
From: north1@planninginspectorate.gov.uk
Sent: 07 June 2022 10:06
To: KMBC DC Consultations
Subject: External Mail: COMMERCIAL:Planning Inspectorate APP/V4305/W/22/3293572:
The Farmers Arms, L33 1XD
Attachments: 217 - Enclosing Final Comments - Both Parties - Technical Support - 07 Jun
2022.pdf; THE FARMERS ARMS PLANNING APPEAL FINAL COMMENTS
STATEMENT - MAY 2022.pdf

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The Planning Inspectorate (England)
Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN

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The Planning Inspectorate

Room 3M
Temple Quay House
2 The Square
Bristol
BS1 6PN

Direct Line: 0303 444 5333
Customer Services:
0303 444 5000

Email: North1@planninginspectorate.gov.uk
www.gov.uk/planning-inspectorate

Your Ref: 21/00759/FUL
Our Ref: APP/V4305/W/22/3293572

Technical Support
Knowsley Metropolitan Borough Council
Business Support Officer
Planning Services Division
Municipal Buildings
Archway Road
Knowsley
L36 9UX

07 June 2022

Dear Sir/Madam,

Town and Country Planning Act 1990
Appeal by TISA PROPERTY LIMITED
Site Address: The Farmers Arms, Kirby, L33 1XD

I enclose for your information a copy of the appellant's final comments on the above appeal(s). Normally, no further comments, from any party, will now be taken into consideration.

Yours sincerely,

Anton Godfrey
Anton Godfrey

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THE FARMERS ARMS, MOORFIELD, KIRKBY. L33 1XD

FINAL COMMENTS STATEMENT

STATEMENT PREPARED BY:- MR MIKE CARR MSc MRTPI, MAT DESIGN LIMITED

ON BEHALF OF:- TISA PROPERTY LIMITED

PROPOSED DEVELOPMENT:- CHANGE OF USE FROM SUI GENERIS USE CLASS (PUBLIC HOUSE & HOT FOOD TAKEAWAY) TO USE CLASS E (RETAIL CONVENIENCE SHOP) TOGETHER WITH THE ERECTION OF 2.0M FENCING AND ACCESS GATES AND ASSOCIATED CAR PARKING

DATE: MAY 2022

1. INTRODUCTION

This final comments statement has been prepared following consideration of the Local Planning Authorities appeal document and we will identify 4 significant areas of concern. Those are:-

- The submissions made by internal and external consultees (submitted with the questionnaire) that have now been made available to the appellant;
- Representations made by neighbours/third parties,
- A review of the LPA case officer report;
- Why the proposed development has not been properly considered by the LPA against the provisions of Local Plan Policy CS12, given that the appeal site falls squarely within the Tower Hill Action Area, which provides positive support towards new small scale enhancements to retail development and;
- The appeal conclusions.
- A costs application will be submitted separately.

2. INTERNAL AND EXTERNAL CONSULTÉES

2.1 ENVIRONMENTAL HEALTH ADVISER CONSULTATIONS

We are extremely concerned about the actions of the LPA in this case and in this appeal, particularly in relation to the representations made by their own Planning Environmental Health Advisers (EHO'S) as part of the planning application process.

Please bear in mind that the evidence referred to below was not made public on the Council web site and does not appear on the web page to this day (see the below link):-

https://epa.knowsley.gov.uk/PublicAccess_LIVE/SearchResult/RunThirdPartySearch?FileSystemId=DC&FOLDER1_REF=21/00759/FUL

Furthermore, we must also highlight and question why the LPA case Officer makes no reference or any assessment in the officer report, as to the submissions made the same EHO, so as to offer such conflicting advice. We must also question LPA reached its decision to refuse the planning application in the first place, based on the advice and evidence it had before it at that time in relation to environmental protection matters?

On the face of it, there appears to be no logical reason as to why one of the LPA's professional EHO's would firstly offer no objections, subject to conditions, then to revise those comments without evidence or changes to the planning application. These issues are considered in more detail in sections 2.1 – 2.4 below.

