

BRECKLAND COUNCIL

DEVELOPMENT CONTROL COMMITTEE - 20th SEPTEMBER, 2010

REPORT OF DEPUTY CHIEF EXECUTIVE

(Author: Heather Burlingham: Assistant Development Control Officer)

**SWAFFHAM: 15A MARKET PLACE: INTERNAL AND EXTERNAL
ALTERATIONS: 3PL/2010/0707/LB**

DEFERRED ITEM REPORT

Members will recall the above application for Listed Building Consent was considered by Development Control Committee on 2nd August, 2010. (See previous report attached). Members resolved to defer the application to seek legal advice, including a legal opinion as to whether a change of use application was also required.

The application relates to Listed Building Consent only. Section 66 of the Planning (Listed Building and Conservation Area) Act 1990 refers to a duty "to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses". The Listing for this property, from January 1973 and updated July 1996, refers to it being an early 18th century house, subsequently converted to a shop and highlights exterior features such as a twentieth century half glazed door to the left of a late 19th century plate glass display window with a canopy box above. No features of special interest to the interior were noted.

The proposal continues to prompt letters of objection in relation to the use of the premises as a funeral directors. The application does not relate to change of use. (See attached report)

A formal Counsel opinion as to whether the use, as described in the application, needs a separate planning permission has been sought. A report will be made verbally at the meeting in relation to that consultation. A letter from the applicants' solicitors on this subject is attached for information.

RECOMMENDATION: That Listed Building Consent be granted subject to the amended plans and details supplied in respect of works to the building.

BRECKLAND COUNCIL - DEVELOPMENT CONTROL COMMITTEE - 02-08-2010

ITEM	11	RECOMMENDATION : APPROVAL
REF NO:	3PL/2010/0707/LB	
LOCATION:	SWAFFHAM 15a Market Place	APPN TYPE: Listed Build Consent POLICY: In Settlemnt Bndry ALLOCATION: Primary Comm. Area CONS AREA: Y TPO: N LB GRADE: Grade II
APPLICANT:	Fairways Partnership New Century House Manchester	
AGENT:	Pass Consultants Suites Kingswood House	
PROPOSAL:	Internal & external alterations	

KEY ISSUES

Impact of the proposals on the architectural and historic interest of the Listed Building

DESCRIPTION OF DEVELOPMENT

The application relates to Listed Building Consent for alterations to the ground floor of an existing shop to provide a reception area, arranging room, viewing room, tea room, toilet and holding room in connection with a funeral directors business.

External alterations include removal of a canopy blind, replacement of doors and repairs and redecorating of exterior. A short metal ramp is to be provided to the rear door and a ventilation grille is shown in the rear wall to serve ductwork in the building.

Internal alterations relate mainly to removal of elements such as pipework etc., repairs and the provision of new studwork partitions and ramp between varying floor levels and provision of an extract duct through the building to the external grille.

SITE AND LOCATION

15 Market Place, Swaffham is a narrow but relatively long building, with a more recent two storey extension to the rear, set back from the Market Place and linked to the Market Cross Restaurant and adjacent to The Assembly Rooms. A narrow passageway runs between the premises and the Assembly Rooms. The frontage is open with a large pedestrianised area between the shop and restaurant and the adjacent parking area. The buildings back onto an area used for parking and servicing, known as The Shambles.

The property is a Grade 2 Listed Building lying within the Conservation Area and part of the main shopping area of Swaffham. It was previously used as a shop.

