was a shopping parade. All issues associated with commercial activity had been considered

such as impact on local amenity and impacts on traffic. All the external visual impacts of the single storey extension of the development were considered to be acceptable. With regards to activity such as noise and disturbance these had all been considered within the report and no complaints had been made to the Environmental Health Team in terms of noise and disturbance. Therefore from an officer point of view and planning perspective officers were satisfied that there was no impact on residential amenity which would not cause such harm that it would justify refusal of the application.

Where Members had raised concerns relating to the windows on the side elevation, officers noted those concerns and were satisfied that if Members wanted to extend condition 02, obscure glazing and restrictive opening to the side elevation windows then this could be addressed.

Officers noted Members comments in relation to the Police and whether they had considered the application properly however all officers could do was look at their comments provided on the planning application. It had to be assumed that a thorough assessment had taken place and that there was no evidence or issues from their perspective in terms of anti-social behaviour crime which they would generally comment on.

Where there had been concerns in relation to highways and staff car parking, officers confirmed that the application conformed to planning policy SPD3 in terms of car parking. There was a requirement for 16 spaces and it had 16 spaces. The SPD assumed that not everyone would travel by car and there would also be cycle provision. In addition there was to be a 20MPH speed limit introduced on Butterfield Drive, therefore in relation to highways matters the application conformed to all required regulations.

Officers re confirmed that all issues relating to the development impacting on neighbouring residents had been considered within the report such as distances from the proposed hotel to the nearest property. Distances from the proposed hotel to the school. Comments from Environmental Health colleagues had been taken into consideration who had confirmed that there had been no noise complaints in the area. Planning Officers were satisfied that there was no adverse impact on neighbouring properties or local amenity hence the recommendation for approval.

Members were informed that officers did assess the sequential assessment; it was not just something that was taken as read when an applicant submitted an assessment. Officers were satisfied the assessment had been carried out thoroughly and the applicants findings had been accepted. Officers expressed that the sequential test element of the planning policy aspect which was set out in the NPPF and the Local Planning Policy had been satisfied and therefore it was the officer's professional opinion that it was unsafe to refuse it on that basis.

Officers were happy to consider obscure glazing on the second elevation if it was deemed necessary by Members. In addition officers were happy to restrict the use to a hotel only within use class D1.

A vote took place in relation to the suggestion made by Members that the 2nd elevation windows on the side elevation would have obscure glazing and that

the use of the building would be restricted to a hotel.

The vote was carried.

A vote then took place and the application was approved with an amendment to condition 02 obscure glazing on side elevation and an additional condition - restricting use to hotel only.

RESOLVED that planning application 16/1891/REV be approved subject to the following conditions and informative:-

Approved Plans;

01 The development hereby approved shall be in accordance with the following approved plans;

Plan Reference Number	Date on Plan
15/51/10	19 July 2016
15/54/08	1 August 2016
15/54/04	1 August 2016
15/54/06	1 August 2016
15/54/07	19 July 2016
15/54/09	1 August 2016
15/54/03	1 August 2016
15/54/02	19 July 2016
15/54/05	1 August 2016
15/54/01	1 August 2016
15/54/11	19 July 2016

Windows – obscure glazing and restrictive opening

02 Within six weeks of the date of this approval notice, the existing windows on the northern elevations and side elevation of the building shall be fitted with obscure glazing to a minimum obscurity rating of level 5. Any opening windows shall also be fitted with a restricted opening mechanism, limiting opening to a maximum of 150 mm. The agreed scheme shall remain in place for the lifetime of the use hereby approved.

Materials

03 The materials used in the construction of the walls and roof of the hereby approved single storey extension, shall match those within the existing main dwelling.

Use

04 Restrictive use to hotel only.

INFORMATIVE OF REASON FOR PLANNING APPROVAL

Informative 1: 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.

**P
85/16**

**16/2241/VARY
Land at Sandgate, The Rings, Myton Way
Section 73 application to vary condition no14 (Opening Times) to units 2**

and 9 of planning approval 15/3136/FUL- Application for the erection of 12no. commercial units consisting of Retail and Non-Retail (Use classes A1, A2, A3 and A5) uses, to include a cafe/bistro (A3/A4 use with associated access, car parking and landscaping

Consideration was given to planning application 16/2241/VARY Land at Sandgate, The Rings, Myton Way

The application site was located within Village six (known as 'The Rings') on its eastern edge adjacent to an area of open space/highway verge with Sandgate highway junction with Myton Way. 'The Rings' distributor road lay to the south with further residential development which would form the last phase(s) of Village six to the south, work on this phase of housing was now under construction.

