

ITEM NO:	<u>Location:</u>	The Station Inn, Station Approach, Knebworth
	<u>Applicant:</u>	Market Homes (knebworth) Ltd
	<u>Proposal:</u>	Erection of 3 storey building to provide 9 x 2 bed flats, conversion and extension of store to 1 bed hours and new vehicular access off of Station Approach (as amended by drawings received on 12th and 2th October 2017)
	<u>Ref. No:</u>	17/01622/1
	<u>Officer:</u>	Simon Ellis

Date of expiry of statutory period: N/A

Reason for Delay

N/A. This application is now the subject of an appeal to be heard by Public Inquiry.

Background to Report and Reason for Referral to Committee

This planning application was originally reported to the Meeting of the Planning Control Committee held on 19 April 2018 (report attached as appendix 1). At that Meeting Members resolved to refuse planning permission for the reasons set out in the decision notice attached as appendix 2. Members will note that the decision of the Planning Control Committee to refuse planning permission for the reasons set out in the decision notice was made against the recommendation of the Development and Conservation Manager which was to grant planning permission with conditions.

Since this decision the appellant has lodged an appeal against this decision (start date for the appeal set by the Planning Inspectorate (PINs) is 2 August 2018). PINs have decided that the appeal is to be determined through a Public Inquiry.

At the time of writing there is no confirmed date for the Public Inquiry but by 28 September the Council is required to provide its full 'Statement of Case' to PINs and the appellant. The Statement of case is a brief document which sets out in broad terms the case that the Council will defend at the Inquiry. It needs to explain how the Council will provide expert evidence in the form of proofs of evidence to substantiate each reason for refusal.

The purpose of this report is to seek Members agreement to reduce the number of reasons for refusal and clarify other reasons that the Council seeks to defend at the Public Inquiry. By reducing the reasons for refusal to those set out in the recommendation the Council will reduce its costs risk at the Inquiry and be able to present a professional case to support the reasons for refusal rather than relying on Members having to present the evidence themselves.

As in all cases where Members have overturned officer recommendation under the professional code of conduct of the Royal Town Planning Institute (RTPI) officers cannot present evidence on behalf of Members or be cross examined on a case they cannot support. The Council will however need professional representation at the Inquiry and I have employed the services of a highly experienced planning consultant to review the case and in his view he is prepared to defend the reasons for refusal at the appeal but only based on the changes to the reasons I recommend below.

1.0 Relevant History

- 1.1 See committee report and decision notice attached as appendices 1 and 2.

2.0 Policies

- 2.1 See committee report and decision notice attached as appendices 1 and 2.

3.0 Representations

- 3.1 All representations received as a result of consultation on the planning application have been sent to the Planning Inspectorate and all interested parties have been provided with an opportunity to make further comments to PINs and attend and will be able to participate in the forthcoming public inquiry.

4.0 Planning Considerations

4.1 Site & Surroundings

- 4.1.1 See committee report attached as appendix 1.

4.2 Proposal

- 4.2.1 See committee report attached as appendix 1.

4.3 Key Issues

4.3.1 I set out below my assessment of each reason for refusal and the likely consequences of pursuing each reason in terms of evidence required to be presented at the Inquiry, the likely prospects of success and the costs risks that the Council will be exposed to should Members resolve to pursue the reason and seek to defend it at the forthcoming public Inquiry.

4.3.2 Reason 1 Potential Loss of the Public House use

The proposed development, due to the loss of most of the public house garden and the introduction of residential units in such close proximity to the public house, would be prejudicial to the retention and development of this important community facility, which is a designated Asset of Community Value and the only public house in Knebworth. As such, the development would be contrary to paragraphs 28 and 70 of the National Planning Policy Framework and contrary to Policy ETC7 of the submitted Local Plan 2011-2031.

4.3.3 The new NPPF published in July 2018 replaces the NPPF on which the decision to refuse permission was determined. The equivalent paragraphs to 28 and 70 in the new NPPF are paragraphs 83 and 92.

4.3.4 Whilst the development proposal would not lead to the loss of the public house the Committee were concerned about the development proposal encroaching onto the pub garden and threatening its long term viability.

4.3.5 Arguably paragraph 92 of the new NPPF could strengthen the Council's case in relation to this reason for refusal. Paragraph 92 replaces the provisions of old paragraph 28 of the previous NPPF but adds another element to the policy as follows:

'To provide the social, recreational and cultural facilities and services the community needs, planning policies and decisions should:

c) guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day to day needs;

d) ensure established shops, facilities and services are to develop and modernise, and are retained for the benefit of the community;'

4.3.6 This new clause d) can in my view be used as a basis to support the Council's refusal reason at the appeal, which can be supported by paragraph 83 of the new NPPF which replaces paragraph 70 and reads as follows:

'Planning Policies and decisions should enable:

d) the retention and development of accessible local services and community facilities, such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship.'