2.1 During the planning application process, the LPA EHO was consulted as part of the application process, which is standard practice for applications such as this in our experience.

On 28th October 2021 the Council EHO advised that having reviewed the submissions made, they had **no objection in principle to the proposed application, subject to various conditions**. All the relevant areas of environmental protection were considered in considerable detail in the consultation response, with various reasonably worded conditions proposed for the decision notice.

Those areas, which we consider were critical to the assessment of the planning application and to this appeal, included conditions relating to:-

- Opening hours of the premises are limited to 6:00 to 22:00 - See EHO response dated 28 October 2021;
- Lighting – See EHO response dated 28 October 2021;
- Fixed plan noise - See EHO response dated 28 October 2021;
- Deliveries - See EHO response dated 28 October 2021;
- Noise - See EHO response dated 28 October 2021 and;
- Waste storage and removal - Waste storage and removal.

Following that, and for some inexplicable reason, on **13th December 2021 and prior to ANY representations made by Merseyside Police**, the Council EHO effectively provided conflicting advice (and without any evidence or reason) and stated that “Environmental Health have reviewed the information submitted and have concerns in regards to the potential disturbance on the surrounding residents due to the noise associated with the activities from a retail convenience shop and the potential anti-social behaviour it could bring”.

We do not consider that there are any reasonable planning related reasons why this should have happened, and there is no explanation in the LPA officer report or in the LPA appeal statement.

2.3 In considering the above, we consider that the environmental control conditions that were put forward as part of the planning application process are entirely reasonable. The proposed conditions would ensure that the use of the site would be suitably controlled. Effectively, given that Local Plan Policy CS12 supports small scale enhancements to retail development, the proposed conditions would allow the site to function without detriment to the locality.

We agree with the EHO that the proposed conditions would ensure that the development would not cause environmental harm and minimise noise, so as to protect residential amenity. This advice was ignored by the LPA.

In terms of planning conditions, we would also like to add (see the proposed Crime Prevention Management Strategy) that the hours for the proposed use are limited until 21:00 hours closing and that CCTV cameras are installed to reduce/remove any aspects of Anti-Social behaviour on and around the site.

Taking the above mentioned factors into account, and after considering the LPA appeal statement, we would also questions why suitable conditions are not proposed by the LPA in the appeal statement, bearing in mind the formal response of the EHO on 28th October 2021?

Overall, and in terms of the proposed planning conditions made by the EHO, this would have ensured that the proposed development complied with Policies SD1, CS2, CS12 and CS19 of the Knowsley Local Plan Core Strategy and saved Policies H5 and DQ2 of the Knowsley Replacement Unitary Development Plan adopted June 2006.

2.4 In assessing the above, it is clear to us that there has been some sort of approach by the LPA to conceal, hide or ignore material planning considerations made by their own EHO, which must be fundamental to the assessment of this type of planning application, particularly when one bears in mind the reasons for refusal used by the LPA.

In this case, we can see no reasonable explanation as to why the EHO response and suggested conditions, would be replaced with an objection on 13th December 2021 when there had been no additional information submitted by the appellant.

Furthermore, we would also highlight and stress that there was no response from Merseyside Police as part of the planning application process until 21st December 2021, so the EHO changes could not rely on comments from Merseyside Police or any other planning related evidence.

Taking these factors into account, and that the role of the LPA is to assess all planning applications and representations made in the public interest and without prejudice to any applicant, we would have expected the LPA to be open, honest and transparent in their handling of any planning application. We do not consider that is the case here.

There are no references to the EHO advice of 28th October in the case officer report or the appeal statement, so it is entirely reasonable for us to ask WHY?

I would like make it clear that if we had known of this evidence at the time the appeal was made, we would have asked for an Inquiry so that evidence could be tested on Oath.

Unless there is some reasonable explanation or evidence for these errors/mistakes, I have to question the probity of the LPA in this case, which we consider (on the face of it) clearly designed to prejudice the appellants commercial opportunities.

2.5 MERSEYSIDE POLICE REPRESENTATIONS

Merseyside Police provided representations on the planning application (21/00759/FUL) on 21 December 2021, which we will look at in section 2.6.

