

Mereworth **565946 154293** **14 July 2010** **TM/10/01731/FL**
(Mereworth)
Hadlow, Mereworth And
West Peckham

Proposal: Variation of condition 8 of planning consent TM/99/02352/FL to allow outside seating on patio area with erection of an enclosure of acoustic fence/gates
Location: Queens Head 133 Butchers Lane Mereworth Maidstone Kent ME18 5QD
Applicant: Mrs Linda Sutton

1. Description:

1.1 This application is submitted under S73 for a variation of a planning permission granted in June 2000 to convert outbuildings at a Public House to dwellings.

1.2 At the time, there was considered to be an unacceptable relationship between the side patio area of the retained PH and the dwelling proposed in the barn opposite. DHH raised objections on noise grounds. A condition was imposed to restrict the use of the patio by preventing furniture being placed on it as follows:

8. No table or chairs or other furniture or equipment shall be located on the patio areas at the side of the public house to allow customers to drink outside the public house.

Reason: In order to protect the amenity of the occupiers of the residential units.

1.3 However, complaints were first received in 2007 that the side patio was being used for sitting out which resulted in an enforcement investigation. In May 2009, an application was submitted seeking to regularise this situation, i.e. to allow seating to be provided on the patio (TM/09/00646/FL). A one year temporary planning permission was granted subject to a condition that a screen fence be erected:

2. Within 1 month of this decision, details of a fence screen/gates to separate the side patio area from the front elevation of 127a Butchers Road shall be submitted for the approval of the Local Planning Authority. The approved fence screen/gates shall be erected within 1 month of approval and retained thereafter.

Reason: In the interests of neighbouring residential amenities.

1.4 The condition regarding the screen fence was never discharged because although some details were submitted, there was never payment of the statutory fee for determination of the reserved details so the application relating to the fence details remained invalid. No screen fence was therefore erected. The use of the patio for

seating and tables has been intermittent since that date and no breach of condition notice has been served to date. The temporary planning permission issued under TM/09/00646/FL has, in any event, now expired.

1.5 This application seeks a permanent planning permission for use of the side garden for tables and chairs. It includes details of a reflective acoustic fence, 2m high and made of timber boards, on 2 sides of the garden. Two gates are included, one of which is to allow for people to gain entrance through the garden to one of the rear doors of the pub and the other is to a ramp needed for deliveries. The gates/fence will have a length of 8.4m along the access track to the side of the pub, set 0.9m from the edge of the track.

1.6 The applicant claims that:

- The existing seating area is too small, unsafe and unsuitable, being within the car park and fronting Butchers Lane which is a narrow country lane.
- A risk assessment on the existing outside seating areas breaches health and safety.
- The area will be used for the consumption of food and drink during normal opening hours as used by the previous owners of the public house.
- The Queens Head has been refurbished to give much greater family appeal.
- The pub is a popular location for walkers who enjoy external seating.
- The facilities at the Queens Head are available as a public amenity, used by a number of local organisations, eg PTA.
- In the continuing economic climate, the restriction is an additional threat to the business which provide local employment and economic benefits to the Borough.
- We have an excellent working relationship with our neighbours and enjoy the support of the village as a whole.
- The proposed facility was in existence before 1999 and the existing facility (to the front) offers no protection against noise, and has been in situ for over 10 years.
- Other public houses make much more noise for neighbours.

2. Reason for reporting to Committee:

2.1 The site is locally controversial and subject to an enforcement investigation.

3. The Site:

- 3.1 The site is a Public House in the village confines of Mereworth. The pub is grade II listed and is in a Conservation Area.
- 3.2 To the south and west are 3 separately occupied residential properties in converted pub outbuildings approved under TM/99/02352/FL. There is a shared driveway to these converted buildings which passes by the southern flank of the side patio. Currently the side patio is unfenced and hence visible to the dwelling immediately opposite (127a Butchers Lane).
- 3.3 The front of the site comprises an informal tarmacked parking area with a wide frontage to Butchers Lane. There are 2 seating areas at the front of the pub, one small one to the southern side of the entrance door and a larger one on the northern boundary, adjoining the front garden of 135 Butchers Lane.

4. Planning History (selected):

TM/91/11160/FUL Grant with Conditions 30 September 1991

Retrospective: Change of use from grazing land to children's timber climbing frame with associated safety surface enclosure and 3 no. picnic tables to provide beer garden.

