



To: DEVELOPMENT CONTROL
COMMITTEE

Report of Head of Planning and
Building Control, Regeneration
Directorate on
08 Oct 2009

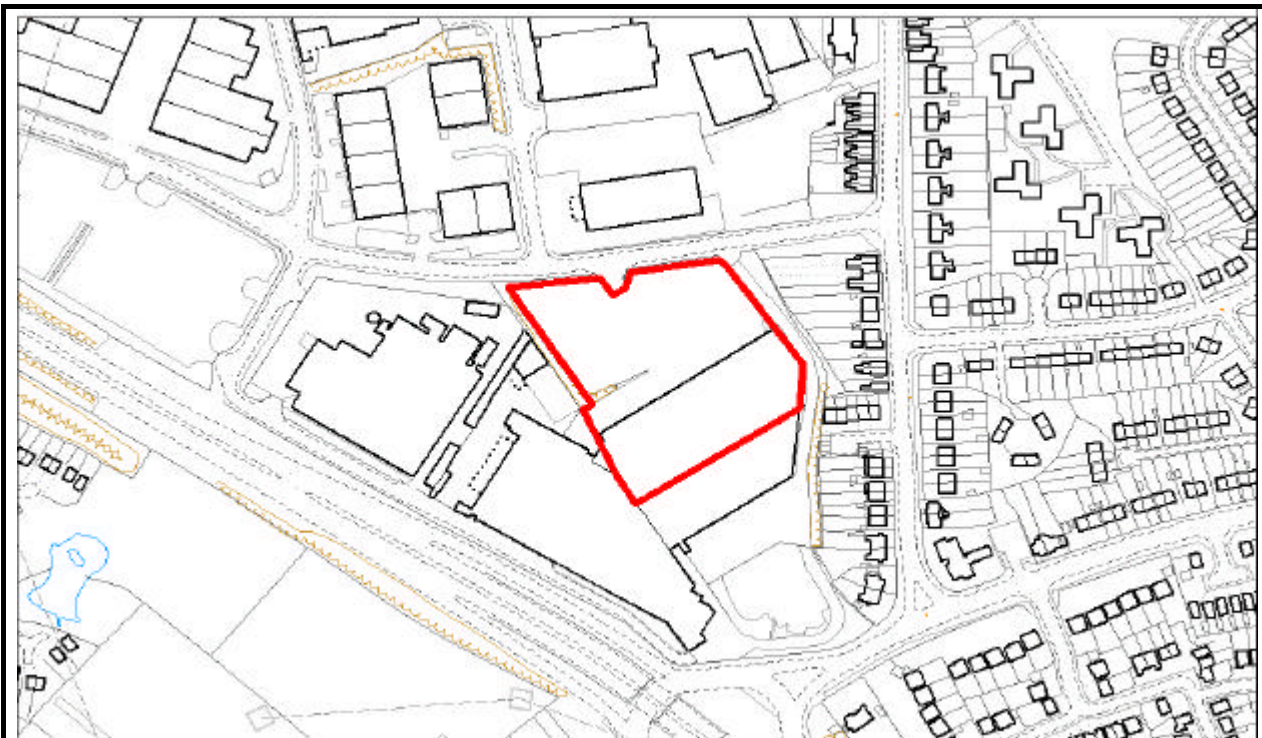
**REASON FOR BRINGING TO COMMITTEE: Unresolved objection from key
consultee**

Application Number: 08/0894/FL
Application Type: Full application
Applicant: Hootys Supplies Ltd
Proposal: Variation of Condition 3b of
BC47202P to allow longer opening hours
on Fridays (09.00 to 21.00)

Ward: Willenhall South

Recommendation Summary: Grant Subject to conditions

Case Officer: Jan Scrivens
Telephone Number: 01922 652436
Agent: Ms Sian Griffiths
Location: HOOTYS SUPPLIES
(WHOLESALE) LTD, LONGACRES
INDUSTRIAL ESTATE, ROSE
HILL, WILLENHALL, WV13 2JX
Expired: 08/08/2008



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Application and Site Details

This application proposes varying condition 3b of BC47202P to extend the opening hours of this retail store. The hours approved were:

09.00 to 18.00 Mondays

09.00 to 18.00 Tuesdays

09.00 to 18.00 Wednesdays

09.00 to 21.00 Thursdays

09.00 to 18.00 Fridays

09.30 to 18.00 Saturdays

11.00 to 17.00 Sundays and Public Holidays

The proposal is to allow opening from 09.00 to 21.00 on Fridays (to match the already approved late night opening on Thursdays).

It is relevant to note that the original opening hours have been amended before, under planning permission 06/0389/FL/W3, to 09.00 to 21.00 on Mondays, Tuesdays and Wednesdays but this is during the months of November and December only.

