

Report of the Head of Planning & Enforcement Services

Address 135 FIELD END ROAD EASTCOTE PINNER

Development: Application for variation of condition 6 (hours of operation) of planning permission ref: 5910/C/96/ 0074 dated 15/01/1996: Change of use from Class A1 (Shop) to Class A3 (Food and Drink.)

LBH Ref Nos: 5910/APP/2010/2346

Drawing Nos: Location Plan (Land Registry) to Scale 1:1250
Location Plan to Scale 1:1250
OL/123

Date Plans Received: 06/10/2010 **Date(s) of Amendment(s):**
Date Application Valid: 15/10/2010

1. **SUMMARY**

Planning permission is sought to extend the hours of operation of an existing take-away use. The proposed hours, into the early hours of the morning are considered to be excessive and are likely to result in unacceptable noise, disturbance and general activity. The application is therefore recommended for refusal.

2. **RECOMMENDATION**

REFUSAL for the following reasons:

1 NON2 **Non Standard reason for refusal**

The proposed hours of operation are likely to result in noise, disturbance and general activity above the level acceptable in this area at that time in the morning given that the site is in close proximity to residential properties. The proposal is therefore contrary to Policy OE1 of the Hillingdon Unitary Development Plan (Saved Policies September 2007).

INFORMATIVES

1 I52 **Compulsory Informative (1)**

The decision to REFUSE planning permission has been taken having regard to all relevant planning legislation, regulations, guidance, circulars and Council policies, including The Human Rights Act (1998) (HRA 1998) which makes it unlawful for the Council to act incompatibly with Convention rights, specifically Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

2 I53 **Compulsory Informative (2)**

The decision to REFUSE planning permission has been taken having regard to the policies and proposals in the Hillingdon Unitary Development Plan Saved Policies (September 2007) set out below, including Supplementary Planning Guidance, and to all relevant material considerations, including the London Plan (February 2008) and national guidance.

OE1 Protection of the character and amenities of surrounding properties and the local area

3. CONSIDERATIONS

3.1 Site and Locality

The application site is located on the east side of Field End Road and comprises a ground floor hot food take-away use within class A5, forming part of a terrace of ground floor commercial units with two upper floors in residential use, accessed from the rear. The street scene is commercial in character and appearance and the application site lies within the Eastcote Town Centre, as identified in the adopted Hillingdon Unitary Development Plan (Saved Policies September 2007).

3.2 Proposed Scheme

Planning permission was granted in the July 1996 for the change of use from class A1 to class A3. Condition 6 states:

"No persons other than staff shall be permitted to be on the premises between the hours of 2330 hours and 0800 hours.

REASON: To ensure that the amenity of the occupiers of neighbouring or nearby properties is not adversely affected."

The application seeks to vary condition 6 to allow the premises to open between the following hours:

0800 hours to 0100 hours between Sundays to Wednesdays and 0800 hours to 0200 hours between Thursday and Saturday.

These trading times reflect the premises license. The applicant has advised that the premises has been trading under these hours for at least 5 years.

3.3 Relevant Planning History

5910/C/96/0074 135 Field End Road Eastcote Pinner
Change of use from Class A1 (Shop) to Class A3 (Food and Drink)

Decision: 19-07-1996 Approved

Comment on Relevant Planning History

As above

UDP / LDF Designation and London Plan

The following UDP Policies are considered relevant to the application:-

Part 1 Policies:

Part 2 Policies:

OE1 Protection of the character and amenities of surrounding properties and the local

area

5. Advertisement and Site Notice

5.1 Advertisement Expiry Date:- Not applicable

5.2 Site Notice Expiry Date:- Not applicable

6. Consultations

External Consultees

46 adjoining and nearby properties have been consulted. 1 letter of support, 1 letter raising concerns and 2 petitions with 168 and 12 signatures in support have been received making the following comments:

Letters in support:

- (i) The premises is a well established part of the fabric of the centre;
- (ii) The premises has been operating under these hours of some time.
- (iii) This is good for business
- (iv) Very convenient for local residents.

Letter of objection:

- (i) The shops are an integral part of the fabric of the building and there is noise transmission through the walls including banging of doors and the extractor fan;
- ii) There has been music from car radios at excessive volume and gathering of youths making noise;
- iii) Noise, disturbance and anti-social behaviour late at night.

Petition (1):

"We confirm that we like 'SAMS CHICKEN' at 135 Field End Road Pinner Middlesex HA5 1QH to be open for service until 1.00am on Sundays to Wednesdays and until 2.00 am on Thursdays to Saturdays each week.

