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Beacon Authority 2008-2009 Tackling Climate Change

EASTLEIGH BOROUGH COUNCIL

Development Control

Reference No	APP/W1715/A/11/2149972/NWF
Application No	X/10/67644
Please ask for	Andy Grandfield
Direct dial	023 8068 8267
Hours of work	Mon-Thurs 9-5 Fri 9-4.30
e-mail	andy.grandfield@eastleigh.gov.uk

The Planning Inspectorate
Temple Quay House
2 The Square
Temple Quay

FAO John Pingstone

16 May 2011

Town and Country Planning Act 1990
Town and Country Planning (Development Management Procedure) (England) Order 2010

APPEAL BY Mr Enser Yilmaz
SITE AT: 54a High Street, West End, Southampton, SO30 3DR
APPEAL REFERENCE NUMBER: APP/W1715/A/11/2149972/NWF

Dear Sir/Madam,
In relation to the above appeal, it is considered that the officer's delegated report gives full details of the Local Planning Authority's case and the Inspector's attention is respectively drawn to this report, submitted as section 21D of the questionnaire. The Local Planning Authority would, however, like to take the opportunity provide additional details along with some history, to ensure the Inspector has all the information required to make an informed decision.

Relevant History

F/08/63891 – Change of use from class A1/A2 (shop, financial/professional services) to use class A3/A5 (restaurant, cafe, hot food takeaway)

This application permitted the change of use subject to conditions – see decision notice in Appendix A. Condition 2 imposed restrictions of the cooking times to 0700-1700 Mon-Sat with condition 3 restricting frying on the premises. Both conditions were imposed to protect the amenities of the occupiers of nearby residential properties.

F/09/66121 –Change of use from class A1/A2 (shop, financial/professional services) to use class A3/A5 (restaurant, café, hot food takeaway) to included revised hours to those permitted under F/08/63891.

The decision notice for this can be found in Appendix A. As per the description, this application sought to amend the hours of use allowed under the previous approval.

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Condition 5 restricted the times that the premises can be open to customers to 0700-2300 Mon-Sat and 1000-1600 Sun.

X/10/67644 – Relief of conditions 3 & 5 of planning permission F/09/66121 to allow the installation of deep fat frying equipment & odour extraction system & to change the hours of opening to 12am-12pm Mon-Sat & 12am-11pm Sun.

This is the application the subject of this appeal. The proposal sought to significantly increase the hours of opening and install equipment for deep fat frying.

As detailed in the delegated report submitted with the appeal questionnaire, these hours were considered to be excessive, and likely to result in increased disturbance to the neighbouring residential properties. It is acknowledged that there are hot food takeaways in close proximity to this application site, with opening hours late into the evening. On this basis, a more reasonable increase of hours for a Sunday evening would be considered acceptable. Opening until 2300 on a Sunday and 2400 Mon-Sat, however, is not considered acceptable in a location with residential properties nearby. Any new application for change of use in this parade of shops would be assessed in the same context.

As set out in the submitted delegated report, the application was also not considered to adequately demonstrate that the deep fat frying would not adversely affect the amenities of neighbours, largely through insufficient information being submitted.

X/10/68080 - Relief of condition 3 & 5 of planning permission F/09/66121 to allow the installation of deep fat frying equipment & odour extraction system & change the hours of opening to 12-11pm daily

This is the most recent application received by the Local Planning Authority and amends the conditions imposed in application F/09/66121 relating to hours of opening and deep fat frying. This application was approved in December 2010 with permission granted for the use of deep fat frying equipment, in accordance the submitted agreed details and to open the premises from 1200-23 daily.

