



TO: Planning Committee North
BY: Head of Development
DATE: 2 October 2018
DEVELOPMENT: Variation of Conditions 4 and 7 to previously approved DC/11/1660
SITE: Enterprise House 80 Lambs Farm Road Horsham West Sussex RH12 4JH
WARD: Roffey North
APPLICATION: DC/18/0055
APPLICANT: **Name:** Mr Celebi **Address:** 80 Lambs Farm Road Horsham RH12 4JH

REASON FOR INCLUSION ON THE AGENDA: At the discretion of the Head of Development

RECOMMENDATION: Grant Planning Permission

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 Changes are also proposed to the previously approved ventilation and extraction details as required under condition 7 of DC/11/1660, which stated that

Prior to the use hereby permitted commencing, the extraction and ventilation system hereby approved shall be constructed and thereafter retained and maintained all strictly in accordance with the approved details and the maintenance regime set out in the

application details for the life of the development, unless the prior written agreement of the Local Planning Authority is obtained for any variation.

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).

- 1.5 It is advised by the applicant that since the original commencement of use they have installed a new, purpose designed professional ESP ventilation and extraction system which is considered to be industry standard good practice equipment and has been expressly chosen as a system because it should cope comfortably with smells arising from pizza cooking and protect amenity from smell and noise. Some issues have been identified however, with regards to the maintenance of the system and changing of the carbon filters which has led to complaints from local residents regarding the impact on amenity.
- 1.6 The applicant seeks to agree the details of the ventilation system in situ, and re-condition the ventilation system to ensure the precise technical operation and maintenance of the system, in order to ensure effective management of odour and to overcome the concerns raised in regards to impact on amenity. The applicant's wish to work with the Local Planning Authority and Environmental Health Department to secure acceptable conditions in respect of the ventilation system.

DESCRIPTION OF THE SITE

- 1.7 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

The following Policies are considered to be relevant to the assessment of this application:

2.2 **National Planning Policy Framework**

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/10/1724	Change of use to a food takeaway	Application Refused on 22.12.2010
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/17/0168	Variation of Condition 4 to previously approved application DC/11/1660 to extend permitted opening hours	Application Refused on 04.01.2018

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 **HDC Environmental Health:** No objection.
- 3.3 It is confirmed that the system proposed in the Application would meet the level of odour abatement appropriate for the premises, as indicated by the Defra guidance's risk assessment. It is also confirmed that while a number of Statutory Nuisance complaints from local residents remain open as active investigations, this Service's monitoring in the area around Pizza Plus has to this point not substantiated that a Statutory Nuisance is occurring. To this end, our intention is to undertake verification monitoring once the planning process has completed and it has been established that the system has been installed as proposed.
- 3.4 It is pleasing to note that the Applicant has engaged the services of a professional kitchen ventilation designer in Purified Air, who has assessed the development using Annex C of the Defra Guidance. Although this process appears to have been applied correctly and the design of the proposed system offers satisfactory performance in line with its conclusions, indicating that a high level of odour control is required, it has been noted that the premises' permission granted via DC/11/1660 required a system to be installed that offered an equivalent 'Very high level' of control.
- 3.5 Given the number of ongoing odour complaints this Service continues to receive from local residents, we are concerned that the Application now seeks to secure a level of odour control which is lower than this original permission, in a residential area which the Planning Committee had previously considered sensitive.
- 3.6 However, this is not a basis for this Service to object to the Application based on the information submitted and without further instruction; It is therefore recommended that the maintenance regime for the proposed system previously submitted on the 7th March 2018 is secured by Condition, in addition to consideration being given to the comments made regarding DC/17/0168 dated 28th Feb and 6th Sept 2017.

OUTSIDE AGENCIES

- 3.7 **WSCC Highways:** No Objection

PUBLIC CONSULTATIONS

- 3.8 6 representations have been received objecting to the application on the following grounds:

- Loss of amenity noise and smell and litter
- Trading hours
- Performance of the Ventilation Extraction System
- Traffic generation
- Access and Parking
- Impact on grass verge
- Tackling Obesity and Health Inequalities

- 3.9 Petition received with 156 signatures supporting the application.

