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**APPLICATION DETAILS**

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<b>Application No:</b>	<b>19/0560/VAR</b>
<b>Location:</b>	<b>The TAD Centre Ormesby Road Middlesbrough TS3 7SF</b>
<b>Proposal:</b>	<b>Removal of condition 6 on application M0741/92. <i>(The bar and restaurant approved as part of the building shall be used only for the purpose incidental to the training centre as such and shall not be used for general public purposes)</i></b>
<b>Applicant:</b>	<b>Ms Sally Marshall</b>
<b>Company Name:</b>	<b>Marshall Robertson Group Ltd</b>
<b>Ward:</b>	<b>Berwick Hills/Pallister</b>
<b>Recommendation:</b>	<b>Approve with conditions</b>

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**SUMMARY**

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The site is a unit that is part of the business and training centre known as the TAD Centre on Ormesby Road at the edge of, but not within, the Berwick Hills District Centre. Use of the unit as a restaurant and bar was approved as part of the original application for the TAD centre but was subject to a condition preventing it being open to the public. This application seeks to remove the condition to allow use by members of the public, indicated as being to support the viability of the business.

The main considerations are whether or not the use of the restaurant by members of the public will undermine the vitality and viability of the nearby district centre; the availability of alternative suitable units within the district centre; the need for the restaurant to be located within the TAD centre and its importance in the successful functioning of the TAD centre.

In assessing the application it was concluded that although use as a restaurant outside of the district centre is contrary to local policy, its use is important in the functioning of the TAD centre and that opening it up to the public will support its long term viability and the ability therefore for the use to continue supporting the businesses within the TAD Centre. It was also considered that there was no evidence to show that the use, which has been in operation for a year, has a significant impact on the vitality and viability of the nearby district centre. On balance the recommendation is that the application be approved subject to conditions.

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## **SITE AND SURROUNDINGS AND PROPOSED WORKS**

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The application site is a ground floor unit based within the TAD Centre, a local training/business centre located off Ormesby Road Middlesbrough. The site is adjacent to, but not within the Berwick Hills District Centre. The TAD Centre has its own car park. Residential properties are located on the opposing side of Ormesby Road to the east.

The original planning approval for the TAD centre was in 1992 and was subject to several conditions, including one which restricted how the bar and restaurant within it could operate, see below;

*Condition 6*

*The bar and restaurant approved as part of the building shall be used only for the purposes incidental to the training centre as such and shall not be used for general public purpose.*

The original approval had no restrictions on opening hours due to it only serving users of the centre.

This application seeks to remove condition 6 of the original approval to allow use of the premises by the general public and for the opening hours of 9am - 10pm Mon to Fri and 12pm to 10pm Saturday and Sunday.

The facility had already started providing a service to members of the public prior to the Covid-19 lockdown and the application was therefore retrospective at the time of its submission.

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## **PLANNING HISTORY**

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M/0741/92 Four storey and two storey training advice and development centre – approved subject to conditions

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## **PLANNING POLICY**

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In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004, Local Planning Authorities must determine applications for planning permission in accordance with the Development Plan for the area, unless material considerations indicate otherwise. Section 143 of the Localism Act requires the Local Planning Authority to take local finance considerations into account. Section 70(2) of the Town and Country Planning Act 1990 (as amended) requires Local Planning Authorities, in dealing with an application for planning permission, to have regard to:

- The provisions of the Development Plan, so far as material to the application
- Any local finance considerations, so far as material to the application, and
- Any other material considerations.

### Middlesbrough Local Plan

The following documents comprise the *Middlesbrough Local Plan*, which is the Development Plan for Middlesbrough:

- Housing Local Plan (2014)

- Core Strategy DPD (2008, policies which have not been superseded/deleted only)
- Regeneration DPD (2009, policies which have not been superseded/deleted only)
- Tees Valley Joint Minerals and Waste Core Strategy DPD (2011)
- Tees Valley Joint Minerals and Waste Policies & Sites DPD (2011)
- Middlesbrough Local Plan (1999, Saved Policies only) and
- Marton West Neighbourhood Plan (2016, applicable in Marton West Ward only).

