

# COMMITTEE REPORT

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## APPLICATION DETAILS

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**APPLICATION NO:** DM/16/01017/VOC  
**FULL APPLICATION DESCRIPTION:** Variation of Condition 5 (hours of operation) of planning permission 4/11/00713/FPA from 9am – 11pm Mon – Sun to 9am – 11pm Sun – Thurs and 9am – 3am Friday – Saturday.  
**NAME OF APPLICANT:** Ms L O Hama.  
**ADDRESS:** Wok Next, 97 Claypath, Durham. DH1 1RG  
**ELECTORAL DIVISION:** Elvet and Gilesgate  
Susan Hyde  
Planning Officer  
**CASE OFFICER:** 03000 263961  
susan.hyde@durham.gov.uk

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## DESCRIPTION OF THE SITE AND PROPOSALS

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### The Site

1. The application site relates to an end terraced shop on Claypath that is currently in an A5 use and operating as a hot food takeaway called Wok Next. The site lies within the secondary shopping area within Durham and within the City of Durham Conservation Area. The existing building is a three storey modern property constructed of red brick with a slate roof. At ground floor level adjacent to the site are other commercial uses with an A2 shop immediately to the west. The upper floors are occupied as separate residential flats.
2. Claypath is characterised by the mixed commercial ground floor use and residential use on the north side of the road. The south side has more residential accommodation on the ground floor as well as above. A recent planning consent (DM/14/03842/FPA) has been granted for student accommodation to replace 18 - 29 Claypath to form a 440 bedroom student accommodation and work has commenced on site to demolish the existing buildings.
3. There are 3 other hot food takeaway premises nearby on Claypath that have current planning applications submitted to extend the opening hours of these premises to 3am.

## The Proposal

4. This application proposes the variation of Condition 5, which states:

5. The hours of operation of the A3 cafe shall be between 9am and 11pm only and at no other time.

Reason In the interests of residential amenity as there are residential properties adjacent to the planning application site in accordance with Policy S2b and S10 of the City of Durham Local Plan 2004.

The proposal is to alter the opening hours of the hot food takeaway from the current agreed closing time to extend the opening hours to 3am on Friday night and Saturday night only.

6. The application is reported to the Planning Committee at the request of Councillor David Freeman because of concerns about the impact on residential amenity.
7. The recent planning applications have been submitted following the Alcohol Harm Reduction Unit of the Police making representations to the County Councils Planning Enforcement section about the problems that the late night opening of the hot food takeaways was having on residential amenity and Police resources. Although Officers have not undertaken night time surveillance of the takeaway businesses it is put forward by residents and the Police and in the applicants supporting statement that the hot food takeaway is currently opening beyond the 11pm closure time specified on their planning approval.

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## **PLANNING HISTORY**

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8. Looking at the planning history on Claypath 92 Claypath is Pizza Uno and operates as a hot food takeaway pizza house with restricted hours of operation between 11am – 11pm. (09/00251). (12/0752) .
9. 57 Claypath has restricted opening hours of 8 – 18.30 Monday – Friday and 9.00-17.00 on Saturday and has consent for mixed A1(shop)/A3 (restaurant)use. (10/0582)
10. 85 Claypath has no hours condition attached to a consent to operate as a hot food takeaway (02/0578).
11. 86 Claypath which operates as a hot food takeaway with pizza and falafel house has consent to operate from 11am – 11pm Monday – Thursday and 11am – 3am Friday – Saturday. (09/088)
12. The United Reform Church has planning permission to operate as a restaurant with opening hours restricted to 11pm Sunday – Thursday and 12 midnight on Friday and Saturday. (08/0758)
13. 94 Claypath which operates a hot food takeaway has a condition which limits the opening hours from 9am to 11 pm. An application for a variation of condition to

allow opening to 3am was refused planning permission and a subsequent appeal was dismissed An additional planning application in 2012 also refused planning consent for an extended opening time till 3am seven days a week.

