
APPLICATION DETAILS

Application No:	21/0480/VAR
Location:	Former Ormesby Methodist Church High Street Middlesbrough TS7 9PA
Proposal:	Variation of condition no. 5 of planning approval 20/0045/COU to remove the condition which requires external windows in the north west elevation to remain closed between the hours of 9am to 9pm
Applicant:	Mrs Natalie Woodgate
Agent:	Mr Andrew Riley
Company Name:	AJ Riley Architects
Ward:	Park End/Beckfield
Recommendation:	Approve with Conditions

SUMMARY

Planning permission is sought to remove condition No.5 attached to planning approval 21/0045/COU which granted permission for the use of the former church to be a dance studio. Condition 5 related to windows on the northwest elevation, which were required by condition to be closed to prevent undue disturbance to surrounding residential amenity in lieu of any evidence demonstrating it would not cause harm.

The main consideration of this application is whether or not there is sufficient information to demonstrate the opening of the windows can occur whilst the dance school is operational without having an undue impact on nearby neighbours in terms of noise and disturbance.

Consideration has been given to a technical report submitted with the application and noise monitoring carried out by the Councils Environmental Health Department and it was concluded that the opening of windows can occur without having a significant increase in noise levels or impact in terms of noise and disturbance on local residents.

In view of the findings, it is the Officer recommendation that the application to remove the condition be approved.

SITE AND SURROUNDINGS AND PROPOSED WORKS

The application site is located in a residential area in Ormesby, Middlesbrough. It occupies a corner plot at the junction of Ladgate Lane with Pritchett Road. Surrounding properties are

typically two storey semi-detached dwellings. The site is opposite but not within the Ormesby Conservation Area.

The application property is a purpose built, relatively modern building that was previously used as a church. Pedestrian and vehicular access is from Pritchett Road. There is an open landscaped area to the front of the building with Ladgate Lane beyond to the south, residential properties are to the west and north with Pritchett Road and residential properties beyond to the east.

Planning permission for change of use of the building to a dance studio was approved subject to conditions by the Council's Planning and Development Committee in April this year.

This application seeks to vary a condition attached to the approval by removing condition 5 which requires windows to the north west elevation to remain closed between the hours of 9am to 9pm (While the dance school is in operation).

PLANNING HISTORY

20/0045/COU Change of use from Methodist Church (F1) to dance studio/community events centre (F2) Approve with Conditions
13th April 2021

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

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 Environmental Health

With the dance school in operation and with windows open, the Laeq is 48.9dB at the nearest residential premise which falls under the required WHO recommendation of 50dB for outdoor spaces.

Public response

Comments were received from the following:

- Mrs Urwin 44 Pritchett Road - object to noise at 7.30am, operation outside of hours and comment was made in respect of children changing outside of the building.
- Mrs J Sinclair 57 High Street Ormesby -object to noise levels, questions outcome of noise report. Classes being conducted outside of building and impact on listed buildings.
- Mr M Stephenson 5 Coronation Green - objects to noise levels in garden should windows be opened

- Mr B Pugh 8A Pritchett Road - objects re noise, opening of windows outside of prescribed hours, reference made to loss of privacy.

Public Responses

Number of original neighbour consultations	22
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 July 2021, 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. Policy DC1 seeks 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.

Background

3. The principle of the use of the dance school was considered and approved under the original application. In respect of the windows subject of this application, a condition was imposed requiring the windows on the north-western elevation to remain shut during the approved hours of operation. The purpose of the condition was to ensure that the proposed use was operating within the terms set out in the noise report submitted with the original application. It advised that, with the windows closed, noise levels at the boundary with the nearest residential dwelling (No 8A Pritchett Road) were within World Health Organisation prescribed limits (50dBA). At the time the application was being considered, the Councils Environmental Health Officer advised that, due to the internal layout of the property with intervening internal walls and doors between the noise source and the nearest residential premises, noise levels at the site might be acceptable with windows open but that this would need to be demonstrated. A request was made that the applicant carry out a noise survey to establish this but the request was declined at that time. As there could be no certainty that noise levels would be acceptable with the windows open, the condition to keep the windows closed was imposed on the planning approval.

