

PLANNING COMMITTEE

17/07/2019

Late Information as at 17 July, 2019

AGENDA DETAILS
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<p>5</p>	<p>PA/343071/19</p> <p>Land at Saint Johns Street, Porter Street and Edward Street, Oldham, OL9 7QS Erection of 68 no. dwellings</p> <p>ADDITIONAL REPRESENTATIONS:</p> <p>One additional letter of objection was received which commented that statutory consultation procedures had not been adhered to, the amount of public open space is not acceptable, and that the proposed development would cause an unacceptable overshadowing and overbearing impact.</p> <p>Officers can confirm that the statutory 21 day consultation period took place in full, by way of site notice, press notice and neighbour notification letters, prior to the letters notifying interested parties of the application's inclusion on the Committee Agenda for 17th July 2019.</p> <p>The remaining matters raised within the objection letter have already been addressed within the Committee Report.</p>
<p>19</p>	<p>PA/343258/19</p> <p>Donkeystone Brewing Co Ltd, UNIT 17, BOARSHURST BUSINESS PARK, Boarshurst Lane, Greenfield, OL3 7ER Retrospective application for a change of use of industrial (Class B2) floorspace to use as a drinking establishment (Class A4) at Unit 18, in association with the existing brewery use at Unit 17</p> <p>ADDITIONAL REPRESENTATIONS</p>

An additional 3 letters of support have been received as part of the publication process. No additional points have been raised within the letters of support that have not already been addressed within the Committee Report.

Amendment to Condition 7

Since the publication of the original report, residents have raised concerns about Condition 7 relating to the use of outside areas being unclear. In summary, residents have argued that the bar use of the business parks courtyard area for external events is creating problems. Specifically, they illustrated this by pointing out that last weekend the applicant arranged for their bar and associated courtyard to be used as a gathering point for a Tractor Derby - an event that created noise, fumes and disturbance to residents.

On reflection, Officers concur that Condition 7 needs to be clearer in order to protect residents' amenity from noise disturbance.

The original report clearly indicates that the rear open area is too close to residential addresses not to cause noise and disturbance issues. Moreover, the front area is clearly shown on the applicants plans as a car park with the service road in front of it. In these circumstances, using the front area for bar use has clear highways safety issues. In these circumstances, Officers consider Condition 7 should be amended to state the following:

"The outside areas shown within the red line in drawing 3750.2 should not be used by customers for eating or drinking purposes.

Reason: To protect the amenity of occupiers of nearby properties and to ensure highways safety".

The effect of this condition would be to prohibit the use of both the front and rear outdoor areas (and indeed the service road).

Residents have requested that the condition should state that:

"None of the outside areas should be used for eating, drinking or other public events and gatherings".

However, this application can only consider the red line boundary that is the subject of this application and the proposed use. As such, such a condition cannot legally be imposed as it could be seen as referring to all outside areas in the business park - areas outside of the red line boundary and uses ("public events and gatherings") that are not applied for.

Red Line Boundary

Residents have raised issues in relation to the extent of the red line boundary that covers the service road, front car park and wraps around the premises in question.

Officers consider that the plans indicate the bar and service road

only. They do not include the brewery element of the business because the applicant is not applying for the change of use of the adjacent unit (unit 17 / Brewery), but rather the bar use only (unit 18). As such, Officers consider that the extent of the application is clear, particularly since the red line is intended to show the extent of the application, rather than the extent of who owns what piece of land.

The Class B2 use of the site

Whilst noting the views of residents that the site has lawful use as a Class B1 use, the history of the site indicates that the site has lawful use as a Class B2 use as a former mill site (Boarshurst Mill) and that the Class B1 use of some of the business park is occurring because of permitted development rights that allow a change of use of Class B2 premises to Class B1 use without the need for planning permission.

Alleged restrictions to the Business Park

It is clear that this application relates to the bar use rather than use of the brewery or the rest of the business park. As such, any planning restrictions on the brewery and rest of the business park are not directly the consideration of this application, which of course has to be treated on its own merits.

Nevertheless, residents have argued that a 2002 permission proves that conditions, including one that restricts operating hours to 6pm Monday to Saturday, limit the use of the business park.

