

## **BREACH OF PLANNING CONTROL REGARDING THE OPERATION OF A HOT FOOD TAKE-AWAY AFTER 11.30PM AT 94/96 TELEGRAPH ROAD, HESWALL**

### **1. EXECUTIVE SUMMARY**

- 1.1 The purpose of this report is to advise members of the operation of a hot food take-away without planning consent after 11.30 pm. A Breach of Condition Notice has been voided by a change of ownership. It is proposed that action be taken in this matter as it is considered the operation of the premises after 11.30 pm has a detrimental impact on the amenities of the occupiers of neighbouring residential properties. In order to take effective action, an Enforcement Notice should be served.

### **2. BREACH OF PLANNING**

- 2.1 Use of the land for hot food take-away without the benefit of planning permission after 11.30 pm.

### **3. EVIDENCE**

- 3.1 Condition 3 of APP/2003/5432/D states: Trading at the premises shall not take place between 23.30 hours and 08.00 hours. On the 1<sup>st</sup> April 2006 a site visit was made which revealed the occupier to be in breach of the condition.
- 3.2 The occupier, identified as Mr Ahmet Karakaya, was served with a Breach of Condition Notice on the 7<sup>th</sup> November 2006. The notice became effective on the 7<sup>th</sup> December 2006.
- 3.3 Site visits on the 17<sup>th</sup> December 2006 and the 15<sup>th</sup> January 2007 confirmed that the premises were still operating in breach of condition, which is an offence.
- 3.4 A prosecution took place at Birkenhead Magistrates Court on the 3<sup>rd</sup> April 2007, and the leaseholder, Mr Karakaya was fined £500, and ordered to pay £432 costs.
- 3.5 It appears the premises have now changed ownership and we can no longer take action against the new owner as the existing notice relates to the person and not the premises.
- 3.6 Rather than serve another Breach of Condition Notice and the new owner avoid action again, it is proposed that we issue an Enforcement Notice.

3.7 The Enforcement Notice runs with the land and the issue of ownership will not enable people to evade action. However, the service of an Enforcement Notice can be a more protracted process due to the proprietors right of appeal.

#### **4. EXPEDIENCY FOR ENFORCEMENT ACTION**

4.1 The operation of the premises between 23.30 and 08.00 hours results in an increase in noise and disturbance that creates a detrimental impact on the amenities of the occupiers of neighbouring residential properties. This is contrary to Policy HS15 of the adopted Wirral Unitary Development Plan.

#### **5. FINANCIAL AND STAFFING IMPLICATIONS**

5.1 There are no direct financial implications.

#### **6. EQUAL OPPORTUNITIES IMPLICATIONS**

6.1 I am not aware of any Equal Opportunities Implications.

#### **7. LOCAL AGENDA 21 IMPLICATIONS**

7.1 I am not aware of any Human Rights Implications.

#### **8. LOCAL MEMBER SUPPORT IMPLICATIONS**

8.1 This report will be of interest to Heswall members.

#### **9. BACKGROUND PAPERS**

9.1 None.

#### **10. RECOMMENDATION(S)**

10.1 To serve an Enforcement Notice to ensure compliance with Condition 3 of APP/2003/5432/D. Time for compliance 1 week.

D Green  
DIRECTOR OF TECHNICAL SERVICES

This report was prepared by Stuart Williamson of the Development Control Section who can be contacted on (0151) 606 2536.

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