

Date of Meeting	30 th January 2020
Application Number	19/10636/FUL
Site Address	116 High Street, Marlborough SN8 1LZ
Proposal	Change of use of basement and ground floors from members' club (Sui Generis) to dental clinic and surgery (Use Class D1) and associated internal alterations.
Applicant	Dental Care Group Ltd
Town/Parish Council	MARLBOROUGH
Electoral Division	Marlborough West – Cllr Nicholas Fogg
Grid Ref	418718 169053
Type of application	Full Planning
Case Officer	Lucy Rutter

Reason for the application being considered by Committee

The application has been called to committee by Councillor Nicholas Fogg due to perceived concerns that it contradicts Wiltshire's Core Strategy page 122, para 5.78 which supports Marlborough's town centre to continue to function as a prominent retail centre for east Wiltshire.

1. Purpose of Report

The purpose of the report is to assess the merits of the proposal against the policies of the development plan and other material considerations and to consider the recommendation that the application be approved.

2. Report Summary

The main issues to be considered are:

- Whether the use is acceptable in principle;
- Whether the proposal would have a negative impact on parking and highway safety;
- Impact on neighbour amenity;

The report put before committee considers the change of use only. Any internal alterations are to be considered separately under the associated listed building consent application (ref: 19/11025/LBC). The current proposals have brought to light unauthorised works to the listed building which have been carried out prior to this current submission. An investigation into this is being conducted; as such the listed

building application has been held in abeyance and is not to be read in conjunction with the FUL application at this committee meeting.

3. Site Description

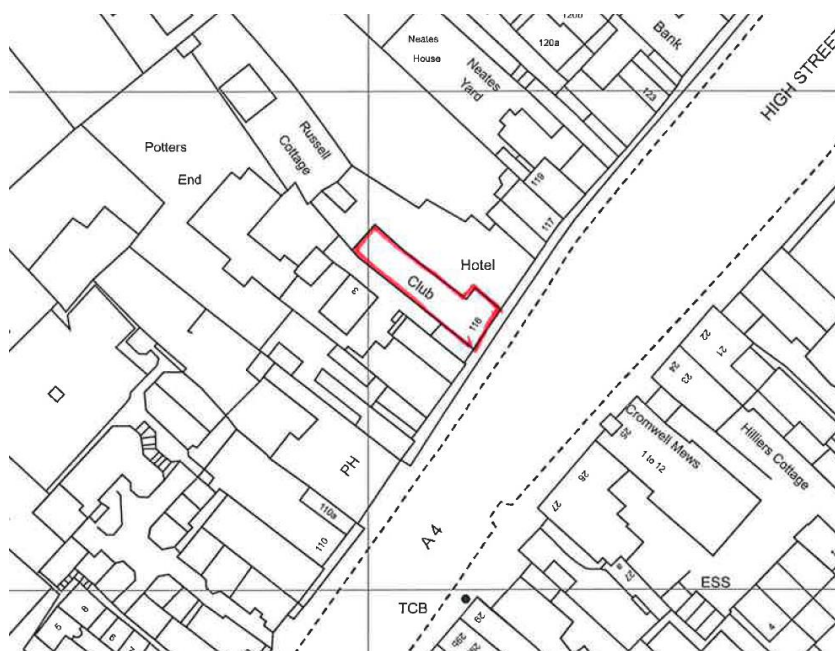
The application relates to number 116 Marlborough High Street. The site is adjoined to the north-east by the Castle and Ball Hotel and to the south-west by retail and residential properties. Further residential dwellings lie to the north-west (rear) of the site accessed by a lane that runs along the South West elevation of the application site. The principal elevation of the property fronts the High Street.

The application property is a Grade II listed building. For identification purposes only, the Historic England Listing Description is as follows:

HIGH STREET 1. 5407(North Side)Nos 114 to 116 (consec)(formerly listed asNos 114 & 115) SU 1869 1/32 18.7.49. II GV 2. Early C18. 3 storey and attic. Tile hung (shaped tiled) with wood angle rusticated bands, whole height above ground floor. Moulded and bracketed wood cornice. Old tile roof. 6 hipped dormer casements. 10 windows on 2nd floor. 4 angular bay windows and 2 single sash windows on 1st floor. All glazing altered. The 2 right hand bays larger than 2 left hand. On ground floor to left hand 3 C18 shop windows - 2 altered, but H Duck window, a projecting rectangular bay with curved ends has original glazing and shop door at left hand side. Yard entry to right hand of centre and plain C19 shop front at right hand. Tiled pent roof supported on cast iron columns across ground floor. Nos 112 to 116 (consec), Potters End, The Castle & Ball Hotel and Nos 117 to 124 (consec) form a group.

