

5e 3/10/1226/FO - Variation of Condition 9 (3/09/0939/FP) 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 use of the restaurant by customers shall be restricted to the hours 08:00-23:00 Monday-Wednesday, 08:00-00:00 Thursday-Saturday and 10:00-22:00 on Sunday and Bank Holidays unless otherwise agreed in writing with the Council' at The Riverside Garden Centre, Lower Hatfield Road, Bayford, Hertford, Herts, SG13 8XX for Riverside Garden Centre Ltd.

Date of Receipt: 12.07.2010

Type: Variation of Condition - Major

Parish: BAYFORD, HERTFORD

Ward: HERTFORD – CASTLE, HERTFORD – RURAL SOUTH

RECOMMENDATION

That planning permission be **GRANTED**.

_____ (122610FO.HI)

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 3/09/0939/FP subject to a number of conditions. This application proposes to amend condition 9 of that consent to read 'The use of the restaurant by customers shall be restricted to the hours 08:00-23:00 Monday-Wednesday, 08:00-00:00 Thursday-Saturday and 10:00-22:00 on Sunday and Bank Holidays unless otherwise agreed in writing with the Council'.
- 1.3 Members may recall that a previous application to extend the opening hours to 08.00-01.00 every day (reference 3/10/0704/FO) was refused at Committee on 30th June 2010 and is now under appeal.

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, 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 (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 were on-going issues related to the Flood Risk Assessment for the site (an update on this is the subject of a further enforcement report on this agenda), the development has since been completed and opened. It is condition 9 of this permission that the owner is now applying to amend.
- 2.5 Application 3/10/0704/FO to change the description to read "The restaurant shall not be open for business from 01.00 to 08.00" was refused by Members on 30th June 2010 for the following reason:

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.

3.0 Consultation Responses

- 3.1 Environmental Health do not wish to restrict the grant of permission. The only complaint they are currently dealing with relates to an odour complaint from the extraction system but there have been no significant findings. Conditions are recommended on external loudspeakers and external lighting.

4.0 Town/Parish Council Representations

- 4.1 Bayford Parish Council comment that “with the rebuilding of the garden centre, the restaurant assumes a different character, that of a separate business, with opening hours extended beyond those of the garden centre, for most days of the week. Thus, the Planning Authority is justified in reconsidering the hours of opening. We must also be mindful of the possibilities that these extended opening hours introduce. This is important since ‘conditions of use’ cannot easily be taken away once granted, and are granted to the site, not the current owner. At the same time we recognise that the nature of the business must change and that the present financial environment is not easy.
- 4.2 “The definition of opening times of customer use is more sensible. It is unlikely that staff leaving the site at the end of the day would constitute a nuisance to anyone except the next door property. We consider such nuisance to be minimal given the hedge and fences between the properties. We note that this adjacent property was formerly granted construction permission as a part of the garden centre and as such, even though now separated, must expect some disturbance. Whilst the majority of the members of this council find the extended opening hours not unreasonable, we would like to see some conditions imposed so as to restrict the level of noise emanating from the site after 11pm. We would also like to see some restriction on the number of occasions per year when the opening hours can be extended.”
- 4.3 Hertford Town Council comment that their “Committee did not object to the application when it was made initially. The applications are considered to be balanced and fair proposals. They are reasonable in consideration to the location of the premises.”

5.0 Other Representations

- 5.1 The applications have been advertised by way of press notice, site notice and neighbour notification.
- 5.2 2 no. letters of objection have been received from Burrowfields and 1 Waterhall Cottages, which can be summarised as follows:-
- Query the meaning of the wording ‘use of the restaurant by customers’;
 - Overdevelopment in the Green Belt – the site has evolved to a completely new venture;
 - Support written agreement from the Council for extended opening hours on certain occasions, but limited to maybe 5 times a year;

