

ITEM NO:	
<u>Location:</u>	Tally Ho London Road Barkway Royston Hertfordshire SG8 8EX
<u>Applicant:</u>	Mr Hall
<u>Proposal:</u>	Two storey rear extension to provide enlarged kitchen and ground floor and additional residential accommodation on first floor (Section 73 application to vary condition 3 of permission granted under ref 05/00469/1 to allow ancillary residential accommodation for the public house but not for any additional operational floor space in connection with the public house)
<u>Ref. No:</u>	20/00627/S73
<u>Officer:</u>	Sam Dicocco

Date of expiry of statutory period: 19 May 2020

Submitted Plan Nos: Location plan; Existing floor plan; Proposed floor plan

Extension of statutory period: 22 June 2020

Reason for referral to Committee: The application has been called in by Councillor Gerald Morris on the grounds of public interest

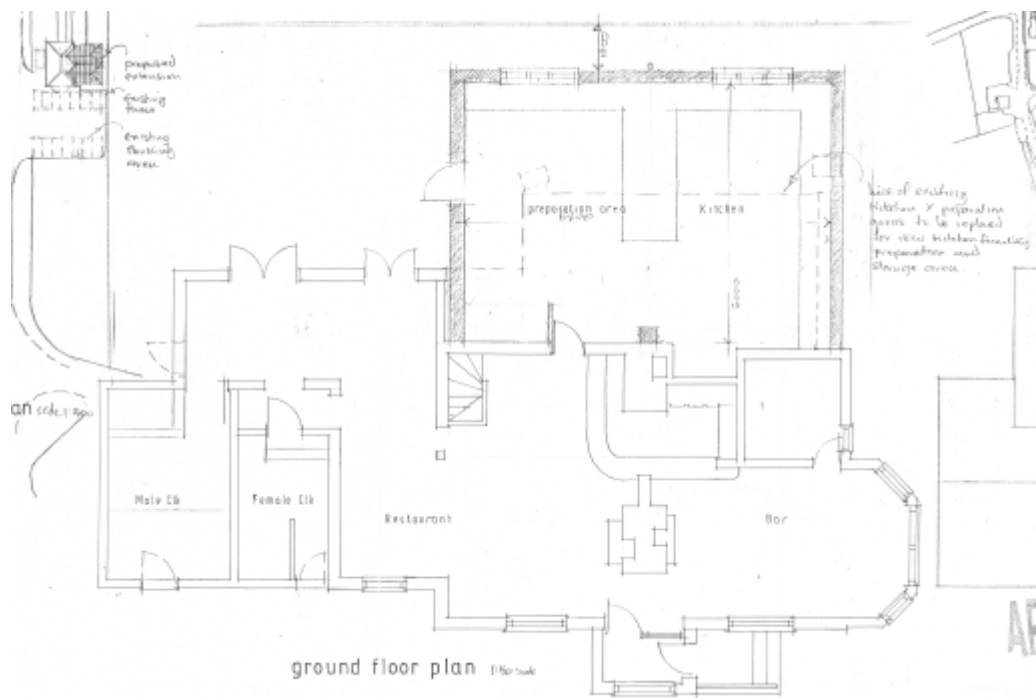
1.0 **Relevant History**

1.1 74/00429/1 - Construction of car park – Conditional Permission 21/10/1974

1.2 05/00469/1 - Two storey rear extension to provide enlarged kitchen and ground floor and additional residential accommodation on first floor – Conditional Permission 28/06/2005

“3. The ground floor space hereby permitted shall be used solely for kitchen and food preparation purposes, ancillary to the existing public house bar and restaurant areas, and not for any additional public seating, drinking or eating facilities within the building.

Reason: To safeguard against the enlargement of the public areas within the building, the consequences of which could lead to a greater intensity and use of the Public House, and a resultant impact on the availability of car parking spaces at the site and a general level of activity that would be detrimental to the overall character and appearance of the area.”



