

PLANNING COMMITTEE
20TH FEBRUARY 2024

CORRESPONDENCE RECEIVED AFTER PREPARATION OF THE AGENDA

ITEM 5.1 – 23/01310/FUL – INSTALLATION OF 11NO. SOLAR PV PANELS AT THE OLD BLACKSMITHS SHOP, DALE END, WIRKSWORTH.

Further public comments have been received in support of the application:

1. I live within a few metres of the Old Blacksmiths. I wholly support solar panels as they are part of Wirksworth's plan to become a more sustainable community. The plans also state that they will not even be visible. Why would they be turned down? It would be terrible to turn this application down and as a neighbour I would be both sad and very disappointed in the planning department if they were short sighted enough to turn down such sensible plan.
2. It makes perfect sense to install this form of renewable energy in an unobtrusive location.
3. As a neighbour I walk past the roof every day and do not think the installation of solar panels on the roof would be detrimental to the look of the building. It would also be a huge benefit to the environment.
4. As a resident of The Dale who passes by this location on a daily basis, I wholeheartedly support the application for solar panels on this roof of the Old Blacksmith. Protection of the historic environment in a Conservation Area must be balanced with the need to reduce carbon emissions to fight climate change. Of these, reducing climate change must be imperative.

Solar panels are a proving technology and the appearance of carefully chosen panels does not detract from the look of a conservation area. The Council has rightly declared a climate emergency, and this is an opportunity for planning to demonstrate action at a local level.

5. We refer to the application due to be considered at a meeting of the Council's Planning Committee this evening.

Grassroots Wirksworth would like to express our support for the proposed addition of Solar Energy generation on the roof of The Blacksmiths at the bottom of the Dale.

Sustainable business is a key part of the fight against climate change. We understand the proposed installation will not only generate a significant portion of the energy needs of the property, but the battery systems will assist in wider renewable grid balancing, being of benefit to the public as a whole and setting a valuable precedent for other businesses.

We urge the planning committee to fully consider whether the important contribution this development would make in the fight against climate change, outweighs any effects of a temporary alteration of the appearance of the roof.

Preventing businesses from investing their own capital to become more sustainable is surely the wrong message for 2024.

ITEM 5.2 – 23/00916/FUL – CHANGE OF USE FROM MUSEUM AND EXHIBITION SPACE TO (CLASS E) ANTIQUE, SALAGEM RECYCLED AND VINTAGE COLLECTABLES SHOP AT RED HOUSE STABLES, OLD ROAD, DARLEY DALE, DERBYSHIRE, DE4 2ER.

1. Mr Russell has accumulated a range of antique and vintage collectibles, signs, pictures and furniture which he wishes to offer for sale to dealers and the public. The majority of his larger Georgian and Victorian furniture to be stored and sold from within the former large and small carriage garage and stores - Blocks A and B on the 1-500 block plan. The remainder and majority portion of his antiques and vintage goods will be displayed and sold from within Block J. His partner collects, has stored, and will display vintage ladies clothing from 1900s through to the 60s - this collection located within the right hand portion of Block J over approx 30% of the floor area will not be for sale.

Externally Mr Russell intends to display for sale, free standing decorative architectural ornaments and garden related products chiefly stone troughs, statuary, urns, planters, saddle stones, metal animal feeds, troughs etc and finally metal gates, panels and smaller scale ironmongery.

Within the red zone delineated area for the change of use application there will be no salvage building material of any kind - stacked, or otherwise set upon racking, nor will any such material be offered for sale.

The yard will be improved and made safer by applied new surfacing and with the proposed one way driveway to rear site access being perimeter edged, smooth finished and clearly defined - ditto pedestrian pathways to Block entrance ways.

2. The rear of the site, identified zone edged red for the proposed dwelling etc, is currently where Mr Russell stores his building materials - chiefly stone blocks and paving, timber sleepers etc. These are materials he uses as a self employed builder specialising in garden reconstruction. However, as it has been previously expressed Mr Russell has now entered into semi retirement and intends to quit landscape work. Should he be successful in obtaining planning consent for the dwelling then the site will be cleared of those stored materials. He does not intend to add to these material stocks. Existing material stored heights will not be increased and there will be no provision for future stacking etc.

