

PLANNING COMMITTEE: 6 March 2012
DIRECTORATE: Planning and Regeneration
HEAD OF PLANNING: Susan Bridge

N/2012/0058: Application for the variation of Condition 3 of Planning Permission N/2011/0588 to allow the pharmacy to be open between the hours of 7.30 and 22.30 on Mondays to Fridays, 8.00 and 22.30 on Saturdays and 8.00 – 18.30 on Sundays, Bank Holidays and Public Holidays
Abington Health Complex, 51a Beech Avenue, Northampton

WARD: Phippsville

APPLICANT: Mr. Nawaz; Beech Avenue Ltd
AGENT: Mr. B. Waine; Christopher Cox Solicitors

REFERRED BY: Cllr. A. King
REASON: The proposal would have an impact upon anti-social behaviour and security and generate late night noise

DEPARTURE: No

APPLICATION FOR DETERMINATION:

1. RECOMMENDATION

1.1 REFUSAL for the following reason:

By reason of the extent of the proposed operating hours, the proposed development would have a significant detrimental impact upon residential amenity as a result of increased noise and disturbance. The proposal therefore fails to comply with the requirements of PPG24 – Planning and Noise.

2. THE PROPOSAL

2.1 The applicant seeks permission to vary Condition 3 of Planning Permission N/2011/0588, which permits use of the pharmacy by members of the public between the hours of 8.00 – 22.30 on

Mondays to Fridays; 8.00 – 21.45 on Saturdays and 8.00 – 18.30 on Sundays and Bank Holidays.

3. SITE DESCRIPTION

- 3.1 The application site is located within a complex containing a doctor's surgery, clinic, opticians, dentists and a pharmacy. The immediate vicinity contains residential accommodation and a primary school located adjacent to the western boundary. The Birchfield Road East Local Centre is located approximately 100m to the south of the application site. Although a local centre, there are few late night uses beyond a relatively small number of hot food takeaways.

4. PLANNING HISTORY

- 4.1 An application for a comparable proposal was submitted in 2010 (application reference number N/2010/0700); however, this was withdrawn prior to a decision be issued. Subsequent to this, an application for a Certificate of Lawfulness for a Proposed Use (reference: N/2011/0338) was submitted as the applicant contended that planning permission was not required for the proposal. This application was also withdrawn.
- 4.2 The most recent application (reference N/2011/0588) was considered by the Planning Committee at the August 2011 meeting, which sought planning permission to operate a pharmacy at the premises. Although the application was refused, the subsequent appeal was successful, on account of the Inspector considering that subject to the imposition of appropriate conditions, including that the pharmacy should be only be open to members of the public between the hours of 8.00 – 22.30 on Mondays to Fridays; 8.00 – 21.45 on Saturdays and 8.00 – 18.30 on Sundays and Bank Holidays.

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, the saved policies of the Northamptonshire County Structure Plan and Northampton Local Plan 1997.

5.2 National Policies:

PPS1 – Delivering Sustainable Development
PPS4 – Planning for Sustainable Economic Growth
PPS23 – Planning and Pollution Control
PPG13 – Transport
PPG24 – Planning and Noise

5.3 **East Midlands Regional Plan**
Policy 2 – Promoting Better Design
Policy 22 - Regional Priorities for Town Centres & Retail
Development

5.4 **Northampton Borough Local Plan**

E40 – Planning and crime and anti-social behaviour
T11 – Commercial uses in residential areas
T12 – Development requiring servicing

5.5 **Supplementary Planning Guidance**
Northamptonshire County Parking Standards
Planning Out Crime in Northamptonshire

6. **CONSULTATIONS / REPRESENTATIONS**

6.1 **Environmental Health (NBC)** – No objections

6.2 **Highways (NCC)** – No objections

6.3 **Cllr. A. King** – Requesting that the application be determined by the Planning Committee as a result of concerns being expressed regarding the proposal in terms of anti-social behaviour, security and noise.

6.1 Letters of objection from **17 Abington Park Crescent; 4 Ambleside Close; 1 Ashley Close, Moulton; 135a Barton Road, Barton Seagrave; 51f, 74, 90, 92, 122 and 127 Beech Avenue; 146 and 166 Birchfield Road; 271 and 424 Birchfield Road East; 68 Booth Lane South; 84 Broadway; 101, 121, 125, 127 and 131 Broadway East; 48 and 169 Bush Hill; 29 Cedar Road; 118, 160 and 184 Cedar Road East; 51 Conyngham Road; 16 Cottingham Drive; 1 Earl Street; 44 Ecton Lane, Sywell; 6 Fieldway; 37 Grangewood; 16 Greenview Drive; 35 Hawthorn Road; 9 Holmfield Way; 310 Kettering Road; 56 Kingsley Park Terrace; 20 and 34 Lime Avenue; 4 Lindsay Terrace; 27 Mistletoe Place; 42 Oaklands Drive; 20 Overstone Road, Sywell; 154 Park Avenue North; 25 Pinetrees; 15 and 23 Ridgeway; 9 Sandiland Road; 10 Sheraton Close; 163 Sherwood Avenue; 11 Stanfield Road; 6 The Avenue; 53 The Drive; 24 The Headlands; 11 Weston Way; Abington Pharmacy; Fleetland Farm, New Duston; Heath Bank, Rugby Road, Lower Harlestone, Northamptonshire Local Pharmaceutical Committee; one unaddressed letter and a petition signed by 15 individuals. Comments can be summarised as:**

