

OFFICER REPORT FOR COMMITTEE

DATE: 25/05/2022

**P/22/0439/CU
MR & MRS A WELLS**

**PORTCHESTER EAST
AGENT: MR ROBERT TUTTON**

**CONTINUED USE OF GARAGE AS A TAKEAWAY COFFEE SHOP AT
WEEKENDS AND BANK HOLIDAYS**

84 MERTON AVENUE, PORTCHESTER, FAREHAM, PO16 9NH

Report By

Jon Snook – Direct Dial 01329 824703

1.0 *Introduction*

- 1.1 The planning application is being brought before Planning Committee due to the number of third-party representations received.
- 1.2 In September 2020 the Planning Committee resolved to refuse an application seeking temporary consent for a takeaway coffee shop at 84 Merton Avenue (reference P/20/0811/CU). An appeal was lodged with the Planning Inspectorate against the Council's refusal and in June 2021 the appeal was allowed and planning permission granted for a temporary period of twelve months.

2.0 *Site Description*

- 2.1 The site consists of a semi-detached chalet bungalow set on the western side of Merton Avenue. The application site occupies a corner plot with the southern boundary adjoining Alton Grove. The property has a detached building which formerly was a double garage which is located at the end of the rear garden. The building is a distance of 1.1 metres from the western boundary which adjoins the neighbouring property of 5 Alton Grove. The former garage has direct access onto Alton Grove with a partial dropped kerb providing access to the road. The building does not benefit from a driveway.
- 2.2 The immediate area of Merton Avenue and Alton Grove is a pleasant residential area comprising of a mixture of both bungalows and chalet bungalows. A feature of Alton Grove is the large public open green space which lies to the south of the road and adjoins the Portchester foreshore. The public open space lies opposite 5 to 27 Alton Grove and the entrance to the detached double garage located at the rear of 84 Merton Avenue.

2.3 The public open green space in Alton Grove is used for recreational purposes and for access to the Portchester foreshore where there is a public footpath stretching along the coastline.

3.0 *Description of Proposal*

3.1 The planning application has been made for the continued and permanent use of the garage as a takeaway coffee shop at weekends and bank holidays.

3.2 In support of the application, the applicant has informed the Council that takeaway coffee shop has been open since the 4th July 2021, between 0900 – 1700 hours on weekends and bank holidays, after the Planning Inspector granted temporary consent for the use.

3.3 The applicants have stated that it would be their intention to continue to open the shop on Saturday, Sundays and Bank Holidays between the hours of 0900 - 1700 hours.

3.4 The garage has a small paved area (measuring 1.67 metres wide) which separates the roller shutter door from the pavement in Alton Grove. The applicant states that this area will be used for queuing customers as well as an area located to the east of the garage.

3.5 In further support of the application the applicants provided a Planning Statement and Noise impact Assessment. A summary of the application is as follows: -

- The Planning Inspector stated that the three main issues of the appeal case related to noise, privacy, and impact on centres and parades
- The noise assessment completed by Airtight NoiseCheck for the appeal concluded that the takeaway coffee shop would not have an adverse noise impact and that the Planning Inspector agreed with this assessment
- The coffee machine was set back from the front counter and that the Planning inspector agreed with the assessment of the Environmental Health Officer that it would not cause a disturbance
- That the Planning Inspector stated that that the coffee shop was unlikely to be a magnet for visiting car drivers and motorcyclists
- That postings on Facebook and Instagram had been in place since the opening of the coffee shop reminding prospective customers that they intended to serve walkers predominantly and drivers should park elsewhere

- The overlooking objections raised by neighbours were considered by the Planning Inspector who commented upon the openness of the front gardens and was satisfied the facility complied with Policy DSP3
- That the Planning Inspector was satisfied the coffee shop met with Policies DSP37 and DSP38
- That there is a healthy demand for the takeaway coffee shop which makes a positive contribution to the area.

