

Committee Report

Application No:	DC/16/01185/FUL
Case Officer	Owain Curtis
Date Application Valid	14 November 2016
Applicant	Mr Joghinder Singh
Site:	Windyridge 6 Holburn Crescent Ryton Central Ryton NE40 3DH
Ward:	Ryton Crookhill And Stella
Proposal:	VARIATION OF CONDITION 2 (opening hours) imposed by Appeal Decision APP/H4505/A/09/2111204 to extend operating hours from 08:00 - 20:00 Monday to Saturday and 16:00 - 20:00 on Sundays and public holidays to 08:00 - 21:30 Monday to Saturday and 16:00 to 21:30 on Sundays and public holidays
Recommendation:	Refuse Permission
Application Type	Full Application

1.0 The Application:

1.1 DESCRIPTION OF THE SITE

1.2 The application site is an existing ground floor unit. The unit was formerly an off licence / newsagents however planning permission was granted for use of the premises as a hot food takeaway in 2009. The takeaway operated for approximately 18 months before it closed down in 2013.

1.3 The front of the premises is accessed via a small cul-de-sac off Holburn Lane with the rear accessed off Holburn Crescent. There is hard standing to the front of the property, which provides some level of off-street parking.

1.4 There are residential properties either side of the application site; the dwelling to the west of the application property (no.5) is attached to the application property via a garage and glazed porch area. The character of the area is predominantly residential, although the Runhead Public House is located within the vicinity, approximately 90 metres to the west.

1.5 DESCRIPTION OF THE APPLICATION

1.6 This applicant seeks the variation of condition 2 (opening hours) imposed by appeal decision APP/H4505/A/09/2111204 which reads:

1.7 *The use shall not take place other than between the hours of 08.00 - 20.00 Mondays – Saturdays and 16.00 - 20.00 on Sundays and Public Holidays.*

1.8 This application proposes to vary the hours of opening of the business to 08.00 – 21:30 Monday – Saturdays and 16.00 – 21:30 on Sundays and Public Holidays i.e. one and a half hours longer, later into the night on all days of the week.

1.9 PLANNING HISTORY

1.10 Ref No: DC/11/00004/NMA Status: GRANT Proposal: Proposed non-material amendment to DC/09/00836/FUL to allow for additional extract grills, changes to proposed shop front and rear elevation. Decision Date: 18.01.2011

1.11 Ref No: DC/09/00836/FUL Status: REFUSE Proposal: Proposed variation/removal of Conditions 2,3,4,5,7 and 8 of planning application DC/09/00411/COU. Variation of Condition 2 (Hours of Operation) to restrict operation of the premises between 0800 and 2300, Monday to Saturday and between 1600 and 2200 on Sundays and Public Holidays (formerly restricted to between 1130 and 1330 and between 1800 and 2000, Monday to Saturday and closed on Sundays and Public Holidays), variation of Condition 7 (Hours of delivery) to restrict deliveries or refuse collections made to/from the application site between the hours of 2200 and 0600 seven days a week (formerly restricted between 2000 and 0800). Removal of Condition 3 (Noise Mitigation), Condition 4 (Customer bin provision), Condition 5 (Refuse storage) and Condition 8 (Parking area). Decision Date: 13.08.2009 Appeal Status: PARTIALLY ALLOWED

1.12 Ref No: DC/09/00411/COU Status: GRANT Proposal: Change of use of ground floor premises (un-used Use Class A1 off-licence/shop) to hot food take-away (Use Class A5) and elevational alterations. Decision Date: 07.07.2009

1.13 Ref No: DC/08/01567/COU Status: REFUSE Proposal: Change of use of ground floor premises (un-used Use Class A1 off-licence/shop) to hot food take-away (Use Class A5) and elevational alterations (resubmission DC/08/01271/COU). Decision Date: 02.12.2008 Appeal Status: DISMISSED

1.14 Ref No: DC/08/01271/COU Status: WITHDRAWN Proposal: Change of use from off licence (use class A1) to hot food take-away (use class A5). Decision Date: 11.09.2008

2.0 Consultation Responses:

None.

3.0 Representations:

3.1 This application is referred to the Planning and Development Committee as ward Councillor Liz Twist formally objects to the proposal.

