
Appeal Decision

Site visit made on 16 May 2017

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

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

Decision date: 06 June 2017

Appeal Ref: APP/U4610/W/16/3157403

Pronto Pizza & Grill, 98 Moseley Avenue, Coventry, West Midlands CV6 1HQ

- 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 Osama Rahal against the decision of Coventry City Council.
 - The application Ref S73/2016/1612, dated 6 June 2016, was refused by notice dated 19 August 2016.
 - The application sought planning permission for change of use from A1 to A5 and installation of fume extraction duct to rear without complying with a condition attached to planning permission Ref FUL/2014/3794, dated 19 January 2015.
 - The condition in dispute is No 2 which states that: *No customers shall be permitted to be on the premises and no hot food deliveries shall be carried out from the premises other than between the hours of 09:00 and 00:00 hours (midnight) on any day.*
 - The reason given for the condition is: *The premises are closely adjoined by residential properties and the City Council considers it necessary to strictly control the nature and intensity of use of the premises in the interests of the amenities of the area in accordance with Policies OS6 & EM5 of the Coventry Development Plan 2001.*
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Section S73 applications are commonly said to be seeking to vary or remove conditions to which an existing permission is subject. However, that is not strictly the case. If such applications (or appeals against their refusal) succeed, a completely new permission is created that stands alongside the original and the applicant or appellant is able to choose which is implemented. As such, it is necessary for the description of development to equate to that applied for at the time of the original consent.

Background and Main Issue

3. A hot food takeaway is trading at the appeal site. The appellant wishes to extend the opening hours from those originally imposed to between 09:00 and 02:00 hours of the following day, every day of the week. The main issue is the effect that these proposed opening times would have on the living conditions of nearby residents with regard to noise and disturbance.
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Reasons

4. The appeal relates to a ground floor commercial premises which is located within the Barker Butts local centre. Neighbouring properties also have commercial uses at ground floor and there is a nightclub on the opposite side of Moseley Avenue. However, the surrounding area is predominantly residential in character and there are residential properties in close proximity to the local centre and the appeal site. Moreover, the Council have stated that only 2 commercial uses in the local centre can open past midnight. One is Wokstar on Barker Butts Lane which has a licence until 00:30 hours and the other is the nightclub which opens until 02:00 hours on a Friday and Saturday.
5. Hot food takeaways can generate significant levels of activity which can affect residential living conditions. I consider that residential occupiers near the site will be used to higher levels of activity than if the area were purely residential but it is still likely that general activity in the area will significantly reduce as the evening progresses. Furthermore, they are entitled to a reasonable degree of peace and quiet in their homes, particularly in the late evening period between midnight and 02:00 hours when they can expect to be sleeping.
6. 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 late at night if approved. Customers late at night may have been to other local centre establishments and may not be so respectful of the presence of residents. No doubt on occasions it would be likely to lead to customers congregating on the footway outside the premises, especially during warm weather and there would be noise from the high-spirited behaviour and congregation of customers. These activities would be clearly audible at these later times.
7. Whilst, I recognise that the appellant has made a financial investment into the business and wishes to capitalise on this late night trade I consider that the presence or likelihood of such activity until 02:00 hours would be likely to have a significant and unacceptable effect on the living conditions of nearby residents. I accept that the longer trading hours would have some beneficial effect on the business and a consequent small local economic benefit. However, I consider that the significant unacceptable social effects of the proposal outweigh any economic benefits and so the proposal does not represent a sustainable form of development.

Conclusion

8. The opening times permitted by Condition No 2 of planning permission Ref FUL/2014/3794, dated 19 January 2015 are necessary and reasonable to protect the living conditions of nearby residents with regard to noise and disturbance. Accordingly, the proposed extension of the opening hours would conflict with Policy EM5 of the Coventry Development Plan (2001) which states that proposals which could result in pollution through noise will only be permitted if the amenity of users of neighbouring land is assured.
9. For the above reasons, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

D. Boffin

INSPECTOR