

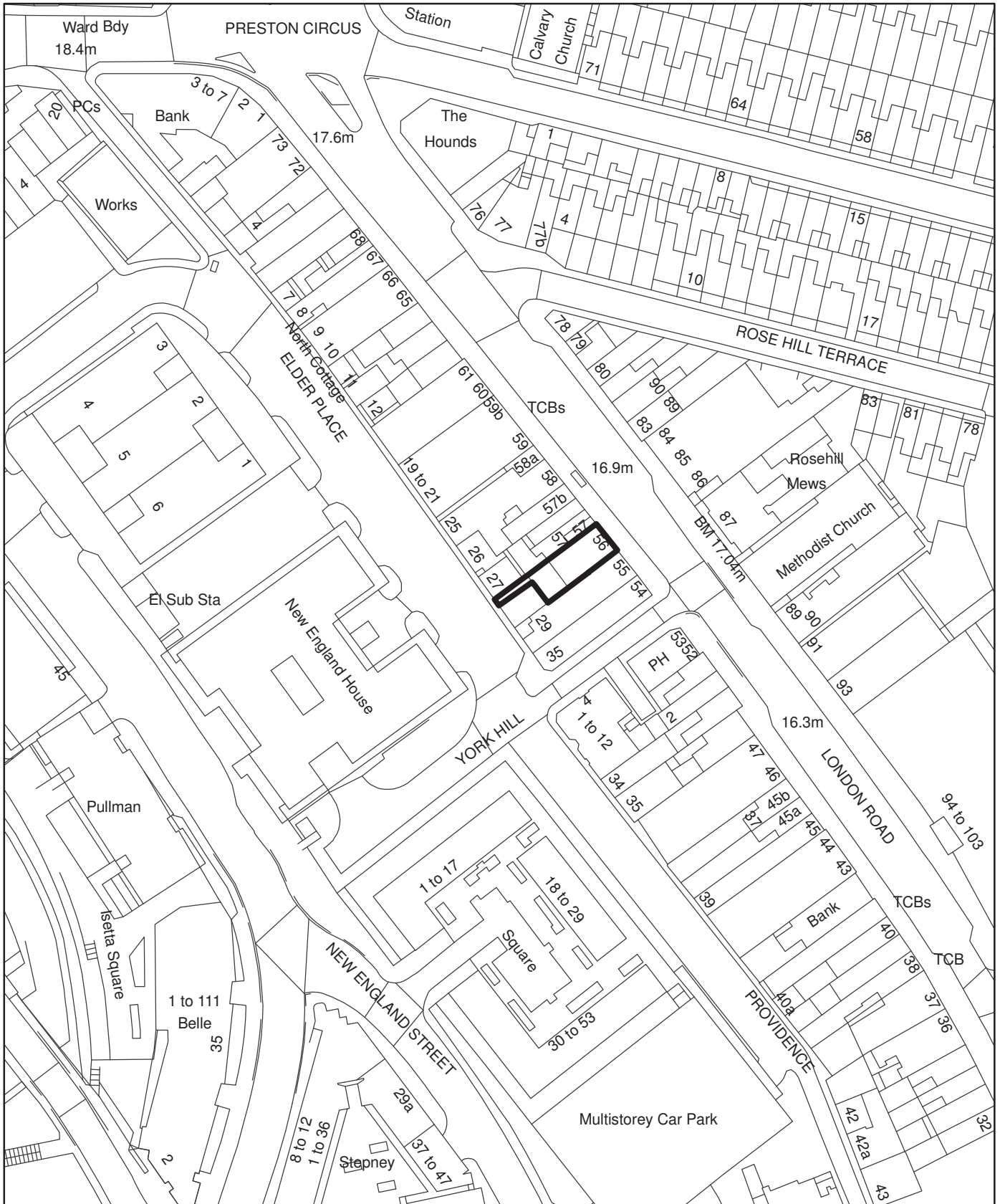
ITEM D

56 London Road, Brighton

BH2013/03117
Removal or variation of condition

20 NOVEMBER 2013

BH2013/03117 56 London Road, Brighton



**Brighton & Hove
City Council**



Scale : 1:1,250

<u>No:</u>	BH2013/03117	<u>Ward:</u>	ST. PETER'S & NORTH LAINE
<u>App Type:</u>	Removal or Variation of Condition		
<u>Address:</u>	56 London Road Brighton		
<u>Proposal:</u>	Application for variation of condition 1 of application BH2011/02890 to permit the premises to be in use between the hours of 08.00 and 04.00 daily with counter sales to cease at 01.00.		
<u>Officer:</u>	Jonathan Puplett Tel 292525	<u>Valid Date:</u>	16/09/2013
<u>Con Area:</u>	N/A	<u>Expiry Date:</u>	11/11/2013
<u>Listed Building Grade:</u>	N/A		
<u>Agent:</u>	Meeson Williams Phillips Ltd, Unit 7 Court Farm Barns Medcroft Road Tackley Oxfordshire OX5 3AL		
<u>Applicant:</u>	Dominos, 56 London Road Brighton BN1 4JE		

1 RECOMMENDATION

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(s) set out in section 11.

2 SITE LOCATION & DESCRIPTION

The application relates to a hot food takeaway (Use Class A5) located on the western side of London Road.

3 RELEVANT HISTORY

BH2011/02890: Application for variation of condition 3 of application BH2010/02854 (Change of use from retail (A1) to hot food take-away (A5) incorporating new shop front and installation of extract duct). Approved 21/11/2011.

BH2011/00657: 'Application for Approval of Details Reserved by Condition 4 of application BH2010/02854.' Approved 05/05/2011.

BH2010/03900 (Advertisement Consent): 'Display of internally illuminated fascia sign, projecting sign, internal sign and non illuminated window vinyls.' Approved 02/03/2011.

BH2010/02854: 'Change of use from retail (A1) to hot food take-away (A5) incorporating new shop front and installation of extract duct.' Approved 31/01/2011.

4 THE APPLICATION

