

<u>Location:</u>	151C Bearton Road Hitchin Hertfordshire SG5 1UB
<u>Applicant:</u>	Mr Abdul Mumin
<u>Proposal:</u>	Variation of Condition 3 (to allow a limited and controlled extension of operating hours on Sundays, restricted to delivery-only takeaway service between 16:00 and 20:00) of planning permission 95/00276/1 granted 24.05.1995.
<u>Ref. No:</u>	26/00403/S73
<u>Officer:</u>	Melissa Tyler

Date of expiry of statutory period 5 May 2026

Reason for Delay: In order to present the application to an available committee meeting.

Reason for referral to Committee Cllr Albert: Call in application if minded to approve the proposed development as he supports the objections of residents that this would interrupt their quiet enjoyment and create further noise.

1.0 **Planning Policies**

1.1 **North Hertfordshire Local Plan 2011-2031**

SP1 – Sustainable Development in North Herts
 SP3 - Employment
 D3 – Protecting Living Conditions
 T2 – Parking

1.2 **National Planning Policy Framework**

Section 6 – Building a strong, competitive economy
 Section 7 – Promoting safe and healthy communities
 Section 12 – Achieving well-designed places

1.3 **Supplementary Planning Document**

Vehicle Parking at New Development SPD

2.0 Site History

- 2.1 **93/01364/1** - Change of use from retail to the preparation and sale of hot food (as amended by plan received 2.2.94) – Granted Conditional Permission on 23/02/1994.
- 2.2 **95/00276/1** - Change of use of Units B & C to hot food takeaway (as amended by plan and letter received on 19.5.95) – Conditional Permission granted on 25/05/1995.
Condition 3 – The use of the property within Class A3 of the Town and Country Planning (Use Classes) Order 1987, (or as amended) hereby approved, shall only operate between the hours of 11 am and 9.00 pm Monday to Saturdays.
- 2.3 **96/01247/1** - Variation of condition 3 of planning permission 95/0276/1 restricting opening hours – Granted Conditional Permission on 19/12/1996.
- 2.4 **20/02825/S73** Variation of condition 3 of Planning permission 95/00276/1 granted 24.05.1995 to extend opening hours to Monday to Sunday 11am- 10:30pm. Refused 05.02.2021
Reason for refusal: The extended opening hours, due to noise and disturbance caused by the use of the site, would result in having an unacceptable impact on the residential amenity of nearby neighbouring occupiers. The proposed development would therefore fail to comply with Policy 57 of the Saved Local Plan, Policy D3 of the Emerging Local Plan and Section 8 and 12 of the National Planning Policies Framework (2019).
- 2.5 **22/00254/S73** The use of the premises as a hot food takeaway (Use Class Sui-Generis), shall only operate between the hours of 11.00am and 10.30pm Monday to Saturdays and between the hours of 4.00pm and 9.30pm on Sundays (including Bank Holidays) as variation of condition 3 of Planning permission 95/00276/1 granted 24.05.1995. REFUSED
Reason: Planning permission has been refused for this proposal for the clear reasons set out in this decision notice. The Council acted proactively through positive engagement with the applicant in an attempt to narrow down the reasons for refusal but fundamental objections could not be overcome. The Council has therefore acted proactively in line with the requirements of the Framework (paragraph 38) and in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015.

3.0 Representations

- 3.1 Site notice/neighbours:

Support – 5 neighbours in support summary:

- Existing issues of noise and disturbance in the area are attributed by supporters to another nearby business rather than the application site.
- Supporters state they have not experienced noise, odour, litter, or disturbance arising from the takeaway.
- Several neighbouring residents consider the business to be responsibly managed and respectful of neighbouring amenity.
- No objections to the proposed Sunday opening hours (4pm–8pm).
- Support expressed on the basis that proposed conditions are strictly adhered to, particularly:

- limited 4-hour Sunday opening period; and delivery-only operation.
 - Recognition that compliance and enforcement of conditions would rest with the local planning authority.
- The premises has operated as a takeaway at the site for over 30 years, indicating an established commercial use.
- Supporters consider the proposed Sunday hours unlikely to adversely affect residential amenity.
- Representations highlight the economic benefits of the business, including:
 - supporting a small independent trader;
 - providing local employment;
 - contributing to the local economy/community; and
 - Some supporters consider the proposal would provide an additional local service for residents without causing material harm.

