Leeds
CITY COUNCIL

Originator: Umar Dadhiwala

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Report of the Chief Planning Officer

NORTH AND EAST PLANS PANEL

Date: 8th October 2020

Subject: 20/03654/FU- Variation of condition 3 (opening hours) of approval 19/07083/FU to amend opening hours to 0700 hours to 2300 hours Monday to Sunday including Bank Holidays, at 138 Harrogate Road, Chapel Allerton, Leeds, LS7 4NZ.

APPLICANT	DATE VALID	TARGET DATE
Deliziosa Ltd	24.06.2020	19.08.2020

Electoral Wards Affected:

Chapel Allerton

Yes — Ward Members consulted. Referred to in report

Specific Implications For:

Equality and Diversity ☐

Community Cohesion ☐

Narrowing the Gap ☐

RECOMMENDATION: GRANT PERMISSION subject to following conditions:

1. Plans to be approved.
2. Restriction on hours of use as proposed to 0700 hours to 2300 hours. Monday to Sunday including Bank Holidays. Use of the outdoor space to be limited to 2100 hours.
3. Details of windows, doors, dormers roof lights as per application ref: 19/05918/COND.
4. Sample of walling materials as per application red: 19/05918/COND.
5. Tree protection as per application 19/05918/COND.
6. Construction methodology within Root Protection Area of trees as per application 20/00158/COND.

7. Sound proofing of at first floor level side wall that adjoins the neighbouring property. Details approved on application 20/00158/COND.
8. Screen constructed to the northern section of the terraced area.
9. Eastern elevation windows of the conservatory to be obscure glazed.
10. Bin storage details and Waste Management Strategy to be submitted for approval.
11. No music to be played from external areas of the site.
12. External extract ventilation system to deal with odours to be carried out in accordance with details approved under 20/00158/COND.
13. Details of noise associated with extract ventilation system to be submitted for approval.
14. No access and egress by customers from Regent Street after 2100 hours on any day.

INTRODUCTION:

1. This application is brought to North and East Plans Panel following consultation with the chair of the Plans Panel and at the request of the local Ward Members. The local Ward Councillors comment that the application building is located in a quiet residential area with family homes and the amended opening hours may lead to noise disturbance as well as increase in footfall and in the residential street at unsociable hours. Furthermore, the Ward Councillors are concerned that noise and cooking odours will emanate from the large kitchen extractor fan that will be operated from the site, which will cause harm to the living conditions of the residents on to Back Allerton Terrace.

2. As the matters raised by the ward Members are based on material planning considerations, that give rise to concerns affecting more than neighbouring properties, the request meets the test set out in the Officer Scheme of Delegation and it is therefore appropriate to report the application to Panel for determination. In addition the Chair, in light of the planning history of the site and the representations from Ward Members, considers that the application should be referred to the Plans Panel for determination because of the sensitivity of the proposal.

3. Section 73 of the Town and Country Planning Act 1990 enables an applicant to apply to develop land without compliance with conditions attached to an extant previous planning permission. Under this section a local planning authority may amend or remove conditions but may not amend any other part of the permission. A successful s.73 application results in the grant of a new planning permission and therefore the original permission remains intact. In light of this the report will focus on issues related to the planning condition, hours of opening, and will not revisit other matters relating to the development.

4. Members will be aware of the latest Covid restriction introduced by the government, which include the restriction of the opening hours of bars and

restaurant to 10pm. These restriction have been introduced temporarily by the government and are a public health matter. The restriction are not considered to affect the merits of this planning application.

PROPOSAL:

5. This application seeks permission to vary Condition 3 of 19/07083/FU which granted planning permission to change the use of this premises from an A1 shop unit and three flats, to a delicatessen/ restaurant (mixed A1/A3 use class).

6. Condition 3 of the 2019 permission restricted the opening hours of the premises. The condition states:

   - The opening hours of the premises shall be restricted to 0700 hours to 1900 hours Monday to Sunday including Bank Holidays.

     In the interests of amenity of nearby residents.

7. The applicant proposes to amend opening hours to 0700 hours to 2300 hours Monday to Sunday including Bank Holidays. The applicant has also agreed for the use of the outdoor space to be limited to 2100 hours.