### National Planning Policy Framework

National planning guidance, which is a material planning consideration, is largely detailed within the *National Planning Policy Framework* (NPPF). At the heart of the NPPF is a presumption in favour of sustainable development (paragraph 11). The NPPF defines the role of planning in achieving economically, socially and environmentally sustainable development although recognises that they are not criteria against which every application can or should be judged and highlights the need for local circumstances to be taken into account to reflect the character, needs and opportunities of each area.

For decision making, the NPPF advises that local planning authorities should approach decisions on proposed development in a positive and creative way, working pro-actively with applicants to secure developments that will improve the economic, social and environmental conditions of the area and that at every level should seek to approve applications for sustainable development (paragraph 38). The NPPF gives further overarching guidance in relation to:

- The delivery of housing,
- Supporting economic growth,
- Ensuring the vitality of town centres,
- Promoting healthy and safe communities,
- Promoting sustainable transport,
- Supporting the expansion of electronic communications networks,
- Making effective use of land,
- Achieving well designed buildings and places,
- Protecting the essential characteristics of Green Belt land
- Dealing with climate change and flooding, and supporting the transition to a low carbon future,
- Conserving and enhancing the natural and historic environment, and
- Facilitating the sustainable use of minerals.

The planning policies and key areas of guidance that are relevant to the consideration of the application are:

DC1 - General Development  
 CS5 - Design  
 CS13 - Town Centres, Strategy

The detailed policy context and guidance for each policy is viewable within the relevant Local Plan documents, which can be accessed at the following web address.  
<https://www.middlesbrough.gov.uk/planning-and-housing/planning/planning-policy>

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## **CONSULTATION AND PUBLICITY RESPONSES**

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### **Middlesbrough Council Highways**

The Highway Officer originally objected to the proposal due to lack of information. Additional information has been provided detailing how the car park was expected to operate and the Highway Officer now has now confirmed they have no objections to the proposal.

### **Middlesbrough Council Environmental Health**

Have raised no objections subject to conditions relating to opening hours being restricted to be between the hours of 9.00am and 10.30pm Monday to Sunday and details of fume extraction equipment being submitted and agreed.

### **Middlesbrough Council Waste Policy**

No objection

### **Middlesbrough Council Strategic Policy**

It is considered that new/redevelopment of restaurant uses in this location could harm the vitality and viability of Berwick Hills District Centre, contrary to Policy CS13.

### **Middlesbrough Council Investment and Growth**

The bistro was encouraged to locate to the TAD centre by the centre owners to provide a focal point for the business centre and in accordance with their lease agreement and transfer which allows the use of B1, A3 'restaurant, snack bar, café provided it is limited to the ground floor' A1, live/work. The centre owner was aware of the operators reputation as an experienced restaurateur and successful business owner with the ambition to create a quality bistro of this nature.

The business has invested £60K and created 20 jobs for the surrounding residential area. In previous roles the bistro owner has traditionally worked in partnership with organisations to create jobs for long term unemployed, ex-offenders and those hard to reach individuals who need a little more support to get them on career ladder.

The location of the bistro within a business centre suited their business model to service an existing business community and use their quirky location and quality fit out to create the ultimate 'hidden restaurant' concept to their advantage, aiming to attract customers from the local area and create a 'destination' rather than accommodate passing trade or take out. They were unable to find a suitable location in the town centre or nearby area to achieve this.

The occupancy levels of the business centre have increased with the restaurant playing a crucial part in serving the business users from early morning to late evenings. Many high profile businesses based in the centre enjoy the use of a quality bistro setting to undertake business meetings, broker deals and win new work. In addition businesses locating to the centre have cited these facilities as a reason for relocation.

Staff and customers of James Cook Hospital are utilising the venue, which again provides a suitable off site venue for management business lunches along with providing visitors to the hospital somewhere nearby that offers a quiet bistro setting with a family feel that suits their needs.

The restaurant also provides a crucial on site catering facility for the conference centre providing buffet catering or the opportunity for visitors and delegates to use during breaks and lunchtime.

Previous to the restaurant opening the centre had suffered continued anti-social behaviour, however since the restaurant has opened incidents have reduced which is attributed to the continued usage of the building till later in the evenings.

