

Area North Committee – 26 February 2014

Officer Report On Planning Application: 13/03341/COU

Proposal :	Continued use of land for a mixed use of residential and B8 storage of used windows and doors with ancillary sales (retrospective) (GR 346669/116976)
Site Address:	Leggs Stores, West Street, Stoke Sub Hamdon.
Parish:	Stoke Sub Hamdon
HAMDON Ward (SSDC Member)	Cllr Sylvia Seal
Recommending Case Officer:	Anuska Gilbert Tel: 01935 462159 Email: anuska.gilbert@southsomerset.gov.uk
Target date :	18th October 2013
Applicant :	Mr M Legg
Agent: (no agent if blank)	Mr D Stephens, Battens Solicitors Ltd, Mansion House, Princes Street, Yeovil BA20 1EP
Application Type :	Minor Other less than 1,000 sq.m or 1ha

UPDATE

This application was considered by members at the January 2014 Area North Committee meeting. The decision was deferred to allow the consideration of enforcement options. However, legal advice is that it would be inappropriate for members to be asked to consider a report on an application seeking planning permission for an existing use, whilst at the same time being presented with a report outlining the enforcement options. Should it be necessary, a confidential enforcement item can be presented to members next month.

This application is referred to committee at request of the Ward Member with the agreement of the Chairman to enable the issues raised to be fully debated.

SITE DESCRIPTION AND PROPOSAL





The application site is located on the north side of West Street, on the western outskirts of the village of Stoke Sub Hamdon and within the development area. The surrounding properties to the east and west are mainly residential, with open land to the north and south. The site comprises of a detached 2 bedroom bungalow with garden area to the front and rear and a driveway along the western side of the plot.

The application seeks permission for the continued use of land for a mixed use of residential and B8 storage of used windows and doors. Included in this use would be a small amount of ancillary sales.

RELEVANT HISTORY

SE4844	Erection of a sweet and cigarette shop – refused January 1954- appeal allowed. The Appeal decision indicated that there was an existing market garden use to the rear.
4844/A	Erection of two petrol pumps and installation of underground tanks at forecourt of bungalow and shop – refused – March 1964
22186/A	Erection of extension to existing shop store at West End Stores – permitted with conditions – October 1966
4844/C	Erection of tomato store – Permitted with conditions – September 1970
800163	The use of existing shop stores for the assembly and distribution of timber garden sheds and the manufacture and process of rabbit hutches at West End Stores – permitted with conditions – May 1980 – temporary permission
820736	The continued use of existing shop stores for the assembly and

- distribution of timber garden sheds and manufacture and process of rabbit hutches at West End Stores – permitted with conditions – July 1982 – temporary permission
- 831153 The continued use of existing shop stores for the assembly and distribution of timber garden sheds and manufacture and process of rabbit hutches at West End Stores – temporary permission
- 861969 Continued use of shop stores for the assembly and distribution of timber garden sheds and manufacture of rabbit hutches – permitted with conditions – November 1986 – temporary permission
- 89/01861/FUL The continued use of shop stores for the assembly and distribution of timber garden sheds and manufacture and process of rabbit hutches – refused – March 1990 – Appeal against enforcement notice – split decision. Allowed continued use of land for residential and retail purposes on a temporary basis subject to conditions. Upheld the enforcement notice in respect of the dismantling of pallets/other timber articles/sheds/hutches/other wooden articles.
- 97/00079/COU Use of land and buildings for residential and retail purposes – permitted with conditions – February 1997 – temporary permission
- 02/00453/COU Use of land and buildings for residential and retail purposes (renewal of temporary permission 97/00079/COU) – permitted with conditions – April 2002 – temporary permission for 5 years, which lapsed on 30 April 2007.

This final permission was personal to the applicant, limited to ‘garden sundries’, required the drive way to be kept clear and limited storage in the front garden to 25% of its area with nothing to be stacked more than 1m high.

POLICY

Section 38(6) of the Planning and Compulsory Purchase Act 2004 repeats the duty imposed under S54A of the Town and Country Planning Act 1990 and requires that decision must be made in accordance with relevant Development Plan Documents unless material considerations indicate otherwise.

For the purposes of determining current applications the local planning authority considers that the relevant development plan comprises the saved policies of the South Somerset Local Plan and the provisions of the National Planning Policy Framework (NPPF).

