

12 DCCE2005/3160/F - VARIATION OF CONDITION 4 OF PLANNING PERMISSION HC/970513/PF/E TO ALLOW EXTENDED OPENING HOURS UNTIL 2 AM. THE LITTEN TREE, 58 COMMERCIAL ROAD, HEREFORD, HR1 2BN**For: Laurel Pub Company, CgMs Ltd, Morley House, 26 Holborn Viaduct, London, EC1A 2AT****Date Received: 30th September, 2005 Ward: Central Grid Ref: 51366, 40191****Expiry Date: 25th November, 2005**

Local Member: Councillor D.J. Fleet

1. Site Description and Proposal

1.1 This application seeks permission to vary Condition 4 attached to planning permission HC.970513/PF/E to allow extended opening hours at The Litten Tree, 58 Commercial Road, Hereford. The site is located on the southern side of Commercial Road opposite Monkmoor Street. The application site consists of a four storey terraced property flanked by a public house to the east, and a vacant retail unit to the west. The upper floors have recently been converted into residential use. The site lies within the Central Hereford Conservation Area and the Central Shopping Area.

1.2 Condition 4 attached to permission hC/970513/PF/E states that:

"The use hereby permitted shall not be open to customers outside the hours of 0800 to midnight".

1.3 This application seeks to vary Condition 4 to extend opening hours until 2am.

2. Policies

2.1 Planning Policy Statement 6 – Planning for Town Centres
Circular11/95 – 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 CE2002/3017/F - Stair/lift tower with glazed link to main building, timber deck. Approved 28th April, 2005.
- 3.2 CE2001/3378/F - Conversion of upper floors to form 10 apartments. Approved 12th February, 2005.
- 3.3 CE2000/2172/F - Conversion of second and third floors into student accommodation. Approved 17th January, 2001.
- 3.4 CE2000/0967/A - Signage. Approved 19th September, 2000.
- 3.5 CE2000/0808/F - Section 73 application to modify Conditions 1 and 4 of planning permission HC98/0088/PF/E. Approved 31st July, 2001.
- 3.6 CE2000/0407/F - Single storey rear extension, Approved 25th May, 2005.
- 3.7 1999/2461/F - Demolition and erection of single storey addition. Approved 1st December, 1999.
- 3.8 1999/1715 - Change of use second and third floor from B1 (Business) to D2 (Assembly and Leisure). Withdrawn 17th October, 1999.
- 3.9 1999/1714 - Change of use from B1 (Business) to B8 (Storage). Approved 9th September, 1999.
- 3.10 98/0089/PF - Section 73 application to modify Condition 4 of planning permission 97/0513/PF. Approved 29th April, 1998.
- 3.11 98/0799/PF - Alterations to front elevation. Approved 26th January, 1999.
- 3.12 97/0513/PF - Change of use of basement, ground and first floors to A3. Approved 19th February, 1998.

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: No objection.
- 4.4 Environmental Health and Trading Standards Manager: 'No objection, licensing controls are available to ensure undue disturbance to neighbours'.
- 4.5 Licensing Manager: Confirmed that the licensed opening hours that will be in operation from the 24th November, 2005 will be:

- Supply of alcohol and late night refreshment: various between the hours of 0800 to 0100 daily;
- Premises to be open to the public 0800 to 0145 hours.

5. Representations

- 5.1 Hereford City Council: *'Hereford City Council has considered this application and recommends refusal on the grounds that the reason for the condition remains'*.
- 5.2 Local Residents: No comments received.

6. Officers Appraisal

- 6.1 The reason for the operating hours conditions attached to permission HC970513/PF/E was stated as being: 'In order to minimise the impact of the use and protect the amenities of occupiers of nearby dwellings to maintain the quality of the environment'. Notwithstanding this, it is of significance that on two occasions (98/0089/PF and CE2000/0808/F) the restriction of closing has been relaxed from 12 midnight to 1am. Both of these permissions were temporary.
- 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 for 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 advised 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 retention of this 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 it is proposed that the

condition be varied to reflect the hours of operation confirmed by the Licensing Manager.

6.5 Notwithstanding the comments above, the longer opening hours requested will potentially place an additional burden on the operation of the existing CCTC system within Hereford generally and on Commercial Road in particular, as well as, causing further issues associated with street maintenance, dispersal policies, and taxi availability management. The existing CCTV system does not operate 24 hours. The Litten Tree, along with many other bars and clubs are requesting to remain open for a longer time period which will therefore necessitate the existing CCTV operations to be extended and, subject to resources, operate 24 hours a day. It is considered reasonable that the Litten Tree, along with other bars and clubs, contribute towards the continued and extended operation of CCTV in their respective parts of Hereford. Furthermore, the increased burden being placed upon resources having regard to the aforementioned street maintenance, dispersal policies, and taxi availability management required mitigation. Therefore, an annual financial contribution is requested for this purpose. No response has been received from The Litten Tree as yet and therefore a delegated recommendation is required in order that the possibility of a financial contribution under Section 106 of the Planning Act can be discussed and negotiated.

