



NORTHAMPTON
BOROUGH COUNCIL

PLANNING COMMITTEE: 8 March 2011
DIRECTORATE: Planning and Regeneration
HEAD OF PLANNING: Susan Bridge

APP: E/2010/0689

SITE: Former Mill Wheel Public House
Billing Brook Road
Northampton
NN3 8NQ

WARD: Lumbertubs

REFERRED BY: Head of Planning
REASON: Breach of planning control

DEPARTURE: N/A

ENFORCEMENT MATTER:

1. RECOMMENDATION

1.1 That the Borough Solicitor be authorised to issue two Enforcement Notices in respect of the unauthorised:

- (a) Change of use from Public House to composite uses including hot food takeaway, hairdressing salon and community centre; and
- (b) Erection of a wooden and polycarbonate covered structure over unauthorised chiller / freezer units.

requiring the unauthorised use to cease and the removal of the unauthorised structure and freezer/chiller units with a compliance period of 3 months pursuant to the provisions of the Town and Country Planning Act 1990, (as amended).

2. THE BREACH OF PLANNING CONTROL

2.1 That without planning permission the use of the former public house has materially changed to incorporate a number of uses including the sale of hot food for consumption off the premises, a hairdressing salon and a

community centre.

- 2.2 In addition, the siting of large freezer / chiller units incorporated within a new unlawful structure comprising wooden frame and polycarbonate roofing, has taken place.

3. SITE DESCRIPTION

- 3.1 The property is located within a former local centre and was previously in use as a public house. Beyond the immediate vicinity of the site is residential accommodation.

4. PLANNING HISTORY

- 4.1 Planning permission N/2009/0894 was granted for “Change of use from public house to community centre with ancillary restaurant, hairdresser and taxi office”, on 10 March 2010 subject to various conditions.

4.2 The current uses and operational development do not benefit from any lawful planning approval therefore a number of letters have been sent, business cards left, and one letter hand delivered requesting contact with the owner without success. In addition, a formal Planning Contravention Notice have been served.

5. PLANNING POLICY

5.1 Development Plan

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 current Development Plan comprises of the East Midlands Regional Plan and saved policies of the Northamptonshire County Structure Plan and Northampton Local Plan 1997.

- 5.2 Planning Policy relevant to this case is incorporated with Policy E20 of the Northampton Local Plan and PPS4 – Planning for Sustainable Economic Growth. However, the merits of unauthorised development can only be rehearsed if an application is made for the actual uses taking place.

6. CONSULTATIONS / REPRESENTATIONS

- 6.1 Not applicable.

7. APPRAISAL

- 7.1 The uses previously permitted (N/2009/894) by the Council have not been implemented.

- 7.2 Planning approval N/2009/0894 provided for a specific composite of uses

ancillary to a community centre. In allowing that composite of uses the Council as Local Planning Authority sought to restrict those uses by way of hours of operation and in accordance with specific floor plans.

- 7.3 In addition controls were sought in respect of storage of refuse, parking of bicycles, dispersal of cooking smells and sources of noise.
- 7.4 Following visits to the site by Council planning enforcement officers it is clear that the proposed ancillary restaurant is in fact a pizza takeaway and delivery service (Class A5). It did not accord with the approved floor plan in respect of the allocated dining area, nor did it reflect a use that could be described as a restaurant (Class A3).
- 7.5 The floor plans and external fenestrations for the building also did not reflect the details shown on the approved drawings.
- 7.6 Finally, without the benefit of planning permission, large external freezer / chiller units had been installed covering approximately one half of the service area which had been enclosed by a new covered structure.
- 7.7 The uses currently taking place do not reflect those that have been granted planning permission and therefore do not benefit from planning permission.
- 7.8 To date a valid planning application to regularise the unauthorised development has not been received.

8. CONCLUSION

- 8.1 The unauthorised uses are unacceptable in their unrestricted form. In the absence of an application for retrospective consent for the uses and the structure the issue of enforcement notices is the only avenue open to the Council to control the unauthorised development. Whilst there is a right of appeal to the Planning Inspectorate against an Enforcement Notice an inspector if minded to allow an appeal could impose appropriate conditions.

9. HUMAN RIGHTS IMPLICATIONS

- 9.1 The Human Rights Act 1998 introduces a number of rights contained in the European Convention on Human Rights. Public bodies such as the Council have to ensure that the rights contained in the Convention are complied with. However, many of the rights are not absolute and can be interfered with if sanctioned by law and the action taken must be proportionate to the intended objective. In this particular case Officers' views are that seeking to take action in respect of a perceived loss of amenity to nearby residents and occupiers is compliant with the Human Rights Act 1998 because the harm to the wider community clearly outweighs the harm (in human rights terms) to the owner.

