

LOCAL MEMBER OBJECTION

COMMITTEE DATE: 02/02/2023

APPLICATION No. **22/02542/VAR**

DATE RECEIVED: 27/10/2022

ED: **HEATH**

APP: TYPE: Variation of Conditions

APPLICANT: Mrs Sophie Pascoe

LOCATION: 32 St Anthony Road, Heath, Cardiff, CF14 4DJ

PROPOSAL: VARIATION OF CONDITION 3 OF 20/01075/MNR TO EXTEND
TRADING HOURS WEDNESDAY TO SATURDAY FROM 19:00
TO 21:00

RECOMMENDATION: That planning permission be **GRANTED** subject to the following conditions:

- 1 C01 – Statutory Time Limit
- 2 The premises shall be used only as a 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 Members of the public shall only be admitted to or allowed to remain on the premises between the hours of 07:00 and 19:00 on Mondays and Tuesdays, 07:00 and 21:00 on Wednesdays to Saturdays, and 08:00 and 17:00 on Sundays.
Reason: To ensure that the amenities of other premises in the vicinity are protected, in accordance with policy EN13 of the Local Development Plan.
- 4 If at any time the use of the premises requires the installation of any external extraction equipment associated with the permitted use, details of the equipment shall be submitted to and approved by the Local Planning Authority in writing prior to installation of the extraction equipment.
Reason: To ensure that the amenities of occupiers of other premises in the vicinity are protected, in accordance with policy EN13 of the Local Development Plan.

- 5 Secure and covered cycle storage shall be provided for staff use within the site to accommodate at least 2 cycles and shall thereafter be retained.

Reason: To ensure that secure and under cover cycle parking facilities are provided to encourage other modes of transport over the private car, in accordance with Policy T5 of the Local Development Plan.

- 6 A 1.8m high solid fence/wall enclosure shall be retained along the east side boundary of the external area in alignment with the side elevation of no. 83 Rhydhelig Avenue at all times that the garage or front external area are used for class A3 purposes.

Reason: To ensure that the privacy of adjoining occupiers is protected in accordance with Policy KP5 of the Local Development Plan.

1. **DESCRIPTION OF PROPOSED DEVELOPMENT**

- 1.1 This application was considered at Planning Committee on 12th January 2023 where it was resolved to defer the application for a site visit which took place on Monday 23rd January.

- 1.2 The application seeks permission to vary condition 3 of planning permission 20/01075/MNR to allow extended opening hours until 21:00 on Wednesdays to Saturdays at a class A3 café/coffee shop premises.

- 1.3 Condition 3 was imposed as follows:

3) Members of the public shall only be admitted to or allowed to remain on the premises between the hours of 07:00 and 19:00 on Mondays to Saturdays, and 08:00 and 17:00 on Sundays.

Reason: To ensure that the amenities of other premises in the vicinity are protected, in accordance with policy EN13 of the Local Development Plan.

2. **DESCRIPTION OF SITE**

- 2.1 The site comprises a ground floor commercial unit within a two storey detached building, inclusive of an associated detached garage to the east side, and an external area at the front and sides. The premises lies at the north-west corner of the roundabout junction of St Anthony Road, King George V Drive West, and Rhydhelig Avenue. It is adjoined by residential dwellings to the sides and rear, the external area at the west side is separated from the residential garden to the north by an electricity sub-station. The upper floor and external area at the rear is in separate residential use, and not part of the application site. There is a funeral director's premises on the north-west corner of the junction of St Anthony Road and Rhydhelig Avenue.

3. **SITE HISTORY**

- 3.1 20/01075/MNR – planning permission granted for change of use from A2 to A3 café/coffee shop.

- 3.2 15/00422/MNR – planning permission refused for change of use from A2 + residential to a children’s day nursery for a maximum of 18 children.

