

**1. Application Details**

**1.1. Address:** 79 Rykneld Road, Littleover

**1.2. Ward:** Littleover

**1.3. Proposal:**

Variation of conditions 2 (approved plans), 4 (operating hours) and 5 (parking provision) of previously approved planning permission ref: 06/18/00822, which approved the demolition of the previous Retail Building and the Erection of a two-storey building for use as a Dental Clinic and Retail / Financial and Professional Services uses.

**1.4. Further Details:**

Web-link to application:

<https://eplanning.derby.gov.uk/online-applications/plan/22/00674/VAR>

The Site and Surrounding

The application site comprises the site of a former convenience store on the corner of Rykneld Road and Haven Baulk Lane. Permission was granted to demolish the store and to erect a 2-storey building, housing a ground floor dentist and a first floor retail/service use.

The approved layout showed 11 parking spaces, positioned on both road frontages, and a further 3 parking spaces adjoining the west site boundary. Cycle parking was shown to be provided on the Rykneld Road frontage, behind the parking spaces.

This permission has been implemented and the dentist use is operational. The site is tight up to the boundary with the 2 adjoining dwellings. The surrounding area is primarily residential. Rykneld Road is a main arterial road, giving access to the A38 further south. To the east of Rykneld Road is the Nuffield hospital and a care home.

The proposal

The layout, as implemented, now includes a ground floor extension in the southwest corner. This prevents any car parking along the west site boundary, as shown on the approved plans. The parking layout, as implemented, has only 7 spaces laid out and no cycle parking.

This application seeks to vary three Conditions imposed on the previous permission. The proposal relates to the variation of Condition 2 (approved plans), Condition 4 (operating hours), to allow revised opening hours; and Condition 5 (parking provision), to allow for a revised parking layout.

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The applicant has now confirmed that the proposed opening hours of the dentist are between 9.00am-5.00pm, Monday to Saturday. The proposed layout now shows a ground floor extension in the southwest corner.

Members will recall that the application was removed from the agenda before the October meeting to enable the applicant and agent to consider the issues surrounding parking and the operation of the surgery. The agent has recently tabled an amended site layout plan which includes the following:

- A total of 10 parking spaces, and the dimensions of these, around the building with staff cycle parking accessed behind the side gate on the Havenbault Lane frontage.
- The inclusion of visitor cycle parking on the Rykneld Road frontage.
- Retention and minor relocation of planters around the building to 'soften' the external layout.

The applicant has also submitted a letter to justify the layout, the adequacy of the on-site parking level and the overall importance and need for NHS dentistry. This letter can be accessed via the link to the application documents. The applicant provides the following conclusion:

*..."In summary, we are short of ONE car parking space on our land, we are surrounded by potentially hundreds of free and available car parking spaces that have no restriction.*

*We are the only clinic in our area providing a vital service to thousands of patients.*

*My request is you accept and approve my application on the key merits it holds, which are:*

- 1. Service to community,*
- 2. No detrimental effect to environment, improved aesthetics/landmark building*
- 3. The investment we have provided which has increased local employment. Now is the time for the council to support Key workers like me and allow me to direct our energy and funds to patients care as we did during covid".*

## **2. Relevant Planning History:**

<b>Application No:</b>	06/18/00822	<b>Type:</b>	Full Application
<b>Decision:</b>	Granted Conditionally	<b>Date:</b>	30.07.2018
<b>Description:</b>	Demolition of Existing Retail Building. Erection of a Two Storey Building for Use as a Dental Clinic (Use Class D1) at Ground Floor And Retail (Use Class A1) or Financial And Professional Services (Use Class A2) at First Floor Level		

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- Condition 4 states: The dental clinic hereby approved shall only be open to patients during the following hours:
  - 8.30 - 19.30, Monday and Tuesday;
  - 8.30 - 17.30, Wednesday and Thursday;
  - 8.30 - 14.30, Fridays
  - and not at all at weekends or on public holidays.
  - The first floor use shall only be open to customers between 8.30-19.30 daily, unless otherwise agreed in writing by the local planning authority.
- Condition 5 states: No part of the development hereby permitted shall be brought into use until the parking areas are provided in accordance with the approved plan 2028.004. The parking areas shall not be used for any purpose other than parking of vehicles.

