
MAIN CASE

Proposal: Change of use of premises from offices (A2) to Business use (B1(c)). Opening hours 4 pm until 11pm.

Location: 3A Forehill Ely Cambridgeshire CB7 4AA

Applicant: Mr Ismail Uzun

Agent: Ada Group

Reference No: 10/00598/FUL

Case Officer: Ann Caffall

Parish: Ely
Ward: Ely East

Ward Councillor/s: Councillor Brian Ashton
Councillor Jackie Petts

Date Received: 17 September 2010 Expiry Date: 12 November 2010

[K154]

1.0 EXECUTIVE SUMMARY

1.1 The amended application seeks to change the use of the premises from Offices (A2) to a pizza production and delivery business (Use, Class B1). There will be no customers and no advertisement on the premises. Advertisement for the business will be via flyers and the local papers as well as the Internet. Pizza deliveries will be made by two mopeds, which will be secured within the alleyway at all times.

Officers consider that the siting of the proposal is both in an appropriate location and supported by national and local policy. The amenity of the existing residential uses adjoining the application site should be protected in order to comply with policy EN6, and therefore any approval should be controlled by conditions. The conditions should relate to the use, opening hours, noise and odour emissions.

1.2 The Local Planning Authority could not reasonably refuse planning permission on the grounds of highway safety in this town centre location. The access arrangements and parking for delivery vehicles is considered appropriate for the site.

1.3 The application is recommended for APPROVAL

2.0 **THE APPLICATION**

2.1 The amended application seeks to change the use of the premises from Offices (A2) to a pizza production and delivery business (Use, Class B1). It is proposed to use the ground floor as the production/kitchen area with the first floor as storage.

3.0 **THE APPLICANT'S CASE**

3.1 The intention is to cook and deliver pizzas from the premises. There will be no visiting customers and no advertisement on the premises. Advertisement for the business will be via flyers and the local papers as well as the Internet. Arrangements have been made with feedmeonline.co.uk whereby orders will be taken on line, which will link direct to the premises.

3.2 It is proposed to install an oven to cook the pizzas but no other power operated machinery. Pizza deliveries will be made by two mopeds, which will be secured within the alleyway at all times.

4.0 **THE SITE AND ITS ENVIRONMENT**

4.1 This two-storey property is accessed via a pedestrian passageway from Forehill. The external appearance comprises white painted brickwork with timber-framed windows, under a slate roof. There is no curtilage with the premises. A hot food premises adjoins the application site to the north with an associated flat over. To the south of the passage, fronting Fore Hill is an estate agents business, and further to the rear, residential properties accessed from Burgundy Walk and Market Place.

4.2 The site is located within the designated Conservation Area.

5.0 **PLANNING HISTORY**

5.1

05/00788/FUL	Change of use from an insurance office to one bed. Accommodation	Approved	05.09.2005
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6.0 **REPLIES TO CONSULTATIONS**

6.1 Ely City Council – recommend refusal – inappropriate location for such a business. Concerns are:

- Noise and smells
- Double yellow lines outside the alleyway
- Alleyway not wide enough for 2 delivery motorcycles and if parked there it would conflict with pedestrians.

6.2 Neighbours – Market Place, Forehill, Burgundy Walk, - Generally object to the unsuitability of this location on the following grounds:

- Noise and late-night disruption by pedestrians and motor traffic in a currently residential area,
- Antisocial behaviour by people congregating outside the takeaway, also leaving bodily fluids on adjacent shop windows

- Rubbish and waste – pizza boxes drink cans and foodstuffs littering streets, alleyway is storage area for existing fast food business and smells of rotting food permeates the adjacent buildings,
- The courtyard is narrow and noise of mopeds will be transferred to the rear of the building where there are residential properties
- Takeaway status does not fit with design and access statement saying delivery service only
- Delivery service – club goers will call the business using their mobile phones and have them delivered to the street.
- There are enough takeaways already within the city centre
- Parking on Yellow lines outside the premises

6.3 Ely Society – concerns regarding the tortuous access and the lack of parking for customers and delivery vans. Signage could be problematic too.

