

## PLANNING COMMITTEE – THURSDAY 23<sup>RD</sup> JANUARY 2025

**24/1725/FUL - Variation of Conditions 1 (Hours of Operation) and 2 (External Use Hours) pursuant to planning application 12/1452/FUL: To allow the cafe to operate between 08:00 to 22:00 every day at 16 Money Hill Parade, Uxbridge Road, Rickmansworth, Hertfordshire, WD3 7BE**

Parish: Batchworth Community Council  
Expiry of Statutory Period: 23.12.2024  
(Extension of Time: 30.01.2025)

Ward: Rickmansworth Town  
Case Officer: Scott Volker

Recommendation: That Planning Permission be approved.

Reason for consideration by the Committee: Part of the application site is under the ownership of the Council.

To view all documents forming part of this application please go to the following website:  
<https://www3.threerivers.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=SM1ZG0QLQH00>

### 1 Relevant Planning History

- 1.1 06/1972/FUL: Change of use from restaurant (A3) to take away (A5). Permitted, January 2007; implemented.
- 1.2 07/1652/FUL: Demolition of existing public convenience building and erection of two storey side and single storey rear extension to provide new cafe and three self-contained flats and extended restaurant. Refused October 2007 for the following reasons:

*R1 The proposal, by reason of its sighting, would adversely affect the root protection area of the Sycamore tree, and would place undue pressure on the Sycamore to be felled or lopped in the future. This is not in accordance with Policy N15 of the Three Rivers Local Plan 1996-2011.*

*R2 The proposal, by reason of its inadequate parking and access arrangement in terms of residential and restaurant access would create an unacceptable access arrangement for the residential occupants. This is not in accordance with Policies GEN3, T7 and T8 and Appendix 2 of the Three Rivers Local Plan 1996-2011.*
- 1.3 08/0203/FUL: Demolition of existing public convenience building and erection of two storey side and single storey rear extension to provide new cafe (Class A3) and three self-contained flats (Class C3) and extended restaurant (Class A3). Permitted, April 2008 implemented.
- 1.4 11/1731/CLPD: Certificate of Lawful Proposed Development: Proposed use of existing timber decking at the front of the property for table and chairs associated with the proposed cafe (use Class A3). Permitted October 2011; implemented.
- 1.5 12/1452/FUL: Variation of Condition 2 of planning permission 08/0203/FUL to enable cafe to open between the hours of 08.00 and 22.00 every day. Permitted, September 2012.
- 1.6 16/1688/FUL - Replace existing awning with weather resistant covering – Permitted November 2016; implemented.
- 1.7 22/2202/FUL - Variation of Condition 1 (Opening Hours) and Condition 2 (Outdoor seating) of planning permission 12/1452/FUL to enable the indoor use of the cafe between the hours of 08.00 to 23.30 (Monday to Saturday) and 08.00 to 22.00 (Sunday) and outdoor seating

area use between the hours of 08.00 to 22.00 (Monday to Saturday) and 08.00 to 21.00 (Sunday) – Pending Consideration (includes land under ownership of Thrive Homes to south west which is not included in current planning application).

## **2 Description of Application Site**

- 2.1 The application site contains an end of terrace property containing an existing café (Class E(b)) use at ground floor level and an enclosed awning, positioned forward of the premises. The building containing the café includes residential flats (Class C3) above on the first floor and within the roof. The application site is situated on the north-western side of Money Hill Parade, a local shopping parade in Mill End. The parade contains a variety of commercial units.
- 2.2 To the front of the premises is an awning with weather resistant covering to the roof and sides to provide an enclosed dining area. On the left of this is an uncovered external seating area although this does not form part of the application site outlined in red on the submitted Location Plan (but is included within the application site for pending application 22/2202/FUL). The designated highway pavement is situated between the awning and the road edge (Uxbridge Road).
- 2.3 The premises next door 'Pour Me' is a mixed-use unit operating as a Class (E)(a) (restaurant) and Sui Generis (drinking establishment). This unit benefits from an external terrace area. To the west is Moneyhill Court which is a flatted development with communal grounds.

