

**DARLINGTON BOROUGH COUNCIL**  
**PLANNING APPLICATIONS COMMITTEE**

**COMMITTEE DATE: 20 February 2019**

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**APPLICATION REF. NO:** 19/00002/FUL

**STATUTORY DECISION DATE:** 28 February 2019

**WARD/PARISH:** PARK EAST

**LOCATION:** 15 Belvedere Road

**DESCRIPTION:** Variation of condition 7 (Opening Hours) of planning permission 14/00563/FUL allowed on appeal APP/N1350/A/14/2228133 dated 23 January 2015 (Change of use from shop (Use Class A1) to hot food takeaway (A5) and external alterations) to permit change of opening hours from 12.00 - 19.00 on Sundays and Bank Holidays to 11.30 - 21.00 (Revised submission)

**APPLICANT:** MR JESBIR SINGH

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**APPLICATION AND SITE DESCRIPTION**

Planning permission was granted on appeal (APP/N1350/A/14/2228133) in January 2015 for the change of use of a shop to a hot food takeaway, with a number of internal alterations. Condition 7 of that permission restricted the opening hours of the takeaway to 11:30 to 21:00 Mondays to Saturdays and to 12:00 to 19:00 on Sundays and Bank Holidays. This application seeks to vary condition 7 to permit opening hours from 11:30 to 21:00 on Sundays and Bank Holidays to bring the opening hours in line with the approved Monday to Saturday opening hours. No changes are proposed to the opening hours on the remaining days of the week.

The application property is a two-storey end of terraced property located on the corner of Belvedere Road and Leafield Road with a first floor flat above. The surrounding area is predominantly residential in character, with the adjoining property to the south side being a dwelling.

**PLANNING HISTORY**

14/00300/CU – Change of use from shop to hot food takeaway (Use Class A5) and external alterations including new shopfront to front and side, insertion of ground floor side window and extractor flue pipe to side elevation. REFUSED 19 MAY 2014

14/00563/FUL – Change of use from shop (Use Class A1) to hot food takeaway (Use Class A5) and external alterations including new shopfront to front and side, insertion of ground floor side window and extractor flue pipe to side elevation (resubmission).

REFUSED 4 SEPTEMBER 2014 and ALLOWED ON APPEAL  
(APP/N1350/A/14/2228133) 23 JANUARY 2015

16/00387/FUL – Variation of condition 7 (opening hours) of planning permission  
14/00563/FUL allowed on appeal APP/N1350/A/14/2228133 dated 23 January 2015 to  
permit opening hours from 11:30 – 22:30 Monday – Saturdays and 11:30 – 22:00 on  
Sundays and Bank Holidays. REFUSED 7 JULY 2018 and APPEAL  
(APP/N1350/W/16/3166100) DISMISSED 16 MARCH 2017

16/00642/FUL – Installation of extractor flue to the rear. REFUSED 10 AUGUST 2016  
and APPEAL (APP/N1350/W/16/16/3163121) DISMISSED 24 FEBRUARY 2017

18/00718/FUL – Installation of extractor fan and flue with acoustic jacket (retrospective).  
APPROVED 5 OCTOBER 2018

18/00376FUL - Variation of condition 7 (Opening Hours) of planning permission  
14/00563/FUL allowed on appeal APP/N1350/A/14/2228133 dated 23 January 2015  
(Change of use from shop (Use Class A1) to hot food takeaway (A5) and external  
alterations) to permit opening hours from 11.30 - 22.00 Friday and Saturday and 12.00 -  
21.00 on Sundays and Bank Holidays. REFUSED 15 OCTOBER 2018 APPEAL  
LODGED

## **PLANNING POLICY BACKGROUND**

The following policies are relevant to consideration of the application:

### **Darlington Core Strategy Development Plan Document 2011**

- CS16 – Protecting Environmental Resources, Human Health and Safety

### **National Planning Policy Framework, 2018**

## **RESULTS OF CONSULTATION AND PUBLICITY**

**Highway Engineer** – No highway objection

**Environmental Health Officer** – No objections

**Durham Constabulary Architectural Liaison Officer** – No comment

Three letters of objection from local residents have been received which raise the following issues:

- *Permission was only granted for a hot food takeaway on the basis of the hours agreed;*
- *The applicant has applied numerous times over 4 years to try and extend the hours;*

- *Do not want a hot food takeaway 4 doors away from our property but permission was granted on the basis of the opening hours;*
- *Do not want to hear the noise of car doors opening, shutting and music playing in cars on a Sunday night or on bank holidays;*
- *It will be open late at a time when people are relaxing and watching television;*
- *This is a residential area and it should be kept that way*

## **PLANNING ISSUES**

The principle of the use of the premises as a hot food takeaway has already been established by way of the previous appeal decision, subject to a condition restricting the hours of opening to limit the impact of the use on the amenities of nearby residential properties. The main issue for consideration is therefore whether the proposed increase in opening hours on Sundays and Bank Holidays from 12:00 to 19:00 to 11.30 to 21:00 would have an unacceptable impact on the amenities of nearby residential properties in terms of noise, nuisance and disturbance. The effect of the proposed increase in opening hours would be to bring the opening hours on these days in line with the rest of the week.

Core Strategy Policy CS16 (Protecting Environmental Resources, Human Health and Safety) states that development should protect and, where possible, improve environmental resources, whilst ensuring there is no detrimental impact on the environment, general amenity and the health and safety of the community. Paragraph 180 of the National Planning Policy Framework, 2018 states that planning decisions should ensure that new development is appropriate for its location taking into account the likely effects of pollution on health, living conditions and the natural environment. In particular, decisions should mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development and avoid noise giving rise to significant adverse impacts on health and quality of life.

The site has a lengthy planning and appeal history which are also material considerations in the determination of this application. In considering the impact of the proposed hot food takeaway use on the living conditions of neighbouring residents in the 2015 appeal (APP/N1350/A/14/2228133) the Inspector considered that the resulting noise and disturbance from car engines, car audio systems, slamming of doors and people conversing would be too dissimilar from the activities associated with the previous retail use, or that the use would generate significantly more litter or traffic than this use. In imposing an hours of operation condition, the Inspector also concluded that these times were not considered to be at antisocial times, or when residents would reasonably expect a degree of peace and quiet. The Inspector also considered there was scope to install an effective form of extraction that would not harm the living conditions of neighbouring occupiers by reason of noise caused through its operation or cooking smells.

An application in 2016 (16/00387/FUL) to vary condition 7 to extend the opening hours to 11:30 – 22:30 Monday to Saturdays and 11:30 – 22:00 Sundays and Bank Holidays was refused on the grounds that the proposed extended opening hours would be likely to result in the generation of noise, disturbance and odours detrimental to the amenities of local residents.

In dismissing the subsequent appeal (APP/N1350/W/16/3166100) the Inspector was of the opinion that noise from customers, staff and equipment would arise in very close proximity to neighbouring residential properties and this would be more intrusive during the late evening when background noise levels would be lower and residents would be more likely to be resting or sleeping. Due to the predominantly residential nature of the surrounding area, residents would also have a reasonable expectation that their living environment would be quieter in the late evening. The Inspector therefore concluded that a condition limiting the hours of opening was necessary in the interests of protecting the living conditions of neighbouring residents with regard to noise, disturbance and odours and that the hours imposed on the original planning permission were reasonable and accorded with the amenity protection aims of Policy CS16 and the NPPF at the time.