- 3.10 **North Horsham Parish Council:** No objection but reiterate its view regarding concerns of the potential nuisance from cooking smells and would like reassurance that the ventilation system is adequate and working at maximum capacity to reduce unwanted odours.

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 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 A previous application, ref: DC/18/1584, to vary the opening hours condition was considered by Planning Committee North on the 5th December 2017. While this application was recommended for approval it was refused for the following reason:-

'The proposal would cause unacceptable harm to the amenity of nearby residents and is therefore contrary to Policy 33 of the Horsham District Planning Framework (2015).'

- 6.3 The current application again seeks planning permission to vary the opening hours, and condition 4, and also to vary condition 7. These conditions state:-

Condition 4:-

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).

Condition 7:-

Prior to the use hereby permitted commencing, the extraction and ventilation system hereby approved shall be constructed and thereafter retained and maintained all strictly in accordance with the approved details and the maintenance regime set out in the application details for the life of the development, unless the prior written agreement of the Local Planning Authority is obtained for any variation.

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).

- 6.4 The current application has been referred to Planning Committee North due to the previous decision on the same site for a comparable proposal. The number and nature of representations received on the application would not have required the application be determined by Members.

Impact on amenity

- 6.7 The proposed increase in opening hours would result in the takeaway being open for 1 additional hour each night Monday to Saturday inclusive, and additionally 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.
- 6.8 The opening hours of the neighbouring one stop shop are until 23:00hrs and as such the proposed opening hours for the hot food takeaway are considered to be comparable. A previous appeal decision on the site for the takeaway, ref: DC/10/1724, is considered to remain relevant to this application. In the appeal decision the Planning Inspector notes that given the opening hours of the neighbouring 'One Stop' shop it would be a generator of activity well into the evening. If a developments opening hours were similar there would be no activity later than that which already occurs, and the effect on neighbours living conditions would be acceptable. It is considered that the situation outlined above would remain applicable to the current proposal, which would generate a level of activity at a time when activity already exists in the locality.
- 6.9 The ventilation system proposed in the application would meet the level of odour abatement appropriate for the premises, as indicated by the Defra guidance's risk assessment. It is therefore considered that there would be insufficient planning reasons to warrant the refusal of the application on these grounds. A revised condition is recommended (no. 4) to ensure the appropriate management of the odour control equipment.
- 6.10 The objections from local residents received throughout the planning process from local residents with regard to noise, odour, traffic and parking nuisances and the efficiency of the ventilation system have been noted and considered. The Council's Environmental Health

Department have advised that they will continue to monitor the site to establish whether there is any statutory nuisance but to date, from the investigations carried out, these claims have not been substantiated.

- 6.11 Notwithstanding the above, the Council's Environmental Health department have advised that should the application currently under consideration be recommended for approval that appropriate conditions be imposed including the submission of a Noise Management Plan to identify and control noise breakout after 23:00pm Monday to Saturday inclusive and at any time the premises are open on Sundays or bank holidays.

WSCC Highways

- 6.12 From a highway safety point of view there are no proposed changes to access and no changes to parking accompanying this application. The Local Highways Authority (LHA) advise 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. In respect of the governing policy Paragraph 32 of the National Planning Policy Framework (NPPF) which states, *Development should only be prevented or refused on transport grounds where the residual; cumulative impacts of development are severe*. It is not considered that the change in hours would have a severe impact; the LHA would therefore have no grounds on which to object to this application.

Conclusion

- 6.13 It is not considered that the increase in the hours of opening would result in a significant difference to the level of activity and traffic movements associated with the use of the existing A5 unit and the variation of conditions would not result in significant harm to neighbouring amenity.

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 following hours;

Monday - Saturday - 0900 - 2300 hours;

Sunday - 0900 - 2200 hours;

Bank Holidays - 0900 -2200 hours

Reason: To safeguard the amenities of neighbouring properties in accordance 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 the Local Planning Authority for its written approval. The development shall thereafter 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:** The use and ventilation details hereby permitted shall operate in accordance with the submitted details including maintenance programme and regime submitted by Kobane metal Limited on the 7th March 2018. Thereafter, the ventilation system shall be operated and maintained in accordance with the approved details.

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/18/0055
DC/17/0168
DC/15/1402
DC/11/1660
DC/10/1724