
Appeal Decision

Site visit made on 23 November 2016

by John Morrison BA (Hons) MSc MRTPI

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

Decision date: 16 December 2016

Appeal Ref: APP/V2825/W/16/3157902

99 Weedon Road, Northampton, Northamptonshire NN5 5BG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Shah Sharabeel Yasir against the decision of Northampton Borough Council.
 - The application Ref N/2016/0251, dated 7 March 2016, was refused by notice dated 19 May 2016.
 - The application sought planning permission for *the removal of condition 5 of planning permission N/2009/0504 for the change of use to restaurant (class A3) and takeaway (class A5) on ground floor and residential (class c3) on first floor including single storey ground floor side extension, new shop front and extraction flue to rear* without complying with a condition attached to planning permission Ref N/2010/0532, dated 13 August 2010.
 - The condition in dispute is No 5 which states that: *The premises shall not remain open to customers between the hours of 2300 and 1000 and there shall not be any delivery from the premises between the hours of 2200 and 1000.*
 - The reason given for the condition is: *In the interests of the protection of residential amenities in accordance with the guidelines contained within PPG24 (3).*
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The appellant has submitted a noise assessment with their appeal documentation. It was submitted at an early stage in proceedings and the Council have made comment on it. It is for these reasons that I am content no parties would be prejudiced by my acceptance of it as part of the appellant's evidence.

Main Issue

3. The main issue is whether or not the condition is reasonable and necessary in order to mitigate the effect of the proposed development on the living conditions of the occupiers of nearby residential uses with particular regard to late night noise disturbance.
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Reasons

4. The appeal site is in use as a hot food takeaway. It is the ground floor of one of a parade of terraced units with commercial uses to the ground floor and flats above. The wider area is predominantly residential, albeit the immediately surrounding uses are aimed at the night time economy. These include, but are not limited to, a chip shop, an Indian and Chinese takeaway, a kebab shop and late night mini market. The evidence before me suggests that the latest these units open is midnight and in the case of one of the shops 01:00 at weekends. A 23:00 closing time during the week appears to be most common.
5. The appellant seeks to vary the condition to allow opening to the public until 01:00 on weekdays and 02:00 at weekends (Friday and Saturday).
6. It is clear that there are no premises within the parade that open to the public as late as the hours sought by the appellant. It appears to me that there is an acceptance in the times that the various hot food takeaways close that the area is predominantly residential. It is not in doubt therefore, that opening until 2am on a Friday and Saturday would be significantly longer than the existing closing time for both the appeal site and the other takeaways in the parade.
7. I accept that the use of the appeal site and the surrounding parade is aimed at the night time economy and the main road that the parade fronts onto would appear to remain fairly busy, even through the night. Nevertheless, any noise disturbance that would be associated with one of the units in the parade opening significantly later than the others would be in addition to and not instead of existing noise disturbance. An effect which would in my view be exacerbated with it being very localised to one specific area of the parade.
8. To my mind, such noise disturbance would involve, but would not be limited to, opening doors, raised voices and conversation from loitering outside of the premises.
9. I note the findings of the appellant's noise assessment which monitored ambient noise levels against the operation of the appeal site within its existing parameters. This assessment also took account of noise associated with loitering outside the premises. I accept that the operation of the extraction flue could be addressed through appropriate conditions and that the measuring of outside noise was indeed conducted up until 02:00. The assessment, with specific regard to loitering, concluded that most visitors left as soon as they were served. A small number ate within the premises and no loitering was witnessed.
10. Whilst this may be the case, the same assessment recognises the inherent difficulty in making a detailed prediction of what is effectively human behaviour and then seeking to accurately monitor its effect. The assessment correctly states that this would be dependent on a number of very different factors.
11. Considering this uncertainty in context, there are no other premises in the parade which open as late as those times which are proposed. As such, even an assessment which monitors outside noise until the closing time proposed would not be able to take account of that which may be associated with something that is yet to be in operation. In addition, and quite rightly, no

methodological assessment can take account of an individual's choice to stay in a particular place or conduct a conversation.

12. The area is no doubt relatively 'lively' during the evening and into the night time. In addition, I acknowledge that the premises license authorises the carrying out of licensed activities for longer hours than the opening hours being sought. However, and for the reasons above, I am not persuaded that allowing a takeaway use to be open to the public as late as is proposed here would be appropriate. Particularly during a time when the majority of local residents would be asleep and thus expect a lesser degree of disturbance.
13. My attention is drawn to appeal reference APP/N4720/A/14/2215784 which was allowed and granted planning permission for the respective development not in accordance with a condition which restricted its opening hours to the public. I note the Inspector's findings in respect of the context of the proposal before them.
14. In this case however there are differences to the development proposed as part of this appeal. Critically it did not seek to operate until 02:00 but 01:00 at the latest on a weekend. This was not deemed to be significantly later than the existing opening hours in its own context.
15. The appeal before me seeks to open until 02:00 which, given its own context and the existing operating hours of the premises itself and those around it, would be significant a change and consequently would have the effect I have explained above. Furthermore, each development proposal is considered on its own merits and with regard to matters that are specific to it. The Inspector's allowing of the abovementioned appeal is therefore not sufficient for me to justify allowing this one, for the reasons given.
16. The proposed development would therefore cause harm to the living conditions of local residents which, as a result, would lead to conflict with S10 of the West Northamptonshire Joint Core Strategy 2014. This Policy seeks to ensure that, amongst other things and along with one of the core principles of the Framework¹, noise pollution should be minimised and a good standard of amenity secured for all existing and future occupants of land and buildings.

Other Matters

17. I note the appellant's point that the later opening of the premises would help sustain the business and employment and that in not allowing such, the future of both would be under threat. However, I have no further evidence before me pertaining to the current viability of the business as a result of its operation within the currently restricted hours and how it may or may not be affected should the operating hours increase. Moreover, the appellant states in their evidence that the existing business is "a viable and sustainable entity". I therefore afford this particular argument only limited weight.
18. I also note that objections submitted to the Council as part of the public consultation period of the planning application were limited. Whilst this may be the case, this would not absolve the decision maker from making a full assessment of the effects of a given development. Specifically in this case its potential effect on the living conditions of existing and future occupiers.

¹ The National Planning Policy Framework 2012

Conclusion

19. Condition 5 of the above mentioned planning permission seeks to restrict the operating hours of the premises in the interests of the living conditions of local residents. For the reasons given above I conclude that the appeal should be dismissed and the condition retained in its present form.

John Morrison

INSPECTOR