

4.3 – SE/15/00722/FUL Date expired 25 September 2015

PROPOSAL: Use of the building with no restrictions on occupancy and alterations to fenestration on side wall of office.

LOCATION: 49A College Road, Hextable BR8 7LN

WARD(S): Hextable

ITEM FOR DECISION

Councillor Kitchener has called the application to committee on the basis the site has been vacant for a number of years and the use should therefore be considered on its merits and in the context of the residential location and its potential impact on neighbours.

RECOMMENDATION: That planning permission be GRANTED subject to the following conditions:-

1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

In pursuance of section 91 of the Town and Country Planning Act 1990.

2) The development hereby permitted shall be carried out in accordance with the following approved plans: 49A-COLLEGE-ROAD-01/B; 02/B.

For the avoidance of doubt and in the interests of proper planning.

3) The materials to be used in the construction of the development shall be those indicated on the planning application form.

To ensure that the appearance of the development is in harmony with the existing character of the surroundings as supported by Policy EN1 of the Sevenoaks Allocations and Development Management Plan..

4) No operations shall take place on the premises except between 0730 and 1800 Monday to Friday and 0830 and 1300 on Saturdays and no operations shall take place on Sundays or Bank or Public Holidays.

To safeguard the residential amenity of surrounding residential occupiers..

5) The premises shall be Class B1 use only and no changes of use, extensions or external alterations shall be carried out, despite the provisions of any Development Order.

To safeguard the amenities of the occupiers of surrounding properties as supported by Policy EN2 of the Sevenoaks Allocations and Development Management Plan.

6) No part of the site shall be used for any external storage of any kind.

To safeguard the appearance of the area and the amenities of the occupiers of surrounding properties as supported by Policy EN1 and EN2 of the Sevenoaks Allocations

and Development Management Plan.

Note to Applicant

In accordance with paragraphs 186 and 187 of the NPPF Sevenoaks District Council (SDC) takes a positive and proactive approach to development proposals. SDC works with applicants/agents in a positive and proactive manner, by;

- Offering a duty officer service to provide initial planning advice,
- Providing a pre-application advice service,
- When appropriate, updating applicants/agents of any small scale issues that may arise in the processing of their application,
- Where possible and appropriate suggesting solutions to secure a successful outcome,
- Allowing applicants to keep up to date with their application and viewing all consultees comments on line (www.sevenoaks.gov.uk/environment/planning/planning_services_online/654.asp),
- By providing a regular forum for planning agents,
- Working in line with the NPPF to encourage developments that improve the improve the economic, social and environmental conditions of the area,
- Providing easy on line access to planning policies and guidance, and
- Encouraging them to seek professional advice whenever appropriate.

In this instance the applicant/agent:

- 1) Was updated on the progress of the planning application.

Description of Proposal

- 1 Use of the building with no restrictions on occupancy and alterations to fenestration on side wall of office. The application originally included an extension to a store, but that element has now been omitted from the scheme.

Description of Site

- 2 The application site comprises a single storey building attached to the end of a terrace of two-storey dwellings on the south side of College Road. Vehicular access exists to the side of the building to an area of hardstanding that wraps around the rear boundary of 49 College Road and runs parallel with the rear boundaries of dwellings located in New Road. There is also a detached single storey storage building located to the rear of the site. The site is not located within the Green Belt or AONB and it is not located within a Conservation Area.

Constraints

- 3 Urban confines of Hextable

Policies

Core Strategy

- 4 Policies – SP1 and SP8

Allocations and Development Management Plan

- 5 Policies – EN1, EN2, EN6, EMP5, T1, and T2

Other

- 6 National Planning Policy Framework
7 National Planning Practice Guidance

Relevant Planning History

- 8 03/02037/CONVAR: Variation of condition 2 of SE/91/1600 to allow occupation of rear of premises by another occupier, being Mr M Gill, Accountant. GRANT 06/01/2004
- 84/01315/HIST: CHANGE OF USE FROM STORAGE AND WASHING MACHINE REPAIRS TO UPHOLSTERY REPAIR WORKSHOP. GRANT 12/12/1984
- 85/01706/HIST: USE OF PREMISES BY BUILDING/ELECTRICAL/PLUMBING CONTRACTOR FOR STORAGE AND OFFICE. GRANT 19/02/1986
- 85/01165/HIST: REBUILDING AND ENLARGING EXISTING SINGLE STOREY UNIT AND THE SITING OF A DOUBLE GARAGE. GRANT 07/03/1986

