

3/2020/0911

APPLICATIONS DEFERRED AND DELEGATED TO THE DIRECTOR OF DEVELOPMENT SERVICES SUBJECT TO A SECTION 106 AGREEMENT RECOMMENDATION FOR PLANNING AND DEVELOPMENT COMMITTEE

DATE: 9 OCTOBER 2007

REF: SW/CMS

CHECKED BY:

APPLICATION NO: 3/05/0999/P (GRID REF: SD 7655 4354)
PROPOSED USE OF CAFÉ AS RESTAURANT OPEN UNTIL 12PM (MIDNIGHT) ON THURSDAY TO SATURDAYS (RETROSPECTIVE) AT SHACKLETON'S GARDEN CENTRE, CLITHEROE ROAD, CHATBURN

PARISH COUNCIL: No comments received in relation to the revised hours at the time of report preparation but originally commented as follows:

Has viewed the planning application relating to this site and has the following observations to make.

1. We have requested that there be no further retrospective planning applications.
2. The village already supports four licensed premises which adequately cater for the public in later evening, and the Parish Council has concerns about further alcohol abuse in the village.

ENVIRONMENT DIRECTORATE (COUNTY SURVEYOR): Had no objections to the originally proposed development as detailed in the supporting statement. No comments received in relation to the revised hours at time of report preparation.

ADDITIONAL REPRESENTATIONS: One letter of objection has been received in relation to the revised hours as follows:

1. This is supposed to be a garden centre not a nightclub.
2. Object to loud music played – the doors are thrown wide open and the noise can be heard in the centre of Chatburn.

Proposal

Retrospective consent is sought for use of the café and restaurant and extending the opening hours of the restaurant at Shackleton's Garden Centre until midnight on Thursday to Saturdays.

Site Location

The garden centre lies to the south of Clitheroe Road outside the defined settlement limit with in land designated as open countryside. Opposite the application site are industrial units and a petrol filling station.

Relevant History

3/2007/0329/P- Replacement and extension of aquatics building and installation of 2 fire doors in replacement building approved under planning reference 3/2005/1034/P. Approved with conditions 30 July 2007.

3/05/1034/P – Replacement of seven bay polytunnel with larger permanent building and alterations to conservatory (resubmission) – see elsewhere in this Agenda.

3/05/1000/P – Increase in the range of goods for sale to include homeware, gifts and indoor fish (retrospective) – see elsewhere in this Agenda.

3/05/0998/P – Modification of condition No. 4 on planning consent 3/99/0399/P to allow the opening of the garden centre to 8pm on Thursdays and Fridays – see elsewhere in this Agenda.

3/05/0508/P – Proposed replacement of seven bay polytunnel with larger permanent building, alterations to conservatory, extension of car park into a growing-on area and replacement of part of the car park with a growing-on area. Refused 28 October 2005.

3/04/0059/P – Extension to shop, display area and open sided covered area and extension existing conservatory (resubmission). Approved with conditions 4 March 2004.

3/03/0802/P – New shop display area. Open sided covered area and extension to existing conservatory. Approved with conditions 31 October 2003.

3/03/0098/P – Change of use of agricultural land to provide additional parking, turning circle and growing on area for garden centre, creation of two new accesses, re-routing of footpath. Approved with conditions 10 Jun3 2003.

3/02/0831/P – Erection of two poly tunnels with stone front elevation. Approved with conditions 26 November 2002.

3/00/0554/P – New poly tunnel replacing existing greenhouse (phase 2). Approved with conditions 6 September 2000.

3/00/0551/P – New poly tunnel replacing existing greenhouse (phase 1). Approved with conditions 6 September 2000.

3/99/0399/P – New garden centre building, change of use of site from nursery to garden centre. Approved with conditions and subject to Section 106 Agreement. 18 September 2000.

Relevant Policies

Policy G1 - Development Control.

Policy S8 - Garden Centres.

Environmental, AONB, Human Rights and Other Issues

This application was originally presented to Planning and Development Committee on 6 February 2006 at which time it was deferred and delegated to the Director of Development Services to tie the restaurant to the overall garden centre site. The legal agreement was also to govern the range of goods to be sold from the garden centre site and that agreement has now been drafted and is included elsewhere on this agenda for Committee's consideration. It has however become apparent in recent months that the restaurant, whilst having a premises licence in line with the previously suggested hours of 11pm closure Thursday to Saturday, has sought Temporary Event Notices for extended opening until midnight for one-off events. Had the Section 106 been signed and this planning consent issued, these events would have been in breach of those hours. Therefore given the legal agreement is still to be finalised, it was considered an opportune time to suggest that the applicant revise the proposed hours of opening under this original planning submission. The report which follows is the same as that presented to and agreed in principle by Committee in February 2006 apart from the final paragraph which has been revised to take into account the later opening hours and resultant revised comments of one of the Council's Senior Environmental Health Officers.

