

DELEGATED

**AGENDA NO
PLANNING COMMITTEE**

9 NOVEMBER 2016

**REPORT OF DIRECTOR,
ECONOMIC GROWTH AND DEVELOPMENT
SERVICES**

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

Expiry Date 30th November 2016

SUMMARY

The application site is 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 lies to the south with further residential development which will form the last phase(s) of Village six to the south, work on this phase of housing is now under construction.

This application seeks 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 seeks 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 has already been established and construction of the development is now well underway. No physical alterations to the premises are proposed and therefore the main planning considerations of this application are 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 are noted, a degree of activity will 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 seek the same trading hours and consequently the resultant harm from the associated activities arising out of the extended opening hours are 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 has considered the proposed development and does not consider that there would be any significant increase in traffic or parking demand and consequently has no objections on grounds of highway safety. There is 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 this these considerations the proposal is recommended for approval subject those conditions identified in the report below;

RECOMMENDATION

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.**

Reason: In the interests of the amenity of the neighbouring residential premises.

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.**

Reason: To reserve the rights of the Local Planning Authority with regards to these matters.

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

BACKGROUND

1. The application site forms part of the wider Ingleby Barwick settlement and was granted outline planning consent for residential development in 1979. In 2009 a development brief for the remaining phase of Ingleby Barwick (village 6) was developed through a working party of Council Officers and Persimmon Homes, with additional consultation from Local Ward Councillors (at the time IBIS) and Ingleby Barwick Town Council. The development brief sets out key principles for future housing development within Ingleby Barwick, including a number of guiding principles. This included an aspiration for additional facilities within Ingleby and village six which included provision for a community centre and potential shop/pub. The development brief was approved by planning committee on the 24th February 2010. It is however not a statutory development plan document and consequently carries little weight in the determination process.
2. Most recently an application for 12no. Commercial units consisting of a mixture of uses (Use classes A1, A2, A3 and A5) was approved by planning committee (application ref; 15/3136/FUL). Following that approval, a variety of pre-commencement conditions were discharged (ref; 16/1664/APC) and a revision to the external materials has been agreed (ref; 15/3136/NMA). Work has commenced on the site with the construction well underway.

SITE AND SURROUNDINGS

3. The application site is 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 and Myton Way beyond. Immediately to the west and north of the site lie the residential properties of

Bancroft Drive, which lead round onto Magnis Close, while to the south lies 'The Rings' distributor road with a further area of land with planning permission for residential development which will form the last phase(s) of Village six, which is also now currently under construction.

PROPOSAL

4. Planning permission is sought under Section 73 of the Town and Country Planning Act 1990 to vary the wording of condition 14 to allow for extending opening hours of units 2 and 9 of the previously approved retail development at Sandgate, Ingleby Barwick (ref; 15/3136/FUL), the condition reads;

Opening times:

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;

- o Unit 10 (convenience store) - 06.00 to 23.00hrs Monday to Sunday*
- o 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.*

Reason: In the interests of the amenity of the neighbouring residential premises.

5. The proposed change seeks to vary the opening times from 08.00 to 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. This would bring the proposed closing time of the premises in line with the approved closing times for the convenience store (23.00hrs Monday- Sunday) and the bistro (23.00hrs Fridays and Saturdays). As part of the submission the applicants have submitted a supporting planning statement and a number of appeal decisions.

CONSULTATIONS

6. The following consultations responses were received in response to the application (in summary):-

SBC Highways Transport and Environment Manager – no objections to the variation of conditions

Environmental Health Unit – no objections in principle to the variation of opening hours
I have checked the documentation provided and I have found no grounds for objection in principle to the application to vary condition 14 (opening times) of planning approval 15/3136/FUL for units 2 and 9.

Parish Council – no comments received

Councillors – no comments received

PUBLICITY

7. Neighbouring residents were notified of the application, a total of 8 objections were received from surrounding residents with 2 objections/concern being raised from residents elsewhere in Ingleby, these are set out below (in summary):

Mr Sam Nixon - 16 Bancroft Drive Ingleby Barwick

When I bought the property was told that there would be no takeaway and there are sufficient takeaways within the area. Having one in close proximity could cause devaluation of houses in the local area and increase the level of traffic in an evening.

