

PLANNING COMMITTEE

2nd November 2011

APPEAL OUTCOME REPORT FOR INFORMATION

APPEAL MADE AGAINST A GRANT OF PLANNING PERMISSION SUBJECT TO CONDITIONS

PLANNING APPLICATION DETAILS: 2010/244/COU

PROPOSAL CHANGE OF USE OF PREMISES FROM A1 (SHOPS) TO
A5 (HOT FOOD TAKEAWAY) (RETROSPECTIVE)

LOCATION 9 MATCHBOROUGH CENTRE, MATCHBOROUGH WAY,
REDDITCH

WARD MATCHBOROUGH

DECISION PLANNING DECISION MADE AT PLANNING COMMITTEE
ON 9TH NOVEMBER 2010

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

Discussion

The case related to a former shop use which had been operating as the 'Woodstock Cafe' without consent. Members granted retrospective permission for a restaurant and takeaway use as per the recommendation of Officers subject to the imposition of conditions. Condition number 2 attached to the consent stated the following:

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

Reason: The sale of hot foods other than pizza 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.

The appellant considered that the above condition was overly restrictive and appealed to the Planning Inspectorate to seek its removal. Officers sought to defend the reason for imposing the above condition through written representations to the Planning Inspector.

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In view of the location of the site, within a very small district centre and having regard to the close proximity of two other hot food takeaway uses, the Inspector agreed with the Council that it would be reasonable to seek to retain the cafe function as the primary use of the premises in order to avoid an over-concentration of A5 uses which would be detrimental to the vitality of the centre. The Inspector also understood concerns that without an appropriate condition, the frying of large quantities of food could not be controlled which could harm the living and working conditions of nearby occupiers.

Whilst the Inspector was satisfied that the A5 use should remain subsidiary to the cafe use and considered it wise to prohibit the sale of fried foods (such as fish and chips) she considered that restricting the hot food takeaway uses to pizzas only was overly severe and restrictive. She considered that any hot foods, providing they are not fried, for example jacket potatoes could be sold for takeaway.

Appeal outcome

The appeal to remove condition 2 as stated on the original decision notice was ALLOWED but with a substituted condition which now reads as follows:

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

Costs were neither sought nor awarded.

Further issues

Although the decision to allow the appeal has been made in so far as the original condition has been deleted, it has been substituted with a similar condition which allows other hot foods (but not fried foods) to be sold for takeaway which was always the primary concern raised by Officers and as explained to Members at the time. In terms of lessons learnt however, having read the appeal decision letter, Officers do understand why the Inspector saw fit to amend the condition, and ongoing monitoring of the situation will be carried out to ensure compliance.

Recommendation

**The Committee is asked to RESOLVE that
the item of information be noted.**