SITE AND SURROUNDINGS

8. The application relates to property which has been granted approval to be used as an A1/A3 restaurant. The approved chance of use application also granted permission to extend property and make alterations to the fenestration and shop front. The approved construction works have commenced on site.

9. The host property is a traditionally designed property that is located within the town centre of Chapel Allerton. The property is said to be one of the oldest in the town and historically was used as a farmhouse. A small number of parking spaces are available to the rear via Back Allerton Terrace.

10. The host property forms part of a row of retail and food and drink units within the S2 centre. Much like the other buildings on this row of units, the host unit has a traditional shop frontage to Harrogate Road with the bulk of the building and garden area set to the rear. Harrogate Road is the main route through Chapel Allerton and neighbouring properties generally comprise of ground floor retail units with accommodation above. To the rear of the property are three small retail units, along Regent Street with the area becoming predominantly residential away from the high street. There are a number of parking spaces to the rear of the site which is access of Back Allerton Terrace. Back Allerton Terrace is private and unregistered road. The applicant states that the application site benefits from a right of access. Back Allerton Terrace also provides rear parking to the properties fronting onto Harrogate Road including No. 9 & 10 Back Allerton Terrace.

11. The application site lies with the Chapel Allerton Conservation Area and within an area designated as a Secondary Shopping Frontage within the development plan. The host property has been identified as a positive building within the Conservation Area Appraisal.

RELEVANT PLANNING HISTORY

12. In 2019 permission was granted for the change of use of the premises from an A1 shop and three flats to delicatessen/salumeria (mixed A1/A3 use). This permission also included physical alteration being made to the building (Application ref: 18/06292/FU). The application was reported to the 11th April 2019 Plans Panel. Panel Members resolved to grant planning permission in accordance with the officer recommendation with Condition 3 to restricting opening hours to 7am to 7pm Monday to Sunday including Bank Holidays (in line with the hours applied for by the applicant).

13. Following the approval of the change of use application, a further application was approved which proposed to make various minor material amendments to the scheme (application ref: 19/07083/FU). The following amendments were approved;

- Amendments to the design of the conservatory.
- Omission of a French door on the balcony change in the arrangements of fenestration at ground level.
- General alteration to the size and location of the approved roof lights.
- Change in the design of the dormers.
- A new bin storage area/bike storage areas.
- Screens to the balcony.
- Retention of shop front, with one window being replaced to match original.
- Fenestration painted apple green.

14. Details relating to external materials, fenestration, tree protection, sound insulation, bin storage, extract ventilation were submitted pursuant to conditions attached to 18/06292/FU and were approved under applications 19/05918/COND and 20/00158/COND. An application was made for two illuminated signs and four non illuminated signs on the property. The scheme was determined as a Split Decision with only three of the six signed being approved (application ref: 20/01114/ADV).

HISTORY OF NEGOTIATIONS

15. As part of the processing of this application and following concerns raised by Officer's in relation to the use of the outdoor terrace and garden areas at

unsociable hours, the applicant has agreed for a condition to be imposed that restricts the hours the outdoor spaces can be used.

PUBLIC/LOCAL RESPONSE:

16. The application was advertised by site notice dated 14.07.2020 and was advertised in the Yorkshire Evening Post on 17.07.2020.

17. The local Ward Members have raised the following concerns;

- Noise disturbance for the houses in the vicinity as well as an increase in footfall
- Traffic generated at unsociable hours.
- Noise and cooking odours from the large kitchen extractor fan which will face on to Back Allerton Terrace.

18. 41 objections have been received raising the following concerns;

- Noise and disturbance - the proposal will increase noise from comings and goings and people congregating late night and late night taxi pickups.
- Harm to neighbouring dwellings by way of cooking odours
- The use of the outdoor areas during unsociable hours will create additional noise and disturbance.
- Additional traffic and parking issues late in the night.
- The proposed sale of alcohol would result in further noise and disturbance and the site is not suited to be used for the consumption of alcohol.
- Abundance of drinking establishments in the area another one is not needed.
- Noise from refuse and bottle bank being filled and emptied
- The proposal will intensify the use of the site and create more issues of noise and waste.
- The proposed change in the hours of use together with the licencing application will change the nature of the use from the restaurant to a drinking establishment.
- Music being played in the outdoor areas will be harmful to residential amenity.
- Licence application should be refused and, or restricted.
- The front entrance should be solely used as entrance and exit.
- Increase in crime and disorder.
- No right of access for the property from Back Allerton Terrace.
- Support comments made by people who do not live in the area.
- Overlooking.

