

Planning Committee Report	
Planning Ref:	S73/2018/0583
Site:	8 Station Avenue
Ward:	Westwood
Applicant:	Ms Iwona Zuraska
Proposal:	Variation of condition 2 to extend opening hours imposed on application reference FUL/2016/2113, granted on 30 th September 2016 for change of use from retail (A1) to café/take-away (A3 and A5), external extraction flue, alterations to shop front and raised planters.
Case Officer:	Anne Lynch

SUMMARY

The site is a mid-terraced two storey property with a café/take-away at ground floor. Planning permission was granted for change of use of the premises in 2016 with a condition restricting the hours of opening. This application seeks to extend the opening hours.

BACKGROUND

A planning application was to be presented to Planning Committee in August 2016 with a recommendation of refusal. It was withdrawn at Committee and resubmitted. The resubmission was approved by Planning Committee in September 2016 with a condition restricting the opening hours. The current application now seeks to vary that condition to extend the opening hours.

RECOMMENDATION

Planning committee are recommended to refuse planning permission.

REASON FOR DECISION

- The proposal will adversely impact upon the amenity of neighbours
- The proposal to extend the hours was previously considered unacceptable by Planning Committee and dismissed at appeal.
- The proposal does not accord with Policies and of the Coventry Local Plan 2016 or with the aims of the NPPF.

APPLICATION PROPOSAL

The application seeks to vary condition 2 which states:-

“No customers shall be permitted to be on the premises and no hot food deliveries shall be carried out from the premises other than between the hours of 07:30 and 18:00 hours on Monday to Friday, 08:00 and 18:00 hours on a Saturday, 10:00 and 16:00 hours on a Sunday and at no time on a bank holiday.”

The reason for the condition states:-

“The premises are closely adjoined by residential properties and the City Council considers it necessary to strictly control the nature and intensity of use of the premises in the interests of the amenities of the area in accordance with Policies BE9 & EM5 of the Coventry Development Plan 2001.”

The application proposes to extend the opening hours to 07:30 to 23:00 hours Monday to Saturday and 08:00 to 22:30 hours Sundays and Bank holidays.

The reason given is to meet customer requirements and ensure the viability and competitiveness of the premises.

The application also includes details of odour control and extraction and flue to the rear.

KEY FACTS

Reason for report to committee:	The premises are owned by Councillor Rois Ali
Current use of site:	Mixed use as café (A3) and takeaway (A5) but currently not operating
Proposed use of site:	As existing but with extended opening hours
Approved opening hours	07:30 until 18:00 hours Monday to Friday, 08:00 until 18:00 hours Saturday and 10:00 until 16:00 hours on Sundays, with no opening on bank holidays.
Proposed opening hours	07:30 until 23:00 hours Mondays to Saturdays and 08:00 to 22:30 hours Sundays and Bank holidays.

SITE DESCRIPTION

The property is a two storey building with a café and take-away at ground floor with the upstairs used for storage. The premises are understood to currently be vacant but the ground floor has a seating area to the front with 14 covers and sales counter and kitchen beyond. There have been alterations to the shop front to reposition the entrance door to the right hand side

The property is in the middle of a row of three terraced properties to the south-west of the crossroads with Station Avenue, Tanners Lane, Banners Lane and Tile Hill Lane. The site is within a designated Local Centre which includes the adjoining property to the north and the site beyond that was previously a bank, commercial properties on the opposite corner and the public house to the south. There are two properties between the application site and the public house (no. 10 and no. 12 Station Avenue) which are excluded from the local centre and both in residential use.

The application site adjoins no. 10 Station Avenue to the south and there are residential dwellings to the rear of the site beyond the rear garden area. The property adjoins no. 6, a funeral directors, to the north.

PLANNING HISTORY

There have been a number of historic planning applications on this site; the following are the most recent/relevant:

Application Number	Description of Development	Decision and Date
FUL/2016/2113	Change of use from retail (A1) to café/take-away (A3 and A5), external extraction flue, alterations to shop front and raised planters.	Approved 30 th September 2016.
FUL/2016/1678	Change of use from retail (A1) to cafe and takeaway (A3/A5 mixed use) (Retrospective). Revised application.	Withdrawn 4 th August 2016.
FUL/2015/2200	Change of use from A1 to A3 and A5 mix use.	Refused 3 rd September 2015. Appeal dismissed 9 th May 2016.
LDC/2013/0638	Application for a lawful development certificate for a mixed A1, A3 and A5 use.	Refused 21 st June 2013. Appeal dismissed because of insufficient evidence to demonstrate an A3 or A5 use.

Application FUL/2015/2200 was refused by Planning Committee on the grounds of the impact on the residential amenity of no. 10 Station Avenue and highway safety due to the location close to the signalised junction and bus stop and was subsequently dismissed

at appeal by decision dated 9th May 2016. The Inspector concluded that “the development would have a significant adverse impact on the living conditions of the occupiers of 10 Station Avenue having regard to noise and disturbance. Although the development is acceptable with regard to its impact on highway safety and provides some other benefits, these matters do not outweigh the harm identified.”

