<table>
<thead>
<tr>
<th><strong>Application No:</strong></th>
<th>15/01609/FUL</th>
<th><strong>Ward:</strong> Chadwell Heath</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Reason for Referral to DCB as set out in Part 2, Chapter 9 of the Council Constitution:</strong></td>
<td>The application has attracted 5 or more objections and is recommended for approval.</td>
<td></td>
</tr>
<tr>
<td><strong>Address:</strong></td>
<td>4 Tolworth Parade, East Road, Chadwell Heath</td>
<td></td>
</tr>
<tr>
<td><strong>Development:</strong></td>
<td>Application for variation of condition 1 of planning permission 10/00886/FUL to extend opening hours from 1900 to 2000 Monday to Saturday.</td>
<td></td>
</tr>
<tr>
<td><strong>Applicant:</strong></td>
<td>Samosa King Ltd</td>
<td></td>
</tr>
</tbody>
</table>

**Summary:**

This application relates to a variation of a planning condition in respect of Samosa King, a hot food takeaway in Tolworth Parade, East Road, Chadwell Heath, to allow the shop to open till 8pm from Monday to Saturdays (an hour later than currently permitted). The proposal has attracted a significant amount of support and opposition. Officers consider that the extra hour is unlikely to result in any material loss of amenity to neighbouring occupiers and is recommended for approval.

**Recommendation(s)**

That the Development Control Board grant planning permission subject to the following conditions:

1) The shop shall not be open except between 0700 and 2000 Monday to Saturday and between 1000 and 1600 Sundays.

   Reason: To ensure that the proposed hours of use do not cause undue nuisance and disturbance to neighbouring properties at unreasonable hours and in accordance with policy BP8 of the Borough Wide Development Policies DPD.

2) Outside the permitted opening hours:

   a) No cooking shall take place and no cooking equipment shall be operational;

   b) The premises shall only be occupied for the purposes of cleaning, maintenance and stock replenishment related to the approved use.

   Reason: To ensure that no undue nuisance or disturbance is caused to neighbouring properties outside of opening hours and in accordance with policy BP8 of the Borough Wide Development Policies DPD.

3) No deliveries shall be despatched other than between the hours of 0700 to 2200 Monday to Saturday and 0800 to 1800 on Sunday.
1. **Introduction and Description of Development**

1.1 The application premises is Samosa King Catering, a hot food takeaway located in Tolworth Parade which forms part of the Tolworth Parade Neighbourhood Centre comprising of 9 retail units on the western side of East Road, Chadwell Heath. A planning application for the use of the premises as a hot food takeaway (06/00641/FUL) was refused by the Council in 2007 on noise and disturbance grounds. Planning permission was subsequently granted on appeal with a condition restricting hours of use to between 7:00am and 7:00pm Monday to Saturday which were the hours that the applicant had sought.

1.2 A further application (07/00766/FUL) was submitted in 2007 to allow extended hours to 10:00pm 7 days per week with the shop closed for the preparation of food, and 10:00am to 4:00pm on Sundays for the sale of hot food. Again, this application was refused by the Council. The proposals were allowed in part on appeal, in that new conditions were imposed. One extra hour for cleaning with the shop closed was permitted between the hours of 7pm and 8pm Monday to Saturday, with the permitted opening hours remaining at 7am and 7pm Monday to Saturday.

1.3 An application to vary this condition once again was submitted in October 2010 (10/00886/FUL). The proposals were essentially the same as the 2007 application, only the proposed extended hours until 10:00pm Monday to Saturday were for the purposes of cleaning with the shop remaining closed, as opposed to the preparation of food. The application also proposed Sunday opening hours from 10:00am until 4:00pm, with unlimited hours for cleaning. This application was recommended for refusal at the Development Control Board on 20 December 2010, with the Board deferring their decision pending a site visit and submission of further information. Following the site visit and further discussions between the applicant and Officers, the proposals were amended to remove the Sunday opening element but to allow unlimited hours for cleaning, maintenance and stock replenishment, and deliveries between 7:00am to 10:00pm Monday to Saturday and 8:00am to 6:00pm on Sunday. This application was approved by the Development Control Board on 28 February 2011.
1.4 A further application (11/00142/FUL) for the variation of condition 1 (opening hours) of 10/00886/FUL was submitted in March 2011 to allow for Sunday opening hours between 10:00am and 4:00pm. This application was recommended for refusal by officers on the basis that the proposed increase in hours would be to the detriment of local amenity and the character of this local shopping parade. The decision was overturned by Members at the Development Control Board on 3 May 2011, on the basis that the proposed increase in hours would not result in such an intensification of the use of the premises so as to generate an unacceptable level of additional vehicular movements or unacceptable levels of noise and disturbance. The Board decided that the proposal would not harm local amenity and was compliant with policy BP8 of the Local Development Framework Borough Wide Development Policies.

