

LATE ITEMS REPORT

FOR DEVELOPMENT CONTROL COMMITTEE MEETING OF 04 August 2008

ITEM B1 – 2007/630 Land at New Hall Hey, Rawtenstall

Two letters have been received

23rd July 2008 and 30th July email and letter letter sent to all DC members and to Linda Fisher .The letter contains an email from a potential operator / together with internal layout plans .

23rd July 2008 letter

This letter was received on Friday the 25th July 2008 by the Director.

- It is stated that matters have not changed; **at no time** has Hurstwoods said that there has been a contract with a health and fitness operator. Louise Brookes confirmed this point at the last Committee

response of the Director

Louise Brookes confirmed there was a contract in place at the last committee. The private and confidential information submitted to the Director confirmed that an agreement was in place with Louise Brookes.

- Hurstwoods state its only the officers who seek to deliver a health and fitness club at the Kwik Save site. Members have never expressed a desire to see only Louise Brookes health and fitness provided.

response of the Director

Hurstwoods continue to say that its the view of the officers that a health and fitness club should be delivered. Members are fully aware that this application was based on the delivery of the health and fitness club by at the time Louise Brookes - this was put forward as a material benefit in favour of approval for a scheme contrary to policy. It is always for the applicant to present their own case. Having not reached agreement to deliver with Louise Brookes the Development control committee specifically asked for clarification of what was now being proposed following Mr Ashworths confirmation that people were at the table "other health and fitness operators "

- Hurstwoods state they are concerned with the conflict of approach from the March 2008 committee. They state that members approved this on economic / regenerative / physical benefits also. Members they say considered the neutral retail impact arising from the swap of land uses.
- Hurstwoods state that they have at least 2 health club operators / facilitators interested. The operator names are confidential.
- Hurstwoods question whether we are now giving weight to viability issues which were accepted in March.

Directors response

There has been no conflict of approach . In march members were requested by the applicant to consider the swap of uses retail for retail / leisure for leisure. Linked with that argument was a business case suggesting that Louise Brookes would be subsidised by the Aldi permission. In other words without the Aldi approval the Leisure could not be delivered. While officers did not accept the financial case put forward it was nevertheless part of the applicants case to obtain approval and formed part of the considerations put forward. Officers have requested further clarification from the applicant on whether there is any such information being presented to substantiate why other leisure operators require the Aldi approval financially. No such information has been submitted despite requests from officers. It is accepted that the D2 permission is not personal to Louise Brookes. However the case presented by Hurstwoods in March 2008 revolved around Louise Brookes and the offer in terms of Leisure benefits that her business would deliver to the Borough. The applicant ran a case akin to a personal permission and now seeks to distance himself from any suggestion this was ever the case.

- Hurstwood then state that they accept that they will deliver 30,00sq ft of Leisure and that **the health and fitness club would be delivered at the same time as the opening of the Aldi. In other words if the health club is not delivered then an Aldi store can't open.**

Directors response

Officers consider that this offer is fundamental to deliver a leisure facility within the Borough and therefore realise the deliberation of this Committee previously in considering a number of material planning considerations against prevailing policy.

However, this position has now been superseded in that the covenants offered in the letter of the 30th July 2008 differ substantially to what has been expressed in their previous letter.

Letter of the 30th July 2008

The applicant has made a number of comments in respect of the Committee report. The points made are:

- 1 We are displeased with the update report and the fact that officers maintain their stance with regard to their recommendation concerning this application. We have put forward a number of suggestions that ensure the delivery of a health and fitness club at Kwik Save from a “land-use planning” point of view.
- 2 In my previous letter, we made it clear that we have interest in the site from the point of view of a health and fitness operation. In addition, both operators have expressed their interest in the building one of these we are considering a revised offer from which is being reviewed.
- 3 In order to resolve this matter, we ask you to consider the following revised wording for the suggested clause:
“ Prior to first occupation of the food retail unit the landowner will complete or procure the completion of the construction and fitting out ready to open of a health and leisure club on the Kwik Save land with an area of not less than 2900 square metre comprising swimming pool, spa, changing rooms, treatment rooms, exercise areas and ancillary facilities commensurate to a health and leisure club) and prior to first occupation of the food retail unit will either sell such club or grant a lease thereof for a term not less than 5 years to an entity which will only use such premises as a health club unless otherwise authorised in writing by the Council”
- 4 The revised wording would seem to address the points raised in the Committee report regarding the procurement process and delivery. The clause ensures that the Aldi unit cannot be occupied until we have completed or procured the completion of the construction and fitting out of a club. It also requires the landowner to either sell or grant a lease for the club for a period of not less than 5 years prior to the occupation of Aldi.
- 5 In our view, the suggested wording provides more than adequate control not only in terms of actually delivering a health and fitness club but also ensuring that the Aldi unit is not occupied until the clause has been satisfied.
- 6 We feel that this version of the clause fully addresses all the matters that members want to see. We feel that we can do no more here to meet the requirements of both officers and members alike. However if you feel that the clause requires further amending, it would be helpful if you could let us

- know the exact wording.
- 7 We trust that this would enable you to put forward a favourable recommendation on this application.