4.0 Policies

4.1 The following policies apply to this application:

Adopted Fareham Borough Core Strategy

CS5- Transport Strategy and Infrastructure

CS17 – High Quality Design

Adopted Development Sites and Policies

DSP2- Environmental Impact

DSP3 – Impact on Living Conditions

DSP37 – Out-of-Town Shopping

DSP38 – Local Shops

Other Documents:

Fareham Borough Design Guidance: Supplementary Planning Document (excluding Welborne) December 2015

5.0 Relevant Planning History

5.1 The following planning history is relevant:

P/09/0797/FP APPROVED	ERECTION OF DETACHED DOUBLE GARAGE 17/11/09
P/20/0656/VC APPROVED (on appeal)	REMOVAL OF CONDITION 6: (LIMITING USE OF GARAGE) OF APPROVED PLANNING P/09/0797/FP – ERECTION OF DETACHED DOUBLE GARAGE. 01.03.21
P/20/0811/CU APPROVED (on appeal)	TEMPORARY CONSENT FOR A TAKEAWAY COFFEE SHOP 15/06/21

6.0 Representations

6.1 There have been 151 representations about this planning application and a summary of the representations are as follows: -

- 139 were in favour of the continued change of use to a coffee shop
- 12 were not in favour of the continued change of use to a coffee shop

Support

Upon examining the representations of those in favour of the retention of the coffee shop, there were a number of comments made from individuals outside of the Fareham area who reside in places such as Portsmouth and Waterlooville. In addition, further comments were made by people who, whilst they may live in the Fareham area, do not live in the immediate vicinity of the site. Many of the points made are not material planning considerations (for example, the applicants are nice people or the coffee and cakes are nice). The following provides a summary of the planning considerations mentioned:

- The applicants are environmentally friendly which includes litter picking
- Queuing takes place in the specific queuing area
- It is a community-based facility
- The area is good for walks and an attractive location
- Support for local business
- No customers park nearby
- No customers stand in front of neighbouring properties
- The coffee shop brings people to the area which has open space opposite

Objections

The following review has been undertaken in relation to the 12 representations.

- A total of 4 of the objections raised were made from individuals who either lived outside of Fareham or were visitors to neighbouring families
- A further 3 objections were made from residents of Fareham who do not reside in the immediate vicinity of the application site
- There are 2 objections from the residents of 17 Alton Grove and 83 Merton Avenue that are close to the application site
- The remaining 3 objections are raised by the immediate neighbours of the application site namely 5 and 7 Alton Grove and 82 Merton Avenue

The following material planning considerations were raised:

- Customers queuing regularly block the path and road causing pedestrians to walk in the road and further obstruction to mobility scooters, wheelchair users and for those with push chairs
- The queuing area in the garden filled with chairs for customers and is ignored with customers queuing and going to and from the coffee shop staring at the neighbouring property and the occupants
- Customers block the driveway to 5 Alton Grove, one used the vehicle on the driveway as a stand for his bike
- The neighbours feel unable to wash their car at weekends due to the possibility of spray affecting queuing customers causing conflict
- Increased number of parked cars in the area and customer's cars do park in Alton Grove and neighbouring area, causing it difficult for neighbouring residents and family to visit
- The coffee machine is audible in the neighbouring property
- There is a privacy impact and noise implication generated from queuing customers, their barking dogs and conversations with staff members. This results in the occupant of the property not being able to open their windows or doors
- Advertisements with flags and banners which are placed on the green changing the residential feel of the area to that of a seaside tourist attraction
- The neighbouring property and vehicles are often posted on social media sites whilst queuing customers take photographs, thereby affecting privacy
- The coffee shop is open at the very time when neighbouring residents are trying to enjoy their own leisure time
- Increased rubbish in area
- The facility is a magnet for people to stop, purchase and consume on the open space benches
- Customers waiting in the road, sitting on the bollards on the opposite green or the chairs on the green which are provided by the applicant
- Loose dogs roaming around the road and going onto the land of neighbouring residents
- Wider privacy issues with customers loitering and staring towards neighbouring properties windows and down driveways
- Highway safety implications
- Unable to enjoy neighbouring garden due to noise of coffee machine and interactions between staff and customers
- Elderly neighbouring residents and visitors to neighbouring properties feel intimidated

7.0 Consultations

7.1 Hampshire County Council Highways

No objection. The Highway Authority considers that the continued use of the proposed takeaway coffee shop at weekends and bank holidays is unlikely to result in any material highway/transportation implications.

