

Application Number: 16/03473/FUL

Removal of condition 11 (number of people on premises) attached to planning permission 16/01309/FUL

AT Unit 10, Walker Avenue, Wolverton Mill

FOR Hazara Community, Milton Keynes

Target: 31st January 2017

Extension of time: 20th March 2017

Ward: Wolverton

Parish: Wolverton & Greenleys Town Council

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1.0 INTRODUCTION

(A brief explanation of what the application is about)

- 1.1 The main body of the report set out below draws together the core issues in relation to the application including policy and other key material considerations. This is supplemented by an appendix which brings together planning history, additional matters and summaries of consultees' responses and public representations. Full details of the application, including plans, supplementary documents, consultee responses and public representations are available on the Council's Public access system www.milton-keynes.gov.uk/publicaccess. All matters have been taken into account in writing this report and recommendation.
- 1.2 This application is referred to the Development Control Panel for determination as the condition to which this application refers to, was imposed by the Members of the October 2016 Development Control Panel.

1.3 The Site

The application site contains a commercial unit which is located in the northern corner of an employment area on Walker Avenue. The unit provides an overall floor space of 418 square metres and is faced in brick with a pitched tiled roof. Four assigned parking spaces are located immediately to the front of the unit and two assigned spaces within the 50 shared visitor car park in front of the site. In addition, the applicant has confirmed that a further six spaces are assigned to unit 10 in the car park to the west of the development.

1.4 Directly adjoining the site to the north is unit 12 where along with unit 14 it has been deemed as permitted development under reference 13/02071/FUL to convert these units to a residential use under the prior notification procedure as set out in the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). To date these notifications have not been implemented. Beyond the site to the north are residential properties along Walker Avenue, Alvrice Way, Hamon Way and Turneys Drive. To the east of the site are further commercial premises with residential dwellings beyond; to the south are commercial units with larger industrial premises beyond and to the west are a mixture of commercial and residential properties along Walker Avenue and East Moor Drive.

1.5 **Proposal**

The application seeks permission for the removal of condition 11 (number of people on premises) attached to planning permission 16/01309/FUL which was for a change of use from office accommodation (use Class B1(a)) to non-residential institution (use class D1). The condition reads as follows:

“The maximum number of people on the premises at any one time for the purposes of the proposed use shall not exceed 60.

Reason: To ensure control over the scale of the use in relation to the amenities of neighbouring residents and the availability of car parking.”

2.0 **RELEVANT POLICIES**

(The most important policy considerations relating to this application)

2.1 **National Policy**

National Planning Policy Framework 2012

17 – Core Planning Principles

70 – Delivering the social, recreational and cultural facilities and services the community needs.

123 – Noise

Parking

2.2 **Local Policy**

Milton Keynes Core Strategy (2013)

CSA – Presumption in favour of sustainable development

CSA 16– Supporting small businesses

Milton Keynes Local Plan 2001-2011 (Saved Policies)

D1 (i) and (iv) – Impact on development proposal on locality

T3 and T4 – Pedestrians and cyclists
T5 – Public transport
T15 – Parking provision
E11 – Protection of small business units
C1 – location of community facilities
C4 - Education

Supplementary Planning Documents

Milton Keynes Parking Standards SPD 2016

3.0 MAIN ISSUES

(The issues which have the greatest bearing on the decision)

- 3.1 Background
- 3.2 Impact on parking
- 3.3 Impact on neighbouring amenity

4.0 RECOMMENDATION

(The decision that officers recommend to the Committee)

- 4.1 It is recommended that planning permission be granted

5.0 CONSIDERATIONS

(An explanation of the main issues that have led to the officer Recommendation)

5.1 Background

The original application (16/01309/FUL) was brought before Members of the Development Control Panel on Thursday 20th October 2016. When the Development Management Manager introduced the application she recommended that a condition, relating to a maximum number of students, was deleted should the application be permitted. The reasoning for this was that it was considered by the Development Management Manager and following Legal advice, that the condition would be difficult to enforce and was not necessary. Upon debating the application and the concerns raised by the Town Council, Members of the Panel decided to amend the condition rather than delete it so that it controlled the total number of people allowed within the building. The application was permitted with the amended condition along with several other conditions relating to noise, parking, bicycle storage, openings hours and the use.

