DELEGATED REPORT / CASE OFFICER'S ASSESSMENT

Ref No: ST/0975/20/VC
Proposal: Variation under Section 73 of the Town and County Planning Act 1990, to allow variation of Condition 2 of planning consent Ref. ST/0448/20/PNCU to change the opening hours to 9am -11pm seven days a week.
Location: 181B Sunderland Road, South Shields, NE34 6AD

Site Visit Made: 06/01/2021

Relevant policies/SPDs

1 DM1 - Management of Development (A and G)

Description of the site and of the proposals

The application property of 181B Sunderland Road is a ground floor commercial unit in use as a café/ restaurant, with a residential flat above. The site is located within the middle of a row of terraced properties within a local neighbourhood shopping centre. There is a mixture of retail, cafe/restaurant, bar/public house and repair garage uses within the surrounding area. There is also a 24-hour petrol station on Moor Lane within proximity of the site.

Prior approval was previously given under Part 3 Schedule 2 (Change of Use) of the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015, for the change of use of an ice cream shop (Class A1) to a café/restaurant (Class A3) at the site. This use has commenced.

Through an application submitted under Section 73 of Town and Country Planning Act 1990; consent is now sought to vary condition 2 (opening hours) of the 2020 prior approval consent, which stated:

The premises shall only be open to the public between the hours of 11:00 and 18:00 on Monday to Wednesday, 11:00 and 23:00 on Thursday to Saturday and 11:00 and 20:00 on Sunday. It shall not be open to the public at any other time outside these hours.

To safeguard the amenity of local residents in accordance with South Tyneside Local Development Framework Development Management Policy DM1

Consent is now sought to change the opening hours to allow the premises to be open for customers between the hours of 9am until 11pm daily.

A planning statement was submitted on 2 February 2021 setting out the justification for the proposed increase in opening times. It states that the increase in opening time is proposed in part to offset the impact of Covid-19 restrictions and to safeguard employment. It is stated that an earlier opening time of 9am onwards would allow the business to offer a breakfast and brunch morning service. It is also argued that the later opening times would potentially allow for an additional table service to be provided. Due to the relatively small size of the unit and Covid-19 restrictions, seating is limited within the unit.

Publicity / Consultations (Expiry date: 23/12/2020)

1) Neighbour responses

One representation received (without postal address), commenting:

My bedroom is directly above the building. Over past few months I have been disturbed with noise from the premises. People have been in the building till 2am in the morning. That's the

approximate time when roller shutters came down and taxis pull up outside. I think this application will make matters worse in the future.

2) Other Consultee responses

Environmental Health: I have considered the application in terms of the residential amenity of the adjoining residential neighbours.

I do not believe that the proposed times are acceptable given the close proximity of residential neighbours.

I would propose that the following times would be appropriate:

Mon – Wed	09:00 – 22:00
Thurs – Sat	09:00 – 23:00
Sun	09:00 – 20:00

My justification for this is residential amenity of the adjoining property. I believe that the times above are fair, taking into account the current night-time activity of nearby commercial uses including an off license and a pub, but also the presence of a residential property to the first floor of the application site.

Assessment

An application can be made under section 73 of the Town and Country Planning Act 1990 to vary or remove conditions associated with a planning permission. However, section 73 of the Act is not limited to permissions expressly granted by the Local Planning Authority. Accordingly, deemed planning permission granted by way of a development order is "a previous planning permission" to which Section 73 applies.

One of the uses of a section 73 application is to seek a minor material amendment, where there is a relevant condition that can be varied. Although there is no statutory definition of a minor material amendment, Government Guidance set out in "Flexible Options for Planning Permissions" (March 2014) states that a minor material amendment "is one whose scale and nature results in a development which is not substantially different from the one which has been approved."

Section 73(2) of the above Act requires that on determination of applications to develop land without compliance with conditions previously attached, the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and —

(a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and.
(b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.

The application site is located within a local neighbourhood shopping centre as shown on the adopted South Tyneside Local Development Framework Site Specific Allocations proposals map. The proposed café/ restaurant use was determined to be in accordance with this allocation, as well as Local Development Framework Policies. The applicant and agent have both confirmed that no change is proposed to the use of the building or site by this application.

Therefore, the main issues relevant to the assessment of this proposal is the impact of the longer opening hours on neighbouring amenity and highway capacity and road safety.

Neighbouring Amenity

Policy DM1 (B) requires a development to be acceptable in relation to any impact on amenity of neighbours.

As highlighted, the application site is located within a local neighbourhood shopping centre. The unit has been in commercial use for a significant number of years (prior to the approved change to a café/restaurant), with the associated level of activity from customers and staff that this entails. It is noted that the adjoining commercial units to the application site have daytime opening times. Village Delights Cafe is open between 10am to 3pm on Wednesday to Saturday, while the Cake Place is open between 10am to 4pm on Monday to Friday and 10am to 12pm on Saturday. However, there is a pub (The Vigilant Inn) in close proximity to the application site with later evening closing times (open between 11am and 11pm Monday to Friday and 11am to Midnight Saturday and Sunday), as well as an off license/ convenience store along the same terraced row of businesses as the application site (with weekly opening hours of 7.30am to 9.30pm between Monday and Thursday, 7am to 10pm on Friday and Saturday and 7am to 9.30pm on Sundays) and a 24-hour petrol station, all of which contribute to an existing level of evening activity around the site.

