

UTT/1306/06/FUL - CLAVERING
(Referred at Discretion of Executive Manager)

Changes to door layout to that allowed under appeal reference APP/C1570/A/021104894 dated 12-8-2003

Location: Funston Tractor Sales Arkesden Road. GR/TL 481-327.
Applicant: C E Funston
Agent: Mr P R Livings
Case Officer: Ms H Lock 01799 510486
Expiry Date: 03/10/2006
ODPM Classification: MINOR

NOTATION: Within Development Limits.

DESCRIPTION OF SITE: The site is located within the Development Limits of Hill Green, Clavering, at the junction of Clatterbury Lane with Stickling Green Road. The whole site is in commercial use. To the rear of the main two-storey building in the centre of the site is a single storey joinery business, which has recently been extended northwards towards the boundary with a dwelling known as "Timberscombe". Other commercial premises are to the west, and there are dwellings to the north and east (on the opposite side of the road).

DESCRIPTION OF PROPOSAL: This is a retrospective application to retain an emergency fire door that has been inserted into the northern elevation of an extended joinery building (Unit 8) operating from this site. However, the plans as submitted do not accord with the works as undertaken on site. The implications of this are addressed in the "Planning Considerations" section below.

The extension was granted at appeal (see relevant history below), and the fire door has been inserted in breach of a planning condition.

APPLICANT'S CASE: The door was inserted on the advice of the Fire Officer.

RELEVANT HISTORY: Commercial use of this site has taken place since the 1940s, and numerous planning permissions have been granted. The most relevant application is UTT/0241/02/FUL, which included the conversion of an existing office building to 7 light industrial/office units, an extension to the existing joinery building towards the rear of the site, and the construction of a new frontage building for two Class B1 business units. The application was refused by the Development Control Committee but allowed at appeal.

Changes to the extension to the joinery building are the subject of this application. A planning condition attached to the appeal permission states that:

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no windows or doors, (other than those expressly authorised by this permission), shall be constructed on the northern elevation of Units 9 or 10 or the northern elevation of the extension to Unit 8.

The joinery business is Unit 8.

CONSULTATIONS: Environmental Services: (1) concerns regarding use of the fire door for ventilation purposes allowing noise breakout, which could adversely affect the neighbouring residential property. Recommend a condition requiring the door to be kept shut except in emergency and another requiring a scheme of ventilation to be submitted.

(2) Additional Comments: The fire door at the end of the new extension appears to be being left open on a regular basis and has consequently led to increased noise levels being experienced in the neighbouring residential property.

Whilst my comments regarding this application suggested including a condition to keep the door shut, the overall situation pertaining to the premises may be more complex. This is because the door is being left open to provide ventilation in the new extension for the employees. The operator informs me he intends to look at extending the ventilation system currently used in the old part of the building to include the extension. This means the doors will not have to be left open. As an employer he will have a duty under Health and Safety legislation to provide suitable ventilation to the premises. Likewise, it is his responsibility to ensure a Statutory Nuisance is not created by the business activities. In this case the two responsibilities, for all intensive purposes, are interlinked as one will affect the other.

I have also been made aware that the former external wall of the original building, which would have created an internal dividing wall in the new building, has been removed. This will affect the acoustics of the building and may potentially increase noise levels where breakout occurs i.e. through an open fire door.

In view of this I would recommend that a scheme of noise attenuating works be provided for the building as a whole, due to the changes that have been made. This may also include how some attenuation can be achieved by either removing the fire door completely or carrying out such works as necessary to allow it's retention e.g. installation of a ventilation system.

Since the subject of noise control in buildings is a technically complex matter, I would recommend a noise consultant be employed to carryout a proper assessment of the current situation and give recommendations as to the noise attenuation works that could be used to reduce the impact on nearby residential properties.

Fire Officer: The original plans showed the extension with no fire exit door. A site visit by the fire officer was made and because of the type of work being carried out and the possible risk to persons employed, it was recommended that the fire exit in question was installed. The revised plans numbered P7605 Rev. B showed a roller shutter door, an additional door adjacent to it and the fire exit door. On this basis the safety of employees has been satisfied in the application, and the Fire Officer confirmed this as part of the Building Regulations consultation. When the Fire authority is consulted under Building Regulations planning conditions are not included as part of the process. If an amended scheme is proposed the fire authority will comment on amended plans as part of the consultation process.

Building Surveying: No adverse comments.

PARISH COUNCIL COMMENTS: Strongly recommend refusal of this application. The application is in direct contradiction of the conditions and planning restrictions set by the previous permission, and this would make nonsense of Council policies and considered decisions, some of which we believe were put in place to protect the amenities of the surrounding residential area.

The present working at the site is also in breach of permission. To allow any amendments to those in this application would be in direct contradiction of the Inspector's rulings, and current policies on noise, etc.

We understand that the Enforcement Officer requested that work cease at this building and the conditions were met. This has not happened, and work has continued with doors and

openings which are in breach of the permission being left open all day, in spite of requests to close them.

Ask that the Building Inspector check the sound-proofing and other door/window openings to ensure these comply with permission, bearing in mind that further works are ongoing at this building, and as this is a very restricted site, that the parking provisions are provided as required.

REPRESENTATIONS: Two. Notification period expired 8 September.