- 4.1 Planning permission is sought for the variation of Condition 1 of application BH2011/02890, which states that:
- 4.2 *The premises shall not be in use except between the hours of 08.00 and 24.00 Sunday to Thursday, between 08.00 Friday and 02.00 Saturday, and between 08.00 Saturday and 02.00 Sunday.*
- 4.3 The hours of use now sought are 08.00 to 04.00 daily with counter sales to cease at 01.00.

5 PUBLICITY & CONSULTATIONS

External

- 5.1 **Neighbours: Fifteen (15)** letters of representation have been received from **nos. 1, 7 (5 letters) and 9 (2 letters) Chalvington Close, no. 19 Canfield Close, no. 64A Beaconsfield Road, no. 18 Lucraft Road, no. 26a Southover Street, no. 56 Ladies Mile Road, Flat 3 Level 2 The Hub Varley Park, Varley Park University of Brighton (full address not provided), supporting** the application for the following reasons:
 - It would be a good idea to have the shop open later so that we can order food at a later hour after a night out.
- 5.2 A letter has been received from the **North Laine Community Association** objecting to the application. It however appears that the comments submitted relate to a separate hot food takeaway outlet operated by the same company (Dominos) at the eastern end of Trafalgar Street. Therefore these comments do not relate to the application property.
- 5.3 **Councillor Lizzie Dean: Objects** and requests that the application goes before the Planning Committee. (Full comment appended)
- 5.4 **Sussex Police Crime Prevention Design Adviser:** The proposed hours of use in comparison to the existing would have an impact upon the amenity of residents of the immediate area. The proposals would impinge upon the objectives of policies SU10 and QD27 and would impact upon police resources.
- 5.5 Sussex Police would welcome Sunday to Thursday opening hours remaining at 08.00-24.00, and Friday and Saturday opening hours being 08.00 – 04.00 with counter sales ceasing at 01.00.

