

17 OCTOBER 2017 PLANNING COMMITTEE

5b 17/0726 Reg'd: 23.06.17 Expires: 18.08.17 Ward: HO
Nei. 11.08.17 BVPI Change of Number 17/8 On No
Con. Target Use - 20 of Weeks Target?
Exp: on Cttee'
Day:

LOCATION: Patches of Horsell, 80 High Street, Horsell, Woking, GU21 4SZ

PROPOSAL: Proposed variation of Condition 5 (restriction on outdoor seating) and Condition 4 (opening hours) of permission ref: PLAN/2015/1384 for the erection of two storey side and rear extension and change of use from Class A1 (retail) to Class A3 (restaurant/café) (Amended Proposal)

TYPE: Section 73 Application – Variation of Conditions

APPLICANT: Ms Sarah King

OFFICER: David Raper

REASON FOR REFERRAL TO COMMITTEE:

The Development Manager has referred this application to Planning Committee.

PLANNING STATUS

- Urban Area
- Horsell Local Centre
- Thames Basin Heaths SPA ZoneB (400m-5km)

RECOMMENDATION

GRANT consent for the variation of Conditions 4 and 5.

SITE DESCRIPTION

The proposal relates to a two storey semi-detached Victorian property on High Street in Horsell. The property is in use as a café with seating areas both upstairs and downstairs. Outside seating areas exist to the front and rear. The site forms part of the designated Horsell Local Centre which is characterised by two storey buildings of varying ages and styles with various A1, A2 and A3 uses at ground floor level. The proposal site does not benefit from any off-street parking or vehicular access. The nearest residential neighbours are at first floor level in Allerford House adjacent to the site and Scillonia Cottage on Manor Road backs onto the site to the rear and is positioned approximately 11m from the rear boundary of the proposal site.

PLANNING HISTORY

- PLAN/2015/1384 - Proposed two storey side and rear extension and change of use from Class A1 (retail) to Class A3 (restaurant/café) – Permitted
- PLAN/1993/0985 - Change of use of first floor from flat to ancillary storage in connection with ground floor shop – Permitted

17 OCTOBER 2017 PLANNING COMMITTEE

- 82/0299 - Change of use to shop - Permitted

PROPOSED DEVELOPMENT

Proposed variation of Condition 5 (restriction on outdoor seating) and Condition 4 (opening hours) of permission ref: PLAN/2015/1384 for the erection of two storey side and rear extension and change of use from Class A1 (retail) to Class A3 (restaurant/café). The conditions currently read as follows:

Condition 4:

The premises hereby approved shall not be open to customers outside of the following hours:

Monday to Friday 7:30am to 18:00pm

Saturday 8:00am to 17:30pm

Sunday 9:00am to 16:00pm

Reason: To protect the environment and amenities of the occupants of neighbouring properties in accordance with Policy CS21 of the Woking Core Strategy 2012.

Condition 5:

Notwithstanding any indication otherwise given by the approved plans, the external courtyard area to the rear of the building shall not be used at any time as customer seating or for the consumption of food or drink from the premises.

Reason: To protect the amenities of neighbouring occupiers in accordance with Policy CS21 of the Woking Core Strategy 2012.

CONSULTATIONS

- **Environmental Health:** No objection to revised opening hours or variation of condition restricting use of outdoor seating area.

REPRESENTATIONS

11x representations received objecting to the proposal, including one from the Horsell Residents Association, raising the following concerns:

- Use of the seating area and extended opening hours would lead to an unacceptable neighbour amenity impact from noise disturbance
- The applicant has ignored Condition 5 by using the rear courtyard as a seating area
- The consumption of alcohol on the premises and in the external seating areas would cause noise disturbance in the evening hours
- The rear seating area is out of character with the area
- The proposal would worsen the parking situation in the area
- The premises is described as a 'Café/Wine Bar' which could be an A4 use rather than an A3 use

