

Wolverhampton City Council

OPEN INFORMATION ITEM

Committee / Panel	<u>PLANNING COMMITTEE</u>	Date 11 th September 2012
Originating Service Group(s)	EDUCATION AND ENTERPRISE	
Contact Officer(s)/	STEPHEN ALEXANDER (Head of Planning)	
Telephone Number(s)	(01902) 555610	
Title/Subject Matter	PLANNING APPEALS	

1.0 Purpose of Report

- 1.1 To provide the Committee with an analysis of planning appeals in respect of decisions of the Council to either refuse planning or advertisement consent or commence enforcement proceedings.

2.0 Planning Appeals Analysis

- 2.1 The Appendix to this report sets out the details of new planning appeals, ongoing appeals and those which have been determined by the Planning Inspectorate in respect of the decisions of the Council to either refuse planning or advertisement consent or commence enforcement proceedings.
- 2.2 In relation to the most recent appeal decisions of the Planning Inspectorate i.e. those received since last meeting of the Committee, a copy of the Planning Inspector's decision letter, which fully explains the reasoning behind the decision, is attached to this report. If necessary, Officers will comment further on particular appeals and appeal decisions at the meeting of the Committee.

3.0 Financial Implications

- 3.1 Generally, in respect of planning appeals, this report has no specific financial implications for the Council. However, in certain instances, some appeals may involve the Council in special expenditure; this could relate to expenditure involving the appointment of consultants or Counsel to represent or appear on behalf of the Council at Public Inquiries or, exceptionally, if costs are awarded against the Council arising from an allowed planning/enforcement appeal. Such costs will be drawn to the attention of the Committee at the appropriate time.

**4.0 Equal Opportunities/
Environmental Implications**

- 4.1 None.

ONGOING APPEALS

	<u>Appeal Site / Ward</u>	<u>Appellant</u>
1.	53 Mount Road Tettenhall Wood Wolverhampton Tettenhall Wightwick	Mr P Stafford
2.	Land Fronting The Firs PH Windmill Lane Wolverhampton Tettenhall Wightwick	Vodafone Ltd & Telefonica O2 UK Ltd
3.	7 Park Avenue Whitmore Reans Wolverhampton Park	Mr H S Raikhy
4.	25 Benson Avenue Wolverhampton Blakenhall	Mr Chris Clacken
5.	Lidl Food Store 27 Blackhalve Lane Wolverhampton Fallings Park	Donna Commock

APPEALS DETERMINED SINCE LAST MEETING

Appeal Site / Ward / Appellant	Application No / Proposal	Type of Appeal / Date Submitted	Reasons for Refusal / Requirements of Enforcement Notice	Decision and Date of Decision
Unit 4, Springhill Lane, Wolverhampton Penn Seven Counties Construction Ltd	11/00306/FUL Change of use from beauty salon to restaurant and cafe (Class A3).	Planning Written representation 06.02.2012	Noise disturbance Contrary to Policy SH10 Inadequate parking	Appeal Allowed 21.08.2012



Appeal Decision

Site visit made on 1 August 2012

by Elizabeth Hill BSc(Hons), BPhil, MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 21 August 2012

Appeal Ref: APP/D4635/A/12/2170138

Unit 4, Springhill Lane, Penn, Wolverhampton, WV4 4SH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Seven Counties Construction Ltd against the decision of Wolverhampton City Council.
 - The application Ref 11/00306/FUL, dated 22 March 2011, was refused by notice dated 11 August 2011.
 - The development proposed is a change of use from a beauty salon to a restaurant and cafe.
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Decision

1. The appeal is allowed and planning permission is granted for a change of use from a beauty salon to a restaurant and cafe at Unit 4, Springhill Lane, Penn, Wolverhampton, WV4 4SH, in accordance with the terms of the application, Ref 11/00306/FUL, dated 22 March 2011, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The use hereby permitted shall not be open to customers outside the following times: 0800 to 2200 Monday to Saturday and 1100 to 2200 on Sundays, Bank or Public Holidays.
 - 3) The development hereby permitted shall not be occupied for the permitted use until waste storage provision has been provided in accordance with the details shown on drawing no SCC.SL.01 and shall be maintained as such thereafter.

