

## WEEKLY LIST

APP. NO 10/00298/COU

CASE OFFICER	TEAM LEADER	HOPS/P M	COND. COLOURING		COND. MONITORING	Comino CHECKED	POSTED
			COND. NO	PLAN NO.			
JA 23/6/10		<i>JH</i> 23/6				JA 23/6/10	

**Proposal:** Retrospective Application for a Change of Use of Building From Use as a Shop, Refreshment Room, Changing Rooms, and Toilets Ancillary to the Golf Driving Range to a Mixed Use Class A3 Restaurant and Uses Ancillary to the Golf Driving Range and Layout of Hard Surfaced and Extended Car Park. (Amended Proposal).

**Site Location:** The Rose Garden 33A Aldermans Hill Hockley

**Legal Agreement:** NO

**Plan Numbers:** Date stamped 10th May 2010

**Zoning:** MGB

**Parish Council** - Hockley Parish Council

### Officer Report:

Retrospective planning permission is sought for a change of use to part of an existing single storey building in conjunction with an adjacent car park extension at the Golf Driving Range, to the south of Aldermans Hill in Hockley.

The site is located within the Metropolitan Green belt to the south of a residential area that extends to the west of Hockley and runs along Main Road, Aldermans Hill and High Road. To the north the site directly borders the rear gardens of eleven dwellings that front Aldermans Hill. To the western boundary it abuts the rear of five properties within Bullwood Approach. There are no residential properties within the adjacent land to the east and south, the area beyond the site boundaries in these directions being woodland.

The site was formerly a mushroom farm that was granted planning permission in the 1980s for a change of use to a golf driving range. It covers a total land area of approximately 4 hectares.

Access is achieved from a narrow private driveway that runs down into the site between two residential properties fronting Aldermans Hill and which terminates in a car park area within the north east corner. This car parking area adjoins the driving range bays and wraps around an adjacent single storey detached building to the south. This existing building has an approved use, ancillary to the golf driving range facility, as a shop, refreshment room, changing rooms and toilet. The unauthorised restaurant use, which occupies the eastern half of the footprint, shares a common entrance with the remainder of the building. There is an attached open patio area to the southern elevation which is accessed from the restaurant via French doors.

The application form states the opening hours of the restaurant to be 0900-2100 Monday to Saturday with the same hours for Sundays and Bank Holidays.

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The application description as submitted did not include the car park extension. The applicant's agent subsequently confirmed a revised description to include this element. The application as revised is subject to a new round of consultation and notification with neighbours. The consultation period runs until 29th June 2010, *any new issues arising will be considered in liaison with members in the normal way*. The site has an extensive planning history as set out below:

ROC/273/82 - Use and layout of land as a private golf range with pitch and putt course. Not determined by the Council as correct fee not paid. Appealed

ROC/604/83 - Change of use from mushroom farm to private golf driving range. Approved on 11 July 1984

ROC/882/85 - Convert existing farm building to shop, refreshment room, changing rooms and toilet, ancillary to golf driving range - failure of Rochford District Council to give notice of its decision within the appropriate period. Appealed and appeal allowed.

ROC/058/87/1 Erect single storey building to provide shop, refreshment room, changing rooms and toilets ancillary to golf driving range. Approval of outline planning permission 13 July 1987.

ROC/058/87/1 - Erect single storey building to provide shop, refreshment room, changing rooms and toilets ancillary to golf driving range. Approval of reserved matters 23 February 1988.

Appeal (reference T/APP/C/B1550/28/PN6) against an Enforcement Notice dated 19 October 1989 - Construction of golf driving bays and removal of all subsequent materials from the site - Appeal allowed and planning permission granted for the retention of the development

00/00700/FUL - Remove Condition 4 of Permission ROC/058/87 (Prohibiting Sale of Intoxicating Drinks in Refreshment Room on Site). Refused 19 December 2000.

07/001007/COU - Continued use of part of the building as a gym/physio room and ancillary golf shop. Refused 28 December 2007

08/878/FUL - Retention of Two 4m High Lighting Columns. Approved 16 January 2009.

