

Planning Committee

Wednesday 03 July 2019

Late Observations Schedule

Agenda Items

<u>Item</u>	<u>Comments</u>
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| 5 | Members will note that, at paragraph 6 on page 91 of the agenda, the report advises that appeals are still under consideration in regard to Raval House and Wesham Park Hospital and these properties will be reported for consideration in a future committee report. Unfortunately, Raval House (FR16) has not been deleted from the schedule attached to the report as appendix 1. For clarification, this property is not being put forward for consideration for inclusion in the local list at this time and should have been deleted from Appendix 1. |
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Schedule Items

<u>Item</u>	<u>App No</u>	<u>Observations</u>
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| 1 | 18/0659 | <p><u>Parish Council Query</u></p> <p>Following the publication of the agenda a representative of the Parish Council contacted the case officer to query some elements of the application, in particular the implications of the development for vehicle use of Dagger Road. Notwithstanding that the local highway authority had commented on the application to confirm that they had no objections to the development as quoted in the agenda papers, officers have explored the issues raised by the Parish Council representative with the applicant's agent and the local highway authority as follows:</p> <ul style="list-style-type: none">• How many vehicle movements will be generated by the construction of the lagoon? – The agent confirms that this will involve around 35 movements, but this will not involve the movement of soil or other spoil as this is all to be retained on site. The local highway authority confirm that they have no objections to this level of use.• How many vehicle movements will be used to fill the lagoon? – The Design and Access Statement confirms at para 3.8.2 that the slurry will be pumped from the farm to the lagoon so there will be no vehicle movements associated with this.• How many vehicle movements will be used to empty the lagoon? – The agent confirms that the slurry is stored for use as a fertiliser for the land. This typically occurs twice a year and is a standard agricultural practice that is undertaken across the borough by farm labourers in tractors with their elevated cab positions. This will be undertaken on fields around the site and will involve some use of Dagger Road by these vehicles, as is the case at present where vehicles use Dagger Road to carry slurry from the existing store on Treales Road to the parts of the farm which are off Dagger Road. |
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- As such there will be no material change in vehicle numbers.
- What is intended for the existing lagoon on the farm? – The agent advises that this will be retained as a ‘holding lagoon’ for use before slurry is pumped to the new facility, but the increased capacity is essential to avoid the current risk of this overtopping and so causing pollution and highway safety issues on Treales Road.

3 19/0123 Local Plan Clarification

The officer report refers to the site as being within the Countryside under Policy GD4 of the Fylde Local Plan to 2032. Whilst the area that the dwellings are proposed are designated in this way, there is an area of the site that includes the access road and part of the land to be reinstated as agricultural land that benefits from an employment allocation under Policy EC1, albeit the area is shown on the policies map only and is not listed in the sites that are covered by the Policy in the Plan itself. This is not referenced in the report and so the following comments are provided.

As a planning principle, where there are inconsistencies between the Plan document and the Plan map then the wording takes precedent. As such the employment allocation could be discounted simply as it is not listed in the Local Plan document as being covered by Policy EC1.

However for completeness if it were assumed that this employment allocation was a valid one then this could only be based on a planning permission granted for some Class B8 storage uses on the site in 2011 which appears not to have been implemented, and which would be superseded by the development proposal here which requires, through condition 13, that the land is reinstated for agricultural purposes. Policy EC1 requires that land designated for these purposes is retained in an employment use, and as the proposed condition requires that the majority of this land be reinstated to agriculture then there is no policy conflict as agriculture is an employment use for the purposes of Policy EC1. The element that is to be used for the access to the dwellings could still be used to access the agricultural land and so this would not create any conflict either.

Accordingly this oversight in the report does not alter the recommendation to members.

Additional Neighbour Comment

An additional email has been received from one of the near neighbours to the site. They reiterate comments made previously in support of the application on the basis of the proposed residential use being the most appropriate use of this site as:

- The farm is not viable for a return to agricultural use
- An industrial use is not appropriate for the site due to the restricted access routes and disturbance to neighbours
- The proposed development will bring a significant visual impact over the current situation
- The development will conclude the current uncertainty over the future

activities at the site.

Officer Response

These points generally reiterate points made earlier and so reported in the officer report. There is no revision to the recommendation as a result.

5 19/0376 Revised Condition 2

The officer report was written on the basis that a series of minor amendments and corrections to the submitted drawings that had been requested would be received for presentation to Committee. These are now with the council and so it is appropriate to revise the list of plans provided in condition 2 with each updated to version 'a' of that listed on the agenda.

Revised Condition 7

This condition is designed to ensure that the works to the property are constructed jointly. In reviewing the file in preparation for Committee officers feel that the condition could be worded better to ensure it delivers the protection required and so the following revised wording is suggested:

The extensions hereby approved shall only be constructed jointly as a single building operation, with no element of the works at either property completed to a point which allows its use for residential purposes until the element at the adjoining property has been constructed to a point whereby it is enclosed with the roof covering and windows in place.

Reason: As the extension of one property only would create unacceptable harm to the amenity of the adjoining neighbour and so be contrary to criteria c) of policy GD7 of the Fylde Local Plan.

6 19/0381 Revised Recommendation

The application is supported by Certificate A which confirms that the application (Mr C Furnell) is the owner of the application property. Since the report was completed it has come to light that this is not correct as the building is owned by '64 Developments Ltd'. As such the application was not correctly submitted and so any decision made on it would be unsound.

