

**Application Number:** DM/2018/00908

**Proposal:** Extend opening hours only on Friday and Saturday nights from 00:00 to 2:00am.

**Address:** 35 Frogmore Street Abergavenny Monmouthshire NP7 5AN

**Applicant:** Mr Hasan Saritag

**Plans:** Location Plan O/S Extract -

**RECOMMENDATION: APPROVE**

Case Officer: Ms Kate Bingham

Date Valid: 04.07.2018

**1.0 APPLICATION DETAILS**

1.1 This application seeks to extend the opening hours of an existing kebab shop in the centre of Abergavenny on Friday and Saturday nights from midnight to 2.00am.

1.2 An application to extend the opening hours to 2am was refused in 2017 as it was considered that there had been no material changes since a dismissed appeal in 2006. However, since this time the kebab shop has been granted a license by MCC Environmental Health to open until 2am. This application seeks to amend the condition on the original planning approval for the A3 use to match this licence.

**2.0 RELEVANT PLANNING HISTORY (if any)**

| <b>Reference Number</b> | <b>Description</b>  | <b>Decision</b> | <b>Decision Date</b> |
|-------------------------|---|-----------------|----------------------|
| DC/2017/01195           | Variation of condition (extend opening hours) from previous consent A26791. | Refused         | 26.01.2018           |
| DC/1991/00151           | Alteration To Shopfront (Including Internal Lobby).                         | Refused         | 24.04.1991           |
| DC/1987/01106           | Amendment Of Time Limiting Condition From 10.00 P.M. To 11.30 P.M.          | Refused         | 11.01.1988           |

|               |   |                       |            |
|---------------|---|-----------------------|------------|
| DC/1986/00868 | Amendment Of Time Limiting Condition From 10.00 P.M. To 12 Midnight.      | Refused               | 07.11.1986 |
| DC/1992/00323 | Alteration To Shopfront, Including Internal Lobby.                        | Refused               | 05.08.1992 |
| DC/1986/00989 | Non-illuminated Fascia Sign And Externally Illuminated Projecting Sign.   | Approved              | 04.12.1986 |
| DC/2006/01336 | Extension of opening hours Fridays and Saturdays from midnight to 2.30 am | Refused               | 04.04.2007 |
| DC/1990/01294 | Retention Of Fascia Sign Box, Projecting Sign Box (Illuminated).          | Approved              | 03.04.1991 |
| DC/1987/01003 | Single Storey Flat Roof Rear Extension Restaurant Kitchen/Store/Toilets   | Approved              | 03.03.1988 |
| M08987        | Vary Of Condition 2 Of A21327 Open Hours 8AM - 12 Midnight.               | Pending Consideration |            |

### 3.0 LOCAL DEVELOPMENT PLAN POLICIES

#### Strategic Policies

S6 LDP Retail Hierarchy

#### Development Management Policies

EP1 LDP Amenity and Environmental Protection

### 4.0 REPRESENTATIONS

#### 4.1 Consultation Replies

**Abergavenny Town Council** - Recommend approval.

**MCC Environmental Health** - I am not in a position to substantiate a level of noise impact from activities on the premises itself, if extended opening is permitted, on which I could base an objection. I therefore confirm that I do not object to this application.

#### 4.2 Neighbour Notification

Two representations received. Object on the following grounds:

Commercial Street - Object to this on noise and disturbance grounds. We are regularly kept up at night, particularly on weekends with noise and rowdy behaviour. We feel that 2am would be far too late for a premises such as this to be open in a residential area, and we already regularly see drunk people shouting up and down our street.

33A Frogmore Street - We would strongly object to this application, particularly for opening hours after midnight as we have always noticed a large increase in anti-social behaviour around our premises due to a lot of clients of the kebab shop having over indulged in alcohol in an evening. We have had several shop windows vandalised due to fighting and have noticed an increased amount of litter, vomiting & urinating in our shop doorway leaving us with a particularly unpleasant start to our mornings - this is noticeably more prevalent following a weekend. We are aware that several applications for this have been made (and refused) in the past and we have always been consistent in our objection.

## **5.0 EVALUATION**

### **5.1 Principle of the proposed development and residential amenity**

5.1.1 There is legitimate concern that the later night opening will give rise to the potential for noise disturbance to nearby residents from rowdy behaviour of 'customers' in the street over which the applicant can be expected to have very limited control. The Council's Environmental Health section will not be in a position to resolve any complaints of noise arising from this source having regard to the legislative powers within its remit. However, in granting the licence for the 2am opening, the Council's Licensing Team consulted neighbouring properties and also Gwent Police. No objections were received and the Police also offered no objections on the condition that CCTV is installed. Two other conditions of the licence are that the shop has a closed door policy and also that a notice is displayed within the premises reminding customers to leave quietly. Further conditions of the licence are litter receptacles to be placed inside and immediately outside the premises for customer use and at closing time, staff are to clean the immediate area around the outside of the shop including pavements outside neighbouring properties. The applicant has agreed to all of these conditions.

5.1.2 It is also understood that the Police currently patrol the area around the shop up to 2am as this is the closing time of the nearby Auberge nightclub. Noise and disturbance attributed to the kebab shop would in any case happen as a result of customers of the Auberge making their way home so provided that the shop does not open beyond 2am and adheres to the conditions of the licence then the increase in people acting in an anti-social manner is unlikely to be significant enough to justify refusal of this proposal to have the same opening hours as the licence already allows. Should the licence be revoked in the future then this would override the planning consent and the shop would have to comply with the licence.

### **5.2 Highway Safety**

5.2.1 The majority of customers frequenting the kebab shop between the hours of midnight and 2am will be on foot. It is the responsibility of individual pedestrians to ensure that they do not encroach onto the main road and put themselves in danger.

### **5.3 Well-Being of Future Generations (Wales) Act 2015**

5.3.1 The duty to improve the economic, social, environmental and cultural well-being of Wales has been considered, in accordance with the sustainable development principle, under section 3 of the Well-Being of Future Generations (Wales) Act 2015 (the WBFG Act). In reaching this recommendation, the ways of working set out at section 5 of the WBFG Act have been taken into account and it is considered that this recommendation is in accordance with the sustainable development principle through its contribution towards one or more of the Welsh Ministers' well-being objectives set out in section 8 of the WBFG Act.

## **6.0 RECOMMENDATION: APPROVE**

Conditions:

1 The use hereby approved shall be restricted to the ground floor only.

REASON: To define the area to which the consent relates.

2 The premises shall not be used for the approved purposes outside the following times:  
08:00 to midnight Sunday to Thursday and 08:00 to 02:00 Friday and Saturday.

REASON: In the interests of amenity.