

DELEGATED

**AGENDA NO
PLANNING COMMITTEE**

15 JUNE 2016

**REPORT OF DIRECTOR,
ECONOMIC GROWTH AND DEVELOPMENT
SERVICES**

16/0852/VARY

10 Clifton Avenue, Billingham, TS22 5DE

Section 73 application to vary condition 3 (opening hours) of planning approval 00/0568/P to allow the hot food takeaway to open on Sundays and Bank Holidays between 12:00 and 23:00 hrs.

Expiry Date 17 June 2016

SUMMARY

This application seeks to vary the days/hours of operation of the previously approved Hot Food Takeaway unit at 10 Clifton Avenue in Billingham.

The planning approval for the hot food takeaway was granted by a Planning Appeal on 15 November 2000 for a change of use from A1 Retail to an A5 Hot Food Takeaway (00/0568/P) and as part of the decision the hours/days of the use were conditioned to 10:00 - 23:00 Monday to Saturday with no operating hours on Sundays and Bank Holidays. The application seeks to extend those opening hours/days to 12:00 –23:00 on Sundays and Bank Holidays.

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 Unit have no objections to the extended days/hours having regard to existing background noise levels.

Following the neighbour consultation and the display of a site notice there have been 6 letters of objection and 1 letter of support received. These objections principally relate to concerns including the following matters: noise and disturbance; litter; increased traffic; odour; 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 days/hours is considered not to have an unacceptable adverse impact on residential amenity 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 16/0852/VARY be approved subject to the following conditions and informative:

01 *The development hereby approved shall be in accordance with the following approved plan(s);*

<i>Plan Reference Number</i>	<i>Date on Plan</i>
<i>SBC0001A</i>	<i>4 May 2016</i>

Reason: To define the consent.

02 Hours of operation –Hot Food Takeaway;

The premises shall not be open customers and no customer shall be permitted to be on the premises outside the hours of 08:00 –23:00hrs Monday to Saturday and 12:00 and 23:00hrs on Sundays and Bank Holidays.

Reason: To prevent noise and disturbance in the interests of the amenity of the neighbouring occupiers in accordance with the guidance of the National Planning Policy Framework.

03 Variation of hours only;

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 00/0568/P dated 15 November 2000, 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;

00/0568/P	Change of use from retail (A1) to Hot Food Takeaway (A3) Refused and Granted on Appeal 15 November 2000
01/1276/P	Application for the variation of condition 3 of 00/0568/P to allow premises to open until 00:00 Monday to Sunday. Refused and Dismissed on Appeal 10 January 2002
03/0261/P	Application to vary condition 3 of 00/0568/P to allow premises to operate 10:00 – 23:00 (last customers) 11.15PM (Closed) Monday-Saturday & 16:00 - 22.30 on Sundays & Bank Holidays. Refused and Dismissed on Appeal.
10/0881/VARY	Application to vary condition 3 (operating time/days) of 00/0568/P (change of use from retail (A1) to hot food takeaway (A3) Application Refused.

SITE AND SURROUNDINGS

2. The application site is located at 10 Clifton Avenue which is a commercial unit within the

neighbourhood shopping centre of Wolviston Court in Billingham. The unit operates as a pizza hot food takeaway. The adjacent commercial units and public house form an 'L' shaped form of development fronting onto a car park serving the parade. To the west lies Clifton Avenue with the Rectory and St Mary Magdalene Church beyond. To the north, separated from the shopping centre by its own car park is the Wolviston Court Community Centre. The residential properties of Barton Crescent are located to the north-east and to the north-west are the residential properties of Burniston Drive and Clifton Avenue. Beyond the Car Park and Public House to the south is Whitehouse Road and the properties of 87 to 99 Whitehouse Road.

PROPOSAL

3. This application seeks the variation of condition no.3 of the previously approved hot food takeaway unit under a section 73 application, which was granted on appeal (00/0568/P). Condition no. 3 restricts the opening hours to between 10:00 and 23:00 Monday to Saturday and prohibits opening on Sundays and Bank Holidays. This application seeks to allow the premises to open for trade on Sundays and Bank Holidays between the hours of 12:00 and 23:00. Trading hours Monday to Saturday would remain unchanged.

