

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H14-0223-24 **Applicant:** Mr N Odedra

Proposal: Change of use of part of building from builders yard and offices to bathroom showroom (retrospective) - approved under H14-0440-10. Modification of Condition 3 to allow extension of opening hours

Location: 75 Church Street Pinchbeck Spalding

Terminal Date: 14th May 2024

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

01	Spatial Strategy
02	Development Management
03	Design of New Development
27	Additional Retail Provision
30	Pollution
36	Vehicle and Cycle Parking
APPENDIX 6	Parking Standards

National Guidance

National Planning Policy Framework 2023

Section 2 - Achieving sustainable development
Section 4 - Decision-making
Section 12 - Achieving well-designed and beautiful places

Representations:

	Object	Support	No Obj.	Comments
PARISH COUNCIL	0	0	0	0
WARD MEMBER	1	0	0	0
SHDC INTERNAL	0	0	1	0
RESIDENTS	22	0	0	0

CASE OFFICER ASSESSMENT

Proposal

This application is to modify Condition 3 of H14-0440-10 to allow for an increase in the opening hours at 75 Church Street, Pinchbeck.

Application H14-0440-10 granted planning permission for the change of use of part of building from builders yard and offices to bathroom showroom.

Site Description

The application comprises a detached rendered building located on Church Street in Pinchbeck. The building is set back on its plot with a forecourt to the front. The location of the application site is to the edge of Pinchbeck Conservation Area, with older terraced properties to the north and more modern dwellings to the south and east. The building is also located within the street scene of Pinchbeck Hall, which is a listed building to the north west. The building is not a significant building within the Conservation Area and is of plain construction.

History

H14-0222-24 - External alterations including new frontage, the installation of shutters, and installation of condensing units - To be determined

H14-0221-24 - Confirmation of existing use which falls within Class E(a) - To be determined

H14-0983-22 - Conversion of existing building to provide a local convenience store, to include new front elevation design, shutters, condensing units external works and extension of opening hours - Refused - Appeal Dismissed

H14-0521-13 - Extension and alterations to front elevation - Approved

H14-0440-10 - Change of use of part of building from builders yard and offices to bathroom showroom (retrospective) - Approved

H14-0133-07 - Timber store shed (retrospective) - Approved

H14-0545-06 - Change of use of former garage to offices and general store - Approved

H14-1110-06 - Alteration to front elevation and security fence & gate to rear (retrospective) - Withdrawn

H14-1437-06 - Alteration to front elevation, security fence and gate to rear - 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:

SHDC Environmental Protection Officer

No comments.

Ward Member Cllr S A Slade

Previous objection to store on this site still stand. Dangerously close to the traffic lights. It is completely unnecessary for a bathroom showroom to have such early and late opening hours. This will pose an inconvenience to their neighbours, who are mainly residential. Strongly object: traffic, noise, unnecessarily long opening hours.

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, 23 letters of representation have been received.

These can be summarised as follows:

- The danger is high
- There is a high volume of traffic on the roads
- Unloading of good would be dangerous
- Not safe near a pedestrian crossing
- The road has 'no parking'
- The site is totally unsuitable
- Not acceptable in a residential area
- Extended hours will impact on the health of neighbouring residents
- Big impact on neighbouring dwellings with noise
- Security concerns
- Why does a bathroom showroom need to be open 07:00 - 22:00
- Pinchbeck does not need any more convenience stores
- The last application was refused for a reason
- No sufficient parking
- Unsafe for school children
- The proposal does not fit within its surroundings
- More suited towards the industrial estate
- Too close to a busy junction

Evaluation - Section 73

The proposal relates to the variation of Condition 3 (Opening Hours) of H14-0440-10, 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 part of the building from a builders yard and offices to bathroom showroom has already been established by virtue of the previous approvals (ref. H14-0440-10); however, the business has now ceased. Notwithstanding this, the corresponding applications suggest that the building would be used for commercial purposes (Retail/Convenience Store) and as such argue that the Use Class would remain as Class E.

This application is to modify Condition 3 (opening hours) of H14-0440-10, 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 8:30 to 17:30 Monday to Saturday and not at all on Sundays or Bank Holidays without the express written consent of the Local Planning Authority.

Reason: In the interest of the amenity of local 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. In addition, the impacts that could be afforded as a result of the increased hours when occupied by an alternative use or the potential for the site to be used for purposes other than a 'Bathroom Showroom' without the need to obtain permission from the LPA, must also be considered given that the site is also subject to a Lawful Development Certificate that seeks to confirm that the site can be used as a Convenience Store under Class E Use. Although, it should be noted that the matter and assessment of the buildings use as a Class E retail store is subject to a separate assessment under an alternative Lawful development Certificate proposal.

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 nearest residential properties are situated immediately to the north, north east, east, south and south east, with access being shared with No.77 Church Street, Pinchbeck. Residential properties do not lie immediately to the west; although properties are situated adjacent to the western side of Church Street.

It is noted that given ongoing applications on the site, in addition to the recent site history, that it is likely that the applicant seeks to use the property as a Convenience Store; however, this has not been stated within this submission. As such, the LPA do not wish to assume that this is the definitive use for the site going forward; albeit, that this is likely. Therefore, the assessment is based upon the use of the site in respect of its most likely lawful use, as a Class E unit (in a number of appropriate capacities). Given the outcome of the recent Lawful Development Certificate, the use for the site is that of a Class E use; as such, the site could accommodate a Convenience Store alongside other uses which provide a notable increase in the nature and extent of use, having the opportunity to be used for purposes with an increased intensity without the need for permission to be sought by the Local Planning Authority.

