

**No.1, THE GREEN  
SHIREHAMPTON  
BRISTOL BS11 0DS**

10 March 2021

Dear Sirs,

**Planning application ref: 21/00726/F [PP-09493611]  
Shirehampton Village Café - 2, The Parade, Shirehampton, BS11 9TS  
C/U from café (within Class E) to Hot food take-away (*sui generis*)**

We live at No.1 The Green, which stands at the junction between The Green and Station Road, immediately opposite the application site, within 20 metres from it. This is the nearest house on The Green to the application site, and is therefore the residential property that is likely to be most closely affected by this proposed change of use. We recently learnt of this application only by chance, not having received any consultation letter from the Council; nor have we seen any site notice displayed on or near the application site. [All properties with addresses at The Green should have been notified as being potentially affected by this proposed development.]

We would strongly recommend that you should call up your previous files relating to 2, The Parade (including 04/02164/F, 04/30227/COU, 05/20017/ENFNOT and 06/01169/F), in order to understand the serious problems that were encountered on the previous occasion when that property operated as a hot food take-away between 2004 and 2005. In light of that previous experience, we would strongly object to the proposed change of use.

*All the information set out in this letter has been compiled from information that will be found in the Council's own files, including officers' reports to committee, and from our own personal knowledge recorded at the time of the events in question.*

**Previous planning history**

Conversion of these premises from a retail shop (within Use Class A1) to a hot food take-away commenced in April 2004. Local residents alerted the Council's officers to these works, and officers warned the owner of the premises that the proposed change of use could not be made without first obtaining planning permission.

A planning application for the proposed change of use was submitted in May 2004, but the conversion works to fit out the premises as a hot food take-away continued apace, apparently on the advice of a firm of chartered town planners who had been retained to advise the owner on the matter.

When the application came before the committee for determination, concerns were expressed about the impact of possible anti-social behaviour arising out of this development,

and the police were firmly opposed to the application for the same reason. This application was therefore refused on 25 October 2004, but the take-away nevertheless opened in breach of planning control in the week commencing 8 November 2004.

An Enforcement Notice against this unlawful change of use was then served in December 2004. This had been due to take effect on or about 24 January 2005, but an appeal against the enforcement notice was lodged just in time before the time limit expired, which suspended the enforcement notice coming into effect until the final determination of that appeal (together with an appeal against the refusal of planning permission).

As explained below, it became necessary for the Council to serve a Stop Notice, leading to the closure of the hot food take-away on 7 March 2005, but not before local residents had endured four months of serious problems arising from the operation of the hot food take-away in this location.

All the outstanding appeals were dismissed on 6 October 2005.

A subsequent planning application for change of use from A1 shop to A3 café, was later granted by the Council, subject to conditions that included restricted opening hours and forbade use as a hot-food take-away. The café at 2, The Parade has successfully traded since then within the terms of this planning permission, and has caused no further problems.

### **Planning policy**

The café at 2, The Parade traded successfully as a café for some 14 years, until it was adversely affected by the current temporary restrictions associated with the coronavirus crisis. During that long period from 2006, the premises were not simply “a coffee shop” as described in the current application, but have always served a full range of meals (as they were fully entitled to do within Class A3, now Class E) and the café has been well patronised.

Whilst the business is temporarily disadvantaged by the current coronavirus restrictions, there is no reason to suppose that it cannot resume trading successfully as a café under its present planning permission, once the current restrictions are lifted (as the government intends, hopefully in a little over two months’ time, on 17 May). Furthermore, the wide range of uses within Use Class E allows for the possibility of a range of alternative uses without the need for planning permission, including retail sales, professional or financial services, general office use, or medical and other health services, among others, any of which would be capable of contributing to the vitality, viability and diversity of this commercial centre by maintaining an active ground floor use in accordance with Policy BCS7 of the Bristol Core Strategy. On the other hand, the fact that a hot food takeaway is now a *sui generis* use testifies to the problems known to be associated with such a use. There is nothing in the development plan that would encourage or support the provision of an additional hot food takeaway in this location.

