

PETITION & LOCAL MEMBER SUPPORT

COMMITTEE DATE: 20/03/2019

APPLICATION No. **19/00282/MNR**

DATE RECEIVED: 12/02/2019

ED: **RIVERSIDE**

APP: TYPE: Variation of Conditions

APPLICANT: Mrs Halina Islam

LOCATION: 26 Clare Street, Riverside, Cardiff, CF11 6BB

PROPOSAL: REMOVAL OF CONDITION 5 OF 14/00341/DCI – TO ENABLE
HOT FOOD TAKEAWAY

RECOMMENDATION: That planning permission be **REFUSED** for the following reason:

1. The inclusion of a hot food takeaway facility at these premises would be very likely to attract illegal short stay car parking within the existing residents parking bays and on double yellow lines adjacent to the site, contrary to the provisions of policy T5 of the adopted Local Development Plan and paragraph 5.23 of the Food, Drink and Leisure Uses Supplementary Planning Guidance.

1. **DESCRIPTION OF PROPOSED DEVELOPMENT**

- 1.1 The application seeks planning permission to remove condition 5 of planning permission 14/00341/DCI to allow the sale of hot food for consumption off the premises.

- 1.2 Condition 5 was imposed as follows:

5) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting or modifying that Order), no sale of hot food for consumption off the premises shall take place.

Reason: The inclusion of a hot food takeaway facility at these premises could attract illegal short stay car parking within the existing residents parking bay which passes the application site.

2. **DESCRIPTION OF SITE**

- 2.1 The site comprises a class A3 restaurant/café premises which occupies a ground floor unit within an end of terrace three storey building on the east side of Clare Street at the junction with Dispenser Place

3. **SITE HISTORY**

- 3.1 18/00767/MNR – planning permission refused for variation of condition 5 (no sale of hot food for consumption off the premises shall take place) of 14/00341/DCI to allow the sale of hot food to be split between 50% take-away and 50% eat-in. A subsequent appeal was dismissed with the planning inspector concluding that the variation would produce material harm in terms of highway safety.
- 3.2 17/02403/MNR – planning permission granted for variation of condition 3 of 14/00341/DCI to allow opening of the premises between 10:00 and 23:30 Monday to Saturday and 10:00 on 22:00 Sunday.
- 3.3 14/00341/DCI – planning permission granted and implemented for change of use of the ground floor to a café.

4. **POLICY FRAMEWORK**

4.1 Relevant National Planning Guidance:

Planning Policy Wales (Edition 10, 2018)

4.2 Relevant Cardiff Local Development Plan (2006-2026) policies:

Policy EN13 (Air, Noise, Light Pollution and Land Contamination)

Policy R8 (Food and Drink Uses)

Policy T5 (Managing Transport Impacts)

4.3 Relevant Supplementary Planning Guidance

Managing Transportation Impacts (Incorporating Parking Standards) 2018.

Food, Drink and Leisure Uses (2017)

5. **INTERNAL CONSULTEE RESPONSES**

- 5.1 Transportation – application 18/00767/MNR, which was refused on highway safety grounds, and the refusal was upheld and the appeal dismissed. The Inspector, in dismissing the appeal, confirmed what she considered to be “material harm” that the variation of the restriction on take away use would have on “highway safety”; the Inspector’s conclusion is copied below for information: *I appreciate the constraints of the appeal site in terms of its location. I also note the appellants’ claim that the existing café use has not proved economically viable and the letter of support from the Councillor for Riverside. Nevertheless, these matters cannot outweigh the substantial material harm that the variation of condition 5 would produce in terms of highway safety. I bear in mind the general requirements of Policy T5 of the Cardiff Local Development plan in relation to transport requirements. In the light of this, and on the evidence before me, I conclude that it is necessary and reasonable to retain the current restriction on the sale of hot food from the premises as set out in condition 5 of planning permission 14/00341/DCI.*

5.2 In light of the above and in the absence of any apparent material change in the circumstances of the site or proposal, and despite the apparent local support for the relaxation of the take away restriction, I have no choice but to confirm that my safety concerns remain and I would again seek to retain the restriction for the well documented reasons previously given.

6. **EXTERNAL CONSULTEE RESPONSES**

6.1 None.

7. **REPRESENTATIONS**

7.1 The application was publicised by letter and site notice. A petition of support was received with the application, signed by 33 residents with addresses in Cardiff, all of which are within the Riverside and Grangetwon wards who could reasonably be affected by the matter. Full details are viewable online.

