

**6 DCNC2009/0151/F - PROPOSED VARIATION OF CONDITION 3 OF PLANNING PERMISSION NC2006/1387/F, TO ALLOW OPENING OF PREMISES FOR CUSTOMERS UNTIL 10PM MON-THURS AND 10.30PM FRI-SAT AT CHOPSTICKS, 73 ETNAM STREET, LEOMINSTER, HEREFORDSHIRE, HR6 8AE.**

**For: Mr T. Teoh at the above address.**

**Date Received: 26 January 2009 Ward: Leominster South Grid Ref: 49893, 58948**

**Expiry Date: 23rd March 2009**

Local Members: Councillors PJ McCaull and RC Hunt

**1. Site Description and Proposal**

- 1.1 The site lies to the south east of Leominster's town centre and is situated on the northern side of Etnam Street adjacent to the entrance to the public car park.
- 1.2 The building has three storeys, with its ground floor used as a Chinese take-away and residential accommodation above. This part of Etnam Street is predominantly residential, although there is a public house nearby and a church directly opposite.
- 1.3 The proposal seeks to vary a condition imposed on an earlier planning permission which limits the opening hours of the premises to 8am until 9pm Monday to Saturday and not at any time on Sundays or Bank Holidays. As proposed the premises would be open between 1700 to 2200 hours Monday to Thursday, 1700 to 2230 hours Friday and Saturday and not at all on Sunday. The application suggests a willingness to accept a temporary permission if it is felt that the impact of such a change to opening hours needs to be assessed before deciding whether it is acceptable on a permanent basis.

**2. Policies**

Herefordshire Unitary Development Plan:

DR2 - Land use and activity

TCR2 - Vitality and viability

TCR15 - Hot food take away outlets

**3. Planning History**

- 3.1 DCNC2006/0067/F - Change of use to A3 (restaurants and cafes) between hours of 8.00 am to 21.00 pm Monday to Saturday - Approved 22nd February 2006.
- 3.2 DCNC2006/1387/F - Change of use to A5 (hot food take-aways) between hours of 14.00 pm - 21.00 pm Monday to Saturday - Approved 14th June 2006.

- 3.3 DCNC2006/3515/F - Variation of condition no.2 of DCNC2006/1387/F to enable use of 18 litre deep fat fryer - Refused 3rd January 2007
- 3.4 DCNC2008/1668/F - Variation of condition 3 of planning permission NC2006/1387/F to allow opening hours of 8am to 11pm Monday to Sunday - Refused 27th August 2008

#### **4. Consultation Summary**

##### Statutory Consultations

- 4.1 No statutory consultations required.

##### Internal Council Advice

- 4.2 Transportation Manager - No objection
- 4.3 Head of Environmental Health & Trading Standards - No objection
- 4.4 Conservation Manager - No objection

#### **5. Representations**

- 5.1 Leominster Town Council - Recommend approval for a temporary period of six months.
- 5.2 Three letters of objection have been received from the following:

Mr Bird, 75 Etnam Street, Leominster  
Mr & Mrs Halford, 81 Etnam Street, Leominster  
Vivienne Pearson, 77 Etnam Street, Leominster

- 5.3 In summary the points raised are that an increase in opening hours will give rise to longer periods of nuisance caused by odours, noise and traffic. The objection letters also point out that the restricted opening hours that are currently in place are not being adhered to.
- 5.4 The full text of these letters can be inspected at Northern Planning Services, Garrick House, Widemarsh Street, Hereford and prior to the Sub-Committee meeting.

#### **6. Officer's Appraisal**

- 6.1 The only issue relevant to this proposal is whether the proposal will give rise to a detriment in the residential amenity of nearby properties. A judgement has to be made as to whether such harm would be caused by extending the opening hours by an extra hour between Monday and Thursday and 1 ½ hours on Friday and Saturday.
- 6.2 In response to the earlier 2008 application to vary condition 3 that was eventually refused, the Environmental Health Officer advised that there had not been any complaints in respect of odour or noise emanating from the premises. It is not evident that they have received any complaints since the application was refused. Notwithstanding this, the Environmental Health Department do have powers under the

Environmental Protection Act 1990 should a nuisance be being caused and these would be applicable under the current opening hours.

- 6.3 The proposal would give some parity with other similar businesses in the town. Whilst it is acknowledged that there may be differences with other takeaways in terms of their location and relation to residential dwellings the absence of any formal complaints to Environmental Health suggests that the current situation is not giving rise to any significant nuisance. The extension of opening hours is unlikely to result in any significant change to this situation. Whilst the applicant expresses a willingness to accept a temporary permission this is considered to be both unnecessary and unreasonable, thus failing two of the tests set down by Circular 11/95 regarding the imposition of conditions. The proposal is acceptable on a permanent basis and is therefore recommended for approval.