The bistro has a licence to operate on evenings, serving drinks with food only. It has its own parking so does not impact on the surrounding community.

We are happy to support this development and support approval of planning in its current location

## Public comment

Nearby neighbours / businesses were notified of the proposal. 15 comments in support of the proposal were submitted. Comments are summarised as follows:

- Local resident in support of business
- Closure will result in loss of jobs
- Use will contribute to commercial success of the area
- Opening to public will make business viable
- Restrictive opening times are bad for business
- Business provides employment opportunities for vulnerable adults
- Encouragement of local business should override policy
- Successful business should be encouraged

## Public Responses

Number of original neighbour consultations	46
Total numbers of comments received	15
Total number of objections	0
Total number of support	15
Total number of representations	0

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## PLANNING CONSIDERATION AND ASSESSMENT

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### Policy Context

1. Planning legislation requires applications to be determined in accordance with the Local Plan for the area unless material considerations outweigh doing so. The National Planning Policy Framework (NPPF Feb 2019), as governments planning policy, is also a material consideration, this states that,
  - where an planning application conflicts with an up-to-date development plan, permission should not usually be granted (para. 12).
  - In determining planning applications, due weight should be given to local planning policies in accordance with their consistency with the revised Framework, with greater weight given to those policies which are closer to those in the Framework (para 213).
2. Section 7 relates to town centre development and sets out the need for a sequential test when considering applications for town centre uses that are located outside of an allocated town centre going onto advise that town centre uses should be located in town centres, then in edge of centre locations; with a sequential test applied to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan.
3. Development Plan Policies DC1 and CS5 are relevant and in essence seek;
  - Ensure high quality sustainable development;
  - Ensure the amenity of nearby residents;
  - Ensure the character of the area and highway safety are not adversely affected by the development.
4. Policy CS13 is also relevant which defines a hierarchy of retail centres based upon strategic importance within the borough that meet day to day shopping and community needs. The policy seeks to safeguard the retail character and function of centres by resisting development that would detract from their vitality and viability.

5. Governments Planning Guidance documents - '*Town Centres and Retail*' and '*How should locational requirements be considered in the sequential test?*' are also relevant.

### **Principle of the proposal**

6. The proposal relates to an existing restaurant/bar use which is currently located within and serves the businesses within the TAD Centre. The restaurant was, at the time of the TAD Centre being approved, specifically restricted from being open to the public. This proposal now seeks to amend the restrictions to allow it to be able to be open to members of the public. The proposal is therefore for a town centre use rather than an ancillary restaurant / bar although the applicant has advised that the business still fundamentally seeks to provide an ancillary function to the business within the TAD Centre. In line with both local and national policy and guidance, a town centre use should be located within either the town centre or a local centre as defined by the local plan. In this instance, the application site (TAD Centre) is not located within a defined centre and is the proposal is therefore contrary to policy in this regard. In such instances, policy and national guidance require a sequential assessment to be undertaken to determine whether there are other available premises for the use within local centres which should therefore serve this function and whether there are any other material planning considerations which would weigh in favour, or otherwise of this proposal.
7. The nearest defined centre (Berwick Hills District Centre) lies adjacent to the site as shown by the plan at appendix 2. The District Centre is arranged however with the Morrison's Supermarket being the closest District Centre premises to the TAD Centre and its extensive car park forming the boundary with the TAD Centre. The other units within the District Centre and associated parking are therefore more distant.
8. Policy CS13, seeks to protect and enhance Middlesbrough's centres and safeguard the retail character and function of centres by resisting development that detracts from their vitality and viability. This includes ensuring uses considered to be a town centre use are located within the centre itself and to avoid locating such uses outside of the centre where they can potentially draw trade from the designated centres. In instances where an a premises within a defined centre is not available, the National Planning Guidance requires edge of centre locations to be considered before out of centre locations and in view of the application site abutting the District Centre boundary, this would constitute an edge of centre site, therefore making it more preferable as a place for such a use than an out of centre location. National Guidance further advises that where edge of centre sites are being considered, preference should be given to ones which are well connected to and accessible from the defined centre.
9. To provide some context, Berwick Hills District Centre has a good mix of uses which are considered to meet the day to day needs of residents in the surrounding areas, with the Morrison's supermarket and the Neptune Leisure Centre attracting residents from wider areas of the Borough. Following a recent site visit a number of vacancies within the defined centre were identified within both Park Parade (a recently built retail development to the northern part of the district centre on the old Kwiksave site) and the existing centre at Norfolk Place. Location of a new restaurant so close to the edge of the centre has the potential to reduce interest in the vacant units within the centre to be occupied for a similar purpose, thereby reducing the likelihood of them becoming occupied and reducing the vitality and viability of the centre generally.

