The Marquee, Upper Parade, Sutton Coldfield, Birmingham, B72 1QX

Erection of kiosk for A1 and A5 use with opening hours between 0900 hours to 2300 hours Monday to Wednesday, 0900 hours to midnight and midnight to 0300 hours Thursday to Saturday and between 0900 hours to 2230 hours on Sundays.

Applicant: Corstone Ltd
382 Aston Lane, Witton, Birmingham, B6 6QN
Agent: Mr John Dring
7 Ashfield Road, Kings Heath, Birmingham, B14 7AS

Recommendation
Approve Subject To Conditions

1. **Proposal**

1.1. This application is for the erection of an octagonal kiosk for A1 and A5 use.

1.2. The kiosk would be used as a retail shop and hot food takeaway shop and would be open between 0900 to 2300 Monday to Wednesday, 0900 to midnight and midnight to 0300 Thursday to Saturday, and 0900 to 2230 on Sundays. It would create 2 full time job opportunities.

1.3. The proposed kiosk would measure approximately 5.3 metres in length by 5.3 metres in width by 7 metres in height. It would be constructed from wood and brick and used for A1/ A5 use. The kiosk formerly stood in Vyse Street, adjoining the Big Peg in the Jewellery Quarter.

1.4. This application is identical to the scheme approved under 2014/03049/PA except for the opening hours. The current application seeks to extend the approved closing time from 11pm to 3am on Thursday, Friday and Saturday evenings. The applicant has advised that the approved opening hours are too restrictive and in order to secure the viability of the kiosk longer opening hours are required that are similar to other hot food takeaway premises in the Town Centre.

1.5. A Tree Survey Report was submitted with the previous approved application 2014/03049/PA which confirmed that the installation of the proposed kiosk would not require the removal of any existing trees. The Tree Survey Report recommends that any excavation works required should be carried out by hand under direct arboricultural supervision to ensure no harm to existing tree roots in the vicinity of the site.

1.6. [Location Plan and Proposed Site Plan]
1.7. **Proposed Elevation Plans**

2. **Site & Surroundings**

2.1. The application site relates to a grass area approximately 190m² in size situated adjacent to Upper Parade, immediately to the south of 'The Marquee', which is a pedestrianised shopping area in Sutton Coldfield Town Centre. There is shrub planting to the south of the application site and established street trees to the east and west.

2.2. The surrounding area is predominantly commercial in character. There is an existing kiosk operating as a hot food takeaway ('Chicken Stop') which is located to the north of the site. There are other late night uses within the immediate area including restaurants and public houses. The nearest residential properties are located approximately 81 metres to the southeast of the site on the opposite side of Victoria Road.

2.3. **Site Location**

2.4. **Street View**

3. **Planning History**

3.1. 17 February 2009 - 2009/05238/PA Refused application for the erection of kiosk with A1 retail and A5 hot food takeaway, on the grounds of design of the proposed kiosk being out of keeping with the character and street scene of the area; would result in an unacceptable cumulative impact of Class A5 uses and would adversely impact on the vitality of the shopping area; and it was considered that the proposed kiosk would erode an area of open space which positively contributes and enhances the character of the Parade and would damage a high value amenity tree

3.2. Subsequent Appeal dismissed.

3.3. 19 August 2014 - 2014/03049/PA - Planning permission granted for erection of kiosk for A1/ A5 use, subject to conditions including a condition restricting opening hours to between 0900 to 2300 Monday to Saturday, and 0900 to 2230 on Sundays.

3.4. Related Planning History at the existing kiosk (Chicken Stop) located at 3 The Marquee

3.5. 26 April 2001 - 2000/01313/PA - Planning permission granted for change of use and erection of extension of existing single-storey public convenience to form two-storey restaurant with adjacent open seating area fronting the Parade, subject to conditions.

3.6. 11 March 2010 - 2009/05480/PA - 6 month temporary consent to vary condition attached to 2008/05567/PA to allow opening hours of 0700-0130 Monday-Wednesday, 0700-0230 Thursday-Saturday, and 0900-Midnight Sundays, subject to conditions. This application expired on 11 September 2010.