## **3 Description of Proposed Development**

- 3.1 This planning application seeks to vary the wording of both Condition 1 (Hours of Operation) and 2 (External Use Hours) pursuant to planning application 12/1452/FUL to allow the cafe to operate between 08:00 to 22:00 every day.
- 3.2 Conditions 1 and 2 of planning permission referenced 12/1452/FUL state the following:

### **Condition 1 – Hours**

*'The use of the café hereby permitted shall not operate other than between the hours of 08.00 – 22.00 Mondays to Saturdays and between 10.00-17.30 on Sundays and Bank Holidays*

*Reason: To safeguard the residential amenities of the occupiers of neighbouring properties in accordance with Policy CP1 of the Core Strategy (adopted October 2011).'*

### **Condition 2 – External Use Hours**

*'The raised external decked area to the front of the unit shall not be used for any purpose before 08.00 or after 19 00 Monday- Saturdays and shall not be used before 10.00 or after 17.30 on Sundays and Bank Holidays.*

*Reason: To safeguard the residential amenities of the occupiers of neighbouring properties in accordance with Policy CP1 of the Core Strategy (adopted October 2011).'*

- 3.3 This application proposes that the opening hours of the café and the use of the awning enclosure are amended to enable the premises to operate between the hours of 08.00 to 22:00 everyday.
- 3.4 Since the grant of the 2012 planning permission, the external area to the front of the premises has evolved particularly after the grant of application 16/1688/FUL so the specific wording to describe the area to the front of the premises would be changed to refer to an awning enclosure.

## **4 Consultation**

4.1 National Grid (Gas): No response received.

4.2 Batchworth Community Council: BCC discussed and noted this application.

4.3 Environmental Health Officer: No objection

*After reviewing the previous conditions, the nature of the location as a busy high street, the addition of covering and the operating hours of other businesses in the vicinity, I have no objections to the proposed extension of operating hours.*

## **5 Public/Neighbour Consultation**

5.1.1 Number consulted: 55

5.1.2 No of responses received: 0

5.1.3 Site Notice: None Press notice: None.

## **6 Reason for Delay**

6.1 None.

## **7 Relevant Planning Policy, Guidance and Legislation**

### **7.1 National Planning Policy Framework and National Planning Practice Guidance**

In December 2024 the National Planning Policy Framework was updated. This is read alongside the National Planning Practice Guidance (NPPG). The determination of planning applications is made mindful of Central Government advice and the Local Plan for the area. It is recognised that Local Planning Authorities must determine applications in accordance with the statutory Development Plan, unless material considerations indicate otherwise, and that the planning system does not exist to protect the private interests of one person against another. The NPPF is clear that “existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework”.

The NPPF retains a presumption in favour of sustainable development. This applies unless any adverse impacts of a development would 'significantly and demonstrably' outweigh the benefits unless there is a clear reason for refusing the development (harm to a protected area). Relevant chapters include Chapter 2, Chapter 6 and Chapter 7.

The Localism Act received Royal Assent on 15 November 2011. The growth and Infrastructure Act achieved Royal Assent on 25 April 2013.

The Wildlife and Countryside Act 1981 (as amended), the Conservation of Habitats and Species Regulations 2010, the Natural Environment and Rural Communities Act 2006 and the Habitat Regulations 1994 may also be relevant.

The Environment Act (2021).

### **7.2 The Three Rivers Local Development Plan**

The application has been considered against the policies of the Local Plan, including the Core Strategy (adopted October 2011), the Development Management Policies Local Development Document (adopted July 2013) and the Site Allocations Local Development

Document (adopted November 2014) as well as government guidance. The policies of Three Rivers District Council reflect the content of the NPPF.

