
APPLICATION DETAILS

Application No:	21/0247/COU
Location:	Former St Cuthberts Youth and Community Centre, Newport Road, Middlesbrough TS5 4BY
Proposal:	Part change of use from church and community centre (D1) to public house (A4) with associated outdoor seating area
Applicant:	Russell Towers
Agent:	Parker Barras
Ward:	Newport
Recommendation:	Approve Conditionally

SUMMARY

The application seeks planning permission to use part of the existing community centre as a drinking establishment (A4). Although there are no significant alterations to the external appearance of the premises, part of the curtilage (between the building and the church to the north) is proposed for use as an outdoor drinking area.

The key issues to be considered as part of this application are the principle of a town centre use being situated outside any designated centre, and the potential detrimental impacts of the use and its associated operations (for example, any deliveries, refuse collections and outdoor seating area use) on the nearby residential properties.

The application under consideration is a resubmission of a previous application (20/0205/FUL). Members of the Planning Committee refused the preceding application in November 2020, as it was considered that the proposed use and its associated activities would result in undue noise and disturbance upon the nearby local residents.

The application has been supported by a Sequential Assessment in order to provide justification for the proposed use in this edge-of-centre location. Whilst it is the officer conclusion that the application fails the sequential approach, it is considered that the scale of the use would not be harmful to the vitality and viability of Middlesbrough Town Centre or any other recognised local centre.

To address the concerns of Members, the application has also been supported by a Noise Assessment, which considers the potential noise and disturbance from the use. The

assessment estimates the expected levels of noise from the premises and concludes that there is very little likelihood of any adverse noise impacts from the proposed development.

With its location in close proximity to residential properties, two objections have been received based on the likely noise and associated disturbance from the use on local amenity. The application has also received 66 letters of support, although many of these are from beyond the immediate community. Officers have worked closely with the applicant in order to seek a potential solution, which has resulted in conditions restricting hours of opening and refuse collection, as well as the undertaking of a noise risk assessment to mitigate for any increased noise levels within the outdoor seating area.

On balance, it is the officer view that the proposed change of use of part of the existing community centre to a drinking establishment is acceptable, and it is the officer recommendation to approve conditionally.

SITE AND SURROUNDINGS AND PROPOSED WORKS

The application site forms part of a church and community hall which is situated at the western end of Newport Road. The existing hall forms a D1 planning use and historically formed part of the curtilage with the former church to the north, which is now operating as a dance studio.

The application seeks planning permission for a partial change of use of the existing community hall (D1) to a drinking establishment (A4). An outdoor seating area is proposed as part of the application, which sits on the northern side of the building. No other external alterations are proposed as part of the application.

PLANNING HISTORY

20/0205/FUL

Part change of use from church and community centre (D1) to a public house (A4).

Officer recommendation of Approve Conditionally.

The application was refused by Members of the Committee at its meeting on 30th November 2020 owing to the likely undue noise and disturbance on the amenities of nearby residential occupiers.

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:

H1 - Spatial Strategy
CS4 - Sustainable Development
CS5 - Design
DC1 - General Development
CS13 - Town Centres etc 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>

CONSULTATION AND PUBLICITY RESPONSES

The application was subject to the standard notification of neighbouring properties, which included 100 different addresses.

After the statutory consultation period, two objections were received. In summary, the comments were as follows:

- Likely anti-social behaviour from the proposed use.
- There will be no privacy or security to private gardens nearby.
- The noise and disturbance from the proposal. Enough noise from the A66 already.
- The former youth club in the old church generated noise and disturbance. The proposed drinking establishment will generate similar - Levels of noise and disturbance.
- The majority of customers will use the pathway behind our properties creating noise and disturbance.

The consultation period also resulted in sixty-six letters of support, although most of these are from outside the local community.

Responses from Internal Technical Consultees

MBC Planning Policy – The proposed development fails the sequential assessment, although a drinking establishment in this area is not expected to harm the town centre or any designated nearby centre.

