

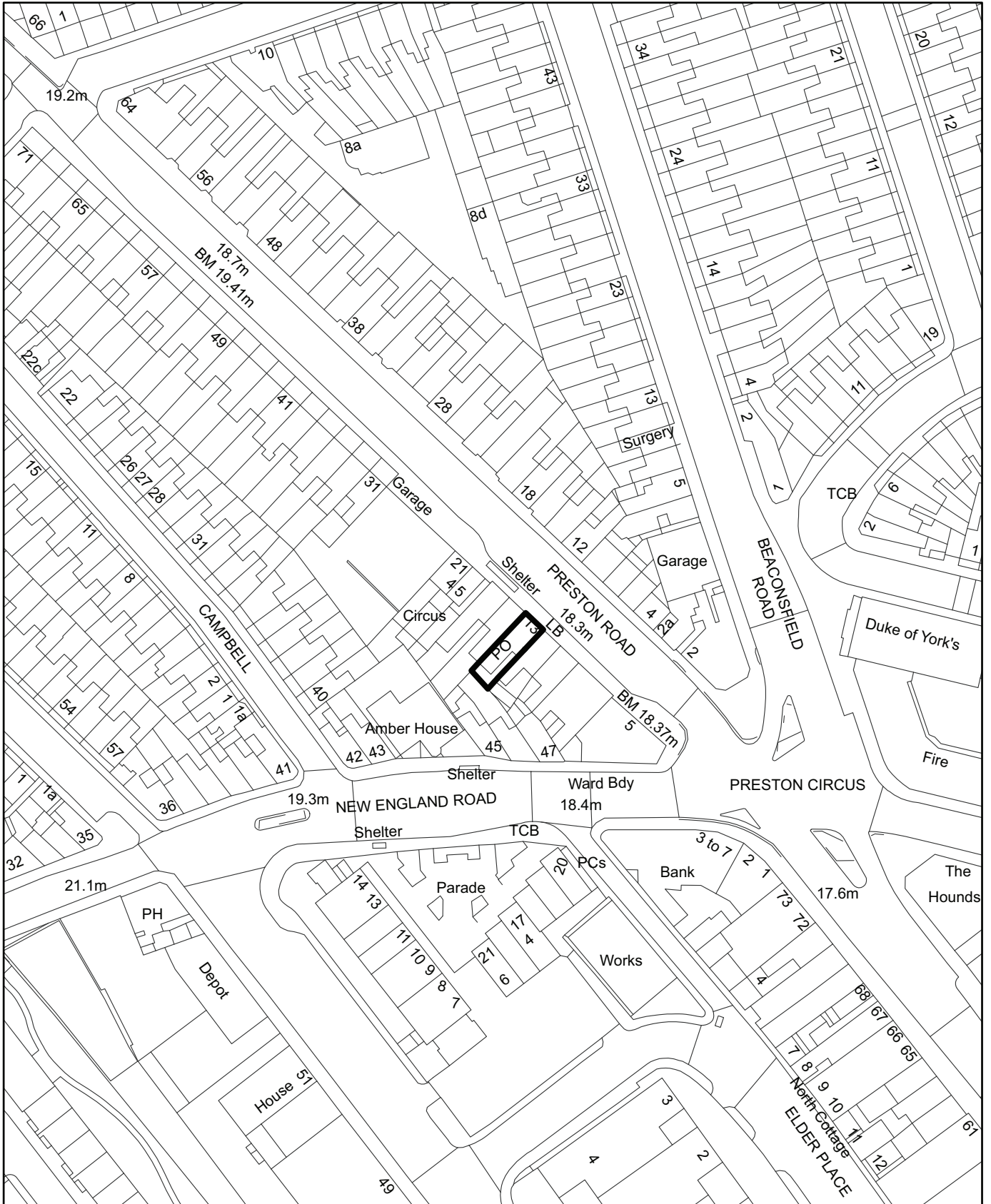
**PLANS LIST  
ITEM C**

**13 Preston Road, Brighton**

**BH2012/01994  
Removal or variation of condition**

**10 OCTOBER 2012**

# BH2012/01994 13 Preston Road, Brighton



**Brighton & Hove  
City Council**



**Scale: 1:1,250**

<b><u>No:</u></b>	<b>BH2012/01994</b>	<b><u>Ward:</u></b>	<b>PRESTON PARK</b>
<b><u>App Type:</u></b>	<b>Removal or Variation of Condition</b>		
<b><u>Address:</u></b>	<b>13 Preston Road, Brighton</b>		
<b><u>Proposal:</u></b>	<b>Application for variation of condition 6 of application BH2010/01864 (Change of Use from retail (A1) to hot food take-away (A5) incorporating extraction flue) to permit the premises to be open for trade between 1100 and 0100 hours Sunday to Thursday and 1100 and 0300 hours on Friday and Saturday for a 12 month temporary period.</b>		
<b><u>Officer:</u></b>	<b>Chris Swain Tel: 292178</b>	<b><u>Valid Date:</u></b>	<b>10/07/2012</b>
<b><u>Con Area:</u></b>	<b>N/A</b>	<b><u>Expiry Date:</u></b>	<b>04/09/2012</b>
<b><u>Listed Building Grade:</u></b>	<b>N/A</b>		
<b><u>Agent:</u></b>	<b>Lewis and Co Planning SE Ltd, Paxton Business Centre, Portland Road, Hove</b>		
<b><u>Applicant:</u></b>	<b>Har Ltd, Mr Afshin Kianifard, C/O Lewis &amp; Co Planning</b>		

## 1 RECOMMENDATION

- 1.1 That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in section 11 and the policies and guidance in section 7 and resolves to **REFUSE** planning permission for the reason set out in section 11.

## 2 SITE LOCATION & DESCRIPTION

- 2.1 The application relates to a pizza takeaway (A5) on the ground floor of a two storey terraced property on the western side of Preston Road. There is a residential unit above the flat. This part of the Preston Road street scene is characterised predominantly by a mix of commercial units at ground floor level with residential above. It is noted that the existing shopfront is unauthorised and is subject to a current planning enforcement investigation.

## 3 RELEVANT HISTORY

**BH2012/00308:** Installation of new shopfront. Refused 11 April 2012.

**BH2011/02841:** Application for variation of condition 6 of application. (Change of Use from retail (A1) to hot food take away (A5) incorporating extraction flue) that the premises shall not be open or in use except between the hours of 11am-1am Sunday to Wednesday and 11am-3am Thursday to Saturday. Refused 24 November 2011.

**BH2011/01213:** Application for variation of condition 6 of application BH2010/01864 (Change of Use from retail (A1) to hot food take-away (A5) incorporating extraction flue) that the premises shall not be open except between the hours of 11.00 and 04.00 seven days a week. Refused 21 June 2011.

