

8 DCCE2005/2392/F - APPLICATION TO VARY CONDITION 1 OF CE2000/0427/F TO EXTEND OPENING HOURS TO:- MON - TUES: 12.00 TO 02.00; WED - SAT: 12.00 TO 03.00; SUN: 12.00 TO 02.00; BANK HOLIDAY (EXCEPT CHRISTMAS DAY): 12.00 TO 03.00. HEREFORD CHARCOAL GRILL, 41 COMMERCIAL ROAD, HEREFORD, HR1 2BG

For: Mr. Y. Gulbahce, 24 Belgravia Gardens, Hereford, HR1 1RB

Date Received: 20th July, 2005

Ward: Central

Grid Ref: 51469, 40327

Expiry Date: 14th September, 2005

Local Member: Councillor D.J. Fleet

1. Site Description and Proposal

1.1 This application seeks permission to vary Condition 1 attached to planning permission DCCE2000/0427/F to allow extended opening hours at the Charcoal Grill, 41 Commercial Road, Hereford. The site is located on the northern side of Commercial Road opposite the entrance to the County Bus Station. The application site consists of a terraced property flanked by an Insurance Shop (A2) to the south west, and a shop unit (A1) to the north east. A takeaway pizza premise is located further to the north east with residential properties above and further to the south west. The site lies within the Central Hereford Conservation Area. The site is located outside the Central Shopping Area.

1.2 The most recent planning permission to alter operating hours was approved on the 1st March, 2000. Condition 1 states that:

"The premises shall not be open to customers outside the following hours: 0800 to 2300 Mondays to Wednesdays, 0800 on Fridays to 0130 on Saturdays, 0800 on Saturdays to 0130 on Sundays and 0800 to 2300 on Sundays."

1.3 This application seeks to vary Condition 1 to extend opening hours on Mondays – Tuesdays from 1200 to 0200; Wednesday – Saturday 1200 to 0300; Sunday 1200 to 0200; and Bank Holidays (except Christmas Day) 1200 to 0300.

2. Policies

2.1 Planning Policy Statement 6 – Planning for Town Centres
Circular 11/95 – The Use of Conditions in Planning Permissions

2.2 Hereford Local Plan:

ENV17 - Safety and security
CON12 - Conservation areas

- 2.3 Herefordshire Unitary Development Plan (Revised Deposit Draft):
DR13 - Noise
HBA6 - Development within conservation areas

3. Planning History

- 3.1 HC900423PF - Change of use from Post Office to Chinese takeaway on ground floor with living accommodation above. Refused 15th November, 1990.
- 3.2 HC910237PF - Change of use from Post Office and shop to A2 use. Approved 17th July, 1991.
- 3.3 HC920153PF - Change of use of vacant shop and Post Office to takeaway. Refused 21st May, 1992. Appeal allowed 9th September, 1992.
- 3.4 HC930161PF - Variation of Condition 3 of previous permission (HC920153PF) to allow altered opening hours. Refused 27th May, 1993. Appeal dismissed 13th January, 1994.
- 3.5 HC950203PF - Extension to provide first floor bathroom and kitchen and additional bedroom. Approved 28th July, 1995.
- 3.6 HC960082PF - Retrospective application to vary Condition 3 of HC920153PF to extend opening hours. Refused 25th April, 1996. Appeal dismissed 13th January, 1994.
- 3.7 CE1999/2740/F - Extension to form kitchen/staff toilet and first floor fire escape (Revision to HC950203PF). Approved 26th January, 2000.
- 3.8 CE2000/0427/F - Extension of opening hours. Approved 1st March, 2002.

4. Consultation Summary

Statutory Consultations

- 4.1 West Mercia Police: No comments received.