ITEM 5.4 - 23/01094/OUT - OUTLINE PLANNING APPLICATION FOR THE DEMOLITION OF EXISTING DWELLING AND ASSOCIATED BUILDINGS AND CONSTRUCTION OF A 74NO. BEDROOM CARE HOME (USE CLASS C2) WITH APPROVAL SOUGHT FOR ALL MATTERS EXCEPT LANDSCAPING AT HOLMELEA, DERBY ROAD, ASHBOURNE, DE6 1LZ.

A letter from Heatons on behalf of Trouw Nutrition GB at Blenheim House has been received and this is summarised below.

COMAH is the 'Control of Major Accident Hazard Regulations' which is enforced by a Competent Authority (CA) that comprises of, both the Health and Safety Executive (HSE), and the Environment Agency for England. COMAH applies mainly to the chemical industry, but also to some storage activities, explosives and nuclear sites and other industries where the threshold quantities of dangerous substances identified in the Regulations are kept or used.

Trouw Nutrition is rated as a COMAH 'Upper Tier' Site, which is labelled as a major hazard site. The duties for upper tier operators, as listed by Health and Safety Executive on their website, outline an "identification of neighbouring establishments, as well as sites that fall outside the scope of these regulations, areas and developments that could be the source of, or increase the risk or consequences of a major accident and of domino effects." Having a residential care home with circa 74 permanent residents next to a Major Hazard Site would increase the risk of accidents associated to the hazardous production of Trouw Nutrition. The PPG provides additional advice for Local Authorities for handling development proposals around hazardous sites. Such proposals include residential development located in consultation zones and developments which are likely to result in an increased numbers of people working/ visiting of the site. Particular regard should be given to older people using the site who may be at risk of the environment.

The HSE's consultation response states that the application site does not fall within the Consultation Distance of a major hazard site such that it has no comments to make. Our client's highlight, however, that the application site shares a boundary with Trouw Nutrition. It is considered, therefore, that potential safety implications should still hold significant weight, when considering the potential impacts on the proposed site. Indeed, the PPG gives additional advice for Local Authorities for handling development proposals around hazardous sites. In view of the above, they consider that further advice should be sought from the HSE before the application is determined.

The odour assessment submitted uses data from a meteorological station approximately 22.5km away to the north west. The 'sniff test' was limited to between 9:30am and 3.40pm which is flawed and the wind direction at the time was not coming from the odour generation sites. Furthermore, this test should be part of the assessment together with technical modelling.

In terms of noise the acoustic barriers on the previously refused scheme were 4.5m whereby 2.1 m barriers are proposed which would be less effective.

The Noise assessment includes an assessed level of 66dB and 57dB for daytime and night-time volume levels time respectively being recorded, both exceeding the maximum standard of 60dB and 55dB of daytime and nighttime levels, meaning that certain facades would require the windows to not open which has clear implications for the amenity of future occupiers.

Leaving the overheating assessment to be dealt with by condition is insufficient as it should be carried out prior to any decision as it has implications for the amenity of future residents.

The building would be highly prominent on Derby Road and due to the scale of the building existing screening would be insufficient and landscaping left to a further reserved matter.

Officer Response

Following further consultation with the Council's Environmental Health Team, it is considered that the impacts of allowing a 74 bed care home in close proximity to this COHAH top tier site has not been sufficiently considered and could present unacceptable risks to the future occupants of the care home. Planning practice guidance advises under handling development proposals at and around hazardous installations, that consultation is required for development involving transport routes, and public-use locations near existing establishments, where the development could be the source of or increase the risk or consequences of a major accident. Although the HSE has not indicated that they would wish to comment in this case, the buffer zone for this upper tier site is unclear on their portal. What is clear on the COMAH public information page for Frank Wright (former name of the premises) is that the establishment is in the process of preparing an internal emergency plan to deal with major accidents and is in the process of liaising with the emergency services in order to deal with major accidents and to minimise their effects. It goes on to state that the local authority is preparing an external emergency plan to deal with any consequences outside this establishment as a result of a major accident. Members of the public are advised to co-operate with any instructions or requests from emergency services in the event of an accident. Insufficient information has been submitted to demonstrate that the development would not present unacceptable risks to the future occupants and users of the facility and the following additional reason for refusal is recommended on this basis:

