DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H09-0234-24**	**Applicant:**	**The Coffee Lounge (Lincs) Ltd**
Proposal:	Change of use of shop to cafe/coffee shop (eat in and take-away) - approved under H09-0137-23. Modification of Condition 3 to allow extension of opening hours		
Location:	51 High Street Holbeach Spalding		
Terminal Date:	10th May 2024		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

01	Spatial Strategy
02	Development Management
03	Design of New Development
24	The Retail Hierarchy
26	Primary Shopping Frontages
27	Additional Retail Provision
29	The Historic Environment
30	Pollution
36	Vehicle and Cycle Parking
APPENDIX 6	Parking Standards

National Guidance

National Planning Policy Framework 2023

Section 4. Decision Making
Section 7. Ensuring the Vitality of Town Centres
Section 12. Achieving Well-Designed and Beautiful Places
Section 16. Conserving and Enhancing the Historic Environment

Representations:

	Object	Support	No Obj.	Comments
PARISH COUNCIL	0	0	0	1
WARD MEMBER	0	0	0	0
HIGHWAYS & SUDS SUPPORT	0	0	0	1

SHDC INTERNAL	0	0	0	1

CASE OFFICER ASSESSMENT

Proposal

This application is to modify Condition 3 of H09-0137-23 to allow for an increase in opening hours at 51 High Street, Holbeach.

Application H09-0137-23 granted planning permission for the change of use of shop to cafe/coffee shop (eat in and take-away).

Site Description

The application site comprises a buff brick building located on High Street in Holbeach. The site is within the Holbeach settlement boundary, Holbeach Conservation Area and Holbeach Town Centre. The immediate area is a mixture of retail and commercial.

History

H09-0459-17 - Change of Use from Post Office (A1 use) to Tanning Bed Salon (Sui Generis use). - Approved

H09-0137-23 - Full - Change of use of shop to cafe/coffee shop (eat in and take-away) - Approved

Consultation Responses

The responses received from consultees during the initial consultation exercises, which can be viewed in their entirety through the South Holland website, can be summarised as follows:

Holbeach Parish Council

No Comment

SHDC Environmental Protection

No objections providing business operates in accordance with proposals as listed in the application.

LCC Highway and Lead Local Flood Authority

Recommendation: No objection. The proposal is for change of use of shop to cafe/coffee shop (eat in and take-away) - approved under H09-0137-23. Modification of Condition 3 to allow extension of opening hours and it does not have an impact on the Public Highway or Surface Water Flood Risk.

Having given due regard to the appropriate local and national planning policy guidance (in particular the National Planning Policy Framework), Lincolnshire County Council (as Highway Authority and Lead Local Flood Authority) has concluded that the proposed development would not be expected to have an unacceptable impact upon highway safety or a severe residual cumulative impact upon the local highway network or increase surface water flood risk and therefore does not wish to object to this planning application.

Public Representation

This application has been advertised in accordance with the Development Procedure Order and the Council's Statement of Community Involvement. In this instance, no letters of representation have been received.

Evaluation - Section 73

The proposal relates to the variation of Condition 3 (Opening Hours) of H09-0137-23, through seeking permission under Section 73 of the Act. The purpose of an application made under Section 73 of the Town and Country Planning Act 1990 is to vary or remove conditions associated with an existing planning permission. These applications are used to allow for amendments to an approved scheme and can be made both retrospectively and prior to a permission being implemented, as long as the permission is extant.

The Act is very clear that: "On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted." As such, the Local Planning Authority are not able to revisit the principle of development and only matters relevant to the specific conditions can be considered. The effect of granting permission would be to issue a new permission with Condition 3 amended, together with any other relevant conditions from the original permission, or subsequent relevant revisions since this permission.

Planning practice guidance highlights that where less substantial changes are proposed, amending a proposal can occur through 'Amending the conditions attached to the planning permission, including seeking to make minor material amendments'.

The PPG clarifies that "Permission granted under Section 73 takes effect as a new, independent permission to carry out the same development as previously permitted subject to new or amended conditions. The new permission sits alongside the original permission, which remains intact and unamended. It is open to the applicant to decide whether to implement the new permission or the one originally granted". There is no statutory definition of a 'minor material amendment'; but this is likely to include any amendments where its scale and or nature results "in a development which is not substantially different from the one which has been approved".

In this instance, the subsequent amendments, submitted under this Section 73 application, have not varied the description of development.