<b>Application No:</b>	04/18/00557	<b>Type:</b>	Full Application
<b>Decision:</b>	Granted Conditionally	<b>Date:</b>	05.06.2018
<b>Description:</b>	Change of use from retail (use class A1) to dental clinic (use class D1) including installation of new windows		

### **3. Publicity:**

- 2 Neighbour Notification Letters
- Site Notice

*This publicity is in accordance with statutory requirements and the requirements of the Council's adopted Statement of Community Involvement.*

### **4. Representations:**

***In line with the Data Protection Act and associated legislation this appraisal should not include details, or seek to identify through repeating specific comments, the individuals who have objected, supported or made general comments about the application. Therefore, to maintain anonymity, the relevant planning grounds of objection, support or comment have only been included in broad terms. It is important to note that all comments received have been fully considered as part of the application process and included in the overall 'planning balance' exercise.***

No third party objections received. However, Cllrs Care and Lonsdale both requested that, due to local interest, the application should be referred to Planning Control Committee.

**5. Consultations:**

**5.1. Highways Development Control:**

Additional comments in relation to the latest submissions from the applicant/agent will be reported orally at the meeting.

Previous comments:

Condition 4 reads

“The dental clinic hereby approved shall only be open to patients during the following hours: 8.30 - 19.30, Monday and Tuesday; 8.30 - 17.30, Wednesday and Thursday; 8.30 -14.30, Fridays and not at all at weekends or on public holidays. The first floor use shall only be open to customers between 8.30-19.30 daily, unless otherwise agreed in writing by the local planning authority.”

The submitted application form states that “Opening hours have been revised”; but no information appears to have been provided to advise what the revised opening hours are; and therefore the need for the varied condition.

Nevertheless the hours of operation of the site are unlikely to be of significant concern to the Highway Authority.

Condition 5 reads

“No part of the development hereby permitted shall be brought into use until the parking areas are provided in accordance with the approved plan 2028.004. The parking areas shall not be used for any purpose other than parking of vehicles.”

These observations are primarily made on the basis of details shown on submitted plans 2028.004 Rev A and 2028.006 Rev A.

A site visit has ascertained that this layout is not “as constructed”; it is therefore assumed that the applicant intends to reconstruct to comply with the submitted drawings.

By comparing these drawings with the approved historic plan (2028.004) it appears that the building has not been constructed in line with the approved details, this has resulted in the loss of three (marked for staff) parking spaces.

Further, it is also apparent that whilst the development is currently being operated with a different parking layout than is shown on the plans. It is also clear that some of the spaces shown (and constructed) are too small to be of practical use and lead to vehicles overhanging the highway footway. In respect of new development this would not normally be supported.

This notwithstanding, in this case the principle has been established with respect to the plans approved for historic application, which could therefore be legitimately

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implemented (albeit that the applicant developer would need to demolish and reconstruct some of the development).

The site visit also indicated that some patients/visitors appear to be parking on the adjacent highway (Haven Baulk Lane in particular – but at the time of the Case Officer visit there was also parking on Rykneld Road); whilst there are no parking restrictions in the vicinity of the site, parking so close to the junction could be considered to be creating a hazard.

Further, there are no pedestrian crossing facilities on Rykneld Road in close proximity, lack of parking means that patients/customers are also parking on the opposite side of Rykneld Road and are having to cross the busy road to visit the premises. This is considered to be increasing the risk to pedestrians at this point.