**BH2011/00490:** Erection of a single storey rear extension. Relocation of extraction flue and condensing unit and the addition of a new air intake grille (part retrospective). Approved 4 May 2011.

**BH2010/01864:** Change of Use from retail (A1) to hot food take-away (A5) incorporating extraction flue. Approved 24 September 2011.

#### **4 THE APPLICATION**

- 4.1 Planning permission is sought for the variation of condition 6 of application BH2010/01864 (Change of Use from retail (A1) to hot food take-away (A5) incorporating extraction flue) to permit the premises to be open for trade between 11.00 and 01.00 hours Sunday to Thursday and 11.00 and 03.00 hours on Friday and Saturday for a 12 month temporary period.

#### **5 PUBLICITY & CONSULTATIONS**

##### **External:**

- 5.1 **Neighbours: 11 (eleven)** letters of representation have been received from **10, 13A, 33, 31A, 33A(x2), 35(x3), 35A and 39A Preston Road**, objecting to the application for the following reasons:
- Increased noise disturbance from the operations of the commercial unit, users of the takeaway, increased car movements and deliveries,
  - Increased anti-social behaviour,
  - Increased rubbish/litter,
  - Increased pressure on car parking.
- 5.2 **7 (seven)** letters of representation have been received from **12 and 17A, Preston Road, 25 Vale Avenue, 173 Lewes Road, 5 Richmond Road, 17 York Place and 5 Sussex Row, Bristol Gardens** supporting to the application for the following reasons:
- The proposed extension to the opening hours provides a welcome community facility by providing a late night eating option.
- 5.3 **Sussex Police:** Nothing material has changed in the circumstances since the applicant's previous application, therefore the previous comments remain extant. Sussex Police are opposed to this latest repeated application.
- 5.4 Original comments for application BH2011/01213  
There is a historical problem of youth disorder within the area, albeit of a reduced number now due to the regular Policing Operations. The problem of youth disorder still exists and the Police Operation is still running weekly to combat the existing problem. To this extent I and the N.P.T. feel that the granting of the extension of hours for this premises would potentially produce a hot spot for the local youths to gather, increasing the fear of crime within the community. It would be very detrimental to the amenity of the community and as such the Sussex Police object to this application.

