

PLANNING COMMITTEE

Wednesday 14th January 2009

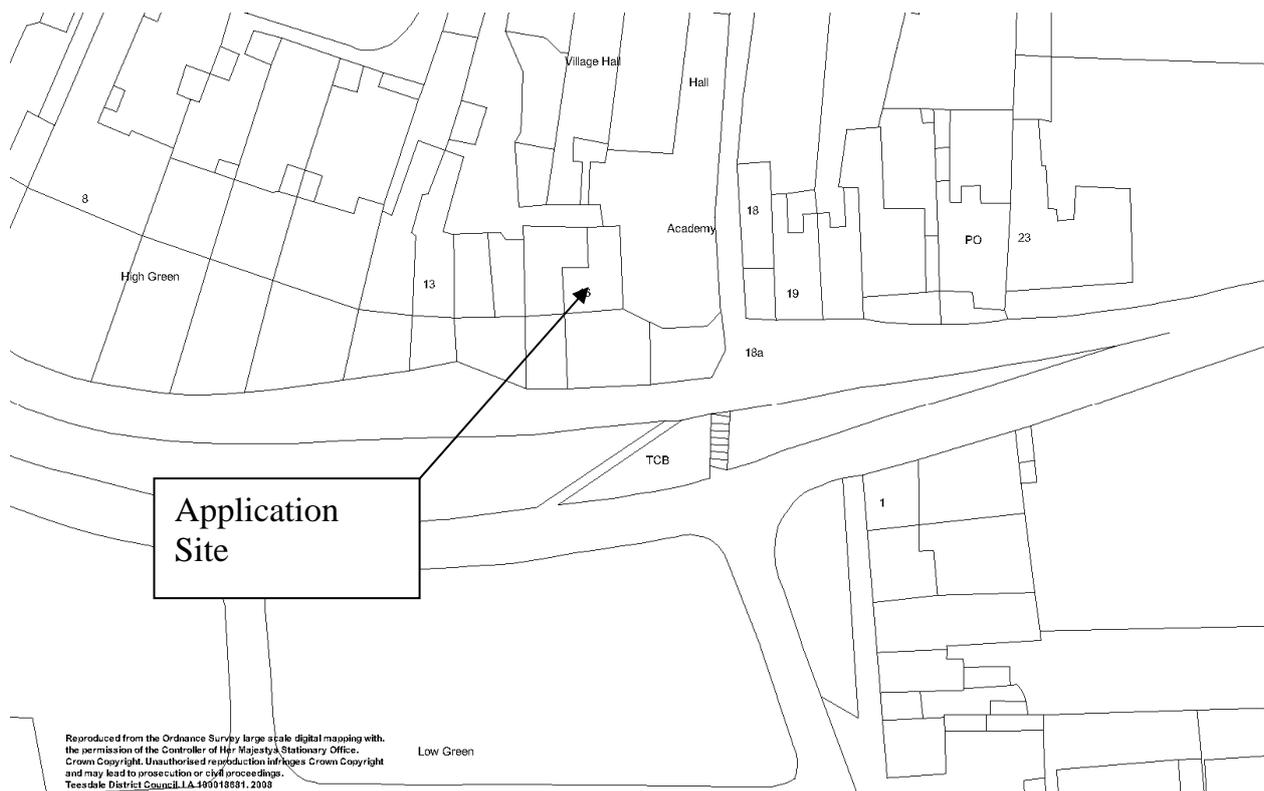
This application is reported to Members because there has been significant interest in the proposals and in this instance it was considered the application should be determined by the Planning Committee.

Case Officer - Charlie Colling

GAINFORD & LANGTON - 6/2008/0429/DM

Variation of conditions 2 & 3 of planning permission 6/2005/0327/DM at The Laurels, 16 High Green, Gainford for Mrs Karen Birch (27 October 2008).