This report uses two terms, **application site** and **occupation site** to mean the following. The boundary of the application site reflects that of BC47202P. This is not the whole of the area Hooty's are using. Their occupation site has expanded from that of BC47202, and now includes an attached building on the south side of the original building, and a vehicular access track between the application site and the rear of the houses in Rose Hill leading to a service yard at the rear (south) of the enlarged building.

There are no conditions relating to hours of operation on the additional land and buildings.

Relevant Planning Policy Summary

(Note the full text version of the UDP is available from the First Stop Shop in the Civic Centre and on the Planning Services Website www.walsall.gov.uk/planning)

Development Plan

GP2, 3.6 and 3.7 expect all development to contribute to the improvement of the environment. The Council will seek to protect people from unacceptable noise, pollution and other environmental problems.

JP76 identifies the site as part of a core employment area. These sites will be safeguarded for industrial use unless it can be demonstrated that a need would be met which cannot be satisfied elsewhere in the borough or the range and quality of employment opportunities would be significantly increased.

T7 and T13 relate to car parking.

Relevant Planning History

The application site

BC47202P Change of use to non-food store (Class A1). Granted subject to conditions 9.10.97. Conditions of this permission restricted the type of goods to be sold, hours of delivery vehicle movements and hours of customer vehicle movements and sales. The approved customer hours were as set out above.

BC55594P Retrospective: Retention of existing polytunnel and change of use of part of existing car park for the purposes of a garden centre. Granted subject to conditions 3.8.04

03/0990/FL/W3 Variation of condition 3(b) of planning permission BC47202P. Extension of opening hours. Granted for a period of three years. 23.9.03 to extend the opening hours on Mondays, Tuesdays and Wednesdays to 21.00 hours for the months of November and December.

06/0389/FL/W3 Permanent retention of extended opening hours (variation of condition 3b of BC47202P). Granted subject to conditions 28.6.06

The wider occupation site

BC14167P Change of use to wholesale cash and carry warehousing and light industrial. Granted subject to conditions 26.6.85

BC27946P Factory extension Granted subject to conditions 13.11.89

Consultations

Transportation: No objection

Environmental Health: Object. Longer opening hours may result in general noise disturbance from on site activities such as deliveries and personnel within the service yard and access. A restriction on the hours of deliveries would be beneficial.

Representations

Objections to the application have been received from the occupiers of five properties in Rose Hill which back onto the access drive and delivery area. The grounds of objection are:

- additional noise from deliveries (including noise from unloading and noise from staff), this has now extended into the weekend; work seems to be starting earlier and earlier, including Sundays. Increasing the opening hours would allow large vehicles to deliver later; if the store opens an hour later it would take an extra hour for the noise to stop; at Christmas the store was open 24 hours for restocking ; most industrial estates do not operate 24 hours a day seven days a week but residents here have lorries day and night
- light pollution from the delivery area
- litter blows into gardens
- loss of privacy due to delivery lorries parking in the driveway and overlooking

the rear of houses and gardens, also staff overlooking the garden; some kind of privacy screening should be erected

- the proposal will increase traffic by encouraging more people to visit the store, particularly at antisocial times; traffic queues on Rose Hill to get into the estate, particularly at weekends creating problems for ambulances and residents, making it difficult to get on and off driveways; traffic has increased partly due to the new housing in the area; at one time it was proposed to link Longacres to The Keyway which would improve the situation for the industries on the estate and the residents of Rose Hill
- traffic on Rose Hill causes poor air quality and makes houses difficult to keep clean
- will devalue property

All letters of representation are available for inspection upon publication of this committee report.

Observations

- the planning status of the occupation site
- parking/servicing/traffic
- amenity of adjacent occupiers

The planning status of the occupation site

The occupation site, prior to Hootys moving onto the site was one site.

Planning application BC14167P, in 1985, showed the front part of the site (i.e. the application site) to be used for wholesale cash and carry sales (this is the permission which Hootys used when they first moved onto the site). That permission also showed the rear part of the building, the access drive and service area to be used for textile manufacturing with a warehouse. The report on the application stated that both Hootys and B.Allen Ltd. have traded elsewhere on a cash and carry basis and it was intended to continue the arrangement here. The decision notice gave consent for wholesale cash and carry warehousing and light industrial. The report which accompanied the application stated that both Hootys and B.Allen Ltd. have traded elsewhere on a cash and carry basis and it was intended to continue the arrangement here.

BC14167P did not give Hootys consent to use the former B. Allen Ltd premises for their current use since B. Allen Ltd. were a mixed factory/ cash and carry use and Hooty's does not contain any industrial element.