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- Extractors are audible and smelly and noises come from kitchen and patio doors which are often open;
- The sewage treatment plant produces a horrid smell – opening hours should be restricted to curtail liquid waste;
- HGV deliveries take place as early as 05.30 and 06.00 and cause disturbance through unloading and its reversing bleeper – deliveries should therefore be restricted to 07.00 to 18.00;
- Range of retail goods now on offer and it would be difficult to control in the future if all such restrictions are removed from the retail element;
- Two further conditions are recommended – a restriction of no later than midnight for complete closure, and a restriction of 23.00 for playing of amplified or other music such as festive discos and live music;
- The previous use was very different in terms of scale, location and general level of activity;
- The initial introduction of an A3 use was unauthorised and the 2005 permission was only for a 'part' change of use;
- The current opening hours are already having a considerable impact on the amenities of the adjoining property – this is a Green Belt locality where residents have a right to expect a reasonable level of amenity.

5.3 12 no. letters of support have been received from addresses in Lower Hatfield Road, Bayfordbury, Hertford, Little Berkhamsted, Brickendon and Hoddesdon, which can be summarised as follows:-

- The current restrictions are completely unworkable;
- Excellent local business and amenity – orderly and well run;
- Restaurant caters for families and mature members of the public;
- Excellent disabled facilities;
- It opens for tea and coffee in the morning, lunch between 12 and 3, then afternoon tea, and then opens in the evening for dinner;
- The only noise in the restaurant is background music and this cannot even be heard in the kitchen and certainly not outside the building;
- Opportunity to put Hertford on the good food map;
- The site is well screened by trees and shrubs;
- Never seen the car park full to capacity or full of noisy people, as alleged;
- If refused, a very successful business and jobs would be jeopardised;
- Councillors were previously influenced by references to the restaurant as a 'venue' and 'nightclub';
- The only letter read in full at the previous Committee was a letter of objection from a local Councillor, which contained several incorrect assertions;
- Recommend that the Noise Abatement Agency set up equipment to monitor noise levels in houses where people have complained;
- Music has been turned up to its highest capacity, but was not audible outside the building.

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- An extra hour on Thursdays, Fridays and Saturdays seems reasonable;
- Nearby properties have not heard any noise nuisance.

5.4 A petition of 1,818 signatures has been received from Riverside Garden Centre stating that it is unreasonable for all staff and customers to have to vacate the premises by 11pm.

6.0 Policy

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

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), and Planning Policy Guidance 24 (Planning and Noise) are considerations within this application.

7.0 Considerations

7.1 This application follows a previously refused application to vary Condition 9 of permission 3/09/0939/FP which relates to the hours of use of the premises. This application proposes to change the wording from 'use of the premises...' to 'the use of the restaurant by customers...', and to extend the hours from 23.00 to 00.00 (midnight) on Thursdays, Fridays and Saturdays.

7.2 The main issues in this case therefore relate to the need for the condition, in relation to the tests of Circular 11/95, having particular regard to the proximity of the site to neighbouring property.

7.3 First, it is important to look at the precise wording of the condition. The condition currently relates to the 'premises', not just the restaurant, and therefore the existing condition also covers the retail element of the new building. The applicant is now applying to change the wording to specifically relate to the "use of the restaurant by customers". The opening hours of the retail element would therefore 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 or cause a nuisance.