Insufficient information has been submitted to demonstrate that the development would be compatible with the adjacent COMAH 'Upper Tier' site in terms of not prejudicing its ongoing operation and presenting unacceptable risks to the occupants and visitors of the care home facility contrary to Local Plan Policies PD1 and PD9 of the Adopted Derbyshire Dales Local Plan (2017) and policy contained within the National Planning Policy Framework (2023).

A further letter from the agent's have been received which is summarised below:-

Firstly, despite continuous attempts to discuss the application with the Case Officer, no engagement had been received ahead of receiving the notification the application was recommended for refusal. Only being notified of the application going to committee late on Friday 9th of February with no details of the recommendation and receiving a copy of the committee report on Monday 12th despite numerous calls and previous attempts for communication on the application is not considered to be working proactively with the applicant.

The committee report also states an agreed extension of time to the 23rd February 2024. This is incorrect, no agreement has been given to an extension of time for the determination of the application.

The Committee Report is materially defective and misleading because the documents list is inaccurate and is incomplete and it follows from this that the author of the Report has demonstrably failed to have taken into account all relevant material and must, therefore, have misdirected themselves.

It's also noted that the latest comments from Environmental Health have not been published online on the application page or a copy issued. We request that a copy is published and provided.

In view of the material errors/omissions in the Report and the likelihood of consequent misdirection, the application should be withdrawn from the Committee and engagement with the applicant from the Case Officer.

With reference to the proposed first reason for refusal, a key consultee, the EHO, who - despite a request by the Applicant to engage with their Noise and Air Quality Consultants to address their rebuttal response to the initial consultation comments – has declined to do so; has misinterpreted the submitted reports and wrongly criticized alleged environmental mitigation measures which are not in fact proposed or relied on by the Applicant – e.g., sealed, non-opening windows – and indeed are not necessary.

These measures are not necessary because the Applicants consultant has demonstrated, through authoritative technical assessments that accord with best practice that the alleged environmental constraints are not serious or compelling and will not materially detract from the amenity of the residents of the proposed Care Home. The potential adverse environmental impacts have been overstated and are given undue weight – especially the odour impact.

The Committee Report and Recommendation demonstrates an approach that is inconsistent with past decisions. Thus, the alleged adverse environmental conditions did not prevent the granting of planning permission for residential development (by Cameron Homes) immediately opposite the Application Site, on Turnpike Way. Furthermore, the allegedly pervasive local odour impact did not prevent the Council allocating a major residential sustainable urban extension (HC2 c) and (d) immediately abutting the Airfield Industrial Estate and in the path of the prevailing winds therefrom.

The Authority is also inconsistent in the characterization of the environmental ‘threat’ posed by the odour sources on the Airfield Industrial Estate. The Applicant’s evidence is that the odour levels are not such as to prevent residential (Care Home) development on the Application Site and are in any event, variable in their intensity depending on weather conditions. But the Council can’t ‘have its cake and eat it’ – if the odour impacts are so great as to absolutely constrain nearby development, then they must amount to a statutory nuisance which is actionable through air quality legislation. Moreover, we think the originators of these odours who have objected to the Application ‘doth protest too much’ indicating that they are unduly defensive of the pollution they are producing and seems to exercise a chilling effect on legitimate development.

In addition, paragraph 7.17 refers to the proposal only being able to meet the recommended internal and external noise levels with 2.1m acoustic barriers on large parts of the sites boundaries. 2.1m acoustic fencing, is not an unreasonable height for fencing. The Town and Country Planning (General Permitted Development) (England) Order 2015 allows for the erection of fencing up to 2m. Consequently, the proposed fencing is not of an unreasonable height at just 0.1m above the height which can be erected under permitted development rights.