The Council's Parking Standards – as set out in the Derby City Local Plan, Part 1 – Core Strategy (Appendix C) advises that for “surgeries and clinics” that there should be 1 space per medical staff member and two spaces per consulting room. As there are 4 consulting rooms it is assumed that there will be 8 medical staff (one dentist and one dental nurse per consulting room) – this equates to 16 parking spaces.

In respect of A2 use, the same standards advise that there should be 1 space per 35sqm, the upper floor approved follows much the same layout as the ground floor, and I estimate this has a ‘footprint’ of (say) 240sqm; which equates to 6-7 parking spaces.

Making a total number of spaces required to (say) 22 spaces.

The plans show 11 off-street parking spaces (as previously mentioned some are too small for practical use); giving a shortfall of a minimum of 11 off-street parking spaces.

The Highway Authority considers therefore that inadequate levels of parking have been (and will be) provided to serve the development.

I am aware of complaints having been received in respect of highway parking associated with the development along Haven Baulk Lane at the junction with Rykneld Road; as previously stated, such parking close to the junction can be hazardous.

Should the Local Planning Authority be minded to approve the application, the Highway Authority considers that it would therefore be appropriate for the developer to fund the provision of a suitable Traffic Regulation Order to control highway parking adjacent to the junction. The standard fee for such provision would be £7,000.

Nevertheless, the only material difference between the historic and current proposals appears to be the loss of the (three) staff parking spaces to the rear of

the development; spaces which may not in practice have been accessible; by reference to the parking standards calculation, this would equate to one consulting room (two members of staff plus 2 spaces).

It is suggested therefore that should the Local Planning Authority be minded to approve the application, that the development be restricted to three consulting rooms, not four.

I do note proposals to create dropped footway crossings along the appropriate site frontages of Rykneld Road and Haven Baulk Lane. Should the variation be approved these works should be completed accordingly.

The Local Planning Authority should also note that the site appears to also currently operating in breach of conditions 6 and 8.

**Recommendation.**

Should the Local Planning Authority be minded to approve the application to vary Condition 5; the Highway Authority recommends that:-

1. The use of the site ceases until the approved parking layout has been implemented in accordance with details shown on drawing 2028.004 Rev A.
2. The use of the site be restricted to a maximum of three consulting rooms
3. The applicant funds the provision of a suitable Traffic Regulation Order to protect the highway junction of Rykneld Road and Haven Baulk Lane.

All in the interests of highway safety.

**Notes To Applicant**

N1. The development makes it necessary to improve vehicular crossings over a footway of the public highway. These works shall be constructed to the satisfaction of the Highway Authority. You are, therefore, required to contact StreetPride at Derby City Council to apply for a vehicle access under Section 184 of the Highways Act 1980 (as amended) to arrange for these works to be carried out. Visit <https://www.derby.gov.uk/transport-and-streets/roads-highways-pavements/vehicle-access-kerbs/> or contact customerservices@derby.gov.uk or tel 0333 200 6981.

N2. Traffic Regulation Orders – The proposal relies on the introduction of a new traffic regulation order (TRO). It should be noted that the TRO process is not certain as it is subject to a formal consultation process, including public consultation, and the Council must give proper consideration to any valid objections that are raised. You proceed are required to fund all costs associated with the new TROs that is to be implemented.

The applicant should in the first instance contact traffic.management@derby.gov.uk to commence the process.

**6. Policies:****6.1. Relevant Policies**

The Derby City Local Plan Part 1 - Core Strategy was adopted by the Council on Wednesday 25 January 2017. The Local Plan Part 1 now forms the statutory development plan for the City, alongside the remaining 'saved' policies of the City of Derby Local Plan Review (2006). It provides both the development strategy for the City up to 2028 and the policies which will be used in determining planning applications.

