

PLANNING COMMITTEE

8 March 2021

SUMMARY OF ADDITIONAL CORRESPONDENCE RECEIVED SINCE THE PUBLICATION OF THE AGENDA AND ERRATA

Item No. 8/1(b) **Page No.** 8

Third Party: Has the following query:

You were given a distance of 18 metres from the closest point of the proposed building to the closest Petrol Pump.

My question is does the Fuel Vent pipes and the Fuel fill Point from where the Petrol Tankers deliver the fuel not need to be included in your report? They are between the proposed new build and the petrol pumps. My argument with the Planning is that the Vent and Fuel filling valves are actually on the proposed boundary wall and seem to always get overlooked, it's where the bungalows are to be built.

Cllr Joyce has made the following comments/queries (summarised):

1. Is the Local Planning Authority in a position to determine this application? An offence was committed when the application went before the Planning Committee in February that false and misleading information was presented to the Planning Department and then onto the Planning Committee in contravention of Section 65 subsection 6 of the 1990 Town and Country Planning Act. The false and misleading information was that the filling station was not originally identified as being an interest to the applicant. This has now been corrected, but it was only after the application had been deferred by the Planning Committee.
2. Where has the agent or the applicant in his Design and Access Statement claimed that Regent Avenue has been previously used as access to the site for commercial or any other use? Where has the applicant made a claim there has been a previous use, commercial or otherwise, of Regent Avenue as access to the site?
3. The Planning Committee were not made aware of the Ministerial Statement in answer to the Member of Parliament for Witham. "Planning permission can be refused on the grounds that information provided was insufficient to accurately describe the nature and anticipated impacts of the proposed development." Hansard 17 October 2011 C586W. Rather the report to Committee stated the Local Highways position, "in the view of the Local Planning Authority, retain a commercial use class." The report did not say it was the view of the Highway Authority. In addition, recent suggested clarification from Eastlaw appears to have ignored the Ministerial Statement.
4. The Highway Officer has suggested the site is landlocked. With no identified access to the highway where is the Highway Officer wrong? They also originally had concerns suggesting an inconsistency in approach to this application and to others close by. It appears they retain their fears. Has submitted various appeal references to demonstrate his point.
5. Given that the Fire and Rescue Service consider vent pipes should be at least 2 metres from a boundary and that the Planning Department have been made aware that in this instance vent pipes are approximately 0.5 metres from the boundary; Is there written confirmation from the Fire and Rescue Service that a 2 metres solid brick wall is satisfactory in this case?

Cllr Ryves has made the following comments:

1. Is there any definitive guideline in the UK for the minimum distance between a benzene garage and a private dwelling? There are such regulations in place in the US due to concerns.

Assistant Director's comments:

In response to Cllr Joyce:

1. The Planning Department is satisfied that sufficient information was sent to it, as part of the application, to enable it to lawfully validate the application. Although the filling station is in the ownership of the applicant, it does not form part of the application site. The site location plan has been amended to show the correct ownership, shown as red and blue land.

2. The site was not previously accessed for the commercial use via Regent Avenue and the report does not state this was the case. The existing access from the Esso garage does not prevent a further access point being obtained from Regent Avenue which is an existing route to the public highway.

3. Planning Officers are comfortable that sufficient information has been provided to enable the application to be determined, such that the non-binding Ministerial Statement to which reference has been made has not been breached. The weight to be accorded to this and any other Ministerial Statement is a matter of planning judgement, not legal interpretation.

4. The Highway Authority is the statutory consultee on highways matters and has the information and expertise to be able to consider the effects of development proposals on the wider highway network. It is not constrained from such consideration where an application only proposes access works to a private access way and should consider wider network impacts whatever the route by which development traffic reaches the public highway. The proposed route by which access to the public highway will be obtained from the application site is set out in the application. The Local Highway Authority does not object to the scheme and is well aware of all the appeal history in this area. The comments referred to (above) were initial discussions about the need to ensure consistency in approach. It is our view a consistent approach has been taken and the previous commercial use is a significant material consideration which sways the balance in favour of the development. The site is not landlocked as discussed within the report.

5. Discussions were held with the Fire and Rescue Service, and initially they referred to the standards considered when looking at new petrol filling stations. However, the Fire and Rescue Service confirmed verbally that they would not object to the scheme, and had no further comments to add. This view is detailed within the report.