Matters for consideration relate to both the principle of use and whether the extended hours would have an adverse impact on neighbouring amenity. When permission was granted for the change of use of the site from nursery to garden centre under 3/99/0399/P, as well as imposing an hours restriction on the premises (as outlined in 3/05/0998/P – elsewhere in this Agenda) a Section 106 Agreement was entered into by the applicant with the relevant clause being "not to allow the property subject of the development to be used other than as a garden centre for the sale of garden and landscaping products with no other retail use". This was done in order to meet the requirements of Policy S8 of the Districtwide Local Plan which aims to ensure that once granted permission as a garden centre sites continue to be operated as such with no other retail uses that would otherwise be permitted under Use Class A1. This fact is recognised by the applicant's agent who, in a supporting letter to the application, refers to the fact that in other situations an increase in the range of goods would remain ancillary to the main use of the site as a garden centre in the same way that the café is ancillary to the garden centre. I would however question whether the existing café is indeed ancillary to the primary use of the site as a garden centre given that it operates in, and has become a popular destination in its own right – under the Premises Licence the application is made by Pavilion Restaurant and not Shackleton's Garden Centre. The matter of an ancillary use or not aside, its use as café or restaurant would still be at odds with the terms of the Section 106. Thus Committee should consider whether the principle of permitting a café/restaurant is appropriate and secondly whether extending the hours of this part of the establishment to 11pm on Thursdays to Saturdays would significantly impact on existing amenities.

With regard to the actual site usage, the spirit of Policy S8 of the Local Plan and the Section 106 is to prevent an unfettered A1 use of this open countryside site. Should planning permission be granted, separate consent would be required to revoke/amend the Section 106 Agreement to match any approval given. It is common place to find cafés at garden centres but, in this instance, I am of the opinion that the pavilion restaurant has become a destination in its own right. Therefore, its usage is, I believe, within Class A3 Restaurants and Cafés of the Use Classes Order as amended and should be considered on that basis. The Highway Engineer has no objection to the development and the use (already established on site) has not resulted in any complaint to the Council. I am of the opinion that the facility is an important element of the overall site usage and is a well used facility. Therefore, whilst recognising the reason for

imposing the Section 106 Clause on the site, in this particular instance I conclude that there would not be significant harm cause if an A3 Use was permitted on this part of the Shackleton's site. However, I would suggest that if Committee were minded to approve this application then permission be granted subject to a new S106 Agreement, which would seek to provide adequate safeguards to ensure that the predominant use of the site remained as garden centre. I also consider it should tie the ownership of the restaurant facility to the garden centre so that the overall planning unit is not split into different ownerships, as this may result in operational issues in respect of servicing the overall site.

In respect of the originally applied for revised hours until 11pm, these would have accorded with those applied for under the Premises Licence and to which colleagues in Environmental Health raised no objection on amenity grounds. It was felt that there is a public house some 120m to the north east which will be open until late into the evening and thus approval here would not be permitting opening hours in excess of those for other premises in the area. Concerns of the Parish regarding alcohol nuisance are noted, but this more a police matter under crime and disorder. They comment on four other licensed premises but Committee cannot take this into account in their determination of this matter as commercial competition is not a planning matter. Thus, whilst recognising that there are a small number of dwellings around the site, whose amenity may be affected by extended opening hours, I have also had regard to the distance they are from the application site. With regard to the 11pm finish it was concluded that given the distances involved (between 140m to 300m) any noise impact from comings and goings would not be significant enough to recommend unfavourably. The applicants are now asking for a midnight closure and this matter has been discussed with colleagues in Environmental Health given the objection which has been received. They have commented that the proprietors of Shackleton's have applied for a number of Temporary Event Notices under the Licensing Act 2003 to provide a venue for music and dancing in the restaurant area which has not generated complaints to Environmental Health. However, it would be appropriate in the light of this application for more regular use of the premises for this purpose that a Noise Survey be undertaken to assess the potential for noise nuisance with the findings submitted to the Planning Department to discuss with the Council's Senior Environmental Health Officer. It should identify abatement measures to minimise impacts on neighbouring amenity which can then be subsequently conditioned for implementation. This is an approach that has been adopted on other sites and would provide an enforceable planning means of control over noise attenuation measures - if Temporary Event Notices are granted there are no conditions attached. It is suggested that should Committee be minded to approve the application a Noise Survey be submitted for the planning and environmental health officers to consider. If the findings meet the requirements of the Environmental Health Officer then the application be approved but if adequate safeguards cannot be incorporated then the scheme be brought back to Members for further consideration.

