

5 DCCE2006/3614/F - VARIATION OF CONDITION 4 OF PLANNING CONSENT REF. NO. DCCE2006/2424/F TO PERMIT MOVEMENT OF ONE CART AND ASSOCIATED SUPPORT VEHICLE IN THE YARD, AND INTO AND OUT OF THE YARD BETWEEN 6.00AM AND 10.00PM 10 KYRLE STREET, HEREFORD, HEREFORDSHIRE, HR1 2ET

For: Mr. J. Gardner per RPS Planning, Highfield House, 5 Ridgeway, Quinton Business Park, Birmingham, B32 1AF

Date Received: 15th November, 2006

Ward: Central

Grid Ref: 51447, 40097

Expiry Date: 10th January, 2007

Local Member: Councillor D.J. Fleet

Introduction

This application was originally to be heard at the Central Area Planning Committee held on the 13th December, 2006. However, due to issues associated with the consultation responses in respect of this application the item was deferred to allow all parties an appropriate period for comment. The report has been updated to reflect correspondence received in the interim period. Of greatest significance is the receipt of the advice of the Environmental Health Manager and the subsequent revision of the proposal such that the relaxation of the condition would apply to a single cart, and its associated support vehicle, only.

1. Site Description and Proposal

1.1 This application seeks permission for the variation of Condition 4 attached to planning permission DCCE2006/2424/F. The application relates to a commercial activity at No. 10 Kyrle Street, Hereford. Activities on site originally commenced following planning permission granted by virtue of application CE1999/2467/F that allowed an area of hardstanding for a mixed residential/commercial parking use and the use of existing residential sheds for conducting a sign writing business. A subsequent application, DCCE2003/0405/F, secured permission to vary this permission to allow for storage of four coffee bar trailers and one swing boat trailer as opposed to the previous arrangement which allowed for two coffee bars trailers and one swing boat trailer. More recently, application DCCE2006/2424/F secured permission to vary Conditions 1 and 2 of application DCCE2003/0405/F, thereby allowing the storage of 4 mobile coffee carts, 1 freezer cart, 1 fridge car, and 4 non-HGV associated support vehicles. This permission was subject to conditions, No. 4 of which states:

'Notwithstanding the connections of the freezer and fridge carts to a mains power supply, the coffee carts and support vehicles described in the description of development shall not be moved or operated in the yard or over into or out of the yard before 7am or after 9pm on any day except in the case of emergency.'

Reason: To safeguard the amenities of the locality.'

This application now seeks to vary this condition to allow **one** of the aforementioned coffee carts and an support vehicle to be moved or operated in the yard, or moved into or out of the yard no earlier then 6am or after 10pm on any day except in the case of emergency.

- 1.2 The application site itself comprises a semi-detached house and associated yard positioned on the south east side of Kyrle Street. Immediately to the south of the site is a tyre business and two vacant units last used as hairdressers shops. To the north and west a mix of residential and commercial uses are found.

2. Policies

- 2.1 Herefordshire Unitary Development Plan (Revised Deposit Draft):

S2	-	Development requirements
DR2	-	Land use and activity
DR13	-	Noise
E9	-	Home based businesses

3. Planning History

- 3.1 CE1999.2467/F - New hardstanding for both residential and commercial (non-HGC) parking to include a 16ft trailer mounted set of swingboats. Use of existing residential shed for conducting family signwriting business. Approved 19th January, 2000.
- 3.2 DCCE2003/0405/F - Retention of existing sheds and variation of Condition 2 of planning permission CE1999/2476/F to permit storage of mobile coffee bars and trailer mounted swing boats. Approved 11th June, 2003.
- 3.3 DCCE2006/2424/F - Variation of Conditions 1 and 2 of planning permission DCCE2003/0405/F to permit the storage of 4 mobile coffee carts, 1 freezer cart, 1 fridge cart, and 4 non-HGV support vehicles. Approved 25th September, 2006.

4. Consultation Summary

Statutory Consultations

- 4.1 None.