TM/91/11161/FUL Grant with Conditions 27 September 1991

Construction of parking area to rear.

TM/97/01572/FL Grant With Conditions 18 November 1997

change of use of part of premises to village shop and post office

TM/99/02352/FL Grant With Conditions 28 June 2000

Retention of public house and conversion of outbuildings with a single storey extension and new detached store to 3 self-contained dwellings with 2 new associated garages and a new fence and gate

TM/99/02353/LB Grant With Conditions 15 June 2000

Listed Building Application: retention of public house and conversion of outbuildings with single storey extension and detached store to 3 dwellings, internal and external alterations, 2 new assoc. garages and new fence and gate

TM/01/02072/RD Grant With Conditions 12 October 2001

Details of fume treatments system for the Public House's kitchen pursuant to condition 10 of consent ref: TM/99/02352/FL (retention of public house and conversion of outbuildings to residential dwellings)

TM/02/00350/LRD Grant 26 March 2002

Details pursuant to conditions 3 and 4 of LBC ref: TM/99/02353/LB (residential dev) and being details of joinery, decoration of external joinery: black gloss paint to windows and doors, matt black preservative to timber weatherboard

TM/02/00351/RD Grant 26 March 2002

Details pursuant to conditions 4 and 6 of consent ref: TM/99/02352/FL (residential dev.) giving details of landscaping and boundary treatment and details of fencing and gates to the entrance of the site

TM/02/00352/RD Grant 24 May 2002

Details pursuant to condition 9 of consent ref: TM/99/02352/FL (residential dev.) for scheme of acoustic protection to the habitable rooms of the residential units that face the Public House

TM/02/00354/LRD Grant 26 March 2002

Details pursuant to condition 2 of LBC ref: TM/99/2353/LB (residential dev.) and being samples of materials: red stock bricks, clay roof tiles, timber weatherboard cladding with ebony finish and Marshall Tegula cobbles

TM/03/01832/FL Grant With Conditions 1 September 2003

Erection of fence around patio area

TM/09/00646/FL Approved 22 May 2009

Variation of condition 8 of planning consent TM99/02352/FL to allow outside seating on patio area

TM/09/02711/RD Invalid

Details of screen to patio area pursuant to condition 2 of TM/09/00646/FL (variation of condition 8 of planning consent TM99/02352/FL to allow outside seating on patio area)

5. Consultees:

- 5.1 PC: Members have no objection to the outside seating, it's a necessary amenity. The acoustic fencing, however, is felt to be inappropriate for a rural location.

5.2 DHH: The original restriction on the use of this area was put in place to protect the aural amenity of nearby residents and this would remain my concern with this application. Although the applicant has stated that they will be erecting acoustically reflective fencing, they have given no indication as to the effectiveness of such fencing. Until such information has been received I must enter a holding objection. In compiling the information, I would suggest that the applicant use absorptive fencing rather than reflective, as this will provide a better attenuation of the noise. I would seek Conditions to assist in the control of noise (in addition to those cited above): Effective self-closers be installed on all gates/accesses to area (This would include accesses from the building itself); such doors/gates/accesses are not to be kept open; the use of the outside area cease at 22:00; there be no form of amplified music (including TV) in the outside area.

5.3 Private Reps: (6/3R/1S/2X) + Art 8+ CA/LB site/press notices.

5.3.1 One Letter of support make the following points:

- I have lived at Butchers Lane for 12 years and have not been disturbed by any noise from the pub in that time nor have my neighbours and they also have no objection to the application.
- We need to support the pub as much as possible so that it is viable because it provides local employment and is the centre of community life. You will have records of the campaign to oppose change of use to residential.
- Property owners adjacent to the pub may object but they bought the houses with the knowledge that the pub was in full use. One must also assume that the patio will only be used in fine weather so that in itself will restrict use.

5.3.2 Three letters of objection make the following points:

- The additional noise that this area would create is not something I welcome at all. In fact, the new area at the front of the pub has already increased the noise level.
- This application is to both renew and double the seating capacity of a beer garden outside our home, whilst re-locating existing seating to outside our home. The facility was granted on a temporary basis in order to assess the impact on surrounding residential accommodation. During this time, the seating capacity was only half that which is proposed now, and at the time of the original application there were no residents in the two of the three 'outbuildings' in order to object to the application. During the time the facility has existed on this temporary basis under TM/09/00646FL it has had an extensive impact on our home and lives. The facility is completely unacceptable to us.

