

MEETING:	PLANNING AND REGULATORY COMMITTEE
DATE:	17 JANUARY 2018
TITLE OF REPORT:	<p>172756 - PROPOSED VARIATION OF CONDITION 7 OF PLANNING PERMISSION DCCW2003/3853/F (VARIATION OF CONDITION 7 TO ALLOW TRADING TO 23.00, 7 DAYS A WEEK (APPLICATION NO. CW2002/3803/F)) TO ALLOW TRADING TO BE UNTIL 01:00 HOURS ON SUNDAY TO THURSDAYS AND UNTIL 02:00 ON FRIDAY AND SATURDAY. WITH CUSTOMER DELIVERY ONLY SALES AND NO SALES COUNTER SALES AT UNIT 3, 109-111 BELMONT ROAD, HEREFORD, HEREFORDSHIRE, HR2 7JR</p> <p>For: Red Miracle Ltd per Seacourt Tower, West Way, Oxford, OX2 2JJ</p>
WEBSITE LINK:	https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=172756&search=172756
Reason Application submitted to Committee - Redirection	

Date Received: 25 July 2017
Expiry Date: 8 December 2017
 Local Member: Councillor P Rone

Ward: Red Hill

Grid Ref: 350422,238897

1. Site Description and Proposal

- 1.1 The application site is situated on the south-eastern side of Belmont Road within Hereford City. The site comprises a single commercial unit, part of a mixed use commercial complex with a dedicated car-parking area to the front. The unit itself is currently occupied by Dominos Pizza. In the immediate vicinity of this commercial parade are residential properties to the north and west, school playing fields to the south and Our Lady Queen of Martyrs Church to the east. The terrace of properties, known as 119-125 Belmont Road have a particularly close association, sharing a common brick boundary wall with the parking area and side access to the rear of the parade.
- 1.2 A variation of condition is sought to condition 7 of the original planning permission CW2002/3853/F. The proposed change seeks approval to extend the opening hours for pizza deliveries from the premises on Sunday to Thursday to 1am and on Friday and Saturday to 2am. In addition direct counter sales to visiting customers are proposed to be extended until midnight throughout the week.
- 1.3 The application is submitted following the expiry of a temporary planning permission (153000/F) which permitted the same extension of hours and which was allowed on appeal following its refusal by Planning Committee on 3 February 2016.

1.4 The Planning Committee previously refused permission on the following ground:

The extension of opening hours would give rise to increased disturbance to nearby residents such that acceptable levels of residential amenity would not be safeguarded, contrary to Policy SD1 of the Herefordshire Local Plan – Core Strategy.

1.5 Reference will be made to the Appeal Decision in the Appraisal below but for the sake of clarity, the Decision is attached at Appendix 1.

2. Policies

2.1 The Herefordshire Local Plan Core Strategy policies together with any relevant supplementary planning documentation can be viewed on the Council's website by using the following link:-

SD1 - Sustainable Design and Energy Efficiency

2.2 NPPF

Introduction - Achieving Sustainable Development

2.3 NPPG

2.4 Neighbourhood Plans

Work has commenced on the Hereford Action Plan but it is not at a stage where it can be afforded material weight in decision-making

2.5 The Core Strategy policies together with any relevant supplementary planning documentation can be viewed on the Council's website by using the following link:-

https://www.herefordshire.gov.uk/info/200185/local_plan/137/adopted_core_strategy

3. Planning History

3.1 153000/F Variation of Condition 7 of Planning Permission CW2002/3803/F and Condition 1 of Planning Permission CW2003/3853/F. **Refused** 03.02.16. **Allowed on Appeal (12 month temporary period)** 24.05.16

3.2 151384/F Variation of condition 1 of CW2003/3853/F. **Refused** 01.09.15

3.3 DCC041324/F New shopfront, extract ventilation system and external compressors. **Approved** 14.04.04

3.4 DCC033580/F Variation of condition 6 of CW2002/3803/F to allow deliveries between 9am and 1pm on Sundays and Bank Holidays. **Approved** 16.01.04

3.5 DCC033383/F Variation of condition 7 of CW2002/3803/F to allow trading to 11pm, 7 days a week. **Approved** 13.02.04

3.6 DCC023952/F Local centre (Class A1 and A3) with car-parking and ancillary works. **Approved** 16.10.03

4. Consultation Summary

4.1 Statutory Consultations

None

Further information on the subject of this report is available from Mr Simon Withers on 01432 260612

4.2 Internal Council Consultations

Principal Environmental Health Officer - Environmental Health received no further noise complaints regarding Domino's over the last year and officer's observations have not identified any noise issues or concerns, therefore, Environmental Health have no objections to the application.