### **Sequential Assessment Considerations**

10. A sequential test needs to be applied to this proposal in line with national guidance, and, unless material planning considerations dictate otherwise, only should an edge of centre be supported where no reasonable 'within centre' premises exist and consideration also needs to be given to whether the site is both accessible and well connected to the town centre.
11. Planning Practice Guidance '**Town Centres and Retail**' determines that in order for a proposal to comply with the sequential test a reasonable degree of flexibility in format and/or scale should be considered. It is not necessary to demonstrate that a potential town centre and edge of centre can accommodate precisely the scale and format of development being proposed, but rather to consider what contribution more central sites are able to make to accommodate the proposal. **PPG Guidance 'How should locational requirements be considered in the sequential test?'** recognises that certain town centre uses may have particular market and locational requirements, which mean they only be accommodated in specific locations, but requires robust justification where this is the case. Arguably, the applicant has advised that the business needs to continue to serve the businesses within the TAD Centre and so in order to do this needs to be in relative close proximity.
12. The application site has a total floor area of 460m consisting of 110sqm of restaurant floor space with further 350sqm providing customer toilets, lockable store room, manager office, lobby and kitchen. The sequential test submitted with the application set out the result of a visual survey carried out in December 2019. It identified the following units that were available in the nearby Berwick Hills Centre:
  - a) former Yorkshire Bank (240.5sqm)
  - b) Unit 3 of Park Parade (104sqm)
  - c) Unit 7 of Park Parade (104sqm)
  - d) Unit 8 of Park Parade(113sqm)
13. The Yorkshire Bank was discounted because the agent in charge of marketing it advised that the unit was not currently available as the owner was planning to sub divide into smaller units and could not provide a date when they would be available. The sequential test goes onto dismiss the other three units due to their limited size although two of these units could be grouped together to form a larger unit, however, this would still be less than half the size of the unit from which the business currently operates. The sequential assessment sought to also discount the units due to them being unable to allow the business to continue serving the TAD Centre which is its current function. The sequential assessment further sought to dismiss units because of the inhibitive cost of relocating the existing use although this is considered to carry little weight.
14. The sequential assessment does not refer to other vacant units within the Norfolk Place section of the district centre and how they can accommodate an A3 use. No.20 Norfolk Place (141sqm) and No.24 Norfolk Place (97.64sqm) appear to be vacant but do not display any signs for let or sale, it is assumed that they would also be unsuitable due to their limited size. Furthermore the sequential assessment fails to consider the vacant units that adjoin Norfolk Place and the Morrison's supermarket (also within the district centre), namely the retail unit at Crossfell Road (formerly the Middlesbrough library). The unit has a floor area of 536sq m and could also be sub divided to make it closer to the size of the existing restaurant business. This unit is considered to be an appropriate size subject to a degree of flexibility. There is also an empty housing office, previously occupied by Thirteen. It is understood the lease expires in December and that the building may therefore become available in the near future.