Preliminary matters

2. In the grounds of appeal the appellants asked me to also consider a takeaway use from the premises. This would be a different Use Class, A5, whereas the application proposal is for A3 use. Given the implications of takeaway operations, I consider that this would be a significant difference from the use applied for, which would require further consultation, especially with neighbouring residents. Therefore I have considered only the use of the premises applied for, that is, a café/ restaurant, Class A3.
3. The Wolverhampton Unitary Development Plan (2006)(UDP) was not prepared under the Planning and Compulsory Purchase Act 2004 and falls to be considered under paragraph 215 of the National Planning Policy Framework (the Framework), with due weight being given in terms of the consistency of policies with those of the Framework. The UDP policies quoted are generally

consistent with the Framework and have significant weight in determining the appeal.

Main Issues

4. The main issues in this case are the effect on:
 - 1) the retail function of the Local Centre;
 - 2) the living conditions of neighbouring occupiers in terms of noise and disturbance; and,
 - 3) highway safety, in terms of parking provision.

Reasons

Local centre

5. The proposed development would take place in Springhill local centre, which comprises two main areas of shops on opposite sides of Springhill Road, surrounded by housing. The proposal would be in association with the existing adjoining Balti Hut delivery service, which would provide cooking facilities for the café/ restaurant. It would operate as a café during the day and a restaurant in the evening. The local centre has 22 shops and UDP policy SH10 sets a threshold of 30% non-A1 uses in such centres. The proposal would take the percentage to just over this amount. Whilst there are a few existing café/ takeaways in the centre, there are also a number of vacant A1 units. The daytime café use of the proposal could be an attractor, encouraging people to spend more time in the centre and visit other shops, contributing to its vitality and viability. In this case where the proposal would take the percentage of non-A1 uses only just over the criterion in policy SH10 and would be effectively an extension to an existing use in the centre, then slightly exceeding the threshold would not have an adverse effect on the centre.
6. Therefore, although the proposal would be contrary to policy SH10 of the UDP, it would not harm the vitality and viability of the centre.

Living conditions

7. The row of units is single storey, with no accommodation over them, although there is housing to the side of and opposite the site. There is some parking space to the rear of the units but at the time when I visited this was rather congested with vehicles. Therefore it is likely that parking would take place on the road outside. The Council have proposed a Traffic Regulation Order (TRO) in the vicinity and this would be likely to reduce the number of on-street parking spaces. However, there would still be a number of spaces that would not be directly outside neighbours' dwellings and there were a number of spaces around the shopping centre when I visited in the early evening.
8. The Council have suggested conditions which would ensure that the restaurant closed by 2200 each day and the café would not open until 1100 on Sundays, Bank and Public Holidays. These hours would help to protect neighbours' living conditions from noise and disturbance.
9. The existing cooking facilities at the Balti Hut would be used and therefore there should be no increase in odour, provided the extraction and ventilation equipment was maintained and operated in accordance with the manufacturer's

recommendations. In addition, there should be no litter arising from a café/ restaurant use on the site.

10. Therefore the proposed development would not be harmful to the living conditions of neighbouring occupiers and would be in accordance with policy EP5 of the UDP.

Highway safety

11. Parking would be likely to take place on the street outside the premises. There was no evidence when I visited that parking was taking place in positions that would be likely to cause harm to highway safety or congestion to local traffic. In any event, highway safety and congestion are matters which would be taken into account in the location of parking spaces proposed in the TRO.
12. Therefore the proposed development would not be harmful to highway safety and would be in accordance with policies AM12 and AM15 of the UDP.

Conditions

13. The proposed conditions have been considered in the light of the advice in Circular 11/95: The Use of Conditions in Planning Permissions. Conditions would be necessary to limit the hours open to customer use in the interests of protecting the living conditions of neighbouring occupiers. Since Bank/ Public Holidays normally have the same hours as Sundays, these have also been included for opening at 1100. A condition would be necessary to ensure proper waste storage from the use to prevent pollution of the environment and ensure provision for waste management. The suggested conditions have been amended in the interests of precision.

Conclusions

14. Therefore, for the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

E A Hill

INSPECTOR