

| <i>Name of Applicant</i> Type of Certificate | <i>Proposal</i> | Map/Plan Policy | Plan Ref. Expiry Date |
|---|--|-----------------|------------------------|
| Mr Gregg Howard “A” | Variation of condition 2 attached to B/2002/0264 to allow the sale of Breakfast sandwiches 'Our Plaice', 131 Worcester Road, Hagley | Shopping | 12/0987 21/1/13 |

Councillor Steven Colella has requested that this application be considered by the Committee, rather than being determined under delegated powers.

RECOMMENDATION: that permission is **GRANTED**

Consultations

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| WH | No objection received 17/12/12 |
| Hagley PC | Objection received 20/12/12-expressed concerns with regard to parking problems and unhealthy sandwiches being eaten by children who attend schools with healthy eating policies. |
| WRS (Pollution) | No objection received 17/12/12 |
| Publicity | <p>6 neighbour notification letters sent 11/12/12 (expired 1/1/13)</p> <p>Site notice posted 12/12/12 (expired 2/1/13)</p> <p>1 petition of support received titled 'Petition to Bromsgrove Council in support of breakfast sandwiches to take away' containing 174 signatures.</p> <p>37 letters of support on the following principal grounds:</p> <ul style="list-style-type: none"> • Convenient for use by local business people • Local business trying to compete in difficult economic times • Award winning business bringing publicity to Hagley • High quality food sold by friendly staff and from pristine premises • Other businesses are open early in the village • Offers choice to local people <p>12 representations objecting to the scheme on the following principal grounds:</p> <ul style="list-style-type: none"> • Increased smell • Increased litter • Increased traffic • Encouraging unhealthy eating. |

The site and its surroundings

This application relates to an existing fish and chip takeaway on the west side of Worcester Road, Hagley, the main High Street in Hagley. The premises is located within the primary shopping allocation of the village.

The proposed development

The applicants are applying for retrospective consent to vary condition 2 of the original planning permission referenced B/2002/0264 to allow for the existing opening hours to be extended. The existing opening hours are detailed on condition 2 attached to B/2002/0264. These are 12:00pm until 10:00pm Monday to Saturday. This scheme proposes to extend the opening hours to 8:00am until 10:00pm Monday to Saturday to allow for the sale of breakfast sandwiches. The application has been submitted following the Council's Enforcement team requesting that a planning application be submitted following a report being put forward to Planning Committee in November 2012 and them resolving in agreeing that enforcement action should not commence and an application be requested to legalise the current earlier opening times.

Relevant Policies

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| WMSS | QE3 |
| WCSP | CTC.1, T.1 |
| BDLP | TR11, HAG3, S19, S21 |
| Draft CS2 | CP3, CP23 |
| Others | NPPF |

Relevant Planning History

B/2002/0264: Change of use from A1 to A3 ground floor only for use as a fish and chip shop and alterations to the shop front: Refused 15/4/02: Allowed at appeal with a condition imposed restricting hours of operation to 12:00pm to 10:00pm Monday to Saturday.

09/0024: Variation of condition 2 of planning approval referenced B/2002/0264 to allow business to open on Sundays from 12:00pm to 10:00pm: Refused 19/5/09: Dismissed at appeal.

Assessment of proposal

The premises has been opening in the morning from 8:00am and selling breakfast sandwiches which is in breach of the planning condition governing the hours of operation imposed by permission referenced B/2002/0264.

In order to assess whether there would be demonstrable harm caused to the amenities of the area, certain aspects which have been raised as objections from local residents should be considered as follows:

Increased noise and smell

It should be noted that the butchers shop further up the High Street at number 147, also opens early and sells breakfast sandwiches from 7:00am Monday to Thursday and 6:00am Friday and Saturday. Other shops along the High Street also open early as is usually the case within a shopping area and sell food and drink. The shop is fitted with extraction systems which are designed to rid the premises of cooking odours so as not to cause nuisance to nearby residential properties or other shops within the vicinity. WRS have raised no objection to the extended opening hours proposed and therefore, I am satisfied that the proposal would not cause any additional problems with regard to noise and smells. Policy S19 of the BDLP states that the District Council would not allow land uses which would have a detrimental affect on residential amenity. I consider that given the location of the premises within the High Street, it would be difficult to refuse the application on amenity issues alone.

