
Appeal Decision

Site visit made on 27 February 2017

by C L Humphrey BA (Hons) DipTP MRTPI

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

Decision date: 16th March 2017

Appeal Ref: APP/N1350/W/16/3166100
15 Belvedere Road, Darlington DL1 5EP

- 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 J Singh against the decision of Darlington Borough Council.
 - The application Ref 16/00387/FUL, dated 24 March 2016, was refused by notice dated 7 July 2016.
 - The application sought planning permission for the change of use from shop (A1) to hot food takeaway (A5) and external alterations including new shopfront to front and side, insertion of ground floor side window and extractor flue pipe to side elevation without complying with a condition attached to planning permission Ref 14/00563/FUL (Appeal Ref APP/N1350/W/14/2228133) dated 23 January 2015.
 - The condition in dispute is No 7 which states that: The use shall hereby permitted shall not be open to customers outside the following times: -
11:30 - 21:00 Mondays to Saturdays and 12:00 - 19:00 on Sundays and Bank Holidays.
 - The reason given for the condition is: In the interests of safeguarding the living conditions of neighbouring occupiers.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. The application which is the subject of this appeal relates to the hours of opening imposed by Condition 7 of planning permission Ref 14/00563/FUL (Appeal Ref APP/N1350/W/14/2228133) dated 23 January 2015 which states that the permitted hot food takeaway shall not be open to customers outside the hours of 11:30 - 21:00 Mondays to Saturdays and 12:00 - 19:00 on Sundays and Bank Holidays. The appellant now wishes to extend the hours of opening to 11:30 - 22:30 Mondays to Saturdays, and 11:30 - 22:00 on Sundays and Bank Holidays.
 3. A further appeal, Ref APP/N1350/W/16/3163121, in respect of an extractor duct which has been installed at the appeal premises was dismissed on 24 February 2017. In that case, the Inspector concluded that the existing ducted extraction/filter system causes unacceptable harm to the living conditions of neighbouring residents by reason of noise and disturbance.
 4. The main issue in respect of this appeal is the effect that the proposed extended hours of opening would have on the living conditions of neighbouring residents with particular regard to noise, disturbance and odours.
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Reasons

5. The appeal premises occupy the ground floor of 15 Belvedere Road, a 2 storey end of terrace property located at the junction with Leafield Road. The property adjoins the dwelling at 16 Belvedere Road and there is a flat at first floor above the appeal premises. Although vacant at present, I have no reason to believe that this flat could not be brought back into use.
6. At the time of my site visit, which took place during the middle of the day on a weekday, the predominantly residential area surrounding the appeal site was quiet with little in the way of pedestrian or vehicular activity. Whilst there are some evening uses in the wider area, there are none in the immediately vicinity of the appeal site. Accordingly, I would expect pedestrian and vehicular activity to reduce and the area to be even quieter throughout evening hours.
7. The arrival and departure of customers of the hot food takeaway would be likely to result in noise from car engines, in-car audio systems, car doors slamming and people talking and possibly congregating in groups on the footway outside, and I note that third parties raise objections in this regard. The former Class A1 retail use of the appeal premises would be unlikely to result in the same type or intensity of customer activity. Noise would also be likely to arise from staff legitimately engaged in activities such as clearing away and locking up the premises at closing time.
8. In addition, as set out above, noise from the existing ducted extraction/filter system which serves the hot food takeaway has been found to cause harm to the living conditions of neighbouring residents. Extending the hours of opening would be likely to prolong the hours that the kitchen and therefore this system operate, thereby exacerbating the existing harm. I note that the appellant intends to submit a new application to the Council in respect of the ducted extraction/filter system. However, no revised details are before me to indicate in what way this would overcome the identified harm. In these circumstances, I am not satisfied that a condition could reasonably be imposed to secure an effective form of extraction that would not harm neighbours' living conditions.
9. The noise from customers, staff and equipment identified above would arise in very close proximity to neighbouring residential properties. This would be more intrusive during the late evening when background noise levels would be lower and residents would be more likely to be resting or sleeping. Due to the predominantly residential nature of the surrounding area, residents would have a reasonable expectation that their living environment would be quieter in the late evening.
10. Although other hot food takeaways, convenience stores and public houses in the area may operate beyond the hours permitted at the appeal premises, I have not been provided with details of the planning history of these other premises or of their relationship with neighbouring residential properties. In any event, I must determine the appeal on its own merits and have done so. It is not clear from the evidence before me what direct effect the proposed extended opening hours would have upon the viability of the enterprise. I therefore give these matters little weight.
11. I conclude that a condition limiting the hours that the appeal premises can open is necessary in the interests of protecting the living conditions of neighbouring residents with particular regard to noise, disturbance and odours.

I further conclude that the hours imposed on the original planning permission are reasonable and accord with the amenity protection aims of Policy CS16 of the Darlington Local Development Framework Core Strategy and paragraphs 17 and 123 of the National Planning Policy Framework.

Conclusion

12. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

CL Humphrey

INSPECTOR