4. **POLICY FRAMEWORK**

4.1 Relevant National Planning Guidance:

Planning Policy Wales (Edition 11, 2021)
Future Wales - the National Plan 2040

4.2 Relevant Cardiff Local Development Plan (2006-2026) policies:

Policy EN13 (Air, Noise, Light Pollution and Land Contamination)
Policy R8 (Food and Drink Uses)

4.3 Relevant Supplementary Planning Guidance

Food, Drink and Leisure Uses (2017)
Managing Transportation Impacts (Incorporating Parking Standards) 2018.

5. **INTERNAL CONSULTEE RESPONSES**

- 5.1 Neighbourhood Services: No comments received.
- 5.2 Transportation: Do not see that the extended opening hours would result in traffic/safety issues. Given our maximum parking standards, there is no requirement for car parking. If there is abuse of existing limited waiting/residential permit parking this can be considered by our Parking Enforcement team, some staff work after 18:00 to be able to monitor the time in question.

6. **EXTERNAL CONSULTEE RESPONSES**

- 6.1 None.

7. **REPRESENTATIONS**

- 7.1 The application was publicised by neighbour letter and site notice. Objections have been received from the following addresses:

- nos. 30, 30A, 34, 36, 38, 40 St Anthony Road.
- No. 83 Rhydheilig Avenue.
- no. 24 St Benedict Crescent.

Full details are viewable online, their comments are summarised as follows:

- a) *Noise disturbance to adjoining residential properties;*
- b) *Use of garage in breach of existing planning permission;*
- c) *Impact of cooking smells from use of converted garage;*
- d) *Visual intrusion of adjoining residential properties;*
- e) *Impact upon on residents parking;*

- f) *Impact upon highway safety at a busy roundabout;*
- g) *Sale of alcohol at the premises;*
- h) *Would set a precedent for later opening until 11pm.*

7.2 Cllrs Mike Ash-Edwards, Graham Hinchey and Cllr Julie Sangani object to the application as follows:

As the three ward councillors for Heath we wish to support residents in the immediate vicinity of the property concerned in this application, who fear the impact that the extension of business evening opening hours to 9pm will have on them.

The Park Side Café operates on the roundabout outside the entrance to the University of Wales Hospital at the junction of St Anthony Road and Rhydelig Avenue and is a few hundred yards from Birchgrove business centre. While there are a couple of other businesses in the vicinity of this location, neither are of a retail nature and none have any significant public footfall. The immediate location is otherwise completely of a residential nature.

The Park Side has been generally welcomed as a business in the neighbourhood, but its immediate neighbours have become concerned about the more regular use of the outdoor space and the recent addition of a pizza takeaway on the premises which have resulted in additional traffic to the business. Given the residential nature of the neighbourhood the majority of parking spaces in the vicinity are covered by a residents parking scheme and there are only a few open but limited spaces available nearby. An increased number of parking violations have been observed in this location recently, in terms of non-permit holders parking in residents parking spaces, overlong occupation of restricted parking spaces and short periods of illegal parking on the roundabout.

Residents living adjacent to the property and on the roundabout at the front of the business are legitimately concerned that the 7pm – 9pm Wed -Saturday extension to the operating hours sought in this application, would result in the tolerable level of nuisance experienced from this business currently becoming more intrusive and in conflict with the residential nature of the area. We would share their concerns about the likelihood of increased noise from the occupation of the outdoor area on summer evenings and increased traffic to the takeaway which would then be servicing the evening trade, and in an area of very restricted parking would be most likely to create increased problems.

We recognise the support this business has from its customers and those residents not directly impacted by its day to day operation but are of the view that the concerns of its most immediate neighbours in relation to an extension of opening hours are merited and need to be taken into account.

We would ask the committee to consider the residential nature of this area and the disruption likely to be caused by a business extension into the evening period and would request that this application be refused.

