

**PLANNING AND DEVELOPMENT COMMITTEE**

A meeting of the Planning and Development Committee was held on Friday 19 November 2021.

**PRESENT:** Councillors J Hobson (Chair), D Coupe (Vice-Chair), D Branson, B Cooper, C Dodds, M Nugent, J Rostron, J Thompson and G Wilson.

**ALSO IN ATTENDANCE:** E Craigie (Teesside Live), F Farooqui, F Hynes and P Hynes.

**OFFICERS:** S Bonner, P Clarke, C Cunningham, A Glossop, C Lunn and S Moorhouse.

**APOLOGIES FOR ABSENCE:** Councillor L Garvey.

**DECLARATIONS OF INTEREST**

There were no declarations of interest received at this point in the meeting.

**MINUTES - PLANNING AND DEVELOPMENT COMMITTEE - 15 OCTOBER 2021**

The minutes of the Planning and Development Committee meeting, held on 15 October 2021, were submitted and approved as a correct record.

**SCHEDULE OF REMAINING PLANNING APPLICATIONS TO BE CONSIDERED BY COMMITTEE**

The Head of Planning submitted plans deposited as applications to develop land under the Town and Country Planning Act 1990 and reported thereon.

**21/0233/VAR Variation of Condition 3 (opening hours) of application 19/0532/COU for the roof top terrace to operate between 10:00 and 22:00 hours Monday to Sunday at 2A Oxford Road, Middlesbrough TS5 5DT for Mr and Mr A and A Hynes**

The Development Control Manager advised that the above application had been identified as requiring a site visit by Members of the Planning and Development Committee. Accordingly, a site visit had been held on the morning prior to the meeting.

Full details of the planning application and the plan status were outlined in the report. The report contained a detailed analysis of the application and analysed relevant policies from the National Planning Policy Framework and the Local Development Framework.

The Development Control Manager advised that planning permission was previously granted in November 2019 under application 19/0532/COU for: *Part change of use of first floor from residential (C3) to create a roof terrace/kitchen/store room associated to ground floor bar (A4) at No.55-59 Roman Road with internal and external alterations.*

In order to limit potential impacts to the neighbouring residential properties from the use of the roof terrace, a condition (Condition 3) was imposed to limit the use of the open terrace to be between the hours of 10:00 and 19:00, as well as for the provision of acoustic fencing to the rear of the terrace to limit noise transference.

This application sought to vary Condition 3 of the approved scheme to allow the roof terrace to be used beyond the controlled hours, up to 22:00 on all days.

The application site was 2A Oxford Road, a first floor kitchen/store and roof terrace which was associated with a ground floor bar at 55 to 59 Roman Road. The property was located within the Roman Road Local Centre and was within the Linthorpe Conservation Area and Article 4 designated area. The site was located at the junction of Oxford Road and Roman Road with commercial units located to the north and west along Oxford Road.

The application was supported by a Design and Access Statement, Noise Assessment and Noise Management Plan.

The Noise Management Plan, which was submitted by the applicant's consultant, suggested that no live music should be played on the roof terrace and that the doors to the roof terrace would remain closed when it was not in operation.

The submitted noise assessment indicated that the average noise levels would not increase as a result of the proposed extended hours relative to the nearest residential property to the rear of the site, and the vehicle noise was the greatest impact of noise within the area. Notwithstanding this, it was considered that the proposal would introduce a type of noise into a mixed commercial / residential area, at a point close and adjacent to residential properties which would be particularly difficult to predict and control and would be doing so at a time of the day when surrounding residents should be able to expect a greater level of amenity. The proposal would be likely to result in intermittent additional disturbance to residential amenity on a basis sufficiently regular to be considered as being notably harmful to the existing levels of residential amenity contrary to the NPPF and Local Plan Policy DC1.

The Council's Environmental Health Officer had reviewed the application and not raised any objections to it. The officer had accepted the findings of the noise report, but also noted that noise from patrons was particularly difficult to predict and manage through both licensing regimes and statutory noise processes because it was noise generated by individuals, as opposed to particular activity or equipment.

Following consultation, two objections had been received in relation to the proposed extension of opening hours. These were predominantly based around additional comings and goings / traffic and additional noise disturbance, indicating there was already noise disturbance from the late night establishments within the area.

The Committee was advised that in the period since the report had been produced and circulated with the meeting papers, seven letters of support had been received. Copies were tabled for Members' perusal. In summary, support related to:

- The pleasant environment of the establishment and the attractiveness of the roof terrace;
- The many events that were held on the roof terrace;
- The sustainability of the establishment without the roof terrace;
- The location of the establishment and noise performance to date;
- The potential for an impact assessment and control measures being put in place, as opposed to a curfew;
- The availability of roof terraces in Middlesbrough versus in cities across the UK;
- The positive impact of the establishment on the Linthorpe area, its inhabitants and on existing businesses;
- The size of the establishment;
- The maintenance of the historic building; and
- The impact of other businesses on the area.

