



APPLICATION UNDER THE TOWN & COUNTRY PLANNING ACTS
PLANNING SUPPORT STATEMENT
TO VARY CONDITION TO EXTEND OPENING HOURS TO SUNDAY
BY DR ANTON LANG MRTPI OF
ANTON LANG PLANNING SERVICES LIMITED
INFORMING THE DECISION OF
SOUTH TYNESIDE MBC

Development description:

"Application under Section 73 of Town & Country Planning Act 1990 to allow variation of Condition 2 of approved planning application Ref ST/0250/12/VC: Seeking 1½ hours extension of business opening until 10:30pm Mondays through to Saturdays and until 8:30pm Sundays, as well as retaining existing hours"

At: 68a Stanhope Road, South Shields, Tyneside NE33 4BS

For: Mr Behnam Mohamadi

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1 INTRODUCTION

QUALIFICATIONS & EXPERIENCE

- 1.1 I am DR ANTON LANG MRTPI. I am a Bachelor of the Arts with Honours in the subject of Town Planning, I hold a Diploma in Town Planning, am a Master of Town Planning, and have been awarded a Doctorate of Philosophy by research from the Faculty of Law, Social and Environment Sciences at the University of Newcastle-upon-Tyne.
- 1.2 Additionally, I am a fully-academically-qualified, non-practising barrister having been admitted as a member of the Honourable Society of the Inner Temple. I have been awarded a First Class Bachelor of Laws Degree and two Post-graduate Diplomas in Law from the University of Northumbria at Newcastle.
- 1.3 I am a Chartered Town Planner with full Royal Town Planning Institute membership and over twenty years experience of the public and private sectors in academia, local government, quango and consultancies both multi-national and small.
- 1.4 I have operated as a sole practitioner Planning & Development Consultant for the last 12 years and am sole owner and director of the incorporated limited company Anton Lang Planning Services Limited.
- 1.5 A large proportion of my work involves detailed assessment of development control applications and appeals and the deliberation of material planning considerations for both private clients and local planning authorities.
- 1.6 I have considerable experience in dealing with development control matters and in particular applications and appeals for hot-food take-away uses, cafes/restaurants and other catering units.

2 BACKGROUND

- 2.1 The applicant seeks planning permission to extend in the evenings, by an hour and a half, the opening hours of the existing cold/hot food café/take-away from the ground floor premises as per the submitted application materials and description of development - in order to better serve the community and increase the economic vitality & viability of the operation.
- 2.2 It is recognised that this is the latest in a series of applications to extend hours.
- 2.3 However the premises have operated without upheld complaint or nuisance since the applicant's ownership in 2005 and thus this operation is worthy of positive consideration of this modest extension of opening hours.
- 2.4 It is also recognised that previously there has been a single complainant, whose objection was suspected to really be founded upon perceived competition, as it was from the woman who owned the next door cafe operation and who lived (lives) above that and thus adjacent to this catering unit.
- 2.5 However that that next door operation has shut down now, as have many other units along this street; and thus it is hoped a more pragmatic stance can be taken towards this proposal.
- 2.6 It is underlined that there are more and more voids along this stretch of the road than ever before; so it is clear that the remaining and existing operations require as much support as possible so as to remain economically functional.
- 2.7 It is also noted that a new Sainsbury's mini-market has opened a few yards away, also on a corner site similar to this (at the top of terraced residential streets) and that that unit has been granted permission to open until 11pm at night every night of the week.
- 2.8 This catering operation continues to trade, to serve healthy food, and customers continue to plead that some extended opening is allowed to offer the flexibility for these loyal patrons and to attract new customers.

- 2.9 The applicant/appellant prides himself on offering healthy, interesting take-away food which is gas or oven cooked without any deep-fat frying. The merest perusal of the menu is evidence of this, and patrons will attest that meal come with a free apple.
- 2.10 In an age where there is some concern with regards to hot food take-away operations and any impact they might have on obesity, Benny's Pomodoro offers a refreshing and innovative alternative.
- 2.11 Current opening is just permitted on Mondays to Saturdays between 8am and 9pm and on Sundays from 10am to 7pm.
- 2.12 It is respectfully requested that evening opening is extended just 1½ hours until 10:30pm Mondays through to Saturdays and just 8:30pm Sundays.
- 2.13 This will further increase the availability of the produce to the local community.
- 2.14 Longer opening hours will also mean that existing employment is sustained and possibly extra employment is created.
- 2.15 It is considered that this slightly extended opening will have no tangible impact on this locality which already has many other establishments nearby opening much later.

