

TITLE: 23/01056/VARM

Committee: Planning Committee

Date: 07.02.2024

Author: Senior Planning Officer

Report No: Z29

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Site Address: Bens Yard Soham Road Stuntney Cambridgeshire

Proposal: To vary Condition 18 (opening hours) of 18/01793/FUM, relating only to the restaurant and café

Applicant: Cole Ambrose Ltd

Parish: Ely

Ward: Ely East

Ward Councillor/s: Kathrin Holtzmann
Mary Wade

Date Received: 25 September 2023

Expiry Date: 16 July 2024

1.0 RECOMMENDATION

1.1 Members are recommended to REFUSE the application for the reason stated below:

1.2 The extension of the opening hours into the evening would result in the restaurant and café that were originally permitted as ancillary elements operating separately and therefore being tantamount to a new evening restaurant facility in the countryside. Policy COM 1 of the East Cambridgeshire Local Plan 2015 (as amended 2023) states that proposals for 'town centre uses' outside of town centres may only be permitted providing there would be no adverse effect on the vitality and viability of the nearest town centre, or any other centres. The extended opening hours would create a substantial turnover and has the potential to detract trade from the existing centres of Soham and Ely. The application has failed to identify a need to expand this element of the existing facility in order to ensure its ongoing viability.

The proposal is therefore contrary to the requirements of Policies COM 1 and EMP 7 the East Cambridgeshire Local Plan 2015 (as amended 2023) together with Chapter 7 of the NPPF.

2.0 SUMMARY OF APPLICATION

- 2.1 The application seeks a variation of condition 18 (opening hours) of planning permission 18/01793/FUM under Section 73 of the TCPA 1990. That permission was for the demolition of existing buildings and the erection/ conversion of buildings to provide retail, café / restaurant/ leisure / wellbeing and sui generis uses together with ancillary storage, office & administration space in association with these uses, access, parking, children's play area, landscaping, service yards & associated infrastructure.
- 2.2 Condition 18 of the full permission states:
“The use hereby permitted shall take place only between the hours of 07:00 - 19:00 each day Monday to Saturday and 08:00 - 17:00 on Sundays, Bank Holidays and Public Holidays, with the exception of any seasonal events (up to 8no per calendar year), where said event shall only take place between the hours of 07:00 and 22:00 on any day. Deliveries to the site shall take place only between the hours of 06:30 - 19:00 Monday to Saturday and 07:30 - 17:00 on Sundays, Bank Holidays and Public Holidays.”
- 2.3 The variation to condition 18 seeks to extend the opening times for the restaurant and café units only. The application proposes that the restaurant and café units would close at 23:00 each day, as opposed to the originally approved closing time of 19:00 Monday – Saturday and 17:00 on Sundays, Bank Holidays and Public Holidays. All remaining units would continue to operate in line with the originally approved opening hours.
- 2.4 The application has been called into Planning Committee by Chair and Vice Chair due to the original permission being determined at Planning Committee.
- 2.5 The full planning application, plans and documents submitted by the Applicant can be viewed online via East Cambridgeshire District Council’s Public Access online service, via the following link <http://pa.eastcambs.gov.uk/online-applications/>.

3.0 PLANNING HISTORY

3.1 Site History

18/01793/FUM – original application

Proposed demolition of existing buildings and the erection/ conversion of buildings to provide Class A1 (Retail), Class A3 (Cafe/ Restaurant), Class D2 (Leisure/ wellbeing), Sui Generis (Micro-brewery) uses (together with ancillary storage, office & administration space in association with these uses) access, parking, children's play area, landscaping, service yards & associated infrastructure

Approved

7 May 2020

23/00367/VARM

To vary condition 25 (floor space limit) of previously approved 18/01793/FUM for the proposed demolition of existing buildings and the erection/ conversion of buildings to provide Class A1 (Retail), Class A3 (Cafe/ Restaurant), Class D2 (Leisure/ well-being), Sui Generis (Micro-brewery) uses (together with ancillary storage, office & administration space in association with these uses) access, parking, children's play area, landscaping, service yards & associated infrastructure