Internal Council Advice

- 4.2 Environmental Health Manager: *'No objections but the movements between 6am – 7am and 9pm – 10pm should be restricted to 1 coffee cart as detailed in the supporting statement'*
- 4.3 Traffic Manager: No objections.

5. Representations

- 5.1 Hereford City Council: No response.

5.2 Local Residents:

5.2.1 Support:- Two letters of support have been received, one from Hereford Tyres Ltd, which is found on the boundary to the south of the application site, and one from 9 Kyrle Street (opposite). The latter comments that '*...the alleged noise activity at 10 Kyrle Street, which our house over looks, neither spoils or detracts the quiet enjoyment of living in Kyrle Street.*'

5.2.2 Objection:- A letter of objection has also been received on behalf of number 12 Kyrle Street, the comments of which can be summarised as follows:

1. The circumstances have not changed following the previous application and it seems that the applicants are effectively attempting a re-hearing;
2. Real problems and disturbance are being caused because of the commercial activities next door;
3. Sleep has been disrupted and comfort was taken from the last Committee decision, although these hours were less than ideal;
4. To bring the hours forward would result in an intolerable position;
5. The hours are beyond those normally permissible to most businesses and this is doubly significant in this mixed residential area;
6. The location is in a quite area which is primarily residential and located some distance from main roads. Extended hours would be inconsistent with the character of the area;
7. The variation would have an adverse effect upon the neighbours enjoyment of their property;
8. The level of use on the site has more than doubled in the last seven years;
9. No evidence of steps to relocate the business to a more appropriate site have been put forward;
10. The quality of life for the neighbouring property has degraded and it is increasingly difficult to sleep in the summer with windows open.

5.3 In support of this application a supporting statement was submitted, the contents of which can be briefly summarised as follows:

1. The requested extension in hours is absolutely essential to enable the Coffee Cart Co to continue to operate as a viable business;
2. An extended temporary permission is also requested, particularly having regard to the limited timescale associated with the extant business;
3. Kyrle Street is not a primarily residential street with a variety of commercial activities in close proximity of the site;
4. A number of premises on Commercial Road are accessed via Kyrle Street, including extended hours licensed uses, with associated HGV movements;
5. The site is also a residential property occupied not by the applicant/owner, but by his parents;
6. The site is established and well maintained;
7. Vehicle movements and associated noises are low;
8. One of the Coffee Carts is licensed by Herefordshire Council to operate in High Town. This has been undertaken for 8 years running from 7am (8am on Saturdays), To get on site and set up departure from the application site must be at 6am;
9. The licence permits the service between 6am and 9pm and have been issued annually for the last 8 years without debate or discussion;
10. Other carts are used for 'events' nationally and as such need flexibility in hours;

11. No objections were received from the Environmental Health Manager to the previous application and, although monitoring and loading/unloading restrictions were requested, no restriction on hours of operation were requested;
 12. Condition 7 attached to permission DCCE2006/2424/F requires approval of noise control measures and will ensure appropriate noise control;
 13. The variation of Condition 4 is for real and reasonable business needs and are necessary to allow the business to continue to operate and compete;
 14. The hours variation is to allow the business to continue to operate within its existing contracts;
 15. A 2 year period is considered appropriate to allow for effective monitoring;
 16. The 'fallback' (DCCE2003/0405/F) allows for fewer carts to be stored, but places no hours of restriction, either on the hours of operation or the loading/unloading.
- 5.4 In addition to the supporting statement, the applicant has also forwarded a copy of an item of correspondence from the Environmental Health and Trading Standards Department to the applicant in response to a personal query. This correspondence states that *'This department has received five official complaints regarding noise from No.10 Kyrle Street, all of which have come from a nearby property. Noise monitoring has been carried out over 13 days with the installation of noise monitoring equipment at the complainant's property. This department through its noise monitoring or through Officer observations has never established Statutory Nuisance. I can confirm that no Abatement Notices for nuisance have ever been served nor are any pending.'*
- 5.5 The full text of these letters can be inspected at Central Planning Services, Blueschool House, Blueschool Street, Hereford and prior to the Sub-Committee meeting.