However, we would highlight that there is also a response submitted with the LPA Questionnaire pack from Merseyside Police, as part of this appeal. This response is dated 18th January 2021 and relates to planning application 20/00655/FUL. Whilst this is the same site, that response related to a proposed use of the site that included a retail sales and a Hot Food Take Away. This document has no part to play in this appeal. Why has this been submitted by the LPA? Is this a further error?

2.6 There was a Merseyside Police response to planning application on 21/00759/FUL on 21st December 2021, which is referred to in the appellants appeal statement. This response is not included with the LPA submissions, neither is there a response from the Police as part of this appeal, given that they are an interested party.

In particular, the Merseyside Police response from 21st December 2021 highlights issues that are solely associated with the vacancy of the premises and the wider area, including levels of criminal activity and anti-social behaviours that have ensued since the premises closed. These issues have not and cannot have any association whatsoever with the proposed use, as it is not taking place.

What is clear is that if the site was allowed to operate for the proposed use, the conditions that were proposed by the LPA Environmental Health Adviser, along with a CCTV planning condition, would ensure that this site could operate sensitively and actually reduce the levels of crime and anti-social behaviours that clearly affect the area.

We consider, given that the proposed development is supported in this Action Area, that the LPA would work positively with all stakeholders, given the alternative fall back position, the hot food use and the extended opening hours into the early hours of the morning.

The Police also advised that there was no DAS accompanying this application and they would like to know how the applicant intends to manage the shop and particularly the rear of the premises within the proposed fenced area.

We provided a Crime Prevention Management Strategy Statement – February 2022 and as part of the appeal process, which effectively sets out how the site would be managed and how the site would operate on a day to day basis. We were never asked for this as part of the planning application process, despite Merseyside Police asking how the applicant intends to manage the shop and particularly the rear of the premises within the proposed fenced area.

Furthermore, when we provided the Crime Prevention Management Strategy Statement, we had absolutely no knowledge of the EHO comments made on 28th October 2021. We consider that the provides a direct link to the EHO's comments and provides a suitable and reasonable basis through which this site could operate without causing any demonstrable harm to the locality.

We consider that this is particularly relevant on the planning balance, given the lawful use of the site and the hours of operation for the lawful use.

2.7 PRE-APPLICATION ENGAGEMENT WITH MERSEYSIDE POLICE (LICENSING)

further to the above, we would reaffirm that prior to the preparation and submission of the planning application, we submitted a licensing request to Merseyside Police, which is standard practice for us when looking at new retail provision.

The enquiry was submitted to the Merseyside Police Licensing Unit on 24th August 2021, seeking a response as to a proposed new alcohol sales license for the proposed convenience store at The Farmer Arms.

EMAIL SUBMISSION TO THE MERSEYSIDE POLICE LICENSING UNIT

From: [Licensing Unit](#)

Sent: 24 August 2021 18:39

To: 'Ian Rushton'

Subject: RE: PROPOSED NEW PREMISES LICENCE AT THE SITE OF THE FARMERS ARMS PUB, MOORFIELDS, TOWERHILL, KIRKBY, L33 1XD

Good Morning Ian (Licensing Agent),

The Area Inspector is not adverse to the premises becoming another off licence, however he would like me to point out that there are problems in the vicinity from ASB, centred around scrambler bikes and drug taking.

As such we would ask that your clients be made aware of the situation and that stringent conditions be considered in order to deter youths gathering at the premises.

Julie Southern
LP Licensing Assistant
LP PST Licensing Team | Team B

Taking the above into account, we saw no reasonable plannign reason as to why the proposed development would not be approved in the Tower hill Action Area.

3. NEIGHBOUR CONSULTATIONS – PLANNING APPLICATION

As part of the planning application process, the LPA consulted Local Councillor's and **30** neighbours around the appeal site. The same process was carried out as part of the appeal process and the consultation list forms part of the LPA Questionnaire.