Application FUL/2016/1678 was withdrawn from the Planning Committee Agenda on 4th August 2016. Officers changed their recommendation to “refusal” as the alterations to the shop front to reposition the entrance door were not received ahead of the Planning Committee meeting.

POLICY

National Policy Guidance

National Planning Policy Framework (NPPF). The NPPF published in March 2012 sets out the Government’s planning policies for England and how these are expected to be applied. It sets out the Government’s requirements for the planning system only to the extent that is relevant, proportionate and necessary to do so. The NPPF promotes sustainable development and good design is recognised as a key aspect of this.

The National Planning Practice Guidance (NPPG) 2014, this adds further context to the NPPF and it is intended that the two documents are read together.

Local Policy Guidance

The current local policy is provided within the Coventry Local Plan 2016, which was adopted by Coventry City Council on 6th December 2017. Relevant policy relating to this application is:

Policy DS3 – Sustainable Development Policy
Policy DS1 – Overall Development Needs
Policy R3 – The Network of Centres
Policy R6 – Restaurants, Bars and Hot Food Takeaways
Policy EM1 – Planning for Climate Change Adaption
Policy AC1 – Accessible Transport Network
Policy AC3 – Demand Management

Supplementary Planning Guidance/ Documents (SPG/ SPD):

SPD Delivering a More Sustainable City

CONSULTATION

No Objections received from:

- Highways.

Objections have been received from:

- Environmental protection.

Immediate neighbours and local councillors have been notified, together with those neighbours who commented on the previous application. Neighbours have been re-notified following receipt of amendments to the application form and additional information in support of the application.

The re-consultation is still underway and any comments received will be reported in the late representations.

In respect of the initial consultation 16 letters of objection have been received, raising the following material planning considerations:

- a) Noise and anti-social behaviour with people gathering outside.
- b) Noise and disturbance from the extraction fans.
- c) The proximity to the pub will encourage loitering.
- d) Recent issues with drugs and anti-social behaviour will be made worse.
- e) There are already 3 hot food outlets in the centre with late night opening.
- f) The examples of precedents are not in the centre and precedent shouldn't lead to saturation.
- g) Why impose conditions if they get over-ruled in subsequent applications.
- h) The proposals will do nothing to enhance the area.
- i) Loss of privacy for neighbours.
- j) Residents next to a nearby take-away already have issues with parking and disturbance.
- k) The reasons in the planning statement do not stack up as the premises have been closed for nearly a year.

Councillor Lapsa has objected to the application and asked to speak at Planning Committee. He considers this to be an application by stealth to sell a lease. The hours were agreed by Planning Committee a year ago. The reasons for the application do not stand up as the café has not been trading. The extended hours would cause noise nuisance and residents believe this is an underhand way of getting a fast food takeaway.

APPRAISAL

The main issues in determining this application are the impact upon neighbouring amenity and highway considerations.

Impact on residential amenity

Policy DE1 of the Coventry Local Plan and Paragraph 17 of the NPPF seek to protect the amenities of all existing and future occupants of land and buildings.

Policy R6 (restaurants, bars and hot food takeaways) states that outlets should be located within defined centres and will normally be discouraged outside those locations. It further states that proposals within defined centres will be permitted provided they;

- a) Would not result in significant harm to the amenity of nearby residents or highway safety;
- b) Would not result in harmful cumulative impacts due to the existence of any existing or consented proposed outlet;
- c) Are in accordance with the emerging Hot Food Takeaway Supplementary Planning Document (in particular, proposals for A5 uses); and
- d) Are compatible with other Plan Policies.

The premises were previously a butcher's shop which is understood to have sold hot batches and pies. However, an application for a lawful development certificate for use of the premises as a café was refused, as it was considered that any hot food sold from the premises was only ancillary to the main use as a butcher's shop. The subsequent Appeal was dismissed.

The previous change of use application in 2015, the subject of appeal, proposed opening from 6.00am until 11.00pm, seven days a week. The Environmental Protection Officer raised concerns about this due to the close proximity to residential dwellings. Whilst there were no objections to a daytime café use, Environmental Protection were concerned about a late night takeaway use in this location and recommended conditions restricting the hours of operation from 7.00am until 8.00pm.