6. Officers Appraisal

- 6.1 The commercial activities on this site, including the units stored and the areas of operation, are established and accepted by virtue of the existing planning history. The matters for consideration are limited to the request to extend the hours of operation by 1 hour at each end of the day for one cart, and the question of the length of time appropriate for a temporary permission,
- 6.2 The Environmental Health Manager has confirmed previously that although complaints have been received regarding this business, these have not been substantiated following investigation. It is significant that previously the Environmental Health Manager requested restrictions upon deliveries, but not hours of operation. It is also assessed that the conditions suggested will allow for effective monitoring of the activities on site and the issuing of a temporary permission will allow for the review of operations and restrictions on site.
- 6.3 This application seeks permission for an extension in the hours of activity on site to allow the business to operate and comply with the requirements of its existing contracts. Of particular note is the operating of a coffee cart in High Town. In accordance with a licence from Herefordshire Council. This operation commences on site at 7am weekdays, necessitating a departure from the application site at 6am. It is on the basis of this unit in particular that the Environmental Health Manager has recommended that the existing condition be relaxed to allow one trailer more flexible hours of operation. Although originally pursuing a full relaxation for all units through this application, the applicant is in agreement with this revised arrangement which would apply to a single cart only.

- 6.4 The limited variation in hours is considered reasonable having regard not only to the existing business operations on site, but also to the advice of the Environmental Health Manager and the safeguards in place through the conditioning of this permission. It is notable that neither hours of operation nor hours for deliveries have historically been restricted on this site.
- 6.5 Turning to the temporary permission status, it is suggested that 2 years is reasonable in consideration of the need to balance the desire to review the activities on site at an appropriate time against the need to be reasonable and considerate of the business implications of an excessively short time restriction.

RECOMMENDATION

That planning permission be granted subject to the following conditions:

1. **A01 (Time limit for commencement (full permission)).**
Reason: Required to be imposed by Section 91 of the Town and Country Planning Act 1990.
2. **E02 (Restriction on hours of delivery).**
Reason: To safeguard the amenities of the locality.
3. **Notwithstanding the connections of the freezer and fridge carts to a mains power supply, the coffee carts and support vehicles described in the description of development shall not be moved or operated in the yard or moved into or out of the yard before 7am or after 9pm on any day except in the case of emergency, with the exception of one cart and its associated support vehicle which shall be permitted to be moved into or out of the yard between 6am and 10pm.**
Reason: To safeguard the amenities of the locality.
4. **This consent shall expire on the 17th January, 2009. Unless further consent is granted in writing by the local planning authority prior to the end of that period, the restrictions on activities on site shall revert to those as approved by virtue of planning permission DCCE2003/0405/F, or DCCE2006/2424/F if said permission has been implemented.**
Reason: To enable the local planning authority to give further consideration of the acceptability of this proposed use after the temporary period has expired.
5. **The permission hereby granted is an amendment to planning permission CE1999.2467/F (as amended by application DCCE2003/0405/F and DCCE2006/2424/F) and, otherwise than is expressly altered by this permission, the conditions attached thereto remain.**
Reason: For the avoidance of doubt.
6. **Before the development hereby permitted commences a scheme shall be agreed with the local planning authority which specifies the provisions to be**

made for the monitoring of, and control of, noise emanating from the site. The use shall be carried out in accordance with the approved details.

Reason: In order to protect the amenity of occupiers of nearby properties.

Informatives:

1. N01 - Access for all.
2. N03 - Adjoining property rights.
3. N15 - Reason(s) for the Grant of PP/LBC/CAC.
4. N19 - Avoidance of doubt.