1. Objection. Can see no good reason why the Council should consent to the requested changes. The conditions attached to the original consent were intended to protect the houses to the north of the building from being overlooked, and from the noise created by the processes carried on inside the building. The creation of the present doorway in breach of planning conditions has resulted in the very nuisances which those conditions were designed to prevent. As a separate issue, residents are suffering from light pollution from the premises' security lighting.

2. Objection. The door which has been installed for over six months in breach of the Appeal Inspector's condition should be removed and bricked up in order to prevent the escape of noise. The new door on the eastern elevation which was not shown on the original plans and installed without planning permission is a fire door, but is not properly sound proofed. Since the doors have been installed the continuous noise levels experienced in our house and garden have been intolerable and far above that which we should be expected to accept. The doors are left open practically every day. We and Council Officers have requested that the doors are kept closed but requests are ignored. Even with doors closed the noise has increased dramatically and we are convinced noise measures have not been carried out. Loud industrial saws and continuous banging is now much closer to our boundary.

If the WC is installed the door will need to move closer to our property. Information contained in the application is contradictory. All conditions have been ignored to date and any new conditions will undoubtedly be so.

COMMENTS ON REPRESENTATIONS: The issue of lighting for the premises and breaches of other conditions are being pursued separately with the applicant, and do not form part of this application.

PLANNING CONSIDERATIONS: The main issues are

- 1) **whether the insertion of the fire door would prejudice the amenity of adjacent residential properties by virtue of additional noise nuisance and loss of privacy (ULP Policies GEN2 & GEN4);**
- 2) **Other material planning considerations.**

1) The site has historically contained a mix of commercial uses, including the joinery business. In allowing the appeal, the Inspector regarded the removal of the existing tractor storage and Class B2 uses as a benefit, and considered moving the joinery business closer to the boundary with "Timberscombe" would be acceptable, provided there were no further openings in the northern elevation and additional noise insulation was included (further measures are required and are subject of separate investigation by officers).

The insertion of the fire door was undertaken at the request of the fire officer. This would open within 5m of the boundary with Timberscombe. The previous appeal Inspector considered that a condition should be imposed preventing further openings into this

elevation specifically to protect the amenity of the adjacent residents, and the presence of this opening has been a source of nuisance since it was installed. The door itself does not have the same noise insulation properties as a solid wall, and the presence of the opening creates the potential for it to be opened, with consequent escape of noise. Although a condition could be imposed requiring the door to remain shut except in the event of fire, this would be difficult to enforce, and to date the applicants have not complied with requests to close the door. However, even if the door was closed its presence undermines effective noise insulation at the premises.

Although the Fire Officer required the installation of a fire door, there are discrepancies between the submitted plans and the works as constructed on site. Although the fire officer recommended the installation of the door as shown on the submitted plans, it is not known whether or not the works as built would satisfy safety requirements. Furthermore, it has not been demonstrated that a door in the northern end elevation is the only means of providing a satisfactory means of emergency escape in the building.

The applicant is required to satisfy health and safety legislation, but such legislation should not override the planning process. It is the applicant's responsibility to meet all competing requirements, and a compromise should be found which addresses the safety of employees and the amenity of adjacent residents. At the time the appeal was allowed, there was no opening shown in this elevation, and the Inspector felt it important enough to prevent by condition further openings. In this context, the protection of the amenity of residents should be given considerable weight.

2) The application has been submitted to regularise a breach of planning condition, but there are significant errors on the plans, sufficient to refuse the application. The door itself is not shown in its built position. There are also other doors and openings on the eastern front elevation which are either not built, or not shown on the layout drawings. The inaccuracy of the plans raises sufficient doubt about the nature of the application to warrant refusal. The agent has not complied with a written request to submit accurate drawings.

CONCLUSIONS: The addition of this fire door has adversely affected the amenity of neighbouring residents to a degree to warrant refusal of planning permission, and it is not considered this harm could be adequately addressed by conditions. There are significant inaccuracies in the submitted plans to raise doubt over the development for which permission is sought.

RECOMMENDATION: REFUSAL & ENFORCEMENT ACTION

1. The proposal is to retain a door inserted in the northern elevation of the joinery building extension, in breach of a condition attached to planning permission UTT/0241/02/FUL. The unauthorised presence of the door has given rise to significant noise nuisance and loss of privacy to adjacent residents, contrary to ULP Policies GEN2 and GEN4. Its retention creates the potential for continued nuisance, and would undermine effective noise insulation of the building, to the detriment of residential amenity. The extension to the building was allowed subject to a condition controlling the insertion of additional openings into this elevation of the building, in order to protect the amenity of residents, and the insertion of this door has created the unacceptable nuisance that the condition sought to prevent.
2. The application sought permission to retain the door inserted into the northern elevation, but the submitted plans do not accurately reflect the development as built. Furthermore, there are significant discrepancies between the submitted elevations and layout drawings: the door in question is not shown on the 1:100 scale layout plan; a roller shutter door marked on that plan is not shown on the elevations or 1:50 scale layout; the position of the door on the front elevation of the extension differs

between 1:50 & 1:100 layouts. The discrepancies on the submitted drawings and their relationship to the development as built are of such significance as to prevent a full and accurate assessment of the proposal, and can only result in a refusal of the planning application.

ENFORCEMENT ACTION:

That the door in the northern elevation of the extension to the joinery building be removed and the opening permanently filled with blockwork to match the existing building.

Background papers: see application file.
