



**Horsham
District
Council**

PLANNING COMMITTEE REPORT

TO: Planning Committee North

BY: Head of Development

DATE: 5 December 2017

DEVELOPMENT: Variation of Condition 4 to previously approved application DC/11/1660 to extend permitted opening hours between the hours of 0900 - 2200 hours Monday to Saturday inclusive and at no time on Sundays.

SITE: 80 Lambs Farm Road Horsham West Sussex RH12 4JH

WARD: Roffey North

APPLICATION: DC/17/0168

APPLICANT: **Name:** Mr Celebi **Address:** 80A Lambs Farm Road Horsham West Sussex RH12 4JH

REASON FOR INCLUSION ON THE AGENDA: More than 8 representations have been received of a contrary view to the Officer recommendation.

RECOMMENDATION: Approve subject to conditions

1. THE PURPOSE OF THIS REPORT

1.1 To consider the planning application.

DESCRIPTION OF THE APPLICATION

1.2 The application seeks a variation of condition 4 of planning permission DC/11/1660, this condition states:-

The premises shall not be open for trade or business except between the hours of 0900 - 2200 hours Monday to Saturday inclusive and at no time on Sundays.

Reason: To safeguard the amenities of neighbouring properties in accordance with policy DC9 of the Horsham District Local Development Framework: General Development Control Policies (2007).

1.3 The proposed variation would allow the following opening hours:-

*Monday - Saturday - 0900 – 2300 hours;
Sunday and Bank Holidays- 0900 - 2200 hours;*

1.4 The application relates solely to the hours of opening. No changes are proposed to the previously approved ventilation and extraction details.

DESCRIPTION OF THE SITE

- 1.5 The application site is located in Lambs Farm Road within the Built up Area of Horsham. The commercial unit is not identified as falling within any defined Primary or Secondary shopping frontages. The unit is positioned on the southern side of Lambs Farm Road within a small parade of shops, with the other units in the parade currently occupied by a sports shop and a 'one-stop' convenience store with residential flats above. A forecourt area exists to the front of the parade of shops with 3 delineated parking spaces serving the application site. The surrounding area is predominantly residential with a mix of semi detached and detached dwellings in Lambs Farm Road and the immediate vicinity.

2. INTRODUCTION

STATUTORY BACKGROUND

- 2.1 The Town and Country Planning Act 1990.

RELEVANT PLANNING POLICIES

- 2.2 **National Planning Policy Framework:**
NPPF1 - Building a strong, competitive economy
NPPF14 - Presumption in favour of sustainable development

- 2.3 **Horsham District Planning Framework (HDPF 2015)**
HDPF1 - Strategic Policy: Sustainable Development
HDPF 12 – Vitality and Viability of Existing Retail Centres
HDPF13 – Town Centre Uses
HDPF33 - Development Principles

RELEVANT NEIGHBOURHOOD PLAN

- 2.4 An application for the designation of the Parish of North Horsham as a neighbourhood area for the purpose of producing a neighbourhood development plan was received from North Horsham Parish Council on 4 January 2017. There is currently no Made plan for the Parish.

2.5 PLANNING HISTORY AND RELEVANT APPLICATIONS

DC/11/1660	Change of use from retail/office (Use Class A1/B1) to a hot food takeaway (Use Class A5) and erection of associated chimney to side elevation to service extract duct	Application Permitted on 03.05.2012
DC/15/1398	New position for ducting and the construction of a chimney to match the existing wall; a gate aligned with the west elevation of the building is to be removed	Application Permitted on 08.09.2015
DC/15/1402	Variation of Condition 10 (DC/11/1660) to install the counter in a different position to accommodate the cooking appliances with extraction, ventilation and acoustic jacket and easy access to disabled WC	Application Permitted on 08.09.2015

3. OUTCOME OF CONSULTATIONS

- 3.1 Where consultation responses have been summarised, it should be noted that Officers have had consideration of the full comments received, which are available to view on the public file at www.horsham.gov.uk

INTERNAL CONSULTATIONS

- 3.2 **Environmental Health**: No objection, subject to imposition of condition

OUTSIDE AGENCIES

- 3.3 **WSCC Highways**: No objection.

- 3.4 **North Horsham Parish Council**: Do not wish to make any observations on this application on planning grounds. However, it was noted that when the original planning application was approved there was significant emphasis on having adequate extraction facilities to disperse the fumes from the property and cause as little loss of amenity as possible to neighbouring properties. The Parish Council recommends that this condition is rigorously enforced and that consideration is given to ways of controlling the smell of cooking odours coming from open doors at the property.

PUBLIC CONSULTATIONS

- 3.5 20 Neighbour letters have been received (including 5 from 1 household, 3 from 1 household and 2 from 1 household) objecting to the proposals to extend the opening hours for the following reasons:

- Impact on private amenities of neighbouring properties
- Excessive noise after closing time
- Odours
- Traffic and parking issues
- Litter
- Eating on premises

4. HOW THE PROPOSED COURSE OF ACTION WILL PROMOTE HUMAN RIGHTS

- 4.1 Article 8 (Right to respect of a Private and Family Life) and Article 1 of the First Protocol (Protection of Property) of the Human Rights Act 1998 are relevant to this application, Consideration of Human rights forms part of the planning assessment below.