15. In view of the above, the sequential assessment has reasonably demonstrated that, apart from the former library, other available units within defined centre would not meet the businesses needs in terms of floor space, even with a degree of flexibility being applied and none of the units within the centre, either available or currently occupied would be able to reasonably serve the TAD centre in the manner that the existing facility does and by relocating the premises into a unit such as the library, would serve to either sever the business from the TAD Centre or require two businesses to be operated, one from within the District Centre and one from the TAD Centre which is not the applicants aspirations.
16. The typical walking distance for shopping or utilising services within a centre is nationally recognised within planning as being 400m and this is based on the department of Transport 'Guidelines for providing Journeys on Foot' document. The walking distance between the entrance to the TAD Centre and the main entrance to the shops at the District Centre is approximately 340m which falls within the normal expected walking distance for shopping. In view of the site physically abutting the District Centre with no intervening uses or land, being within accepted walking distances from the District Centre core, for people to reasonably make the journey between the District Centre and the TAD Centre and in view of there being parking facilities both within the District Centre and at the TAD Centre it is considered that the two sites do have some, albeit limited, opportunity to provide a supporting role to one another.
17. National planning guidance recognises that main town centre uses may have particular market and locational requirements which mean they have to be accommodated in specific locations. Given the walking distances between the TAD Centre and the district centre set out above, although the site provides some ability for linkage with the District Centre, it is considered that clients at the TAD centre would be unlikely to use a facility located within the district centre due to the inconvenience and time limitations of courses/business meetings taking place. A business assessment including financial detail was submitted by the applicant to evidence the need to open up to the public to sustain the viability of the business. It was requested the report remains confidential and so a full analysis cannot be made in this report due to it being a public document. The report in essence identifies the need for the restaurant to be located within the TAD Centre in order to serve the needs of business clients within it. It also sets out a financial case showing how the business is dependent on public use of the restaurant to remain viable. Fifteen letters of support were received from users of the restaurant but it is not clear how many of the supporters were occupants or users of other facilities in the TAD Centre and as such little weight can be given to this in terms of indicating the role the facility plays in underpinning the function of the TAD centre. Middlesbrough Councils Investment and Growth Officers comments are set out in the consultee comments at the start of this report. They identify the contribution the facility provides to the TAD centre with occupancy levels increasing with the restaurant in place. It is also advised that high profile businesses use the quality bistro setting for meetings and that businesses have cited the high quality facility as a reason for relocation. The facility also provides 20 jobs to the local area and while it can be argued that these jobs could be provided if the restaurant were to relocate to the district centre, in practise, this will not happen due to the inter-dependence of the restaurant and the TAD Centre clientele. In light of the comments above, it is considered that the supporting role of the use within the TAD centre adds weight to the use needing to operate within this location, particularly in view of there being no suitably sized units in very close proximity to the application site.
18. The needs of the business to be located in this specific location should be balanced against any impact on the vitality and viability of the nearby district centre. Based on information in surveys undertaken by the Council every March, the occupancy rate



for Berwick Hills has remained reasonably static over the last three years (2018 up to and including 2020) with around 8% of units being noted as being vacant. The applicant has confirmed that the restaurant has been serving the public for approximately one year. As the occupancy during this period has not changed significantly it can be argued that there has been no obvious impact on vitality and viability of the district centre. It is acknowledged that there might be a time delay for any impact to become apparent. A development of 8 units has been constructed on the former Kwik Save site that is within the district centre. Five of the eight units have already been occupied. Furthermore an application for a bar/bistro at 1 Norfolk Place as been approved and implemented and an application for a new retail unit within the Morrison's Car Park approved. In view of this it would appear that there is demand for units within the centre and so it is considered that it would be difficult to substantiate refusal of planning permission in this instance based on loss of vitality and viability to the district centre.

19. In view of the above, it is considered that although the sequential test submitted with the application does not robustly demonstrate that there are no more sequentially preferable sites available to accommodate the restaurant use, there is sufficient evidence that there is a need for the use to be located within the TAD Centre as the facility helps to underpin the success of this training and business facility which in turn makes an important contribution to the local economy which as a principle, is supported by local and national planning policy. In addition to this, the site is in an edge of centre location already and given its link to the TAD Centre, requiring it to move such a short distance from the edge of centre, is considered would not constitute sound reasoning when taking into account the very specific nature of this proposal. Importantly, had the business not already been operating or the site be more removed from the District Centre, then these considerations would significantly alter the balance of weight being given in reaching a recommendation on this proposal. It must be stressed that on its own, the introduction of restaurant use outside of a defined centre is not acceptable in principle unless it passes the sequential test. It is the fact that the situation is unique in that the use is already in existence, is instrumental in the successful functioning of the TAD Centre and that there is a need to expand its offer to the public to maintain its viability that balances the view in favour of the proposal. In view of this, it is considered important that the restaurant does not operate independently to the TAD centre and should remain available as a resource serving the TAD centre. A suitable condition is recommended.

