**8. 17/0142/FUL – Variation of conditions 4 (Use of premises) and 5 (External area) of planning permission 15/1210/FUL to alter opening hours and external use of the rear garden at SWILLET HOUSE, 52 HERONSGATE ROAD, CHORLEYWOOD, HERTS, WD3 5BB for Mr Lusha**

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| Parish: Chorleywood | Ward: Chorleywood South and Maple Cross |
| Expiry Statutory Period: 22 March 2017 | Officer: Suzanne O’Brien |
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| **Recommendation:** That condition 4 (Use of premises) is varied to extend the opening hours on Sundays up until 18:00 and that the wording of condition 5 (External area) remains as existing.  |
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| Reason for consideration by the Committee: At the request of Chorleywood Parish Council. |

 1 **Relevant Planning History**

1.1 8/545/77 - Change of use from laundrette to retail shop - Permitted - 29.09.1977

1.2 8/1284/88 - Kitchen, conservatory - Permitted - 17.02.1989

1.3 94/936/8 - Change of use from A1 (Shop) to A1 (Shop) and A3 (Food and Drink) use. - Permitted - 18.05.1995

1.4 96/0421 - Change of use from A1 (shop) to A1 (shop) and A3 (food and drink) - Permitted - 22.08.1996. Appealed conditions.

1.5 06/1371/RSP - Retrospective: Construction of timber decking and bin store - Refused - 10.10.2006

1.6 07/1082/RSP - Retrospective application: Timber decking to rear of property and two air conditioning units - Refused - 01.08.2007. Dismissed on appeal.

1.7 08/0620/FUL - Installation of two air conditioning units to rear of building with a 1.2 metre close boarded fence housing air conditioning units - Permitted - 06.06.2008

1.8 13/0012/FUL - Removal of Condition 2 of planning permission 96/0421/8 - to allow use of premises as Class A1 and A3 by persons/companies other than 'Janes Country Store' – Withdrawn - 13.02.2013

1.9 15/1210/RSP – Part Retrospective: Demolition of existing conservatory and construction of a single storey rear extension – Permitted – 27.08.2015 – Works have been completed.

2. **Detailed Description of Application Site**

2.1 The application site is situated in Chorleywood, on the eastern side of Heronsgate Road. No. 52 Heronsgate Road comprises a commercial premises on the ground floor in a use as a restaurant with a private residential flat above. The surrounding area is predominantly residential in nature.

2.2 The restaurant has a mainly glazed frontage which is 8 metres in width. The premises are adjoined to No. 2 Rosa Cottages (a residential property) to the north and to No. 50 Heronsgate Road (commercial use at ground floor level with a residential flat on the first floor) to the south. The building’s curtilage extends approximately 2 metres beyond its frontage and abuts the highway.

2.3 The site contains a single storey rear extension. A shed has been constructed along the northern boundary adjacent to 2 Rosa Cottages. Close board fencing surrounds the outside space sited to the rear of the restaurant.

3. **Detailed Description of Proposed Development**

3.1 This application seeks planning permission to vary conditions 4 (use of premises) and 5 (external areas) of planning permission 15/1210/RSP to vary the opening hours and allow use of the external areas by patrons.

3.2 Condition 4 of planning permission 15/1210/RSP states:

 *The use of the premises for A3 purposes shall not be open to customers other than between the hours of 0800 and 2300 hours Monday to Saturdays, 1000 to 1500 hours on Sundays and not at all on public holidays.*

 *Reason: To restrict disturbance to the occupiers of nearby properties and to protect the amenities of the locality in accordance with Policies CP1 and CP12 of the Core Strategy (adopted October 2011) and Policy DM9 of the Development Management Policies LDD (adopted July 2013).*

3.3 This application seeks to vary this condition to allow the premises to be open to customers between the hours of 1100 and 2300 hours Monday to Sundays.

