

**PLANNING
COMMITTEE**

29th April 2015

Planning Application 2015/073/S73

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, Matchborough, Redditch

**Applicant: Mr Mehdi Kalateh
Expiry Date: 23rd April 2015
Ward: MATCHBOROUGH**

(see additional papers for Site Plan)

The author of this report is Steven Edden, Planning Officer (DM), who can be contacted on Tel: 01527 548474 Email: steve.edden@bromsgroveandredditch.gov.uk for more information.

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.

Proposal Description

This application made under Section 73 of the Town and Country Planning Act 1990, is 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 Policies :

Borough of Redditch Local Plan No.3:

CS07 The Sustainable Location of Development
BBE13 Qualities of Good Design
ETCR09 District Centres
ETCR12 Class A3, A4 and A5
CT12 Parking Standards
S01 Designing out Crime

Others:

NPPF National Planning Policy Framework
NPPG National Planning Practice Guidance
SPD Designing for Community Safety

**PLANNING
COMMITTEE**

29th April 2015

Relevant Planning History

2010/244/COU	Retrospective Application - Change of use of premises from A1 (Shops) to mixed A3 (Cafe/Restaurant) and A5 (Hot Food Takeaway) Use	Approved	10.11.2010
	Appeal against imposition of condition: Allowed (re-worded condition) 06.07.2011		
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	Refused	01.11.2013
2013/255/S73	Appeal against non-determination of application 2013/242/S73 within prescribed timescales	Appeal dismissed	04.03.2014

Consultations

Area Environmental Health Officer

No objections as long as the proposals for the kitchen extract system are implemented in full prior to first commencement of use.

Highway Network Control

No objection

Crime Risk Manager

Although the area does generally attract an element of anti-social behaviour, the majority of this has involved youths gathering, making a noise and kicking footballs up against the shutters to the shops. I do not see that a hot food take away will exacerbate this issue and therefore, I don't feel that there are sufficient grounds to object to this application.

Public Consultation Responses

Responses against

3 letters received. Comments summarised as follows:

- Too many food outlets already within the district centre
- Very few units within the centre now operate in shop (A1) type use
- Such uses attract gatherings of young people and associated anti-social behaviour issues and thus detriment to nearby premises
- An increase in noise associated with the use of the premises would have a detrimental impact on amenity

**PLANNING
COMMITTEE**

29th April 2015

- Additional smells and fumes will be of detriment to nearby residents
- Litter associated with this hot food takeaway has increased
- The ratio of A5 uses relative to A1 / community type uses would be unbalanced being contrary to the council's planning policies
- Applications for full A5 use here have been refused planning permission in the past. No reason to change this stance

Other issues which are not material planning considerations have been raised, but are not reported here as they cannot be considered in the determination of this application.

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
Unit 13 (upstairs) residential flat	C3

Officers considered that the application submitted under 2010/244/COU would not have an adverse impact on the vitality and viability of the District Centre and nor would it

**PLANNING
COMMITTEE**

29th April 2015

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 essentially agreed with the Council that such a condition was reasonable and necessary, although she 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 removal of the above restrictive condition would enable the applicant to sell fried foods (principally chips) for consumption off the premises as hot food takeaway where under the terms of the above condition, fried foods may only be consumed on the premises.

Following the above application, application 2013/242/S73 was submitted which sought to remove the above condition imposed by the Planning Inspector. As before, the Council refused the application for the following reason:

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.

**PLANNING
COMMITTEE**

29th April 2015

Following the above refusal, a second appeal was lodged and considered by the Planning Inspectorate. With respect to the first part of the refusal reason and the perceived harm to the vitality and viability of the District Centre, the Inspector commented as follows:

In my opinion, the introduction of a greater range of foods that could be consumed off the premises could only enhance the vitality and viability of the centre as this would be likely to increase customer levels. This would in turn serve to support the local area.

I note that the supporting text to Policy E(TCR).9 of the Borough of Redditch Local Plan No. 3 explains that the aim of the policy is to ensure that the retail and community function of the District Centre is not undermined but it also recognises that other non-retail uses may be acceptable provided they do not hinder the primary retailing function. I consider that the proposal would not undermine but could support this function and thus I find no conflict with this policy.