(Officer note: the approved use of the premises is A3 (restaurant/café); a change of use to a drinking establishment or a mixed use would require planning permission. Whilst Officers are satisfied that the premises is within A3 use, the applicant can be reminded of the above by informative)

RELEVANT PLANNING POLICIES

National Planning Policy Framework (NPPF) (2012):
Section 2 – Ensuring the Vitality of Town Centres

Woking Borough Core Strategy (2012):
CS1 – A Spatial Strategy for Woking Borough
CS4 – Local and Neighbourhood Centres and shopping parades
CS21 – Design

Development Management Policies DPD (2016):
DM7 – Noise and Light Pollution

BACKGROUND:

The original proposal included the removal of Condition 5 (restriction on outdoor seating area) altogether and the variation of Condition 4 (restriction on opening hours) as follows:

Monday to Friday 07.30 am to 23.30 pm
Saturday 08.00 am to 00:30 am
Sunday 9.00 am to 16.00 pm

Following discussions with the applicant it was considered appropriate to amend the proposal to vary the opening hours as follows:

Monday to Friday 07.30 am to 23.00 pm
Saturday 08.00 am to 23:30 pm
Sunday 9.00 am to 16.00 pm

The revised proposal also retains Condition 5 but seeks to vary the condition to limit the hours of use of the seating area to the following:

Monday to Friday 7:30am to 18:00pm
Saturday 8:00am to 17:30pm
Sunday 9:00am to 16:00pm

The proposal has been assessed on this basis.

PLANNING ISSUES

1. Planning permission was granted on 11/02/2016 under application ref: PLAN/2015/1384 for the change of use of a retail unit (A1 use) to a restaurant/café (A3 use). The permission was granted subject to conditions. Condition 4 restricted the opening hours and reads as follows:

The premises hereby approved shall not be open to customers outside of the following hours:

*Monday to Friday 7:30am to 18:00pm
Saturday 8:00am to 17:30pm
Sunday 9:00am to 16:00pm*

Reason: To protect the environment and amenities of the occupants of neighbouring properties in accordance with Policy CS21 of the Woking Core Strategy 2012.

17 OCTOBER 2017 PLANNING COMMITTEE

2. The application was resolved to be granted at the 09/02/2016 Planning Committee however the Committee also added the following Condition (Condition 5) due to concerns about the potential impact on adjoining occupiers from outdoor seating areas to the rear:

Notwithstanding any indication otherwise given by the approved plans, the external courtyard area to the rear of the building shall not be used at any time as customer seating or for the consumption of food or drink from the premises.

Reason: To protect the amenities of neighbouring occupiers in accordance with Policy CS21 of the Woking Core Strategy 2012.

3. The current proposal seeks to vary the approved opening hours and Condition 5 to allow the use of the outdoor seating area within certain times. The rear courtyard area has been landscaped and tables and chairs have been placed to the side and rear of the premises and it is understood that the seating area has been used since May 2017. The courtyard is therefore being used in breach of Condition 5. It is also noted that condition 9 (cycle parking) was never formally discharged; it is considered that this can be remedied by re-wording this condition to require submission of details within 3 months (Condition 3). Condition 8 (external plant) was also not discharged however the Council's Environmental Health team are satisfied that this condition is no-longer required.
4. The potential impacts on the amenities of neighbours as a result of the proposed variation of these conditions is therefore the key consideration under this application as set out below:

Condition 4 - Opening Hours:

5. The approved opening hours of the existing café is as follows:

Monday to Friday 7:30am to 18:00pm
Saturday 8:00am to 17:30pm
Sunday 9:00am to 16:00pm

6. The condition was applied in order to protect the amenities of neighbouring occupiers and was in accordance with the opening hours requested by the applicant at the time. The applicant is now proposing to vary the opening hours as follows:

Monday to Friday 07.30 am to 23.00 pm
Saturday 08.00 am to 23:30 pm
Sunday 9.00 am to 16.00 pm