Withdrawn

11 May 2023

23/00161/VARM

To vary condition 31 (no retail floor space to be occupied by a retail multiple) of previously approved 18/01793/FUM for proposed demolition of existing buildings and the erection/ conversion of buildings to provide class a1 (retail), class a3 (cafe/ restaurant), class d2 (leisure/ well-being), sui generis (micro- brewery) uses (together with ancillary storage, office & administration space in association with these uses) access, parking, children's play area, landscaping, service yards & associated infrastructure

Withdrawn

2 May 2023

3.2 Adjacent Site History

23/00404/FUL – Building to rear of Ben’s Yard

Change of use of existing agricultural building to flexible B2, B8 & agricultural use, and erection of additional hardstanding and associated infrastructure

Approved

29 August 2023

23/00761/FUL – Land Northeast of Ben’s Yard and Harlocks Farm access road

Development of four tennis courts with external lighting, fencing, clubhouse and associated parking, drainage, utilities and landscaping

Refused

10 October 2023

Pending Decision

24/00323/FUL – Land North West of Harlocks Farm

Change of use of agricultural field to a dog park with fencing, double access gate and proposed footpath

Pending consideration

4.0 THE SITE AND ITS ENVIRONMENT

4.1 The application site, known as ‘Ben’s Yard’, gained consent under application reference no.18/01793/OUM. That permission gave consent for demolition of existing buildings together with erection of new buildings and conversion of existing buildings to provide A1 (retail), A3 (café and restaurant), D2 (leisure) and Sui Generis uses.

- 4.2 The site itself is accessed via a new access off the A142 that was approved under the original application and benefits from a car park to the front of the site. To the West of the units is the 'overspill' car park.
- 4.3 The restaurant unit and café unit are located within units 3, 8 and 9, positioned towards the front of the site. Unit 3 (Café) comprises 125 sqm gross floorspace and Units 8 and 9 (Restaurant) comprises 300 sqm.
- 4.4 For clarity, since the original permission was granted the use classes above have been updated under the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 that came into force on 1st September 2020. A1, A3 and D2 (leisure) are all now known as Class E.

5.0 RESPONSES FROM CONSULTEES

- 5.1 Responses were received from the following consultees and these are summarised below. The full responses are available on the Council's web site.

Parish - 10 October 2023

The City of Ely Council has concerns regarding the extension of the opening times and the impact this will have on the nighttime economy in Ely.

Ward Councillors - No Comments Received

Consultee For Other Wards In Parish - No Comments Received

Environmental Health - 2 October 2023

Thank you for consulting us on the above application.

I understand that this application seeks an extension of the permitted opening times for the consented restaurant and café only and that these are proposed to be until 23:00.

I have no concerns to raise concerning this.

Local Highways Authority - 19 October 2023

Upon reviewing the information submitted as part of this application, I do not object to the variation of Condition 18 (opening hours).

Tourism (Visit Ely) - No Comments Received

Design Out Crime Officers - 10 October 2023

I have read the documents, and I have no comment.

Cambridgeshire Fire And Rescue Service - No Comments Received

- 5.2 A site notice was displayed near the site on 20 October 2023 and a press advert was published in the Cambridge Evening News on 5 October 2023.

5.3 Neighbours five neighbouring properties were notified and the responses received are summarised below. A full copy of the responses are available on the Council's website.

