

Application No: 22/4758M

Location: 4, WAREHAM STREET, WILMSLOW, SK9 1BT

Proposal: Variation of condition 1 and removal of condition 3 on approval 21/3436M for retrospective application for external drinking & dining area in connection with restaurant with proposed decking and canopy

Applicant: Ms A Mott, Sotto

Expiry Date: 01-Apr-2023

REASON FOR DEFERRAL

This application was deferred from the Northern Planning Committee on 22 March 2023 for the following reasons:

- “1. To resolve the maintenance/protection/care of the trees on site*
- 2. Submission of information to identify the economic benefits and justification for the proposal*
- 3. To identify mitigation for the loss of open space in other open spaces”*

KEY ISSUES

Maintenance / Protection / Care of On-Site Trees

The Council's Arboricultural Officer has previously confirmed the trees were not protected nor within a conservation area but did provide an attractive decorative feature. No objection was raised to the proposal in terms of the impact on the existing trees.

An Arboricultural Report from November 2022 has been provided in support of the current application. Following a site visit in November, the trees were considered to still appear structurally stable and in reasonable condition. There were not considered to be any external signs of deterioration, reduced vitality or mechanical change and there was no evidence that the canopy and decking had caused any significant long-term harm to the existing trees.

The recommendations within the Arboricultural report are set out below:

‘In the short to medium-term, the ratchet straps will need to be re-positioned and re-tensioned, at least once a year, to prevent damage to the branches. The health and condition of the trees should be reviewed at the same time. In the long-term, adjustments to the wooden base, plastic decking and covered canopy are likely to be required to accommodate future growth of the stems and main branches and prevent damage to the trees and the structures. Any such work should be overseen by a competent arboriculturist.’

Officers did not raise any concerns with regards to the impacts on the existing trees and thus the development is still considered to be acceptable in this regard. If the application is approved, a condition is recommended to ensure compliance with the above recommendations.

Economic Benefits and Justification of Proposal

Financial statements have been provided by the applicant. The figures for 2019 show the position when the business was operating solely within the restaurant building, with only 39 covers in the restaurant. The figures for 2020 take into account the Pandemic, the temporary closure of the restaurant, but also the funding received from the Government. The figures for 2019, 2020, 2021 and 2022 show the business operating at a profit. These later figures include the external dining area with the increased number of 70 covers (this is the number of covers provided under the canopy, additional covers can be provided on the remainder of the decking when the weather permits).

The financial statements show the net profit of the business to have more than doubled in 2020, compared to 2019, and the net profit in 2021 to have doubled again from the 2020 figure. The 2022 profits (from draft accounts) have then increased a further 58% from 2021.

The statements also demonstrate how the costs of raw materials, staff costs, utility costs, etc. have all increased significantly over time. Staff costs increased by 13% between 2019 and 2021 and are projected to increase by a further 8.6% between 2021 and 2024. In terms of raw materials, a spreadsheet was submitted showing the purchase unit price for raw materials such as alcohol and food products in 2019 and 2023. The information shows that for all the items listed, the purchase unit price has increased for all items. The sum of all the individual items shows an increase of 40%. This is acknowledged, and not disputed, given the rising costs everyone is currently experiencing.

Details of gas and electric bills since October 2019 to March 2023 have also been provided. Whilst there is some variation in the bills during this time, the information does indicate a significant increase (approximate doubling) in bills between December 2022 and February / March 2023. This is not unexpected given the current issues with energy costs for everyone.

Projected accounts figures for 2024 have also been provided for a scenario of the restaurant only (excluding the decking / canopy area) to demonstrate the value of the decking to the viability of the business. This shows that the restaurant would make a very significant loss if the decking was not included. It is noted that the turnover for the projected 2024 figure (without decking) is the same as the 2019 figure (without decking). This was queried by officers, and the applicant has clarified that whilst *“the decking / canopy area provides an additional 70 covers, at the time of the 2019 accounts the restaurant operated with 25 covers at first floor level. These have now been removed and the space utilised for storage and additional kitchen/prep space. This reduction in internal covers accounts for the difference with the projected costs for the 2024 (if the decking is not in situ) as they can no longer provide the number of covers pre covid”*. Given that in 2019 the restaurant operated in 2019 with 39 covers, and 25 were removed from the first floor, the projected 2024 turnover is based on only 14 covers.

The agent has also provided a list of 5 restaurants in Wilmslow that have recently closed. These are:

- Anthology, Swann Street
- Roost, Water Lane

- Brew House, Swann Street
- Se7en, Grove Street
- Cheeky Tikka, Grove Street.