1.5 A further application (11/00428/FUL) for the variation of condition 1 (opening hours) of 10/00886/FUL was submitted in April 2011 to allow the premises to be open from 7:00am until 9.00pm Monday to Saturday as opposed to the current opening hours of 7:00am to 7:00pm. This application was recommended for refusal by officers on the basis that the proposed increase in hours would result in an intensification of the use of the premises involving greater vehicular movement, increased noise and disturbance, and additional smells and odours, to the detriment of local residential amenity and the character of this local shopping parade. An appeal was made by the applicant which was subsequently dismissed by the Planning Inspectorate.

1.6 This application is for a further variation to condition 1 of 10/00886/FUL relating to opening hours. The proposal is a one-hour extension of opening hours per night from Monday to Saturday, from 7:00pm to 8:00pm.

2. **Background**

2.1 See above.

3. **Consultations**

3.1 124 Neighbouring occupiers were consulted.

3.2 20 neighbouring properties have raised objection; 14 using a standard template from residents at:

- 6a Tolworth Parade;
- 2, 21, 57 Tolworth Gardens;
- 68, 79, 81, 85, 92, 94, 96 and 100 East Road;
- 60, 64 Adelaide Gardens

3.3 Objections have been raised on the following grounds:

- Unacceptable odour from cooking on premises
- Noise and disturbance from vehicles delivering stock to premises
- Litter from takeaway thrown in front gardens of neighbouring properties
- Anti-social behaviour
- Previous examples of the proprietors breaching planning conditions and showing little concern for residents
• Concerns regarding the catering and delivery aspect of the business, and whether this now forms the primary use of the unit as opposed to a hot food takeaway
• Late opening not suitable for a quiet residential area

The residents of 5, 15, 21, Tolworth Gardens, 80, 94 East Road, 60 Adelaide Gardens, and 4, 6 and 16 Portland Gardens submitted detailed comments objecting on the following grounds:

• Unacceptable odour
• Noise and disturbance from delivery vans
• Litter
• Anti social behaviour

3.4 128 letters in support of the proposal, using a standard template, have been received from residents from various locations including the following:

• Tolworth Parade
• Tolworth Gardens
• Portland Close
• Portland Gardens
• East Road
• Melbourne Gardens
• Pemberton Gardens
• Adelaide Gardens
• Ashton Gardens

3.5 The residents of 7 Tolworth Gardens, 107 East Road, 58 Adelaide Gardens, and 65 Donald Drive, submitted detailed supporting comments on the following grounds:

• The requested extension of hours are not unreasonable
• Local residents will benefit from extended opening hours as many people arrive home from work around 6.30-7.00pm
• Other business in the parade are already open later than 8.00pm, the business is therefore unlikely to make any difference in the noise level of local traffic
• Food is served in take-away style containers, no litter is generated as customers take food home to eat
• Small family run business provides an invaluable service to the local elderly and disabled residents
• One shop within the parade is open until 11.00pm selling alcohol and cigarettes
• Local police and community support officers are regular customers of the premises
• An extension of hours would be useful for food preparation times
• Not witnessed any disturbances in or outside the premises in the evenings
• Provides a valuable service as other similar outlets are located much further away
• The majority of customers live within close proximity of the premises so there is no impact on noise, disturbance or traffic
3.6 Internal Consultations;

3.7 Environmental Health Officer;

Noise;

3.8 I note that the premises is situated in a parade of shops in a predominantly residential area with residential accommodation above the commercial units. Extending the opening hours clearly has the potential to create a degree of additional early to mid-evening noise disturbance.

3.9 I have no record of noise disturbance associated with the current use of the Tolworth Parade commercial units and so, on balance, I do not wish to object to the application.

Odour Emission;

3.10 I have consulted the food team who tell me there is a longstanding (several years) complaint of odour emission from the Samosa King, 4 Tolworth Parade but that, to date, investigations have not substantiated the complaint.

3.11 Metropolitan Police;

Confirm that following on from the information provided at the time of the previous application (ref.11/00428/FUL) confirming only one incidence of shoplifting in August 2010, there have been no further reported crimes that could be linked to Samosa King. Police records confirm that for the period 1 Feb 2015 to 1 Feb 2016 no requests for police assistance via 999 or 101 have been made.

4. Analysis

4.1 Principle of Development:

4.2 The first Inspector’s appeal decision of February 2007 related to the change of use from A1 (retail shop) to A5 (hot food takeaway). With regard to hours of operation the Inspector imposed a condition restricting the use to between 7:00am to 7:00pm Monday to Saturday, which were the hours sought by the applicant. The Inspector’s decision of February 2008 permitted an extra hour per evening for cleaning and maintenance purposes, with the shop remaining closed outside of the permitted opening times. The planning application granted in February 2011 (10/00886/FUL) allowed the proprietors to be on the premises at any time outside of the permitted opening hours for the purposes of cleaning, maintenance and stock replenishment and allowed deliveries within specified hours.

4.3 With regard to the original condition for opening hours from Monday to Saturday, the Inspector concluded that although there is a variation in opening hours amongst the units on this shopping parade, it would be necessary to impose a closing time of 7:00pm for this unit (earlier than a nearby convenience store). It was considered that the upper floor flats above and alongside the unit would suffer a greater degree of harm resulting from movements associated with the use than would be the case otherwise. This must be taken into consideration when determining this application.
It should be noted that the entrance to the first floor flat above the premises is located at ground floor level immediately adjacent to the rear of 4 Tolworth Parade. The 2008 Inspector’s decision noted that cooking smells during operational hours were likely to be significant at both the front and rear of the premises, and these were unlikely to be produced by any other premises. This was considered to cause potential harm to the amenity of adjacent residents.