19. Seven supporting letters have been received and the following comments have been made;

- The proposal will benefit the local economy.
- There are similar uses in the area with similar opening hours.
- The property is well suited for use as a café/ restaurant.
- The property will not be converted into a drinking establishment.
- The proposal will make a welcome alternative to the bars and pubs in the area.

CONSULTATION RESPONSES:

20. Highways: No objection.

21. Environmental Health - does not object to the proposal as long as the outdoor terraced area be closed from 2100 hours, as per the suggestions within the planning application.

PLANNING POLICIES

22. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan for Leeds currently comprises the Core Strategy (2014), saved policies within the Leeds Unitary Development Plan (Review 2006) and the Natural Resources and Waste Development Plan Document (2013) and any made neighbourhood plan. Section 72 of the Planning (Listed Building and Conservation Areas) Act 1990 requires development, as a whole, to preserve the appearance and character of Conservation Areas.

Local Planning Policy

23. The most relevant Core Strategy policies are outlined below:

Spatial Policy 1- Location of Development – retail/leisure development to be focused in town centres.
Policy P1 – Chapel Allerton is designated as a town centre.

Relevant saved UDPR Policies:

24. GP5 – Detailed Planning Considerations – this includes protecting amenity.

Chapel Allerton Community Plan and Design Statement

25. The contents of the Chapel Allerton Community Plan and Design Statement, November 2011 (not adopted as supplementary guidance by the council), are also considered relevant to this development. The document notes that there are

numerous bars, restaurants and takeaways and this can bring issues of noise and place pressure on parking space. It is noted that the needs of such businesses need to be balanced against those of local residents (para 7.3)

Chapel Allerton Conservation Area Appraisal & Management Plan

26. The building has been identified within the appraisal as a positive structure. The site falls within character area 1, historic core. It is noted that there is a wide variety in size and character of buildings, mainly 2 storey in height, mainly of coursed stone with slate roofs and a mixture of commercial and residential properties in proximity to each other. The document progresses to state that “new development must respond sensitively and creatively to the historic environment” (page 15).

National Planning Policy Framework

27. This document sets out the Government's overarching planning policies on the delivery of sustainable development through the planning system and strongly promotes good design.

28. Paragraph 55 of the National Planning Policy Framework makes clear that planning conditions should be kept to a minimum, and only used where they satisfy the following tests:

1. necessary;
2. relevant to planning;
3. relevant to the development to be permitted;
4. enforceable;
5. precise; and
6. reasonable in all other respects.

29. Paragraph 196 of the NPPF states where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. In relation to heritage, local planning authorities are encouraged to sustain and enhance the historic environment.

Planning Practice Guidance

30. The PPG gives advice on the use of conditions and also includes advice on the variation of conditions. At paragraphs 031 and 040 it states:

“Some or all of the conditions could be removed or changed by making an application to the local planning authority under section 73 of the Town and Country Planning Act 1990. In deciding an application under section 73, the local planning authority must only consider the disputed condition/s that are the

subject of the application – it is not a complete re-consideration of the application. A local planning authority decision to refuse an application under section 73 can be appealed to the Secretary of State, who will also only consider the condition/s in question." (para. 031)

"The original planning permission will continue to exist whatever the outcome of the application under section 73. The conditions imposed on the original permission still have effect unless they have been discharged. In granting permission under section 73 the local planning authority may also impose new conditions – provided the conditions do not materially alter the development that was subject to the original permission and are conditions which could have been imposed on the earlier planning permission. For the purpose of clarity, decision notices for the grant of planning permission under section 73 should set out all of the conditions imposed on the new permission, and restate the conditions imposed on earlier permissions that continue to have effect." (para.040)

Other relevant legislation

31. Conservation area: Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that in the exercise, with respect to any buildings or other land in a conservation area of any functions under the Planning Acts, that special attention shall be had to the desirability of preserving or enhancing the character or appearance of that area.