Increased litter

Objectors have raised the point that there is litter generated from the premises and that this would increase if opening hours were to be extended. Photographs have been submitted showing litter scattered on the nearby playing fields to the rear of the premises. However, there is no definitive proof that the litter has derived from the application site and there is a litter bin situated at the front of the premises. It is up to the customers of the premises to be responsible for disposing of any litter and as the food purchased would usually be taken home to consume, any litter would be disposed of away from the premises. There are benches located at the front of the premises where some customers would eat the food purchased and hopefully dispose of the litter in the bin provided.

It is my view that the extension of opening hours proposed would not increase the amount of litter significantly enough to warrant refusal of the application for this reason alone. It is somewhat an issue which is out of the hands of the owners and down to the customers to be responsible enough to dispose of their litter appropriately. The volume of customers using the breakfast sandwich facility would not be significant and many of the letters of support have been submitted from other shop owners within the village who would also consume the sandwiches at their own premises and dispose of the litter there.

Increased traffic

The premises is located within the main High Street where there are no parking restrictions on either side of the street. Free parking is located along either side of the High Street with a car park located at the other end of the High Street within walking distance to the front of the library and community centre providing ample off street parking when the High Street is busy.

Policy T.1 of the WCSP requires that any additional traffic generated by development proposals will need to be shown to be capable of accommodation safely on the road system without undue environmental consequences. Development proposals should be designed to maximise access by pedestrians, cyclists and public transport providers. Policy TR11 of the BDLP requires that development proposals to include sufficient off-street parking in accordance with the Council's parking standards. These policies are consistent with the sustainable transport provisions within the NPPF.

The additional opening hours would be in line with the opening hours of other shops within the High Street and the parking facilities already *in situ* should be sufficient to cope with any additional parking requirements. The Highways Officer has no objections to the proposal.

It is therefore found to be in accordance with Policy T.1 of the WCSP, Policy TR11 of the BDLP and associated advice within the NPPF.

Healthy eating issues

Concerns have been raised by the Parish Council and objectors with regard to the affect on the health of customers of the takeaway in particular that of school children calling in for a sandwich on the way to school. All Hagley schools operate a healthy eating policy. There are concerns that the proposal to open the takeaway for breakfast sandwiches, would send the wrong message to children and promote unhealthy eating before school. It is also noted that in general terms that fast food is commonly associated with obesity and other health problems.

Consideration will therefore be given to the effect of the increased hours on the health of pupils. Consideration will also be given to the wider effects of the proposal on the health of the District's residents.

It has been established on appeal that the proximity of a hot food takeaway to a school is a material planning consideration, particularly where adjacent schools has a healthy eating policy.

However it has also been established on appeal that refusal of planning permission would be unjustified where there is no planning policy which would prohibit the creation of a hot food takeaway close to the school on the grounds of the impact on healthy eating amongst school children.

Examples of appeal decisions that have established this precedent are as follows:

Appeal ref. APP/A5270/A/11/2150976 (Hanger Lane, London 09/11/11)

In this appeal the Inspector stated that the refusal of planning permission on the ground of proximity to a school without a specific policy based on well researched information and which has undergone public consultation is unjustified. The appeal was allowed

Appeal ref. APP/A5270/A/11/2159886 (Southall, London 21/11/11)

In the appeal at 74 King Street, Southall the Planning Inspector gave the proximity of the takeaway to the school considerable weight in the decision. He noted that there were high levels of obesity in Southall and that the High School has a healthy eating policy. He also acknowledged that the proposed hot food takeaway could have significant consequences for children's health. However as the Council had no policy prohibiting the creation of hot food takeaways close to schools judged that the proposal was compliant with the development plan. The appeal was allowed.