However, unfortunately the plan residents have argued proves that units 17, 18 and 19 are caught by these restrictions is a black and white copy that consequently does not show red line boundaries that prove conclusively that units 17 and 18 are covered by the restrictions they claim. Indeed, the plan in question does not even show the building in question. The Council has no specific records or plans that prove conclusively that this unit is covered by restrictions. Consequently, whilst Officers have some sympathy that, because the 2002 officer report identifies a 15m by 42m by 7m building, a reasonable interpretation could be that the 2002 report relates to the block that contains units 17, 18 and 19, there is no documentary evidence that proves this for certain. As such, the case officer's conclusion in the report, that it is not clear what conditions and restrictions relate to each unit, remains the view of Officers.

Furthermore, even if Members accept the residents view about operating hours, this application seeks to amend the use and confirm the hours of operation the applicant is seeking. Since guidance clearly states that each case has to be considered on its merits, whether the hours proposed are acceptable or not needs to be considered as part of this application in the normal way.

ADDITIONAL INFORMATION:

To ensure that residents' amenity is protected, it is considered that the noise scheme works outlined in condition 2 need to be implemented quickly. In these circumstances, it is considered reasonable that sound insulation works are implemented within 3 months of the date of the scheme being agreed or within 6 months of

the date of this permission. Condition 2 is therefore recommended is to be altered accordingly.

AMENDMENT TO RECOMMENDATION:

Amendment to Condition 2

"2. Prior to the Class A4 use of Unit 18, the applicant must provide a scheme to demonstrate that entertainment noise (LAeq) shall be controlled to 10dB below the background noise level (LA90) without the entertainment noise present, in each octave band at the nearest noise sensitive location, in order to adequately contain the noise generated within the premises.

The scheme must be submitted to and approved by the Local Planning Authority and retained at all times thereafter.

This scheme must be implemented within three months of the scheme being agreed or within 6 months of the date of this permission.

Reason - To protect the residential amenity of adjacent residents from noise nuisance".

Amendment to Condition 7

7. "The outside areas shown within the red line in drawing 3750.2 should not be used by customers for eating or drinking purposes.

Reason: To protect the amenity of occupiers of nearby properties and to ensure highways safety".

Additional condition

"Prior to the Class A4 use of Unit 18, the applicant must provide a scheme for an outdoor smoking shelter.

The scheme must be submitted to and approved by the Local Planning Authority and retained at all times thereafter.

This scheme must be implemented within three months of the scheme being agreed or within 6 months of the date of this permission.

Reason - To protect the residential amenity of adjacent residents from noise nuisance".

VERY LATE REPRESENTATIONS

Letter from Gateley Legal dated 17th July 2019 (the Letter)

The Letter was received by Officers at lunchtime on 17th July 2019. It was forwarded to Members at 11.31am on the day of the Committee.

In response Officers would make the following points.

1. Officers do not consider that anything in the Letter means:

"that the only course of action is for the Council to refuse the Application".

Clearly, it is for the Members to make the decision on this application having considered the merits or otherwise of this application and views expressed on it at Planning Committee

2. The Letter claims that:

"all development plan provisions have not been properly considered...."

The Letter goes on to give an example of Policy 14 claiming:

"... no analysis whatsoever is provided in the committee report"

on this policy.

This is simply incorrect.

The report shown on page 21 of the agenda clearly refers to Policy 14 and indicates that:

"... within Business Employment Area's the change of use to a Class A4 use facility is on the list of acceptable use classes"

shown in Policy 14.

The Letter's contention is therefore clearly without any merit since the proposed use clearly is within the uses that will be permitted within other BEA's and SEA outlined in Policy 14 (page 93 of the Local Plan). Equally, this fact means that the Letters contention, that:

"There are no material considerations in favour of the Application being approved"

is incorrect.

3. The Letter raises again issues in relation to the claimed Class B1 use of the premises. However, no evidence is provided to support this contention within the Letter. Officers remain of the view that the premises has lawful Class B2 use, based on their review of the planning history of the site. In these circumstances, Officers consider that the Letter's position has no evidence to support its view.

4. The Letter also appears to misquote the Council's report. On page 23 of the report, Officers clearly state:

"It is considered that it would be impossible to justify a refusal on the basis of noise and disturbance, if any potential noise associated with the use was contained within a small outdoor area located to the front of Unit 18 and its use was limited to 21:00, taking into consideration the existing Class B2 use".

