

Planning Committee Report	
Planning Ref:	S73/2019/3170
Site:	8 Station Avenue
Ward:	Westwood
Applicant:	Mr Skues
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:	Emma Spandley

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 for a period of 6 months to enable monitoring of the impacts to take place.

BACKGROUND

Planning Application FUL/2016/2113 was approved by Planning Committee on 30th September 2016 to change the use of the premises from a shop (Use Class A1) to a café/takeaway (Use Class A3 & A5), which also included the repositioning of the entrance door. A condition was attached to the grant of permission which restricted the opening hours to 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 on a Sunday and at no time on a Bank Holiday. This was due to the extremely close proximity of the neighbouring property, No.10, in relation to the application site.

Furthermore, the supporting information submitted with the application stated that the premises was only required for a daytime use and not required in the evening. On this basis the opening hours were accepted by the applicant.

Planning application S73/2018/0583 was submitted in May 2018 for the variation of the opening hours condition to allow the premises to open until 23.00 Monday to Saturday and 22.30 on Sunday and Bank holidays. The reason given was to meet customer requirements and ensure the viability and competitiveness of the premises.

This was subsequently refused by Planning Committee 14th June 2018 and subsequently dismissed at appeal on 17th April 2019.

In dismissing the appeal the inspector stated:-

“Given that Nos 8 and 10 are so close to one another, I consider that the only practical way of ensuring that the occupiers of No.10 would not be subjected to unacceptable levels of noise disturbance arising from the comings and goings to No.8 would be through the use of a condition precluding the premises use after 1800hrs.”

RECOMMENDATION

Planning committee are recommended to grant a temporary permission for 6 months, to allow the premises to open until 20.00.

REASON FOR DECISION

- The proposal is acceptable in principle.
- To enable monitoring to take place in order to assess whether the extended opening hours would have an adversely impact upon the amenity of neighbours.
- In accordance with Policies: DS3, DE1, EM5 & AC3 of the Coventry Local Plan 2016, together 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 20.00 hours Monday to Saturday and 10:00 to 16.00 hours Sundays and Bank holidays.

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

KEY FACTS

Reason for report to committee:	The premises are owned by Councillor Rois Ali and over 5no. letters of objection and support have been received.
Current use of site:	Mixed use as café (A3) and takeaway (A5)
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 20:00 hours Mondays to Saturdays and 10:00 to 16:00 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 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
S73/2018/0583	Variation of condition 2- to extend opening hours: imposed on planning permission FUL/2016/2113 for change of use from retail (A1) to cafe/take-away (A3 and A5), external extraction flue, alterations to shop front and raised planters granted on 30/09/2016	Refused 14 th June 2018 & dismissed on Appeal 17 th April 2019. (23.00 Monday to Saturday and 22.30 Sunday)
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. (18.00 Monday to Saturday and 16.00 Sunday)
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. (Retrospective)	Refused 3 rd September 2015. Appeal dismissed 9 th May 2016. (23.00 All week)

LDC/2013/0638	Application for a lawful development certificate for a mixed A1, A3 and A5 use.	Refused 21 st June 21 st June 2013. Appeal dismissed because of insufficient evidence to demonstrate an A3 or A5 use.
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Application FUL/2015/2200 which was for the change of use from A1 to A3 and A5 mix use, 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.”

Planning Application FUL/2016/2113 was approved by Planning Committee on 30th September 2016 to change the use of the premises from a shop (Use Class A1) to a café/takeaway (Use Class A3 & A5). A condition was attached to the grant of permission which restricted the opening hours to 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 on a Sunday and at no time on a Bank Holiday. This was due to the extremely close proximity of the neighbouring property, No.10, in relation to the application site.

Furthermore, the supporting information submitted with the application stated that the premises was only required for a daytime use and not required in the evening and the opening hours were accepted.

Planning application S73/2018/0583 was submitted in May 2018 for the variation of the opening hours condition to allow the premises to open until 23.00 Monday to Saturday and 22.30 on Sunday and Bank holidays. The reason given was to meet customer requirements and ensure the viability and competitiveness of the premises.

This was refused by Planning Committee on 14th June 2018 and subsequently dismissed at appeal on 17th April 2019.

In dismissing the appeal the inspector stated:-

“Given that Nos 8 and 10 are so close to one another, I consider that the only practical way of ensuring that the occupiers of No.10 would not be subjected to unacceptable levels of noise disturbance arising from the comings and goings to No.8 would be through the use of a condition precluding the premises use after 1800hrs.’

POLICY

National Policy Guidance

National Planning Policy Framework (NPPF). The NPPF was updated on February 2019 and 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 DE1 – Ensuring High Quality Design
Policy R3 – The Network of Centres
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
SPD Hot Food Takeaways

CONSULTATION

No Objections received from:

- Highways.
- Environmental protection, subject to a temporary permission to assess the impacts.

Immediate neighbours and local councillors have been notified, together with those neighbours who commented on the previous application.

In respect of the consultation 4 letters of objection have been received, raising the following material planning considerations:

- a) Noise and anti-social behaviour with people gathering outside and the comings and goings.
- b) Why impose conditions if they get over-ruled in subsequent applications.
- c) The proposals will do nothing to enhance the area.
- d) Loss of privacy for neighbours.
- e) Residents next to a nearby take-away already have issues with parking and disturbance.
- f) A Hot Food Takeaway has been refused on this site since the 1970's, nothing has changed, it is still in close proximity to No.10 Station Avenue, a residential property.

