

LOCAL MEMBER OBJECTION

COMMITTEE DATE: 19/06/2019

APPLICATION No. **19/0563/MNR**

DATE RECEIVED: 08/03/2019

ED: **LLANISHEN**

APP: TYPE: Full Planning Permission

APPLICANT: Mr S Gropetis

LOCATION: 11 Station Road, Llanishen , Cardiff

PROPOSAL: VARIATION OF CONDITION 3 OF PLANNING APPLICATION
17/01143/MNR TO ALLOW TRADING HOURS OF 09:00 TO
21:00 MONDAY – SATURDAY AND 10:00-16:00 ON A
SUNDAY

RECOMMENDATION 1: That Planning Permission be **GRANTED** for the development in accordance with planning permission 17/01143MNR without compliance with condition 3 but subject to the following conditions:

1. C01 – Statutory Time limit
2. The premises shall be used only as a restaurant, hot food takeaway, café or coffee shop and for no other purpose (including any other purpose in Class A3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 or in any provision equivalent to that Class in any statutory instrument amending, revoking or re-enacting that Order).
Reason: The use of the premises for other purposes within Class A3 could detract from the amenities of nearby occupiers.
3. The premises shall only be open to members of the public between 09:00 and 21:00 Monday to Saturday and between 11.00 and 16:00 on a Sunday.
Reason: To ensure for the amenities of occupiers of other premises in the vicinity are protected.
4. Refuse storage containers shall be provided internally to accommodate general waste, recycling and food waste. Refuse storage shall thereafter be retained.
Reason: To protect the amenities of the area.

RECOMMENDATION 2: The applicant is advised that a suitable grease trap should be provided to prevent entry into the public sewerage system of matter likely to interfere with the free flow of the sewer contents, or which would prejudicially affect the treatment and disposal of such contents.

RECOMMENDATION 3: The applicant is advised that due to the extended opening hours it may be necessary for the commercial waste collection contract to be amended appropriately.

1. **DESCRIPTION OF PROPOSED DEVELOPMENT**

- 1.1 This application seeks planning permission to modify condition 3 of planning application 17/01143/MNR which allowed for the property to be used as a restaurant/hot food take away, cafe or coffee shop.

Presently Condition 3 states:

The premises shall only be open to members of the public between 09:00 and 21:00 Monday to Saturday and shall not be open to members of the public at any time on a Sunday.

Reason: To ensure for the amenities of occupiers of other premises in the vicinity are protected.

The applicant seeks to vary condition 3 of planning permission 17/01143/MNR to read as follows:

The premises shall only be open to members of the public between 09:00 and 21:00 Monday to Saturday and open to members of the public between 11.00 and 16:00 on a Sunday.

- 1.2 No external changes are proposed as part of this application.

2. **DESCRIPTION OF SITE**

- 2.1 The site relates to the end unit of a block of five, two storey purpose built shop units within the Station Road Local Shopping Centre. The lawful use of No. 11 is as a restaurant, hot food take away, café or coffee shop falling within Use Class A3 of the Town and Country (Use Classes) Order 1987. At first floor level is a residential flat.

The four adjoining properties are all in commercial use on the ground floor. The adjoining property contains a residential flat above with the first floor of the three other units being used for commercial and storage purposes. The block of properties is adjoined on the one side by Llanishen Church and associated graveyard and on the other side by Cardiff County Council's Llanishen Hyb which provides community contact centre services. Forecourt parking is available at the front of the properties and a service road is situated to the rear which provides for a garage and a parking space for each unit.

3. **RELEVANT SITE HISTORY**

- 3.1 14/1745DCO – Retention of use of property as a day time café – Permission granted 17th September 2014

17/1144MNR – Ground floor rear extension – Permission granted 17th July

2017

17/1143MNR - Variation of conditions of planning application 14/1743DCO 1) to allow fish and chip café with take away use and 2) to allow trading hours of 07:30 to 21:00 Monday – Saturday and 09:00-21:00 Sunday – Permission granted 13th October 2017. Premises required to close on Sunday

17/2741MNR – Retention of outside store, shed and toilet – Permission granted 1st February 2018

18/222MNR – Discharge of condition 4 (Fume Extraction) of planning permission 17/1143MNR– Condition discharged 23rd July 2018

19/562MNR – Discharge of condition 4 (Fume Extraction) of planning permission 17/1143MNR – Condition discharged 4th April 2019.