- The 'Patio area' is located approximately 3-4 meters in front of The Coach House, 127a Butchers Lane, with all rooms of the Coach House giving onto the Patio area. TMBC had previously specified that **"No table or chairs or other furniture or equipment shall be located on the patio area at the side of the public house to allow customers to drink outside the public house"** (see TM/99/02352/FL). In the pursuit of profit, the proprietor of the Queens Head was able to take advantage of a period during which two of the adjoining properties were unoccupied to seek the aforementioned restriction of seating in front of our home to be removed under the pretence that it would attract 'walkers & families'. The facility attracts groups of tradesmen who shout, laugh and swear loudly most days.
- The facility has been used for approximately the past year in breach of express conditions without any attempt to comply with planning condition 2 of this temporary permission.
- The Queens Head has two existing outdoor seating areas (in addition to the rear patio area) which provide adequate and appropriately enclosed seating. These face a large open field and no residential properties to suffer direct noise pollution. These are also away from the carriageway and access road, whereas the rear patio (proposed seating area) gives directly onto a gravelled through road on which children of patrons play whilst their parents consume alcohol.
- The provision of the aforementioned facility whilst only half the proposed capacity of 25 seats has had the following impact on our home: Throughout the day and especially in the afternoon and evening (every day of the week), our home is subject to the sounds of loud shouting, laughing and swearing. The proximity of the patio, its courtyard position (sound reflecting off the walls regardless of any proposed fencing) and position of our house result in every single room being penetrated by the noise from the patio. Even where 'acoustic laminated' secondary glazing is fitted, the noise penetrates. The south-facing nature of the patio, results in most guests facing 127a whilst occupying the patio to face the sun. On occasion we have had abuse and shouting specifically directed at us whilst in our home by 'regulars' of the Queens Head. The noise can be heard from several cottages down from 127a according to the new occupants of the cottages. Whilst application TM/10/01731/FL claims to be aimed at attracting "Families and children" and concerned with "health & safety" issues, the public house actually appears to attract groups of male tradesmen mainly who tend to cause the aforementioned disturbance.
- We are unable to open any of our blinds/curtains which face the patio- we typically experience groups of tradesmen looking directly into our home whilst stood outside the patio entrance of the Queens Head drinking and smoking. It should be noted that the proposed fencing in TM/10/01731/FL does not

prevent this issue due to most patrons smoking outside the 'rear bar entrance' where no fencing is proposed. We no longer able to use the front entrance of our home for both security reasons and the fact that we feel intimidated by groups of tradesmen that stand on the patio in front of our home watching us. We are instead forced to enter via a rear gate then through the back entrance.

- We are unable to effectively rent or sell our home. We have had numerous viewings whereby the viewers have admired the property but cited specifically that the proximity of the pubs existing seating facility made the property unsuitable. Evidence can be provided on request from our lettings agent.
- Children of the Queens Head patrons use the gravelled through road as a play area, as they do the frontage of our home. Children often 'skid' out from between the cars into the through road presenting an obvious safety risk as vehicles have no room to avoid children, which could result in tragic consequences if permitted to continue. I have myself on several occasions come very close to colliding with a child skidding out onto the road on the loose gravel. The lack of friction decreases braking effectiveness severely. The parents of said children are unable to effectively supervise their children as parked vehicles prevent view from the tables where parents consume alcohol. The existing seating at the front of the Queens Head is c. 8m from the nearest road, whereas the proposed seating in TM/10/01731/FL is approximately 1m from the access road.
- No amount of soundproofing, redesign or changes to our home can negate the levels of noise and disturbance we experience. The application TM/10/01731/FL seeks to double the capacity of this facility whilst simultaneously removing the long established seating facility at the front of the public house in order to increase parking capacity. The resultant stress and anxiety this facility has caused is having a huge impact on our lives, and occurred every single day of the week under TM/99/02352/FL whilst the facility was in place.
- I hope that you are able to appreciate the impact the proposed facility will have upon our home and lives. I welcome your inspection of our home to help better understand the proximity and disturbance the aforementioned facility causes.
- The allowance of external seating to a public house is inevitably likely to be a cause of significant noise nuisance to neighbours. This is particularly an issue for this establishment, due to the close proximity to neighbouring properties. This has worsened considerably since the application of the 'No Smoking' rules, with the addition of a great deal of unpleasant passive smoke to add to the increased noise pollution.