In response to Cllr Ryves:

The Environmental Quality Team has provided a detailed response-

The UK has published statutory guidance which has been applied to this situation. To require monitoring for benzene, a petrol station must meet all the following criteria:

- Petrol throughput >2000m³ or 2 million litres per year
- Near busy road (>30,000 vehicles/day)
- Exposure within 10m from the pumps

The closest point of the proposed dwelling is stated to be 18m away from the closest pump. Therefore, according to the screening criteria for petrol stations, no further action is required as the conditions necessary for a likely exceedance of the annual mean benzene National Air Quality Standard are not met. Therefore, this application does not meet that criteria required for further review or monitoring.

UK law sets the benzene annual mean emission objective of 5µg/m³. The only site within the Borough which we considered where a likely breach could occur was at the PACE Petroleum Fuel Storage Depot in King's Lynn. Monitoring within 2007-2008 showed the levels to be well under the annual mean objective. Moreover, LAQM TG16 and Policy Guidance PG16 state that, in recognition of the fact that all the objectives for benzene have been met for several years and are well below limit values nationally, local authorities in England do not have to report on benzene, unless local circumstances indicate otherwise.

Petrol stations are controlled according to Local Air Pollution Prevention and Control (LAPPC) Guidance (PG1/14). The petrol station adjacent to the proposed development is controlled by a Local Authority regulated Environmental Permit (permit number LAPPC517) and is subject to Stage I emission controls. Stage I controls prevent the emissions associated with the escape of petrol vapour when the petrol tanks are filled, by returning the vapour to the tanker when it unloads along a gas tight vapour line instead of venting to the atmosphere. The vent pipes have a pressure valve fitted which prevents petrol vapour being emitted to the atmosphere when the tanks are being filled and in normal operation. The trapped vapour is then returned to the refinery with the tanker. Furthermore, under normal conditions there is no venting of emissions from petrol stations through the vent pipes. PG1/14 Guidance states that vent pipes from new petrol stations must not vent within 3m of any opening windows or ventilation air inlets. It is stated that the eastern most dwelling is approximately 7m away from the vent pipe, with this distance already considered by Norfolk Fire and Rescue who are the petroleum licensing authority for the site. Moreover, the site is inspected routinely by our permitting officer.

LAQM TG16 Guidance can be found at <https://laqm.defra.gov.uk/documents/LAQM-TG16-February-18-v1.pdf>

Part IV of the Environment Act 1995 Environment (Northern Ireland) Order 2002 Part III Local Air Quality Management - GOV.UK

Part IV of the Environment Act 1995 Environment (Northern Ireland) Order 2002 Part III Local Air Quality Management Technical Guidance (TG16) February 2018

laqm.defra.gov.uk

Benzene specific information for England can be found in Section 1.12 (page 1-3).

The screening criteria used for this application can be found in Table 7.3 (page 7-15).

The application has been considered from both a Local Air Quality Management and Local Air Pollution Prevention and Control viewpoint, and Environmental Quality do not have any objection to the proposed development on the grounds of air quality.

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Third Party: One **OBJECTION** letter received and can be summarised as follows:

- Concern that granting consent for one dwelling will then lead to an application for two dwellings to the rear.
- Have the existing sewerage and water issues in the locality been taken into account?
- Access onto Winch Road will cause traffic issues and additional noise.

Community Safety and Neighbour Nuisance Officer: **NO OBJECTION** to scheme. Discussions with Anglian Water noted. Please attach the Noise, Dust & Smoke from Clearing and Construction Work Informative.

Assistant Director's comments:

Comments noted. These issues are addressed within the report.

Item No. 8/2(b) **Page No.** Late Pages

CORRECTION: P7, the Parish is **Congham** and not Grimston.

Parish Council: Additional comments of **OBJECTION** have been received which can be summarised as follows:

- Congham Parish Council are predominantly concerned that the quiet residential amenity of Low Road, Congham is not altered, or compromised.
- This is a modest residential property, in a residential area on the north side of Low Road, Congham.
- The Parish Council must consider the long term and future implications of granting such an application on the surrounding area, the amenity and peace and quiet for neighbouring residents.
- At the back of the property the kennels take up a significant proportion of the leisure space and butts onto the boundary of an adjacent property.
- The Parish Council believe that this enterprise does fall within Policy DM15; such an application if approved would mean that it would not be possible to reverse this planning approval at any point in the future.
- In such a domestic residential property the number of dogs does not normally exceed 4. This applicant has had in excess of 20 dogs on the premises, including 13 adult dogs plus 1 Labrador and 12 puppies.
- We understand that the applicant has suggested that the number of adult dogs could be reduced to 10 and they could be kept within the property except for toileting and exercise. It is questionable whether this would be acceptable. This, if approved, could not be monitored; this number of dogs would still be unacceptably high for such a property.
- If such an amended application were approved it would not be possible to prevent this small commercial enterprise being changed to allow for a much larger breed of dogs in the future.