#### **Appearance**

20. There are no physical alterations to the exterior of the building proposed as part of this application. A change of use or change in operation of a building can sometimes lead to activity that is contrary to the character of the area. In this instance however, The Tad Centre is already used for business purposes with vehicles arriving and leaving the site, some uses also take place in the evening and it is considered therefore that the proposed opening up of the restaurant service to the public will not result in a significant change in the nature of the building and so there will be minimal impact on the character of the area in accordance with CS5 (test c) and DC1 (test b), the Urban Design Guide.

#### **Impact on privacy, amenity and the character of the area.**

21. The main concern in terms of impact is the potential for cars entering and leaving the site during the late evening and customers causing noise and disturbance to nearby residents as they leave the premises. Car parking is located to the west, north and east of the TAD centre, although the parking during the day is well used it is less so during the evenings when members of the public are more likely to visit the restaurant. Customers are most likely to use the parking to the north of the site which is nearest the entrance to the building. This is set a minimum of 30m away from the

nearest residential properties to the east on Ormesby Road and to the west on Penrith Road. In any event it is not considered that the level of from vehicular and pedestrian movement generated by the restaurant will be so significant as to result in an unacceptable level of noise and disturbance. The applicant has requested opening times until 10pm which is considered to be a reasonable time for some level of noise to occur.

22. In light of the above, it is considered that the additional level of use generated by opening the facility up to public use will not result in an unacceptable level of noise and disturbance to nearby residents in accordance with policy DC1 (test c). The Councils Environmental Health Department considered the proposal and raised no objection.

### **Highways**

23. The applicant provided a written statement that 100 spaces are available for the whole centre within the existing car park and that with the restaurant at full capacity only 15% of the car park was used. Due to the nature of the restaurant use, the majority of the additional custom will be during the evening when demand for the car park from other uses within the centre is at a minimum. It is not therefore considered that the proposal will lead to undue demand on parking or have an adverse effect on the safe operation of the highway. The Councils Highway Officer considered the application and raised no objection. It is the Development Control view therefore that the proposal will not have an impact on the safe operation of the highway in accordance with policy DC1 (test d).

### **Conclusion**

24. The proposal has been assessed against national and local policy and guidance. It is considered that the opening up of the restaurant to the general public will in effect result in a town centre use being located outside of the designated centre which is contrary to principles of Local Plan Policy CS13, however there are sufficient material planning considerations which add weight to allowing this proposal in this location which will provide continued support for the TAD Centre and associated businesses and taking into account the sites location on the edge of the District Centre.
25. In view of the above, the proposal is considered to be an acceptable form of development is therefore recommended for approval subject relevant conditions.

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## **RECOMMENDATIONS AND CONDITIONS**

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### **Approve with conditions**

#### **No affect to other conditions associated with application M/0741/92**

1. This permission relates only to affect condition no.6 of application reference M/0741/92 subject to the provision of the additional conditions within this decision.

Reason: To define the permission.

#### **Independent Use**

2. Should the restaurant and bar facility ever cease to provide a restaurant and bar service to the businesses within the TAD Centre, then the use shall also cease all services to the general public.

Reason: To ensure the successful functioning of the training business centre it is associated with and to avoid detrimental impact on the vitality and viability of the nearby district centre.

**Opening hours**

- 3 The restaurant shall not be open to members of the public outside of the following times 9.00am to 22.00pm Monday to Friday and 12.00pm to 10.00pm Saturday and Sunday.

Reason: in the interests of the amenity of nearby residents.

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**REASON FOR APPROVAL**

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In the view of the Local Planning Authority the proposed use will contribute to the continued successful functioning of the training and business facility without having a detrimental impact on the vitality and viability of the nearby district centre in accordance with policy CS13 of the Local Development Plan.

