DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H16-0549-23**	**Applicant:**	**Mr A Mustafa**
Proposal:	Change of use from A1 use (Shop) to A3/A5 (Restaurant/Takeaway) - approved under H16-0462-18 (allowed on appeal). Modification of Condition 3 to allow extension of opening hours.		
Location:	15 New Road Spalding		
Terminal Date:	28th August 2023		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

02	Development Management
03	Design of New Development
29	The Historic Environment
30	Pollution

National Guidance

National Planning Policy Framework 2021

Section 2 - Achieving Sustainable Development
Section 12 - Achieving Well Designed Places

Representations:

	Object	Support	No Obj.	Comments
WARD MEMBER	0	0	0	0
SHDC INTERNAL	0	0	1	0

CASE OFFICER ASSESSMENT

Proposal

The application is a 73A modification, to alter Condition 3 of APP/A2525/W/18/3208189 (appeal for H16-0462-18) relating to opening hours. Currently opening hours are 08:00am to 11:00pm Monday to Saturday and 08:00am to 10:00pm on Sundays and Bank Holidays.

It is proposed that the hours change to 01:00pm to 03:00am Monday to Sunday (including bank

holidays). No external alterations are proposed, the application solely seeks to alter opening hours. The application solely refers to the ground floor as the two floors above are currently used as an HMO. The ground floor unit is occupied by Sultan Kebab and Pizza.

The original application that this proposal relates to (H16-0462-18) was initially refused; with this decision being overturned via appeal. Within this appeal, the agreed upon opening hours were defined.

Site Description

The site is within the settlement boundaries of Spalding, as outlined within the South-East Lincolnshire Local Plan, 2019 (SELLP). The site is within the defined town centre and Conservation Area of the town. The immediate area is predominantly characterised by night-time businesses, with a relatively high density of pubs and late opening hot food takeaways.

While not listed, the building is highly prominent within the locale, occupying a highly visible corner plot along New Road. Architecturally, the building is distinct in the immediate area due to its decorative facade. The property is in the vicinity of the Grade II listed Black Swan and Punchbowl pubs.

Relevant History

H16-0599-11 - Full. External staircase and landing area (retrospective) and replacement boundary wall. Approved 19/10/11.

H16-0760-11 - Full. Use of first and second floors for multiple occupation (9 residents). Approved 11/01/12.

H16-0865-12 - Full. Change of use of ground floor from Class A1 (Shops) to Class A5 (Hot Food Take-Away). Refused 13/12/12.

H16-0841-13 - Full. Reinstatement of store building, raise part of existing boundary wall and new slate roof (retrospective). Approved 11/11/13.

H16-0995-13 - Full. Internal alterations and external ventilation flue. Approved 17/01/14.

H16-0856-14 - Full. Proposed change of use from A1 to A5. Refused 10/12/14.

H16-0507-15 - Full. Conversion of derelict outbuildings into two self-contained flats. Approved 12/08/15.

H16-1005-15 - Full. Timber window and surround repairs/replacement. Approved 06/01/16.

H16-0462-18 - Full. Change of use from A1 use (Shop) to A3/A5 (Restaurant/Takeaway). Allowed at appeal 18/06/19.

H16-1120-19 - Full. Part conversion/new build of derelict outbuildings into two self-contained flats. Approved 02/03/20.

Consultation Responses

Environmental Protection

No observations.

Planning Considerations

Layout, Design, Size and Scale

Paragraph 130 of the National Planning Policy Framework (NPPF), 2021 establishes that planning policies and decisions should ensure that developments will function well and add to the overall quality of the area, that they are visually attractive, as a result of good architecture, and are sympathetic to local character. Likewise, Policy 2 of the SELLP, states that design which is inappropriate to the local area, or which fails to maximise opportunities for improving the character

and quality of an area, will not be acceptable.

No external changes are proposed, the only change proposed is the change of opening times. The proposal will therefore have no impact upon the aesthetics of the area, the Conservation Area, or the nearby heritage assets.

The proposal conforms to Policies 2, 3 and 29 of the SELLP in terms of visual impact.

Impacts Upon Resident Amenity

Paragraph 130 of the NPPF amongst other matters, seeks places with a high standard of amenity for existing and future users. Policies 2 and 3 of the SELLP set out residential amenity and relationship to existing development and land uses as main considerations when making planning decisions. Policy 30 of the SELLP aims to reduce the potential pollution arising from development, including noise and light pollution.

It is significance to note the opening hours of comparable and connected establishments in the locale.

The nearby bars all are open till 12am on weekdays and 1am on weekends, with opening hours ranging between 8am and 11am. While the bars are not comparable businesses, they are involved in the night-time economy and therefore are of relevance. There are a number of takeaways in the locale, with significant variety in opening times. Bentley's currently opens from 11am-2am on Fridays and Saturdays; Turner's operates from 11am-8pm and American Burger opens 10am-10pm. Hot and Spicy (directly opposite the site) currently opens 4:30pm until 1am (Monday - Thursday) and 4:30pm until 3am (Friday and Saturday).

The above opening times shows that no business currently operates mid-week or on Sundays at comparable hours. It is therefore likely that the current ambient noise at this time is low, and consequently any change would lead to a significant increase in noise levels. The potential impacts here would be felt particularly poignantly due to the presence of the density of dwellings in the area and the residences above the shop. The noise and other biproducts of operating the business at these late hours would impact upon the amenity of the nearby residents, reducing their quality of life.

The proposed opening hours would be more acceptable if they were restricted solely to Fridays and Saturdays, were it is accepted that noise levels will be greater for longer.

It is therefore considered that the proposed opening times would lead to an unacceptable impact upon residential amenity, particularly within the working week and Sunday nights. The proposal fails to achieve the aims of Policies 2, 3, and 30 of the SELLP in terms of residential amenity and pollution.

Planning Balance

It is considered that the proposed alteration of opening hours is unacceptable due to the potential pollution arising from the change. The opening hours proposed are not in keeping with the current hours seen throughout the area on Sunday - Thursday and therefore, there is the potential for a significant increase in noise levels. The site is particularly sensitive due to the dwellings located in the area.

It is also acknowledged that due to the lack of exterior changes, the proposal would have no impact upon the Conservation Area or the aesthetic quality of the locale. However, the operation of a business at these times, seven days a week is not seen in the area and as such, the proposal would introduce a use at a time that is out of keeping with the character of the area.

Therefore, despite the lack of aesthetic impact, the potential noise pollution and the potential damage to the character of the area is considered unacceptable. The proposal fails to conform to Policies 2, 3 and 30 of the SELLP. The planning balance is against the proposal.

Conclusion

The recommendation is for delegated refusal.

Additional Considerations

Public Sector Equality Duty

In making this decision the Authority must have regard to the public sector equality duty (PSED) under s.149 of the Equalities Act. This means that the Council must have due regard to the need (in discharging its functions) to:
A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s).
C. Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in s.149. It is only one factor that needs to be considered, and may be balanced against other relevant factors.

It is not considered that the recommendation in this case will have a disproportionately adverse impact on a protected characteristic.

Human Rights

In making a decision, the Authority should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as South Holland District Council to act in a manner that is incompatible with the European Convention on Human Rights. The Authority is referred specifically to Article 8 (right to respect for private and family life) and Article 1 of the First Protocol (protection of property).

It is not considered that the recommendation in this case interferes with local residents' right to respect for their private and family life, home and correspondence, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general public interest and the recommendation is considered to be a proportionate response to the submitted application based on the considerations set out in this report.