Mitigation for Loss of Open Space

A biodiversity statement has been submitted, which includes an assessment of the impact of the decking and canopies on the biodiversity of the site and if any mitigation measures would be considered to be necessary to compensate for any loss (including a financial contribution).

The report concludes that:

The costs of Habitat Units varies between local planning authorities throughout the UK, and Defra suggest costs should be in the region of £9,000-£15,000 per Habitat Unit lost (Defra 2019 Impact Assessment). Cheshire East Council recommend a sum of £16,980.00 per Habitat Unit. Therefore, if the CEC fee is adopted, the cost to off-set the 0.03 Habitat Unit deficit at Sotto would be £509.40.

To compensate for the loss of the grassland, and to achieve a betterment in biodiversity, it is suggested that the fund to be donated should be £700.00. This should be used to purchase and plant a number of flowering species and varieties, which would attract invertebrates, such as Hebe, Lavender, Ox-eye Daisy, Tansy, Chamomile, Salvia, Foxglove and Scabious

Moreover, the planters that are located on site should be replanted with flowering varieties of perennials and shrubs. This would provide a higher number of species than those lost to the development. The trees are to be retained and protected through an arboricultural method statement (Cheshire Woodlands).

Given the very small level of contribution required (£509), and the fact that the planters on the site could be re-planted with higher numbers of species than those lost to the development it is not considered to be necessary to secure this contribution. A condition could be attached requiring this new planting to be implemented.

The applicant has also discussed the loss of open space with the Council's Greenspaces officer. They have advised that whilst their policy objection to the loss of the open space remained, a sum of £75 per sqm could be used to calculate the amount of financial mitigation that would be required to compensate for the loss of open space. The site is approximately 145sqm, which would equate to a total contribution of £10,875.

In terms of the spend locations, a number of locations were put forward by the applicant, and whilst the Romany Garden may be the largest area of open space listed, it cannot be said to be part of the public realm where the application site (Open Space Assessment reference - WLM 057 Wareham Street) is located. For the use of the contribution to meet the policy, it should seek to offset the loss in the vicinity, the actual impact of the loss and in this case, the public realm around the site, at the busy junction.

The following sites are considered to be appropriate locations:

- WLM 062 – Station Road/Alderley Edge Road – this site is opposite the junction and is amenity open space that makes a significant contribution to the public realm at this busy junction
- WLM 058 – Bank Square, Sparrow Park Green/Swan Street – 80m from the application site in the main pedestrian and traffic flow to the junction.

The contribution would be used to make improvements including landscaping, and possible tree planting, in consultation with the Town Council.

Conclusion

The information summarised above has been provided by the applicant in response to the request from the Planning Committee in March 2022. The recommendation from officers remains, as in the original report, to refuse for the reasons stated below.

*******ORIGINAL COMMITTEE REPORT (from 22 March 2023 agenda)*******

SUMMARY

This application seeks consent to vary Condition 1 (approved plans) and remove Condition 3 (temporary permission) attached to the approved application in April 2022 for retrospective permission at 4 Wareham Street in Wilmslow. The approved application granted temporary permission for an external drinking and dining area in connection with the restaurant, with proposed decking and canopy.

The site is located within Wilmslow Town Centre and is an area of protected open space.

The current approval restricts the use of the outdoor external area for 18 months, which is due to expire on 22nd October 2023. The submitted Planning Statement states the development would encourage longevity for the existing business and would have a positive impact on Wilmslow Town Centre.

The application initially proposed 3 pergolas, two on the proposed decking and one within existing parking spaces to the east of the site and protected open space. The application seeks to vary the approved plans, which would remove the pergola within the existing parking area and would result in the introduction of planter beds around the decked area.

The development is not considered to comply with the relevant local plan policies which relate to protected open space, and the proposed materials would not be appropriate for a permanent structure.

The application is recommended for refusal.

RECOMMENDATION

Refuse for the following reason:

1. The Local Planning Authority consider that the proposed materials would not be appropriate for a permanent structure and the development would be contrary to policies regarding the protection of open green spaces. The proposal development would be contrary to Policies SD2 (Sustainable Development Principles) and SE6 (Green Infrastructure) of the Cheshire East Local Plan Strategy, GEN1 (Design Principles) and REC1 (Open Space Protection) of the Site Allocations and Development Policies Document, LSP1 (Sustainable Construction) and TC4 (Retail Development) of the Wilmslow Neighbourhood Plan and Paragraph 99 of the National Planning Policy Framework.

