

Dominos, 132 Buckingham Crescent, 12/01059/F Bicester

Ward: Bicester East

District Councillors: Cllr Stratford
Cllr Mrs Stratford

Case Officer: Simon Dean

Recommendation: Refusal

Applicant: Miss Serena Patel

Application Description: Variation of Condition 4 of 02/00154/F – extension of trading hours

Committee Referral: Member Request

1. Site Description and Proposed Development

- 1.1 The application site is a pizza takeaway in a crescent of shops at the end of Buckingham Crescent marking the transition between Buckingham Road and Buckingham Crescent.
- 1.2 In 2002 (under application 02/00154/F) planning permission was granted at the site for “*Change of use of supermarket with ancillary hot food to solely hot food shop*”. Condition 4 of that permission stated;

“That the operational use of the premises shall be restricted to no opening or dispatch of telephone orders later than 11.00p.m.

Reason – In order to safeguard the amenities of the area.”

- 1.3 This proposal seeks to vary that condition to allow opening from 11am until 1am, 7 days-a-week, but restricted to ‘delivery-only’ between 11pm and 1am.

2. Application Publicity

- 2.1 The application has been advertised by way of neighbour letter, site notice and press notice. The final date for comment was the 6th of September 2012.

At the time of writing the report 8 letters have been received. Any other representations received between the report deadline and the consultation deadline will be reported at the Committee Meeting. The following Issues were raised

Material planning comments:

Suitability of use in a residential area

Impact on amenity (nuisance from noise, odour, intensity of use)

Highway safety – insufficient parking

3. Consultations

3.1 **Bicester Town Council:** no comments received at time of writing the report

Cherwell District Council Consultees

3.2 **Anti Social Behaviour Officer:** *“Further to my holding response of 09/08/12 I have now had the opportunity to consider this application in more detail. I note that the applicants are seeking permission to relax condition 4 of their previous planning permission to allow the home delivery of pizza to customers between 23:00 and 01:00 hrs. When this application was originally considered the permitted hours of operation of the business were set by condition after taking into account the potential the business operation had to impact on the lives of the occupants of nearby dwellings. Three key elements of the operation were identified as having potential to cause disturbance to these residents. They were the noise produced by customers arriving at the premises both on foot and in vehicles, noise from delivery vehicles arriving and leaving the premises and noise from the operation of equipment at the premises.*

Whilst the noise element from customers is not an issue in this application the potential for noise to be generated by deliveries and by the premises remains.

Due to the close proximity of dwellings and the nature and character of the area immediately surrounding the premises i.e. predominantly residential I am of the view that these premises are not suitable for the provision of a home delivery service beyond 23:00 hrs and would therefore recommend that the application be rejected.”

Oxfordshire County Council Consultees

3.3 **Highways Liaison Officer:** no objections

4. Relevant National and Local Policy and Guidance

4.1 Development Plan Policy

Adopted Cherwell Local Plan (Saved Policies)
C31 – Compatibility of proposals in residential areas

4.2 Other Material Policy and Guidance

National Planning Policy Framework

Non-Statutory Cherwell Local Plan 2011

In December 2004 the Council resolved that all work to proceed towards the statutory adoption of a draft Cherwell Local Plan 2011 be discontinued. However, on 13 December 2004 the Council approved the Non-Statutory Cherwell Local Plan 2011 as interim planning policy for development control purposes. Therefore this plan does not have Development Plan status, but it can be considered as a material planning consideration. The policies listed below are considered to be

material to this case and are not replicated by saved Development Plan policy:

D7 – Mixed uses

5. Appraisal

5.1 The key issues for consideration in this application are:

- Relevant planning history
- Compatibility of the proposal with the residential area

Relevant planning history

5.2 Aside from the original consent allowing use of this site for a hot food takeaway, discussed in para 1.2 above, an application in 2010 also sought to extend the opening hours of the unit. That application (reference 10.00205/F) sought to extend the opening hours from 7am until 5am, 7 days-a-week and was refused under delegated powers as it was considered harmful to the residential character of the area. That refusal was not challenged at appeal. In addition, those extended opening hours were also refused by the Licensing Committee of this Council.

5.3 This application makes no reference to the 2010 application for extended opening hours. It does not seek to set out how the proposed extended opening hours would protect neighbour amenity or address the reason for the imposition of the condition.

5.4 In addition to the amended opening hours from the 2010 application, the context to the application has changed slightly; the adjacent unit, which was a shop in 2010 has since closed and is now proposed to be a pharmacy. Whilst this use would still attract visitors to the site, the pharmacy use is arguably less intensive than the previous retail use. It is important to note though that both uses are in the A1 use class, so the unit could revert to the previous use.

Compatibility of the proposal with the residential area

5.5 As the County Council have raised no issues of highway safety or convenience relating to this application, the main issue to consider is the impact of the proposal upon the intention of the original condition and the reason for its imposition.

5.6 The original condition restricted opening hours *“in order to safeguard the amenities of the area”* so the only logical conclusion is that if the proposal causes harm to the amenity of the area, it is unacceptable and should be refused.

5.7 It is clear from the comments of the contributors to the application that the proposal does already cause a degree of nuisance, and that any intensification and extension of that use would cause an increased level of harm to the amenity of the area and should therefore be refused.

5.8 Policy C31 states that “*development which is not compatible with the residential character of the area, or [which] would cause an unacceptable level of nuisance... will not normally be permitted*” and seeks to ensure that development does not prejudice the environment of areas in which it takes place.

Conclusion

5.9 The proposal before the Committee in this application increases the hours of operation and home delivery of the use of this hot-food takeaway beyond the current level. It is considered that the representations received support the view that this increase would cause nuisance to surrounding residents, and would be incompatible with the existing residential character of the area.

5.10 The proposal does not therefore comply with either Policy C31 of the adopted Cherwell Local Plan (as amplified by Policy D7 of the non-statutory Cherwell Local Plan) or the direction of the National Planning Policy Framework.

6. Recommendation

Refuse for the reason(s) set out below:

1) The proposal is considered to be harmful to the residential amenity of the area and would therefore be contrary to the original intention of the condition. The proposal is demonstrably not compatible with the residential character of the area and would cause an unacceptable level of nuisance. It is therefore contrary to the provisions of Policy C31 of the adopted Cherwell Local Plan 1996, as amplified by Policy D7 of the non-statutory Cherwell Local Plan 2011, and government advice in the National Planning Policy Framework.