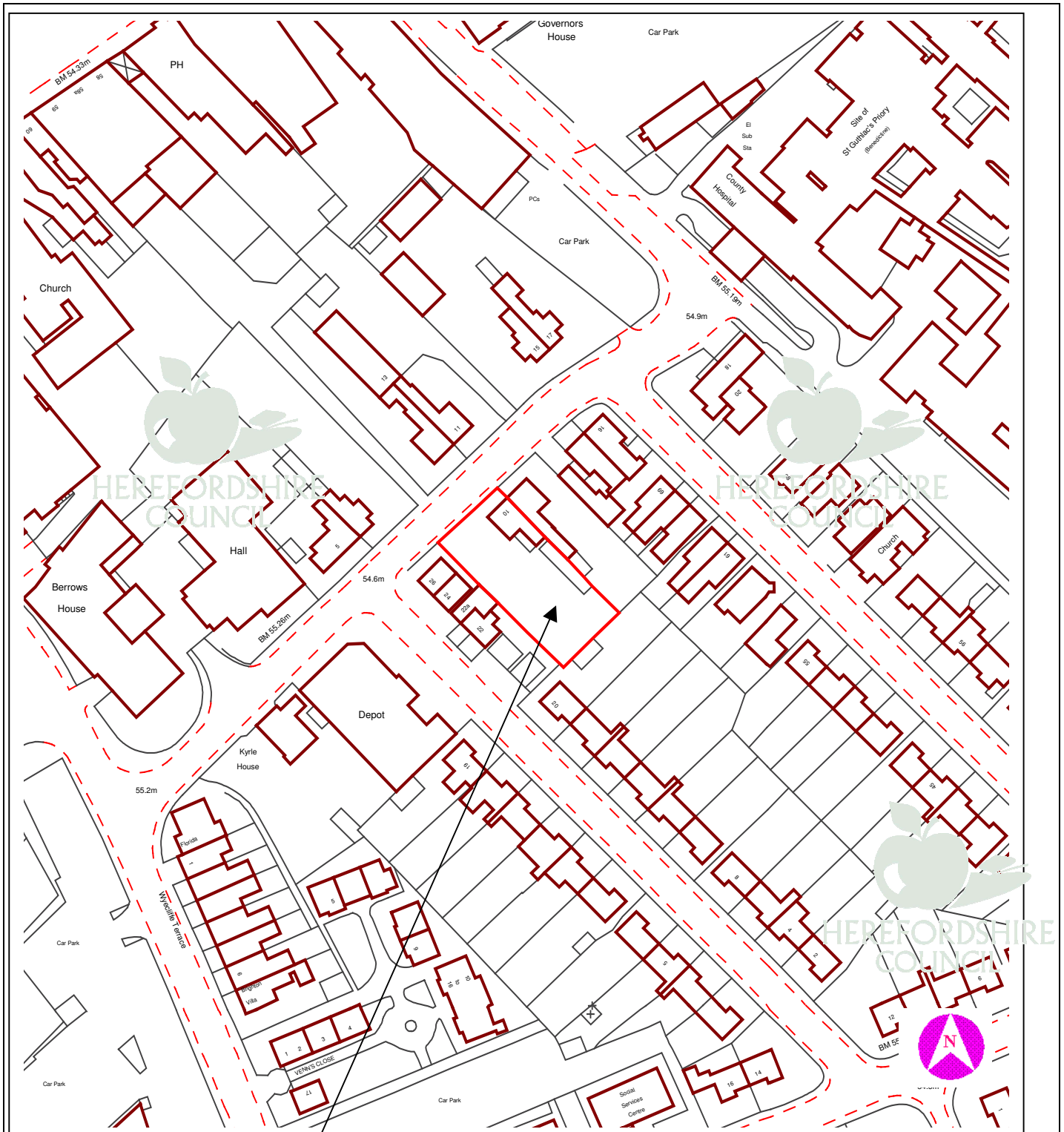
Decision:

Notes:

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Background Papers

Internal departmental consultation replies.



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APPLICATION NO: DCCE2006/3614/F

SCALE : 1 : 1250

SITE ADDRESS : 10 Kyrle Street, Hereford, Herefordshire, HR1 2ET

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