5. HOW THE PROPOSAL WILL HELP TO REDUCE CRIME AND DISORDER

- 5.1 It is not considered that the development would be likely to have any significant impact on crime and disorder.

6. PLANNING ASSESSMENTS

Background

- 6.1 Planning permission was originally granted for the change of use from a retail /office (use A1/B1) to a hot food takeaway (use Class A5) with the erection of a chimney to the side elevation to provide extract and ventilation in May 2012, ref: DC/11/1660. The application

was granted subject to conditions in respect of opening hours (as set out in paragraph 1.2) and adequate ventilation and extraction equipment.

- 6.2 This application relates solely to the extension of the previously permitted opening hours, and does not relate or propose any changes to the ventilation and extraction equipment at the premises. The representations received in respect of existing operational noise from the premises, including from deliveries and refuse arrangements, fall outside the scope of this planning application. These complaints are instead being investigated and pursued through separate Environmental Health legislation, and this is considered to be the most appropriate route to address any statutory disturbances.

Impact on neighbouring amenity

- 6.3 It is noted that there are residential flats immediately above the application premises and that the application premises is one of several other ground floor retail / commercial premises within the parade. Policy 33 of the HDPF seeks, amongst other criteria, to ensure development avoids unacceptable harm to the amenity of occupiers / users of nearby property / land. This is the key consideration raised by this application.
- 6.4 The proposed increase in opening hours would result in the takeaway being open for 1 additional hour each night Monday to Saturday inclusive, and between the hours of 09:00 and 22:00 on Sundays and Bank holidays, when currently it remains closed during these periods. The applicants have cited opening hours of other similar A5 establishments with longer opening hours and wish to amend their opening hours in order to compete with these businesses.
- 6.5 In planning terms it is considered that an additional hour opening Monday through Saturday would not be of such magnitude as to result in significant additional harm for occupants of adjoining properties. Similarly, it is considered reasonable and appropriate for a commercial premise to open on Sundays and Bank Holidays. The proposed opening hours would not encroach into what is accepted as being the night-time (which the World Health Organisation defines as between 23:00 and 07:00 hours). It is considered that opening during the proposed hours would not be excessive in this location and would not be expected to generate such harm as to warrant a refusal of planning permission.
- 6.6 The Council's Environmental Health Team has advised that should the application be approved appropriate conditions should be imposed to restrict the extended opening hours, and to secure a Noise Management Plan, which would identify and control noise breakout during the extended hours. This would primarily be to control operational noise from the business such as (but not limited to) deliveries and ensuring doors are shut during noisy operations.
- 6.5 A number of representations have been received raising concerns in respect of noise, odour, traffic and parking nuisances; these are issues which have been created by the existing (and lawful) opening hours of the premises. The Council's Environmental Health Team are currently in discussion with the applicants to assess the ventilation equipment that has been installed at the premises and to establish whether the system installed is as originally agreed and whether it is being maintained appropriately. Their role is to assess any alleged nuisances (including those relating to noise and odour) and take separate action under Environmental Health legislation if they consider that the complaints raised constitute a statutory nuisance. This is a separate matter from the planning process which serves to determine the land use considerations which can be controlled through the imposition of appropriate conditions as considered appropriate and necessary. The investigations of the Council's Environmental Health Department are on-going and would not be affected or compromised by the granting of this planning application.

WSCC Highways

- 6.6 The application relates solely to opening hours and proposes no changes to access or parking arrangements. The Local Highways Authority (LHA) has advised that the change in hours is unlikely to attract any extra vehicular trips on the network that could be considered to have a severe impact. There are enforceable parking restrictions in place to restrict parking in unsafe locations along Lambs Farm Road and any limitations associated with the site are as existing, and would not be exacerbated or materially worsened as a result of this application (to extend opening hours). It is not therefore considered that the extension of the opening hours would result in a significant increase in the movement of traffic sufficient to warrant a refusal of this application.

Conclusion

- 6.7 It is not considered that the increase in the hours of opening would result in a level of harm to neighbouring amenity which would warrant refusal of the application, and no implications for surrounding highways have been identified. The proposal is therefore considered to accord with relevant local and national planning policies.

7. RECOMMENDATIONS

- 7.1 Grant planning permission subject to conditions

1. A list of the approved plans.
2. **Regulatory Condition:** The premises shall not be open for trade or business except between the hours of 09:00 and 23:00 on Monday to Saturday, and the hours of 09:00 and 22:00 on Sundays and Bank Holidays.

Reason: To safeguard the amenities of neighbouring properties and to accord with Policy 33 of the Horsham District Planning Framework (2015).

3. **Regulatory Condition:** With 3 months from the date of this permission a Noise Management Plan to identify and control noise breakout after 22:00pm Monday to Saturday inclusive and at any time the premises are open on Sundays or bank holidays shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved scheme.

Reason: In the interests of the amenities of the locality and in accordance with Policy 33 of the Horsham District Planning Framework (2015).

4. **Regulatory Condition:** Noise from the extraction system shall not exceed 49dB(A) at 3m as measured in a free field condition and should not emit any tonal noise as defined by BS 7445 :part 2 :1991 ISO 1996-2 1987.

Reason: In the interests of the amenities of the locality and in accordance with Policy 33 of the Horsham District Planning Framework (2015).

Background Papers: DC/17/0168
DC/11/1660