

Officer Report

Application Number:	HGY/2022/4545
Application Type:	Removal/variation of conditions
Address:	460 Lordship Lane, Tottenham, London, N17 7QY
Proposal:	Variation of condition 3 (hours of opening) attached to planning permission HGY/2022/3867 to allow opening from 07:00 to 23:00 hours Sunday to Wednesday, and 09:00 to 00:00 Thursday to Saturday.
Case Officer:	Kwaku Bossman-Gyamera
Valid Date:	27/01/2023
Applicant:	MR H AYDEMIR
Agent:	other - ARCHPL

RECOMMENDATION

1. PROPOSED DEVELOPMENT AND LOCATION DETAILS

Proposed development

This application seeks to vary condition 3 to increase the opening hours to 7:00 am - 11:00 pm Sunday to Wednesday and 9:00 am - 12:00 am Thursday to Saturday.

2. Site and Surroundings

The application relates to a two-storey end of terrace building the ground floor of which is occupied by a café with residential accommodation above. The café forms part of a shopping parade which is designated in Haringey's Development Management Plan as a Local Shopping Centre.

The boundary of the Tower Gardens Conservation Area runs through the rear garden of the property and the proposed extension would be located within the conservation area.

3. Relevant Planning and Enforcement history

The most recent planning history in relation to the site is as follows.

- HGY/2022/3867 – GTD 15/12/2022 - Single storey rear extension to include additional seating and smoking area to existing restaurant.
- HGY/2022/1959 REF 30/08/2022 - Single storey rear extension to include additional seating and smoking area to existing restaurant.

- HGY/2020/0732 GTD 10/04/2020 Single storey rear extension ancillary to existing café.
- HGY/2019/2556 REF 01/11/2019 Single storey rear extension and associated ancillary seating.
- HGY/2007/0758 GTD 06/06/2007 Conversion of rear garden to form a car park for two cars and crossover onto Turnant Road.
- HGY/2007/0228 REF 20/03/2007 Conversion of rear garden to form a car park for four cars and crossover onto Turnant Road.
- HGY/2006/0781 GTD 14/07/2006 Change of use of property from A2 to A3, (restaurant /cafe), provision of ductwork for extractor fan to side / rear elevation and installation of security shutters to front of premises.
- HGY/2006/0780 GTD 20/06/2006 Display of internally illuminated shop fascia sign.
- HGY/1989/0682 REF 20/10/1989 Erection of single storey side and rear extensions to existing betting shop, installation of new shopfront and erection of new external staircase to provide new access to 1st floor flat.

There is no enforcement planning history in relation to the site.

4. Consultation response

The responses below were received following consultation on the application:

Internal:

- 1) LBH Transportation Team: There are no transport objection regarding this application.
- 2) LBH Environmental Health Team: no comments.

5. LOCAL REPRESENTATIONS

The application has been publicised by way of 90 letters. The number of representations received from neighbours, local groups, in response to notification and publicity of the application were as follows:

No of individual responses: 15

Supporting: 15

The following issues were raised in representations that are material to the determination of the application and are addressed in the next section of this report:

- 15 letters of support for the proposed variation to increase the opening hours for the premises on the grounds that proposal would allow local community to enjoy late restaurant, no need to travel outside the locality, provide competition within Lordship Lane.

6. MATERIAL PLANNING CONSIDERATIONS

The main planning considerations raised by the proposed development are:

1. Impact on neighbouring amenity.

Scope of Section 73 planning application

An application can be made under S.73 of the Town and Country Planning Act 1990 to vary or remove conditions associated with a planning permission. One of the uses of a S.73 application is to seek a minor material amendment, where there is a relevant condition that can be varied. A S.73 application results in a new permission being issued.

Guidance for determining S.73 applications is set out in the NPPG which states that a minor material amendment is one “whose scale and nature results in a development which is not substantially different from the one which has been approved.” This is not a statutory definition but the Department for Levelling Up, Housing, Communities and Local Government agree with this statement. It is further stated that the development which the application under S.73 seeks to amend will by definition have been judged to be acceptable in principle at an earlier date. Consequently, the extent of the material planning considerations is somewhat restricted and only the amendments being applied for should be considered at this stage. Having said that, when determining the application, the local planning authority (LPA) will have to consider the application in the light of current policy. The LPA therefore has to make a decision focusing on national or local policies which may have changed significantly since the original grant of planning permission as well as the merits of the changes sought.

Impact on neighbouring amenity

London Plan Policy D6 outlines that design must not be detrimental to the amenity of surrounding housing, in specific stating that proposals should provide sufficient daylight and sunlight to surrounding housing that is appropriate for its context, while also minimising overshadowing. London Plan Policy D14 requires development proposals to reduce, manage and mitigate noise impacts.