The Core Strategy was adopted on 17 October 2011 having been through a full public participation process and Examination in Public. Relevant policies include Policies PSP1, CP1, CP6, CP9 and CP12.

The Development Management Policies Local Development Document (DMLDD) was adopted on 26 July 2013 after the Inspector concluded that it was sound following Examination in Public which took place in March 2013. Relevant policies include DM6 and DM9.

The Site Allocations LDD (SALDD) was adopted on 25 November 2014 having been through a full public participation process and Examination in Public. Relevant policies include SA4 and Site Ref R(f).

### 7.3 Other

The Community Infrastructure Levy (CIL) Charging Schedule (adopted February 2015).

## **8 Planning Analysis**

### 8.1 Impact on Neighbours

- 8.1.1 Policy CP12 of the Core Strategy states that development should 'protect residential amenities by taking into account the need for adequate levels and disposition of privacy, prospect, amenity and garden space'. Policy DM9 of the DMP LDD sets out that the council will refuse planning permission for development which would give rise to disturbance, noise, light, smell, fumes and vibrations unless appropriate mitigation measures are in place. Additionally, in regards to noise pollution DM9 sets out that planning permission will not be granted where development has an unacceptable impact on the indoor or outdoor acoustic environment of existing or planned development.
- 8.1.2 The NPPF promotes economic development and states at Paragraph 85 that planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. Consequently, there is a balance to be struck between supporting the commercial success of individual businesses and protecting the living conditions of residents within the surrounding area. This is emphasised by Policy CP1 of the Core Strategy (adopted October 2011) which seeks to ensure that all development contributes to the sustainability of the district, by balancing the need to sustain the vitality and viability of centres whilst safeguarding residential amenity.
- 8.1.3 The application site is the last commercial property on this side of Moneyhill Parade, which is a Local Centre, characterised as a relatively large parade of commercial premises either side of a main road, which includes restaurants, bars, takeaways, shops, and services providing both daytime and night-time services to the local community. There are residential units located above a number of the commercial units (including the application site) and also Moneyhill Court which is located approximately 12m from the application site to the west.
- 8.1.4 As previously mentioned, the adjoining premises (15 Moneyhill Parade) is a mixed-use unit operating as a Class (E)(a) (restaurant) and Sui Generis (drinking establishment) known as Pour Me. The opening hours for this premises are 08:00 to 23:30 Monday to Saturday and between 10:00 to 22:00 on Sundays and Bank Holidays. In addition, it benefits from an external seating area which is permitted for use until 22:00 every day (including shutting of

the bi-fold doors). Other nearby establishments operating within the Parade of which their permitted opening and closing hours are as follows:

Address	Permission Reference (if known)	Use (Name)	Mon to Fri (Opening & Closing Times)	Saturday (Opening & Closing Times)	Sunday/Bank Holiday (Opening & Closing Times)
15 Moneyhill Parade	24/1514/RSP	Pour Me	08:00 to 23:30	08:00 to 23:30	10:00 to 22:00
14 Moneyhill Parade	95/0784	Kebab Centre	11:00 to 23:00	11:00 to 02:00	11:00 to 00:00
8 Moneyhill Parade	18/2493/FUL (19/0005/REF)	The Shish Meze Bar	11:30 to 23:00	11:30 to 23:00	11:30 to 23:00
141 Uxbridge Road	8/696/86	Curry Garden	16:30 to 11:30	16:30 to 23:30	14:00 to 22:00
157 Uxbridge Road		Woks Cookin'	17:00 to 22:30 (Tues – Thurs)  12:00 to 13:30 & 17:00 to 23:00 (Fri)	12:00 to 13:30 & 17:00 to 23:00	17:00 to 22:30

