

**3/08/2069/FP – Proposed retention of mixed A1/A3 use at Units 6 and 8  
Bircherley Green, Hertford for Starbucks**

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**Date of Receipt:** 10.12.2008

**Type:** Full

**Parish:** HERTFORD

**Ward:** HERTFORD - CASTLE

**RECOMMENDATION**

That planning permission be **REFUSED** for the following reasons:-

1. The proposed retention would result in the permanent loss of a retail unit to the detriment of the vitality and viability of the town centre. If permitted it would be contrary to Policy STC2 of the East Herts Local Plan Second Review (April 2007), which seeks to retain retail uses within Primary Shopping Frontages.

\_\_\_\_\_ (206908FP.MC)

**1.0 Background**

- 1.1 The application site is shown on the attached OS extract.
- 1.2 The site is located at the north-west corner of the Bircherley Green shopping centre, within the centre of Hertford, in an area designated as Primary Shopping Frontage in the East Herts Local Plan Second Review April 2007. The site is also located within the Hertford Conservation Area.
- 1.3 The premises comprise two two-storey retail units that have been converted into a single continuous unit at ground floor level. A fenced area to the north-east of the building provides space for external seating outside the shopping centre, adjacent to the River Lee. The ground floor of the premises is predominantly glazed, with entrances from the shopping centre and the fenced area.
- 1.4 A serving counter is located towards the rear of the units, with seating predominantly along the front wall, and circulation and display space in the centre. An area is given over to customer toilets, with storage and private staff areas to the rear. Seating for forty customers is provided.
- 1.5 This application was made to enable the Council to reconsider the development in light of the recently allowed appeal in Potters Street, Bishop's Stortford for Café Nero. Unfortunately, the timing of submission means that the application could not be referred to a Committee meeting

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prior to the Public Inquiry dealing with the appeal against the previous refusal. That inquiry is due to be held on 10 February 2009.

### **2.0 Site History**

- 2.1 3/03/2382/FP – Ground floor extension with terrace over – Approved 13<sup>th</sup> April 2004 (Unit 6)
- 2.2 3/06/1615/FP – Change of use from A1 to A3 – Refused 10<sup>th</sup> October 2006 (Unit 8, application by Serendipity Foods Ltd. of Unit 10, Bircherley Green)
- 2.3 3/07/2389/FP – Installation of new shopfront, door and access ramp – Approved 8<sup>th</sup> January 2008 (Unit 8)
- 2.4 3/07/2427/AD – Wall mounted roundel, individual letters and projecting sign – Approved 8<sup>th</sup> January 2008 (Unit 8)
- 2.5 3/07/2604/FP – Change of use from A1 to mixed A1/A3 – Refused February 2008 – Currently the subject of an appeal
- 2.6 Enforcement: E/07/0548/B – Unauthorised change of use from A1 to A3 – Notice served 7<sup>th</sup> April 2008 – Currently the subject of an appeal
- 2.7 Enforcement: E/08/0301/B – Tables and chairs on pavement area outside shop – No further action December 2008

### **3.0 Town Council Representations**

- 3.1 The Town Council have objected to the application on the grounds that the presence of a non-A1 business in the premises is contrary to Council policy.

### **4.0 Other Representations**

- 4.1 The application has been advertised by way of site notice, press notice and direct notification.
- 4.2 36 responses have been received from local residents.
- 4.3 In addition, a petition of 271 signatures has been submitted in opposition to the application, and the ongoing appeal against the previous refusal of planning permission.

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4.4 The material planning concerns can be summarised as follows:

- Damage to vitality and viability of town centre through proliferation of A3 units; Loss of an A1 unit
- That permission has previously been refused on two occasions for a development of this nature

4.5 A number of other issues that are not material planning concerns were also raised by respondents. These have not been included in this report.

### **5.0 Policy**

5.1 Policy STC2, Primary Shopping Frontages, of the adopted East Herts Local Plan is most relevant to the consideration of this application.

### **6.0 Considerations**

6.1 The determining issues in this case are as follows:

Use of premises as A3 contrary to policy; Loss of A1 unit in Primary Retail Frontage

6.2 Of the 99 premises designated as Primary Frontage in the Local Plan, 64 are currently in use solely as A1 retail, of which two are vacant (survey conducted December 2008). There is therefore a 65% A1 presence within the Primary Frontages.