The site has most recently been used as a Bathroom Showroom; however, given the aforementioned Class E use, the site can be lawfully occupied by other Commercial uses that fall within this use class. Therefore, the LPA must ensure that such increased opening hours are suitable for the uses in which the site can lawfully be utilised for. The scope of a Section 73 application, as detailed above, is to "consider only the question of the conditions subject to which planning permission should be granted" and the LPA are not able to revisit the principle of development and only matters relevant to the specific conditions can be considered". As such, in respect of its potential use, the LPA should not restrict this under a Section 73 as the use has been permitted and can be altered within its use class without any formal submission to the LPA;

however, the assessment of increased opening hours, the subject of this proposal, is necessary; alongside an assessment of these increased hours for uses that the building could be utilised as.

Due to the close proximity of residential dwellings to the application site, it would not be unreasonable to restrict the opening hours to protect residents from undue adverse impacts on existing residential amenity. The potential hours as proposed, would increase the likelihood for vehicular movements to and from the site at notably earlier and somewhat extensive later times, in addition to the pedestrian movements which may have the potential to be the method more frequently used. The noise generated from the current use, and those in which the site could be accommodated for under its Class E use, would occur within these increased hours and would not be considered suitable. No justification has been submitted by the applicant for the need to extend the opening hours from 08:30 to 17:30 to 07:00 to 22:00, nor has supporting information been provided in respect of its potential use going forward. Likewise, no detail has been forthcoming in respect of any mitigation for such increase in hours of operation.

Whilst no objections have been formally raised within this application from Environmental Protection, it is noted that within the previous proposal on site, including that which was recently refused and dismissed at appeal, concerns were raised through the request for restricted hours of delivery. This is not being sought in this instance, with the single matter being the hours in which the unit is open to customers.

It is also noted that the previously permitted use as a Bathroom Showroom was considered and determined in 2010, significantly prior to the change to the Use Classes Order. As such, the ability to alter the sites use to an alternative use such as a Convenience Store was not known at the time of determination. Given this, and the lesser extent of deliveries required, no conditions were attached in this regard to the original permission. The increase in hours, coupled with the likelihood for the site change in specific operation, would require additional deliveries to occur and should this be required prior to opening, these would be at notably early or later periods of the day. As such, conditions would be required to restrict such delivery hours; however, given the recommendation of this proposal, these have not been added in this instance.

In any event, the increase in the opening hours, in the opinion of the Local Planning Authority, would have the potential to result in an unacceptable increase in noise and disturbance to the detriment of the amenity of nearby residents and as such would be contrary to Policies 2 and 3 of the South East Lincolnshire Local Plan, 2019.

Highway Safety and Parking

Section 9 of the National Planning Policy Framework (December 2023) specifically relates to 'Promoting sustainable transport'. Paragraph 115 of the National Planning Policy Framework (December 2023) advises that "development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe".

In respect of highway matters, Policy 2 details that proposals requiring planning permission for development will be permitted provided that sustainable development considerations are met, specifically in relation to access and vehicle generation. Policy 3 details that development proposals will demonstrate how accessibility by a choice of travel modes including the provision of public transport, public rights of way and cycle ways will be secured, where they are relevant to the proposal.

The application site is located on Church Street, a principal route through the settlement of Pinchbeck, and the area comprises a number of features that could give rise to pedestrian and vehicle conflict.

Nearby to the site lies a pelican crossing along Church Street, with associated zigzag markings on the carriageway extending across the frontage of the site. A bus stop is also located adjacent the site, with buses also providing a pick-up and set-down on the pavement close to the application site frontage. Close to the marked bus stop opposite the site is a lay-by capable of providing on-street parking for several vehicles.

These features, amongst others, were identified within the recent appeal decision on site and it was concluded that the resultant use, along high probability of pedestrian and vehicle conflict, with customers either accessing the proposed shop on foot, or pedestrians making use of the adjacent

footway, waiting at the pelican crossing or for a bus. In combination with vehicles manoeuvring within the area of hardstanding and also with vehicles potentially queuing to access the additional area to the rear of the shop, and with deliveries to the premises also requiring accommodation, it was considered that the overall situation, without adequate management would be likely to lead to harm to highway safety.

The increase in the opening hours that would provide openings prior to 08:00am and after 17:30pm would result in the use of the site, for a Class E use, within hours that are likely to be subject to footfall and vehicular activity of an increased intensity. This increase is considered to exacerbate the potential conflict identified within the recent appeal decision on site and as such, would be likely to be harmful to highway safety, being at conflict with SELLP Policy 36 and Section 9 of the NPPF.

The proposal would therefore not be acceptable and would have an unacceptable adverse impact on highway safety contrary to the Local Plan Policies 2, 3 and 36, and Section 9 of the National Planning Policy Framework (December 2023).

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 result in an unacceptable increase in noise and disturbance to the detriment of the amenity of nearby residents.

Conclusion

Taking into consideration these factors, the proposal is considered to be contrary to Policies 2 and 3 of the South East Lincolnshire Local Plan (SELLP) (2019), as well as advice within the National Planning Policy Framework (NPPF) (December 2023).

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.

Recommendation

Based on the assessment detailed above, it is recommended that the proposal should be refused under Delegated Authority.