14. With regard to this site planning permission was granted in 2011 to form a hot food takeaway with the hours of operation conditioned to be between 9am and 11pm. Two further applications were refused in 2012 for the variation of condition to allow a later closing time.

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## **PLANNING POLICY**

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### **NATIONAL POLICY:**

15. The Government has consolidated all planning policy statements, guidance notes and many circulars into a single policy statement, the National Planning Policy Framework (NPPF), although the majority of supporting Annexes to the planning policy statements are retained. The overriding message is that new development that is sustainable should go ahead without delay. It defines the role of planning in achieving sustainable development under three topic headings – economic, social and environmental, each mutually dependant.
16. The presumption in favour of sustainable development set out in the NPPF requires local planning authorities to approach development management decisions positively, utilising twelve 'core planning principles'.
17. The following elements are considered relevant to this proposal;
18. *NPPF Part 1 – Building a Strong and Competitive Economy.* The Government attaches significant weight on the need to support economic growth through the planning system. Local Planning Authorities should plan proactively to meet the development needs of business and support an economy fit for the 21<sup>st</sup> century.
19. *NPPF Part 4 – Promoting Sustainable Transport.* Encouragement should be given to solutions which support reductions in greenhouse gas emissions and reduce congestion. Developments that generate significant movement should be located where the need to travel will be minimised and the use of sustainable transport modes maximised.
20. *NPPF Part 7 – Requiring Good Design.* The Government attaches great importance to the design of the built environment, with good design a key aspect of sustainable development, indivisible from good planning.
21. *NPPF Part 8 – Promoting Healthy Communities.* The planning system can play an important role in facilitating social interaction and creating healthy, inclusive communities. Developments should be safe and accessible; Local Planning Authorities should plan positively for the provision and use of shared space and community facilities. An integrated approach to considering the location of housing, economic uses and services should be adopted.

*The above represents a summary of the NPPF considered most relevant the full text may be accessed at: <http://www.communities.gov.uk/publications/planningandbuilding/nppf>*

## **LOCAL PLAN POLICY:**

### **City of Durham Local Plan**

22. *Policy H13 (Residential Areas – Impact upon Character and Amenity)* states that planning permission will not be granted for new development or changes of use which have a significant adverse effect on the character or appearance of residential areas, or the amenities of residents within them.
23. *Policy T1 (Traffic – General)* states that the Council will not grant planning permission for development that would generate traffic likely to be detrimental to highway safety and / or have a significant effect on the amenity of occupiers of neighbouring property.
24. *Policy T10 (Parking – General Provision)* states that vehicle parking should be limited in amount, so as to promote sustainable transport choices and reduce the land-take of development.
25. Policy E22 (Conservation Areas)
26. Policy E6 Durham City Centre Conservation Area
27. Policy S2B A2 and A3 uses within the Secondary Retail Area.
28. Policy S10 Food and Drink

## **EMERGING POLICY:**

29. Paragraph 216 of the NPPF says that decision-takers may give weight to relevant policies in emerging plans according to: the stage of the emerging plan; the extent to which there are unresolved objections to relevant policies; and, the degree of consistency of the policies in the emerging plan to the policies in the NPPF. The County Durham Plan (CDP) was submitted for Examination in Public and a stage 1 Examination concluded. An Interim Report was issued by an Inspector dated 18 February 2015, however that Report was quashed by the High Court following a successful Judicial Review challenge by the Council. In accordance with the High Court Order, the Council has withdrawn the CDP and a new plan being prepared. In the light of this, policies of the CDP can no longer carry any weight. As the new plan progresses through the stages of preparation it will begin to accrue weight

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## **CONSULTATION AND PUBLICITY RESPONSES**

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### **INTERNAL CONSULTEE RESPONSES:**

30. Environment, Health and Consumer Protection: Raises an objection as she has concerns over the increase in noise levels as a result of greater activity within the Claypath area should this extension of hours variation be granted planning approval. An extension of hours will change the noise climate in the Claypath area

during the early hours of the morning and due to Claypath having residential premises close by she feels that this increase in noise activity will have a significant adverse impact on the occupants of the residential premises and potentially cause a statutory nuisance under the Environmental Protection Act 1990. Therefore she would recommend refusal of this application.