With respect to the second part of the reason for refusal under application 2013/242/S73, that is, the effect of the proposals upon living and working conditions of nearby occupiers, the Inspector commented as follows:

The effect of removing the restriction on the type of foods which can be consumed off the premises would be to intensify the operation overall and in particular to increase the amount of fried foods cooked on the premises. The previous Inspector referred specifically to this issue and concluded that unless odour control was adequate this would be detrimental to the living and working conditions of nearby occupiers. I concur with this view and noted on the site visit that there are residential properties directly above the appeal premises and that a dentist surgery also adjoins at the upper level. In particular, an open terrace is located directly above the rear of the premises close to where the existing system currently discharges.

I find that I am unable to conclude that there would not be an adverse impact on the amenity of adjoining properties. Thus the proposal fails to comply with Policy E(TCR).12 of the Borough of Redditch Local Plan No.3 which requires that development does not have an adverse impact upon the amenities of neighbouring properties by reason of smell and that adequate provision is made for the extraction of fumes.

At the time of the earlier 2013 application, the Environmental Health Officer acting for Worcestershire Regulatory Services (WRS) commented that insufficient evidence had been submitted to demonstrate that the odour control / ventilation system proposed to deal with cooking odours would be acceptable having regard to the proposals upon nearby occupiers. Since the latter appeal decision, the applicant has been working with WRS in order to overcome the concerns raised in this respect. As part of the current application, full odour control details have been submitted which satisfy the Environmental Health Officer that the proposals would not have a detrimental impact upon nearby residents. Provided the submitted scheme is implemented prior to first use

**PLANNING
COMMITTEE**

29th April 2015

of the premises as an unrestricted hot food takeaway, officers no longer raise any concerns with respect to the impact of the proposals upon nearby occupiers.

The latest appeal decision comments that a greater range of foods that could be consumed off the premises would enhance the vitality and viability of the centre by increasing customer levels to the district centre. This would comply with the aims and objectives of the National Planning Policy Framework by supporting sustainable economic growth. The Framework comments that significant weight should be placed on the need to support such economic growth.

Other issues

A considerable 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.

Comments have been raised with regards to anti-social behaviour issues associated with the operation of Unit 9. Officers would comment that no specific evidence in this respect has been advanced with the representations received. The Police Crime Risk Manager has raised no objection to the application. The Planning Inspector in considering the appeal referred to earlier in this report commented that:

In view of the existing takeaway premises in the vicinity I am not persuaded that the increase in takeaway sales from the site would materially affect the level of antisocial behaviour in the area.

Your officers do not consider that this matter needs to be examined further.

Conclusion

Significant weight should be given to the latest appeal decision which states that an unrestricted hot food takeaway use at the premises would aid the vitality and viability of the district centre rather than harm it. WRS have now commented that the odour control system submitted as part of the current application is acceptable, which was the one reservation the Inspector had, leading to the latest appeal being dismissed. As such, your officers are now in a position to be able to recommend that the restrictive, reworded condition attached to application 2010/244/COU set out earlier in this report should be removed.

RECOMMENDATION:

That having regard to the development plan and to all other material considerations, planning permission be GRANTED subject to the following conditions:

**PLANNING
COMMITTEE**

29th April 2015

- 1) An unrestricted hot food takeaway use is permitted under the terms of this consent provided that the odour control details submitted as part of this application and as detailed on 'Extract and Ventilation System ref EQ1408-171' are fully implemented in full to the satisfaction of Worcestershire Regulatory Services prior to the first use of the premises for the frying of foods for consumption off the premises.

Reason: In order to provide an adequate means of odour control in the interests of protecting residential amenities in accordance with Policy E(TCR).12 of the Borough of Redditch Local Plan No.3

- 2) The development hereby approved shall be implemented in accordance with the following plans:

Site location plan, scale 1:1250; block plan scale 1:500;
Drawing no: 002-BM0060 Revision B; supporting statement pages 1 to 3;
Plan-IT Contracts Extract and Ventilation System ref EQ1408-171

Reason: To accurately define the permission for the avoidance of doubt and to ensure that the development is satisfactory in appearance in order to safeguard the visual amenities of the area in accordance with Policy B(BE).13 of the Borough of Redditch Local Plan No.3

Informatives

- 1) Proactive engagement by the local planning authority was not necessary in this case as the proposed development was considered acceptable as initially submitted.

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. This application has also attracted two (or more) objections where the recommendation is that planning permission be granted.