- 8.1.5 Currently, Dolce Café (application premises) operates between 08:00 to 22:00 Monday to Saturday and it is only Sundays and Bank Holidays where the hours are reduced to 10:00 - 17:30. This application seeks to vary the hours so it can operate 08:00 to 22:00 every day. The site is located within a commercial parade with multiple other premises open to public, with residential units above and as such, this arrangement is not uncommon. Considering the existing hours of operation on Sundays and Bank Holidays of similar premises locally, and recent permissions granted, it is considered that the Sunday morning opening time should remain at 10:00 but the closing time can be extended to 22:00 to be consistent with the other units on the Parade. The requested hours are not considered to result in an unacceptable level of disruption beyond the existing circumstances. The Environmental Health Officer was consulted on the application and raised no objections to the extension to the closing hours on Sundays and Bank Holidays. In addition, there is no loss of privacy compared to the existing circumstances given that no external changes are proposed.
- 8.1.6 The application also seeks to vary the hours for the use of the covered external seating area located to the front of the premises. Currently this area is restricted for use between 08:00 and 19:00 Monday to Saturdays and 10:00 and 17:30 on Sundays and Bank Holidays. This application seeks to extend the use of the external seating area to 08:00 to 22:00 every day. Of the premises listed in the table above it is only 15 Moneyhill Parade ('Pour Me') which benefits from an external terrace area to the front which is restricted via condition of planning permission 24/1514/RSP for use up to 22:00 every day. It is noted that the front terrace of Pour Me is not enclosed and is therefore its use would be generally dependent on the weather.
- 8.1.7 The external seating area of Dolce Café provides for up to 20 covers and is fully enclosed by a canvas material fitted to a metal frame. The enclosed nature of the external seating area of Dolce Café minimises noise levels early in the morning and at night such that it is not considered that an increase in the hours of the use of the external area would result in demonstrable noise and disturbance. The extension to 22:00 would be consistent with the use of the front terrace area of 'Pour Me' next door. The Environmental Health Officer has also verbally confirmed that they have not received any noise complaints in connection with the current existing use of the external seating area from local residents.

8.1.8 Overall, subject to conditions, it is considered that an extension to the closing hours on Sundays and Bank Holidays and extension to the hours of use of the external seating area would not result in any demonstrable harm to the residential amenities of any of the surrounding neighbouring properties and the development would be acceptable in accordance with Policies CP1 and CP12 of the Core Strategy (adopted October 2011) and Policy DM9 of the Development Management Policies LDD.

## 8.2 Biodiversity

8.2.1 Section 40 of the Natural Environment and Rural Communities Act 2006 requires Local Planning Authorities to have regard to the purpose of conserving biodiversity. This is further emphasised by regulation 3(4) of the Habitat Regulations 1994 which state that Councils must have regard to the strict protection for certain species required by the EC Habitats Directive. The Habitats Directive places a legal duty on all public bodies to have regard to the habitats directive when carrying out their functions.

8.2.2 The protection of biodiversity and protected species is a material planning consideration in the assessment of this application in accordance with Policy CP9 of the Core Strategy and Policy DM6 of the Development Management Policies document. National Planning Policy requires Local Authorities to ensure that a protected species survey is undertaken for applications where biodiversity may be affected prior to the determination of a planning application. A Biodiversity Checklist was submitted with the application and states that no protected species or biodiversity interests will be affected because of the application.

8.2.3 In summary, the proposed development is acceptable in accordance with Policy CP9 of the Core Strategy (adopted 2011) and Policy DM6 of the Development Management Policies document (adopted 2013).

## 8.3 Mandatory Biodiversity Net Gain

8.3.1 Paragraph 13 of Schedule 7A of the Town and Country Planning Act 1990 sets out that every planning permission granted for the development of land in England shall be deemed to have been granted subject to the 'biodiversity gain condition' requiring development to achieve a net gain of 10% of biodiversity value.