Directors response

The recommendation remains one of refusal from officers we received a covenant very late in the day from the applicant. The applicant has been informed that the officer recommendation remains one of refusal.

However a response has been sent outlining that the covenant proposed is not acceptable for the following reasons

A definition is required of what a health and Leisure club is - its the Councils suggestion that the wording should provide;

" shall mean a person or company which has a minimum of 5 years practical experience of running health and fitness operations such operators comprising the supply of health and fitness services facilities to paying members of the public such practical experience meeting with the reasonable written approval of the Council "

Reference to procurement of the completion could mean that the discount food retail store is occupied while the procurement process is ongoing. This is not agreed. A suggested covenant as follows has been put to the applicant.

- " Prior to first occupation of the discount food retail unit the landowner will construct and fit out and **open** a health and leisure club on the kwik save land with an area of not less than 2900 sq metres such operations comprising swimming pool etc "
- " Prior to first occupation of the discount food retail unit to use all reasonable endeavours to let or sell at market rate the Kwik Save land to a Health and leisure to be used only as a health and leisure club for a period not less than 5 years from the date of the transfer unless otherwise agreed in writing with the Council "
- evidence of such reasonable endeavours to sell or let to be presented to the Council - with reference to expert if the Council and the applicant cant agree such reasonable endeavours .
- The Council to be informed of all offers to let or buy
- The landowner to agree with the Council a marketing strategy prior to commencement of development in relation to the marketing of the site
- Covenants on the requirement to obtain alternative providers if / when the first health and leisure provider ceases to operate - with the same clauses on the let or sale and the marketing of such to be in

accordance with the agreed marketing strategy .

A lobbying letter has been received by Louise Brookes but no late items letters

Ms Brookes letter outlines that she has not been able to conclude any agreement with the applicants.

A letter has been received from Rossendale Leisure Trust

The Trust have requested clarification of what the Leisure offer will be at the Kwik Save site and they confirm that representatives of Hurstwoods have recently approached the Trust to deliver Leisure at the Kwik Save building. They state that Louise Brookes Leisure proposed a high quality club based on £40 plus private sector market something which was not provided for in the valley. If the operator is in the £20- £30 price band or below this would raise issues for the existing providers of Leisure in the valley.

Directors comments

The comments relate to commercial issues and competition which are not matters we can control through the planning process.

Overall conclusion from Director

- The application is contrary to PPS 6;
- How (then) does this covenant make an otherwise unacceptable development acceptable?
- The covenant means that the Kwik save unit will be fitted out as a leisure unit;
- It DOES NOT mean that the unit will be operated as a leisure unit. The LPA cannot compel someone to run a leisure operation on the site. The covenant allows for a situation where the fitted unit is left vacant (a “white elephant”);
- Ultimately, a leisure operator will only run a leisure operation on the kwik save site if there is a market to do so.
- What (then) will the covenant deliver over and above the extant leisure permission on the kwik save site?
- If there is a market for a leisure business, then the planning permission will (all other things being equal) be implemented.
- **The covenant therefore seems to add very little to the extant planning permission.**
- What weight should be attached to the covenant?
- On the basis of the above, very limited weight must attach to the covenant as a material consideration in the determination of the application.

- The Planning Committee must (then) determine whether it outweighs non-compliance with PPS 6.

Members should note that no determination has been made by the LPA on the application. The Planning Committee's determination (applying s.38(6) P&CPA (2004) has not been fettered by previous resolutions.

ITEM B2 - 2008/0403 Land adjacent Brook House, Coal Pit Lane.

