

Borough Green
Borough Green And
Long Mill

Location: Henry Simmonds PH 4 Wrotham Road Borough Green
Sevenoaks Kent TN15 9DB

1. Purpose of Report:

- 1.1 Elsewhere on this agenda Members are asked to consider and determine a planning application for single storey side and rear extensions and other related and consequential alterations to an existing building currently the Henry Simmonds Public House in Borough Green. That application has been made by Sainsbury's in connection with a project to convert the building to retail use.
- 1.2 The change of use of the Public House to retail use, in itself, has the benefit of planning permission granted by virtue of The Town and Country Planning (General Permitted Development) Order 1995 (GPDO), Schedule 2, Part 3, Class A. This enables the use of a building to change from a public house (Use Class A4) to a retail use (Class A1) without further permission from the Local Planning Authority. Physical works to alter or extend buildings are not affected by this provision and require planning permission in their own right in the conventional way, although, as the report later in the agenda sets out, should the building first be converted to a retail use it would then benefit from 100 sq m of permitted floor-space expansion.
- 1.3 The GPDO also makes provision for Directions to be made to restrict such 'permitted development' in circumstances where the Secretary of State or the appropriate Local Planning Authority consider it expedient that development should not be carried out unless permission is granted for it on application (an 'Article 4 Direction').
- 1.4 In connection with the Henry Simmonds, I have received representations submitted by one of the local Borough Council Members, which I believe is submitted on behalf of the Borough Green Parish Council, asking that consideration be given to the prospect of serving such a Direction. I have attached the text of that representation to this report in order to outline the concern that is held.
- 1.5 I have also received a letter from planning consultants acting on behalf of Sainsbury's who put forward reasons why the Borough Council should not serve an Article 4 Direction. I have also attached that letter to this report

2. Determining Issues:

- 2.1 As is often the case with planning matters, the Order requires a test of expediency to be applied to any consideration of serving a Direction to restrict permitted development. Importantly, however, the test is not simply whether it is expedient to make a direction, but whether the Local Planning Authority is satisfied that it is

expedient that development within a given Permitted Development class or paragraph should not be carried out unless permission is granted for it on application. The general importance of this is that the expediency "test" applies to both the principle of the use and to whether the circumstances would indicate that the particular development might only be considered acceptable in planning terms if subject to conditions.

- 2.2 That test of expediency falls to be considered in the important context that, in general, Parliament has considered it appropriate to grant planning permission for a change of use of a building as in this case, and has had such rights on the statute books since at least 1988. Clearly that is a matter of fact that must not be considered lightly.
- 2.3 In terms of expediency, the advantages and disadvantages of an Article 4 Direction can only properly be weighed in the further context of the prevailing Development Plan policies, The National Planning Policy Framework (NPPF), supported by The National Planning Policy Guidance (NPPG) and any other material considerations. In that context the test to be applied needs an examination of the general merits of the prospective change of use to the extent to enable the Council to determine if an Article 4 Direction is justified in this case.
- 2.4 Bearing in mind that the intent of national statute is to enable such changes of use to take place without further permission, the NPPF makes it clear that the removal of permitted development rights should be *"limited to situations where this is necessary to protect local amenity or the wellbeing of the area"*.
- 2.5 The NPPG also makes it clear that the removal of national permitted development rights must be justified in terms of the purpose and extent of a potential Direction and that *"the potential harm that the direction is intended to address should be clearly identified"*.
- 2.6 In Paragraphs 23 to 27 of the NPPF the thrust of policy towards retail and other town centre proposals is set out. (For the avoidance of doubt town centres are defined in the NPPF as including district centres, which is the status given to Borough Green in the LDF). It provides positive support for proposals within identified centres. Indeed, it says that planning authorities should require town centre uses to be located in centres as opposed to other locations such as edge or out of centre. Within identified centres there is a strong presumption in favour of retail proposals where no impact assessment is required. Paragraph 23 of the NPPF expressly states that that Local Authorities should *"promote competitive town centres that provide customer choice and a diverse retail offer...."* and *"retain and enhance existing markets and, where appropriate, re-introduce or create new ones, ensuring that markets remain attractive and competitive"*.
- 2.7 With this up to date national policy position in mind, a key consideration in this case is the location of the site within an adopted retail policy boundary in the Local Development Framework, as defined by Policy R1 of the DLA DPD 2008 that lies

within what can be considered to be the district centre of Borough Green. In such a defined area Policy CP22 of the Tonbridge and Malling Borough Core Strategy 2007 (TMBCS) sets out the approach to retail proposals and gives priority and presumption in favour of sites located within the defined limits of town, district or local centres. This reflects the thrust provided by Paragraph 24 of the NPPF.

