
Appeal Decision

Site visit made on 23 March 2017

by D J Board BSc (Hons) MA MRTPI

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

Decision date: 28 April 2017

Appeal Ref: APP/D3830/W/16/3166348
39 Station Road, Burgess Hill, RH15 9DE

- 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 Hasan Cinar against the decision of Mid Sussex District Council.
 - The application Ref DM/16/1917, dated 3 May 2016, was refused by notice dated 30 June 2016.
 - The application sought planning permission for "Extend hours of opening to 01.00am Saturday and Friday and 0.00 Thursday to Sunday" without complying with a condition attached to planning permission Ref 08/02343/FUL, dated 4 December 2008.
 - The condition in dispute is No 1 which states that: *'The premises shall not be open for trade or business except between the hours of 09.00 to 00.00 – Sunday to Thursday and 09.00 to 01.30 Friday to Saturday, for a period of 1 year from the date of this planning permission. After 4 December 2009 the opening hours of the premises shall revert back to those permitted under planning permission BH/270/90 (09.00 to 23.00 each day of the week).'*
 - The reason given for the condition is: *'To protect the amenities of neighbouring properties and to comply with Policy B3 of the Mid Sussex Local Plan, and to enable the Local Planning Authority to assess the impact of the extended opening hours'.*
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. Planning permission was granted on appeal in June 1991 for an A3 use at the premises¹. A condition was imposed on the planning permission restricting the opening hours to 23.00. In 2008 a temporary planning permission was granted for one year to extend hours of opening to 01.30 Saturday and Friday and 00.00 Thursday to Sunday². This was controlled by a condition attached to that planning permission.
3. There has been an appeal at the site³ against that condition which was dismissed. This sought a variation to condition 1 to extend the hours of opening to 01.30am Saturday and Friday and 00.00 Thursday to Sunday. The current scheme reduces the hours sought on a Friday and Saturday to 01.00.

¹ LPA Ref BH/270/90

² LPA Ref 08/02343/FUL

³ APP/D3830/W/15/3135975

4. Accordingly the main issue is the effect of the later opening hours on the living conditions of existing occupiers nearby, with particular regard to crime and disorder.

Reasons

5. The premises is a ground floor commercial unit. It is within the secondary shopping frontage of Burgess Hill centre. It is located amongst other commercial uses. There are some residential uses at first floor and within the wider area at Wolstonbury Court.
6. The initial grant of planning permission restricted the operation of the premises to 23.00 to protect the living conditions of existing residents. The 2008 permission is described as a 'trial run'. Nevertheless, the appellant states that the amended hours are already in operation and that there is an absence of complaints. Since then it is suggested that the opening hours have continued and that the property has a licence to reflect these hours.
7. I appreciate that this is a location which is not solely residential. However, like the previous inspector, I consider that the presence of the residential units requires careful consideration when assessing the potential effects of the later opening hours. In particular the only change since the previous appeal is 30 minutes on a Friday and Saturday. The Council's environmental protection officers and Sussex Police have objected to the proposal. There are also further representations from local residents citing issues of noise and disturbance from loud voices, staff and customers coming and going and littering.
8. Therefore, I agree with the assessment of my colleague that *'Such a use is likely to give rise to a number of customers using the premises and possibly congregating outside, during its opening hours, which would be until the late hours if approved. Customers late at night may have been to other town centre establishments and may not be so respectful of the presence of residents. I have taken account of the fact that the Council confirms that no formal complaints have been made to their Environmental Protection Officers or to Sussex Police whilst the premises has been operating'*.
9. In addition I understand that the premises have been used into the late hours and that this scheme is a reduction on two days by 30 minutes to 01.00. Nevertheless, again I agree with the assessment of my colleague that *'...the absence of any formal complaints does not mean that its use has not had any unreasonable effects in relation to the behaviour of its customers.... I must also take into account the likelihood of the future activity of the premises and its effects on neighbours. In my judgement an establishment such as this is likely to attract numbers of customer to it until it closes and some of those customers may be likely to generate an amount of noise and disturbance which would be incompatible with neighbouring residential uses...'*. Therefore, as in the previous case, whilst I understand that the appellant wishes to make the most of night time trade, the likelihood of such activity until 01.00, albeit just on two nights, would be likely to have a significant adverse effect on the living conditions of existing occupiers nearby. Further I also agree with my colleague that overall *'...the congregation of customers, late at night, possibly after a night out could give rise to anti-social behaviour which, at such a late hour, would be... unacceptable'*.

10. I therefore conclude that the proposal would have an unacceptable impact on the living conditions of existing occupiers nearby, with particular regard to crime and disorder. In this regard it would be in conflict with policies B3 and B9 of the Mid Sussex Local Plan which amongst other things seek to resist new development that would harm the amenities of nearby residents due to noise and disturbance.

Other matters

11. The appellant states that the proposal is for a form of sustainable development, which should be allowed. The National Planning Policy Framework sets out the three dimensions of sustainable development. I accept that the longer trading hours would have some beneficial economic effect on the business and a consequent impact on the local economy. In relation to the social role, the proposal has/would have a significant and negative effect due to the likely levels of disturbance. There would be no significant conflict with the environmental role which seeks to protect the natural and built environment. Therefore, considering the issue as a whole there would be significant unacceptable social impacts that would outweigh any economic benefits and absence of environmental impacts. As such the proposal is not a sustainable development.

Conclusion

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

D J Board

INSPECTOR