##### **Internal:**

- 5.5 **Sustainable Transport:** No objection.

- 5.6 **Environmental Health:** Complaints about early morning deliveries have been resolved by negotiation. Because of the main road location there are parking restrictions that mean deliveries require careful timing. The restriction on deliveries does not include pizza deliveries by cars, motorcycles and mopeds.
- 5.7 Noise from the kitchen and fan in the residential rooms above has been observed, but did not establish a statutory noise nuisance. Noise to the occupiers above was dealt with by moving take away staff into the accommodation. However, the occupation may change and the shortage of housing means that the council could not take action that would prevent it from being used (thereby abating any noise nuisance). If the take away is open late, residential occupiers above are likely to be disturbed and a requirement for sound insulation has been included in this advice.
- 5.8 This service received a report of noise in the street from activities associated with the take away; this was actually linked to neighbouring premises rather than number 13. Environmental Protection has no legislation controlling noise from people in the street; though it is understood that the police have made comments covering this area of responsibility. However, were any residential occupiers to be adversely affected, a licence review could be called under the Licensing Act 2003. This would be a targeted way of addressing the problem (under this legislation the premises is currently able to remain open until 4am).
- 5.9 Advice is that the temporary nature of this permission makes it possible to allow the application with the following conditions.
1. Restrict loading / unloading  
No loading or unloading of vehicles associated with the business shall take place except between the hours of 7am and 7pm on Monday to Saturdays and not at any time on Sundays, Bank or Public Holidays.  
Reason: To safeguard the amenities of the occupiers of adjoining properties and to comply with policies SU10 and QD27 of the Brighton & Hove Local Plan.
  2. Soundproofing of building  
No development shall commence until a scheme for the soundproofing of the building has been submitted to and approved in writing by the Local Planning Authority. The measures shall be implemented in strict accordance with the approved details prior to the occupation of the development and shall thereafter be retained as such. Reason: To safeguard the amenities of the occupiers of adjoining properties and to comply with policies SU10 and QD27 of the Brighton & Hove Local Plan.

## **6 MATERIAL CONSIDERATIONS**

- 6.1 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 states that “If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.”

- 6.2 The development plan is:
- The Regional Spatial Strategy, The South East Plan (6 May 2009);
  - East Sussex and Brighton & Hove Minerals Local Plan (November 1999);
  - East Sussex and Brighton & Hove Waste Local Plan (February 2006);
  - Brighton & Hove Local Plan 2005 (saved policies post 2004).
- 6.3 The National Planning Policy Framework (NPPF) was published on 27 March 2012 and is a material consideration which applies with immediate effect.
- 6.4 Due weight should be given to relevant policies in the development plan according to their degree of consistency with the NPPF. At the heart of the NPPF is a presumption in favour of sustainable development.
- 6.5 All material considerations and any policy conflicts are identified in the considerations and assessment section of the report.

## 7 RELEVANT POLICIES & GUIDANCE

### The National Planning Policy Framework (NPPF)

#### Brighton & Hove Local Plan:

QD27	Protection of Amenity
SU9	Pollution and noise control
SU10	Noise nuisance
TR1	Development and the demand for travel
TR7	Safe development

## 8 CONSIDERATIONS & ASSESSMENT

- 8.1 The main consideration in the determination of this application relates to how the proposed variation in condition 6 of planning approval BH2010/01864 would impact upon the amenity or neighbouring occupiers.
- 8.2 It is noted that a Breach of Condition Notice was served on the premises on 15 August 2011 after receiving noise complaints from neighbouring residents. The premises had originally been opening to 04.00 every day in line with the approved licensing hours.

