

Appeal Decision

Site visit made on 24 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 March 2017

Appeal Ref: APP/U5930/W/16/3162419 196 High Street, Walthamstow E17 7JH

- 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 a condition subject to which a previous planning permission was granted.
 - The appeal is made by Mr Rob Capener of Talarius Ltd against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref 161927, dated 16 June 2016, was refused by notice dated 31 August 2016.
 - The application sought planning permission for a change of use of shop to amusement centre without complying with a condition attached to a planning permission, Ref 80/1092, granted on appeal, Ref T/APP/5032/A/81/02123/09, dated 24 February 1982.
 - The condition in dispute is No 7 which states that: *The use hereby permitted shall take place only between 10.00 hrs and 22.00 hrs on weekdays and not at any time on Sundays or public holidays.*
 - The reason given for the condition is: *To protect the amenities of nearby residents.*
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Decision

1. The appeal is allowed and planning permission is granted for change of use of shop to amusement centre at 196 High Street, Walthamstow E17 7JH without complying with condition No. 7 previously imposed on planning permission, Ref 80/1092, granted on appeal, Ref T/APP/5032/A/81/02123/09, dated 24 February 1982, but subject to the following conditions:
 - 1) The premises shall be used for the playing of prize bingo and amusements with prize machines only and for no other purposes.
 - 2) The use hereby permitted shall relate only to the ground floor of the premises.
 - 3) No games of a sessional character (e.g. cash bingo) shall be played on the premises.
 - 4) The shop windows of the premises shall at all times be used for the purpose of display to the satisfaction of the local planning authority.
 - 5) Goods on display in the shop windows of the premises shall be available for sale to the public.
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Procedural matters

2. The appellant's appeal form has confirmed that the appeal is made in the name of Mr R Carpener of Talarius Ltd rather than RAL Limited as stated on the original application form. This change has been confirmed as acceptable by the applicant and I have determined the appeal on this basis accordingly.
3. I have used the planning application Ref 80/1092 referred to in the original planning application form and the appellant's appeal form. I have used this as the relevant reference number for this appeal although I note that the Council have also referred to planning application reference 800478 in this case.

Background and Main Issue

4. Planning permission was allowed on appeal for the change of use of the ground floor to amusement centre at 196 High Street in 1982 following the Council's decision to refuse permission for the development on 27 January 1981¹. The appellant seeks to remove condition No. 7 of the previous appeal decision relating to the opening hours of the premises in order to allow it to operate 24 hours a day. The condition currently only allows the amusement centre to operate between 10.00 and 22.00 hours on weekdays and not at any time on Sundays or public holidays.
5. Paragraph 206 of the National Planning Policy Framework (the 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. 7 is reasonable and necessary to safeguard the living conditions of the occupiers of the neighbouring properties.

Reasons

6. The appeal property comprises a three storey mid terraced commercial building with an amusement centre at ground floor level and residential accommodation above. The appeal site is located in a predominantly commercial area within a Primary Shopping Frontage and the Walthamstow Town Centre, with a pedestrianized area in front of the premises. At ground floor level the majority of the neighbouring properties are occupied by shops, restaurants/hot food takeaways and professional services with residential units above.
7. Policies CS13 and CS14 of the Waltham Forest Local Plan Core Strategy 2012 (CS) and Policies DM27, DM32 and DM33 of the London Borough of Waltham Forest Local Plan Development Management Policies 2013 (DMP) seek to prevent development having a harmful effect on residents, including entertainment and evening economy uses. These policies are consistent with the Framework core principle of a good standard of amenity for all existing and future occupants of land and buildings.
8. The property benefits from a premises licence which does not impose any restrictions on the opening hours and, accordingly, under this licence the use could operate 24 hours per day and is reported to have operated with the opening hours of 10.00 to midnight 7 days a week for past two years. The appellant states that prior to that the appeal site was open from 10:00 to 23:00 on a daily basis for 9 years and no complaints were received by the

