



AGENDA ITEM:

**PLANNING COMMITTEE:
23 November 2023**

Report of: Corporate Director of Transformation, Housing & Resources

SUBJECT: LATE INFORMATION

1.0 INTRODUCTION

The information below has been received since completion of your Agenda.

2.0 ITEM 7 – PLANNING APPLICATIONS

Item 7G

Application No.	2023/0471/FUL
Location	Vicarage Barn, Southport Road, Scarisbrick, L40 8HQ
Proposal	Full planning application for the erection of a building to house a cosmetic manufacturing facility. (Resubmission of 2020/1092/FUL)

LETTER RECEIVED BY APPLICANT DATED 21 NOVEMBER 2023

I am writing concerning the pending planning application for our new cosmetics manufacturing facility, scheduled for discussion at the upcoming Planning Committee Meeting on 23rd November. As the Director of Cerberus Cosmetics, a business my wife and I founded in Scarisbrick in 2012, I am deeply invested in this matter.

Our company specialises in crafting bespoke beauty products, including specialist skin treatments, trend-setting formulations for spa/retail and soaps, shampoos, and shower gels tailored for presentation by hotels, spas, and as 'own brand' products. The demand for our offerings has surged significantly in recent years, and we have been operating at full capacity for years.

Our clientele is drawn to our brand's rural, artisanal, and eco-conscious image, a rare and key advantage in this globalised, hyper-competitive segment of manufacturing in which we operate. Despite this, and due to this unique segment, our production must maintain adherence to industry unique regulations that ensure quality and safety standards are met. Maintaining our presence in Scarisbrick is crucial to us, as relocating to an urban industrial park poses harm to our business image we have

worked hard to garner. Additionally, we have calculated and provided detailed financial figures that evidence how retrofitting an existing structure to meet industry standards would be an impossible financial burden, given the glass ceiling these regulations have imposed on our ability to grow at this stage of our development.

Simply put, in order to grow, we need more specialised, made to measure room to ensure compliance. But to arrive at a point in which our needs are achievable financially, we need to grow. We have been in this impossible situation since the initial planning application and this outlines why we aren't just considering this site because it's the 'cheaper' option. We are considering this because it is our only solution for growth.

To sustain and foster our growth while positively contributing to the local economy, a purpose-built facility that accommodates our unique manufacturing requirements is imperative. This application represents a resubmission following the previous application 2020/1092/FUL and subsequent planning appeal (ref: APP/P2365/W/22/3300313).

The Appeal Decision acknowledged the acceptability of our proposed design within the area, highlighting its alignment with key considerations such as highways, flood risk, drainage, and ecology. It was also deemed that our design and location minimise impacts on the Green Belt and local amenities.

However, the appeal specified the need for additional information regarding financial viability and alternatives explored. This information gap is the sole obstacle preventing approval, as indicated by the Inspector's concluding remarks, which suggest these matters are surmountable and should amount to merely a delay for the business progression.

In our resubmission, the design remains unchanged, while certain reports, such as those concerning ecology and drainage, have been updated. Most importantly, we've augmented our submission with comprehensive financial and location-specific information.

Since the application was validated in June, our planning agents (PWA Planning), have frequently and professionally approached the Planning Officer to offer the availability to meet or discuss the justification. I have seen correspondence where the Planning Officer has denied this but also promised that if they had any queries, then they would be in touch.

Their lack of engagement and queries has come as a surprise because of the detailed nature of the financial information. I would have expected that anyone without experience in business finance to have followed-up with some questions. Indeed, I note that within the consultation response from the Planning Policy Officer, it was advised that the Council should seek a professional opinion on the financial data for ratification.

I was consequently very disappointed to see that our application is recommend for refusal. I am more disappointed still that when reading Paragraphs 10.36 – 10.43 of

the Committee Report, the Planning Officer clearly did have important queries, that I feel we could have responded to comprehensively, had we been given the opportunity.

Our Planning Agents have escalated the matter to the Chief Planning Officer, who understandably supported their team. However, the urgency of these queries demands a collaborative effort and adequate time for a comprehensive response, which cannot be rushed.

Therefore, I implore the Committee to consider deferring the decision until January, allowing us an opportunity to address these concerns collaboratively. We also seek reassurance from the Chief Planning Officer that they will work with us positively to resolve these outstanding issues.

The success of this application is pivotal for us, and I hope for your understanding and fair consideration of our situation. I remain open to further discussion but respect the sensitivity of your position as a Committee Member.

