

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: Development and Conservation Control Committee 2nd August 2006
AUTHOR/S: Head of Planning Services

S/0856/06/F - Histon
Variation of Condition 3 of Planning Permission S/0242/01/F to Allow Hot Food
Takeaway Service Between the Hours of 17:00 to 23:00
at 44 Station Road for R. Dias

Recommendation: Refusal
Date for Determination: 27th June 2006

Conservation Area

Site and Proposal

1. An Edwardian building that has been previously extended, located on the corner of Station Road, New School Road and Saffron Road. It is a predominantly residential area where houses opposite the site sit close to the highway boundary. Station Road has been traffic calmed. The application site has a number of uses, which include a 3-bedroom flat at first floor, a small shop area selling cold food to takeaway (delicatessen), a cold and hot food delivery service which is not limited in terms of hours, and a 24 cover restaurant which has permission to be open between 08:00 and 23:30 hours, seven days a week. Following an appeal the site can now operate a lunchtime takeaway service between the hours of 11:00 and 14:30 hours.
2. This full application, received 2nd May 2006, seeks permission to extend the hours for the hot food take-away service to evenings. The suggested opening hours for the evening are 17:00 – 23:00 hours. The applicant has indicated that he would accept a temporary permission in order to trial the evening opening hours (as had previously been granted for the lunch time session) if it were considered necessary.
3. This application has been brought to committee at the request of a Local Member.

Planning History

4. There has been a long string of planning applications for this site over the last 13 years. A summary of the planning decisions most relevant to the current proposals are as follows:
 - a) **S/1775/92/F** – Change of use from retail to take-away, and extension. REFUSED.
 - b) **S/0871/93/F** – Extension to shop/dwelling and part use for food preparation and delivery. APPROVED.
 - c) **S/2036/94/F** – Change of use to take-away. REFUSED.
 - d) **S/1762/95/F** – Part use of shop as restaurant. APPROVED – hot food take-away excluded, limitation on hours and number of covers.
 - e) **S/1973/96/F** – Part use of ground floor for hot food takeaway (Class A3). REFUSED.

- f) **S/0551/98/F** – Change of use of shop to restaurant (Class A3). WITHDRAWN.
- g) **S/0850/98/F** – Part change of use to restaurant. APPROVED – temporary consent.
- h) **S/0222/99/F** – Use of restaurant made permanent with number of covers limited to 24 and hours restricted from 08.00 to 23.30. APPROVED.
- i) **S/1292/99/F** – Removal of conditions to allow hot food take-away. REFUSED.
- j) **S/0639/00/F** – Variation of condition 2 of planning permission S/0222/99/F to allow opening of restaurant from 8am to 11.30pm. APPROVED.
- k) **S/0242/01/F** – Permanent permission was APPROVED allowing a restaurant use with 24 covers and all day opening (08.00 – 23.30 hours).
- l) **S/0861/01/F** – Removal of conditions to allow hot food take-away. REFUSED – Appeal dismissed.
- m) **S/1603/02/F** – Variation of conditions to allow hot food take-away. A one-year temporary permission APPROVED for the lunch time period only (11.00 – 14.30 hours) – expired 29th February 2004.
- n) **S/2415/03/F** – Removal of condition 3 of planning permission S/0242/01/F to allow hot food takeaway service. REFUSED.
- o) **S/0951/04/F** – Variation of condition 3 of planning permission S/0242/01/F to allow hot food takeaway between 11.00am and 2.30pm and 5.00pm to 11.00pm. REFUSED.
- p) **S/1692/04/F** – Use of premises for hot food takeaway between the hours of 11.00am and 2.30pm. REFUSED – Appeal allowed.

5. While the Council has consistently resisted takeaway use from this site the two appeal decisions for applications **S/0861/01/F** and **S/1692/04/F** are particularly relevant in considering the current proposals. This will be expanded upon in the Planning Comments section found later in this report.

6. In addition to the above planning applications the Council has had cause to serve breach of condition notices on this site. The first occasion was in 1999 when it came to our attention that the restaurant was operating outside its permitted opening hours and that a takeaway was being run from the site. The most recent two notices, served in 2004, required the applicant to cease transferring hot food to customers waiting off site, as a planning condition attached to S/0871/93/F excluded use as a takeaway service from the site.

Planning Policy

7. There are no relevant policies within the Cambridgeshire and Peterborough Structure Plan, 2003.

8. **Policy EM7** of the South Cambridgeshire Local Plan, 2004 states:

Development for the expansion of existing firms within village frameworks or on suitable brownfield sites next to or very close to the village frameworks will be permitted subject to the provisions of Policy EM3 and EM6 (neither of which are relevant in this case).

