
Appeal Decision

Site visit made on 31 August 2016

by Rory Cridland LLB (Hons)

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 23 September 2016

Appeal Ref: APP/G1250/W/16/3150244

414 Wimborne Road, Bournemouth BH9 2HB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Rasti Khalil against the decision of Bournemouth Borough Council.
 - The application Ref 7-2016-6166-H, dated 14 January 2016, was approved on 10 March 2016 and planning permission was granted subject to conditions.
 - The development permitted is a change of use from shop (class A1) to restaurant/hot food takeaway (Class A3/A5).
 - The condition in dispute is No 2 which states that: "The use hereby permitted shall not be open to customers outside the following times 11.00 hours and 23.00 hours".
 - The reason given for the condition is: "To safeguard the amenities of occupiers of adjoining and nearby residential properties and in accordance with Policies CS38 and CS41 of the Bournemouth Local Plan: Core Strategy".
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Decision

1. The appeal is allowed and the planning permission Ref 7-2016-6166-H for a change of use from shop (Class A1) to restaurant/hot food takeaway (Class A3/A5) at 414 Wimborne Road, Bournemouth BH9 2HB granted on 10 March 2016 by Bournemouth Borough Council, is varied by deleting condition 2 and substituting for it the following conditions:

The premises shall only be open for customers between the hours of 1100 -0200 Monday to Sunday.

Prior to the occupation of the development hereby permitted, the mitigation measures contained in paragraph 1.7 of the Noise Impact Assessment (Ref IMP4700), namely the reduction in fan sound power by 10-11dB(A) and the improved loss of the silencer by 10-11dB(A), shall be implemented and thereafter retained.

Background and Main Issues

2. The Council has granted permission for a change of use from a shop to a hot food takeaway which includes a condition restricting the opening hours to between 1100 and 2300. The reason cited for the condition was to safeguard the amenity of adjoining and nearby residential properties. The application sought longer opening hours with them extending to 0200 during the week and 0400 at the weekend.
 3. Separately, the Council, as Licensing Authority, has granted a license which allows for opening hours which extend to 0200 every day. The planning and
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licensing regimes involve consideration of different (albeit related matters). The Local Planning Authority is not bound by the decisions of the Licensing Authority and vice versa. Nevertheless, Paragraph 9.44 of the Revised Guidance issued by the Home Office under Section 182 of the Licensing Act 2003¹ advises that where businesses have indicated when applying for a license that they have also applied for planning permission or that they intend to do so, licensing committees and officers should consider discussion with their planning counterparts prior to determination with the aim of agreeing mutually acceptable operating hours. The intention is clearly to achieve a degree of consistency in these matters. Where a terminal hour has been set in the planning process which differs to that set in licensing regime, the applicant must observe the earlier closing time.

4. As part of this appeal, the Council has indicated that it also objects to the later opening times due to the impact it would have on the character of the surrounding area. I must determine this appeal based on the issues outstanding at the present time. As such, I consider the main issues to be the effect that bringing the operating hours into line with those set out in the license would have on the character of the surrounding area and the living conditions of neighbouring occupiers with particular regard to noise and disturbance.

Reasons

5. The appeal site is located on Wimbourne Road, a busy commercial street designated as a Core Shopping Area. Many of the properties consist of commercial units at street level with residential accommodation above. There are a number of nearby bars, restaurants and takeaways, the closing times of which are generally before midnight. The surrounding streets consist mostly of residential dwellings.
6. Policy CS41 of the Bournemouth Local Plan Core Strategy (LP)² seeks to ensure that new development, including changes of use, enhance the character, local distinctiveness and amenities of neighbouring residential dwellings. Development which, by virtue of its design, would be detrimental to the amenity or character of an area will not be permitted.
7. The Council has asserted that extending the opening hours until 0200 would be detrimental to the area's night-time character. However, in view of its location as part of the Core Shopping Area within a District Centre, later opening is to be expected. Furthermore, although the majority of nearby premises have closing times before midnight, allowing the appeal site to remain open for a longer period would not, in itself, materially alter the character of the area to any significant degree. Some customers would remain longer but their numbers would not be so great that they would have any significant impact. Likewise, there is no suggestion that there is any overconcentration of premises open until this hour, the cumulative impact of which, when taken with that of the appeal premises, would result in the proposal materially altering the character of Wimbourne Road. Accordingly, I find that the proposal would not materially alter the character of Wimbourne Road.

¹ March (2015); Web ISBN 9781474116800

² Bournemouth Local Plan: Core Strategy (2012)

8. Similarly, although I note the Council's concerns regarding the impact of the proposed opening hours on nearby residential premises, the appellant has provided a detailed acoustic report which demonstrates that with the mitigation proposed, noise levels resulting from the operation of the equipment would be acceptable. This is confirmed by the Council's Environmental Health officer. Nevertheless, the Council has objected on the basis that the later opening times would result in an increase in general noise and disturbance from the comings and goings of customers. These matters will have been considered in detail as part of the licensing process where it was concluded that a closing time of 0200 would be appropriate. Furthermore, I have found above that the numbers of customers involved would not be significant. While I acknowledge that the decision reached by the licensing committee is not binding in so far as it relates to an application for planning permission, I have seen no robust evidence as part of this appeal which would lead me to conclude differently. As such, I am satisfied that there would be no material impact on the living conditions of neighbouring occupiers by way of increased noise or disturbance.
9. Consequently, I have found that reconciling the operating hours to accord with those already permitted by the Council by virtue of its licensing powers would not materially impact on the character of the area or the living conditions of neighbouring occupiers. As such, I find no conflict with LP Policy CS41. I also find no conflict with LP Policy CS38 which seeks to minimise potential noise pollution resulting from new development.

Conclusion

10. For the reasons set out above, I conclude that the appeal should be allowed. I will therefore vary the planning permission by deleting the disputed condition and substituting it for an amended condition No 2 to take account of the extended opening hours. As a result, a further condition is necessary to ensure that the mitigation measures set out in the appellant's Noise Impact Assessment are implemented.

Rory Cridland

INSPECTOR