4.3.7 Policy ETC7 of the submission Local Plan (2011-2031) is also referenced in the reason for refusal and this policy reads as follows:

'Planning permission for the loss or change of use of any shops, services, or facilities outside the defined retail hierarchy will be granted where:

- a. There is another shop, service or facility of a similar use available for customers within a convenient walking distance; and**
- b. The proposed replacement use would complement the function and character of the area.'**

4.3.8 In my view the appeal proposal which does not lead to the change of use or direct loss of public house does not conflict with this policy. The Council need to concede this point at the earliest opportunity (i.e. within the Statement of Case) in order to reduce the appellant's costs in seeking to demonstrate to the Inspector how the scheme does comply with the policy. The policy simply does not fit these circumstances, its criteria are only relevant to planning applications which propose the loss of facilities within the application, which is not the case here.

4.3.9 Overall therefore in relation to reason 1 of the decision notice I recommend that Members agree to present a Statement of Case which seeks to remove reliance submission Local Plan Policy ETC7 but presents an argument that the appeal proposal would be prejudicial to the aims of new NPPF paragraphs 83 and 92 (see recommendation 6.1 i) set out below).

4.3.10 **Reason 2 Poor Design and Layout**

The proposed block of flats, due to its size, would present a cramped appearance in the street scene and this, together with its overall design, would be out of keeping with the character and visual amenities of Station Approach and Park Lane. As such the development would be contrary to the National Planning Policy Framework, Section 7 'Requiring Good Design', Policy 57 – Residential Guidelines and Standards of the North Hertfordshire District Local Plan No. 2 with Alterations and Policy D1 – Sustainable Design of the submitted Local Plan 2011-2031.

4.3.11 This reason relates to design and layout and can be argued at an appeal as it does not require the submission of technical evidence that can be easily cross examined. Save for updating the relevant sections of the new NPPF I can recommend that the Council continues to defend this reason for refusal at the Inquiry.

4.3.12 **Reason 3 Lack of Parking leading to severe highway impacts**

The proposed development would fail to provide a sufficient number of parking spaces to serve the new flats, to meet the Council's current minimum car parking standards and would result in the reduction of the parking space available for the public house. This would result in severe harm upon the parking capacity of the local highway network. The development would, therefore, be contrary to the National Planning Policy Framework, Section 4 – Promoting Sustainable Transport; North Hertfordshire District Local Plan No 2 with Alterations, Policy 55 Car Parking Standards, and the submitted Local Plan 2011-2031, Policy T2 Parking.

4.3.13 The National Planning Practice Guidance (NPPG) sets out circumstances (not exhaustive) when a local planning authority may be at risk of an award of costs against it at an appeal. Two specific examples given are when a local planning authority withdraws a reason for refusal and when a local planning authority fails to produce evidence to substantiate each reason for refusal at an appeal.

4.3.14 To defend this reason for refusal under cross examination will require clear evidence that the effect of a slight deficiency in car parking on site would have a severe impact on the safe operation of the highway, in the face of no objections from the statutory consultee (Hertfordshire County Council Highway Authority). To continue to defend this reason beyond Statement of Case Stage (28 September 2018) leading up to exchange of proofs of evidence and presentation at the Inquiry, would add to the costs the appellant would accrue in providing their own expert evidence to counter the Council's case.

4.3.15 Taking account of the advice within the NPPG the Council is at risk of an award of costs by withdrawing this reason for refusal. However, at this early stage of the appeal and before the Statement of Case is submitted any costs claim on this element would be very limited as the appellant has not spent resource seeking to counter any evidence that the Council has put forward defending this reason refusal; Such as employing expert witnesses to explain the highway implications of the scheme and seeking legal advice on preparing proofs of evidence for those witnesses.

4.3.16 The higher risk of a greater award of costs is in my view incurred by continuing to pursue this reason for refusal and then attending the Inquiry without substantive, expert evidence to support the argument.

4.3.17 There is a balance of risk here but given that the Council is now faced with having to prepare for a Public Inquiry I am of the view that the most prudent course of action is to withdraw this reason for refusal at this early stage of the appeal process. I therefore recommend that Members agree to withdraw reason for refusal 3.

4.3.18 **Reason 4 Noise and Odour Impacts**

Due to the close proximity of the proposed flats and the residential conversion of the store building of the existing public house, the living conditions of the future occupiers would be prejudiced by the general noise and odour associated with the public house. In addition to this, insufficient outdoor amenity space would be provided to meet the needs of the future occupiers. The development would, therefore, be contrary to the National Planning Policy Framework, paragraph 17; North Hertfordshire District Local Plan No. 2 with Alterations, Policy 57 – Residential Guidelines and Standards; and the submitted Local Plan 2011-2031, Policy D3 – protecting living conditions.