REASON FOR REFERRAL

Application 22/4758M was referred to the Northern Planning Committee at the request of Cllr David Jefferay (Wilmslow East Ward) for the following reasons:-

Whilst it was the case officer's view that the application contravened open space policy and it was therefore only appropriate for the structure to be temporary to support the business during the pandemic, as open space the grass actually provided minimal amenity value to Wilmslow's residents and its development has attracted widespread support amongst residents. It has been used far more since the structure was built than it ever was before and therefore it is my belief that the economic benefits of the business should outweigh the benefits provided as open space.

Further, the justification for the condition relied heavily on saved MBC local plan policies which, with the adoption of the SADPD, have now been superseded.

Noting that approval would potentially require a deviation from policy (and it is my opinion that this deviation is justified) the application should be considered by the Northern Planning Committee

DESCRIPTION OF SITE AND CONTEXT

The application site is located on the edge of the town centre boundary, within an area that comprises a mix of uses including shops, cafes, public houses and residential properties.

DETAILS OF PROPOSAL

The application seeks to vary condition 1 and remove condition 3 on approval 21/3436M - Retrospective planning permission for external drinking and dining area in connection with restaurant, with proposed decking and canopy.

The application seeks to vary the approved plans, by removing the bar proposed in the existing parking area, providing a main entrance to the proposed external area with sliding doors, and the introduction of planter beds around the decked area

The application also seeks to remove condition 3, which granted temporary permission of the external dining area. The application seeks permanent consent for its retention.

Approved application 21/5769M is a like-for-like approval of the application seeking to be varied.

RELEVANT HISTORY

21/5769M - Approved with conditions / 12-Aug-2022
Proposed decking and canopy

71559P – Advertisement Consent - Approved / 16-Sep-1992
Illuminated projecting sign

71050P – Full Planning - Approved / 01-Jul-1992
Use of premises for a2 purposes professional and financial services

72424P – Full Planning - Approved / 18-Nov-1992
Change of use from retail to hot food take-away/ restaurant

68867P – Full Planning - Approved / 28-Nov-1991
New shop front

33483P – County Matter Development -Approved / 06-Oct-1983
For an eight-space car park to be used by shopkeepers (and their customers) in Wareham Street and that part of station road Wilmslow

POLICIES:

Cheshire East Local Plan Strategy (CELPS):

EG5 – Promoting a Town Centre First Approach
MP 1 - Presumption in Favour of Sustainable Development
PG1 – Overall Development Strategy
PG2 – Settlement Boundaries
SD 1 – Sustainable development in Cheshire East
SD 2 - Sustainable Development Principles
SE1 - Design
SE2- Efficient Use of Land
SE5 – Trees, Hedgerows and Woodlands
SE6 – Green Infrastructure
Appendix C Parking Standards

Site Allocations and Development Policies Document (SADPD) (Adopted December 2022)

PG9 – Settlement Boundaries
ENV6 – Trees, Hedgerow and Woodland Implementation
GEN1 – Design Principles
HOU12 – Amenity
HOU13 – Residential Standards
RET1 – Retail Hierarchy
RET5 – Restaurants, cafes, pubs and hot food takeaways
RET7 – Supporting the vitality of town and retail centres
INF3 – Highway Safety and Access
REC1 – Open Space Protection

Wilmslow Neighbourhood Plan (adopted 2019)

Policy CR4 – Public Open Space
Policy LSP1 – Sustainable Construction
Policy TC4 – Retail Development

Other Material planning policy considerations

National Planning Policy Framework (The Framework)
National Planning Practice Guidance
Cheshire East Design Guide

CONSULTATIONS (External to Planning)

Wilmslow Town Council – No objection

Conservation and Archaeology (CEC) – No comment received

REPRESENTATIONS

In response to the original consultation exercise, representations were received from 1 residence. This consultation response supported the proposal for the following reasons:

The terrace gives great character to the area and is perfect business and casual meeting spot. It also creates employment and business opportunities.

OFFICER APPRAISAL

Relevant Considerations

When considering variation or removal of condition applications (known as Section 73 applications), it must be recognised that, by definition, the development will have already been found to be acceptable in principle. With regards to this application, the development was considered to be acceptable on a temporary basis.

Condition 1 – Approved Plans

Condition 1 outlines the plans in which the previous approval was based upon. As currently worded, it states:

The development hereby approved shall be carried out in total accordance with the approved plans:

*Drawing No. 0167-P30 (Proposed Plan and Section)
Drawing No.0167-P35 (Proposed Elevations)
Pergola Information*

received by the Local Planning Authority on 10th December 2021 and:

*Drawing No. 0167-P05 (Proposed Site Plan)
Site Location Plan*

received by the Local Planning Authority on 24th June 2021 except where varied by other conditions of this permission.

