

REPORT TO: Development Control Committee

DATE: 16 January 2017

REPORTING OFFICER: Strategic Director, Enterprise Community & Resources

SUBJECT: Planning Applications to be determined by the Committee – AB Update List

WARD(S): Boroughwide

PAGE NO.	LIST A	LIST B	Updated Information
6		16/00333/COU	<p>Two further representations have been received in support of the application.</p> <p>There is a typo in condition 2 on Agenda page 51, the word 'work' should be replaced with 'use' in the reason for the condition.</p> <p>See below update in relation objections received in relation to the existing use.</p>
62		6/00272/FUL	

Lilycross report page 40

During the week prior to the meeting objectors have claimed that a prospective purchaser has been identified for the site who would wish to use the site as a care home. No details have been provided to substantiate this. This claim has been put to the applicant who confirmed there is no interest from any other parties to purchase the site for the use as a care home. Nevertheless, the claim requires that the section of the report headed "Retention of Existing Use" (at page 40) needs to be amplified.

All of the potential uses cited under the above heading, other than the resumption of a care home use, come within the category of 'alternative potential future uses'. These are not precluded as being capable of constituting material considerations.

However, they have been presented in such a speculative and vague way that even if they could be seen as constituting material considerations little or no weight being given to them. Indeed, In Niall Carroll V Secretary of State for

Communities and Local Government 2016 Mrs Justice Lang states: "It would be highly harmful to the efficient and otherwise beneficial workings of our system of development control if decision-makers were required to consider possible alternatives, of which, on the facts before them, there is no likelihood or real possibility of occurrence in the foreseeable future."

In the present application objectors have asserted the desirability of the resumption of the previous use as a care home. However, in policy terms the 'need' for care homes and the 'need' for initial accommodation for asylum seekers may be considered to be equally valid. The argument typically runs that if a proposed use is refused the resumption of a previous use would be more desirable (the latter being an inherently 'better' use).

The issue of the materiality of the possibility of resumption of a lawful use was considered by the House of Lords in the case of *London Residuary Body v. Lambeth London Borough Council* [1990]. In that case Lord Keith stated: "In my opinion nothing in either the *Clyde & Co.* case or in the *Westminster Council* case is properly to be interpreted as laying down that the competing needs test exists as a matter of law. Such a proposition would involve putting an unwarranted gloss on the language of section 29(1) of the Act of 1971. The most that can be extracted from the two cases is that the desirability of preserving an existing use of land is a consideration material to be taken into account under that subsection, provided there is a reasonable probability that such use will be preserved if permission for the new use is refused. ..."

Even assuming that the previous use was more desirable than the proposed use no evidence has been provided that there is a reasonable probability that the previous use would be re-instated should the proposed use be refused.

It also follows that if it is not more desirable in policy terms to potentially re-instate the care home use over the proposed use, the proposed use should simply be considered on its own merits.

Impact on Conclusion

The conclusion section on page 50 of the report is amended as follows. The following text should be added to page 50, following the third paragraph ending in "quality of life".

With regard to the retention of existing use, it is considered that the desirability of bringing a care home back into use is equal in policy terms to the provision of initial accommodation for asylum seekers.

Even assuming that the previous use was more desirable than the proposed use no evidence has been provided that there is a reasonable probability that the previous use would be re-instated should the proposed use be refused.

It also follows that if it is not more desirable in policy terms to potentially re-instate the care home use over the proposed use, the proposed use should simply be considered on its own merits.