### **Problems caused by a hot food take-away in this location**

Problems were experienced immediately after the hot food take-away at 2, The Parade opened in November 2004, involving the need for repeated attendance by the police, until the Council was eventually persuaded to serve a Stop Notice, requiring the immediate

closure of the hot food take-away. We set out below brief details of the major problems that were encountered.

### **Noise and general disturbance**

While the hot food take-away at 2, The Parade remained open, a significant number of people were attracted to the premises late at night (no doubt due to similar premises elsewhere having closed earlier in the evening) with resulting noise and disturbance, arrival and departure of cars, and the banging of car doors (which is particularly noticeable late at night in what otherwise becomes a very quiet area after the shops have closed).

Issues of violence and disorder are dealt with separately below, but even in the absence of those more serious incidents, there was frequent calling and shouting from people outside the premises to people inside the take-away (and vice-versa) and arguments and shouting were not infrequent, especially later in the evening (although it should be noted that these problems were not confined solely to the late evening, but were liable to occur on occasions at earlier times during the evening). This was a significant source of disturbance and worry to nearby neighbours, who were sometimes woken up by the noise from the premises later at night.

The problem of noise and disturbance had been experienced even in the winter when windows are kept closed. The effect of noise and disturbance is likely to be far worse in the warmer weather in the Spring and Summer when residents may normally expect to have their windows open.

While the hot-food take-away at 2, The Parade remained open, our nearby neighbours in another house on the south side of The Green found it necessary to abandon the use of their bedroom and to sleep downstairs at the back of the house because of the late-night noise from the hot food take-away. Another resident at Sunnyhill Drive was obliged to sleep with her bedroom window closed for the same reason.

### **Violence and Disorder**

Concern on the part of the Police as to its possible effect on public order was one of the underlying reasons for the refusal of planning permission for this hot food take-away in 2004. As was feared, public order did indeed become a particular problem in the vicinity as soon as the take-away started trading, and this increased with time until a Stop Notice was eventually served by the Council at the end of February 2005 (coming into effect on 8 March). The hot food take-away accordingly closed on 7 March 2005. There is no doubt that much of the trouble arose in and around the hot food take-away at 2, The Parade itself, which acted as a magnet for youths and young adults, particularly after pub closing time.

There had been problems for some time with shouting and arguments among people inside and outside the premises, but events took a particularly serious turn on the 27 January 2005, when at about 11.35 p.m. a noisy disturbance rapidly escalated into an affray, involving at least one person being seriously hurt. The Police were immediately called upon the fight starting and a squad car attended very promptly. Upon arrival, the two officers were unable to control the situation, which involved at least 8 people, and summoned reinforcements. Within a short time, a total of 4 Police vehicles were in attendance (including a van). After a struggle, Police effected two arrests and eventually succeeded in calming the situation. The injuries sustained by one person in the fight were sufficiently serious for the Police to

summon an ambulance and the victim of the attack was detained in hospital with a broken jaw and serious bruising to the body. Two persons were subsequently charged with causing Grievous Bodily Harm. We witnessed the whole incident from our lounge window immediately opposite the premises and were extremely distressed by what we saw.

There were further serious problems the following night (the 28<sup>th</sup>). Police again attended at about 11.30. Police confirmed that several arrests were also made that evening.

A renewed outbreak of anti-social behaviour and disorder occurred the following Friday (4 February 2005). Apparently, the trouble escalated from several different sources, with the hot food take-away at 2, The Parade once again being a focal point. On The Green, rowdy behaviour escalated into fights around the hot food take-away, moving onto The Green and the area outside 3 – 6 The Parade [sometimes referred to as 'the Precinct']. There was a lot of racial abuse in both the hot food take-away at 2, The Parade and the Indian restaurant in Station Road. The situation escalated and developed into a very serious incident. Several Police Officers received injuries. The local Beat Officer, PC Gareth Davies, had to go to hospital on the Saturday for checks and treatment for injuries received. Three people were arrested and were charged with violent disorder and were prosecuted for public order offences. There were three Police cars and the Riot van involved in that incident.