9. In **supporting** paragraph 5.39 to this policy it adds:

Whilst the expansion of existing firms will be generally acceptable in principle, it will also be important to consider the local impact of development. Development will not be permitted where it would consolidate a non-conforming use or cause problems with traffic, noise, pollution or other

damage to the environment.

10. **Policy ES6** of the South Cambridgeshire Local Plan, 2004 states:

The District Council will seek, by the means of appropriate planning conditions, to minimise the impact of noise and pollution on noise-sensitive development arising from any new industrial, commercial or recreational activity.

Consultations

11. **Histon Parish Council** recommends the application be refused commenting:

“The applicant has advised the Parish Council that he is submitting a fresh application on these premises for hot food takeaway because he believes that a substantive change has taken place with regard to the original condition no. 3 placed on S/0242/01/F in that as a result of an appeal decision made in 2005 he was granted permanent lunch time permission for hot food takeaway and he now wishes to extend this to evenings. The Parish Council refer to the subsequent application and appeal reference S/0861/01/F (June 2002) whereby the application for hot food takeaway was refused by the Inspector on the grounds of disturbance to local residents and traffic considerations. Throughout the planning history on this site over the last 13 years the Planning Authorities have consistently refused evening takeaway use and the Parish Council support these views and strongly recommend refusal of this application”.

12. **The Chief Environmental Health Officer** has commented that he is concerned that if approved there is a likelihood and opportunity for noise and disturbance from patron’s visiting and leaving the premises, as well as from staff leaving the premises when it is closing down for the evening. In addition there is potential for noise and disturbance from patron’s vehicles manoeuvring close to the premises where there are now parking restrictions and traffic calming measures in place. He refers to advice contained in paragraph 20 of Annexe 3 to Planning Policy Guidance 24: Planning and Noise which advises:

“Commercial developments such as fast food restaurants, discos, night clubs and public houses pose particular difficulties, not least because associated activities are often at their peak in the evening and late at night. Local planning authorities will wish to bear in mind not only the noise that is generated within the premises but also the attendant problems of noise that may be made by customers in the vicinity. The disturbance that can be caused by traffic and associated car parking should not be underestimated.”

13. He is not currently investigating any outstanding complaints in respect of noise nuisance associated with these premises.

14. **The Local Highways Authority’s** comments will be reported verbally.

Representations

15. The applicant has written stating:

- a. The only fact that SCDC seems to be concerned about is how many of the residents between 49-63 (Station Road) are affected by this application. However SCDC seems to have forgotten about my immediate neighbour (42

- Station Road) or the Nursery School opposite who continues to have no objections.
- b. I already have lawful permission to operate a takeaway service between 10-2.30pm and SCDC do not have any objections to this. Although I am requesting permission for 5-11pm, my records and my experience of this site show that the majority of my takeaway trade would occur between the hours of 6-10pm, given that these are the peak trading hours, the School does not function between 5-11pm and therefore will be unaffected by this application.
16. Local Member, Councillor Chatfield, supports the application, requesting that it be considered at Committee if recommended for refusal in order for both sides of the case to be heard. He comments:
- a. The current situation of hot food takeaway at lunchtimes, hot food delivery service and at seat restaurant service is working satisfactorily, with few or no complaints from local residents.
 - b. The location is not ideal from a traffic point of view, being situated on a bend in Station Road and near to the Nursery and Infants Schools. However, parking has been provided at the front of the establishment and this is rarely full. The corner with Saffron Road is far busier at school drop off and pick up times than it would be as a result of the takeaway.
 - c. The only way to provide completion on these planning applications, based on fact rather than forecast, would be to allow a temporary permission (for 6 or 12 months). This would allow time for a full analysis of such an operation. If there were problems with traffic, noise and disturbance, then the planning approval should not be renewed. However, if it proves to be successful, then we will have added to the facilities offered within the village community.
 - d. If you are considering refusal, I would ask that the full DCCC is given the opportunity to hear both sides of the case.
17. The County Councillor for Histon, Councillor Jenkins, supports the application commenting:
- a. First let me declare an interest. I am a customer of Mr Dias.
 - b. This is a regular planning application that it is routinely turned down on the grounds of the disturbance it would cause for local residents.
 - c. May I suggest that we find a way to give Mr Dias an opportunity to prove that it would not cause a disturbance? He has his own parking and there is limited/no opportunity for people to park on the street because residents generally use this in the evening.
 - d. This is a useful local business and I am sure that many local residents would appreciate being able to collect their take-aways in much the same way as they can collect their fish and chips at the chip shop at the top end of Station Road.
 - e. Can we give Mr Dias a 1 year conditional approval perhaps?
18. Five letters of support have been received from residents at 77 Pelham Close, Cottenham; 19 Station Road, Histon; and 15, Mill Road, 24 Perchoran Close and 16 Cambridge Road, Impington. A further letter has been received from 16 Almond Grove, Bar Hill. The comments received include:
- a. Mr Dias is operating a takeaway service from the premises anyway on the basis that his restaurant customers can if they choose take their food away rather than eat it there or have a doggy bag at the end of their meal.
 - b. No enforcement action has been taken against this.