The site and its surroundings lie within the North Wessex Downs AONB and the Marlborough Conservation Area. There are no other notable planning constraints pertaining to the site.

Below is a location map with photographs that show the context of the site.



Location Plan – the site is outlined in red



View of the principal elevation of the site



Residential access lane to the south-west of the site



Residential access lane to the south-west of the site



View towards the High Street from the lane

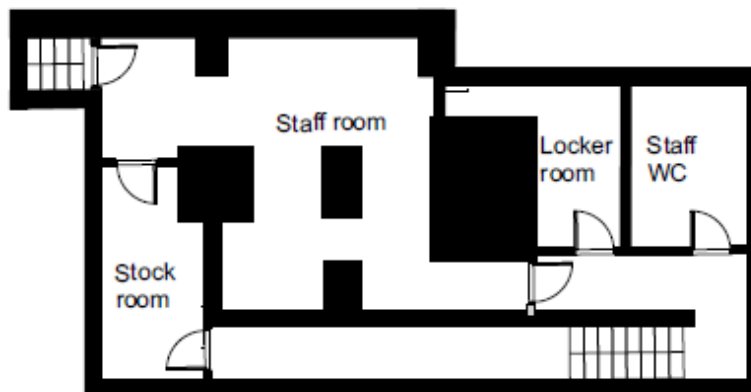


View showing the 1960s extensions to the rear of the site

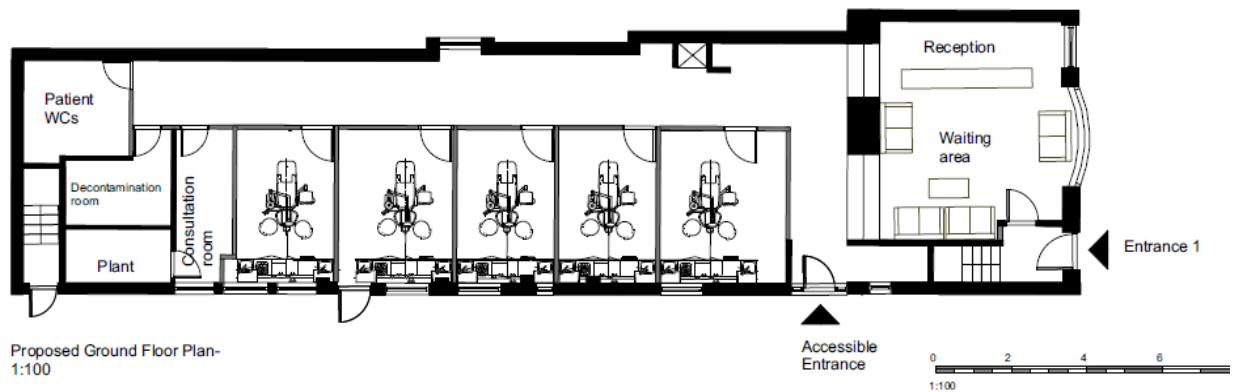
4. The Proposal

The application seeks planning permission for the proposed change of use of the existing members club (sui generis) to dental clinic and surgery (use class D1 – non-residential institution). Associated internal alterations are proposed under the aforementioned listed building consent application (ref: 19/11025/LBC).

Below are the proposed plans and elevations for the scheme:



Proposed basement floor plan



Proposed ground floor plan

5. Local Planning Policy

The adopted Wiltshire Core Strategy (WCS) and made Neighbourhood Plans:

- Core Policy 1 – Settlement strategy
- Core Policy 14 – Spatial strategy: Marlborough Community Area
- Core Policy 57 - Ensuring high quality design and place shaping
- Core Policy 58 - Ensuring the conservation of the historic environment
- Core Policy 60 – Sustainable transport
- Core Policy 61 – Transport and new development

Saved Policies of the Kennet Local Plan:

- ED18 - Prime Shopping Areas

National Planning Policy Framework 2019 (NPPF):

- Chapter 7 - Ensuring the vitality of town centres
- Chapter 16 - Conserving and enhancing the historic environment

Planning Practice Guidance (guidance on the policies contained within the NPPF)

Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990

6. Summary of consultation responses

Marlborough Town Council

The following comments were received from the Town Council:

“Marlborough Town Council objects to this application on the grounds of it being an inappropriate use of a building in the commercial centre, possibly in breach of the High Street’s designation as a primary frontage area and in contravention of the Wiltshire Core Strategy where it refers at para.6.28 to specific retail requirements set out in Area

Strategies (para 5.78 relates to Marlborough retaining its town centre as a prominent retail centre)."

