

DELEGATED

**AGENDA NO
PLANNING COMMITTEE**

DATE 15 OCTOBER 2008

**REPORT OF CORPORATE DIRECTOR,
DEVELOPMENT AND NEIGHBOURHOOD
SERVICES**

08/2582/VARY

48 Durham Road, Stockton-on-Tees

Application to vary planning approval 06/1138/FUL to allow opening hours of ground floor retail unit to change from 06.00 until 21.30 to 08.00 until 22.00 (Monday to Sunday)

Expiry Date 27 October 2008

SUMMARY

The application site lies on the site of the former Durham Road petrol filling station. The site has recently been redeveloped and comprises of three commercial units on the ground floor. The application site is located to the western unit of the building.

This application seeks to vary to condition no. 12 of application 06/1138/FUL to allow the unit identified as A to change its opening hours from 06.00 until 21.30 to 08.00 until 22.00 (Monday to Sunday for this unit only).

The applicant has confirmed that the opening hours of the other uses shall remain the same.

Having considered the information provided, the previous appeal decision, planning history and statutory consultees' comments, it is considered that on balance the reduction of opening hours in the early morning and the half hour extension late in the evening is unlikely to cause any significant impacts on the amenity of the neighbouring occupiers or highway safety.

Consequently the application is recommended for approval.

RECOMMENDATION

Planning application 08/2582/VARY be Approved with subject to the following conditions

01 The development hereby approved shall be in accordance with the following approved plan(s); unless otherwise agreed in writing with the Local Planning Authority.

02

<i>Plan Reference Number</i>	<i>Date on Plan</i>
<i>SBC0001</i>	<i>1 September 2008</i>

Reason: To define the consent.

02. The retail premises (Use class A1) hereby permitted at No. 48 Durham Road shall not be open for business outside of the following times of 0800 hrs to 2200 hrs.

Reason: To protect the amenity of the nearby residential properties.

INFORMATIVE

The proposal has been considered against the policies below and it is considered that the scheme accords with these policies as the development is considered not be to the detriment of the amenity of the neighbouring properties or highway safety and there are no other material considerations which indicate a decision should be otherwise.

Stockton on Tees Local Plan GP1 General Principles

BACKGROUND

1. The application site has been subject to several applications in the past in April 2004 planning permission was granted on the site for the erection of a two-storey building containing 3 no.. retail units at ground floor with 5 no. flats above (04/0139/FUL).
2. A further application (04/2373/FUL) sought to vary condition 7 of approval 04/0139/FUL to permit revised opening hours and add additional conditions regarding deliveries and security measures. Whilst this was refused by the Local Authority the appeal was allowed. In the considerations of the appeal the planning inspector considered that the proposed development would not cause undue harm early in the morning and restricted opening hours from 6 am – 9.30 pm (Appeal decision attached to Appendices).
3. A subsequent application then sought planning consent for the erection of 2 no. apartment blocks containing 20 no. apartments (05/2188/FUL) and was approved in October 2005.
4. A further application in July 2006 sought planning consent for the erection of a two storey building with 2 no. retail units, 1 no. veterinary surgery and 6 no. apartments with associated parking and services provision (demolition of existing structures) 06/1138/FUL and this is the planning consent which was implemented.
5. At present there is also currently under consideration an application for the installation of a new shop front at the site (08/2750/FUL) which is due for determination under delegated powers by the 29th October 2008.

PROPOSAL

6. This application seeks to vary to condition no. 12 of application 06/1138/FUL to allow the unit identified as A to change the opening hours from 6.00 am until 21.30 to 08.00 until 22.00 (Monday to Sunday for this unit only).
7. The applicant has confirmed that the opening hours of the other units will remain the same.

CONSULTATIONS

8. The following Consultations were notified and the comments received are set out below:-

Urban Design

General Summary

See below.

Highways Comments

We have no objections to this application on highway grounds as the alteration in the times will have no affect on the highway.

Landscape & Visual Comments

No Comments

Built Environment Comments

No Comments

Environmental Health Unit

This application represents a change in opening hours from 06.00 - 21.30 hrs to 08.00 - 22.00 hrs which in effect is a reduction in opening hours and in particular reduces the likelihood of early morning delivery noise. The additional 1/2 Hour on an evening will result in very little additional noise nuisance from the premises itself and is within the Licence hours.

The issues regarding anti- social behaviour outside the premises are matters for comment from the police rather than Environmental Health at Licensing and they had no objection to the application given the conditions put in place on the license.

PUBLICITY

A total of 6 objections have been received from neighbouring residents and any comments received are below (in summary):-

- Will worsen existing noise, litter and disturbance problems
- Will add to Anti Social Behaviour problems
- Development will result in Disturbance of clients of neighbouring business
- Lack of parking facilities
- No need for further off licensee's
- No need for the premises to be opened for extended hours.

PLANNING POLICY

9. The relevant development plan in this case is the adopted Stockton on Tees Local Plan. Where an adopted or approved development plan contains relevant policies, Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that an application for planning permissions shall be determined in accordance with the Development Plan(s) for the area, unless material considerations indicate otherwise. In this case the relevant Development Plans are the Tees Valley Structure Plan (TVSP) and the Stockton on Tees Local Plan (STLP).

10. The following planning policies are considered to be relevant to the consideration of this application:-

Policy GP1

Proposals for development will be assessed in relation to the policies of the Cleveland Structure Plan and the following criteria as appropriate:

- (i) The external appearance of the development and its relationship with the surrounding area;
- (ii) The effect on the amenities of the occupiers of nearby properties;

- (iii) The provision of satisfactory access and parking arrangements;
- (iv) The contribution of existing trees and landscape features;
- (v) The need for a high standard of landscaping;
- (vi) The desire to reduce opportunities for crime;
- (vii) The intention to make development as accessible as possible to everyone;
- (viii) The quality, character and sensitivity of existing landscapes and buildings;
- (ix) The effect upon wildlife habitats;
- (x) The effect upon the public rights of way network.

