

Committee Report

Application No:	DC/17/00900/FUL
Case Officer	David Morton
Date Application Valid	9 August 2017
Applicant	Mr Graham Gill
Site:	Gills Super Fry 23 The Crescent Dunston Gateshead NE11 9SJ
Ward:	Dunston Hill And Whickham East
Proposal:	Proposed variation of Condition 3 (opening hours) of planning approval reference DC/12/01065/COU to allow opening hours between 1100hrs and 2300hrs Monday to Saturday, between 1700 and 2300 on a Sunday and Bank Holidays (currently restricted to between 0800 and 1700 on Monday to Saturday and at no other times) (additional information received 20/11/17).
Recommendation:	REFUSE
Application Type	Full Application

1.0 The Application:**1.1 DESCRIPTION OF THE SITE**

The application site is a two-storey end terrace property, situated within a local shopping parade on Ellison Road and surrounded by residential properties to the rear on Ede Avenue. The ground floor was formally a fruit and vegetable shop with a residential flat at first floor. Adjacent at ground floor is a sandwich bar with residential flat above.

1.2 The application property is located within the defined Ellison Road District Centre.

1.3 DESCRIPTION OF THE APPLICATION

Planning permission was granted under application DC/12/01065/COU to change the use of the ground floor fruit and vegetables shop to a hot food takeaway to be used as a fish and chip bar. The application was granted with opening hours between 0800 and 1700 Mondays to Saturdays and closed on Sundays.

1.4 A number of planning applications were submitted seeking to vary the operating hours associated with the premises (as set out in the planning history section); these permissions were either refused or granted temporarily. All temporary permissions associated with the site have now lapsed and the site has reverted back to the original hours of operation.

1.5 The latest application seeks to vary the operating hours associated with the application site. The application seeks hours of between 1100 and 2300 Monday to Saturday and between 1700 and 2300 on a Sunday and Bank Holidays.

1.6 PLANNING HISTORY

The planning history associated with the site is set out below;

- DC/12/01065/COU; Planning permission granted for 'Change of use from fruit shop (use class A1) to fish and chip shop (use class A5).' Date; 04 April 2013.
- DC/13/00542/COU; Planning permission refused for 'Variation of condition 3 of DC/12/01065/COU to allow opening hours of 10.30am - 11.00pm Monday to Saturday, 10.30am - 8.00pm Bank Holiday (Good Friday) and no Sunday opening (previously restricted to 8.00am - 5pm Monday to Saturday and at no time on a Sunday).' Date; 01 July 2013.
- DC/13/00878/FUL; Planning permission granted temporarily (12 months) for 'Variation of condition 3 of DC/12/01065/COU to allow opening hours of 10.30am to 09:30pm Monday to Saturday, no Sunday opening and 10.30am to 8.00pm on Good Friday (previously restricted to 8.00am - 5pm Monday to Saturday and at no time on a Sunday) together with details of extraction equipment to discharge condition 4 (revised application) (additional info received 04/09/13). Part Retrospective.' Date; 21 November 2013.
- DC/14/01281/FUL; Planning permission granted temporarily (12 months) for 'VARIATION OF CONDITION 3 (opening hours) of DC/13/00878/FUL (to allow opening hours between 11am and 23:00 Monday to Saturdays and 17:00 to 23:00 on Sundays and bank holidays).' Date; 29 January 2015.

2.0 Consultation Responses:

None

3.0 Representations:

3.1 Neighbour notifications were carried out in accordance with the formal procedures introduced in the Town and Country Planning (Development Management Procedure) Order 2015. Three objections to the proposal (including a single objection from a Ward Councillor (Councillor Allison Thompson)) have been received. The letters are summarised as follows:

- The proposal would lead to an increased level of traffic.
- The proposal would lead to an increase in litter within the area.
- The development is not consistent with the Hotfood Takeaway SPD.
- The neon signage in the window of the takeaway leads to disturbance.