Consultations

Hextable Parish Council

- 9 *'Objection. The Parish Council strongly objects as this property is attached to a residential property in different ownership and occupied by a family. It is in a quiet residential road in a compact residential area with terraced houses attached and neighbouring at rear plus houses adjacent and opposite. B1 use may be industrial and this would not be appropriate in this confined residential area. The building has been an accountants for many years and there would be no objection to office use but not industrial use which could mean noise, fumes, smells and traffic. The previous use was a personal use so perhaps this site needs to be regarded as nil use and a fresh view needs to be considered. Residential use is preferred by the parish council with office use also fine but industrial use is not acceptable to the residents opposite, adjacent and particularly behind. The parish council is concerned because the actual use isn't specified which if it were a personal use with specific conditions could be considered.'*

Representations

- 10 Notification letters were sent to the occupiers of 11 properties surrounding the site. A site notice and press notice were displayed. The statutory consultation period ended on 27.08.2015.

11 4 letters of objection received as summarised below:

- More details of proposed use required;
- Concerns regarding light industrial use;
- Noise disturbance in quiet neighbourhood;
- Parking of large vans would restrict light and privacy;
- Extension to storage facility would abut whole width of rear garden at close proximity;
- Impact on visual amenity;
- Query regarding land ownership.

Chief Planning Officer's Appraisal

12 The main issues relate to

- Principle of development
- Design and impact on the character and appearance of the surrounding area
- Residential amenity
- Highways
- Other

Principle of development

13 The site comprises an existing office building, hardstanding and detached store building within the settlement confines of Hextable. Policy L07 of the Core Strategy is relevant and permits small scale development taking account of the limited scope for development to take place in an acceptable manner and the limited range of services and facilities available. This and policy EMP5 also states that existing suitable employment sites will be retained with the opportunity for regeneration and redevelopment to better meet the needs of business. Policy SP8 seeks to retain business uses.

14 The site comprises an established Class B1 employment use. Class B1 business uses fall into three categories comprising a) offices, b) research and development of products and processes and c) any light industrial process. The Use Classes Order makes the important proviso that to fall within the B1 Class a use has to be capable to being carried out without detriment to the amenity of any residential area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit. Thus any use that cannot comply with this definition would not normally be considered a Class B1 use. Article 3 of the Use Classes Order provides that where a building or land is used for a purpose in any class, the use of that building/land for any other purpose of the same class will not involve development. As such any change between these three categories does not constitute development for the purposes of the Town and Country Planning Act 1990 and would not normally require planning permission.

- 15 Since 1986 the use of the site has been restricted to named occupiers. The site is currently vacant and although it is not clear when the use by the named occupiers ceased, it is not considered that the use has been abandoned. The test of abandonment is whether a reasonable person would conclude in the circumstances that the use has been abandoned and the following considerations will be relevant: i) the physical condition of the building; ii) the period of non-use; iii) whether there has been any other use; and iv) the owner's intentions.
- 16 As to i) the physical condition of the building, on the information available, it appears that the former office building and store is in good physical condition both externally and internally, and at the time the commercial agents were instructed to market the site in December 2013 it was occupied (albeit not by the named occupiers) and therefore of a standard as to allow active use of the building. There is no evidence that any of the buildings has fallen into dereliction or disrepair and there is nothing in its physical condition to suggest to the reasonable person that the use of the building has been abandoned.
- 17 As to ii) the period of non-use, it is not clear how long the site has been vacant for; however it is known from the planning records that it was occupied, at least in part, from 2004 (according to the Parish Council 'for many years') and that it was occupied in December 2013, albeit it is not clear how long it had been occupied for by that individual or company. I consider it very unlikely that the period of non-use would have been long enough to suggest that the use of the site has been abandoned, particularly in circumstances where the site has been marketed. By way of comparison, in appeal decisions [1978] J.P.L. 651 and 653 the Secretary of State found that there had been no abandonment of an existing use although dwelling-houses had been out of use for 35 and 25 years respectively.
- 18 As to iii) whether there has been any other use, there is no evidence that it has been used for any use other than that falling within Class B1.
- 19 As to iv) the owner's intentions, I am not aware of any intention by the owners of the site to abandon the use as an employment site. The site has been actively marketed since at least December 2013 as an office premises and the current planning application indicates a positive intention to continue to use the building for B1 purposes. On this basis I do not consider that the use has been abandoned or extinguished and as such the lawful use of the site remains Class B1 use, with restrictions on the occupier.
- 20 For clarification purposes this is not a s73 application for removal of a 'personal occupancy' condition, rather a full application that seeks permission for the continued use of the site for Class B1 use without restriction to a named individual or company.
- 21 In response to a query raised by Members a legal opinion has been sought as to whether the "personal occupancy" conditions imposed on the permissions granted in 1984 and 1986 had the effect of limiting the use of the site so that it would have a nil planning use once the site ceased to be occupied by the persons who had been granted those permissions. In summary, it is concluded that neither the 1984 or 1986 planning permissions were personal permissions because the conditions imposed in relation to "ensuring for the benefit of the applicant", would not have had the effect of creating personal planning permissions. This view is supported by a decision in the High Court in the case of *Knott v Secretary of State for Environment and Caradon DC (1997)*.