7.3 Comments of support have been received from over 40 residents with addresses in Cardiff, of which 34 are from addresses within the Heath area. Full details are viewable online, their comments are summarised as follows:

- a) *The proposed extended opening hours would be relatively early and not disruptive;*
- b) *Unpleasant odours, noise and litter have not been experienced from this business;*
- c) *A two hour extension of opening would not have any noticeable impact upon noise, parking or traffic;*
- d) *Parking issues in the area have been a long term issue from hospital staff and users of the park, this proposal will not make the situation any worse;*
- e) *The premises is not for heavy drinking, loud music or rowdy behaviour;*
- f) *The premises is an asset for the local community as a hub for the community;*
- g) *An independent family owned business should be supported.*

7.4 The applicant has provided a response to the comments of objection, summarised as follows:

We completely understand the parking concerns raised. We are also local residents and with the nature of the hospital and recreational park being in such close proximity, the area as a whole is notorious for parking issues (and is actually far worse in other areas of the ward). However, the objecting points raised relating to parking and our attempt to open for 2 hours longer across a few days will have very little impact on parking. If illegal parking is occurring then it is pure speculation that we are the cause of this rather than the hospital or park. Being open an extra 2 hours between 7pm-9pm will not have the detrimental effect that the objecting residents are claiming.

The majority of objecting residents see pizzas and jump to conclusions. We are not Dominos. We are being painted as a fast food outlet which is such a misrepresentation in many ways. We are a cafe serving limited hot food and to increase revenue (and survive) we are also offering it as takeaway which is secondary.

8. **ANALYSIS**

8.1 The principal issue in the determination of this application concerns the effect of the proposal upon the amenity of neighbouring residents.

8.2 Impact upon Neighbouring Occupiers

Policy KP5 seeks to ensure that 'no undue effect on the amenity of neighbouring occupiers' results from development and Policy EN13 seeks to ensure that no undue impact results as a result of sources of pollution.

Policy R8 of the LDP identifies that A3 (food and drink) uses are most appropriately located in the City Centre, the Bay and District and Local Centres, and the Food, Drink and Leisure Uses SPG identifies that A3 (food and drink) uses are most appropriately located in the City Centre Principal

Shopping Area, District and Local Centres and the City Centre Principal Business Area.

It is noted that the site is not located within a designated commercial centre and there is residential accommodation above and adjacent to the premises. However, having regard that the premises is of relatively small scale and located at a busy roundabout junction used by vehicles to access/exit the Heath hospital during daytime and evenings, it is considered that the opening until 21:00 on Wednesdays to Saturdays is not likely to result in unreasonable harm to the amenity of nearby residential occupants. The external area at the rear is not within the demise of the application premises, and the external area at the front is screened from the residential dwelling of no. 83 Rhydheilig Avenue by a 1.8m high timber fence and separated from the residential dwelling of no. 34 St Anthony Road by an existing electricity sub-station structure. It is noted that overlooking to the side windows of no. 83 Rhydheilig Avenue could occur in the absence of the screen fence to the east side boundary, Additional condition 6 is therefore considered necessary to ensure a 1.8m high solid screen fence or wall is retained along the east side boundary of the external area in alignment with the side elevation of no. 83 Rhydheilig Avenue at all times that the garage or front external area are used for class A3 purposes.

Furthermore, the proposed closing time of 21:00 would remain relatively early not likely to result in late evening disturbance, particularly having regard to the location at a busy roundabout junction characterised by vehicular and pedestrian movement to/from the nearby hospital site. The proposed opening hours would accord with the Council's Food, Drink & Leisure Uses SPG which states that *'any external seating area should also be restricted to no later than 9.00pm in the interests of residential amenity'*. Condition 2 would remain applicable to prevent any future changes of use within the A3 use class to more harmful uses such as a public house, and replacement condition 3 would restrict the opening hours to 07:00 - 19:00 on Mondays and Tuesdays, 07:00 - 21:00 on Wednesdays to Saturdays, and 08:00 - 17:00 on Sundays. Having regard to the above it is considered that the proposal would not have any unreasonable amenity impact.