MBC Environmental Health – No objections subject to two conditions: restrictions on the collection times of the refuse, and the hours of use of the outdoor seating area.

MBC Highways – No objections as the levels of traffic expected as part of the use are not likely to materially affect the highway network.

MBC Waste Policy – No objections.

Public Responses

Number of original neighbour consultations	100
Total numbers of comments received	68
Total number of objections	2
Total number of support	66
Total number of representations	0

PLANNING CONSIDERATION AND ASSESSMENT

Background

1. The application under consideration represents a resubmission of one that was refused (20/0205/FUL) by Members of the Planning Committee at its meeting in November 2020. Although the principle of a drinking establishment in this location was considered to be acceptable and that there would be no detrimental impacts on other nearby designated centres, Members expressed concerns over the potential impacts of the intended use on the neighbouring occupiers in terms of their residential amenities. Ultimately, the previous application was refused as it was considered that the proposed use and its associated activities would result in undue noise and disturbance for surrounding residents.
2. Seeking to address these concerns, the applicant has repositioned the outdoor seating area (previously at the rear of the site; now to the north of the building) and commissioned a noise impact assessment, which considers the implications of noise on the surrounding area. The assessment and its findings will be discussed later in the report.

Local Planning Policy Context and Assessment

3. Within the Council's adopted Proposals Map, the application site is not allocated for any particular purpose and has no specific designations. The application will, therefore, be determined on its own merits. As the application is for a change of use to a drinking establishment (A4) the following policies will apply.
4. Policy CS4 states the proposal will be required to contribute to sustainable development by making the most efficient use of land and being located so that services are accessible on foot, bicycle and public transport. As the proposed use would involve the re-use of an existing premises and is within recognised walking distances of sustainable transport methods, the application is considered to adhere to this policy.
5. Policy CS5 requires high quality design in terms of layout, form and contribution to the character and appearance of the area, and consideration must be given to Middlesbrough's Urban Design SPD (adopted Jan 2013). Although there are no proposed alterations to the external appearance of the premises, there are proposals to introduce a waste collection point on the north elevation of the building as well as an area for outdoor seating. Given these minor alterations to the external areas, the proposals are considered to be in accordance with policy CS5.
6. Policy CS13 aims to safeguard the retail character and function of centres by resisting developments that detract from their vitality and viability. The sequential approach will be applied when considering proposals for new town centre uses. Further to this, the NPPF, in supporting the vitality and viability of town centres by placing existing town centres foremost in both plan-making and decision-taking, determines main town centre uses (such as A4 uses) should be located in town centres first, and then in edge-of-centre locations. A sequential test will then be 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. As noted, the proposed use (being a main town centre use), in this edge-of-centre location requires a sequential test. An assessment of the submitted sequential test shall be looked at in more detail later in the report.
7. Policy DC1 shall also be taken into consideration in that the proposal should not have a detrimental impact on the surrounding environment and amenities of occupiers of nearby properties. Given the close proximity of residential dwellings to the application site, consideration needs to be given to the associated noise and traffic levels that the public house and associated entertainment events will generate.