CONSULTATIONS

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

Ward Councillor Chris Clough

I wish to object to this planning application. Increasing the opening hours will potentially lead to increased anti-social behaviour and noise nuisance. The premises are located in a small parade of shops which has generated a litter problem over the years. SBC has installed litter bins and clears them free of charge to all of these shops as previous landlords made no attempt to keep the area tidy and free from litter. The landlord makes no financial contribution to this. Any increase in litter generated by extended hours will increase costs to SBC.

Highways Transport and Environment Team

General Summary

Highways, Transport & Environment raise no objections.

Highways Comments

There are no highway objections to this variation.

Environmental Health Unit

The premise is situated on an existing commercial parade. The retail unit within the parade is licensed to close at 23:00 hours and the Public House is licensed to close at 23:30 hours, Monday to Thursday with 00:30 closing times on Fridays, Saturdays and Sundays. 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 and Bank Holiday opening hours would not have a significant

impact upon existing noise levels and therefore have no grounds for objection to this variation.

Community Liaison Officer

In relation to this application, I have checked incidents reported to Police in the area for the past 12 months and spoke to the Neighbourhood Police team who Police the location. Police have had no significant problems of anti-social behaviour at this location. What tends to happen is that kids have tended to migrate from area to area but no specific problems have been linked to this premise in relation to anti-social behaviour.

Therefore Police do not have any grounds to object to this variation and do not feel that the proposed additional opening times will have a significant impact on anti-social behaviour.

PUBLICITY

5. 6 objections and 1 letter of support to the proposal have been received 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).
6. 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 Ward Councillor Chris Clough
- 2 Mr Ian Austin, 22 Burniston Drive
- 3 J B Graham, 79 Grosvenor Road
- 4 Mr And Mrs Womphrey, 97 Whitehouse Road
- 5 Professor & Mrs Anderson, 12 Burniston Drive
- 6 Mrs M Sharples 86 Whitehouse Road

- Increase in Noise, disturbance and litter related issues
- Odour and Environmental Impact of Takeaway
- Increase in Traffic and Car Parking issues
- An increase in anti-social behaviour/crime

One letter of support was received from P M Napthine of 101 Whitehouse Road.