Comments

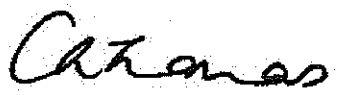
The most recent application, X/10/68080, represents the current situation with regard to the appeal site. The premises is able to lawfully use deep fat frying equipment subject to it being in accordance with the details submitted and agreed within application X/10/68080. On this basis, as the appeal application did not contain sufficient detail to demonstrate that the frying would not adversely affect the amenities of neighbouring properties, the Local Planning Authority still raise an objection and respectively request that this element of the appeal is dismissed for reasons set out in the delegated report and reason for refusal 2.

The hours agreed under application X/10/68080, represent the extent of what the Local Planning Authority would find reasonable given the proximity of residential properties. It is acknowledged that the current appeal seeks to effectively extend the opening hours by just one additional hour in the evenings, from 2300-2400, but the Local Planning Authority is of the opinion that difference between 2300 and 2400 is significant in terms of the increased sensitivities of neighbouring residential occupiers and the subsequent potential impact and disturbance. Every application to extend the opening hours has prompted letters of objections from the residential neighbours with noise being both an existing issue and future concern. It is also acknowledged that

there are hot food takeaways with non-specified opening hours nearby but this is itself is not considered to justify allowing opening hours that are considered to be harmful to residents' amenities. Any future applications for these adjacent premises will be assessed in the context as the appeal application with the potential interference with residential amenity being a significant material consideration.

The Inspector is respectively requested to dismiss the appeal but in the event that the appeal is allowed the Local Planning Authority would like consideration given to the conditions contained within Appendix B.

Yours faithfully



Caroline Thomas
Head of Development Control

Enc

Appendix A

Decision notices for previous applications

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Beacon Authority 2008-2009 Tackling Climate Change

EASTLEIGH BOROUGH COUNCIL

Development Control
Application No F/08/63891
Your ref
Please ask for Dawn Errington
Direct dial 023 8068 8260
Hours of work Mon-Wed-Fri am/Tu-Th 9-5
e-mail dawn.errington@eastleigh.gov.uk

Mr Mark Pinder
45 Dean Road
Bitterne
Southampton
SO18 6AQ

27 November 2008

Town and Country Planning Act 1990
Town and Country Planning (General Development Procedure) Order 1995

Application No. F/08/63891

In pursuance of their powers under the above Act and in accordance with your application received on 03/10/2008, made valid on 3 October 2008

the Council, as Local Planning Authority hereby PERMIT the following:

Description: Change of use from class A1/A2 (shop, financial/professional services) to use class A3/A5 (restaurant, cafes, hot food takeaway)
Site: 54a High Street, West End, Southampton, SO30 3DR

Subject to due compliance with the following conditions:

(1) The development hereby permitted must be begun within a period of three years beginning with the date on which this permission is granted. Reason: To comply with Section 91 of the Town and Country Planning Act 1990.

(2) No cooking of food may take place on the premises outside the following hours without prior written consent of the Local Planning Authority: Monday to Saturday 07.00-17.00 hours. Reason: In order to protect residential amenity.

(3) No shallow frying shall take place on the premises, and the equipment installed must include an odour extraction system which must, long as the use continues, be operated in such a manner as will effectively suppress the emission of fumes or smell. Details of the equipment must be submitted to, and approved by, the Local Planning Authority and the equipment must be installed and in full working order to the satisfaction of the Local Planning Authority prior to the commencement of the use. Reason: To protect the amenity of the occupiers of adjoining properties.

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(4) The facilities to be provided for the storage and removal of refuse from the premises as shown on the approved plans must be provided before the uses hereby permited commence, and retained thereafter. Reason: In the interests of amenity.

Note to Applicant: It is considered that, subject to compliance with the conditions and any obligations attached to this permission, the proposed development is acceptable because it will not materially harm the character of the area, the amenity of neighbours or highway safety, and it is in accordance with the policies and proposals of the development plan, as listed below, and after due regard to all other relevant material considerations the local planning authority is of the opinion that permission should be granted.