8.3.2 The application form states that development is subject to the 'de minimis' exemption as the development is below the threshold by reason that the proposal results in no change to the footprint of the building and therefore it the development is not impacting on 25sq.m of grassland or 5 linear metres of hedgerow. In addition, this S.72 application seeks to vary a planning permission which pre-dated the abovementioned Regulations took effect. Consequently, there is no requirement for biodiversity net gain for this development.

## 8.4 Conditions

8.4.1 In summary, following an assessment of the application having regard to the site circumstances it is suggested that the opening hours of the premises can be varied to enable the business to operate later on Sundays and Bank Holidays. As such, the suggested opening hours are 08:00 to 22:00 Monday to Saturday and 10:00 to 22:00 on Sundays and Bank Holidays. In addition, it is also suggested that the permitted hours of use of the external covered seating area can also be extended to 08:00 to 22:00 every day.

8.4.2 For ease, a single condition covering the opening hours and external seating area is considered appropriate and thus condition 2 would no longer be required.

## 9 **Recommendation**

9.1 That PLANNING PERMISSION BE GRANTED subject to the following condition:

- C1 The use of the café and the external covered seating area hereby permitted shall not be open to the public other than between the hours of 08.00 to 22.00 Mondays to Saturdays and between 10.00 to 22.00 on Sundays and Bank Holidays.

Reason: To safeguard the residential amenities of the occupiers of neighbouring properties in accordance with Policy CP1 of the Core Strategy (adopted October 2011).

## 9.2 **Informatives:**

- I1 The Local Planning Authority has been positive and proactive in its consideration of this planning application, in line with the requirements of the National Planning Policy Framework and in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015. The development maintains/improves the economic, social and environmental conditions of the District.
- I2 The effect of paragraph 13 of Schedule 7A to the Town and Country Planning Act 1990 is that planning permission granted for the development of land in England is deemed to have been granted subject to the condition "(the biodiversity gain condition)" that development may not begin unless:
- a) a Biodiversity Gain Plan has been submitted to the planning authority, and
  - b) the planning authority has approved the plan.

The planning authority, for the purposes of determining whether to approve a Biodiversity Gain Plan if one is required in respect of this permission would be Three Rivers District Council.

There are statutory exemptions and transitional arrangements which mean that the biodiversity gain condition does not apply.

Based on the information available this permission is considered to be one which will not require the approval of a biodiversity gain plan before development is begun because the following statutory exemption or transitional arrangement is considered to apply.

Development below the de minimis threshold, meaning development which:

- a) does not impact an onsite priority habitat (a habitat specified in a list published under section 41 of the Natural Environment and Rural Communities Act 2006); and
- b) impacts less than 25 square metres of onsite habitat that has biodiversity value greater than zero and less than 5 metres in length of onsite linear habitat (as defined in the statutory metric).

Where the local planning authority considers that the permission falls within paragraph 19 of Schedule 7A to the Town and Country Planning Act 1990, the permission which has been granted has the effect of requiring or permitting the development to proceed in phases. The modifications in respect of the biodiversity gain condition which are set out in Part 2 of the Biodiversity Gain (Town and Country Planning) (Modifications and Amendments) (England) Regulations 2024 apply.

Biodiversity gain plans are required to be submitted to, and approved by, the planning authority before development may be begun, and, if subject to phased development, before each phase of development may be begun.

If the onsite habitat includes irreplaceable habitat (within the meaning of the Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024) there are additional requirements for the content and approval of Biodiversity Gain Plans. The Biodiversity Gain Plan must include, in addition to information about steps taken or to be taken to minimise any adverse effect of the development on the habitat, information on arrangements for compensation for any impact the development has on the biodiversity of the irreplaceable habitat.

The planning authority can only approve a Biodiversity Gain Plan if satisfied that the adverse effect of the development on the biodiversity of the irreplaceable habitat is minimised and appropriate arrangements have been made for the purpose of compensating for any impact which do not include the use of biodiversity credits.

More information can be found in the Planning Practice Guidance online at <https://www.gov.uk/guidance/biodiversity-net-gain>.