

(HEWEB, Hedge End, West End & Botley Local Area Committee, 7th March 2022)

Application Number: X/21/92160
Case Officer: Rachael Morris
Received Date: 24/12/2021
Site Address: UNIT 3, LANKESTER HOUSE, 1 FREEGROUNDS ROAD,
HEDGE END, SOUTHAMPTON, SO30 0HG
Applicant: Alison Davanzo
Proposal: Variation of condition 3 (opening hours) of planning
permission J/17/80081 for prior approval for change of use
for A1 (retail) to A3 (restaurants and cafes)
Recommendation: PERMIT subject to conditions

CONDITIONS AND REASONS:

1. The development hereby permitted shall be implemented in accordance with the following plans numbered: BLOC 01.

Reason: For the avoidance of doubt and in the interests of proper planning.

2. No deliveries shall be received or dispatched from the site except between the hours of 10am - 5pm Monday to Saturday and 10am - 4pm Sundays or Bank Holidays.

Reason: To protect the amenities of the occupiers of nearby properties.

3. The development hereby permitted shall not be open to customers except between the hours of 8am - 6pm Monday – Saturday and 8:30am - 4pm Sundays or Bank Holidays.

Reason: To protect the amenity of the occupiers of nearby properties.

4. Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 the building shall only be used as a café or tearoom and not for any other purpose falling within Class A3: Food and Drink of this order unless a specific grant of planning permission for such a use has first been obtained.

Reason: For the avoidance of doubt. The Local Planning Authority is disposed to grant permission for the proposed use only as in so far as the site will be used as a café or tearoom, and the Local Planning Authority wishes to retain control over the use of the site in order that any future proposals may be considered on their merits.

5. There shall be no sales of hot food to take away from the premises to which this permission relates unless otherwise agreed in writing by the Local Planning Authority.

Reason: The Local Planning Authority consider that use of the property for hot food take away sales would, by virtue of the general levels of activity, noise and general disturbance associated with such use, harm the amenity of local residents and the character of the area.

Note to Applicant: In accordance with paragraph 38 of the National Planning Policy Framework (February 2019), Eastleigh Borough Council takes a positive approach to the handling of development proposals so as to achieve, whenever possible, a positive outcome and to ensure all proposals are dealt with in a timely manner.

Report:

1. This application has been referred to Committee because a member of the committee lives in close proximity to the application site.

Site Characteristics and Character of the Locality

2. The application site forms a ground floor unit used as a café/tearoom. The area forms part of the secondary shopping area of Hedge End. To the south are residential dwellings, to the east The Catholic Church of the Assumption and residential units, and to the north is the primary shopping area of Hedge End.

Description of Application

3. This application is the variation of condition 3 (opening hours) of planning permission J/17/80081 for prior approval for change of use for A1 (retail) to A3 (restaurants and cafes).
4. The application (J/17/80081) concluded that full planning permission was not required, subject to compliance with conditions, and the use was changed to an A3 café and tearoom use. In addition, conditions were attached to restrict the use to a café or tearoom and for no other use within Class A3 and a further condition restricting the sale of hot food to takeaway.
5. Condition 3 from J/17/80081 states:

The development hereby permitted shall not be open to customers and no deliveries shall be received or dispatched from the site except between the hours of 10am-5pm Monday – Saturday and 10am-4pm

Sunday. Reason: To protect the amenity of the occupiers of nearby properties.

6. As the use of the unit is already a A3 use, this application is only to amend the condition that restricts opening hours, as above.
7. The current opening hours are 10am - 5pm Monday to Saturday and 10am-4pm on Sunday. This application would like to extend the hours to open 8am - 6pm Monday to Saturday and 8.30am - 4pm on Sunday. Therefore, increasing the Monday-Saturday hours by 3 hours per day and the Sunday hours by 1.5 hours.