- 22 Therefore the conditions did not have the effect of limiting the planning use so that it would cease to be lawful once the land was no longer occupied by the person who had applied for the 1984 and 1986 permissions. In the circumstances, and on the basis that there is no evidence that the use of the land has been abandoned, then it is not considered that the land has a “nil use”. Accordingly, it is considered that because the site has been used as a workshop/office, the site benefits from a Class B1 use.
- 23 In assessing the acceptability of the proposal it is necessary to consider the National Planning Policy Guidance (NPPG) which states that ‘*unless the permission otherwise provides, planning permission runs with the land and it is rarely appropriate to provide otherwise*’. The guidance states that there may be exceptional circumstances where on personal or compassionate grounds a permission may be restricted to a named person, however this is generally where a proposed development would otherwise be unacceptable in principle (for example the erection of a new house in open countryside required to support an agricultural use).
- 24 Former Circular 11/95, now superseded by the NPPG advises that local occupancy conditions limiting occupancy to local firms can act undesirably to protect local businesses against fair competition, and may hinder the movement of industry in response to economic demand. *“If a service, or the employment it generates, is needed in an area, there is no planning reason why it should be provided by one firm rather than another. Commercial and industrial buildings will not become more acceptable because their occupancy is restricted, not will the expansion of a local firm necessarily lead to less pressure for further development (e.g. housing) than the arrival of a firm from outside. The Secretaries of State therefore regard such conditions as undesirable in principle.”*
- 25 The personal occupancy condition previously imposed was not attached for either personal or compassionate grounds. The existing condition does not limit the intensity of the Class B1 use nor the number of employees and is therefore not necessary to maintain highway safety or the amenity of local residents. The condition is unduly restrictive on the employment use of the land and the owner’s ability to dispose of it.
- 26 Planning should confine itself as far as possible to considerations of the impact of land use, and not how that use is managed or by whom. The personal occupancy condition now only exists as a vetting procedure for the Local Planning Authority and fails to meet the six tests required for imposing a condition. Specifically the condition is unnecessary and unreasonable and other conditions are capable of being imposed, including to safeguard neighbour amenity (discussed below). The NPPF sets the six tests for conditions and in terms of necessity states that a condition must not be imposed unless there is a definite planning reason for it (i.e. it is needed to make the development acceptable in planning terms). It is also states that if a condition is wider in scope than is necessary to achieve the desired objective it will fail the test of necessity. It is considered that there is no definite planning reason for it and that it is wider than necessary to achieve the desired objective, which in this case is to protect neighbour amenity. In terms of reasonableness the NPPF states that conditions which place unjustifiable and disproportionate burdens on an applicant will fail the test of reasonableness. It is considered that the occupancy condition is unduly restrictive on the use of the land and the owner’s ability to dispose of it.

- 27 The Council has a variety of enforcement powers it could use in the event that the site is used for any other use not falling within Class B1. In this instance, and taking account of the restricted size of the site and buildings, it is considered that the removal of the personal occupancy condition and extension of the existing store is acceptable in principle.

Design and impact on the character and appearance of the surrounding area:

- 28 Paragraph 56 of the NPPF states that the Government attaches great importance to the design of the built environment; 'Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people'. Policy SP1 of the Core Strategy states that all new development should be designed to a high quality and should respond to the distinctive local character of the area in which it is situated. Policy EN1 of the ADMP state that the form of proposed development should be compatible in terms of scale, height, density and site coverage with other buildings in the locality. The design should be in harmony with adjoining buildings and incorporate materials and landscaping of a high standard.
- 29 The site plan has been amended to exclude the area of land to the rear of the existing store and as such there are now no proposals to extend or add any additional built form on the site. The replacement of existing windows in the flank elevation of the office building at the front of the site with windows of the same size and design as others in the building would also not have any harmful visual impact on the streetscene consistent with planning policy.