- c. No evidence has been put forward by the Parish Council or Police, nor is there local experience of, any noise or disturbance to neighbours from anti-social behaviour by customers of the site. There is no evidence therefore to substantiate an objection to the proposals on these grounds.
 - d. The restaurant, cold food takeaway and lunchtime takeaway operate without problems.
 - e. Traffic peaks in the Station Road area during school hours. The restaurant already operates all day without problems and he can serve hot food takeaways at lunchtimes.
 - f. The Council claims to want to retain businesses within our little community and to this end Unwins were refused residential planning permission for their site in Impington. So I do not understand why applications from Mr Dias that will help him run his business better and offer us all a more comprehensive service should be continually refused permission. Why can the council not help with Dias with his modest ambitions?
 - g. There are no justifiable reasons not to allow evening takeaway.
19. Four letters of objection have been received from 25 Beaumont Crescent, Cambridge; 1 Saffron Road, 55 and 59 Station Road, Histon. The comments received include:
- a. When visiting an elderly relative who lives opposite 44 Station Road it is already very difficult to locate a parking place. The increase in traffic requiring to park on an already busy road can only add to the many hazardous situations that already occur.
 - b. There will be an increased likelihood of parking on double yellow lines and/or the pavement, adding to highway dangers.
 - c. This type of takeaway results in noise and disturbance late at night, which is already a problem in this part of Histon. This includes from young people hanging about.
 - d. In the past people have hung about while illegal takeaways were going on.
 - e. The police have been called on more than one occasion.
 - f. There is a likelihood that people will come after pub closing and be hanging around, causing noise and disturbance after midnight.
 - g. As the 'Flying Tandoori' nearly always has four staff cars parked on the site's car park, where will customers wait?
 - h. Neighbours' environment should be protected.
 - i. No-one will starve if this is not allowed and there will still be the delivery service, which seems to have many drivers at times.

Planning Comments – Key Issues

Noise and disturbance to neighbouring residential properties

20. The key issue here is the impact of a hot food take-away establishment on the amenities and living conditions of neighbouring properties, a relationship that is generally considered to be problematic in predominantly residential areas. Save for the last consent that allowed a limited lunchtime service all the relevant consents that allowed food preparation and restaurant use at the premises specifically excluded hot food take-away for the following reason:

The establishment of a take-away facility in this area, which is primarily residential and subject to high levels of traffic throughout the day, would increase the risk of road users and pedestrians and would be to the detriment of the amenities at present enjoyed by occupiers of neighbouring properties by virtue of

noise and disturbance.

21. Although there have been no specific complaints since permission was granted for hot food take-away at lunch times the potential for noise and disturbance associated with such use remains, particularly if it were carried on in the evenings when general movement and ambient noise levels are likely to be lower than at lunch times. It would appear that, for whatever reason, levels of business since permission was granted have been low. Should permission be granted for a take-away business at these premises there would be nothing stopping the level of business increasing, either with the current owner or with a future hot food outlet. The consequent general disturbance associated with such use would, in my view, still be a cause of concern in respect of its impact on neighbour amenity, particularly on those properties opposite the site in Station Road and Saffron Road.

Relevant appeal decisions

22. At appeal in 2002 the Appeals Inspector did consider that the potential for general noise and disturbance associated with a hot food take-away establishment in this location was a legitimate concern and concluded that the removal of the restrictive condition would result in an unacceptable level of noise and disturbance for the occupiers of houses at 51-61 Station Road and the first few properties on the south side of Saffron Road. Particular points made by the Inspector are relevant in considering this application:
- a) Noise and disturbance would mostly affect nos. 51-61 Station Road and the first few properties on the south (odd) side of Saffron Road (para.13);
 - b) “The scope for disturbance from visits that are likely to be frequent and of short duration, resulting in noise from car engines, radios and the banging of doors, and from groups of people arriving and leaving...I consider the scope for disturbance from these other sources would be clear, especially in the evenings” (para. 14);
 - c) “In other locations, the impact of this activity may be capable of being absorbed into the general environment more successfully than is the case here. The short terrace opposite appears to me to be particularly vulnerable to disturbance: the houses have very shallow front gardens, and their living rooms and bedrooms are therefore no more than about three to four metres from the road. Since this is the nearest piece of highway to the restaurant which is free of parking restrictions, I consider it highly likely that visitors would park directly outside the terrace for short periods to collect orders, possibly even mounting the pavement to provide more clearance for passing traffic. No doubt many visitors would use the car park, but others would not – and in any event, this small area would on occasions be full, primarily with vehicles of restaurant customers. There would be a similar effect on the Saffron Road houses, exacerbated by the need for cars to turn before leaving the site. The limited capacity of the rear car park makes it unlikely that it would be used by “takeaway” customers to any great extent” (para. 15).
23. In the more recent 2004 appeal, which allowed the lunchtime takeaway, the Inspector noted that the impact of noise and disturbance from parking “...would be greater in the evening and therefore I do not take issue with the previous Inspector’s decision”.