The policies of most relevance to the proposal are:

Saved policies of the South Somerset Local Plan (April 2006)

Policy ST2 – Development in Villages

Policy ST5 - General Principles of Development

Policy ST6 - The Quality of Development

Policy MC3 – Shopping Proposals outside Preferred locations

Policy MC5 – Non-shopping Uses

Policy MC6 – Non-shopping Uses outside Town Centres

National Planning Policy Framework - March 2012

Chapter 1 – Building a strong, competitive economy

Chapter 2 – Ensuring the vitality of town centres

Chapter 3 – Supporting a Prosperous Rural Economy

Chapter 7 – Requiring good design

Chapter 8 – Promoting Healthy Communities

South Somerset Sustainable Community Strategy

Goal 5 – High Performance Local Economy

Goal 7 - Distinctiveness

Goal 8 – Quality Development

CONSULTATIONS

Stoke Sub Hamdon Parish Council – The use of the property for the storage of doors, windows etc. particularly in the front garden or the side driveway should not be permitted.

SCC Highways – Refer to standing advice, particularly access, parking and turning for all uses. B8 use – 1 parking space per 200 square metres in Zone C. Therefore 4 spaces should be required together with at least 2 residential parking spaces and associated turning.

Environmental Protection Officer – No observations

REPRESENTATIONS

9 letters of representation received, raising points and concerns covering

- the history of the site and the change of the use of the site over time
- the visual impact of the use, the use itself and its suitability and scale
- residential amenity

Other matters including whether the windows and doors meet building regulation standards, whether the materials on site are recycled, health, safety and fire hazard concerns and questions over the ability of the applicant to adhere to any conditions that may be included in an approval.

CONSIDERATIONS

History

The application constitutes the most recent chapter of a substantial planning history dating from 1954. Over this time the applicant has received various permissions; beginning with permission granted at appeal for the erection of a sweet and cigarette shop in 1954. According to the inspector's report this permission was for the addition of a small general store, a little larger than a domestic garage to be erected behind the bungalow in place of two existing sheds. Various applications followed between 1955 and 1970.

In 1980 an application was considered which proposed the first significant change of use of the site since 1954; for the use of the shop stores for assembly and distribution of timber garden sheds and the manufacture and process of rabbit hutches. This was followed by three permissions for the continued use of the site for the same purposes.

The applications granted temporary permission for various periods of time, with conditions including a personal condition, hours of operation and that no metal was to be cut or worked on on-site.

In 1990 a further application was considered for this same use of the site and was refused. Enforcement action was subsequently authorised, requiring the applicant to permanently cease the use of the site for timber works, storage of timber, the manufacture of sheds and hutches and the retail/display/sale/storage of articles on the land otherwise than in connection with the permitted use of part of the site for shop purposes.

The enforcement notice was appealed and a split decision was issued, with the inspector noting that "it is clear that the commercial use of the site has expanded very substantially since planning permission was granted on appeal in 1954 for the erection of a shop in the back garden of the bungalow for use as a small general store". The inspector upheld the enforcement notice insofar as it related to the use of the land for timber works and the manufacture and assembly of sheds, hutches and other wooden articles.

However, the appeal was allowed in terms of the continued use of the land for residential and retail purposes, subject to conditions. These conditions included a personal condition, a temporary condition for 5 years, that no goods should be stored in the driveway in front of the front wall of the dwelling and that not more than 25% of the front garden area should be used for the display of goods for sale, with such goods restricted to garden sundries with no display exceeding 1 metre in height.

In 1997 and 2002 temporary planning permissions were granted for the use of land and buildings for residential and retail purposes, both of which contained the same conditions applied by the inspector in relation to the 1990 appeal against the enforcement notice. The latter of these two temporary permission expired in 2007, with no applications having been made since until now.

Visual Impact

Concerns have been raised by both neighbours and the parish council in terms of the appearance of the site. It is clear that the level of the current use of the site for the storage of a considerable amount of material both in front of and to the rear of the dwelling is out of keeping with the predominantly residential streetscene. It is also clear that the level of use is substantially different to that considered by previous applications. Previous permissions on the site have restricted the area, height, amount and type of material stored.

On this basis it is considered that to allow the fettered continuation of the existing use would be unacceptable and contrary to policies ST5 and ST6. Nevertheless at a certain level the mixed commercial/residential use of this site has been repeatedly deemed acceptable over the years.

