

DELEGATED DECISION REPORT

SMD/2021/0613
Valid 21/09/2021

167 CONGLETON ROAD
BIDDULPH

**REQUEST TO VARY
CONDITION NO. 6 TO NEW
OPENING HOURS AS
FOLLOWS: MONDAY TO
SATURDAY INCLUSIVE 11:30 -
21:30 INCLUDING BANK
HOLIDAYS BUT NOT OPEN ON
25TH AND 26TH DECEMBER
OR 1ST JANUARY IN ANY
YEAR AND NOT OPEN ON
SUNDAYS.**

(FULL - MINOR)

MAIN ISSUES

- Residential living conditions of neighbours

DESCRIPTION OF SITE

Roadside location – main A527 Congleton Road – set back behind a pavement with dropped kerb allowing vehicle pull-in parking. Condition 6 of 11/01127/FUL is as follows:

6. The premises shall only be open between the hours 11.30 to 14.30 and 16.30 to 21.30 Monday to Saturday. The premises shall not be open on Sundays and Bank Holidays.

Reason: To avoid the risk of disturbance to neighbouring dwellings from noise during unsocial hours.

The area is residential although the former Biddulph Arms is adjacent to the north but now approved for conversion to 8 dwellings and there is a petrol filling station on the opposite side of the road some 30m to the south.

PROPOSAL

As first submitted the application proposed varying condition 6 to allow daily opening 11.30 to 22.45 with Bank Holiday opening 11.30 to 22.30. Following advice from the Council's Environmental Health officer and the LPA the applicant has amended the proposal wording so that the variation to the condition would mean that the premises shall only be open Monday to Saturday inclusive between the hours 11:30 to 21:30 including Bank Holidays with exception of 25th and 26th December and 1st January in any year and not open on Sundays.

RELEVANT LOCAL AND NATIONAL PLANNING POLICIES

Local Plan (adopted 9th September 2020)

SS1 Development Principles
SS2 Settlement Hierarchy
SS6 Biddulph Area Strategy
DC1 Design Considerations
E1 New Employment Development
T1 Development and Sustainable Transport

National Planning Policy Framework February 2019

Paragraph(s) 1 – 14;

Section(s) 4 – Decision making; 6 – Building a strong and competitive economy; 7 – Ensuring the vitality of town centres; 8 Promoting healthy and safe communities; 11 – Making effective use of land; 12 – Achieving well designed places; 15 – Conserving and enhancing the natural environment; 16 – Conserving and enhancing the historic environment.

Adopted Supplementary Planning Documents/Guidance (SPD/G):

- Space About Dwellings SPG
- Design Principles SPG
- Design Guide SPD adopted 21st February 2018

Local Plan Supporting Evidence Documents:

- Landscape and Settlement Character Assessment (2008)

SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS

SM99-00228 – Extension to shop – refused – dismissed on appeal.

01/01345/FUL – Extension and alteration to shop and frontage – approved

07/00332/FUL – Installation of shutters (retrospective) – approved

06/00114/FUL – Change of use from retail to hot food takeaway – refused

06/01192/FUL – Change of use from retail (A1) to hot food takeaway (A5) including changes to front elevation, security shutters and fume extractor chimney – refused – at appeal change of use dismissed on highway safety grounds and first floor extension (retrospective) allowed.

11/01127/FUL – change of use from retail (A1) to hot food takeaway (A5) and alterations to shop frontage – approved

CONSULTATIONS

Publicity

Site Notice expiry date: 17.11.2021

Neighbour consultation period ends: 11.10.2021

Press Advert: N/A

Public Comments

Objections from 5 parties

- The dangerous parking situation. Although there is a car park available to customers, this is quickly full with a small amount of cars which then leads to the parking on the double yellow lines in the surrounding areas and mounted on pavements. This can cause many issues on the main road and there are often people reversing into the road and disrupting the traffic flow.
- Neighbour experiencing blocked driveway due to customers' cars / delivery vehicles.
- Vehicles mounting pavement and reversing over footpath.
- Constant smell – if the chip shop was to be open to the hours stated in the application, there would be no rest from the smell meaning everyday things like opening house windows and putting washing on the line becomes a problem.
- At the moment Sunday and Bank Holidays are the only days free from the overwhelming smell. On other days it can be impossible to be in or do anything in the garden.
- Intrusive signage with bright lights.
- Noise level and encouragement of gathering people. If the chip shop extends its opening hours, this will lead to an increase in the amount of people gathered in the area and therefore the noise level. The slamming of car doors and general noise of a chip shop will be highlighted even more during the stated hours as the main road becomes quiet of traffic after around 8pm.
- Questions the need on grounds “the shop is not busy after around 8pm”
- Frontage design does not fit.
- The limited opening times were designed to minimise the disruption to local residents through parking, lighting, smell and antisocial behaviour. At that point the aim of the Council was to refrain granting permission for food outlets outside the town centre.
- Any extension to these hours would cause further erosion of the residential status.
- Supporters may not appreciate how it impacts on local residents.
- Unsociable opening hours for a residential area and intrusive illuminated external sign for properties opposite.
- Noise late at night unsuitable for residential area.
- Odour extraction system is not adequate.
- Double yellow lines do not stop people parking dangerously