6.0 THE PLANNING POLICY CONTEXT

6.1 *East Cambridgeshire Local Plan 2015 (as amended 2023)*

GROWTH 1	Levels of housing, employment and retail growth
GROWTH 2	Locational strategy
COM 1	Location of retail and town centre uses
COM 7	Transport impact
COM 8	Parking provision
EMP 7	Tourist Facilities and Visitor Attractions

6.2 Supplementary Planning Documents

Design Guide

Contaminated Land

Flood and Water

Natural Environment SPD

Climate Change SPD

6.3 *National Planning Policy Framework (December 2023)*

- 2 Achieving sustainable development
- 4 Decision-making
- 6 Building a strong, competitive economy
- 7 Ensuring the vitality of town centres
- 8 Promoting healthy and safe communities
- 9 Promoting sustainable transport
- 11 Making effective use of land
- 15 Conserving and enhancing the natural environment

6.4 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires a planning application to be determined in accordance with the Development Plan unless material planning considerations indicate otherwise. The Development Plan for the purposes of this application comprises the adopted East Cambridgeshire Local Plan (2015) (as amended 2023) and the Cambridgeshire and Peterborough Minerals and Waste Local Plan (2021).

7.0 PLANNING COMMENTS

7.1 The original planning permission (18/01793/FUM) the application seeks to vary is extant and has established the acceptability of the principle and detailed impacts of the originally proposed development, subject to conditions.

7.2 This report will only cover the material differences proposed due to the requested changes to Condition 18 (opening hours) for the existing café and restaurant that operate from the site.

7.3 The proposed variation would increase the opening hours of the restaurant (units 8 and 9) and café (unit 3) uses from 07:00 - 19:00 Monday to Saturday and 08:00 -

17:00 on Sundays, Bank Holidays and Public Holidays, to 07:00 - 23:00 seven days a week. All remaining units would continue to operate in line with the currently conditioned opening hours. The proposed change in opening hours would extend the opening by 4 hours Monday – Saturday and by 6 hours on Sundays and bank holidays. This generates an additional 30 hours over the course of a seven day period and would allow evening opening each day of the week where currently there is no evening opening.

7.4 *Relevant background*

7.5 The original application approved the site for a mixed-use development, as outlined above. The previous Officer Report for that application noted how Officers worked diligently on the previous approval to protect the existing local centres of Ely, Soham and Littleport. The original Retail Impact Assessments (RIA) undertaken by the applicant and the reviews from Council’s Retail Consultant at the time advised that the proposal would offer a unique artisan experience that would be different to the services that are on offer within local centres.

7.6 The applicants RIA submitted under the original application noted how the scheme is retail-led and there would be ‘ancillary’ food and drink units. In addition, the original RIAs also emphasised how the suggested opening times were unlikely to be attractive to branded operators nor those seeking to cater for evening diners. This again narrowed the type of food and drink operator that the existing centres would be seeking to attract. It is therefore clear from the original consent that the restaurant and café elements were only permitted to serve the primary retail function of the site during their operating hours.

7.7 Ben’s Yard has been open to the public since 29 June 2023, with the current application submitted three months after its opening on 25 September 2023. Therefore, the Council contend that arguments about viability are limited due to its limited operating period.

7.8 It is important to the determination of this current variation application to note the parameters to which the original application was determined within. A very detailed and careful consideration was given to just how much development could be supported on the site without resulting in impacts to the local centres. It was therefore only accepted on the basis of the original proposals that the site would be unlikely to result in significant effects to nearby local centres.

7.9 **Principle of Development**

7.10 *Applicable policy*

7.11 The overarching aim of Policy COM 1 of the Local Plan is to focus main town centre uses within identified town centres wherever possible. This is in response to the government’s commitment to sustaining and enhancing the vitality and viability of the centres. Policy COM 1 of the East Cambridgeshire Local Plan states:

7.12 Proposals for retail and ‘town centre uses’ outside of the town centres of Ely, Soham and Littleport may be permitted under the following circumstances:

- The sequential approach has been followed and there are no suitable sequentially preferable sites available.
- The site is suitable for the proposed use and the building form and design is appropriate in the local context.
- The scale and type of development is directly related to the role and function of the centre or its locality, in accordance with the hierarchy in Policy GROWTH 2.
- For retail developments of 280m² net floorspace or larger, there would be no adverse effect on the vitality and viability of the nearest town centre, or on any other centres, as demonstrated in a Retail Impact Assessment.
- The development would enhance the character and attractiveness of the centre and its locality, and not adversely affect residential amenity; and
- The development would be accessible by a choice of means of transport (including public transport, walking and cycling), and the local transport system is capable of accommodating the potential traffic implications.

