

6j E/12/0096/B – Unauthorised use of outside seating area in rear garden of café/restaurant at 25a St Andrew Street, Hertford, Herts, SG14 1HZ

Parish: HERTFORD

Ward: HERTFORD - BENGEO

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 such other steps as may be required to cease the use of the unauthorised outside seating area and to remove any operational development that facilitates the unauthorised use.

Period for compliance: 1 Month

Reasons why it is expedient to issue an enforcement notice:

1. The development, by reason of the increased number of table covers and the siting of such tables in relation to the neighbouring properties has resulted in unacceptable harm to the amenities of those residential properties from increased noise and disturbance, contrary to Policies ENV1 and ENV24 of the East Herts Local Plan Second Review April 2007.

_____ (009612.PD)

1.0 Background:

- 1.1 The site is shown on the attached Ordnance Survey extract. It lies within the built up area of Hertford just on the outskirts of the main shopping area.
- 1.2 Planning permission for the use of the building as a Class A3 Café/Restaurant was approved under Ipa 3/02/1976/FP. The hours of opening are restricted to the hours 09:00-23:00 Mondays to Thursdays, 10:00-23:30 Fridays and Saturdays and 11:00-23:00 on Sundays and Bank Holidays with no customers to be admitted after 1 hour before closing on all days.
- 1.3 There is an approved outdoor seating area restricted to a 25 metre square area, immediately to the rear of the building, with no use of the seating area to take place outside the hours of 10:00 – 19:00 Monday – Saturday, and 11:00 – 18:00 on Sundays and Bank Holidays. A

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condition also requires that no other outdoor seating or similar use shall be made of the remainder of the outdoor area. The reason for this restriction was in the interests of the amenities of the residents of nearby properties.

- 1.4 Concerns were however raised with the planning enforcement team in March 2012 that the owners of the property had extended the approved seating area to cover most of the outside area with tables close to the boundary wall of the neighboring properties. The extended seating area was also being used in breach of the permitted times of use.
- 1.5 The company and their agents were contacted in May 2012 advising them that the use of the area and tables was unauthorised.
- 1.6 A planning application was subsequently submitted in August 2012, under reference 3/12/1307/FP, seeking retrospective permission to extend the outside seating area. After due consideration however the application was refused permission for the following reason:-

The development by reason of the increased number of table covers and the siting of such tables with the neighboring properties would result in unacceptable harm to the amenity of 15a,15b and 15c St Andrews Street from increase noise disturbance, contrary to Policies ENV1 and ENV24 of the East Herts Local Plan Second Review April 2007

- 1.7 No appeal was lodged against this decision and the unauthorised seating area remains in use.

2.0 Planning History:

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| 3/12/1307/FP | Expansion of existing outdoor seating area in rear garden | Refused |
| 3/11/1575/FP | Single storey rear extension, internal mezzanine and change of use of outside area to A3 use in association with the premises | Approved |
| 3/11/0037/FP | Variation of condition 2 of lpa 3/09/2043/FP to change opening hours for restaurant. | Approved |
| 3/09/2043/FP | A3 use with opening hours as 8:00 – 19:00 Tuesday –Thursday, 8:00 – 23:00 Friday and Saturday and 11:00 – 18:00 Sunday and outside area of patio 10:00 – 19:00 | Approved |

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|--------------|---|---------|
| | Tuesday to Saturday and 11:00 – 18:00 Sunday. | |
| 3/09/1065/FP | Retention of premises for A3 use and change of use of outside area to A3 use in association with the premises. | Refused |

3.0 Policy:

3.1 The relevant policies of the Local Plan in this matter are:-

ENV1 – Design and Environmental Quality
ENV24 – Noise Generating Development

4.0 Considerations:

4.1 The main issue to consider in this case is the impact that the unauthorised seating area has upon the residential amenities of neighbouring properties as a result of noise and disturbance. Properties impacted upon are the residential properties 15a, 15b and 15c, as they face on to the site. The residential properties of 15a–15c have an unusual orientation and layout, wherein they back onto the entrance of the public car park in St. Andrews street and only have very few windows on that elevation. All main windows to those properties face west towards the rear of 25a St Andrews Street. Although they back onto the public car park, they do have secluded private front (west) gardens and do not appear to suffer from noise and disturbance from the car park and general town centre location.

4.2 However, the gardens of those properties do adjoin the unauthorised seating area at number 25a and a resident has complained (both to the Planning department and the Environmental Health department) about noise and disturbance from the use of the area.

4.3 The amount of seating has more than doubled from that previously approved and it is also sited much closer to the neighbouring boundary with numbers 15a – 15c. The cumulative effect of the increased covers and its relationship with neighbours has created an unacceptable impact to these neighbouring properties from general noise and disturbance from customers.

5.0 Recommendation:

5.1 It is therefore recommended that authorisation be given to issue and serve a Planning Enforcement Notice requiring the cessation of the

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unauthorised outdoor seating area and the removal of any operational development (paving/walling) that facilitates the unauthorised use.