Thank you for your time and consideration.

EMAIL FROM PLANNING AGENTS RECEIVED 21 NOVEMBER 2023

Further to our correspondence last week, we have now digested the content within the Committee Report.

Notwithstanding the recommendation for refusal, we are extremely disappointed that when reading Paragraphs 10.36 – 10.43, the Planning Officer clearly did have important queries, that I feel we could have responded to comprehensively, had we been given the opportunity. After no communication regarding the content of the planning justification, it seems unreasonable that the Officer concludes that they remain “unconvinced the proposed development is the viable option.” They use phrases such as “this brings into question” and “I am not convinced.”

This isn't a plea for special treatment; it's a plea for fairness and collaboration. I therefore urge you to please reconsider your position, agree to defer to a later meeting of the Committee and provide the applicant an opportunity to convince and explain. The type of information that is needed isn't something that can simply be prepared in a few days. Nor is it fair to drop it all on the Members of the Committee and expect them to review alongside everything else that accompanies the comprehensive submission. The length of time that it will take to appeal against a refusal will harm the local business.

OBSERVATIONS OF THE DIRECTOR OF TRANSFORMATION, HOUSING AND RESOURCES

Careful consideration has been given to the above request and the respective concerns of the applicant and agent are noted.

The applicant indicates that they are seeking to grow their business further, and this is understood, but the starting point remains that of whether very special circumstances have been presented to overcome the strong presumption against development in the Green Belt. The applicant has referred to the previous appeal

decision, and officers agree that in many ways, the development may prove acceptable in respect of certain considerations having regard to highway impacts, flood risk, drainage and ecology. The appeal decision however makes clear the Green Belt harm, and even if the harm is deemed minimal, it is still harm regardless and very special circumstances must still be demonstrated.

The Inspector did comment at appeal that the proposals may bring various benefits to the local economy and to the business itself. However, as set out by the officer report, it remains the case that officers are unconvinced over the breadth of the alternative search undertaken and note that the applicant's preference is land currently within their ownership.

With the information provided demonstrating continued and projected growth of the existing business it is not considered that there is an essential need for the expansion of the business in the manner proposed. The applicant's submissions indicates that the existing business is performing well, and though the applicant is understood to be taking premises in Burscough on a temporary lease, there is no reason to consider that it will not continue to do so.

The applicant has not provided any evidence to suggest that the business requires the proposed development to remain viable. It is a well-established planning principle (*as outlined in Samuel Smith Old Brewery (Tadcaster) v Selby DC [2003]*) that the applicant's desire to expand their business does not in itself amount to very special circumstances.

Furthermore, the fact that a business already exists with additional land already in their ownership is not considered to constitute a very special circumstance. Such an approach could be applied to any such application. This also applies in respect of job creation. Whilst the creation of jobs weighs positively in favour of the proposal, the creation of jobs in this instance is not considered to outweigh the harm identified.

As such it is considered that for very special circumstances to apply, it would have to be demonstrated that the strategic benefits would be far more wide reaching than those presented. To approve the proposal could effectively "green light" a wide range of non land-based rural businesses seeking similar localised expansion on their own Green Belt sites, at the expense of other more appropriate settings, including those in strategic land allocations, and on other more suitable sites, including previously developed land in the Green Belt.

With regard to the comment of Strategic Planning: "If necessary, specialist advice should be sought in relation to the applicant's evidence relating to financial viability." Such advice is **not** considered necessary in the circumstances and an objective analysis cannot be delivered based on the submitted information as this is largely highlighting business costs, as opposed to providing evidence that the business will not remain viable without the new building.

It is also a remaining concern that if approved future pressure will continue for additional expansion if the business continues to scale up. The planning case against inappropriate development appears to centre on the aspirations of a single business hoping to expand, without incurring further acquisition costs, as opposed to not being

able to viably continue should permission not be forthcoming and could be easily replicated elsewhere.

The issue of whether very special circumstances apply is a matter of planning judgment and noting the applicant's concern over a lack of engagement, they were invited to withdraw the planning application prior to its publication on the Planning Committee agenda but chose not to do so and have not provided any further information in response to their criticisms of paragraphs 10.36-10.43 of the report.

As such, whilst understanding the concerns of the applicant and their planning representatives, Officers have based their recommendation on all available information and in the circumstances the Director of Transformation, Housing and Resources is satisfied that members have a report on which an informed planning decision may be reached.

The recommendation therefore remains as set out the main report.

