



## Report of the Chief Planning Officer

### *PLANS PANEL EAST*

Date: 10/06/2010

**Subject: APPLICATION 10/00944/FU – Variation of condition 4 of permission H34/582/89/ (opening hours 16:00 to 00:30 Sunday to Thursday and 16:00 to 01:00 hours Friday and Saturday, 250 Easterly Road, Leeds, LS8 3ES**

#### **APPLICANT**

Mr Mohammed Aslam

#### **DATE VALID**

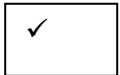
01/03/2010

#### **TARGET DATE**

26/04/2010

#### **Electoral Wards Affected:**

**Gipton & Harehills**



Ward Members consulted  
(referred to in report)

#### **Specific Implications For:**

Equality and Diversity

Community Cohesion

Narrowing the Gap

### **RECOMMENDATION: REFUSE PERMISSION for the following reasons:**

The Local Planning Authority considers the proposed opening hours of the hot food takeaway shop to be unacceptable, as they would cause significant detriment to the residential amenity and quality of life of the occupants of adjoining and nearby residential properties, as a result of noise disturbance emanating from within the premises and externally, generated by the comings and goings of customers and congregation of customers outside of the premises. Therefore, the proposed development is contrary to policies GP5 and SF15 of the Leeds Unitary Development Plan (Review).

#### **1.0 INTRODUCTION:**

1.1 This application was deferred at the previous Plans Panel in May, at the request of Councillor Iqbal, on behalf of the applicant, as the applicant wanted time to provide some additional information in relation to the application. It was not confirmed what the additional information related to and the information has not been forthcoming.

1.2 The application was brought to Plans Panel in May at the request of Councillor Hussain, who as a Ward Councillor is in support of the application, as he claims there are already similar premises in the vicinity operating the requested hours. In addition, the business faces a busy dual carriageway and he does not feel that the additional hours will cause any further disruption to local residents.

## **2.0 PROPOSAL:**

2.1 The proposal seeks permission for the extension of opening hours of a hot food takeaway from the approved hours of 0800 to 2300 hours Sunday to Thursday and 0800 to 2330 hours on Friday and Saturday, to the extended hours of 1600 to 0030 hours Sunday to Thursday and 1600 to 0100 hours on Friday and Saturday.

## **3.0 SITE AND SURROUNDINGS:**

3.1 The application site consists of a mid-terrace, two storey property situated within a parade of shops fronting onto Easterly Road, in a mixed commercial and residential area on the edge of a residential area. There is no residential accommodation above the hot food takeaway shop itself, however, there is a separate residential flat above the adjoining Bookmakers and residential houses nearby to the rear of the site on Lawrence Gardens.

3.2 The property is characterised by a gable front, with shop frontage at ground floor level. A paved forecourt extends to the front of the shopping parade and an access road and garages extends to the rear of the parade.

## **4.0 RELEVANT PLANNING HISTORY:**

4.1 06/02128/FU – Variation of condition 4 of permission H34/582/89 (opening hours), refused 05/06/06.

H34/557/89 – Change of use of shop to takeaway hot food shop, approved 01/02/90.

H34/582/89 – as above, approved 01/02/90.

## **5.0 PUBLIC/LOCAL RESPONSE:**

5.1 The application was advertised by site notices posted on 08/03/10. The publicity period expired on 29/03/10.

5.2 One letter of representation has been received in relation to this application. However, it would appear that the author of this letter mistakenly believes that the application is in relation to a business called “Café Jazz”, which was recently granted planning permission. This is not the application premises. The application premises relate to a business called “The Flying Tandoori”.

5.3 The objection is based on concerns that extended hours of opening for premises which also serve alcohol, would attract drunken behaviour and cause additional littering. This objection is not considered to be relevant to the application premises in that the “Flying Tandoori” does not have a licence to sell alcohol.

5.4 With regard to the issue of littering, this is not considered to be relevant to an application to extend the opening hours of an existing hot food takeaway shop.