- 5.2 Section 206 of the National Planning Policy Framework 2012 sets out that planning conditions “should only be imposed where they are necessary,

relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects". The National Planning Practice Guidance provides further information in relation to conditions. The NPPG sets out that "Any proposed condition that fails to meet any of the 6 tests should not be used. This applies even if the applicant suggests it or agrees on its terms or it is suggested by the members of a planning committee or a third party."

5.3 An extract of the minutes of the October 2016 Development Control Panel are found below:

The Development Management Manager (Debbie Kirk) introduced the application with a presentation. The Panel heard that a noise impact assessment had been provided which did not demonstrate any major concerns at the level of proposed usage of the facility, however, following Legal advice and taking consideration of the difficulty to enforce, it was recommended that condition 10 be deleted, it was further noted that the applicants had agreed to condition 10 with the addition of the word 'pupils' after the number 40, however the concerns in respect of enforcement difficulties were considered to outweigh the need for the condition and that the recommendation remained to grant the application subject to the conditions as detailed within the Panel report with condition 10 deleted.

The Panel heard representations from the Town Council in respect of concerns about parking and vehicle movements in a busy area. The Applicant told the Panel that the highest concentration of vehicles was likely on a Saturday and this would have limited impact on neighbouring businesses, also pupils attending were in the majority of cases be dropped off so parking would not be a major implication. Councillor A Geary proposed that the officer recommendation be agreed this was seconded by Councillor Legg.

The Panel expressed concern at the proposal to remove the condition 10, that restricted numbers of occupants as the potential impact was wider than just parking as there remained concerns about noise. It was suggested that in recognition of the applicants request to include the word 'Pupils' it would be reasonable to apply a condition to restrict the number of occupants at any one time at 60, thus allowing for 40 children teachers and some parents who may wish to remain on the premises. It was further noted that the Fire Authority may put a further restriction on numbers.

It was proposed by Councillor Bint that in recognition of the concerns about parking and noise that condition 10 be re-instated to read;

'The maximum number of people on the premises at any one time for the purposes of the proposed use shall not exceed 60. Reason: To ensure control over the scale of the use in relation to the amenities of neighbouring residents and the availability of car parking'

This was seconded by Councillor Exon. On being put to the vote the motion to

include the condition as detailed above was carried unanimously. On being put to the vote the proposal to grant the application subject to the conditions as detailed in the Panel report with condition 10 included and amended to read as above was carried unanimously, and it was;

RESOLVED – That planning permission be granted subject to the conditions as detailed in the Panel report with condition 10 amended to read; ‘The maximum number of people on the premises at any one time for the purposes of the proposed use shall not exceed 60. Reason: To ensure control over the scale of the use in relation to the amenities of neighbouring residents and the availability of car parking.’

5.4 **Parking provision and traffic**

Saved Policy T15 of the Milton Keynes Local Plan 2001 - 2011 states that parking should not be reduced below the maximum standard if it would be likely to result in off-site parking causing problems that cannot be resolved by on-street parking control. Milton Keynes Parking Standards SPD 2016 set out the requirements for the number of allocated parking spaces for developments.

- 5.5 The impact of the proposal, in terms of parking provision and traffic, was considered acceptable within the original application. The application unit has a total of 12 allocated spaces and in addition there are 50 shared ‘visitor’ parking spaces within the communal car park which serves the surrounding commercial properties. It is also noted that within the original application the Highways Officer raised no objection to the proposal and considered that the proposed use would result in fewer vehicle movements during peak hours than the existing use as an office. The Highway engineer also provided an analysis of the parking provision and concluded that staff would occupy 6 of the 12 allocated spaces leaving 6 allocated spaces for parents. This would represent 1 space per 7 pupils, assuming all 40 pupils were in attendance. It was further noted that given the 50 shared parking spaces, this would be sufficient to accommodate additional parking especially at the weekend when other commercial properties are not in use. Two conditions were imposed on the original application which related to parking, the first was a condition to ensure the allocated parking spaces shall be retained for no other purpose.

The second was a condition relating to a Management Scheme of Parking had to be submitted to the Local Planning Authority. This Management Parking Scheme has since been submitted and found acceptable by the Highways Officer and the condition has been discharged.

