

---

**APPLICATION DETAILS**

---

<b>Application No:</b>	<b>20/0760/FUL</b>
<b>Location:</b>	<b>249 Acklam Road Middlesbrough</b>
<b>Proposal:</b>	<b>Erection of pergola with glass panels to side over outdoor seating area to front</b>
<b>Applicant:</b>	<b>Mr Shaun Crake</b>
<b>Ward:</b>	<b>Acklam</b>
<b>Recommendation:</b>	<b>Approve with Conditions</b>

---

**SUMMARY**

---

The application site is a drinking establishment located in the Acklam Local Centre. Planning permission is sought for the erection of a partial glass balustrade and pergola type roof around and over the existing raised drinking area to the front of the property. Following the usual consultation process three objections were received. The comments related to loss of privacy, noise and disturbance and parking issues.

Permission has already been granted for the raised drinking area to the front of the property, this application relates only to the installation of a glass balustrade, poly carbonate roof with timber supports, over and around the drinking area and timber fence to side. The main areas for consideration are the design and appearance of the structure, its impact on the character of the area and impact on amenity.

The proposal has been assessed against local policy and guidance and is considered to be an appropriate form of development.

The Officers recommendation is for approval subject to conditions.

---

**SITE AND SURROUNDINGS AND PROPOSED WORKS**

---

The application site is a two storey end of terrace property located in a row of commercial properties within the Acklam Road Local Centre. Planning permission for use as a café/bar (A3/A4) was granted in April 2019 and the use is in operation.

The application site occupies the ground floor of a two storey property with separate residential flat above. The property originally had an open area to the front with retaining wall to the side which served as parking for the shop that previously operated from the site. The forecourt has subsequently been built up to make it level to provide an outdoor seating area

for the current use, this part of the development was approved retrospectively in February 2020.

Planning permission is now sought to partially enclose the raised seating area with a three quarter height glass balustrade and a polycarbonate roof with timber supports. Following concerns raised by officers, a revised scheme showing separate access to the flat was submitted. The plans now show the pergola reduced in width, a ramped access to the flat entrance introduced at ground floor level and a fence to the side.

---

## PLANNING HISTORY

---

20/0009/DIS Discharge of conditions 2 (Noise Assessment) 3 (Ventilation details of a ventilation and fume extraction) and 4 (Insulation of equipment) on application 19/0102/COU Part Discharge Conditions  
10th March 2020

19/0632/FUL Retrospective raising of ground level Approve with Conditions  
24th February 2020

19/0102/COU Change of use from sandwich shop (A1) to cafe/bar (A3/A4) Approve with Conditions  
25th April 2019

---

## PLANNING POLICY

---

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 etc Strategy  
REG29 - Local Centres  
UDSPD - Urban Design SPD

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>

---

## **CONSULTATION AND PUBLICITY RESPONSES**

---

### **Middlesbrough Council Highways**

No objection.

### **Middlesbrough Council Environmental Health**

No objection.

### **Ward Councillor**

Councillor Dean objects to the proposal

### **Public comment**

Nearby Neighbours were notified of the proposal, comments were received from the following:

Empathy Hairdressing 251A Acklam Road.  
251A Acklam Road

255-257 Acklam Road,

- Loss of privacy
- Anti-social behaviour
- Highway Safety/Parking provision
- Noise
- Waste storage provision
- Lack of smoking area
- Loss of property Value

247 Acklam Road (Objection withdrawn and advised of support for the scheme following submission of revised plans)

### Public Responses

Number of original neighbour consultations	16
Total numbers of comments received	4
Total number of objections	4
Total number of support	0
Total number of representations	0

---

## PLANNING CONSIDERATION AND ASSESSMENT

---

### Policy context

1. The National Planning Policy Framework (NPPF) was most recently revised and published by the Government in February 2019, and is a material consideration. The NPPF states that, where a 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. As a starting point, the proposal should be assessed against policies set out in the Development Plan. Policies DC1 and CS5 in essence seek to ensure high quality sustainable development; ensure the amenity of nearby residents; character of the area and highway safety are not adversely affected by the development.
3. The site is located within the Acklam Road Local Centre so Policies CS13 and REG29 also apply. The policies seek to establish a hierarchy of centres with a retail function throughout the borough and to ensure that development does not undermine their vitality and viability.
4. Supplementary planning guidance in the form of the 'Middlesbrough Urban Design Guide' which sets out the principles by which high quality development can be achieved is also relevant.