MAIN ISSUES

- Impact on Amenity
- Impact upon the Character of the Conservation Area
- Highways
- Representations

APPRAISAL

Impact on Amenity

32. The application relates to a site which was granted permission to be used as a delicatessen/salumeria (mixed A1/A3 use). The proposal is to vary the opening hour's condition which was imposed to protect residential amenity on the site. The current opening hours are restricted to 0700 hours to 1900 hours Monday to Sunday including Bank Holidays.

33. The applicant proposes to amend opening hours to 0700 hours to 2300 hours Monday to Sunday including Bank Holidays. The applicant has also agreed for the use of the outdoor space to be limited to 2100 hours.

34. The application site is located away from the main body of the residential area, which is located to rear of the site. There are, however, some dwellings located

above the shop units on this commercial parade of shop units. A large number of the public comments have been received that raise concern with regards to the noise implication of the proposed extended opening hours on the local residents. It is noted that there will be comings and goings from the site that will last for longer periods of the day. However, balanced against this the application property is located within a designated and busy town centre where there are a number of food and drink businesses some of which have similar opening hours. The nature of the business, which is a restaurant, means that much of the activity will be confined to being within the building. The outdoor space will only be used when weather allows and will be restricted to no later than 21.00 hours. The applicant has also agreed to a condition being imposed that prevent access/egress to the restaurant from Regent Street after 21.00 hours on any day. In light of these factors it is considered the levels of noise associated with the extended hours of use will not be significantly detrimental to the amenity of nearby residents.

35. The Environmental Health Officer comments that, whilst the patrons leaving late at night and noise from delivery vehicles with drivers slamming doors causes some concerns, Leeds has many restaurant or takeaway businesses near to residential premises and these concerns would be something the business owner could be left to appropriately managed.

36. There were also conditions that were attached to the original permission that required sound proofing measures being introduced and also restricted the music being played in the outdoor spaces. These condition will help limit the noise from the site. As noted above, there is also a condition that will be imposed on this permission which will restrict the use of the outdoor areas to 2100 hours. This condition will ensure that the noise levels from the outdoor spaces is reduced at a more reasonable hour.

37. The potential for odours from the site was controlled by condition on the original planning permission (18/06292/FU) that required details of the extract ventilation system to be submitted for approval. These details were subsequently submitted and found to be acceptable after consultation with colleagues in Environmental Health. Accordingly, it is not considered that the proposal will harm the neighbouring amenity by way of smells from the additional hours of cooking that will take place on the site.

38. It is noted that the applicant has submitted a licensing application and objectors have raised concerns that the proposal will lead to excessive drinking late into the night. These fears can be eased somewhat by the fact that the use of the site is restricted to an A1/ A3 use, and therefore the sale of alcohol cannot become the predominant business model for the site. It is often the case that restaurants serve alcohol but this does not necessarily lead to the site function as a drinking establishment. Furthermore, a drinking establishment such as a pub falls within a separate use class to the permitted use of the site. Therefore, should the

applicant intend to change the business model and convert the site into a drinking establishment, it will need to be the subject of a full planning application.

39. The Environmental Health Officer states that the restaurant business is food driven and not drink driven like a pub would be. Therefore, people are not likely to be visiting to get drunk and the risk of people leaving the premises having had too much to drink and cause trouble is reduced.

40. Although the noise impact assessment from the extract and ventilation system was submitted and approved as part of the discharge of Condition 13, the assessment was based on the original operating hours. Therefore, an updated noise impact assessment will need to be submitted. It is recommended that Condition 13 is reinstated on this application.

41. Members of the public have commented that the noise from bottle bank being filled and emptied and from refuse being collected at inappropriate hours. The original permission included a waste management strategy being submitted for prior approval, this included details being submitted in relation to how waste will be stored and collected. This condition is recommended be re-imposed to ensure all issues around storage and the collection of waste is re-examined in light of the extended opening hours.

Impact upon the Character of the Conservation Area

42. The application does not seek further external alterations to the property, therefore the proposal does not propose any physical change to the character of the Conservation Area. The use is also in keeping with its historic town centre setting and the extended hours of opening will not affect that.

Highway Issues

43. The Highways Officer has evaluated the parking and traffic implications of the scheme and has raised no concerns.

44. The highways and parking issues as well as the issues relating to refuse collection and deliveries were looked at during the original scheme and the proposal was not considered to raise any highways issues. It is not considered that the parking needs or traffic to and from the site would be substantially different during proposed opening hours when compared to the existing hours of opening. Therefore, it is difficult to argue that the proposal would significantly increase on-street parking demands or traffic issues.

