

ITEM NUMBER: 5f

20/03089/ROC	Variation of condition 3 (Opening hours) attached to planning permission 4/00868/14/FUL (Change of use from retail (A1) to fast food outlet (A5), opening hours 11am-11 pm and installation of an external flue pipe). Allowed on appeal ref APP/A1910A/14/2227697	
Site Address:	Entreat 59B Gossoms End Berkhamsted Hertfordshire HP4 1DF	
Applicant/Agent:	Mr Ased Shfaq	
Case Officer:	Andrew Parrish	
Parish/Ward:	Berkhamsted Town Council	Berkhamsted West
Referral to Committee:	Contrary views of Berkhamsted Town Council.	

1. RECOMMENDATION

That planning permission be GRANTED.

2. SUMMARY

2.1 The application is recommended for approval. The non-residential use as a hot food takeaway is already established following an appeal allowed in 2015. The proposal is to extend trading hours for deliveries only to 1 am. Subject to a condition seeking details of the delivery vehicle / parking arrangements, and limiting the hours to deliveries only, the proposed extended hours of use would not result in any material detriment to residential amenity through noise, disturbance, litter, parking or traffic congestion. Permission is recommended on a temporary basis of 18 months given the reason for extending hours is to cope with the Covid-19 situation. This would also give the opportunity to monitor the impact on residential amenities and review the permission at the end of the period.

3. SITE DESCRIPTION

3.1 No. 59B is an end of terrace ground floor double fronted shop unit located within a small shopping parade fronting onto and on the north eastern side of London Road/ A41. It is trading as an A5 takeaway restaurant following an allowed appeal in 2015.

3.2 The parade features a convenience store, art shop, sign company and another takeaway restaurant. There are residential properties above the retail units and dwellings to both sides of the parade, a sheltered housing scheme at Gossoms Ryde opposite, and housing off Stag Lane to the rear.

3.3 The parade has a parking layby to the frontage and to the rear of the parade features servicing /parking and amenity area for the respective units and residential uses with a narrow access between the application property and the adjoining Grade II listed Gossoms Cottage.

4. PROPOSAL

4.1 The applicant is seeking longer opening hours to allow home deliveries to carry on until 00.00 on Sundays to Wednesdays and until 01.00 on Thursdays to Saturdays. Shop opening hours to visiting customers are to remain as approved, 11.00 to 23.00.

4.2 The applicant argues in his application form that the business is struggling and needs to be open for longer hours to stop struggling. In particular, the restrictions in COVID-19 especially closing

doors at 22.00 is a real struggle as well as not being able to open during the day due to people working from home.

5. PLANNING HISTORY

Planning Applications

4/02302/02 - Historic File Check DMS for Documents and Further Details
DET - 20th December 2002

4/01657/15/DRC - Details of installation of equipment to control emission of fumes, sound insulation, plant and machinery to be installed, disposal of waste and litter and external lighting as required by conditions 4, 5, 6, 7 and 9 of appeal decision app/a1910/a/14/22276
GRA - 29th July 2015

4/03091/14/FUL - Change of use from a1 to a5 use class with opening hours monday to saturday 11am - 11pm and sundays and bank holidays 11am - 10pm. installation of an external extraction flue
REF - 17th February 2015

4/00868/14/FUL - Change of use from retail (a1) to fast food outlet (a5), opening hours 11am-11 pm and installation of an external flue pipe
REF - 15th August 2014

4/00906/10/FUL - Change of use of ground floor shop from a1 to a1/sui generis, widening of front door and new bicycle rack
WDN - 19th July 2010

4/00975/06/FHA - Two storey rear extension
GRA - 28th June 2006

Appeals

4/00868/14/FUL
Appeal allowed - *23rd March 2015*

6. CONSTRAINTS

Area of Archaeological Significance: 21
Canal Buffer Zone: Major
CIL Zone: CIL1
Former Land Use (Risk Zone):
Parish: Berkhamsted CP
RAF Halton and Chenies Zone: Yellow (45.7m)
RAF Halton and Chenies Zone: RAF HALTON: DOTTED BLACK ZONE
Residential Area (Town/Village): Residential Area in Town Village (Berkhamsted)
Residential Character Area: BCA6
SPD Zone 3
EA Source Protection Zone: 3
EA Source Protection Zone: 2
Town: Berkhamsted

7. REPRESENTATIONS

Consultation responses

7.1 These are reproduced in full at Appendix A.

Neighbour notification/site notice responses

7.2 These are reproduced in full at Appendix B.

8. PLANNING POLICIES

Main Documents:

National Planning Policy Framework (February 2019)

Dacorum Borough Core Strategy 2006-2031 (adopted September 2013)

NP1 - Supporting Development
CS1 - Distribution of Development
CS4 - The Towns and Large Villages
CS10 - Quality of Settlement Design
CS11 - Quality of Neighbourhood Design
CS12 - Quality of Site Design
CS13 – Quality of Public Realm
CS27 – Quality of the Historic Environment
CS29 - Sustainable Design and Construction

Dacorum Borough Local Plan 1999-2011 (adopted April 2004)

Policy 13 - Planning Conditions and Planning Obligations
Policy 99 – Preservation of Trees, Hedgerows and Woodlands
Policy 100 – Tree and Woodland Planting
Policy 119 – Development affecting Listed Buildings
Appendix 3 - Layout and Design of Residential Areas

Supplementary Planning Guidance/Documents:

Environmental Guidelines
Parking Standards SPD (Nov 2020)
Roads in Hertfordshire, Highway Design Guide 3rd Edition (2011)

9. CONSIDERATIONS

Main Issues

9.1 The main issues to consider are:

Policy and Principle;
The impact on residential amenity; and
The impact on highway safety and car parking.

Policy and Principle

9.2 Under the saved Dacorum Borough Local Plan (DBLP) Gossoms End Parade is within an established residential area. It does not form part the defined Berkhamsted Town Centre and is well separated from Northchurch Local Centre. In residential areas non-residential development for

small-scale social, community, leisure and business purposes is encouraged, provided it is compatible with its surroundings. The non-residential use as a hot food takeaway is already established following an appeal allowed in 2015. The use is therefore acceptable in principle and the only key consideration relates to the impact of extended trading hours on adjoining residential amenities and the impact on car parking and highway safety.

Impact on Residential Amenity

9.3 The Town Council object to the application as it could lead to undesirable anti-social behaviour and want to avoid unnecessary disturbance to neighbours at night.

9.4 No. 63 Gossoms End objects on grounds that the restaurant has become a centre for anti-social behaviour; that youths hang around and the level of noise and litter is totally unacceptable, and that extended opening hours would exacerbate the nuisance to elderly residents.

9.5 The neighbour also objects on grounds that given the narrow road, and parked cars that effectively reduce the road down to one running lane at this point, and which causes vehicles to have to accelerate from a standstill, would cause increased traffic noise, even just for extended deliveries.

9.6 The immediate neighbour at Gossoms Cottage also objects on grounds of noise and disturbance from the extraction unit, and the increase in customers since 2015, even during the pandemic. He has also raised the issue of litter which despite assurances from the applicant, has allegedly rarely been picked up. He requests that if approval is granted it should lapse at the end of the pandemic.

9.6 The Environmental Health Officer has commented on the application and notes that the extended sales hours will be made by delivery, suggesting a low impact due to noise and disturbance as the premises will close to the public in accordance with the existing permitted trading hours (11.00 to 23.00).

9.7 The EHO notes that this would avoid issues that might be associated with late night trade due to customer noise. He also notes that he is not aware of any history of complaints re noise or odour that suggests that plant / equipment associated with the site would lead to any problems. He recommends that the noise from people congregating can be dealt with by way of a condition to restrict extended hours to delivery only after normal closure. On the matter of nuisance from equipment, he notes from the objector's additional clarification that there is very limited suggestion of problems from extended opening hours, and that problems with odour/noise in the outdoor environment will be from the existing operation.

9.8 Given the extended hours requested relate to deliveries only, and not to visiting customers, it is not considered that there would be any material detriment to residential amenities through additional noise and disturbance. The only disturbance would be from delivery vehicles that pick up and return, which we consider is likely to be on an occasional rather than a continual, non-stop, basis.

9.9 We do not consider that the constricted condition of the road would result in any additional noise from extended hours, especially given limited traffic at those times.

9.10 Litter dropping is unlikely to be an additional problem during these extended hours and as noted by the EHO, noise from extended operation of extraction equipment would not be a significant issue.

9.11 We have requested information from the applicant to understand how deliveries would operate, what vehicles are proposed and where they would park (to rear or front), but have not received a response despite follow up emails and telephone calls.

9.12 Subject to a condition as recommended by the EHO to restrict the extended hours to delivery only, and to a condition requesting details of the arrangements for delivery vehicles that will be put in place, there would be no material detriment to residential amenities and the proposal would therefore accord with Policy CS12.

9.13 Given the reason given for extending hours is due to the Covid 19 situation, it would be recommended that any permission be given on a temporary basis and that the hours should revert to those of the extant permission following its expiry. A period of 18 months is considered reasonable. This would also give the opportunity to monitor the impact on residential amenities and review the permission at the end of the period.

Impact on Highway Safety and Parking

9.13 Concerns have been raised by a neighbour that the frequent parking of delivery vehicles usually/often results in “one way” traffic in the main road and that parking is seldom enough and results in yellow line parking that isn’t enforced, with an overall danger to the elderly, handicapped and children.

9.14 The concerns are noted but the impact of extended delivery hours, especially considering these are at a time when the roads are generally quiet, is not considered likely to result in any material increase in danger that would justify a reason for refusal.

9.15 The Highway Authority has raised no objection to the application in terms of highway safety.

9.16 In terms of car parking, there is a layby to the frontage and if this reaches capacity there is allocated car parking to the rear which is intended to provide 3 staff parking spaces and 2 visitor spaces, including one disabled parking space. However, the proposed extended hours for deliveries will occur at a time when there should be capacity in the layby for delivery vehicle/s. Nevertheless, the arrangements for delivery vehicles are unknown, and therefore should be agreed as part of the suggested condition on delivery vehicles.

Other Material Planning Considerations

9.16 Concerns have been raised by the neighbour to the poor access to, and functionality of, the parking to the rear of the premises to serve the premises, with abandoned vehicles, litter and rubbish confronting anyone wishing to use the area.

9.17 This is noted, and whilst we have queried this with the applicant but not received a reply, this is an existing situation, and not made worse per se by the application to extend hours. Nevertheless it is related to the arrangements for delivery vehicles and where they park and would be covered by the suggested condition seeking further information.

9.18 The Scientific Officer raises no objection in relation to land contamination.

Response to Neighbour Comments

9.19 These points have been addressed above.

Community Infrastructure Levy (CIL)

9.20 The proposal is not CIL liable as it creates no additional floorspace.

10. CONCLUSION

10.1 To conclude, the use is acceptable in this location provided it would be compatible with the surroundings. There would be no material detriment to residential amenity through noise, disturbance, litter, traffic or car parking issues. The EHO raises no objection subject to a condition. The Highway Authority raises no objection on highway safety grounds.

11. RECOMMENDATION

11.1 That planning permission be granted subject to the following conditions:

- 1. The development hereby permitted shall be carried out in accordance with the following approved plans:**

drawings numbered 980/1A and 980/2G and the Sustainable Design and Construction Statement submitted to the Council by email dated 11 June 2014.

Reason: For the avoidance of doubt and in the interests of proper planning.

- 2. The use shall not take place other than between the hours of:**

**11.00 to 23.00 Mondays to Saturdays and
11.00 to 23.00 Sundays**

with the exception of use of the premises in connection with deliveries only which are permitted for a temporary period ending 1st September 2022, to take place between the hours of:

**11.00 to 00,00 Sundays to Wednesdays and
11.00 to 01.00 Thursdays to Saturdays**

Reason: To protect the residential amenities of the locality in accordance with Policy CS12 of the Dacorum Borough Core Strategy (2013) and Paragraph 127 (f) of the National Planning Policy Framework (2019). A temporary period of extended hours is considered appropriate to allow the authority to review the impact on residential amenities at the end of the period given the extended hours would not normally be permitted in this location but regard has been had to the particular circumstances relating to the pandemic.

- 3. The details of equipment to control the emission of fumes and smell from the premises approved under application ref: 4/01657/15/DRC on 29.07.2015 shall be installed, operated and maintained in accordance with those details and the manufacturers instructions.**

Reason: To avoid odour ingress, noise/vibration nuisance and loss of amenity to surrounding properties/premises in accordance with Policy CS12 and CS32 of the Dacorum Borough Core Strategy (2013) and Paragraph 127 (f) of the National Planning Policy Framework (2019).

- 4. The details of measures to improve sound insulation between the unit and the existing first floor flat as approved under application ref: 4/01657/15/DRC on 29.07.2015 shall be installed and maintained in accordance with the approved details and the manufacturer's instructions.**

Reason: To protect the residential amenities of the first floor flat, having regard to Policies CS12 and CS32 of the Dacorum Borough Core Strategy (2013) and Paragraph 127 (f) of the National Planning Policy Framework (2019).

5. **The details of plant and machinery and its operation agreed under application ref: 4/01657/15/DRC on 29.07.2015 shall be installed and maintained in accordance with the approved details and the manufacturer's instructions.**

Reason: To protect the residential amenities of the locality, having regard to Policies CS12 and CS32 of the Dacorum Borough Core Strategy (2013) and Paragraph 127 (f) of the National Planning Policy Framework (2019).

6. **The facilities for the disposal of waste and litter approved under application ref: 4/01657/15/DRC on 29.07.2015 shall be installed and maintained in accordance with the approved details.**

Reason: To safeguard the residential and visual amenities of the locality, protect the environment and prevent obstruction to pedestrian movement in accordance with saved Policy 129 of the Dacorum Borough Local Plan (2004) and Policy CS29 of the Dacorum Borough Core Strategy (2013).

7. **Prior to this permission being implemented the parking spaces shown on drawing 980/G shall be laid out within the site and shall be permanently kept available in a clean and tidy condition to serve the A5 use.**

Reason: In accordance with Policy CS12 of the Dacorum Borough Core Strategy (2013) and Section 9 of the National Planning Policy Framework (2019).

8. **The approved scheme of external lighting under application ref: 4/01657/15/DRC on 29.07.2015 shall be installed before the use hereby permitted begins and thereafter it shall be retained and maintained in full in accordance with the approved details.**

Reason: To ensure that the lighting is designed to minimise problems of glare, protect residential amenity, to minimise impacts on biodiversity and avoid unnecessary light pollution in accordance with Policy 113 of the Dacorum Borough Local Plan 1991-2011 and Para 180 of the National Planning Policy Framework (2019).

Informatives:

1. Planning permission has been granted for this proposal. Discussion with the applicant to seek an acceptable solution was not necessary in this instance. The Council has therefore acted pro-actively in line with the requirements of the Framework (paragraph 38) and in accordance with the Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2015.

APPENDIX A: CONSULTEE RESPONSES

Consultee	Comments
Parish/Town Council	Objection

	<p>The Committee noted an objection received from a neighbour regarding potential noise and anti-social behaviour if the application were to be approved.</p> <p>The Committee objected to the application as it could lead to undesirable anti-social behaviour. The Town Council want to avoid unnecessary disturbance to neighbours late at night and to keep them safe.</p>
<p>Environmental And Community Protection (DBC)</p>	<p>5/01/20</p> <p>Reading back the comments I would advise condition which restricts the operation of the business to delivery only after 22:00. This removes the issue of customers calling at the premises or issues with youths congregating outside. This reflects the nature of the application made to allow late night delivery.</p> <p>There is very limited suggestion of problems from extended opening hours, and problems with odour / noise in the outdoor environment will be from existing operation.</p> <p>29/12/20</p> <p>The detail submitted by the applicant is of a very low standard in terms of plans. However the application suggests the premises will remain closed to the public at 22:00 but is seeking to be allowed to trade until 00:00 Sun - Thu, and 01:00 Fri - Sat.</p> <p>All sales between these times will be made by delivery, suggesting a low impact due to noise, i.e. no customers at the premises or congregating. This would avoid issues that might be associated with late night trade due to customer noise. I am not aware of any history of complaints re noise or odour that suggest plant / equipment associated with the site would lead to any problems. Have the objections from neighbours / town council suggested otherwise that we should be requesting a further survey? If not, then no objection, but condition to restrict to sale by delivery only, or no customers admitted to store after 22:00.</p>
<p>Food, Health & Safety (DBC)</p>	<p>Having reviewed the application submission and the ECP Team records I am able to confirm that there is no objection to the variation of condition 3 (opening hours) in relation to contaminated land.</p>
<p>Hertfordshire Highways (HCC)</p>	<p>Notice is given under article 18 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 that the Hertfordshire County Council</p>

	<p>as Highway Authority does not wish to restrict the grant of permission. No objection from HCC as Highway Authority</p>
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APPENDIX B: NEIGHBOUR RESPONSES

Number of Neighbour Comments

Neighbour Consultations	Contributors	Neutral	Objections	Support
44	2	0	2	0

Neighbour Responses

Address	Comments
<p>62 Gossoms End Berkhamsted Hertfordshire HP4 1DJ</p>	<p>since opening the restaurant has become a centre for anti social behaviour. Youths use it hang around as long as it is open, and the level of noise (and litter) is totally unacceptable. it is situated in a residential area where the neighbourhood is predominantly elderly and extending the open hours will only exacerbate these intrusions.</p> <p>The road narrows at this part of the road, so there is insufficient width for cars to pass vehicles parked outside the shop, so they have to stop and wait, then accelerating causing increase to existing traffic noise. Extending opening hours, even just for deliveries, will make an already truly awful situation far worse.</p>
<p>Gossoms Cottage Gossoms End Berkhamsted Herts HP4 1DF</p>	<p>I have received notice of the above application and must register my objection as the immediate neighbour to "Entreat, 59B Gossoms End.</p> <p>The reasons for my objection are:</p> <p>Noise and disturbance. Since granted in 2015 the noise from both the extraction unit and the customers has increased significantly. Principally of evenings when youngsters congregate even during the pandemic</p> <p>Litter. Assurances were given by the applicant that litter would be collected on a frequent and regular basis. Other than the occasional litter collection vehicle I have never seen anyone clearing the discarded packaging or tin cans. I make it my business to collect from my frontage and a little further east but not in front of number 59B ! I have continually to collect rubbish from my hedge and indeed front garden.</p> <p>Opening hours and Home Deliveries. It is not clear what hours are being sought but 1am is too late!</p> <p>Parking. Gossoms End is certainly the narrowest part of Berkhamsted's extended High Street. The frequent parking of delivery vehicles</p>

usually/often results in "one way" traffic in the main road. There is limited space for parking but seldom enough for vans, lorries and customers. Yellow Line parking is rarely enforced. Overall the danger to the old, handicapped and above all children is very real and I pray there will not be an accident.

Parking. It was claimed that parking was available behind the shop and the parade of shops. Very difficult access and, once in the area one would be confronted by abandoned vehicles, litter, rubbish and a filthy mess.

I have, further more, heard that fines? have been imposed on the cafe by H&C. Hearsay or rumour? I don't know but I would be very unhappy if the application is approved and I would suggest that, in view of the statement that the COVID 19 restrictions are causing the business to struggle, if indeed approval is granted, the permission should lapse at the end of the pandemic, whenever that may be.

I might add that since October a certain amount of work has been undertaken behind the property in question. The "garden" has been fenced but to the rear the public? space remains a mess and a health hazard in as much as I have seen the occasional rat "trespassing" in my garden!

You will gather that the fact of having a take away establishment in Gossoms End has resulted in a real increase in parking particularly in front of my house and driveway.