8. Evidently, there are likely to be associated activities through its existing use as a community centre that bring elements of noise that may be at similar levels to those created by a potential drinking establishment use.
9. In the previous application, it was recognised that there could be noise and disturbance from customers (especially those sitting in the outdoor seating area), as well as from activities associated with a drinking establishment that may take place within the building. The noise and disturbance issues ultimately resulted in the refusal of the application.
10. Mindful of which, a noise risk assessment has been undertaken and supports the application, which considers the potential noise from the proposed use, how this is likely to add to the existing noise levels of the area, and provides an indication of the likely adverse effects of noise on the amenities of local residents. The report assesses the situation of the proposed use and its position relative to nearby residential properties. The report investigated the levels at which noise can be heard at the nearest sensitive receptors. Part of the assessment included – as a worst-case scenario – playing very loud music with a high base content inside the proposed use, but this turned out to be inaudible at the nearest sensitive receptor. It is concluded that any activities inside the building would not result in undue harm to the residential amenities of nearby occupiers.
11. It is noted that the outdoor seating area has been moved away from the rear boundary, where it was immediately adjacent to a residential property, and is now proposed on the north side of the building, being approximately 25 metres from the boundary. This proposed location of the outdoor seating area would mean it is screened from the private gardens at Aidan Court, and along with the squash club, is greatly screened from the private gardens of Newport Road properties. Such a location would reduce the potential impact on the residential neighbours.
12. Notwithstanding the above, however, additional information has been requested to assess the likely impacts of the noise levels from the outdoor seating area on the nearby residents. Any subsequent mitigation measures – which may include the erection of an acoustic fence on particular boundaries – could then be implemented as part of the use in perpetuity. Such measures are considered prudent to alleviate any potentially harmful noise impacts from the proposed use, and reasonably safeguard the living conditions of nearby residents.
13. In addition to the above measures, it is considered necessary to control certain operations associated with the proposed use, including to restrict the hours of opening and collections from the refuse store. Through negotiations with the applicant, a list of days and hours of opening have been drawn up, which include opening the drinking establishment no more than five days each week and not later than 23:00 (only on Fridays and Saturdays would the use be open this late). It is the officer view that the implementation of these hours of opening would help to prevent the drinking establishment being open at times that may be seen as detrimental to the well-being and general amenities of residents in the local vicinity. Similarly, a condition is recommended to ensure that collections are made from the refuse store at sociable hours in order to minimise disturbance to neighbouring residents.
14. In terms of the highways implications, it is considered unlikely that the proposed change of use would have a material impact with regards to car parking demands, nor will it in terms of the level of traffic generation when considering the existing use of the property, which could continue without the need for further planning consent. As a result, there are no objections to the scheme from the Council's Highways officers.

15. With the implementation of the use in accordance with the limitations of the hours of opening and the hours of refuse collection, it is considered that the proposed drinking establishment use would not unduly harm or disturb local residential amenity and would accord with policy DC1.

Sequential Assessment Context and Appraisal

16. In accordance with policy CS13 and the 'town centre first' approach within National Planning Policy Framework, as a main town centre use in an edge-of-centre location, the proposed drinking establishment use requires a sequential assessment. When the application was first submitted, no sequential assessment had been provided; without supporting evidence an informed decision cannot be made by the local authority in terms of the potential harm to Middlesbrough's town and local centres.
17. First of all, taking into consideration the unknown impact of the Coronavirus pandemic upon the economy, there is never a more important time to protect and enhance Middlesbrough's town centres, and, in accordance with the 'town centre first' approach, encourage new retail development to town centres first, in order to protect and enhance their vitality and viability.
18. In terms of the area of search for sequential sites, current National Planning Practice Guidance 'determines main town centre uses should be guided towards town centre locations first, then, if no town centre locations are available, to edge-of-centre locations. If neither a town centre location nor edge-of-centre location is available, only then should out-of-centre locations (with preference for accessible sites which are well connected to the town centre) be considered. This approach supports the viability and vitality of town centres by placing existing town centres foremost in both plan-making and decision-taking.
19. Within the supporting evidence, paragraph 4.13 refers to former Planning Policy Guidance Note 6 (PPG6) in relation to 'catchment areas': "*When considering applications, LPAs will need to consider the extent of the catchment area likely to be served by the proposal, and to then identify alternative sites located in centres within the catchment area*". However, there is no reference to the requirement for identifying catchment areas in the current NPPG (updated July 2019), with reference given to 'town centre locations'. Nevertheless, the catchment area identified by the applicant, in fact, includes Middlesbrough Town Centre as a designated centre that is within 300 metres (edge-of-centre being defined by Annex 2: Glossary of the NPPF as a location within 300 metres of a town centre boundary) and as the application site is closest to the Middlesbrough Town Centre boundary, this should be assessed for alternative sites that could be sequentially preferable.
20. As part of the Sequential Approach, the flexibility of the development should be considered, with the NPPG providing guidance of what should be taken into account when determining whether a proposal complies with the sequential test. For example, the NPPG asks whether a more suitable, central site to accommodate the proposal or a variation of the proposal has been considered (it may not be necessary to demonstrate that a potential town centre or edge-of-centre site can accommodate precisely the scale and form of development being proposed, but rather to consider what contribution more central sites are able to make individually to accommodate the proposal). Given that the proposed development is for a small drinking establishment – a main town centre use – the assessment could be afforded more flexibility, giving further consideration to vacant units within centres, particularly the Town Centre and Linthorpe Road, which appears to fall just outside of the identified catchment area.
21. Considering what is required as part of the Sequential Approach, it is deemed that the supporting sequential assessment fails to satisfy the requirements of the NPPF and Policy CS13, in that the assessment has not considered units within the Middlesbrough