6.3 The Council does not generally permit changes of use to non-retail uses within the Primary Frontages. Exceptional circumstances have surrounded the grant of permission for two recent conversions in Salisbury Square (Caffé Nero, which occupies the site of a former ophthalmologists in Use Class D1, and which involved extensive restoration work to a Grade II listed building and improvements to the local street scene via funding of town centre seating) and at 130 Fore Street, where a substantial and fixed A1 presence was required as part of the permission, and where the pre-existing use was A2.

6.4 Because of the existing number of non-A1 uses, the Local Plan does not set a minimum percentage of A1 uses within the Primary Frontages but sets a robust policy in order to maintain a predominance of retailing.

6.5 The granting of permission for the continued operation of the premises as mixed A1/A3 use would undermine policy STC2.

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- 6.6 The separation of the frontages within the town centre into Primary and Secondary Frontages recognises that non-shopping uses can play a role in the viability of the town centre. Generally, the Council would wish to see these restricted to the Secondary Frontages to ensure that the core of a town centre, which would be composed of the Primary Frontages, would usually be comprised of retail (A1) units.
- 6.7 With regard to the Primary Frontages, a ratio of less than 2:1 retail to non-retail uses is low compared to 77% A1 in the Primary Frontages of Bishop's Stortford. That is precisely why the Council has attempted to prevent the further loss of A1 units to non-retail uses through policy STC2.
- 6.8 Your officers recognise that policy STC2 is restrictive. However, this is considered to be necessary to control the ratio of non A1 uses to A1 uses in the Primary and Secondary Frontages of Hertford. The ratio of non A1:A1 uses is considered to already be too great even without the continuation of the use that is the subject of this application.
- 6.9 It is your officers' opinion, therefore, that the use of the premises for non-A1 purposes is detrimental to the vitality and viability of the town centre. There are insufficient material considerations that would warrant a departure from planning policy.

#### Previous refusals of permission

- 6.10 Planning permission has previously been refused on two permissions for a mixed A1/A3 use in this premises, as detailed in section 2 of this report.
- 6.11 The first refusal (ref: 3/06/1615/FP) was issued in October 2006 under the previous Local Plan, for the combination of units 8 and 10 to a mixed A1/A3 use. The policies relating to town centres within the district were carried through largely unchanged to the present Local Plan Review.
- 6.12 In February of last year, permission was refused for a mixed A1/A3 use at units 6 and 8 (ref: 3/07/2604/FP). This application is the subject of an ongoing appeal, with the Public Inquiry scheduled for the day before this Committee meeting.
- 6.13 Since the most recent refusal of permission, an appeal against the refusal of permission for Cafe Nero in Potters Street, Bishop's Stortford has been granted permission, as the Inspector felt that a mixed A1/A3 use could be acceptable in a designated Primary Frontage without causing harm to the vitality of the town centre. The applicants contend that the same principle can be applied to this application.

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- 6.14 Your officers do not consider that this appeal decision is directly comparable to the considerations of this application. In dealing with that appeal, the Inspector noted that the development was contrary to policy STC2. It was necessary then to consider whether other material considerations justified a departure from the policy. The same situation is the case with this application.
- 6.15 He took into account the percentage of non A1 uses (which is much higher in Hertford than in Bishops Stortford), he considered the issue of footfall in relation to the Bishop's Stortford site and the submission of a petition in that case which demonstrated public support. Whilst these issues are relevant ones in relation to this site the weight to be assigned to them is different and indeed, in this case, a petition has been submitted which represents objection to the proposals
- 6.16 Accordingly officers do not feel, taking into account the outcome of the appeal in relation to the Bishop's Stortford site, that a recommendation of refusal of permission, in line with the two previous refusals, is unsound.

### **7.0 Conclusion**

- 7.1 The application has allowed the reconsideration of the applicant's case in light of the recent appeal decision at Cafe Nero, Potters Street, Bishops Stortford. However, officers remain of the opinion that the retention of the use that is the subject of this planning application would result in the loss of a retail unit within the primary shopping frontage. This would be detrimental to the vitality and viability of the town centre, and contrary to the aims and objectives of policy STC2 of the East Herts Local Plan April 2007. Accordingly, it is recommended that permission be refused.