On Saturday 5 February 2005, there was a lot of very noisy anti-social behaviour around the entrance to the hot food take-away at 2, The Parade, then spreading through Station Road and Pembroke Road as those involved moved on. There was also a large group of youngsters exiting the Pubs very noisily and walking around in large noisy groups. Some of these resorted to the hot food take-away at 2, The Parade to buy hot food on their way home.

In the Summer of 2004, Police had felt it necessary to obtain powers to disperse troublemakers around Shirehampton, but these powers were not renewed when the order expired in January 2005, as there had been little trouble in the previous three months and the Inspector did not think it necessary. However, in view of the further serious trouble in February 2005, involving or including the hot food take-away at 2, The Parade, Police decided that the Dispersal Order needed to be renewed at the earliest opportunity, and this was done in March 2005.

Since 2005, problems of anti-social behaviour in Shirehampton have not gone away, although the closure of the hot food take-away at 2, The Parade has largely eliminated such problems in this particular part of Shirehampton.

In January 2020, at a PACT meeting in Shirehampton, the residents discussed local anti-social issues relating to Shirehampton and Avonmouth, in particular with groups of young males causing criminal damage and acting anti-socially in public areas.

In February 2020, Avon and Somerset Police noted that they had recently had a number of reports regarding anti-social behaviour and problems with youths congregating in the area. They had managed to identify a few of those individuals and passed on details to the Anti-Social Behaviour team for appropriate action.

In September 2020, the police noted that over the past few months they had had a few issues with a group of youths from the local area causing harm, harassment and distress to local residents. The beat team along with the Anti-Social Behaviour team issued warning letters to a number of youths, with the aim of monitoring their behaviour and reducing further issues.

In February 2021, the police noted that four of the local youths had been issued Acceptable Behaviour Contracts and a number of others were being monitored by the Anti-Social Behaviour team.

This clearly indicates the potential for renewed trouble in the vicinity of the application site, in the event of planning permission being granted for the resumption of the hot food take-away use at 2, The Parade.

The suggestion that has recently been made by the Police that a CCTV camera could be installed to monitor anti-social behaviour on or immediately outside the premises is totally impractical, because it could view only a small area of the pavement immediately outside 2, The Parade, and would not cover the covered arcade around the corner, with its wide area of raised pavement, adjoining Nos. 3 to 6, The Parade, where people could be expected to congregate after leaving the take-away with their food.

Local police recognise the potential problem that the presence of two public houses (*The George Inn* and *The Lifeboat*) within a very short distance of 2, The Parade could cause. This in itself would make the opening of a hot-food take-away in this location problematic, and could lead to a repetition of the sort of problems that were encountered in 2004 to 2005.

As before, it might be argued that operators of take-away businesses cannot be held responsible for violence and disorder occurring outside their premises, but it is the very presence of this type of take-away that attracts people who may be violent or abusive. The serious incidents which occurred in the vicinity of the appeal premises in late January and early February of 2005 arose precisely because of the presence of the hot food take-away, which acted as a magnet for unruly and in some cases very drunk youths and young men and women, and is an inevitable focus of anti-social and sometimes violent behaviour, not only late at night but sometimes earlier in the evening. These incidents would not have occurred had it not been for the presence of that business in this location.

### **Stop Notice**

Individual Police officers, and especially the local beat officers, were strongly in favour of a Stop Notice being served in respect of the continued unlawful use of the application site as a hot-food- take-away. Chief Inspector Hazell (who led 'Operation Reflex' in which 12 connected kebab shops, including the application site, and a cold store at Avonmouth, were raided on the 27 January 2005 and various arrests made) also expressed his support for a Stop Notice. The incidents which occurred in the vicinity of the premises in 2004/5 were undoubtedly connected with the operation of the hot food take-away at 2, The Parade. They occurred precisely because of the presence of a take-away, which inevitably acted as a magnet for unruly and in some cases very drunk youths and young men and women, and was an inevitable focus of anti-social and sometimes violent behaviour.