4.0 Policies:

NPPF National Planning Policy Framework

NPPG National Planning Practice Guidance

ENV3 The Built Environment - Character/Design

ENV61 New Noise-Generating Developments

DC2 Residential Amenity

RCL6 Food and Drink Uses

CS13 Transport

CS14 Wellbeing and Health

Hot Food Takeaway SPD

5.0 Assessment:

- 5.1 This is a Section 73 application for a variation of an approved condition of planning permission DC/12/01065/COU. Therefore, the principle of the scheme does not require assessment again, but is instead a re-examination of certain elements within the approved scheme, namely the opening hours of the take away.
- 5.2 The main planning considerations are: whether the opening hours condition is necessary and reasonable, in the interests of living conditions of neighbouring occupiers, with particular reference to noise and disturbance and the impact on the proposal on the health and wellbeing of the local population.
- 5.3 **IMPACT ON RESIDENTIAL AMENITY**
The original planning application DC/12/01065/COU granted planning permission with opening hours between 0800 and 1700 on Monday to Saturday and at no other times.
- 5.4 The National Planning Policy Framework states that planning decisions should "avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development" and that decisions should "mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions".
- 5.5 As a reflection of the national planning policies and specific guidance of noise generating development, saved UDP policy ENV61 (new noise-generating development) states that new noise generating development will not be permitted if it causes an unacceptable increase in noise levels.

- 5.6 Opening until 2300 at night has been considered against the existing trading hours of other premises within the local centre and from this assessment, it is apparent that retailers (Co -Op, Costcutters, bookmakers) open until 2200 at night, therefore there is already activity within the location up until this time. Dunston Hill Chinese Takeaway at 2 King George Avenue is within 40 metres of the application site and currently opens until approximately 2300 seven days a week (there are no restricted hours of opening for this take-away from a planning perspective as the use is historic and not subject to a planning approval). This unit is located within a parade of shops with residential accommodation above and adjacent. There have been no complaints received in regard to the take-away in either planning or statutory nuisance terms.
- 5.7 There is residential accommodation above the application site at 22 The Crescent; the residential unit above the site is not within the control of the applicant.
- 5.8 It is considered when the application is considered in the context of the above and the fact that the site is within a commercial area, it is considered that the proposal would not result in any unacceptable impact on residential amenity.
- 5.9 Based on the above, it is considered that the extension of operating hours would not give rise to significant adverse impacts on residential amenity and on that basis the variation of Condition 3 is considered to be acceptable in accordance with the NPPF, UDP Policies ENV3 and ENV61 and Policy CS14 of the Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne (CSUCP).
- 5.10 HEALTH AND WELLBEING
One of the 12 core planning principles outlined at paragraph 17 of the NPPF is that the planning system should take account of and support local strategies to improve health, social and cultural wellbeing for all, and deliver sufficient community and cultural facilities and services to meet local needs.
- 5.11 Furthermore, section 7 of the NPPF stresses the role of the planning system in promoting healthy communities. Specifically, paragraph 69 advises that the planning system can play an important role in creating healthy, inclusive communities.
- 5.12 In response to this national policy agenda, policy CS14 of the CSUCP aims to ensure that the wellbeing and health of communities is maintained and improved by controlling the location of, and access to, unhealthy eating outlets.
- 5.13 The Council, in its role as Local Planning Authority, recognises that one of the ways in which planning can have the greatest impact on health, and in particular obesity levels, is to restrict access to hot food takeaways. To this end the Council's Hot Food Takeaway Supplementary Planning Document (SPD) is one component in the wider Council Health and Wellbeing.
- 5.14 Planning consideration 2 of the SPD states that wards where there are high levels of obesity, defined as more than 10% of the year six pupils, are not

appropriate locations for A5 uses. In this case the application site is located in the Dunston Hill and Whickham East Ward which has a year 6 obesity level of 17%. This is significantly higher than the SPD limit and therefore is not an appropriate location to increase access to an unhealthy eating outlet.

- 5.15 SPD planning consideration 12 states that applications for A5 uses will be required to include a health impact assessment as part of their application. Where an unacceptable adverse impact on health is established, permission should not be granted. No such assessment has been submitted as part of the application but given the shop operated as a fish and chip shop it is likely that the standard food types on sale would be deep fried fish and chips, kebabs, pizzas, burgers, etc. it is therefore considered that it could not be argued that the food offer would support a healthy lifestyle - no Health Impact Assessment having been submitted to provide evidence to the contrary.
- 5.16 In this case the application proposes to vary the opening times of the existing A5 premises, which is currently restricted by a planning condition. If approved, this would result in an increase of opening times and subsequently increased access to an unhealthy eating establishment contrary to policy CS14 of the CSUCP and not satisfying the criteria set out in the Hot Food Takeaway SPD, nor would the proposal comply with the relevant policies of the NPPF.
- 5.17 In this regard the proposal to vary the planning condition is considered to be unacceptable as it does not comply with the relevant policy framework and would likely result in demonstrable harm to the health and wellbeing of the residents of Gateshead through greater access to unhealthy food.
- 5.18 OTHER ISSUES
The applicant has submitted a supporting statement in support of their application, in which they state;
"The introduction of the SPD is a new material consideration, however given that the proposals are not for a new A5 premises the weight attributed to the SPD should be restricted to the tests set out by criteria 6, which as demonstrated above has already indirectly been tested by the Council who have in the past concluded that the proposals accord with the guidance."
- 5.19 Officers disagree with the stance of the applicant and are of the view that the SPD should be applied as set out above.
- 5.20 In regard to the objections received officers have the following comments to make;
- It is considered that the proposal would have a minimal impact on the wider highway network given it does not propose a new use and the proposed additional hours are not significant in highway terms.
 - Signage or proposed signage does not form part of the planning application and therefore cannot be afforded weight.
- 5.21 It is considered that all other material considerations have been addressed within the main body of the report.