We are in favour of this because these types of retail outlets are unavailable in the locality for servicing during the time period mentioned above. It would be of great assistance if the above shop is allowed to continue service past midnight as many customers are devoid of options for food at late night. We as customers feel that this area is certainly lacking in choice in post midnight food services. Allowing 'SAMS CHICKENS' to continue their service would be of great benefit to the locality.

Furthermore we also have the area residents' interests at heart. We are certain that the noise levels would be minimal and the opening of the shop between 1am - 2am would not be of a nuisance to local residents.

Ultimately we confirm SAMS CHICKEN at 135 Field End Road Pinner Middlesex HA5 1QH should be allowed to remain open during 1.00 am - 2.00am we sign below is in support of our petition.

Petition (2):

" I write in support of both applications to vary hours of operation re planning permission ref:

5910/C/96/0074 and change of use from Class A1 to Class A3.

The applicant Mr Varatharasan t/a Sam's Chicken has traded from the premises since July 2008 and to the best of my knowledge has done so without incident.

The applicant's business is the only late night 'take away' business in Eastcote and as such meets a demand serving customers leaving licensed premises.

I would respectfully submit that both applications should be granted."

Eastcote Conservation Panel:

The above application for Planning Permission to extend trading hours, until 1am Sunday - Wednesday and until 2am Thursday to Saturday.

It would appear that these trading hours have been carried out for the past 5 years, so this should be a retrospective application. A trading licence for these hours was granted in August 2008. I have been given to understand that there have been concerns raised at the Police Ward Panel of anti-social behaviour taking place late at night in Eastcote.

It would be desirable for the Police Ward Panel to be asked to give their views on this application before planning permission is granted.

Internal Consultees

Environmental Protection Unit: There is no history of complaint of nuisance under the Environmental Protection Act 1990 related to the operation of these premises as an A3 use. Therefore, no objections are raised.

7. MAIN PLANNING ISSUES

7.08 Impact on neighbours

Condition 6, of planning permission 5910/C/96/0074 granted in July 1996 for the change of use of the premises from retail use to a food and drink use, restricted the hours of opening so that the latest that the premises could trade was 23.30. This condition was imposed in order to safeguard the residential amenities of adjoining and nearby properties. There are residential properties above and adjacent to the application property and within the side roads adjacent to the parade of commercial units. Take-away and restaurant uses, by their very nature, are designed to attract customers. The coming and going of customers, the general noise of customers talking, cars arriving and departing, car doors banging allied to the general activity within the unit, which even with sound insulation will still result in some transmission of noise, means that at the times proposed by the application, 1am Sunday-Wednesday and 2am Thursday-Saturday, there would be noise and disturbance at a time when there is not the general activity associated with a commercial area. This is likely to result in an unacceptable impact on the amenities of the residential occupiers of properties within the vicinity of the site.

Whilst there have not been any complaints to the Council's Environmental Protection Unit, this would relate to statutory nuisance and thus any issues of gathering of people, general noise in the early hours of the morning, the banging of car doors, transmission of noise from the premises to the units above and adjoining etc would not normally result in a complaint and it is this which is of greater concern and results in a deterioration of residential amenity.

As such, given the above, objections are raised to the extended hours of use and it is

considered that the proposal would not comply with policy OE1 of the adopted Hillingdon Unitary Development Plan (Saved Policies September 2007).

7.19 Comments on Public Consultations

The third party comments are addressed in the report.

7.22 Other Issues

There are no other relevant issues.

8. Observations of the Borough Solicitor

When making their decision, Members must have regard to all relevant planning legislation, regulations, guidance, circulars and Council policies. This will enable them to make an informed decision in respect of an application.

In addition Members should note that the Human Rights Act 1998 (HRA 1998) makes it unlawful for the Council to act incompatibly with Convention rights. Decisions by the Committee must take account of the HRA 1998. Therefore, Members need to be aware of the fact that the HRA 1998 makes the European Convention on Human Rights (the Convention) directly applicable to the actions of public bodies in England and Wales. The specific parts of the Convention relevant to planning matters are Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

Article 6 deals with procedural fairness. If normal committee procedures are followed, it is unlikely that this article will be breached.

Article 1 of the First Protocol and Article 8 are not absolute rights and infringements of these rights protected under these are allowed in certain defined circumstances, for example where required by law. However any infringement must be proportionate, which means it must achieve a fair balance between the public interest and the private interest infringed and must not go beyond what is needed to achieve its objective.

Article 14 states that the rights under the Convention shall be secured without discrimination on grounds of 'sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status'.