3.1 NEIGHBOUR RESPONSES TO THE APPEAL

From 30 neighbour letters, the following neighbour consultation responses were received as part of the planning application process:-

- 2 X Councillor objections;
- 1 x unsigned objection relating to hours and ASB;
- NONE of the neighbours on the consultation list objected to the planning application.

3.2 NEIGHBOUR RESPONSES TO THE APPEAL CONSULTATION

From 30 neighbour letters, the following neighbour consultation responses were received as part of the planning application process:-

- 2 X Councillor objections;

- 2 neighbour objections;
- 1 commercial objection from Mr Ajiab Singh the owner of Binny's supermarket for the in the nearby Local Centre and;
- 1 petition that was prepared by Mr Liam Sweeney, the owner of a shop in the nearby Local Centre. We have spent time looking at the petition and the addresses of the people that signed the petition. NONE of the signatories live or face towards the appeal site. Indeed, the majority of the signatories live up to 1.5 miles away!

We also understand from our own enquiries that residents who live near to the appeal site would not sign the petition as the did not agree with the assertions made. They considered that the replacement use would improve rather than detract from living conditions near to the site.

Overall, it is quite clear that the representations made predominantly relate to economic competitors seeking to compromise the appeal process for non-planning reasons. Furthermore, given that there are no objections for residents who are closest to the appeal site, one has to recognise that local people **do see the real local benefits of the proposed use**, particularly when the full weight of the lawful fallback position and use is placed into the planning balance.

Overall, what local people do realise is that the proposed use of the site offers an opportunity to replace a harmful and noisy use, which can lawfully operate between the hours of 11:00 - 24:00 hours Monday to Thursday, 11:00 - 02:00 hours Friday to Saturday and 11:00 - 01:00 hours Sunday into Monday. Furthermore, the proposed use does not have the levels of environmental protection offered by the appellant as part of this appeal process.

4. KNOWSLEY LOCAL PLAN POLICY CS12

NPPF paragraph 2 identifies that planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.

In this case, the appeal site falls within the Tower Hill Action Area, where Policy CS12 provides positive support towards new housing development, and small scale enhancements to retail, employment, leisure, education, health and community facilities. As such, we consider that the

proposals for the site fit squarely within the framework of Policy CS12, meaning that the adopted Local Plan positively supports the proposed change of use of the site as a small scale retail enhancement.

We do not consider that there are other material considerations that indicate otherwise, particularly if there is a positive use of planning conditions as directed in NPPF paragraph 55, which would mean that the lawful use is replaced and replaced with a more sensitive use that can be positively and reasonably controlled.

Taking the above into account, we must question why the LPA positively seek to distance itself from Local Plan Policy CS12 (The primary Policy for this Action Area), and do not provided any sort of policy assessment or analysis at either applciation or appeal stage. This must be detrimental to any reasonable consideration of the proposals for the site, given the land use allocation in which the appeal site falls.

5. CONCLUSIONS

We consider that the proposals for the site would comply with the development plan that is in force in Knowsley, particularly Policy CS12, and that the day to day running of the proposed convenience store would be positively and properly controlled through suitably worded plannign conditions, so as to ensure that the development complies with Policies SD1, CS2, CS12 and CS19 of the Knowsley Local Plan Core Strategy and saved Policies H5 and DQ2 of the Knowsley Replacement Unitary Development Plan adopted June 2006.

In reality, if the planning conditions that were originally proposed by the LPA's own professional officer had been applied, then this appeal could have been avoided in totality.

Through out this final comments statement, there are various example of processes and procedures that have no place in the planning process, which appear to have been designed to prevent the proposals for the site for none planning related reasons.

As such and taking all the relevant material planning considerations into account, we would ask that the Planning Inspector allows this appeal for a proposed use that complies with the adopted Development Plan.

MAT DESIGN LIMITED
Planning & Building Control Consultancy
Tel: 07850203448 Email
miketa@blueyonder.co.uk

Project:
THE FARMERS ARMS, MOORFIELD, KIRKBY.
L33 1XD - APPEAL DOCUMENT LIST

By:
MCC

Date:
31/05/2022
Revision:

A costs application will be submitted separately to this final comments submission.