- 2.8 It is acknowledged that Policy CP22 also requires that all proposals for new retail development must maintain or enhance the vitality and viability of the existing centre. Vitality and viability of such proposals is tested through retail impact assessment, but in this case the scale of the building is significantly below the threshold that would give rise to the need for such an assessment, even if a conventional application were to be required. The impact test only applies to proposals exceeding 2,500 square metres gross floor-space unless a different locally appropriate threshold is set by the Local Planning Authority, which is not the case here. There is no other evidence that can be advanced in this respect that would amount to impact on the vitality and viability of the centre. Indeed it could be argued that to prevent the permitted change of use of the premises would in itself hinder the vitality of the centre that could be gained from another retail use available for local residents of Borough Green and adjoining areas. It is appreciated that some concern has been raised locally about the effect of a new retail use at this site and its impact on some existing business. Whilst that concern is understood it is not a matter, in the context described here, that should weigh significantly in considering whether an Article 4 Direction should be made.
- 2.9 Consequently, there seems no sustainable case to pursue an Article 4 Direction on the basis of the retail use and the vitality and viability of the centre in terms of amenity or wellbeing of the area.
- 2.10 Looking to other amenity considerations and any other material matters, the permitted change of use to retail would stand to be judged against the characteristics of the maximised use of the existing public house were it to be the subject of a conventional planning application. In terms of traffic generation and any impact related to noise and general disturbance, whilst a retail use would have different characteristics it would be difficult to substantiate any appreciable general detriment to amenity, particularly bearing in mind its District Centre location. In this respect there does not seem to be sufficient reason to justify removing permitted development rights on the basis of protecting local amenity and wellbeing.
- 2.11 Insofar as the loss of the public house itself is concerned, there is some support for retaining community facilities at policy CP 26 of the LDF Core Strategy, where they are controllable by the Council and in themselves play an important role in the social infrastructure. In terms of testing the potential restriction of permitted development rights, the test is whether they are *necessary for the wellbeing of an area* rather than more general desirability and convenience. In view of the strong presumption in favour of retail use in this location and the fact that there would still be one other traditional Public House in Borough Green, the weight of this factor would not amount to an adequate reason to override established permitted development rights.

- 2.12 The existing Public House is the subject of an application to be registered as an Asset of Community Value. That matter remains under consideration against the set criteria that must be applied in those cases and an update will be given at the meeting.
- 2.13 **Summary of planning considerations**
- 2.14 We have considered the merits of an Article 4 Direction against the tests set out in the General Permitted Development Order and considered those in the context of prevailing policy and other material planning considerations. On that basis it seems clear that the Council should not seek to restrict the permitted development rights granted in respect of the change of use of the existing Henry Simmonds Public House to retail use. To do so would be in the face of the will of national statute as expressed in the GPDO and contrary to the prevailing policy position. There are no overriding matters that weigh significantly against those considerations.
- 2.15 **Compensation and financial implications**
- 2.16 In the case of potential Directions restricting permitted development compensation may apply and is capable of being a material consideration in the Council's determination of its way forward.
- 2.17 In cases where a local planning authority makes an Article 4 direction, it can be liable to pay compensation to those whose permitted development rights have been withdrawn if it then subsequently refuses planning permission for development which would otherwise have been permitted development or grants planning permission subject to more limiting conditions than the general permitted development order.
- 2.18 The grounds on which compensation can be claimed relate to abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights.
- 2.19 In this case if an Article 4 Direction was made and an application for planning permission subsequently refused, the Borough Council would be liable for compensation in respect of the financial implications of the loss of value and other costs. Also in the particular circumstances of this case and the general appraisal of the planning merits, there would be considerable risk of incurring the costs related to the refusal of planning permission and subsequent appeal.
- 2.20 The precise financial implications are difficult to appraise at this stage but would be significant if that course of action were to be followed by the Council. Indeed it is important that we advise the Committee that if it were minded to take the view that an Article 4 Direction was appropriate the matter would need to be deferred to the Cabinet for further consideration bearing in mind the potential financial implications.
- 2.21 Article 4 Directions are subject to statutory procedures governing consultation with local residents, and must be notified to the Secretary of State.

3. Recommendation:

- 3.1 The Committee are recommended not to make an Article 4 Direction.

Adrian Stanfield, Director of Central Services

Steve Humphrey, Director of Planning, Housing and Environmental Health