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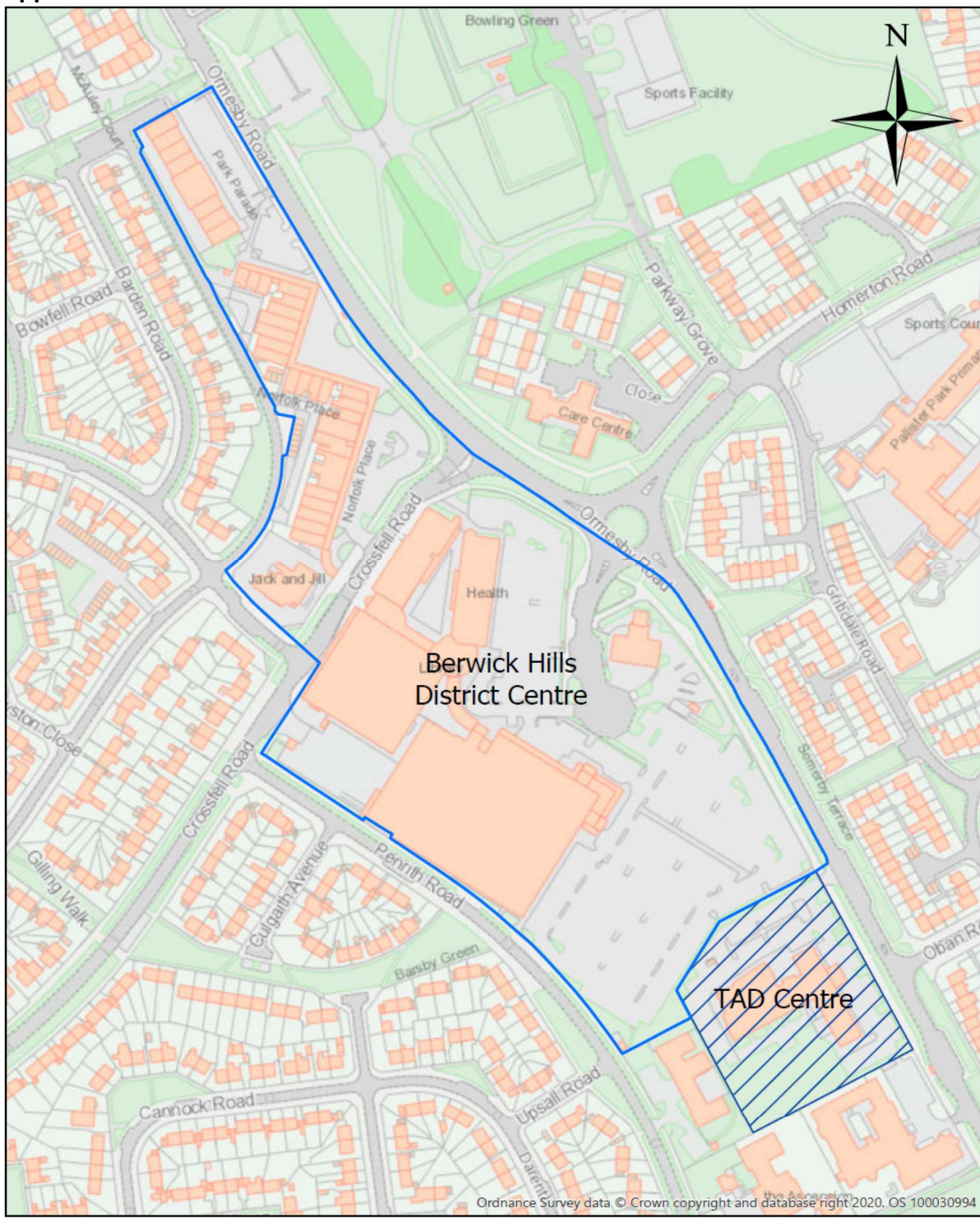
Case Officer: Maria Froggatt

Committee Date: 10<sup>th</sup> July 2020

**19/0560/VAR - The TAD Centre Ormesby Road, Middlesbrough**  
**Appendix 1: Site Location Plan**



**Appendix 2: Site Context relative to District Centre**



<b>Title:</b>	
Service Area: Planning	
Map Reference:	Scale: 1:2,500@A4
Map created by: J Manders	Date: 25/6/20
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