10. CONCLUSION

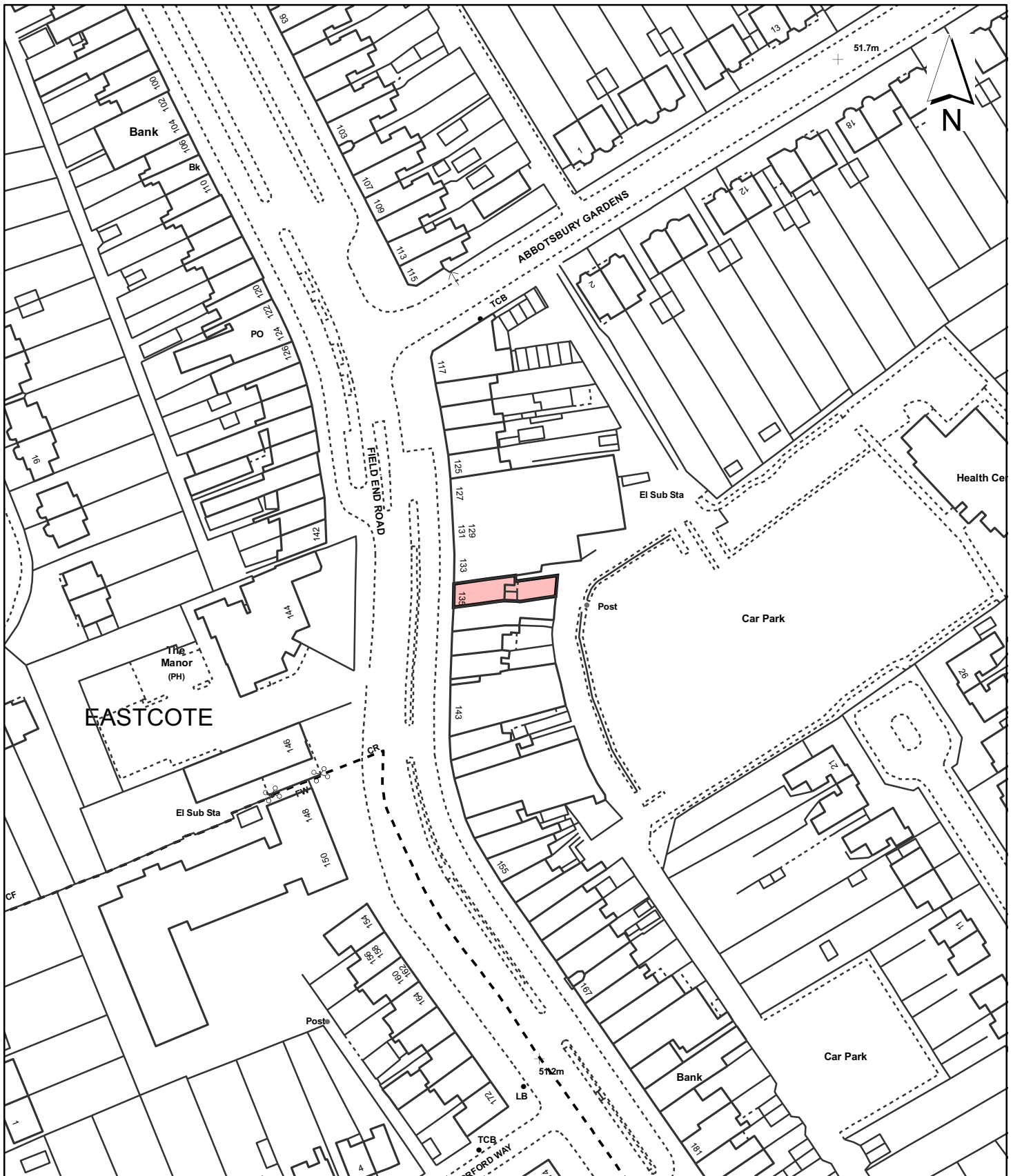
The proposed hours of operation, into the early hours of the morning are considered to be excessive and are likely to result in unacceptable noise, disturbance and general activity to the detriment of the residential occupiers of adjoining and nearby properties. The application is therefore recommended for refusal.

11. Reference Documents


Adopted Hillingdon Unitary Development Plan (Saved Policies September 2007).

Contact Officer: Sonia Bowen

Telephone No: 01895 250230



Notes

 Site boundary

For identification purposes only.

This copy has been made by or with the authority of the Head of Committee Services pursuant to section 47 of the Copyright, Designs and Patents Act 1988 (the Act). Unless the Act provides a relevant exception to copyright.

© Crown Copyright. All rights reserved. London Borough of Hillingdon 100019283 2011

Site Address

**135 Field End Road
Eastcote**

Planning Application Ref:

5910/APP/2010/2346

Planning Committee

North

Scale

1:1,250

Date

March 2011

**LONDON BOROUGH
OF HILLINGDON**

**Planning, Environment
& Community Services**

Civic Centre, Uxbridge, Middx. UB8 1UW
Telephone No.: Uxbridge 250111



HILLINGDON
LONDON