

TEWKESBURY BOROUGH COUNCIL – DEVELOPMENT MANAGEMENT

Committee:	Planning
Date:	19 April 2022
Site Location:	7 St Marys Lane Tewkesbury
Application No:	22/00243/FUL
Ward:	Tewkesbury Town South
Parish:	Tewkesbury
Proposal:	Variation of condition 3 (opening hours) of planning application 21/01254/FUL to extend existing opening hours.
Report by:	James Stanley
Appendices:	Site location plan
Recommendation:	Permit
Reason for referral to Committee:	Called in for Committee determination by Councillor Cody, to assess the impact upon neighbouring amenity

1.0 SITE DESCRIPTION AND PROPOSAL

- 1.1** This application relates to 7 St Marys Lane, a two-storey cottage which is a Grade II Listed building. The building operates a food outlet under Class Sui Generis of the Use Class Order and is located on a mixed street use in Tewkesbury. The site is located within the Tewkesbury Conservation Area, Flood Zone 2 and is subject to the Tewkesbury Article 4 Direction.
- 1.2** The application seeks to vary condition 3 (opening hours) of permission 21/01254/FUL from 11:00 – 17:30 to 10:30 – 18:30 Monday to Sunday and to 10:30 – 20:00 during special events.

2.0 RELEVANT PLANNING HISTORY

Application Number	Proposal	Decision	Decision Date
66/00132/FUL	Change of use of two front rooms on ground floor of dwelling from residential to gift shop and coffee room.	PER	22.06.1966
21/01254/FUL	Change of use from Class E to sui generis to allow food hot for takeaway (retrospective).	PER	25.02.2022

3.0 RELEVANT POLICY

The following planning guidance and policies are relevant to the consideration of this application:

3.1 National guidance

National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (NPPG)

3.2 Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (JCS) – Adopted 11 December 2017

- Policy SD8 (Historic Environment)
- Policy SD14 (Health and Environmental Quality)
- Policy INF1 (Transport Network)

3.3 Tewkesbury Borough Local Plan to 2011 – March 2006 (TBPL)

- Policy HEN2 (Conservation Area: Setting and Impact)

3.4 Tewkesbury Borough Plan 2011-2031 Pre-submission Version (October 2019)

- Policy HER1 (Conservation Area)
- Policy RET6 (Hot Food Takeaway)

3.5 Neighbourhood Plan

None

3.6 Other relevant policies/legislation

- Human Rights Act 1998
- Article 8 (Right to Respect for Private and Family Life)
- The First Protocol - Article 1 (Protection of Property)

4.0 CONSULTATIONS

Full copies of all the consultation responses are available online at <https://publicaccess.tewkesbury.gov.uk/online-applications/>.

- 4.1** Tewkesbury Town Council – Objection due to the negative impact upon neighbouring amenity.
- 4.2** Gloucestershire County Council Highways – No objection.
- 4.3** Conservation Officer – No objection.
- 4.4** Environmental Health – No objection.

5.0 PUBLICITY AND REPRESENTATIONS

Full copies of all the representation responses are available online at <https://publicaccess.tewkesbury.gov.uk/online-applications/>.

- 5.1** The application has been publicised through the posting of a site notice for a period of 21 days.
- 5.2** At the time of writing the report, two letters of representation have been received objecting to the application on the following grounds. Any further comments will be summarised in the late representations sheet.
- 5.3**
 - Impact upon neighbouring amenity
 - Highways Safety
 - The potential of opening to 20:00 every time there is a special occasion
 - Potential for additional safety issues and anti-social behaviour in the dark
 - The manner in which the business trades

6.0 POLICY CONTEXT

- 6.1** Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. Section 70 (2) of the Town and Country Planning Act 1990 provides that the Local Planning Authority shall have regard to the provisions of the Development Plan, so far as material to the application, and to any other material considerations.

- 6.2** The Development Plan currently comprises the Joint Core Strategy (JCS) (2017), saved policies of the Tewkesbury Borough Local Plan to 2011 (March 2006) (TBLP), and a number of 'made' Neighbourhood Development Plans.
- 6.3** The Tewkesbury Borough Plan (TBP) has reached an advanced stage. The Pre-Submission TBP was submitted for examination in May 2020. Examination in Public (EiP) took place over five weeks during February and March 2021. The examining Inspector's post hearings Main Modifications letter was received on 16th June 2021. In this letter the Inspector provided his current view as to what modifications are required to make the Plan 'sound'.
- 6.4** A schedule of Main Modifications to the Pre-submission TBP were approved at the meeting of the Council on 20th October 2021 and is now published for consultation as the Main Modifications Tewkesbury Borough Plan (MMTBP).
- 6.5** Those policies in the MMTBP which were not listed as requiring main modifications may now attract more weight in the consideration of applications, with those policies which are subject to main modifications attracting less weight depending on the extent of the changes required. The TBP remains an emerging plan and the weight that may be attributed to individual policies (including as with modifications as published for consultation) will still be subject to the extent to which there are unresolved objections (the less significant the unresolved objections, the greater the weight that may be given) and the degree of consistency with the NPPF (the closer the policies to those in the NPPF the greater the weight that may be given).
- 6.6** The relevant policies are set out in the appropriate sections of this report.
- 6.7** Other material policy considerations include national planning guidance contained within the National Planning Policy Framework 2021 and its associated Planning Practice Guidance (PPG), the National Design Guide (NDG) and National Model Design Code.