- 5.6 Given that the Highways Officer raised no objection to the scheme and the scope and form of the other conditions imposed relating to parking, it is considered that the condition relating to the maximum number of people within the building is not necessary to ensure adequate parking provision. This condition does not therefore meet the 6 tests for conditions as set out in section 206 of the National Planning Policy Framework 2012.

5.7 **Impact on neighbouring amenity**

Policy D1 (iii) of the Milton Keynes Local Plan 2001 – 2011 looks to ensure the development proposals do not adversely affect neighbouring properties within the locality. The Policy relates to a number of issues which developments can cause but in this case it is the possibility of noise disturbance which is being considered the most relevant.

5.8 Within the original application a noise assessment was submitted which concluded that there would be limited noise disturbance as a result of the use. It was found that open window ventilation would provide some sound spillage. A condition was therefore imposed for the windows to be permanently fixed shut which was considered reasonable as the proposed use was not residential. This was considered necessary in order to protect the amenity of the neighbouring properties. A second condition was imposed in regards to opening times between 09:00-22:00 Monday to Friday and 10:00 - 14:00 in order to protect the amenity of the neighbouring properties. An additional condition was imposed so that the approved use could not commence until the mitigation measures outlined in the noise assessment were implemented. Two further conditions were imposed, one relating to the use of the building not being used for any other use within the D1 Use Class and another for no acoustic equipment audible from the outside to be used.

5.9 It is considered that the scope and form of these conditions imposed on the original application sufficiently protects the amenity of the neighbouring properties. The condition relating to the maximum number of people within the building is therefore considered not to be necessary to protect the amenity of the neighbouring properties given the other conditions imposed on the original application which would remain in force. The condition is also considered to be unenforceable at all times of operation.

5.10 **Other matters**

It is noted that other Legislation and Acts are likely to cover occupation of the building, including a Fire Safety Assessment which will impose on an upper limit of the number of people that may use the premises at any one time.

5.11 **Conclusion**

In conclusion, it is considered that the condition is neither reasonable nor enforceable for the reasons given above and as such does not meet the 6 tests as set out in the National Planning Policy Framework 2012. As such it is recommended that the condition is removed from application 16/03473/FUL.

6.0 CONDITIONS

(The conditions that need to be imposed on any planning permission for this development to ensure that the development is satisfactory. To meet legal requirements all conditions must be Necessary, Relevant, Enforceable, Precise and Reasonable)

1. The approved development shall be carried out in accordance with the following drawings/details:

TPS15354.04 SITE LOCATION PLAN electronically registered on 18th July 2016

TPS15354.05 BLOCK PLAN electronically registered on 18th July 2016

1610 02 REV P2 PROPOSED FIRST FLOOR PLAN electronically registered on 18th July 2016

Planning Supporting Statement prepared by Kirkby Diamond dated May 2016 electronically registered on 18th July 2016

"Noise Impact Assessment for a Proposed Community Hub" produced by Enzygo Environmental Consultants electronically registered on 18th July 2016

Reason: For the avoidance of doubt and in accordance with the requirements of The Town and Country Planning (General Development Procedure) (Amendment No. 3) (England) Order 2009.

2. The development hereby permitted shall be begun no later than 21st October 2019

Reason: To prevent the accumulation of planning permissions; to enable the Local Planning Authority to review the suitability of the development in the light of altered circumstances; and to comply with section 51 of the Planning and Compulsory Purchase Act 2004. (D11)

3. The use hereby approved shall not commence until the windows in the proposed classrooms are fixed shut and a supplementary form of ventilation used. The details of the supplementary ventilation shall first be submitted to and agreed in writing with the Local Planning Authority. The windows shall permanently remain fixed shut thereafter.

Reason: To safeguard the residential amenities of the occupiers of nearby residential properties.

4. Prior to the first occupation of the development hereby permitted the proposed bicycle parking shown in the approved drawings shall be provided and be retained thereafter.

Reason: To ensure that adequate parking facilities are provided to serve the development.

5. No activities associated with the use hereby approved shall be carried out

outside the following times 9:00 to 22:00 Monday to Friday; 10:00 to 22:00 on Saturdays and 10:00 to 14:00 on Sundays and Bank Holidays.

Reason: To ensure that the development does not prejudice the enjoyment by neighbouring occupiers of their property.

