



Item No.

Walsall Metropolitan Borough Council

DEVELOPMENT CONTROL COMMITTEE

Date: 5th November 2009

Report of Head of Planning and Building Control - Regeneration

Hootys Supplies (Wholesale) Ltd., Longacres, Rose Hill, Willenhall

1. PURPOSE OF REPORT

- 1.1 To request authority to take planning enforcement action in respect of the unauthorised use of part of Hootys premises for a mixed retail and wholesale cash and carry use and the use of adjoining land for car parking..

2. RECOMMENDATIONS

- 2.1 That authority is granted for the issuing of an Enforcement Notice under the Town and Country Planning Act 1990 (as amended) to require remedial actions to be taken as set out in 2.3 below.
- 2.2 To authorise the decision as to the institution of Prosecution proceedings, in the event of non-compliance with an Enforcement Notice or the non-return of Requisitions for Information or a Planning Contravention Notice; and the decision as to the institution of Injunctive proceedings in the event of a continuing breach of control; be delegated to the Assistant Director – Legal and Constitutional Services in consultation with the Head of Planning and Building Control.
- 2.3 That, in the interests of ensuring an accurate and up-to-date notice is served, authority be delegated to the Assistant Director – Legal and Constitutional Services in consultation with the Head of Planning and Building Control to amend, add to, or delete from the wording set out below stating the nature of the breach(es), the reasons for taking enforcement action, the requirement(s) of the Notice, or the boundaries of the site:

Details of the Enforcement Notice

The Breach of Planning Control:-

Change of use of part of a building, service yard and access track from a mixed cash and carry and industrial use to a mixed cash and carry and retail use and the use of adjoining land for car parking in connection with this use.

Steps required to remedy the breach:-

Cease the use of the building, service yard and access track for a mixed cash and carry and retail use and cease the use of the adjoining land for car parking in connection with this use.

OR

Cease the use of the adjoining land for car parking in connection with the mixed cash and carry and retail use

AND

Restrict the goods sold by retail from the building to those permitted by planning permission BC47202P

AND

Cease to use the access track and service yard for deliveries (including parking or waiting of delivery vehicles, delivery vehicle movements and unloading of deliveries) except between the hours of 0700 to 19.00 hours on Mondays to Fridays and 07.30 to 13.00 on Saturdays

AND

Cease the use of the access track and service yard for cash and carry customer vehicle movements and parking except between the hours of 09.00 to 18.00 on Mondays, Tuesdays, Wednesdays and Fridays and 09.00 to 21.00 on Thursdays and 09.30 to 18.00 Saturdays and 11.00 to 17.00 on Sundays and Bank and Public Holidays and in the months of November and December only, between the hours of 09.00 to 21.00 on Mondays, Tuesdays and Wednesdays.

AND

Cease the use of the access track and service yard for vehicle movements and parking, other than by cash and carry customers or delivery vehicles

Period for Compliance:-

2 months

Reasons for taking enforcement action:-

- a) the use of this part of the building for a mixed cash and carry and retail use, without a restriction on the retail goods sold from it, would be inconsistent with the planning approval given to use the remainder of the building and contrary to the reason for imposing the restriction on planning permission BC47202P which was to control the provision of retail outlets in Willenhall.
- b) the hours of use of the access track and service yard are at present uncontrolled and their more intensive use as part of a larger site has resulted in the occupiers of the adjoining houses in Rose Hill suffering a loss of amenity in the form of loss of privacy, increased noise and increased activity. The retention of the use or retention without control would perpetuate this situation.
- c) the use of the adjoining land for car parking in connection with the mixed cash

and carry and retail use deprives the adjacent industrial units of car parking to the detriment of their functioning and that of adjacent buildings and the adjacent highway

3. **FINANCIAL IMPLICATIONS**

None arising from this report

4. **POLICY IMPLICATIONS**

The report recommends enforcement action in order to seek compliance with planning policies.

5. **LEGAL IMPLICATIONS**

None arising from this report

6. **EQUAL OPPORTUNITY IMPLICATIONS**

None arising directly from this report.

7. **ENVIRONMENTAL IMPACT**

The report seeks enforcement action to remedy adverse environmental impacts.

