

BOROUGH OF KETTERING

Committee	Full Planning Committee - 04/10/2016	Item No: 5.3
Report Originator	Sean Bennett Senior Development Officer	Application No: KET/2016/0490
Wards Affected	Ise Lodge	
Location	5 St Stephens Road, Kettering	
Proposal	s.73 Application: Variation of condition 3 of KET/2013/0130, in respect of opening hours	
Applicant	Mrs V Castagnette	

1. PURPOSE OF REPORT

- To describe the above proposals
- To identify and report on the issues arising from it
- To state a recommendation on the application

2. RECOMMENDATION

THE DEVELOPMENT CONTROL MANAGER RECOMMENDS that this application be APPROVED subject to the following Condition(s):-

1. The development hereby permitted shall not be carried out other than in accordance with the approved plans detailed below

REASON: In the interest of securing an appropriate form of development in accordance with policy 8 of the North Northamptonshire Joint Core Strategy.

2. The use hereby permitted shall be for A5 use (Hot Food Takeaway) as defined within the Town and Country Planning (Use Classes) Order 1987, or in any statutory instrument revoking or re-enacting that Order with or without modification.

REASON: In the interests of amenity and protecting the character of the area in accordance with policy 8 of the North Northamptonshire Joint Core Strategy.

3. The use hereby permitted shall not be carried out before 07.00 hours or after 23.00 hours seven days per week. The premises shall not open to the public on Christmas Day.

REASON: To protect the amenities of the occupiers of nearby properties in accordance with policy 8 of the North Northamptonshire Joint Core Strategy.

4. The use hereby permitted shall continue in accordance with the scheme showing the position and design of ventilation and extraction equipment, including details of odour abatement techniques and acoustic noise characteristics submitted to and approved in writing by the Local Planning Authority by discharge of conditions application referenced AOC/0130/1301 in relation to Planning Approval KET/2013/0130 and be retained hereafter.

REASON: In the interests of the amenities of the area in accordance with policy 8 of the North Northamptonshire Joint Core Strategy.

5. The use hereby permitted shall continue in accordance with the scheme for the storage of refuse on the premises and the disposal of litter in the vicinity submitted to and approved in writing by the Local Planning Authority by discharge of conditions application referenced AOC/0130/1301 in relation to Planning Approval KET/2013/0130 and be retained hereafter.

REASON: In the interests of general amenity and the amenities of the occupiers of nearby properties in accordance with policy 8 of the North Northamptonshire Joint Core Strategy.

Officers Report for KET/2016/0490

This application is reported for Committee decision because there are unresolved, material objections to the proposal

3.0 Information

Relevant Planning History

KE/91/0825 - Change of use from A1 to A3 – APPROVED - 14/01/1992

KET/2013/0130 - Change of use to A5 hot food takeaway – APPROVED by Full Planning Committee – 11/04/2013 and included the following condition (2):

The use hereby permitted shall not be carried out before 17.00 hours or after 23.00 hours seven days per week. The premises shall not open to the public on Christmas Day.

Site Description

Officer's site inspection was carried out on 27/07/2016 and 25/08/2016

The property is an established take-away business and forms part of a small district centre of purpose built commercial units constructed in the late 1960's to support the surrounding housing with a mix of commercial at ground floor and residential or offices above. 11 St. Stephens Road to the northern end of the parade has been extended to the rear, to form part of a medium-sized Budgen's convenience store with a drinking establishment beyond. The other surrounding uses are residential.

Other than the Budgens Store, which also includes a Post Office the majority of the other ground floor uses are takeaways including a Thai and Chinese, fish and chips, and Indian takeaway and the development premise which is described on its advert as a burger, pizza and kebabs takeaway with the exception of a Hairdressers adjacent and to the north of the proposal site.

The current permitted hours of operation of the surrounding commercial uses are as follows:

Unit	Days	Hours
1 – Thai & Chinese Takeaway	Mon-Thurs	9:00-22:30
	Fri-Sat	9:00-23:00
	Sunday/ BH	12:00-22:30
3 – Chips'r'us	Mon-Sat	12:00-22:00
	Sunday	Closed
	Bank Holiday	16:30-22:00
5 – Application site	All (Except Christmas Day)	17:00-23:00
7 – Hair dressers	All (Excluding BH)	9:00 – 17:00 (Generally)
9 – Al-Amin Balti	All (Excluding BH)	16:30 – 23:00
11 - Budgens	All	7:00 – 22:00

Proposed Development

The application seeks to vary the hours of opening as stated in condition (3), as shown above, in relation to approval KET/2013/0130 to lengthen the hours from 17:00 – 23:00 hours seven days a week to the proposed 07:00 – 23:00 hours seven days a week.

It is understood that this change in hours is required to protect the viability of the business by enabling it to meet an identified opportunity to provide breakfast related takeaways to construction workers associated with the nearby Kettering East development that has recently commenced nearby on the David Wilson site.

Any Constraints Affecting the Site

None

4.0 Consultation and Customer Impact

KBC Environmental Health: *No objection* stated and saying that there is no history of complaint in relation to the proposal site

Highway Authority: *No objection* stating *no observations*

Neighbours: One third party letter of **objection** received from the proprietor of the hairdressers adjacent on the basis of the increased nuisance that would be caused to their business as a result of smells, parking congestion and general anti-social behaviour associated with longer opening hours.