7.2 Cllr Kanaya Singh supports the application, as follows:

As an elected member of the Riverside ward I would like to express my support for the fresh application to amend current A3 to allow for a Café to Pakistani Halal Food with eat-in and takeaway planning permission. I am in support of this application because:

- *Most users of the business will be from the local area and will therefore walk to the takeaway;*
- *The applicant will utilise a delivery service which will also mitigate the illegal parking;*
- *Riverside has a number of short stay 2 hour only parking bays which will mitigate the illegal parking;*
- *Riverside is not entirely residential parking so there are plenty of parking bays for legal parking;*
- *This restaurant adds to and enhances the character of the area it is welcome addition to the area;*
- *This retail unit is currently closed which does no good in the community and sends out negative message about Clare Street;*
- *There is a very large Muslim and Pakistani community within the area which would welcome such an eatery;*
- *There are several other eat in establishments just metres away from this location, so it seems unfair and unnecessary to treat this application differently.*

I know of other residents in the area who are in support of this application, I hope you take my letter of support into consideration.

8. **ANALYSIS**

8.1 **Residential Amenity**

The Food, Drink and Leisure Uses SPG identifies that A3 (food and drink) uses are most appropriately located in the City Centre Principal Shopping Area, District and Local Centres and the City Centre Principal Business Area. It is noted that the site is not located within a designated commercial centre and there is residential accommodation above/adjacent the application premises and on the opposite side of Clare Street, however the premises are of very small capacity and located on a busy road with a hotel nightclub (Club Rumours, The Wynford) located on the opposite side of Clare Street less than 30m from the application premises which opens until 03:00. It is also noted that condition 5 of planning permission 14/00341/DCI was imposed solely for reason that a hot food takeaway facility at these premises could attract illegal short stay car parking, and not for reason of protection of residential amenity. Having regard to the above it is not considered that the sale of hot food for consumption off the premises would have any unreasonable amenity impact in this instance.

8.2 Transportation

Policy T5 of the adopted Local Development Plan states that *'where necessary, safe and convenient provision will be sought in conjunction with development for: vi. Vehicular access and traffic management within the site and its vicinity.* Paragraph 5.23 of the Food, Drink and Leisure Uses SPG states that *'Proposals that might encourage short-stay parking near to junction, traffic lights, pedestrian crossings, bus stops, or double yellow lines are unlikely to be acceptable'*. Transportation have confirmed that the sale of hot food for consumption off the premises would be very likely to attract illegal short stay car parking within the existing residents parking bays on Clare Street and on double yellow lines adjacent to the site on Despenser Place. Having regard to the above it is considered the sale of hot food for consumption off the premises would have an unacceptable impact on highway safety.

8.3 Representations

The representations of support received from the neighbouring residents and Cllr Kanaya Singh are noted. While the substance of local views must be considered, the duty is to decide each case on its planning merits. As a general principle, local opposition or support for a proposal is not, on its own, a reasonable ground for refusing or granting planning permission; objections, or support, must be based on valid planning considerations. Specific issues are addressed as follows:

- a) Most Users Would Walk from Local Area. Whilst most users from the local area may walk, there would be no means of preventing them from using vehicles to collect hot food or of preventing users from outside the local area from using vehicles to collect hot food.
- b) Delivery Service. It is noted that the applicant may use a delivery service, condition 5 does not prevent a home delivery service.
- c) Short Stay and non-resident's Parking Bays. It is acknowledged that there are 2 hour short stay and non-resident's parking bays in the Riverside

area, however these are not located within close proximity to the application site therefore it cannot be assumed that patrons would use these parking bays.

- d) Muslim/Pakistani Community in the area. The demographic of the local community is noted, however there would be no means in planning terms of preventing the premises from being used to sell other types of food or to be occupied by a different commercial tenant in the future.
- e) Other Establishments in the Area. It is noted that there are other existing class A3 hot food takeaway premises in the area, however these are either located within the designated commercial Local Centre at Tudor Street or are historically established. In any case, all planning applications are considered on their own merit.