The problems were so serious that the Council's Development Control (North) Committee was eventually persuaded on 23 February 2005 to serve a Stop Notice under Section 186 of the 1990 Act, which came into effect on the 8 March. The premises finally closed for business shortly before midnight on 7 March 2005 and remained closed until they re-opened as a café within Use Class A3 following the grant of planning permission in 2006 for that change of use.

No further incidents have occurred in this part of Shirehampton following the closure of the hot food take-away at 2, The Parade in March 2005.

## **Litter**

Local shopkeepers reported a significant increase in litter in the vicinity of 2, The Parade when the hot food take-away was open. Packaging from take-away meals from these premises, which was readily identifiable by its style and colouring, as well as partly consumed food, was frequently found strewn over a wide area, up to a mile away from the premises. Quantities of litter were blown around and presented a very unpleasant sight. On Christmas Day 2004, when the local street sweeper was off-duty, a large amount of litter strewn over the pavement outside the premises the previous evening blew around the area all day.

The operators of the business were unable to exercise any control or influence over the behaviour of customers on leaving the premises, and although they made assurances about regularly sweeping the pavement outside the premises, this did not in practice address the serious litter problem associated with discarded packaging from take-away food being eaten in the street or on The Green by customers leaving the premises. No reliance can therefore be placed on any such assurances that might be made now regarding the control of litter in the event of planning permission being granted for the resumption of the hot food take-away use.

## **Appeals dismissed**

The legal requirement for consistency in decision-making, unless there has been a very clear change of circumstances since a previous decision on the same subject, especially where the subject matter of an application has previously been adjudicated upon in a planning appeal, makes it particularly important that the dismissal of the appeals against the previous enforcement notice and the refusal of planning permission (APP/Z0116/A/043/1166964, APP/Z0116/A/05/2000828 and APP/Z0116/A/05/2001281) should be followed by the Council in determining the present application.

In paragraph 13 of her decision letter, issued on 6 October 2005, the Planning Inspector reported the detailed evidence of PC Davies. He stated that while the premises were open there had been a significant increase in “rogues” in the area looking for a meeting place for confrontation. He had observed a significant increase in cars visiting the site with people coming from all over Bristol. There were even small rugby coaches stopping outside the kebab shop. The village green presented an opportunity for people to congregate. People would buy kebabs and then go and sit on The Green. He was permanently moving them on and he had had to re-arrange the police shift pattern to deal with the problem. The police always had to be in that location, knowing that some sort of disturbance would kick off. The hot food take-away at 2, The Parade attracted people looking for potential violence. There was a correlation between the hot food take-away being open and the level of violence in this location.

The Planning Inspector noted that PAN 17 warned that where several uses are grouped together in one area, it can become a strong focus of activity, often attracting a significant volume of people from a wide catchment area. She also noted the advice in PAN 17 that where a situation existed that a number of people on local streets and public places were causing noise and disturbance, new uses would generally be resisted. In her opinion, the introduction of a further A5 unit in this particular location would be unacceptable and contrary to PAN 17.

Dealing with the suggestion that the take-away might be permitted to operate within more restricted hours, the Inspector's conclusion was that it is likely that the detriment to residential amenity associated with people congregating and causing disturbance would simply be shifted forward to an earlier part of the evening. In her judgement, the proposed reduction in hours of opening would not fully address the objections to the use. Circular 11/95 paragraph 35 advised that a condition may be unreasonable because it is unduly restrictive. In order to safeguard the amenities of residents she concluded that the hours of opening would need to be restricted to such an extent that it would make it impossible for the occupier to run the business properly. It was therefore necessary to refuse permission altogether.