There are residential flats above the terraced row of businesses (including above the application premises), with the dwellings along St Marys Avenue positioned to the rear of the site behind a row of detached private garages.

The council's Environmental Health Officer has reviewed the submitted information and, taking into account site circumstances, has proposed that the following opening times would be appropriate:

Mon – Wed	09:00 – 22:00
Thurs – Sat	09:00 – 23:00
Sun	09:00 – 20:00

In their view, these extended opening hours would protect the amenity of the occupier of the flat above the unit (from unacceptable disturbance and noise generation at quieter times during the week) but also reflect the existing level of commercial evening activity within proximity of the site, which would ensure that the proposed increase the hours of operation would not be out of place for the area, in terms of night time activity from customers visiting and leaving the site.

Concern was raised in a representation submitted to the Local Planning Authority regarding late night activity at the site, with reference to people being in the unit until 2am. However, activity at this time is substantially later than the hours being applied for (and those recommended by the council's Environmental Health Officer). The hours proposed to be granted would be no later than other existing evening uses in immediate area and, in terms of the extended hours above those already permitted, would only represent an additional 2 hours each morning (from 9am onwards) and an additional 4 hours on a Monday, Tuesday and Wednesday evening to 10pm (previously granted 6pm closure). The use would therefore not open any later into the evening than hours already granted for other nights (with an 11pm closure currently allowed between Thursday and Saturday).

It is also noted that there are tools available under the Environmental Health regime to ensure that the development would not result in an unacceptable impact on the nearest residential properties (including the residential flats above the row of shops) through noise generation or general disturbance.

Taking into account the small size of the unit, as well as the surrounding commercial uses with evening opening hours, including the nearby Vigilant Inn public house, Harton Convenience Store (which is located along the same row of businesses) and Moorlane Service Station (which is open 24 hours), it is not considered that the proposed increase in opening hours (as restricted to those recommended by the council's Environmental Health Officer) would result in material harm to the amenity of any neighbouring land use (including the upper residential flat); and, as such, the development would remain in

accordance with LDF Policy DM1 (B), as well as the requirements of the NPPF, which seeks to ensure a good standard of amenity for all existing and future occupants of land and buildings.

Highway Capacity and Road Safety

None of the commercial units along this section of Sunderland Road (including the existing business unit) currently benefit from any private off-street parking. However, there is designated on-street car parking to the front of the row of businesses, available for use by customers. Fewer businesses are open into the evening, which would offer more parking availability for use by this unit.

The existing customer parking arrangements would remain as existing (and as accepted by the previous prior approval consent), with the residential streets around the site parking permit restricted, preventing non-local customers using them for parking.

There is a row of detached garages to the rear of the site, with a private road providing access for servicing and waste. There would also be no change to servicing/ delivery arrangements for the business.

The council's Traffic and Road Safety Team were consulted in relation to the original prior approval application (for the change of use of the unit) and confirmed that they had no objections to the proposal in terms of access, layout or traffic movements; and wished to offer no additional highways comments on the proposal.

It is not considered that the proposed increase in opening hours to the café/restaurant would generate substantial trip numbers over and above those which are carried out in connection with the existing operation of the unit. This is also having regard to the residential properties within walking distance which could use the business; and the position of a bus stop within close proximity of the property, which provides a public transport link. As such, it is judged that the impact of the development would remain acceptable in relation to highway capacity; and would accord with LDF Development Management Policy DM1 (G).

Conclusion

It is considered that the opening hours of the development, as amended, would still accord with LDF Development Management Policy DM1 (Criterion B and G) and the requirements of the National Planning Policy Framework.

The Government's Planning Practice Guidance recommends that to assist with clarity decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission

In this instance, as the use has already commenced, it is not considered necessary to re-attach a condition relating to the time limit in which the development must be commenced.

Recommendation

Grant Permission with Conditions

In assessing this application due regard has been had to the requirement of section 149 of the Equality Act 2010.

Recommendation

Grant Permission with Conditions

Conditions

1 The premises shall only be open to the public between the hours of 09:00 and 22:00 on Monday to Wednesday, 09:00 and 23:00 on Thursday to Saturday and 09:00 and 20:00 on Sunday. It shall not be open to the public at any other time outside these hours.

To safeguard the amenity of local residents in accordance with South Tyneside Local Development Framework Development Management Policy DM1

Informatives

1 In dealing with this application the Council has implemented the requirements of the National Planning Policy Framework to seek to approve applications for sustainable development where possible.

Case officer: Josh Kenolty
Date: 11/02/2021

Authorised Signatory:
Date:

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