

ITEM 2.2 - TABLED UPDATE 1
REFERENCE NO - 26/500987/FULL
PROPOSAL - Change of use of public open space / grass area to mixed use as a public open space and beer garden (Sui Generis Drinking Establishment and restaurant use) including siting of picnic tables and benches.
SITE LOCATION - Albion Tavern, Front Brents, Faversham, Kent, ME13 7DH

Additional Condition

As per the response to the interested party comment that is detailed below, an additional condition (8) is recommended to be imposed:

Prior to the first use of the land for the purposes hereby approved, a Flood Emergency Plan and Evacuation Strategy shall be submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of ensuring that any risks associated with flooding at the site are adequately mitigated.

Correspondence

Since the publication of the report correspondence has been received and is responded to as is detailed below.

Councillor Questions

Cllr Cavanagh has put three questions to Officers which are summarised as follows:

- 1. What rent will be paid to SBC ,if this is approved, to counter the loss of open grass land?*
- 2. In the interests of ensuring that there is no adverse financial implications for SBC, can it be set out who will be responsible for grounds maintenance and who will be responsible for litter picking? Also, as there can be delays to cutting grass brought about by obstacles being in the way eg benches, can this impact on maintenance by SBC be factored into any contract that is entered into?*
- 3. What is the situation if the Council decide in the future they need to withdraw permission to use the land? Could a situation arise where, after a certain amount of time, the user of the site might gain a legal right to keep using the land? Could a prescriptive easement be created?*

Officers would respond as follows:

- 1. The Council's Planning Officers are not aware of the financial arrangements between the landowner (Swale Borough Council) and the applicant. Other than in very specific circumstances relating to "local financial considerations,*

so far as material to the application” as detailed at Section 70 of the Town and Country Planning Act 1990, financial considerations are not a material planning consideration. The effect on ‘open grass land’ and all other material considerations are considered within the Officer Report in the context of the relevant development plan policies, other guidance and legislation and all other material considerations. It is advised that financial considerations should not be treated as a material consideration in this instance, noting that the decision is to be made by Swale Borough Council in its role as Local Planning Authority rather than, and separated from, any of its other roles.

- 2. In this case, the arrangement of the maintenance of the land at the site would be for the applicant and the landowner rather than the Local Planning Authority. It is not considered that the development is of a type where on-going maintenance or management would conventionally be addressed through planning conditions or planning obligations. The Council being the landowner is not considered to be reason for the Council, as Local Planning Authority, to approach the planning application or the use of conditions / planning obligations in a different manner. Colleagues have advised that they expect that the maintenance and litter associated with the applicant’s activities will be the responsibility of the applicant. However, this is not considered to be a matter that should influence the decision in respect of the planning application.*
- 3. The details of what happens if a license ends, for whatever reason, is a matter for the Council as landowner and the applicant and not the Council in its role as Local Planning Authority. It has been advised that a “Prescriptive Easement” would not be achieved in this case as it is dependent on long-term unauthorised use. A planning permission would run with the land, whoever the owner may be, and whilst there are powers to revoke a planning permission in certain instances, those powers are rarely used. The cessation of the use of land by the applicant would more likely be for a reason that falls outside the scope of material planning considerations.*

Councillor Comment

Councillor Eyre has submitted the following comment:

“I am extremely unhappy that this is going to Planning at this time, when most of us are on holiday and cannot attend. This is really bad. I and my Priory ward FTC councillor counterpart, Peter Cook, are both away on holiday, as is one of the complainants whose house backs onto the site in question.

I find it quite unbelievable that this is going to Planning at a time when affected residents and local councillors are the most likely to be away and therefore unable to attend to put in their objection.”

In response, Officers would advise that the application has been placed on Planning Committee agenda at the earliest time that, in the opinion of Officers, the application has been ready for determination. The Council is obliged to act positively and proactively and determine applications at the earliest opportunity. The availability of Ward Councillors and interested parties was not known and there is not considered to be any procedural requirement to attempt to establish this at the time that an

agenda is prepared. A Planning Committee meeting has been scheduled for August and it is respectfully suggested that it is legitimate for planning applications to be presented to an arranged Planning Committee.

A subsequent email has set out the following:

“Please note that I will be unable to attend this meeting to speak on behalf of my constituents who are very unhappy with this application.

Faversham Town Councillor for Priory ward, Cllr Peter Cook will be in attendance to speak.”

Interested Party Comment

A written representation has identified that the Flood Risk Assessment refers to the inclusion of a Sewer Incident Report Form within an Appendix of the document but that no such document has been included. It has also been identified that a map has been included showing flood events at a site that is outside the Borough rather than the application site.

These shortcomings within the FRA are noted. However, recognising the nature of the development and the inclusion of suitable plans for evacuation, it remains the case that the proposal is considered to be acceptable in terms of flood risk, with the land being able to be used safely without causing an increased risk of flooding off-site.

Upon receipt of this comment it has however been identified that a suggested condition securing the implementation of a Flood Emergency Plan and Evacuation Strategy was not included in the list of recommended conditions. The mitigation secured by that condition is considered to be adequate to mitigate the residual flood risk that would exist in this case.

Environment Agency Comment

Upon receipt of notification informing the item being on the agenda for this Planning Committee meeting, the Environment Agency have stated that they have no comment to make.

Applicant Comment

The planning agent has advised that the applicant would be required to obtain a license to be able to use the land for the stated purpose and, through that license, the Council would have additional controls over the use of the land.

In response, Officers would highlight that planning permission runs with the land and, whilst the current owners might operate in one way, any future owner might have a different approach. In this case, it would not be for the planning permission to seek to control the future ownership of the land and, therefore, it is not considered that ability of a landowner to control the use of the land should be determinative in the assessment of the application. Other legislative regimes can be relied upon but it is

not considered that ownership should be and, for the reasons set out in the report, it is not considered that the ownership of the land is material to Officer's finding the proposal acceptable.