Conservation

Does not object to the principle of the change of use. Full comments included within report.

7. Publicity

The application was advertised by way of a site notice and neighbour notification letters. As a result, around 34 letters of objections and 2 letters of support have been received. The principal comments put forward are highlighted below. The full comments can be read on the Council's website under the relevant application reference number:

Objections:

- Concerns the D1 use will have a negative impact on the Prime Shopping Retail Area
- The members club is a local amenity, offering facilities for wakes and local associations that cannot be catered for elsewhere on the high street
- Multiple comments received in relation to the social and atmospheric aspects of the members club
- The closure of the club would be a loss to the community
- The club adds to a sense of place for the area
- The high street already benefits from two dentists, there is no need for another
- The site is historically a food and drinks establishment and should remain as such
- The club offers vibrancy in the town centre
- A dental surgery goes against the Town Councils Strategy Plan
- A dentist in this location would set a negative precedence

Support:

- The change of use would reduce the present nuisance and improve the cleanliness and environment surrounding the property externally
- The residential access lane is often used as 'overspill' where customers and employees come to smoke, drink and chat to each other or on their phones
- The access lane is often littered
- The bins and waste are poorly managed and often block the access lane and attract vermin
- As a result of the change of use, the access lane will be cleaner, quieter and safer for residents
- There are multiple eateries and drinking establishments in close proximity therefore an alternative use should be supported
- The application should be approved, subject to an amended design to reduce the number of regularly accessed doors opening on to the lane, in the interest of vehicle/pedestrian safety
- Any windows on the ground floor overlooking the lane should, for privacy reasons, comprise opaque (not clear) glass and be kept closed.
- All the proposed dental surgeries, and particularly the proposed plant room (including any compressors), should be well sound-proofed so that drills and other equipment cannot be heard by adjacent residents and passers by

- Any waste disposal proposals and especially the storage of chemical and hazardous waste need to be carefully considered and frequent waste collections will be necessary to reduce the number of rubbish bins, which should all be stored within the property itself and not outside in the open.
- Support the provision of additional health care facilities in the Town
- It is a sustainable location with regards to public transport routes and parking facilities
- It will not result in any loss of retail facilities and is similar to the three opticians and several hairdressers and beauticians in the High Street and provides similar personal care facilities and will ensure continued and viable use of these premises.

8. Planning Considerations

Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 require that the determination of planning applications must be made in accordance with the Development Plan, unless material considerations indicate otherwise.

a. Principle of change of use

The occupancy of the application site is beyond the LPAs control and is therefore not a material planning consideration. The existing business at the site, The Conservative Club, has now ceased in operation (as of the 10th January 2020). The property now lies vacant. The sui generis use remains with the building. This application seeks to assess whether the change of this use to D1 dental clinic and surgery is acceptable in this location.

Marlborough is a designated market town, which is defined within CP1 of the Wiltshire Core Strategy (WCS) as a settlement that has the ability to support sustainable patterns of living in Wiltshire through its level of facilities, services and employment opportunities. The proposed change of use to D1 dental clinic and surgery will ensure the necessary provision of health care services and facilities within a sustainable location and in addition would offer employment opportunities. The proposed use is considered to aid towards the self-containment and viability of the community area and is therefore consistent with the advice set out within Core Policy 1 of the WCS.

Core Policy 14 outlines the overall strategy for the Marlborough community area with specific support being given to the continued function as a prominent retail centre (para 5.78). The policy goes on to mention that the area should continue to benefit from housing, health, education and culture in the context of a growing economy (para 5.79). With this in mind, it is important to highlight that the existing sui generis use does not contribute to or form part of the existing retail facilities in the area. Therefore, there is no support under Core Policy 14 for the retention of the existing sui generis use. It does however, imply that a health care use would be a benefit to the growing economy.

CP 57 requires a high quality of design in all developments including changes of use of existing buildings. When assessing a proposal, it is important that the development takes into consideration the wider area, including existing uses, in order to '*deliver an appropriate development which relates effectively to the immediate setting and to the wider character of*

the area' (CP 57 vi.). Regard should also be given to the *'compatibility of adjoining buildings and uses, the impact on the amenities of existing occupants, and ensuring that appropriate levels of amenity are achievable within the development itself, including the consideration of privacy, overshadowing, vibration, and pollution (e.g. light intrusion, noise, smoke, fumes, effluent, waste or litter)'* (CP 57 vii.)