Mr Mike Oakley & Mr Jack Fenwick - 2 Bancroft Drive Ingleby Barwick

The developer was given clear guidelines and conditions were put in place to protect the resident's amenity, residents accepted this enables traffic to be eased later on an evening and to prevent noise. The original planning statement recognised the provision of takeaway units and although the developer states that the times are "not economically viable", buyers should recognise planning constraints

The developer also quotes takeaways in the local area and their opening hours, but then also acknowledges that no two locations and applications are the same. This site is significantly closer to residential properties than other shopping areas in Ingleby Barwick and the original controls are necessary. As the Sandgate development is significantly closer it is argued that the limitations already placed on the opening hours by the council are necessary. As the extended opening hours will cause a significant increase in noise disturbance at late hours and they ask the council block any attempt to alter these.

Eleanor Watson - 1 Magnis Close Ingleby Barwick

No objection to the shops being built there, but I am very concerned about the parking. Seeks a sign being erected stating that it is parking for residents only to stop people from parking over drives and outside houses

Mrs Helen Smith - 35 Bancroft Drive Ingleby Barwick

I strongly object to the proposal of the two units in questions from being allowed to extend their opening hours.

Miss Nina Pendlington & Mr Chris Milligan - 1 Bancroft Drive Ingleby Barwick

Bought the property having been informed there would be no takeaway. Further takeaways are not necessary as there are already plenty within the area

The developer was given very clear guidelines following objections on the original planning application and conditions were imposed to protect the local residents. The residents accepted this as it enables traffic to be eased later on an evening and to prevent noise. The developer, at the time of the original planning application, was already aware that two hot food takeaways would be installed and accepted the constraints. The Sandgate development is significantly closer to residential properties than other shopping areas in Ingleby Barwick and it is argued that the limitations already placed on the opening hours by the council are necessary and ask the council block any attempt to alter these.

The new development could cause devaluation of houses in the local area and even more traffic on an evening.

Miss Hannah Richardson - 4 Bancroft Drive Ingleby Barwick

Raises concerns given the proximity of the site to her property about increased noise and anti-social behaviour. Concerns about the associated smells and litter as a result of the takeaways are also raised.

Mrs Amber Harris - 22 Magnis Close Ingleby Barwick

No further takeaways are needed, if this had been known then it is unlikely would have chosen to live there due to litter issues and the smell.

Miss Sarah Pinkney - 16 Bancroft Drive Ingleby Barwick

Area is not suitable for this amount of shops never mind having them stay open so late. Houses opposite will suffer further inconvenience by allowing the premise to open late.

Mrs Rachael Fitton - 10 Greensforge Drive Ingleby Barwick

Not appropriate when in such close proximity to houses. Access road to the estate is already a problem.

Mrs Kendra Richardson - 25 Houghton Banks Ingleby Barwick

Only 4 houses on Bancroft Drive and only a couple in Magnis Way/Close receive letters relating to the notification of this extension of hours and more objections may be received if ALL concerned houses are consulted. The Shops are too close to the residential properties to house late night takeaways and will impact on families within the houses. The development was supposed to have no takeaways as there are already several within Ingleby Barwick.

PLANNING POLICY

8. 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

9. 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

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

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

1. Accessibility will be improved and transport choice widened, by ensuring that all new development is well serviced by an attractive choice of transport modes, including public transport, footpaths and cycle routes, fully integrated into existing networks, to provide alternatives to the use of all private vehicles and promote healthier lifestyles.

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

5. For all major developments, including residential developments comprising 10 or more units, and non-residential developments exceeding 1000 square metres gross floor space, at least 10% of total predicted energy requirements will be provided, on site, from renewable energy sources.

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 5 (CS5) - Town Centres

1. No further allocations for retail development will be made other than in or on the edge of Stockton Town Centre during the life of the Core Strategy.

2. Stockton will continue in its role as the Borough's main shopping centre. Up to 2011, the need for additional capacity can mostly be met through committed developments and the occupation and reoccupation of vacant floorspace. Beyond 2011, there may be a requirement to bring forward new retail developments within the town centre in the first instance, to improve quality and widen the range of the shopping offer in the Borough. The creation of specialist roles for Stockton, for example as a sub-regional historic market town, or through the concentration of a mix of ethnic retailers or small independent chrysalis stores, will be supported. Other initiatives will include:

- i) Improving the main approaches to the town via the Southern, Eastern and Northern Gateways, through creating new development opportunities and promoting environmental improvements;
- ii) Promoting a balanced and socially inclusive cultural sector and 24-hour economy across the town centre, particularly in the vicinity of Green Dragon Yard;
- iii) Providing additional leisure opportunities, and other town centre uses, in accordance with Planning Policy Statement 4: Planning for Sustainable Economic Growth;
- iv) Improving pedestrian links to the riverside.

