

**DELEGATED**

**AGENDA NO  
PLANNING COMMITTEE**

**25 NOVEMBER 2015**

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

**15/2132/VARY**

**Unit 5, Bassleton Court, Newton Drive**

**Section 73 application to vary condition no.3 (Operating Hours) of planning approval 91/2126/P- (Change of use from retail shop to hot food takeaway) to amend the opening hours/days to be Monday to Sunday 0800-2300.**

**Expiry Date 25 November 2015**

**SUMMARY**

This application seeks to vary the hours/days of operation of the previously approved Hot Food Takeaway at Unit 5 Bassleton Court, Newton Drive Thornaby.

The planning approval for the hot food takeaway was granted by a Planning Appeal in 1992 for a change of use from A1 Retail to an A5 Hot Food Takeaway (91/2126/P) and as part of the decision the hours/days of the use were conditioned to 08:00 - 21:00 Monday to Saturday. The application seeks to extend those opening hours to 08:00 – 23:00 and the proposal also seeks to include opening on Sundays to the same time.

The Highways Transport and Environment Manager has no objection to the proposal in terms of highway safety, vehicular traffic and car parking. The Environmental Health Officers have no objections to the revised hours/days having regard to existing background noise levels.

Following the neighbour consultation and the display of a site notice there have been 14 letters of objection received. These objections principally relate to concerns including the following matters: noise and disturbance; litter; increased traffic and associated noise; odour; need for the facility and issues around anti-social behaviour/crime.

In view of the material planning considerations and the level of activity which is already present within the surrounding area, the revision to the proposed variation of hours is considered not to have an unacceptable adverse impact on residential amenity due to the existing background noise levels and would accord with the general principles of the National Planning Policy Framework and the Development Plan in all other regards.

**RECOMMENDATION**

***That planning application 15/2132/VARY be approved subject to the following conditions and informative:***

- Hours of operation –Hot Food Takeaway:**  
01 The premises shall not be open for customers outside the following hours 08:00 – 23:00 Monday to Sunday

*Reason: To prevent noise and disturbance in the interests of the amenity of the neighbouring occupiers.*

- Delivery Times:**  
02 No deliveries shall be made to the Hot Food Takeaway outside the hours of 08:00 – 23:00 Monday to Sunday.

*Reason: To prevent noise and disturbance in the interests of the amenity of the neighbouring occupiers.*

- Variation of hours only;**  
03 This approval relates solely to this application for the variation of opening hours (Condition 03) and does not in any way discharge the conditions contained in Planning Approval reference 91/2126/P decision dated 02 April 1992, which conditions apply to this consent.

*Reason: For the avoidance of doubt.*

## **INFORMATIVE OF REASON FOR PLANNING APPROVAL**

### **Informative: Working Practices**

*The Local Planning Authority found the submitted details satisfactory subject to the imposition of appropriate planning conditions and has worked in a positive and proactive manner in dealing with the planning application.*

## **BACKGROUND**

1. The application site has been subject to a number of planning applications, which include the following;

- W1086/71** Erection of Public House and Shopping Precinct  
Approved 6 September 1971  
Conditions relate to materials, boundary wall and landscaping.
- W48/72** Erection of Public House and Shopping Centre  
Approved 31 January 1972  
Conditions relate to Materials, Boundary Wall, Landscaping, retail unit restrictions.
- 91/2126/P** Change of use from Retail shop to Hot Food Takeaway  
Refused 3 January and approved on appeal 2nd April 1992
- 91/0339/P** Erection of 4 Semi-detached bungalows and detached garages.  
Refused 2nd August 1991 and dismissed on appeal.
- 94/1774/P** Variation of condition 3 (Opening hours (91/2126/P))  
Refused and dismissed on appeal.

## **SITE AND SURROUNDINGS**

2. The application site relates to the existing hot food takeaway at Unit 5 Bassleton Court, Newton Drive, Thornaby. The hot food takeaway is the end unit (north) of a small parade of three separate operational units. Attached to the hot food takeaway to the south is a retail unit (Unit 2 and 4) and attached beyond that is The Griffin Public House and beer garden, which is at a right angle to the south-west of the application site. To the north of the application site is a large car parking area that serves the parade and beyond that is the side elevation of 22 Newton Drive and the rear garden of 11 Kintyre Drive. To the front of the application site (west) is an area of pedestrian hard standing and a grassed area, and beyond that is the road of Newton Drive with the properties of 1, 3, 5 and 7 Newton Drive and the side elevations of 17 and 20 Rudston Close. To the east of the application site is the rear of the precinct units with an approximate 2 metre high wall with the gardens and properties of 3, 5 and 7 Kintyre Drive beyond.