Item 7 B & C

Application No.

2022/0624/FUL & 2022/0626/FUL

Location

The Aviary Restaurant, Blindmans Lane, Ormskirk

Proposal

RETROSPECTIVE permission for water fountain, wedding gazebo, fence and change of use from café to function room.

3rd PARTY CORRESPONDENCE RECEIVED 21ST NOVEMBER 2023

For members benefit, the full document is appended to the late information.

In summary, the document concerns both items 7B and C relating to the same site known as The Aviary. The document raises issues with the content of the committee reports, namely the interpretation of the planning history for the site and the planning assessment.

OBSERVATIONS OF THE DIRECTOR OF TRANSFORMATION, HOUSING AND RESOURCES

- **Application ref. 2022/0624/FUL - RETROSPECTIVE permission for water fountain, wedding gazebo and fence**

Notwithstanding matters concerning licensing, which is governed under separate legislation or any unauthorised activity, the planning use of the site as it stands is part restaurant part function room therefore this is what it is referred to. The consideration of the wedding/party venue is separate to this application therefore in relation to the current use of the building this is what is referred to.

The red line on the 2019 application related only to the extension of the existing building with all the other land within the Applicant's ownership edged in blue. The proposed layout plan approved under the 2019 permission included the presence and use of the rear patio as outdoor seating area of which beyond this is an enclosed area

laid to lawn now holding both the Wedding gazebo and fountain subject to the current application. The redline of a plan indicating the location of development provided in support of any application does not legally define the curtilage associated with a premise or property nor does the granting of such permissions confirm that the Local Planning Authority accepts the redline as defining the curtilage. In any case, there is no legal definition of curtilage and is therefore a matter of planning judgement. The planning assessment considers the use of the land and 'encroachment', which is specifically dealt with in para 10.6 in terms of impacts on openness of the Green Belt.

The change of use is dealt with in the accompanying application this is a separate matter. The land is considered to be associated with the use on site.

The comments of Environmental Health are as they were received in response to the consultation requests made as part of the consideration of the application. During which no request was made for a noise survey to be provided. The noise mitigation plan refers to outdoor areas in terms of closure of them and covers the use of outdoor equipment.

Whilst Licensing is referred to, it is governed under separate legislation. Therefore planning and licensing cannot be seen as being the same thing, nor can planning conditions requiring information or actions controlled by separate legislation be imposed on any such permission, as they simply would not meet the 6 tests for conditions.

- **Application ref. 2022/0626/FUL – RETROSPECTIVE - change of use from café to function room**

The requirement for a noise limiter was not conditioned as part of the previous permissions, however the device was installed following a recommendation by the Council upon receipt of noise complaints. The device remains on site and forms part of the noise mitigation plan (conditioned) as retained equipment which should be maintained at the approved setting when amplified music or equipment is used. Environmental Health are satisfied with the noise mitigation plan provided and that the device remains in-situ in association with the use of the site. Environmental Health also confirmed at the time of writing their consultation response(s) that there has been no new nuisance complaints relating to noise at the above site in the last 12 months. As such, subject to the implementation of the noise mitigation plan, officers are satisfied that noise disturbance will not result and therefore living conditions of neighbouring properties is safeguarded.

Condition 4 is correct – no amplified speech (anyone using a microphone) or any electronic equipment (i.e using an amplifier) shall go through the limiter.

Further conditions are recommended for 2023/0626/FUL as follows:

Notwithstanding the provisions of the Noise Management Plan dated 26 October 2023, all doors and windows shall be closed outside the hours of 0800-2200 except in the event of an emergency.

Reason: To safeguard the amenities of nearby residents and to comply with Policy GN3 in the adopted West Lancashire Local Plan 2012-2027 Development Plan Document.

Notwithstanding the provisions of the Noise Management Plan dated 26 October 2023, the outdoor seating area to the premises shall only be available for use between the hours of 1000 to 2200 and shall be removed or otherwise secured to prevent use outside of the permitted hours.

Reason: To safeguard the amenities of nearby residents and to comply with Policy GN3 in the adopted West Lancashire Local Plan 2012-2027 Development Plan Document.

No loading/unloading of vehicles and no deliveries shall be taken at or dispatched from the site, outside the hours of 0800 to 2000, nor at any time on Sundays, Bank or Public Holidays.

Reason: To safeguard the amenities of nearby residents and to comply with Policy GN3 in the adopted West Lancashire Local Plan 2012-2027 Development Plan Document.