DEVELOPMENT OBJECTIVES

- 2.16 The primary objective of this proposal is to introduce slightly longer opening hours to improve the viability and vitality of the operation and thus make a more positive contribution to this part of the borough; whilst attempting to not adversely affect visual or residential amenity in the locality, nor the commercial balance of the locality.
- 2.17 What is requested by this submission is a pragmatic decision to allow slightly longer opening hours for an existing operation in an existing commercial unit on a main route-way, on a site which should welcome investment of this nature and that has commercial operations proximate, is at the end of a terrace and has an existing catering use next door.
- 2.18 An approval would be manifestly sustainable as it:
- the proposal involves expanding a successful, existing commercial use;
 - is not a dominant use when taken in the context of the locality;

- is a use that should be located near to residential areas and other planning conditions control any noxious impacts;
- involves previously-developed land on an existing operational brown-field site;
- would result in an extended facility availability for the locality, new and existing patrons;
- would provide for additional / retained employment;
- would be an extended existing operation which would thus not unduly affect the retail balance in the locality;
- is still limited by its existing floor-space
- would help maintain the vitality & viability of the locality.

ACCESS & CAR PARKING

- 2.19 Pedestrian access to the site can be gained by the existing pavement. The premises are sited along the two-way commercial main road through to the town.
- 2.20 STMBC Highway's Unit have previously not objected to the proposal. To quote the Planning Unit's report into a previous submission:
- 2.21 *"Regarding Highway / parking issues, Stanhope Road has marked out car parking spaces on both sides of the road and in connection with the application previously refused in 2007 one of the Council's Transport Futures Officers visited the site at various times throughout the day and found adequate parking to be available within the vicinity. It is considered that the current proposal would still not be detrimental to highway safety in accordance with Policy T2 of the South Tyneside UDP, as traffic movements and parking demand are usually lighter on Sundays and Bank Holidays."*
- 2.22 It is impossible at this site to provide in-curtilage car parking for customers, as the traditional footprint and density of the existing building precludes this. Fortunately there is plenty, unrestricted on-street car parking in the immediate vicinity. This area is not heavily parked either during the day or at evening times, as the Highways Unit confirms.
- 2.23 It is worth noting that should a car be parked inappropriately it is the remit of the Police under the Highways Acts to enforce the Highway Code.
- 2.24 Notwithstanding this, it is actually rather the case that car owners do not park inappropriately as they do not wish to be inconvenienced by the Police, the law or by putting their vehicles under the risk of damage from other road users. It is

not the remit of the planning system to protect against such happenstance and other agencies (the Police) exist to enforce any actual danger that might occur.

- 2.25 It is considered that in the light of the above, highways, traffic and car parking issues are of no importance with regards to the consideration of this matter.

SMELLS & FUMES

- 2.26 Modern ventilation equipment is able to mitigate even the most noxious food odours. It is common practice for local planning authorities to control venting and extraction equipment through their Environmental Health Units, so it can be ensured that this type of nuisance does not occur.
- 2.27 It is opined that there will always be the possibility of slight smells. However this is taken to be an acceptable part and parcel of living in an urban environment on a main commercial road and that planning decisions should be made on the balance of all matters and not because of residents on or adjacent to a small area of commercial premises possibly being able to detect the slightest smell.
- 2.28 The equipment and technology exists to mitigate cooking odours to well beyond acceptable levels; it is considered that the operation (which has been the subject of no known odour or smell complaints) operates to such a standard. The ventilation extracts well away from residential neighbours. The hot air extraction drifts harmlessly upwards.
- 2.29 This operation is not one with a fish-frying range or any deep-fat fryers. It is therefore a catering operation which generates little in the way of odours or smells. It is considered that some slightly longer opening would not tangibly increase the level of such pollutants to such an extent that someone would actually notice.

NOISE & DISTURBANCE

- 2.30 It is considered that the proposed extension of opening hours would not be so significantly detrimental to the amenity of adjacent residents so as to warrant the withholding of planning permission, as the unit is at the end of a terrace on one side and the other previously catering use next door acts as a 'buffer' between the appeal site and its non-adjoining residential neighbours to the other side.

- 2.31 Notwithstanding that most important consideration, any noise or disturbance would of a level to be expected on an established, commercial street which is sited along a main arterial route within the borough.
- 2.32 Quite simply, this is a main, commercial road; it is exactly the sort of location where the proposed use with evening opening hours would be expected to be sited in an urban locale.
- 2.33 Opposite and across the road to the south is a working men's club. Buses run up and down the street. Therefore there is such a level of activity in these environs already for an additional 1½ evening opening hours to not substantially alter the level of amenity of the locality.
- 2.34 In any case, it would not be of benefit to the operator of the premises to have any detrimental noise or disturbance generated by this use; as it would simply detract from business. People are already discouraged from congregating on the pavement outside by the operator, as it might inhibit further custom. His food is aimed at people eating at home, not of the more 'walk & talk' vertical grazing of other hot food takeaway establishments.
- 2.35 Bearing in mind the main and commercial nature of the street, this is obviously a roadway that experiences activity almost 24 hours a day. The applicant obviously wants the greatest possible flexibility with regards to opening, and, as such, seeks opening to 22:30 to provide this flexibility, although it should be recognised that the peak times for custom are expected to be in the earlier part of the evening (i.e. around 8/9pm).
- 2.36 The request for permission for slightly longer opening is two-fold: due to the interest expressed by existing patrons and also in order to make more effective and efficient use of this single unit under its existing modest operation.
- 2.37 There is much evidence of his community-spirited nature in the newspaper articles hung in the front of the shop. The owner wants longer opening hours, but not to such an extent that he would adversely impact upon the community he serves. As the operation is modest and generates zero nuisance, residential amenities are not so unduly impacted upon so as to make this extended opening unreasonable.
- 2.38 It is understood that the decision-maker might wish to restrict the requested opening hours if it is considered completely necessary, and, as such, the applicant/appellant is happy to accede to any extended slightly longer hours (say 1 hour only,

as any less is not very much at all) that might be seen as fit in order that planning permission might be granted (or perhaps a temporary permission for 1½ hours, or 2 hours even, for 14 months as per the conclusion to gauge impacts).