### Principle

5. Use of the area as an outdoor drinking area has already been established under the previous approvals and as such, the key considerations in assessing this proposal relate to the physical structure that is proposed with regard to its design, impact on the character of the area and amenity of occupiers of nearby dwellings.

## **Appearance**

6. In respect of appearance, the Middlesbrough Urban Design Guide states that development should be sympathetic to the building and should enhance not detract from the character of the area.
7. The addition of a roof and glass balustrade will effectively extend the building line of the application property beyond the general building line of the other properties in this block. The existing raised area and associated bench's, tables and chairs, is already a notable addition, and the proposed balustrade and roof will be of a 'lightweight' construction relative to the main building. It is therefore considered that, given the transparent nature of the glass balustrade and slender appearance of the polycarbonate roof and supports, the additional structure will contrast with the main block as a lightweight addition and will not result in an overbearing appearance in the street scene.
8. The proposed fence to the side of the property will be approximately 2.3m high where it abuts the front elevation reducing down to 1.2m in height where it abuts the rear of the footpath graduating as it projects. It is considered that graduated height of the fence will reduce its impact on the street scene in terms of appearance and will provide some screening to the residential entrance.
9. In view of the above it is considered that the proposal will not have a significantly adverse impact on the character of the area in accordance with CS5 (test c) and DC1 (test b) and the Urban Design Guide.

## **Impact**

10. Concerns were raised regarding lack of privacy due to patrons of the establishment sitting and standing within the outside of the premises however as the area is already established as a drinking area it is considered that the proposed glass balustrade will provide a barrier, albeit transparent, and will not result in additional loss of privacy over and above the existing situation. Comment was also made about levels of noise and disturbance associated with the site, it is considered that the proposed balustrade and roof will act as a barrier and have the potential to contain some noise from the drinking area. The premises is located in a local centre where some additional level of noise and activity is to be expected. Unacceptable noise levels are controlled under Environmental Health legislation and should they occur beyond the expectations of this proposal then they would need to be considered under alternative legislation.
11. Notwithstanding this, it is recognised that the proposal will allow for patrons to be sat out for longer periods of time (during inclement weather etc) which, in turn will serve to increase the times at which people are likely to be using this area and therefore prolong any impacts on privacy and amenity, and over the course of a year, resulting in reduced respite from those impacts. Whilst noted, it is considered that, in view of it being within a local centre, taking into account the presence of residential properties above and on the opposing side of the street, that this, although having an impact, would not be such, in this local centre, that would justify refusal.
12. In respect of comments made about customers spilling onto the adjacent parking area and highway and anti-social behaviour, these are matters of site management and cannot be addressed under planning legislation. Notwithstanding this, the proposed balustrade would serve to contain people more easily within the site.
13. The glazed balustrade will run along the shared boundary with the adjoining property to the south, No.251 Acklam Road, given its transparent nature it is considered to have minimal impact in terms of overbearing appearance or overshadowing. The proposed roof will extend out from the front elevation by approximately 7m at a height

of approximately 3.3m above ground level with supporting posts located along the shared boundary. Although it will be visible from the adjoining property, given the slender appearance of the posts and the height of the roof, it is considered that any impact in terms of visual amenity will not be significant.

14. On its northern side, the proposal sits adjacent to an access to the adjacent petrol filling station access where it will have no perceptible impact on amenity, beyond the current situation.
15. In light of the above, it is considered that the proposed alterations will not have a significant impact on the amenity of nearby residents in accordance with Policy DC1 (test c).

### **Highways**

16. Comments were made regarding issues with parking at the site but as outlined above the drinking area is already established and the proposals will not create additional space for customers or a demand for additional parking.
17. The proposed fence to the side of the site has the potential to block visibility between vehicles exiting the nearby petrol filling station and pedestrians travelling north on the adjacent footpath. It is however considered that, given the width of the footpath and the egress from the garage and the limited height of the fence at this point, there will be no significant loss of inter visibility between pedestrians and drivers. As such it is the Officers view that there will be no impact on highway or pedestrian safety in accordance with Policy DC1 (test d).

