

**DARLINGTON BOROUGH COUNCIL**

**APPEAL AGAINST REFUSAL OF PLANNING PERMISSION**

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**APPLICATION REF. NO:** 23/01224/FUL

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**LOCATION:** 55 Neasham Road, Darlington

**DESCRIPTION:** Application submitted under Section 73 of the Town and Country Planning Act 1990 for the variation of Condition 2 (opening hours) attached to planning permission 20/00963/FUL (Change of use from off-licence (Use Class E) to a hot food takeaway (Sui Generis) with installation of extraction equipment including external flue to north elevation) dated 18 February 2021 to permit a change in opening hours from 11am - 9pm Monday to Sunday to 11am - 10pm Monday to Sunday (Amended Description)

**APPLICANT:** Mr Abobaker Omar

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**PLANNING OFFICER: CHRISTINA MCALPINE**

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**REASON(S) FOR REFUSAL:**

*In the opinion of the Local Planning Authority, the proposed variation of condition 2, by virtue of extending the operating hours, would increase the noise and disturbance levels to the detriment of residential amenity. This extension of operating hours and close proximity to nearby residential dwellings would harmfully affect the levels of residential amenity that are currently and could reasonably be expected to be enjoyed, contrary to Local Policy DC4 of the Darlington Local Plan and the National Planning Policy Framework.*

**BRIEF SUMMARY:**

- The application sought to vary the existing hours of operation from a closing time of 9pm to 10pm, Monday to Sunday.
- This variation was refused due to amenity impacts via noise and disturbance to residential amenity.
- The inspector dismissed the appeal on planning procedural grounds; as the hours of operation were specifically mentioned within the description (that the business would close at 9pm), the variation could not be considered as it would amend the original description.
- The hours mentioned in the original description were in brackets, to notify neighbours on the original application of what the hours had been changed. This method is how neighbours are notified of any changes within a planning application. This is to be discussed within the planning team as to whether the process of neighbour consultation should be amended i.e. to include the nature of the change within the main body of the letter sent to neighbours, rather than within the main description.

**KEY POINTS TO NOTE:**

The appeal was dismissed because the planning merits could not be considered.