



Report to Planning Committee

Reference: 0018/2017

Location: 3 Nottingham Road, Ravenshead. NG15 9HG

Breach of Planning: Breach of Planning Conditions of Permission
2012/0686.

1 Background

- 1.1 On the 13th October 2015, planning permission was granted for a Change of Use of the premises No. 3 Nottingham Road, Ravenshead to a restaurant and bar with an extension to the front and side. (Reference 2012/1449)
- 1.2 The permission was subject to a number of conditions including Condition 2, 4, 5,6 and 7 which state;
- 1.3 **Condition 2** – The development hereby approved shall be carried out in accordance with plan no. PR02A, the revised 1:500 site plan received on the 23rd July 2012 showing the proposed parking and access arrangements and the materials proposed within the application forms submitted as part of this application.

Condition 4 – The development shall not be occupied until the car parking area has been surfaced, drained to prevent surface water discharging onto the public highway and the individual parking spaces clearly marked out in accordance with the details to be submitted to and approved in writing by the Borough Council. The spaces shall be kept available for parking in association with the development thereafter.

Condition 5 - The signage to the entrances of the site to enable the car park area to operate IN/OUT movements shall be installed in accordance with the details approved under Advertisement Consent No. 2015/0768. The signage shall be installed prior to the restaurant first being brought into use and retained thereafter.

Condition 6 – Parking spaces 15- 22 shown on the approved 1:500 site plan received on the 23rd July 2012 shall be available for users of the restaurant from 6.00pm until the closure of the restaurant every evening.

Condition 7- Before development is commenced precise details of the kitchen odour extract unit shall be submitted to and approved by the Borough Council. Once approved the extract unit shall be installed in accordance with these details and retained in working order thereafter unless otherwise agreed in writing by the Borough Council.

- 1.4 A number of letters have been sent to the owner and there have also been telephone conversations with the owner to advise these conditions have not been discharged and they remain outstanding. Despite the owner promising to address the issue, the details required by the conditions have not been submitted and the car park remains poorly surfaced and without car parking spaces being marked out. In addition the signage advising customers of the way in and out have not been provided. Details of the odour extract unit have not been supplied and it is not known if an extractor unit has been fitted.
- 1.5 A car wash operates during the day in part of the car park belonging to the restaurant and although the car wash does not have planning permission it has operated uninterrupted from the site for more than 10 years and is now immune from enforcement action.

2 ASSESSMENT

- 2.1 The power to impose conditions on planning permissions is an extremely important part of the development management process in order to safeguard matters of planning importance, mitigate the impact caused by the development and ensure the development is acceptable all planning aspects.
- 2.2 Conditions have to be necessary; relevant to planning and the development to be permitted; reasonable; precise; and enforceable. Unless conditions fulfil all these criteria (known as the “six tests”) they are likely to fail if challenged at appeal.
- 2.3 In this case, the conditions were imposed in the interests of highway safety and in accordance with local plan policies. It is considered the outstanding conditions comply with the six tests above.
- 2.4 A recent visit to the site shows the restaurant car park leading immediately from the A60 Nottingham Road. It is on two levels with the restaurant building sited centrally on the upper car park. Steep slopes on either side of the restaurant building lead to and from the lower car park.
- 2.5 The middle section of the higher car park, immediately in front of the main entrance to the restaurant has been partly brick paved with tarmacked and concrete bound areas to each side of the brick paving. The tarmacked areas are in a moderate condition with some tarmac lifting and leaving small areas

where pools of water are formed when it is raining. No parking spaces have been marked out.