Noise

4. Since the use has been in operation, particularly during the summer and following relaxation of Covid restrictions, windows have been left open to provide ventilation in breach of condition No.5. In order to regularise the situation, the applicant has submitted this application to remove the condition.

5. A noise report submitted in support of the application tested noise levels at the site under three scenarios:
 1. With both halls active and all north facing windows closed;
 2. With both halls active, with kitchen, dining windows open and hall doors onto corridor closed and;
 3. With both halls active kitchen, dining windows open and halls doors into corridor open.

The report concludes that there is no discernible difference in noise levels between scenario 1 and 2 and that there is only a marginal increase with all windows open. The increase was still below World Health Organisation prescribed levels and the highest typical background traffic noise. The Councils Environmental Health Officer carried out an independent noise measurement at the site which confirmed the result of the submitted report.

6. In view of the above, it is concluded that removal of the condition will not result in any significant impact on the amenity of local residents in terms of noise in accordance with Policy DC1 (test c) and as such there is no justification for the condition remaining in place. Importantly any noise related matters arising from the site in the future can be considered under statutory nuisance legislation and or a noise controlling condition as recommended.

Privacy

7. Comments have been made about the issue of overlooking at the adjacent property due to the windows being open. However, the condition being considered under this application was imposed in relation to control of noise only. It is acknowledged that some direct overlooking takes place and due to varying land levels at the site, the perception of overlooking is emphasised. However, there have been windows in this elevation for a number of years. It appears that the frames have more recently be renewed and the metal grills which would have prevented opening have been removed but neither of these require planning approval and as such, this matter is not within the control of the Council.

Other Matters

8. Operation of the use outside of hours is a matter for planning enforcement and should not be taken into consideration in the assessment of this application. Other matters raised are not material planning considerations.

Summary

9. Consideration has been given as to how the removal of condition No.5 would impact nearby neighbours in terms of noise and disturbance. Evidence submitted with the application shows that there is no significant difference in noise levels at the site with windows open. The findings of the noise report were verified by the Councils Environmental Health Department. It is the Development Control view therefore that removal of the condition would not unduly impact the amenity of local residents in accordance with local policy.

Conclusion

10. Removal of the condition is in accordance with local and national policy and is recommended for approval.

RECOMMENDATIONS AND CONDITIONS

Approve with Conditions

1. **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 Plan received 05.02.2020 ,
- b) Site plan received received 29.09.2020

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

2. **Hours of Operation**

The premises shall not operate outside the hours of 0900hr to 21.00hrs Monday to Sunday

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

3. **Noise Mitigation on request**

If noise levels, as a result of the use hereby approved, when measured at the façade of any of the dwellings whose boundaries adjoin the development site, exceed 5dB above background noise levels then;

- a. At the written request of the Local Planning Authority, and within 1 month of the request being made, the operator of the premises shall submit a scheme of mitigation measures in writing to the Local Planning Authority, and;
- b. Once accepted by the Local Planning Authority in writing, the approved scheme shall be implemented on site within 1 month of the scheme being agreed and thereafter retained in perpetuity.

In the event that an agreed scheme is not implemented within 4 months of the initial request for a mitigation scheme to be submitted, all amplified sound at the premises shall cease until an agreed scheme is implemented.

Reason: To avoid undue noise and disturbance in the interests of the amenity of nearby residents.

4. **Car and Cycle Parking Laid Out**

Within four months of the date of this approval the areas shown on the approved Site Plan Drawing No.01 received on the 29th September 2020 for parking and manoeuvring of vehicles and cycles shall be constructed and laid out, including white lining of parking spaces, in accordance with the approved plans, and thereafter such areas shall be retained solely for such purposes.

Reason: To ensure a satisfactory form of development and in the interests of highway safety having regard for policies CS5 and DC1 of the Local Plan and sections 9 and 12 of the NPPF.

Reason for Approval

This application is satisfactory in that the proposed removal of the condition requiring that windows to the north western elevation remain closed between the hours 9am to 9pm accords with 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 (2021). In addition, the removal of the condition requiring that windows to the north western elevation remain closed between the hours 9am accords with the local policy requirements (Policy DC1 of the Council's Local Development Framework).

The application to remove the condition 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.

Case Officer: Maria Froggatt

Committee Date: 15th October 2021

Location Plan