Relevant Planning History

- Z/27911/001/00 – Change of use to pet shop – Permit - Feb 1985
- Z/27911/002/00 - Conversion to offices with external alterations and associated parking – Permit – Oct 1985
- Z/27911/003/00 – Formation of vehicular access to car park – Refuse – Feb 1986
- Z/27911/011/00 - Change of use from retail (A1) to hot food take away (A5) – Withdrawn – Nov 2002
- J/17/80081 – Prior approval for change of use for A1 (retail) to A3 (restaurants and cafes) – Prior approval not required subject to conditions – Apr 2017
- X/19/86760 - Variation of condition 3 of prior notification J/17/80081 to extend opening hours – Dismissed – Nov 2020 (Refused at LAC - Feb 2020)

Representations Received

8. 3 letters of objection, within the same received document, and 2 letters of support.
9. The objections include:
 - Impact on residential amenity
 - Highway matters including parking
 - Highway safety
10. The support includes:
 - Local amenity

Consultation Responses

11. Hedge End Town Council - Object to the change of proposed hours on the basis of protecting the amenity of occupiers of nearby properties. Councillors also objected to any change of use to serving hot food.
12. Pollution Control – No Objection
13. Hampshire Highways - No Objection

Policy Context and Designations Applicable to Site

- Within Built-up Area Boundary
- Shopping area – secondary zone
- Flood Zone 2 and 3
- Town, district and local centres (Submitted 2016-2036 Submitted Local Plan)

Development Plan Saved Policies and Emerging Local Plan Policies

Eastleigh Borough Local Plan Review (2001-2011) Saved Policies:

- 32.ES (Pollution control);
- 59.BE (Design criteria);
- 100.T (Transport criteria);
- 104.T (Off-highway parking);
- 138.TC (Changes of Use Town and District Centres)

Submitted Eastleigh Borough Local Plan 2011 - 2029, July 2014

14. The Eastleigh Borough Local Plan 2011-2029 was submitted for examination in July 2014 but the Inspector concluded that insufficient housing was being provided for in the Plan and that it was unsound. While this has not been withdrawn and remains a material consideration, it can therefore be considered to have extremely limited weight in the determination of this application.

Submitted Eastleigh Borough Local Plan 2016-2036

15. The 2016-2036 Local Plan was submitted to the Planning Inspectorate on 31st October 2018 and the examination hearings concluded in January 2020. The Council received the Inspector's post-Hearing advice on 1 April 2020. The Council is progressing with modifications to the Local Plan to enable its adoption, anticipated in late 2022. Given the status of the Emerging Plan, it is considered that overall considerable weight can be attributed to it. The most relevant policies are:

Strategic policies:

- S1 (Sustainable Development);

Development Management policies:

- DM1 (General Development Criteria);
- DM8 (Pollution);
- DM13 (Transport);
- DM14 (Car Parking);
- DM22 (Changes of use in retail frontages in Eastleigh town centre, district centres, local centres and neighbourhood parades)

Supplementary Planning Documents

- None

National Planning Policy Framework

16. At national level, the National Planning Policy Framework (the 'NPPF' or the 'Framework') is a material consideration of significant weight in the determination of planning applications. The National Planning Policy Framework (the 'NPPF' or the 'Framework') states that (as required by statute) applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise and sets out a general presumption in favour of sustainable development unless material considerations indicate otherwise. Agent of Change principles protect existing businesses.

National Planning Practice Guidance

17. Where material, the Planning Practice Guidance which supports the provisions and policies of the NPPF should be afforded weight in the consideration and determination of planning applications.

Assessment of Proposal: Development Plan and / or Legislative Background

18. Section 70(2) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004 require a Local Planning Authority determining an application to do so in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan comprises the Saved Policies of the Eastleigh Borough Local Plan Review 2001-2011 and the Hampshire Minerals and Waste Plan 2013 (which is not applicable in this case). The NPPF and the Planning Practice Guidance constitute material considerations of significant weight.

