

Appeal made against the refusal of planning permission

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| Appeal reference | APP/P1805/A/11/2154916 |
| Planning Application | 11/0054-RL |
| Proposal | Change of use of ground floor of premises from a retail shop (Class A1) to restaurant (Class A3) with takeaway facilities, without complying with a condition attached to planning permission Ref. 09/0353-MT (which 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 23:30 hrs. on Saturdays, and between 12:00 hrs. and 23:00 hrs. on Sundays and Bank Holidays) |
| Location | Elachi Indian Restaurant, 33-35 Worcester Road, Bromsgrove, B61 7DN |
| Ward | St. Johns |
| Decision | Refused (delegated decision): 1st April 2011 |

The author of this report is Mr. Tim Collard who can be contacted on 01527 881243 (e-mail: t.collard@bromsgrove.gov.uk) for more information.

Discussion

The proposal was for a Change of use of ground floor premises from retail shop (Class A1) to restaurant (Class A3) with takeaway facilities at Elachi Indian Restaurant.

The main issue is the effect of the proposal on the locality with particular regard to noise, odour, nuisance and disturbance.

It was noted that the principle of using the premises as a restaurant with take away facilities was accepted by the Council when it granted planning permission for the use in 2009, having first assessed the merits of the development against the prevailing development plan policies.

It was noted as the proposal does not include any physical alterations to the building, it would not have a material impact on the integrity, character or appearance of the Appeal building which is "listed." The Appeal site is located within Bromsgrove Town Conservation Area, where the prevalence of shops and other commercial premises trading throughout the day contributes to its character and vitality. The proposed extended opening hours would be consistent with and would make a positive contribution to the vitality of the conservation area during

the daytime. Accordingly the proposal would preserve the character and appearance of the conservation area.

It is noted that the premises are also located within a secondary shopping street, close to both the High Street and a public car park. As such it is an active area during the day where retail and other commercial uses including restaurants and cafes with take away facilities are concentrated. The Appeal property does not adjoin any residential properties and there is a cafe on the opposite side of the road which is open from early morning. Further to the northeast are a number of restaurants and cafes which have a variety of opening times. They add to the diverse range of uses which contribute to the vitality of the shopping area.

It was considered given the location of the Appeal premises, the proposed trading hours would be consistent with policy EC4.1 of Planning Policy Statement 4 - *Planning for Sustainable Economic Development* (PPS4). It seeks to promote competitive town centre environments and provide consumer choice by supporting a diverse range of uses and small scale economic uses.

It was noted with regard to odour, noise, or other nuisance, as stated above the premises do not adjoin any residential properties and it is an active area during the day. It was noted the Appellant has commented that since the use of the premises as a restaurant with take away facilities commenced there have been no complaints concerning noise or odour. This is despite the fact that the premises have opened late into the evening, when the potential for noise and nuisance is generally greater. The proposal includes reducing the evening opening hours on Mondays to Saturdays from 23:30 hours to 23:00 hours, which should reduce the potential for late night noise or disturbance.

It was noted that no concerns have been expressed by the police, Environmental Health, Worcestershire Highways or Community Safety. Also that condition 4 of the original planning permission requires that the extraction equipment is regularly maintained, and that the cooking process shall cease to operate if at any time the extraction equipment ceases to function to the satisfaction of the local planning authority.

It was noted that the Council has expressed concern that the proposal, if allowed, could set a precedent for extended opening hours at other hot food takeaway outlets in the area. This could result in further noise, odour and nuisance which would harm the locality. However, the Appeal premises have permission for a restaurant/cafe, with a takeaway facility. As such they are in a different "Use Class" to the takeaway outlets in the locality and provide a broader facility for the public. Other restaurants and cafes in the area operate a variety of hours, which likely reflects consumer demand and the precise nature of the outlets concerned. Accordingly the current proposal would not set a precedent for the extension of opening hours by takeaway outlets in the locality.

The inspector noted that for these reasons the proposed extended opening hours would be highly unlikely to result in material harm within the locality due to noise, odour or other disturbance. That is other than early on Sunday and Bank Holiday mornings, when activity levels are generally lower. During this period the activity generated by the restaurant and take away service could result in noise and disturbance in the locality. This is addressed in the replacement opening hours condition, which restricts the opening time on Sundays and Bank Holidays to 10:00 hours.

It was noted that the Appellant would be willing to modify the proposed opening hours, to facilitate opening between 12:00 hours and 23:00 hours on Mondays to Fridays. However, on the basis of the above findings this is unnecessary and would thus fail to comply with the tests set out in Circular 11/95, which deals with the imposition of conditions.

The Inspector concluded that the proposal would not result in material harm to the locality due to increased noise, odour, nuisance or disturbance. Accordingly it would comply with policies DS13 and S19 of the Bromsgrove District Local Plan 2004 which seek to provide a high quality environment and safeguard and improve the quality of life for residents. It would similarly comply with Government policy and advice regarding the quality of the urban environment and sustainable economic growth, as set out in PPS1 - *Delivering Sustainable Development* and PPS4.

The Inspector allows the appeal and grant planning permission for change of use of ground floor premises from retail shop (Class A1) to restaurant (Class A3) with takeaway facilities at Elachi Indian Restaurant, 33 - 35 Worcester Road, Bromsgrove, B61 7DN in accordance with the application Ref. 11/0054 dated 20th January 2011, without compliance with condition number 2 previously imposed on planning permission Ref. 09/0353 dated 15 July 2009 but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect and subject to the following new condition:

- 1) The permitted use shall not operate outside the following hours: 07:00 hours - 23:00 hours - Monday to Saturday 10:00 hours - 23:00 hours - Sundays and Bank Holidays.

The appeal was therefore allowed.

Costs application

No application for costs was made.

Appeal outcome

The appeal was **ALLOWED**.

Recommendation

The Committee is asked to RESOLVE that the item of information be noted.