8.3 Transportation

The Managing Transportation Impacts (Incorporating Parking Standards) SPG identifies a minimum requirement of no car parking spaces and cycle parking for staff at a ratio of 2 per 100 square metres for class A3 uses. The proposed extended opening hours of the existing use is therefore considered to be car parking policy compliant. Condition 5 would remain applicable to ensure cycle storage for staff use is provided within the site (either internally or externally). Transportation have advised that the extended opening hours would not result in traffic/highway safety issues.

8.4 Representations

The representations of objection received from Cllrs Mike Ash-Edwards, Graham Hinchey and Cllr Julie Sangani, and local residents are noted. Specific issues are addressed as follows:

- a) Noise disturbance to adjoining residential properties. It is considered that opening until 21:00 on Wednesdays to Saturdays is not likely to result in unreasonable harm to the amenity of nearby residents having regard to the particular location, as detailed in the above analysis.
- b) Use of garage in breach of existing planning permission. The garage is within the site boundary of planning permission 20/01075/MNR and the consumption of food off the premises is not restricted by that permission, therefore use of the garage for the cooking and sale of pizzas is compliant with permission 20/01075/MNR.
- c) Impact of cooking smells from use of converted garage. The use of the garage for cooking purposes is compliant with permission 20/01075/MNR as detailed above and the chimneys are considered 'de minimis' in planning terms on the basis that they do not materially affect the external appearance of the building. In addition, the chimneys are solely outlet vents which do not perform any mechanical extraction function, therefore are not considered to be in breach of condition 4 of permission 20/01075/MNR. If any of the cooking equipment within the garage is causing odour nuisance, residents can make a complaint to Neighbourhood Services who can carry out an investigation and take any necessary action under their statutory legislation.
- d) Visual intrusion of adjoining residential properties. It is considered that opening until 21:00 on Wednesdays to Saturdays is not likely to result in unreasonable harm to the amenity of nearby residents, as detailed in the above analysis. The external area to the front/sides is within the site boundary of planning permission 20/01075/MNR., it is screened from the residential dwelling at no. 83 Rhydheilig Avenue by a 1.8m high timber fence and separated from the residential dwelling at no. 34 St Anthony Road by an existing electricity sub-station structure. Additional condition 6 would ensure a 1.8m high solid fence/wall enclosure is retained along the east side boundary of the external area in alignment with the side elevation of no. 83 Rhydheilig Avenue.
- e) Impact upon residents parking. The Council's Managing Transportation Impacts (Incorporating Parking Standards) SPG identifies a minimum requirement of no car parking spaces for class A3 uses, therefore provision of off-street car parking is not required. Any illegal parking in residents parking bays would be a matter that can be controlled by the Council's Parking Enforcement team.
- f) Impact upon highway safety at a busy roundabout. It is considered that opening until 21:00 on Wednesdays to Saturdays is not likely to result in any highway safety issues as advised by Transportation.
- g) Sale of alcohol at the premises. Sale of alcohol cannot be controlled by planning, it is regulated by the licensing regime under relevant licensing legislation.
- h) Would set a precedent for later opening until 11pm. The application does not propose any later opening other than until 21:00 on Wednesdays to

Saturdays. A separate application would be required for any future further variation of opening hours which would be considered on its own merits.

The representations received in support are noted.

8.5 Other Legal Considerations

Crime and Disorder Act 1998 – Section 17(1) of the Crime and Disorder Act 1998 imposes a 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.

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.

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.

8.6 Conclusion

It is concluded that the application is acceptable in accordance with the planning policies listed, and is recommended that planning permission be granted, subject to conditions.

32 St Anthony Road, Heath, Cardiff, CF14 4DJ



Site Plan shows area bounded by: 317195.31, 179551.95 317395.31, 179751.95 (at a scale of 1:1250), OSGridRef: ST17297965. The representation of a road, track or path is no evidence of a right of way. The representation of features as lines is no evidence of a property boundary.

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