07/00946/LDC - Use of the building as a restaurant. Refused on 19 June 2008. Appeal dismissed 1 June 2009

08/00218/LDC - Construction of a car park. A split decision issued on 17 July 2008 which refused the extended area of car parking subject to the current planning application  
09/00471/FUL. Appeal dismissed 1 June 2009

Appeal (APP/B1550/C/08/2085885) against an enforcement notice dated 2 September 2008 in respect of a breach of planning control with regard to the change of use of the building to mixed use as a restaurant and uses ancillary to the golf driving range and the laying of a hard surface to form additional car parking. Appeal dismissed and requirements of enforcement notice to cease the restaurant and to break up and remove the hard surface upheld.

09/00470/COU - Retrospective Application for a Change of Use of Building From Use as a Shop, Refreshment Room, Changing Rooms, and Toilets Ancillary to the Golf Driving Range

to a Mixed Use Class A3 Restaurant and Uses Ancillary to the Golf Driving Range. Refused 26th October 2009.

09/00471/FUL – Retrospective Application to Form Hard Surface Extension to Existing Car Park. Refused 24th November 2009.

Appeal (APP/B1550/A/09/2116139) against the refusal grant planning permission for the change of use proposed under 09/00470/FL was dismissed on 21st April 2010. This was on grounds relating to unacceptable impact on the living conditions of adjacent neighbours.

The LDC determination (08/00218/LDC) allowed only for a 'teardrop' shaped area to the north of the driving range and adjacent ancillary building in respect of its use as a car park. The remaining part of the hard surfaced area currently used for car parking, i.e. the area to the east which wraps around the single storey ancillary building and extends up into the north east corner of the site adjoining the rear of nos. 21 & 23 Aldermans Hill was found to be unlawful. It is this extended area for which the current application seeks retrospective permission together with the part change of use of the existing building to A3 restaurant.

### Green Belt Issues

The site is located within the Metropolitan Green Belt. Policy advice contained within Planning Policy Guidance 2: Green Belts generally advocates the change of use of existing buildings because they are already in existence, provided that no harm would arise as a result.

Saved Policy R9 of the adopted Local Plan (2006) allows for the re-use of farm and other existing buildings subject to a number criteria. In this respect there is support for the application as far as the building relates to the surroundings and is capable of conversion as being of sound construction. Nevertheless the policy also requires that the proposed use of the building and associated land would not have a materially greater impact than the permitted/lawful use on the openness of the Green Belt or the fulfilment of its purposes. In addition the policy requires that the proposed use would not introduce additional activity or traffic movements likely to materially and adversely affect the character of the Green Belt.

The recent appeal decision is a significant material consideration with regard to the current application. In consideration of this appeal the Inspector identified two main issues:

1. whether use of the part of the existing building as a restaurant constituted inappropriate development in the Green Belt
2. the effect of the change of use on the living conditions of neighbouring residents in respect of noise and disturbance

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The Inspector accepted that the restaurant use by its very nature had increased the level of activity and traffic movement associated with the overall use of the site. However she considered that in combination with the effect of the other uses within the building, the driving range itself and the dwelling (no.) within the site, the restaurant would not have a materially greater impact on the openness of the Green Belt or on the purposes of including land within it. She concluded that the restaurant use did not amount to inappropriate development within the Green Belt.

However, in her assessment of the proposal the Inspector confirms that she has considered only the access and car parking arrangements shown on the submitted site layout plan, not as set out on site i.e. not including the car park extension which forms part of the current

application. Moreover the applicant state that the additional parking for which permission is sought is required for use in association with not only the authorised use of the site but in addition to serve the unlawful restaurant.

The additional car parking area constitutes operational development within the Green Belt. National green Belt policy, as set out in PPG2 is well established and defines all development in the Green Belt as inappropriate unless it is for one of the purposes set out in paragraph 3.4, 3.8 or 3.11 of the PPG.

The applicant states that this car park extension has been used for a long time as an overflow facility. Whilst this area, when grassed and un-surfaced, may have been used periodically, this temporary use would not have had any significant impact on the character and openness of the green belt. By contrast the additional hard standing car parking area, due to its scale and use of materials has a direct material impact on the character of the green belt by reducing its openness contrary to PPG2, ~~and SS7 of the East of England Plan~~. In addition it has an intrusive appearance that is harmful to the visual amenity of the area.