¹ 80/1092

- appellant in relation to the extended opening hours. A premises licence is a significant material consideration and the Planning Policy Guidance advises that conditions should not be imposed where other regulatory regimes apply.
9. There are different considerations in determining a premises licence application and a planning application and it is legitimate for the effect of, for example, noise and disturbance on local residents to be taken into account in determining this appeal. However, the appellant notes that the property is soundproofed and possesses self-closing doors which contains noise and disturbance within the premises. The premises also benefit from remote control magnetic locks which mean the staff controls entry into the premises.
 10. Residents living within a commercial area might reasonably expect to experience some noise and disturbance because of evening and night-time activities. My daytime site visit indicated that the area was busy, experiencing high levels of noise and it was evident some disturbance would continue into the night-time. This noise and disturbance would be associated with traffic and pedestrian movements along the nearby roads, some of the restaurants/hot food take-aways opening beyond midnight and, as noted by the appellant, a small number of amusement centres operating 24 hours per day in the area.
 11. The appellant claims that, at most, 8 customers would occupy the property at any one time after midnight and this figure is based upon the appellant's experience of other premises owned by the appellant where properties are opened for 24 hours per day. No evidence has been provided by the Council to contradict the appellant's claims concerning the likely number of customers who would use the property at night time. There is also no specific evidence that customers would either enter and leave the property at the same time nor congregate outside the premises causing unacceptable external noise and disturbance. Due to the pedestrianized area in front of the premises and parking restrictions in the vicinity, it is likely that any customers driving would use public car parks in the area. It is therefore unlikely that there would be significant noise from vehicular activity.
 12. I am mindful that no comments were submitted by the Council's Environmental Health Department concerning any adverse impact which might be caused to the living conditions of the occupiers of neighbouring properties by the proposed change to the hours of operation. Therefore whilst this proposal may cause some limited increase in noise and disturbance, I do not consider this harm would be sufficient to justify withholding permission on these grounds in this case.
 13. I note the comments from the other Council consultees regarding the on-going issues of anti-social behaviour and crime in the High Street and the objections raised that the longer opening hours being sought by the appellant would increase the likelihood of criminality and anti-social behaviour in the area. However, no specific evidence of existing anti-social behaviour and crime within the area has been provided and I note that the Police have not made any specific comments about the appeal scheme.
 14. As was evident from my site visit, the property does not sell alcohol and the premises benefit from a CCTV system. The appellant states that staff levels are doubled after 7pm each evening. The incident reports submitted by the appellant show that there has been only one incident at the premises during opening hours to which the police have been called in the past six years.

Accordingly, in the absence of evidence to the contrary and based upon the cameras and staffing provision acting as a deterrent to criminality and anti-social behaviour, there would be no conflict with Policy CS16 of the CS and Policies DM27 and DM33 of the DMP that seek to improve community safety and minimise the opportunities for crime and anti-social behaviour.

15. Consequently, I conclude that condition No. 7 is not necessary to safeguard the living conditions of the occupiers of the neighbouring properties and is therefore unreasonable. The removal of this condition would be consistent with Policies CS13, CS14 and CS16 of the CS and Policies DM27, DM32 and DM33 of the DMP that seek to prevent development having a harmful effect on residents and to promote community safety, as set out above. Policy DM25 of the DMP on managing town centre uses does not add anything further to these specific policies.

Conditions

16. In allowing the appeal and granting the planning permission I have considered those conditions imposed on the original planning permission but with some variations to the wording in the interests of precision or clarity. A condition relating to the commencement of development and the pre-commencement condition relating to the submission of the details of the self-closing front entrance doors and sound insulation scheme for the walls and ceilings are not considered appropriate as the change of use has already taken place. I agree that the conditions relating to the operation of the premises, restricting the use to the ground floor of the premises and shop windows displays are appropriate to protect Primary Shopping Frontage and the retail use in this location.

Conclusion

17. For the reasons given above, and having regard to all other matters raised, I conclude the appeal should be allowed and the disputed condition should be removed.

David Troy

INSPECTOR