

**PLANNING
COMMITTEE**

23rd October 2013

Planning application 2013/242/S73

Section 73 application: Removal of condition 2 of planning approval 2010/244/COU to allow wholly A5 (hot food takeaway) consent and to allow all types of hot food to be sold on the site for consumption off the premises

Unit 9 Matchborough Centre, Matchborough Way, Redditch

Applicant: Mr F Dadash
Expiry date: 24th November 2013

WARD: MATCHBOROUGH

The author of this report is Steven Edden, Planning Officer (DM), who can be contacted on extension 3206 (e-mail: steve.edden@bromsgroveandredditch.gov.uk) for more information.

(See additional papers for Site Plan)

Background

Prior to the submission of planning application 2013/242/S73, an application was lodged for an identical proposal which is referenced 2013/255/S73. The expiry date for this application was 11th September 2013. Application 2013/255/S73 was not determined by this expiry date and the applicant has appealed against non-determination of the application. This matter is currently with the Planning Inspectorate who confirmed validation of the appeal on 3rd October. While the appeal is being progressed, the applicant has submitted a fresh, identical application which is to be considered here. The applicant is entitled to do this since application 2013/242/S73 was submitted to the Council after the expiry period for application 2013/255/S73 on 11th September 2013. The decision taken by the Planning Committee on this application (2013/242/S73) may however determine whether or not the appellant wishes to continue with or withdraw their appeal for the Councils non-determination of application 2013/255/S73.

Site Description

Unit 9 is situated within the Matchborough District Centre between two commercial premises, also within the District Centre: a Fish and Chip Takeaway (Unit 8) and a former Bookmakers (now vacant) (Unit 10). Beyond the District Centre boundary lie a busway to the west, and large public car parks to both the north and south. Since the granting of consent under application 2010/244/COU which will be discussed later in the report, the front of the unit which was previously a seating area (18 covers) has been replaced by that of a counter. RBC Property Services (who are owners and landlords of the premises) consider, as do your Officers, that Unit 9 is already operating as a wholly A5 use.

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Proposal Description

This is a retrospective application made under Section 73 of the Town and Country Planning Act 1990 to remove Condition 2 of planning approval 2010/244/COU which would allow wholly A5 (hot food takeaway) consent and allow all types of hot food to be sold on the site for consumption off the premises.

Relevant Key Policies:

All planning applications must be considered in terms of the planning policy framework and all other relevant material considerations (as set out in the legislative framework). The planning policies noted below can be found on the following websites:

www.communities.gov.uk

www.redditchbc.gov.uk

National Planning Policy

The National Planning Policy Framework (NPPF)

Borough of Redditch Local Plan No.3

CS.7	The Sustainable Location of Development
B(BE).13	Qualities of Good Design
E(TCR).9	District Centres
E(TCR).12	Class A3/A4/A5 uses
C(T).12	Parking Standards
S.1	Designing Out Crime

SPDs

Designing for Community Safety

Relevant Site Planning History

2010/244/COU	Retrospective application: change of use from A1 (retail) to mixed A3 (cafe/restaurant) and A5 (hot food takeaway) use	Approved subject to conditions	10.11.2010
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Appeal made against imposition of Condition 2 (application 2010/244/COU).
Appeal allowed in part subject to the variation as set out later in this report
Decision date: 6 July 2011

Public Consultation Responses

No comments received

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Consultee Responses

County Highway Network Control

Comments awaited

Police Crime Risk Manager

Comments awaited

Worcestershire Regulatory Services

Comments awaited

Assessment of Proposal

When application 2010/244/COU which proposed to change the use of a shop to a mixed cafe/restaurant and hot food takeaway use was reported to the Planning Committee in 2010, Officers explained that the relevant planning policy was E(TCR).9 of the Borough of Redditch Local Plan since the unit falls within the Matchborough District Centre. Policy E(TCR).9, along with Policy E(TCR).12 which examines the impact of A5 uses upon nearby occupiers, remain the relevant key planning policies in the determination of such applications.

Policy E(TCR).9 comments that the Town Centre is the primary focus for major shopping needs. District Centres are the secondary level of shopping, meeting daily needs for basic items. Typically District Centres in the Borough accommodate a newsagent, a general store, a sub-post office and occasionally a pharmacy, a hairdresser and other small shops of a local nature. It is important to protect and where appropriate, enhance District Centres particularly with regard to their useful retail function. Proposals that would undermine the retail and community function of the District Centre would normally be refused.

Occupation of the various units within the District Centre is currently as follows:

Unit 1 Boxing Gymnasium	D2
Unit 2 Boxing Gymnasium	D2
Unit 3 Chemist/Pharmacy	A1
Unit 4 Hairdressers	A1
No Unit number: Public House	A4
Unit 5 Indian Takeaway	A5
Unit 6&7 Supermarket and Post Office	A1
Unit 8 Fish and Chips takeaway	A5
Unit 9 Cafe/restaurant with subsidiary hot food takeaway	A3 & A5
Unit 10 Currently vacant, last used as bookmakers	A2
Unit 11 (upstairs) Dentists	D1
Unit 12 (upstairs) residential flat	C3

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Unit 13 (upstairs) residential flat

C3

Officers considered that the application as submitted under 2010/244/COU would not have an adverse impact on the vitality and viability of the District Centre and nor would it detrimentally impact upon nearby amenities provided a condition were imposed restricting the hot food takeaway element as an ancillary part to the primary cafe / restaurant use.