5.0 Planning Policy

National Planning Policy Framework (NPPF)

Policy 1. Building a strong, competitive economy

Policy 2. Ensuring the vitality of town centres

Policy 4. Promoting sustainable transport

Policy 11. Conserving and enhancing the natural environment

Development Plan Policies

North Northamptonshire Joint Core Strategy (JCS)

Policy 7. Community services and facilities

Policy 8. Place shaping

Policy 11. The network of urban and rural areas

Policy 22. Delivering economic prosperity

Local Plan

58. Employment: Within Towns

99. Leisure: Class A3 Uses

6.0 Financial/Resource Implications

None

7.0 **Planning Considerations**

The key issues for consideration in this application are:-

1. The principle of the development
2. The impact on residential amenity
3. The impact on highway safety and convenience

1. The principle of the development

The principle of the change of use has been established through the approval of the original planning application on the site referenced KET/2013/0130 which has been implemented.

Policy 7 of the of the JCS states that *Development should support and enhance community services and facilities* with Policy 22 of the Strategy seeking to safeguard existing employment sites and in particular *Prioritising the enhancement of existing employment sites*. This approach is consistent with Chapter 1 of the NPPF which says that local planning authorities should build a strong competitive economy by, amongst other ways, being *flexible enough to accommodate needs...and to allow a rapid response to changes in economic circumstances*.

As such the principle of a change of hours in support of a business that would likely improve its viability and thereby maintain a local facility, by seeking to meet an identified business opportunity is supported by the Development Plan in principle.

This support, however should not be at any cost and critically, in this case, should be weighed against any harm that may be caused to the amenities of those in the area. This impact will be considered below.

2. The impact on residential amenity

Policy 8 of the JCS, amongst other things, seeks to protect *amenity by not resulting in an unacceptable impact on the amenities of future occupiers, neighbouring properties or the wider area, by reason of noise, vibration, smell, light or water or noise pollution* and also *seeking to design out antisocial behaviour*.

This is consistent with the NPPF which in its core principles seeks a *good standard of amenity for all existing and future occupants of land and buildings*. This is reinforced in Chapter 11 of the 'Framework' which states that planning should prevent *existing development from contributing to...unacceptable levels of soil, air, water or noise*. The Chapter goes on to say that decisions should aim to: *mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions*.

The original planning approval for the change of use (KET/2013/0130) that this application is seeking to vary included a condition (4) requiring approval of the ventilation and extraction equipment which included the provision of details relating to odour abatement techniques and acoustic noise characteristics. This condition has been discharged and the related equipment has been in place for over two years. Critically there have been no complaints received by the Council's Environmental Health Officer in relation to this unit. As such the approved noise and odour mitigation measures have been working effectively and there is no reason to believe that this will not continue going forward in the event of the hours of opening being extended.

In addition the original approval also included a condition (5) that required details of refuse storage and litter management. Similarly this condition has been discharged with the approved mechanisms in place for at least two years with no complaints having been received by the Council in this regard. As such the arrangements would appear to be operating satisfactory with no reason to believe that this would not continue with an increase in opening hours.

It is acknowledged that the proposed earlier opening hours may create disturbances to the local area with the arrival of employees, food preparation and customers however the proposed 7am opening would be consistent with Budgens. Therefore the area already sees some early activity with users of the takeaway for breakfast likely to also visit the convenience store or its associated Post Office in the same visit. As such the level of disturbance caused as a result of the early opening to surrounding residences or businesses is not likely to be a significant increase when compared with the existing situation.

There is no reason to believe those longer opening hours, particularly as it relates to a longer day-time hours would result in an increased likelihood of anti-social behaviour in the area. In particular takeaways and retail premises, which include hairdressers, are considered to be common neighbours with various examples throughout the Town. There is no reason to conclude here that both uses cannot operate successfully next to one another without conflict in the event that longer opening hours is permitted.

As such and with the imposition of conditions requiring the development to continue with regard to the measures approved by the original planning application and with no objection from the Council's Environmental Health Officer the proposal is considered to respect the amenities of surrounding residences and business users. As such the proposal is considered to comply with the parts of Policy 8 of the JCS and the NPPF that consider impact on neighbours amenities.

3. The impact on highway safety and convenience

Policy 8 of the North Northamptonshire Core Spatial Strategy requires new development to have a satisfactory means of access, provide for parking, servicing and manoeuvring to adopted standards, and not to have an adverse impact on the highway network nor prejudice highway safety.

The parade was designed to accommodate a fairly high frequency of short stay visitors. Provision has been made for parking in an off-street lay-by which can accommodate approximately 10 vehicles. In addition St. Stephens Road and the surrounding residential streets have unrestricted highway parking. These current parking arrangements appear to be operating well with no evidence of parking congestion in the area.

The ramifications of the change of use was considered during the original application and considered to be acceptable.

It is considered that the most intensive vehicular movements to the parade are likely to be in the evenings as a result of relatively high proportion of takeaways in the row. As such given that the proposal relates to the increase of opening hours during the day-time the proposal would not likely result in an increased risk to highway safety with the existing parking arrangements operating well. Thereby and with no objection from the Local Highway Authority the proposal is considered to maintain highway safety and convenience and therefore the proposal is considered to be acceptable in this respect.

Conclusion

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires local planning authorities to determine planning applications in accordance with their Development Plans unless material planning considerations indicate otherwise. In light of the above and subject to the imposition of conditions relating to hours of opening and the retention of the existing ventilation and refuse arrangements, the proposal is considered to comply with the development plan and is therefore recommended for approval.

Background Papers

Title of Document:

Date:

Contact Officer:

Previous Reports/Minutes

Ref:

Date:

Sean Bennett, Senior Development Officer on 01536 534316