31. Highways Development Management: Claypath operates a no access restriction in the evenings Fri – Sunday. 9:00pm to 4:00am. No additional vehicles could gain access as a result of an extension of time of the business use and as such no objection is raised to the proposal.
32. Police: The Police are not making objections against the management of individual premises but do object to the underlying effect these premises have on public safety and amenity.
33. The drinking establishments on nearby Walkergate are licensed until 2.00 am with closure for 2.30 am, the operation of the late night refreshment houses on Claypath to 3.00am effectively extends late night activity in the area to 3.30 - 4.00 am this creates serious Policing issues as a key strategy for the Police is to clear the area as quickly as possible.
34. At first sight this area of Claypath appears to be commercial in nature however there is a surprising number of residential properties in the immediate vicinity and this will increase with the completion of the 400 bed student accommodation which has been approved. The operation of late night refreshment houses into the early hours of the morning is in direct conflict with residential amenity.

#### **PUBLIC RESPONSES:**

35. The application was advertised by means of a site notice and by letter to 28 neighbouring properties within the area. Twenty seven letters of objection have been received from local residents raising concerns and 2 letters from a residents group and the City of Durham Trust. The following is a summary of the points raised:
36. St. Nicholas Community Forum, which is the residents' group whose area includes Claypath raises concerns that the atmosphere in Claypath, especially at weekends, is already threatening and unpleasant. There is so much rowdy and anti-social behaviour that the road has had to be closed from 9 pm until 4 am on Fridays and Saturdays. The rowdy "revellers" disturb Claypath residents, who are NOT all students and NOT "an integral part of the late night culture" and are NOT "quite happy with the late opening".
37. City of Durham Trust – Objects on the grounds that during hours when most people are asleep, Lower Claypath constitutes what might be classified as an unfortunate 'character area' within the city's Conservation Area. To extend until 3am the unacceptable nuisance to which residents of Claypath are subjected is highly undesirable and clearly contrary to Local Plan policy S10.

Individual letters from local residents raise the following concerns:

- The area is unpleasant for residents to walk through late at night.
- On Sunday mornings on the way to Church residents have to navigate themselves through the vomit and grease on the streets outside these takeaway businesses.
- Additional student accommodation has been granted at Chapel Heights and Kepier Court in addition to the new accommodation on Claypath. The increase in hours on the takeaways on Claypath will lead to the existing noise, mess and bad behaviour getting even worse with the additional students and the late night opening to the detriment of residents.
- Elderly people live near the businesses and already suffer from the rowdy behaviour on Claypath late at night. This application will make this situation worse.
- Claypath provides a bad impression to visitors to the city at night which detracts from the historic core of the City.
- A landlord who is also a University Lecturer objected as students occupy a lot of flats on Claypath and wishes to point out they also need sleep at night to operate effectively.
- The hot food takeaways already stay open beyond their planning consent hours and already create problems with noise and anti-social behaviour.
- On a positive note one resident noted that the movement of the Taxis away from Claypath has greatly improved the residential amenity of Claypath.
- The food served by hot food takeaways tends to be unhealthy and extending the hours will detract from people's health.

**APPLICANTS STATEMENT:**

38. Wok Next's main trading hours are late night on weekends, as the pubs and bars close from 11pm onwards and customers head towards the nearby taxi ranks. If the opening hours of Wok Next are not altered to reflect the opening hours of the surrounding businesses, there will be a severe adverse effect on the business with a real risk to its viability.
39. Wok Next already has a late opening licence granted by the Council which allows opening hours of 11pm -3am Monday – Sunday. As impact on residential amenity is a major consideration in granting late opening licences it must be assumed that the Council's Environmental Health Department considered that there was no adverse impact on residential amenity from late opening as was also the Environmental Health Officer's view of this application (see below).
40. Notwithstanding the above the planning application to extend opening hours has been specifically restricted to Friday and Saturday nights when pubs and bars in this area (and some takeaway businesses) are open through to 3.00 am. There is

therefore already a lot of activity in the area and the extension to opening hours will not increase noise levels and there will therefore be no additional disturbance to residents a point noted by the Council's Environmental Health Officer in her comments of 25<sup>th</sup> April on the application as set out below.