Objections – 4 neighbours objecting summary:

- Concerns that the proposal conflicts with previous decisions and policies within the Local Plan.
- Existing operation is alleged to already generate unacceptable levels of noise and disturbance affecting residential amenity.
- Specific concerns regarding:
 - - kitchen noise from the rear door being left open;
 - banging of utensils/pots and pans;
 - staff voices and movement between indoor and outdoor areas; and
 - operation of extraction/ventilation equipment.
- Objections that operational activities are extending outside the building, including use of external storage facilities.
- Concerns that the proposed “delivery-only” Sunday operation would be difficult to monitor and enforce effectively.
- Concerns that Sunday opening would increase:
 - delivery traffic;
 - vehicle movements;
 - parking pressures; and
 - associated noise disturbance.
- Concerns regarding highway and pedestrian safety arising from delivery driver behaviour, including reversing manoeuvres near a zebra crossing/junction; and illegal or inconsiderate parking.
- Concerns that additional Sunday trading would harm the quiet residential character of the area, particularly at weekends.
- Objections reference existing anti-social behaviour and disturbance associated with nearby takeaway premises and concern that additional opening hours could worsen these issues.
- Concern that approving the application could set a precedent for neighbouring takeaways to seek similar Sunday opening permissions, leading to increased commercial activity throughout the week.
- Residents state that cumulative impacts from noise and activity are affecting quality of life and sleep.

- Some objections argue there is no demonstrated need for additional takeaway provision in the area due to the number of similar nearby businesses.

Statutory Consultees

3.2 **Environmental Health (Noise):** *Due to the location and proposals, I have no objections to the application. Environmental Health consider that the limited proposed hours of operating allied to the delivery only mode of trading would result in limited/insignificant impact on the residential amenity of nearby dwellings.*

3.3 **Herts Highways** - *Notice is given under article 22 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 that Hertfordshire County Council as Highway Authority does not wish to restrict the grant of permission.*

The application for a variation of change of hours for the above site has no highway implications therefore the Highway Authority would not wish to comment.

4.0 **Planning Considerations**

4.1 **Site and Surroundings**

4.1.1 The application site comprises a two-storey building currently used as a hot food takeaway on the ground floor. It is situated on the north side of Bearton Road adjacent to the junction with Brampton Park Road within a small terrace of commercial properties which includes another hot food takeaway and a general store.

4.1.2 The area is predominantly residential in character and includes traditional Victorian terraced properties and, opposite the site, a 1950s/1960s residential block.

4.2 **Proposal**

4.2.1 Permission is sought for the variation of condition 3 of the original planning permission for the premises – ‘to allow a limited and controlled extension of operating hours on Sundays, restricted to delivery-only takeaway service between 16:00 and 20:00) of planning permission 95/00276/1 granted 24.05.1995.

4.2.2 The applicant has confirmed there will be 4 employees, one of which is an inhouse delivery driver.

Key Issues

4.2.3 In dealing with applications made under S 73 Local Planning Authorities are required to only consider the question of the condition and must leave the permission intact. Local Planning Authorities are empowered to:

- Grant permission subject to conditions differing from those subject to which the previous permission was granted or
- Grant permission unconditionally or
- Refuse the application.

- 4.2.4 The application site is situated within a predominantly residential area of Hitchin with residential dwellings to the rear and a shop to the left and another takeaway shop immediately east at the junction with Brampton Park Road. The key issue for consideration is the impact the proposal would have on the amenity of neighbouring occupiers.

Enforcement/neighbouring premises

- 4.2.5 Several representations have referred to the neighbouring Uptown Pizza Enforcement case against unauthorized opening hours. However, the proposed extension of operating hours on Sundays from 16:00 to 20:00 should be assessed on its own planning merits, with regard to the scale of the operation, the nature of the surrounding area, and any potential impacts on residential amenity. While it is acknowledged that a separate takeaway premises within the locality has been subject to enforcement action due to adverse impacts arising from late-night trading, it is important to note that each planning application must be determined independently and based on its own specific circumstances. The existence of enforcement issues at another site does not justify refusal of this application. Instead, consideration should focus on whether the proposed hours, which are notably limited in duration and early in the evening, would give rise to unacceptable impacts in terms of noise, disturbance, or general amenity for nearby residents.