BRECKLAND COUNCIL - DEVELOPMENT CONTROL COMMITTEE - 02-08-2010

RELEVANT SITE HISTORY

3PL/2002/1590 - Two storey extension - Approved - 9/12/02
3PL/2004/0127 - Change of use from A1 to A2 (estate agents) - Refused - 7/4/04
3PL/2004/1421 - Change colour of fascia. Recover existing canopy - Listed Building Consent - 27/10/04
3PL/2004/1535 - Replace shop window and door and replace window of flat - Listed Building Consent - 22/10/04

POLICY CONSIDERATIONS

The following National Planning Guidance and/or Saved Policies of the Breckland Local Plan and those of the Core Strategy and Development Control Policies Development Plan Document have been taken into consideration in the determination of this application:

PPG5: Planning for the Historic Environment

DC17: Historic Environment

CONSULTATIONS

SWAFFHAM TOWN COUNCIL

Objection:-

Swaffham Town Council object to this application whilst acknowledging that technically under Listed Building Consent objections to the above application on the grounds of planning or change of use cannot be entertained.

However the Council are of the opinion to support the substantial local opposition to the use of the premises as a Funeral Directors/Chapel of Rest on the grounds of the negative impact on adjacent local businesses. The total impracticality of using or attempting to use the Shambles as a means of access for hearses into a congested service area and existing blind onto a main bus route.

We would therefore urge the Development Control Committee to consider this application accordingly taking into account the views of Swaffham Town Council and the Swaffham Community at large.

Secondly we would respectfully argue that the above mentioned objections, and in particular with reference to the access problems at the rear of the building, do in fact warrant and constitute the basis of a planning objection in a Conservation Area. The Council strongly recommend that planning consent should have been applied for and refused.

HISTORIC BUILDINGS OFFICER - Requests further information and amendments relating to wall and flooring systems, coverings and redecoration.

ENVIRONMENTAL HEALTH OFFICER - No objections. Comment in relation to any refrigeration or air conditioning plant which may impact on amenity of nearby occupants.

REPRESENTATIONS

A large number of letters of objection have been received. The issues raised relate to the use of the premises as a funeral directors and the impact of the use on the general public in this area and those using the adjacent Market Cross Restaurant. Concerns also relate to the difficulties of access to the building for hearses and the possibility of bodies being brought into the front of the building from the Market Place, causing distress to the general public.

ASSESSMENT NOTES

- * The application is referred to Development Control Committee at the request of the Ward Representative.
- * The application relates to Listed Building Consent only. It does not relate to a change of use. The existing use as a shop falls within Use Class A1 of the Use Classes Order. A funeral directors also falls within that Use Class. As such, no application for change of use is required.
- * The alterations to the building are relatively minor with the main part of the scheme being the provision of partition walls to the ground floor of the building to provide a reception, arranging room, store, viewing room, tea room, toilet and holding room. Apart from replacement doors, the provision of a metal ramp to the rear, repairs and redecoration, external changes are minimal.
- * Whilst the application refers to proposals for signage, this would be the subject of a further application and does not form part of this scheme.
- * The application has provoked a large amount of letters of objection from local residents and visitors to Swaffham generally and, in particular, customers of the adjacent restaurant, in respect of the use as a funeral directors. They feel the site is not appropriate to such a use and the difficult access to the rear has raised concerns that coffins or bodies would be brought in through the front entrance, in view of passers by and customers of the adjacent restaurant. Concerns also relate to health issues if bodies were treated and stored at the premises prior to burial.
- * Plans showing the layout of the building do not indicate that any preparation of bodies will be carried out on site and no chilled storage area is shown to allow bodies to be kept prior to any funeral. Further information regarding how the business will operate has confirmed that bodies will not be treated at this site; such facilities are available elsewhere, bodies will only be on site for short periods when arrangements are made for relatives to view the deceased on the premises; they will not be stored on the site. The agent has indicated that coffins will be taken into the premises via the rear service door. Notwithstanding this information which has been supplied in response to the concerns raised, the issues cannot be considered as part of the assessment of this proposal.
- * The Environmental Health Officer has no objections to the proposal but states that if bodies were to be stored on site, some form of refrigeration or air conditioning is likely to be required and details would be required to avoid impact on the amenity of nearby occupants. The provision of such equipment is not included in this application.
- * Subject to amendments to the proposal in respect of methods of redecoration, wall and flooring systems and coverings, the proposal is not considered likely to impact on the architectural or historic interest of the Listed Building and is recommended for approval.