**Derby City Local Plan Part 1 - Core Strategy (2017)**

CP1a	Presumption in Favour of Sustainable Development
CP2	Responding to Climate Change
CP13	Retail and Leisure Outside of Defined Centres
CP21	Community Facilities
CP3	Placemaking Principles
CP4	Character and Context
CP23	Delivering a Sustainable Transport Network

**Saved CDLPR Policies**

T10	Access for Disabled People
GD5	Amenity

The above is a list of the main policies that are relevant. The policies of the Derby City Local Plan Part 1 – Core Strategy can be viewed via the following web link:

[https://www.derby.gov.uk/media/derbycitycouncil/contentassets/documents/environmentandplanning/planning/localplan/evidencebase/Core-Strategy\\_ADOPTED\\_DEC-2016\\_V3\\_WEB.pdf](https://www.derby.gov.uk/media/derbycitycouncil/contentassets/documents/environmentandplanning/planning/localplan/evidencebase/Core-Strategy_ADOPTED_DEC-2016_V3_WEB.pdf)

Members should also refer to their copy of the CDLPR for the full version or access the web-link:

[https://www.derby.gov.uk/media/derbycitycouncil/contentassets/documents/environmentandplanning/planning/localplan/part1/CDLPR\\_2017.pdf](https://www.derby.gov.uk/media/derbycitycouncil/contentassets/documents/environmentandplanning/planning/localplan/part1/CDLPR_2017.pdf)

An interactive Policies Map illustrating how the policies in the Local Plan Part 1 and the City of Derby Local Plan Review affect different parts of the City is also available at – <http://maps.derby.gov.uk/localplan>

*Over-arching central government guidance in the NPPF is a material consideration and supersedes earlier guidance outlined in various planning policy guidance notes and planning policy statements.*

**6.2. Non-housing applications:**

The Local Plan consists of the policies of the DCLP1 and the saved policies of CDLPR. The DCLP1, which sets out the growth strategy for the city, covers the period 2011 to 2028 and was adopted on 25 January 2017. The policies of the local plan were reviewed in December 2021 in line with Regulation 10a of the Town and Country Planning (Local Planning) (England) Regulations 2017 and paragraph 33 of the NPPF, the provisions of which require Local Plan policies to be reviewed at least every 5 years. The officer led review, endorsed by the Council's Cabinet on 8 December 2021, indicated that all of the policies relevant to the consideration of this application are still up to date and carry weight in the decision-making process as they remain consistent with the NPPF and there have been no changes in local circumstances that render any of the policies out of date. The application is therefore being considered in terms of its accordance with the policies of the Local Plan and any other material considerations, including the National Planning Policy Framework.

**7. Officer Opinion:**

**Key Issues:**

In this case the following issues are considered to be the main material considerations which are dealt with in detail in this section.

**7.1. The principle of the development**

**7.2. Highway Safety**

**7.3. Other amenity issues**

**7.1. The principle of the development**

The proposal was considered to be acceptable in principle, and permission ref: 18/00822 was approved.

Core Strategy Policy CP21 deals with health uses and seeks to have a choice of travel options and ideally to be located within existing centres. The site is relatively close to a Neighbourhood Centre and has the potential for linked trips. The site is on a main road with good public transport links. The clinic proposal was considered to be in accordance with Policy.

Any use of the site would be limited by its scale, accessibility, parking proposals and impact on neighbours. It was considered that the proposal would not vary in use from a more typical arrangement of a ground floor retail use, with a service use above. Particularly, it was considered that the proposed uses would not have a cumulative detrimental impact on the vitality or viability of any nearby centres.



**7.2. Highway Safety**

The Highway Authority note that the development is currently being operated with a different parking layout than is shown on the approved plans. There is some dispute about the siting of parking spaces on the Havenbault Lane frontage and the position of the highway boundary on that frontage. This is addressed by the applicant in his latest letter.

However, in this case, the principle of the development has been established through the historic permission, such that mitigating measures must be considered to alleviate the current parking arrangements and traffic congestion near to the road junction.