PLANNING POLICY

7. 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

8. 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

9. 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

10. 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

11. 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

12. With reference to the site history, there have been two previous planning appeals dismissed for extension of hours in 2001 and 2003 (01276/P & 03/0261/P). A further planning application was refused for an extension of hours in 2010 that was not appealed (10/0881/VARY). The 2001 application sought to extend the hours of use beyond the existing neighbouring commercial units to 00:00 hours (midnight) and the appeal was dismissed as the Inspector concluded 'that after 2300 hours it is reasonable for residents in a suburban area to expect their environment to be quiet.' The 2003 application sought to open on Sundays and Bank Holidays until 22.30 hours which was consistent with operating hours of the Public House at the time and the Inspector dismissed the appeal commenting 'In my opinion, the takeaway generates noise and disturbance in its own right over and above that associated with the Public House and food store.' In 2010 a Planning application sought to operate on Sundays and Bank Holidays until 23:00 hours, consistent with the Food Store and Public House and was refused on the grounds of noise and disturbance citing the Inspectors 2003 decision. It is noted that Environmental Health Unit did not object to the 2010 application.
13. In 2013, the unit of 2 Clifton Avenue located to the west at the end of the parade was refused permission for a change of use from a Butcher's shop to a Hot Food Takeaway (13/2653/COU) but granted on appeal. The opening hours were controlled by the Inspector to 23:00 Mondays to Saturdays with no opening on Sundays.
14. Between the application site and 2 Clifton Avenue is Yum Yum's Chinese Hot food Takeaway, which although operates to 22:00 on Fridays and Saturdays with Sunday opening until 21:30, the units opening hours are not controlled by any planning restrictions and can operate up until 23:00 under Licensing Monday to Sunday.
15. The NPPF seeks to strike a balance between protecting residential amenity and allowing businesses to grow. Paragraph 123 states that planning decisions should avoid significant levels of noise from new developments from adversely impacting on health and quality of life whilst Paragraph 21 of the NPPF also seeks to "*support existing business sectors, taking account of whether they are expanding or contracting; be flexible enough to accommodate needs not anticipated in the plan and to allow a rapid response to changes in economic circumstances*"
16. The application site relates to an established commercial premise within a neighbourhood centre that benefits from planning permission to operate from 10:00 until 23:00 hours Monday to Saturday with no operational hours on Sundays and Bank Holidays. The immediate area is characterised by a Public House – 'The Whitehouse', a retail unit 'Sainsbury's' the Hot Food Takeaway subject of the application, a salon, a barbers, a Chinese Takeaway, a Fish and Chip Shop and a Café. Residential properties surround the commercial units, the nearest one being to the rear (north-east), and is at a distance of approximately 30 metres. The nearest properties to the front (west) are at a distance of approximately 35 metres and the nearest properties to the south are approximately 65m away, all being beyond the car park which serves the commercial parade.
15. The adjacent retail unit to the east (Sainsbury's) operates until 23:00hrs Monday to Sunday. The Public House also operates until 23:00hrs Monday to Thursday and Sundays with 00:00hrs (midnight) on Friday's and Saturdays. Whilst the neighbouring Hot Food Takeaway unit only operates until 22:00hrs on Fridays and Saturdays and closes on Sundays at 21:30hrs, the unit could operate up until 23:00hrs 7 days a week.
16. 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.

17. It is considered that the proposal would not therefore lead to an extended period of dispersal of customers in the general area and noise beyond the times which the existing public house and shop result in. Furthermore, it is not expected that noise generated from vehicles utilising the associated car parking would be significantly worse given the level of activity which currently exists.
18. Whilst consideration is given to the Inspectors comments within the 2003 appeal decision, regard has to be given to how the parade currently operates and could operate. The adjacent takeaway unit to could open until 23:00, the attached retail unit to the east operates until 23:00 and the Public House immediately to the south-east closes at the earliest time of 23:00.
19. It is acknowledged that the planning inspector's decision at 2 Clifton Avenue (13/2653/COU) excludes the Sunday operation, however having carefully considered the location of the application site within the corner of the parade and given the separation distances between the application site and the nearest residential properties and given the professional guidance of the Environmental Health unit, it is considered that there is no evidence which demonstrates that the extension of the operation of the takeaway unit on Sundays and Bank Holidays to 23:00 would be likely to result in a significant increase in the level of activity and noise which would impact on the surrounding residential properties to justify the prevention of Sunday and Bank Holiday opening.
20. Given the above considerations 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

21. Although neighbour objections have been received relating to the car parking provision and the suitability of the service access at the site, the Highways Transport and Environment Manager has considered the application and the proposal is considered not to significantly affect the existing car parking and service yard arrangements and raises no highway objections and is considered acceptable in terms of Highway Safety.

Residual Matters

22. 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 are 4 existing litter bins 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.
23. Objections have been received relating to the odour and environmental impact 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.
24. 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.

CONCLUSION

25. It is considered that the proposal will provide economic and social benefits and by the imposition of conditions will reasonably protect the amenity of the surrounding area to a level suited to this area given its function as a parade of commercial units intended to serve the local area and will not result in a significant adverse impact on the amenity of existing and future occupiers of the surrounding residential properties. The proposal is therefore considered to satisfy the provisions of the National Planning Policy Framework and be in accordance with the Development Plan when taken as a whole. It is recommended that planning permission be granted with conditions for the reasons specified above.

Director of Economic Growth and Development Services
Contact Officer Mr Kieran Campbell Telephone No 01642 528551

WARD AND WARD COUNCILLORS

Ward **Billingham West**

Ward Councillors **Councillor Helen Atkinson**

Ward Councillors **Councillor Chris Clough**

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) SPD8 – Affordable Housing