6.4 Environmental Health – to safeguard the situation with regard to odour and noise emissions from the kitchen and to minimise noise disturbance attributable to “comings and goings” from the premises, recommend that any permission be granted subject to conditions relating to control and installation of a ventilation system, noise emissions from the ventilation system, restriction of opening times.

6.5 Environmental Health Commercial team – If the proposal is successful the premises will need to comply with the requirements of the Food and Hygiene regulations. The submitted plans do not comply with the regulations and further information and details will need to be provided before any use/works are commenced.

6.6 Conservation Officer – No objections subject to conditions relating to changes to the appearance of the building and advertisements

7.0 **THE PLANNING POLICY CONTEXT**

7.1 **East Cambridgeshire Core Strategy 2009**

- CS1 Spatial Strategy
- CS5 Retail and town centre uses
- EN6 Design
- S1 Location of retail and town centre uses
- S6 Transport impact
- S7 Parking provision

7.2 **National Planning Policy**

- PPS1 Delivering Sustainable Development
- PPS4 Planning for Sustainable Economic Growth

8.0 **PLANNING COMMENTS**

The material planning considerations are the principle of development, impact on adjoining occupiers and highways

8.1 Principle of development

National policy guidance on economic development and Policy CS5 of the Core Strategy promote the vitality and viability of town centres as important places for communities. It promotes the delivery of more sustainable patterns of development, reducing the need to travel especially by car, and responding to climate change. Policy CS5 of the Core Strategy identifies Ely as the main town centre in the district and encourages a wide range of services in order to support a vibrant and vital town centre, which people will want to visit. When considering economic development the proposal is a category of use identified as appropriate for a Town Centre. Forehill is designated as a secondary shopping frontage within the city centre. There is a take-away premises at the adjoining property (No.3) in the same ownership. There are no restrictions on the amount of certain use classes within the secondary shopping frontages. The proposal involves the production and delivery of pizzas by two mopeds from a central location to the surrounding area and therefore your officers consider that the siting of the proposal is both in an appropriate location and supported by national and local policy.

8.2 Impact on adjoining occupiers

To the rear of the site are residential properties with access from Market Place and Burgundy Walk. Adjoining the alleyway fronting Forehill is an estate agents office. It is quite clear from the objections received that concerns are the anti-social behaviour, which is attributed to the take-away fronting Forehill, would be exacerbated by the proposal. However the proposal does not involve the sale of hot food for take-away, it involves the use of an oven for the baking of pizzas and the use of mopeds for delivery which has been clarified and confirmed by the applicant. It is considered that without a take-away element, fears that the proposal might create circumstances in which public disorder and anti-social behaviour could arise are not reasonable grounds for refusal of the application.

Town Centres are by their very nature areas of mixed uses and residential properties located in such areas generally experience a level of “coming and going” which is not experienced in a purely residential area. Nevertheless your officers are of the view that the amenity of the existing residential uses adjoining the application site should be protected in order to comply with policy EN6, and therefore any approval should be strictly controlled by conditions. The conditions should relate to the use, opening hours, and noise and odour emissions. The suggested opening hours are those requested by the applicant and restricted to 16:00hrs to 23:00hrs on any day including Bank Holidays. The opening hours of the adjoining take-away are 10:00hrs Mondays to Fridays and 11:00hrs Saturdays and Sundays, until 23:00hrs on Sundays to Thursdays and 23:30 hrs Fridays and Saturdays.

8.3 Highways

Parking restrictions apply to the area outside the alleyway in Forehill and concerns have been raised regarding illegal parking by members of the public visiting the site. However the nature of the use has been clarified by the applicant and there will be no public visiting the site for the sale of food. The delivery vehicles proposed are two mopeds, which will be parked in the alleyway at all times, except when delivering pizzas. In order to gain access to the alleyway the mopeds will need to cross the footway. However this would be the case if the premises were still in the previous approved uses as office or residential use and the occupants used mopeds. Any abuse of the parking restrictions would be a matter for the police who are empowered to

prevent on-street parking. The Local Planning Authority could not reasonably refuse planning permission the grounds of highway safety in this town centre location, given the use of the site. The access arrangements and parking for delivery vehicles is considered appropriate for a town centre location.