Transportation Manager – Proposal acceptable

5. Representations

5.1 Hereford City Council – No objection

Two separate submissions have been received setting out the objections on behalf of the residents of 119-125 Belmont Road (M Jones, S Marriott, S Eastwood and owner of 119 Belmont Road).

The written objection essentially reiterates the objections submitted to the previous application (153000/F)

In addition a schedule of alleged breaches of the conditions accompanied by photographs is provided

5.2 The consultation responses can be viewed on the Council's website by using the following link:-

https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=172756&search=172756

Internet access is available at the Council's Customer Service Centres:-

<https://www.herefordshire.gov.uk/government-citizens-and-rights/customer-services-enquiries/contact-details?q=customer&type=suggestedpage>

6. Officer's Appraisal

6.1 The principal consideration in the determination of this application is whether the detrimental impact to neighbouring amenity, which led to the previous refusal reason, has been suitably addressed, enabling a permanent extension of opening hours to be approved

6.2 The temporary permission was allowed on appeal, conditional upon sales of food to walk-in customers ceasing at midnight throughout the week, whilst the delivery service could continue until 1am from Sunday-Thursday and 2am on Friday and Saturday. In order to secure additional controls and minimise the impact upon residential amenity, conditions requiring the installation of roller blinds that would be shut at midnight and the deployment of a barrier across part of the parking court to prevent delivery vehicles from parking close to the common boundary with 119-125 Belmont Road.

6.3 In light of the appeal decision, it is accepted that ongoing compliance with the conditions of the temporary permission should satisfactorily address the amenity concerns raised by neighbouring residents. In reaching the decision to allow the appeal however, the Inspector was clearly cognisant of the potential risk of failing to properly implement the restrictive measures. To quote directly from the Inspectors decision letter:

The Council and the neighbouring residents have reservations that these measures would not stop customers arriving at the site trying to get served and that more noise may be generated by the arguments between staff and customers. The implementation of the proposal and the operational statement would be reliant on management practices and updated advertising in relation to the amended opening hours. Consequently, as the likelihood that disturbance would not occur has not been demonstrated I do not consider that a permanent permission can be granted.