Reason: For the avoidance of doubt and to specify the plans to which the permission/consent relates.

The applicants seek to amend the approved plans, by removing the proposed pergola in the existing parking area and by adding planter beds to the boundaries of the decked area.

Policy SD2 of the CELPS states that all development will be expected to contribute positively to an area's character and identity, creating or reinforcing local distinctiveness in terms of:

- Height, scale, form and grouping

- Choice of materials
- External design features
- Massing of the development (the balance between built form and green/public spaces)
- Green infrastructure; and
- Relationship to neighbouring properties, street scene and the wider neighbourhood

Policy GEN1 of the SADPD sets out that development proposals should create high quality, beautiful and sustainable buildings and places and should reflect local character. Policy TC4 of the Wilmslow Neighbourhood Plan states proposals are supported, including new build and alterations, which seek to enhance the quality of Wilmslow's shopping experience and generate attractive active frontages.

Policy LSP1 of the Wilmslow Neighbourhood Plan relates to sustainable construction. Applicants should seek to incorporate the following features as part of their applications:

- The use of sustainably sourced and energy efficient materials as part of the building's construction, which seek to reduce the overall carbon footprint of the building
- The use of innovative design techniques which reduce the demand for energy including, the incorporation of passive solar gain, passive cooling and ventilation and neutral design
- The use of on-site energy generation technologies to reduce the demand for energy
- Where appropriate, the inclusion of electric vehicle charging points

The positioning of the proposed external dining area would be visible from Manchester Road and would be positioned between existing built form and viewed against the backdrop of buildings on Wareham Street. The removal of the bar within the existing parking area and the introduction of planter beds around the decking are welcomed changes to the proposal. The planter beds would soften the appearance of the external dining area from the surrounding street scene, while the removal of the bar would retain the existing parking provision and reduce the number of structures.

The development would however be a prominent addition to the surrounding area due to its close proximity to Manchester Road. Further to this, the structure is made up of retractable flexible translucent plastic screening between pergola posts. This material is not considered to be suitable for a permanent structure. It would not weather well, and would deteriorate rapidly, which will be to the detriment of the character and appearance of the area. The structure does not positively contribute to the character and identity of the area and is therefore contrary to policy SD 2 of the CELPS. It is also not clear how the proposal complies with policy LSP1 of the Wilmslow Neighbourhood Plan.

The proposed development would result in a detrimental impact upon the character of the surrounding area contrary with policies SD2 of the Cheshire East Local Plan, Policy GEN1 of the SADPD, Policy TC4 and LSP1 of the Wilmslow Neighbourhood Plan and the NPPF.

Condition 3 – Temporary Basis

The applicant seeks to remove Condition 3. Condition 3 restricts the use of the external dining area for 18 months, expiring in October 2023. As currently worded, it states:

The building/structure and use hereby permitted is acceptable for a temporary period only. The use shall cease and all structures shall be removed from the site, and the site returned to its former condition on or before 22th October 2023 unless in the meantime a further application has been

submitted to and approved by the Local Planning Authority. The land shall be restored in accordance with a scheme of work submitted to and approved by the Local Planning Authority.

Reason: To enable continued control and appraisal of the development proposed having regard to the particular circumstances and nature of the development, and to comply with policies SE1 and SE6 of the Local Plan, RT1 and RT2 of the Macclesfield Local Plan and the NPPF.

It is noted that saved policies in the Macclesfield Local Plan are superseded and therefore cannot be used within the determination of planning applications. Therefore, the below outlines the development in relation to relevant policies, including the newly adopted Site Allocations and Development Policies Document.

The amenity open space is identified as an area of protected open space on the adopted policies map. The amenity open space is included within the current CEC Open Space Assessment and listed as Amenity Greenspace and is protected under CELPS policy SE6.

The area is a piece of amenity open space in the centre of Wilmslow Town Centre. Situated on a busy highway junction, it forms part of a larger area of Green Infrastructure in this area and helps soften the urban/built environment as well as contributes to the public realm for the benefit of the wider community and urban air quality. The amenity open space and its trees also help improve microclimate, biodiversity and reduce peak flow rainfall. With the ever-growing awareness around the green agenda, the importance of these areas is increasingly recognised as being critical for the contribution they make on a number of levels.

The application for decking to cover the majority of the site and install canopies over a large percentage of the area, removes the area from the public realm and prevents the open access previously enjoyed by the local community. The bench situated at the rear of the amenity open space is now isolated and enclosed. The decking and canopies urbanise the space, transform it into part of the built environment and remove the softening and openness once provided by the amenity green space.