3.7. 31 December 2010 - 2010/05614/PA - 1 year temporary consent to vary condition C4 attached to planning application 2008/03142/PA to permit opening 0700 - 2300 Monday to Wednesday, 0700 - 0300 Thursday to Saturday and 0900 - 2300 on Sunday, subject to conditions. This application expired on 31 December 2011.
3.8. 20 July 2011 - 2011/02967/PA - Withdrawn application for the variation of condition C4 attached to planning application 2008/03142/PA to permit opening from 0700 - 2300 Monday to Wednesday, 0700 - 0330 Thursday to Saturday and 0900 -2300 on Sunday.

3.9. Related Planning History at 10-12 The Parade

3.10. 28 September 2012 - 2012/04507/PA - Planning permission granted for change of use of mezzanine level and part of lower level into a night club with ground level entrance from The Parade (Sui Generis), subject to conditions, including a condition restricting opening hours to between 1000-0500 daily.

4. Consultation/PP Responses

4.1. Ward Councillors, residents associations and adjoining occupiers were notified. Site Notice displayed at site.

4.4. Sutton Coldfield Town Centre BID - Objects to the application on the grounds that the proposed opening hours would encourage congregation of people and potential anti-social behaviour and would work against all of the work that is going on in the town centre to improve it and make it more, not less attractive.

4.5. Sutton Trinity Ward Committee - Objects to the application and express concern that the extended opening hours would lead to an increase in littering, loitering around and anti-social behaviour, which was already a feature of the very busy night-time economy in the town centre, thus putting increased pressure on the resources of the local policing team and street wardens. The immediate area around the Marquee Kiosk is always littered, even though litter bins are already in-situ.

4.6. Councillor Pears - Objects to the application and supports the concern raised by local residents and the BID about the impact of this application leading to anti-social behaviour and general nuisance.

4.7. Regulatory Services - Recommends a temporary consent to assess the impact on local residents.

4.8. West Midlands Police - Recommends a temporary consent in order to assess the impact of the proposal on late night anti-social behaviour and crime.

5. Policy Context


6. Planning Considerations

6.1. The main considerations are whether the proposed kiosk operating as a retail and hot food takeaway shop would be acceptable in principle and whether it would have a detrimental impact on visual amenity, the amenities of nearby residents and highway safety and whether it would increase the potential for late night anti-social behaviour and crime.

6.2. Policy Context
6.3. The NPPF contains a presumption in favour of sustainable development and seeks to secure a good standard of amenity for existing and future occupants of buildings. It advises in paragraph 69 that planning decisions should aim to achieve places which promote safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion.

6.4. Policies 3.8 and 3.10 of the UDP seek to protect and enhance the quality of the built environment and resist proposals which would adversely affect it.

6.5. Policy 8.7 states that hot food shops and cafes/restaurants should generally be confined to shopping areas or areas of mixed commercial development due to residential amenity issues associated with such development, e.g. late night opening, noise, disturbance, smell, litter and impact on traffic generation. It further stipulates that in areas where similar facilities exist, account should be taken of the cumulative impact of development on residential amenity. Where a proposal does involve evening opening, Policy 8.7 aims to ensure that demonstrable harm would not be caused to the occupiers of nearby dwellings due to additional problems of noise and disturbance. To ensure this, conditions may be attached restricting evening opening hours, normally requiring the premises to be closed and cleared of customers by 23:30.

6.6. Shopping and Local Centres SPD advises that within Primary Shopping Areas, policies should seek to ensure the continuance of a compact attractive and lively shopping environment. It advises that hot food takeaway shops offer a popular service to local communities, support the local economy and provide employment opportunities. They can, however, have a detrimental impact on the amenity of an area, particularly where they involve evening opening.