Internal:

- 5.6 **Environmental Health: Comment.** No objections to the proposed hours which would accord with the current licensed hours of operation. As the application seeks a significant increase in hours of operation it is recommended that if approved permission should be granted for a temporary period of one year.
- 5.7 **Sustainable Transport: Comment.** The proposed hours of operation in comparison to the existing are unlikely to have a significant transport impact. It is recommended that a Delivery and Service Management Plan be secured by planning condition.

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:
- Brighton & Hove Local Plan 2005 (saved policies post 2007);
 - East Sussex, South Downs and Brighton & Hove Waste and Minerals Plan (Adopted February 2013);
 - East Sussex and Brighton & Hove Minerals Local Plan (November 1999); Saved policies 3,4,32 and 36 – all outside of Brighton & Hove;
 - East Sussex and Brighton & Hove Waste Local Plan (February 2006); Saved Policies WLP 7 and WLP8 only – site allocations at Sackville Coalyard and Hangleton Bottom and Hollingdean Depot.
- 6.3 The National Planning Policy Framework (NPPF) is a material consideration.
- 6.4 Due weight should be given to relevant policies in the development plan according to their degree of consistency with the NPPF.
- 6.5 The Brighton & Hove City Plan Part One (submission document) is an emerging development plan. The NPPF advises that weight may be given to relevant policies in emerging plans according to their stage of preparation, the extent to which there are unresolved objections to relevant policies and the degree of consistency of the relevant policies to the policies in the NPPF.
- 6.6 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:

- TR1 Development and the demand for travel
- TR7 Safe Development
- SU9 Pollution and nuisance control
- SU10 Noise nuisance
- QD27 Protection of amenity

Brighton & Hove City Plan Part One (submission document)

- SS1 Presumption in Favour of Sustainable Development

8 CONSIDERATIONS & ASSESSMENT

- 8.1 The main considerations in the determination of this application are the potential impacts of the proposed increase in opening hours, primarily in regard to neighbouring amenity and transport considerations.
- 8.2 Condition 1 of application BH2011/02890 states that:
- 8.3 *The premises shall not be in use except between the hours of 08.00 and 24.00 Sunday to Thursday, between 08.00 Friday and 02.00 Saturday, and between 08.00 Saturday and 02.00 Sunday.*
- 8.4 The hours of use now sought are 08.00 to 04.00 daily with counter sales to cease at 01.00. This therefore represents an increase in counter sales of 1 hour on Sunday to Thursday, and a decrease in counter sales of 1 hour on Friday and Saturday. The proposed operation and deliveries until 04.00 represents an increase of four hours Sunday to Thursday, and an increase of 2 hours Friday and Saturday.

Neighbouring amenity:

- 8.5 Impact upon neighbouring amenity was considered at the time of the original application for the hot food takeaway use under application BH2010/02854 and the report stated:
- 8.6 *'The proposed use, located below residential properties, has the potential to cause significant nuisance by way of odours and noise caused by ventilation and refrigeration plant and machinery to be located to the rear of the property.*
- 8.7 *The submitted information demonstrates that the proposed extraction system would control odour expulsion and would include appropriate sound insulation.*
- 8.8 *It is however considered that a background noise survey at the premises should be undertaken adhering to guidance given in BS4142, to ensure that the operation of the proposed plant and machinery (specifically, the proposed air conditioning units, the fresh air intake and the extract system) does not cause a noise nuisance to the nearest receptors. The Rating Level, measured or calculated at 1-metre from the façade of the nearest existing noise sensitive premises, should not exceed a level 5dB(A) below the existing L_{A90} background noise level.*
- 8.9 *In terms of general activities and 'comings and goings', whilst the proposed use may not result in a significantly increased level of disturbance overall in comparison to the betting shop use, evening / night activity will be increased. Proposed opening hours are 09.00 to 23.00 Monday to Sunday. Whilst a takeaway use located in close proximity to residential properties is not an ideal scenario, such uses are to be expected in a commercial street. Any disturbance created would be unlikely to be beyond that expected in such locations. A condition is proposed to require that the takeaway is only in use between the hours proposed.*
- 8.10 *The arrival and departure of delivery vehicles will cause some noise; it appears likely that such vehicles will have to visit the rear of the unit as the section of*