6. The car parking area provided to serve the use hereby approved use shall be maintained as a permanent ancillary to the development and shall be used for no other purpose thereafter.

Reason: To ensure adequate parking provision at all times so that the development does not prejudice the free flow of traffic or the safety on the neighbouring highway.

7. The agreed Management Scheme of Parking shall be implemented in accordance with the Parking Management Scheme as approved under application 16/03475/DISCON on commencement of the use and shall be adhered to at all times thereafter.

Reason: To ensure that the car parking and traffic generated by the use does not harm the residential amenity of local residents.

8. The use hereby approved shall not commence until the mitigation measures outlined in the "Noise Impact Assessment for a Proposed Community Hub" produced by Enzygo Environmental Consultants have been implemented. The mitigation measures shall thereafter be maintained.

Reason: To safeguard the residential amenities of the occupiers of nearby residential properties

9. The use hereby approved shall be as outlined in the Planning Supporting Statement prepared by Kirkby Diamond dated May 2016 only and operated as such and shall not include any other use under class D1 of the town and Country Planning Use Classes order 1987 (as amended).

Reason: In order to safeguard the residential amenities of the occupiers of nearby residential properties.

10. There shall be no use of acoustic equipment that is audible from outside the building.

Reason: In order to safeguard the residential amenities of the occupiers of nearby residential properties.