3.4 Condition 5 of planning permission 15/1210/RSP states:

 *No part of the external areas surrounding the building, including the garden to the rear and front forecourt shall be used as external eating or drinking areas or for any other purpose associated with the A3 use and no tables or chairs shall be provided at any time in any external area.*

 *Reason: To restrict disturbance to the occupiers of nearby properties and to protect the amenities of the locality in accordance with Policies CP1 and CP12 of the Core Strategy (adopted October 2011) and Policy DM9 of the Development Management Policies LDD (adopted July 2013).*

3.5 This application seeks to vary this condition to permit ancillary use of the rear garden for ‘smoking/fresh air and child use’. The application form suggests that no tables or chairs would be permitted within the external area.

4. **Consultation**

4.1 Chorleywood Parish Council

4.1.1 Summary: Objection.

4.1.2 *The Committee had an objection to this application and wish to CALL IN, unless the Officers are minded to refuse this application.*

* *Planning Conditions 4 (Use of Premises) and Condition 5 (External Area) placed on approved planning allocation 15/1210/FUL – must remain as per previous condition placed on application 15/1210/FUL.*
* *Policies CP12, CP1 and DM9.*
* *The Committee Object to the requested alterations of the opening hours for the restaurant.*

4.2 Environmental Health Officer:

4.2.1 Summary: No objection.

4.2.2 *Following our discussion I agree that extending to 18:00 on Sundays would be reasonable, it allows respite for residents as well as giving a fair extension to the current hours.*

4.3Herts Constabulary Crime Prevention Design

4.3.1 Summary: Objects to hours proposed and external use

4.3.2 *I am writing in regarding planning application 17/0142/FUL at Rootz Brasserie Swillet House (currently known as Herons 52), 52 Heronsgate Road, Chorleywood, Rickmansworth, Hertfordshire WD3 5BB for Variation of conditions 4 (Use of premises) and 5 (External area) of planning permission 15/1210/FUL to allow opening from 11:00 to 23:00 Monday to Sundays (except public holidays) and external use of the rear garden.*

 *Comments*

 *1. Location: Although the restaurant Herons is in a small parade of shops, the location is in a mainly residential area and not in the main shopping area of Chorleywood. The other premises along the same parade of shops are the sort that trade during the day and not into the evening. There is also a lay by arrangement where vehicles can park out the front of the shops as well as some of the residential homes.*

 *2. Hours of operation of Herons:*

 *a. Planning: Under condition 4 of planning permission 15/1210/FUL the hours were set as: "The use of the premises for A3 purposes shall not be open to customers other than between the hours of 0800 and 2300 hours Mondays to Saturdays, 1000 to 1500 hours on Sundays and not at all on public holidays."*

 *b. Licensing: On weekdays, other than Christmas Day, Good Friday or New Year's Eve from 10:00 to 00:00;*

*On Sundays, other than Christmas Day or New Year's Eve, and on Good Friday 12:00 to 23:30;*

 *On Christmas Day: 12:00 noon to23:30;*

 *On New Year's Eve, except on a Sunday, 10:00 to 00:00;*

 *On New Year's Eve on a Sunday, 12:00 to 23:30 p.m.*

*On New Year's Eve from the end of permitted hours on New Year's Eve to the start of permitted hours on the following day (or, if there are no permitted hours on the following day, 00:00 on 31st December).*

*This means the terminal hour under licensing is generally Mondays to Saturdays 10am to midnight and on Sundays 12 (noon) to 23.30hrs*

 *c. Planning application to extend terminal hour: Extended Hours applied for under this planning application are 11:00 to 23:00 Monday to Sundays (except public holidays). This is a significant extension for hours allowed for Sundays.*

 *d. Correct terminal hour allowed when Licensing and Planning Terminal hours conflict: As can be seen from the permitted hours under Licensing and Planning, there is a discrepancy in the terminal hours permitted.*