The 2015 application was refused at planning committee on the grounds of residential amenity and highway safety. In considering the appeal the Inspector observed that, in the appeal statement, it was noted that the Council's suggested opening hours would be acceptable as an alternative to the appeal being dismissed. The Inspector noted that the proximity of the building to the dwelling at No. 10 and the lack of screening between the two properties meant that any comings and goings and activity associated with the café and takeaway use would have a direct and significant impact on the living conditions of the occupiers of No. 10. The Inspector further noted that, whilst the level of noise and disturbance generated by the café and takeaway in the daytime is unlikely to be materially more harmful than that generated by the previous use as a butchers shop, any noise and disturbance associated with the appeal site in the early morning and in the evening would have a significant adverse impact on the living conditions of the occupiers of No. 10. The Inspector did not consider that the alternative closing time (8.00pm) would overcome this adverse impact. (The hours of opening for the butchers were not known but typically, a butchers is a daytime use operating between 9.00 am until 5.00pm.)

A subsequent application was submitted and was due to be considered by Planning Committee on 4th August 2016. Officers initially recommended approval of the application on the basis of some revisions to show the repositioning of the door. Those revisions were not received ahead of Planning Committee and officers changed their recommendation to refusal. The application was withdrawn on the day of Planning Committee. Planning permission was later granted with a revised application that included the re-positioned door and restricted the opening hours by condition. It is this condition which the application seeks to vary.

Although the application seeks to open the premises until 11.00pm, Environmental Protection Officers do not consider that this is acceptable and initially indicated that a temporary extension until 8.00pm might be acceptable to allow monitoring of the opening hours and its impact on amenity. Whilst the Inspector had previously indicated that 8.00pm was too late changes have been made to the premises since that decision to move the entrance door away from no. 10 Station Avenue and a temporary permission to extend the opening hours would enable the Council to monitor the amenity impacts. The applicants do not wish to pursue this option as the premises are being marketed and have indicated that there is no interest due to the restriction on hours. They do not wish to restrict the hours to 8.00pm closing. On the basis that officers are now aware that the premises are not currently operating as a café/take-away, it is considered that a temporary permission would not be effective as there would be nothing to monitor until a new tenant is in place.

Residents have raised concern about the noise from extraction fans. Details of the fans have been submitted for consideration as these were required by a condition of the

current planning permission. Environmental Protection require further information in respect of the specification for the fans.

There have been no material changes that would now make opening until 11.00pm acceptable. The hours are consistent with the use as a daytime café/take-away and to extend them to 11.00pm would change the nature of the use and be harmful to the amenities of the adjoining neighbours and would therefore be contrary to Policies R6 and DE1 of the Coventry Local Plan 2016.

Highway considerations

Policy AC1 'Accessible Transport Network' states that development proposals which are expected to generate additional trips on the transport network should: a) Integrate with existing transport networks including roads, public transport and walking and cycling routes to promote access by a choice of transport modes. b) Consider the transport and accessibility needs of everyone living, working or visiting the city. c) Support the delivery of new and improved high quality local transport networks which are closely integrated into the built form. d) Actively support the provision and integration of emerging and future intelligent mobility infrastructure.

Policy AC3 of the Local Plan acknowledges that the provision of car parking can influence occurrences of inappropriate on-street parking which can block access routes for emergency, refuse and delivery vehicles, block footways preventing access for pedestrians, reduce visibility at junctions and impact negatively on the street scene. Proposals for the provision of car parking associated with new development will be assessed on the basis of parking standards set out in Appendix 5. The car parking standards also include requirements for the provision of electric car charging and cycle parking infrastructure.

Residents have raised a number of concerns about highway safety. Highways have no objection to the proposals and the previous refusal on highways grounds was not supported by the Inspector at appeal. The Inspector noted that the site is within a designated Local Centre with the immediate surrounding area comprising a mixture of commercial and residential uses. On street parking is restricted on Station Avenue outside and in the immediate vicinity of the site by double yellow lines. However, on street parking is available further along Station Avenue. At the time of the Inspectors visit, on street parking spaces were available within easy walking distance of the site. A pay and display car park is available near to the appeal site at the public house and there is off street parking for a small number of vehicles in front of the site and the adjoining funeral directors. The Inspector was satisfied that sufficient parking exists to accommodate the level of parking likely to be generated by the development. The Inspector noted concerns about indiscriminate parking near to the site and the nearby junction and bus stops but did not consider that there was substantive evidence to support these concerns and any such parking would be in breach of the existing parking restrictions. Similarly there was no substantive evidence to support the concerns about existing parking problems. The Council's reason for refusal on highways grounds was not therefore supported by the appeal decision.

There have been no changes to the highway arrangement since the appeal decision that would lead to officers forming a different view to the previous application. Highways do not consider the impact of development to be severe and have no objection.

Conclusion

The proposed development is considered to result in a significant impact on neighbour amenity and therefore contrary to Policies DE1 and R6 of the Coventry Local Plan 2016, together with the aims of the NPPF.

CONDITIONS/REASON

Reason: *The proposal would have a significant adverse impact on the living conditions of the occupiers of no. 10 Station Avenue having regard to noise and disturbance and would therefore be contrary to Policies R6 and DE1 of the Coventry Local Plan 2016 and the principles of the National Planning Policy Framework.*

[Site Plan](#)