

PLANNING APPLICATION NUMBER: P05/1973

Type of approval sought	FULL PLANNING PERMISSION
Ward	LYE & WOLLESCOTE
Applicant	A.J.'S
Location:	A J'S FISH & CHIPS, 180, HIGH STREET, LYE, STOURBRIDGE, DY9 8LH
Proposal:	EXTENSION OF OPENING HOURS (VARIATION OF CONDITION 3 OF 93/51967) (RESUBMISSION OF P05/1403)
Recommendation summary:	REFUSE

SITE AND SURROUNDINGS

1. The application site is a takeaway located towards the eastern end of Lye High Street. The surrounding area is predominantly commercial, although there is a church directly opposite the site and houses to the rear on Church Road. There are also flats at first floor above the commercial buildings in the vicinity of the application site.

PROPOSAL

2. Permission was granted in 1993 for the use of the site for A3 (now A5) purposes subject to a condition restricting opening hours to 12:00 – 23:00, Monday to Saturday only. This application seeks to vary that condition to increase the opening hours to 23:30 Monday to Thursday, 00:30 on Fridays and Saturdays, and from 12.00 to 23.00 on Sundays.

HISTORY

3.

PROPOSAL	DECISION	DATE
Variation of Condition 3 of Planning Permission 93/51967 to Increase Opening Hours to 0.300 Mondays to Saturdays (P04/2405)	Ref	2005
Variation of Condition 3 of Planning Permission 93/51967 to Vary Opening Hours to 17:00 to 01:00 Mondays to Saturdays (P05/1403)	Ref	2005

4. Both applications were refused on the grounds that the proposed extension of opening hours into the noise sensitive late night/early morning hours would be severely damaging to the amenities of occupants of nearby existing residential properties on Church Road and High Street, by virtue of noise disturbance and odour.
5. The member will be aware that a Breach of Condition Notice exists on this site with regard to operating beyond the currently authorised hours. Prosecution proceedings are ongoing.

PUBLIC CONSULTATION.

6. The Reverend Falshaw of Christ Church (directly opposite the site) has no objection to the proposal as he does not consider that the proposed increased opening hours would significantly increase public nuisance. The occupant of no. 3d Church Road also has no objection.
7. The landlord of the application premises considers that the proposed opening hours would increase noise disturbance, odour problems, litter and anti-social behaviour, and would exacerbate on-street parking problems in the vicinity of the site. The occupant of no.7 Church Road objects to the proposal on similar grounds.

OTHER CONSULTATION

8. The HEP recommends that opening hours should be increased to 23.30 on Friday and Saturday only and on Sundays/Bank Holidays to 23.00.
9. The Head of Traffic and Road Safety has no objections.

RELEVANT PLANNING POLICY

10. Policy CR12 – Car parking in town centres of the adopted UDP and PGN28 (Hot Food Takeaway Shops).

ASSESSMENT

11. Policy CR12 and PGN28 advise that proposals for A5 uses will be assessed with regard to the potential impact on environmental quality and residential amenity.
12. The proposed opening hours exceed those of other A5 uses on the High Street which have restrictions on opening hours (generally most premises are restricted to 23.00/23.30 opening hours only). The HEP considers that opening hours on Mondays to Thursdays should remain at the presently permitted 23.00 only, and that an extension of opening times to 23.30 would only be acceptable on Fridays and Saturdays. The recommendation that the premises should be allowed to open till 23.00 on Sundays is based on consent being granted in 2000 for no.s 178-181 High Street to be converted to a single unit and used for A3 purposes. That consent allowed the premises to remain open until 23.00 on Sundays (the permission was recently renewed). The HEP is concerned that to allow an extension of opening hours to those requested by the applicant (other than on Sundays) would adversely affect the amenity of nearby residents by reason of noise disturbance and odour (the nearest residential properties being on Church Road and flats above commercial properties on High Street).
13. It is acknowledged that there are a number of A3/A5 premises on the High Street which do not have any limit on opening times. However to approve this application on the basis that there are other unrestricted premises on the High Street may set a precedent for similar applications from other existing A3/A5 uses which would then be difficult to resist, and may potentially have a detrimental impact on residential amenity.

CONCLUSION

14. The proposal contravenes Policy CR12 and PGN28 and would cause harm to surrounding amenities.

RECOMMENDATION

15. It is recommended that planning permission should be refused for the following reason:

Conditions and/or reasons:

1. 'The extension of opening hours on Mondays to Saturdays into the proposed noise sensitive late night opening hours would be severely damaging to the amenities of occupants of nearby existing residential properties on Church Road and High Street, by virtue of noise disturbance and odour. The application is therefore contrary to Policy CR12 of the adopted Dudley Borough Unitary Development Plan and Planning Guidance Note 28 relating to Hot Food Takeaway Shops'.