*This is resolved by 'Revised Guidance issued under section 182 of the Licensing Act 2003, Presented to Parliament pursuant to section 182 (4) of the Licensing Act 2003' dated March 2015 which is available at: https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003*

*At section 13.58 it says: "There are circumstances when as a condition of planning permission, a terminal hour has been set for the use of premises for commercial purposes. Where these hours are different to the licensing hours, the applicant must observe the earlier closing time. Premises operating in breach of their planning permission would be liable to prosecution under planning law. Proper integration should be assured by licensing committees, where appropriate, providing regular reports to the planning committee."*

*Therefore the premises should close by its permitted Planning Terminal Hour.*

 *3. Police position:*

 *a. Terminal Hour for Sundays: I have consulted with colleagues and the police position is that the terminal hour for Mondays to Saturdays should remain at 23:00hrs. As regards Sundays and a terminal hour the planning committee to the planning application of 15/1210/FUL said at condition 4: "1000 to 1500 hours on Sundays and not at all on public holidays." This was obviously to protect nearby residential amenity and the quietness of the area, which we are happy to support. If however the planning committee for this application determine to extend permitted hours under planning we would ask that the terminal hour for Sundays is not extended beyond 22:00hrs, due to nearby residential dwellings and the quietness of the area.*

 *b. Rear Garden Use: The use of the back garden even if only intended for children to play in, is likely to also be used by smokers or people spilling out from the restaurant on a hot day. This is likely to adversely affect the neighbours amenity, and therefore should not be allowed or if planning committee decide to allow then to restrict the rear garden hours of use. If planning committee decides to allow the rear garden use, then we would wish for such terminal hour of rear garden use to be 18:00hrs.*

*I hope the above is of use to you in your deliberations and will help the development achieve that aims of the National Planning Policy Framework (NPPF).*

 *o 69 - re safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion.*

 *And the National Planning Practice Guidance (NPPG) under 'Design'*

 *o 010 - re Sec 17 of the Crime and Disorder Act 1998 - to prevent crime & disorder.*

*And CP1 part n, to reduce the opportunity for crime and anti-social behaviour; and CP12 part c re protecting residential amenity, of Three Rivers Core Strategy.*

5. **Neighbour Consultation**

5.1 No. consulted: 25

 No. responses: 18 (Including one received from a Ward Councillor)

5.2 Site Notice: Posted 20 February 2017 and expired 13 March 2017

 Press Notice: Not applicable.

5.3 Summary of responses:

* A number of different proprietors have operated the restaurant seeking extensions to the scope of the original permission 96/0421/8;
* Lack of parking has led to obstruction of neighbouring properties;
* Parking associated with the restaurant causes highway safety issues;
* Patrons exiting the restaurant and congregating outside smoking and drinking and accessing their cars late at night results in noise and disturbance to neighbouring properties any permission to extend the opening hours and use the rear garden would exacerbate the existing problems;
* Changes to licensing laws allows the current proprietor to hold music nights which results in disturbance to neighbouring properties;
* The existing use results in noise and disturbance to neighbouring properties if the application were to be permitted would unacceptably increase the nuisance and inconvenience to neighbouring residents and make the parking/traffic situation along Heronsgate Road even more dangerous;
* The current use of the site represents overdevelopment of the site and results in an extremely noisy restaurant impacting on the residential amenities of the neighbouring property. Any extension to hours or permission for use of the external areas would exacerbate the existing problem;
* The current opening hours provides a respite for neighbours;
* Any extension of the hours will simply extend the disturbance and nuisance;
* Use of external areas would result in overlooking of neighbouring properties;
* The existing proprietors fail to adhere to the current permitted opening hours and the outside space is already used by patrons;
* Use of the external areas would result in loss of any noise protection, protection from smoking and no privacy to the neighbouring property;
* The permitted use of the external area would increase capacity of the restaurant resulting in increased parking issues;

6. **Reason for Delay**

6.1 Committee Cycle.

7. **Relevant Local Planning Policies:**

7.1 National Planning Policy Framework (NPPF)

7.1.1 On 27 March 2012, the framework of government guidance in the form of Planning Policy Statements and Planning Policy Guidance Notes was replaced by the National Planning Policy Framework (NPPF). The adopted policies of Three Rivers District Council reflect the content of the NPPF.

