

<b>Item No.</b> <b>1.2</b>	<b>Classification:</b> OPEN	<b>Date:</b> 14/04/2010	<b>Meeting Name:</b> DULWICH COMMUNITY COUNCIL
<b>Report title:</b>	<b>Development Management planning application:</b> Application 09-AP-2596 for: S.73 Vary/remove conds/minor alterations  <b>Address:</b> 14 FELLBRIGG ROAD, LONDON, SE22 9HH  <b>Proposal:</b> Variation of condition 2 on application 9200224 to extend opening hours to: 8:00 to 22:00 Monday to Saturday and 9:00 to 22:00 on Sunday.		
<b>Ward(s) or groups affected:</b>	East Dulwich		
<b>From:</b>	Head of Development Management		
<b>Application Start Date</b> 23/11/2009		<b>Application Expiry Date</b> 18/01/2010	

## RECOMMENDATION

- 1 To consider this application which has been brought before Dulwich Community Council, as officers are minded to refuse permission and there have been letters supporting the application, including that of the ward Councillor and the Local MP.

## BACKGROUND INFORMATION

### Site location and description

- 2 The site is located on the corner of Fellbrigg Road and Shawbury Road. On site is two-storey building with a cafe use (A3) on the ground floor.
- 3 The surrounding context is residential with the area dominated by two storey terraced dwellings.

### Details of proposal

- 4 The application is to extend the opening hours of the cafe from 8am to 10pm Monday to Friday and from 9am to 10pm on Sundays.

### Planning history

- 5 0100147 Permission REFUSED for Variation of condition 2 of planning permission dated 03/07/92 to allow cafe to open on Sundays from 10am to 4pm for 1 reason:
- 6 The proposed variation in opening hours to include Sundays between 10am and 4pm would result in a loss of amenity to occupiers of nearby residential properties on Fellbrigg Road and Shawbury Road from increased traffic, vehicular movement and noise generally associated with this type of use. As such the proposal would be contrary to Policy E.3.1 [Protection of Amenity] of the Southwark Unitary

Development Plan.

- 7 9200224 Permission GRANTED for change of use on the ground floor from retail to cafe
- 8 Condition No. 2 of Decision Notice states that ;  
'The premises shall not be open to the public for the use hereby permitted other than between the hours of 8.30am and 5.30pm and at no time on any Sunday or Public Holiday'
- 9 Reason:  
In order to safeguard the amenities of the adjoining premises and the surrounding area generally.
- 10 TP/2626-14/RW Permission GRANTED for the change of use of the ground floor, 14 Fellbrigg Road, London SE22 from a retail shop to a cafe/tea-coffee shop.
- 11 A condition of note is condition No. 5 which states that the premises shall not be open to the public for the use hereby permitted other than between the hours of 8.30 am and 5.30pm and at no times on any Sunday or Public Holiday.
- 12 Reason  
In order to safeguard the amenities of the adjoining premises and the surrounding area generally.

**Planning history of adjoining sites**

- 13 No recent applications on file.

**KEY ISSUES FOR CONSIDERATION**

**Summary of main issues**

- 14 The main issues to be considered in respect of this application are:
- 15 a) the principle of the development in terms of land use and conformity with strategic policies.
- 16 b) the impact on the amenity of neighbouring residents and the surrounding area
- 17 c) traffic issues

**Planning policy**

- 18 Southwark Plan 2007 (July)  
3.2 'Protection of Amenity'  
5.2 'Transport Impacts'

**Principle of development**

- 19 The principle of a extension of opening hours in not acceptable in this instance due to the potential negative impact of such an extension in relation to residential amenity and traffic impacts.