**RECOMMENDATION**

**That planning permission be 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 F04 (Restriction on hours of opening (restaurants and hot food takeaways)) (1700 to 2200 hours Monday to Thursday, 1700 to 2230 hours Friday and Saturday)**

**Reason: To safeguard the amenities of the locality and to comply with Policy DR1 of Herefordshire Unitary Development Plan.**

**INFORMATIVES**

- 1 N15 - Reason(s) for the Grant of PP/LBC/CAC**

- 2 N19 - Avoidance of doubt - Approved Plans**

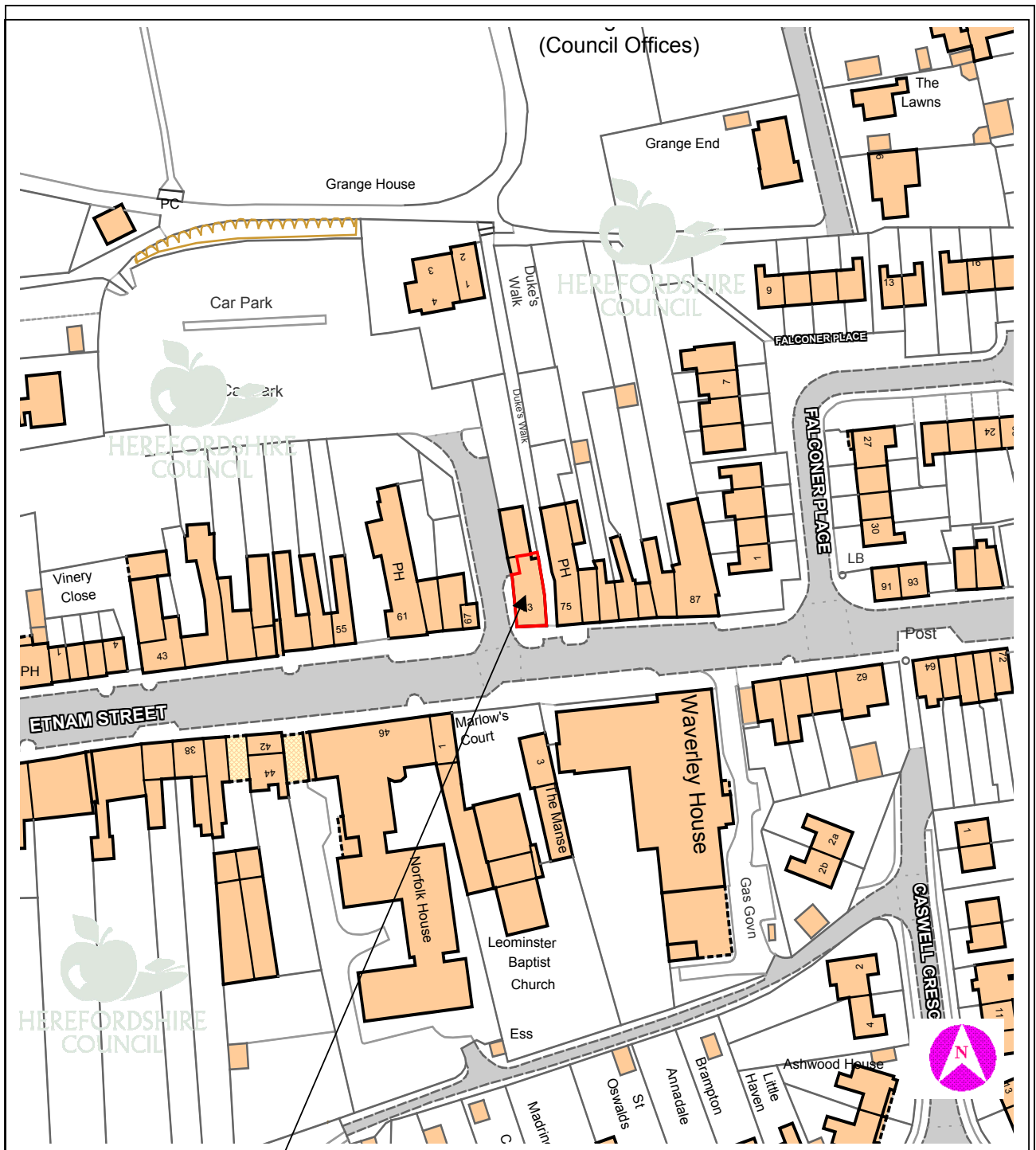
Decision: .....

Notes: .....

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**Background Papers**

Internal departmental consultation replies.



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**APPLICATION NO:** DCNC2009/0151/F

**SCALE :** 1 : 1250

**SITE ADDRESS :** Chopsticks, 73 Etnam Street, Leominster, Herefordshire, HR6 8AE

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