6. The existing roles played by Teesside Park as an out-of-town location, and Portrack Lane as out-of-centre site, are recognised. Whilst no additional retail or leisure development proposals will be encouraged in these locations or any other out of centre locations, any proposals which emerge will be dealt with as under 7 below.

7. Should any planning application proposals 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 S2 of Alteration No 1 of the adopted Stockton on Tees Local Plan

Proposals for new, or extensions to existing, major retail development outside the Primary Shopping Area within Stockton Town Centre and beyond the boundaries of the District and Local Centres, as illustrated on Proposals Map, will not be permitted unless :-

- i) there is clearly defined need for the proposed development in the catchment area it seeks to serve ; and
- ii) it can be clearly demonstrated that there are no other sequentially preferable sites or premises which are available, suitable and viable to accommodate the identified need the proposed development seeks to serve, starting from sites :-
 - 1) within the Primary Shopping Area within Stockton Town Centre or within the boundaries of the various District or Local Centres defined under Policy S1; followed by
 - 2) on the edge of the Primary Shopping Area within Stockton Town Centre or on the edge of the boundaries of the District and Local Centres within the Borough, then

3) in out-of-centre locations which are well served by a choice of means of transport, close to an existing centre, and which have a high likelihood of forming links with the centre; and only then

4) in other out of centre locations;

iii) the proposal would not have an adverse impact, either individually or cumulatively with other committed developments, upon any proposed strategy for a centre, or the vitality and viability of any centre within the local retail hierarchy set out in Policy S1 or nearby centres adjoining the Borough; and

iv) the proposal would be appropriate in scale and function to the centre to which it relates

v) the proposed development would be accessible by a choice of means of transport, including public transport, cycling and walking, and

vi) the proposed development would assist in reducing the need to travel by car, as well as overall travel demand.

Proposals for other key town centre uses in locations which lie beyond the Town, District and Local Centre boundaries defined on the Proposals Map will also be required to satisfy the above criteria. In relation to Criterion (ii), other Town Centre use proposals should be accompanied by evidence which demonstrates that there are no sequentially preferable development opportunities either within and/or on the edge of defined boundaries of the Town, District and Local Centres in the Borough.

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 the defined retail Centres listed in Policy S1, where the proposal is in accordance with the 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;

4) Within the defined Local and Neighbourhood Centres, subject to Policies S10;

5) Outside of the defined retail Centres, proposals 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 circumstances that necessitate such a location.

Proposals for all Use Class 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 provision of facilities for litter within and adjoining the premises;

v) the secure provision for trade waste, stored in an out of sight location;

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

MATERIAL PLANNING CONSIDERATIONS

11. Given that the alteration to the opening hours proposes no physical alterations to the premises the main planning considerations of this application are the principle of development and the impacts of the development on; amenity of neighbouring residents; highway safety; crime and anti-social behaviour; and, other matters arising out of consultation.

Principle of Development;

12. The earlier approval for the retail development established the principle of the land use for a mix of retail uses which included controls to limit the number of takeaways to no more than two. Whether there is the need for additional takeaways or the retail development are therefore not for consideration under this application.

13. Under planning legislation provision exists under Section 73 of the Town and Country Planning Act to seek the removal or variation of previously imposed planning conditions. Whilst objection comments regarding developers and occupiers needing to recognise the imposed planning constraints are noted, the purpose of this application is to fully consider the associated impacts of any variation to the opening hours and whether they are acceptable in planning terms or not. These matters are discussed below;

Amenity;