With the above in mind, when considering the wider area, there are a number of existing restaurants, pubs, bars and cafes in the town centre. The loss of this one establishment is therefore unlikely to have a harmful impact given the number of similar facilities in the area. However, the sui generis use is not specific to the members club which has recently closed down. This use would also cover (but not limited to) theatres, large Houses of Multiple Occupation (more than 6 people sharing), hostels, shops selling and/or displaying motor vehicles, retail warehouse clubs, nightclubs, launderettes, taxi or vehicle hire businesses, amusement centres, casinos, betting offices and pay day loan shops. In theory, the building could remain within this use class and be used in any one of the ways listed above.

The proposed D1 use would be akin to other facilities seen on the high street which offer alternatives to retail use, including hairdressers, nail bars and opticians, all of which stem from personal care. This proposed use therefore seems like a fitting addition to the town centre; a refusal on the basis that one (or more) dentists already exist would not be justifiable. It would be unreasonable to expect only one optician or hairdresser per town centre location therefore it would be unreasonable in this instance to refuse an additional D1 use. The proposed D1 use would be easily accommodated within this location and would not be to the detriment of adjoining and nearby existing uses.

With regards to neighbour amenity, the proposed change of use would likely have a positive impact on nearby residents when compared to the existing situation. The members club has caused distress for nearby residents with regards to noise, littering and anti-social behaviour. The proposed D1 use would only operate within daytime working hours, thereby significantly reducing the noise created by the club and often at unsocial hours. In addition, the proposed use would be less likely to produce an amount of waste that would obstruct the adjacent lane, nor would it result in a loss of privacy to any neighbouring properties. As such the change of use seems in accordance with the key points highlighted within Core Policy 57 of the WCS.

Saved policy ED18 of the Kennet Local Plan offers guidance specifically for the Prime Shopping Areas. However, this policy is quite dated (written pre-NPPF for a time expired local plan), and although a saved policy under the WCS, the weight to be attached to it should be on the basis of its conformity with NPPF. Policy within the NPPF is a material consideration when assessing development proposals under saved policy ED18. It has been established under previous appeal decisions (Costa Coffee, High Street Marlborough) that little weight should be given to this policy as it does not conform with NPPF policy e.g. it was considered to be inflexible and negatively worded vs. the NPPF's flexible and positive approach to new development on the high street.

Notwithstanding the above, ED18 seeks to ensure only A1 uses are permitted within the Primary Shopping Centre. However, the policy does support the change of use of retail units providing they make a positive contribution to the vitality and viability of the centre (point a of

this policy). The proposed D1 use could be considered to contribute to the vitality and viability of the area given that the centre is of mixed uses comprising, retail, hotels, bars, estate agents and banking facilities to name a few. More specifically a dentist use would encourage footfall onto the High Street and thus potential linked trips to other High Street businesses.

The NPPF is in favour of Town Centres that take a positive approach to their growth and adaptation. The NPPF outlines that *'policy should promote (Town Centres) long-term vitality and viability by allowing them to grow and diversify in a way that can respond to rapid changes in the retail and leisure industries ...and... allows a suitable mix of uses (paragraph 85)* It has therefore been considered that the advice given within paragraph 85 of the NPPF, as a material consideration, is sufficient to outweigh the requirements of policy ED18 of the development plan which reduced weight has been given to. NPPF policy is clearly in support of mixed uses within Town Centres that would aid towards diversifying and promoting the vitality and viability of the area. In addition, the NPPF is in favour of enhancing existing markets.

With the above assessment in mind, the principle of the change of use from sui generis to D1 is considered to be acceptable.

b. Site-specific considerations (e.g. parking)

(i) Parking

CP 60 of the WCS highlights that one factor which aids towards achieving sustainable transport is for development to be located within accessible locations. The proposed town Centre location for the dentist will provide many opportunities for parking for those travelling by private car as there are a number of public car parks within walking distance of the property. In addition, the site would be served by reliable and frequent public transport services, which ensures compliance with CP 61 as the need to travel by private car is in fact reduced as there are existing sustainable transport alternatives. Accordingly, specific parking provision for the dentist is not considered to be reasonable or necessary.

(ii) Impact on the character and appearance of the conservation area and special interest of the listed building

As mentioned previously, this application seeks to assess the impact of the change of use only and does not consider any physical alterations to the property. As such, the proposal is not considered to cause harm to the historic significance of the building nor will it impact on the character and appearance of the wider conservation area. The following assessment was put forward by the Council's Conservation Officer:

"For comment on the change of use only, generally from a listed building point of view, the acceptability of the change of use will be dependent on any proposed alterations in order to implement the change of use, being considered acceptable for the listed building: these changes could be physical changes to the interior of the building (such as proposed here) or changes required in relation to the current building and fire regulations. The majority of the changes proposed are within the c.1960/70s rear extension, which should not have a harmful impact on the special interest of the listed building. Although at the time of

commenting I still require access to the building in order to carry out a full internal assessment, the new use could probably be achieved without causing harm to the building, as the works are concentrated within the modern rear wing. Therefore there is no 'in principle' objection to the change of use, as if the current proposed alterations are unacceptable, there is likely to be scope to negotiate revisions that would prove acceptable."

c. Matters raised by members of the public

The purpose of this section is to assess any additional matters that have not yet been addressed within the above assessment, namely concerns regarding waste management and suggested physical changes to the building.