To regularise this a revised application form and ownership certificate have been requested from the applicant which confirm that '64 Developments Ltd' have been formally notified of the submission of the application. To ensure that a sound decision is made planning legislation requires that the owners are served with notice of the application at least 21 days before it is determined. As this application form and certificate has yet to be received the 21 day period has yet to commence and so to allow this time to elapse it is requested that the recommendation be revised to delegate the decision to the Head of Planning and Housing so that he can issue a decision after that period. The wording of this would be as follows:

That the decision to refuse planning permission be delegated to the Head of Planning and Housing, with that decision to be made on the basis of the reason

stated in the Committee agenda papers, or any revision or addition to that reason that he considers appropriate, on the expiry of a 21 day period beginning with the receipt of a correct application form and ownership certificate.

Summary of Supporting Financial Information

The applicant has provided some information relating to the economic benefits of the enclosed extension to the business, and of the business to the local economy. They have asked that this is considered in support of their application but it was received too late to be incorporated into the officer report. The following is a summary of the information that removes the financial details for reasons of commercial confidentiality and has been agreed with the applicant.

- The Deacon operates under a licence that confirms there are 99 covers, with 63 within the glazed extension and 36 within the building.
- There are a further 60 covers available in an open area to Clifton Street which is only available for use during 6 months of the year (April – September).
- All the labour that is employed by the business (chefs, bar tenders & waiters) live in Lytham and the Fylde,
- Under the current operation when the labour costs, the stock purchases, and other overheads are deducted from the sales figures the business generates a small profit.
- If the glazed extension were to be revised to its authorised form and so be more open to the elements then the Directors estimate that the sales on the 63 covers in that area would reduce by 70%. They advise that this estimate is based on:
 - The directors' 7 years' experience of operating Capri on Dicconson Terrace, which has a proportion of its covers open to the elements.
 - The directors believe that the outdoor area under the canopy would not be used for 6 months of the year due to the weather. This is related to their view that customers would not be comfortable in this area and that the hot food which they sell cannot be served in a cold environment.
 - The directors believe that customers would not book in advance for outside seating and so the business would need to rely on passing trade for custom in this area. This creates a business uncertainty for them as they are unable to rely on the weather conditions and as they believe it usually too cold on evenings to eat outside. They explain that they are a restaurant and not a bar, so outside seating has a limited benefit to restaurant covers. The statement explains that any restaurant terrace in Lytham will be empty for the majority of the year, especially in the evenings when customers mainly come out to eat, because it is too cold to dine outside.
- The report explains that whilst the reduced income would lead to a proportionate reduction of direct costs (e.g. food and drink purchases and some labour costs), the indirect costs (e.g. rent, rates, other property

- expenses, accountancy and other professional fees, etc.) would remain fixed and so would not reduce irrespective of the level of trading.
- The conclusion of the report is that the reduction in sales as a consequence of implementing the open canopy would mean that the existing small profit would become a substantial loss.
 - The applicant has also provided a second assessment based on the works leading to a 25% reduction in sales (rather than 70%) which also indicates that the business would return a loss.

Officer View on Supporting Financial Information

The NPPF definition of sustainability explains that there are economic, environmental and social objectives. As such the economic implications of development proposals are clearly a material planning consideration.

In this case the previous applications on this site have made some passing reference to the economic harm of the existing unauthorised extensions being replaced by the open canopy which has planning permission, but no figures have ever been presented to support this position. As such it has not been possible to ascribe any weight to this in the planning decision. This is a point that the Planning Inspector highlighted when determining the planning and enforcement appeal on which relates to the current situation on site. Para 14 of his decision letter states: *"I have not actually been provided with any objective or persuasive evidence from the appellant that the implementation of the more sympathetic and acceptable extant planning permission would render the business unviable in financial terms. I note the comment made by the appellant that without the unauthorised development the "business would likely be unable to continue", but this comment is not reasonably substantiated."*

The applicant has sought to address this with this information and it is a factor that needs to be considered by Committee. Unfortunately it was not provided with the application but was received shortly after the completion of the agenda report. The information is also submitted in a form that requires it to remain confidential for reasons of commercial sensitivity. This reduces the weight it can be given as there is no opportunity for the Committee to challenge the financial robustness of the claims that are made, and so Committee must consider the position based on the information presented in this Late Observations statement only.

Officers have significant doubts that the information provided is sufficient to accept that the approval of the current application will off-set the claimed economic harm that the implementation of the approved open-sided canopy would cause to the business. Whilst it could be reasonable to expect that the opening of the extension to the lawful open canopy construction may lead to a slightly reduced revenue for the business, it is not clear that this is sufficient to result in the overall failure of the business. There is also no context to the information that has been supplied as the council does not have the original business plan that was presumably drawn up prior to the establishment of the operation and so must have been based on the open sided canopy that was the

subject of the planning permission that was granted at that time under reference 17/0262.

Members also need to be aware that the economic situation to test is in respect to the economy of Lytham as a whole, not simply to the current business model at this site. There is no information that a different business model, for example a bar, would not be able to operate with the lawful open canopy and so maintain the vibrancy that a business occupying these premises brings to the town. Equally there is no consideration of how the current harmful appearance of the canopy could be impacting on the economic trading position across the town centre as a whole.

There are clear environmental harms from the visual appearance of the canopy in the streetscene and to the conservation area and locally listed building. There are some social benefits from the presence of the business as a communal resource for the town, but these do not seem to offer any greater benefit with the extension in comparison to a canopy. There are likely to be some economic benefits from the enclosed canopy, but these are not able to be quantified at this time given the scope of the information that is provided, and are likely to be limited anyway.

The officer recommendation is therefore that the supplied information is not sufficient to outweigh the other harms and so the availability of this information does not alter the recommendation for refusal on the agenda papers.