

Application Recommended for Refusal

APP/2017/0450

Gannow Ward

Full Planning Application

Variation of condition 6 (relating to operating hours of 9.30am to 7pm on any day) of planning permission APP/2016/0007 to change the operating hours to 11.00am to 9pm Sunday to Thursday and Bank holidays and 11.00am to 9.30pm on Friday and Saturday

318 PADIHAM ROAD, BURNLEY

Background:

This application has been called in, by three Councillors, to be considered by the Development Control Committee.

Consent was granted for the change of use of the former post office to a hot food take away in March 2016 with a condition restricting opening hours until 7pm. The applicant wishes to extend the opening hours; an application to extend the hours until 9pm Sunday to Thursday and Bank Holidays and until 10pm on Fridays and Saturdays was refused in August 2017. The current application is to extend the hours to 9pm Sundays to Thursdays and Bank Holidays and 9.30pm on Fridays and Saturdays.

Objections have been received.

Relevant Policies:

Burnley Local Plan Second Review

CF11 - District and local centres

CF13 - Restaurants, cafes, public houses and hot food take-aways

E21 - Gateways and throughroutes

GP1 - Development within the Urban Boundary

H12 - Non-residential uses in residential areas

H9 - Regenerating urban areas and neighbourhoods

TM15 - Car parking standards

TM8 - Quality bus routes

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TC7 – Hot Food Take-aways

IC3 – Car parking standards

Site History:

Relevant applications:

95/0397 - Proposed extension to shop and sales area to first floor, new shop front and access ramp to forecourt – c/c

05/0021 – Use for sale of hot drinks (opening 8.30am to 5.30pm) and extension to front elevation to provide glazed entrance – c/c

15/0459 – Change of use of ground floor to hot food take-away (opening 11am until 12 midnight Mon-Fri, Sundays and Bank Holidays and 11am until 2am on Saturdays) – refused

16/0007 – Change of use of ground floor to hot food take-away (closing at 7pm) – c/c

16/0261 – Discharge of conditions 3 and 4 on 16/0007 – condition 4 yet to be discharged

17/0300 - Variation of condition 6 (relating to operating hours of 9.30am to 7pm on any day) of planning permission APP/2016/0007 to change the operating hours to 9.30am to 9pm Monday to Thursday, Sunday and Bank Holidays and 9.30am to 10pm on Friday and Saturday – refused

Consultation Responses:

Highway Authority –The proposal raises no highway concerns and I would therefore raise no objection to the proposal on highway grounds.

Environmental Health – There are no grounds for Environmental Health to object to the application, however, we have had complaints of alleged odour nuisance coming from the premises. *This was investigated and it was found that there was a faint cooking odour present at the complainant's property but at the time of the visit they did not believe this to be a statutory nuisance.*

Neighbouring residents – *Nine letters/e-mails have been received, objecting to the proposed take-away for the following reasons;*

- There is a pervading smell from the premises when it is open (we are unable to have our windows open during the hours of opening and can't put our washing out). Also can't put washing out.
- The roads around the premises are congested and parking is a problem, extended opening hours will add to the problem/safety issues (we are having to park further away from our homes).
- The late opening hours would also mean additional noise late at night with customers arriving/leaving due to car doors slamming and customer discussions.
- Increase in car fumes
- Extending the closing time until 9.30pm on Fridays and Saturdays would act as a magnet for local youths to congregate.
- They are already opening past 7pm without consent.
- We were told that there would be plenty of refuse bins provided for the customers and that staff would ensure that the area would be clean; the staff do not clean around the front of the shop and at most one bin is provided, which is often full. We have rubbish discarded in our gardens.
- Applications were previously refused for later closing times.
- The applicant has also bought the fish and chip shop in the row of shops (298 Padiham Road) opposite the Tim Bobbin pub. (*This is an old established use and is considered to be within the area classed as a 'local centre' – see Local Plan policy CF13 below*).

Planning and Environmental Considerations:

The property is an end terraced shop which was previously a Post Office; there is an Oddies Bakery next to it and the rest of the row is residential. Properties to the rear, other side of the side street and at the other side of Padiham Road are residential.

Consent was refused (on residential amenity grounds) in December 2015 for the change of use of the former post office to a hot food take-away opening until 12

midnight every day except Saturdays which was proposed until 2am. Following the refusal an application was submitted for opening hours until 9.30pm every day (they applied for opening hours from 11am until 9.30pm Mon to Fri and 9.30am until 9.30pm on Saturdays, Sundays and Bank Holidays); following discussions the application was changed to closing at 7pm and was granted at a Development Control Committee meeting on that basis (as there was no issue with the shop opening earlier, if they so wished, a condition was attached stating that they should not operate outside the hours of 9.30am and 7pm on any day).

The applicant then applied to extend the opening hours until 9pm Mondays to Thursdays, Sundays and Bank Holidays, and until 10pm on Fridays and Saturdays. The applicant was advised prior to submission of the application that such an application would be likely to be refused. The application was refused under delegated powers in August 2017.