4. **POLICY FRAMEWORK**

4.1 The site lies within the Station Road Local Shopping Centre as defined by the proposals map of the Cardiff Local Development Plan 2016

4.2 Relevant National Planning Guidance:
Planning Policy Wales (Edition 10, 2018)

4.3 Relevant Cardiff Local Development Plan Policies:

Policy KP5: Good Quality and Sustainable Design
Policy EN 13: Air Noise Light Pollution and Land Contamination
Policy R5: Local Centres
Policy R8: Food and Drink Uses

4.5 Relevant Supplementary Planning Guidance:

Managing Transportation Impacts (Incorporating Parking Standards) (2018)
Planning for Health and Wellbeing (2017)
Food Drink and Leisure Uses (2017)
Waste Collection and Storage Facilities (2016)

5. **INTERNAL CONSULTEE RESPONSES**

5.1 Shared Regulatory Services (Pollution Control) have been consulted and no adverse comments have been received.

5.2 Waste Management Have been consulted and have advised that they have no objection to the application. They have advised that due to the extended opening hours it may be necessary for the commercial waste collection contract to be amended to take the extended hours into account. Recommendation 3 has been included to bring this matter to the attention of the applicant.

- 5.3 Traffic and Transportation have advised that on-street parking within Llanishen village immediately outside the row of shops (No. 11 to the Hyb) is controlled (1 hour max stay) during the day (8am to 6.30pm), Monday to Saturday. There are no parking controls outside these hours therefore no controls operate on a Sunday. Outside of the permitted parking bays the roads are controlled by “at any time” waiting restrictions (double yellow line) or zebra crossing zig-zags. No parking is available on-street outside the church. There is a free shoppers car park behind the church.

There are no transportation grounds for objecting to the proposal to open the café / chip shop during the trading day on a Sunday.

6. **REPRESENTATIONS**

- 6.1 5 separate letters of objection have been submitted against the proposal from the occupiers of 37, 45, 56 and 72 Station Road and Llanishen Parochial Church Council. The objections can be summarised as follows:

1. Issues with illegal parking and deliveries vehicles blocking the road and causing traffic chaos which will only worsen if Sunday trading is allowed;
2. The smell of cooking from the chip shop;
3. The use of the premises on a Sunday would have a detrimental effect on the parking situation at times of St Isan’s Church services.
4. The premises is already popular with pupils from Llanishen High School and by increasing the opening hours will increase that custom to the detriment of public health;
5. Increase in litter;
6. Use of advertising on the pavement.

- 6.2 Local Ward Councillor Shaun Jenkins has objected to the application and has requested the application be considered at Planning Committee. His objection is as follows:

I am writing to object to the proposed change in opening hours of Fintans, 11 Station Road, planning ref: 19/00563/MNR.

The condition to restrict the opening hours was imposed by the planning committee less than 24 months ago and nothing has changed to infer that that decision should be changed/ varied.

The condition is to ensure the amenities of occupiers of other premises in the vicinity are protected. The condition is very important and I am concerned that were the committee to change the condition, then this would lead to a deterioration to the amenities of the occupiers of other premises in the vicinity.

In addition, owing to the proximity to the ancient church, odours coming from the chip shop, which to date the business have failed to appropriately manage, would likely make their way in to the church during services and baptisms causing a nuisance to churchgoers.

Further, the area is busy during church opening hours and as such there would be a significant increase in car parking, causing further nuisance to churchgoers.

Given that the chip shop is so close to the church grounds, it is both reasonable and proportionate to restrict the opening hours to ensure that the religious practices, which have been undertaken in the area for almost 1,000 years, are protected and as such the condition should not be changed/varied.