#### **Impact on Amenity:**

- 8.3 The original application involved the change of use from a newsagents and post office (A1) to a hot food takeaway (A5). Condition 6 of the original application stated;
- The premises shall not be open or in use except between the hours of 8am until 11pm Monday to Sunday (including bank holidays). Reason: To safeguard the amenities of the locality and to comply with policy QD27 of the Brighton & Hove Local Plan.*
- 8.4 Policy QD27 of the Brighton & Hove Local Plan states that planning permission for any development or change of use will not be granted where it would cause material nuisance and loss of amenity to the proposed, existing and/or adjacent



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users, residents, occupiers or where it is liable to be detrimental to human health.

- 8.5 It is noted that a previous application for the extension of opening hours to 04.00am every day was refused on amenity grounds in June 2011 and a subsequent application, proposing opening hours of hours of 1100-0100 Sunday to Wednesday and 11.00-03.00 Thursday to Saturday was refused in November 2011.
- 8.6 The current application proposes an increase in opening hours to 01.00, Sunday to Thursday and 03.00 Friday to Saturday for a temporary period of 12 months. Furthermore, a Management Plan is proposed to help mitigate any amenity concerns for neighbouring residents.
- 8.7 The hours of operation for the takeaway were evaluated in the original application. It was considered that opening hours should be restricted to 08.00 to 11.00 in accordance with comments from the Environmental Health Team due to the residential properties above the ground floor unit. It was considered that the opening hours were necessary to mitigate for the potential for anti social behaviour. It is noted that the hours of operation have been conditioned on the pizza takeaway (No.36 Preston Road) to 08.00-23.00 while the kebab takeaway (No.15 Preston Road) has opening hours conditioned until 24.00 (Sun to Weds) and 01.00 (Thurs to Sat).
- 8.8 The applicant's Planning Statement has a list of the opening hours of nearby commercial premises. None of the other hot food takeaways are open later than midnight other than Delight Kebab (15 Preston Road), which is open until 01.00 on Friday and Saturday. The opening hours at No.15 were approved in 2004, this was before the current Brighton and Hove Local Plan and does not set a precedent for future applications that are likely to result in harm to local amenity.
- 8.9 Ace Pizza (No.36 Preston Road) has planning permission to open to 23.00, not 00.30 as stated by the applicant. The late night off-licences listed are A1 units that do not have planning restrictions for hours of operation. The LPA has no control over the hours of operation to these premises. They do not set a precedent for further late night opening and it is noted that the LPA will seek to restrict opening hours to preserve amenity where they have the opportunity and authority to do so.
- 8.10 Comments from the Environmental Health Team state that whilst noise from the commercial unit is likely to result in harm to the amenity of the residential unit above, this may be mitigated by the implementation of a sound proofing scheme. It is stated that whilst complaints have been received by the Environmental Health Team regarding noise and disturbance on the street outside the premises. Whilst these may have been linked to neighbouring properties this is outside the remit of the licensing legislation and therefore cannot comment on these issues. Approval of the proposal is recommended for a temporary 12 month period subject to compliance with conditions relating to soundproofing and delivery hours.