7.13 Policy COM 1 goes on to say, as an exception to this approach, support may be given to:

- Proposals for tourist facilities and attractions which require a rural location, or are associated with the expansion of existing tourist facilities/attractions in the countryside – and which accord with criteria in Policy EMP 7.

7.14 Policy EMP 7 of the East Cambridgeshire Local Plan (as amended 2023) states:

7.15 Proposals for new or extended tourist facilities or attractions will be supported where it can be demonstrated that:

- There is an identified need to create new facilities or to expand or improve existing visitor attractions and facilities to ensure their continued viability.
- The proposal is of an appropriate scale and nature relative to its location, and would not (by itself or cumulatively) have a significant adverse impact in terms of the amount and nature of traffic generated.
- The character & appearance of the area and natural assets would be maintained and enhanced.
- The proposal maximises opportunities for sustainable travel including walking, cycling and public transport; and
- Opportunities to reuse existing buildings have been explored.

7.16 Chapter 7 of the NPPF seeks to ensure that planning decisions support the role that town centres play at the heart of local communities by taking a positive approach to their growth.

7.17 *Assessment of expansion of existing facility*

7.18 It is first necessary to consider the application in connection with the existing Ben's Yard facility, and thus in accordance with EMP 7 of the ECDC Local Plan, as set out above. The policy seeks to support proposals to extend existing attractions where it has been demonstrated that there is an identified need to expand the facility to ensure their continued viability.

- 7.19 A new Impact Assessment (IA) was submitted by the applicant in support of the application. This IA notes that the overheads associated with the café and restaurant are reflective of a 'full time' operation and thus seek to benefit from evening trading periods. The IA outlines that the applicant finds the existing condition to be acceptable in respect of the general retail use of the site, but too restrictive in terms of providing for commercially viable food and beverage operations.
- 7.20 Whilst it is accepted that Policy EMP 7 seeks to ensure continued viability of existing enterprises, the supporting information has not clearly demonstrated how the existing enterprise is unviable. The IA focuses predominantly on the potential impacts to existing centres of Soham and Ely. The submitted IA has not been submitted as a comprehensive viability appraisal relating to the wider Ben's Yard site. The pre-amble to Policy EMP 7 states that applicants will be expected to submit evidence of genuine need to support the case for the proposal. Without a detailed assessment as to what the existing 'full time overheads' are, details as to how the applicant has sought to investigate reducing the overheads to meet their daytime overheads only, and thus reducing outlays, a vague reference to viability contained within an Impact Assessment cannot be accepted.
- 7.21 Furthermore, in considering the viability and proposed opening hours it is important to note that the applicants are suggesting treating the restaurant and the café as one of the main income generators of the site. However, the original application was supported by a Retail Impact Assessment (RIA) and a series of supplementary notes from their retail consultants that provided an assessment of the proposed café and restaurant units and the impact they would have on nearby local centres. Those RIAs noted that the proposed restaurant and café units were to be 'ancillary' elements to the main functioning of the site:
- 7.22 *"The proposed Harlocks Farm scheme is seeking to include a small amount of A3/A4 offer, which could be in the form of a café/ restaurant and would provide day time dining"* (pg. 12 LSH Letter Dated 11 June 2019).
- 7.23 With the details of the previous application assessed, the conclusion was reached that the restaurant and café units were considered secondary elements to support the primary retail functions of the site.
- 7.24 With this in mind, although the application is to extend the opening hours of an existing out of town attraction, the extension to the opening hours would be catering towards an evening dining experience that the main site does not currently offer. The café and restaurant units would therefore be separated from the wider site in respect of their operation and would expand significantly beyond their permitted ancillary contribution to the main retail facility contrary to the considerations of the original scheme.
- 7.25 As such, the proposal runs contrary to the requirements of Policy EMP 7 that requires a genuine need to be identified to support an existing facility. In addition, it is fundamentally not accepted that the proposal would form an extension to an existing tourist facility as it is concluded that the proposal would be tantamount to a new evening restaurant use in the countryside. Therefore, given that the restaurant and café would extend beyond a time that supports the primary retail role of the site and as the application does not present a persuasive viability argument regarding the

need for the evening use, it is relevant in this instance to consider the impact of this proposal as a stand-alone retail enterprise.