24. The application includes evidence from Cambridgeshire County Council's A14 Village Traffic Calming Team indicating that an evening survey of vehicles parked on Station Road showed that cars were parked opposite the site (eastern side of Station Road) from outside 49 to 61 Station Road. An informal survey carried out by Councillor Matt Bradney (County Councillor for Histon) indicated the same. In my opinion, this simply strengthens concerns that people using the takeaway will park elsewhere, such as on Saffron Road, or illegally / dangerously.

Highways

25. At appeal in 2002 and 2004 the Appeals Inspector's did not agree that highway safety warranted a reason to refusal in itself, however in the 2004 decision the inspector noted that disturbance from car parking would be greater in the evenings.

Trial/temporary permission

26. In considering a temporary permission the Appeal Inspector noted in the 2002 decision that:

"It would be inappropriate to consider removing the conditions for a temporary period it is clear to me that the demand for hot food in the evenings would far exceed that for cold food, and thus the nature of the two regimes, and the impact each would have, would be substantially different".

27. The Council has consistently maintained this view itself and there is no evidence to support revising this position at this stage.

Material changes in circumstances

28. Since the previous application 2001 no material changes in circumstances have occurred.
29. The road calming has been introduced, however a trial one-way system has been removed.
30. Lunch-time takeaway has been permitted however it is clear that in allowing this the Inspector remained concerned about evening takeaway.

Enforcement

31. Enforcement notices have been served in the past against the applicant's unlawful operation of a takeaway from the site. Were evidence to be obtained then the Council may consider taking further enforcement action, if expedient to do so.

Business

32. There is a suggestion that we are being unfair in not allowing the applicant the same commercial opportunities as other premises in the village, in particular by not allowing the same opening times as the Histon Fryer. It should be noted that the Histon Fryer, which has been an established takeaway facility for many years, does not also operate a seated restaurant service, open until 11.30 in the evening, nor does it operate a food delivery service at all hours of the day. It should also be noted that this Council has consistently taken the view that this was an inappropriate location for hot food take-away and refused planning permissions for this use even before Mr Dias purchased the property.

Recommendation

33. Refuse for the following reason:

- a) 44 Station Road, which is located on a prominent corner site in a predominantly residential location with limited on-site parking facilities, benefits in part from an A3 use with the restriction that no part of the premises shall be used for hot food takeaway (Condition 3 of S/0242/01/F). This restriction has been tested at appeal (planning reference S/0861/01/F) and upheld by the Inspector on the grounds that takeaway establishments generally result in more frequent visitors and more general disturbance and would be unacceptable in this location where houses opposite the site in Station Road and Saffron Road, situated close to the road frontage, would be particularly vulnerable to disturbance, especially in the evenings. There have been no changes in circumstances that would warrant a different conclusion.
- b) This application to vary condition 3 of planning permission S/0242/01/F to allow evening takeaway sales would be detrimental to the residential amenities of neighbouring residential properties by reason of general noise, disturbance and inconvenience arising from increased visitor trips associated with such use, and associated vehicular activity including parking and manoeuvring, doors banging and radio noise. The proposal is therefore contrary to Policy EM6 of the South Cambridgeshire Local Plan 2004 which allows development and expansion of existing firms where, *inter alia* there would be no adverse impact on residential amenity and traffic conditions. Such general noise, disturbance and inconvenience is not possible to control by planning condition(s) as referred to in Policy ES6 of the same Local Plan

Background Papers: the following background papers were used in the preparation of this report:

- South Cambridgeshire Local Plan 2004
- Cambridgeshire and Peterborough Structure Plan 2003
- Planning files refs. S/1775/92/F, S/0871/93/F, S/2036/94/F, S/1762/95/F, S/1973/96/F, S/0551/98/F, S/0850/98/F, S/0222/99/F, S/1292/99/F, S/0639/00/F, S/0242/01/F, S/0861/01/F, S/1603/02/F, S/2415/03/F, S/0951/04/F, S/1692/04/F and S/0856/06/F

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