THE SITE:



The building is Grade II listed. It is sited on the northern side of Gainford Village Green and is covered with render and painted cream. It is a Georgian building and has two large timber small-paned bow windows to the ground floor. It is accessed from the front with a short flight of steps to a central front door. There are two paved areas to either side of the front path.

The property has, in the past, been subdivided and there are two independent flats on the upper floors. One is let out as a holiday apartment and the other is a residential property.

The rear exits onto a shared courtyard / car park which is shared with the Gainford (Montalbo) Village Hall and several residences. The applicant has advised on a previous application that there is one parking space in this area which is 'allocated' for the premises.

THE PROPOSAL:

The applicant seeks to vary two conditions of application 6/2005/0327/DM. That application was for the change of use of the premises. Two conditions were placed upon the use at that time by the Planning Committee. These were that the premises shall not be open to the public other than between the hours of 8:30 and 18:00, and that there shall be no outside seating. The current application seeks to vary these conditions to allow the premises to open between 8:30 and 20:00 Monday to Saturday and between 8:30 and 18:00 on Sundays. The other condition, which it is sought to vary, is to allow outside seating to the eastern part of the front paved area, and that this seating shall only be used between 8:30 and 18:00.

PLANNING HISTORY:

6/2008/0297/DM - Variation of condition 2 (to allow the premises to open between 8:30 and 20:00 7 days a week) and removal of condition 3 (to allow outside seating to all of the external area) of 6/2005/0327/DM – Refused: The proposed increase in hours and outdoor seating would have an unacceptable harm on the amenities of nearby residents contrary to Policies ECON4 and GD1 of the Local Plan.

6/2008/0157/DM/AD - Advertising consent for the installation of front & rear fascia signs (approved).

6/2008/0121/DM – Removal of condition for external seating and variation of conditions to allow premises to be open between 8:30 and 23:00 during the Academy Theatre productions which take place twice yearly for a period of two weeks and at all other times that a restriction be placed allowing the business to open between 8:30 and 23:00 a maximum of the three times in any given week. Remove condition restricting outside seating. Refused on the grounds of unacceptable harm on the amenities of nearby residents.

6/2008/0112/DM/LB - Retrospective Listed Building Consent for fixing of fascia signs to front & rear elevations, removal of light above front door and installation of ground level lamps, re-fitting of security boxes, landscaping of front garden area with cobbles and reinstatement of railings to front wall (approved).

6/2005/0327/DM – Change of use of doctor's surgery to tea rooms - Approved by Committee subject to conditions, including hours of opening restricted to 8:30 and 18:00 any day of the week and that there is to be no outside seating.

PLANNING POLICY:

GD1	General Development Criteria
BENV1	Alterations, extensions and changes of use to a Listed Building
BENV3	Development affecting the character of a Listed Building or its setting.
ECON4	Business uses within residential areas

REPRESENTATIONS:

Statutory and Internal Consultees:

Highways – no objections

Parish – “A vote was taken and 90% of councillors agreed that we should simply refer this application to you, as the professionals, to deal with this without any further input from us.

At our last meeting about this application the councillors were not in agreement with the extra hours and outside seating and because they were split on the decision, they would like you to consider this point.”

Environmental Health – 27th November 2008: Because of concerns regarding the transfer of noise from the function room made by the occupants of the neighbouring property, I would recommend that a condition be placed on any approval of the application requiring that sound insulation be installed to the floor and party wall in the function room. This will reduce the impact from any functions occurring in the Laurels.

Further comments - 22nd December 2008: My recommendation remains the same in that sound insulation should be installed to the function room so that the impact from functions will be reduced. However, following a meeting with the applicants I was informed that the party wall has already been sound insulated following the previous planning consent. I confirmed that this has been done to the section of wall at the front of the room where alterations have been carried out to form an entrance to the property next door.

I discussed with the applicants means of insulating the wooden floor so that noise and vibration are not transferred through the structure of the building. They are unwilling to cover the floor with sound insulating material but they suggested an alternative means that is carried out under the floorboards and between the joists. I am to be provided with details of the system to be used and a sample of the insulating material.