7.2 Environmental Health

No objection. Further to the above consultation for pollution and suitability of use matters, I can advise that further to the details of the noise assessment submitted, having received no complaints in relation to the operation during the temporary permission period and the retention of the operating hours currently used, I have no adverse comments in respect of this application.

8.0 Planning Considerations

8.1 The following matters represent the key material planning considerations which would need to be assessed to determine the suitability of the development proposal. The key issues comprise:

- a) Character of the Area
- b) Impact upon living conditions of neighbouring residents
- c) Other matters

a) Character of the Area

8.2 Planning permission was originally approved for the development of the detached double garage at 84 Merton Avenue on 17th November 2009.

8.3 The applicant subsequently fitted out a section of the garage for purposes of operating as a takeaway coffee shop which would also serve ice creams and cakes. The garage has been fitted with a roller shutter door which, when opened, reveals a takeaway counter for the service of customers with refreshments. In addition, signage has been added advertising the business as '84 by the shore'.

8.4 The planning application made in 2020 (P/22/0811/CU) for the use of the garage for temporary consent for a takeaway coffee shop was refused by the Council's Planning Committee on the 21st September 2020. Subsequently, planning permission was granted on appeal by a Planning Inspectorate on the 15th June 2021. The planning refusal of the Council in 2020 did not consider, that at that time, the proposal was harmful to the character or appearance of the area and therefore this matter was not considered by the Planning Inspector.

- 8.5 The immediate surrounding area of the application site is one used for residential purposes with a distinct style of properties consisting of mainly bungalows and chalet bungalows. It is considered that the area is a sought-after location for homeowners to enjoy the benefits of a peaceful location, whilst sharing the wider recreational facilities with visitors to the green and Portchester shoreline.
- 8.6 The external visual appearance of the structure has not changed in that the roller shutter door still gives the appearance of a garage when it is closed. The application specifies restricted opening hours for the takeaway coffee shop with it being open between 9.00am and 5.00pm on Saturdays, Sundays and Bank Holidays and therefore for the majority of the day and week the building maintains the appearance of a garage. Upon opening the roller shutter door there is a modest sized service counter for the service of customers with coffee and ice creams. The applicant has installed additional fencing on the boundary with 5 Alton Grove and visibility of the counter is therefore largely restricted to the area of open green space located opposite the application site.
- 8.7 The applicant has placed signage on the gates which are situated immediately adjacent to the detached garage and the service counter (which is visible when the roller shutter door is open) advertising '84 by the shore'. The signage is not considered to be intrusive or unacceptable and does not detract from the appearance of the street.
- 8.8 In view of the limited opening hours for the takeaway coffee shop, the outlook of the shop onto the green open space and the lack of significant change in the overall visual appearance for the garage, it is not considered that there would be any materially harmful effect on the character of the area.

b) Impact upon living conditions of neighbouring residents

- 8.9 The detached garage is located on the western boundary of the application site some 27 metres in distance away from the rear wall of 84 Merton Avenue. The garage is 1.1 metre away from the boundary with 5 Alton Grove with this property being separated by a further 2.4 metres from the boundary which is the width of the driveway. Furthermore, the driveway which leads to 5 Alton Grove is immediately adjacent to the Alton Grove access to the detached garage. Therefore, it is considered that the impact of any business activity may have a greater impact upon 5 Alton Grove than the residential property of 84 Merton Avenue.
- 8.10 The permission granted on appeal in June 2021 is subject to six planning conditions. Condition 2 limits the permission to twelve months to enable an

assessment of the impact of the operation of the appeal scheme on the living conditions of neighbouring properties. Condition 3 limits the use to a takeaway coffee shop only and condition 4 to use by Mr & Mrs Wells only in order to respect the vitality and viability of the Borough's centres and parades and the living conditions of neighbours. Condition 5 requires the existing boundary treatment between the appeal site and 82 Merton Avenue and 5 Alton Grove be retained and condition 6 limits the hours of opening to 0900 – 1700 Saturdays, Sundays and Bank Holidays.

- 8.11 The impact of noise and disturbance along with the detrimental impact to the outlook and privacy of neighbouring residents, formed part of the refusal of the Council to grant planning permission for planning application P/20/0811/CU. These matters were subsequently examined in detail by the Planning Inspector when arriving at her appeal decision.

