



Leeds
CITY COUNCIL

Originator: Martha Hughes

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Report of the Chief Planning Officer

PLANS PANEL EAST

Date: 24 September 2009

Subject: APPLICATION 09/03427/FU – Variation of condition number 3 (hours of opening - 1100 hours to 2330 hours Monday to Saturday and 23.00 on Sundays) of planning permission 08/00853/FU - Change of use of shop to take away hot food shop, at 15 Middleton Park Circus, Middleton

APPLICANT

M I Sharif

DATE VALID

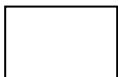
05 August 2009

TARGET DATE

30 September 2009

Electoral Wards Affected:

Middleton Park



Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

RECOMMENDATION:

GRANT PERMISSION subject to the following condition;

Conditions:

The opening hours of the premises shall be restricted to 1100 hours to 2330 hours Monday to Saturday and 11.00 to 23.30 on Sundays, unless otherwise agreed in writing with the Local Planning Authority.

In the interests of amenity of nearby residents.

All other conditions from application 08/00853/FU to be imposed.

Reasons for approval: The application is considered to comply with policies GP5 and SF15 of the UDP Review and, having regard to all other material considerations (e.g. exceptions to policy, very special circumstances) , is considered acceptable.

1.0 INTRODUCTION:

- 1.1 The application is brought to Panel for determination as the application for change of use (08/00853/FU) was approved by Panel Members on 10 April 2008. The 2008 application was reported to Panel at the request of Councillor Driver due to concerns that the development would create amenity issues by way of visual intrusions from the flue, cooking smells, litter and food spillage, operation at unsocial hours, congregation of customers, parking and vehicle movements and noise.
- 1.2 When approving the change of use application, Panel Members were minded to restrict the hours of opening further than the officer recommendation and imposed a condition to restrict the hours of opening to 22.30 Monday to Sunday. This current application seeks to vary this condition which Members imposed.

2.0 PROPOSAL:

- 2.1 Planning permission was granted for change of use from A1 to A5 in application 08/00853/FU with conditions. Condition 3 restricted the opening hours of the premises to 1100 hours to 2230 hours Monday to Sundays and Bank Holidays.
- 2.2 This condition was imposed by Panel Members after concern was expressed regarding the opening hours. The Officer report recommended the standard opening hours until 23.30 however this was reduced to 22.30 at Panel's request.
- 2.3 This application proposes to extend opening hours to 23.30 Monday to Saturday and 23.00 on Sundays.
- 2.4 The application form states that the variation is 'essential for the business to have late night hours as a lot of people visit to order after a night out'. The applicant refers to a licensing application which has also been submitted to change the hours in accordance with this planning application.

3.0 SITE AND SURROUNDINGS:

- 3.1 The application relates to a hot food take away unit with storage on upper floor which is situated at the end of a parade of shops within the primary frontage of Middleton Park Circus Shopping Centre (S4).
- 3.2 Middleton Park Circus forms two parades either side of Middleton Park Avenue. The take away premises occupy the ground floor level of a three storey property at the end of a parade of shops, west of Middleton Park Avenue. There are other takeaways at Nos. 10a and 11 Middleton Park Circus. The relevant planning permissions place the following restrictions on opening hours:
- No. 10a – 8.00 to 23.30hrs Monday to Saturday and 12.00 to 23.00hrs on Sundays.
 - No. 11 – 9.00 to 23.30hrs Monday to Sunday.
- 3.3 Above the shops at first floor level are a mixture of storage uses and residential accommodation. To the rear of the premises are residential properties on Middleton Park Mount. Garages are immediately to the rear of the site. It is also understood that there is a first floor flat adjacent above a retail unit at 2 Middleton Park Ave.

4.0 RELEVANT PLANNING HISTORY:

- 09/02560/FU Side extension to take away hot food shop
Approved 05.08.09
- 09/02206/FU Variation of condition 3 of application 08/00853/FU relating to opening hours (to allow opening hours 17.00 to 12.30am Sunday to Thursday, 17.00 to 1.30am Friday and Saturday).
Withdrawn 05.08.09
- 08/00853/FU Change of use of shop to take away hot food shop, with new extract flue. Approved by Plans Panel on 10.04.08
- 07/05790/FU Two storey side extension to shop to form store with enlarged shop over. Refused on 14.11.07 for the following reasons;
1. The proposal is shown to be located on the adopted public highway. As a result, it is considered that the proposal will be detrimental to the free and safe passage of the general public and as such is contrary to Policy T2 of the adopted Leeds Unitary Development Plan (Review 2006).
 2. It is considered that the proposed extension, by reason of its design, is detrimental to the appearance of the streetscene and of the host property and fails to take the opportunity to improve the area and as such it would be contrary to Policies GP5 and BD5 of the adopted Leeds Unitary Development Plan (Review 2006) and the guidance given in PPS1 - Delivering Sustainable Development.
- H22/34/85 Change of use, involving alterations, of bakers shop to bakers shop and tea room - Approved (22-Apr-1985)

5.0 HISTORY OF NEGOTIATIONS:

- 5.1 Applicant was advised of officer concerns in respect of a previous application to extend the opening hours to 12.30am and 01.30 and this application was withdrawn.

6.0 PUBLIC/LOCAL RESPONSE:

- 6.1 Site notices were posted on 21st August 2009.
- 6.2 The notification period does not expire until 18th September, and therefore any letters of representation received will be reported verbally to the Plans Panel meeting.

7.0 CONSULTATIONS RESPONSES:

Statutory: None

Non-statutory:

Environmental Protection Team – No adverse comments about the variation of condition 3 to 23.30 Monday to Sunday.