The car park extension does not fall within the definition of appropriate Green Belt development as set out in PPG2. PPG2 Green Belts in paragraph 3.1 states that there is a general presumption against inappropriate development within the Green Belt. Such development should not be approved, except in very special circumstances. Paragraph 3.2 states that inappropriate development, is by definition, harmful to the Green belt. It is for the applicant to show why permission should be granted and very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

The additional car parking area has a direct impact on the character of the green belt by reducing its openness contrary to PPG2 ~~SS7 of the East of England Plan~~ and R9 of the adopted Local Plan and is in addition harmful to the visual amenity of the area. No special circumstances, which would override such policies, have been put forward by the applicant.

#### Residential Amenity

*interest was in golf and/or*  
In consideration of the approved use of the building as shop, refreshment room, changing rooms and toilets ancillary to the golf driving range it was felt that such facilities would be attractive only to visitors whose ~~prime purpose would be~~ to practice stroke play and that therefore the level of activity generated would be limited by this association. Nevertheless, in order to protect local residential amenity, it was considered necessary to ensure by condition the shop to sell only golfing equipment.

It is considered that the further intensification of activity arising from the restaurant use together with the associated car parking area would generate a level of activity, noise and disturbance that would be significantly above that associated with the driving range (especially at weekends) and that given the proximity to neighbouring dwellings this would be materially harmful to residential amenity. In this respect it is likely that noise and disturbance from people outside the building would be very noticeably increased in the late evening, especially in the summer months and if outdoor seating were provided on the patio area adjoining the south of the building.

Use of the driving range and the external lights to the building is limited by condition to cease at 21:00. Any disturbance resulting from activity taking place after this time would therefore be intensified by the comparative quietness of the remainder of the site. It is not clear from the stated opening hours whether it is proposed that the restaurant itself would close at 21:00 or

whether this would be the time of the last booking. It is not normal practice for restaurants providing evening meals to be closed at this time and in general it is not considered reasonable to impose such a restrictive condition on this type of business enterprise. In respect of the current opening hours a number of the letters received in support of the application state that the restaurant use extends well beyond 21:00.

The proposal introduces significant additional vehicle movements into the area immediately adjoin the north and east boundaries and is directly adjacent to the residential properties in Aldermans Hill. It is considered that the proposal, in conjunction with the lawful car park area, would generate an unacceptable increase in the level of activity by way of noise and disturbance, which would have a significantly detrimental impact on the residential amenity currently enjoyed by the occupiers of dwellings backing into and in close proximity to the site. Furthermore this disturbance is substantially increased by the use of a loose stone base and finish to the entire hardsurface car parking area has the effect of amplifying the noise created by vehicle movements, even at slow speeds.

In her decision the Inspector considered that it was clear that there was a significant difference between the existing use of the refreshment room and the independent restaurant use that was sought. She concluded that the resultant intensification in use and associated increase in activity had unacceptably disrupted the balance between the living conditions in respect of noise and disturbance, which the residents of the nearby houses could reasonably be expected to enjoy, particularly within their private garden areas, and the commercial operation behind.

In conjunction with the associated use of the car park extension it is felt that the additional noise and disturbance generated by the proposal would have a significantly detrimental impact on the residential amenity currently enjoyed by the occupiers of dwellings backing onto and in close proximity to the site.

The applicant has put forward a number of proposals which aim to reduce the adverse impact on the residential amenity of adjoining dwellings. These constitute the erection of a 2m high acoustic fence and planted buffer zone along the northern boundary to the rear of nos.21-25 Aldermans Hill, although no details of these proposals are given. In addition, ~~the~~ proposed ~~is~~ *is The* replacement of the existing hard surface of the car with a new permeable surface with a crushed stone finish. This boundary already benefits from a continuous wooden fence of at least 2m as well as mature planting of trees and shrubs within the adjoin rear gardens. In addition it is proposed to reduce the existing number of covers by 33% and to restrict a la carte dining to evenings and Sunday lunches.

It is not considered that any of the proposed mitigation measures would significantly reduce the level of harm to residential amenity, by way of noise and disturbance, identified by the Inspector.

### **Representations:**

#### **First Round Consultation**

Hockley Parish Council: members found it difficult to decide on this retrospective application since there appears to be a following for the restaurant among Hockley residents but the members do not wish to approve an unauthorised change of use in Green Belt that could potentially create a precedent. They also considered the amendments to the proposal insufficient in the short term to ameliorate the potential loss of amenity for the neighbouring properties due to increased noise.