- 2.39 Notwithstanding that, it is considered that the extended opening proposed under this application would not give rise to a level of noise or disturbance which would be untenable in any environs; in this locality, on this main road, even less so.
- 2.40 These slightly longer opening hours are considered eminently reasonable because of the main road, the commercial neighbours nearby and the end of terrace/not residentially-proximate situation of the premises.
- 2.41 Strong weight must also be given to this proposal following the "*Planning for Growth*" agenda (see later section) and the "*National Planning Policy Framework*", which both demand that decision-makers are a lot more positive.
- 2.42 The economic advantages this proposal brings in these recessionary times are now considered to add to the case to outweigh the marginal adverse effects, if any, on nearby residents.

JOB CREATION

- 2.43 It is obvious that this proposal will involve extended employment opportunities. The economic benefit of this job provision and also the increased utilisation of these premises cannot be over-emphasised. The promotion of employment generating proposals is a key aspect of both Central and Local Government policy. Enabling increased employment-generation at these premises will greatly benefit the economic well-being of the locality and the borough.

3 LOCAL PLANNING POLICY

INTRODUCTION

- 3.1 The duties of decision makers when making any determination under the Planning Acts are set out in Section 38(6) of the Planning and Compulsory Purchase Act 2004. This states that:

"If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."

DEVELOPMENT PLAN POLICY

- 3.2 For the purposes of Section 38(6) of the Planning & Compulsory Purchase Act 2004, the development plan is formed by the 'Core Strategy' adopted in June 2007 and then the more detailed and specific 'Development Management Policies Development Plan Document' adopted in December 2011.

POLICY DM1: MANAGEMENT OF DEVELOPMENT

- 3.3 Policy DM1 deals with the "Management of Development".

"Policy DM1 Management of Development:

In determining all applications under the planning Acts we will ensure that, where relevant:

A) the development, including new buildings, extensions and alterations to existing buildings, is designed to convey sensitive consideration of its surroundings, and where possible enhance its local setting and reinforce local identity, having particular regard to scale and proportions, alignment, form, use of materials and architectural detailing;

B) the development is acceptable in relation to any impact on residential amenity;

C) the development protects existing soft landscaping, including trees and hedges, where possible or provides replacement planting where necessary;

D) new development provides well-designed external spaces including streets, squares and parks, where possible linked to the wider green infrastructure network, with hard and soft landscaping to provide a high quality setting for buildings, improve visual amenity, enhance community activity and support the provision of priority natural habitats and species;

E) the design of buildings and external spaces incorporates focal points and landmarks to aid recognition and legibility of the townscape and streetscape, including public art, where possible;

F) the design of advertisements complements the architecture to which it relates and the local context, and is considered as an integral part of the development;

G) the impact of the development is acceptable in relation to highway capacity and safety or includes proposals to mitigate any adverse impacts;

H) new development provides site layouts that facilitate convenient and safe routes between facilities, and prioritises movement by pedestrians and cyclists;

I) the needs of all users for access around sites and into buildings for public use are considered as an integral part of the development;

J) the development is designed to achieve lower carbon emissions, and to be energy efficient and maximise the use of renewable and low carbon energy sources, having greater resilience to the likely affects of climate change, including higher summer temperatures and increased prevalence of flood events. Where relevant, development should incorporate green spaces to mitigate the heating of urban areas and should create and support opportunities for sustainable forms of transport, drainage and waste management;

K) the development is designed to minimise and mitigate localised flood risk, both on site or elsewhere, where this has been identified by the Strategic Flood Risk Assessment, Site-Specific Flood Risk Assessment or Surface Water Management Plan. For any development proposed in a Critical Drainage Area, as identified by the Strategic Flood Risk Assessment, a full flood risk assessment and drainage impact assessment may be required. Development on any sites allocated in Flood Risk Zones will only be permitted in accordance with the findings of a Sequential Flood Risk Assessment;

L) the development does not adversely impact upon air pollution levels, particularly of nitrogen dioxide in the Boldon Lane/Stanhope Road and Leam Lane/Lindisfarne Roundabout Air Quality Management Areas (as shown on the Proposals Map), or any other designated area where air quality objectives are not met or not likely to be met in the foreseeable future or as a result of the proposed development;

M) any risks of contamination have been fully assessed and, where necessary, remediation measures, appropriate to the intended use of the land, are included as part of the development proposals; and

N) the development takes into consideration the potential legacy of mineral workings, particularly in areas of known former mine shafts (see Annex D), and also the existence of landfill sites at Newton Garths, Temple Park, Trow Quarry and Gypsies Green."