45. A member of the public has contended that the applicant has no right of access over the rear yard where the servicing and refuse collection is proposed. This question was posed to the applicant, during the determination of the original application, and the applicant advised that a right of access does exist. As the

Planning Authority does not have the remit to get involved with land ownership and access disputes, it is considered that further investigation in this matter is not warranted.

Public Representations

46. The majority of the concerns raised by members of the public and Local Ward Members generally relate to the noise disturbance that will be caused as a result of the extended opening hours and the licencing application that has been submitted for the site. These issue have been discussed within the report.

47. The comments made by members of the public and Local Ward Members that the proposal will cause harm to neighbouring dwellings by way of cooking odours being emitted from the site late into the night, is noted. Condition 13 of original permission required details of the extract ventilation system to be submitted, this condition allowed the council to ensure odours from the extract system would not cause nuisance to neighbours.

48. The comments made in relation to the traffic and parking issues have been evaluated by the Highway Team, who raise no issues.

49. The issue raised in relation to the sale of alcohol on the premise has been addressed within the report. It has been discussed that the property will function as a food establishment with the consumption of alcohol remaining as a secondary element of the business.

50. The comments made in relation to noise from refuse collection has been addressed within the report. A waste management condition is recommended to be attached to ensure that the refuse collection including bottle bank filling and emptying takes place at an appropriate time.

51. The comments made in relation to music being played in the outdoor areas, is noted. There was a condition imposed on the original permission which prevented music being played in the outdoor areas of the site. This condition will be re-imposed on this permission.

52. A member of the public has commented that the licence application should be refused and, or restricted. The outcome of the licencing application is not within the control of the Planning Department.

53. The comments made that the front entrance should be solely used as entrance and exit points to the property. It is considered that the permission will not cause significant noise issue when people are exiting and coming into the site. In any case, it is reasonable to assume that most customers will leave and coming in from the main entrance to the front and a condition is suggested that prevent access/egress to Regent Street after 21.00 hours.

54. The concern raised that the proposal will lead to further unsociable behaviour, crime and littering of the local street cannot be substantiated. It can be clearly evidenced that the extension of the opening hours to an existing restaurant would directly lead to unsocial behaviour or crime nor is it considered that this use would increase littering on the local streets.

55. The comments made in relation to the right of access from Back Allerton Terrace, has been discussed within the report.