### **Other matters**

18. Issues raised in relation to access to parking and transgressions across private land and loss of property value are not material planning considerations and should have no influence in the assessment of this application.
19. Concerns were raised by the owner of the first floor flat regarding blocking of access to the first floor flat above the application site which may have been occurring following the previous approval of the outdoor drinking area. This has been recognised and the positioning of the proposed balustrade has been amended from its initial submission to leave the access path to the flat outside of the balustrade area which will now serve to provide a direct and demarcated access to the flat.
20. The pergola will discharge water onto adjoining land and in order to prevent it causing flooding or issues with ice on publically accessible areas, it is considered necessary to have an adequate form of drainage. A suitable condition requiring installation of a drainage system that prevents water discharging onto the footpath is recommended.

### **Conclusion**

21. The proposal has been assessed against local policy and guidance and is considered to be an acceptable form of development that will not have any notable affect on the character of the area, will serve to contain an outdoor seating area and, given its design and relationship to surrounding properties, will not have any significant impact on the amenity of occupiers of nearby properties above the existing situation and above what is anticipated in such an area subject to reasonable use and reasonable management of the area.
22. In view of the above, the proposal is considered to be an acceptable form of development fully in accordance with National and Local policy and is therefore recommended for approval.

## RECOMMENDATIONS AND CONDITIONS

---

1. Time Limit  
The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which this permission is granted.

Reason: In order to comply with the requirements of Section 91 of the Town and Country Planning Act 1990 (as amended).

2. Approved Plans  
The development hereby approved shall be carried out in complete accordance with the plans and specifications detailed below and shall relate to no other plans:
  - a) Location received 17th December and,
  - b) Proposed Ground Floor Plans and Elevations Drawing No. 002 REV B received 11<sup>th</sup> March 2021.

Reason: For the avoidance of doubt and to ensure that the development is carried out as approved.

3. Materials - Approved Details  
The development hereby approved shall be carried out in complete accordance with the external finishing materials detailed in the approved Proposed Ground Floor Plans and Elevations Drawing No. 02 received 11th December 2020, or in accordance with details to be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved details.

Reason: To ensure the use of appropriate materials in the interests of the visual amenities of the area having regard for policies DC1, CS4 and CS5 of the Local Plan and section 12 of the NPPF.

4. Drainage  
A suitable drainage system that directs surface water from the approved pergola roof into the existing on site drainage system shall be implemented before the covered outdoor drinking area is brought back into use.

Reason: To avoid surface water discharge onto the adjacent footpath in the interests of highway safety

### REASON FOR APPROVAL

This application is satisfactory in that the design of the proposed balustrade and pergola accords with the principles of the National Planning Policy Framework (NPPF) and, where appropriate, the Council has worked with the applicant in a positive and proactive way in line with paragraph 38 of the NPPF (2018). In addition the balustrade and pergola accords with the local policy requirements (Policies CS5 & DC1 of the Council's Local Development Framework).

In particular the balustrade and pergola are designed so that their appearance is complementary to the existing building and so that they will not have a detrimental impact on the amenity of the occupiers of any adjoining or nearby property. The balustrade and pergola will not prejudice the appearance of the area and do not significantly affect any landscaping nor prevent adequate and safe operation of the highway.

The application is therefore considered to be an acceptable form of development, fully in accordance with the relevant policy guidance and there are no material considerations which would indicate that the development should be refused.

---

## **INFORMATIVES**

---

1. Building materials on highway  
The applicant is reminded that building materials shall not be deposited on the highway without the specific consent of the Highway Authority.
  
2. Deliveries to site  
It should be ensured that, during construction, deliveries to the site do not obstruct the highway. If deliveries are to be made which may cause an obstruction then early discussion should be had with the Highway Authority on the timing of these deliveries and measures that may be required so as to mitigate the effect of the obstruction to the general public

Case Officer: Maria Froggatt

Committee Date: 9th April 2021





Appendix 2 – Elevational drawings (Side, Side beyond initial fence, Front)