Principle:

Economic Sustainability:

19. Section 2 of the NPPF (2021), when discussing economic sustainability, it states 'to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure'

Assessment:

20. Within this application, this is only to assess the opening hours. The change of use from A1 to A3 was previously considered under J/17/80081 and so it not up for consideration within this application. The original conditions would be transferred over to this application, with the amendment of condition 3 only.
21. As explained above in the description section, the establishment would like to increase hours of opening. This would be to reflect the other surrounding businesses/offices and local people that commence their days earlier than the existing 10am start and finish later than the existing close time of 5pm. Therefore, the hours of 8am - 6pm Monday to Saturday and 8.30am - 4pm Sunday mirrors this.
22. There was a previous appeal under application X/19/86760 (APP/W1715/W/20/3257049) which was dismissed. This proposed the following hours:
- 10am - 5pm Monday to Wednesday
 - 10am – 10pm Thursday to Saturday
 - 10am - 4pm on Sundays or Bank Holidays

Residential amenity

23. Policy 59.BE of the Local Plan requires development to take full and proper account of the context of the site and avoid unduly impacting on neighbouring uses through overlooking, loss of light, loss of outlook, noise and fumes.
24. There are residential properties located close-by, along Freegrounds Road, which provides the vehicular access to the site. It is noted that the extended hours could result in more activity in this area later into the afternoon. However, this would still only be under the nature of the use as a café/tearoom. The additional hours would not be considered to result in noise disturbance that would materially impact on the amenities of these neighbouring properties.
25. In the previous appeal which proposed opening hours to extend until 10pm, under X/19/86760, the Inspector noted that to introduce a night-time commercial activity had the potential to significantly impact on the living conditions of neighbouring residential occupiers. However, these opening hours proposed in this application would only extend to a time compatible with the adjacent offices and at a time when the Hedge End shopping area is still expected to be active and lively, therefore attracting customers that may also visit the town for other purposes too. This would accord with a main goal within the Council's Local Plan (2001-2011) which states that the Council's objectives are to sustain and enhance the vitality and viability of its town, district and local centres.
26. The existing conditions on the original application controlling hours of delivery, use and sale of hot food takeaways would be reattached to

maintain those controls. Therefore, planning permission would be required to change the unit into a restaurant use within this use class. The site would also require planning permission to change the use to a Sui Generis use (previously known as a A5 take-away use). The Inspector raised concerns (appeal X/19/86760) regarding delivery schedules, however a condition would be placed to ensure this is kept to what is as existing.

27. In the previous appeal (X/19/86760), the Inspector noted that harmful noise impacts from the tearoom could also arise from the use of the outdoor customer seating area, which extends along the west side of the building, and directly faces residential properties. The Inspector said that all these impacts would potentially occur during a time at night when the surrounding residential area would be expected to be relatively quiet. It is worth noting the material difference here in this application as the hours applied for are still within the working day while the area would still be busy.
28. In addition, it has been raised that opening the café/tearoom earlier in the morning, at 8am, could create congestion on Freegrounds Road and subsequently Freegrounds Avenue when residents are also trying to leave their homes for the start of their day. However, it is noted that this would not be too dissimilar from the adjacent offices, also opening at a similar time. (Leaders opens at 9am Monday-Sat and Richmonds opens at 8:30am Mon-Thur, 9am on Fri-Sat and 10am on Sundays).
29. The Pollution Control officer has the following comments to make. Regarding the attraction of patrons and vehicles at the earlier opening hours, we recognise this might increase average ambient noise levels slightly but may be more noticeably visually or through perception of other side effect. We recommend this is a 'character' consideration in planning taken into consideration with other matters. We note the application refers to local activities; village activity starts from 7am and the hours applied for are accord with all the neighbouring retails shops, and local schools open at around 8am. The earlier opening hours could be a key part of this local life. On the other hand, trade vehicles and lorries for example may be a concern of neighbours and short-term noise such as arriving, parking and departing would probably be noticeable. Again, these might not significantly increase ambient noise levels and so are more a planning consideration on character and other factors on balance.
30. Condition 5 from the original application, to be transferred to this application, restricted the take-away of hot food. However, it is reasonable to expect this café/tearoom would still provide the provision of hot drink takeaway. This would not create the same odour emissions, air quality concerns and noise disturbance that food takeaway would create and so is not unacceptable.