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- 7.4 Comments raised on behalf of the adjoining neighbour are noted; however given that the garden centre was not previously restricted, and that the retail floorspace of the new building was actually reduced following the granting of application 3/09/0939/FP, it is not considered reasonable to now apply opening hours restrictions to the retail part of the new building.
- 7.5 The application also proposes to incorporate the wording 'the use of the restaurant by customers'. This would allow for staff to remain on site following the departure of customers in order to clean. This is considered to be acceptable as it was not previously the intention of the Council to prevent such activities. Further, the use of the word 'customers' is considered to be appropriate, and follows the model condition set out in Circular 11/95.
- 7.6 A suggestion to require complete closure of the restaurant by a specific time is not considered reasonable or necessary, because the primary source of noise nuisance would arise from noise activities during hours open to the public. Ancillary cleaning activities would not be anticipated to cause undue disturbance. It has also been suggested that the playing of music be restricted to 23.00. Officers do not consider that such a restriction would be sufficient to protect neighbouring amenity as it is not just noise arising from music, but customer movements that would be likely to cause a nuisance.
- 7.7 The proposal also includes a clause that states "...unless otherwise agreed in writing with the Council". This would allow for Officers' discretion to extend opening hours, for example for a particular event, or New Years Eve. Officers are satisfied that this would be an acceptable form of control, providing an element of flexibility for the applicant. Any failure to agree discretionary extended hours would have to be referred to Members as a formal application to vary the condition. Overall, the proposed change in wording of the condition is therefore considered to be acceptable. The remaining issue therefore relates to the proposed extension of opening hours for the restaurant.
- 7.8 The application proposes to extend the opening hours of the restaurant from 11pm to midnight on Thursday, Friday and Saturday evenings. The application also previously proposed opening at 08:00 rather than 10:00 on Sundays and Bank Holidays, but this aspect of the application has been removed following discussions between Officers and the applicant. The main consideration is therefore the additional opening hour three nights a week. Officers are concerned about the levels of noise arising from music, outdoor seating, and customers departing in close proximity to neighbouring property, in particular Burrowfield located approximately 50m to the east, and this resulted in the refusal of consent to extend the opening hours to 1am every night of the week (3/09/0704/FO).

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- 7.9 In considering the proposed extra hour of opening on Thursday, Friday and Saturday nights, Officers remain concerned over potential noise disturbance, particularly on a Thursday as it is mid-week. However, the proposed opening hours are not considered to be wholly unreasonable for a restaurant, and the harm expected to arise from this additional hour in the evening three nights a week is not considered to be significantly greater.
- 7.10 It is noted that a number of letters have been received in support of the application, with several neighbours in Lower Hatfield Road and Bayfordbury confirming that they have never experienced any noise disturbance from the restaurant. Tests have apparently been undertaken to check noise levels of recorded music which have been inaudible outside the building. It is also noted that Environmental Health have not received any recent noise complaints, and have not objected to the application.
- 7.11 The applicant holds a drinks licence until 00.30 and an entertainments licence until 01.00, and these have been granted by the Licensing Authority. However, regardless of the licence, a planning judgement needs to be made as to whether complaints would be likely to arise by extended the restaurant opening hours. Comments raised regarding odour and noise from extraction equipment and the sewage treatment plant are not material to this application.
- 7.12 Comments from the adjoining neighbour do indicate levels of noise disturbance, and Officers acknowledge that some disturbance may result from the extended opening hours. However, on balance, it is not considered that this would be detrimental to residential amenity to a degree that would warrant refusal of the application. The proposal is therefore considered to be in accordance with policies ENV1 and ENV24.
- 7.13 A petition has also been received from the restaurant with 1,818 signatures of support. However, the wording of this petition does not support extended opening hours, but questions the need for all staff and customers to vacate the premises by 11pm. Officers have already confirmed that this was not the intention of Condition 9 and that cleaning activities can continue after 11pm. However, the proposed re-wording of the condition does clarify this position.
- 7.14 Concerns have also been raised over potential job losses if the application were refused. Officers do not consider that this application should affect the current employment situation as the hours of use restriction has been in place since the new restaurant was granted consent, and therefore since staff were employed. Therefore this does not weigh heavily in the balance of considerations.

8.0 Conclusion

- 8.1 Overall, on the balance of considerations, Officers consider this proposal to amend the wording of Condition 9 of 3/09/0939/FP, and to extend the opening hours from 23:00 to 00:00 on Thursday, Friday and Saturday nights would be unlikely to result in detrimental harm to neighbouring amenity.
- 8.2 The application is therefore recommended for approval.