- The application makes much of the unsuitability of the existing seating area positioned to the front of the property adjacent to the car park. This seating area is, incidentally, also arguably in contravention of the aforementioned Planning Condition. To add a second seating area would inevitably add significantly to the noise nuisance and would seem to be a considerable further imposition on the neighbours.
- If, on the other hand, the external seating was confined only to the proposed patio area, exactly as defined on the planning application, this would at least have the benefit of concentrating the nuisance in an area away from the public road and confined on two sides by the public house itself. The proposed acoustic fence/gate, if properly maintained and used, should provide adequate protection to the neighbours. In conclusion, our contention is that any external seating is unsuitable in the confined space available around this public house. If, however, the Council is minded to approve the application, we would contend that a replacement planning Condition should be inserted which prevents seating provision at the front of the public house. This would address the safety concerns raised by the applicants, it would improve the general aspect of the establishment from the public road and would be a fair compromise to neighbours who certainly do not want a large increase in noise from two separate locations.

5.3.3 Two further letters support the use of the side garden for tables and chairs but object to the acoustic fence screen:

- The area has been used for the enjoyment of the Queens Head patrons for a number of years that include many visitors to the village also walkers and cyclists. It is a real shame that they being turned away through the lack of tables and chairs outside, particularly during the summer months when the pub can maximise its income.
- 6 feet high acoustic fencing will seal off the area and it will not be used.
- The pub is potentially struggling as a small business and is an independent small business which should be encouraged to thrive.
- As the last public house in the village, it promotes the sustainability of local communities.
- The fence is a threat to the security of my property as all of my sight lines will disappear and painting it black will create too many dark areas, as well as being aesthetically pleasing.
- The expense of the acoustic fence is out of proportion to the number of music events and a certain amount of noise is accepted when thinking of purchasing a property next to a pub.

- The areas should be enclosed with trellis and planters with climbing plants which are a better sound barrier and suit a listed building.
- Exclude any gate to allow access by frail or disabled.
- The fence will darken and have a negative effect on the attractive, light, airy area opposite my front door.
- No objection to seating but add a trellis/vines or similar if necessary.

6. Determining Issues:

- 6.1 The site is within the confines of a rural settlement and is a listed building and is in a Conservation Area.
- 6.2 In my view, the use of the side patio for tables and chairs requested in this application would not in itself impact on the setting of the listed building and would not harm the character or appearance of the Conservation Area. However, the application does include screen fencing in the form of acoustic fencing and 2 gates which may affect those aspects of the locality and need to be assessed in the light of policy guidance in PPS5 (Planning For The Historic Environment).
- 6.3 The main issue, however, is residential amenity impact in terms of Policies CP1 and CP24 of the Tonbridge and Malling Borough Core Strategy 2007, particularly noise, disturbance and loss of privacy to neighbouring property. The neighbouring dwelling most affected would be 127a Butchers Lane which has its front elevation windows directly facing the patio area.
- 6.4 The area of the patio is not excluded from the license for the PH. The licence therefore allows its use until midnight 7 days a week (and until 1am on Christmas Eve and New Year Eve). It is understood that the patio is used as the outside smoking area and as a pub garden where the patrons can stand and drink. This in itself is not a breach of the licence nor of planning control. Many of the points raised by the owner of the nearest property are therefore not controllable under planning powers because it is not the chairs/tables per se which result in the disturbance and loss of privacy described.
- 6.5 Members will note that the use of furniture on the patio was allowed on a trial basis of 1 year to assess whether it added to nuisance or gave rise to complaints to DHH. Whilst there are 2 objections to the proposal, there is one letter of support and 2 other close neighbours support the proposed use of the side patio but object to the method of boundary enclosure. This is also the view of the PC.
- 6.6 On balance, I am of the view that in the light of local representations, the benefits of the use of the side garden as an amenity seating area for the pub, in terms of economic benefits to an important community facility, outweigh any harm to

residential amenity arising solely from the introduction of tables and chairs to an existing outside pub amenity area.