- The extended opening hours are not suitable for a residential area and the use is not complementary to the neighbouring land uses.
- The proposal would generate excessive noise and disturbance

- The opening hours were considered by the Planning Inspectorate, which deemed that 96³/₄ hours were acceptable. Given the limited time between the consideration of the appeal and this application, no justification has been put forward as to why the hours should be increased. These hours were intended to prevent an over intensification of the use.
- There has been no change in planning policy
- No justification has been submitted for increasing the number of opening hours
- There would be a detrimental impact upon traffic and highway safety
- The need for the facility is debatable
- Existing pharmacies are already operational
- The safety of staff is questioned
- Vandalism and anti-social behaviour is also likely to occur. This may be exacerbated by leaving the car park gates open.
- Comparable facilities are accessible from this location.
- The land owner would be responsible for the prescription and supplier of medication, which may create conflict.
- Alternative opening hours would create less of an impact
- The Inspector's decision should have been final.

6.2 Letters of support from the occupiers of **10 Addison Road; 126 Ardington Road; 30 Druids Way; 22 Fullingdale Road; 17 Highfield Road; 233 Kettering Road** (two letters); **32 Lauderdale Avenue; 18 Longmeadow; 21 Sheraton Close; 17 Spinney Hill Road; 22 Stanfield Road, 19 Underbank Lane, Moulton; 26 West Leys Court; 15 Wheatfield Gardens** and two unaddressed letters. Comments can be summarised as:

- The proposal would benefit patients and local residents by providing a service when other pharmacies are closed.
- The car park gates are already open until 9pm without causing disturbance
- There is no evidence of noise being created or groups of individuals congregating at the site.
- Adequate car parking would be provided and no external changes are required to the building.
- Not all residents have their own cars and public transport is limited on Sundays
- As the pharmacy can open at 8:00am, an opening time of 7:30am is unlikely to lead to any greater impacts.

7. APPRAISAL

7.1 This application focuses upon the wording of Condition 3 of Planning Permission N/2011/0588, which states that the pharmacy should be only be open to members of the public between the hours of 8.00 – 22.30 on Mondays to Fridays; 8.00 – 21.45 on Saturdays and 8.00 – 18.30 on Sundays and Bank Holidays. Within the appeal Inspector's

decision, it was held that a pharmacy operating these hours would not harm the amenity of surrounding properties through increased noise and disturbance. The applicant now seeks to vary these opening hours to operate for an additional 30 minutes on Mondays to Fridays (opening at 7.30), an extra 45 minutes on Saturdays (opening until 22:30). Sunday and Bank Holiday trading times would remain unchanged.

- 7.2 In considering this application, it should be recognised that the 2011 application (reference N/2011/0588) was revised to include these hours and it was these hours that the Committee refused Planning Permission and the Council prepared its statement of case when submitted to the Planning Inspectorate.
- 7.3 In allowing the appeal, the Inspector appears to discount these hours and expressly imposed different times as set out within Paragraph 7.1 above. Therefore, it is reasonable conclusion that the Inspector had considered the longer opening hours and deemed them unacceptable, hence the wording of Condition 3 that he opted to impose. Circular 11/95 provides guide on the use of conditions in order to render a planning application acceptable.
- 7.4 In order to grant a variation of condition in such instances, it is necessary to identify whether changed circumstances would render a different approach acceptable. Within the vicinity of the site, there have been no changes in the character of surrounding uses or their hours of operation. Furthermore, there have been no changes to national and local planning policies with relation to the matter of noise. This is combined with the short time frame between the Inspector's decision (which was issued in December 2011) and the submission of this application, it is considered that there are substantive or material changes in circumstances, which would warrant the granting of this application. For this reason, it is considered that the additional hours of operation, which would be focussed upon the early morning/night time periods, would generate excessive noise and disturbance to the detriment of residential amenity. For this reason, it is considered that the proposed revision of Condition 3 fails to comply with the requirements of PPG24 – Planning and Noise.
- 7.5 It is noted that a number of observations have been submitted regarding the impact on business viability. Although this point is noted, it is considered that it is not one that can be given any significant amount of weight in the planning process. In any event, the previous appeal conferred consent to the operation of a pharmacy within this location and as such the principle of the use has already been established.