8.0 PLANNING POLICIES:

GP5 - seeks to ensure that development proposals resolve detailed planning considerations, including amenity

Policy SF15 – hot food take aways

In relation to opening hours of hot food takeaways this policy states that:

In cases where surmountable residential amenity concerns are raised, due to the close proximity of residential properties the hours of opening will normally be limited by condition to the following;

(A) Monday to Saturday 08.00 to 23.30

(B) Sunday (if Appropriate) 19.00 to 23.00

9.0 MAIN ISSUES

1. Existing restrictions
2. Residential amenity

10.0 APPRAISAL

Existing restrictions

- 10.1 The hours set out in condition 3 of application 08/00853/FU were imposed following discussion by Members at Plans Panel and were reduced from the standard opening hours of 23.30 recommended in the Officer report, due to concerns regarding the impact on residents and Members specifically sought to control the opening hours to 22.30 only.
- 10.2 The applicant has stated that the proposed extension of hours to 23.30 am Monday to Saturday and 23.00 on Sunday is essential for the business. The proposed extended hours are in line with the hours recommended in policy SF15 of the UDP where surmountable residential amenity concerns are raised, due to the close proximity of residential properties.

Residential amenity

- 10.3 There are existing residents at first floor flats above the shops which are the main residents which could be affected by any disturbance; there are also residents to the rear of the premises on Moor Park Avenue.
- 10.4 Environmental Protection has considered the additional hour proposed by the applicants and has no adverse comments to make. Furthermore, Environmental Protection records show that there have been no complaints concerning the take away since it opened.

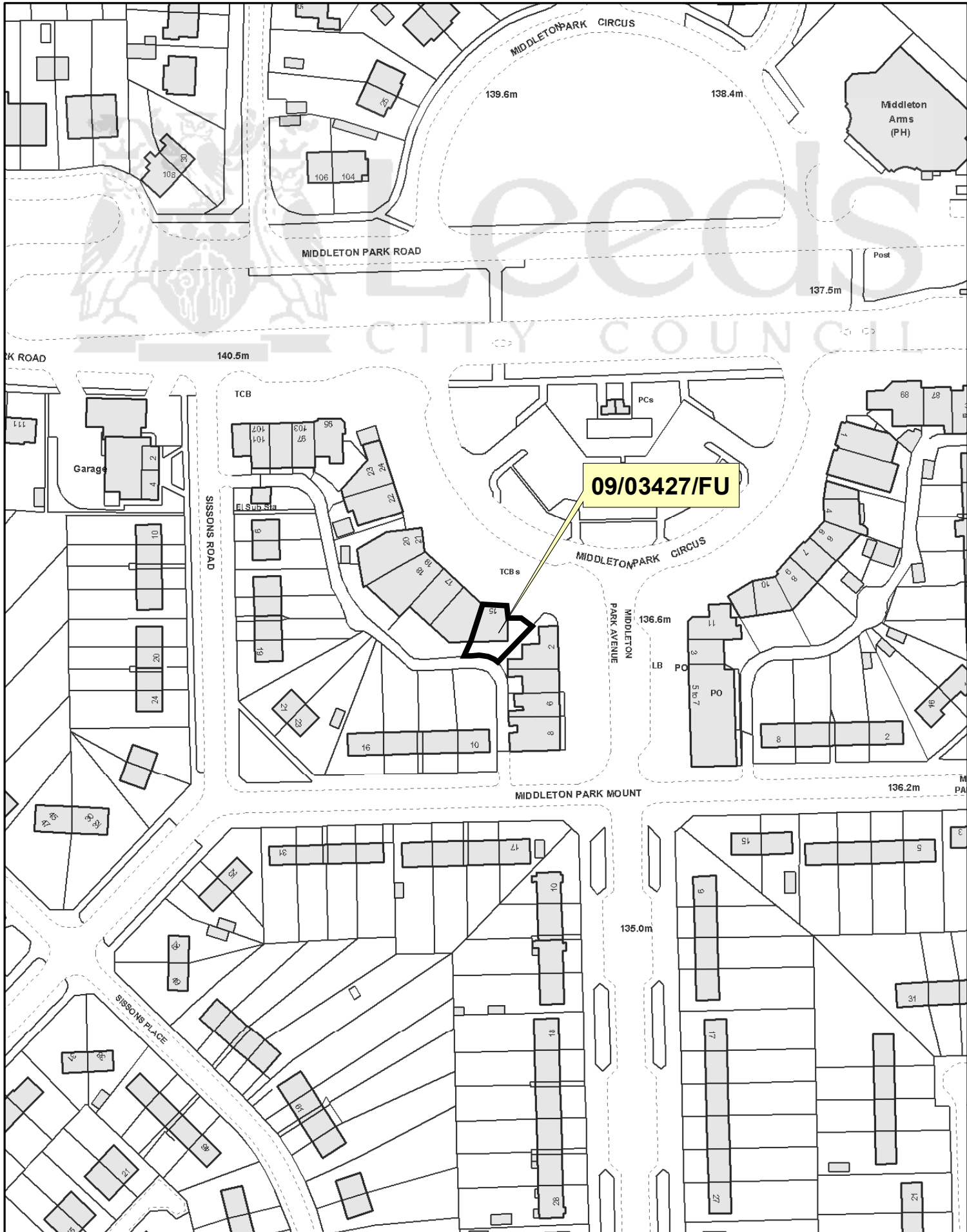
11.0 CONCLUSION

- 11.1 In light of the Environmental Protection Officer's comments and the guidance set out in policy SF15 of the UDP Review Members are asked to grant permission for the premises to stay open for an extra hour Monday to Saturday and half an hour on Sundays.

Background Papers:

09/03427/FU & 08/00853/FU.

Certificate of Ownership – Certificate A submitted



EAST PLANS PANEL



Scale 1/ 1500

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