- 3.4 Under Limb A, it is considered that, the proposed hours extension development, would not adversely impinge on the, "*sensitive consideration of its surroundings*", or, "*its local setting*" as it is undertaken from the site already.
- 3.5 Under Limb B, "*the development is acceptable in relation to any impact on residential amenity*", as it is an already-ongoing existing catering use, in an end of terrace property, with a former catering use next door as a buffer before any residential properties.
- 3.6 Under Limbs G, H and I, it is considered that the needs of all potential users with regard to transport, accessibility and circulation have been taken into account as the premises are already easily accessible.
- 3.7 The other limbs are considered to not be relevant to this extension of hours condition variation proposal.
- 3.8 Overall, it is rather considered that the extension of opening hours would have an acceptable impact on levels of residential and other amenities in the locality due to the location of the unit and the busy, wide nature of Stanhope Road and the weight that must be given to the "Planning for Growth" agenda and the NPPF. As such it is considered that this proposal is not contrary to this policy and is rather policy compliant.
- 3.9 Policy is meant to be applied flexibly, reasonably and sensibly.

- 3.10 Such proposals should not be resisted generically, nor on harsh and subjective policy terms. It is clear from government guidance that *actual tangible harm* should also be demonstrated. It is considered that it is impossible for them to do this, bearing in mind the modest nature of these proposals.

SUMMARY

- 3.11 The proposal is not considered to have an unacceptable adverse impact on the amenity or security of adjacent properties or the surrounding area, as the use will be contained within the site, and occurs in an existing busy urban area along a main road. Any activities associated with the premises are those which one might expect in an urban location at commercial premises.
- 3.12 This proposal should be considered to be in accord with the aims of achieving economic growth which: firstly, helps assist with an existing economic activity in the premises; secondly, increases the level of employment provision; thirdly, enhances the economic potential of the District; and, fourthly, assists urban regeneration.
- 3.13 This proposal will more effectively use existing premises within the limits of development, will provide jobs, provides longer-opening hours for this facility to better serve the borough, helps urban regeneration and will not adversely affect residential or visual amenity to such a tangible degree so as to warrant a refusal.
- 3.14 It is considered that this proposal is in accord with this aim of the planning policy framework and should be supported by planning approval.

4 NATIONAL PLANNING POLICY

- 4.1 Up until 27 March 2012 there was an established national planning framework made up of a number of Planning Policy Guidance Notes (PPGs) and Planning Policy Statements (PPSs) which were material considerations which could be applied to development proposals. These no longer apply and have all been cancelled.
- 4.2 From that date, that morass of unwieldy paperwork has been swept away by a single document called the National Planning Policy Framework (NPPF), which is intended to ensure that development proposals can be assessed and decided more proactively, more progressively and more promptly.
- 4.3 The NPPF makes it clear from the very start, in the Ministerial Forward, that:
- 4.4 *"The purpose of planning is to help achieve sustainable development. Sustainable means ensuring that better lives for ourselves don't mean worse lives for future generations. Development means growth. We must accommodate the new ways by which we will earn our living in a competitive world. We must house a rising population, which is living longer and wants to make new choices."*
- 4.5 The use of the word "must" makes it clear it is imperative that development proposals are considered positively.
- 4.6 It is further stated that:
- 4.7 *"Sustainable development is about positive growth – making economic, environmental and social progress for this and future generations. The planning system is about helping to make this happen."*
- 4.8 The planning process is about helping make "growth" happen; not about restricting or stopping "growth". Decision-makers should thus not be resisting growth, but should rather be helping it happen.
- 4.9 *"In order to fulfil its purpose of helping achieve sustainable development, planning must not simply be about scrutiny. **Planning must be a creative exercise** in finding ways to enhance and improve the places in which we live our lives"*.

- 4.10 The negative, 'all boxes must be ticked' ways of approaching assessing planning applications should no longer hold back development.
- 4.11 Planning, planners and planning decisions should all strive to be "creative" as much as possible.
- 4.12 At Paragraph 7 it is stated:
- 4.13 *"There are three dimensions to sustainable development: economic, social and environmental. These dimensions give rise to the need for the planning system to perform a number of roles".*
- 4.14 The first dimension (and, having that primary position can be extrapolated to be the most important), is stated as:
- 4.15 **"An economic role** – contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time **to support growth and innovation;** and by identifying and coordinating development requirements, including the provision of infrastructure;"
- 4.16 The second and third dimensions are:
- 4.17 **"A social role** – supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being; and"
- 4.18 **"An environmental role** – contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy".
- 4.19 At Paragraph 8 it is made clear that:
- 4.20 *"Economic growth can secure higher social and environmental standards".*
- 4.21 Such as under this development proposal for longer opening. This is re-enforced at Paragraph 9:
- 4.22 *"Pursuing sustainable development involves seeking positive improvements in the quality of the built, natural and historic environment, as well as in people's quality of life, including*