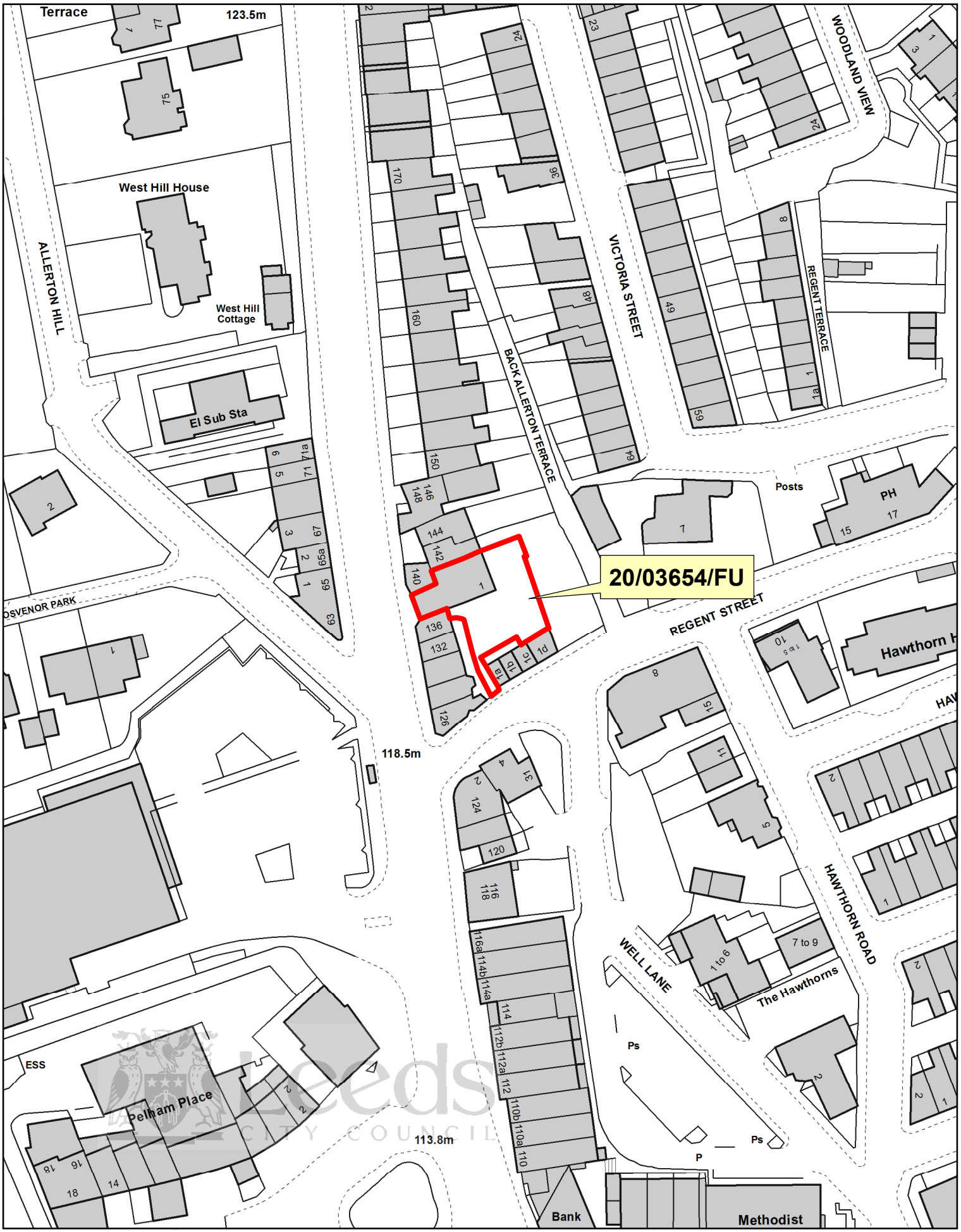
56. The comments have been made that the proposal will raise overlooking issues. It is not clear how the extension of the opening hours would raise overlooking issues.

57. A number of public comments in support of the application have been received highlighting the benefits to the scheme on the character of the area, to the local community and the local economy.

CONCLUSION

58. It is not considered the proposed extended hours of opening would have an unduly adverse impact on neighbouring residential amenity, parking requirements or on highway safety. In light of the above and all other material planning considerations it is the officer view that the proposal is compliant with the relevant policies and guidance set out in this report and subsequently it is recommended that the proposal to extend the hours be granted planning permission subject to the conditions set out at the head of this report.

Background Papers:
Application file: 20/03654/FU and 19/07083/FU
Certificate of ownership: Certificate B- signed by Agent on behalf of the applicant



NORTH AND EAST PLANS PANEL

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PRODUCED BY CITY DEVELOPMENT, GIS MAPPING & DATA TEAM, LEEDS CITY COUNCIL

SCALE : 1/1000

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138 HARROGATE ROAD, CHAPEL ALLERTON
Proposed Site Layout (Block Plan)

Scale: 1:500 @ A3 - Revision Date: NOV 19 - By: AW

For details of landscape, bin stores and bike parking see detailed drawing Wiles and Maguire Ltd CHA: 01/306 A

N
S

LEGEND:

EXISTING TREES

ROOT PROTECTION AREA

Harrogate Road, **CHAPEL ALLERTON**

DO NOT SCALE - ALL DIMENSIONS & LEVELS TO BE CHECKED ON SITE - THIS DRAWING IS COPYRIGHT

PLANNING
subject to structural review
subject to accurate measured survey

revision	date	content	
C	12.11.19	Adapted and updated by Wiles and Maguire ltd	
B	07.02.19	INTRODUCED TREE SURVEY	DDS
A	07.01.19	INTRODUCED 4NOS LONG STAY CYCLING SPACES.	DDS

project: PROPOSED DELICATESSEN/ SALUMERIA, 138 HARROGATE RD CHAPEL ALLERTON

client: DELIZIOSA LTD.

title: PROPOSED SITE LAYOUT

date	scale	drawn
03.07.18	1:500@A3	DDS

drawing number: 3057-1-002 C
checked:

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