### **Impact of proposed development on amenity of adjoining occupiers and surrounding area**

- 21 The surrounding area is predominately residential and this cafe (former corner shop) is the only one of its kind in the immediate area. At present the opening hours are restricted by Condition 5 of Planning Ref 9200224 which limits the opening hours to between 8.30 and 5.30pm Monday to Saturday.
- 22 It is considered that these opening hours remain appropriate and that any extension to opening hours would have a negative impact on the amenity of adjoining occupiers and on the surrounding area in general in terms of noise and increased traffic movement. The opening hours of the cafe generally coincide with the working day which is the time when many of the surrounding dwellings would be unoccupied and the level of traffic and noise would be at its highest. However, before and after these times, especially in a quiet residential street, it is expected that the area would have a decreased traffic volume and a general decrease in noise levels from activity in the area.
- 23 An increase in opening hours relating to the A3 use to 10pm allows for a potential increase in activity and traffic movement in the immediate area, creating a disturbance for the surrounding residential area.
- 24 It has been suggested that the applicant has agreed to close at 9pm. However having had regard to the application form and having confirmed with the applicant, the application is to extend the opening hours from 8 am to 10pm Mon - Sat and from 9am to 10om on Sun.

### **Conclusion on planning issues**

- 25 Having regard to the above the extension of opening hours is considered to be detrimental to the residential amenity of the area and the recommendation is to refuse permission.

### **Community impact statement**

- 26 In line with the Council's Community Impact Statement the impact of this application has been assessed as part of the application process with regard to local people in respect of their age, disability, faith/religion, gender, race and ethnicity and sexual orientation. Consultation with the community has been undertaken as part of the application process.
- 27 a) The impact on local people is set out above.

### **Consultations**

- 28 Details of consultation and any re-consultation undertaken in respect of this application are set out in Appendix 1.

### **Consultation replies**

- 29 Details of consultation responses received are set out in Appendix 2.

- 30 Summary of consultation responses

- 31 Rt. Hon. Tessa Jowell M.P.
- States that Ms Barret has agreed to close at 9.00pm and this would not be disruptive to the area
- 32 Cllr Jonathan Mitchell
- Supports application
  - cafe serves a diverse range of people
  - there is ample business for the cafe
  - there is a market for such a cafe
  - such uses are part of history, an attractive part of the street scene and an important part of the local economy
- 33 David and Maureen Manning (21 Fellbrigg Road)
- no objection to the longer opening hours
  - would like to support the applicant
- 34 Dan Bevan (9 Fellbrigg Road)
- Supports application
  - would be an asset to the area alongside such businesses nearby such as the Thai Corner Cafe and Blue Mountain Cafe.
- 35 Jim Ivimey, 48 Hansler Street, East Dulwich
- Supports application
  - extension in opening hours would enhance the community
- 36 Chris Merry (no address)
- Supports application
  - type of food is not being offered anywhere else in the area
- 37 16 Felbrigg Road
- Objects to application
  - Noise from the cafe is an issue and would be more of an issue during the evening
  - rubbish from the cafe blowing into garden
  - concerned about the possibility of an alcohol licence
  - extractor fan is located beside rear bedroom of the property and objector has concerns that the flue would create smells and fumes that would come into the bedroom where her daughter sleeps
  - another owner may not be as considerate as current owner
  - concerns about music
- 38 No address
- potential noise nuisance
  - likely to increase demand for parking in the evening

### **Human rights implications**

- 39 This planning application engages certain human rights under the Human Rights Act 2008 (the HRA). The HRA prohibits unlawful interference by public bodies with conventions rights. The term 'engage' simply means that human rights may be affected or relevant.
- 40 This application has the legitimate aim of providing extended opening hours to an A3 use. The rights potentially engaged by this application, including the right to a fair trial and the right to respect for private and family life are not considered to be unlawfully interfered with by this proposal.

**SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

41 **Strategic Director of Communities, Law & Governance**  
n/a

42 **REASONS FOR LATENESS**  
n/a

43 **REASONS FOR URGENCY**  
n/a

## BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Site history file: TP/2626-14  Application file: 09-AP-2596  Southwark Local Development Framework and Development Plan Documents	Regeneration and Neighbourhoods Department 160 Tooley Street London SE1 2TZ	Planning enquiries telephone: 020 7525 5403 Planning enquiries email: <a href="mailto:planning.enquiries@southwark.gov.uk">planning.enquiries@southwark.gov.uk</a> Case officer telephone:: 020 7525 5420 Council website: <a href="http://www.southwark.gov.uk">www.southwark.gov.uk</a>

## APPENDICES

No.	Title
Appendix 1	Consultation undertaken
Appendix 2	Consultation responses received

## AUDIT TRAIL

<b>Lead Officer</b>		
<b>Report Author</b>	Ronan O'Connor	
<b>Version</b>		
<b>Dated</b>		
<b>Key Decision</b>		
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Communities, Law & Governance		
Strategic Director of Regeneration and Neighbourhoods		
Strategic Director of Environment and Housing		
<b>Date final report sent to Constitutional / Community Council / Scrutiny Team</b>		

## **APPENDIX 1**

### **Consultation undertaken**

**Site notice date:** 11/01/2010

**Press notice date:** n/a

**Case officer site visit date:** 11/01/10

**Neighbour consultation letters sent:** 08/01/10

#### **Internal services consulted:**

Environmental Protection

Transport

#### **Statutory and non-statutory organisations consulted:**

None

#### **Neighbours and local groups consulted:**

As per Appendix 3

#### **Re-consultation:**

None

## APPENDIX 2

### Consultation responses received

#### Internal services

Environmental Protection - no objection

Transport - no objection

#### Statutory and non-statutory organisations

n/a

#### Neighbours and local groups

##### Summary of consultation responses

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- Supports application
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Chris Merry (no address)

- Supports application
- type of food is not being offered anywhere else in the area

Name and Address Withheld on request

- Objects to application
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- another owner may not be as considerate as current owner



- concerns about music

No address

- potential noise nuisance
- likely to increase demand for parking in the evening

### APPENDIX 3

#### Neighbour Consultee List for Application Reg. No. 09-AP-2596

<b>TP No</b>	TP/2626-14	<b>Site</b>	14 FELLBRIGG ROAD, LONDON, SE22 9HH
<b>App. Type</b>	S.73 Vary/remove conds/minor alterations		

<b>Date Printed</b>	<b>Address</b>
08/01/2010	38B SHAWBURY ROAD LONDON SE22 9DH
08/01/2010	12B FELLBRIGG ROAD LONDON SE22 9HH
08/01/2010	29 SHAWBURY ROAD LONDON SE22 9DH
08/01/2010	31 SHAWBURY ROAD LONDON SE22 9DH
08/01/2010	34 SHAWBURY ROAD LONDON SE22 9DH
08/01/2010	15B FELLBRIGG ROAD LONDON SE22 9HQ
08/01/2010	14A FELLBRIGG ROAD LONDON SE22 9HH
08/01/2010	17B FELLBRIGG ROAD LONDON SE22 9HQ
08/01/2010	11B FELLBRIGG ROAD LONDON SE22 9HQ
08/01/2010	16 FELLBRIGG ROAD LONDON SE22 9HH
08/01/2010	18 FELLBRIGG ROAD LONDON SE22 9HH
08/01/2010	13 FELLBRIGG ROAD LONDON SE22 9HQ
08/01/2010	21 FELLBRIGG ROAD LONDON SE22 9HQ
08/01/2010	13A FELLBRIGG ROAD LONDON SE22 9HQ
08/01/2010	10A FELLBRIGG ROAD LONDON SE22 9HH
08/01/2010	38A SHAWBURY ROAD LONDON SE22 9DH
08/01/2010	11A FELLBRIGG ROAD LONDON SE22 9HQ
08/01/2010	15A FELLBRIGG ROAD LONDON SE22 9HQ
08/01/2010	17A FELLBRIGG ROAD LONDON SE22 9HQ
08/01/2010	19 FELLBRIGG ROAD LONDON SE22 9HQ
08/01/2010	12A FELLBRIGG ROAD LONDON SE22 9HH
08/01/2010	10B FELLBRIGG ROAD LONDON SE22 9HH
08/01/2010	REAR OF 31 SHAWBURY ROAD LONDON SE22 9DH