
Appeal Decision

Site visit made on 3 January 2017

by David Troy BSc (Hons) MA MRTPI

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

Decision date: 14 February 2017

Appeal Ref: APP/T2405/W/16/3161051
16 Cambridge Road, Whetstone LE8 6LG

- 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 Ilkhan against the decision of Blaby District Council.
 - The application Ref 16/1097/VAR, dated 1 August 2016, was refused by notice dated 22 September 2016.
 - The application sought planning permission for change of use to hot food takeaway (A1 to A5 classification) and erection of sign without complying with conditions attached to planning permission Ref 15/1555/FUL, dated 4 February 2016.
 - The conditions in dispute are Nos 2 and 3 which state that:
 - [2] *The development hereby permitted shall be built in strict accordance with the following approved plans: 001a (floor plans, elevations, site plan, car parking plan received 18 July 2016).*
 - [3] *Sales of hot food from the premises shall only take place between the hours of 10.00-18.00 Monday to Saturdays inclusive and no time on Sundays and Public Holidays.*
 - The reasons given for the conditions are:
 - [2] *For the avoidance of doubt.*
 - [3] *To safeguard the living conditions of nearby residents.*
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Decision

1. The appeal is allowed and planning permission is granted for change of use to hot food takeaway (A1 to A5 classification) and erection of sign at 16 Cambridge Road, Whetstone LE8 6LG without complying with condition No. 3 previously imposed on planning permission Ref 15/1555/FUL, dated 4 February 2016, but subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the approved plans: Plans and Elevations DWG Ref 001a received 18 July 2016.
 - 2) Sales of hot food from the premises shall only take place between the hours of 16:00 to 22:00 Monday to Saturday and at no time on Sundays and Public Holidays.
 - 3) No deliveries shall be taken or dispatched from the site outside the hours of 16:00 to 22:00 Monday to Saturday and at no time on Sundays and Public Holidays.
 - 4) The development hereby permitted shall be provided with the 4 car parking spaces as detailed on drawing no 001a. The parking spaces so
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provided shall not be obstructed and shall remain available for use at all times thereafter unless agreed otherwise in writing by the District Planning Authority.

- 5) The details for the storage of waste and waste products for the development hereby permitted shall be submitted and agreed in writing by the District Planning Authority. The storage area shall thereafter remain in perpetuity.
- 6) The development hereby permitted shall be provided with a waste paper receptacle within the site and shall thereafter remain in perpetuity.

Procedural matter

2. The appellant's appeal form has confirmed that the appeal is made in respect to condition No. 3 and that there appears to be no dispute about condition No. 2 as set out in the original application form. I have determined the appeal on this basis accordingly and my decision focuses on condition No. 3.

Background and Main Issue

3. Planning permission was granted for the change of use to hot food takeaway (A1 to A5 classification) and erection of sign of the appeal property in February 2015¹. The appellant seeks to vary condition No. 3 of the previous permission relating to the opening hours of the premises in order to allow later opening times Monday to Saturday until 22:00. The condition currently only allows the hot food takeaway to operate between 10.00 and 18.00 hours on Monday to Saturday and at no time on Sundays and Public Holidays.
4. Paragraph 206 of the National Planning Policy Framework states that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. With this in mind, the main issue is whether condition No. 3 is reasonable and necessary to safeguard the living conditions of the occupiers of the neighbouring property at No. 18 Cambridge Road with particular regard to the noise disturbance and activity associated with the hot food takeaway.