- 1.3 07/02310/1 - Single storey rear and side extension following demolition of garage. Formation of Disabled access to rear of building – Conditional Permission 15/11/2007
- 1.4 14/00608/1 - Insertion of new bay window to front elevation – Conditional Permission 28/04/2014
- 1.5 15/01724/1 - Outline application for one detached four bed dwelling (appearance and landscaping reserved) – Conditional Permission 27/08/2015
- 1.6 16/03082/1 - Two 3-bedroom semi detached dwellings with associated parking and access off High Street (as amended by plans received on 07/02/2017) – Conditional Permission 04/07/2017
- 1.7 17/00264/1 - Reserved matters application for approval of appearance and landscaping for outline planning application 15/01724/1 granted 27.8.15. for one x 4 bedroom detached dwelling – Conditional Permission 26/05/2017
- 1.8 16/03069/1 - Outline planning permission for one two bedroom house (layout and scale reserved) – Refused 14/09/2017

2.0 **Policies**

2.1 **North Hertfordshire Local Plan No.2 with Alterations**

LP6 - Rural Areas Beyond the Green Belt

LP28 - House Extensions

LP30 - Replace or Extension Dwellings Countryside

LP55 - Car Parking Standards

LP57 - Residential Guidelines and Standards

2.2 **National Planning Policy Framework**

SECN6 - Building strong, competitive economy

SECN9 - Promoting sustainable transport

SECN12 - Achieving well-designed place

SECN16 - Conserve + enhance historic environment

2.3 **Supplementary Planning Documents**

Design Supplementary Planning Document

Vehicle Parking at New Developments Supplementary Planning Document

2.4 **North Hertfordshire Draft Local Plan 2011-2031**

XCGB1 - Rural Areas Beyond the Green Belt

XCGB4 - Existing Rural Buildings

XD1 - Sustainable Design

XD2 - Hse Extns, Replacement Dwells, Outbuilding

XD3 - Protecting Living Conditions

XHE1 - Designated Heritage Assets

XT2 - Parking

3.0 **Representations**

3.1 **Site Notices: 31.03.2020 Expiry: 23.04.2020**
Press Notice: 02.04.2020 Expiry: 25.04.2020

Consultee responses

Barkway Parish Council - The Parish Council wishes to object to this application on the grounds that this is an application for a change of use for part of the ground floor area of the pub. The previous owners of the pub gained planning consent for this area to be used as a kitchen area which was for the direct benefit of the business (although not for access and use by the public). The current owners, when they made their alterations to make a larger dining area for the pub, initially were in fact in breach of this planning permission. However, that is now water under the bridge and they have now blocked this area off again and it is no longer accessible to the public. The current owners no longer serve food and rely on wet sales only. This is difficult to understand when it is a well-documented fact that rural pubs need to offer both wet and dry sales to make the business viable. Concern is that they are jeopardising the future of the pub and actively trying to run the business down.

The Parish Council has grave concerns that by obtaining permission to use the former kitchen area as residential space that this is a pre-cursor to the owners trying to close the business and to try and obtain total change of use of the whole of the property to residential. If this did happen, then this would be most strongly opposed by the Parish Council and the residents of the village and any rights that exist, as it is a registered Asset of Community Value, would be actively pursued.

The Parish Council has requested Dist. Cllr. Morris to call this application in before the Planning Committee should you be mindful to approve this application.

Public representations

Cllr G Morris – Objection. The room would be used for shooting party-dining. It is virtually impossible for a pub to survive with only wet sales; therefore, using part of the ground floor as accommodation would likely result in the pub's demise. The kitchen to the north side of the building does not exist, this information is incorrect the kitchen to the south east elevation does not exist the prep area is I believe the existing kitchen, with a wall dividing up the room, this is not shown on the drawing. The drawings generally are incorrect, including as I mention the omission of the first floor alterations and therefore it is not possible to comment properly on the application. The loss of the only pub in the village is unacceptable. Generally, the drawings are of a very poor standard and are incomplete and what is shown is either wrong or at best misleading.