Therefore, having carefully considered all the above, I recommend accordingly.

SUMMARY OF REASONS FOR APPROVAL

The proposal has no significant detrimental impact on nearby residential amenity, nor would it have an adverse visual impact or be to the detriment of highway safety.

RECOMMENDATION: That the application be DEFERRED AND DELEGATED to the Director of Development Services for approval subject to the satisfactory completion of a Section 106 Agreement to limit the extent of an A3 use on the site and ensure it is not severed from the primary use as a garden centre, to the submission of a satisfactory Noise Report identifying any

noise attenuation/abatement measures necessary to limit potential impacts on neighbouring amenity, and subject to the following conditions:

1. The use of the restaurant in accordance with the permission shall be restricted to the hours between 0800 hours and 1800 hours Monday to Wednesday, 0800 hours and 2400 hours Thursday to Saturday and 1000 hours to 1600 hours on Sundays.

REASON: In order to comply with Policy G1 of the Ribble Valley Districtwide Local Plan as use of the premises outside these hours could prove injurious to the character of the area and in order to safeguard residential amenity.

2. This permission shall relate to the Section 106 Agreement dated which restricts the extent of A3 use on the site and ensures it does not operate independently from the primary use as a garden centre.

REASON: For the avoidance of doubt as the proposal has been the subject of a Section 106 Agreement.

3. Within 4 weeks of the date of this permission the restaurant shall be insulated in accordance with the recommendations contained within the report prepared by dated and submitted in support of the application.

REASON: In order to safeguard neighbouring residential amenity in accordance with Policy G1 of the Ribble Valley Districtwide Local Plan.

PLANNING & DEVELOPMENT COMMITTEE AMENDMENTS

DATE: 9 OCTOBER 2007

<u>PAGE</u>	<u>APPLICATION</u>	
20	3/2007/0535/P	<p>Additional condition.</p> <p>9. Prior to commencement of development further details of bin storage areas and the access arrangements for such areas shall be submitted to the Local Planning Authority and approved in writing and thereafter maintained in perpetuity.</p> <p>Reason: To ensure adequate bin storage and to comply with Policy G1 of the Districtwide Local Plan.</p> <p>Recommendation 2: That the Section 106 Agreement be taken back to Planning and Development Committee.</p>
27	3/2007/0555/P	<p>Additional condition.</p> <p>12. Prior to commencement of development further details of bin storage areas and the access arrangements for such areas shall be submitted to the Local Planning Authority and approved in writing and thereafter maintained in perpetuity.</p> <p>Reason: To ensure adequate bin storage and to comply with Policy G1 of the Districtwide Local Plan.</p> <p>13. No work shall take place on the site until the applicant, or their agent or successors in title, has secured the making of a detailed record of the building. This must be carried out by a professionally qualified archaeological/building recording consultant or organisation in accordance with a written scheme of investigation which shall first have been submitted to and agreed in writing by the Local Planning Authority.</p> <p>REASON: To ensure and safeguard the recording and inspection of matters of archaeological/historical importance associated with the building in accordance with Policies G1, ENV14 and ENV15 of the Ribble Valley Districtwide Local Plan.</p> <p>Recommendation 2: That the Section 106 Agreement be taken back to Planning and Development Committee.</p>
37	3/2007/0657/P	<p>Deferred for further information in relation to highway and agricultural justification.</p> <p>Action Note – Graham to consult the County Surveyor and also request the Rural Estates Manager to either attend Committee or elaborate on such details relating to the likelihood of pressure for additional dwellings, whether or not there is a more suitable location within the ownership of the applicant. Also how water and feed</p>

		would be transported to the site. It may also be prudent to ask some of these questions to the applicant direct.
45	3/2007/0699/P	Deferred for further investigation in relation to issues of flicker and also a site option appraisal. Action Note – Colin to request details from the applicant on whether there is feasibility to relocate the mast further away from the house affected by flicker, and also investigate the possibility of a planning condition as well as obtain evidence from the objector regarding issues of flicker which would include the frequency and length of occasions.
53	3/2007/0721/P	Refused for the following reason: The proposal by virtue of the nature of the development and its location close to residential properties would result in conditions to the detriment of residential amenities and as such be contrary to Policy G1 of the Districtwide Local Plan.
74	3/2007/0575/P	Minded to Approve - Section 106 to go back to Planning and Development Committee.
70	3/2007/0888/P	Action Note – Sarah The Section 106 to go back to Planning and Development Committee with further details of the buildings and also the need to check that are no other outstanding Section 106 Agreements.