The applicant has indicated that they now wish to wind down and cease the current use. It is considered that this is welcome however there would need to be a clear undertaking on their part to abide by such intention. To this end the applicant has indicated a willingness to give an undertaking in the form of a S106 agreement to do so.

Residential Amenity

Concerns have been raised by a number of neighbours over the effect of the use of the site on residential amenity. They note that along with concerns over health, safety and fire hazard, the material stored on site is encroaching on neighbours' boundaries due to the weight of the materials leaning against fences and walls. It is considered clear that

the current state of the site is such that there is a clear harm to residential amenity that could not be supported under the terms of policy ST6.

Nevertheless mixed residential /commercial use of the site has been deemed acceptable, subject to tight controls, albeit on a temporary basis. Accordingly it is accepted that at a suitable level the principle of the residential use of the site in conjunction with B8 storage for a limited period of time is considered acceptable.

Highways Safety

The proposal includes the mixed use of the site as residential and for B8 storage. Whilst the existing situation is such that parking cannot be easily provided, the reduction of the material stored on site over time will free up the driveway area so that it may be used for vehicle parking.

Special Circumstances

It is clear that from a straight forward visual and residential amenity point of view there is little (if any) justification to allow the current use to perpetuate. However, when arriving at a planning decision section 38(6) of the Planning and Compulsory Purchase Act 2004 allows local planning authorities to consider whether there are material considerations that justify making an exceptional decision.

In this instance there is a long standing (c.60 years) permission for a mixed residential/retail use of the site. Furthermore there is history of temporary permissions, stretching back to 1980, for the use of the site for storage/display and sale of larger items. Clearly the applicant's activities are in breach of a number of conditions of the 2002 permission. Not only has the use not ceased, it now covers more than 25% of the front garden, where goods are displayed more than 1m high, and clearly the use is no longer confined to 'garden sundries'.

Whilst these breaches of planning control are legion, consideration must be given to the applicant's fall-back position. This is set out in the temporary condition attached to the 2002 permission. This stated:-

"The use hereby permitted (other than that allowed on appeal on 6 October 1954) shall be for a limited period expiring on 1 March 2007 and by the end of such period the use shall cease and any buildings, works or structures comprised in the said development shall be removed and the land restored to its former condition."

Effectively the site should have reverted to the mixed residential/retail/market garden use approved by the Inspector in 1954. This did not limit the range of goods to be sold, although the then intent was a modest village store selling "sweets tobacco, tinned goods and general groceries". There is no suggestion of a limited sales area however it would be reasonable to suggest that this could be interpreted as a limited area, commensurate with the modest retail use proposed.

Notwithstanding this theoretical fall-back position it is clear that the current use is more akin to a B8 storage use with ancillary retail sales of second-hand door and window units. It would not be reasonable to accept that these activities are within the scope of the historic use to which the site should have reverted. However it is possible that a scaled back operation could be argued as being lawful – for example a retail activity based on the sale of second-hand doors and windows, with minimal outside storage, operating from the building approved as a shop in 1954. It is considered that this theoretically lawful use is a material consideration.

Consideration should also be had to the applicant's circumstances. He some 70 years

old and is of limited means. Following lengthy discussions it is accepted that total and immediate clearance of the site is probably beyond his means. Accordingly whilst a breach of condition or enforcement notice (or possibly a Section 215 notice) might be served to require the clearance of the site within a relatively short time the Council should be mindful of the difficulties that might arise.

The applicant is aware of the situation and is willing to co-operate with the local planning authority to agree a managed wind-down of his activities. To this end it has been offered to clear the front garden of all non-domestic items within 6 months and to clear the rear garden area, a third at a time over 5 years, with trigger points at one and three years. The applicant is also willing to accept a personal condition and limitations on the height of the storage of items.

Circular 11/95 (the use of conditions in planning permission) advises that it may exceptionally be reasonable to “grant permission for the use of a building or land for some purpose which would not normally be allowed at the site, simply because there are strong compassionate or other personal grounds for doing so.” (para. 93).

Given the history of the site, the fall-back options theoretically available to the applicant, his willingness to wind-down his activities and mindful of his circumstances it is not considered reasonable to refuse the application, and, in this instance it would be reasonable to make any permission personal to the applicant.

