
Appeal Decision

Site visit made on 10 May 2017

by A A Phillips BA (Hons) DipTP MTP MRTPI

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

Decision date: 17 June 2017

Appeal Ref: APP/Y5420/W/16/3166199
373A Archway Road, London N6 4EJ

- 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 Mehmet Ganidagli against the decision of the Council of the London Borough of Haringey.
 - The application Ref HGY/2016/3052, dated 2 September 2016, was refused by notice dated 28 October 2016.
 - The application sought planning permission for a change of use from A1 (office) to A3 (restaurant and take away) including the erection of a ground floor rear extension without complying with a condition attached to planning permission Ref HGY/1995/0283, dated 14 November 1995.
 - The condition in dispute is No 4 which states that: *'The use shall not be operated before 08:00 to 23:00 hours Monday to Saturday and not at all on Sundays or Bank Holidays.'*
-

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposal on the living conditions of the occupants of nearby residential properties with particular reference to noise, disturbance, activity and anti-social behaviour.

Reasons

3. The appeal site is a hot food takeaway situated within a commercial parade on Archway Road. It is single storey although most properties in the immediate locality are commercial at ground floor with residential above. Planning permission was granted for an A3 use in November 1995 when a condition restricting the opening hours was imposed. I understand from the appellant that the premises is currently open between 1000 and 0100 Sunday to Thursday and between 1000 and 0200 on Fridays and Saturdays.
 4. The current proposal is to extend the opening hours to 1000 to 0200 Sunday to Thursday and between 1000 and 0500 on Fridays and Saturdays.
 5. This area of Archway Road has a range of mainly small retail, food and drink related and other commercial uses. The commercial activity is concentrated in a single row, outside of which are mainly residential uses, including opposite the appeal site. At my site visit I observed that there are only a few premises
-

that would be open during the evening and I found no evidence of very late opening times.

6. Given the relatively isolated nature of this commercial area and the presence of residential properties very close to the appeal site it is likely that any significant increase in opening hours would be noticeable in terms of the noise and general level of activity generated. Even against the background noise of the busy Archway Road I believe that this would be the case. Furthermore, the proposed very late opening hours to 0500 on Fridays and Saturdays would be during the time when traffic noise is likely to be at a reduced level.
7. It seems to me that the proposed very late opening hours would be much later than other uses along the parade. Therefore, the use may attract customers late at night when local residents can reasonably expect activity to be at a low level and for local conditions to be relatively quiet. The levels of activity are likely to increase at times when the nearby drinking establishments close and when passengers leave the nearby Highgate Underground station.
8. The appellant recognises that where there is an impact on local amenity the Council will consider mitigation through appropriately worded conditions. In this case the existing conditions attached to planning permission HGY/1995/0283 are in place to mitigate potential harm to living conditions that may result from late night opening. I have also noted the appellant's comments regarding litter, the quietness of customers and matters relating to competition between local businesses. However, none of these matters persuade me that the increase in opening hours would not be harmful to the living conditions of local residents.
9. The increase in late night noise from customers, vehicles and general activity and disturbance would be harmful to the living conditions of the occupants of local residential properties, some of which are very close to the appeal site. I am aware that the Council has also identified possible anti-social behaviour, but I have no evidence that this would necessarily be the case. Nonetheless, the harm I have identified would be contrary to the amenity provisions of Policies UD3 and ENV6 of the Haringey Unitary Development Plan Saved Policies Adopted July 2006 Saved March 2013 which seek to ensure that noise sensitive development is protected from noisy development and ensure that new development does not have a significant adverse impact on residential amenity in terms of noise, among other matters.

Conclusion

10. For the reasons given above and taking into account other matters raised I conclude that the proposal conflicts with the development plan taken as a whole and that the appeal should be dismissed.

Alastair Phillips

INSPECTOR