6.7. Principle of Development

6.8. The proposed kiosk would be located within a Primary Shopping Area and within a centre boundary where such uses are actively encouraged. Policy 1 of the Shopping and Local Centres SPD states that 55% of all ground floor units within this location should be retained as Class A1 use. This proposal would create an additional A1 use and the total number of A1 uses in this locality would be 70%. In addition, Policy 4 of the Shopping and Local Centres SPD states that no more than 10% of units within this location should consist of A5 uses. This proposal would result in a further A5 use, with a total of 2.3% of the units within the centre being used for A5 uses. As a whole therefore, the principle of a new A1/A5 use in this location is acceptable. I also note that the proposed retail and hot food takeaway shop would not have a detrimental impact on the vitality or viability of the centre.

6.9. Impact on Visual Amenity

6.10. The design of the kiosk is acceptable and would not have a detrimental impact on the character and appearance of the area. In the previous approved application (2014/03049/PA) the Tree Officer raised no objection to the proposed kiosk, subject to all works being carried out in accordance with the submitted tree survey. This overcome the concerns raised with the previously refused application in 2009. I concur with this view and have recommended a condition accordingly.

6.11. Impact on Residential Amenity
6.12. The kiosk would be located within Sutton Coldfield Town Centre which contains a number of evening uses including a nightclub in close proximity to the application site at 10-12 The Parade which opens until 0500am daily.

6.13. Regulatory Services raise no objection to the application but do however recommend a temporary consent to assess the impact on nearby residents. The nearest residential properties are located on the opposite side of Victoria Road approximately 81 metres to the southeast of the site and in my opinion, are unlikely to be significantly impacted by the proposed kiosk including the opening hours proposed.


6.15. Transportation Development raised no objection to the previous approved application (reference 2010/05614/PA) and I am also of the view that the proposed kiosk is unlikely to prejudice highway or pedestrian safety.

6.16. Crime and Anti-Social Behaviour

6.17. West Midlands Police have advised that there have been a number of incidents relating to anti-social behaviour and violent crimes in streets in the vicinity of the application site and are concerned that the proposed opening hours up until 3am on Thursday to Saturday nights has the potential to increase anti-social behaviour and crime in the Town Centre.

6.18. West Midlands Police have recommended a temporary consent to assess the impact of the proposed opening hours on existing levels of anti-social behaviour and crime. I concur with this recommendation and consider that a one year temporary consent is reasonable to enable sufficient time to monitor the use and to ascertain whether there has been any rise in late night and early morning anti-social behaviour or crime.

6.19. This recommendation for a temporary consent would be consistent with a previous application (reference 2010/05614/PA) at the adjacent kiosk known as Chicken Stop, which was granted a one year temporary consent in 2010 to extend the opening hours until 0300 Thursday to Saturday.

7. Conclusion

7.1. I consider that the proposed kiosk for A1 (retail) and A5 (hot food takeaway) use is acceptable in this location in terms of the land use principle, impact on visual amenity, impact on residential amenity and highway safety. However, I have recommended a one year temporary consent for the proposed opening hours to assess whether the opening time until 3am on Thursday to Saturday evenings would increase the likelihood of anti-social behaviour and crime. Subject to safeguarding conditions, I am of the view that the proposed scheme would comply with policies 3.8, 3.10, 3.16A and 8.7 of the adopted UDP, Shopping and Local Centres SPD and the NPPF.

8. Recommendation

8.1. I recommend approval subject to the following conditions:
1 Requires the prior submission of extraction and odour control details

2 Requires the prior submission of a drainage scheme

3 The proposed works in relation to tree protection shall fully comply with the details contained within the Tree Survey from Aspect Arboriculture, dated July 2014.

4 Limits the opening hours to 0900 hours to 2300 hours Monday to Wednesday, 0900 hours to midnight and midnight to 0300 hours Thursday to Saturday and 0900 hours to 2230 hours on Sundays for a one year temporary period from the date of this consent, and then the opening hours shall revert back to 0900 hours to 2300 hours Monday to Saturday, and 0900 hours to 2230 hours on Sundays.

5 Requires the scheme to be in accordance with the listed approved plans

6 Limits the approval to 3 years (Full)

Case Officer: Helen Hawkes