

REGULATORY COMMITTEE

27 APRIL 2022

REGULATORY COMMITTEE

A meeting of the Regulatory Committee was held on 27 April 2022.

PRESENT. Councillor Stuart Smith (Chair),
Councillors Ayre, Foggo, Foley-McCormack,
Gray, Head, Lockwood, Morgan, Ovens and
Watts.

OFFICIALS. E Dale, E Garbutt and C Griffiths

AN APOLOGY FOR ABSENCE was submitted on behalf of Councillor Baldwin.

85. **MINUTES**

RESOLVED that the minutes of the meeting of the Regulatory Committee held on 31 March 2022 be confirmed and signed by the Chair as a correct record

86. **PLANNING APPLICATION FOR DECISION.**

86.01 **R/2022/0119/VC Variation of condition 4 of Planning Permission R/2018/0668/CA to permit use of rear doors of conservatory up to 21:00 hrs daily.**

The Managing Director advised that Permission was sought for the variation of condition 4 of planning permission R/2018/0668/CA to permit the use of rear doors of conservatory up to 21:00 hours each day.

The application related to 18 The Wynd, Marske. The application site was a commercial property which was located within Marske designated centre and within Marske Conservation Area.

Permission was granted in 2019 for a side extension and conservatory to create a café / drinking establishment. Members approved the application at Regulatory Committee and requested the following condition;

The set of doors on the rear (north facing) elevation of the conservatory hereby approved shall be used in an emergency only.

REASON: To ensure that the doors are not left open or used on a regular basis in order to protect residential amenity in accordance with policy SD4 of the Redcar and Cleveland Local Plan.

The application sought consent to vary the condition to:

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The set of doors on the rear (north facing) elevation of the conservatory hereby approved shall only be available for use until 21:00 daily unless in the event of an emergency.

REASON: To ensure that the doors are not use on a regular basis after 21:00 in order to protect residential amenity in accordance with policy SD4 of the Redcar and Cleveland Local Plan.

The applicant had provided the following supporting information:

1: It has been suggested that the conservatory doors continue to be used, regardless of the decision from the council; that they are only used in an emergency.

I have CCTV that clearly shows the doors have remained shut. If I have tested the doors, to make sure that they remain operational, I have recorded this in my incident book.

2: In the event we've had live music played at the premises, it has never been a band, it's only ever been a singer or a duo, and they have only ever performed in the main part of the building, never in the conservatory. This is to keep noise levels for neighbours to a minimum. In the last 12 months, there has only been 3 live music events. We have aircon in the premises, so windows were closed for these events at the start of the event and well before our 9pm regulation time. I check noise regularly by going outside and listening.

3: The fence that separates my garden and the waste land to the side is in disrepair.

We have had many lengthy discussions with the owner of the land, even communicating via his solicitor.

We have tried to have something more substantial built, at a cost to ourselves but to no avail.

Unfortunately, most shrubs and trees have been cut down and removed, by the landowner, which was providing privacy and a sound barrier to the neighbours. •I had no control over this.

I have had staff and customers come up to me and inform me that they have been spied on whilst in the outside space, with pictures and videos being taken of them. We don't really think this is acceptable nor do we think the state of the land is acceptable either. It has become an eye sore and a breeding ground for rats.

The consultation exercise had resulted in 68 representations having been received making the following comments:-

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- As a member of staff horrified we cannot use the back doors and have to carry drinks around the building.
- No additional noise came from the inside.
- Rarely had music.
- Government were encouraging airflow and windows and doors to be opened.
- Concerned about the welfare for staff and customers.
- The premises were an enhancement for Marske.
- Customers were respectful.
- Love the noise of successful businesses.
- People need to learn to live with each other and successful businesses.
- Health and safety issues if doors were not used.
- Usually no loud noise.
- The use of the back doors would reduce activity down the side of the building which was close to residents.
- It was a silly restriction.
- No objections
- Use of doors would not increase noise to unacceptable levels
- Management put things in place to reduce any impacts and were considerate.
- Agreed with the plans
- Business was hindered by the condition.
- Do not see any issues.
- Other businesses were allowed to have doors open.
- Impacts on business operation
- Could not believe issue was still on-going.

12 representations **objecting** to the application which made the following comments;

- Conflicted with policy SD4.
- Noise pollution issues.
- Doors were open already and were causing issues.
- Previous appeal had failed.
- Local residents were not able to use gardens due to noise issues.
- Loud music from the premises.
- People get louder as the night goes on.
- Limits residents being able to open windows and doors.
- No consideration for neighbours.
- How could this be looked at again.
- As numbers of people inside the premises increase the noise levels would only get worse.
- Beer garden does not have permission.
- Raising of ground levels.
- Fence was too low.