Condition 2 attached to permission 2010/244/COU read as follows:

The hot food takeaway element approved under this consent is restricted to the sale of pizzas only, with this use remaining strictly ancillary to the primary use of the premises as a café/restaurant use falling within Class A3 of the Town and Country Planning (Use Classes) Order 1987, as amended 2010, or in any provision equivalent to that Class in any statutory instrument amending, revoking or re-enacting that Order with or without modification

Reason:

The sale of hot foods other than pizzas from the premises may have required an alternative cooking odour extraction system, details of which have not been submitted with the application, and to restrict the sale of hot foods to an acceptable level in accordance with Policy E(TCR).9 and E(TCR).12 of the Borough of Redditch Local Plan No.3

An appeal was made against the imposition of the condition where the Planning Inspector considered that the condition should be re-worded. The condition now reads as follows:

The A5 (hot food takeaway) use hereby permitted shall remain subsidiary to the primary A3 (café/restaurant) use and the range of hot foods sold for takeaway shall be restricted to pizzas, and other foods sold for consumption in the café, but with the exception of fried foods which shall not be sold for consumption off the premises.

It is the above condition which the Planning Inspector imposed, which the applicant is seeking to remove in order that the premises can operate as a wholly A5 (hot food takeaway) use.

The Inspector, in her deliberations commented that:

'In view of the location of the site, in a small district shopping centre, and the other nearby uses which include two hot food takeaways, it is reasonable for the Council to seek to retain the café function as the primary use in order to avoid an over-concentration of A5 uses which would be detrimental to the character and vitality of the centre'

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She went on to say that:

'At present frying appears to be carried out in small quantities and the extraction system appears to be commensurate with a low key operation. Although, there is nothing to prevent the café from increasing the range of fried foods on its menu, if the takeaway part of the business was to expand without restriction, the intensity of the operation, and in particular the frying of foods, could materially increase and unless odour control was adequate this would be detrimental to the living and working conditions of nearby occupiers'

Her decision letter continued by stating:

The Council suggests that in order to cope with increased cooking odours from additional frying a large flue would need to be sited to the rear of the premises, which it suggests may be unacceptable. The appellant has provided details of a proposed system. However, whilst the drawings show this venting through the rear wall of the unit, as does the existing system, this is inconsistent with the written details which state that the discharge would be via a stack and 1000mm above ridge height. Moreover, it is not clear how, if this is correct, it would be achieved. Overall the details of the proposed system are therefore inadequate to demonstrate that satisfactory odour control could be achieved if the range of hot food for takeaway included fried foods.

The Inspector was of the opinion that, provided the takeaway use remains subsidiary to the cafe and the frying of foods does not materially intensify, it would be unlikely that cooking smells from other hot food would materially affect the living and working conditions of nearby occupiers, including residents and a dentists occupying units on the first floor of the parade. In the absence of adequate evidence to demonstrate that a satisfactory odour control system could be provided to cope with smells from materially larger quantities of fried food, she considered that fried foods should remain limited to those sold for consumption on the premises.

Officers would suggest that a wholly (and unrestricted) A5 use would have a detrimental impact upon nearby amenities. The applicant's agent has stated that the applicant has installed a new (internal) ventilation system in the unit which addresses the concerns raised by the Inspector and alternatively comments that such a matter could be dealt with by condition. Officers are seeking the comments of Environmental Health on the current (internal) ventilation system but have historically and would continue to suggest that an external flue system (taking into consideration the premises location between units either side which are attached to it) would be inappropriate on visual grounds alone, considering the residential and dental surgery uses at first floor level.

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The Inspector considered that the provisions of the original Condition 2 were, in part, necessary to protect the character and vitality of the Matchborough District Centre but considered that the restrictions on the takeaway menu were unreasonable hence the substitution of the original Condition 2, to that set out earlier in the report which in her view addresses:

'a balance between the A5 and A3 uses to remain biased towards the A3 use, but which would expand the permitted range of hot takeaway foods to include, in addition to pizzas, other hot foods sold in the café, with the exception of fried foods'

Other issues

A significant level of parking exists to both the north and the south of this courtyard of commercial premises: 44 spaces to the north and 45 spaces to the south. No objections have been raised by County Highways. This level of provision is thought by your officers to be sufficient and the proposal would not be considered to give rise to any harm to highway safety.

Conclusion

Allowing an unrestricted A5 consent by the removal of Condition 2 (permission 2010/244/COU) would in your officer's view seriously harm the vitality and viability of this small district centre to its detriment. Insufficient evidence has been submitted which suggests that the ventilation system installed would adequately safeguard the working and living conditions of nearby occupiers. The proposal is therefore recommended for refusal being contrary to Policies E(TCR).9 and E(TCR).12 of the Borough of Redditch Local Plan No.3.

Recommendation

That having regard to the development plan and to all other material considerations, authority be delegated to the Head of Planning & Regeneration to REFUSE planning permission following the expiry of the consultation period on 31st October 2013 for the following reason:

1. Allowing an unrestricted A5 consent by the removal of Condition 2 (permission 2010/244/COU) would seriously harm the vitality and viability of this small district centre to its detriment. Insufficient evidence has been submitted which suggests that the ventilation system installed would adequately safeguard the working and living conditions of nearby occupiers. The proposal is therefore contrary to Policies E(TCR).9 and E(TCR).12 of the Borough of Redditch Local Plan No.3.

Informative

- 1) Plan refused consent

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Procedural Matters

All A5 use applications are automatically referred to Committee. In addition where the landowner is Redditch Borough Council such applications are reported to Committee as they fall outside the scheme of delegation.