Town Centre boundary. Additionally, given its proposed use as a small drinking establishment, a further degree of flexibility could be afforded to the potential of occupying one of the many vacant units within the identified centres, promoting their long term vitality and viability.

Discussion

22. Notwithstanding the above conclusion that the sequential assessment fails the Sequential Approach, it is the officer view that, mindful of its scale, the proposed drinking establishment use at this site is unlikely to harm any designated centre within the Local Plan. Although within 300 metres of Middlesbrough Town Centre, it is considered that the size of the use will not compete directly with similar uses located there. Whilst the scale of the use might be similar to other drinking establishments within local centres, it is considered that other local centres are positioned at too great a distance for the proposed use to compete with or affect these uses (Parliament Road local centre approximately 600 metres; Linthorpe Road local centre approximately 1200 metres). It is also observed that the local geography of the area would suggest that the use will not affect similar uses in these centres. The position of the A66 is considered to act as a major barrier and is unlikely to result in significant numbers of customers coming to the proposed use from the east, who are likely to continue to take advantage of similar uses within the Parliament Road and Linthorpe Road local centres.
23. In addition to the above, it is noted that the application seeks only a part change of use of the site, with the rest of the floorspace being retained as part of the existing community centre use. In which case, the proposed use would not occupy the entire unit, but be used as part of the existing uses within the site. From a planning perspective, this is considered to be acceptable in principle, as the site is not deemed appropriate for a fully functioning drinking establishment as this may become detrimental to the residential amenities of nearby properties. It is also deemed that a larger and more established drinking establishment would not be an acceptable use at this site given its location outside of any recognised centre.
24. It is also noted that the application site is in family ownership, so seeking a more sequentially preferable site may not be in the interest of the applicant in this case, who is seeking to provide a drinking venue for the local area. However, such a justification for use of a unit outside a local centre is not a material planning consideration.

Conclusion

25. Overall, it has been concluded that the proposed use would fail the Sequential Approach as there are likely to be available and vacant units within local centres of a similar size to the proposals sought. Notwithstanding this, the proposed minor scale of the use and the retention of the rest of the site as community centre use is considered to minimise the harm to the vitality and viability of Middlesbrough Town Centre and the nearby local centres.
26. Whilst the use might be deemed appropriate in principle, planning conditions to control the hours of opening and refuse collections are deemed to be necessary and reasonable to minimise the potential disturbance caused to the residents of the local area. The applicant has worked with the Planning Authority seeking to address the concerns of Members over the potential noise from the use and its associated activities, and the submitted noise assessment clearly concludes that any noise from inside the building would not harm the residential amenities or general living conditions of nearby occupiers. The request for additional information pertaining to the noise implications from the outdoor seating area shall be reported to Members at the meeting, which is likely to report that the expected levels of noise from the seating area would not be harmful to any nearby sensitive receptors.
27. On balance, it is the officer recommendation to approve conditionally.

RECOMMENDATIONS AND CONDITIONS

Approve with 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: The time limit condition is imposed in order to comply with the requirements of Section 91 of the Town and Country Planning Act 1990.