## **PROPOSAL**

3. This application seeks to vary the hours/days of operation of the previously approved hot food takeaway, under a section 73 application, which was granted on appeal (91/2126/P). The opening hours proposed are to be from 0800 – 23:00 with the proposal also seeking to include Sunday opening between 0900 - 23:00. The current hours of operation are between 08:00-21:00 Monday to Saturday.

## **CONSULTATIONS**

The following Consultations were notified and any comments received are set out below:-

4. **Highways Transport and Environment Manager** – Concerns have been raised regarding the junction of Newton Drive/Bader Avenue, however there have been no recorded injury accidents in the vicinity in the 5 years to August 2015. Visibility of at least 2.4m x 43m is available at the junction, as required for a 30mph limit. There are no highway objections.
5. **Environmental Health Unit** – The premise is situated on an existing commercial parade consisting of a retail grocery unit and a Public House. The retail unit is licensed to close at 23:00hrs; and the Public House is licensed to close at 00:30hrs. It is recommended that takeaway premises in the vicinity of a public house close either earlier or at the same time to help with dispersal of customers and noise issues, which this application adheres to. The nearest residential premises is situated to the rear of the unit behind the service yard approximately 30 meters away. There have been no recent noise investigations regarding any of these commercial units. Given the current factors, Environmental Health are of the opinion that the proposed increase in the opening hours and the addition of Sunday opening will not have a significant impact upon existing noise levels and therefore have no grounds for objection to this variation.
6. **Community Liaison Officer**- I have checked Police records for the past 12 months at this location, which has revealed no reports of anti-social behaviour I have not received and further information from the local Police Team as yet with regard any problems in relation to their knowledge of any anti-social behaviour in this location.  
In general Hot food take-away premises have the potential to increase incidents of anti-social behaviour. If the application is granted I would recommend that CCTV is installed at the premises which as a minimum covers entrances, shop frontage and serving area to help deter incidents of anti-social behaviour and provide evidence for Police if anti-social behaviour occurs.

## **PUBLICITY**

7. 14 objections have been received to the proposal which was advertised by site notice and letters to neighbouring residents. A list of the objectors and issues identified are set out below (in summary).
8. The full details of the objections can be viewed online at the following web address <http://www.developmentmanagement.stockton.gov.uk/online-applications/>

## **List of Objectors**

- 1 Mr and Mrs Wheatley, 5 Newton Drive
- 2 Mr Luke Frost, 37 Diamond Road
- 3 Lisa Cuthbert, 26 Bader Avenue
- 4 Barry Hetherington, 45 Bader Avenue
- 5 Maureen Hetherington, 45 Bader Avenue
- 6 Paul Little 53 Bader Avenue
- 7 Terry Little, 53 Bader Avenue
- 8 Glenis Beevers 17 Rudston Close
- 9 Mr G.R Neilson and Mrs D Neilson, 20 Rudston Close
- 10 Carol Wilkinson, 5 Kintyre Drive
- 11 Mr and Mrs Wilkes, 7 Kintyre Drive
- 12 Christopher and Pamela Norman, 9 Kintyre Drive
- 13 John Whiteside, 11 Kintyre Drive
- 14 Craig Hetherington, 49 Carlton Drive

- Noise, disturbance and litter issues
- Increased traffic noise and music from cars
- Odour from the pizzeria and the building being unsuitable
- Questioning the need for an additional pizza shop
- Sufficient existing takeaways to meet demand
- The hot food takeaway contributing towards obesity
- The development not being suitable for the residential area
- Groups of people congregating around the takeaway
- An increase in anti-social behaviour/crime
- Highway Safety issues from Newton Drive/Bader Avenue
- Ongoing works to flue system
- The possibility of patrons of the Public House using the Pizzeria and extending the time beyond the proposal
- The extent of the consultation being insufficient.