I trust therefore that you will be mindful to refuse this application. Should that not be the case. I should like this application be heard by the Planning Control Committee in the public interest.

4.0 **Planning Considerations**

4.1 **Site and Surroundings**

4.1.1 The site lies in the rural area beyond the Green Belt, to the south of Barkway and Barkway Conservation Area. The site contains a two storey building with a principal A4 use class as a public house. An extension over two storeys approved in 2005 subject to conditions to provide a food preparation and kitchen area at ground floor level and two bedrooms at first floor level within ancillary residential accommodation. The condition subject to this application is condition 3, quoted in section 2.2 above. The building has subsequently been extended and altered.

4.2 **Proposal**

4.2.1 The application seeks to vary the terms of condition 3 to allow an alternative use to the ground floor than that specified in the condition. Specifically, the variation requests the following alternative wording for condition 3 –

“3. The ground floor space hereby permitted shall be used solely for residential purposes as ancillary residential accommodation to the Public House, and not for any additional public seating, drinking or eating facilities within the building.

Reason: To safeguard against the enlargement of the public areas within the building, the consequences of which could lead to a greater intensity and use of the Public House and a resultant impact upon the availability of car parking spaces at the site and a general level of activity that would be detrimental to the overall character and appearance of the area.”

4.3 **Key Issues**

Condition origins

4.3.1 The condition was not imposed as a request of the Local Highways Authority. As such, the Local Highways Authority have not been consulted in this application for the varying of this condition.

4.3.2 The officer report suggests the condition to control the usage of the ground floor extension to the purpose for which it was originally designed, to safeguard against any uncontrolled future increase in ‘public’ space within the enlarged building. The condition gives further reasoning, explaining that the consequence of increased ‘public’ space would result in greater intensity of use and impact on the availability of car parking on-site, as well as a general level of activity that would be detrimental to the overall character and appearance of the area.

Section 73 considerations

4.3.3 Consideration in applications to vary planning permission are limited to that expressed in Section 73 of the Town and Country Planning Act 1990 (as amended). The Local Planning Authority shall consider only whether the planning permission previously granted should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally.

Changes in the planning policy framework

- 4.3.4 A key consideration in deciding whether or not planning permission should be granted subject to conditions differing from those previously imposed is changes in the planning policy framework.
- 4.3.5 The condition was based on policy 55 of the Saved Local Plan, which stated minimum parking requirements for residential and commercial development proposals. The updated Vehicle Parking at New Developments SPD (2011) changed the minimum parking requirement for commercial developments to a maximum requirement.
- 4.3.6 There have been no significant changes in the policy framework in regards to the character and appearance of the site.

Discussion

- 4.3.7 The question, then, is whether planning permission should be granted for the same physical development with an alternative split between ancillary residential accommodation and principal use as a public house within the updated planning policy framework.
- 4.3.8 The residential use is ancillary to the public house use and would remain ancillary to the public house use even if the ground floor of the extension were changed to habitable residential space. Consequently, it is considered that the proposal would still support the need of local community facilities, through adapting and improving the living conditions of the person running that local community facility.
- 4.3.9 The visual and spatial impact of the extension would remain the same regardless of the use of the ground floor part of the addition. It is not considered that intensifying the public space available within the building would result in a material altering of the character of the site or surrounding area. The site would remain of the character of a public house. The alteration of the wording of condition 3 would not alter the considerations in regards the character of the sites surroundings or impact on the rural area beyond the Green Belt. Neither would the alteration in the conditions wording alter the contribution of the site to the significance of the setting of the nearby Conservation Area.
- 4.3.10 The proposed variation of the condition to alter the ground floor from a food preparation and kitchen area associated with the public house use to ancillary habitable residential space would not materially increase parking requirements or highways impact.
- 4.3.11 The minimum car parking requirement the proposal was originally assessed against is now out-of-date. The parking requirement is now a maximum requirement. The existing maximum requirement would not be altered by the changing of the ground floor from food preparation and kitchen space to ancillary residential accommodation. The existing maximum vehicular parking requirement, based on approximately 66sqm of bar floor space, and no more than 4 FTE employees, is 25 spaces. That breaks down to 3 spaces for no more than 4 employees, and 22 spaces when calculating 1 space per 3sqm of floorspace of the bar area. The site currently hosts 14 car parking spaces.