Internal Council Advice

- 4.2 Traffic Manager: No objection.
- 4.3 Conservation Manager: 'The proposal would have no impact on the historic built environment and therefore is considered acceptable'.
- 4.4 Environmental Health and Trading Standards Manager: 'Whilst I continue to be concerned about the disturbance to neighbours, the new Licensing regime should provide adequate controls. Therefore I do not wish to object to the planning application to extend opening hours'.
- 4.5 Licensing Manager: Confirmed that the licensed opening hours that will be in operation from the 24th November, 2005 will be Mondays – Wednesdays 1200 – 2330,

Thursdays 1200 – 0030, Fridays and Saturdays 1200 – 0130, and Sundays 1200 – 2300.

5. Representations

- 5.1 Hereford City Council: 'Hereford City Council has considered this application and is opposed to the application being granted. The reason for the imposition of the conditions remains unaltered'.
- 5.2 Local residents: No comments received.

6. Officers Appraisal

- 6.1 This premise has been the subject of a number of applications for change the use and to allow greater flexibility in the operating hours. The reason for the operating hours condition attached to permission CE2000/0427/F was stated as: 'In the interests of the residential amenities of the adjoining occupiers and to ensure the dispersal of people in the street with the aim of reducing crime and disorder in Commercial Road'.
- 6.2 On the 24th November, 2005 the Licensing Act 2003 will come into force. This act removes standard licensing hours enabling licensed premises to apply to remain open for longer. It is stated that the act should:

"...enable flexible opening hours for premises, with the potential for up to 24 hours opening, seven days a week, subject to consideration of the impact on local residents, businesses and the expert opinion of a range of Authorities in relation to licensing objectives. This will help to minimise public disorder resulting from fixed closing times."
(Licensing Act 2003).

- 6.3 The Circular advises that a condition which duplicates the effects of other controls will be unnecessary and one whose requirements conflict with those of other controls will be ultra-vires because it is unreasonable. Notwithstanding this, the Circular also states that even where other controls are available, a condition may be needed when the considerations material to the exercise of the two systems of control are substantially different. In this instance the key reason for the imposition of the condition was the protection of residential amenity. It is of note that the Licensing Act of 2003 is specifically intended to consider the following four objectives:

- 1) The prevention of crime and disorder;
- 2) Public safety;
- 3) The prevention of public nuisance; and
- 4) The protection of children from harm.

The objectives outlined above clearly have implications upon the preservation of residential amenities, however, it is the case that the operations of the unit in question will have wider implications upon the residential amenities of local residents and the proximity of dwellings to this premise renders the condition necessary and reasonable.

- 6.4 In relation to the specific hours requested, the Environmental Health Manager expressed concerns over the impact of the hours requested but confirmed that the Licensing Act should provide effective controls. On the basis of this comment it is not considered appropriate for the conditions to be varied as requested, but rather be varied in line with the hours confirmed by the License.

6.5 Turning to the issue of CCTV coverage, the result of the alteration of the condition to fall in line with the Licensed hours is that only 30 minutes on Mondays – Wednesdays will be gained above the existing hours permitted by condition. In light of this limited change it is considered unreasonable, in this specific instance, to require a contribution towards the maintenance of the CCTV system.

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. The use hereby permitted shall only be open to customers during the following hours:**

Monday to Wednesday 1200 hours to 2330; Thursday 1200 hours to Friday 0030; Friday 1200 hours to Saturday 0130 hours; and Sunday 1200 hours to 2300 hours.

Reason: In the interests of residential amenities.

Informatives:

- 1. N03 - Adjoining property rights**
- 2. N15 - Reason(s) for the Grant of PP/LBC/CAC**