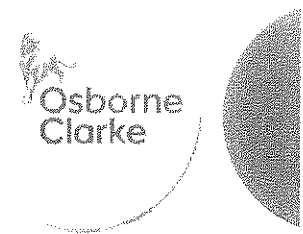
RECOMMENDATION

Listed Building Consent

BRECKLAND COUNCIL - DEVELOPMENT CONTROL COMMITTEE - 02-08-2010

CONDITIONS

- 3009** Listed Building Consent - Time Limit (3 years)
- 3048** In accordance with submitted AMENDMENTS
- 3994** NOTES: Further consent reqd for other equipment
- 3998** Reasons for Approval
- 4000** Variation of approved plans
- 3996** Note - Discharge of Conditions



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By email and post

Our reference AELH/0959749/O10052064/AELH

26 August 2010

Dear Sir

Fairways Partnership – 15a Market Place, Swaffham

Application for Listed Building Consent ("the Application")

Ref : 3PL/2010/0707/LB

We are instructed by the Fairways Partnership and write to you with reference to the Application.

We have considered the planning officer's report to the Development Control Committee dated 2 August 2010 ("the Officer's Report"), together with the various representations made on behalf our client, statutory consultees and also third parties, including the ward member and the Town Council.

We understand that at the committee meeting on 2 August 2010 the Development Control Committee resolved to defer the Application until the next committee for further legal advice. We understand that the Application is due to be taken back to the Development Control Committee on 20 September.

We understand that clear advice was provided to the committee by the Council's officers to the effect that the proposed use of the property is irrelevant to the Application. However it would appear that the Cllr Sherwood, who is not a member of the Development Control Committee but is ward member for the Swaffham ward, challenged officers' advice on the basis that he had been provided with conflicting legal advice. It was unfortunate that neither officers nor my client had been provided with the opportunity to consider this conflicting legal advice before the committee meeting. Although my client is very clear in terms of its legal position on the Application, a more timely exchange of information prior to the meeting could have delivered a clearer position for members at the Development Control Committee. This has effectively resulted in further committee time being taken up with considering the Application on 20 September despite clear advice and a positive recommendation from officers.

We have been asked to set out the legal framework for the determination of the Application in order to assist the Council and to enable the Application to be considered properly at the Development Control Committee on 20 September.

As you will be aware, the Application was submitted under the Planning (Listed Buildings and Conservation Areas) Act 1990 ("the Act"). The Act sets out the requirements for the contents of the Application and the process to be followed in determining the Application. Section 16 of the Act sets out the particular consideration that the Council must have in mind when determining the Application, which is namely to "have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest that it possesses". The current national

guidance for the determination of such applications can be found in PPS5 (2010) together with the accompanying Practice Guide dated March 2010. The policies and principles set out in PPS5 are to be taken into account when determining the Application.

The Officer's Report correctly advises the committee that the Application only relates to Listed Building Consent. As such, this is the extent of the Application before the Development Control Committee and they must determine the Application within the statutory framework in order for their decision to be properly and lawfully made.

It would appear that the majority of the third party representations relate to the proposed use of the property which is to provide a viewing facility in connection with my client's funeral direction business. We concur with the statement in the Officer's Report that there is no change in use arising from this proposed use of the property, given that the existing use is A1 (shops) and which specifically includes Class A1(f) for the direction of funerals under the Town and Country Planning (Use Classes) Order 1987 (as amended). We would comment that planning appeal decisions have confirmed that a funeral director's cold room (such as the proposed viewing room and holding room) is tantamount to a chapel of rest. In addition such appeal decisions have also confirmed that a chapel of rest or preparation room are an integral part of a funeral director's business, which encompasses both administrative and operational arrangements. To this extent, it is clear that the proposed use falls fully within class A1(f) and would not be considered as ancillary to such use in planning terms.