The Inspector noted that: *"There is overwhelming evidence to demonstrate that, notwithstanding the implementation of the Dispersal Order, there was a significant deterioration in social and environmental conditions during the late evening period in the vicinity of the site whilst the business remained in operation."*

The Inspector observed that: *"The use would materially harm the living conditions of the nearby residents by virtue of noise and general disturbance"*

and she concluded that:

***"The proposed use would have a detrimental impact upon the amenities of nearby residents and the preservation of a safe and secure local environment. This would be due to increased noise, disturbance and other associated deleterious effects linked to anti-social behaviour generated by the proposed use when combined with the specific characteristics of the site. This would be contrary to PPS1, Policy S8 of the adopted Bristol Local Plan and to Policy Advice Note 17."***

There is every reason to suppose that the same would apply to a resumption of the hot food take-away use on the application site in the event of planning permission being granted in respect of the present application. This application should therefore be refused for the same reasons as the Planning Inspector clearly stated in her 2005 appeal decision.

### **Planning permission for café**

The current planning permission for A3 (now Class E) use as a café contains a condition that strictly controls the hours of operation of this business, as follows:

*"Unless otherwise agreed in writing by the Local Planning Authority, no customers shall remain on the premises outside the hours of 08.30 and 17.00 hours Monday to Sunday, and no work activities shall be carried out in the premises except for between the hours of 08.00 and 18.00 hours."*

The stated reason for this condition is

*"Reason: SR21 – To safeguard the residential amenity of nearby occupiers."*

Similar restrictions in relation to deliveries and refuse collection were also imposed under SR21 for the same reason.

The applicants are proposing to open the hot food takeaway from 08.00 hours to 23.00. These are the same hours during which the hot food take-away at 2, The Parade previously operated between 2004 and 2005. There is no doubt that a use continuing that late into the evening would have an unacceptable impact on the residential amenity of ourselves and our neighbours, as it did before.

The observations of the Council's own planning officers in their report to committee on the previous application for a hot food take-away at 2, The Parade are equally applicable to the present application:

***“The past concerns raised regarding the use of the site as a hot food takeaway stem from the interaction of a number of factors. These are: Shirehampton’s ongoing problems with anti-social behaviour; the unique characteristics of a hot food takeaway (based on an assessment of the criteria of PAN 17, including the associated high levels of off-site activity; the availability public open space in the form of The Green that allows the congregation of large number of users; the number of residential properties within the sphere of influence of both the actual unit and the Green. This unusual combination of circumstances means that the site would act as a catalyst and focus for anti-social behaviour in Shirehampton, far beyond the usual range of issues associated with an A5 use.”***

The same circumstances apply now as applied then, and the threat of anti-social behaviour is still a real risk. So there can be no justification for determining the current application any differently from that previous application. If the re-opening of a hot food takeaway, trading for extended hours until late at night, were to be authorised at 2, The Parade these premises would yet again act as a magnet to youths and young adults and to the repetition of serious anti-social behaviour, due to the sensitivity of the location.

## **Conclusions**

There are the clearest possible objections to the grant of planning permission for the resumption of the use of the application premises as a hot food take-away, both on policy grounds and in relation to the adverse impact of the use of these premises on the residential amenity of neighbours.

The adverse impact of the use of the application premises on nearby residential properties was clearly felt by neighbouring residents in 2004/5. Not only should such a situation not be allowed to occur again for sound practical reasons, but it would also be in clear breach of the adopted policies in the Development Plan, which are designed to avoid noise, smell or other environmental problems arising from such developments.

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that this application shall be determined in accordance with the Development Plan unless material considerations indicate otherwise. Clearly, all the relevant material considerations in this case point in the same direction as the adopted policies. The policy considerations and other material considerations are also reinforced in this case by Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, which requires that in determining this application special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the Conservation Area.



Any suggested restriction on the hours of operation would not obviate the problems associated with the operation of a hot food take away in this location. Furthermore, the arguably unreasonable nature of such a restrictive condition leads to the conclusion that planning permission should be refused in any event, as the Inspector herself decided in her 2005 decision letter.

The need for consistency in decision making (as confirmed in various High Court decisions) requires that this application should be determined in the same way as the Council's previous decisions on similar applications for change of use of these premises at 2, The Parade, and in line with the Inspector's subsequent dismissal of the appeal against the refusal of planning permission for that use.

We therefore ask that the current application should be refused.

Yours faithfully

*Mrs & Mrs M H Goodall*