3.2 91 neighbour notification letters were posted to properties in the surrounding area in accordance with formal procedures introduced by the Town & Country Planning (Development Management Procedure) Order 2015.

3.3 A total of 4 objections have been received raising the following issues:

- There would be a loss of residential amenity because of increased traffic.
- There is no evidence the extension of hours would not adversely affect residential amenity.
- The new hours would be a nuisance.
- Operating in the evening would increase disruption to a peaceful cul-de-sac which is occupied by retired residents.
- There is very little car parking in front of the shop.
- The shop has tried before and did not succeed.

4.0 Policies:

NPPF National Planning Policy Framework

NPPG National Planning Practice Guidance

CS14 Wellbeing and Health

DC2 Residential Amenity

ENV61 New Noise-Generating Developments

Hot Food Takeaway Supplementary Planning Document

5.0 Assessment of the Proposal:

5.1 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.

5.2 RESIDENTIAL AMENITY

5.3 The existing opening hours of the business were last assessed by the Planning Inspectorate under appeal reference APP/H4505/A/09/2111204 on 18 November 2009. The Inspector concluded that:

5.4 *...given the close relationship of the appeal property to the neighbouring dwellings, I consider that some control over trading hours is necessary to protect local residents from undue disturbance associated with the comings and goings of customers. In particular I am concerned that, because the shop sits on a spur from Holburn Crescent, there would be a considerable level of engine noise from vehicles manoeuvring as they turned around in order to leave the parking area in front of the shop. The neighbouring bungalows to the*

west have relatively short front gardens and would be close to the area where vehicles were turning. In my judgement, vehicle noise would become unacceptably intrusive at quieter times, especially later in the evening, when background noise levels such as from other traffic passing along Holburn Lane would be lower.

It seems to me that the time of 20.00 in the existing condition strikes a fair balance between allowing the business to flourish whilst at the same time allowing nearby residents to quietly enjoy their own homes for a reasonable part of the evening.

Owing to the residential character of the street, the need for vehicles to turn and the position of the nearest dwellings, I consider it necessary to restrict opening hours in the later evening and the early part of the day on Sundays and Public Holidays in order to protect the living conditions of nearby residents, in accordance with UDP policies DC2 and RCL6."

- 5.5 Since this appeal decision a new suite of planning policies have been adopted nationally and locally.
- 5.6 The National Planning Policy Framework (Para. 123) 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." It gives guidance to local authorities on the use of their planning powers to minimise the adverse impact of noise and outlines the considerations to be taken into account in determining planning applications both for noise-sensitive developments and for those activities which will generate noise.
- 5.7 The NPPF also states that one of the 12 core planning principles is that decisions should always seek to secure a good standard of amenity for all existing and future occupants of land and buildings.
- 5.8 The Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne (CSUCP) policy CS14 states that the wellbeing and health of communities will be maintained and improved by preventing negative impacts on residential amenity and wider public safety from noise inter alia.
- 5.9 As a reflection of the national planning policies and specific guidance for noise generating development, saved UDP policy ENV61 states that new noise generating development will not be permitted if it causes an unacceptable increase in noise levels. Policy DC2 of the UDP is also saved and allows development where it would not cause undue disturbance to nearby residents or conflict with other adjoining uses.
- 5.10 The residents of the surrounding properties are entitled to a reasonable degree of peace and quiet in their homes, particularly in the evening when they can expect to be relaxing. Customers of the hot food takeaway would

likely park in the bays in front of the takeaway and along the road directly in front of the properties on Holburn Crescent into the evening. The cars would then need to reverse and manoeuvre round the cul-de-sac to exit. Officers consider that the comings and goings of vehicles and pedestrians, slamming of car doors and revving of engines to manoeuvre outside of the takeaway in the evening would cause unacceptable harm to the residents' living conditions.