Public Responses:

Neighbouring properties have been consulted and a site notice posted, with 5 letters of objection received and a letter of objection from a planning consultant on behalf of the occupiers of 15 High Green. Concerns in summary are:

- No substantial difference between the application first submitted in 2005, and this application.
- There have been no change in circumstances to warrant alterations to the conditions.
- The applicant proceeded developing the business being fully aware of the conditions restricting its operation. The application to remove these conditions makes no proposals for measures to ameliorate the adverse effects of the business upon immediate neighbours but each development and application is asking these residents to make additional compromises to their amenities.
- If the conditions were considered valid by the Planning Officer and Planning Committee in 2005 to protect local neighbours, why would these same conditions not be considered valid now.

- The only difference is the intention of the Laurels to extend its operation still further, which impinges further upon the amenity of neighbours who rely on the protection these conditions provide.
- This will increase the noise level for the neighbours as the building is Grade II listed which does not qualify for double glazing.
- How will the outside seating be supervised after 18:00?
- How many tables and chairs will be outside and what type will these be? Are these to be moved back inside the building?
- If the Laurels should change hands, the new owners may not be as considerate as Mr and Mrs Birch. Therefore if conditions were to be removed this would duly affect the immediate neighbours and village life.
- Will have significant negative impact on our amenities.
- Extended hours will increase noise levels significantly.
- We will be affected by noise from both outside and inside the building.
- The party wall with no. 15, 16 and 17 were not purpose built for noise protection between the different units. Noise is a particular issue for us when the function room is in use.
- Smell, noise light pollution from the kitchen would be worse with increased hours and when windows and doors are open this is a particular issue.
- Noise levels will not be reduced in any significant way by concentrating the seating on one side, especially as the whole of the patio area can still be used by customers and noise cannot be easily contained.
- The eastern side of the paving is also the larger of the two and we can still be observed from there. In order for the Laurels to be able to use their outside space, we will have to sacrifice the use of ours.
- The layout of the building is not conducive to a business holding evening events and catering for large groups at any time of the day. There are thin partition walls which are insufficient to protect neighbouring amenities from existing and potential noise.
- After 18:00 we currently experience very low noise levels around the Green, which there would be significantly changed if extended hours were permitted.
- The coffee shop is one of only three small businesses in an otherwise completely residential area.
- Problems with regulating the proposed variation of conditions, seating to be taken in, functions remaining de-minimus, numbers of seats and no alcohol use or outdoor smoking.
- Suggestion for two tables only to the eastern side, with a total of eight chairs, to be put away by 17:00 and that the premises not to open on Sundays. Also that umbrellas are used to shield noise to the neighbouring properties. No groups larger than 8 and the seating should be of materials which would reduce noise eg. wood or plastic. Also that the premises are open till 20:00 on days of Academy Theatre Productions only.
- Unacceptable adverse impact that the development in its revised form would have upon the amenities of the occupiers of the nearby residential properties, particularly no.15, by way of noise nuisance, general disturbance and loss of privacy. The proposals would therefore conflict with local plan policies GD1 and ECON4.
- Extended hours would exacerbate noise and disruption and unreasonably harm neighbouring amenities.
- The original restrictions should remain in force.
- Support for this application is not universal and it does not seem to be in the best interests of the neighbours around the Green.

- The reason for requesting the change in opening hours and external seating is commercial necessity. However commercial interests should not over rule the concerns or be at the detriment of the residents.
- If this nuisance was allowed to increase I am sure the property will not be habitable and remain un-let and unoccupied.
- The applicants state their guests would be able to enjoy fresh air on tables out the front of the café, we should also remember that their neighbours would like to enjoy fresh air and privacy in their own properties.
- The coffee shop operates within a residential area and its operations should be in-keeping with such an area.
- Extended opening hours will increase the nuisance.
- The application does not advise any measures that will be taken to minimise the impact upon neighbours.