41. *"The main potential environmental impact with this application is noise from customers using the premises on a Friday and Saturday night. I have considered the surrounding area and I have noted that there are bars open until this time within this area as well as one other hot food takeaway; Falafel Al Hana. Therefore there is already activity within this area from customers using bars and one other hot food takeaway. The applicant has not requested an extension to hours Sunday – Thursday, when the area is quieter; the nights requested are nights when there is already activity until 3am. Therefore I do not consider that this extension of hours within this area will specifically increase noise levels. Therefore I have no objections to this application."*

42. Officer's note that the Environmental Health Officer updated their comments to the ones reviewed in this application following the submission of the additional 3 planning applications for the variation in hours on the hot food takeaways.

### **43. PLANNING CONSIDERATIONS AND ASSESSMENT**

44. Having regard to the requirements of Section 38(6) of the Planning and Compulsory Purchase Act 2004, the relevant Development Plan policies, relevant guidance and all other material planning considerations, including representations received, it is considered that the main planning issues in this instance relate to the impact on residential amenity and highway and access issues.

#### **Impact on residential amenity.**

45. The main planning issue in this case relates to Policy S10 and S2b which permits food and drink outlets providing there are no adverse effects on the amenities of nearby occupants and Policy H13 that seeks to protect the character or appearance of a residential area. In addition paragraph 17 of the NPPF seeks to ensure a good standard of amenity for all existing and future occupants of land and buildings. In this case the application site lies within the secondary retail area on a street with a mixture of shops, A2, restaurants, hot food takeaways and residential flats, houses and recent planning consents for student accommodation. The planning issues raised with increasing the opening hours are the same issues as was considered on the earlier refusal in 2011 for the extension in operating hours with regard to noise and disturbance to residential amenity.

46. Residential flats are above the application site and above the adjacent buildings. The existing hours of opening of the hot food takeaways are from 11.00am till 11.00pm every day. The site is located at the western end of Claypath close to the cinema, theatre, bars and a night club. As such there will already be some noise and disturbance from the existing night time activities. However the use of the building will bring clients into the building late at night with the associated noise from people talking and congregating outside. Given the opening hours are till 11pm this is consistent with the nearby hot food takeaways at 92 and 94 Claypath. As this is a City Centre location these times are considered reasonable

to allow residents some peace at night whilst reflecting the lively nature of the area.

