

<b>APPLICATION NO.</b>	<a href="#">P18/S3345/FUL</a>
<b>APPLICATION TYPE</b>	FULL APPLICATION
<b>REGISTERED</b>	5.10.2018
<b>PARISH</b>	DIDCOT
<b>WARD MEMBER(S)</b>	Anthony Dearlove Vacant position for Didcot South ward Mocky Khan
<b>APPLICANT</b>	Mr Ferhat Bakabala
<b>SITE</b>	Delight 2 Kebab & Pizza House 100 Broadway Didcot, OX11 8AB
<b>PROPOSAL</b>	Variation of condition 2 (neighbour amenity) on application reference P10/W0325 to extend opening hours of hot food take-away to:  Monday to Wednesday 11.00 to 00.30 Thursday to Saturday 11.00 to 03.30 Sunday - 11.00 to 00.30
<b>OFFICER</b>	Kim Gould

1.0 **INTRODUCTION**

- 1.1 This application has been referred to Planning Committee because the recommendation to approve temporary planning permission conflicts with the views of the Didcot Town Council.
- 1.2 The site is an end of terrace property which lies on the northern side of Broadway. These premises are in an A5 hot food takeaway use. The building is a three-storey, end terrace in a row of units with commercial uses on the ground floor and residential accommodation above. An OS extract showing the location of the site is **attached** as Appendix 1.
- 1.3 The A5 use of the ground floor property was granted planning permission on 15 July 2003 under application P03/W0079 and was subject to a number of conditions. The original condition 5 read as follows.
- “That the premises shall not open after 11.00pm Sunday to Thursday nor after 11.30pm on Friday and Saturdays.
- Reason. To ensure that the development was not unneighbourly in accordance with policy G9 of the adopted SOLP.”
- 1.4 On 4 May 2010 planning permission was granted to vary condition 5 of planning permission P03/W0079 to ‘allow the premises to be open to the public between 09:00-11:30 Monday to Wednesday, 09:00-00:00 Thursday to Saturday and 12:00-23:30 on Sundays’ under application P10/W0325.
- 1.5 In May 2018, an alleged breach of planning control was reported to the Local Planning Authority regarding the opening of the premises until 03:00. As a result of the enforcement investigations, the applicant has agreed to open only during the hours approved under P10/W0325 until the outcome of this current planning application is

known. This compliance is further corroborated by the opening times now advertised on Google maps and those on the company website.

2.0 **PROPOSAL**

2.1 This application is made under Section 73 of the Town and Country Planning Act 1990 and seeks to vary condition 02 of planning permission P10/W0325 to increase the opening times of the premises.

2.2 The original condition 5 of P03/W0079 has already been varied by application P10/W0325 as follows

“The use of the premises hereby permitted shall be restricted to:

Monday to Wednesday 9.00 to 23.30  
Thursday to Saturday 9.00 to 24:00  
Sundays 12:00 to 23.30

Reason: To safeguard the amenity of neighbouring residents in accordance with Policies EP2 and E8 of the South Oxfordshire Local Plan 2011.”

2.3 This application seeks a further variation to the opening hours to:

Monday to Wednesday 11.00 to 00.30  
Thursday to Saturday 11.00 to 03.30  
Sunday 11.00 to 00.30

2.4 In the supporting statement, the agent states that the alteration to opening hours will be in line with the licensing hours permitted in May 2018. The license for the premises allows opening hours as follows:

Monday to Wednesday – 11.00 to 00.30  
Thursday to Saturday – 11.00 to 03.30  
Sunday – 11.00 to 00.30

3.0 **SUMMARY OF CONSULTATIONS & REPRESENTATIONS**

3.1 Didcot Town Council – Object

- Didcot Town Council deems a 3.30am closing time to be unacceptable in a semi-residential area with neighbours almost directly opposite.
- Concerns over the potential for anti-social behaviour in a semi-residential area

Env. Protection Team - No objections to this variation to extend the opening hours

4.0 **RELEVANT PLANNING HISTORY**

4.1 [SE18/271](#) - (08/11/2018)

Alleged opening to 3am in breach of condition

[WE09/129](#) - (17/05/2010)

Remaining open beyond the times stipulated in planning permission P03/W0079 (that the premises shall not open after 11.00pm Sunday to Thursday nor after 11.30pm on Fridays and Saturdays)

[P10/W0325](#) - Approved (04/05/2010)

Variation of condition of 5 (restricted opening hours) of planning permission P03/W0079 to allow premises to be open to the public between 09:00-11:30 Monday to

Wednesday, 09:00-00:00 Thursday to Saturday and 12:00-23:30 on Sundays.  
(resubmission of planning application P09/W0940).