Previously, the Highway Authority recommended that, based on the parking arrangements, the use of the site should be restricted to a maximum of three consulting rooms and that the applicant funds the provision of a suitable Traffic Regulation Order (TRO) to protect the highway junction of Rykneld Road and Haven Bault Lane.

Contrary to my advice in the previously published report to the October meeting, the applicant is not content to instigate the necessary TRO. He has sought to justify the current parking arrangement and the unreasonableness of the TRO request in his recent letter.

The Highway Officer will be on hand at the meeting to debate this issue further, if required.

As with all decisions the starting point for the decision maker is the Development Plan, which needs to be considered as a whole. Issues relating to the access and parking merits of this development need to be balanced with the continued operation and importance of such a community facility. The site is in a main road location and is accessible by alternative modes of transport and members will be aware, both locally and nationally, of the scarcity of NHS dentistry.

The clinic offers a modern facility to the local population, and this is projected to grow in future years with continued residential development on Rykneld Road in the Policy AC20 land allocation. The application has not attracted letters of objection from local residents and, although planning decisions are not beauty contests, this does provide some indication about the continued operation of the clinic from an overall amenity perspective. The site was previously occupied by an unrestricted retail shop, and we should be mindful of that history.

In my opinion and judgment this is a finely balanced decision and I value the professional comments of our Highways Team. In this case I would recommend that permission be granted with a safeguarding condition to secure the parking layout together with a further condition to secure travel planning for staff members.

Conditions are recommended with what is considered to be a reasonable implementation time of 6 months.

**7.3. Other amenity issues**

The extension of opening times to include Saturday use is likely to have some impact on residential amenities. However, the former convenience store was open 7 days a week and probably had no planning restrictions over opening hours. The proposed 9-5 opening hours are unlikely to have any overriding impact on residential amenity. No enforcement complaints or objections to the application have been raised on these grounds.

The visual impact of the small ground floor extension on the adjoining neighbours also needs to be considered, with a greater degree of enclosure and some marginal additional overshadowing on no. 182 Havenbault Lane. The rear garden faces south and is already overshadowed by a large fruit tree within the garden. The change in levels and intervening garage give significant separation to no. 81 Rykneld Road. On balance it is not considered that the neighbour's amenities would be adversely affected. Overall, it is considered that the proposal would not have any additional overriding adverse impact on residential amenity.

**8. Recommended decision and summary of reasons:**

**8.1. Recommendation:**

**To grant** planning permission with conditions.

**8.2. Summary of reasons:**

The proposal was considered to be acceptable in principle, and permission ref: 18/00822 was approved. In policy terms, it is not considered that the proposed uses would have a detrimental impact on the vitality or viability of any nearby centres. Subject to the implementation of the recommended measures, it is considered that the proposal would not have any additional overriding adverse impact on residential amenity.

The recommended Conditions have been re-numbered and re-ordered to meet the requirements of the current decision notice format, as follows:

- Condition 2 (approved plans) remains unaltered.
- Condition 4 (operating hours) of previously approved permission ref: 06/18/00822 has been replaced by proposed Condition 7.
- Condition 5 (parking provision) of previously approved permission ref: 06/18/00822 has been replaced by proposed Condition 3.

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### **8.3. Conditions:**

#### **General Conditions**

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

**Reason:** To conform with Section 91(1) of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The development must conform in all aspects with the plans and details shown in the application as listed below. (It is very important to note that, in order for this decision to be lawfully implemented, all approved plans and details must be adhered to and any other condition(s) attached to this decision must be formally discharged, by separate Discharge of Condition applications, in accordance with the relevant timeframe).