5.5 Any material planning considerations are addressed within the Appraisal section of the report.

## **6.0 HISTORY OF NEGOTIATIONS:**

- 6.1 A meeting was held with the applicant, Councillor Arif Hussain, Councillor Iqbal and Mr Mudie MP, to discuss possible ways forward, including the option of opening an extra 30 minutes Monday to Thursday, up until 2330 hours, and keeping the existing hours on a Sunday until 2300 hours, which would be compliant with policy SF15. The premises already have opening hours until 2330 hours on Friday and Saturday. However, whilst the applicant was willing to accept the extra 30 minutes Monday to Thursday, he still requested extended hours until 0030 on Friday and Saturday, which are still considered to be unacceptable, due to the impact on neighbouring residential amenity and being contrary to policy SF15.

## **7.0 CONSULTATION RESPONSES:**

### Non-statutory

- 7.1 Environmental Protection comments received 19/04/10 – objection, due to the potential to cause noise disturbance to the occupiers of the residential flats above the adjoining commercial units, from activities from within the application premises, from customers coming and going from the premises, noise associated with arrival and departure of cars, the slamming of car doors, revving of engines, sounding horns, loud use of car stereos etc. Environmental Health has no enforcement powers to deal with any noise complaints associated with customers causing noise disturbance in the vicinity of the premises.
- 7.2 The Department also has concerns regarding noise disturbance from the kitchen's extract ventilation system, as the tonal noise from this equipment will be more dominant/noticeable when the background noise levels are relatively low as the night progresses. The possible noise problems from the aforementioned sources of noise will be exacerbated especially during the summer months when residents are likely to have their windows open for ventilation purposes.

## **8.0 PLANNING POLICIES:**

### Development Plan

- 8.1 The development plan comprises the Regional Spatial Strategy to 2026 (RSS) and the adopted Leeds Unitary Development Plan (Review 2006). The RSS was issued in May 2008 and includes a broad development strategy for the region setting out regional priorities in terms of location and scale of development. No RSS policies have a specific relevance to the application site.

### Leeds Unitary Development Plan (Review):

- 8.2 GP5 – seeks to resolve detailed planning consideration including design, access and amenity.  
SF15 – Hot food takeaway shops - in cases where there are residential amenity concerns, hours of opening will normally be limited by condition to the following: Monday to Saturday – 0800 to 2330 hours and Sunday until 2300 hours.  
T2 – Highway safety.

### National planning policy guidance documents:

- 8.3 Planning Policy Statement 1: Sustainable Development

## 9.0 MAIN ISSUES

- Principle of development
- Impact on residential amenity
- Highways
- Conclusion

## 10.0 APPRAISAL

### Principle of Development

- 10.1 The extension of the opening hours of a hot food takeaway shop (HFTA), is acceptable in principle, subject to satisfying the opening hour requirements of policy SF15 of the UDP (Review), which specifically relates to HFTA uses and seeks to protect neighbouring residential amenity from potential harm caused by the activities and processes associated with a hot food takeaway use e.g. odours and noise disturbance. The policy recognises that where there is an issue in terms of the proximity of a HFTA use to residential properties, that the hours of opening should be restricted to 2330 hours Monday to Saturday and 2300 hours on Sundays, in order to contain the impact on residential amenity to reasonable hours and offer some respite from the associated noise to nearby residents.
- 10.2 It is considered that the hours of openings as proposed, are contrary to policy SF15, and would cause significant detriment to the residential amenity of the occupants of adjoining and adjacent residential dwellings. The proposed hours are also inconsistent with the hours of opening of other A5 uses within the same and nearby local shopping parades (as authorised through planning permissions).