This falls well within the maximum car parking standard, even if that maximum standard is reduced to 75% as allowed by the site's location in zone 4 (17 spaces). Even if the ground floor space were to change to a public seating area, this would only serve to increase the maximum parking allowed. The existing parking facilities will, in any case, be below this maximum requirement.

4.3.12 The above covers all material considerations against which the original development was assessed, and by which the condition requested for alteration was imposed. The change in specified use of the ground floor of the addition would not alter the principal use of the building, or the status of that building as a community facility, not alter the physical properties of the extension, or increase traffic or parking requirements in line with the latest planning policy requirements. Consequently, it is considered that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted.

4.3.13 Turning to the re-wording of the condition, the applicant has suggested wording as quoted in section 4.2.1 of this report. The above considerations lead to the conclusion that, by reason the introduction of maximum car parking standards, the requirement for the condition on car parking grounds is now unjustified. Furthermore, it is not considered that the use of the ground floor of the extension as public space would alter the character and appearance of the site as a public house.

4.3.14 Any re-wording of the condition would fail to meet the tests of conditions laid out in paragraph 55 of the NPPF:

"Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects."

4.3.15 The condition is no longer necessary to make the development acceptable in planning terms. Whilst a condition could be worded to be precise and enforceable, it would remain unreasonable, as the planning policy framework has rendered the original purpose of the condition unnecessary.

4.3.16 The grant of a variation or deletion of a condition has the effect of granting a new planning permission. Reviewing the other conditions applied to the original permission, the time limit for commencement is no longer required. The condition for the development to be built in accordance with approved plans and details is no longer required, as the proposal has already been constructed in accordance with those plans and details. It is recommended that planning permission should be granted unconditionally.

4.3.17 The concerns expressed by Councillor Gerald Morris and Barkway Parish Council are noted. Whether or not the ground floor space has previously been used for purposes in breach of condition 3 is not a material to this determination. There is no planning policy requiring a public house to have ancillary restaurant or cooking and serving facilities. In any case, the condition was not imposed to ensure the viability of the public house, but to protect against up-rise in intensity of the public house use to the detriment of the character of the area. The previously approved floor plans and elevations remain the same.

4.3.18 It appears of most importance to the Parish Council and Councillor Gerald Morris that the community facility of the existing public house use is retained. It is of utmost importance that the Council determine what has been applied for. This application does not seek the material change of use of the building away from its principal use as a public house. Loss of community facilities is not a consideration relevant to this determination. The deletion of the condition allows more flexibility in the use of the ground floor of the premises, so long as the primary use remains a public house. The deletion of this restrictive condition would allow the use of the ground floor of the extension to return to any form of public house use, to promote the uses long-term viability, without the requirement for planning permission.

4.4 **Conclusion**

4.4.1 It is considered that the planning permission previously granted should be granted unconditionally.

5.0 **Legal Implications**

5.1 In making decisions on applications submitted under the Town and Country Planning legislation, the Council is required to have regard to the provisions of the development plan and to any other material considerations. The decision must be in accordance with the plan unless the material considerations indicate otherwise. Where the decision is to refuse or restrictive conditions are attached, the applicant has a right of appeal against the decision.

6.0 **Recommendation**

6.1 That planning permission be **GRANTED** unconditionally.

Planning permission has been granted for this proposal. The Council acted proactively through positive engagement with the applicant during the determination process which led to improvements to the scheme. The Council has therefore acted proactively in line with the requirements of the Framework (paragraph 38) and in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015.