The following development plan policies are relevant to this decision and the conditions attached to it:

Eastleigh Borough Local Plan Review 2001-2011 142.TC

Under the Town and Country Planning [Fees for Applications and Deemed Applications][Amendment][England] Regulation 2008, a fee is now required for Discharge of Condition Applications.
N.B. Conditions not fully discharged, invalidate the planning permission.

The scheme plan 146734 includes what appears to be an enclosure with three tables and six chairs out the front on what is used as a footway, which presents a partial obstruction to users of the path .Tables and chairs shown are not within the red line boundary shown on application plan. A separate application for placing tables and chairs on highway land would need to be made to the council under Highways Act 1980 section 116E, if the land forms part of the publicly maintainable highway. The granting of planning permission for the tables and chairs use does not infer that permission under Highways Act would be forthcoming .

C D Peters
Head of Development Control

N.B. See Enclosed Notes (PER)

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Beacon Authority 2008-2009 Tackling Climate Change

EASTLEIGH BOROUGH COUNCIL

Development Control
Application No F/09/66121
Your ref
Please ask for Dawn Errington
Direct dial 023 8068 8260
Hours of work Mon-Wed-Fri am/Tu-Th 9-5
e-mail dawn.errington@eastleigh.gov.uk

Mr M Pinder
45 Dean Road
Bitterne
Southampton
SO18 6AQ

02 December 2009

Town and Country Planning Act 1990
Town and Country Planning (General Development Procedure) Order 1995

Application No. F/09/66121

In pursuance of their powers under the above Act and in accordance with your application received on 27/10/2009, made valid on 27 October 2009

the Council, as Local Planning Authority hereby PERMIT the following:

Description: Change of use from class A1/A2 (shop, financial/professional services) to use class A3/A5 (restaurant, cafes, hot food takeaway) to include revised hours to that permitted under F/08/63891
Site: 54a High Street, West End, Southampton, SO30 3DR

Subject to due compliance with the following conditions:

(1) The development hereby permitted must be begun within a period of three years beginning with the date on which this permission is granted. Reason: To comply with Section 91 of the Town and Country Planning Act 1990.

(2) No sound amplification equipment, which is audible outside the premises, shall be installed in the premises without the consent, in writing, of the Local Planning Authority. Reason: In the interests of the amenities of occupiers of nearby properties

(3) Only shallow frying shall take place at the premises and the equipment installed must include an odour extraction system which must, long as the use continues, be operated in such a manner as will effectively suppress the emission of fumes or smell. Details of the equipment must be submitted to, and approved by, the Local Planning Authority and the equipment must be installed and in full working order to the satisfaction of the Local Planning Authority prior to the commencement of the use. Reason: To protect the amenity of the occupiers of adjoining properties.

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T: 023 8068 8000 F: 023 8064 3952 E: direct@eastleigh.gov.uk W: www.eastleigh.gov.uk

(4) The facilities to be provided for the storage and removal of refuse from the premises as shown on the approved plans must be provided before the uses hereby permitted commence, and retained thereafter. Reason: In the interests of amenity.

(5) The use hereby permitted shall not be open to customers outside the hours of 0700 to 2300 Mondays to Saturdays and 1000 to 1600 on Sundays without the prior written consent of the Local Planning Authority. Reason: To protect the amenity of occupiers of nearby properties.

(6) The rear service road area shall not be used for customer parking at any time. Reason: To ensure adequate provision is retained for staff parking and servicing/delivery requirements.

Note to Applicant: It is considered that, subject to compliance with the conditions and any obligations attached to this permission, the proposed development is acceptable because it will not materially harm the character of the area, the amenity of neighbours or highway safety, and it is in accordance with the policies and proposals of the development plan, as listed below, and after due regard to all other relevant material considerations the local planning authority is of the opinion that permission should be granted.

The following development plan policies are relevant to this decision and the conditions attached to it:

Eastleigh Borough Local Plan Review 2001-2011 Saved policies 59.BE and 142.TC

Under the Town and Country Planning [Fees for Applications and Deemed Applications][Amendment][England] Regulation 2008, a fee is now required for Discharge of Condition Applications.
N.B. Conditions not fully discharged, invalidate the planning permission.