**Reason:** For the avoidance of doubt and to define the bounds of this decision.

<b>Plan Type: received:</b>	<b>Plan Ref – Rev:</b>	<b>Date</b>
Location Plan	2028.006 rev A	26.4.2022
<u>Layout Plan</u>	<u>2028.004 rev D</u>	<u>01.11.2022</u>
Proposed Floorplans	2028.003 rev A	26.4.2022
Proposed Elevations	2028.002 rev A	26.4.2022

#### **Management Conditions**

3. Within 6 months of the date of this permission, the parking areas shall be provided in accordance with the approved plan 2028.006 rev D. The parking areas shall be surfaced in a hard bound material (not loose gravel) behind the Highway boundary and with provision to prevent the discharge of surface water from the parking areas to the public highway. The parking areas shall then be maintained in such a manner for the life of the development. The parking areas shall not thereafter be used for any purpose other than parking of vehicles.

**Reason:** To ensure that adequate and satisfactory off-street parking provision is made to reduce the possibilities of the proposed development leading to on-street parking in the area and to accord with the adopted policies of the Derby City Local Plan Part 1: (Core Strategy) and the saved policies of the adopted City of Derby Local Plan Review as included in this Decision Notice.

4. Within 6 months of the date of this permission, provision shall be made within the application site for parking of cycles in accordance with the details on plan 2028.006 rev D. Precise details of the secure parking

stands to serve those cycle parking areas shall be submitted to and approved in writing by the Local Planning Authority. Those areas shall not thereafter be used for any purpose other than the parking of cycles.

**Reason:** To promote sustainable travel and to accord with the adopted policies of the Derby City Local Plan Part 1: (Core Strategy) and the saved policies of the adopted City of Derby Local Plan Review as included in this Decision Notice.

5. Within 6 months of the date of this permission a scheme for travel planning for staff and other associated professionals at the clinic shall be implemented, in accordance with specific details and targets that have been submitted to and agreed in writing by the Local Planning Authority.

**Reason:** To encourage sustainable modes of travel to site and to accord with the adopted policies of the Derby City Local Plan Part 1: (Core Strategy) and the saved policies of the adopted City of Derby Local Plan Review as included in this Decision Notice.

6. Notwithstanding the provisions of the Town & Country Planning Use Classes Order 1987 (as amended) and any relevant succeeding legislation, the use of the premises hereby approved shall be for:

- Ground Floor - a dental clinic only and not for any other purpose, including other uses falling within Use Class D1.
- First Floor - a single operator using the whole of the first floor for purposes falling within Use Classes E(a) and E(c) only.

The dental clinic shall only operate a maximum of three surgeries at any one time. The first floor shall not be subdivided and used by more than one operator without the approval of a planning application.

**Reason:** To enable the Local Planning Authority to exercise control in the interests of the amenities of nearby residents and to accord with the adopted policies of the Derby City Local Plan Part 1: (Core Strategy) and the saved policies of the adopted City of Derby Local Plan Review as included in this Decision Notice.

7. The dental clinic hereby approved shall only be open to patients during the following daily hours:

- 09:00 to 17:00 Monday to Saturday
- and not at all on Sundays or on public holidays.
- The first-floor use shall only be open to customers between 8.30-19.30 daily, unless otherwise agreed in writing by the Local Planning Authority.

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**Reason:** To safeguard residential amenity and to accord with the adopted policies of the Derby City Local Plan Part 1: (Core Strategy) and the saved policies of the adopted City of Derby Local Plan Review as included in this Decision Notice.

### **8.4. Informative Notes**

1. The development makes it necessary to improve vehicular crossings over a footway of the public highway. These works shall be constructed to the satisfaction of the Highway Authority. You are, therefore, required to contact StreetPride at Derby City Council to apply for a vehicle access under Section 184 of the Highways Act 1980 (as amended) to arrange for these works to be carried out. Visit <https://www.derby.gov.uk/transport-and-streets/roads-highways-pavements/vehicle-access-kerbs/> or contact customerservices@derby.gov.uk or tel 0333 200 6981.

### **8.5. Application timescale:**

The application expired on 12/7/2022. Further to negotiations, an extension of time has been requested. The application has been called into Committee by Cllrs. Care and Lonsdale.

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