Noise

- 8.12 The Planning Inspector gave due consideration as to whether the use of the takeaway coffee shop would have a detrimental impact upon the living conditions of neighbours living nearby through increased noise and disturbance. The Inspector focused upon the noise from the coffee machine at the premises, visiting customers, any increase in vehicles to the road and deliveries to the site, which were outlined in the Council's reasons for refusal.
- 8.13 The appeal Inspector acknowledged that the takeaway would be likely to generate an increase in comings and goings to the site but was not convinced that with the limited opening hours that there would be any material harm to the occupants of 5 Alton Grove. Furthermore, the Inspector stated that the surrounding properties had open frontages and were therefore already open to day time external noise associated with the traffic, pedestrians and the users of the open space opposite.
- 8.14 The Inspector was not convinced that noise from the coffee machine would be harmful following the applicant's noise assessment report and the advice received from the Council's Environmental Health Officer. The Inspector examined the noise impact from queuing customers highlighting the boundary fence with 5 Alton Grove, the hard surface immediately in front of the counter and that any additional customers would queue in the applicants neighbouring garden to the east of the garage. The Inspector was satisfied that, provided these measures were in place and having regard to the nature of the business, it was unlikely that the queues would build up to an extent that noise would be materially harmful to the neighbours. Similarly, the Inspector was not persuaded that there would be noise and disturbance from visiting

vehicles or deliveries making comment, that she thought it was likely that customers would arrive by foot, cycle or jogging.

- 8.15 To allow the impact of the coffee shop to be assessed, the Inspector imposed a condition limiting the use to a temporary period of 12 months during which any noise issues could be monitored. The coffee shop opened in July 2021 and has traded since then, albeit it is acknowledged that the shop may not have been open on every day permitted (for example, in bad weather or in the winter months). Officers consider there has been a reasonable period of time over which the impacts on the living conditions of neighbours could be monitored.
- 8.16 In response to this application for the continued use of the coffee shop, neighbours continue to raise concerns in relation to noise from the coffee machine. As explained above, the coffee machine was subject to a previous noise assessment report and considered by the Environmental Health Officer with the previous application. Furthermore, the Planning Inspector considered the use of the coffee machine at the appeal. In all instances the parties were not convinced that any noise emanating from the coffee machine would be so harmful that would warrant the refusal of the application. The Council's Environmental Health Department have not received any complaints in relation to the use of the coffee machine since the opening of the takeaway and have raised no objection to the continued use of the shop. Therefore, in the absence of any further information, the Council are not persuaded that there is any significant change in the circumstances to justify reaching a different conclusion to that which the Inspector reached when looking at this same issue previously.
- 8.17 Neighbours have also raised once again concerns over the noise from the customers and staff using the takeaway. The representations made about the noise relate to both queuing customers, who will often arrive as a family, and the interactions between staff and customers. As highlighted in the appeal of the original planning application, the Inspector stated that the surrounding properties had open frontages and were therefore already open to daytime external noise associated with the traffic, pedestrians and the users of the open public space opposite the application site.
- 8.18 In an effort to minimise any such disturbance from noise with the previous planning application, the applicant introduced a queuing system which used a small section of the rear garden of rear garden of 84 Merton Avenue and thereby encouraged any queues to form away from the 5 and 7 Alton Grove. The applicant has provided further information with this application to show how this arrangement works in practice and has also shown photographic evidence of the queuing system in use. As with the coffee machine, the

Council's Environmental Health Team have not received any complaints relating to the noise generated from customers and staff since the opening of the coffee shop. With the small size of the shop and the fact that customers ordinarily take their purchases away and do not consume beverages and food on the premises, Officers consider any such noise experienced by neighbours living nearby is unlikely to be significant. Furthermore, the modest opening times outlined within the application would help to continue to limit any such impact.

8.19 Local Plan Part 2 Policy DSP2 states:

“Development proposals should not, individually or cumulatively, have a significant adverse impact, either on neighbouring development, adjoining land, or the wider environment, by reason of noise, heat, liquids, vibration, light or air pollution (including dust, smoke, fumes or odour).”