- 5.11 Whilst the applicant contends in their planning statement that two prominent roads are in front of the neighbouring houses, and therefore the area is not completely quiet in the evening, by its nature the comings and goings of pedestrians and cars parking and manoeuvring in the small cul-de-sac immediately in front of the properties would have a greater impact on residential amenity than noise from cars simply passing on Holburn Lane or the B6317.
- 5.12 The harm identified is compounded by the fact the takeaway is in such close proximity to, and attached to, residential properties within the small cul-de-sac, and that these properties have small front gardens therefore the coming and going of customers would take place very close to the front windows of the properties. It is considered that the existing closing time of 20.00 imposed by Appeal Decision APP/H4505/A/09/2111204 is appropriate to prevent this harm and should not be varied. To do so would be contrary to the NPPF, policy CS14 of the CSCUP and DC2 of the UDP.
- 5.13 The applicant states that other takeaways in the area are open later – including Fishnets at 22.00 and The Golden Fry at 21.30. Be that as it may, this does not justify a proposal which is considered to add noise and disturbance to an otherwise quiet area in the evening to the detriment of the living conditions of surrounding residents.
- 5.14 It is also put forward that the Runhead Public House some 90 metres away creates “a lot of local noise well past 8pm and late into the night”. Officers consider that the public house is seen in a different context to the hot food takeaway which lies within the small cul-de-sac immediately adjacent the residential properties. The patrons of the public house do not result in frequent comings and goings immediately in front of any residential property nor do drivers who visit the pub have to reverse or manoeuvre within the tight cul-de-sac thus any harm to residential amenity is not considered to be comparable to that which would be created by extended hours of the hot food takeaway.
- 5.15 HEALTH AND WELLBEING
- 5.16 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.

- 5.17 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.
- 5.18 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.
- 5.19 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.
- 5.20 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 Ryton, Crookhill and Stella Ward which has a year 6 obesity level of 23%. This is significantly higher than the SPD limit and therefore is not an appropriate location to increase access to an unhealthy eating outlet.
- 5.21 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.
- 5.22 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.
- 5.23 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.
- 5.24 OTHER ISSUES
- 5.25 It is acknowledged that the re-opening of the hot food takeaway would have a moderate benefit to the local economy. The applicant proffers that the

opening hours condition is too restrictive and this was the primary cause for the shop's closure in 2013. The applicant believes 17.30 – 20.30 is peak trading time which meant the business lost out in the last half hour because it was shut by then and that at 21.30 the streets remain active, residents are awake and business is fizzling out from 20:30 onwards.

- 5.26 No accompanying evidence has been submitted to verify that but for the imposition of the opening hours condition, the business would still be open nor that the condition has prevented the business from being sold on. In any event it is considered that the modest economic benefit would not outweigh the need to provide a good standard of amenity for nearby residents, this being a fundamental aim of the planning system, or the harm arising from increased access to unhealthy eating outlets.
- 5.27 The applicant further contends that the existing condition imposed by the Inspector is in breach of Circular 11/95: Use of Conditions in Planning Permission.
- 5.28 Circular 11/95 was superseded by the National Planning Practice Guidance in 2012 which reflects paragraph 206 of the NPPF which states 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. When used properly, conditions can enhance the quality of development and enable development proposals to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects of the development. In this instance the opening hours condition was and is considered necessary on the grounds that the hot food takeaway operating outside of the hours specified by the condition would have an unreasonable impact on the amenity of adjoining neighbours and prevent increased access to unhealthy eating outlets.
- 5.29 The NPPF, policy CS14 of the CSUCP and DC2 of the UDP aim to protect residential amenity of neighbouring properties for existing and future users and CS14 also seeks to prevent increased access to unhealthy eating outlets. It is considered the condition enabled the change of use to a hot food takeaway to be acceptable in planning terms and the condition, without modification, meets the six tests for conditions set out in paragraph 206 of the NPPF.
- 5.30 The applicant has also submitted news articles relating to British bed times in their planning statement. These articles are not directly related to the development and are therefore afforded limited weight.
- 5.31 COMMUNITY INFRASTRUCTURE LEVY
- 5.32 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 The proposed variation of the permitted opening hours is considered to be unacceptable following full consideration of national and local policies, the findings of the Planning Inspector who dealt with the previous appeal (including conditions), submissions of third parties, submission by the applicant on the present application and all other material planning considerations the development.
- 6.2 The opening hours condition was originally imposed to mitigate the harm which would otherwise be caused to the residents of the neighbouring properties. Since then the Council has adopted the CSUCP and the Hot Food Takeaway Supplementary Planning Document. Controlling the access to unhealthy eating outlets is a fundamental principle and it is considered that the extension of trading hours is contrary to this. Officers consider that extending the opening hours until 21.30 7 days a week would be contrary to the NPPF, policy CS14 of the CSUCP, DC2 of the UDP and the Hot Food Takeaway Supplementary Planning Document (2015)