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- Issues with overlooking.
- Nothing done to address previous concerns.
- A noise assessment should be completed.
- Applicant showed disregard to council and neighbours.
- Business did not need these doors open to operate.
- As soon as doors open the noise increases.
- Impacts on people sleeping
- No faith in the applicant.

Saltburn, Marske and New Marske had no comment to make.

Redcar and Cleveland Borough Council (Conservation Advisor) had no objection. The proposal was not considered to have an impact on the conservation area, thereby preserving its character as required by Policy HE1 of the adopted Local Plan.

Redcar and Cleveland Borough Council (Environmental Protection) (Nuisance) confirmed that they had assessed the following environmental impacts which were relevant to the development and would comment as follows:

“The EP department has previously objected to applications concerning the use of the conservatory due to the potential that noise from the proposed development could cause a material change in behaviour and/or attitude for neighbouring residents, e.g. residents having to keep windows closed most of the time and being affected within their gardens.

Although a noise assessment has been carried out this did not include the use of the conservatory for live music events which have occurred since.

There have been no modifications to the fence since the previous applications and as stated previously it is totally inadequate to attenuate noise from patrons and Live music from the premises.

The applicant has not provided any further information detailing how any noise will be attenuated or mitigated from the premises.

The EP section is currently not in receipt of any complaints however there is a likelihood that complaints will be received due to warmer weather and lighter nights without any mitigation from a noise barrier.

If the planning committee are minded to grant this application I would recommend that this should only go ahead after a scheme and implementation for a more substantial fence/noise barrier is submitted to the LA for approval.

I would also add as a note to the applicant that no live music should take

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place within the conservatory with the doors open.”

The Managing Director advised that the main consideration in the assessment of the application was;

- The impacts on neighbour amenity

The application site was located within the commercial centre of Marske, however it was acknowledged that it was on the edge of the commercial centre and was adjoined by residential properties to the north and east.

The condition which was the subject of this variation was imposed by Regulatory Committee through the granting of permission for the conservatory in 2019.

One of the previous applications which was refused and taken to appeal sought to allow the use of the back doors to allow staff to go about their job. The Inspector considered that the revised wording suggested would be complex and not enforceable.

The Inspector dismissed the appeal and stated the following;

“8. It is evident that during the daytime period, the access and yard area to the north of the parade is subject to activity in the form of deliveries and other comings and goings related to the various businesses. Given the nature and intensity of use of the café bar during the daytime, I do not conclude that the use of the doors to the conservatory as access for deliveries to the appeal premises could reasonably be considered to result in levels of noise and disturbance that would in the context of this commercial parade be either unexpected or have an unacceptable impact on the living conditions of nearby dwellings. With regards this aspect of the potential use of the conservatory access, I therefore agree in part with the appellant that the condition for the daytime period is therefore unduly and unnecessarily onerous.

10. Turning to the effect of the use of the access during the evening periods, as observed, the hours of opening of the premises in the adjacent parade are largely restricted to daytime hours, albeit that I noted that The Wynd Pantry is open until early evening on several evenings a week. As a consequence, the permitted opening of the appeal premises until 2300 hours on a daily basis is something of a departure from the prevailing character of use of the parade and given the overall much lower background noise levels in the vicinity during the evenings, any noise and disturbance, even if momentary, could have a more significant impact on noise-sensitive receptors.”

The appeal decision concluded that restrictions on the use of the patio doors during daytime houses was unnecessarily onerous and also

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confirmed activity in the area for other businesses. However, there was concern over potential operating until 23:00.

The applicant then sought to remove the condition through an application submitted last year. Members refused this application for the following reason:

Removal of the condition would allow for unrestricted use of the back doors until the permitted closing of the business at 23:00 which has the potential to cause significant levels of noise and disturbance to those existing residential properties to the north and east of the application site. The proposal would therefore have a significant adverse impact on the amenity of occupiers of existing buildings contrary to part b of policy SD4 of the Redcar and Cleveland Local Plan.

Members agreed with the previous appeal decision and were concerned with the potential use of the patio doors until 23:00 hours.

It was acknowledged that the rear garden was in use by the premises and was not controlled through planning.

The use of the doors until 21:00 was considered on-balance to be acceptable. The use of the doors until this point would assist with the operation of the business and would not generate activity and noise until an unacceptable time (late in the evening) therefore ensuring there would be no adverse impact on residents.

The variation of the condition had no impacts in terms of character and appearance of the area, conservation area, highways safety or crime prevention and accords with all other aspects of policy SD4 and policy HE1 of the Redcar and Cleveland Local Plan. The variation of the condition did not impact on the vitality and viability of the commercial centre and the application raised no issues with policy ED1 of the Redcar and Cleveland Local Plan.