14. The proposed units are commercial premises which were granted planning permission as part of a small retail development, which allowed for a mix of A1(retail), A2 (financial and professional services), A3 (café/restaurants), A4(drinking establishments) and A5 (takeaway) uses. However, condition 27 controlled the mix of uses upon implementation within the retail development, whilst it allowed for some flexibility over the mix of uses no more than two takeaway units (use class A5) were allowed and therefore the associated impacts of takeaways being on the site could occur. In considering the associated impacts on residential amenity the proximity of the site to the surrounding residential premises is noted, as are the various concerns of the neighbouring objectors.
15. As identified within saved policy S14, food and drink uses can result in noise and disturbance to neighbouring occupiers given that those premises are often open late into the evening and attract patrons. Whilst the concerns of the neighbouring residents with regards to increase noise and disturbance are noted, it is considered that a degree of activity will already occur within the wider retail development as a result of those operations associated with the opening times of the convenience store (until 23.00hrs (11pm). The proposed extension to the opening hours of units 2 and 9 seek the same trading hours of the convenience shop and consequently the resultant harm from the associated activities arising out of the proposed takeaway use on the surrounding residential properties are considered to be relatively limited and would not be sufficient to warrant a refusal of the application on these grounds.
16. The Councils Environmental Health Officers have considered the application and have no objections to the planning application for the extension in opening times of units 2 and 9. However, a planning condition is recommended to ensure that the original conditions of the approval are secured ensuring that appropriate controls are retained for matters which amongst others relate to odour control, servicing/refuse arrangements, fat/grease trap and noise disturbance from other plant and machinery.

Access and Highway Safety;

17. A retail development for 12 no. units with a suitable access and parking arrangements to meet the demands of those units has already been approved and this cannot be reconsidered. Whilst the concerns of objections which relate to the potential increase in traffic and parking problems are noted, the Highways Transport and Environment Manager has considered the proposed development and the effects that an extension to the existing opening hours would have. It is considered that given the relatively limited increase in the opening times and the degree of curtilage parking already available at the site, the Highways, Transport & Environment Manager does not consider that there would be any significant increase in traffic or any significant increase in parking demand and consequently has no objections on grounds of highway safety.

Crime and Anti-social behaviour;

18. Section 17 of the Crime and Disorder Act requires that the planning system and the Planning Authority must do all that it reasonably can to prevent, crime and disorder in its area. In considering such aspects it is noted that the existing retail development would allow for 2no. takeaways and for those premise along with other smaller retail premise to be open until 10pm Monday to Saturday and 4pm on Sundays. Under that approval the convenience store was also permitted to open until 11pm and the Bistro to open until 11pm on Friday's and Saturday's.

19. Whilst the concerns of local residents with regards to anti-social behaviour are noted, there is no firm evidence before the Local Planning Authority which would indicate that this proposal for an increase of the opening times would give rise to any significant rise in crime or anti-social behaviour. In addition the restriction in opening hours across the wider development would mean that the latest any premise would close would be 11pm, minimising the attraction of the site beyond this time.
20. The proposed development as a whole is considered to have a good degree of natural surveillance from a number of areas and is considered to be in broad accordance with the principle of secure by design. In the event that any instances of crime or disorder were to arise then this would be a matter for the appropriate authorities, such as the Police and not the planning system.

Residual matters;

21. It is noted that one resident states that insufficient consultation has been carried out. However, additional consultation letters were sent out as part of the planning application process and all residents within the immediate area were notified of the application and given the opportunity to comment. Therefore a site notice was displayed adjacent to the site along with a press advert notifying people of the application, a sufficient degree of consultation has been carried out
22. It is noted that an objector raises the potential devaluation of property, however this is not a material planning consideration and cannot be taken into account in the determination of this application.

CONCLUSION

23. In view of the above considerations and whilst noting the concerns of neighbouring residents, the proposal is 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 are therefore recommended for approval subject to conditions.

Director of Economic Growth and Development Services
Contact Officer Mr Simon Grundy Telephone No 01642 528550

WARD AND WARD COUNCILLORS

Ward Ingleby Barwick West
Ward Councillor(s) Councillor K Dixon
Ward Councillor(s) Councillor Ross Patterson
Ward Councillor(s) Councillor David Harrington

IMPLICATIONS

Financial Implications:

Section 143 of the Localism Act has been taken into consideration and there are no known financial considerations/implications at this time.

Environmental Implications:

The proposal relates to a retail development and the variation to opening hours. The environmental impacts relating to residential amenity particularly as a result of noise and disturbance, traffic and parking provision are considered and addressed within the report. These are however considered to have a limited impact.

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

Planning Applications; 09/3024/REM; 11/1685/VARY; 11/0652/REM; 13/1833/FUL 13/2626/REM; 14/3035/REM and 15/3136/FUL.