Impact on Neighbours

- 4.2.6 The site is located within a predominantly residential area, where the protection of neighbouring amenity is a key material consideration. Policy D3 of the Local Plan states that planning permission will be granted for development proposals which do not cause unacceptable harm to neighbour amenity.
- 4.2.7 The site is currently operating as a hot food takeaway/delivery unit in accordance with the original planning permission (ref: 95/00276/1), where hours of operation were limited by condition between 11am and 9pm Monday to Saturdays. Permission was then granted under application reference number 96/01247/1 to extend these opening hours to 10.30pm. The proposal seeks to vary the hours of operation to include from 1600 to 2000 on Sundays. Looking at google the advertised opening hours are 1630 -2200 Monday to Saturday.
- 4.2.8 Four representations have been received from nearby residents objecting to the proposal. The concerns raised primarily relate to the potential for increased noise and disturbance, particularly associated with vehicle movements, delivery drivers arriving and departing, and general activity during what is typically regarded as a quieter period of the week. These concerns have been given careful consideration in the assessment of the application. There have also been five representations from neighbours supporting the proposal.
- 4.2.9 In this instance, it is considered that the proposed extension of hours is relatively modest, limited to a four-hour period in the early evening on Sundays only. The delivery-only nature of the operation is a material factor, as it would not give rise to customer congregation at the premises, thereby reducing associated noise and disturbance typically linked to takeaway uses.

- 4.2.10 While delivery activity has the potential to generate noise and disturbance, this is expected to be intermittent albeit they would be concentrated in the restricted hours proposed. Furthermore, the early evening timeframe (ending at 20:00) is not considered to be unduly late to give rise to unacceptable harm to residential amenity.
- 4.2.11 The Council's Environmental Health Officer raises no objections to the application and no requirements for further information, such as a noise report, to be submitted.
- 4.2.12 As the proposal is for delivery only and the premises will not be open for customers to pick up and order food the additional footfall and associated impacts on amenity of neighbouring residential properties will not be excessive.
- 4.2.13 However, in line with what has been enforced at the neighbouring commercial unit and at other hot food businesses in the district, it is considered reasonable to grant temporary permission of 12 months to enable an assessment of the impact of this premises opening on a Sunday.
- 4.2.14 As part of the previously refused application for extended hours in 2022 (this was not limited to delivery only) the following was stated:
"Typical of many modern hot food businesses, the applicant serves a wider customer base than just the immediate locality. Delivery drivers are employed to meet this wider demand. These drivers and normal local customers visiting the site create more general noise and disturbance from their comings and goings. To understand this more fully, the applicant has provided some information relating to visits to and from the site by delivery drivers on peak days – Friday and Saturday. This data was collected during four weekends in June and July. This confirmed that typically there are 3 delivery drivers creating an average of 14 visits in the course of a working day."
- 4.2.15 Compared to the previous applications made in 2020 and 2022 to vary condition 3, Sunday operating hours between 1600 and 2000 and delivery only, it is anticipated that there would be approximately 10-12 deliveries (by an inhouse driver) during these Sunday opening times.
- 4.2.16 The issue of general noise and disturbance in connection with an application to extend opening hours of the adjacent hot food takeaway at 151B Bearton Road on Sundays from 12 noon to 10.30pm was considered in 2006 (application reference 06/00592/1 - appeal reference APP/X1925/A/06/2032549). In dismissing the appeal, the Inspector commented that *"the additional comings and goings associated with the proposed extension of opening hours and the consequent slamming of car doors, manoeuvring of vehicles and general level of activity would unacceptably affect the living conditions of residents in the nearby properties through noise and disturbance"*.
- 4.2.17 The key difference between this current application and the recently refused application (and the dismissed appeal on the adjacent site) is the period that the premises would be open (four hours) compared to a ten and half hours long proposed extension. It is considered that the general noise and disturbance activities identified by the appeal inspector will be similar although less intense and prolonged due to the shorter opening hours currently sought and restriction to delivery only. In considering this application it is

important to bear in mind the existence of the adjacent hot food takeaway. If this variation of the opening day/times condition is allowed, a precedent would be created. However, the proposal is very limited in period and with a relatively early (8pm) closure, setting a very limited precedent. Moreover, if this proposal is found to cause unacceptable harm to the living conditions of neighbours, control would be retained insofar as a condition is recommended limiting the permission to a temporary period of 12 months.