Access, Parking and Transport Matters:

31. The prior approval application considered that the A3 use would result in less trip generation than the previous A1 use that was on the site and therefore raised no objection to the proposal.
32. It is noted that the existing use does not have any allocated parking for the site. Following a site visit it is noted that there is informal parking to the front of the site. It is also noted that there are existing car parks and bus stops in close proximity to the site. It is therefore considered that due to the site's location within Hedge End Town Centre it is well served by public transport and existing parking with the town centre. It is considered that the extension of the opening hours would not impact on the existing parking situation such as to warrant a reason for refusal in this case.
33. The Inspector noted previously that given the limited amount of street parking in front of the tea-room, there is a reasonable prospect that tearoom customers may park on the street along Freegrounds Road in an attempt to reduce walking distance to the premises. This has the potential to cause inconvenience to residents, and conflict between vehicular and pedestrian use of the road, particularly given the narrow road width. This is taken on board but in this case where the hours will not go into the evening, it is considered reasonable that customers could park in the car parks available within the Hedge End Town Centre, including that of one situated across the road that offers 2 hours of parking, due to the fact customers would not be leaving the premises at a late hour and may feel more comfortable to walk a short distance to their car.

Drainage and Flood Risk:

34. Although situated in Flood Zone 2 and 3, the increased opening hours applied for here would not impact this designation.

Other material considerations

Equalities Implications:

35. Section 149 of the Equalities Act 2010 created the public sector equality duty. Section 149 states:-

36. A public authority must, in the exercise of its functions, have due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

37. When making policy decisions, the Council must take account of the equality duty and in particular any potential impact on protected groups. It is considered that this application does not raise any equality implications.

