

Application No: 10/01282/F	Ward: Banbury Grimsbury and Castle	Date Valid: 19/08/2010
Applicant:	Mr Riasat Sadiq	
Site Address:	The Indian Pantry, 65 Calthorpe St, Banbury	

Proposal: Variation of Condition 5 of permission 08/02513/F to extend the operational use of the premises to Monday - Thursday 11am to 11pm, Friday and Saturday 11am to 1am, Sunday and Public Holidays 11am to 11pm (as amended by email received on 16 September)

1. Site Description and Proposal

- 1.1 The application site is a hot-food takeaway, in a ground floor unit underneath the 18 flats at The Counting House on Calthorpe Road. The unit was changed from the originally consented retail use to a hot-food takeaway under application 08/02513/F, approved in February 2009.
- 1.2 The original permission for hot-food takeaway use limited the opening hours by condition as follows;
 - Monday to Thursday – 11am to 11pm
 - Friday and Saturday – 11am to 12am
 - Sunday and Public Holidays – 11am to 10pm
- 1.3 This application originally proposed to extend the opening hours as follows;
 - Monday to Thursday – 11am to 1am
 - Friday and Saturday – 11am to 2am
 - Sunday and Public Holidays – 11am to 12am
- 1.4 The opening hours originally applied for (in para 1.3 above) were approved by this Council's Licensing Sub Committee on 20th August.
- 1.5 Following Officer feedback and consultee comments, the applicant has agreed to amend this application as follows;
 - Monday to Thursday – 11am to 11pm
 - Friday and Saturday – 11am to 1am
 - Sunday and Public Holidays – 11am to 11pm
- 1.6 The application is placed before the committee for determination following a successful call-in request by the ward member.
- 1.7 There is a second application relating to the site, which is a retrospective application to regularise the erection of a storage building (10/01258/F refers) which is due to be determined under delegated powers.

2. Application Publicity

- 2.1 The application has been advertised by way of site notices, press notice and

neighbour letters. The final date for comments was 27 September 2010.

2.2 Letters of objection to the originally proposed hours were received from residents of four flats above and from three Councillors. Material comments raised were as follows;

- impact on residential amenity (through increased noise, disturbance and anti social behaviour)

Non material comments raised were as follows;

- issues of ownership of the land associated with the business use

2.3 In addition to the letters of objection received, the proposals at the site have received some coverage in the Banbury Guardian, especially with regard to the publicity of the application, however, the application has been publicised in line with statutory requirements. An initial shortcoming in the completeness of the pattern of consultation has been corrected and has still allowed sufficient time for response.

3. Consultations

3.1 Banbury Town Council – no comments received at the time of writing this report. Any further comments received will be reported at the meeting.

3.2 The Council's Anti Social Behaviour Manager has suggested the amended hours now being considered. He notes that the current dynamic of the businesses in Calthorpe St produces limited amounts of noise and associated anti-social behaviour, and that any significant extension to the take-away opening hours would increase the potential for noise and anti-social behaviour.

4. Relevant Planning Policies

4.1 National Policy Guidance:
PPS1 – Delivering Sustainable Development
PPS4 – Planning for Sustainable Economic Growth

4.2 Local Policy in the Adopted Cherwell Local Plan 1996:
Policy C31 – Compatibility of proposals in residential areas
Policy ENV1 – Development likely to cause detrimental levels of pollution (including noise, smell and other disturbance)

5. Appraisal

5.1 As an application to vary a condition attached to a previous approval, the principal issue to consider is the acceptability of the proposal when weighed against the reason for the original condition.

5.2 The original condition was imposed in order to “safeguard the amenities of the area and to comply with...Policies C31 and ENV1 of the adopted Cherwell Local Plan”. This proposal must therefore continue to comply with that condition in order to be acceptable.

5.3 It is clear from the comments received during the course of the application, both from Councillors, local residents and internal consultees, that the originally proposed extended hours were not acceptable against the requirements of the relevant policies.

- 5.4 The amended opening hours now proposed, as suggested by the Anti Social Behaviour Manager, represent only a small increase in the opening hours already in operation (i.e. increasing from midnight to 1am on Saturday night/Sunday morning). These opening hours are considered to be compatible with the mixed residential/ town centre context of the area; offering a reasonable balance between the amenity of the residential units and the typical town-centre uses, which are to be expected in this type of area.
- 5.5 Whilst the originally applied-for extended hours were approved by the Licensing Committee, it is not considered that this extant licensing approval overrides the need to consider the impact of the proposal upon, and compatibility with residential amenity.
- 5.6 The amended proposal is therefore considered to comply with Policies C31 and ENV1 of the adopted Cherwell Local Plan, and is therefore recommended for approval.

6. Recommendation

Approval, subject to the following conditions;

- 1) SC 1_4A (Time for implementation)
- 2) That the operational use of the premises shall be restricted to the following times:-
Monday to Thursday – 11am to 11pm
Friday and Saturday – 11am to 1am
Sunday and Public Holidays – 11am to 11pm

Reason – In order to safeguard the amenities of the area and to ensure the compatibility of the commercial use with the residential elements, in accordance with Policies C31 and ENV1 of the adopted Cherwell Local Plan 1996.

Planning Notes

- 1) T1 – Third party rights
- 2) The applicant is reminded that this consent only varies the requirements of Condition 5 of 08/02513/F. All of the other conditions attached to that approval must be complied with for the use of the unit as a hot-food takeaway to remain lawful in the light of that application.

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