- 6.4 Having regard to the operation of the premises under the terms of the temporary permission, it is advised that there have been no formal complaints to the Enforcement or Environmental Health team. Furthermore, by reference to the comments of the Principal Environmental Health Officer, there has been a limited amount of monitoring of the premises that has not identified any breaches of planning control. The absence of any evidenced breach of planning control since the appeal was allowed is a matter that should be afforded weight.
- 6.5 The above notwithstanding, and in support of a detailed objection, the residents of 119-125 Belmont Road have submitted a schedule of alleged breaches with accompanying photographs. In summary this sets out a total of 15 dates between 24 April and 9 September 2017 when breaches of condition are alleged. The allegations range from the premises door and blinds being open after midnight; barriers not being deployed allowing vehicles and what appear to be customers in varying numbers access to the restricted area; and also customers in the premises after midnight. It is unfortunate that these alleged breaches were not reported at the time as it may have resulted in verifiable evidence or more targeted monitoring by Council officers.
- 6.6 In response to the reported allegations, the applicant (with reference to the Store Manager and staff) has been afforded the opportunity to respond and has provided a rebuttal to all of the incidents allegedly involving customer activity. In respect of the alleged customer activity after midnight, the suggestion is that the premises were closed and any noise or disturbance was not as a result of a customer but rather members of the public. The applicant does acknowledge a number of issues associated with external cleaning contractors working on the premises in the early hours and a single driver using the restricted parking area after midnight (subsequently the company and driver were advised of the restrictions in place). In the response, reference is also made to a stock delivery in the small hours. This is not permitted by the original permission and is a matter that has been referred to the Enforcement team.
- 6.7 In addition to the rebuttal, the applicant has advised of refinements to the operation of the restrictions which include on-line orders being stopped at 11.30pm to enable walk-in customers the ability to collect before midnight; the emailing of pictures of the barriers and blinds in place to an internal email group and the inclusion of specific instructions during inductions. I consider that this does demonstrate a willingness to comply with the conditions that have been put in place following the appeal.
- 6.8 Further comments from the objectors have now also been received to the published rebuttal and these confirm that the photographic evidence provided is accurate; that there has been no attempt to engage with residents and that having put up with the temporary trial period, the 11pm closing time should be reinstated.
- 6.9 In summary, the polarised positions of the applicant and neighbouring objectors together with the absence of any verified contemporaneous reports of alleged breaches is such that I cannot recommend approval for a permanent continuation of the extended hours or conversely justify the refusal of this application. Rather, I consider that a further temporary permission aligned with the expiry of the previous temporary permission is appropriate, some slight refinements to other conditions and an additional condition requiring the applicant to provide a photographic record of compliance with conditions 2 and 3 below. This is accompanied by a commitment on behalf of the Council's Enforcement team to carry out routine random monitoring of the premises in order to independently verify any breaches and their impacts. This course of action has been discussed and agreed with the Enforcement Development Manager and will be appropriately resourced. In addition to this, it is also considered that the neighbours need to ensure that individual alleged breaches are notified to the Enforcement team as soon as practically possible in order to enable matters to be tackled with the applicant in a timely manner. It is also considered that the additional extension of time shall be used to discuss the potential for more permanent arrangements to be out in place. On the basis of this

recommendation it is expected that a definitive view as to the acceptability of the extended hours will be achievable upon submission of a further application made in a timely manner.

RECOMMENDATION

That planning permission be granted subject to the following conditions and any further conditions considered necessary by officers authorised under the scheme of delegation to officers:

- 1. Until 30 June 2018, the permitted use in relation to the delivery of pizzas and associated products off the premises shall not be open to customers outside the hours of 0700 to 0100 Sundays to Thursdays and 0700 and 0200 Fridays and Saturdays. The walk-in counter service shall cease by midnight every day of the week.**

Reason: To ensure the potential for disruption to neighbouring amenity is minimised in compliance with policy SD1 of the Herefordshire Local Plan Core Strategy and the National Planning policy Framework.

- 2. The approved and installed window/door blinds (as approved by letter dated 21 September 2016) shall be drawn shut at midnight or whenever the walk-in service is unavailable, whichever is the earlier.**

Reason: To ensure that the blinds would effectively screen the light emanating from the unit such that the potential for disruption to neighbouring amenity is minimised in compliance with policy SD1 of the Herefordshire Local Plan Core Strategy and the National Planning policy Framework.

- 3. All delivery vehicles operating between 2400 and 0200 will be required to park within the defined area illustrated on a parking plan (as approved by letter dated 21 September 2016).**

Reason: To ensure the potential for disruption to neighbouring amenity is minimised in compliance with policy SD1 of the Herefordshire Local Plan Core Strategy and the National Planning Policy Framework.

- 4. Until 30 June 2018, the applicant shall keep a daily timed and dated photographic record of the window/door blind and parking barrier in situ, which shall be made available to the local planning authority within 5 working days of any reasonable request.**

Reason: To ensure the potential for disruption to neighbouring amenity is minimised in compliance with policy SD1 of the Herefordshire Local Plan Core Strategy and the National Planning Policy Framework.

INFORMATIVES:

- 1. The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against planning policy and any other material considerations, including any representations that have been received. It has subsequently determined to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.**
- 2. With regard to the interpretation of condition 4, a reasonable request shall be made in writing (letter or email) and shall only be requested when the local planning**

authority has established beyond reasonable doubt that a breach of conditions 2 and 3 has occurred.