This statement self-evidently is an Officer opinion, based on their assessment of application and advice of the Council's Environmental Health Section. It is clearly not stated as *"a matter of fact"*. There is no evidence contained in the Letter that proves the site is a Class B1 use. Therefore, the Letter's contention, that this statement is *"misleading and thus flawed"*, is clearly without any merit.

It will of course be for the Members to agree whether the noise and disturbance created by the use is acceptable or not, having assessed the pro's and cons of the application in question.

5. The Council in the original report clearly states:

"it is not clear what conditions and subsequent restrictions relate to each individual unit".

It then adds in the late list report noted above that:

"..... unfortunately the plan residents have argued proves that units 17, 18 and 19 are caught by these restrictions is a black and white copy that consequently does not show red line boundaries that prove conclusively that units 17 and 18 are covered by the restrictions they claim. Indeed, the plan in question does not even show the building in question. The Council has no specific records or plans that prove conclusively that this unit is covered by restrictions. Consequently, whilst Officers have some sympathy that, because the 2002 officer report identifies a 15m by 42m by 7m building, a reasonable interpretation could be that the 2002 report relates to the block that contains units 17, 18 and 19, there is no documentary evidence that proves this for certain. As such, the case officers conclusion in the report, that it is not clear what conditions and restrictions relate to each unit, remains the view of Officers".

The Letter claims as a fact that the 2002 permission restricts the operation of the site to 8am to 6pm Monday to Saturday. For the reasons, stated in the original and late list officer reports, Officer's remain of the view that it is not clear what conditions and restrictions relate to each unit. Moreover, because it is not clear if the 2002 permission restricts the hours of operation of Unit 18 to 6pm Monday to Saturday, it is not reasonable to assess this application against a time restriction that cannot be proved to apply to this site. Additionally, Members will be aware that planning guidance is clear in stating that each case must be treated on its own merits and it is with this in mind that Officers have assessed this application.

Of course, an assessment of the unit's impact on resident's amenity is contained with the original officer and late list report and it is for the Members to consider this in their deliberations on this application.

6. The Letter claims an update sheet or oral summary at the committee will not address issues properly. Officers do not consider that this position has any merit, since all the issues raised by the Letter have either already been addressed in the original and late list Officer reports or will be addressed in the meeting. Of course, the objectors will also get an opportunity at Planning Committee to make any comments on the pros and cons of the application.

7. As stated in the earlier late list, Officers agree that use of the outdoor areas should be restricted for the reasons stated above. We therefore concur with the view stated in the Letter on this point.

8. Planning Officers and Environmental Health Officers do not agree with the Letters view that "*there are no conditions which can make this Application acceptable enough to be granted*". It will of course be for the Members to decide whether the scheme should be approved or refused ultimately based on their consideration of the relevant planning issues.

9. The Letter claims that the bar use "*by its very nature is incompatible with a residential area*" arguing that operating until 23.30 creates "*negative amenity issues*".

To be clear for Members benefit, subject the conditions proposed to be attached to any decision, Planning and Environmental Health Officers do not consider that late night noise and disturbance will occur that will justify a reason for refusal in this instance. It will be of course be for the Members to decide to accept this professional advice or prefer the position outlined in the Letter in relation to operating hours.

10. Parking and highway safety matters are clearly considered in the report (page 22), with it concluding that the proposal will not detrimentally affect the highways network or highways safety. In these circumstances, we do not agree with the Letters position that highways matters have not been considered.

11. The Letter questions the enforceability of the condition that requires all windows and doors to be closed at all times except for access and egress to the building (condition 6). Officers consider this condition is easily enforced by ensuring windows and doors are closed. As such, Officers do not consider this contention has any merit.

12, The Letter contends that there are red line boundary issues with this application. As stated above, Officers consider that the plans indicate the bar and service road only. They do not include the brewery element of the business because the applicant is not applying for its change of use, but rather the bar use only. As such,

Officers consider that the extent of the application is clear, particularly since the red line is intended to show the extent of the application, rather than the extent of who owns what piece of land.

13. Overall, having taken legal advice, Officers consider that there are no grounds that would support a judicial review and that the contentions contained within the Letter are without merit.