The members of the Committee are requested to have regard to the above during their Site Visit to ascertain their own judgement as to the actual effect of noise and odour matters ahead of determining the application at Planning Committee.

Proposed Second Reason for Refusal

We are also concerned as to the conclusions of the Officer's Report in the context of the impact on the character and appearance of the area and second reason for refusal. The application was validated on the 19th October and at no point throughout the assessment of the application, despite attempts to gain feedback on the application, have we been notified of concerns regarding this matter which has been given as a reason for refusal. With the need for the development acknowledged and principle accepted we consider it reasonable for the LPA to engage proactively on this matter.

The application is supported by a comprehensive Design and Access Statement and Local Character Statement providing design rationale for the proposals including extensive examples at 2, 2.5 and 3 storey development, common design features of the local area and the design process.

It is our view that the siting of the built form ensures that the bulk of the mass sits within the central section of the site, mitigated by existing extensive retained and supplemented boundary screening. By introducing a projecting gable toward the Northern entrance, the North facing wing is effectively screened from view when viewing the site Southbound on Derby Road. The development is proposed as 2.5 storey which further reduces the overall mass of the built form reducing the overall height.

Following the pre-application submission, the form has developed to reduce the length of the Derby Road facing elevation by 4.6m reducing the overall mass fronting the highway. Utilizing a 2.5 storey form has enabled the development to tie in with neighbouring property ridge lines, principally Rushclose.

Whilst this is a matter of planning judgment, the Case Officers report fails to reference the existing vernacular in terms of the scale and how the proposals would be viewed in the context of the streetscene with regard to the screening.

Planning Benefits of the Proposals and Planning Balance

The notes to the applicant included in the committee report state that the LPA considered the merits of the submitted application and judged that there was no prospect of resolving the fundamental planning problems with it through negotiation. On this basis the requirement to engage in a positive and proactive manner was considered to be best served by the Local Planning Authority issuing a decision on the application at the earliest opportunity and thereby allowing the applicant to exercise their right to appeal.

We strongly disagree with this conclusion, the proposed reasons for refusal do not relate to the principle of the development which is policy compliant and considered acceptable by officers. Furthermore, the need for residential care bedspaces is acknowledged by officers.

The Local Highway Authority considers the proposed access to be acceptable and the Derbyshire Wildlife Trust are satisfied with the Ecological survey work undertaken and adequate Biodiversity Net Gain and enhancement measures can be secured through conditions. There are no objections from any other main consultees.

The Report fails to strike the planning balance properly. The Council clearly recognizes the impact of an ageing population, resulting in a compelling need for accommodation for the elderly and infirm, including Care Homes through Policy HC 12 of the adopted Local Plan. That there is a national and local crisis in the shortage of specialist accommodation for the elderly is undeniable and the contribution the application proposal would make to

meeting this urgent need should be, at least a weighty, and in the Applicant's view an overriding consideration given the absence of demonstrable harm. But the report signally fails to demonstrate that this consideration has been given due weight in striking the planning balance.

Conclusion

By virtue of the matters outlined above the committee report as drafted is inaccurate, incomplete and misleading and that has resulted in a palpable misdirection, rendering the Report materially defective. Any decision made on the basis of the committee report would be open to legal challenge therefore. Consequently, the application should be withdrawn from the Committee and proactive discussions between ourselves and the Local Planning Authority held.

Officer Response

Given the fundamental concerns set out in the officers report, it was not considered expedient to negotiate on the scale of the development.

It is acknowledged that an extension of time request for determination has not been made but it is normal practice to request one to cover committee determination.

The Environmental Health response was published on the website and the applicant had opportunity to respond to these concerns through the submission of technical notes and rebuttal statements. However, these did not alter the view of the Environmental Health Officers.

The lead Environmental Health Officer has also made the following comments in response to the agent's letter:

I have looked at the report and response from the applicant, and don't feel that any further response is needed from Environmental Health. We still have concerns for this application in terms of proximity to industrial buildings undertaking significant activities, noise and odour.

We can justify the industrial works are significant as the site is COMAH registered, and heavy industrial works are not appropriate adjacent to residential premises. Especially as the industrial activities are existing.

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