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- 8.11 Whilst the comments of the Environmental Health Team are noted, any sound insulation installed at the application property would only help to reduce noise disturbance transmitted through the building to the residential unit on the upper floor. Noise from outside the premises would still likely result in harm to the residential amenity of the first floor flat and nearby residential occupiers. The suggested condition stating deliveries should be restricted to within 07.00 to 19.00 is unworkable as the takeaway is predominantly a delivery service with pizza deliveries during the full hours of operation. Whilst the Environmental Health Team may not consider that the activities of the premises result in noise nuisance as defined within the Licensing Act 2003, the LPA has to assess the proposal in relation to the planning policies within the Local Plan and has a duty to protect the amenity of neighbouring residents regardless as to whether any noise would constitute a statutory noise nuisance.
- 8.12 Sussex Police object to the application stating that there is a historical problem in the area with anti social behaviour and while this has been reduced by more targeted policing they consider that allowing later opening hours could potentially result in increased anti-social behaviour.
- 8.13 It is noted that whilst Sussex Police did not object to the proposed opening hours in a previous licensing application submitted by the applicant, they do object in planning terms to the extended opening hours.
- 8.14 The planning system requires a broader approach to assessing impact upon local amenity than is provided under the Licensing Act 2003. The Courts have held that Councils and Planning Inspectors are entitled to use planning powers to limit opening hours. These may be more stringent than those authorised under the licensing code, such restrictions must however serve a clear planning purpose in protecting amenities. Thus the imposition of planning conditions restricting the opening hours of licensed premises is not a duplication of the licensing regime; rather it is a separate regime with different considerations.
- 8.15 It is noted that there have been a number of objections regarding noise disturbance and anti social behaviour relating to the existing pizza takeaway, including from the flat immediately above the pizza takeaway (13A Preston Road) and there are concerns that these instances would increase if later opening hours were granted.
- 8.16 Taking account of the comments and factors outlined above it is considered that the proposed extension of opening hours to 01.00, Sunday to Thursday and 03.00 Friday to Saturday would result in an increased opportunity for noise disturbance and anti-social behaviour during the early hours of the morning to the detriment of the amenity of neighbouring residential occupiers.
- 8.17 The submitted Planning Statement outlines that a Premises Management Plan, including a telephone hotline for residents to contact the takeaway operators with any concerns, will be put in place if approval is granted. This management plan would be a voluntary agreement, administered by the takeaway operator, and whilst such a plan could be secured by a planning condition and the aims of



this are welcomed, it is not considered that it would satisfactorily mitigate for the potential harm to amenity likely to result from the extended hours.

- 8.18 Whilst the objectives of the proposed Premises Management Plan has been noted, it cannot minimise customer noise and anti social behaviour outside the premises and this does not provide sufficient mitigation for the potential harm to amenity.
- 8.19 Likewise, whilst it is noted that Preston Road is a busy road with a relatively high level of vehicular activity, these vehicle movements are generally passing through the area. The use of a takeaway will result in vehicles stopping and starting outside the premises. It is these movements in addition with the takeaways own deliveries that create additional noise disturbance over and above the level of general traffic noise.
- 8.20 Whilst the granting of a temporary, one year consent has been considered the concerns regarding amenity are too significant to justify this approach. If approval was granted for a set temporary period and this resulted in harmful noise disturbance and anti social behaviour the LPA would not have the authority to rescind the extended operating hours, and nearby residents could potentially be adversely impacted throughout the period of the consent.
- 8.21 It is noted that the adjoining property, No.15 Preston Road has recently had an application to extend opening hours from 01.00 to 03.00 on Friday and Saturday refused as it was considered the additional opening hours would result in increased harm to residential amenity. It is considered that the LPA is following a consistent approach in regards to the assessment of planning applications for extended opening hours to late night takeaways within the immediate vicinity.

#### **Other Considerations**

- 8.22 Regarding the objections relating to increased pressure on car parking within the area, it is not considered that the later opening hours would increase the intensity of the operation and thus would not impact significantly on the existing on-street parking issues in this regard. The Sustainable Transport Team has not objected to the application.
- 8.23 Whilst support for the application has been received, stating that the takeaway is a positive addition to the local community by providing a late night food option, this is not considered to be sufficient to outweigh against the potential harm to amenity of the proposed extended opening hours.

### **9 CONCLUSION**

- 9.1 The proposed extension of opening hours would result in an increased opportunity for noise disturbance and anti-social behaviour during the early hours of the morning to the detriment of the amenity of neighbouring residential occupiers and contrary to policies SU9, SU10 and QD27 of the Brighton & Hove Local Plan.

**10 EQUALITIES**

10.1 None

**11 REASON FOR REFUSAL / INFORMATIVES**

11.1 Reason for Refusal:

1. The proposed extension of opening hours would result in an increased opportunity for noise disturbance and anti-social behaviour during the early hours of the morning to the detriment of the amenity of neighbouring residential occupiers and contrary to policies SU9, SU10 and QD27 of the Brighton & Hove Local Plan.

11.2 Informatives:

1. This decision is based on the drawings and documents listed below:

<b>Plan Type</b>	<b>Reference</b>	<b>Version</b>	<b>Date Received</b>
Site plan			2 July 2012
Planning Statement			2 July 2012