Residential amenity:

- 30 Paragraph 17 of the NPPF identifies a set of core land use planning principles that should underpin decision making. One of these principles is that planning should always seek to secure a good standard of amenity for all existing and future occupants of land and buildings. Policy EN2 of the ADMP requires that any development should not have an adverse impact on the amenities of neighbours and also ensures a satisfactory environment for future occupants.
- 31 The site has an existing Class B1 use and although the occupier is controlled by condition it does not limit the intensity of the Class B1 use nor the number of employees and is therefore not necessary to maintain the amenity of local residents, which a Class B1 use, by definition, is required to do. As existing the hours of use of the site are controlled by condition and prohibit operation except between 0730 and 1800 Monday to Friday and 0830 and 1300 on Saturday. Given the location of the site in a residential area it is considered that residents should be given reasonable respite from lawful activities at the site for the enjoyment of their homes and gardens and on this basis it is recommended that the same condition restricting the hours of operation be imposed on any future planning permission.
- 32 It is not proposed to alter the existing hardstanding or parking area within the site and as such the occupation of the premises by a person other than the previously named occupiers would not result in any additional harm, including in terms of activity levels in accordance with relevant planning policy.
- 33 The objections related to impact on amenity are noted. As discussed above the site benefits from a Class B1 use, which by definition is a use compatible with a

residential area. Even the use of the site for a light industrial use would, by reason of its small size and layout, and subject to conditions regarding hours of operation, be capable of preserving residential amenity including in terms of noise and disturbance. As also discussed above it is not reasonable to require details of a proposed occupier prior to their occupation of an employment site. This application does offer the opportunity for additional benefits to be secured by condition, including in relation to the removal of permitted development rights (permitting changes of use to Class B8, and extensions and alterations to existing buildings) and restrictions on external storage.

Highways:

- 34 Policy T1 of the ADMP requires new developments to mitigate any adverse travel impacts. Policy T2 relates to vehicle parking, including cycle parking and requires provision in accordance with advice from the Highway Authority. No alterations to the existing vehicular access or hardstanding areas are proposed. The existing condition does not limit the intensity of the use, the number of employees or vehicle numbers and size and as such the use of the site for Class B1 purposes by any another occupier would not pose any greater harm to highway safety in accordance with relevant policy.

Conclusion

- 35 The personal occupancy conditions imposed on the previous planning permissions for the site are contrary to current guidance and fail to meet the relevant tests. I do not consider that the Class B1 employment use has been abandoned or extinguished and as such the lawful use of the site remains B1 use. Subject to conditions restricting the hours of operation, permitted development and external storage, the continued use of this Class B1 employment site by an unnamed occupier is considered acceptable in principle and capable of protecting neighbour amenity and highway safety.