PLANNING CONSIDERATIONS:

- **Principle**
- **Amenity**
- **Impact on Conservation Area/Listed Building**

The applicant seeks to remove a condition and vary one other attached to planning permission 6/2005/0327/DM, which was granted by the Planning Committee for a change of use from a doctor's surgery to tea room at 16 High Green, Gainford. Condition 2 currently restricts the use of the premises to between the hours of 8.30 and 18.00. Condition 3 prevents the use of external seating at the premises.

Two recent applications have both been refused under delegated powers which also sought to vary these conditions. The previous applications were to allow seating to all of the front paved area, and to allow extended opening hours (please see history for details of hours).

The applicant has now submitted a revised scheme which is to vary conditions 2 and 3 to allow the premises to be open between 8.30 and 20.00 Monday to Saturday and 8:30 to 18:00 on Sundays. It is also proposed to vary the condition preventing outside seating, so that seating would be allowed outside between the hours of 8:30 and 18:00. The seating would be restricted to the eastern side of the front paved area, away from the neighbouring property 15 High Green. Similar proposals were suggested by the Parish Council as a response to a previous application. However the Parish Council did not have a majority vote in favour of these proposals so it should therefore be noted that this would essentially be considered as an objection to the current application.

This application should be assessed with particular reference to Policy ECON4 of the Local Plan which states '**Business uses within residential areas will be permitted where there is no unreasonable harm to amenities of nearby residents or the character of the area, and subject to complying with the criteria of Policy GD1, where relevant**'.

Firstly, the original application 6/2005/0327/DM was considered by the Planning Committee and, following a recommendation from the planning officer, it was agreed that a condition be attached to prevent the owner of this business from placing seating outside. The reason for this condition was '**In order to protect the residential amenity of the locality and the occupiers of adjoining residential properties**'. This is a terraced property with residential properties immediately above and to the side. The

area proposed for external seating would be to the front of the property and would occupy only the eastern side of this hard paved area. The property adjoining the application site to the west is no.15 High Green. This property has a bay window to the front and along the common boundary there is a fence approximately 1 metre in height with a section of trellis above (approx a further 20-30cm).

Previous applications have sought to have seating to all of the outside area with opening times being up till 20:00 on one application and 23:00 on another application. It was considered that in both previous applications the combination of the extended hours, combined with the outside seating to all of the external paved area, would have an unacceptable impact upon neighbouring amenity, particularly the occupiers of 15 High Green.

The current application seeks permission for seating to one side, away from the neighbouring property 15 High Green, and this seating would only be used up until 18:00. These proposals are considered to alleviate some of the concerns from the previous applications. It is acknowledged that there would be some potential for disturbance through noise and over looking. However with the seating being to one side away from 15 High Green, this should prevent direct overlooking of their front garden and front window. In order to ensure that the paved area to the western side of the Laurels is not accessible, a condition is proposed which would require some delineation measures to be agreed with the Local Planning Authority. It is expected that these may take the form of some large plant pots or similar.

The hours for the outside seating would also be restricted to between 8:30 and 18:00, which would seek to prevent this area being used during less sociable times, when it may be reasonably expected that residents would be returning from work and be within their homes. As the seating would not be used after 18:00, this is considered to be a reasonable amount of time to allow the business to function and afford neighbouring occupiers adequate protection. It is acknowledged that there would be some potential for noise to the neighbouring properties, and as some of these properties are listed they do not have double glazed windows. However, on balance given the restricted area for outside seating and the limited hours, the potential for noise impact is in this instance considered to be acceptable.

As previously mentioned, the applicant seeks to vary a condition which restricts the hours of operation of the business between 08:30 and 18:00. The applicant has indicated that they would like to open between 8:30 and 20.00 6 days a week and 8:30 to 18:00 on Sundays. In terms of impact upon neighbouring amenity it is necessary to determine whether or not these hours are acceptable in terms of any increased impact upon residential amenity.

