

3/10/0704/FO - Variation of Condition 9 which states "The use of the premises shall be restricted to the hours 08.00 to 23.00 Monday to Saturday and 10.00 - 22.00 on Sundays and Bank holidays" to read "The restaurant shall not be open for business from 01.00 to 08.00" at The Riverside Garden Centre, Lower Hatfield Road, Bayford, Hertford, Herts, SG13 8XX for Riverside Garden Centre Ltd.

Date of Receipt: 23.04.2010

Type: Variation of Condition - Major

Parish: BAYFORD, HERTFORD

Ward: HERTFORD – CASTLE, HERTFORD – RURAL SOUTH

RECOMMENDATION

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

1. The proposed extended hours of use of the restaurant would be detrimental to the amenities of the residents of nearby properties by reason of noise nuisance and disturbance contrary to policies ENV1 and ENV24 of the East Herts Local Plan Second Review April 2007.

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1.0 Background

- 1.1 The application site is shown on the attached OS extract. It comprises an established garden centre located on the edge of the River Lea within the Metropolitan Green Belt. A new garden centre and restaurant building was approved in September 2009 and completed soon thereafter. The site is accessed from Lower Hatfield Road with a parking area to the front of the building. The surrounding area is predominantly rural in character, with the only immediate neighbour being Burrowfield to the east, separated by mature tree screening.
- 1.2 The new building was approved under reference 3/09/09393/FP subject to a number of conditions. This application proposes to amend condition 9 to extend the opening hours of the restaurant from 08.00-23.00 Monday to Saturday and 10.00-22.00 on Sundays and Bank holidays to 08.00-01.00 everyday.

2.0 Site History

- 2.1 The site was previously known as Kingfisher Nurseries, and started out only selling produce grown on site. A number of new buildings were granted permission in the 1970s and 80s, including a new farm shop. Then in 1996,

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permission was granted to remove an earlier condition that prevented the sale of produce not originating from the nursery (3/96/1641/FO). The garden centre has since continued to expand.

- 2.2 In December 2005, retrospective permission was granted for a part change of use of the land to a bistro, with a new covered outdoor seating area (our reference 3/05/2129/FP).
- 2.3 Retrospective permission was then refused in November 2006 for the retention of a caravan on site (3/06/1735/FP) and an appeal was subsequently dismissed. An earlier outline application for a dwelling on site was refused in 2001 (3/01/1762/OP) given the location of the site within the Green Belt and within a floodplain.
- 2.4 Permission was then granted in September 2009 for a new garden centre and restaurant building under reference 3/09/0939/FP. Whilst there are on-going issues related to the Flood Risk Assessment for the site, the development has since been completed and opened. It is condition 9 of this permission that the owner is now applying to amend.

3.0 Consultation Responses

- 3.1 Environmental Health do not wish to restrict the grant of permission. They comment that the department has not received any recent noise complaints of noise or nuisance from the premises, and as a result have no representations to make.

4.0 Town/Parish Council Representations

- 4.1 Bayford Parish Council comment that after careful consideration they are opposed to the application. They state that “originally the site was occupied by a traditional garden centre, later a café was opened and some other items were sold such as kitchenware. This application seeks to change the character of the site into a restaurant/night club with retail outlets for pet food and kitchenware together with the original concept of some garden sundries and plants in a minority. We feel that this would be totally inappropriate in this idyllic rural location by the river.”
- 4.2 At the time of writing this report, no response had been received from Hertford Town Council.

5.0 Other Representations

5.1 The applications have been advertised by way of press notice, site notice and neighbour notification.

5.2 3 no. letters of representation has been received from Burrowfields, The Granary at Bayfordbury Park Farm, and 1 Waterhall Cottages which can be summarised as follows:-

- Previously raised strong objections to the new building;
- The applicant had previously confirmed that the restaurant would be ancillary and not intended for regular out of hours events;
- The restaurant is already clearly operating as an independent facility;
- The restaurant is closed for much of the time that the garden centre is open;
- The restaurant is inappropriate development in the Green Belt for which no very special circumstances exist;
- Impact on amenities of Burrowfields through cooking smells, noise and smell from the sewage treatment plant, intrusive external lighting, and noise and disturbance from music and cars when people depart;
- The condition meets the tests of Circular 11/95;
- The adjoining occupier has previously made complaints to Environmental Health;
- The main focus of the business will be the restaurant/bar;
- Previous sporadic late openings did not produce a problem but the restaurant was much smaller in terms of size and capacity;
- The location of the site requires a greater degree of control not the converse;
- Query whether the applicant has delivered on previous promises of employment numbers;
- Restaurant viability should not be a planning matter.

5.3 Cllr Linda Haysey objects on the following grounds:

- There was previously much concern over the opening hours of the restaurant and we were told that the hours would not be changed;
- The restaurant is now open most nights;
- The site lies in a quiet valley and local residents should not be subjected to noise pollution up to 1am. Noise travels in strange ways and parties can be heard some distance away – the site is a natural amphitheatre;
- The new hours are more appropriate to a town location.