7. **ANALYSIS**

- 7.1 When planning application 17/01143/MNR was originally presented to Planning Committee on 11th October 2017 for approval. The requested opening hours covered by condition 3 was to allow for trading from 09.00 – 21.00 Monday to Sunday. However Members of Planning Committee sought to reduce the trading hours by the omission of Sunday trading. Condition 3 was subsequently amended to reflect Committee's wish. This application has been submitted in an attempt to modify condition 3 of the planning permission to allow the premises to trade on a Sunday. Presently Condition 3 states:

The premises shall only be open to members of the public between 09:00 and 21:00 Monday to Saturday and shall not be open to members of the public at any time on a Sunday.

Reason: To ensure for the amenities of occupiers of other premises in the vicinity are protected.

The applicant seeks to vary condition 3 of the planning permission to read as follows:

The premises shall only be open to members of the public between 09:00 and 21:00 Monday to Saturday and open to members of the public between 11.00 and 16:00 on a Sunday.

- 7.2 Since planning permission was granted to allow the premises to operate as a hot food take away there has been no change in land use circumstances, the applicant is still trading from the property and the use has not changed. The property is situated within the Station Road Local Shopping Centre and the principle of the use has been established by the previous planning permission. The key issue for this application therefore is the impact the modification of condition 3 to allow for Sunday trading between 11.00 and 16.00 will have upon the character of the Station Road Local Shopping Centre and the surrounding area and the implications for the residential accommodation situated above and within close proximity to the application site.
- 7.3 Section 4.23 of the "Food Drink and Leisure Uses" SPG 2017 advises that Local Centres and smaller neighbourhood centres are generally more residential in nature, and do not have the scale or variety of retail and non-retail uses of larger centres. Therefore, A3 and commercial leisure (D2) proposals may be more difficult to accommodate, and are less likely to be

acceptable on amenity grounds (e.g. potential noise and disturbance, anti-social behaviour and litter associated with this type of development proposal). As a consequence more emphasis will be placed on protecting residential amenity within these centres through restricting closing times and the type of A3 premises. It should be noted that the premises operated for many years as a café where food could be purchased for consumption off the premises and recently obtained planning permission for a chip shop. While it is noted that there are a mix of uses nearby, the property is within the Local Shopping Centre where such uses can operate successfully. Controlling hours have been imposed but it would not be unusual for such premises to operate 7 days a week provided amenity issues are considered. In this case there are no Pollution Control objections to the proposed opening hours.

- 7.4 Policy R5 of the adopted Local Development Plan relates to Local Centres and advises that proposals for uses other than Class A1 (except business offices class B1) can be permitted at ground floor level if they would not cause unacceptable harm to the predominant shopping role and character of the centre, the vitality, attractiveness and viability of a specific frontage or group of frontages.

In this particular instance the use of the property already benefits from A3 use therefore the proposal will not result in the loss of a retail unit and would be in compliance with this policy.

- 7.5 Shared Regulatory Services (Pollution Control) have been consulted and have not commented on the application. It has been noted previously there were issues with respect to odour emanating from the premises. These issues have since been addressed and the existing fume extraction system being upgraded – See application 19/562MNR. Officers from Pollution Control were involved with the upgrading of the fume extraction system and the system presently installed has been agreed. If it is subsequently found that the approved system is not working correctly and causing a statutory nuisance then action can be taken by Pollution Control via Environmental protection Legislation.

- 7.6 In respect of concerns over parking and highway safety issues, officers from the Transportation Section of the Council were previously consulted on the application when it was originally presented to Planning Committee which sought trading 7 days a week. At that time they advised that they had no objections to the proposal on highway safety grounds. Their position remains unchanged.

Concerns have been raised over the illegal use of the disabled parking bay in front of the shops on Station Road. Such an abuse of parking restrictions would be a matter for the police or the Council's civil parking enforcement officers to investigate.

- 7.7 With respect to concerns received from the Llanishen Parochial Church Council over the potential impact on the parking situation for users of St Isan's Church, it is noted that Sunday services at St Isan's Church are

advertised on their website as commencing at 08.00, 09.00, 10.30 & 18.00. As this application seeks trading between 11.00 and 16.00 it should not impact on the alleged car parking issues and potential conflict with users of the church. It should also be noted that the church has its own private car park immediately adjacent to the church and there is a Council owned public car park situated adjacent to the church's car park.