4.3.19 The NPPG also advised that local planning authorities will be at risk of an award of costs being held against them if they:

'[refuse] planning permission on a ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions enable the development to go ahead.'

4.3.20 The officer report to Committee set out in appendix 2 and the memorandum from the Council's Environmental Health Officers (appendix 3) clearly explains how the Council's Environmental Health Officers following an assessment of the applicants noise and odour assessment were satisfied that the noise and odour effects associated with this development can be mitigated by the imposition of suitably worded planning conditions. Members however decided to refuse planning permission on the basis of noise and odour impacts.

4.3.21 Given the advice of the NPPG set out above there is clear risk of an award of costs being awarded against the Council if the appeal Inspector concludes in line with the Council's employed experts that any noise or odour impacts can be mitigated by conditions. Moreover, if the Council continues to pursue this reason for refusal the appellant will incur considerable costs associated with employing their own experts in seeking to explain how conditions would mitigate any impact.

4.3.22 As with the highway reason for refusal, there is a balance of risk here in withdrawing a reason refusal (but at an early stage of the appeal) or pursuing a reason for refusal to defend which would be very difficult to substantiate with clear expert evidence. I am of the view that the risk of a substantial award of costs being awarded against the Council is lower if this reason for refusal is withdrawn at this stage and then explained in the Statement of Case. I recommend that reason for refusal 4 is withdrawn.

4.3.23 The wider and more general point about poor amenity space can be incorporated into any design evidence associated with reason 2.

4.3.24 **Reason 5 Lack of Completed S106 Obligation**

The submitted planning application has not been accompanied by a valid legal undertaking (in the form of a Section 106 Obligation) securing the provision of planning obligations as set out in the Council's Planning Obligations Supplementary Planning Document (SPD) (adopted November 2006) and the Planning obligations – tool kit for Hertfordshire: Hertfordshire County Council's requirements January 2008. The secure delivery of these obligations is required to mitigate the impact of the development on the identified services in accordance with the adopted Planning Obligations SPD, Policy 51 of the North Hertfordshire District Local Plan No 2 with Alterations (Saved Policies 2007) or Proposed Local Plan Policy HS2 of the Council's Proposed Submission Local Plan (2011-2031). Without this mechanism to secure these provisions the development contrary to the requirements of the National Planning Policy Framework (NPPF).

4.2.25 At present this reason for refusal still stands. It is however standard and expected practice that in the lead up to an appeal the appellant and local planning authority work towards securing a valid S106 Obligation in time for the appeal. On this basis I seek Members agreement to withdraw this reason for refusal if between now and the date of the Inquiry the parties have negotiated a valid S106 Obligation that delivers all the necessary elements.

4.3 Conclusion

4.3.1 A public inquiry throws considerable scrutiny on a local planning authority. A decision to refuse planning permission is opened up to cross examination and expert evidence is tested. Reasons for refusal must be robust and supported by evidence. In this case and having discussed the appeal with our appointed planning consultant who has considerable experience at giving expert evidence at Inquiry and indeed experience as Planning Inspector determining appeals he is prepared to represent the Council at this Inquiry but only the basis of the refined and reduced reasons refusal I recommend below. He will not be able to give expert evidence on noise, odour or traffic issues and indeed I consider that no such evidence on these matters would be credible given the facts of the case.

4.3.2 In my view if Members were minded to support my recommendation I do not consider it to be a weakening of the Council's case. In fact I consider that the Council by being professionally represented at the Inquiry and only arguing the key points that it has a case to pursue would present a more credible and robust defence of the decision to refuse planning permission.

4.3.3 Moreover, by narrowing the range of issues of dispute with the appellant the Council will reduce its risk to cost exposure.

4.3.4 If Members agree this recommendation I also request that Members agree that that I write to PINs and the appellant and ask that the appeal procedure is down graded to a Hearing as in such circumstances technical highway, noise and odour evidence does not need to be tested and on that basis a Hearing would seem more appropriate to avoid significant legal costs to all parties associated with a Public Inquiry.

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 the Council in its Statement of Case relating to this appeal adapts the reasons for refusal as follows:

- i. Refines reason for refusal 1 by withdrawing reference to Policy ETC7 of the Submission Local Plan (2011-2031);
- ii. Supports Reason for refusal 2 on poor Design and Layout with the addition of lack of amenity space as part of the poor design and inappropriate development in relation to the continuation of the pub use;
- iii. Withdraws reasons for refusal 3 and 4 at this early stage;
- iv. Allows the Development and Conservation Manager in consultation with the Council's planning lawyer, appointed Counsel and planning consultant to withdraw reason 5 if and when a satisfactory completed S106 Obligation is finalised between now and the date of the Inquiry.

6.2 That the Members allow the Development and Conservation Manager to write to PINs and the appellant to request that the method of appeal is down graded from Public Inquiry to Hearing in light of the changes to the Council's case agreed under recommendation 6.1: