

SHEFFIELD CITY COUNCIL

PLANNING APPLICATION

14/01031/CHU

PROPOSAL: Application to increase opening hours of cafe to between 0800 hours and 1800 hours (Monday to Friday) and between 0900 hours and 1600 hours (Saturday, Sunday and Bank/Public Holidays) and for the retention of 2 Microwave ovens, 1 safety fat fryer and 1 griddle to be used in the cafe (Application under Section 73 to vary condition 3 (hours of use) and condition 6 (cooking equipment) as per planning permission 13/02171/CHU - Use of dwellinghouse as a restaurant/cafe (Class A3) on the Ground Floor with a flat at first floor level) (Amended description)

ADDRESS: Village News, 176 - 178 Main Street, Grenoside
Sheffield. S35 8PR

INTRODUCTION

Members will recall that this application was scheduled to be reported to the 28 October 2014 Planning and Highways Committee but was withdrawn from the agenda on the advice of the Council's solicitor to allow a new round of neighbour consultation to take place owing to the application not being clear that the proposal included bank/public holiday opening. All properties initially consulted on the application were notified of the proposal to open bank/public holiday by letter on the 29 October 2014.

BACKGROUND

The application relates to 176-178 Main Street in Grenoside. Planning permission was granted in September 2013 to change the use of No. 176, a mid-terrace property from a dwellinghouse (C3) into a restaurant/café (Class A3) on the ground floor with a 2-bedroom flat above both 176-178 (Planning No. 13/02171/CHU refers). The approval was subject to 11 conditions; two of these being the subject of this application, namely 3 (Hours of use) and 6 (Cooking equipment limited to appliances which do not require fume extraction).

Condition 3 states that the café shall be used only between 0845 hours and 1800 hour (Monday to Friday) and between 0900 hours and 1600 hours on Saturdays and shall not be used on any Sunday or any Public Holiday.

Condition 6 states that prior to the commencement of development details of cooking equipment shall be submitted to and approved in writing. Such equipment shall be limited to appliances which do not require fume extraction such as a microwave, bain marie and standard oven. Thereafter the development shall be carried out in accordance with the approved details and any proposed alterations to the cooking equipment used shall be approved in writing by the Local Planning Authority.

The application has been submitted following a complaint being received that the café was operating outside the terms of three conditions (Nos. 3, 6 and 7). Following

investigation of the complaints, the Council served a breach of condition notice on the applicant on the 28 March 2014. Although the date for compliance of the breach of notice has lapsed, it was agreed that the notice be held in abeyance pending a decision on the two applications under consideration at today's meeting, namely 14/01042/FUL and 14/01031/CHU.

LOCATION AND PROPOSAL

The application is a mid-terraced property which forms one of three traditional stone cottages located within the Grenoside Conservation Area. The property is within the same ownership as the adjoining unit No.178 which is in use as a newsagents/local convenience store (A1) at ground floor. Access to the café is taken through the adjoining shop only with no separate entrance from Main Street.

The surrounding area is predominantly residential but is interspersed with commercial units including public houses and small local shops. The site and surrounding area is designated as a Housing Area as identified in the adopted Sheffield Unitary Development Plan.

The applicant is seeking retrospective approval to vary Conditions 3 and 6 in order to increase opening hours of the café to between 0800 hours to 1800 hours (Monday to Friday) and 0900 hours and 1600 hours on Saturdays, Sundays and Bank Holidays and allow the use of 2 Microwave ovens, 1 safety fat fryer and one griddle for the cooking of hot food with external extraction system.

Members are informed that the applicant is seeking to open on Bank Holidays despite this not being set out in the planning application form.

The application has been made under Section 73 of the T&CPA 1990 which allows applicants to vary conditions in order to make material amendments to approved schemes without the need to make a full planning application.

In addition to this Section 73 application, Members are informed that an application (Planning reference No. 14/01042/FUL) to reposition an unauthorised refrigeration unit to the rear of the adjoining shop's single storey rear off-shot is also being reported to this Planning and Highways Committee.

RELEVANT PLANNING HISTORY

13/02171/CHU - Use of dwellinghouse as a restaurant/cafe (Class A3) on the Ground Floor with a flat at first floor level (as amended plans received 27/08/13) – Granted 26/09/13

11/03753/FUL – Retention of solar PV panels – Granted 2 February 2012

07/02518/FUL – Erection of detached dwellinghouse – Refused

03/04087/FUL – Single-storey rear extension to shop – Granted conditionally

SUMMARY OF REPRESENTATIONS

A petition with 200 signatures in support of the proposal was submitted with the application. A further petition with 725 signatures was submitted in support of the café to open Sundays with outdoor seating.

In total, 44 letters have been received in response to this application from the residents of thirty properties. Of these, the residents of nineteen properties (19) are in support of the proposal and eleven (11) against. Representations have also been received from Ecclesfield Parish Council, Grenoside Conservation Society and Angela Smith MP.

A summary of all comments received are listed below:

Support

- The café is in the middle of the village and is an ideal meeting place for family and friends. It is a much needed service within the village community;
- The café will help to attract people from outside of the village, especially walkers and cyclists;
- Good for the local economy;
- Café is what is needed on Sundays with people wishing to go after the church service at St Marks;
- Have not experienced any problems with noise disturbance or parking in connection with the café;
- The café is an attractive and inviting place;
- The café is a good alternative to the village's local pubs.

Object

- The applicant operates the development with scant regard to planning and is in breach of several conditions. This is in direct contravention SCC guidelines, which state that 'appropriate extraction should be fitted before the installation of equipment such as deep fat fryers';
- Loss of amenity for amenity of neighbouring properties in terms of noise disturbance and odours/smells;
- Highway safety; parking in the area has significantly increased owing to the café and is often illegal;
- Inappropriate and unnecessary development within a Conservation Area;
- Only 1 or 2 of the people listed on the petition made in support of the application live near the site;
- Of concern is the applicant's future plans to open an outdoor area at the rear of the property, which will reduce privacy for neighbouring properties;
- Development will not enhance or preserve the character or appearance of the Conservation Area;
- The garden area to the rear of the property should only be used by the residents of the first floor flat;
- Incomplete and inconsistent documentation/application form;
- Sunday and bank Holidays should be times when residents are able to enjoy their quality of life.
- It would be beneficial for Committee Members to visit the site to assess the impact on residents.
- Even if approved, the applicant will take no notice of any restrictions imposed.

Ecclesfield Parish Council is in full support of the objections raised. They comment that the applicant has breached several conditions imposed when the previous application was granted, residents have experienced problems with vehicles being illegally parked on double yellow lines close to their driveway and that they are concerned that the applicant may also apply for outdoor seating when there is a condition imposed stating that there should be no outdoor seating as it would cause a loss of privacy for neighbouring residents. Also, Ecclesfield Parish Council is also concerned with the large advertising signs that have been displayed outside the café and the fence/gates that has been erected to the side of the property 'blocking off' land that is not within the applicant's ownership, within which is a skip, all of which is not in-keeping within the Conservation Area.

Grenoside Conservation Society objects to the application. They comment that the permission for the café was granted with reasonable conditions to protect the environment of his neighbours and Grenoside Conservation Area. The increased opening hours will exacerbate the problems already occurring. This will mean that the café will become more antisocial with increased parking problems, increased noise from traffic, people movement, machinery noise (from the refrigeration unit) and cooking smells. There are already problems with customers parking on the pavement and on double yellow lines causing pedestrians to walk on the road.

The proposal to open on Bank/Public holidays would mean that the café can open every day of the year giving no reprieve from the problems listed.

Angela Smith MP has written in on behalf of a number of her constituents. She states that the café has been fitted with an extraction system to extract cooking smells from the kitchen, which is in contravention to the conditions imposed when planning permission was granted for the café. The same permission also states that no externally mounted plant or equipment for the heating, cooling or ventilation should be fitted to the building without the prior written agreement of the LPA. In addition to this, the café has also been opening longer than is permitted under its planning consent. By doing so, this has resulted in local people being subject to cooking smells from when the café opens until its closes in the evening.

The MP also makes comment on the applicant's proposal to use the area to the rear of the café as an outdoor seating area, which also would be in breach of planning. Concerned that very little notice was been given to the amendment to the application.

PLANNING ASSESSMENT

Principle of Development

The use of the property's ground floor as a café/restaurant was approved in September 2013, under planning No. 13/02171/CHU. It is not for this application to revisit whether the use of the premises as a café (A3) is acceptable as this has been found acceptable.

Residential Amenity Issues

Policy H14 relates to development in Housing Areas. At Part k of this policy, it states that new development or change of use will be permitted provided that it would not lead to air pollution, noise or smell, excessive traffic levels or other nuisance for people living nearby.

The use as a café in close proximity to residential dwellings has the potential to cause noise and odour issues that would be detrimental to the enjoyment of neighbouring properties' residential amenity. In this instance there is an adjoining residential property at No.174, residential accommodation directly above the unit and several dwellings in the immediate locality, the closest being 180 Main Street and 17b Lump Lane.

When considering the merits of the earlier application to change the use of the premises into a café, officers considered it appropriate to restrict the hours of use and limit the type of cooking that could be carried out on the premises owing to the proximity of neighbouring properties. The hours of use were therefore restricted under Condition 3 to 0845 and 1800 hours (Monday to Friday) and 0900 and 1600 (Saturdays) with no opening on Sundays and Condition 6 limited cooking equipment to appliances which do not require fume extraction such as a microwave, bain marie and standard oven. Subject to these two conditions being attached, it was considered by officers that the proposed use would not result in any significant noise disturbance or odours that would be harmful to the residential amenity of neighbouring properties.

Although the conditions imposed by the LPA placed restrictions on the use, the conditions reflected closely to what the applicant was seeking in terms of the nature of the café and its opening hours. Despite this, the applicant has been operating the café breach of both conditions; opening outside the specified hours and cooking foods that require fume extraction. Once officers were made aware of the breaches, the applicant was advised to apply for planning permission to vary the two conditions to allow for extended opening times including Sunday opening and to allow the use of a safety fat fryer and cooking griddle and provision of new external fume extraction.

An assessment of the two conditions with regard to residential amenity is discussed below:-

Condition No. 3

As detailed above, the café has approval to open between the hours of 0845 and 1800 hours (Monday to Friday) and 0900 and 1600 hours (Saturday). The applicant is seeking approval to extend the opening times of the café to 0800 and 1800 hours (Monday to Friday) with Sunday and Bank/Public Holiday opening between 0800 and 1600 hours. From the above, the applicant is therefore seeking approval to increase the opening hours of the café by an additional 45 minutes in the morning (Monday to Friday), with new Sunday and Bank/Public Holiday opening. Saturday openings would remain unchanged (0900-1600 hours)

In officers' opinion, it is not considered that the proposal to increase the opening times of the café proposed for Mondays to Friday would unduly harm the residential amenity of neighbouring properties. Officers also support the applicant's proposal to allow the café to open on Sundays and Bank/.Public Holidays, although as recommended by Environmental Protection Services (EPS) on these days as on Saturdays, the hours of the café be limited to 0900 to 1600 hours only. These revised opening times are considered acceptable and have been recommended on the advice of EPS. Although the hours of use are more restrictive than what was requested by the applicant in his application, he has confirmed through his agent (e-mail dated 13 October 2014) that he would accept the reduced opening hours in line with the advice of EPS.

Any increase in opening hours has the potential to cause disamenity to neighbouring properties. However, in this instance, it is considered that any increase activity within these hours is unlikely to generate any significant noise disturbance to the detriment of neighbouring properties' amenity. In coming to this view, officers have given significant weight to the fact that there is no restriction on opening times of the adjoining newsagent, the size of the café and importantly, the fact that access into the café is taken through the shop only. Any increase activity and noise that is solely related to the increase in the café's opening hours is likely to be minimal and not harmful to neighbouring properties' residential amenity.

Condition No. 6

The applicant is seeking approval to vary Condition No. 6 in order to allow a safety fat fryer and griddle with fume extraction to be used at the café. At present, odours from the use of the cafe are being dispersed by an extraction hood that terminates above the property's single storey rear off-shot. The type and location of the extraction is considered to be unsatisfactory and does not provide adequate dispersion of fumes and odours to avoid occupants of immediate neighbouring properties to be subject to some loss of amenity. The applicant has informed officers that he is currently cooking a wide range of hot foods but the termination point of his existing fume extract is currently at ground floor roof level which is below the windows of surrounding residential properties and is an unsuitable location for this type of cooking.

EPS have stated that the most effective means for minimising cooking odours is to extend the height of the fume extract above the windows of nearby residential properties and to incorporate a suitable filter system. An assessment of the layout and height of the building at 176-78 Main Street in relation to surrounding residential properties shows it is necessary for the fume extract to terminate at a minimum height of one metre above the eaves of the property.

On the advice of EPS, the applicant has agreed to install a new fume extraction system that would terminate a minimum of 1m above the eaves of the property. The details of the proposed fume extract system are shown on Drawing No. P14-034:02 (March 2014). This drawing has been inspected by EPS who have confirmed that the proposed location of the fume extraction is located in a satisfactory position to achieve the adequate dispersion of fumes and odours to avoid any significant disamenity to neighbouring properties. EPS are satisfied that the proposed cooking of hot food at these premises could be carried out without causing any significant nuisance/disamenity at nearby properties providing a suitable fume extraction and filtration system is installed.

Although these measures are effective in minimising the impact of odours on nearby residential properties (and are required for majority of hot food premises) it is not possible to remove all odours from the cooking process and the dispersion of fumes can be affected by local weather conditions. It is therefore likely that residents living nearby to 176-178 Main Street will at times experience some odours but, given the proposed measures, in officers' opinion, it would not be at a level that would lead to significant disamenity or a statutory nuisance.

Should any complaints arise from residents affected by odours from the cooking of hot food it is necessary for the business owner to demonstrate they are not causing a 'statutory nuisance' under the Environmental Protection Act 1990. A defence against

'statutory nuisance' action is to demonstrate that the 'best practicable means' to minimise odours are implemented which in normal circumstances would be the measures outlined above.

Officers have been informed that despite the large number of hot food takeaways/restaurants in Sheffield the number of complaints received by EPS relating to odours is very small and these normally occur when the termination point of the flue extract is too low although residents may be more sensitive to cooking odours when living in an area when no other hot food premises are located in the vicinity.

Subject to a new fume extraction and filtration system being installed that terminates at a minimum of 1m above the eaves of the property, it is considered that any effect on the residential amenity of neighbouring properties from odours emanating from the café would be minimal. Given that the café is already in use, should Members be minded to grant planning permission, it is recommended that the rewording of Condition 6 include a timeframe for when the extraction system should be installed on this building. Given the time that has already lapsed since the initial breach, it is recommended that details of the extraction system be provided within 4 weeks of the date of this decision and then installed on the building within 4 weeks from the details being approved.

Highway Issues

In the planning assessment of the previous application, officers were satisfied that the proposed development would not result in any significant impact on on-street parking that would be detrimental to highway safety.

While officers accept that no off-street parking is provided in connection with the use, the adjoining highway benefits from a relatively high level of on-street parking that can absorb any demand for on-street parking without result in any concerns over highway safety. On-street parking is available directly to the front of the site and to the north with restrictions only to the west side of Main Street by double yellow lines. Given the small scale nature of the café and the fact that there is a large residential population within walking distance of the café, any impact of the proposal to increase the café's opening hours, including Sunday opening is unlikely to materially increase parking problems in the area that would be detrimental to highway safety.

The concerns raised with regard to illegal parking are not a matter for this application and should be disregarded.

Effect on the character and appearance of the Conservation Area

UDP Policy BE16 relates to development in Conservation Areas. This policy details that in Conservation Areas, permission will only be given for development including change of use applications which contain sufficient information to enable their impact to be judged acceptable and preserve or enhance the character or appearance of the Conservation Area.

The only element of the development which would have any effect on the Conservation Area is the proposed extraction flue. The amended plans show that the proposed extraction flue would be fixed up against the rear elevation of the building

and extend 1m above its eaves. The width of the ducting would be only 300mm at the point above the building's eaves and would be painted black.

Given the proposed siting of the flue to the rear of the building, any impact of the development on the character and appearance of Grenoside Conservation Area is likely to be minimal. It is considered therefore that the development would accord with UDP Policy BE16.

Other issues

Several concerns have been raised with the applicant's proposal to use part of the property's rear garden curtilage for outdoor seating in connection with the café. On the issue of outdoor seating, officers are aware that the applicant has placed three tables with twelve chairs on the hardstanding immediately to the rear of the building. Despite being advised that planning permission would be required to provide outdoor seating the applicant has on occasion allowed customers to use this area. Following discussions with officers, the applicant has submitted an application seeking the provision of outdoor seating to the immediate rear of the café. As the planning merits of the outdoor seating is being considered under a separate application, any comments raised regarding the outdoor seating under this Section 73 application should be disregarded.

Other concerns raised by some of the complainants relate to the land to the side of No. 178. They are concerned that this land, which is not within the ownership of the applicant has been effectively 'claimed' by the applicant and has been enclosed by 1m high timber fence/gates at either end; one to Main Street and the other to the south western corner of a neighbouring property garden curtilage (17b Lump Lane). At the time of officers' site visit, this land was being used for storage by the applicant.

Members are advised that land ownership is not a material consideration for the purposes of planning control. While it is accepted that the applicant has erected 1m high timber gate/fencing at either end of the land, which in part has restricted access for the neighbour of 17b Lump Lane to Main Street, the gates are permitted by Class A (Part 2) of the Town and Country Planning (General Permitted Development) Order 1995 and do not require planning permission. The use of the land by the applicant for storage is not considered to have any adverse effect on the character or appearance of the Conservation Area.

SUMMARY AND RECOMMENDATION

The application relates to 176-178 Main Street in Grenoside. Planning permission was granted in September 2013 to change the use of the property from a dwellinghouse (C3) into a restaurant/café (Class A3). This was granted subject to eleven conditions, under planning reference No. 13/02171/CHU.

The applicant is seeking approval to vary two of these conditions (Nos. 3 and 6) to extend the café's opening hours between 0800 hours and 1800 hours Monday to Friday and 0800 hours and 1700 hours on Saturday, Sunday and Bank Holidays and also allow the use of 1 safety fat fryer and one griddle with external fume extraction.

It is considered that for the reasons outlined in the report, the proposal to increase the opening hours of the café is acceptable and would not unduly harm the residential amenity of neighbouring properties in terms of increased noise

disturbance. Although the applicant is seeking to open longer opening hours on Sundays and Bank Holidays, the hours sought are considered unreasonable and instead, it is recommended that this be amended to between 0900 and 1600 hours.

It is also considered that the residents of neighbouring properties would not be unduly harmed by the proposal from unacceptable odours to allow the use of 2 Microwave ovens, a safety fat fryer and one griddle at the café subject to the fume extraction system terminating 1m above the eaves of the property and the use of a low resistance cowl, full details of which to be submitted for approval by the LPA.

For the reasons set out in the report, it is considered that the proposal would satisfy UDP Policies H10, H14, BE5, BE16. It is therefore recommended that the application be approved with Condition Nos. 3 and 6 be reworded as follows:-

Condition No. 3

The building shall be used for the above-mentioned purpose only between 0800 hours and 1800 hours (Monday to Friday) and between 0900 hours and 1600 (Saturday, Sunday and Bank Holidays).

The hours of use, as set out above, shall not be brought into use until the equipment specified in the approved ventilation scheme, as set out in condition No. 6, to control the emission of fumes and odours from the premises, has been installed. The LPA shall be informed of this on completion of the installation.

Reason: In the interests of the amenities of the locality and occupiers of the adjoining properties

Condition No. 6

A scheme for the installation of equipment to control the emission of fumes and odours from the premises shall be submitted for written approval by the Local Planning Authority within 4 weeks from the date of this approval. These details shall include plans showing the location of the fume extract terminating a minimum of 1m above the eaves of the building and shall include a low resistance cowl, and all appliances to be used for the cooking of hot food.

The extraction system shall be installed within 4 weeks of the details being approved and thereafter retained.

Reason: In the interests of the amenities of the locality and occupiers of the adjoining properties

As a consequence of amending Condition No. 6, Members are advised that Condition No. 2 (Schedule of drawings) will also need to be changed to account for the drawings received in connection with this application. Also, Condition No. 1, which requires the use to commence within 3 years from the date of the earlier permission (26 September 2013) has been met, and therefore this condition should be removed from any subsequent planning approval. The other seven conditions that were attached to the September 2013 approval continue to apply to the development and should again be attached to the new planning approval.

