

5o E/11/0039/A – Unauthorised use of industrial unit for the delivery of hot food at Unit 4a Hadham Industrial Estate, Church End, Little Hadham, SG11 2DY

Parish: LITTLE HADHAM CP

Ward: LITTLE HADHAM

RECOMMENDATION:

That the Director of Neighbourhood Services, in consultation with the Director of Finance and Support Services, be authorised to take enforcement action under section 172 of the Town and Country Planning Act 1990 and any such further steps as may be required to secure the cessation of the unauthorised use of the unit.

Period for compliance: 1 month from the notice taking effect

Reasons why it is expedient to issue an enforcement notice:

1. The use of the unit for the delivery of hot and cold food in a location which is away from the centre of population results in an unsustainable form of development which is heavily reliant on motor vehicles and results in additional traffic movements within the rural area. This is at odds with the Councils strategy for development in the District as set out in Policy SD2 of the East Herts Local Plan Second Review April 2007 and the principles of sustainable development set out in the National Planning Policy Framework.

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1.0 Background:

- 1.1 The site is shown on the attached Ordnance Survey extract. The premises are located within the Hadham Industrial Estate which previously consisted of a collection of agricultural buildings associated with Church End Farm.
- 1.2 It was brought to the attention of the Enforcement Team in February 2011 that the unit was being used by a company that operated a take away and delivery service of hot food.
- 1.3 The owner of the unit was contacted and advised that, in Officers view, this use was materially different from the lawful use of the unit (representing a Sui Generis use) and that as such, planning permission would be required for a change of use. The owner advised officers that

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he considered that, like several of the buildings on the site, the unit benefitted from permission for a Class B1, B2 and B8 use and that this new food preparation; delivery and collection use fell within Use Class B2 (General Industrial) and was therefore lawful.

- 1.4 However, following further investigation, the owner accepted that planning permission had not been granted for a commercial use of this particular building and therefore, on 5th May 2011, an application was submitted under LPA reference 3/11/0767/FP for the change of use of the unit from agricultural to Use Classes B1, B2 and B8. This application was approved by the Development Control Committee on 17th August 2011 although Officers advised Members of the Committee at the time that they were of the view that the current use did not fall within one of these Use Classes and that the matter would be pursued through the normal planning enforcement route if necessary.
- 1.5 Following the granting of the above permission Officers contacted the Owner and advised him that, in the Councils view, the planning permission for Class B1, B2 and B8 uses did not cover the current activity and it was considered that the use comprised a Sui Generis use (one that is outside any of the specified classes).
- 1.6 On the 1st November 2011, a further application was submitted under LPA reference 3/11/1881/FP, for the change of use of the unit for the production of hot/cold food and hot/cold food delivery. After due consideration, the application was refused for the following reason:
 1. The use of the unit for the delivery of hot and cold food in a location, which is away from a centre population, results in an unsustainable form of development which is heavily reliant on motor vehicles and results in additional traffic movements within the rural area. The proposal is thereby at odds with the council's strategy for development in the District as set out in Policy SD2 of the East Herts District Plan Second Review April 2007 and is also contrary to Planning Policy Statement 1: Delivering Sustainable Development and Planning Policy Statement 4: Planning for Sustainable Economic Growth and Planning Policy 13: Transport.
- 1.7 The refusal of the above application was appealed by the owner with the Planning Inspectorate. Following a site visit by the Inspector, he dismissed the appeal on the 16th May 2013 concluding that the home delivery element of the business requires an excessive amount of vehicular traffic and is not in a sustainable location, contrary to the objectives of the NPPF. A copy of the Inspectors appeal decision is attached as ERP 'A' to this report.

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1.8 Following the appeal being dismissed, however, Officers are aware that the owners of the unit are still operating the home delivery business although the take away element allowing members of the public to collect from the unit has ceased. This is still considered to be a breach of planning control and one which results in an unsustainable form of development. Indeed, the appeal inspector concluded that 'the home delivery service, on its own would be a Class A5 use' and no planning permission has been granted for that use of the building.

2.0 Planning History:

2.1 The recent relevant planning history is as follows:

3/11/0767/FP	Change of use of agricultural building to uses B1, B2 and B8	Approved with Conditions
3/11/1881/FP	Retrospective change of use of unit to Sui Generis use	Refused. Dismissed at appeal.

3.0 Policy:

3.1 The relevant 'saved' policy of the East Herts Local Plan Second Review April 2007 in this case is:

SD2 – Settlement Hierarchy

3.2 The National Planning Policy Framework is also a material consideration in the determination of this matter.

4.0 Considerations:

4.1 The unit is currently used for the production of hot/cold food and the delivery and collection of that food. From the information submitted with the recent application, Officers understand that the use of the unit can be considered as falling within two general areas of business. Firstly, Officers understand that food is prepared within the unit during the day and is then delivered to trade customers, including other restaurants. That part of the use would appear to represent a B1 use, possibly a B2 use depending on the food preparation processes involved. This part of the business is considered lawful and in line with the permission granted on the unit.

4.2 The unauthorised part of the business is the delivery of hot and cold

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food during the evening, up to 22.00 hours, to local surrounding villages. It is this element that has been considered to be an inappropriate and unsustainable form of development, not only by this Council during its consideration of a previous application, but also by the Planning Inspectorate at the aforementioned appeal.

- 4.3 Deliveries still take place throughout the evening up to 22.00 hours and on Sundays, which is contrary to a planning condition on the existing B1, B2, B8 planning permission on the premises. The condition attached to the previous planning permission restricts vehicle movements to 07.00 and 20.00 hours with no traffic on Sundays and bank holidays. Other units on the site are also restricted by the same condition.
- 4.4 Despite the earlier refusal and appeal dismissal, this business continues to provide a home delivery service from the site which extends later into the evenings and on Sundays when the general level of activity on the site is reduced. This has an adverse effect on the amenity of nearby residents which are located along the approach road to the units. It remains an inappropriate and unsustainable form of development in this rural location and officers consider that formal action is now required to ensure the cessation of the use.

5.0 Recommendation:

- 5.1 For the above reasons it is recommended that authorisation be given to issue and serve a Planning Enforcement Notice requiring the cessation of the unauthorised use.