The current application is to extend the opening hours until 9pm Sundays to Thursdays and Bank Holidays, and until 9.30pm on Fridays and Saturdays.

The applicant has stated that the reasons why he needs to extend the hour are as follows; i.e.at the request of customers, and in order to generate enough income to pay the running costs/business rates. He also states that there are other take-aways in Burnley that are not on a major road and are located in a residential area, that currently operate to 12am and beyond.

The main considerations are residential amenity and highway issues.



318 Padiham Road

Although the change of use has already been granted (APP/2016/0007) the following policy is still considered to be relevant;

Local Plan policy CF13 – Restaurants, cafes, public houses and hot food takeaways states that these proposals will be permitted when the proposal:

- (a) is, wherever possible, located in, or adjacent to, a defined town, district or local centre, or within one of the named settlements listed in General Policy GP2: “Development in Rural Areas” (*the property is not located within a defined town, district or local centre etc. there is a local centre on Padiham Road however the property is not considered to be within or adjacent to this*);
- (b) is accessible by walking, cycling and public transport (*the property is easily accessible*);
- (c) includes an adequate and effective fume and odour control system (*a flue has been erected at the rear of the premises, however there has been complaints about odour nuisance*);
- (d) can be accommodated without detriment to the free flow of traffic or residential amenity; (*the Highway Authority have no objections to the proposal on highway grounds; however, trade is likely to be concentrated in the evening when background noise is less, potentially increasing the impact on local residents; it is proposed to open the take-away until 9pm on Mon to Thurs and Sundays and Bank Holidays, and until 9.30pm on Fridays and Saturdays*);
- (e) includes measures to reduce the impact of noise and litter (*litter bins were proposed inside and outside the premises as part of the approved change of use (16/0007); if the opening hours are extended noise is likely to be an issue due to customers (and their cars) coming and going in the evening*);
- (f) will not create an unacceptable concentration of non-retail uses in Burnley and Padiham Town Centres in accordance with policies BTC1, BTC2, PTC1 or PTC3, or more than 30% in any other centre or frontage (*not relevant to this application*); and
- (g) complies with Local Plan Environment Policy E25 - “Shop Fronts (*no new shop front is proposed*)”.

Local Plan policy H12 – Non-residential uses in residential areas – states that “there should be no adverse effect on residential amenity as a result of the proposed activity (criteria b) (*as mentioned above in CF13 criteria (d), it is considered that the late opening hours would have an adverse effect on the residential amenities of the neighbouring residents, in particular due to noise and disturbance from the coming and going of customers and their vehicles*).

Local Plan policy GP1 – Development within the Urban Boundary – states that development will be permitted when it meets certain criteria. Criteria (g) states that the development should not have a detrimental effect on residential amenity by reason of noise or other nuisance. *As detailed above it is considered that residential amenity would be adversely affected by the proposals.*

There are waiting restrictions on the highway to the front and side of the property between 8am and 6.30pm Mondays to Saturdays. However, cars will be coming and going, parking outside/to the side of the property in the evenings until 9pm Mon to Thurs and Sundays and Bank Holidays and up until 9.30pm on Fridays and Saturdays causing noise and disturbance.

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Policy TC7: Hot Food Takeaways

With regard to 'hours of opening' the policy states;

- h) When determining the appropriate hours of opening, regard will be had to:
 - i) the likely impacts on residential amenity;
 - ii) the existence of an established late night economy in the area; and
 - iii) the character and function of the immediate area, including existing levels of background activity and noise.

4) Where appropriate, restrictions will be placed on opening hours through the use of planning conditions.

Conclusion

The applicant agreed to change the opening hours of the takeaway to close at 7pm (APP/2017/0007) and the application was approved on that basis; the applicant was therefore aware that he could not open after 7pm when the use was brought into use. There are some take-aways within residential areas in Burnley that can open later than 7pm; these are likely to be ones that have a long established use i.e. have been there for a long time and pre-date planning controls.

Trade is likely to be concentrated in the evenings when background noise is less, there are residential properties in close proximity to the proposed hot food take-away; noise and disturbance from customers and their vehicles coming and going late into the evening would have an adverse effect on the residential amenities of the neighbouring residents. The proposals are therefore contrary to Local plan policies GP1, CF13 and H12 (and policy TC7 of the emerging Local Plan).

Recommendation:

Refuse for the following reason:

The operation of a hot food take-away during evening hours up to 9pm Sunday to Thursday and Bank Holidays and 9.30pm Fridays and Saturdays, as specified in the application, would have an adverse effect on the residential amenities of the neighbouring residents in particular by reason of noise and disturbance from the coming and going of customers and their vehicles. The proposal would thereby be contrary to policies GP1, CF13 and H12 of the Burnley Local Plan Second Review and policy TC7 of the emerging Local Plan and policy TC7 of the emerging Local Plan.