(but not limited to):

- making it easier for jobs to be created in cities, towns and villages;
- *moving from a net loss of bio-diversity to achieving net gains for nature;*
- *replacing poor design with better design;*
- *improving the conditions in which people live, work, travel and take leisure; and*
- *widening the choice of high quality homes”.*

4.23 How this is to be done is explained in paragraph 14:

4.24 "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 plan 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”.*

4.25 The test of significantly and demonstrably is a very high test.

4.26 **In order to resist and refuse these proposals the local authority must demonstrate significant adverse impacts. It is considered that on the basis of the facts of this existing site and operation and the materials submitted as part of this planning application they will be unable to do that.**

4.27 Paragraph 17 states that:

4.28 "Within the overarching roles that the planning system ought to play, a set of [twelve] core land-use planning principles should underpin both plan-making and decision-taking:" [inter alia]

4.29 "ii) not simply be about scrutiny, but instead be a creative exercise in finding ways to enhance and improve the places in which people live their lives”.

4.30 "iii) proactively drive and support sustainable economic development to deliver the homes, business and industrial

units, infrastructure and thriving local places that the country needs. Every effort should be made objectively to identify and then meet the housing, business and other development needs of an area, and respond positively to wider opportunities for growth".

- 4.31 *"viii) encourage the effective use of land by reusing land that has been previously-developed (brownfield land), provided that it is not of high environmental value."*
- 4.32 This development scheme accords with these relevant core planning principles as identified above and is considered to not significantly adversely conflict with the others.
- 4.33 The first and most important aim is in the first part of the section called *"Delivering sustainable development"* and is called: *"1. Building a strong, competitive economy"*.
- 4.34 At Paragraph 18 it is stated:
- 4.35 *"The Government is committed to securing economic growth in order to create jobs and prosperity, building on the country's inherent strengths, and to meeting the twin challenges of global competition and of a low carbon future."*
- 4.36 This development proposal will retain and possibly increase employment and create new jobs in itself, through the extended opening, and, further on, as part of the servicing and ancillary supplying functions it will require.
- 4.37 This economic function is stated and re-stated, as per Paragraph 19:
- 4.38 *"The Government is committed to ensuring that the planning system **does everything it can to support sustainable economic growth**. Planning should operate to encourage and not act as an impediment to sustainable growth. Therefore significant weight should be placed on the need to support economic growth through the planning system"*.
- 4.39 And Paragraph 20:
- 4.40 *"To help achieve economic growth, local planning authorities should plan proactively to meet the development needs of business and support an economy fit for the 21st century"*.
- 4.41 With regards to the actual theory and practice of *"Decision Making"* it is stated in Paragraph 186 that:

- 4.42 *"Local planning authorities should approach decision-taking in **a positive way to foster the delivery of sustainable development**. The relationship between decision-taking and plan-making should be seamless, translating plans into high quality development on the ground".*
- 4.43 This is further emphasised at Paragraph 187:
- 4.44 *"Local planning authorities should look for solutions rather than problems, and **decision-takers at every level should seek to approve applications** for sustainable development where possible. Local planning authorities should work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area".*
- 4.45 With regards to determining applications, it is stated at Paragraph 197:
- 4.46 *"In assessing and determining development proposals, local planning authorities should apply the presumption in favour of sustainable development".*
- 4.47 These proposals are sustainable, and therefore there is a clear presumption they should be considered favourably.
- 4.48 From the information and proposals provided it is clear that national guidance and policy indicates this application should be approved.

SUMMARY

- 4.49 We are in an age when Central Government is stressing the importance of utilising land to its optimum degree; this is particularly with regard to new development schemes.
- 4.50 National guidance encourages the efficient and effective use of urban land – such as by longer opening.
- 4.51 It would be obtuse and contrary to the spirit and intention of national policy to inhibit minor, regenerative development such as this operation.
- 4.52 The determination of individual planning applications is intended to be on their specific merits within the framework of the planning system and not a blanket application of policy without consideration.

- 4.53 A balanced view of this use in the context not just of the locality but the aims of national planning policy should result in a planning approval.
- 4.54 From the identification and discussion of the policies in the previous section and this, it is clear that this operation accords with the policies and their provisions and thus is generally and on balance acceptable.
- 4.55 Acknowledging that the development plan policies and national guidance carry significant weight in the consideration of this application, and in view of this proposal's compliance, planning permission should be granted.

5 IMPACT ASSESSMENTS

DESIGN ASSESSMENT

- 5.1 CABE guidelines (within Design & Access Statements, CABE 2006) advise that proposals should be considered under the following topic areas:
- 5.2 Use, Amount, Scale, Layout, Landscaping, and External Appearance.
- 5.3 The continued and extended 'USE' is considered acceptable in these existing commercial premises for the reasons articulated previously in this document.
- 5.4 It is considered that the AMOUNT and SCALE of development proposed is acceptable; occupying the existing floor area of commercial unit. This limits the extent of the operation. No extension of the unit is proposed. The extended opening is acceptable in amount and scale as it is still limited and controlled and 10:30pm is before which time very few people will have gone to bed.
- 5.5 It is considered that the LAYOUT and LANDSCAPING aspects of this scheme are moot due to the existing nature of the site.