This application sought to vary one of the previously imposed planning conditions (condition 14 – opening hours) to allow for extending opening hours of units 2 and 9. The change sought to vary the opening times from 08.00-22.00 Monday to Saturday and 10.00 to 16.00 on Sundays (and Bank Holidays) to 08.00hrs to 23.00hrs Monday to Sunday.

Given the earlier approval for the retail development the principle of the land use at the site had already been established and construction of the development was now well underway. No physical alterations to the premises were proposed and therefore the main planning considerations of the application were the impacts of the development on amenity of neighbouring residents; the impacts on highway safety; crime and anti-social behaviour.

Whilst the concerns of the neighbouring residents with regards to increased noise and disturbance were noted, a degree of activity would already occur as a result of those operations associated with the wider retail scheme and particularly the opening times of the convenience store (until 11pm). Units 2 and 9 sought the same trading hours and consequently the resultant harm from the associated activities arising out of the extended opening hours were considered to be relatively limited and would not be sufficient enough to warrant a refusal of the application on these grounds.

The Highways Transport and Environment Manager had considered the proposed development and did not consider that there would be any significant increase in traffic or parking demand and consequently had no objections on grounds of highway safety. There was also no firm evidence that would indicate that this proposal would give rise to any significant rise in crime, disorder or anti-social behaviour.

In view of these considerations the proposal was recommended for approval subject to those conditions identified within the report.

The consultees that had been notified and the comments that had been received were detailed within the main report.

Neighbours were notified and the comments received were detailed within the main report.

With regard to planning policy where an adopted or approved development plan contained relevant policies, Section 38(6) of the Planning and Compulsory Purchase Act 2004 required that an application for planning permissions should be determined in accordance with the Development Plan(s) for the area, unless material considerations indicated otherwise. In this case the relevant Development Plan was 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 required the Local Planning Authority to take local finance considerations into account, this section s70(2) Town and Country Planning Act 1990 as amended required in dealing with such an application [planning application] the authority should 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 planning policies that were considered to be relevant to the consideration of the application were contained within the main report.

The Planning Officers report concluded that in view of the above considerations and whilst noting the concerns of neighbouring residents, the proposal was not considered to have any significant impacts on residential amenity, highway safety or crime and disorder to be able to justify a refusal of the application on planning grounds. The extension of opening hours to units 2 and 9 were therefore recommended for approval subject to conditions.

The Planning Officer presented the Committee with the report and associated diagrams, photographs and slides.

Objectors were in attendance at the meeting and given the opportunity to make representation. Their comments could be summarised as follows:

A resident of Bancroft Drive addressed the Committee and stated that he had objected at the original committee meeting. The objector referred back to that meeting where he felt the application had been passed even though there were some widespread concerns amongst the residents in Bancroft Drive and Magnus Close. Concerns related mainly to anti-social behaviour. As part of the approval, section 14 of the report set the opening hours in the interest of the amenity of the neighbouring residential premises. The Planning Committee and the officers who had prepared the report had taken into consideration the concerns that the residents had.

At the time of the original application, the application stated that there was to be 12 commercial units consisting of retail and non retail, use classes, A1, A2, A3 and A5. Within the current application seeking to vary the opening hours, the developer had stated that the current opening hours were not economically viable for fast food takeaways, however the developer had known that there was to be fast food takeaways prior to construction being completed and was aware of the restricted opening hours and therefore by continuing with the development the objector felt that this was an acceptance of the opening conditions. The developer was now trying to change the rules to make the units more attractive. It should have been up to the developer to ensure there was a

market for the units with the original opening hours and not allow local residents to suffer as a result of a change in the operating constraints.

The developer had quoted that similar businesses in the area had similar opening times to that which had been proposed, however those areas quoted were geographically much further away from residential areas.

The objector expressed that he hoped the Planning Committee would respect the original decision made to protect local residents from disturbance and continue with the original operating restrictions.