In the case of R (Vue Entertainment Limited) v City of York Council, it was concluded that the decision gives clear support for use of s.73 in respect of changes to condition which go beyond 'minor' amendments. It places a clear emphasis on preserving the precise terms of the grant. If an amendment to a condition can be made which keeps the description of the development intact it may well be appropriate to make such an application under a s.73, even if the affect of the change will be significant".

Planning Considerations

The principle of the change of use of shop to cafe/coffee shop (eat in and take-away) has already been established by virtue of the previous approvals (ref. H09-0137-23).

This application is to modify Condition 3 (opening hours) of H09-0137-23, to increase opening hours previously approved. The original condition stated:

The use hereby permitted shall not be open to customers except between the hours of 0800 to 1700 Monday to Fridays, 0800 to 1600 on Saturdays, and 1000 to 1600 on Bank Holidays, Closed Sundays. Unless agreed otherwise in writing by the Local Planning Authority.

Reason: To protect the amenity of nearby residents.

As such, the main issues are therefore the implications of the increased opening times on the amenity of nearby residents in terms of impact upon privacy, oppressive nature of the use, intensified activity, and increased noise impact.

Paragraph 135 of the National Planning Policy Framework (December 2023) states that development should create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

Policies 2 and 3 of the South East Lincolnshire Local Plan, 2019 indicate that sustainable considerations should be met concerning new development, including in relation to the impact upon

neighbouring land uses and residential amenity by reason of noise, odour, disturbance or visual intrusion. Policy 30 states that there should not be any unacceptable impacts upon the amenities of the area, including noise, odour, air quality and light levels.

The new proposed opening hours are as follows:

From 1st October to 30th April
Monday to Saturday 0730 to 1700 hours
Sunday 1000 to 1600 hours including Bank Holidays.

From 1st May to 30th September
Monday to Wednesday 0730 to 1700 hours
Thursday to Sunday 0730 to 1900 hours including Bank Holidays.

The proposal also includes the occasional Thursdays, Fridays or Saturdays closing at 2200 hours once or twice a month due to local events in Holbeach which take place.

The proposed variation in opening hours will have a limited impact upon residential amenity. Due to the town centre location, there is an assumed increased level of noise and foot traffic at all times of day. The increase of the cafe opening times would not increase this level of noise and foot traffic by an unacceptable level. it should also be noted that the extended opening hours are in line with competitors in the locality and are not considered to be extensive.

As detailed above, the increase of the opening hours of the proposal is considered to be such that there would be no significant or unacceptable impact on the residential amenities of the occupiers of adjacent properties or land users, when also taking account of the conditions recommended. As such, the proposal is considered to accord with the provisions of the Section 12 of the National Planning Policy Framework (December 2023), and Policies 2 and 3 of the Local Plan.

Planning Balance

As detailed above, Section 38 (6) of the Planning and Compulsory Purchase Act 2004, as amended, requires that the Local Planning Authority makes decisions in accordance with the adopted Development Plan, unless material considerations indicate otherwise.

The proposed increase in the opening hours would not result in an unacceptable increase in noise and disturbance to the detriment of the amenity of nearby residents. The development hereby proposed does not materially harm the character or appearance of the locality, or amenity of nearby residents, and provides adequate parking, whilst conforming with the South East Lincolnshire Local Plan and the provisions of the National Planning policy Framework when viewed as a whole.

In this instance, there are no material considerations that weigh against the proposal and as such, the planning balance is in favour of the development.

Conclusion

Taking the above considerations into account, the proposal is considered to be in accordance with policies 2 and 3 of the South East Lincolnshire Local Plan (SELLP) (2019), along with the identified sections contained within the National Planning Policy Framework (NPFF) (December 2023). The are no significant factors in this case that indicate against the proposal and outweigh the consideration in favour of the proposal and the policies referred to above.

Additional Considerations

Public Sector Equality Duty

In making this decision the Authority must have regard to the public sector equality duty (PSED) under s.149 of the Equalities Act. This means that the Council must have due regard to the need (in discharging its functions) to:
A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the

special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s).
C. Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in s.149. It is only one factor that needs to be considered, and may be balanced against other relevant factors.

It is not considered that the recommendation in this case will have a disproportionately adverse impact on a protected characteristic.

Human Rights

In making a decision, the Authority should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as South Holland District Council to act in a manner that is incompatible with the European Convention on Human Rights. The Authority is referred specifically to Article 8 (right to respect for private and family life) and Article 1 of the First Protocol (protection of property).

It is not considered that the recommendation in this case interferes with local residents' right to respect for their private and family life, home and correspondence, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general public interest and the recommendation is considered to be a proportionate response to the submitted application based on the considerations set out in this report.