

Application Number

P/2015/0103

Site Address5-7 Ilsham Road
Torquay
Devon
TQ1 2JG**Case Officer**

Mrs Ruth Robinson

Ward

Wellswood

Description

Variation of condition 7 pursuant to P/2014/0827 (2 new Dwellings and Change of use from A3 (Restaurants & Cafes) to A1 (Shop) and also from part,C3 (Dwelling house) to A1 (Shop)) - hours of operation of shop.

Executive Summary/Key Outcomes

5 and 7 Ilsham Road comprise an adjoining Restaurant (A3) and Shop (A1) within an established Local Shopping Centre with a flat and small office suite above.

Planning permission was granted by DMC at its meeting of the 13th October 2014 for a range of works to these premises to provide 4 residential units and for works to the ground floors of both No5 and 7 Ilsham Road to provide a larger retail unit.

This was approved subject to a number of conditions and submission of additional material in relation to the plant and extract systems only.

In terms of the operation of the shop, the only conditions considered by DMC related to hours of servicing of the unit.

There were no conditions included in the Officer report nor requested by DMC relating to the hours that the shop itself could operate.

In issuing the Decision Notice, in view of continuing local concern, a view was taken that some control of the operating hours of the shop would be beneficial and a condition restricting operation of the unit to between the hours of 8.00am and 22.30 hours daily was included.

The Council's solicitor advises that the imposition of condition 7 was 'ultra vires' as the Committee's decision to approve the application did not include a condition to restrict the operating hours of the shop.

As such, the condition is susceptible to challenge through judicial review. A successful challenge could result in it being struck out and could render the Council liable for costs.

The applicant is however amenable to some degree of control but requires an additional hour in the morning and an extra 30 minutes in the evening. He has thus applied to vary the 'unlawful' condition.

If the current application is approved the Council will retain control over hours of operation which will protect the amenity of local residents. The Council would not have had such control if the Decision Notice had been issued as originally considered by DMC Members.

In view of this, it is recommended that the application be approved.

Recommendation

That the condition be varied to allow operation of the shop between the hours of 7.00 and 23.00 daily.

Statutory Determination Period

The 8 week determination date is 3rd April 2015.

Site Details

Numbers 5 and 7 Ilsham Road form part of the Wellswood Local Shopping Centre. They are identified as key buildings within the Lincombes Conservation Area which form part of a building group of architectural importance which make a significant contribution to townscape.

There are residential properties above and to the rear along Kents Lane. Ilsham Primary school is located opposite.

Planning permission was granted in October 2014 for a range of works to these premises to provide 4 residential units and for works to the ground floors of both No5 and 7 Ilsham Road to provide a larger retail unit.

Detailed Proposals

This application seeks to vary condition 7 pursuant to P/2014/0827. This specified that the operation of the shop was restricted to between the hours of 8.00am to 22.30 hours daily. An extension of an hour in the mornings and 30 minutes in the evening is sought.

Summary Of Consultation Responses

The Councils Solicitor Advises that the imposition of condition 7 was ultra vires as the formal decision to approve the application did not include a condition to restrict the operating hours of the shop.

Summary Of Representations

Numerous public representations have been received. Many of the letters appear to be objecting to the principle of a supermarket being established on the site rather than specifically addressing the variation to condition 7. The balance of representations related to the additional noise and disturbance likely to arise from the extended hours of operation.

These representations have been sent electronically to Members for their consideration.

Relevant Planning History

- P/2014/0328: Change of use of the upper floor of No 7 Ilsham Road from B1 to Residential: Prior Notification Not required 29.5.2014
- DE/2014/2081: 2 new dwellings and formation of larger Retail Unit Supported in principle 10.7.2014.
- P/2014/0827: 2 new dwellings and formation of larger retail unit: Approved: 30.01.2015.

Key Issues/Material Considerations

There is continuing concern about the possible occupation of the larger retail unit by a supermarket operator and the possible impact this will have on the character and amenity of the area and on the range of local shops as is clear from the scale and content of the responses to this application.

To recap on this matter, as was explained in the report to the DMC of the 13th October, the use of the majority of the floor space comprised within the 2 units and its amalgamation to provide a larger unit would not have needed planning permission. All that required consent was a minimal increase in floor space through inclusion of the existing covered courtyards to the rear of both units and a small flat.

In policy terms, the site is located in a defined Local Centre where the retention/creation of shopping floor space is positively encouraged in order to help reinforce the local shopping function. It is not possible within this guidance

to differentiate between 'good' small independent shops and big 'bad' supermarket operators which is clearly at the root of resident concerns.

Nonetheless, issues in relation to amenity are relevant and in determining the application officers recommended conditions restricting hours of servicing and operation of plant.

Hours of operation of the shop itself was not included in the report to DMC nor was it considered necessary during the detailed debate in relation to the application at DMC.

This position was influenced by the fact that none of the retail units on Ilsham Road are subject to any form of planning control over hours of operation and this parity has to form part of the assessment of what is reasonable to impose in terms of conditions.

In issuing the Decision Notice, in view of continuing local concern, a view was taken that some control of the operating hours of the shop would be beneficial and a condition restricting operation of the unit to between the hours of 8.00am and 22.30 hours daily was included.

The Council's Solicitor is of the view that the imposition of a condition that was not included in the Development Management Committee's consideration and determination of the application could be considered 'ultra vires' and as such, the applicant could challenge the imposition of the condition through judicial review, which could result in it being struck out and could render the Council liable for costs.

The applicant is however amenable to some degree of control but requires an additional hour in the morning period and an extra 30 minutes in the evening. He has thus applied to vary the unlawful condition.

Such a condition will give the Council some control over hours of operation which will protect the amenity of local residents which there would not have been if the Decision Notice had been issued as originally considered by DMC Members.

In view of this, it is recommended that approval should be granted to the variation which will deliver a higher degree of protection to residential amenity than would be achieved if the Decision Notice had been issued as originally approved by DMC

Conclusions

That condition 7 in relation to the hours of operation be varied to allow the shop

to operate between the hours of 7.00am to 23.00 hours daily.

Relevant Policies

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