4.4 At the time officers conducted a site visit (4.00pm - 5.00pm) there was little evidence to suggest a high intensity use of the premises with activity levels limited to a few walk in customers collecting takeaway orders. The applicant has indicated that demand is at its greatest during the weekday evening period and as such a one hour extension of opening hours would address this demand and also prevent customers who enter the premises shortly before 7.00pm from leaving after the designated closing time due to the waiting time required for the preparation of hot food. This issue has been raised by both those who are in support of, and those who object to, the proposal.

4.5 Since the time of the previous application complaints have been made from a local resident objecting to customers leaving the premises after 7.00pm, the applicant therefore wishes to address this issue and has therefore submitted a new application.

4.6 With regards to potential noise, disturbance and odour issues, it is noted that only one objection letter has been received out of all of the occupants of Tolworth Parade including residents occupying the flats above. It is noted that the complainant has also submitted a letter in support of the application. In total, 17 letters in support of the proposal have been received from the occupants of Tolworth Parade.

4.7 A number of the objection letters refer to odour emissions. The Council’s Environmental Health Officer has stated that despite a history of objections regarding odour emissions, to date Council investigations have not substantiated these complaints. As such, the emissions are considered to remain at acceptable levels. It is noted that at the time of the original planning permission for the premises under planning ref.06/00641/FUL a condition was imposed requiring the installation of extract ducting to disperse any odours generated. The extract ducting remains in place and continues to serve to minimise the impact of cooking odours in accordance with recommendations from the Council’s Environmental Health Team.

4.8 The Council’s Licensing Team have confirmed that units 8 and 9 of Tolworth Parade occupied by Lotus convenience store and off-licence have permission to open until 11.00pm Monday-Sunday. Given that late night opening of a neighbouring business is already in operation, it is not considered that a one hour extension to existing operating hours for the application site (until 8.00pm) would generate a material increase in noise and disturbance levels over and above that which already exists. The location of the application site means that the business predominantly caters for, and is largely dependent on the custom of local residents, as such it is considered that the proposal would not result in a material increase in vehicular movement or congestion in and around the surrounding area. This view is supported by the Council’s Environmental Health Officer who has also noted that there is no record of any noise disturbances associated with the premises.
4.9 With regard to the objections to the application, many issues raised are not planning issues and as such they have not been included in the report.

4.10 Objections have been raised during the consultation for this and previous applications regarding anti-social and crime related activities associated with the premises. However, no evidence has been provided to suggest that anti-social behaviour would arise or that alleged existing levels would materially increase as a direct result of the proposal. Furthermore the Metropolitan Police have confirmed that no criminal offences have been recorded relating directly to Samosa King.

4.11 A key issue raised is the question of whether the unit is now in use primarily as a catering business rather than a hot food takeaway. The original application for the change of use to hot food takeaway (ref.06/00641/FUL) stated that: “The unit will also be used for an ancillary use to prepare food for parties and events and that preparation of food may take place outside the opening hours of the shop itself”. Concern has been raised in relation to the scale of the catering side of the business, with allegations made that the business is now operating as a catering company rather than a hot food takeaway. Officers have been informed that the proprietor has 2 other businesses listed at Companies House; Samosa Catering Limited, and Samosa King Limited, operating from an industrial unit based in the London Borough of Havering.

4.12 Whilst it is acknowledged that supplies may be delivered from the industrial unit to serve the hot food takeaway business there is no evidence to suggest that the premises in Tolworth Parade is operating primarily as a catering operation. Furthermore, officers consider the separation of the catering side of the business in the form of industrial premises (geographically separate from the hot food takeaway) located on an industrial estate to be an appropriate response to this issue. Officers therefore consider that the premises in Tolworth Parade remains in operation as an A5 hot food takeaway.

4.13 Allegations have been made suggesting that the applicant has deliberately mislead Council officers as to the scale of his business activities, however it should be noted that the applicant is not obliged to inform the Council of commercial operations and business ventures conducted away from the application site particularly those based outside of the Borough.

5. Conclusion:

5.1 Whilst there is strong local feeling both in support of and objection to the proposal, the issue to be considered is the potential harm to the amenities of neighbouring residents resulting from one additional hour of operation at the application premises. Given the comments made by the Council’s Environmental Health Officer regarding the impact from noise and odour levels generated by the premises and the established presence of an existing late night opening business operating within Tolworth Parade, it is not considered that a one hour extension to existing operating hours for the application site would generate a material increase in noise and disturbance levels over and above that which already exists, either from vehicular movements or pedestrian footfall. On balance the proposed extension of trading hours until 8.00pm Monday to Saturday is considered acceptable.
Background Papers

- Planning Application File http://paplan.lbbd.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=NY0ES7BL03O00

- Local Plan Policy

  Policy BP8 – Protecting Residential Amenity