7.2 The Three Rivers Local Plan Core Strategy:

7.2.1 The Core Strategy was adopted by the Council on 17 October 2011. Relevant Policies include: CP1, CP6, CP7, CP9, CP10 and CP12.

7.3 Development Management Policies LDD:

7.3.1 The Development Management Policies LDD was adopted on 26 July 2013 having been through a full public participation process and Examination in Public. Relevant policies include: DM6, DM9, DM10 and DM13 and Appendix 5.

7.4 The Site Allocations LDD:

7.4.1 The Site Allocations LDD was adopted on 25 November 2014 having been through a full public participation process and Examination in Public. Relevant policies include SA4.

7.5 Other

7.5.1 The following Acts and legislation are also relevant: The Wildlife and Countryside Act 1981 (as amended), the Conservation of Habitats and Species Regulations 2010, the Natural Environment and Rural Communities Act 2006 Habitat Regulations 1994, the Localism Act 2011 and the Growth and Infrastructure Act 2013.

7.5.2 The Community Infrastructure Levy (CIL) Charging Schedule (adopted February 2015).

8. **Analysis**

8.1 Overview

8.1.1 This application seeks permission for the variation of conditions 4 (Use of premises) to allow an extension to the opening hours of the restaurant on Sundays and 5 (External area) to allow use of the external areas.

8.1.2 To confirm no change of use of the premises, alterations to the existing built form or increase in floorspace are being sought under this current application. As such, the analysis will assess the potential impacts arising from the proposed variation of conditions 4 and 5 of planning permission 15/1210/RSP.

8.1 Impact of Variation of Conditions

8.2.1 Policy CP1 of the Core Strategy advises that development should reduce opportunities for crime and anti-social behaviour. Policy CP12 of the Core Strategy seeks to protect the residential amenities of neighbouring properties. Policy DM9 relates to contamination and pollution control and advises that permission will be refused for development that would or could give rise to polluting emissions, including by reason of disturbance and noise. In relation to noise pollution Policy DM9 states:

‘*Planning permission will not be granted for development which:*

*Has an unacceptable adverse impact on the indoor and outdoor acoustic environment of existing or planned development.*

*The Council will ensure that noise from proposed commercial, industrial, recreational or transport use does not cause any significant increase in background noise level of nearby existing noise-sensitive property such as dwellings*.’

8.2.2 It is proposed to vary condition 4 to allow the restaurant to be open until 2300 hours Monday through to Sunday. The current opening hours on Sundays are between 1000 and 1500 hours. There have been a number of objections received from neighbouring residents in relation to noise and disturbance experienced based the existing use of the site of the site as a restaurant. The objections received demonstrate that the Sunday opening hours allows a respite from the noise late into the evening.

8.2.3 Based on the current use of the restaurant and the level of noise and disturbance currently experienced by the neighbouring properties an extension to the opening hours on a Sunday up until 2300 hours would result in additional noise and disturbance to the surrounding neighbouring properties contrary to Policy DM9 of the Development Management Policies document.

8.2.4 However, an extension to allow the restaurant to remain open up until 1800 hours on Sundays would be considered an acceptable extension to the restaurant opening hours whilst also providing a respite for neighbouring properties from late night activity. The Environmental Health Officer confirmed that ‘*extending to 1800 on Sundays would be reasonable, it allows respite for residents as well as giving a fair extension to the current hours*’. As such, it is not considered that a three hour extension to the opening times to allow the restaurant to be open until 1800 hours would result in any demonstrable harm to the residential amenities of the surrounding neighbouring properties in relation to noise and disturbance and would represent a reasonable extension to the Sunday opening times.