London Road to the front of the unit has double yellow lines and there is a bus stop in front of the property. Elder Place is a relatively well used route as it provides access to the Multistorey car park on Providence Place, furthermore the majority of properties facing onto Elder Place are in commercial use rather than residential. It is therefore considered that the increased number of vehicular movements the change of use would create would be unlikely to cause a significant disturbance in comparison to the existing situation.

- 8.11 *The illumination of the proposed fascia and projecting signs would not cause significant harm to neighbouring amenity.'*
- 8.12 Thus based on the hours of use previously proposed by the applicant, 09.00 to 23.00 Monday to Sunday, the proposed use was considered acceptable having regard to neighbouring amenity.
- 8.13 Under application BH2011/02890 it was sought (as is sought now) to extend the hours of operation to 01.00 for counter sales and 04.00 for deliveries daily. This proposal was considered to be unacceptable previously as the proposed hours of operation were considered likely to cause noise and disturbance and harm to neighbouring amenity. A variation of hours of operation was granted, this was however restricted to between the hours of 08.00 and 24.00 Sunday to Thursday, between 08.00 Friday and 02.00 Saturday, and between 08.00 Saturday and 02.00 Sunday. These hours are consistent with a planning permission granted for a hot food takeaway use at no. 50 London Road in May 2011 under application BH2010/03813.
- 8.14 The current premises license for the application property permits operation until 04.00 daily. The applicant considers that it would be unreasonable for the Local Planning Authority to apply any more stringent restrictions. Section 4.10 of the applicant's supporting statement suggests:
- 8.15 *'There is no logical or justifiable reason for the planning department to restrict the opening hours in conflict with any control imposed by the Licensing Authority where the relevant considerations are the same.'*
- 8.16 This argument is flawed in that the considerations of a planning application are not the same as those of a licensing application. 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 acts, 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.
- 8.17 A relevant appeal decision is appeal ref. APP/D3830/A/06/2020298 which included the following statement from the Inspector:

- 8.18 *'The prevention of public nuisance under the Licensing Act 2003 is not the same as the protection of residential amenity which is a material planning consideration. What might harm neighbouring amenity may fall well short of constituting a public nuisance. It seems to me that in this respect the two systems of control are substantially different. In my view, the imposition of more restricted opening hours in a planning condition from those set out in the Premises Licence is justified in this case in order to protect the residents living in the vicinity of the appeal site from noise and disturbance.'*
- 8.19 There are residential properties above the ground floor units in London Road, some of which are set back from the ground floor frontage. Given the proximity of the nearest residential units, noise caused by activity within the application unit and in the rear yard area, the operation of plant and machinery, and comings and goings of customers and delivery drivers have the potential to cause harm to neighbouring amenity.
- 8.20 Neighbouring residents could reasonably expect that in night time hours, noise caused by pedestrians, traffic and commercial activities would be significantly reduced in comparison to daytime / evening activity. The proposal to operate a delivery function until 4am would involve noise caused by activity within the unit and in the rear yard area, the operation of plant and machinery, and the comings and goings of delivery drivers and vehicles. The proposal to extend counter sales by 1 hour to 01.00 Sunday to Thursday would also cause additional disturbance by way of comings and goings of customers. It is considered that this would cause unacceptable harm to neighbouring amenity.
- 8.21 It is noted that the Environmental Health Team do not object to the hours of operation sought by the applicant and that no complaints in relation to the current operation have been reported, it is however the case that the current operation is limited by Condition 1 of permission ref. BH2011/02890. The proposed increase in hours of operation are significant and it is considered would cause significantly increased disturbance and harm to amenity. It is not therefore considered appropriate to grant a temporary consent for such hours as even a temporary period is considered likely to cause significant harm.
- 8.22 The agent for the application has provided survey data from December 2011-January relating to outlets in Leicester and Sandhurst, indicating that a relatively small number of customer visits and deliveries took place after 00.00 (37 deliveries and 21 customer visits in Leicester which closes at 05.00, and 10 deliveries and 10 customer visits in Sandhurst which closes at 01.00). It is not demonstrated that these outlets are comparable to the likely level of trade at the application property, and furthermore even a small number of deliveries and customer visits late into the night in conjunction with the continued operation of the premises and associated plant and machinery would cause disturbance for neighbouring occupiers.
- 8.23 Part of the proposal is to reduce counter sales on Fridays and Saturdays to end at 01.00 rather than 02.00 which is currently permitted. 02.00 is considered an appropriate end time for counter sales on Fridays and Saturdays as these nights are generally busier in night hours, and there have been no complaints in relation