KirkbyDiamond

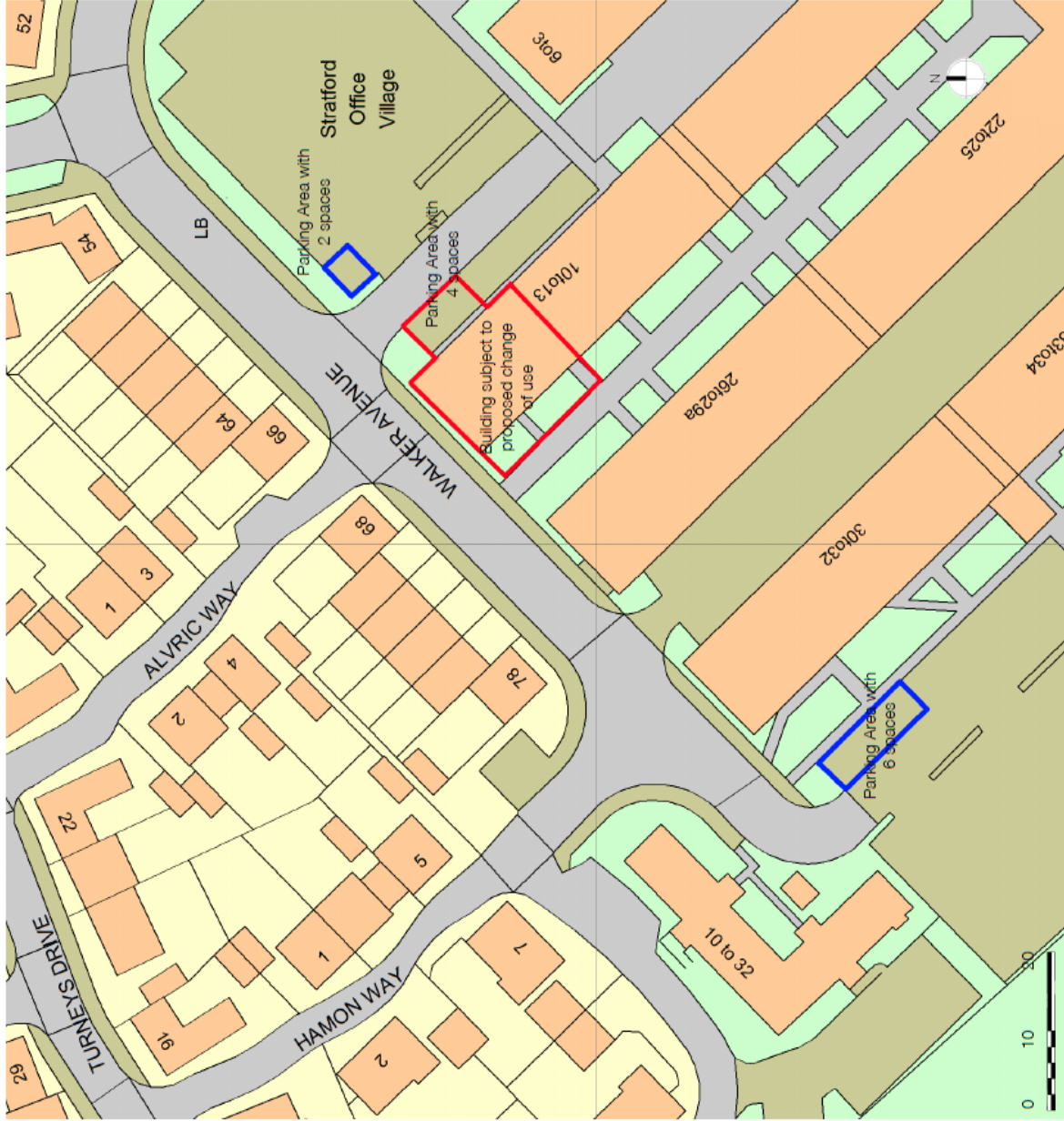
Plan Title
Site Location Plan

Client
Hazara Community Milton Keynes

Proposed Change of Use
10 Walker Avenue
Stratford Office Village
Milton Keynes
Buckinghamshire
MK12 5TW

Site Location  
Other land in the Applicant's ownership

Drawing
TFC1555404
Scale
1:500@A3
OS License
100047474
Date
June 2016



Plan Title
Block Plan

Client
Hazara Community Milton Keynes

Proposed Change of Use
10 Walker Avenue
Stratford Office Village
Milton Keynes
Buckinghamshire
MK12 5 TW

Site Location

Other land in the Applicant's ownership

Drawing
TFS15854.05
Scale
1:500@A3
OS License
100047474
Date
June 2016



Appendix to 16/03473/FUL

A1.0 RELEVANT PLANNING HISTORY

(A brief outline of previous planning decisions affecting the site – this may not include every planning application relating to this site, only those that have a bearing on this particular case)

A1.1 14/01582/FUL

Prior notification of Change-of-Use from offices (Use Class B1(A)) to residential (Use Class C3) for 5 x dwellings with parking spaces
PAREQA 05.09.2014

16/01309/FUL

Change of use from office accommodation (use Class B1(a)) to non-residential institution (use class D1)
PER 21.10.2016

16/03475/DISCON

Details submitted pursuant to discharge of condition 7 (parking management scheme) attached to planning permission 16/01309/FUL
DTAPP 01.02.2017

A2.0 ADDITIONAL MATTERS

(Matters which were also considered in producing the Recommendation)

A2.1 None

A3.0 CONSULTATIONS AND REPRESENTATIONS

(Who has been consulted on the application and the responses received. The following are a brief description of the comments made. The full comments can be read via the Council's web site)

Comments	Officer Response
A3.1 Parish - Wolverton & Greenleys WGTC are concerned that the "Removal of condition 11 (number of people on premises) attached to planning permission 16/01309/FUL" would not restrict the numbers that could attend at any one time, creating a potential fire risk for those that were in the building due to overcrowding. WGTC would wish to see that a fire regulations for the building were adhered to and that there is a maximum capacity suitable for the size of this building at any one time"	Noted and addressed in paragraph 5.10
A3.2 Development Management Highways (No objection)	Noted
A3.3 Ward - Wolverton - Cllr Miles (No comments received)	Noted
A3.4 Ward - Wolverton - Cllr Middleton (No comments received)	Noted
A3.5 Ward - Wolverton - Cllr Marland (No comments received)	Noted
A3.6 Councils Archaeologists (No comments received)	Noted

A3.7 Local Residents

Noted

The occupiers of the following properties were notified of the application:

66, 68, 70 & 72 Walker Avenue, Wolverton Mill
Units 12-14, 28, 29 and 29A Walker Avenue, Wolverton Mill

A3.8 One third representation was received from Unit 29 in objection to the application on the grounds of: Noted and addressed in sections 5.4-5.9

Parking

- The unit has a small number of allocated parking spaces, it is not feasible to have an unlimited amount of people
- This neighbouring unit (Unit 29) requires more spaces which may alleviate parking issues

Noise

- This neighbouring unit has software developers and accountants which require a certain amount of quiet to work. A volume of people entering and existing would disturb the employees