

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H16-0813-23 **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 - re-submission of H16-0549-23

Location: 15 New Road Spalding

Terminal Date: 4th December 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 2023

Section 12 - Achieving well designed places
Section 16 - Conserving and enhancing the historic environment

Representations:

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

CASE OFFICER ASSESSMENT

Description of Proposal

The application is a 73A continuation, to alter Condition 3 of APP/A2525/W/18/3208189 (appeal for

H16-0462-18) relating to opening hours. Currently opening hours are 08:00 to 23:00 Monday to Saturday and 08:00 to 22:00 on Sundays and Bank Holidays.

It is proposed that the hours change to 15:00-00:30 Sunday to Thursday (including bank holidays) and 15:00 to 02:30 Friday to Saturday. 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.

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.

H16-0549-23 - Section 73A Continuation. 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. Refused 11/08/23.

Consultation Responses

The responses received from consultees during the initial consultation exercises, which can be viewed in their entirety through the South Holland website, can be summarised as follows:

Environmental Protection

the opening hours proposed are in line with similar take away premises in the vicinity. however steps should be taken to reduce disturbance to nearby properties- avoid use of amplified sound in the premises beyond 00:00hours

Public Representations

This application has been advertised in accordance with the Development Procedure Order and the Council's Statement of Community Involvement. In this instance, one letters of representation have been received.

These can be summarised as:

- Object due to potential noise
- The business already does not comply with stipulated opening hours

Key Planning Considerations

Evaluation

Section 38 (6) of the Town and Country Planning Act, as amended by the 2004 Act, requires that the Local Planning Authority makes decisions in accordance with the adopted Development Plan, unless material considerations indicate otherwise.

The adopted South-East Lincolnshire Local Plan 2011-2036, adopted March 2019 (SELLP), is the development plan for the district, and is the basis for decision making in South Holland. The relevant development plan policies are detailed within the report above.

The policies and provisions set out in the National Planning Policy Framework, 2021 (NPPF) are also a material consideration in the determination of planning applications, alongside adopted Supplementary Planning Documents.

Layout, Design, Scale and Consideration of the Character of the Area

Section 12 of the NPPF, "Achieving well-designed places", states that " creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve" and as such, it is generally accepted that good design plays a key role towards sustainable development.

Paragraph 130, contained within Section 12 of the NPPF, states that new development should function well and add to the overall quality of the area (including beyond the short term) and should be visually attractive as a result of good architecture and appropriate landscaping. This goes on to establish that it is important that new development should be of the highest quality, to enhance and reinforce good design characteristics, and that decisions must have regard towards the impact that the proposed development would have on local character and history, including the surrounding built environment and landscape setting such as topography, street patterns, building lines, boundary treatment and through scale and massing. Developments create places that are safe, inclusive, and accessible and which promote health and well-being, with a high standard of amenity for existing and future users, among other considerations.

Likewise, Policy 2 of the SELLP outlines sustainable development considerations for proposals; providing a framework for an operational policy to be used in assessing the sustainable development attributes of all development proposals. Furthermore, Policy 3 of the SELLP requires development to comprise good design; identifying issues that should be considered when preparing schemes so that development sits comfortably with, and adds positively to, its historically designated or undesignated townscape or landscape surroundings.

These policies accord with the provisions of the NPPF and require 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. Proposals for new development would therefore require the aforementioned considerations to be adequately assessed and designed, including the siting, design, and scale to be respectful of surrounding development and ensure that the character of the area is not compromised.

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 use, and the proposed times of use, are akin to a number of businesses already present in the area; therefore, ensuring no character significant detrimental character impacts occur.

Taking account of the design, scale, and nature of the development, as detailed above, the proposal is considered to be acceptable. The proposal would not cause an adverse impact to the character or appearance of the area and would therefore be in accordance with Policies 2, 3 and 29 of the SELLP and Section 12 and 16 of the NPPF.

Impacts Upon Resident Amenity

Paragraph 130 of the NPPF states that development should create places that are safe, inclusive, and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.

Policies 2 and 3 of SELLP sets out that residential amenity and the relationship to existing development and land uses is a main consideration when making planning decisions. Both policies are supported by Policy 30, which concerns pollution, including noise pollution.

The site is located beneath and adjacent to high density living accommodation. As such, the site is particularly sensitive to increases in noise pollution, far more so than other nearby establishments. The increase in opening hours would introduce an excessive and harmful level of noise which would significantly harm the amenity of the residents of the aforementioned accommodation. This would be combined with the other biproducts of the business (e.g., steam, odour etc) to severely reduce the amenity of nearby residents, thereby reducing their wellbeing. This would directly contradict Policies 2, 3 and 30 of the SELLP.

The original permission granted for this application (under appeal APP/A2525/W/18/3208189) set the operating hours to cease at 11pm due to the potential amenity impacts of operating later. There have been no changes within that time that would dampen the potential impacts. As such, there is no significant reason as to why these hours should be strayed from.

Therefore, despite the comments from Environmental Protection, it is considered that the proposal would lead to a significant harm to residential amenity to a number of sensitive properties. The high-density accommodation above the shop directly conflicts with the later opening hours. As such, the proposal fails to conform to Policies 2, 3, and 30 of the SELLP.

Planning Balance

As detailed above, Section 38 (6) of the Town and Country Planning Act, as amended by the 2004 Act, requires that the Local Planning Authority makes decisions in accordance with the adopted Development Plan, unless material considerations indicate otherwise.

No exterior changes are proposed, thereby preventing impact upon the Conservation Area or the character of the immediate area. However, the potential increase in noise and disturbance would severely harm the residential amenity of the adjacent dwellings. The proximity to numerous sensitive dwellings means that any potential increase in noise would be to the significant detriment of residential amenity.

The proposal fails to conform to Policies 2, 3, 29, and 30 of the SELLP, as well as Sections 12 and 16 of the NPPF. As such, the planning balance is against the proposal.

Conclusion

Based on the assessment detailed above, it is recommended that the proposal should be refused under Delegated Authority.

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.