8.20 In summary, taking into account the evidence of how the coffee shop has operated in the time since it opened in July 2021, whilst Officers acknowledge that there is some additional noise generated caused by the takeaway coffee shop, it is not considered that the noise could be described as having a significant adverse impact on the living conditions of neighbours. Subject to the same planning conditions being imposed in relation to the limitations on the use, boundary treatment and opening hours, there is no reason to withhold planning permission in relation to noise impacts.

Privacy

8.21 In considering the issue of privacy, the Inspector made mention of the timber fencing separating the service area from 5 Alton Grove, that there was a low likelihood of customers gathering and queuing or additional vehicles parking in the area. Therefore, the Inspector came to the view that the use would not be materially harmful to the living conditions of the occupiers of neighbouring properties having regard to privacy impacts. In reaching this conclusion the Inspector again made mention of the open nature of the neighbouring residential frontages.

8.22 Representations have been made from neighbours objecting to the continued use of the takeaway coffee shop due to the impact they consider it has on their privacy. The fence erected on the boundary between the application site and 5 Alton Grove remains in place and assists in screening views from the forecourt immediately in front of the takeaway. Also, as mentioned above, the applicant has provided details and evidence of the queuing arrangements in place to encourage customers not to queue outside of 5 Alton Grove.

8.23 Local Plan Part 2 Policy DSP3 states:

“Development proposals should ensure that there will be no unacceptable adverse impact upon living conditions on the site or neighbouring development, by way of the loss of sunlight, daylight, outlook and/or privacy.”

8.24 Officers are mindful of the close proximity of the proposed coffee shop to neighbouring properties, in particular 5 Alton Grove. Whilst it is accepted that there may be some impact to the privacy of occupants of the neighbouring properties, when considering the open nature of the residential area, the privacy screening between the application site and 5 Alton Grove and the queuing system, Officers do not consider the development has an unacceptable adverse impact in this regard in accordance with Policy DSP3.

c) Other matters

8.25 The highway safety implications of this application have been considered and no objection has been raised by Hampshire County Council. Provided there is appropriate management of the takeaway queuing system to ensure that the pavement and road are not obstructed, Officers do not consider there to be any material harm arising for the safety or convenience of highway users.

8.26 The Planning Inspector gave due consideration to Policies DSP37 (Out of Town Shopping) and DSP38 (Local Shops) in the planning appeal case. As outlined in the appeal decision, it was concluded, that the garage is a suitable location for a takeaway coffee shop having regard to the impact on the vitality and viability of the Borough's centres and parades, and the provision of new local shops of an appropriate scale. As such, the proposal accorded with the policies in so far as it did not support new out-of-town retail development that would harm the vitality and viability of existing centres, and furthermore supports the provision of new local shops of an appropriate scale so as not to compete with or undermine the vitality or viability of nearby retail centres.

Conclusion

8.27 This application has been assessed with regard to the likely effects of the proposed coffee shop on the character of the area, the living conditions of neighbours and highway safety. The concerns of local residents are noted and have been taken into account, notwithstanding Officers consider that on balance the application should be approved.

8.28 The application is recommended favourably to Members subject to a number of planning conditions being imposed.

9.0 Recommendation

9.1 GRANT PLANNING PERMISSION, subject to the following Conditions:

1. The development hereby permitted shall be carried out strictly in accordance with the following drawings:
 - a) Location plan (drawing 1 issue A).
 - b) Site and Circulation Plan (drawing SD-2078-01 D)REASON: To avoid any doubt over what has been permitted.

2. The part of the garage edged in red on the approved under condition no.1 shall be used as a takeaway coffee shop and for no other purpose (including any other purpose in Class E of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).
REASON: To protect the vitality and viability of the Borough's centres and parades and the living conditions of neighbouring occupiers.

3. The use hereby permitted shall be carried out only by the applicants Mr & Mrs Wells.
REASON: This permission is granted exceptionally and only in view of the personal circumstances of the applicant.

4. The existing close boarded fence erected along the boundary between 84 Merton Avenue and 5 Alton Grove shall be retained at its current full height at all times.
REASON: To protect the privacy of the occupants of 5 Alton Grove.