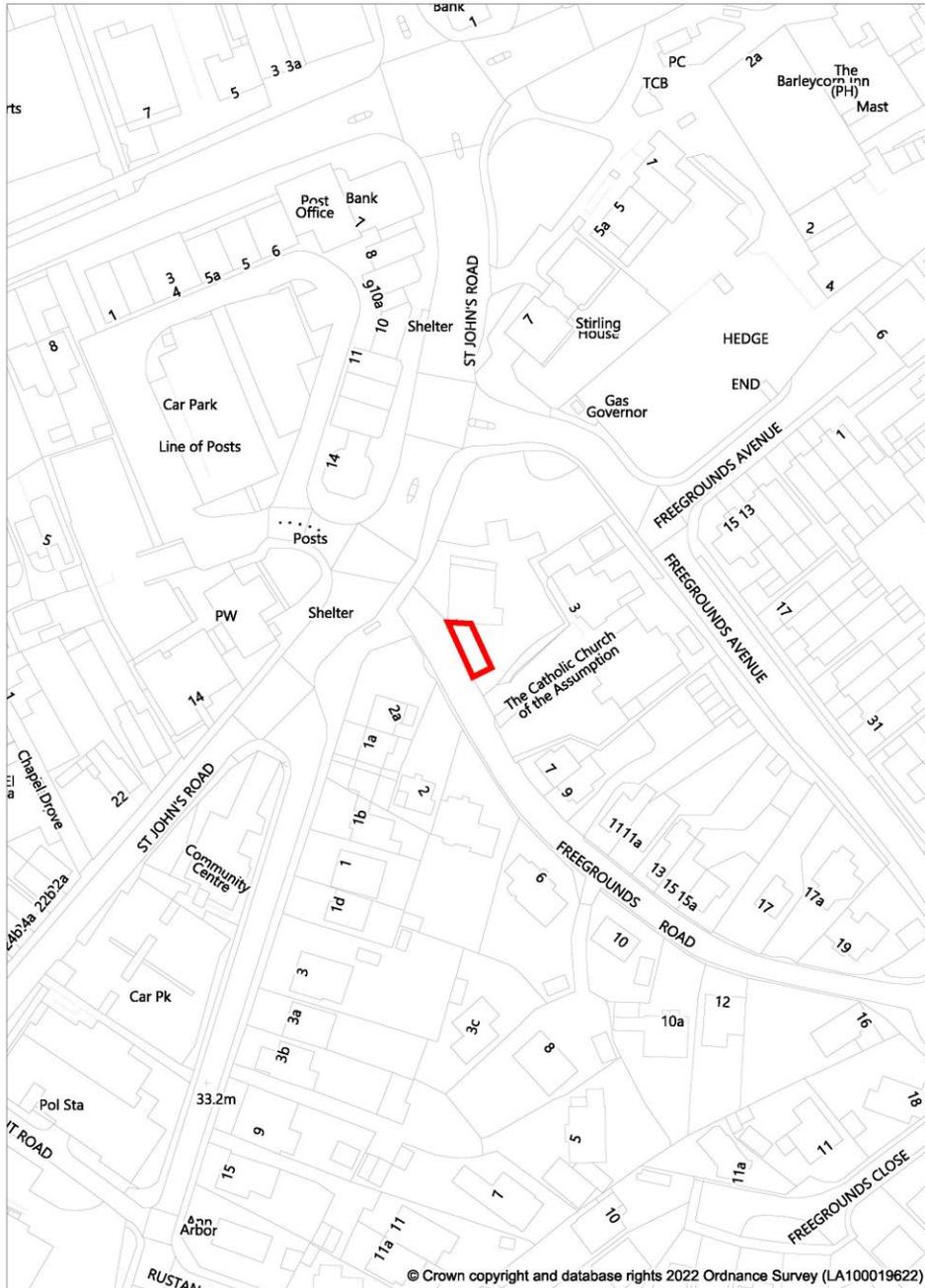
Climate Impact and Sustainability

38. In July 2019, the Council declared a Climate Change and Environmental Emergency. In doing so it agreed, among other things, to: (a) put in place measures to ensure the Council's own operations and functions achieve carbon neutrality by 2025; (b) work with partners to aim for all projects and services delivered in the Borough to achieve carbon neutrality by 2030; (c) ensure that the Council's procurement policy recognises carbon neutrality as one of its primary considerations; and (d) recognise the urgency of action to mitigate and adapt to climate change in every decision taken by the Council. This is underpinned by the Climate and Environment Emergency Strategy 2020–2030 and the supporting Climate and Environmental Emergency Action Plan – Update June 2020.
39. The declaration of the Climate Change and Environmental Emergency demonstrates a strong commitment from the Council to achieve net zero. It is not part of development plan or emerging plan policy, but it is a material consideration to be considered alongside all other material considerations. The need to support the economy is part of the Strategic Environmental Assessment for the Emerging Local Plan, as is an assessment of climate impacts.
40. The NPPF, Saved Policies 34.ES and 37.ES of the local plan, Draft Policies S1, DM2 and DM3 of the Emerging local plan and energy and water elements of the adopted Environmentally Sustainable Development SPD require development to be sustainable in terms of resource use, climate change and energy use. When considering the impact of climate change, the proposed development is not expected to be directly impacted by the potential effects of climate change and is expected to have a negligible impact on the climate because of the development or its use.

Conclusion

41. The proposed variation of condition to extend the opening hours of the existing café/tearoom is considered to be acceptable. The proposal is not considered to result in a significantly detrimental impact on the amenities of the neighbouring properties or existing parking with the surrounding area.
42. Therefore, the recommendation is to Permit, subject to conditions.

X/21/92160



Address: Unit 3, Lankester House, 1 Freegrounds Rd
Hedge End, SO30 0HG

Date: 15/02/2022 Scale: 1:1250