47. Officers consider that the situation is similar to that in 2011. It is acknowledged that the existing environment is likely to be noisier than in a predominantly residential area because of the activity associated with the nearby night club, pubs, cinema, restaurant, and other nearby hot food takeaways. It is accepted that, because of this, occupants of the flats above the host property may be likely to tolerate higher levels of noise and disturbance than they would elsewhere.
48. However, notwithstanding this and even assuming that the other establishments open until the early hours of the morning, it is considered that the additional activity likely to be generated as a result of the proposed extended opening hours would significantly add to the noise and disturbance experienced by the residents of the flats above this hot food takeaway. The comings and goings of customers would have a particularly marked effect on the noise levels experienced by nearby residents in the late evenings and in the early hours of the morning. These are times when residents would have a reasonable expectation of a quieter environment and of achieving uninterrupted sleep.
49. It is also noted that the residential flats above have a separate entrance to the hot food take away and are occupied independently from the business. This area of Claypath has a good proportion of residential flats – many of which are above ground floor commercial uses.
50. As the planning permission runs with the land it is also relevant that the good management that the existing operator employs would not necessarily be repeated with a different owner. The County Environmental Health Officer has carefully considered the application and has concluded that the increased hours would be detrimental to residential amenity and is likely to cause a statutory nuisance to the residents.
51. It is also noted that the residents groups and local residents complain about the noise and disturbance and anti-social behaviour residents already suffer from the existing customers to the hot food takeaways. Residents make reference to the Police being aware of the existing problems and this is reflected in the Police Officers consultation response. The Police have raised concerns that the hours of operation lead to people leaving the late night clubs and drinking establishments at about 2 – 2.30am and then congregating in Claypath which extends the late night activity in the area of Claypath until 3.30 – 4.00am. This creates serious Policing issues as a key strategy for the Police is to clear the area as quickly as possible.
52. The outcome of the appeal that was dismissed on a nearby application site (94 Claypath) in March 2012 is also relevant where the Inspector concluded :
53. 'It is clear that, simply because of the location, the occupiers of the flats above no. 94, and those nearby, must have to tolerate higher levels of noise and disturbance than they would in a normal residential area. That, however, does not deny them the expectation of reasonable quiet during night-time hours. The comings and goings of customers at the appeal premises would be bound to cause noise and have a marked and harmful impact on the quality of the residential environment in



the very late evening and in the early hours of the morning. In addition, any waiting restrictions notwithstanding, there could be the noise from car doors shutting and engines starting. Accordingly the proposed extended opening hours would inevitably conflict with what is sought by saved Local Plan Policy S10.1 and H13.'

54. It is noted that since 2012 restrictions on the highway access have occurred on Claypath on Friday – Sunday 9pm – 4am which has reduced some of the noise and disturbance for residents over the weekend from car doors slamming, vehicles starting etc. However officers are also concerned that there will be noise and disturbance from the people congregating on the street after being in the nearby nightclubs and bars and from doors opening and closing from the comings and goings of customers. This would be detrimental to the quality of the residential environment through the night and early morning as described above.

#### Conservation Area

55. The site lies within the City of Durham Conservation Area and no external alterations are proposed on the building. As such the proposal has no additional impact on the Conservation Area and the proposal raises no additional issues under s72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

#### Highways

56. The County Highway Officer has raised no objection to the increased hours of the hot food takeaway and commented that Claypath has restricted vehicular access Fri – Sunday. 9:00pm to 4:00am.

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## **CONCLUSION**

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57. The site is located within a secondary shopping area where there are residential flats above the shop units. The extension to the opening hours of the hot food takeaway to 3am on Fridays and Saturdays is considered to detrimentally affect the residential amenity of the flats above and nearby residential properties at a time of night when people would expect uninterrupted sleep. This is considered to be contrary to Policy S10, S2b and H13 of the City of Durham Local Plan and Paragraph 17 of the NPPF.

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## **RECOMMENDATION**

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That the application be REFUSED for the following reason:

The alteration of the hours of operation to 3am on Fridays and Saturdays would detrimentally affect the residential amenity of the independent living accommodation above the host property and nearby residents. This would be

contrary to saved Policy S10, S2b and H13 of the City of Durham Local Plan 2004 and Paragraph 17 of the NPPF.

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## **ADDITIONAL MATTERS**

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N/A

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## **STATEMENT OF PROACTIVE ENGAGEMENT**

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The Local Planning Authority in arriving at its decision to approve the application has, without prejudice to a fair and objective assessment of the proposals, issues raised and representations received, sought to work with the applicant in a positive and proactive manner with the objective of delivering high quality sustainable development to improve the economic, social and environmental conditions of the area in accordance with the NPPF. (Statement in accordance with Article 35(2) of the Town and Country Planning (Development Management Procedure) (England) Order.

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## **BACKGROUND PAPERS**

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- Submitted Application Forms and Drawings
- Supporting statement
- City of Durham Local Plan
- National Planning Policy Framework
- Consultation Responses



**Planning Services**

Wok Next  
 97 Claypath  
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