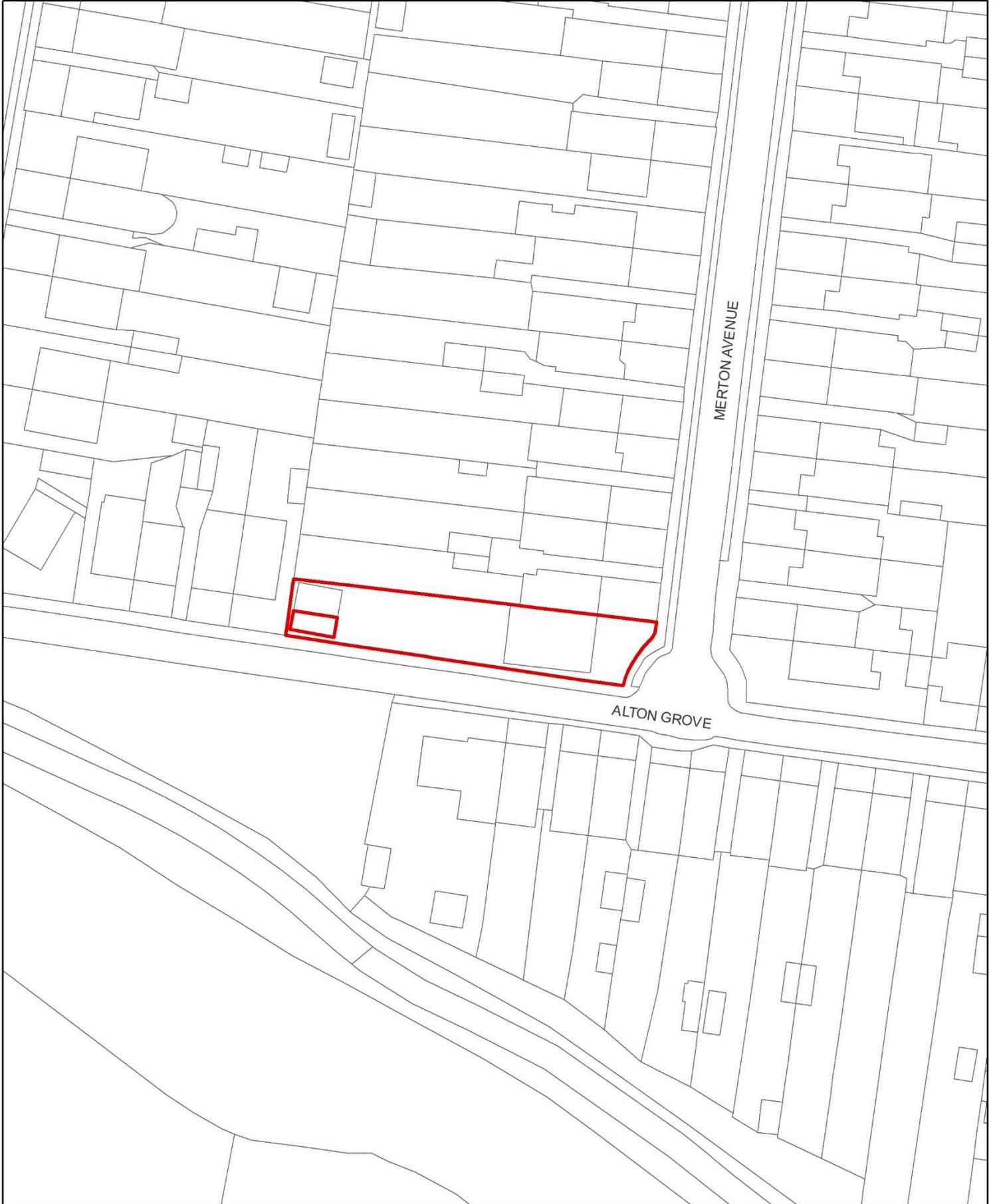
5. The premises shall not be open for customers outside the following hours: -
0900 – 1700 Saturdays, Sundays & Bank Holidays.
No deliveries shall be taken at the site outside of the hours of 0900 – 1700 Monday to Friday.
REASON: To protect the occupiers of the nearby residential properties from possible disturbance from the permitted use.

10.0 Background Papers

P/22/0439/CU; P/20/0811/CU

FAREHAM

BOROUGH COUNCIL



84 Merton Avenue
Portchester
Scale 1:750



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