The application had been considered by the Council's environmental protection team and it was noted that no objection had been received. It was noted that a number of mitigation measures were suggested within the response, a number of which were controlled under separate legislation outside of planning and a number of which could be carried out without the need of planning permission.

The application fell within the catchment for nitrate neutrality however was outside of scope for requiring additional information / assessment.

For the reasons outlined above the proposal was considered acceptable.

The use of the doors until 21:00 hours would not have a significant

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adverse impact on the amenity of occupiers of existing buildings and the proposal would accord with part b of policy SD4 of the Redcar and Cleveland Local Plan.

The objectors at the meeting made the following comments:-

- Live adjacent to the premises and still hear the live music;
- We have to keep our doors and windows shut;
- How are noise levels controlled or policed;
- Applicant told previously to keep doors shut and this never happened;
- We were here 7 months ago discussing the same issues when it was unanimously refused;
- The premises were busy and noisy inside and outside;
- Aware when the doors were left open as there was a significant increase in noise levels;
- The rear doors being open did not offer a safer route as there were steps to negotiate;
- Stated previously that the doors were for emergency use only;
- If condition 4 was varied would the owner adhere to it;
- On the 27 August the owner was served with an intention to enforce notice and yet the doors were left open on the Friday, Saturday and Sunday following;
- The owner advertised that she was open till 11.30pm Friday and Saturday despite condition 3 stating that they would not operate beyond 11pm;
- There had been no attempt to build a more substantial fence;
- The proposal was contrary to Policy SD4;
- An investigation by the Ombudsman was ongoing;
- Asked if a Certificate of Lawful Development had been issued and if so, when? Condition 4 was applied by this Committee after intensive questioning;
- The Planning Inspector recognised neighbouring properties as noise sensitive receptors;
- The decision to impose condition 4 was fair, reasonable and essential;
- The appeal decision identified that the impact of noise would be more significant at night;
- Environmental Protection expressed noise concerns and nothing had been done to address those concerns;
- The proposal was contrary to the NPPF;
- How could you ensure that noise levels would not have a significant impact on our amenity;

The supporters present at the meeting made the following comments:-

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- As an employee it was important to have the use of the doors for easy access;
- Health and safety risk to carry laden trays down the side path;
- Customers liked to sit outside and for those who were less steady on their feet this would offer a safer route and access to the toilets;
- Customers sitting in the garden may create noise and laughter but no more than emanated from the local playing field and school;
- Windows and doors would be closed by 9pm;
- Seating was also offered at the front of the premises;
- Customers were advised to keep noise to a minimum;
- Whilst the Covid situation was much improved it was still safer to leave doors open;
- The owner was a responsive employer;
- The premises were an enhancement to Marske;
- The open doors would not increase noise levels in the garden from the existing noise level;
- The last couple of years had brought home the need to support each other and come together as a community;
- Customers come to the premises to relax and share;
- Premises like this were an integral part of the community;
- Obvious situation for a compromise;
- Small businesses had been badly hit during the pandemic therefore it was important not to put obstacles in their way;

The applicant was present at the meeting and made the following comments:-

- Opened the premises in February 2019 and had survived the Covid restrictions by adapting and opening the outside space;
- Pride ourselves on being a happy and welcoming establishment;
- We should be supported and not hindered;
- The opening of the conservatory doors would make life easier for our staff;
- Open weekdays till 5pm and 11-11.30pm at weekends;
- The accusation that I have had total disregard towards the previous conditions were untrue;
- I have the upmost faith in my staff and all windows would be closed before 9pm;
- To avoid windows and doors having to be open in the summer air conditioning had been fitted;
- A radio was played just to provide background noise;
- So far this year there had been 3 occasions when a singer was booked but the windows were closed before 9pm and the conservatory doors would be the same;
- The fence to the wasteland had fallen into disrepair and attempts to renew at my expense had fallen on deaf ears;

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- Most of the shrubs had been removed by the occupier of the neighbouring property and it was used as a dumping ground;
- Happy to compromise and not open the doors late of an evening.

Following the presentation of the report of the Managing Director and taking into account the representations, the Committee made the following comments:-

- If noise from an entertainment venue could be heard in neighbouring properties then it was too loud and environmental protection would get involved taking decibel readings both in the venue and neighbouring residential properties;
- Health and Safety would improve by opening the conservatory doors;
- The noise in the garden was higher than the noise inside the premises therefore opening the conservatory doors till 9pm would not make a difference;
- Marske was an up and coming town with lots of new licences and the square was noisy and vibrant;
- Even without music the garden would produce noise and would be heard by adjacent residents;
- Having the doors open would not create more noise;
- The fence needed to be sorted and would like to see both parties come together to make that happen;
- Live music was not frequent;
- Concerned how the closing of the doors would be enforced
- The proposal had been passed and endorsed by the Planning Inspector and he stated that he was comfortable with the doors being open during the day but that issues might arrive of an evening;
- There were benefits in living close to a commercial centre but the disadvantage was the noise;
- This request for the opening of the doors until 9pm was a compromise;
- Any breaches would be dealt with by the statutory bodies;
- Saddened that there had been no solution regarding the fence which would reduce noise;
- An automatic door closure system would solve the problem;
- If live performances generally start at 7pm suggest the doors close at 7pm.

