
BREACH OF PLANNING CONTROL AT THE KEBAB HUT, HIGH STREET, RAYLEIGH

1 SUMMARY

- 1.1 The Head of Planning Services reports the use of the above site for opening hours outside those stipulated in Condition 2 attached to planning permission reference F/0029/98/ROC.
- 1.2 Members will need to consider whether it is expedient to serve enforcement notices, etc and this function is discretionary. However, the mechanisms of such actions are statutorily controlled.

2 INTRODUCTION

- 2.1 A Breach of Condition Notice was served on the previous owners / occupiers of the Kebab Hut on 14th October 1999 and 23rd February 2001. Breach of Condition Notices can be served under Section 187A of the Town and Country Planning Act 1990 (as amended), but such a Notice can only be served on a named individual (Section 187A (3)).
- 2.2 In this instance, it is possible that the person on whom any new Notice should be served has changed. Additionally, it would be clearer if a fresh Notice were to be served in view of the time that has elapsed and the previous compliance. Therefore a new Breach of Condition Notice is required. This will be accompanied by an Enforcement Notice to ensure a long-term solution to this re-occurring breach.

3 PLANNING HISTORY

- 3.1 The original permission was granted on 1st March 1985 which allowed for opening - Monday to Friday 09:00 to 23:30 and closed on Sundays. Since then, permission was granted in 1998 for a permanent variation of the opening times so that the premises are allowed to open on Sunday from 17:00 to 22:30.
- 3.2 Some Members may remember that, following a public inquiry, the authority was successful on appeal in 1999 in resisting later closing times. Objections and complaints that the late night use of the premises created a prolonged noise disturbance and public disorder were upheld by the Inspector.
- 3.3 In 2002 another appeal against the refusal of planning permission to extend the opening hours to 02:30 on Friday and Saturday night was also dismissed by an Inspector due to the noise disturbance caused at unsociable hours. Since then there has been no application for the variation of opening hours.

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- 3.4 The previous owner has also been prosecuted on 6th November 2001 for non-compliance with the Breach of Condition Notice and fined £500 plus the Authority's costs.

4 PLANNING ISSUES

- 4.1 Following further observations and complaints relating to the times of opening of the Kebab Hut, investigations have taken place. It is evident that the Kebab Hut is open late into the evening and, on occasions, past 01:00. The conditions attached to the current valid permission were amended by the approval of planning permission reference F/0029/98/ROC. These allowed the Kebab Hut to stay open as follows:

- Mondays to Saturdays: 09:00 to 23:30
- Sundays: 17:00 to 22:30

- 4.2 There are public disorder problems centred on this issue of later opening hours. The local Police have supported the authority at the previous Public Inquiry where their evidence played a significant role in determining the dismissal of the appeal. They have been assisting Planning Enforcement Officers with their investigations and are monitoring the opening hours of the Kebab Hut. It is therefore considered that the recommended action is important for this aspect and is likely to minimise such disorder problems.

- 4.3 Given that the revised opening times have been flouted it has become necessary to recommend further enforcement action. If Members are in agreement, the following recommendation will allow the service of any appropriate Notices. The service of an Enforcement Notice **and** a Breach of Condition Notice would be more beneficial at this stage because:

- An Enforcement Notice is served on the property and so is a longer-term solution, irrespective of the owner. The owner of the premises has changed several times in the past and so the Breach of Condition Notices, which were personal to the previous owners, are now likely to be unenforceable.
- The new Breach of Condition Notice has no right of appeal and so can be the subject of prosecution 30 days after issue.
- Even if the Enforcement Notice is appealed against, the Breach of Condition Notice still stands and so has to be complied with.

- 4.4 Therefore, due to the long history of the case and prosecution of the previous owner, it is recommended that an Enforcement Notice **and** a Breach of Condition Notice be issued. This will both ensure compliance by the existing owners **and** their successors who will also have to comply with the Notice. Serving these two Notices together should ensure both short and long-term compliance.

5 LEGAL IMPLICATIONS

- 5.1 Any action considered necessary through the Courts to remedy the breach.

6 RECOMMENDATION

- 6.1 It is proposed that the Committee **RESOLVES**

That the Head of Planning Services be authorised to take all necessary action, including the issue of Notices and action in the Courts, to secure the remedying of the breach now reported.

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Background Papers:

None.

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