Recommendation: Grant planning permission subject to conditions

Contact Officer(s): Matthew Durling Extension: 7448

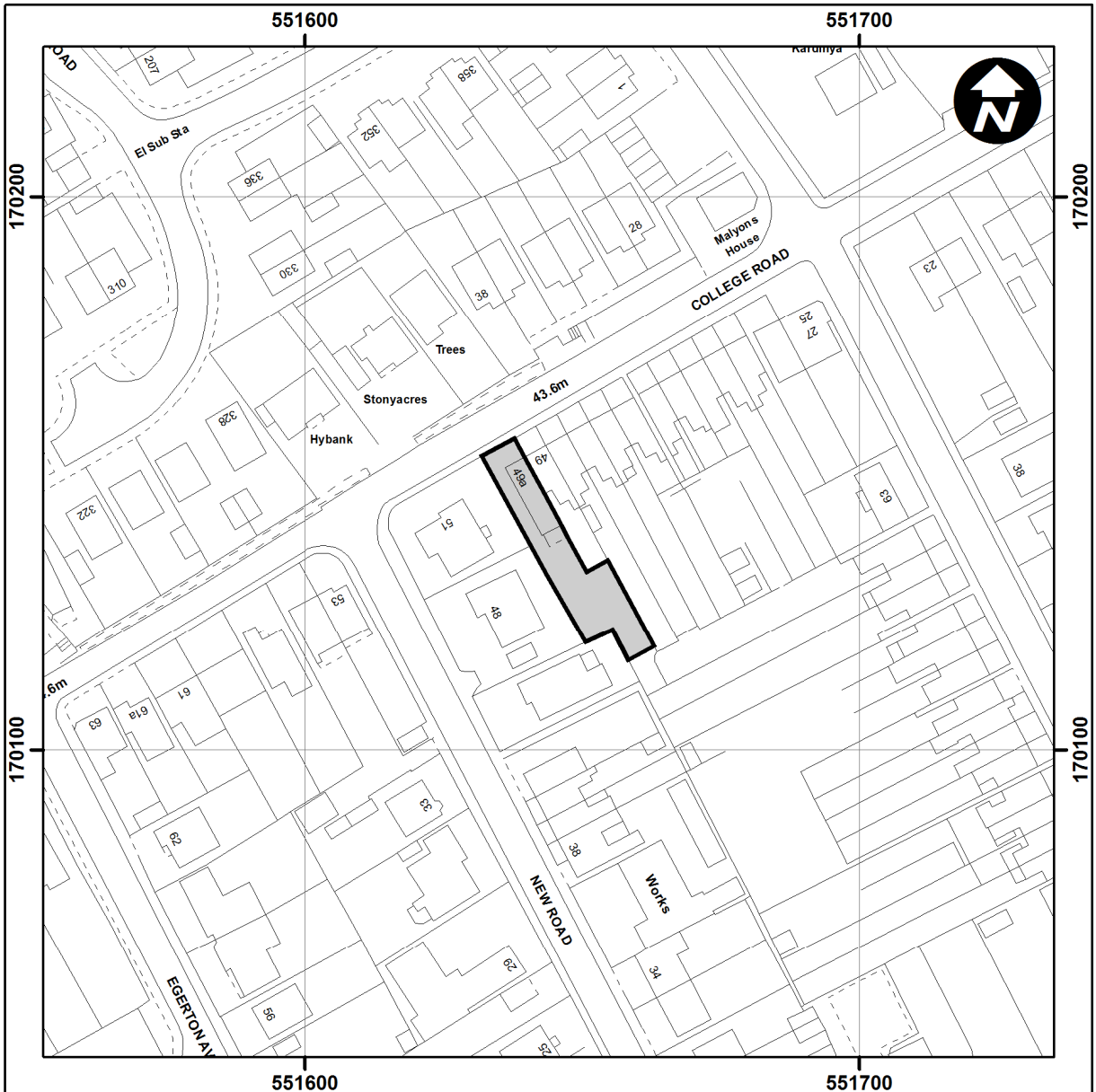
Richard Morris
Chief Planning Officer

Link to application details:

<http://pa.sevenoaks.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=NKYFBHBKIY700>

Link to associated documents:

<http://pa.sevenoaks.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=NKYFBHBKIY700>



Site Plan

Scale 1:1,250

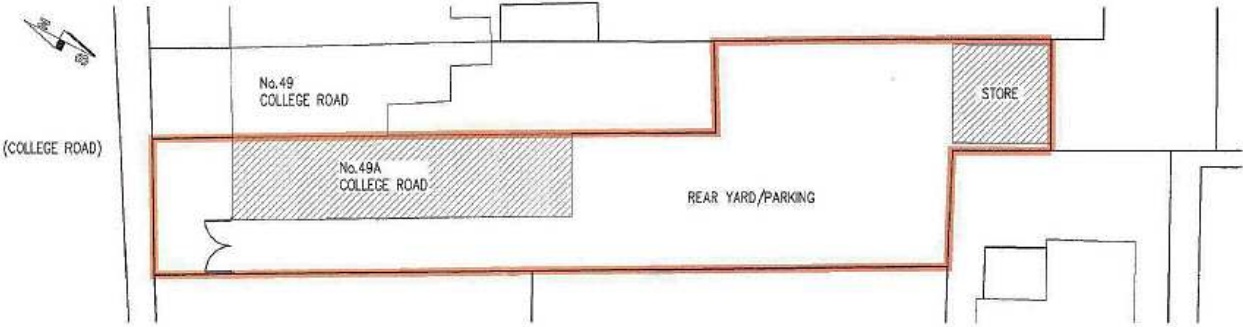
Date 14/09/2015



Sevenoaks
DISTRICT COUNCIL

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Block Plan



PROPOSED BLOCK PLAN