7.0 Recommendation:

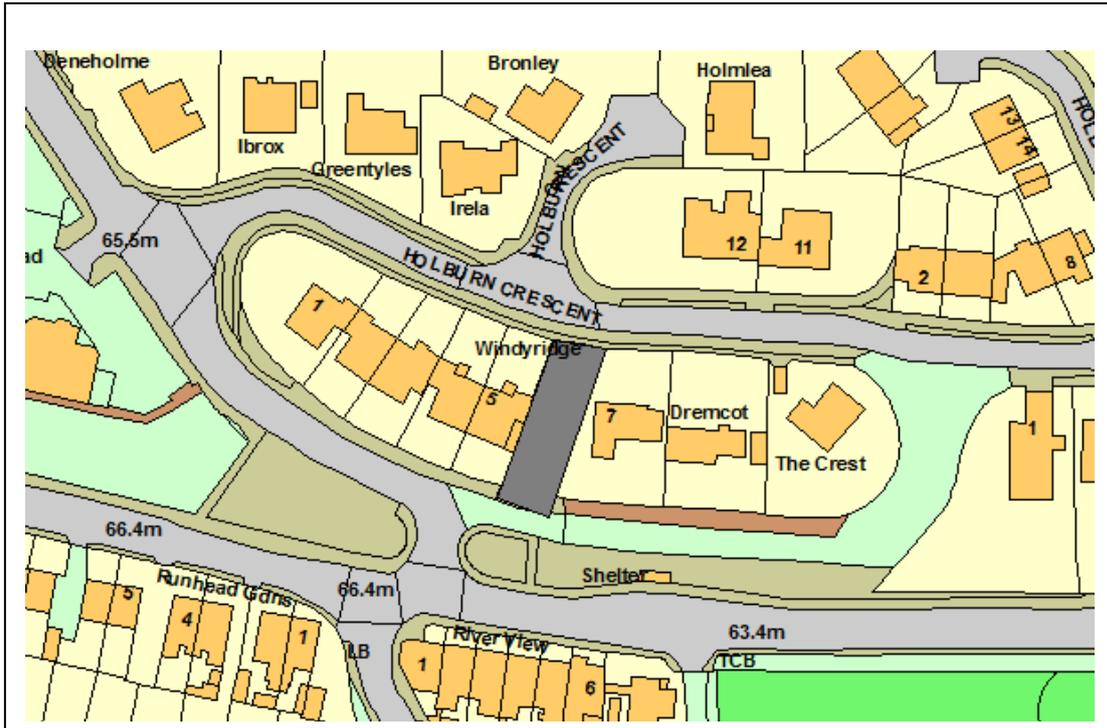
That permission be REFUSED for the following reason(s):

1

The proposed opening hours would have an unacceptable adverse impact on the residential amenity of the occupiers of nearby properties by virtue of the comings and goings of customers generating additional noise, disturbance and traffic manoeuvres. The proposal would therefore be contrary to the aims and objectives of the National Planning Policy Framework (2012), policy CS14 of the NewcastleGateshead Core Strategy and Urban Core Plan (2015) and DC2 of the Unitary Development Plan (saved 2012).

2

The proposed variation of condition would result in extended opening times that would subsequently lead to increased access to an unhealthy eating outlet. The proposal does not satisfy the criteria set out in the Hot Food Takeaway Supplementary Planning Document as the application site is located in an area where the obesity level is much higher than the defined target. Therefore it is considered that the proposal would not support, maintain or improve the health and wellbeing of the local community and as such is contrary to paragraphs 7, 17 and 69 of the National Planning Policy Framework (2012), policy CS14 of the NewcastleGateshead Core Strategy and Urban Core Plan (2015), the Hot Food Takeaway Supplementary Planning Document (2015) and the guidance contained within the National Planning Practice Guidance.



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