- 4.2.18 It would be difficult to also mitigate impacts by, for example, limiting the number of delivery drivers that can operate at the premises on a Sunday as this is unlikely to pass the necessary tests set out in guidance relating to conditions, particularly in relation to enforceability. However, I have proposed a condition for the occupier to implement measures to refuse a customer collection from the premises.
- 4.2.19 As such, it is anticipated that the proposal would not cause unacceptable harm to living conditions, in line with Policy D3 of the Local Plan and is therefore being recommended for a temporary period of 12 months.

4.3 Conclusion

- 4.3.1 Having regard to the site history, relevant planning policies, consultation responses and representations received, it is considered that the proposed Sunday opening hours, limited to a four-hour period between 16:00 and 20:00 and restricted to delivery-only operations, represent a materially different and more constrained form of development compared to previously refused schemes. The reduced duration and nature of the operation are such that any associated comings and goings, including those of delivery drivers, would be limited in frequency and intensity. Furthermore, no objection has been raised by Environmental Health in respect of noise and disturbance.
- 4.3.2 While concerns raised by local residents regarding noise, disturbance, and precedent have been carefully considered, it is concluded that, on balance, the proposal would not result in unacceptable harm to residential amenity, having regard to Policy D3 of the Local Plan. It is also noted that each application must be assessed on its own planning merits, and the circumstances of nearby premises, including any enforcement matters, are not determinative in this case.
- 4.3.3 In order to appropriately monitor the impact of the development and address any unforeseen amenity issues, it is considered reasonable and necessary to grant permission on a temporary basis for a period of 12 months. This will enable the Local Planning Authority to assess the effects of the Sunday operation before considering any application for a permanent arrangement.
- 4.3.4 Subject to the imposition of appropriate conditions, the proposal is therefore considered acceptable and recommended for approval on a temporary basis.

4.4 Alternative Options

- 4.4.1 None applicable.

4.5 Pre-Commencement Conditions

- 4.5.1 None applicable.

5.0 **Legal Implications**

- 5.1 In making decisions on applications submitted under the Town and Country Planning legislation, the Council is required to have regard to the provisions of the development plan and to any other material considerations. The decision must be in accordance with the plan unless the material considerations indicate otherwise. Where the decision is to refuse or restrictive conditions are attached, the applicant has a right of appeal against the decision.

6.0 **Recommendation**

- 6.1 That planning permission be **GRANTED** subject to the following conditions:

Hours

1. The use of the property within Sui Generis of the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020, (or as amended) hereby approved, shall only operate between the hours of 11:00 and 22:00 Monday to Saturdays and Sunday between 16:00 and 20:00

Reason: To protect the residential amenities of existing residents and in accordance with Policy D3 of the North Hertfordshire Local Plan 2011 to 2031.

Temporary Use

2. The operation hours for Sundays hereby permitted shall be for a limited period of 12 months from the date of this decision. The use hereby permitted with extended hours of operation shall be discontinued and may revert to those restricted hours of operation under permission reference 95/00276/1.

Reason: Permission has been granted for a temporary period solely to monitor the use and the appropriateness of the extended opening hours in regard to amenity of neighbouring properties, in line with Policy D3 of the North Hertfordshire Local Plan 2011 to 2031.

Delivery Only Operation

3. The use hereby permitted shall operate on a delivery-only basis and shall not be open to members of the public for the collection of food or drink on a Sunday. No customers shall be permitted to enter the premises on Sundays for the purposes of ordering or collecting goods, and no over-the-counter sales shall take place.

The operator shall implement and retain measures to prevent customer collection from the premises, including but not limited to: clear signage displayed on the site and on any ordering platforms stating that no collection is permitted; the disabling of any “click and collect” or similar options; and procedures requiring staff to refuse service to any customers attending in person.

Reason: To protect the amenities of neighbouring residential occupiers by minimising noise, disturbance, and general activity at the site, in accordance with Policy D3 of North Hertfordshire Local Plan 2011 to 2031

Proactive Statement

Planning permission has been granted for this proposal. Discussion with the applicant to seek an acceptable solution was not necessary in this instance. The Council has therefore acted proactively in line with the requirements of the Framework (paragraph 38) and in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015.