to these hours. It is not therefore necessary to restrict these hours to 01.00 as is proposed.

8.24 The current hours of use are consistent with the permission granted at no. 50 London Road and are considered to be appropriate in an area which is a mix of residential and commercial uses.

8.25 As at the time of application BH2011/02890, it remains the opinion of the Local Planning Authority that the proposed hours of operation would be likely to cause harm to neighbouring amenity.

Transport:

8.26 In regard to transport considerations, an increase in opening hours would be likely to result in increased visits to the unit by customers who may travel by private motor vehicle and an increased number of deliveries and arrivals to / departures from the unit by delivery drivers. The increased traffic impact would not be likely to cause a highway safety risk, but would impact upon neighbouring amenity as detailed above.

9 CONCLUSION

9.1 The hours of operation sought would cause harm to neighbouring amenity and are considered to be unacceptable. Refusal is therefore recommended.

10 EQUALITIES

10.1 No implications identified.

11 REASON FOR REFUSAL / INFORMATIVES

11.1 Reasons for Refusal:

1. The proposed hours of operation, including deliveries until 04.00 on a daily basis, would cause significant increased noise and disturbance to the detriment of the amenity of residents in the immediate vicinity of the application site. The proposed hours of operation are therefore contrary to policies SU10 and QD27 of the Brighton & Hove Local Plan.

11.2 Informatives:

1. In accordance with the National Planning Policy Framework and Policy SS1 of the Brighton & Hove City Plan Part One (submission document) the approach to making a decision on this planning application has been to apply the presumption in favour of sustainable development. The Local Planning Authority seeks to approve planning applications which are for sustainable development where possible.

2. This decision is based on the drawings listed below:

Plan Type	Reference	Version	Date Received
LOCATION PLAN			11/09/2013
PLANNING STATEMENT AND			11/09/2013

PLANNING COMMITTEE LIST- 20TH NOVEMBER 2013

APPENDIX			
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From: Lizzie Deane
Sent: 21 October 2013 15:10
To: Jon Puplett
Cc:
Subject: Re: BH2013/03117 Dominos: protect

Dear Jon,

I write in relation to the above and ask that, should officers be minded to grant this application, it is brought to Planning Committee?

I am concerned that the current application to stay open until 4.00am, with counter sales ending at 1.00am suggests they wish to continue with pizza delivery until the early hours. This will cause unacceptable noise and public nuisance to nearby residents, and I would formally object to such a proposal.

Yours sincerely,
Lizzie

Councillor Lizzie Deane

Green Party member for St Peter's and North Laine Ward, Deputy Leader of the Council (external communications), Deputy Chair, Licensing Committee, Member, Audit & Standards Committee, Chair, West Hill Action Team (WHAT), Chair, North & East Housing Area Panel, Green Group representative to Whips' meetings, **Outside bodies:** Brighton & Hove Allotment Federation, Fair Trade Steering Group, Brighton Racecourse Trustees