RECOMMENDATION

That Officers named in the Scheme of Delegation to Officers be authorised to negotiate the possibility of a financial contribution towards the operation of CCTV in the locality of the application site and if agreement is reached:

The County Secretary and Solicitor be authorised to complete a planning obligation/unilateral undertaking under Section 106 of the Town and Country Planning Act 1990; and

Upon completion of the planning obligation the Officers named in the Scheme of Delegation to Officers be authorised to issue planning permission.

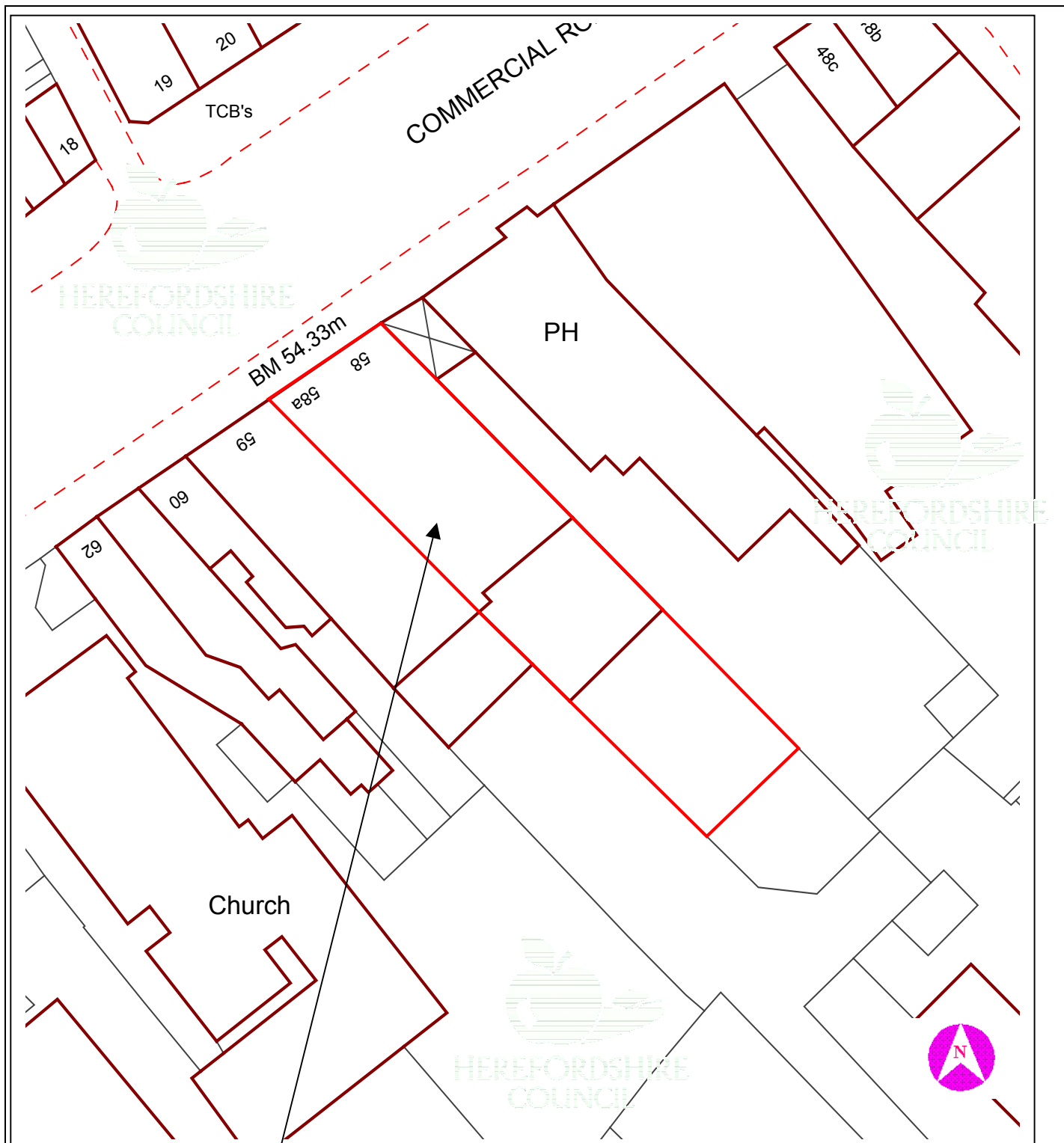
Decision:

Notes:

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Background Papers

Internal departmental consultation replies.



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APPLICATION NO: DCCE2005/3160/F

SCALE : 1 : 491

SITE ADDRESS : The Litten Tree, 58 Commercial Road, Hereford, HR1 2BN

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