Representations in support from 10 parties

- Best fish and chips in town so would like it to open more.
- would like it open more on bank holidays as it is more likely for us to use the food they provide and the fish and chips are the best in the area.
- from an intending occupier of 167a – the shop has odour neutralisers and it is well insulated and keeps the noise away.
- business in the local community.
- Disagree that the sign is too bright.

Town / Parish Comments

Biddulph Town Council – no response received

Environmental Health

- no issue with Bank Holiday opening
- removing the break during the day which required closing for a few hours [14.30 to 16.30] no issue with this
- opening on a Sunday does potentially cause amenity issues especially to the nearest neighbours
- would object to Sunday openings and would request evidence that it will not adversely impact the nearest neighbours i.e noise assessment if the applicant feels it will not cause problems and wishes to pursue Sunday opening.

OFFICER COMMENTS

Principle of Development

The principle of the development has been established with the granting of the 2011 consent.

Design

Nothing in the application seeks to change any of the physical aspects. Policy DC1 addressing design refers at DC1(5) to noise, odour and light pollution saying that new development should:

protect the amenity of the area, including creation of healthy active environments and residential amenity, in terms of satisfactory daylight, visual impact, sunlight, outlook, privacy, soft landscaping as well as noise, odour and light pollution;

In so far as the opening hours are proposed to be extended by addition of Bank Holiday opening and allowing opening in the additional hours of 14:30 to 16:30 daily except Sundays the time period of the impacts of the shop opening would be extended. However these hours would be subject to the same conditions which were imposed to control the planning consent as originally granted.

Amenity

Importantly, the amended application no longer seeks to extend the evening opening hours. Sundays, and the dates 25th and 26th December and 1st January are to remain closed days.

The additional two hours of afternoon opening on the days when opening is allowed, and the addition of Bank Holiday opening which would all be otherwise subject to the same planning conditions as under the current opening arrangements, can reasonably be judged to not unduly intensify the impact for residents.

Odour extraction and dispersal that is applicable for the current operation of the business – condition 10 under the 2011 consent will continue to apply. It can be

seen from the 2011 committee report that “the short opening times” were a factor in the EHO advice and acceptance of the development at the time. EH advice now is accepting of the additional mid-afternoon two hours and of Bank Holidays but would not support later evening opening or Sunday opening – in the latter case not without additional site noise assessment by the applicant.

Highway Safety

Consultation with SCC Highways for this change in hours application has not been undertaken. Condition 3 (marking of parking bays) and condition 4 (turning area) will apply as they apply to the current business operation. It can reasonably be judged that arrangements deemed satisfactory for the current hours and days of operation will be sufficient for the additional hours (14.30 to 16.30) and days (Bank Holidays) now to be included.

CONCLUSION / PLANNING BALANCE

The main issues for residents relate to odours, traffic and illumination and that these impacts would be present for longer periods, especially later into the evenings and on Sundays and Bank Holidays when currently the premises are not able to open.

The residents raising objection obviously also do not consider that the current controls are sufficiently effective or adequate. However, these were deemed to be acceptable by the LPA when the existing permission was granted in 2011.

Now that this current application has been amended to not extend evening opening and to not introduce Sunday opening it can be judged on balance acceptable.

As an application to vary a condition this is in effect a s.73 application. A new decision notice must be issued referring to the permission as being granted under s73, the conditions attached to the new permission and restating the conditions imposed on earlier permissions that continue to have effect.

OFFICER RECOMMENDATION : **approve**

Case Officer: Arne Swithenbank

Recommendation Date: 27th April 2022

X 

Signed by: Ben Haywood

On behalf of Staffordshire Moorlands District Council