Highways (County Surveyor): No objection subject to conditions

### Neighbours:

2 letters of support 52 Church Rd & 56 Aldermans Hill. Summary of main points includes

- Valuable asset for the community
- Has no detrimental affect on any other business and will not reduce number of retail shops, as with other new town centre restaurants
- No highways or woodlands objection to previous application, PC no strong feelings
- Inspector stated "the restaurant use does not amount to inappropriate development in the Green Belt and so the terms of PPG2 and saved Policy R9 remain uncompromised".
- Main objectors to previous application 2 or 3 neighbours
- Current application states all possible steps to alleviate any possible nuisance by
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- 1. erection of fence and tree buffer planting to common boundary
- 2. Replacement of car park surface with permeable hard surface
- 3. And restricting car parking with allocated spaces well away from boundary
- Proposed to reduce seating capacity and hours of opening
- Concern expressed at time taken for neighbour notification letters to arrive so that may be 6/7 days before delivery. Opinion that this is a Council ploy to reduce number of replies

4 letters of objection from neighbours in Aldermans Hill (19, 23, 25, 27). Summary of main points and comments include:

- Objections to previous applications maintained
- Restaurant is without planning permission and on green belt land
- Noise from constant traffic all day and late evening
- Car doors slamming past midnight
- Surface of car parking very noisy
- Have main road to front of property and equivalent to the rear
- Loss of enjoyment of garden
- Already have high trees 50ft plus thick bushes to rear boundary but this doesn't deaden noise
- Screening by trees and fencing won't stop noise
- 600 signed a petition to keep the restaurant open which shows how much traffic
- Impact on property prices on Aldermans Hill
- Owner will try anything to get planning permission
- Appeal decision highlighted "...inappropriate development in the gb and effect on living conditions of neighbours
- Nothing in new application alters the situation
- Proposed surface would be no better than existing
- Restaurant use extends well beyond 9pm, on a specific occasion stated that people still leaving at 12:45am
- Legitimate restaurant and food business in Hockley have gone through the correct channels
- Detrimental impact from cooking smells
- Significant increase in noise since restaurant opened
- Concern that site could be further developed unlawfully
- Detrimental impact from restaurant on quality of life

### Second Round Consultation

2 additional letters of support from the occupiers of 52 Church Road and 7 The Westerings.

Main points include:

- Applicant appears to be doing all he can to reduce impact on neighbours
- Complaint incorrectly quotes Planning Inspector as saying the appeal was inappropriate green belt development

- As a regular visitor have not seen any bad behaviour
- On several occasions there has been loud music from parties in neighbouring gardens
- Restaurant is an asset to Hockley in attractive surroundings

2 further letters of objection received from the occupiers of adjoining dwellings (Nos. 21 and 35 ). Main points include:

- Restaurant has operated without permission since 2007
- Golf range closed at 9pm but restaurant regularly open until midnight
- Disturbance from customers leaving
- Use not appropriate in a residential area
- Licence for premise refused on grounds relating unacceptable degree of public nuisance
- Have suffered anti-social activity
- Overdevelopment
- Insufficient parking without car park extension
- Adverse impact on highway safety from intensification in vehicular traffic
- Number of accidents already taken place resulting from vehicle queuing to turn into the site
- Turn into drive on a blind bend
- Applicant has had no regard for planning regulations
- Vermin in garden associated with restaurant use
- Land is subject to green belt rules
- Restaurant often open until 2am
- Excessive noise and light pollution
- Three examples given of unacceptable noise disturbance
- Bookings being accepted for Christmas and New year 2010
- Devaluation of properties backing onto the site
- Clientele have no regard for neighbours
- Feel let down by Council
- Question as to when enforcement action will commence
- Further development at the site against which the Council has taken no action including;
- 1. new canopy to front of building used as a smoking area
- 2. new doors to rear
- 3. new patio to rear to allow outside dining
- 4. new large shed to side of building

#### **Policies:**

Planning Policy Guidance 2: Green Belts

~~667 of the Regional Spatial Strategy for the East of England (2008)~~

**STET**

R9 of the Rochford District Replacement Local Plan (2006) As saved by Direction of the Secretary of State for Communities and Local Government in exercise of the power conferred by paragraph 1(3) of schedule 8 to the Planning and Compulsory Purchase Act 2004. (5th June 2009)

#### **Conclusions:**

Refuse

#### **~~CONDITIONS OR~~ REASONS FOR REFUSAL:**