Members will note that there is no specific policy within the BDLP on the proximity of hot food takeaway uses to schools, or the promotion of healthy eating through the planning system.

Broad planning policy advocating social wellbeing is set out at Policy DS13 of the BDLP which states that all development must reflect the need to safeguard and improve the quality of life of residents.

It is noted that emerging policy on health and wellbeing exists within the Draft Core Strategy 2 (Policy CP23). This states that the Council will support opportunities for healthy and active lifestyles through seeking to reduce the over-concentration of any use type where this detracts from the ability to adopt healthy lifestyles. When adopted, this policy could allow the Council to refuse planning permission for a hot food takeaway where an over-concentration exists and where it can be proven that the proposal would reduce the public's ability to lead a healthy lifestyle. Members will note however that Policy CP23 relates to a draft policy and it can only therefore be given limited weight in decision making.

Other material considerations in relation to health and well being include the NPPF which requires that Planning should take account of and support local strategies to improve health, social and cultural wellbeing for all. In this instance the single countywide Sustainable Community Strategy (SCS) for Worcestershire, which includes a chapter specifically relating to Bromsgrove Partnership and its priorities, is of relevance. This refers to encouraging a healthy diet as part of its priorities for achieving balanced communities.

The advice within the NPPF and the SCS are material considerations but Members will note the proposal's accordance with the relevant Development Plan policies discussed in the earlier parts of this report. It is considered that only limited weight should be given to the SCS relative to the weight given to these matters.

In any event, it should be noted in relation to this policy that there is not an over-concentration of A5 uses within the vicinity of the site. It would also be difficult to prove that the increase in opening hours and the sale of breakfast sandwiches would detract from people's ability to adopt a healthy lifestyle. It is appreciated that there is a correlation between fast food and obesity, but eating fast food relates to a consumer choice and obesity is often the result of wider social issues such as low income and a poor education on diet and a healthy lifestyle. Such matters are clearly outside of the control of the planning system. Correct diet and healthy lifestyle are integral components of the curriculum at Hagley schools. The proposed would not remove the availability of healthy food at the schools or undo the education received by pupils. It would be difficult to prove that pupils would choose to eat a breakfast sandwich on the way to school rather than eat healthier options and it must also be considered that they have the choice of purchasing fish and chips on the way home. It would also be difficult to prove that pupils would eat excessive amounts of breakfast sandwiches from the establishment that would raise the likelihood of obesity. On this basis it is considered that refusing the application in relation to Policy CP23 would not only be unsound due to its draft status, but also unjustified for the reasons set out above.

It is considered that in light of the appeal decisions set out above, and in the absence of a specific policy, it would be difficult to substantiate the proposal's proximity to the schools and the additional choice given to pupils as a reason for refusing the application that would stand up in the event of an appeal. With regard to refusing the application for more generalised public health reasons, any such decision could only be based on Policy DS13 and the advice within the NPPF which do not provide any clear basis for refusing the application.

Conclusion

The fish and chip shop is an established use within the High Street and shopping area of the village and extending the opening hours would bring it in line with other premises within the vicinity. The longer opening hours would add to the vitality and viability, increasing activity within the village for longer periods during the day. Whilst I understand the concerns raised by the objectors, extending the opening hours would not affect the amenities of residents or give rise to unacceptable impacts on the highway network. On this basis I am content with the application and consider the increase in opening hours to be acceptable.

RECOMMENDATION: that permission is **GRANTED**

Conditions:

1. C001 (time limit for implementation)
2. The use hereby permitted shall operate between the hours of 8:00 hrs and 22:00 hrs Monday to Saturday inclusive.

Reason: In order to protect the amenities of the area in accordance with policies DS13 and S19 of the BDLP.

CASE OFFICER DETAILS

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