Third Parties: **EIGHT** letters of **SUPPORT** have been received, however it is important to note that these are from people living outside the Borough. The comments received can be summarised as follows:

- Mrs Tomsett has kept dogs for a number of years and is respected in the dachshund community, her main concern being the welfare of her dogs.
- On the occasions I have visited the premises I have never heard any noise from the dogs.
- The setup is of the highest quality, the garden is designed to accommodate the dogs with artificial grass and cemented areas for easy cleaning and disinfecting. She also has a sealed incinerator bin for dog waste which is collected on a regular basis. There are also enclosed areas for the dogs to shelter from the rain and heat.
- Mrs Tomsett is well respected and supported by everyone that knows her.
- I have visited Shelley Tomsett's home on numerous occasions and have 2 of her wonderful dogs. On visiting her I have never heard dogs making any noise.
- I have known Shelley Tomsett for a number of years now and have visited her house on several occasions. I have one of her dogs and am hoping to have another puppy in the not too distant future.
- I have to say she is one of the best breeders I have ever met. Her love for her dogs is absolutely paramount and they are her life. The dogs are impeccably behaved and you get a huge sense of their happiness and how much they are loved by Shelley and her family.
- Mrs Tomsett is a most conscientious breeder and her whole life revolves around her passion. I have been to Shelley's several times and I can honestly say in my 30yrs of owning pedigree dogs I have never met a breeder with such an exceptional set up for raising her breeding dogs and puppies.
- Mrs Tomsett has helped me with my breeding practices, she has immense experience and knowledge with regards to health testing and screening of her dogs, beyond what is

even expected by the kennel club. To lose breeders such as her, especially during these times when even the good breeders cannot keep up with the demand for puppies, this will leave the market open for even more unregulated and unscrupulous breeders, and as we all know encourages more puppy farmers.

- She is very good at keeping her dogs under control and the standards she keeps them in are above par.
- I fail to see why any Council would seek to interfere with a licensed dog breeder who has followed all the rules. She has a 3 star licence and has not caused anyone in her neighbourhood any problems at all.
- I would query why some applications are approved when almost identical in content and others are not. She keeps her dogs in tip top condition.
- Her customers do not cause any problems as they are not that many and never on a Sunday.
- I would have expected Norfolk County Council to have the desire to keep an asset such as Dajeon Miniature Wire Haired Daschunds.
- It is quite clear that Britain is a nation of dog lovers, therefore is it not vital that we support reputable and Kennel Club registered breeders, who have the interest of each breed, and indeed each individual dog's interests at heart, rather than their own personal gain.
- Under the Environmental Protection Act 1990 formal action should only be taken if they find your premises to have issues like excessive noise, and odour. Having been to Simla numerous times over the past 4 years I can state that you cannot hear any noise or smell anything both outside the front of the house on the drive, in the garden or even inside within the entrance and kitchen of the property. I also understand that a noise abatement order has not been given to the property either at any point.
- It is clear that licence holder Shelley Tomsett abides by all the requirements under Schedule 6 of the Specific conditions: breeding dogs under the Licensing of Activities Involving Animals part of The Animal Welfare Regulation 2018. With all dogs and puppies born and reared on the premise under the licence with all animals fully vaccinated but health tested to national breed standards; all dogs being socialised and temperament tested; as well as under a Kennel Club assured and reviewed premises. National guidance backs this up, with the Home Office's guidance to local authorities to focus on dog thefts and investigating the links of unregulated breeders to serious organised crime, along with Defra's focus on improving animal welfare.

Cllr Charles Joyce: The following questions have been raised:

1. Is this application operational development? Or maybe why is it not operational development?
2. Daschund puppies are for sale elsewhere at £2,000 each. Why is this not classified as a business if 25 puppies are sold each year?
3. When was the first noise complaint received by CSNN? What was the response?
4. How many complaints have been received by CSNN? What action has CSNN taken?
5. The proposal put forward suggests one dog was causing an issue, but that animal has moved on. When is it suggested the individual animal moved on? What complaints have been made to CSNN since? What was the response?