## **PLANNING POLICY**

9. 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 Plan is the Core Strategy Development Plan Document and saved policies of the Stockton on Tees Local Plan. Section 143 of the Localism Act came into force on the 15 Jan 2012 and requires the Local Planning Authority to take local finance considerations into account, this section s70(2) Town and Country Planning Act 1990 as amended requires in dealing with such an

application [planning application] the authority shall have regard to a) the provisions of the development plan, so far as material to the application, b) any local finance considerations, so far as material to the application and c) any other material considerations.

### **National Planning Policy Framework**

10. Paragraph 14: At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking. For decision-taking this means approving development proposals that accord with the development without delay; and where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or specific policies in this Framework indicate development should be restricted.

### **Local Planning Policy**

11. The following planning policies are considered to be relevant to the consideration of this application.

### **Core Strategy Policy 2 (CS2) - Sustainable Transport and Travel**

3. The number of parking spaces provided in new developments will be in accordance with standards set out in the Tees Valley Highway Design Guide.  
Further guidance will be set out in a new Supplementary Planning Document.

### **Saved Policy S14 of Alteration No 1 of the adopted Stockton on Tees Local Plan**

12. Proposals for Use Class A3, A4 and A5 'Food and Drink' development will be permitted in the defined retail Centres listed in Policy S1, where the proposal is in accordance with the following retail locational policies:-

- 1) Within the Defined Stockton Town Centre, subject to Policies S4, S5 and S6;
- 2) Within the defined District Centres except Yarm, subject to Policy S7;.
- 3) Within the defined Yarm District Centre, subject to Policies S8;
- 4) Within the defined Local and Neighbourhood Centres, subject to Policies S10;
- 5) Outside of the defined retail Centres, proposals for A3, A4 and A5 uses will only be permitted if there are no suitable units available within the defined Centres, or there are justified exceptional circumstances that necessitate such a location.

Proposals for all Use Class A3, A4 and A5 uses will be considered against the following criteria:-

- i) the level of traffic generated and the provision of parking facilities, both in terms of highway engineering considerations and the general amenity of the area;
- ii) any adverse impact of proposals on residential amenity in terms of smell, noise, litter fumes and disturbance;
- iii) the provision of adequate and effective fume extraction and filtration equipment;
- iv) the provision of facilities for litter within and adjoining the premises;
- v) the secure provision for trade waste, stored in an out of sight location;
- vi) where appropriate, conditions limiting the late night opening may be applied.

## **MATERIAL PLANNING CONSIDERATIONS**

13. Given that this application seeks a variation to the opening hours of an established use, the main Planning considerations of this application relate to the impacts on the amenity of the neighbouring residential properties and highway safety considerations.

### **Amenity of Neighbouring Residential Properties**

14. With reference to the National Planning Policy Framework, paragraph 17 seeks to protect residential amenity while Paragraph 123 states that planning decisions should avoid significant levels of noise from new developments from adversely impacts on health and quality of life.
15. The application site relates to an established commercial premise within a neighbourhood centre that benefits from planning permission to operate until 21:00 hours Monday to Saturday. The immediate area is characterised by residential properties surrounding three commercial units; a Public House – ‘The Griffin’, a retail unit ‘Sainsbury’s’ and the Hot Food Takeaway. The nearest residential property to the hot food takeaway is to the rear (east), and is at a distance of approximately 30 metres from the building. The nearest properties to the front on Newton Drive (west) are at a distance of approximately 40 metres and the nearest properties to the north are separated by the large car park serving the commercial units and are at a distance of approximately 47 metres from the hot food takeaway building.
16. The original Planning consent for the erection of the Public House and Shopping Centre (W48/72) did not control the hours of use through planning conditions while the takeaway is controlled as a result of a planning condition arising from the change of use application. However, the Public House and the retail unit are controlled by licencing legislation. The retail unit is licenced to open until 23:00 and the Public House is licensed to be open until 00:30 Monday to Sunday. It is acknowledged that the neighbouring retail unit currently does not utilise the hours permitted by the Licencing legislation and closes at 22:00 Monday to Sunday, however there is nothing to prevent it opening until 23.00. The Public House also currently varies the hours of use within the licencing restrictions with later opening times closing between 00:00 - 00:30 Fridays and Saturdays and 23:30 on Wednesdays and Sundays with a 23:00 close Mondays, Tuesdays and Thursdays but again there is nothing to prevent it opening until 00.30.
17. The Council's Environmental Health Unit have commented that it is recommended that takeaway premises within the vicinity of a public house close either earlier or at the same time to help with dispersal of customers and noise issues and have no objections to this proposal as a result. Whilst under the current circumstance the retail unit and Public House does not utilise the full hours of use, it would still close either later than the Hot Food Takeaway or at the same time and would not therefore lead to an extended period of dispersal of customers and noise beyond the current situation and it is not expected that of any noise generated from vehicles utilising the associated car parking would be significantly worse given the level of activity which currently exists.
18. Given the above and the separation distances to the neighbouring properties and subject to the requisite planning conditions, it is considered that on balance the scheme would not result in a significant adverse impact on the amenity of existing and future occupiers of the surrounding neighbouring properties in terms of noise disturbance. The proposal is therefore considered to satisfy the provisions of the NPPF and Saved Policy S14 criteria: i)-vi) of Alteration No 1 of the adopted Stockton on Tees Local Plan in this respect.