A recent application (18/00376/FUL) sought permission to extend the opening hours to 11:30 to 22:00 on Friday and Saturday evenings only (Monday to Thursday evenings would remain unchanged) and to 12:00 to 21:00 on Sundays and Bank Holidays. The application was refused on the basis that although the takeaway would be open for an additional hour on Friday and Saturday evenings only, in a predominantly residential area there is no expectation that activity levels or background noise levels would be higher on a Friday and Saturday evening compared to other evenings during the week, such that noise, nuisance and disturbance arising from the extended opening hours would have a markedly reduced impact on residential amenity levels. The extended opening hours on Friday and Saturday evenings would extend activity levels into the later evening at a time when residents are likely to be resting and sleeping and would have a reasonable expectation that their living environment would be quieter, a position that has been defended on appeal on a number of occasions. The application was refused on this basis.

By the same token however the extension of the opening hours on Sundays and Bank Holidays to 21:00 would be consistent with other evenings in the week. While the most recent appeal to extend opening hours to 22:00 on these days was dismissed, this was on the basis that activity levels would extend into the 'later evening', i.e. beyond 21:00. In dismissing the previous appeals neither Inspector specifically identified Sundays or Bank Holidays as being particularly sensitive days of the week necessitating earlier closing hours than on any other evening of the week. The Environmental Health Officer and the Policy Architectural Liaison Officer both raise no objection to the proposed extension of the opening hours on Sundays and Bank Holidays. The Highway Engineer has raised no highway objection. The earlier opening of the premises at 11:30 on these days, as opposed to 12:00, would not give rise to any issues of residential amenity.

While there has been previous concerns regarding noise generated by the extractor flue to the rear of the premises, which has been the result of noise complaints, the applicant has worked with the Environmental Health Manager and Planning Enforcement Officer to address the issues of noise and odour arising from the flue and has undertaken remedial work to the flue to reposition it away from the neighbouring property, to fit it with an acoustic jacket and to paint it black. These alterations were regularised by a recent planning application (18/00718/FUL).

On this basis the proposal, to extend the opening hours to 11:30 to 21:00 on Sundays and Bank Holidays, in line with the other days of the week is considered to comply with Policy CS16 and the NPPF.

### **SECTION 17 OF THE CRIME AND DISORDER ACT 1998**

The proposed development has been considered in the context of the requirements placed on the Council by Section 17 of the Crime and Disorder Act 1998, namely, the duty on the Council to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. The proposed development does not give rise to crime and disorder issues.

### **CONCLUSION**

The proposed extension of the opening hours to 11:30 to 21:00 on Sundays and Bank Holidays would bring the opening hours on these days in line with the approved opening hours for the other days of the week. This would ensure that activity levels do not extend into the later evening at a time when residents are likely to be resting and sleeping and would have a reasonable expectation that their living environment would be quieter. The proposal is therefore considered to comply with Policy CS16 and the NPPF, 2018 in this regard.

### **RECOMMENDATION**

THAT PLANNING PERMISSION BE GRANTED SUBJECT TO THE FOLLOWING CONDITION:

1. The use hereby permitted shall not be open to customers outside of the following times:

11:30 – 21:00 Mondays to Sundays

REASON – In the interests of residential amenity.

2. The disabled access to the premises shall be maintained in accordance with the details approved under planning reference number 14/00563/CON dated 22 August 2016 for the lifetime of the development hereby approved.

REASON – To ensure that the premises remain fully accessible in accordance with Policy CS2 (Achieving High Quality, Sustainable Design) of the Darlington Core Strategy Development Plan Document, 2011 and the Equalities Act 2010.

3. The storage of refuse and waste associated with the use of the premises hereby permitted shall be maintained in accordance with the details approved under planning reference number 14/00563/CON dated 22 August 2016 for the lifetime of the development hereby approved.

REASON – In the interest of general amenity.

**THE FOLLOWING POLICIES AND DOCUMENTS WERE TAKEN INTO ACCOUNT IN CONSIDERATION OF THE APPLICATION:**

## **Darlington Core Strategy Development Plan Document 2011**

- CS16 – Protecting Environmental Resources, Human Health and Safety

## **National Planning Policy Framework, 2018**