7.26 *New evening restaurant use in countryside*

7.27 As outlined above, as a robust viability argument has not been advanced, and the original application was assessed with the site's main function providing an “*artisan’ experience which is qualitatively different to that typically secured on the High Street*” (LSH Impact Assessment, dated January 2024), it is necessary to assess the proposal as a new restaurant and café in a countryside location and consider the proposal under Policy COM 1 which seeks to focus main town centre uses within identified town centres wherever possible.

7.28 The existing café and restaurant are supporting elements to the functioning of the wider Ben’s Yard development. However, despite the applicant’s assertion in Paragraph 3.11 of the 2024 Impact Assessment that “*the purpose of the on-site food and beverage provision remains the same, i.e. it will principally cater for those already present at Ben’s Yard and those passing along the A142*”. the extension of the opening hours of the restaurant and cafe units beyond those of the retail elements would no longer be serving existing consumers at Ben’s Yard. Instead, the proposal would attract evening trade and new visitors to the site that are not there for the primary shopping function.

7.29 The original RIA noted how “*whilst there may be some competition with existing independent food and beverage operators in Ely City Centre, we do not believe that the provision of ancillary A3/A4 floorspace at Harlocks Farm would prevent new investment in the city’s food and beverage offer*” (pg.14 LSH Letter Dated 11 June 2019). However, the extended hours would no longer facilitate an ancillary use, and this instead would become the primary function of the site in the evenings with the hours extending beyond the retail element of the site.

7.30 After receiving the officer recommendation of refusal due to concerns that the proposal has a potential to impact the existing centres of Soham and Ely the aforementioned January 2024 Impact Assessment was submitted by the applicant in support of the application. The report concludes that 35% of the turnover from the café and restaurant would be secured during the extended hours of operation proposed in this application and this would equate to £0.89million.

7.31 Having considered the results of this report, the Council are of the view that the impact of drawing £0.89 million of trade away from existing centres has the potential to result in a significant impact to the vitality of existing centres in Soham and Ely. The Council consider that this is not an insignificant amount of money that could otherwise be directed towards restaurants in Ely and Soham that already exist and operate at the hours proposed.

7.32 The proposal therefore runs contrary to Policy COM 1 that requires proposals for town centre uses outside of town centres to demonstrate that there would be no adverse effect on the vitality and viability of the nearest town centre, or on any other centres.

7.33 *Summary of principle of development*

- 7.34 The existing functioning of the site with the café and restaurant opening times being in line with the retail opening hours was originally considered reasonable to support the shoppers and visitors to the site's attractions and these forming ancillary uses.
- 7.35 The proposal to extend the opening hours of the café and restaurant beyond those of the main site is considered to detach these uses from the originally permitted facility. The extension of these uses is tantamount to creating a new evening restaurant in the countryside and therefore has the potential to detract trade out of existing centres that currently facilitate such evening/nighttime uses.
- 7.36 The proposal is therefore in conflict with the aims of Policy COM 1 of the ECDC Local Plan which, amongst other things, seeks to focus the location of leisure uses in the town and village centres unless it has been demonstrated that there would be no adverse effect on the vitality and viability of the nearest town centre. In addition, the proposal would be contrary to Policy EMP 7 of the ECDC Local Plan that seeks existing facilities to identify a need to expand or improve their existing attractions. The proposal is therefore in conflict with the development plan and fundamentally unacceptable in principle.
- 7.37 **Highways**
- 7.38 Policy COM7 of the East Cambridgeshire Local Plan, 2015 requires all new developments to, amongst other things:
- Provide a safe and convenient access to the highway network.
 - Provide a comprehensive network of routes giving priority for walking and cycling.
 - Accommodate the efficient delivery of goods, supplies and services.
 - Be capable of accommodating the level/type of traffic generated without detriment to the local highway network and the amenity, character or appearance of the locality.
- 7.39 Whilst the application does not propose changes to the existing access, the proposal would have the effect of exceeding the limits on which the original application was assessed in terms of impacts to highways. It is therefore relevant to consider whether the existing access has capacity for the additional trips that the proposal would generate.
- 7.40 In consultation with the Local Highways Authority, the Highway Development Management Engineer has confirmed they do not object to the variation of the proposed opening hours.
- 7.41 In respect of Policy COM 8, parking provision, as no new floor space is proposed, there is no requirement to provide additional parking provision.
- 7.42 The proposal is therefore considered to be in accordance with Policies COM 7 and COM 8 of the ECDC Local Plan 2015 (as amended 2023).
- 7.43 **Planning Balance**