10. LEGAL IMPLICATIONS:

10.1 Usual costs of issue, service and any resultant appeal will be met from within the existing budget. In the event of the Notice not being complied with, a costs application can be made to the Courts in respect of any prosecution proceedings.

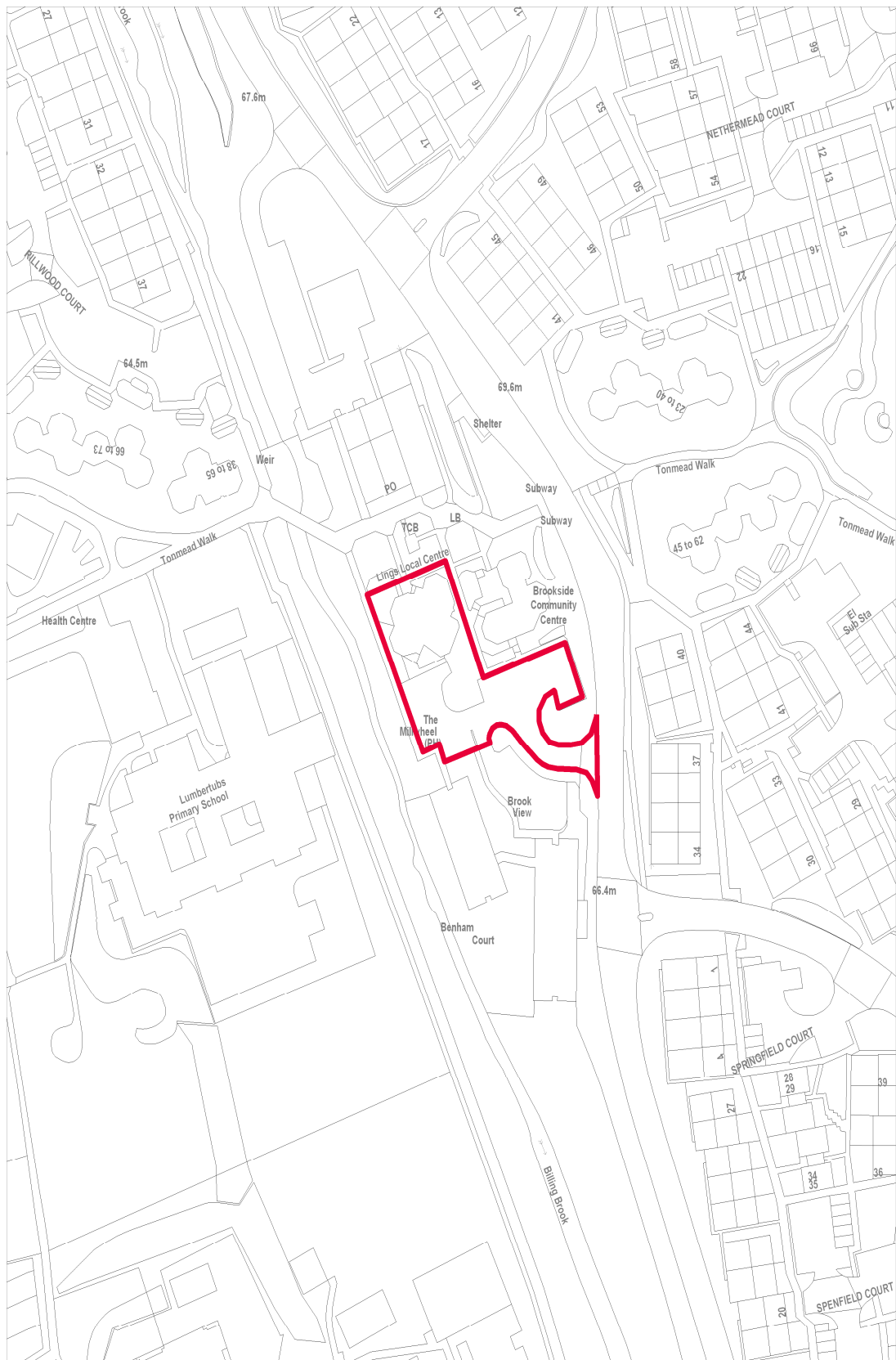
11. BACKGROUND PAPERS

11.1 N/2009/894 & E/2010/689.

12. SUMMARY AND LINKS TO CORPORATE PLAN

12.1 In reaching the attached recommendations regard has been given to securing the objectives, visions and priorities outlined in the Corporate Plan together with those of associated Frameworks and Strategies.

Position:	Name/Signature:	Date:
Author:	Carol Tuckley	14.02.2011
Development Control Manager:	Gareth Jones	14.02.2011



Name: SW
 Date: 17th February 2011
 Scale: 1:1250
 Dept: Planning
 Project: Site Location Plan

Title

The Mill Wheel Public House, Billing Brook Road

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