

Name of Applicant Type of Certificate	Proposal	Map/Plan Policy	Plan Ref. Expiry Date
Mr. M. Ali 'A'	Extend opening hours to 7.00 a.m. - 23.00 p.m. seven days a week: Variation of Condition 2 attached to B/2009/0353 - 33 Worcester Road, Bromsgrove, B61 7DN	CA LB SS TCZ	11/0054-TC 05.04.2011

RECOMMENDATION: that **DELEGATED POWERS** be granted to the Head of Planning and Regeneration Services to determine the application following the expiry of the publicity period on 31st March 2011.

MINDED TO REFUSE

Consultations

Worcestershire Highways	10.03.2011 - no objection.
West Mercia Police	11.03.2011 - no objection.
Environmental Health	14.03.2011 - no objection.
Community Safety	Consulted 23.02.2011 expired 16.03.2011 - no comment.
Conservation Officer	16.03.2011 no objections.
Publicity	Site notice posted 02.03.2011 expires 23.03.2011 no objections. Neighbour notification 7 letters posted 16.02.2011 expired 09.03.2011 no objections. Press Notice posted 10.03.2011 expires 31.03.2011 no objections.

The site and its surroundings

The application is part of 33-35 Worcester Road which is a listed building. The listed building has a traditional design and shop front façade with a number of features including a decorative cornice, panelled pilaster, corbel, fanlight, mullion and base. The premises form the Elachi Indian Restaurant and Takeaway. The Bromsgrove Conservative Association is located at no 35 Worcester Road. Beyond this to the south is the Love 2 Love night club. A Hyundai Garage is situated to the north eastern boundary of the site.

The site is visible from the Worcester Road and is part of the secondary shopping street designation within Bromsgrove Town Centre. The site is within a designated conservation area of Bromsgrove within the town centre boundary.

Proposal

The proposal is to extend opening hours to 7.00 a.m. - 23.00 p.m. Monday - Sunday thus the applicant seeks to vary Condition 2 attached to B/2009/0353.

Condition 2 on B/2009/0353 states:

"The use hereby permitted shall operate between the hours of 16:00 hrs. and 23:30 hrs. on Monday to Friday between 12:00 hrs. and 23:30hrs. on Saturdays, and between 12:00hrs. on Sundays and Bank Holidays."

The reason for the Condition is stated as:

"In order to protect the amenities of the area in accordance with policies DS13 and S19 of the Bromsgrove District Local Plan January 2004."

Relevant Policies

WMRSS QE3
WCSP SD.2
BDLP DS13, S19
Others PPS1

Relevant Planning History

B/2009/0353 Change of Use of ground floor premises from retail shop (Class1) to restaurant (Class A3) - granted 15.07.2009.

Notes

The main issue relating to this application relate to whether the variation of Condition 2 on B/2009/0353 is acceptable given the implications for the amenities of the local area.

Circular 11/95 sets out a number of 'tests' which Conditions are required to comply with as part of their use in planning legislation. These are that Conditions must be:

1. Necessary
2. Relevant to planning
3. Relevant to the development permitted
4. Enforceable
5. Precise
6. And reasonable in all other aspects.

With respect to the current application, Paragraph 15 of this Circular states that in dealing with an application to remove a condition, that a condition should not be retained, unless there are sound and clear cut reasons for doing so.

In addition it will be important to determine whether varying the condition complies with Policy DS13 and S19 of the Bromsgrove Local Plan and whether proposed timings would impact the amenities of the area.

The applicant seeks to extend the opening hours from 7.00am-23.00pm Monday to Sunday. The applicant believes the extended opening hours would be beneficial for the business in the current economic climate. The business wishes to provide free of charge cookery classes for enthusiasts in South Asian Cuisine, this would only be possible if daytime hours are allowed. The applicant is of the view that current opening hours are too restrictive for trade. The applicant also aims to provide a healthier alternative to the traditional takeaway during the day by providing breakfast for early morning workers/commuters.

Under previous application B/2009/0353 the condition was imposed partly following comments from West Mercia Constabulary which stated the premises should not be open beyond midnight (02.07.2009).

I consider that the proposed variation of condition 2, on application B/2009/0353 to 7.00 a.m. - 23.00 p.m. on Monday to Sunday, would be difficult to restrict to cookery classes only. There would be no control if the business decided to change this strategy to opening the takeaway from 7.00 a.m.

In addition I consider that additional noise, cooking smells and odours would further impact the locality as a result from the extension of opening times.

Finally I note that other hot food takeaways in the locality along Worcester Road are restricted in terms of their morning opening times therefore I consider the scheme would set an unfortunate precedent for other local takeaway businesses to follow.

I therefore conclude that the variation of condition to be unacceptable and I am thus minded to refuse consent.

RECOMMENDATION: that **DELEGATED POWERS** be granted to the Head of Planning and Regeneration to determine the application following the expiry of the publicity period on 31st March 2011.

MINDED TO REFUSE