Officers addressed the Committee in response to some of the concerns/issues raised. Their comments could be summarised as follows:

The objectors concerns were fully appreciated regarding amenity surrounding local residents due to activity caused by the various units. There was an original planning condition imposed which was for restricted opening hours, however when a developer submitted an application to vary opening hours, officers would look at a number of issues, activity being one of them. Officers would look at the impact of what this would mean and in this particular instance officers looked at the uses of neighbouring units, 2 of which allowed for extended opening hours. One of the units was a convenience store which was open from 6.00am until 11.00pm Monday to Sunday and the other was a bistro which had phased opening hours restricted until 10.00pm Monday to Thursday and with later opening on a Friday and Saturday, and operating reduced hours on a Sunday. Those 2 units allowed for a degree of activity within the shopping parade already, and after taking everything into consideration officers concluded that it would be unlikely that there would be any significant increase in activity from the proposed application to vary the opening hours of the takeaway and therefore noise and disturbance would not warrant refusal of the application.

Members were given the opportunity to ask questions/make comments on the application and these could be summarised as follows:

The original application was recalled which was specific to certain opening hours and certain uses. It was galling that the developer had come back and asked to change the hours as the applications had already been looked at.

It was disappointing that there was not 2 separate applications as there were 2 completely separate units requesting the variation. It seemed more understandable that unit 9 would require a variation to the opening hours due to the nature of its use being a micro pub and its connection with the bistro. Unit 2 however was in close proximity to local residents and it was felt that this would have an adverse impact on amenity. Was it possible to give to one and not the other?

It was highlighted that any applications for hot food or liquor would have to come through the Environmental Health Unit and if required would be submitted to the Licensing Committee. The Licensing Committee could be in a position at a later date to reduce the operating hours and disagree with the Planning Committee, however advice would be sought on the matter from the Environmental Health Unit should this be required.

Clarity was sought as to the opening hours proposed within the application as it appeared to be no different from the original application.

It was considered that people expected takeaways to open until 11.00 pm and to have one open longer than the other would be seen to be bureaucratic interference.

Officers addressed the Committee in response to some of the concerns/issues raised. Their comments could be summarised as follows:

The Environmental Health Unit Manager clarified information regarding the Licensing of hot food takeaways and those premises selling alcohol. It was stated that takeaways only required a hot food licence if they were open after 11.00pm, which did not apply here, however the micro pub and bistro would require a licence and that would be controlled.

In relation to concerns raised relating to whether the application should have been 2 separate applications, officers explained that the developer was seeking to vary the planning conditions of the original application and therefore the proposed application was not a full planning application as it related to an already existing consent. It was within the Committee's powers to amend the wording to the relevant condition in terms of opening hours which was a consideration for Members as to whether they considered the condition should be applied to only one or both of the units.

It was clarified that as yet none of the units had taken up any of the premises and the original planning condition did not specify which use would be within which unit. Officers were only aware of which uses may be within each unit due to discussions with the developer. It was possible that 2 takeaways could open until 10.00pm anyway and therefore officers would be looking at what was the impact of the additional hour and would that cause such an adverse impact on the residential amenity that it would be refused.

From a planning perspective officers were satisfied that there would be no significant adverse impact on residents from the proposed extra hours for both units 2 and 9 even allowing for the proximity of unit 2 to some of the neighbouring residents that would justify a reason for refusal. It was not dissimilar to other parades of shops within the borough which had residential properties in close proximity.

Officers clarified the position relating to opening hours stated within the report.

A vote then took place and the application was approved.

RESOLVED that planning application 16/2241/VARY be approved subject to the following conditions and informative;

Opening times;

01 The hereby approved premises shall not be open for business outside the hours of 08:00- 22:00 Monday to Saturday and 10:00 to 16:00 on Sundays and Bank Holidays unless otherwise stated below;

- Units 2 and 9 – 08.00hrs to 23.00hrs Monday to Sunday

- Unit 10 (convenience store) - 06.00 to 23.00hrs Monday to Sunday
- Unit 12 (Bistro) - 09.00 to 22.00hrs Monday to Thursday, 09.00 to 23.00hrs Friday and Saturdays and 09.00 - 20.00 on Sundays.

Variation of approved opening hours only;

02 Nothing in this permission other than the variation of condition No.14

(Opening Times) to allow for extended opening units 2 and 9 shall be construed as discharging the conditions attached the previous permission 15/3136/FUL.

INFORMATIVE OF REASON FOR PLANNING APPROVAL

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.