2. Approved Plans

The development hereby approved shall be carried out in strict accordance with the following plans and specifications.

- Location Plan (10th May 2021)
- Proposed Floorplan (6th April 2021)
- Proposed Site Plan (AA6322-01 Rev P2) (10th May 2021)

Reason: To ensure a satisfactory form of development and for the avoidance of doubt.

3. Hours of Opening

The drinking establishment hereby approved shall not be open for customers outside the following hours:

Monday - Closed (except bank holidays refer to Sunday)

Tuesday - Closed

Wednesday - 15:00 to 22:00

Thursday - 15:00 to 22:00

Friday - 15:00 to 23:00

Saturday - 12:00 to 23:00

Sunday - 12:00 to 20:00 (except bank holidays refer to Saturday)

Reason: In the interests of amenity of nearby residents having regard for policy DC1 of the Local Plan and section 12 of the NPPF.

4. Hours of Refuse Collection

Collections from the refuse store shall be kept to between the hours of 08:00 and 18:00 Monday to Saturday, and 09:30 to 18:00 on Sunday.

Reason: In the interests of safeguarding the residential amenities of nearby properties.

5. Noise Risk Assessment

Prior to the first opening of the drinking establishment use hereby approved, a noise risk assessment (described in ProPG: Planning and Noise, May 2017) shall be carried out, and later submitted to and approved in writing by the Local Planning Authority. The noise risk assessment shall consider the potential noise from the outdoor seating area of the approved development that is likely to add to the acoustic profile of the area, and provide an indication of the likely risk of adverse effects of noise on health, quality of life or nuisance to any residential or commercial properties

located in the vicinity of the development. Subsequently, details of any noise mitigation measures shall then be implemented as part of the property and retained in perpetuity.

Reason: In the interest of safeguarding the general and residential amenities of the local area.

6. Use of Rear Garden Area

The outdoor seating area shall only be used as part of the drinking establishment hereby approved subject to appropriate noise mitigation measures being implemented that may be identified by the noise risk assessment (required by separate condition) and shall not be used by patrons of the public house beyond 20:00hrs on any day that the drinking establishment is open.

Reason: In the interests of safeguarding the residential amenities of neighbouring properties as required by Policy DC1.

REASON FOR APPROVAL

This application is satisfactory in that the drinking establishment use (A4) generally accords with the principles of the National Planning Policy Framework (NPPF) and the local policy requirements (Policy H1, DC1, CS4, CS5 and CS13 of the Council's Local Development Framework). Where appropriate, the Council has worked with the applicant in a positive and proactive way in line with the NPPF (2019).

In particular, the drinking establishment use will not prejudice the character and function of the area and, although fails the sequential approach, is not considered harmful to Middlesbrough Town Centre or any other recognised local centres. The drinking establishment use will not conflict with the existing uses of this location and it will not be detrimental to any adjoining or surrounding properties. The traffic generated, car parking and noise associated with the change of use will not be of a level likely to result in an unacceptable impact on nearby premises.

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

Discharge of Condition Fee

Under the Town & Country Planning (Fees for Applications and Deemed Applications)(Amendment)(England) Regulations 2018, the Council must charge a fee for the discharge of conditions. Information relating to current fees is available on the Planning Portal website <https://1app.planningportal.co.uk/FeeCalculator/Standalone?region=1>. Please be aware that where there is more than one condition multiple fees will be required if you apply to discharge them separately.

Building Regulations

Compliance with Building Regulations will be required. Before commencing works it is recommended that discussions take place with the Building Control section of this Council. You can contact Building Control on 01642 729375 or by email at buildingcontrol@middlesbrough.gov.uk.

Where a building regulations approval is obtained which differs from your planning permission, you should discuss this matter with the Local Planning Authority to determine if the changes require further consent under planning legislation.

Case Officer: Peter Wilson

Committee Date: 11th June 2021