RESOLVED that Planning Permission be granted subject to the following conditions:-

1. The set of doors on the rear (north facing) elevation of the conservatory hereby approved shall only be available for use until 21:00 daily unless in the event of an emergency.

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REASON: To ensure that the doors are not use on a regular basis after 21:00 in order to protect residential amenity in accordance with policy SD4 of the Redcar and Cleveland Local Plan.

87. **DELEGATED DECISIONS.**

The Managing Director circulated as schedule of delegated decisions determined by the Corporate Director for Growth, Enterprise and Environment under the delegated power procedure.

:-NOTED.

88. **APPEAL INFORMATION.**

The Managing Director presented Members with a schedule of the appeals which had been received.

:-NOTED.

89. **ENFORCEMENT SCHEDULE.**

The Managing Director presented Members with the schedule of enforcement actions which had been undertaken.

:-NOTED.

90. **SECTION 106 AGREEMENTS.**

The Managing Director presented a response to a recommendation of the Tees Valley Audit and Assurance TVASS report (April 2016) in respect of the reporting of progress on the completion of Section 106 Agreements.

:-NOTED.

91. **DEEMED CONSENT APPLICATIONS.**

91.01 **R/2022/0086/VC Variation of condition 2 (Approved Plans) of Planning Permission R/2019/0071/F3 to enable development Swans Corner Roundabout Guisborough Road Nunthorpe.**

Deemed Consent Granted subject to the following conditions:-

1. The development hereby permitted shall be carried out in accordance with the following approved plans:

General arrangements received by the Local Planning Authority on 03/02/2022

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REASON: To accord with the terms of the planning application.

- 91.02 **R/2022/0097/CA Repairs & rebuild of entablature, stonework; replacement of timber lintels with timber boxed steel beams, re painted surfaces, reinstatement of original design ceiling, addition of roof structure, provision of ceiling lighting and new electrical supply, additional paving Albert Memorial Glenside Saltburn.**

Deemed Consent Granted subject to the following conditions:-

1. The development shall not be begun later than the expiration of THREE YEARS from the date of this permission.

REASON: Required to be imposed pursuant to Section 91 of the Town and Country Planning Act 1990.

2. The development hereby permitted shall be carried out in accordance with the following approved plans:

Location plan received by the Local Planning Authority on 08/02/2022

Site plan received by the Local Planning Authority on 02/03/2022

Proposed plans and elevations received by the Local Planning Authority on 08/02/2022

REASON: To accord with the terms of the planning application.

- 91.03 **R/2022/0098/LB Listed Building Consent for repairs & of entablature, stonework; replacement of timber lintels with timber boxed steel beams, re painted surfaces, reinstatement of original design ceiling, addition of roof structure, provision of ceiling lighting and new electrical supply, additional paving Albert Memorial Glenside Saltburn.**

Deemed Consent Granted subject to the following conditions:-

1. The development shall not be begun later than the expiration of THREE YEARS from the date of this permission.

REASON: Required to be imposed pursuant to section 18 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

2. The development hereby permitted shall be carried out in accordance with the following approved plans:

Location plan received by the Local Planning Authority on 08/02/2022

Site plan received by the Local Planning Authority on 11/02/2022

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Proposed plans and elevations received by the Local Planning Authority on 08/02/2022

REASON: To accord with the terms of the planning application.

91.04 **R/2022/0143/CA Installation of heritage railings to front of gardens 2-12 Milton Street Saltburn.**

Deemed Consent Granted subject to the following conditions:-

1. The development shall not be begun later than the expiration of THREE YEARS from the date of this permission.

REASON: Required to be imposed pursuant to Section 91 of the Town and Country Planning Act 1990.

2. The development hereby permitted shall be carried out in accordance with the following approved plans:

Drawing No PLNG795 Location Plan received by the Local Planning Authority on 11 February 2022

Site Plan received by the Local Planning Authority on 18 February 2022

Drawing no PLNG794 Existing and Proposed Elevations Plan received by the Local Planning Authority on 11 February 2022

Railing Specification received by the Local Planning Authority on 11 February 2022

REASON: To accord with the terms of the planning application.

92. **DEVELOPMENT MANAGEMENT PERFORMANCE REPORT.**

The Managing Director circulated the Quarter 4 2021/22 Performance Report.

:-NOTED.