Whilst all of the comments and noise report were noted, Members were advised that the main planning consideration in this case was whether or not the scheme could be approved whilst maintaining reasonable residential amenity for the surrounding residents.

Officers had noted that the application site was in close proximity to residential properties; there was an existing ground floor outdoor area and that the roof terrace space added to that. It was explained that this was a local centre, not a larger district centre or town or city centre, and therefore the impact of any developments within it needed to be relative. Reference was made to paragraph 18 of the submitted report and an excerpt pertaining to the 'Draft Institute of Acousticians (IOA) Good Practice Guide on the Control of Noise from Places of Entertainment'. Consideration was given to potential sources of noise and the impacts that this could have on residents.

Whilst the officers' view was that the roof terrace would not result in a constant level of noise that would adversely affect residential amenity, it was considered that short spikes of higher noise levels (mainly voices) on an irregular or semi-regular pattern or occurrence would be sufficient to have an undue impact on residential amenity.

Reference was made to the comments that had been received from both supporters and objectors, with reference being made to those citing issues around noise and disturbance originating from The Linthorpe Hotel, which was located on the opposite side of the road. Members were advised that the hotel's outdoor area was located further away from the road than this establishment's, but highlighted that patron noise - particularly in an outdoor area - was difficult to control. Planning controls could not deal with the immediate actions of an individual, so made it difficult to condition or prevent noise disturbance when relating to a patron.

Given the concerns around noise, the officer recommendation was to refuse permission. It was felt that the extended use of the roof terrace was likely to result in noise disturbance at a time of night when people living in surrounding areas should have expected a reasonable degree of amenity.

A Member made reference to main town or sporting events, which could potentially result in raised voices late into the evening, and queried potential preventative action regarding this. In response, the Development Control Manager advised that conditions could be imposed, for example; no televisions to be viewed externally on the premises. Planning officers did impose conditions such as 'no live music' and similar, and could therefore impose some controls to help prevent this.

A Member made reference to the noise assessment and queried the reasoning as to why noise levels increased after the roof terrace had closed. In response, it was explained that background noise levels were relative to the occurrence of vehicle noise. A Member queried whether it would have been possible that the noise was caused by those patrons inside the bar, with the noise transmitting through an open door. The Agent in attendance confirmed this would not have been the case.

A Member made reference to operating hours and queried whether consideration could be given to shorter hours on weekdays and extended hours on weekends. In response, Members were advised that it would be reasonable to consider this; if the Committee were to approve the application subject to conditions, the Applicant could appeal the conditions if they felt the need to do so.

A Member made reference to the number of original neighbour consultations (69) and the total number of objections received (2), and requested clarification on the numbers. In response, it was confirmed that the numbers, as stated in the report, were correct.

Two Members supported the view that patrons may become louder as evenings wore on, and therefore consideration of operating hours would be beneficial.

The Agent was elected to address the Committee, in support of the application.

In summary, the Agent advised that:

- Prior to a second consultation period, the application had received no objections but full support from the community;
- Mitigations regarding opening hours would be in place and, in addition, no live music would be played outside. Physical mitigations, i.e. noise barriers, would also be put in place;
- The noise report submitted with the application had been completed by competent, qualified noise engineers and was calculated on the basis of worse-case scenario;
- In responding to a query from a Member regarding preventative measures for sporting events, it was explained that there would be no loud amplified noise on the premises;
- The Council's Highways department had not raised any objections to the application;
- Noise was a subjective point of view;
- There had been no heavy letters of objection;
- It was not a noisy establishment;
- Requested for a consistent approach to Planning in that a previous similar application with noise related concerns was granted a six-month temporary condition; and
- The premises had a statutory alcohol licence in place.

A Member queried whether there had been any complaints received from residents prior to the application being made. In response, the Agent advised that no complaints had been received.

A Member referred to page 17 of the submitted report and queried a statement that had been made as part of a letter of objection, which indicated that the owners had been requested to remove the current outside drinking areas, but this had not been complied with. In response, the Agent advised that this was not factually correct.

A Member commented that temporary permission would help to support the Applicant's statement of case and could be reviewed after a specified period of time.

A Member queried whether there was a physical barrier currently in place to separate the outside area from the street. In response, the Agent advised that because the premises was located in the Linthorpe conservation area, open railings had been used to fit in with the area's appearance. The Agent made reference to the noise report and indicated that this had predominantly been caused by the flow of traffic coming from the Town Centre late in the evening.

During the discussion that followed, a Member queried the possibility of agreeing temporary permission for a six-month period, with full permission then being granted after that if there were no objections received. In response, the Development Control Manager explained that the Committee could determine the application with a condition based along those lines, but suggested that a longer period of 10-12 months be considered in order for the summer months to be included. In terms of other comments relating to operating hours, Members were advised that another option would be to permit longer hours on a weekend and shorter hours during the week. Members discussed these two suggestions.

Prior to the Committee determining the application, the Legal representative made reference to the Agent's comments and advised Members that, regarding the position in relation to Licensing, the position of the Licensing Committee was irrelevant. It was not a material planning consideration as regards to the determination of the application before them.