VISUAL IMPACT ASSESSMENT

- 5.6 It is considered that there would be no discernible adverse visual impact by virtue of this proposed development. If this proposal is taken in the context of the existing street scene then it would have minimal impact on the locality.
- 5.7 It is considered that this extended opening will enhance the visual appearance of the premises within the locality as it will not be shuttered for so long and will provide for informal policing.

ACCESS & CAR PARKING ASSESSMENT

- 5.8 The site is accessed along the street by foot and by vehicle to both the front, and also to the rear by an alleyway. Car-parking would be in on-street when required as existing.
- 5.9 The car parking allowance has been informed by national planning policy which seeks to inhibit the use of the private car

where possible. It is considered that there really should be no concern in planning terms with regard to parking or highway safety due to the nature of the site and its surroundings, and because controls exist under the Highways Acts or through the Police should road-users contravene the Highway Code. No objection was raised by the Highways Unit to previous submissions.

HIGHWAYS & TRANSPORTATION ASSESSMENT

- 5.10 It is considered that there would be no discernible impact on highways by virtue of this proposed development.
- 5.11 The site is well served by public transport in the form of many bus routes which run to and from the town along this main road; which link into the rail infrastructure.
- 5.12 The large majority of customers expected at this establishment will be pedestrians from the nearby residential areas. This is consistent with Government policy to minimise the use of the private car.
- 5.13 There will be no off-street parking provision for customers within the curtilage. Extensive on-street parking exists nearby in the vicinity. It is expected that customers will be aware of this and make provision by arriving on foot, by public transport or taxi.
- 5.14 It is expected that the few private car-borne customers will make sensible provision for the parking of their vehicles.

NOISE AMENITY IMPACT ASSESSMENT

- 5.15 The noise impact of the proposed development once completed is considered to be within acceptable parameters. It is not considered necessary to provide any further assessments given that the use generates such low levels of noise which are not expected to leak out of the site. It is recognised that the site is near to commercial and residential uses. A pre-application assessment of the site considers that there are no noise attenuation measures required for the building beyond the existing wall and glazing materials.

AIR QUALITY IMPACT ASSESSMENT

- 5.16 The air quality impact of the proposed use is considered to be within acceptable parameters due to the existing installation of the ducting, venting and filtration system.

FLOOD RISK IMPACT ASSESSMENT

- 5.17 The application site and the development proposal are not considered to be at flood risk as they do not fall within any such area on the adopted development plan.

FLORA & FAUNA IMPACT ASSESSMENT

- 5.18 There are no trees on site at present. It is considered that there are no issues which need to be addressed regarding flora and fauna on this under-used inner-urban brownfield site.

ECONOMIC & SOCIAL IMPACT ASSESSMENT

- 5.19 This redevelopment scheme will enhance the immediate locality and the wider town and borough through extended use of a brownfield site contributing to the residential, cultural and economic well being of the town.
- 5.20 The proposed extension of use will also provide for additional employment and extended servicing of the site.

SUSTAINABILITY ASSESSMENT

- 5.21 It is important to consider the sustainability aspect of this site. The proposal is sustainable for a number of reasons.
- 5.22 These reasons include:
- The existing site is ready for longer use;
 - The development makes better use of the site whilst respecting the constraints which exist;
 - The proposal will allow the continuation of a business which will be more financially viable;
 - The proposal involves an existing structure within an existing settlement;
 - The urban area will not be enlarged as a result of the development;
 - The site is well-related to public transport links including bus routes, this means that reliance on the private car is minimized;
 - The development will provide a longer-opening commercial operation of a high quality which will be of benefit to the locality.

AMENITY OF NEARBY RESIDENTS: NOISE & DISTURBANCE

- 5.23 It is considered that the proposed later opening hours would not be materially detrimental to the amenity of nearby residents by reason of noise and disturbance as this is a

commercial premises next to another commercial previous catering use on a predominately commercial, wide, bus-routed street which experiences activity almost 24 hours a day.

