

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 Council's 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 he considered that, like several of the buildings on the site, the unit

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benefitted from permission for a Class B1, B2 and B8 use and that this new food preparation; delivery and collection business 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 of the unauthorised take away and food delivery business 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 food delivery/take away use 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:
 - 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 owner appealed that decision but on 16th May 2013 the appeal was dismissed. The Planning Inspector concluded 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 **Essential Reference Paper 'A'** to this report.

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- 1.8 Notwithstanding the appeal decision, 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 itself has ceased). This remains a breach of planning control and is one which is in conflict with the views of the Planning Inspector and the appeal decision.
- 1.9 Members may recall that this matter was reported to the committee in February 2014 when Members resolved to defer consideration of enforcement action in this respect to enable Officers to enter into a dialogue with the owners and operators of the site to determine if the matter could be resolved.
- 1.10 Following that resolution, the operators of the unit were contacted and a meeting with the owner's planning agent took place. They were then asked to submit further information in respect of the nature and extent of the use to give Officers the opportunity to determine if the current use has changed to such an extent that it would overcome the concerns raised both within the original refusal of planning permission and by the Planning Inspector on appeal.
- 1.11 The requested information was submitted by the owner's agent to the Council on 17th April 2014. Below is a summary of that information.
- 1.12 The use of the unit can be divided into two elements. It involves the preparation and delivery of food during the day to trade customers and other restaurants. This is considered to fall within Use Class B1 or B2 and is therefore permitted by the existing planning permission for the property. However, in addition to that lawful use, the business also involves the delivery of hot food to individual residential properties across a wide area in the evening. That remains a *sui generis* use for which planning permission has not been granted and indeed is one which, as mentioned above, was specifically referred to by the appeal Inspector. He concluded (para. 12) that:
- “the home delivery element of the business requires an excessive amount of vehicular use and is not in a sustainable location, contrary to the objectives of the NPPF.”
- 1.13 In response to the appeal decision and Officers' continuing concerns about the sustainability of this use and its impact on motor vehicle use in the surrounding rural area, the owner's agent has stated that the delivery element of the business is small, both in terms of the business itself and the wider site. In addition, it is stated that the hot food delivery service is a valued 'local service' which the Council should aim to

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retain, in accordance with its Local Plan and forthcoming District Plan objectives.

- 1.14 The agent also argues that, without a delivery service, local residents would need to drive to collect their take away food from larger settlements and therefore the traffic generation and sustainability concerns would be the same in either case.
- 1.15 Whilst Officers acknowledge the point, it is not agreed that this argument is sound. The delivery service encourages and facilitates the consumption of take away food in the rural areas and it does not necessarily follow that, without this service, residents in the villages would drive to the larger settlements to collect food at the same rate. There is likely to be a reduced demand where easy delivery is not an option.
- 1.16 In further support of their arguments, the operators of the unit have also prepared a spread sheet which shows the date, time and locations of deliveries associated with the hot food delivery service from 19 January 2014 to 12 April 2014 (this information will be available at the committee meeting). From that information, it appears that most deliveries take place between 4pm and 9.30pm, 7 days a week, with the amount of deliveries per day ranging from 1 to 23.
- 1.17 The areas covered by the deliveries are Albury, Braughing, Furneux, Little Hadham, Much Hadham, Puckeridge and Standon, with the majority of clients being within the Hadhams and Standon.
- 1.18 Along with the report, the agent has submitted 54 pro-forma letters of support from the residents that have used the delivery service in the past. The letter asks residents simply to confirm the following statement: "We use Masala Express Delivery and support their continued operation".

2.0 Planning History:

2.1 The recent relevant planning history in respect of this unit 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.

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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 As mentioned above, the unit is currently used for food preparation and delivery to both trade customers, including other restaurants, and also as a hot food delivery service to individual households. Whilst the delivery of food to other trades/businesses would represent a B1 use, or possibly a B2 use depending on the food preparation processes involved, and is lawful at this premises, the hot food delivery service to individual households is a sui generis use that is not lawful at the site.

4.2 The unauthorised part of the business involves the delivery of hot and cold food during the evening, up to 22.00 hours, to local surrounding villages. It is this element that is considered inappropriate and an unsustainable form of development by Officers. This view has also been upheld on appeal by the Planning Inspectorate.

4.3 Deliveries continue to take place throughout the evening up to 22.00 hours and on Sundays, which is also contrary to a planning condition on the existing B1, B2, B8 planning permission on the premises. That condition restricts vehicle movements to the hours of 07.00 and 20.00 hours with no traffic on Sundays and bank holidays. Whilst officers have considered whether further conditions could be imposed to mitigate the impact of the use, it is not considered reasonable to restrict delivery hours as, of course, it is the evenings when the business is needed and operates mostly. It would not be possible to restrict the number of deliveries either, as this will depend upon customer demand and it would not be possible to monitor or enforce effectively in any event.

5.0 Conclusion and Recommendation:

5.1 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 otherwise reduced.

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- 5.2 Officers have discussed the matter with the owner's agent and have considered the information and arguments put forward by them. However, given the unsustainable location of the site; the impact of the use on traffic generation across the surrounding rural part of the District, and the views of the appeal Inspector at the earlier appeal, Officers remain of the view that the use is not appropriate in this location.
- 5.3 It is therefore recommended that authorisation be given to issue and serve a Planning Enforcement Notice requiring the cessation of the unauthorised use.