A separate application for placing tables and chairs on highway land would need to be made to the council under Highways Act 1980 section 116E, if the land forms part of the publicly maintainable highway. The granting of planning permission for the tables and chairs use does not infer that permission under Highways Act would be forthcoming.

C D Peters
Head of Development Control

N.B. See Enclosed Notes (PER)

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Beacon Authority 2008-2009 Tackling Climate Change

Development Control
Application No X/10/68080
Your ref
Please ask for Nicola Reid
Direct dial 023 8068 8493
Hours of work Mon-Thurs 9-5, Fri 9-4.30
e-mail nicola.reid@eastleigh.gov.uk

Paul Brotherton
Drawing By Design
280 Priory Road
St.Denys
Southampton
SO17 2LS

10 December 2010

Town and Country Planning Act 1990
Town and Country Planning (General Development Procedure) Order 1995

Application No. X/10/68080

In pursuance of their powers under the above Act and in accordance with your application received on 19 October 2010

the Council, as Local Planning Authority hereby PERMIT the following :

Description: Relief of condition 3 & 5 of planning permission F/09/66121 to allow the installation of deep fat frying equipment & odour extraction system & change the hours of opening to 12-11pm daily
Site: 54a High Street, West End, Southampton, SO30 3DR

Subject to due compliance with the following conditions:

(1) This planning decision is in accordance with the following plans numbered:P3AI, P2AI, P/A1. Reason: To ensure that the development is completed in accordance with the approved plans,

(2) The development hereby permitted must be begun within a period of three years beginning with the date on which this permission is granted. Reason: To comply with Section 91 of the Town and Country Planning Act 1990.

(3) Prior to deep fat frying taking place on site, the odour extraction equipment hereby approved shall be installed as per the manufacturers specification. The equipment shall be retained and maintained in this condition. Reason: To protect the amenity of the occupiers of adjoining properties.

(4) The premises shall not be open to customers outside the hours of 1200 to 2300 on any day. Reason: To preserve the amenity of the area.

(5) The door to the rear of the premises shall remain closed, except for access and egress. Reason: In the interest of rear amenity.

Note to Applicant: Conditions 2, 4 & 6 of planning permission F/09/66121 are still valid and must be complied with.

Note to Applicant: It is considered that, subject to compliance with the conditions and any obligations attached to this permission, the proposed development is acceptable because it will not materially harm the character of the area, the amenity of neighbours or highway safety, and it is in accordance with the policies and proposals of the development plan, as listed below, and after due regard to all other relevant material considerations the local planning authority is of the opinion that permission should be granted.

The following development plan policies are relevant to this decision and the conditions attached to it:

Eastleigh Borough Local Plan Review 2001-2011, Saved Policies 32.ES, 59.BE.

C L Thomas
Head of Development Control

N.B. See Enclosed Notes (PER)

Appendix B

List of conditions

(1) This planning decision is in accordance with the following plans numbered:P1, P2 & P3. Reason: To ensure that the development is completed in accordance with the approved plans,

(2) The development hereby permitted must be begun within a period of three years beginning with the date on which this permission is granted. Reason: To comply with Section 91 of the Town and Country Planning Act 1990.

(3) Prior to the commencement of any deep fat frying on the premises, full details of the equipment and odour extraction system must be submitted to, and approved in writing by, the Local Planning Authority. Any frying must thereafter by only be undertaken in accordance with the approved details. Reason: To protect the amenity of the occupiers of adjoining properties.

(4) The premises shall not be open to customers outside the hours of 1200 to 2400 Mon-Sat and 1200-2300 on a Sunday.Reason: To preserve the amenity of the area.

(5) The door to the rear of the premises shall remain closed, except for access and egress. Reason: In the interest of amenity.