Reasons

5. The appeal property consists of a single storey building attached to a commercial premises consisting of a petrol filling station/shop at the front and a garage workshop at the rear. The building is already operating as a hot food takeaway and is located in a primarily commercial area with industrial/commercial uses to the north, east and west and some residential properties to the north-east and south. The site is immediately adjacent to a two storey dwelling at No. 18 Cambridge Road (No. 18). The main habitable windows (lounge and bedrooms) are located on the front elevation of the property, with no windows on the flank wall of No. 18 which faces the appeal property.
6. The Council's reason for refusal objects to the proposed opening hours on the grounds of the impact on the amenities of No. 18 as result of noise and disturbance from customers, parking and traffic visiting and leaving the site (including from any deliveries) at a time when residents might reasonably expect a high degree of quiet. However, I have viewed the appeal site and I

¹ 15/1555/FUL

am not persuaded by the Council's arguments. Whilst there would be some impact arising from the later opening hours, given the current opening hours of the petrol filling station/shop until 22.00 and the location within a generally commercial area and on a busy road, it is unlikely to be particularly quiet during the day and later evening. The occupiers of No. 18 would therefore be used to a certain degree of noise and activity during these times.

7. I have noted the Council's concerns regarding visitors and delivery vehicles parking in front of the unit rather than in the designated car parking spaces for the hot food takeaway in the north-east corner of the site. However, the Council have granted planning permission with this car parking arrangement and customers to the petrol filling station/shop already park at the front of the site. The appellant has indicated that the delivery vehicles would not be parked outside the premises and anticipates that not many customers would visit the takeaway due to the small size of the premises and they would aim to concentrate mainly on deliveries. No evidence has been provided by the Council to contradict the appellant's claims.
8. I have considered the concerns raised in the representations on behalf of the occupiers of No. 18 that the longer opening hours being sought by the appellant would increase the likelihood of noise, disturbance, anti-social behaviour outside the shop, rubbish and the risk of vermin.
9. However, principle of the use has already been approved and no specific evidence has been provided that the existing use causes any particular issues. No substantive evidence has been submitted that the proposal would result in any significant increase in the likelihood of people congregating outside the premises causing unacceptable external noise, disturbance and anti-social behaviour. In any case, enforcement of these matters would still be possible through other legislation. I also note from the representations that the existing elderly occupier of No. 18 favours early bed times, but the proposed opening hours tie in with the current petrol filling station/shop opening times and are not unreasonably late by hot takeaway standards.
10. In view of the above, I do not consider that the proposed opening hours would significantly change the current situation on the site. Therefore whilst this proposal would cause some increase in noise disturbance and activity, I do not consider this harm would be sufficient to justify withholding permission on these grounds in this case.
11. I have noted the other developments drawn to my attention by the appellant in the area. However, based on the limited evidence provided they have different locational characteristics to the appeal scheme. I consider they are not directly comparable to the case before me and, as such, I afford them limited weight as precedents in this case.
12. Consequently, I conclude that condition No. 3 is not reasonable and necessary and that the proposed opening hours would not result in significant harm to the living conditions of the occupiers of No. 18 with particular regard to the noise disturbance and activity associated with the hot food takeaway. It would therefore accord with the overall amenity aims of Saved Policy R2 of the Blaby District Local Plan 1999 that seeks to ensure that non-residential development would not adversely affect the amenities of neighbouring residential properties.

Other matters

13. I have noted the Parish Council's concerns about the appellant canvassing the neighbours and the statements of commitment between the appellant and the occupiers of the neighbouring properties. Whilst I appreciate the concerns raised regarding the canvassing of the neighbours, I have given limited weight to these matters as material considerations in making this decision.

Conclusion

14. For the reasons given above, and having regard to all other matters raised, I conclude that condition No. 3 should be varied and the appeal should be allowed.

Conditions

15. In allowing the appeal and granting the planning permission, I have considered both those conditions imposed on the original planning permission and those suggested by the Council, but with some variations to the wording to reflect that the change of use has already taken place. A condition relating to the commencement of development is not considered appropriate and the wording "until a waste paper receptacle has been provided" has been removed from condition 6 as a waste paper receptacle has already been provided within the site to safeguard the amenities of neighbouring occupiers. I agree that the conditions relating to the proposed opening hours and deliveries are appropriate, as this would safeguard the amenities of neighbouring occupiers. The Planning Practice Guidance advises that the original conditions should be re-imposed if not discharged and this is what the Council have sought.

David Troy

INSPECTOR