5.22 COMMUNITY INFRASTRUCTURE LEVY

On 1st January 2017 Gateshead Council became a Community Infrastructure Levy (CIL) Charging Authority. This application has been assessed against the Council's CIL charging schedule and the development is not CIL chargeable development as it is not for qualifying retail or housing related. As such no CIL charge is liable.

6.0 CONCLUSION

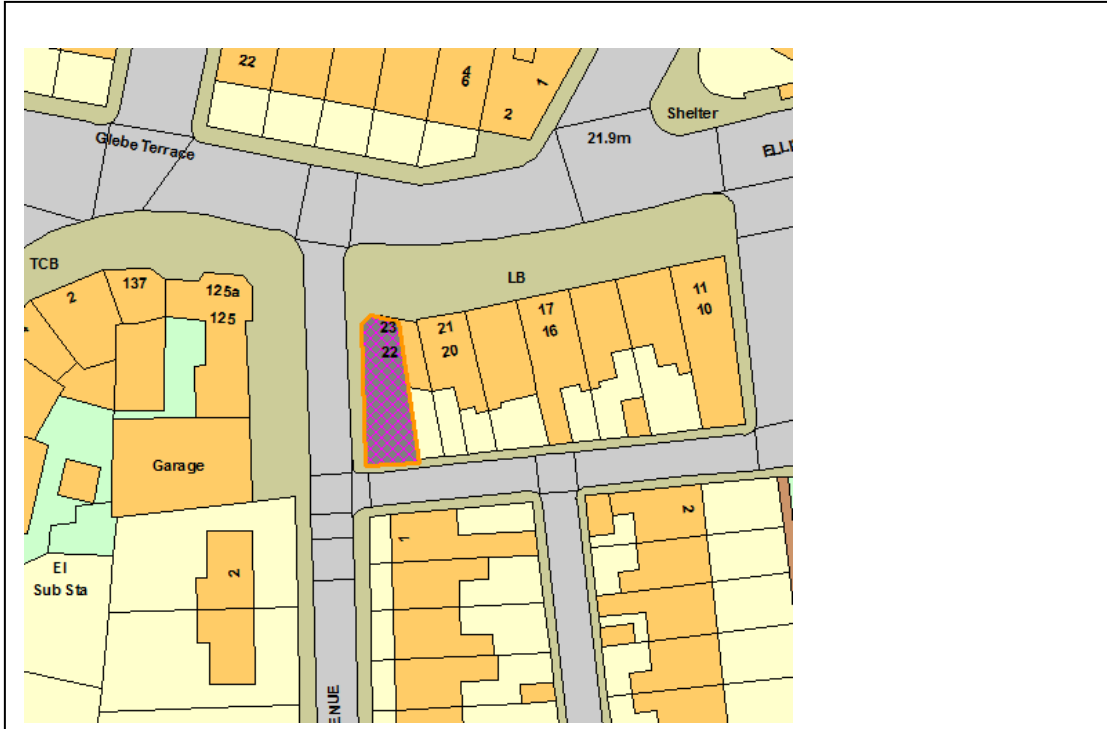
- 6.1 Taking all the relevant issues into account, it is therefore recommended that planning permission be refused, as the proposal would represent inappropriate development given that it would lead to increased access to an unhealthy eating outlet and is therefore contrary to the NPPF, CS14 and the Hot Food Takeaway SPD. The mitigating factors put forward by the applicant are not sufficient to outweigh the harm identified above.
- 6.2 It is considered that the proposed extension of operating hours does not accord with national and local planning policies and as a result it is recommended that planning permission be refused.

7.0 Recommendation:

That permission be REFUSED for the following reason(s):

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The proposal would represent inappropriate development given that it would lead to increased access to an unhealthy eating outlet and is therefore contrary to the NPPF, the Hot food Takeaway SPD and CSUCP policy CS14.



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