DPD Policy DM1 ‘Delivering High Quality Design’ states that development proposals must ensure a high standard of privacy and amenity for a development’s users and neighbours. Specifically, proposals are required to provide appropriate sunlight, daylight and aspects to adjacent buildings and land, and to provide an appropriate amount of privacy to neighbouring properties to avoid overlooking and loss of privacy and detriment to amenity of neighbouring resident.

Condition 3 attached to the previously approved scheme Ref: HGY/2022/3867 for Single storey rear extension to include additional seating and smoking area to existing restaurant.
– Stated:

- The use hereby permitted shall not be operated before 07:00 hours or after 20:00 hours Monday to Friday, before 9:00 or after 20:00 hours on Saturday, and not at all on Sundays and Bank Holidays.

- This was justified within approved permission HGY/2022/3867 so that the opening hours would not adversely impact on the residential amenity of the residents on Lordship Lane to a lesser extent any potential residents on the upper floor of residential accommodation on Lordship Lane and the adjoining residential streets, particularly on Teynton Terrace and Tower Gardens Road. While this predominantly a commercial area there is also a

substantial level of residential property, most in the upper floors of building where the lower floors are used commercially. The application has the potential to affect the amenities of residential occupiers not only in Lordship Lane also in the surrounding street, where the rear elevations of buildings can be affected by noise from the rear area of the application site.

The hours sought by this application are an extension of those permitted, when an application to extend hours of use is made the starting point is the reasonableness or otherwise of the existing hours. If those hours are too constrictive the next step is to examine whether the extension sought is acceptable. This approach is adopted precisely to avoid the situation in which an application has to select precisely the hours that might be acceptable and enable a grant of an extension that is possible not as much as that requested on the face of the application. The approved scheme made plain that 80:00 pm is considered a reasonable closing time for the café.

Whilst it is acknowledged that the existing environment is likely to be noisier than in a predominantly residential area because of the activity associated with the nearby pubs, restaurant, and other nearby hot food takeaways. It is accepted that, because of this, occupants of the flats above the host property may be likely to tolerate higher levels of noise and disturbance than they would elsewhere. However, notwithstanding this and even assuming that the other establishments open until late evening to 23:00pm, it is considered that the additional activity likely to be generated as a result of the proposed extended opening hours would significantly add to the noise and disturbance experienced by residents of the surrounding residential properties. The comings and goings of customers would have a particularly marked effect on the noise levels experienced by nearby residents in the late evening and in the early hours of the morning as proposed.

These are times when residents would have a reasonable expectation of a quieter environment and of achieving uninterrupted sleep. Those residents are entitled to a degree of certainty about the position of the neighbouring business which cannot seek extension in the face of considered a reasonable closing time, because thus will undermine residents understanding, trust and certainty in the planning position. The interest and rights of residents and the business owner have to be balanced and, in this instance, they favour the rights of residents, and the application should be declined.

Officers are also concerned that there will be noise and disturbance from the people congregating on the street and from doors opening and closing from comings and goings of customers. This would be detrimental to the quality of the residential environment through the night and early morning as described above.

It would appear likely that the proposed extension of hours would result in an increase in the level of noise and disturbance to nearby residential occupiers, to the extent that the proposal is contrary to the requirement in Policy DM1 of the adopted DPD which requires development must not cause significant harm to the amenities of nearby residential occupiers.

7. Conclusion

The site is located within the Local Shopping Centre where there are residential flats above the shops and nearby residential properties to the rear of the application site. The extension

to the opening hours of the cafe to 12am on Thursday to Saturday is considered to detrimentally affect the residential amenity of the above flats and residential amenity of the nearby residential properties at a time of the night when people would expect uninterrupted sleep. This is considered to be contrary to policy DM1 of the Development Management, Development Plan Document (adopted 2017), Policy SP11 of the Haringey Local Plan 2017 and Policy D14 of the London Plan (2021). it is recommended that the variation of Condition 3 is refused.

All other relevant policies and considerations, including equalities, have been taken into account. Planning permission should be refused for the reasons set out above. The details of the decision are set out in the RECOMMENDATION.

8. CIL APPLICABLE

The increase in internal floor area would not exceed 100 sq.m. and therefore the proposal is not liable for the Mayoral or Haringey's CIL charge.

9 RECOMMENDATIONS

REFUSE PERMISSION

Refusal Reasons:

In the absence of any noise survey assessing the potential impact of the increased opening hours on the amenity of neighbouring residential occupiers, or details of measures to mitigate potential noise and other issues, the proposed variation of opening hours would not be acceptable due to the likely negative impact on residential amenity due to increased noise and disturbance late at night, contrary to policy DM1 of the Development Management, Development Plan Document (2017), Policy SP11 of the Haringey Local Plan 2017 and Policy D14 of the London Plan (2021).