- 7.44 The proposal would benefit from the creation of 12.6 new full time equivalent jobs based on a 40-hour working week, this would attract additional economic activity and is afforded positive weight, when considered in isolation.
- 7.45 However, the proposal has failed to provide genuine need and viability justification in accordance with Policy EMP 7 of the Local Plan 2015 (as amended 2023) for the extension of the proposed opening hours to the restaurant and café units.
- 7.46 In addition, the proposal, by virtue of the extended opening hours, would result in the café and restaurant operating independently of the main use they were designed to service and would effectively function as a new evening café and restaurant use in the countryside. This would therefore no longer be considered an extension to an existing tourist facility and would be in conflict with Policy EMP 7.
- 7.47 The extended opening hours would be tantamount to a new evening restaurant in the countryside that would create a substantial turnover. As such, the proposal has the potential to detract trade from the existing centres of Soham and Ely and is therefore contrary to the requirements of Policy COM 1 that states proposals for 'town centre uses' outside of town centres may only be permitted providing there would be no adverse effect on the vitality and viability of the nearest town centre, or any other centres.
- 7.48 The proposal therefore has the potential to draw a significant amount of trade out of local centres of Ely and Soham and has the potential to detrimentally harm the viability of these centres, contrary of the requirements of Policies EMP 7 and COM 1 of the Local Plan together with Chapter 7 of the NPPF.

8.0 COSTS

- 8.1 An appeal can be lodged against a refusal of planning permission or a condition imposed upon a planning permission. If a local planning authority is found to have acted unreasonably and this has incurred costs for the applicant (referred to as appellant through the appeal process) then a cost award can be made against the Council.
- 8.2 Unreasonable behaviour can be either procedural ie relating to the way a matter has been dealt with or substantive ie relating to the issues at appeal and whether a local planning authority has been able to provide evidence to justify a refusal reason or a condition.
- 8.3 Members do not have to follow an officer recommendation indeed they can legitimately decide to give a different weight to a material consideration than officers. However, it is often these cases where an appellant submits a claim for costs. The Committee therefore needs to consider and document its reasons for going against an officer recommendation very carefully.
- 8.4 In this case members' attention is particularly drawn to the following points:

- Creation of a new evening restaurant in a countryside location

9.0 **APPENDICES**

9.1 Appendix 1: 18/01793/FUM Decision Notice

Background Documents

- 23/01056/VARM
- LSH Impact Assessment 2024 (found under 23/01056/FUM application file)
- 23/00367/VARM
- 23/00161/VARM
- 18/01793/FUM
- LSH Retail Impact Assessment 2019 (found under 18/01793/FUM application file)
- WYG Retail Impact Assessment 2019 (found under 18/01793/FUM application file)

National Planning Policy Framework -

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf

East Cambridgeshire Local Plan 2015 -

<http://www.eastcambs.gov.uk/sites/default/files/Local%20Plan%20April%202015%20-%20front%20cover%20and%20inside%20front%20cover.pdf>