### Impact on residential amenity

- 10.3 It is considered that the hours of opening as proposed, until 0030 Sunday to Thursday and 0100 hours on Friday and Saturday, would cause significant detriment to neighbouring residential amenity, in particular, the residential amenity of the occupant(s) of the flat above the adjoining Bookmakers at nos.246-248 (which closes at 2200 hours) and any residential accommodation above the other shops, and the properties immediately to the rear of the shopping parade on Lawrence Gardens e.g. through bin emptying etc. relating to the operating of the HFTA.
- 10.4 Whilst it is appreciated that the application premises are situated within a shopping parade which fronts onto a main road, nevertheless, background noise levels are significantly reduced at the time which the HFTA proposes to extend the opening hours to, as traffic levels are much lower along Easterly Road at that time and the majority of the uses within the shopping parades are closed. As such, the area becomes much more noise sensitive at this time, and noises generated by car engines and stereos, the slamming of car doors and voices of customers outside of the premises etc., are much more audible and therefore much more likely to cause disturbance. Particularly, as by this time of the night, many of the occupants of neighbouring residential properties, which include family housing, will be asleep in their beds, especially during the working week. This view is consistent, in terms of likely impact on residential amenity, with the recent Panel decision in respect of an application for a new HFTA situated in Harehills Lane Local Centre at 327 Harehills Lane (planning reference 09/03534/FU). In this case, there was an adjoining residential house to the rear of the premises and even though the hours proposed were 1000 hours to 2300 hours Monday to Saturday and 1000 hours to 2230 hours

on Sundays and Bank Holidays, which are within the hours specified in policy SF15 (planning reference 09/03534/FU), Members still considered that the application was unacceptable due to the detrimental impact it would have on neighbouring residential amenity, due to the proximity of the premises to adjoining and adjacent residential dwellings.

- 10.5 It is important to note, that if the application premises are allowed to open until the hours specified, this would set a precedent for the other similar uses in this parade and other local parades, to apply to do the same and it would then be difficult for the Local Planning Authority to resist further such applications.
- 10.6 In discussions with the applicant and Councillor Hussain, the issue was raised of there being other similar uses situated in other shopping parades in the area, operating until 0100 hours, including further along Easterly Road, on Amberton Approach and Dib Lane. The planning history has been checked and the authorised hours of opening of the hot food takeaways within these parades do not extend beyond 2330 hours as recommended by policy SF15. If any of these uses are operating beyond 2330 hours, the hours are unauthorised. It should also be noted that an application (08/06576/FU) to extend the opening hours of a hot food takeaway at no.128 Dib Lane (Gee Pizza), situated within the main shopping parade, to 00.00 hours Sunday to Thursday and 00.30 hours Friday to Saturday, was refused in 2009, due to the impact on residential amenity.
- 10.7 The applicant also referred to the opening hours of McDonalds, which occupies a site at the corner of Easterly Road and Oakwood Lane. McDonalds took over the existing Whitbread Brewery pub/restaurant site back in the 1990's, which did not require planning permission as it was in the same Use Class. Planning history indicates that because this site has historically been occupied by a pub/restaurant since before the records begin for this site in the 1970's, it has never been subject to a planning permission wherein the hours of opening have been considered or restricted by the Local Planning Authority. As such, this is considered to be a historical exception, and does not justify making decisions contrary to current policy.
- 10.8 In addition, it is considered that the context of the McDonald's site differs from the application premises, in that it is a spacious stand-alone site, which has a much greater distance from residential dwellings. Whereas, the application site is adjoining a property containing residential accommodation and is in much closer proximity to residential housing, which is situated to the rear of the site on Lawrence Gardens.
- 10.9 It should be noted, that the applicant previously applied for the same extension of opening hours in 2006 (planning reference 06/02128/FU), this previous application was refused by the Local Planning Authority, on the grounds that the hours as proposed would be detrimental to residential amenity. It is still considered that the extension of hours as proposed is unacceptable for the same reasons.

### Highways

- 10.10 The proposal raises no specific road safety concerns due to the lower traffic levels during the early hours of the morning and the off-street parking provision to the front of the parade.