## **Highway Related Matters**

19. Although an objection has been received relating to Highway Safety issues at the junction of Newton Drive and Bader Avenue, the Highways Transport and Environment Manager has considered the application and raises no highway objections to the proposal.

## **Residual Matters**

20. Objections have been received relating to litter generated from the increased use of the unit. It is considered that the proposed extension to the use would not lead to a significant change over above the existing situation in terms of issues relating to litter. There is an existing litter bin to the front of the shopping precinct to dispose of any litter generated and matters relating to litter can be dealt with outside of planning control.

21. Objections have been received relating to the suitability of the use in proximity to the residential area, the suitability of the building to accommodate the use and the odour generated from the unit. However, the premise already has an established A5 use and this aspect including the odour control cannot be revisited as part of this application. An objection has also cited on-going works to the flue system and this is currently being investigated separate to this planning application.

22. Concerns have been raised from a number of local residents with regard to potential anti-social behaviour generated by the increase in hours with the site being an area where individuals could congregate. Section 17 of the Crime and Disorder Act 1998 places a duty on the authority to consider the crime and disorder implications of the proposal. Whilst there is no evidence to link such issues to the proposed use, any potential problems arising from this behaviour can be dealt with by other methods such as the police service or community enforcement section and would not be a reason to warrant refusal of the application for the extended opening hours. The Community Liaison Officer has been consulted and has raised no objections to the proposal, but does recommend that CCTV is installed. The use of CCTV is a matter for licencing and not something to be controlled through Planning Legislation.

23. An objection received cited that the extent of the consultation was not sufficient for the amount of people that would be affected by the proposal. As part of the application process, a site visit was carried out by the case officer and an assessment of the level of consultation was undertaken. This resulted in the display of a site notice and this is together with the letters to nearby residents is considered to be appropriate publicity for an application of this nature.

## **CONCLUSION**

24. In view of the above considerations, it is considered that the proposal would not lead to a significant adverse loss of amenity for the neighbouring adjacent properties, in terms of noise disturbance. It is considered that the proposal is in general accordance with the relevant Development Plan policy identified above and it is recommended that the application be approved with conditions for the reasons specified above

**Corporate Director of Development and Neighbourhood Services**  
**Contact Officer Mr Kieran Campbell Telephone No 01642 528551**

## **WARD AND WARD COUNCILLORS**

**Ward**                      **Village**

**Ward Councillor(s)**   **Councillor Ian Dalgarno**

**Ward Councillor(s) Councillor Mick Moore**

## **IMPLICATIONS**

### **Financial Implications:**

As Report

### **Environmental 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.

### **Community Safety Implications:**

The provisions of Section 17 of the Crime and Disorder Act 1998 have been taken into account in the preparation of this report

### **Background Papers**

The Town and Country Planning Act 1990.

National Planning Policy Framework

Stockton on Tees Local Plan Adopted Version June 1997

Core Strategy Development Plan Document March 2010

Supplementary Planning Document 3: Parking Provision for New Developments (2011)