Again the reason for originally attaching this condition restricting the hours of operation was **'In order to protect the residential amenities of the locality and the occupiers of adjoining properties'**. It is understood why the applicant wishes to extend the hours of opening. In terms of impact upon neighbouring amenity it is considered that given the proximity of residential properties, with there being flats above and a residential property to the side, the increase in hours would currently have an unacceptable impact in terms of amenity contrary to Policy ECON4 of the Local Plan.

However it has been discussed with the applicant that if adequate sound attenuation measures were to be provided within the room, which adjoins with the neighbouring property 15 High Green, then the potential impact of the increase in hours, could be somewhat negated. The floor of this room is a stripped wooden floor.

Members should be aware that the applicant has raised concern over a condition which does not specify the extent of the sound attenuation measures to be installed. In cases such as this application, it is common practice for the applicant to provide these details and to persuade the local authority that the measures proposed are sufficient after permission is granted. Members may therefore wish to consider whether the condition in respect of sound attenuation measures should specify any particular measures to be taken.

It is your officer's view that soft flooring and sound proofing underlay should be used in the room adjoining with the neighbouring property, as wooden floors in their nature would reverberate noise around this room. However, the advice from the Environmental Health officer does not support this view.

The Environmental Health officer has visited the property and advised that, one option which he would consider adequate to prevent potential noise being transferred to the adjoining property, would be to 'pack' foam material between the joists of the floor of this room. It is understood that this would dampen down any noise on the floor, and prevent it from being transferred to the neighbouring property.

The Environmental Health officer has also advised that given the thickness of the party wall and the existing sound attenuation measures to an existing partition wall, there would be no requirement for any further sound attenuation measures to the party wall.

It should also be noted that the increase of hours, so that the business could operate into the evening, would also lead to an increase in vehicular movements to the front of this terrace. The doors of the premises would also cause some noise disturbance when opening/closing and other disturbances such as people smoking outside of the premises and talking whilst entering and leaving is likely to have an adverse impact upon the amenities of the neighbouring occupiers contrary to Policy ECON4 and GD1 of the Local Plan. However, it is considered on balance that subject to adequate sound attenuation measures within the internal space, the proposals are acceptable.

The proposals are not considered to have any adverse impact upon the character or setting of this listed building. However some potential sound attenuation measures may in their own right require Listed Building Consent. This would however need to be considered through a separate listed building consent application, should permission be granted and the sound attenuation measures agreed.

Some objectors have made some comments in respect of a Christmas Market which is held on the front paved area once a year for a full day. The applicant has been offered the opportunity to include this event in the details of the current application. However this offer has not been taken up. It should therefore be clarified that the holding of such a market under the current planning permission and conditions would be considered a breach of the permission.

PLAN Nos AND DATE RECEIVED:

SL1 – Site Location Plan (27/10/08)

RECOMMENDED: That Variation of the Existing Permission be allowed subject to the following conditions:

1. The premises shall only be open to the public between the hours of 8:30 and 20:00 Monday to Saturday and 8:30 and 18:00 on Sundays.

In the interests of the amenities of neighbouring occupiers.

2. Outside seating shall be permitted to the eastern part of the front paved area. The seating shall only be used between the hours of 8:30 and 18:00 on any day.

In the interests of protecting the amenities of the neighbouring occupiers.

3. Details of the delineation of the front paved seating area shall be submitted to and agreed in writing with the Local Planning Authority prior to the outside seating area coming into use. The delineation measures shall be carried out in accordance with the details to be submitted and retained thereafter.

In the interests of protecting the amenities of the adjoining residential property.

4. Details of sound attenuation measures to be installed to the room, which adjoins with the neighbouring property 15 High Green, shall be submitted to and agreed in writing with the Local Planning Authority. The sound attenuation measures shall then be installed prior to the premises being used for the extended hours.

In the interests of protecting the residential amenity of the neighbouring occupier.