7.0 ANALYSIS

Residential amenity

- 7.1** Policy SD14 of the JCS requires that new development must cause no harm to local amenity including the amenity of neighbouring occupants. Policy RET6 of the MMTBP ensures that there would be no adverse impact upon the amenity of neighbouring uses with regard to noise and odour pollution.
- 7.2** Prior to the submission of application 21/01254/FUL, 7 St Marys Lane operated as a tearoom called 'Crumpets' which operated under Class A3 of the Use Class Order. Changes to the Use Class Order in 2020 meant that the business then operated under Class E of the Use Class Order.
- 7.3** Under Class E, the business was able to change from 'Crumpets', a tearoom, to 'The Ice Cream Cottage', a cold food takeaway, without the need for planning permission.
- 7.4** Under application 21/01254/FUL, permission was granted to allow 'The Ice Cream Cottage' to sell hot food as it was deemed that the intensification of the use would not result in undue harm to the residential amenity of the neighbouring dwellings.

- 7.5** This application seeks to change the operating hours of the permission to open 30 minutes earlier (at 10:30) and close 60 minutes later (at 18:30) Monday to Sunday, with an exception to close an additional 90 minutes (at 20:00) later during special events.
- 7.6** Environmental Health have been consulted and have raised no objections regarding noise nuisance.
- 7.7** Due to the location of the building and the current permission, it is deemed that the proposed normal operating hours would not result in undue harm to the neighbouring dwellings. This is due to the requested hours being normal operating hours for a takeaway in this location and that the proposed hours are not greatly different from the permitted hours.
- 7.8** It is also deemed that the proposed opening hours during special events would not result in undue harm to the neighbouring dwellings due to already high levels of activity in the street due to the events taking place.
- 7.9** The impact of the proposal upon neighbouring properties has carefully been assessed and it is considered that there would not be an undue impact upon their amenity in accordance with Policy RET6 of the MMTBP and Policy SD14 of the JCS.

Access and highway safety

- 7.10** Policy INF1 of the JCS requires that any development does not have a severe impact upon the highway network.
- 7.11** The Highways Authority has been consulted and have raised no objections to the application on the grounds of highways safety or impact upon congestion.
- 7.12** The impact of the proposal upon the highway network has carefully been assessed and it is considered that there would not be an undue impact upon the safety in accordance with Policy INF1 of the JCS.

Heritage assets

- 7.13** 7 St Marys Lane is a Grade II Listed Building and is also located within Tewkesbury conservation area (both of which are designated heritage assets). In determining planning applications, Section 16(2) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 require the Council to have regard to the desirability of preserving listed buildings and their features of special architectural or historic interest and to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. The proposal must also be assessed against section 16 of the NPPF, JCS Policy SD8, saved policy HEN2 of the Local Plan and MMTBP Policy HER1.
- 7.14** The Conservation Officer has been consulted and it is deemed that this application would have no impact upon the heritage assets present. Therefore, it is considered that there would not be an undue impact upon heritage assets in accordance with Policy SD8 of the JCS, saved policy HEN2 of the Local Plan and MMTBP Policy HER1.

8.0 CONCLUSION AND RECOMMENDATION

- 8.1** It is considered that the proposal would accord with relevant policies as outlined above. Therefore, it is recommended that planning permission be granted subject to the following conditions:

CONDITIONS:

1. The works hereby permitted shall be begun before the expiration of five years from the 24.02.2022.

Reason: Required to be imposed by Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall be carried out in accordance with the following documents:

- Drawing Number TQRQM21292101201664 (Site Location Plan) drawn on 19.10.2021
- Drawing Number TQRQM21314115407995 (Block Plan) drawn on 10.11.2021
- Existing and Proposed Floor Plan received by the Local Planning Authority on 11.01.2022

Except where these may be modified by any other conditions attached to this permission.

Reason: To ensure that the development is carried out in accordance with the approved plans.

3. The development hereby permitted shall be open to customers during the following hours; 10:30 to 18:30 on Monday to Sunday and Bank Holidays. Notwithstanding these opening hours, during the annual special events listed below, the development hereby permitted shall be open to customers during the following hours; 10:30 to 20:00 on Friday and Saturday.

Special Events: Queens Jubilee Weekend, Medieval Fayre Weekend and Fireworks at the Vineyards.

Reason: To protect the noise climate and amenity of local residents

INFORMATIVES:

1. In accordance with the requirements of the NPPF the Local Planning Authority has sought to determine the application in a positive and proactive manner by offering pre-application advice, publishing guidance to assist the applicant, and publishing the to the Council's website relevant information received during the consideration of the application thus enabling the applicant to be kept informed as to how the case was proceeding.