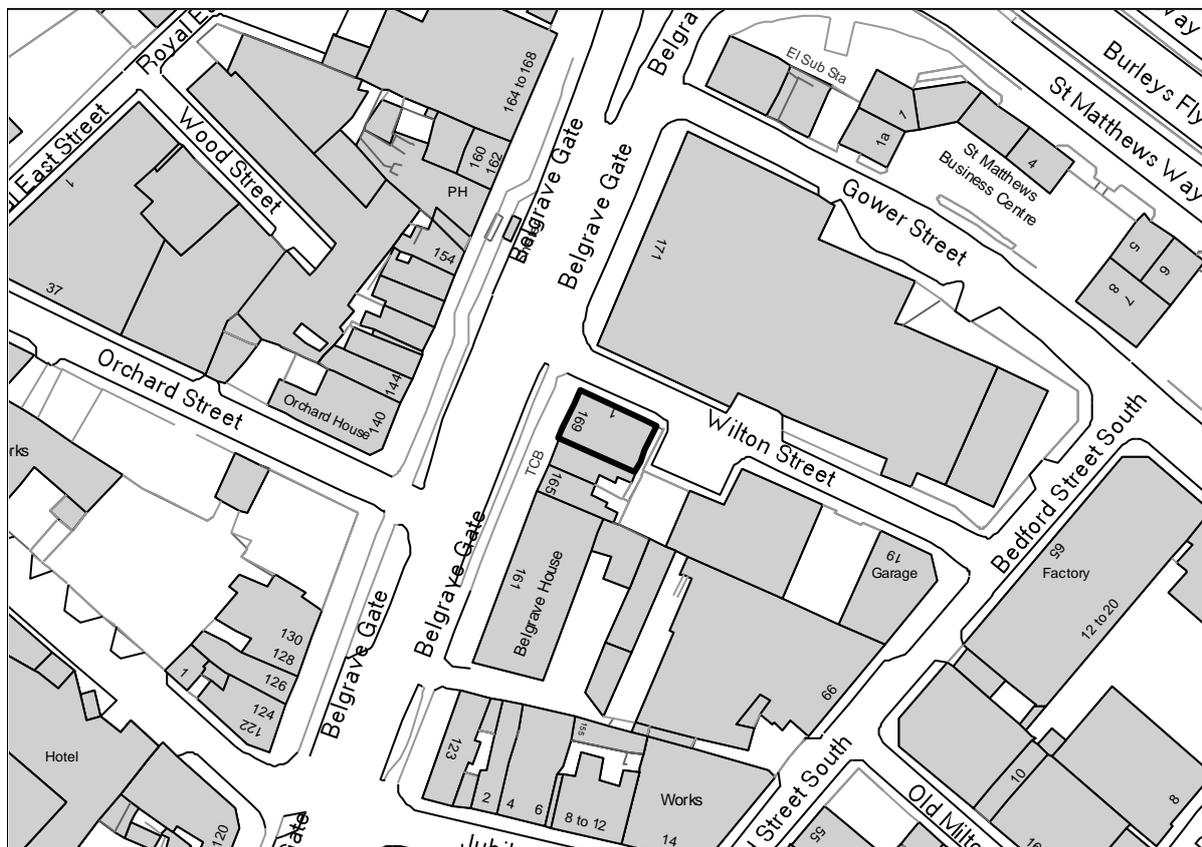


## COMMITTEE REPORT

<b>20192079</b>	<b>169 BELGRAVE GATE</b>	
Proposal:	Variation of Condition 2 attached to planning permission 20190451 to extend hours of use from 07:30 to 23:00 daily to 05:00 to 23:00 daily for use of ground floor as restaurant (Class E)	
Applicant:	Mr Milan Sonigra	
App type:	Operational development - full application	
Status:	Change of use	
Expiry Date:	7 January 2020	
TEI	TEAM: PD	WARD: Castle

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### Summary

- The application is before committee at the request of Cllr Kitterick as the regeneration of the Belgrave Gate corridor is of strategic importance to the city and the area has received and will continue to receive large amounts of public funding.

- The proposal is to extend the permitted hours of use from 07:30 to 23:00 to 05:00 to 23:00.
- The main issue is the impact of the proposal on the amenity of nearby occupiers.
- The recommendation is for refusal.

## **The Site**

The application relates to the ground floor of a three-storey building on the corner of Belgrave Gate and Wilton Street. The ground floor is in use as a café and the upper floors are in use as four flats. The property is in the Central Commercial Zone and in the St George's Residential and Working Community described as the St George's North regeneration area in the Core Strategy.