- 5.24 Activity would occur to the commercial frontage, whereas the majority of the nearby residents are a good distance away: opposite across a very wide main road; across and down from a wide side road; or, further down the terrace after the other existing catering use.
- 5.25 Furthermore, it would not be of benefit to the operator of the premises to have any detrimental noise or disturbance generated by this use; as it would simply detract from business. People are already, and will continue to be, discouraged from congregating on the pavement outside by the operator, as it might inhibit further custom.
- 5.26 This application proposes slightly longer opening hours; but bearing in mind the commercial nature of the street, this is obviously a roadway that experiences activity almost 24 hours a day, every day. The use proposed under this application would not give rise to a level of noise or disturbance which would be untenable anyway; in this locality and on this main road even less so.
- 5.27 The appeal site is an existing commercial unit in a small commercial parade of two on that side of the side street. It is away from residential properties and none are touchingly proximate (excepting the flat above which is where the operator lives). There is enough distance in this urban setting for the proposed longer opening hours to have no tangible impact on nearby residential properties and the locality.
- 5.28 Any nearby residential properties do not benefit from a level of amenity that a residential property at the end of a residential only cul-de-sac might. They are along a main road with many commercial operations in the vicinity.
- 5.29 It is considered that the proposed slightly longer opening would not now be so significantly detrimental to the amenity of adjoining or adjacent residents so as to warrant a refusal of planning permission.
- 5.30 Any noise or disturbance would of a level to be expected on an established, commercial street which is sited along such a main arterial route east/westwards. There will be footfall and vehicles coming and going, there is already as it is a main road.

- 5.31 The local authority has previously made no effort to demonstrate what level of harm might occur and do not quantify the environmental impacts with regards to slightly longer opening.
- 5.32 It is opined that any adverse impacts are actually difficult to discern in the context of this single extended-hours use within an existing premises in this locality.
- 5.33 Quite simply, this is a main, commercial road; it is exactly the sort of location where the proposed use would be expected to be sited.
- 5.34 Opening to 10:30pm, before which time it is unlikely nearby residents will have retired for the night, is considered unlikely to cause such a level of offence so as to warrant a refusal of permission.
- 5.35 It is considered that this main road is well served by litter bins up and down its length and that to try and resist the later opening hours of this single unit operation on the grounds of POSSIBLE litter generation by its prospective customers is tenuous at best and malicious at worst.
- 5.36 It is clear to see that this operation is not a traditional fast food, chip-buttly wrapper on the floor type of operation; the evening operation is aimed at consumption at home.
- 5.37 It is disappointing that previously the local planning authority tried to tar all catering outlet customers with the brush of the litter-bug. This is not considered fair or reasonable; certainly not in this instance.
- 5.38 The operator keeps his café and frontage area very clean and provides for bins and waste disposal. He can do little outwith this site; neither can any other operator across the country.

6 CONCLUSION

MINISTERIAL STATEMENT & PLANNING FOR GROWTH

- 6.1 Since the Spring 2011 Budget, the planning situation has altered to be much more positive towards development.
- 6.2 It is important to draw attention to the Written Ministerial Statement: Planning for Growth (23 March 2011) made by The Minister of State for Decentralisation (Mr Greg Clark) as Annex A to the Planning for Growth letter of 31 March 2011.
- 6.3 Within that letter it is stated that:
- 6.4 *"These objectives need to inform the decisions that local planning authorities are taking now – through plan production as well as development management. The Minister for Decentralisation issued a Written Ministerial Statement on 23 March (Annex A to this letter) to emphasise this point and this statement is capable of being regarded as a material planning consideration. Your attention is drawn especially to the weight that the Secretary of State will give to this statement in cases that come before him for decision."*
- 6.5 It is important to emphasise that it is clear Central Government (and thus the Secretary of State and also Planning Inspectors) will be seeking that local authorities, and decisions by all those within the development control/management process, are positive and encourage growth.
- 6.6 To quote the statement [my underlinings and bold):
- 6.7 *"The Chancellor of the Exchequer has today issued a call to action on growth, publishing an ambitious set of proposals to help rebuild Britain's economy. The planning system has a key role to play in this, by ensuring that the sustainable development needed to support economic growth is able to proceed as easily as possible. We will work quickly to reform the planning system to achieve this, but the Government recognises that many of these actions will take some months to deliver, and that there is a pressing need to ensure that the planning system does everything it can to help secure a swift return to economic growth. This statement therefore sets out*

the steps the Government expects local planning authorities to take with immediate effect.

- 6.8 "The Government's top priority in reforming the planning system is to promote sustainable economic growth and jobs. **Government's clear expectation is that the answer to development and growth should wherever possible be 'yes'**, except where this would compromise the key sustainable development principles set out in national planning policy.
- 6.9 "The Chancellor has today set out further detail on our commitment to introduce a strong presumption in favour of sustainable development in the forthcoming National Planning Policy Framework, which will expect local planning authorities to plan positively for new development; to deal promptly and favourably with applications that comply with up-to-date plans and national planning policies; and wherever possible to approve applications where plans are absent, out of date, silent or indeterminate.
- 6.10 "Local planning authorities should therefore press ahead without delay in preparing up-to-date development plans, and should use that opportunity to be proactive in driving and supporting the growth that this country needs. They should make every effort to identify and meet the housing, business and other development needs of their areas, and respond positively to wider opportunities for growth, taking full account of relevant economic signals such as land prices. Authorities should work together to ensure that needs and opportunities that extend beyond (or cannot be met within) their own boundaries are identified and accommodated in a sustainable way, such as housing market requirements that cover a number of areas, and the strategic infrastructure necessary to support growth.
- 6.11 "When deciding whether to grant planning permission, local planning authorities should support enterprise and facilitate housing, economic and other forms of sustainable development. Where relevant - and consistent with their statutory obligations - they should therefore:
- 6.12 (i) consider fully the importance of national planning policies aimed at fostering economic growth and employment, given the need to ensure a return to robust growth after the recent recession;