8.4 Non material planning considerations

Concerns have been expressed regarding the number of existing take-aways and pizza provision within the town centre. Competition however is not a material planning consideration and should be a matter left to market forces. Notwithstanding this, competition between service providers is actively encouraged in national economic policy guidance, in order to increase the range and choice of goods and services available to consumers.

9.0 **RECOMMENDATION**

The application is recommended for approval, subject to the following conditions:

- 1 The development hereby permitted shall be commenced within 3 years of the date of this permission.
- 1 REASON: To comply with Section 91 of the Town and Country Planning Act 1990, as amended.
- 2 The building shall be used for the production and delivery of pizzas only and for no other purpose (including any other purpose in Class B1, or B8 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 or in any provision equivalent to that Class in any other statutory instrument revoking and re-enacting that Order.
- 2 REASON: To ensure satisfactory use of the site having regard to the provisions of Policy CS5 and S1 of the East Cambridgeshire Core Strategy 2009.
- 3 No staff shall be on the premises outside the hours of 16:00 hrs - 23:00 hrs on any day including Public Holidays.
- 3 REASON: To safeguard the interests of other users of land in the vicinity of the site and in accordance with policy EN2 of the East Cambridgeshire Core Strategy 2009 and policy SS1 of the East of England Plan, 2008.
- 4 Details of a ventilation system for the removal and treatment of cooking odours, which include measures to mitigate system noise, are to be submitted in writing for the approval of the Local Planning Authority. The details shall have regard to guidance and recommendations in DEFRA publication "Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems". The approved details shall be fully implemented prior to the first use of the development hereby permitted and shall be maintained at all times thereafter.
- 4 REASON: To safeguard the interests of other users of land in the vicinity of the site and in accordance with policy EN2 of the East Cambridgeshire Core Strategy 2009 and policy SS1 of the East of England Plan, 2008.

- 5 Noise emissions from the approved ventilation system shall not exceed 40 LAeq dB (5 min) when measured 1m from the external facade of any adjacent residential premises.
- 5 REASON: To safeguard the interests of other users of land in the vicinity of the site and in accordance with policy EN2 of the East Cambridgeshire Core Strategy 2009 and policy SS1 of the East of England Plan, 2008.
- 6 Structure borne (reradiated) noise emissions from the approved ventilation system shall not exceed 30 LAeq dB (5 min) when measured in any habitable room in adjoining residential premises.
- 6 REASON: To safeguard the interests of other users of land in the vicinity of the site and in accordance with policy EN2 of the East Cambridgeshire Core Strategy 2009.
- .7 No food shall be sold in person to members of the public from the premises and sales will be conducted strictly in accordance with those details submitted on 14 October 2010 by the applicant.
- 7 REASON: To safeguard the interests of other users of land in the vicinity of the site and in accordance with policy EN2 of the East Cambridgeshire Core Strategy 2009
- 8 Notwithstanding the provisions of the Town and Country Planning (Control of Advertisements) regulations 1989, there shall be no changes to the physical appearance of the building and no advertisements shall be displayed unless granted both advertising and planning consent by the Local Planning Authority on submission of a formal application.
- 8 REASON: To safeguard the character and appearance of the Conservation Area in accordance with policies EN2 and EN5 of the East Cambridgeshire Core Strategy 2009.

In addition an informative will be added to the decision notice informing the applicant that the planning permission does not grant consent under the Food and Hygiene regulations and that prior to commencement of development these regulations need to be complied with.

<u>Background Documents</u>	<u>Location(s)</u>	<u>Contact Officer(s)</u>
Planning Files	Ann Caffall Room No. 011 The Grange Ely	Ann Caffall Senior Planning Officer 01353 665555 ann.caffall@eastcambs.gov.uk