Policy REC1 of the SADPD states development proposals that involve the loss of open space will not be permitted unless:

- i. an assessment has been undertaken that has clearly shown the open space is surplus to requirements; or
- ii. it would be replaced by equivalent or better open space in terms of quantity and quality and it is in a suitable location; or
- iii. the development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss.

The criteria set out under Policy REC1 of the SADPD mirrors Paragraph 99 of the NPPF with regards to when existing open space should not be built upon.

Taking each point in turn, while the Open Space Strategy makes no mention to a lack of amenity space in the Town Centre, approving such developments as per this application could result in continuous, harmful changes to the amenity open spaces within the Town Centre, therefore creating a lack of amenity space. While it is not stated that there is a surplus, the proposed development would only decrease the green infrastructure within the town centre. While it is noted

the loss of green space would be relatively small, it would still be contrary to adopted planning policies. The approval of the development could result in more harmful impacts to the town centre's open amenity space over time and become more damaging as incremental changes are added.

The development would not result in a replacement of better provision and would not result in alternative sports or recreation provision. The development is therefore not considered to comply with the exceptions to development on existing open spaces and would be contrary to Paragraph 99 of the NPPF and Policy REC1 of the SADPD.

The application therefore leads to the loss of amenity open space, contrary to Policy SE6 of the Local Plan, Policy REC1 of the SADPD and Paragraph 99 of the NPPF.

It is understood that the applicants required the proposed development so that they could and can continue to keep their business operating throughout the COVID 19 pandemic. Under the previously approved application, the agent stated the applicant would accept a condition regarding a 3- year temporary permission.

While the proposed development is considered contrary to policies of the adopted local plan and the justification for permanent permission is very limited, it is considered that a temporary permission could be justified to aid the security of the financial future of the restaurant after difficulties experienced during the pandemic, helping the business to adapt after lockdowns. The work would enable additional trade on a temporary basis following the lifting of restrictions.

Therefore, it was outlined under the previously approved application as to why a temporary permission would be appropriate, and no significant changes to the scheme have been made that would result in the Local Planning Authority approving otherwise. A temporary permission, by virtue of the development's materials and design and its positioning on protected amenity land, would give the applicant a period of time to consider their options for the business moving forward. It is therefore not felt that permission should be granted on a permanent basis.

Other Material Considerations

There are no concerns with regards to residential amenity from the proposal by virtue of separation distance to surrounding properties. The proposed development has been amended from the previously approved application and no longer results in the loss of parking spaces. The site is situated within the town centre and thus a sustainable location. There are no highway implications associated with the proposal as parking provision would not be altered nor would access to the public highway.

The trees are not protected by a Tree Preservation Order or lie within a designated Conservation Area, however the group present a relatively attractive and decorative feature; visible from Manchester Road on the approach to the controlled junction. The Arboricultural Officer is satisfied that the structure is unlikely to cause any long- term damage to the trees.

BALANCE OF ISSUES AND CONCLUSION

In summary, the changes to the proposal are not significant to allow the development to be considered acceptable on a permanent basis. The use of plastic screening between pergola posts would not be appropriate for a permanent structure and the development continues to result in the loss of protected open space. The proposed development is contrary to Policies SD2 and SE6 of

the Local Plan, Policy REC1 and GEN1 of the SADPD, Policy LSP1 and TC4 of the Wilmslow Neighbourhood Plan and Paragraph 99 of the NPPF.

RECOMMENDATIONS

Refuse for the following reason:

- 1. The Local Planning Authority consider that the proposed materials would not be appropriate for a permanent structure and the development would be contrary to policies regarding the protection of open green spaces. The proposal development would be contrary to Policies SD2 (Sustainable Development Principles) and SE6 (Green Infrastructure) of the Cheshire East Local Plan Strategy, GEN1 (Design Principles) and REC1 (Open Space Protection) of the Site Allocations and Development Policies Document, LSP1 (Sustainable Construction) and TC4 (Retail Development) of the Wilmslow Neighbourhood Plan and Paragraph 99 of the National Planning Policy Framework.**

In the event of any changes being needed to the wording of the Committee's decision (such as to delete, vary or add Conditions and/or Informatives or reasons for approval prior to the decision being issued, the Head of Planning has delegated authority to do so in consultation with the Chairman of the Northern Planning Committee, provided that the changes do not exceed the substantive nature of the Committee's decision.

Application for Variation of Condition

RECOMMENDATION: Refuse for the following reasons