- 2.5 The car wash operates from the higher level of the car park to the south of the restaurant building. There are a number of structures on the car park which are associated with the car wash business including a rain canopy supported by metal posts and a wooden shed/shelter for the workers.
- 2.6 The area where the car wash takes place is shown on the approved plan to be marked out with additional car parking spaces and reserved in the evening from 6pm for restaurant parking only but this has not happened and the car wash structures continue to obstruct the area in the evening when the restaurant is at its busiest.
- 2.7 The slopes leading to the lower car parking area is surfaced in concrete and is in poor condition with a deep rut across the middle of the slope to the north elevation of the restaurant again where pools of water collect. The lower car park is a poorly maintained tarmacked area with piles of rubbish stored along the edge of the land making it look unsightly. Again there are no car parking spaces marked out, no lighting in the area and the slopes leading to the lower area are totally uninviting.
- 2.8 The signage to the entrances of the site to enable the car park area to operate IN/OUT movements has not been provided. In addition, the uninviting concrete slopes leading to the unlit and untidy lower car park means it is greatly unutilised with customers reportedly preferring to park on the A60 in front of residential properties near to the restaurant causing unnecessary disturbance to residents and potentially prejudicial to highway safety.
- 2.9 Details of the kitchen odour extract unit have not been submitted as required by condition 7 and therefore any unit which may have been installed has not been approved. No assessment has therefore been made to ascertain whether odours are being removed from the area in order to safeguard the amenities of local residents.
- 2.10 There are several options available to the local authority when a condition is being breached including the service of a Breach of Condition Notice (BCN) for which there is no appeal and a maximum fine of £2,500 if the Notice is not complied with. However, in certain circumstances local authorities tend to prefer to issue a Breach of Condition Enforcement Notice as opposed to a BCN. This is especially the case when the condition requires something to be done prior to the occupation of the premises for example as once the premises are occupied the condition cannot be complied with exactly as the wording requires. Although there is a right of appeal against such a notice, there is a maximum of £20,000 fine in the Magistrates Court and an unlimited fine if action is taken through the Crown Court.

Time limits for taking action

- 2.11 S171B(3) provides that no enforcement action can be taken against a breach of a planning condition after the end of the period of ten years from the date on which the breach first occurred, except where it is a condition relating to a use as a single dwelling house where the period of immunity is four years.
- 2.12 The conditions were required to be fulfilled prior to the occupation of the restaurant. Council records show this was within the last ten years and so the Council is within time to take action.

Human Rights

- 2.13 Under the Human Rights Act, it is necessary for the Authority to have regard to the rights of the owner and occupier of a site under Article 1 of the First Protocol to peaceful enjoyment of possessions and the protection of property and under Article 8 of the convention to respect for his private and family life, his home and his correspondence’.
- 2.14 In considering whether to take any enforcement action, the Council has to consider the proportionality of its actions. In other words whether the proposed action would be proportionate to the objective being pursued – here the enforcement of planning control in support of National and Local Planning Policies. It is recognised that issuing an enforcement notice or a breach of condition notice or taking court proceedings in the Magistrates Court if the notice is not complied with, will result in interference with the recipients’ rights. However, it is considered that issuing a notice in the first instance would be a proportionate response to rectifying the breach of planning control taking place.

Equalities

- 2.15 The Enforcement section operates in accordance with the Council’s Planning Enforcement Policy and is largely dictated by legislation which reduces the risk of discrimination in this service. The Council is accountable to the public, including its stakeholders, for its decisions both to take enforcement action and not to utilise its enforcement powers. There is a legitimate expectation of the public and stakeholders that the Council will take action to address breaches of planning by such means as are appropriate and which are in accordance with the Council’s policy and government legislation.
- 2.16 The Council strives for a consistent approach in targeting its enforcement action. This means that the Council will take a similar, but not the same, approach to compliance and enforcement decisions within and across sectors. It will strive to treat people in a consistent way where circumstances are similar. Each case however will be evaluated on the basis of its own facts and circumstances but will ensure that decisions or actions taken in any

particular case are consistent with the law and with the Council's published policies. It should be noted that decisions on specific enforcement actions may rely on professional judgment. The Council will usually only take formal enforcement action where attempts to encourage compliance have failed as in this case.

Crime and disorder

- 2.17 The Crime and Disorder Act 1998 places a duty on the local planning authority to do all that it reasonably can to prevent crime and disorder in its area. The potential impact on the integrity of the planning system and the setting of a precedent if action is not taken is therefore a material consideration in the authorisation of enforcement proceedings.

3 CONCLUSION

- 3.1 The restaurant has been open for almost a year and the conditions remain outstanding despite the owner promising to comply and submit the required details.
- 3.2 The conditions attached to the permission are necessary to ensure the development is acceptable in planning terms and non-compliance with the conditions is detrimental to highway safety and the amenity of nearby residents resulting in the restaurant use being in conflict with local and national policies.
- 3.3 As the owner has failed to comply with the conditions a notice should now be served to ensure the required details are submitted and the approved schemes carried out.

4 RECOMMENDATION

- 4.1 That the Service Manager, Development Services in conjunction with the Director of Organisational Development & Democratic Services be authorised to take all enforcement action including the service of any necessary enforcement notices and proceedings through the courts to ensure the outstanding conditions are complied with.