- 6.13 *(ii) take into account the need to maintain a flexible and responsive supply of land for key sectors, including housing;*
- 6.14 *(iii) consider the range of likely economic, environmental and social benefits of proposals; including long term or indirect benefits such as increased consumer choice, more viable communities and more robust local economies (which may, where relevant, include matters such as job creation and business productivity);*
- 6.15 *(iv) be sensitive to the fact that local economies are subject to change and so take a positive approach to development where new economic data suggest that prior assessments of needs are no longer up-to-date;*
- 6.16 ***(v) ensure that they do not impose unnecessary burdens on development.***
- 6.17 *"In determining planning applications, local planning authorities are obliged to have regard to all relevant considerations. They should ensure that they give appropriate weight to the need to support economic recovery, that applications that secure sustainable growth are treated favourably (consistent with policy in PPS4), and that they can give clear reasons for their decisions.*
- 6.18 *"To further ensure that development can go ahead, all local authorities should reconsider, at developers' request, existing section 106 agreements that currently render schemes unviable, and where possible modify those obligations to allow development to proceed; provided this continues to ensure that the development remains acceptable in planning terms.*
- 6.19 *"The Secretary of State for Communities and Local Government will take the principles in this statement into account when determining applications that come before him for decision. In particular he will attach significant weight to the need to secure economic growth and employment.*
- 6.20 *"Benefits to the economy should, where relevant, be an important consideration when other development-related consents are being determined, including heritage, environmental, energy and transport consents. The Secretary of State for Culture, Olympics, Media and Sport, the Secretary of State for the Environment, Food and Rural Affairs, the Secretary of State for Energy and Climate Change and the Secretary of State for Transport have consequently agreed that to the extent it accords with the relevant statutory provisions and national policies, decisions on these other*

consents should **place particular weight on the potential economic benefits offered by an application**. They will reflect this principle in relevant decisions that come before them and encourage their agencies and non departmental bodies to adopt the same approach for the consents for which those other bodies are directly responsible."

- 6.21 This has already occurred in decisions such as that made on 26 April 2011 reference APP/K3605/A/11/2143384 (can be sourced through Planning Inspectorate Case Search web page) which stated, at paragraph 9:
- 6.22 "Very recently the Rt Hon Greg Clark MP has published 'Planning for Growth'. This statement indicates that the government wishes to ensure that 'the sustainable development needed to support economic growth is able to proceed as easily as possible' and that the **'government's clear expectation is that the answer to development and growth should wherever possible be 'yes'**, except where this would compromise the key sustainable principles set out in national planning policy'. This is a significant material consideration."
- 6.23 It is worth repeating the last sentence of this paragraph as that is the weight that the Planning Inspectorate are giving to the statement already:
- 6.24 **"This is a significant material consideration."**
- 6.25 Therefore strong weight must be given in favour of this development with its economic and employment aspects.
- 6.26 This much more positive emphasis on growth should/will be reflected in more planning approvals both by local authorities and by the Planning Inspectorate.
- 6.27 This proposal makes an effective and efficient re-use of a brownfield site.
- 6.28 It does not harm anybody or anything to any tangible degree.
- 6.29 **Any previous concerns regarding intangible impact on residential amenity has now to be balanced against a pragmatism to support economic development in the face of the extended bitter recession from which the country is suffering and the rising amount of voids along this street.**

- 6.30 The distances between the proposed use and its neighbours are sufficient to ensure an acceptable level of privacy and amenity is maintained despite this longer opening; and despite what the single objecting neighbour might allege.
- 6.31 In its own small way this proposal is development and growth; in an acceptable location – and thus should be encouraged under the new government guidance.
- 6.32 This scheme would in no tangible or demonstrable way impact on national sustainability and thus should be approved in line with the new "*Planning for Growth*" ministerial guidance.
- 6.33 There are no outweighing material planning considerations that now preclude the variation of condition to allow for extended opening hours.
- 6.34 There has been no known / upheld complaints or nuisance since the last extension of opening hours was granted. The operator has 'kept his nose clean' (as well as his premises) and should be allowed to trade slightly longer.
- 6.35 If it is really considered necessary then a temporary permission for extended opening for 14 months from decision could be granted to see if any nuisance or difficulty arises; and then the situation can reviewed by a revised application for a full permission 12 months after decision on this matter (the 14 months from date of grant allowing time for a 12 month period of extended opening, and then 2 additional months to assess the second submission for a full, non-temporary permission).
- 6.36 So, taking all the relevant matters into account, it is therefore respectfully requested that the decision-maker grants planning permission for the reasons contained throughout this document and the planning application submission.

Dr Anton Lang MRTPI – June 2015