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## Appeal Decision

Site visit made on 9 August 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: 18 August 2017

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**Appeal Ref: APP/L5240/W/17/3175610**

**1466 London Road, Norbury, London SW16 4BU**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
  - The appeal is made by Mr Usman Sohail Butt against the decision of the Council of the London Borough of Croydon.
  - The application Ref 17/00166/CONR, dated 11 January 2017, was approved on 9 March 2017 and planning permission was granted subject to conditions.
  - The development permitted is the use of part of the ground floor for purposes within Class A5 (hot food take away).
  - The condition in dispute is No 1 which states that: *'The A5 (takeaway) shall not be open to the general public except between 1200 hours and 0100 hours'*.
  - The reason given for the condition is: *'To protect the amenities of adjoining residential occupiers in accordance with Policies 7.4, 7.6 and 7.15 of the London Plan 2015 FALP and Policy SP4.2 of the Croydon Local Plan Strategic Policies 2013 (CLP1) and Policies UD8 and EP1 of the Croydon Replacement Unitary Development Plan (The Croydon Plan) 2006 (Saved Policies 2013) as identified in appendix 4 of the CLP1'*.
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### Decision

1. The appeal is dismissed.

### Main Issue

2. The main issue is the effect on the living conditions of the occupants of adjoining residential properties with particular reference to noise, disturbance and a material change or increase in the likelihood and/or perception of security and crime.

### Reasons

3. The appeal site is a terraced single storey property situated within a commercial parade on London Road. Adjacent properties in the immediate locality are commercial at ground floor with residential above. At the time of my site visit I observed that the ground floor property is currently being used as a hot food takeaway with a small part of the unit appearing to be used as a small mini cab office / kiosk.
4. In September 2016 permission was granted by the Council for use of part of the ground floor for purposes within Class A5 (takeaway)<sup>1</sup> subject to conditions including condition 1 which states that *'The application premises shall not be open to the general public except between 0700 hours and 2300 hours'*. The reason given for this condition is *'To protect the amenities of adjoining*

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<sup>1</sup> LPA Reference 16/02590/P

*residential occupiers in accordance with Policies 7.4, 7.6 and 7.15 of the London Plan 2015 FALP and Policy SP4.2 of the Croydon Local Plan Strategic Policies 2013 (CLP1) and Policies UD8 and EP1 of the Croydon Replacement Unitary Development Plan (The Croydon Plan) 2006 (Saved Policies 2013) as identified in appendix 4 of the CLP1'. Subsequently, in January 2017 permission was sought under the current appeal proposal to vary condition 1<sup>2</sup> to allow the premises to be open to the general public between 1200 and 0400. Rather than allowing the variation as proposed the Council granted permission, restricting opening hours to between 1200 and 0100.*

5. The property is situated within a District Centre and is a Primary Shopping Area. It is adjacent to Norbury railway station which has services running late into the night and I also observed that London Road is a major bus route, with buses running 24 hours a day. At the time of my site visit early in the afternoon mid-week I noted that the area is very busy with pedestrians, road traffic and trains and that the bustling activity in the locality generated significant levels of noise.
6. This area of London Road has a range of retail, food and drink related and other commercial uses. The commercial activity is concentrated mainly on the ground floor of premises, many of which including the property adjoining the appeal site have residential uses above. There is a similar row of commercial properties with residential above on the opposite side of London Road. At my site visit I observed that there are only a few premises in the locality that would be open during the evening and I found no evidence of very late opening times.
7. It seems to me that the proposed opening hours would be much later than other uses in the locality. 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 drinking establishments close and when passengers leave the nearby railway station. I acknowledge that London Road is busy and is likely to generate some noise from road traffic, including buses, throughout the night. Noise from nearby trains will also be evident until approximately 0045 when services stop.
8. I understand that the mini cab office which forms part of the ground floor of the premises is open 24 hours a day, although it appeared to be closed at the time of my site visit. The level of activity which may be generated by the small mini cab office is difficult to assess from my observations. However, I consider that an A5 use would generate significantly greater levels of noise from the movement of customers, general increased activity and the operation of the hot food takeaway itself, including extraction fan noise, for example. The Council's officer report states that the property's extraction systems are satisfactory for noise and odour control; however, the additional noise and general disturbance from increased levels of late night activity would be focussed in a particular small area in and around the premises which is very close to adjoining residential properties and other residential properties on the opposite side of the road.
9. In support of the appeal my attention has been drawn to other properties where there is late night opening in circumstances where there appears to be

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<sup>2</sup> LPA Reference 17/00166/CONR

residential premises immediately above. However, the examples are in different locations which are not close to the appeal site. I do not have the full details of the circumstances that led to the late night opening being acceptable and so cannot be sure that they represent a direct parallel to the appeal proposal, including with respect to location, use, development plan policy and relationship to other similar uses and residential properties. In any case, I have determined that appeal on its own merits.

10. Therefore, I consider that the amended condition 1 attached to permission 17/00166/CONR fairly and reasonably relates to the use of part of ground floor for purposes within Class A5 (hot food takeaway). The condition seeks to protect the living conditions of adjoining residents by ensuring that noise from the premises is controlled after 0100 during a period of the night when, although living in a busy locality, residents can reasonably expect quieter conditions.
11. The mini cab office has no restriction on its opening hours but I can see no reason why the restriction of the opening hours of the hot food takeaway use to 0100 would be unenforceable.
12. I am aware that interested parties and the Council have identified possible security and crime concerns, but I have no evidence that this would necessarily be the case. Late night activity would be likely to generate unacceptable levels of noise and disturbance but need not necessarily be from anti-social behaviour or criminal activity. In this case I do not consider it reasonable to associate additional activity in the area with a perception that security may be at risk.
13. Nonetheless, I conclude that the proposed would have a harmful effect on the living conditions of the occupants of adjoining residential properties with particular reference to noise and disturbance. As such it is contrary to the provisions of Policies 7.15 of the London Plan and Policy EP1 of the Croydon Replacement Unitary Development Plan (The Croydon Plan) 2006 (Saved Policies 2013), which among other objectives, state that development proposals should seek to manage noise by avoiding adverse noise impacts on the quality of life and restrict development that may be liable to cause pollution through noise. With respect to Policy EP1 the wording makes it quite clear that the Council will impose conditions to implement the policy.
14. However, with respect to the current proposal I find there to be no breach of the requirements of Policies 7.4 and 7.6 of the London Plan, Policy SP4.2 of the Croydon Plan and Policy UD8 of the Croydon Local Plan Strategic Policies 2013. These policies relate to matters such as character, design and new residential development, for example and cannot be applied reasonably to the current case.

## **Conclusion**

15. 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