Other Matters

Neighbour comments have questioned whether the doors and windows stored on the site would not meet with building regulation standards. This is not a planning consideration with other legislation existing to address such concerns. In terms of the health and safety concerns raised, the environmental protection officer has not objected to the proposal. It has been confirmed that any issues relating to the burning of materials in association with a trade use would be dealt with under the 1993 Clean Air Act.

Section 106

If approved the applicant should provide a formal undertaking to reduce his activities on the site so that after 5 years the sole use of the site would be a house and garden with a small retail shop as originally approved by the Planning Inspector in 1954, with no external storage.

Conclusion

Whilst the neighbours have suggested that the use of the site is not suitable in its location, the extensive history of the site shows that it is the intensity of the use, rather than the use itself, which has proved problematic. Nevertheless, whilst including conditions to limit the use, permissions have continually been granted for the use of the site for residential and retail purposes. What is clear is that past permissions have not had success in controlling the type of material permitted on site, with problems encountered over the terms included in previous conditions.

The applicant’s agent has advised that the applicant is looking to “wind down’ the use in an orderly and manageable way”. Taking this, and the history of the site, into consideration it is suggested that the most appropriate way to recover control over this difficult site would be to agree a final temporary planning permission, in association with a Section 106 agreement.

It is considered that in this unique case it would be reasonable to agree, subject to

appropriate conditions, a managed reduction of the current activities over an agreed timescale. The applicant is willing to enter into a planning obligation to do so and on this basis it is considered reasonable, in this instance, to support the proposal.

RECOMMENDATION

That application reference 13/03341/COU be approved subject to:

(a) The prior completion of a section 106 planning agreement (in a form acceptable to the Council's solicitor(s)) before the decision notice granting planning permission is issued to secure a staged reduction of open storage area over a 5 year period ending in total clearance of non-domestic items as follows:-

- Within 6 months of the date of the permission all non-domestic items shall be removed from the front garden which shall be subsequently maintained free of all non-domestic items at all times thereafter unless planning permission is granted for an alternative use.
- Within 1 year of the date of the permission a third of the rear garden area shall be cleared of all non-domestic items and thereafter maintained free of all non-domestic items at all times unless planning permission is granted for an alternative use.
- Within 3 years of the date of the permission a further third of the rear garden area shall be cleared of all non-domestic items and thereafter maintained free of all non-domestic items at all times unless planning permission is granted for an alternative use.
- Within 5 years of the date of the permission the whole of the rear garden area shall be cleared of all non-domestic items and thereafter maintained free of all non-domestic items at all times unless planning permission is granted for an alternative use.

(For the purposes of this agreement the front garden shall be the land forward of the front elevation of the dwelling and the rear garden shall the land to the rear of the front elevation, including the land to the sides of the house.)

(b) and the following conditions.

Justification

The proposal allows the District Council to control a staged reduction in the use of the site that would be in the interests of the amenities of the locality in accordance with Policies ST5 and ST6 of the South Somerset Local Plan and the provisions of the National Planning Policy Framework

Conditions

01. The mixed use of residential and B8 storage of used windows and doors with ancillary sales hereby permitted shall cease on or before the expiration of five years from the date of this letter. Thereafter the use of the site shall be as a dwelling, with residential curtilage, and a shop within the former garage building as approved in 1954 by application SE4844 attached to this permission.

Reason: In the interests of the amenities of the locality in accordance with policy ST6 of the South Somerset Local Plan.

02. The use hereby permitted shall be carried on only by Michael Legg and shall be for a limited period being the period of 5 years from the date of this letter, or the period

during which the premises are occupied by Michael Legg, whichever is the shorter.

Reason: In view of the applicant's exceptional circumstances and to safeguard of the amenities of the locality in accordance with policy ST6 of the South Somerset Local Plan.

03. At no time shall any material stored in the rear garden of the property be in excess of 2 metres in height

Reason: In the interests of the amenities of the locality in accordance with policy ST6 of the South Somerset Local Plan.

04. At no time shall any material stored in the front garden of the property be in excess of 1 metre in height

Reason: In the interests of the amenities of the locality in accordance with policy ST6 of the South Somerset Local Plan.

05. The permission hereby granted shall relate solely to the land edged in red on the plan submitted with the application received 12/08/13.

Reason: In the interests of clarify and to determine the scope of this permission.

Informative

01. You are reminded that this permission subject to a planning obligation under section 106 of the Town & County Planning Act 1990.