Councillor Lapsa has objected to the application and asked to speak at Planning Committee. He considers this to be an application by stealth. It is an attempt to add to the price of any lease going forward and this type of continued application for the same

thing when being rejected for legitimate reasons is wasting officers and the committees time. The hours were agreed by Planning Committee a year ago. The extended hours would cause noise nuisance and traffic problems.

In respect of the consultation 8 letters of support have been received, raising the following material planning considerations:

- a) The existing petrol station, Off license and Fish and Chip shop are open later than 6pm;
- b) The extra 2 hours will not cause harm to anyone, as it is still rush hour with offices' closing, it is very busy. People will therefore park in the pub car park;

APPRAISAL

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

Impact on residential amenity

The National Planning Policy Framework, paragraph 127 states that "Planning policies and decisions should ensure that developments:

- a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;
- b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;
- c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);
- d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;
- e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and
- f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

The NPPF further states (at paragraph 130) "Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions, taking into account any local design standards or style guides in plans or supplementary planning documents. Conversely, where the design of a development accords with clear expectations in plan policies, design should not be used by the decision-maker as a valid reason to object to development. Local planning authorities should also seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme (for example through changes to approved details such as the materials used)."

This is echoed by policy DE1 of the Coventry Local Plan 2016 and the Supplementary Planning Guidance 'Extending Your Home' of the Coventry Local Plan 2016 which seeks to ensure that development complement or enhances the character of the surrounding area with regard to scale, layout, density, mass, design, materials and architectural features.

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 (FUL/2015/2200), 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 (FUL/2016/2113) and considered by Planning Committee on 29th September 2016. Planning permission was granted with revised opening hours (*18.00 Monday to Saturday and 16.00 Sunday*) and the repositioning of the front door. It is this condition which the application seeks to vary.

The previous application (2015) sought to open the premises until 11.00pm, Environmental Protection Officers did not consider that this was 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.

It is important to note, that the premises are situated within a defined Local Centre (Station Avenue Policy R3). Policy R6 of the Coventry Local Plan (2016) encourages restaurants, bars and hot food takeaways to be “located within defined centres” subject to managing a range of issues, whilst Policy R3 recognises that designated centres will provide a range of uses “to ensure a flexibility of offer and a vibrancy and vitality”.

With regards this specific premises, it is also important to note the main change that has occurred since the 2016 appeal is the repositioning of the front door away from the front door of No.10 Station Avenue to the opposite end of the unit frontage, and a reduction in opening hours requested.

The Local Plan also recognises the changing face of designated centres and the importance of diversification and sustainable change to ensure their long-term survival and ability to support local communities.

Whilst officers acknowledge that there are sensitivities in the relationship between the commercial and residential properties, the unit is situated within a designated centre and there is an overriding policy position (both locally and nationally) to support vibrant and viable centres, to help ensure they remain sustainable and able to serve local communities. On balance therefore an initial period of 6 months is recommended to undertake monitoring and assessment of a modest increase in opening hours.

Officers are mindful of the current circumstances around COVID19 with regards to the proposed temporary permission as the new hours might not commence straight away, even if the premises did operate under the new temporary hours the impact may not be of an appropriate reflection of ‘normal’ circumstances.

As such, it is considered reasonable to include a notification condition to be added to any grant of approval, requiring the applicant to provide at least 7 days’ notice to the local planning authority of the intention to enact the temporary permission.

During the 6-month period the results of the monitoring will be reviewed on an ongoing basis. If, after a 6-month period, monitoring has shown an excessive and unacceptable impact on the residential amenity of neighbouring properties, caused by the increase in hours, then it is likely the premises will revert back to their existing opening hours. If no adverse impact has been recorded, then it would be for the applicant to apply to make the revised opening hours permanent through a subsequent planning application

Taking all of the above into account it is considered that the application, subject to a temporary permission, is in accordance with Policies R3, 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 be acceptable in principle and will enable a full and robust assessment to take place to assess whether the extended opening hours would result in any significant impact upon neighbour amenity and / or the character of the area. The reason for Coventry City Council granting planning permission is because the development is in accordance with: Policies DS3, DE1, R3 & R6 of the Coventry Local Plan 2016, together with the aims of the NPPF.

CONDITIONS:/REASON

1. No use shall be made of the premises before 07:30 or after 20:00 on any day for a period of 6 months from the date of this permission.

Reason: *To ensure that the A3/A5 Use is not used in a manner prejudicial to or likely to cause nuisance to occupiers of nearby properties in accordance with Policies DE1 & R6 of the Coventry Local Plan 2016.*

2. The use hereby permitted shall not commence unless and until seven days' written notice, is submitted to the local planning authority, of the intention to enact the temporary permission. The 6 months temporary permission, hereby permitted will expire from the date given in the written notification.

Reason: *Due to COVID19 and to ensure that the A3/A5 Use is not used in a manner prejudicial to or likely to cause nuisance to occupiers of nearby properties in accordance with Policies DE1 & R6 of the Coventry Local Plan 2016.*