7. The proposed opening hours would therefore result in the premises closing five hours later Monday-Friday and six hours later on Saturdays compared to the approved hours. Sunday opening hours would remain unchanged. The applicant has indicated that they wish to utilise the later opening hours on a limited number of days per year and wish to have the flexibility in the condition to allow for later opening hours. Nonetheless it is necessary to assess the proposal as a permanent change to the opening hours of the premises. There are various A3 (restaurant/café) and A5 (Take Away) uses on Horsell High Street which have closing hours which are consistent with the proposed hours such as the Beijing restaurant at No.95-99 High Street opposite the site (23:00pm), Balaka at No.105 High Street (23:00pm Sun-Thurs & 23:30pm Fri & Sat), Squisito (23:00pm Mon-Sat & 22:00pm Sun) and China Chef at No.94 High

17 OCTOBER 2017 PLANNING COMMITTEE

Street (23:30pm Mon-Fri and 22:00 Sun). The proposed opening hours would be consistent with the opening hours of other similar premises in the surrounding area and are considered acceptable opening hours for the context of the proposal site. The Council's Environmental Health Department raises no objection to the proposed opening hours. The proposed opening hours are therefore considered to have an acceptable impact on the amenities of adjoining neighbours and it is considered acceptable to vary the opening hours condition accordingly. The proposal therefore accords with Core Strategy (2012) policy CS21 which seeks to avoid a 'significant harmful effect' on neighbouring properties.

Condition 5 - Outdoor Seating Area:

8. The applicant originally applied to remove Condition 5 which prevents the use of the area to the rear of the building as outdoor seating for customers. The area to the rear of the building has been landscaped with hard and soft landscaping and there are around 8x tables placed to the side and rear of the premises. The Council's Environmental Health Department raises no objection to the use of the seating area from a statutory noise nuisance perspective however the general amenity impact of the development is also a consideration.
9. There are residential neighbours at first floor level in Allerford House adjacent to the site and Scillonia Cottage backs onto the site to the rear and is positioned approximately 11m from the rear boundary of the proposal site. Other neighbours on Manor Road also back onto the site. The rear courtyard area has been enclosed with replacement fencing approximately 1.8m in height and soft landscaping planted. It is acknowledged that outdoor seating areas used in connection with A3 uses can generate undue noise disturbance. It is however considered reasonable in a high street location to have an element of outdoor seating and the nature of an A3 use is not considered to generate significantly harmful sources of noise and disturbance. It is acknowledged however that use of the seating area for the hours proposed as the business opening hours could generate noise disturbance in the more sensitive evening hours (18:00-23:00pm). It is considered that if the hours of use of the seating area are restricted then this would adequately control the use of the seating area and avoid an unacceptable impact on neighbour amenity. It is however considered appropriate to limit this arrangement to a trial period of 12 months. This would allow the LPA to review the situation in a year's time at which point it would be determined whether it is necessary to retain the original restrictive condition. It is therefore recommended that Condition 5 is varied to restrict the use of the seating area to the existing permitted opening hours of the premises for a period of 12 months as follows:

For a period of 12 months commencing from the date of this permission, the external seating area to the side and rear of the premises shall not be used as customer seating or for the consumption of food or drink from the premises outside of the following hours:

Monday to Friday 7:30am to 18:00pm

Saturday 8:00am to 17:30pm

Sunday 9:00am to 16:00pm

On the expiry of a period of 12 months from the date of this permission, the external courtyard area to the side and rear of the building shall not be used at any time as customer seating or for the consumption of food or drink from the premises unless otherwise agreed in writing by the Local Planning Authority.

17 OCTOBER 2017 PLANNING COMMITTEE

Reason: To protect the environment and amenities of the occupants of neighbouring properties in accordance with Policy CS21 of the Woking Core Strategy 2012.

10. Subject to the above condition, the use of the side and rear of the premises for outdoor seating is not considered to result in an unacceptable impact on neighbouring amenity and the temporary nature of the condition would allow the LPA to review the situation in a year's time.

