

Committee: Development	Date: 9 April 2014	Classification: Unrestricted
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Report of: Director of Development and Renewal	Title: Applications for Planning Permission
Case Officer: Piotr Lanoszka	Ref No: PA/13/02251
	Ward: Shadwell

1.0 APPLICATION DETAILS

Location:	375 Cable Street, London, E1 0AH
Existing Use:	Hot Food Take-away (Use Class A5)
Proposal:	Variation of condition 3 of planning permission granted by the Secretary of State for Communities and Local Government on 30th March 2011, reference APP/E5900/A/10/2141935/NWF, LBTH reference PA/07/03290, to allow opening hours from 9am - 10pm Sunday to Thursday and 9am - 11pm Fridays and Saturdays. Approved Hours: 9am - 9pm Sunday to Thursday and 9am - 10pm Friday and Saturday
Drawings and documents:	N/A
Applicant:	Mr Tera Miah, Fried & Fabulous
Ownership:	Freehold - London Borough of Tower Hamlets
Historic Building:	None
Conservation Area:	None

2.0 BACKGROUND

2.1 This application was reported to the Development Committee on the 12th February 2014 with officers' recommendation for **REFUSAL** for the following reason:

1. The proposed variation of the opening hours would result in an increase in late evening noise, disturbance and general activity in the vicinity of the premises and lead to an unacceptably harmful effect on the living conditions and amenity of the residents living directly above and adjoining the premises, and along Cable Street. This would be contrary to the general principles of the National Planning Policy Framework (2012), policy 7.15 of the London Plan (2011), policy SP03(2B) of the Core Strategy (2010), and policy DM25 of the Managing Development Document (2013). These policies require development to protect, and where

possible improve, the amenity of surrounding existing and future building occupants, as well as the amenity of the surrounding public realm.

2.2 The Committee resolved **NOT TO ACCEPT** officer's recommendation to refuse planning permission. Officers recorded that Members were minded to **GRANT** permission for the following reasons:

1. The lack of formal evidence that the premises were responsible for anti-social behaviour and that the extended hours would cause harm to the amenity of local residents.
2. The number of similar premises that operate with late night hours.
3. To consider the option of a temporary consent with alternative hours (for example a closing time of 10:30 pm, Fridays and Saturdays).
4. That, in view of the current economic climate, it was important to support a local family run business.

2.3 The application was **DEFERRED** to enable officers to prepare a supplementary report to a future meeting of the Committee.

3.0 OFFICER COMMENTARY

3.1 The aforementioned reasons given by Members for overturning officers' recommendation will be addressed in turn.

3.2 Members were concerned by lack of formal evidence that the premises are responsible for anti-social behaviour and that the extended operating hours would cause harm to the amenity of local residents.

3.3 Following the committee meeting of 12th February 2013 officers have approached the Council's Safer Communities - Antisocial Behaviour Section who on 14th March 2014 confirmed that one complaint has been received in relation to the premises. The complaint related to drug dealing in the vicinity of the premises and the investigation by the ASB team was inconclusive. Officers have also contacted the Metropolitan Police Shadwell Safer Neighbourhoods Team and the MET Secure by Design Officer but to date received no formal response.

3.4 Officers are not in possession of local authority or police records demonstrating that the application premises give rise to or facilitate antisocial behaviour or other amenity disturbance to neighbours, however, it is clearly evident from the number of objection letters received from local residents and from the testimony of the speaker at the 12th February committee that the operation of the premises already adversely affects the amenity of neighbours, as outlined in the 12th February report.

3.5 Following the committee meeting, a local resident has submitted a log with pictures as well as a letter from Jim Fitzpatrick MP. The log covers one week between 17th and 23rd February and documents incidents of urinating in doorways and littering, in the area directly opposite the take-away. The letter from Jim Fitzpatrick MP quotes a letter from Eastend Homes' Chief Executive Paul Bloss stating that residents of the nearby Glamis Estate have made complaints about the operation of the take-away shop and that Eastend Homes support the residents' concerns.

- 3.6 Members were minded to consider the proposal more favourably due to the number of similar establishments that operate with late night opening hours. However, most hot food take-aways in the borough are located within either designated town centres or within local shopping parades along main roads. Longer opening hours in such locations can be justified due to the high degree of commercial activity, the amount of pedestrian and vehicular traffic and the background noise climate. The application premises, as detailed in paragraphs 9.8-9.10 of the 12th February 2014 report, are located in a residential rather than a commercial area and are not located on a main road or adjoining a public transport hub. There is very little pedestrian or vehicular traffic and no commercial activity in the vicinity of the site during late evenings. It is evident that the character of the vicinity of the application site including its immediate setting differs substantially from the character of the surroundings of most other take-aways in the borough.
- 3.7 With regard to the option of a temporary 'trial run' consent or a consent for a lesser extension of opening hours, it is considered that such options would not be appropriate in this instance as the public consultation responses received clearly indicate that the operation of the premises already results in disturbance and nuisance. This adverse amenity impact is currently restricted to the approved opening hours and, if the current application was approved, the adverse impact would increase by being extended later into the evening, to the detriment of neighbours' living conditions and contrary to local, regional and national planning policies aiming to safeguard amenity of residential occupiers.
- 3.8 Members will be aware that consistency of decision making and due regard to decisions made by a higher authority, such as by an Inspector appointed by the Secretary of State for Communities and Local Government, are material planning considerations. Officers consider that no material change occurred in the character of the vicinity of the application premises since the date of the Planning Inspectorate decisions and that Members should therefore attach significant weight to these appeal decisions as summarised below.
- 3.9 As outlined in the 12th February report, the first appeal has been dismissed in part due to the late opening hours proposed (until 22:30 all week) which in Inspector's opinion would result in introduction of late evening activity to a residential area to the detriment of residents' amenity. In the second appeal decision - which allowed the opening of the hot food take-away, the Planning Inspector considered that the use would be acceptable with regard to its amenity impact only if it was subject to a closing time of 21:00 Sunday to Thursday and 22:00 on Fridays and Saturdays. The Inspector noted that up to this time a certain level of noise and outside disturbance is to be expected in an urban location and that these restricted hours would mean that the premises would not attract trade from public houses and clubs after they close later in the evening, this having a particularly high potential for noise, anti-social activity and general disturbance. The Inspector also noted that such opening times would allow an appropriate balance to be struck between business viability and residents' living conditions.
- 3.10 In conclusion, officers maintain their recommendation to **REFUSE** permission and consider that the hours of operation requested in this application are not compatible with the residential character of this part of Cable Street and that extending the opening hours would lead to an unacceptable increase in late evening noise, disturbance and general activity to the detriment of neighbours' amenity, which would be contrary to national, regional and local planning policy. In officers' view this harm to amenity would not be outweighed by the likely insignificant economic benefits resulting from the proposal.

4.0 RECOMMENDATION

- 4.1 The officers' recommendation as at 12th February 2014 to refuse planning permission remains unchanged. Accordingly, the Committee are recommended not to approve the application and to resolve to **REFUSE** planning permission for the reason set out in paragraph 2.1.
- 4.2 If members determine to approve the application it is recommended that the varied condition should read as follows:

The premises shall be closed to customers outside the following times: 09:00 to 22:00 Sunday to Thursday; and 09:00 to 23:00 on Fridays and Saturdays.

Reason: To safeguard the amenity of adjoining occupiers.

5 APPENDICES

- 5.1 Appendix One - Report to Development Committee 12th February 2014