

DURHAM COUNTY COUNCIL

At a Meeting of **Area Planning Committee (South and West)** held in Remote Meeting - This meeting is being held remotely via Microsoft Teams on **Thursday 22 April 2021 at 9.30 am**

Present:

Councillor J Clare (Chair)

Members of the Committee:

Councillors J Atkinson (Vice-Chair), J Blakey, L Brown, J Chaplow, I Jewell, S Quinn, J Shuttleworth and S Zair

Also Present:

Councillor A Savory

1 Apologies

Apologies were received from Councillors D Bell, G Huntington, E Huntington, J Maitland, G Richardson and F Tinsley.

2 Substitute Members

There were no substitute Members in attendance.

3 Declarations of Interest

There were no declarations of interest.

4 Minutes

The Minutes of the Meeting held on 30 March 2021 were agreed as a correct record to be signed by the Chair.

a **DM/20/03744/FPA - Building South West of St Annes Centre, West End, Wolsingham**

The Committee considered a report of the Planning Officer in relation to the conversion and extension of pavilion to form food/ refreshment sales kiosk

and WC facilities at building South West of St Annes Centre, West End Wolsingham (for copy see file of minutes).

The Principal Planning Officer gave a detailed presentation which included a site location plan, aerial photographs and photographs of the site.

In response to queries from both Councillor L Brown and the Chair regarding the separation distance between the property of the objectors, the Principal Planning Officer confirmed that his measurement was correct at 20m from the edge of their building to the corner of the existing dwelling.

The Chair further queried whether this was a normal separation distance between public toilets and a residential property and the Principal Planning Officer confirmed that there was no set policy, however at 20m from the nearest habitable room, there was not considered to be a significant loss of amenity.

Councillor Savoury, Local Member and Wolsingham Paris Councillor, confirmed that she had taken legal advice and was permitted to speak, after which she would then withdraw from the meeting.

She declared an interest as she had allocated some of her Neighbourhood Budget to the project, should it be approved.

She spoke in favour of the application for the following reasons.

The Recreation Field at Wolsingham, she described as a jewel in Wolsingham's Crown. It had been gifted to the people of the Parish and was a popular venue with local residents and visitors alike, used by families for generations.

Over the years new attractions had been added to enhance the facilities, some of which had been adapted for disabled users. The Recreation field was situated at the West End area of the village and historically a general dealer operated across the road from the park which gained a great deal of trade users of the park to purchase ice cream, lollies and drinks. This had posed a risk due to the busy main road in between. The shop had been closed for several years and the nearest was approximately 750 metres away.

The facility of having a kiosk selling refreshments could in her opinion, only be an asset and add to the attraction of this facility. The new toilet facility was much needed especially when groups of children from the local primary school and nursery visited the park. The current facility was across the busy Car Park and this kiosk would promote safety as people will not have to leave the venue to purchase drinks and snacks.

People with pets would be able to sit and enjoy a drink whilst keeping an eye on their children and those with both older and younger children would have an excellent vantage point to watch them using the skate park and play area.

Councillor Savory gave examples of people who would benefit from the use of the park; Wolsingham had recently been awarded the walkers are welcome accreditation and the kiosk would be on a popular route for them to stop for refreshments, the Bowling green hosted visitors who often brought spectators, the toddler group which operated from the St Anne's Centre and school children that were not permitted to go off site during school times, but visited after school.

The kiosk would support outdoor enjoyment, which people were encouraged during the COVID-19 recovery period. The current operation included an ice cream van with limited stock which parked up in the car park with the engine is running all day. Councillor Savory advised that the best two reasons for supporting the project was that it promoted tourism and would create at least one job and possibly more in busier periods.

Councillor Savory continued that she was pleased to see from the Officers report that the concerns of the one objector had been properly considered by Officers including Environmental Health, however, no objections had been raised, subject to the conditions listed in the report.

Ms M Ferguson spoke on behalf of Mr and Mrs Bell who lived in the property located immediately to the west of the application site. They were likely to be most affected by the development proposed which would be positioned up to their garden boundary wall. The report stated that the proposal will be 20m from their home, however it would be 11m due to an extension which was not shown on the Ordnance Survey plans.

Mr and Mrs Bell were worried about increased noise in close proximity to their property, as well as odours from the proposed sale of hot food as well as the toilets. Residents on the east side of the recreation ground suffered from anti-social behaviour and other problems associated with the existing toilets and they did not want the same problems.

Ms Ferguson advised that the proposed building would be a focal point for those queuing for and eating food sold on the premises and bring more intensive activity and noise closer to the property. It was not proper to justify this increased disturbance on the fact that there were other activities close by that happened to be built using permitted development rights such as the play equipment.

Ms Ferguson confirmed that they had consistently raised concerns about how the application has been described and it wasn't a barrister had been appointed that and there was an associated threat of judicial challenge that the application was withdrawn from the last committee and the description of the development and associated recommended conditions were changed.

Nevertheless, there were still fundamental concerns about the application and the way it had been put forward and justified in the officer's report. Firstly, whilst the report described the existing building as being in use for storage, the application description still stated 'pavilion'. This was misleading in the extent of activity perceived in connection with the current structure.

Secondly, it was clearly the intention of the applicant to serve more hot food than jacket potatoes as indicated on the revised menu as was alluded to by the list of equipment in condition number. If the intention was to only sell jacket potatoes, cold sandwiches and ice cream, then what was the need for a toaster, sandwich toaster, waffle maker, microwave and bain marie, as well as a jacket potato cooker.

Furthermore, condition 6 required a scheme to control emissions and fumes from the hot food use to protect neighbours, which would not ordinarily be required for the cooking of jacket potatoes. It was the inconsistency between what was intended, what was proposed, and how the proposed use would be controlled which caused Mr and Mrs Bell a great deal of unease.