CONCLUSION

11. Considering the points discussed above, the proposed variation of Condition 4 to allow later closing times and the variation of Condition 5 to allow the use of the outdoor seating area within restricted hours for a temporary period of one year, is considered to result in an acceptable impact on the amenities of surrounding neighbours. The proposal therefore accords with the Development Plan and is recommended for approval.
12. As this is a Section 73 application, it is necessary to re-apply or re-word the conditions attached to the original permission (PLAN/2015/1384) where they are still relevant.

BACKGROUND PAPERS

1. Site visit photographs
2. Consultation response
3. Representations

RECOMMENDATION

PERMIT subject to the following conditions:

1. The development hereby permitted shall be carried out in accordance with the approved plans listed below:

P-1 Rev.A received 16/12/2016
P-2 Rev.A received 16/12/2016
S-6 received 16/12/2016

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

2. The first floor windows in the east-facing side elevation of the development hereby permitted shall be glazed entirely with obscure glass and non-opening unless the parts of the windows which can be opened are more than 1.7 metres above the finished floor level of the room in which the windows are installed. Once installed the windows shall be permanently retained in that condition unless otherwise agreed in writing by the Local Planning Authority.

Reason: To safeguard the amenities of the adjoining properties in accordance with Policy CS21 of the Woking Core Strategy 2012.

3. ++ Within 3 months of the date of this decision, details of secure cycle parking for a minimum of two bicycles shall be submitted to and approved in writing by the Local Planning Authority. These facilities shall be fully implemented and made available for

17 OCTOBER 2017 PLANNING COMMITTEE

use within 6 months of the date of this decision and shall thereafter be retained for use at all times.

Reason: To ensure that satisfactory facilities for the parking of cycles are provided and to encourage travel by means other than the private car in accordance with the principles set out in paragraph 17 of the National Planning Policy Framework 2012 and Policy CS18 of the Woking Core Strategy 2012.

4. The premises hereby approved shall not be open to customers outside of the following hours:

Monday to Friday 07.30 am to 23.00 pm
Saturday 08.00 am to 23:30 pm
Sunday 9.00 am to 16.00 pm

Reason: To protect the environment and amenities of the occupants of neighbouring properties in accordance with Policy CS21 of the Woking Core Strategy 2012.

5. For a period of 12 months commencing from the date of this permission, the external seating area to the side and rear of the premises shall not be used as customer seating or for the consumption of food or drink from the premises outside of the following hours:

Monday to Friday 7:30am to 18:00pm
Saturday 8:00am to 17:30pm
Sunday 9:00am to 16:00pm

On the expiry of a period of 12 months from the date of this permission, the external courtyard area to the side and rear of the building shall not be used at any time as customer seating or for the consumption of food or drink from the premises unless otherwise agreed in writing by the Local Planning Authority.

Reason: To protect the environment and amenities of the occupants of neighbouring properties in accordance with Policy CS21 of the Woking Core Strategy 2012.

6. ++ No fixed plant and equipment associated with air moving equipment, compressors, generators or plant or similar equipment shall be installed until details, including acoustic specifications have been submitted to and approved in writing by the Local Planning Authority. Any plant shall thereafter be installed and maintained in accordance with the agreed details.

Reason: To protect the environment and amenities of the occupants of neighbouring properties in accordance with Policy CS21 of the Woking Core Strategy 2012.

7. ++ No sound reproduction equipment which conveys messages, music or other sound by voice or otherwise which is audible outside the premises shall be installed on the site without the prior written consent of the Local Planning Authority.

Reason: To protect the environment and amenities of the occupants of neighbouring properties in accordance with Policy CS21 of the Woking Core Strategy 2012.

17 OCTOBER 2017 PLANNING COMMITTEE

Informatives

1. The Council confirms that in assessing this planning application it has worked with the applicant in a positive and proactive way, in line with the requirements of paragraph 186-187 of the National Planning Policy Framework 2012.
2. The applicant is reminded that the approved Use Class of the property is A3 (Restaurant/Café). Any change of use to other uses such as a drinking establishment (A4 Use) would require planning permission.