## **Background**

Conditional approval (20131704) was granted on 09.12.13 for the change of use of the ground floor restaurant to three self-contained flats and for alterations associated with the change of use. This change of use does not seem to have occurred. Nor do the external alterations seem to have taken place. A condition was also attached requiring that an insulation scheme to prevent the transmission of external noise into the flats be installed.

Conditional approval (20190451) was then granted on 20.09.19 for the use of the ground floor as a restaurant. Conditions were attached requiring that the use be carried out only between the hours of 07:30 to 23:00, that there be no live or amplified music or voice nor any noise or vibration from the flue that would be detrimental to the amenities of neighbouring properties, and that within three months of the date of the permission an insulation scheme to prevent the transmission of noise to any residential properties be installed. However, this condition does not appear to have been complied with and no evidence has been submitted to demonstrate that it has been installed.

The ground floor is currently in use as Bagel Factory, with hours of opening advertised as 07:30 to 16:00.

## **The Proposal**

The proposal is to vary Condition 2 of approval 20190451 to extend hours of use from 07:30 to 23:00 to 05:00 to 23:00. This is with a view to allowing two hours preparation and baking time to open the premises for customers at 07:00. The application notes that the applicant would be happy with noise levels being monitored to ensure minimal disturbance and also notes that the neighbouring gym is open 24 hours a day.

Given that the desired opening time of 07:00 would require a two hour preparation and baking time it is presumed that to support the current opening time of 07:30 there is a similar preparation and baking time making it likely that current hours of use are in breach of the condition attached to 20190451.

## **Policy Considerations**

### National Planning Policy Framework 2021:

Chapter 7: 'Ensuring the vitality of town centres'

- Para 86 (vitality and viability of town centres)

Chapter 12: 'Achieving well-designed places'

- Para 130 (high standard of amenity)

#### Development Plan Policies:

Development plan policies relevant to this application are listed at the end of this report.

#### **Consultations**

Environmental Health (pollution) (LCC): - EHO comments on the original application continue to be relevant. They raised some concern that the proposal may have an impact on the residential amenity of neighbouring properties, particularly by way of noise. Conditions were recommended restricting the hours of use and hours of delivery, ensuring there is no live or amplified music or voice that would be detrimental, requiring an effective scheme of insulation and ensuring there is no perceptible noise or vibration from any plant or machinery.

When consulted on the proposed variation of condition EHOs raised concerns that at 05:00 the background noise in the area is very low and someone opening up the shop and baking at this time could easily cause a nuisance to the residents above and to residential properties in the wider area. They noted that one thing that could help to reduce the impact would be a sound insulation scheme such as that which was required by condition attached to the original approval. However, as discussed above, there is no evidence that this insulation scheme was installed.

#### **Representations**

None

#### **Consideration**

The application is solely for the variation of Condition 2 of 20190451. Condition 2 was attached to this consent to preserve the amenities of nearby occupiers. As such it is only the acceptability of the proposed change of hours on the amenity of nearby occupiers that is under consideration.

The application property is on a main route into the heart of the city centre and there are residential properties close by including four flats directly above the property and that a food and drink use has potential to cause an unacceptable level of harm to occupiers of these residential properties. For these reasons planning consent (20190451) has a condition restricting the hours of use to between 07:30 to 23:00.

I do not consider that there have been any material changes to local or national policies or guidance or to the local context of the site that would justify a variation of the condition to increase the hours of use to commence at 05:00. Furthermore, no evidence has been provided that the sound insulation scheme to prevent the transmission of internal and external noise into the flats above and the surrounding area has been carried out as required by condition attached to planning approval 20190451.

#### Conclusion:

I therefore recommend REFUSAL for the following reason:

#### REASON FOR REFUSAL

1. The proposal is likely to be detrimental to the residential amenity of the neighbouring occupiers due to an increase in noise and disturbance resulting

from the use of the premises for preparation, baking and opening up during the earlier part of the morning. It is therefore contrary to Core Strategy policy CS12 and saved policies PS10 and PS11 of the City of Leicester Local Plan.

### **Policies relating to this recommendation**

- |           |  |
|-----------|--|
| 2006_PS10 | Criteria will be used to assess planning applications which concern the amenity of existing or proposed residents.   |
| 2006_PS11 | Control over proposals which have the potential to pollute, and over proposals which are sensitive to pollution near existing polluting uses; support for alternative fuels etc.   |
| 2014_CS12 | In recognition of the City Centre's role in the City's economy and wider regeneration, the policy sets out strategies and measures to promote its growth as a sub-regional shopping, leisure, historic and cultural destination, and the most accessible and sustainable location for main town centre uses. |