6.0 Policy

6.1 The relevant saved Local Plan policies in this application include the following:-

GBC1 Appropriate Development in the Green Belt
ENV1 Design and Environmental Quality
ENV24 Noise Generating Development

6.2 In addition to the above it is considered that Planning Policy Statement 1, (Delivering Sustainable Development), Planning Policy Guidance 2 (Green Belts) and Planning Policy Guidance 24 (Planning and Noise) are considerations within this application.

7.0 Considerations

7.1 This application proposes to vary a condition related to the opening hours of the premises. The main issues in this case therefore relate to the need for the condition, in relation to the tests of Circular 11/95, particularly having regard to the location of the site in the Green Belt and proximity to the neighbouring property.

7.2 Firstly, it is important to look at the precise wording of the condition. The condition relates to the 'premises', not just the restaurant, and therefore the existing condition also covers the retail element. The applicant is now applying to extend the opening hours, but specifically related to the restaurant. Should permission be granted, then the opening hours of the retail element would be unrestricted. This is not considered to be a significant issue as the opening hours of the retail element were never previously restricted, and it is considered unlikely that the shop would regularly be open late. A variation of the condition to relate solely to the restaurant, rather than the 'premises' would therefore be considered acceptable in principle. The remaining issue, however, relates to the proposed extension of opening hours for the restaurant.

7.3 The restaurant was granted consent as part of a re-development of the site following an earlier flood, and the application was considered as a mixed use scheme of A1 and A3 (3/09/0939/FP). Officers acknowledged in that Committee report that the restaurant had been identified with later opening hours than the shop on the submitted application form. The application form had specified 08.30-17.30 Monday to Saturday and 10.30-16.30 for the shop, and 08.30-00.00 Monday to Saturday and 10.30-22.00 for the restaurant. It was therefore agreed that the restaurant could not be considered to be ancillary to the shop, but the opening hours were restricted to control the impact of the development on its neighbours and the Green Belt.

- 7.4 The main reason for this condition is to protect neighbouring amenity, and the comments raised by neighbours as far away as 1 Waterhall Cottages (over 2km to the southwest on Lower Hatfield Road) are indicative of the level of concern in this case. The site is located in a valley, where noise, in particular from music or the outdoor seating area, is likely to have a wide impact. The nearest neighbour, Burrowfield, is located at a distance of approximately 50m to the east of the restaurant. Further neighbours include Bayfordbury Park Farm (5 separate units) 350m to the west, Terrace Wood Farm 500m to the north, The Director's House and Bayfordbury Estate (5 units in the Mansion and 6 in the Victorian Mews) 600m to the south, and the Cecil Road estate some 550m to the east.
- 7.5 The playing of music until 1am any night of the week would have the potential to cause significant harm to these neighbours, in particular Burrowfield, contrary to Local Plan policies ENV1 and ENV24. It is noted that Environmental Health state that they have not received any recent noise complaints; however a planning judgement needs to be made as to whether complaints would be likely to arise by extending the restaurant openings hours to 1am. It is the Officers' view that such complaints would be likely to arise, particularly during the summer months when the folding doors of the restaurant are likely to be open and the use of the outdoor seating area more extensive. Condition 9 of 3/09/0939/FP is therefore considered to be necessary in order to protect the amenities of these residents.
- 7.6 Further, although not explicitly referred to in the reason for condition 9, the proposed opening hours are more akin to a town centre use, rather than a garden centre restaurant in the Green Belt, and would result in an inappropriate form of development. Such late opening hours may also attract increased custom from Hertford town centre and therefore impact on the sustainability of the site, encouraging private motor vehicle trips out of the town to the site.
- 7.7 In terms of the morning opening hours, the amended condition would allow for the use of the restaurant between 08.00 and 10.00 on Sundays and Bank Holidays. Officers consider that on these traditional days of rest, the early playing of music or frequency of movements, although perhaps only limited, would also have the potential to significantly impact on neighbour amenity. Officers therefore consider that the opening hours should remain more restrictive on Sundays and Bank Holidays than on Mondays to Saturdays.
- 7.8 Overall, Officers consider that Condition 9 of 3/09/09393/FP meets the tests set out in Circular 11/95. It is necessary in order to protect neighbouring amenity which would be significantly affected by the proposed extended

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opening hours. The condition is also related to planning, and to the development, and is precise and enforceable. Finally, the condition is considered to be reasonable in all other respects and in fact set very similar opening hours to those suggested by the applicants themselves - an extra half hour was permitted by Officers for the opening of the restaurant in the morning, and the Monday to Saturday evening hours were reduced from the 00.00 originally sought to 23.00.

- 7.9 It is noted that the previous restaurant was not restricted in this way; however this was previously ancillary to the garden centre and therefore should not have been opening in the evening when the garden centre was closed. The redevelopment of the site has resulted in a mixed A1 and A3 use with the restaurant able to open into the evening. Further, the restaurant has been relocated closer to the immediate neighbour. These points add further weight to the need for Condition 9.

8.0 Conclusion

- 8.1 The proposed variation of this condition would result in the restaurant possibly remaining open until 1am every night of the week. This is considered to be unacceptable having regard to the proximity of nearby dwellings, in particular Burrowfield, and the location of the site in the Green Belt.
- 8.2 The application is therefore recommended for refusal for the reason set out above.