8.2.5 The application form suggests later morning opening times of 1100 hours Monday to Sunday. However, the morning opening times were agreed back in 1996 and were also considered acceptable in the 2015 permission. The opening hours are associated with the use of the building and not the current occupier as such it would be unreasonable to vary the condition to provide later morning opening hours. As such the morning opening hours of 0800 hours Monday to Saturday and 1000 hours Sundays would continue to apply. It would also be considered reasonable to retain the provision that the unit be closed on Bank Holidays in accordance with the previous permission. Condition 4 of planning permission 15/1210/RSP would therefore be varied to read as follows:

 *The use of the premises for A3 purposes shall not be open to customers other than between the hours of 0800 and 2300 hours Monday to Saturdays, 1000 to 1800 hours on Sundays and not at all on public holidays.*

*Reason: To restrict disturbance to the occupiers of nearby properties and to protect the amenities of the locality in accordance with Policies CP1 and CP12 of the Core Strategy (adopted October 2011) and Policy DM9 of the Development Management Policies LDD (adopted July 2013).*

8.2.6 There have not been any material changes to the site circumstances or relationships with the neighbouring residential properties since the granting of planning permission 15/1210/RSP. Furthermore, it is clear from the objections received that the existing use of the building results in significant levels of noise and disturbance experienced by the neighbouring properties. Any use of the external areas serving the unit would further exacerbate the harm experienced by the neighbouring properties and would directly impact on their residential amenities. The harm would be greater at 2 Rosa Cottages whose dwelling and garden directly adjoin the application site and the external area serving the restaurant. The application form states that no tables or chairs would be permitted outside. However, the lack of tables and chairs sited within the outside space would not serve to limit the use of the external area especially within the warmer seasons. The use of the external areas would serve to exacerbate the noise and disturbance experienced by the neighbouring properties.

8.2.7 In accordance with Policy CP7 of the Core Strategy the viability of the existing commercial use is a consideration in the assessment of the application. However, the restrictions on the use of the rear garden were attached to the 1996 permission. The proprietor would have been aware of such limitations when taking on the lease for the site. The removal or variation of condition 5 of planning permission 15/1210/RSP would result in greater harm to the residential amenities of the surrounding neighbouring properties in terms of noise and disturbance. The variation or removal of condition 5 to permit any external use would therefore be contrary to Policies CP1 and CP12 of the Core Strategy and Policy DM9 of the Development Management Policies LDD.

8.2.8 Objections have been raised that the existing parking generated by the restaurant use causes obstructions to users of the highway impacting on highway safety. As identified above no variation to condition 5 would be granted under this application, as such, no increase in the capacity of the existing unit would result from the current application. As there would be no increase in the floorspace of the restaurant the variation to condition 4 of planning permission 15/1210/RSP would not change the parking provisions required to serve the site.

8.2.9 Condition 6 of planning permission 15/1210/RSP specifies the times that the openings within the rear extension are required to be shut. As there have been no changes to the site circumstances and relationship with the neighbouring properties this condition is still considered to be reasonable and relevant. Condition 3 of planning permission 15/1210/RSP restricted the insertion of any side windows which is still considered relevant and would be retained.

8.2.10 Condition 7 of planning permission 15/1210/RSP required a construction management plan to be submitted to the LPA in relation to the completion of the construction works to the rear extension. As the works to the rear extension have been completed this condition is no longer relevant and will be removed. Condition 2 of planning permission 15/1210/RSP relates to the materials of the rear extension. As the works to the extension have been completed this condition is no longer necessary as such will be removed.

9. **Recommendation**

9.1 That PLANNING PERMISSION BE GRANTEDsubject to the following conditions: -

C1 The development shall be maintained in accordance with the following approved plans: TRDC001 (Location Plan), 52HGR1, 52HGR2, 52HGR3, 52HGR4.