- 7.8 In respect of concerns over increased litter, Waste Management have not objected to the application. Littering in a public place is an offence and under the Clean Neighbourhood and Environment Act 2005 offenders can be issued with a Fixed Penalty Notice. There are 6 litter bins within the local centre including 1 immediately outside of the application site.
- 7.9 In respect of concern over the display of advertising on the pavement (adopted highway) this would be a matter for the Transportation Section of the Council. However, as a result of the objection it was noted that several such adverts from various local businesses were within the vicinity of the Station Road Local Shopping Centre. These have been referred to colleagues within the Transportation Section for appropriate action.
- 7.10 The comments raised by objectors in relation to potential negative impacts of the proposal on the health of the local population and proximity to local schools are noted. However, the LDP, Food Drink and Leisure Uses and Planning for Health and Well-being SPG's have no specific policies to refuse the application on health grounds. In addition Health Impact Assessment (HIA) is not a statutory requirement for this type of development.

Further to the comment with respect to the location of the premises in close proximity to the school and residential accommodation it is important to note that the application site is situated within the Station Road Local Shopping Centre and has provided hot food for sale to members of the public since at least 2004 although this was not in the form of a chip shop but as a café. Whilst the importance of health and wellbeing as it relates to planning is recognised it is important to note that the premises already operates as a hot food outlet and the only matter for consideration in this case is the increase in hours of operation and no change of use is proposed.

- 7.11 The Well-being and Future Generations (Wales) Act 2015 places a duty on public bodies that they must carry out sustainable development and puts in place seven well-being goals to help ensure that public bodies are all working towards the same vision of a sustainable Wales. It defines sustainable development as "the process of improving the economic, social, environmental and cultural well-being of Wales by taking action, in accordance with the sustainable development principle, aimed at achieving the well-being goals." It goes on to identify that "acting in accordance with the sustainable development principle means that a body must act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs."
- 7.12 This duty has been considered in the evaluation of this application. It is

considered that there would be no significant or unacceptable impact upon the achievement of well-being objectives as a result of the recommended decision.

- 7.13 Condition 2 of planning permission already restricts the use of the property to restaurant, hot food take away, café or coffee shop in accordance with the SPG thereby limiting its operations. A limited opening of only 5 hours (11.00 – 16.00) as opposed to the previously applied for 12 hours would not impact upon the locality to such an extent that would cause unacceptable harm to the surrounding area.

8. **CONCLUSION**

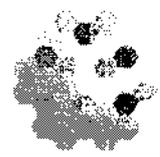
- 8.1 In summary and having taken all relevant factors into consideration it is considered that there are insufficient grounds to refuse the application to extend the opening hours of the property to include trading on a Sunday. Whilst the concerns of those objectors have been noted the majority of the issues raised are not controlled by planning legislation and are covered by other Service Areas of the Council or the police. It is recommended that planning permission be granted to include Sunday trading 11.00 to 16.00 subject to the reintroduction of conditions specific to the use of the premises..

9. **OTHER LEGAL CONSIDERATIONS**

- 9.1 Crime and Disorder Act 1998 – Section 17(1) of the Crime and Disorder Act 1998 imposes duty on the Local Authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. This duty has been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable increase in crime and disorder as a result of the proposed decision.
- 9.2 Equality Act 2010 – The Equality Act 2010 identifies a number of ‘protected characteristics’, namely age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation; marriage and civil partnership. The Council’s duty under the above Act has been given due consideration in the determination of this application. It is considered that the proposed development does not have any significant implications for, or effect on, persons who share a protected characteristic.
- 9.3 Well-Being of Future Generations Act 2016 – Section 3 of this Act imposes a duty on public bodies to carry out sustainable development in accordance with the sustainable development principle to act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs (Section 5). This duty has been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable impact upon the achievement of wellbeing objectives as a result of the recommended decision.

HM Land Registry
Current title plan

Title number **CYM535852**
Ordnance Survey map reference **ST1781NE**
Scale **1:1250**
Administrative area **Cardiff / Caerdydd**



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