8.4 Other Legal Considerations

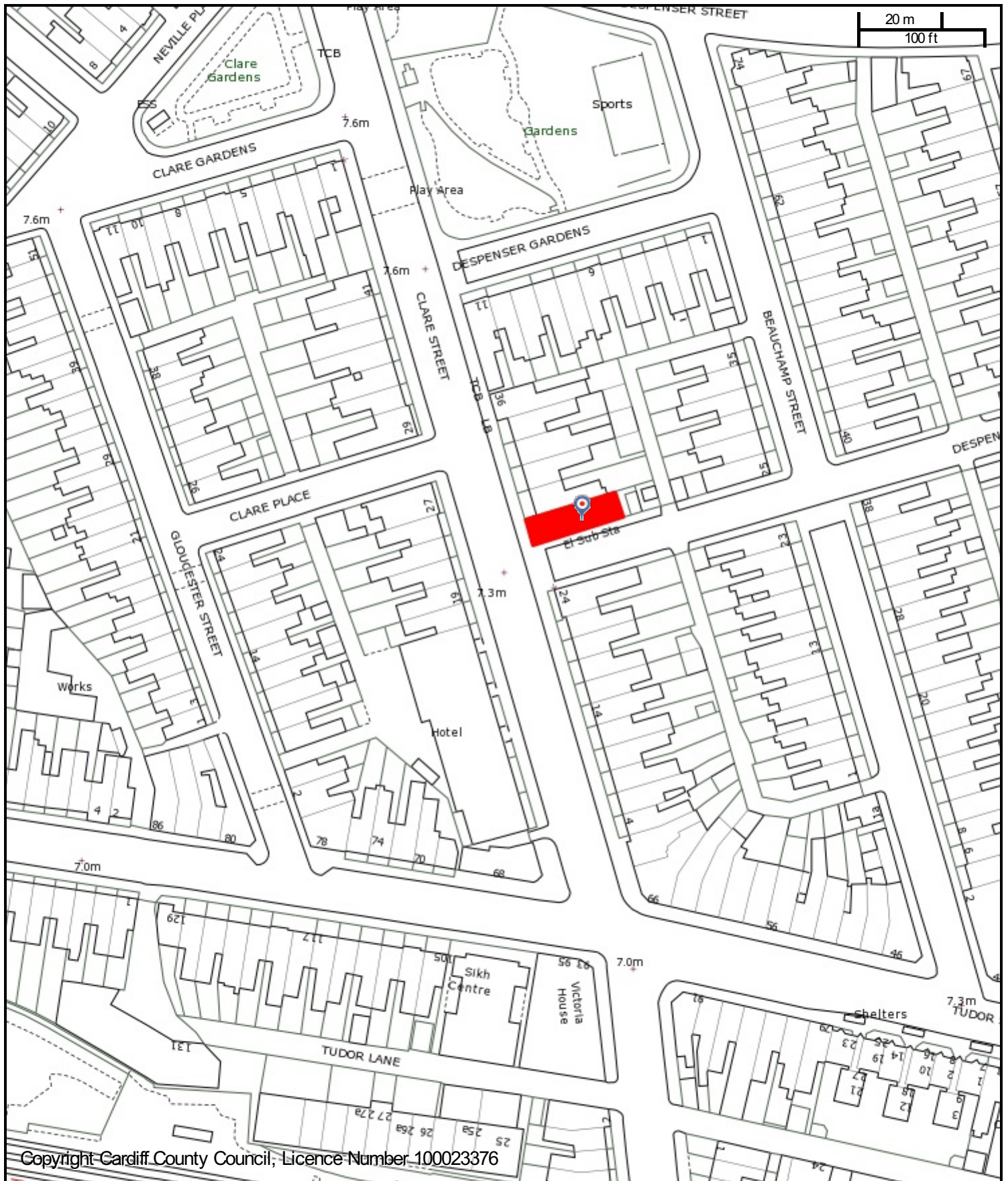
Crime and Disorder Act 1998 – Section 17(1) of the Crime and Disorder Act 1998 imposes a duty on the Local Authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. This duty has been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable increase in crime and disorder as a result of the proposed decision.

Equality Act 2010 – The Equality Act 2010 identifies a number of ‘protected characteristics’, namely age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation; marriage and civil partnership. The Council’s duty under the above Act has been given due consideration in the determination of this application. It is considered that the proposed development does not have any significant implications for, or effect on, persons who share a protected characteristic.

Well-Being of Future Generations Act 2016 – Section 3 of this Act imposes a duty on public bodies to carry out sustainable development in accordance with the sustainable development principle to act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs (Section 5). This duty has been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable impact upon the achievement of wellbeing objectives as a result of the recommended decision.

8.5 Conclusion

It is concluded that the application is contrary to the planning policies listed, and is recommended that planning permission be refused.



CHIEF EXECUTIVE

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