SITE AND SURROUNDINGS

11. The application site lies on the site of the former Durham Road petrol filling station. The site has recently been redeveloped and comprises of three commercial units on the ground floor. The application site is the western unit of the building.
12. A small commercial unit is situated to the west of the site with further commercial premises (car sales and garden centre) to the east. Residential properties in the form of traditional terraces are located opposite the site with Lustrum beck to the north.

MATERIAL PLANNING CONSIDERATIONS

- 13 Given this application proposes no external changes to the existing building, the main planning considerations of this planning application are the impacts on planning policy, the amenity of the neighbouring properties and access and highway safety and the planning appeal (04/2373/FUL) sought to vary condition 7 of approval 04/0139/FUL to permit revised opening hours.

Principle of development;

- 14 Given that the application site has previously been granted planning consent for A1, A2 and D1 uses with opening hours of 6 am – 9.40 pm. The principle of development is therefore considered to remain acceptable subject to policy GP1 of the adopted Local Plan.

Amenity of the neighbouring premises;

- 15 Whilst there are concerns over the possible impacts of noise and disturbance to the neighbouring properties, caused by the proposed retail unit, the application will reduce early morning activity and seeks only a half hour extension in the late evening.
- 16 Whilst the a previous appeal decision in 2004(Appeal reference: H0738/A/04/1166223) limited opening hours to 6 am – 9.30 pm, this is only for one units of the site (no. 48 Durham Road) It is noted that the Council's Environmental Health Unit have no objections to the scheme and on balance it is considered that the increase in opening time for 9.30 pm to 10 pm is unlikely to cause any significant noise or disturbance to justify a refusal of the application.
- 17 Many of the objectors have raised concerns in relation to an off-license being opened and the anti-social behaviour that may arise from this situation. Whether or not the premises sells tobacco, beers, wines and spirits the use class will remain as A1 (retail) and the sale of such products is a matter for the Council's licensing committee.
- 18 On balance therefore the proposal to alter the existing opening hours of No. 48 Durham Road, is considered not to have a detrimental impact on the amenity of the neighbouring occupiers so as to justify a refusal of the application.

Access and highway safety;

- 19 The Council's Highways officers have considered the information provided in support of the application and do not consider that the proposal for the alteration in the opening times will have any significant affect on the highway.
- 20 Concerns have been raised from local residents in relation to the development exacerbating existing parking problems in the area. Member must however be aware that the proposed use of the unit remains within the A1 use classification approved under application 06/1138/FUL and therefore there is neither any requirement/justification for additional parking as part of this application.
- 21 Given the above the proposed development is not considered to result in any significant highway or pedestrian safety implications and is considered to accord with policy GP1 in this respect.

Planning Appeal

- 22 The Planning Inspector considered the main issue of the appeal was whether the disputed condition was necessary to protect the living conditions of nearby residents with particular regard to noise and disturbance. With regard to early morning opening the Inspector found that Durham Road is one of the main approaches in to Stockton and in view of the other industrial uses nearby such as the delivery and sorting office it seemed to her that there would be a considerable degree of activity in the surrounding area at 6 am and the noise associated with the unit would not be unduly in excess of general background noise levels.
- 23 With regard to late evenings opening the two main areas of concern were anti-social behaviour and noise and disturbance from customers coming and going. While the Inspector recognised the very real basis for local concerns of anti-social behaviour she considered extended evening opening hours would not materially worsen problems relating to anti-social behaviour in the surrounding area.
- 24 The Planning Inspector went onto comment that other convenience store operators in the area do not open late evening and would not give rise to a commercial disadvantage and pointed to lower levels of activity and background noise levels later in the evening.
- 25 Activity relating to customers comings and goings would be concentrated around the front of the unit. The Planning Inspector considered that residents living directly opposite would be likely to find noise such as engines revving or car doors slamming extremely intrusive at a time when they could reasonably expect some peace and quiet. Late evening opening would in the inspector's view cause an unacceptable degree of noise and disturbance to residents.
- 26 This proposal relates to increasing the late evening opening by half an hour and in the opinion of the Environmental Health Manager The additional 1/2 Hour on an evening will result in very little additional noise nuisance from the premises itself and is within the Licence hours. The issues regarding anti- social behaviour outside the premises are matters for comment from the police rather than Environmental Health at Licensing and they had no objection to the application given the conditions put in place on the license. On the basis of these comments it is considered that the Planning Inspector's concerns were unfounded and the proposed change in hours is considered acceptable.

CONCLUSION

22. Having considered the information provided, the previous appeal decision, planning history and statutory consultees' comments, it is considered that on balance the reduction of opening hours in the early morning and the half hour extension late in the evening is unlikely to cause any significant impacts on the amenity of the neighbouring occupiers or highway safety. The

proposal is therefore on balance considered to accord with policy GP1 of the Local Plan. Consequently the application is recommended for approval subject to the conditions set out in this report.

Financial Implications.

None

Environmental Implications.

As report.

Community Safety Implications.

As report

Human Rights Implications.

The provisions of the European Convention of Human Rights 1950 have been taken into account in the preparation of this report.

Background Papers.

Stockton on Tees Local Plan

Tees Valley Structure Plan

Planning Policy Statement 1

Planning Applications 04/0139/FUL, 04/2373/FUL, 05/2188/FUL, 06/1138/FUL & 08/2750/FUL

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WARD AND WARD COUNCILLORS

Ward

Newtown

Ward Councillors

Councillor P.W.Baker and Councillor R Gibson