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Hootys use of the former B. Allen Ltd. Premises, as far as officers are aware has only been since 2000 and as a result it can not claim a lawful use (i.e. it has been in place for less than 10 years and is therefore unauthorised). The agents for the application do not agree with this conclusion.

Since 1985, the application site has been given planning permission for retail sales, for Hootys. The cash and carry use of the application site has continued after the introduction of the retail use.

The area formerly used by B. Allen Ltd. (the access drive to the east of the building, the rear part of the building and the service yard) were not part of the application site of BC47202P and are not controlled by any hours restrictions. Since 2000 these areas have been used for deliveries to Hootys, the trade entrance, staff, and trade customer customer parking. The occupation site has therefore become a mixed retail and wholesale cash and carry use, of which the application site forms a lawful part and the remainder is unauthorised. The two 'sites' are however inextricably interlinked, since they are both serviced by the same access drive, are both occupied by the same business and the former B. Allen site provides delivery and office facilities for the whole business in addition to being the trade customer entrance.

Despite this complexity, it is possible, and indeed reasonable to determine this application, in isolation, since it relates to the activities of retail customers who are only in that part of the building to which the application relates.

It is intended to bring a report to the next meeting on the unlawful additional activities, and a decision on this application aids this process by reducing the complexity of the case by this amount.

Parking / traffic / servicing

The store would not require additional car parking as a result of this application, since the parking requirement is based upon floorspace, and the retail floorspace is not changing.

The lengthening of the store's opening hours for retail customers would have little impact on the functioning of the public highway since they and any staff required to serve them would largely be travelling outside rush hour.

None of this is likely to be a problem in highway terms because the hours involved are outside peak times. Transportation has not objected to the proposal.

Servicing is more complex because of the issues arising from the occupation site. However, Hootys are lawfully in occupation of the area of the application site, and there were, when it was created, adequate servicing arrangements from their street frontage to the north. Approval of the present application, notionally, would simply perpetuate that arrangement. It need not necessarily have any impact on deliveries to the store, although in practice it may result in more and/or later deliveries simply because the store is open to receive them. It would also involve staff being present later at the store.

The implications of such changes for the occupation site will be explored in the report to the next meeting.

Amenity of adjacent occupiers

Neighbour objections centre around noise, activity, light pollution and litter from the servicing and staff parking arrangements of the occupation site, though there are objections also about the amount of traffic using Rose Hill. The length of time which it takes for the site to close down after the building has shut is also mentioned as a problem; this may imply that customers vehicles are not leaving the premises by the stated hours and as such warrants further investigation. Neighbours are concerned that an extension to the opening hours will exacerbate these problems.

The concerns of Environmental Health are primarily driven by the activities on the occupation site and will be explored in a future report on those issues.

Currently the permitted hours allow a late night of 21.00 hours all year round on Thursdays only and on Monday to Thursday solely during the months of November and December, so neighbours have had the opportunity to experience how the site behaves at these times.

The hours of operation approved under BC47202P related to a store which had all its parking and servicing on the northern frontage of the site. The area then in use by Hooty's was also smaller than the occupation site. In acquiring and using the building at the rear and the access drive and servicing area, the applicant's have increased the impact of their business on the residents of Rose Hill, though clearly any changes must be weighed against the lawful entitlement and consequences of the previous use. However, these are issues which arise from the occupation site not the application site. They need to be addressed separately, as already envisaged.

Conclusion

The use of the service yard and accessway are matters which are likely to have the greatest effect on the amenity of neighbours. These should be considered, together with the use of the occupation site, at a future meeting. The current application can be considered in isolation, and in itself would not have an excessive impact on the amenity of neighbours.

Summary of Reasons for Granting Planning Permission

There are objections that longer opening hours will adversely affect residential amenity, as a result of noise and on site activities, and that Increasing the opening hours would allow deliveries later. There are also concerns about light pollution, and litter, and the implications of increased traffic.

The application relates to a restricted area of land which does not abut the housing. The concerns about deliveries and other issues do not therefore relate to the application and it is the intention of the Local Planning Authority to consider them separately, at a later date.

The store would not require additional car parking as a result of this application, since the parking requirement is based upon floorspace, and the retail floorspace is not changing.

The lengthening of opening hours would have little impact on the functioning of the public highway since this would largely activity outside the rush hour.

The current application can be considered in isolation, and in itself would not have an excessive impact on the amenity of neighbours.

On balance the development proposals are considered to comply with the policies of the development plan, in particular policies GP2, 3.6, 3.7, JP7, T7 and T13.

Recommendation: Grant Subject to conditions

1. This development must be begun not later than 3 years after the date of this decision.

Reason: Pursuant to the requirements of Section 91 of the Town and Country Planning Act, 1990 (as amended).