Assistant Director's comments:

The response to the questions raised by Cllr Joyce are as follows:

1. As explained on page 5 of late pages, the various structures that have been constructed on site in association with the use, for example the kennels and covered walkway, do comprise operational development but given they were built over 4 years ago they are now immune from planning enforcement action.
2. From a planning point of view it is considered that the use is a business and that a material change of use has occurred, hence the reason for this retrospective application seeking

approval for change of use from residential dwelling to residential dwelling and the keeping / breeding of dogs. The applicant claims that it is not a business venture but a hobby because the sale of any puppies provides income for dog feed and showing of dogs but that does not alter the fact that planning permission is required for the use being carried out at the site.

3. Noise complaints were received by CSNN in 2012. Diary sheets were provided to the complainant to complete a log of noise occurrences and noise recording equipment was also provided. Both identified levels of barking but at the time it was not considered to constitute a statutory nuisance that would enable action to be taken under the Environmental Protection Act. It is understood the complainant at that time subsequently moved away.
4. There have not been any other formal complaints made to CSNN but there have been objections raising noise issues in relation to both this current application and the previous application for the site which was withdrawn (19/01312/F). Furthermore, CSNN have previously advised in relation to this case that notwithstanding a lack of complaints, this does not mean residents are not affected by noise from the premises of dogs barking, because CSNN experience is that residents are often very reluctant to complain in such situations. Furthermore, CSNN visited the site to monitor barking as part of their consideration of the previous planning application on 24th August 2019. Whilst sitting outside the premises for only a short period of time the CSNN officer witnessed 4 separate incidences of barking dogs.
5. We do not have any information about specific noise issues being related to a particular dog, although it is thought this may have been mentioned by the applicant to the CSNN officer during a conversation in September 2019. The objections raised to the current application identify that noise from barking at the premises is still considered to be an issue, and therefore not just related to 1 individual dog that may have been moved on from the site.

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Parish Council: Has made a further **OBJECTION** stating:

Responding to residents' concerns, the Parish Council wishes to object to the inappropriate use of materials for the balcony screen and height of the fencing and gates on the front of the property. The balcony screen, which can be seen from the lane, is of fencing material rather than obscured glass which would be more usual. No permanent barriers in Church Lane are higher than that permitted without planning permission. This is not true of the railings bordering the lane at 1.8 metres and the gate at 2.4 metres at 29 Church Lane. These are totally out of keeping for the area and no level of planting around them will reduce the height.

Assistant Director's comments:

Comments noted. These issues are addressed within the report.

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Parish Council: Continue to **OBJECT** to the scheme on the following grounds (summarised):

- Having review the amended plans, the only changes are the removal of the lounge window to the west elevation, change of rear lounge window to a patio door and a reduction in the overall width by a few inches;
- Considers that revised block plan and the original remain identical.
- Queries why the proposal bungalow can't be turned round so the pathway is on the western side adjacent to 41 Back Lane rather than No 59.
- Reiterates previous objections.

Third Party: ONE letter of **OBJECTION** regarding the following:

The revised plan has moved the side elevation only 200mm further away from boundary wall. The proximity will still lead to a loss of light (right to light legislation).

- Windows are still proposed on side elevation and will lead to a loss of privacy
- Query as to why the proposed bungalow could not be moved closer to other neighbouring property (East) - the existing bungalow is near the neighbour to the east's boundary and around 4m from commenter's own.

Assistant Director's comments: The revised block plan is accurate and shows the dwelling 1.25m (approx.) away from the west boundary.

It has to be acknowledged that were the existing bungalow to be retained, the applicant could erect extensions hard on the boundary with the neighbour subject to complying with the relevant criteria under Schedule 2, Part 1, Class A of the Town and Country (General Permitted Development) Order 2015 (as amended). This fall back position is a material consideration when considering the objector's assertion regarding right to light and the proximity of the development to the boundary.

'Rights to light' under the 1832 Prescription Act are private property rights and are civil matters covered under that legislation. The European Convention on Human Rights (ECHR) requires the rights of individuals to be balanced against the wider public interest, which has been taken into consideration in relation to this application. The Local Planning Authority is required to take account of the permitted development fall back position since it is a material planning consideration. It is a reasonable exercise of planning judgement to recommend approval of a proposal where a similar proposal that could be achieved under permitted development would have a similar level of impact.