Aside from the issue of use in this respect being irrelevant to determination of the Application, in any event no planning permission under the Town and Country Planning Act 1990 would be required for the proposed use of the property. Consequently we would submit that the Council is unable lawfully to prohibit the proposed use of the property under the Application.

With regard to the policy framework contained in PPS5, we highlight the following considerations as being particularly relevant :

- Under PPS5, the Government's overall aim is to conserve the historic environment. Part of this aim is to ensure that heritage assets are put to an appropriate and viable use that is consistent with their conservation. Use is relevant in this context insofar as the works required to accommodate that use may lead to an unacceptable loss of significance of the heritage asset. The Application clearly satisfies this overall aim given the nature and extent of the works required to facilitate the proposed use. It is also notable that the works proposed in the Application will not preclude the future use of the property.
- Policy HE7 – this policy sets out the principles to be considered in determining the impact of the Application on the historic environment. It is clear that the considerations under this policy should be appropriate to the significance of the heritage asset (ie the property). Again we would submit that the Application complies with this policy, as among other issues, the extent of the works affecting the historic fabric of the property are acceptable to the Council's Historic Buildings officer and the proposal is to facilitate the positive use of the property which is currently vacant. It is notable that the third party representations have not commented on the extent or nature of the actual works proposed to the fabric of the property.
- Policy HE9 – it is clear that in this case the Application will not lead to a harmful impact on the significance of the heritage asset, given the extent of the works proposed to the listed building. Again we would submit that the Application complies with this policy.
- Policy HE10 – again we would submit that the Application will not have a negative impact on the significance of the setting of the heritage asset as defined in this policy.

Policies HE7, HE9 and HE10 primarily focus on the design of the proposed works ie the physical nature of the works proposed and how these contribute and respond to the historic environment.

We would also draw your attention to paragraph 191 of the accompanying Practice Guide which comments specifically on use as follows :

Where the proposal involves a change of use, particularly to single or multiple residential units, local planning authorities may consider that the impact on the building and its setting of potential future permitted development, such as conservatories, garden sheds and other structures associated with residential use, make the change of use proposal unacceptable in principle. Conditions preventing or limiting such future permitted development may make the change of use proposal acceptable.

We would suggest that this reinforces the focus on the physical works required to facilitate the proposed use of the heritage asset. In this paragraph, concerns relating to change of use extend to future permitted development rights enabling the erection of structures which may impact on the historic environment. Such concerns are clearly not applicable in this case given there will be no change of use.

It is notable that the Council's Historic Buildings officer considers the Application acceptable against this policy framework as confirmed in his updated memo of 3 August.

Given the failure of the Development Control Committee to follow officer's advice on 2 August, there appears to be a real prospect of the Council misdirecting itself in law as to the relevant considerations to be taken into account when determining the Application. In the light of this we would submit that the officers must be clear in their advice to the Development Control Committee on 20 September.

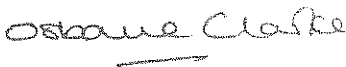
We would welcome the opportunity in advance of the meeting on 20 September to consider and comment on both the legal advice provided to Cllr Sherwood and that provided to the Council at the request of the Development Control Committee.

Please take this letter as formal notice that my client reserves its position with regard to lodging an appeal against any decision of the Council on the Application together with an application for a full costs award against the Council.

Furthermore please note that in the event the Development Control Committee fail to determine the Application on 20 September and resolve to defer the Application a second time, my client also reserves its position with regard to lodging an appeal against non-determination, together with an application for a full costs award against the Council

We would be grateful if you could acknowledge receipt of this letter and confirm that the determination of the Application will be given due legal scrutiny. Please also note that as this matter may lead to an appeal we trust that it will be brought to the attention of the Chief Planning Officer at the Council and members of the Committee.

Yours faithfully



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