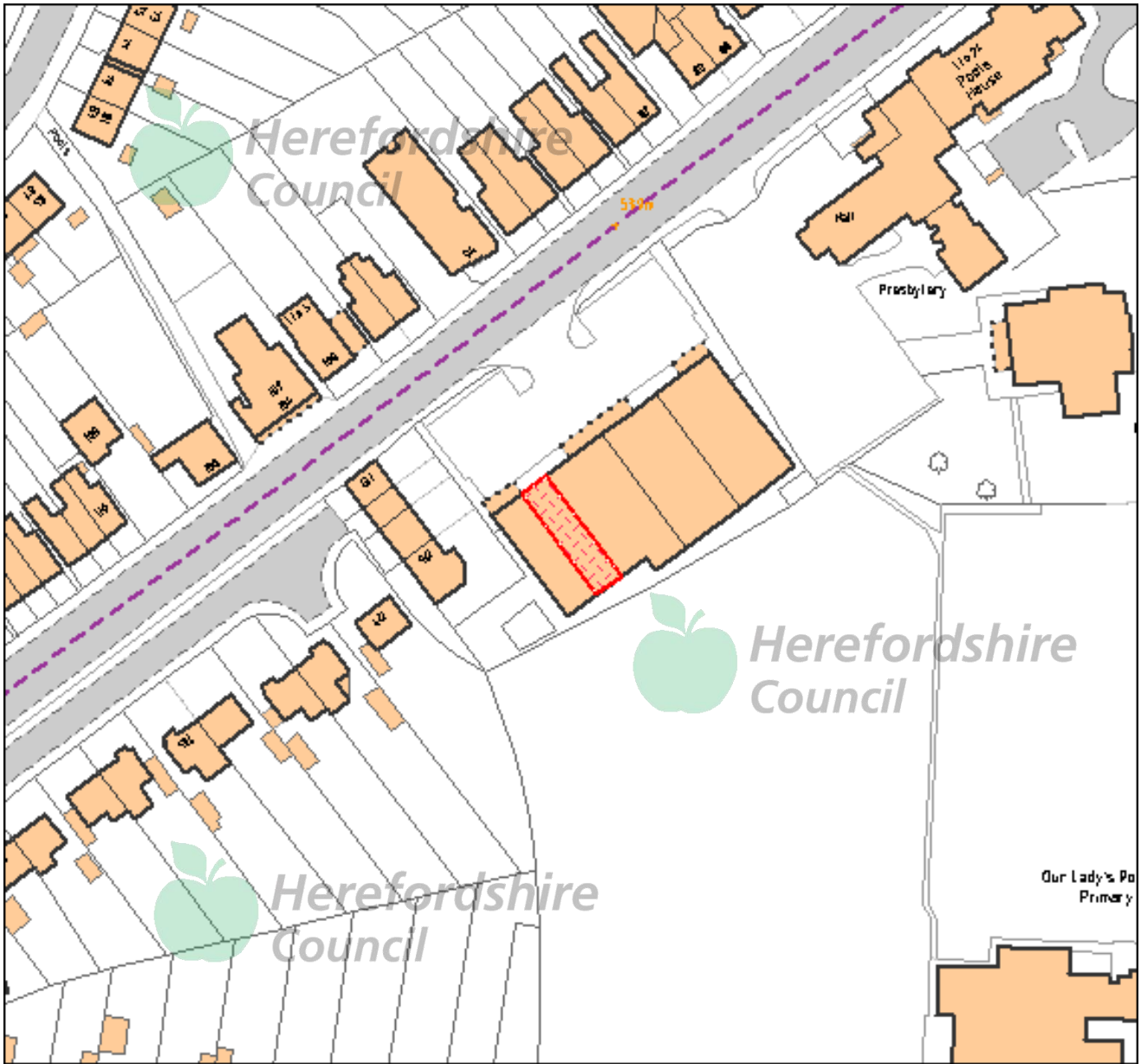
Decision:

Notes:

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Background Papers

Internal departmental consultation replies.



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APPLICATION NO: 172756

SITE ADDRESS : UNIT 3, 109-111 BELMONT ROAD, HEREFORD, HEREFORDSHIRE, HR2 7JR

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