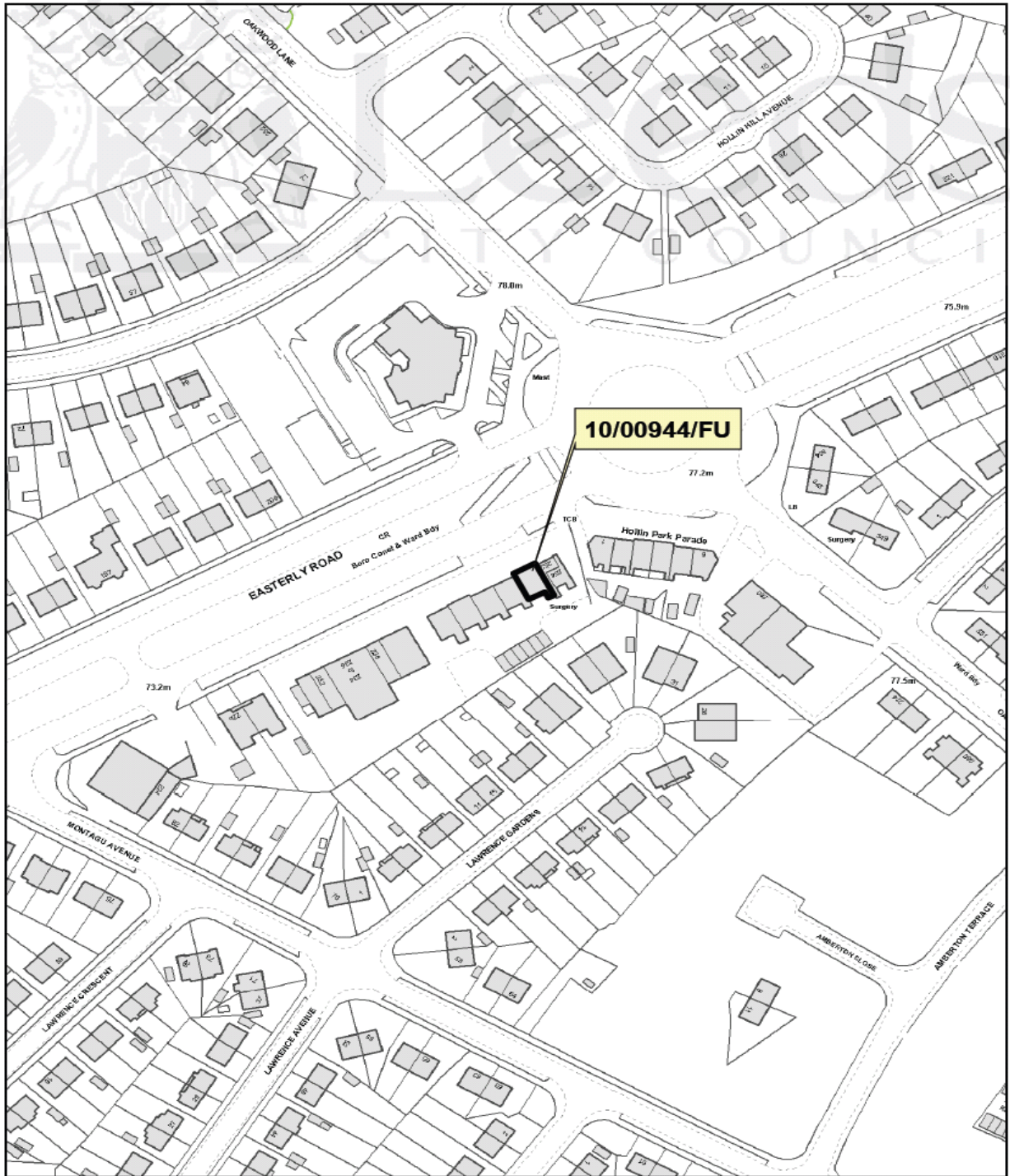
## **11.0 CONCLUSION**

- 11.1 For the above reasons, it is considered that the proposed development is unacceptable and contrary to policy, with particular regard to residential amenity, and as such is recommended for refusal.

### **Background Papers:**

Application file: 10/00944/FU

Certificate of Ownership: the applicant and Mrs. Parveen Akhtar.



# EAST PLANS PANEL

Scale 1/1500

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