A Member proposed that permission be granted on the basis of a 12-month trial to evidence its appropriateness; this was seconded. Before voting, Members discussed the potential of including a caveat to include shorter operating hours on weekdays and longer hours on weekends.

The Committee voted on the proposal for temporary permission to be granted for a 12-month period, which would be monitored. Permanent permission would then need to be re-applied for after the 12-month period had elapsed.

The Committee agreed that there would be no requirement to have differential opening hours for weekdays; these would be the same as weekends.

**ORDERED** that the application be **Approved** for the reasons set out in the report, subject to conditions relating to Time Limit, Approved Plans, Temporary permission, acoustic fencing and use restrictions.

**21/0419/FUL Erection of building to provide 3 storage units (Use Class B8 storage and distribution) on Land at Warelands Way, Middlesbrough TS4 2JY for Mr Majid**

The Development Control Manager advised that the above application had been identified as requiring a site visit by Members of the Planning and Development Committee. Accordingly, a site visit had been held on the morning prior to the meeting.

Full details of the planning application and the plan status were outlined in the report. The report contained a detailed analysis of the application and analysed relevant policies from the National Planning Policy Framework and the Local Development Framework.

The Development Control Manager advised that planning permission had previously been granted on this site for three almost identical industrial buildings for class B8 storage and distribution use.

It was explained that since permission had been granted, and which had been noted during the Committee's site visit, the owner of the premises to the rear of the proposed site had erected a fence line, which was potentially through the applicant's site. As a consequence, any potential land ownership disputes would be dealt with by the relevant bodies.

Members were advised that this application had slightly reduced the footprint and positioning of the three buildings, which required that a new planning application be approved.

The application sought for the erection of the three additional storage units (use class B8 storage and distribution) on land at Warelands Way within the Warelands Way Industrial Estate. The proposal included the alteration to the existing private internal roundabout within the estate, which would be amended to square the northern section of the roundabout to enable access into the unit. This section of the highway and the roundabout were within private ownership and were not adopted. The proposal also included the installation of four additional car parking spaces to the east side of the proposed unit with the overall loss of four car parking spaces.

The design of the industrial units was considered to be consistent with the existing unit design with high quality materials. The nature of the proposal being B8 Storage and Distribution would not result in any notable detrimental impact on the amenities of the neighbouring units.

The site layout and associated highway and parking alterations had been designed to provide adequate highway access and parking provision for the proposed and existing units within the Industrial Estate. No highway safety concerns had been raised.

The application was supported by a Design and Access Statement and a certificate B notice had been served.

Following consultation, three objections had been received from residents.

In summary, the objections related to:

- Highway access to the existing units;
- Loss of existing car parking for existing units and the resulting impact on businesses;
- Intensification on existing parking resulting in congestion;
- Construction work access issues; and
- The lack of need for any more industrial units.

The recommendation was for approval of the application, subject to conditions.

A discussion took place in relation to the fencing that had been erected to the rear of the existing buildings. A Member commented that this was particularly close to a fire escape route and ought to be given further consideration. The Development Control Manager advised that this was not a planning issue and would need to be raised with Cleveland Fire Authority. The Member indicated that this would be undertaken.

**ORDERED** that the application be **Approved on Condition** for the reasons set out in the report.

#### **APPLICATIONS APPROVED BY THE HEAD OF PLANNING**

The Head of Planning submitted details of planning applications which had been approved to date in accordance with the delegated authority granted to him at Minute 187 (29 September 1992).

A Member made reference to page 45 of the papers, planning application reference: 21/0656/TELPN Installation of 20.0m Phase 8 Monopole C/W wraparound cabinet at base and associated ancillary works at Trimdon Avenue, and queried the reasons as to why prior notification had been refused. In response, the Development Control Manager advised that there were usually three ways in which such applications would be granted planning permission: either through permitted development; prior notification; or full planning application. One aspect that officers considered was the impact on surrounding areas. It was felt that the 20m high pole with apparatus, which was required for 5G, was substantially more sizeable than the usual 15m high 3G poles. Whilst it had been recognised that the poles were

needed, it was also important to gain balance between this and the impact upon residential areas. In this case, it was felt that the pole and apparatus were too large for the area.

**NOTED**

**ANY OTHER URGENT ITEMS WHICH IN THE OPINION OF THE CHAIR, MAY BE CONSIDERED.**

Outcome of Planning Appeal – Land at Ford Close Riding Centre (Appeal Ref: APP/W0734/W/21/3268784)

The Head of Planning provided information in relation to a planning appeal hearing that had been held on 22 September 2021:

**Appeal Ref: APP/W0734/W/21/3268784 Land at Ford Close Riding Centre, Brass Castle Lane, Middlesbrough TS8 9EE – Appeal Dismissed**

The development proposed the demolition of existing buildings and the erection of 69 dwellings along with open space and associated infrastructure.

The main issue in the determination of the appeal was the effect of the development on housing choice in the Borough, with particular regard to the type and density of the proposed housing, and the design and layout of the scheme, including trees.

**NOTED**