A letter **raising objection** to the proposal has been received from the residents of Ash Tree Farm, Coal Pit Lane. The points made are:

- 1 Planning permission for the house was granted in 2005 with an access road running in front of rook House. Permission could have been refused if the access was sought via the land behind Brook House.
- 2 Our farm is situated on Coal Pit Lane and we are one of the few neighbours who use it as the only road of access to our property. Why we were not consulted about the proposed development.
- 3 The seven individual letters supporting the proposed development were obviously carefully canvassed.
- 4 Prior to the building of the applicant's house, the land was undeveloped, Coal it Lane was quite, peaceful, virtually vehicle free and a haven for wildlife. Surely the Council should be protecting such areas.
- 5 The applicant has done landscaping work in the wood because the land was bought from the County Council for purposes of the landscape works. The plot of land had the original footbridge over the river and the entrance to the woods. The applicant had to move the footbridge and the entrance further up the woods to make way for his access road.
- 6 The applicant has not fulfilled his promise to tarmac the bottom of the lane which was a condition of his planning permission.
- 7 Replacing fencing with dry stone walls will not necessarily enhance the area.
- 8 Coal Pit Lane is an unadopted road which was never intended to be used by large volumes of traffic. Potholes appear because of the increased use. It is therefore ironic that it is being considered to allow the building of yet another access road onto it.
- 9 Coal Pit Lane is not wide enough and the creation of another access onto it would be endanger e safety of its users.

The applicant has also made a number of comments with regard to the Committee report which require clarification.members received this as a lobbying letter dated 29 July 2008 .

1. Contrary to the applicant's view, there is no Public Right of Way running on the line of the proposed access route. The applicant refers to a private path which currently appears to be unused and covered with

natural vegetation. Whilst the width of the path is not clear, the proposed 3m wide access road with a 4.5m wide entrance located in an elevated position and flanked by a 0.95m high wall, can hardly be described as a replacement of the unused and overgrown path way.

2. The comments made by LCC (Highways) have been correctly reported in the Committee report (i.e. No comments). The Highways comments quoted by the applicant with regard to the approved access for the dwelling (ref. 2005/715) do not form part of the response received from the highway authority in respect of this application. It is re-iterated that planning permission ref. 2005/715 for the erection of the detached dwelling was granted with an access running through the western half of the 6m wide double garage permitted for Brook House. It is considered that the approved access is adequate for the intended purposes.
3. Under paragraph 6.2, the Committee report clearly states that since the proposed access road would be used in connection with a residential dwelling, the proposed development would therefore conflict with the purposes of Policy DS5 of the Local Plan. The examples cited by the applicant such as holiday chalets, equestrian buildings, conversion of barns etc are irrelevant and which may or may not be acceptable in the Countryside.
4. It is acknowledged that the proposed wall along the westerly side of the access road would be lower in height than the existing boundary wall to Brook House. However, the proposed access road would in places exceed the height of the existing ground level by up to a metre. As such the wall would be located in an elevated position and would be more intrusive in the Countryside which is unacceptable.
5. Although the site slopes downwards from Coal Pit Lane, however, the proposal involves raising the level of land which would result in the formation of parts the access road at a higher level. As such the proposed access road would be exposed and prominent when viewed from the adjacent open land.
6. The comments made by the applicant in respect of the use of grasscrete and other issues have already been adequately dealt with.

ITEM B3- 2008/0397 Sunnyside Lodge off Tong Lane, Bacup.

No further comments to make.

ITEM B4 - 2008/0415 5 Pendleton Avenue

Councillor Christine Gill has provided a letter of support for the application:

“To the members of the committee. Can I ask you to consider the application 2008/0401, 5 Pendleton Ave in a favourable light. I have visited the premises and spoken to the applicant on a number of occasions and feel strongly that this would not be detrimental to the street scene and it

would not be detrimental to the original design of the house. The houses on Pendleton Avenue are very varied at the lower part of the Avenue where this house is situated and this plan would fit in very well with neighbouring houses. As the house is at present, the bathroom and en-suite to the main bedroom both have sharply sloping walls that makes it almost impossible for the applicant, who has problems with his joints, to access the toilet and bath. Thank you very much for reading my letter of support”

ITEM B5 – APPLICATION 2008/0206 – FANCY FINGER, 221 BACUP ROAD, RAWTENSTALL

3 additional standardised letters received objecting to the proposal on the following grounds:

- 1 There are already other restaurants and take-aways in the area
- 2 The existing restaurants have a certain calibre of clientele
- 3 Existing businesses in the area complement each other whereas this would detract by litter and smell
- 4 Parking problems

1 individual letter of objection stating that residents and businesses do not want another takeaway in this area, problems with noise, litter and that this use would be more suited to a town centre location.

STEPHEN STRAY

PLANNING UNIT MANAGER
2008