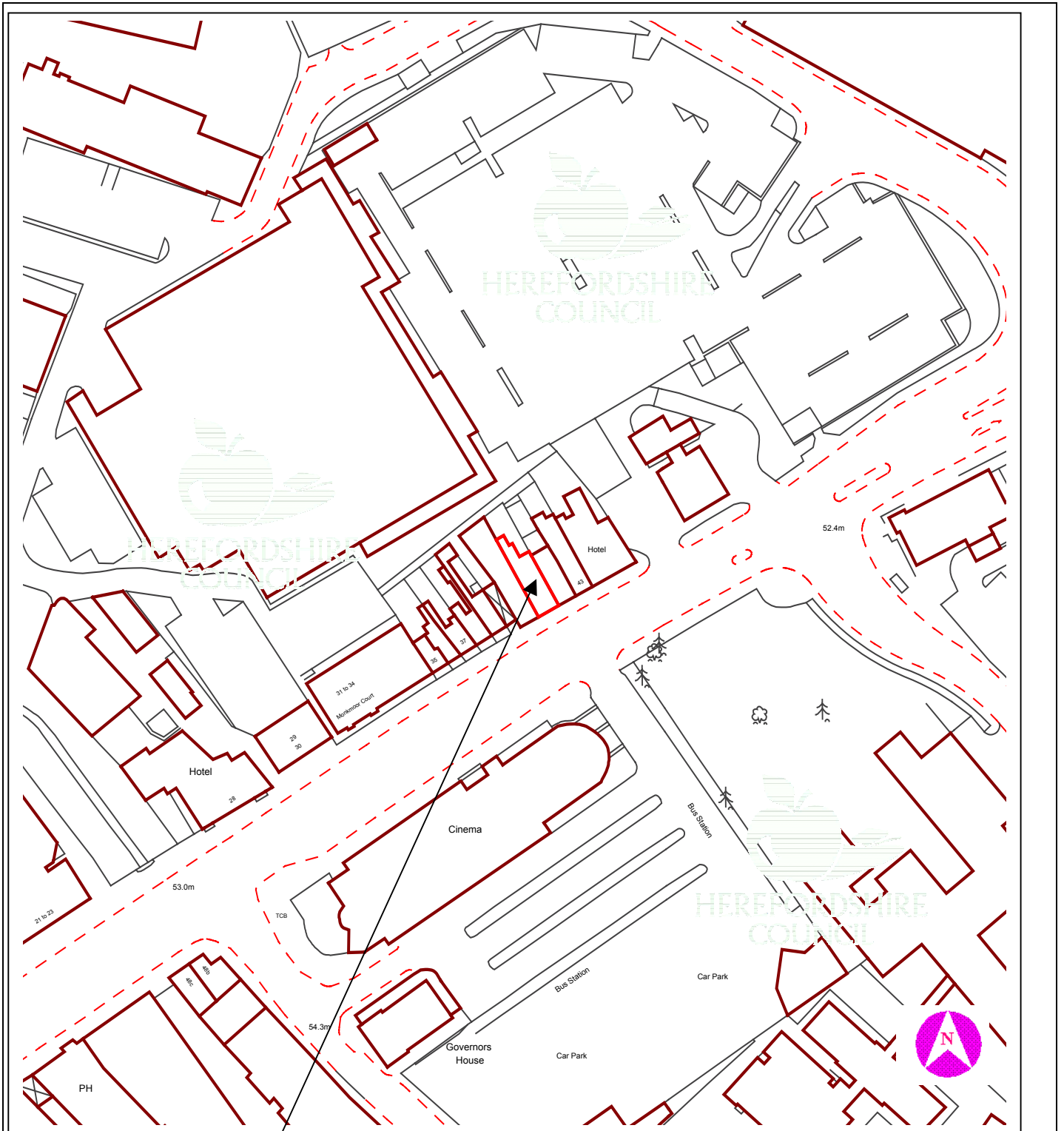
Decision:

Notes:

.....

Background Papers

Internal departmental consultation replies.



This copy has been produced specifically for Planning purposes. No further copies may be made.

APPLICATION NO: DCCE2005/2392/F

SCALE : 1 : 1250

SITE ADDRESS : Hereford Charcoal Grill, 41 Commercial Road, Hereford, Herefordshire, HR1 2BG

Based upon the Ordnance Survey mapping with the permission of the controller of Her Majesty's Stationery Office, © Crown Copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. Herefordshire Council. Licence No: 100024168/2005