 Reason: For the avoidance of doubt and in the proper interests of planning, to protect the residential amenities of the neighbouring properties and in accordance with Policies CP1, CP6, CP7, CP9, CP10 and CP12 of the Core Strategy (adopted October 2011) and Policies DM6, DM9, DM13 and Appendix 5 of the Development Management Policies LDD (adopted July 2013).

C2 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any other revoking and re-enacting that order with or without modification), no windows/dormer windows or similar openings [other than those expressly authorised by this permission] shall be constructed in the flank elevations or roofslopes of the extension/development hereby approved.

 Reason: To safeguard the residential amenities of neighbouring properties in accordance with Policies CP1 and CP12 of the Core Strategy (adopted October 2011) and Policy DM9 of the Development Management Policies LDD (adopted July 2013).

C3 The use of the premises for A3 purposes shall not be open to customers other than between the hours of 0800 and 2300 hours Monday to Saturdays, 1000 to 1800 hours on Sundays and not at all on public holidays.

Reason: To restrict disturbance to the occupiers of nearby properties and to protect the amenities of the locality in accordance with Policies CP1 and CP12 of the Core Strategy (adopted October 2011) and Policy DM9 of the Development Management Policies LDD (adopted July 2013).

C4 No part of the external areas surrounding the building, including the garden to the rear or front forecourt, shall be used for purposes associated with the A3 use other than such areas as may be defined and agreed in writing by the Local Planning Authority prior to the commencement of the use.

Reason: To restrict disturbance to the occupiers of nearby properties and to protect the amenities of the locality in accordance with Policies CP1 and CP12 of the Core Strategy (adopted October 2011) and Policy DM9 of the Development Management Policies LDD (adopted July 2013).

C5 All doors, windows and rooflights within the development permitted under planning permission 15/1210/RSP shall be closed after 2200 hours until the opening hours of the next day.

Reason: To restrict disturbance to the occupiers of nearby properties and to protect the amenities of the locality in accordance with Policies CP1 and CP12 of the Core Strategy (adopted October 2011) and Policy DM9 of the Development Management Policies LDD (adopted July 2013).

9.2 **Informatives:**

I1 With regard to implementing this permission, the applicant is advised as follows:

All relevant planning conditions must be discharged prior to the commencement of work. Requests to discharge conditions must be made by formal application. Fees are £97 per request (or £28 where the related permission is for extending or altering a dwellinghouse or other development in the curtilage of a dwellinghouse). Please note that requests made without the appropriate fee will be returned unanswered.

There may be a requirement for the approved development to comply with the Building Regulations. The Council's Building Control section can be contacted on telephone number 01923 727132 or at the website above for more information and application forms.

Community Infrastructure Levy (CIL) - If your development is liable for CIL payments, it is a requirement under Regulation 67 (1) of The Community Infrastructure Levy Regulations 2010 (As Amended) that a Commencement Notice (Form 6) is submitted to Three Rivers District Council as the Collecting Authority no later than the day before the day on which the chargeable development is to be commenced. DO NOT start your development until the Council has acknowledged receipt of the Commencement Notice. Failure to do so will mean you will lose the right to payment by instalments (where applicable), lose any exemptions already granted, and a surcharge will be imposed.

Care should be taken during the building works hereby approved to ensure no damage occurs to the verge or footpaths during construction. Vehicles delivering materials to this development shall not override or cause damage to the public footway. Any damage will require to be made good to the satisfaction of the Council and at the applicant's expense.

Where possible, energy saving and water harvesting measures should be incorporated. Information on this is also available from the Council's Building Control section. Any external changes to the building which may be subsequently required should be discussed with the Council's Development Management Section prior to the commencement of work.

I2 The Local Planning Authority has been positive and proactive in its consideration of this planning application, in line with the requirements of the National Planning Policy Framework and in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015. The development maintains/improves the economic, social and environmental conditions of the District.