Ms Ferguson suggested that there seemed to be a reluctance to call the proposal what it was; a shop selling hot food to takeaway, a hot food takeaway, because a hot food takeaway would be contrary to policy 30 of the County Durham Plan.

Policy 30 stated that in order to promote healthy lifestyles in young people, proposals for takeaways within 400 metres of a school would not be permitted. Further consideration would need to be given to the impact that the development would have in terms of noise and odours. Where it was considered that the proposal would give rise to unacceptable impact, the application should be refused.

The application use was described as sui generis which meant in a class of its own and this was the reason for saying the proposal would not be subject to Policy 30 which related to A5 hot food takeaways only. However, the Government recently changed the use classes order removing A5 use – hot food takeaways were now sui generis. Furthermore, the menu was not, and could not be conditioned, and so the planning authority would, have no control whatsoever over the extent of hot food sold as opposed to cold food.

The Environmental Health Officer had recognised that a hot food takeaway would harm the living conditions of residents but raised no objection subject to a condition that the property did not operate as a hot food takeaway. Condition 6 required means of dealing with odour and fumes from the cooking of hot food on the premises which suggested otherwise. Such equipment could also cause noise problems, with fans operating constantly.

This building was right against the boundary of a residential property and nobody in the same circumstances would be content with this arrangement. Ms Ferguson asked Members to put themselves Mr and Mrs Bell's position and consider what they were being asked to approve and how it was proposed to be enforced and controlled. The correct recommendation, given the environmental health concerns about a hot food takeaway operating in such close proximity to residential property, and to a school, would be to refuse planning permission.

The Principal Planning Officer responded to confirm that he had reviewed the aerial images of and the distance measured was 20m. He confirmed that there were hot food elements however it was not in the hot food takeaway category due to the volume of food that would be sold and should there be an increase to the hot food element, he was satisfied that appropriate enforcement action could be taken.

The Chair queried the comments regarding the categorisation of the premises as sui generis and of the concerns that the hot food element could be increased in future. The Planning and Development Solicitor confirmed that the A5 use did not exist anymore however sui generis was not within a particular use or class but you could not move from one type of sui generis use to another without there being a material change in circumstances. If there was a material change in circumstances, then planning enforcement powers would be used.

With regards to the issue on separation distances, the Planning and Development Solicitor asked Ms Ferguson to clarify the position that the measurement was taken from and she advised that the measurement had been conveyed to her by Mr and Mrs Bell.

Ms Ferguson highlighted that the report did state what the application was a mixed use of and the Chair asked the Planning Development Solicitor to confirm whether he was satisfied that the conditions of the application would not allow this to morph into a hot food takeaway.

The Planning Development Solicitor advised that the main possibilities for this particular application were;

- A1 Retail use (EA) with an element of hot food takeaway use.

- A5 use (sui generis)
- Primary hot food takeaway with retail use
- Composite/mixed use

The Principal Planning Officer had confirmed that there was a mix of retail and hot food takeaway use, however it was generally of a mixed use and therefore sui generis. He advised that there could be fluctuations of the two mixed use without a change of use taking place, but there was no fixed percentage. Notwithstanding should the hot food sales start to significantly outweigh the cold food, the conclusion would be that the application was no longer of mixed use and was actually a hot food takeaway and the Council had the ability to use enforcement powers.

Councillor Jewell advised that the Committee were to decide whether the application was appropriate or not and not on predictions of what may or may not happen in future. He considered that the conditions included mechanisms to take action should any of the scenarios mentioned by the objector should come to fruition.

The Applicant, Ms S Ramshaw, confirmed that this was a popular recreation area with residents and visitors due to the various amenities. The kiosk would be in a suitable area to the north east of the site. St Annes centre had been considered as a venue for the additional toilet facilities but was considered unsuitable due to safeguarding issues regarding to the use of the building by external parties.

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In response to a question from the Chair, Ms Ramshaw confirmed that a contractor had been approached to run the business on the hours proposed in the application.

In response to a further question from the Chair, the Principal Planning Officer confirmed that the school had not been directly notified, but the appropriate notices had been put up. Although the Committee had been advised that the school children would not be allowed off the school premises during the day, this was a matter of school policy. There was a condition 5 which restricted the nature of the food and condition 5 covered the nature of the food served, if the premises was found to be using deep fat fryers to serve chips, they would be in breach of that condition. The Principal Planning Officer advised that the kitchen area did not have a lot of kitchen area and it was not feasible to operate a hot food takeaway.

Councillor Jewell referred to the situation with an ice cream van operating from the car park with its engine running and concluded that the proposal

was a lot healthier and safer. The objections were based on assumptions that there was going to be an unhealthy element to the kiosk and he was in favour of the proposal over the current operation.

Councillor Chaplow agreed that this would be a positive addition and advised that if a person wanted a hot meal, there were cafes in the area. This was an application for children to have snacks and drinks on the way home from school.

Councillor Blakey concluded that this was more of a sandwich shop and she was satisfied that the conditions attached would keep it that way.

Councillor Blakey moved the recommendation to approve as per the conditions outlined in the report, seconded by Councillor Atkinson.

The Planning Development Solicitor asked the Principal Planning Officer whether he accepted that the separation distance was 20m or 11m and whether it made a difference either way to the recommendation. The Principal Planning Officer confirmed that in the event that the distance was less than 20m, the property was separated by a close boarded fence and mature screening and therefore he was satisfied that this would not result in loss of amenity and justify refusal.

Resolved:

That the application be APPROVED subject to the conditions outlined in the report.