- 6.7 However, there is scope to improve the situation for neighbouring residents over and above the prevailing situation as this application gives scope for the requirement for the introduction of a visual screen in the form of a boundary treatment to the southern side of the side patio.
- 6.8 Members will note the close relationship of the patio to the front entrance and front windows of 127a (Coach House). It was previously suggested that a screen with gates be erected- eg some form of diamond trellis or hit and miss fencing. It was not expected that this would be a complete (ie solid) privacy screen but it should have reduced direct views between persons using the patio and the occupants of the Coach House at least at ground floor level.
- 6.9 It is not correct for the main objector to say that the applicant made no effort to comply with the screen fencing condition as an application was submitted but it is correct that it could not be processed due to non-payment of the fee despite several reminders.
- 6.10 This application for permanent planning permission allowing tables and chairs in the side garden now includes details of a screen fence. Instead of the diamond trellis or hit and miss fencing previously suggested by officers, 2m high reflective acoustic fencing has been proposed. This will have a solid appearance. Whilst it can be softened by the introduction of planting and/or climbing plants, Members will note there is a consensus amongst the locals that it will look unsightly and oppressive in a Conservation Area and close to a listed building.
- 6.11 DHH endorses the principle of an absorptive (not reflective) acoustic fence to cut out noise to the ground floor of no 127a but it would not screen noise to its upper floor. Also the necessity for the gates would potentially interfere with the effectiveness of the fence as a solid acoustic barrier.
- 6.12 Members may agree that it is not feasible to secure complete acoustic protection for neighbours of a public house but that privacy can be improved more practicably. In the light of local representations, Members may consider that the applicant should be invited to submit an alternative (less oppressive) boundary treatment before formal determination of the application.
- 6.13 The condition regarding the tables and chairs was imposed in the interests of amenity and it would not be acceptable to introduce a highway safety reason for the condition as suggested by the main objector.
- 6.14 The comments of DHH with regard to lighting control and sound amplification are agreed to be apposite and are the subject of recommended conditions and a suggested informative.

- 6.15 The area of the patio is not excluded from the licence for the PH which allows its use until midnight 7 days a week (and until 1am on Christmas Eve and New Year Eve). Whilst the concerns of DHH regarding hours of use are noted and understood, it is considered that it would not be reasonable to have a condition in which people can sit on the patio until 10.30pm but would have to stand thereafter. Such a condition would fail the relevant tests for a lawful planning condition in my view.
- 6.16 Conditions from TM/99/02352/FL have been brought forward, modified as appropriate as this is s.73 application and other conditions imposed on the original conversion planning permission need on-going compliance.

7. Recommendation:

- 7.1 **Grant Planning Permission** as detailed by: Letter dated 29.06.2010, Location Plan dated 14.07.2010, Photograph dated 14.07.2010, Photograph dated 14.07.2010, Planning Layout dated 14.07.2010 subject to the following conditions:

- 1 Prior to the introduction of tables and chairs to the side patio, an absorptive 2m high acoustic fence shall be erected as indicated on the drawings hereby approved and shall be retained thereafter.

Reason: In the interests of residential amenity.

- 2 The acoustic protection details to the residential units approved under ref TM/02/00352/RD shall be implemented and retained as approved.

Reason: In the interests of residential amenity.

- 3 Spaces 1-5 (incl) of the vehicle parking and turning areas approved under ref TM/99/02352/FL shall be implemented and thereafter shall be kept available for such use and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 1995 (or any order amending, revoking and re-enacting that Order) shall be carried out on the land so shown or in such a position as to preclude vehicular access thereto.

Reason: Development without provision of adequate accommodation for the parking or garaging of vehicles is likely to lead to hazardous on-street parking.

- 4 The fume treatment system details approved under ref TM/01/02072/RD shall be implemented and retained as approved.

Reason: In the interests of residential amenity.

- 5 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order amending, revoking and re-enacting that Order) no development shall be carried out within Class A B C D E F G H, of Part 1 of Schedule 2 of that Order unless planning permission has been granted on an application relating thereto.

Reason: In the interests of amenity.

- 6 The fencing and gates details approved under ref TM/02/00351/RD shall be implemented and retained as approved.

Reason: In the interests of residential amenity.

- 7 There shall be no additional external lighting of the side patio without the prior submission and approval by the Local Planning Authority.

Reason: In the interests of residential amenity.

- 8 There shall be no amplification of music or speech to the side patio.

Reason: In the interests of residential amenity.

Informative

- 1 You are advised to remove the frontage seating area in the light of the grant of this planning permission for the side patio as a seating area.

Contact: Marion Geary