The Planning Inspectorate

Appeal Decision

Site visit made on 23 January 2018

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 January 2018

Appeal Ref: APP/M0933/W/17/3190003
Church Buildings, Main Street, Grange over Sands LA11 6BA

- 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 Kaya Huyuk of Rainford Charcoal against the decision of South Lakeland District Council.
- The application Ref SL/2017/0796, dated 31 August 2017, was refused by notice dated 25 October 2017.
- The application sought planning permission for change of use to hot food takeaway without complying with a condition attached to planning permission Ref SL/2015/0924, dated 26 November 2015.
- The condition in dispute is No 8 which states that: *"The opening hours shall be restricted to the following hours: 12:00-23:00 Monday – Sunday."*
- The reason given for the condition is: *"To safeguard the amenity of the neighbouring residents in accordance with 'The Planning System: General Principles'."*

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect that the proposed opening hours would have on the living conditions of nearby residents, with regards to noise and disturbance.

Reasons

3. The appeal premises are in the lower ground floor of the building in the centre of Grange-over-Sands. The Amber Court restaurant and the Keg and Kitchen public house are opposite. There are a variety of commercial and residential uses in the town centre, which include shops, financial and professional services, restaurants and cafes, hot food takeaways, dwellinghouses and non-residential institutions. To the south-east of the appeal premises are the three storey Crown Hill apartments. There are multiple rooms on each floor of this building that face the appeal premises.

4. Chilli Red, a hot food takeaway, to the north-west on Main Street is open between the hours of 16:30 to 22:30 on Monday, Wednesday, Thursday and Sunday and 16:40 to 23:00 on Friday and Saturdays. It is also open on Bank Holidays. The Amber Court Restaurant has a takeaway element to the business. The restaurant is open between the hours of 17:00 and 23:30 on Monday and Sundays. It is also open on Bank Holidays.

5. The proposed opening hours would result in the appeal premises being open until midnight on Sundays to Thursdays and until 01:00 on Saturday and Sunday mornings.

6. While there is no evidence of any noise and disturbance complaints from either customers or from the operation of the kitchen, equally, the current opening hours are broadly consistent with other food premises in Main Street. The proposed hours would extend the operation of the appeal premises into a more sensitive time of day when the local noise environment is quieter and residents are likely to be sleeping.

7. I recognise that noise and disturbance may well stem from persons who have consumed alcohol, but the proposed opening hours would, across the week, only be likely to attract customers on foot. The effect is likely to be magnified in the early hours of Saturday and Sunday mornings, given the closing time of the public house and the potential for persons to visit the appeal premises upon leaving the public house. During my site visit I saw the external drinking and smoking area at the front of the public house opposite. Although this is a potential source of noise and disturbance, the manager of the public house has confirmed that this area is closed at 23:00 each day in line with the requirements of their license.

8. The proposed opening hours would, in my view, result in noise and disturbance from persons coming and going from the premises and from persons potentially congregating outside on the wide pavement. Furthermore, comings and goings would be linked with vehicle movements to and from the appeal premises, due to the ability for customers to park immediately outside the premises on the road. The dual effect of the longer opening hours would be significant for residents of the apartments especially, given their proximity and the tight-knit built form of Main Street. This harm would not be mitigated by signs. Nor do I consider that a temporary trial period is appropriate for the same reasons.

9. Even though the restaurant is open until 23:30 each day of the week, the primary business is a restaurant and not a hot food takeaway. Therefore, customers are inside the building or they come and go as they collect their food order. This is unlike a hot food takeaway where there is generally a greater amount of comings and goings. Hence the two businesses are different, even if both premises sell food.

10. The appeal premises do not, and have no intention of selling alcohol. I also note that the appellant has taken out a lease on the appeal premises; that they are committed to making the business work in the town; that potential customers have been turned away due to the current opening hours; and that persons working late may find it difficult to find food if they are unable to buy food before 23:00. However, these matters do not alter my view that the proposed opening hours would result in a significant harm to residents living conditions through noise and disturbance.

11. The Council raise concern that the proposal would also cause harm through cooking activity. The extraction system is on the north elevation. It was approved as part of a condition attached to the planning permission[1] granted in 2015. While the Council assessed the system on the basis of the current opening hours, there is no evidence to suggest, despite the unsociable time of

[1] Council Application Ref: SL/2015/0924

day, that its use during the proposed opening hours or noise from cooking activity would result in harm to residents living conditions.

12. I do, nevertheless, consider that the disputed condition is, in its current form, reasonable, necessary, precise, enforceable, relevant to the development to be permitted and relevant to planning. I therefore conclude that the proposed opening hours would have a significant effect on the living conditions of nearby residents, with regards to noise and disturbance. The proposal would not accord with saved Policy R9 of the South Lakeland Local Plan 2006 and Alterations (Final Composite Plan) and paragraph 17 of the National Planning Policy Framework. These jointly seek, among other things, non-retail uses not to cause disturbance or nuisance so that there is a good standard of amenity for all existing and future occupants of land and buildings.

Other matter

13. Whilst the appeal premises forms part of the Grange-over-Sands Conservation Area (GOSCA), the Council did not raise any concerns about the effect of the proposal on the character or appearance of the GOSCA or in terms of the hygiene of the appeal premises. The Council's concern with the proposal relates only to the living conditions of residents. I agree with their view.

Conclusion

14. For the reasons set out above, I conclude that the appeal should be dismissed.

Andrew McGlone

INSPECTOR