8. CONCLUSION

8.1 By reason of the unchanged planning context between the consideration of this application and the previous appeal decision, it is considered that there is insufficient justification to warrant a greater period of opening for the pharmacy beyond that which the Inspector, on behalf of the Secretary of State, considered with reference to Circulate 11/95 to be maximum permissible. Therefore, it is considered that the revision of Condition 3 would give rise to an undue detrimental impact upon residential amenity and should therefore be refused.

9. BACKGROUND PAPERS

9.1 N/2010/0700
N/2011/0338
N/2011/0588

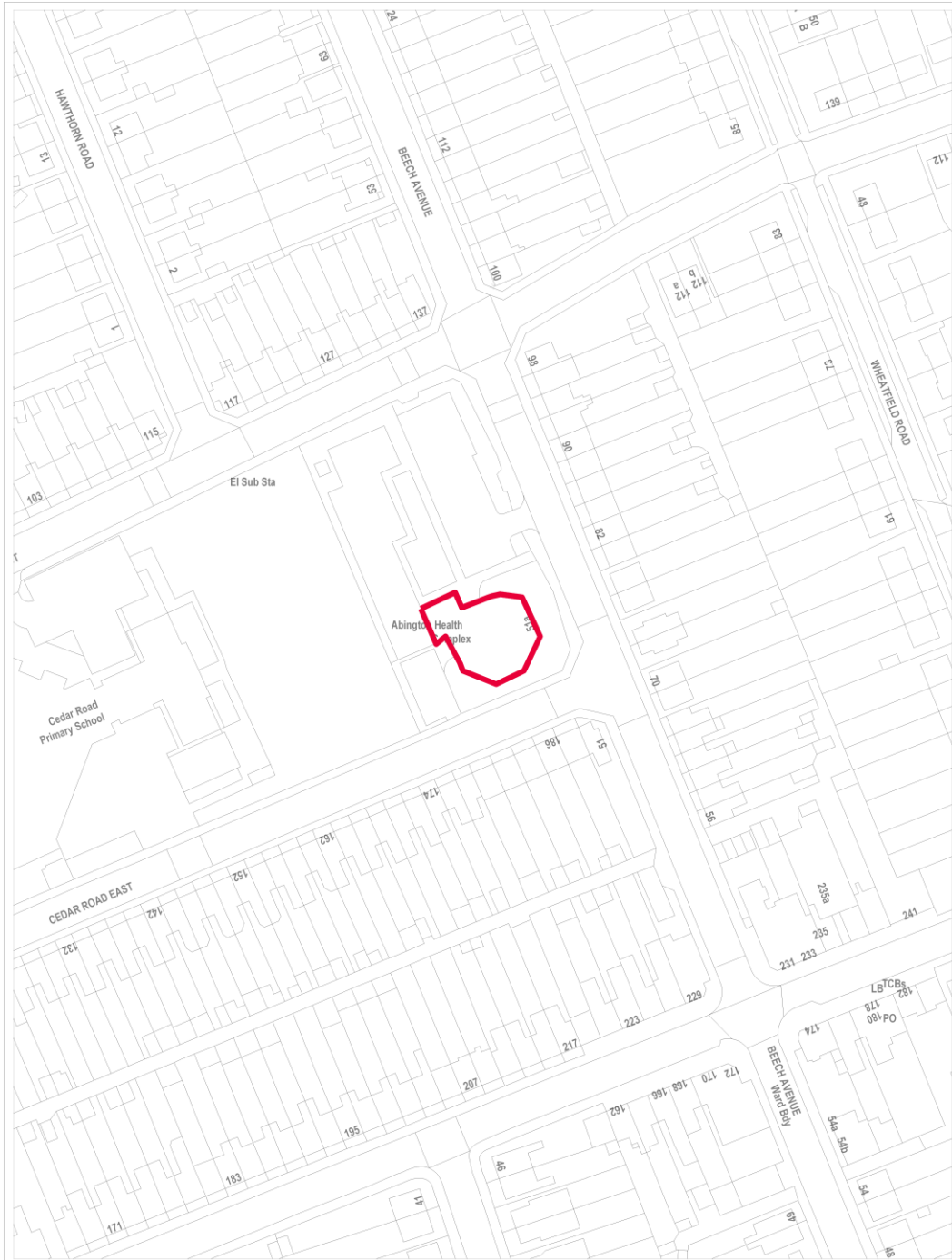
10. LEGAL IMPLICATIONS

10.1 None.

11. SUMMARY AND LINKS TO CORPORATE PLAN

11.1 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:	Ben Clarke	22/02/2012
Development Control Manager Agreed:	Gareth Jones	22/02/2012



Name: Registration
 Date: 23rd February 2012
 Scale: 1:1250
 Dept: Planning
 Project: Location Plan

Title

Abington Health Complex, 51A Beech Avenue

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