8. **WARD(S) AFFECTED**

Willenhall South

9. **CONSULTEES**

Environmental health

10. **CONTACT OFFICER**

R. Scrivens 01922 652488

11. **BACKGROUND PAPERS**

Previous planning applications, all public documents

David Elsworthy
Head of Planning and Building Control

Development Control Committee
5th November 2009

12. BACKGROUND AND REPORT DETAIL

- 12.1 Hootys occupy the area set out on the attached plan. It was formerly two units, occupied by Hootys at the front and B. Allen Ltd. at the rear. The site has a frontage with car park to Longacres and its access track to the rear service yard. The access track and service yard adjoin the rear gardens of houses fronting Rose Hill. They also occupy an area of car park to the south of their service yard which was formerly the car park of the adjacent industrial units.
- 12.2 Hootys current site, excluding the car parking to the south of the service yard, was previously one site. The drawings accompanying planning application BC14167P showed the front part of the site to be used for wholesale cash and carry sales and the rear part of the building, the access drive and service area to be used for textile manufacturing with a warehouse. This division is less clear from the decision notice which 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.
- 12.3 This permission would 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. Hootys use of the former B. Allen Ltd. premises has only taken place since 2000 and as it could not claim a lawful use is therefore unauthorised. The company dispute this and consider that they have a lawful use, since the premises were used for cash and carry prior to their purchase of it, at least since 1994.
- 12.4 The original Hootys building has planning permission for retail sales; it has also been used as a trade cash and carry as a lesser part of the business. Although this mixed use does not have planning permission it is likely, given the previous use of the site for cash and carry, that it is lawful.
- 12.5 The remainder of Hootys current site, which was formerly used by B. Allen Ltd., consisting of 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.
- 12.6 Since 2000 the access drive and service yard have been used for deliveries to Hootys and the rear part of the building (the former B. Allen Ltd.) now also forms the trade entrance, with the service yard also providing customer parking. The current site has therefore become a mixed retail and wholesale cash and carry use, of which the front part of the site forms a lawful part, and the remainder is unauthorised. The two 'sites' are however inextricably interlinked now, since they are both serviced by the access drive, are both occupied by the same business and the former B. Allen site provides delivery facilities for the whole business in addition to being the trade entrance.

- 12.7 Neighbours have raised concerns about noise, activity and loss of privacy arising from the use of the access track and service yard. The length of time which it takes for the site to close down after the building has shut is also mentioned as a problem. Hootys query whether these concerns have been validated. There is however no reason to suppose that the concerns are not genuine.
- 12.8 It is recommended that authority is given to take planning enforcement action to ameliorate the problems experienced by neighbours.
- 12.9 While it would be possible to take enforcement action against the use of the rear part of the building, i.e. the former B.Allen, its use for a mixture of retail and cash and carry has been considered acceptable for the remainder of the building. It is not therefore proposed to enforce against the use as such but instead to address the issues which are causing concern.
- 12.10 It would be necessary to restrict the retail goods sold to those approved under BC47202P to provide consistency with the rest of the building and to avoid conflict with retail policy. Hootys consider this to be totally unjustified and would strongly oppose it if it related to the cash and carry part of the building. I take this to mean the cash and carry use, which it would not be intended to restrict.
- 12.11 The use of the service yard and access track to the enlarged store has given rise to a loss of amenity for the adjacent residents in Rose Hill.
- 12.12 It would be possible to require the use of these to cease and servicing to take place at the front of the building. Servicing at the front of the site would however create a conflict with, and a reduction of, customer parking. This would be detrimental to the functioning of the site and the adjacent highway since the car park appears to be almost fully used on a regular basis.
- 12.13 This course of action would also be excessive, since the service yard and access track were previously part of the former, authorised use, without attracting complaints.
- 12.14 Planning permission BC47202P included a condition restricting delivery vehicle movements to 07.00 to 19.00 on Mondays to Fridays and 07.30 to 13.00 on Saturdays, with no deliveries at all on Sundays, Bank or Public Holidays.
- 12.15 It is proposed that the use of the access track and service yard for deliveries be allowed to continue subject to the same hours restrictions as BC47202P for consistency.
- 12.16 The use of the access track and service yard by cash and carry customers would similarly have taken place as part of the previous authorised use. It is proposed to restrict the hours to those approved under BC47202P for consistency. Any restriction on the hours of use by trade customers is unlikely to be acceptable to Hootys.

- 12.17 The use of the access track and service yard by retail customers or staff would represent an increase in its use which is not acceptable due to the impact which the additional activity would have on residential neighbours.
- 12.18 The use of the car park to the south of the service yard constitutes a change of use, since it was previously part of an industrial site. The extension of Hootys use into this area is unacceptable since it deprives the adjacent industrial units of their parking space, which would be detrimental to their functioning and that of the adjacent highway .