[P09/W0940](#) - Refused (24/11/2009)

Variation of condition 5 (restricted opening hours) of planning permission P03/W0079 to allow premises to open to the public between 9:00 - 1:00 Monday to Saturday and 12:00 - 23:00 on Sundays.

[P03/W0079](#) - Approved (15/07/2003)

Ground floor change of use to A3 take away fast food and single storey extension to rear of property. (As amended by plans and details accompanying letter from the John Phillips Planning Consultancy dated 9th May 2003).

## 5.0 **POLICY & GUIDANCE**

### 5.1 South Oxfordshire Core Strategy (SOCS) Policies

CS1 - Presumption in favour of sustainable development

CSS1 – The overall strategy

CSDID1 – The central area of Didcot – regeneration of The Broadway

### 5.2 South Oxfordshire Local Plan 2011 (SOLP 2011) policies;

EP2 - Adverse affect by noise or vibration

D5 - Compatible mix of uses

### 5.3 Neighbourhood Plan policies; Not applicable.

### 5.4 Supplementary Planning Guidance/Documents

South Oxfordshire Design Guide 2016 (SODG 2016)

### 5.5 National Planning Policy Framework (NPPF)

National Planning Policy Framework Planning Practice Guidance (NPPG)

## 6.0 **PLANNING CONSIDERATIONS**

6.1 When assessing section 73 applications the Council can only consider the original condition and the reasons for applying the condition; new conditions can be attached but only in so far as they apply to the original condition. If the Council decides that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they should refuse the application

6.2 Paragraph 015 of NPPG notes where an application under section 73 is granted, the effect is the issue of a new planning permission, sitting alongside the original permission, which remains intact. It further advises 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, unless they have already been discharged

6.3 As this Section 73 application relates to the extension of opening hours the key consideration is the impact of the additional hours on the amenity of occupiers of neighbouring properties.

6.4 Policy EP2 of the South Oxfordshire Local Plan seeks to ensure that proposals which would by reason of noise or vibrations have an adverse effect on existing or proposed occupiers, will not be permitted. In addition, noise sensitive development will not be permitted close to existing or proposed sources of significant noise and vibrations.

6.5 In this case, there is an existing hot food takeaway establishment at this address. The proposed increase in opening hours is unlikely to have any adverse effect on the existing occupiers of residential properties in the locality according to the council's Environmental Protection Team. As such, it would not be appropriate to recommend this application for refusal without having the technical support to substantiate such a refusal reason at appeal.

There are several other hot food takeaway establishments along Broadway. None of these open as late as proposed by this planning application. The Broadway Public house does, however, open until 3am on a Friday and Saturday.

6.6 The Town Council's concern for neighbour amenity is acknowledged. It is therefore recommended that planning permission is granted for the additional opening hours for a temporary period of 12 months only to allow the situation to be monitored. The applicant would have to reapply within 12 months for a permanent consent. Any complaints regarding noise and disturbance received during this period would be considered when assessing an application for the permanent extension of opening hours.

6.7 Attached to the 2003 planning permission were a number of conditions. A copy of the decision notice is **attached** as Appendix 2. When a Local Planning Authority approves a variation of condition application, it is effectively issuing a new planning permission. As such, conditions attached to the original permission can be altered (if necessary) to reflect a discharge of condition or in some cases the conditions are no longer relevant (due to a change in policy or site circumstances for example).

6.8 In this case, the original planning permission has commenced i.e. the change of use has occurred, and the extension has been built. As such, it is pertinent to review the conditions of the original planning permission to assess whether they are still reasonable and necessary.

1. Five-year time limit – no longer relevant as the development has commenced
2. Matching materials – The extension has been built so this is no longer relevant
3. A scheme for fume extraction to be submitted – there is no record of this condition having been discharged. This condition is therefore recommended in relation to this current application.
4. The accommodation above ground floor – this should be included as it is an on-going requirement.
5. Hours of opening – these are to be replaced with the hours requested by this variation of condition application.

6.9 **Community Infrastructure Levy**

This proposal is not CIL liable.

7.0 **CONCLUSION**

7.1 I recommend that temporary planning permission is granted because these premises currently have a license to open during the hours proposed under this planning application. There has been no objection from the council's Environmental Protection Team in relation to the proposed increase in opening hours. In view of the Town Council's objection on neighbour amenity grounds, the application is recommended for

a 1-year temporary consent to enable the situation to be monitored during that period. As such, subject to the recommended conditions, the proposal accords with Development Plan policy and is recommended for approval.

8.0 **RECOMMENDATION**

8.1 **To delegate authority to the head of planning to grant planning permission subject to the attached conditions:**

1. **Temporary permission for one year.**
2. **Scheme for detailed method of fume extraction to be submitted.**
3. **First floor accommodation to be occupied by person employed by the A5 use.**
4. **Hours of use.**

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