Waste management

It has been noted previously within this assessment that the proposed D1 use will likely incur less waste than that of the members club. Additionally, it is written within the submitted cover letter that *"in the interest of health and safety, provision shall be made for separate storage of chemical and hazardous waste produced from the operation and measures shall be incorporated to ensure proper handling and disposal thereof."*

Incorporated bin storage is not generally a factor in this historical town centre location; bins are typically stored adjacent to the property. This raises no concern from a planning perspective. A site visit was conducted in which the assessment confirmed that the adjacent residential lane was easily accessible. Poorly managed bin storage should be associated with the previous tenants.

Suggested physical revisions to the scheme

Three points have been raised including concerns regarding the number of openings onto the adjacent lane (in the interest of vehicle and pedestrian safety); the impact on privacy from the ground floor windows; noise, and the need for soundproofing.

No physical external changes have been proposed at the property. The number of existing openings is considered suitable for the use of the property. The use of the entrances on the side elevation will likely be reduced when compared to the previous use of the site as a member's club. As these openings are existing features that have been in place for many years; it is not considered reasonable or necessary to make alterations here.

With regards to concerns of loss of privacy and the suggestion that the ground floor windows in the side elevation should be opaque, this does not raise any significant planning concerns. The windows in question are already frosted to a certain extent; more so, they do not look directly into any neighbouring properties but in fact look out over the access lane. As such, it is not considered necessary to condition further 'opaqueness' to these existing features.

The proposed D1 use is not considered to generate a level of noise which would significantly affect neighbour amenity. The use, by its nature, will only operate during day time working

hours when many neighbours will unlikely be within their homes. As with the opaque glass and bin storage, the provision of soundproofing is not considered reasonable or necessary.

9. Conclusion (The Planning Balance)

Whilst acknowledging there is some conflict with development plan policy i.e. ED18, it has been stated above that reduced weight should be given to this policy given its lack of conformity with current NPPF policy on High Streets. The material considerations contained within the NPPF are sufficient to outweigh the requirements of this policy. As such, the principle of development is considered acceptable.

With regards to all other development plan policies listed above, the application is considered to conform with them. The proposed change of use would provide a required healthcare facility within a sustainable and accessible location and as a result would extend the mixed use and viability of this town centre location. The proposed dental surgery would most likely increase footfall in the area through both its clients and employees, which would likely make use of other nearby services. The proposal would therefore have a positive impact on the vitality of surrounding, existing facilities and retail units.

The LPA does not have control over ownership of the property; whilst numerous comments of objection were received these were mostly in relation to the loss of the business itself and the social aspect as opposed to the use per se. However, the covering letter submitted with the application does state that the first floor of the building will retain the sui generis 'members club' use, therefore offering space and (assumed) facilities to accommodate the community's needs with regards to meetings held for local associations. As such there is not a complete loss to the community here.

On balance, the proposed change of use to D1 is in line with policy and should be approved subject to conditions.

RECOMMENDATION

That planning permission be **GRANTED** subject to the following conditions:

- 1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- 2 The development hereby permitted shall be carried out in accordance with the following approved plans and documents:

Drg Title: Location Plan.

Doc Title: Cover Letter and Planning Statement. Ref: HPD/DSP/19/128. Dated: 05/11/2019.

Doc Title: Heritage, Design and Access Statement. Prepared by: Hybrid Planning and Development. Dated: November 2019.

Doc Title: Application Form.

REASON: For the avoidance of doubt and in the interests of proper planning.

- 3 The parts of the building to which this permission relates shall be used solely as a dental clinic/surgery and for no other purpose (including any other purpose in Class D1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provisions equivalent to that class in any statutory instrument revoking and re-enacting that Order with or without modification.

REASON: The proposed use is acceptable but the local planning authority wish to consider any future proposal for a change of use, other than a use within the same Class, having regard to the circumstances of the case.

- 4 **INFORMATIVE TO APPLICANT:**
The applicant is advised that this permission authorises a change of use only and does not authorise any works or alterations that require separate advertisement consent or listed building consent.