

Report for information

Appeal made against the refusal of Planning Permission

**Appeal Ref:** APP/P1805/A/11/2164983/NWF

**Planning Application:** 11/0650

**Proposal:** The development permitted is replacement mixed use A3/A5 building and parking and removal of existing structure (as amended by plans received 05.10.2011). *This appeal solely relates to the conditions applied namely:*

(6) The existing oak tree on the boundary of the application site shall be retained and shall not be felled, lopped, or topped without the express written consent of the Local Planning Authority.

(7) The premises hereby approved shall not be open for customers outside the following hours:

1000 -1800 Monday to Fridays

1000 -1700 Saturdays and not on Sundays or Bank Holidays

(9) Prior to the commencement of the development hereby approved, a Method Statement, with full details of the proposed treatment of the Root Protection Area (RPA) of the oak tree shall be provided to and approved in writing by the Local Planning Authority. This shall be in accordance with the recommendations of BS5837 'Trees in relation to construction'

**Location:** 64 Sherwood Road, Aston Fields, Bromsgrove, B60 3DR

**Decision:** The appeal was dismissed insofar as it relates to condition 6. It is allowed and varied insofar as it relates to conditions 7 and 9.

## **Discussion**

In relation to conditions 6 and 9, the main issue is whether the disputed conditions are reasonable in order to protect the oak tree and to safeguard the character and appearance of the area.

In relation to condition 7, the main issue is whether the restriction of the facility's opening hours is reasonable and necessary in order to protect the vitality of the town centre, to safeguard living conditions and to minimise traffic conflicts.

In relation to condition 6 this was considered to be necessary, relevant, enforceable, precise and reasonable, in accordance with all the tests in Circular 11/95.

However, condition 9 was considered imprecise and was amended. Both the retained condition 6 and the revised condition 9 are required to safeguard the future

health and development of the oak tree and would meet the objectives of Policy DS13 and C17 of the Bromsgrove District Local Plan (2004) and policies CTC.1 and CTC.5 of the Worcestershire County Structure Plan, which together seek to protect trees and environmental assets.

The appellant advised, and it is not disputed, that the existing facility operates between 0600 – 1900 hours. It was considered that condition 7 was unduly restrictive but that there needs to be some restriction to safeguard the vitality of the town centre. Therefore, the condition is amended as follows:

The premises hereby approved shall not be open for customers outside the following hours on any day of the week: 0600 – 1900.

The author of this report is David Kelly who can be contacted on 01527 881345 (email: [d.kelly@bromsgrove.gov.uk](mailto:d.kelly@bromsgrove.gov.uk)).

### **Costs Application**

No application for costs was made.

### **Appeal Outcome**

The appeal was **PART ALLOWED PART DISMISSED**.

### **Recommendation**

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