



Appeal Decision

Site visit made on 15 January 2018

by Rachel Walmsley BSc MSc MA MRTPI

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

Decision date: 1ST February 2018

Appeal Ref: APP/U1620/W/17/3181604

**Charlies Kebab, Coney Hill Rugby Club, Metz Way, Gloucester,
Gloucestershire GL4 4RT**

- 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 Seydi Vakkas Kesser against the decision of Gloucester City Council.
 - The application Ref 17/00117/FUL, dated 30 January 2017, was refused by notice dated 20 July 2017.
 - The application sought planning permission for change of use of parking space for siting of hot food vending van without complying with a condition attached to planning permission Ref 13/01227/FUL, dated 9 June 2014.
 - The condition in dispute is No 3 which states that: *the development hereby permitted shall not be open to customers outside the following times: 0700 to 2300 Monday to Friday, and 0800 to 2300 on Saturdays, Sundays and Bank Holidays.*
 - The reason given for the condition is: *in the interests of protecting the living conditions of nearby residents.*
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Decision

1. The appeal is allowed and planning permission is granted for the proposed change of use of parking space for siting of hot food vending van at Charlies Kebab, Coney Hill Rugby Club, Metz Way, Gloucester, Gloucestershire GL4 4RT, in accordance with the application ref 17/00117/FUL dated 30 January 2017 without compliance with condition No 3 previously imposed on planning permission ref 13/01227/FUL dated 9 June 2014 and subject to the following conditions:
 - (i) the development hereby permitted shall be carried out in accordance with the following approved plans: Drawing No. 1241.1 entitled 'Trailer Plan', scaled 1:50; Block Plan, scaled 1:500; Location Plan, scaled 1:1250;
 - (ii) the use hereby permitted shall not be open to customers outside the following times: 1500 to 0100 Sunday to Thursday, and 1500 to 0300 on Friday and Saturday;
 - (i) the development hereby permitted shall not commence until an external litter bin has been provided on site. The external litter bin shall be available for customer use at all times during the operation of the hot food vending van and the litter and external litter bin shall

be removed from the site no later than 0130 Sunday to Thursday and 0330 on Friday and Saturday; and,

- (i) prior to the commencement of the development, a waste management plan relating to waste oil, shall be submitted to and approved in writing by the local planning authority. The approved plan shall be implemented to a schedule approved in writing by the local planning authority and shall be adhered to thereafter for the duration of the use approved.

Procedural matter

- 2. Since the planning application was decided the Council has adopted the Joint Core Strategy (Core Strategy)¹. Consequently policy SD15 has been superseded by policy SD14 of the Core Strategy. I have considered the appeal on this basis.

Main Issue

- 3. This is the effect varying condition 3 would have on the living conditions of the occupiers of neighbouring properties, with particular regard to noise and disturbance.

Reasons

- 4. The appeal site is within the car park of the Coney Hill Rugby Club which is accessed off Metz Way which is a busy two-lane road. Opposite the access to the rugby club and on the other side of Metz Way are residential properties, the nearest being a house which is screened from the road by trees. Other residential properties within the area are further from the appeal site, at least 150 metres away.
- 5. There is no specific or substantive evidence before me to suggest that noise and disturbance from customers would be harmful to the living conditions of existing occupiers of nearby properties. The lack of objection to the proposal from local residents and the Council's Environmental Protection department indicates an expected lack of harm.
- 6. The distance between the appeal site and the property nearest to it is such that any noise and disturbance from customers at the hot food vending van would not disturb occupiers of this property, particularly when the noise from passing traffic, between the appeal site and the existing residential property, would be more audible which in turn would lessen any impact of noise from customers. I recognise that traffic movements at night and in the early hours of the morning would be less than during the day and therefore the mitigating effect of traffic on the noise from customers would be less, however, I have found that the distance of the van to the nearest dwelling would cause no harm and therefore the mitigating circumstances surrounding passing traffic bears little weight.
- 7. The change of use was granted permission following an appeal (ref APP/U1620/A/14/2214531) which was allowed on the basis of a number of conditions, including a condition to restrict the hours of use. The Inspector, in her reasoning, explained that it was not necessary to apply a condition to control noise for a number of reasons, not least because of the absence of

¹ Gloucester, Cheltenham and Tewkesbury, Joint Core Strategy, 2011-2031 (adopted 11 December 2017)

evidence to indicate that noise would be a problem for residents, the distances involved between the use proposed and existing dwellings, and because there would be a condition to control operating hours. My findings for the current appeal echo the findings of the previous Inspector with regards to evidence and distance which reinforces my conclusion that longer opening hours would not cause undue harm. Controlling opening hours would, naturally, help to regulate noise levels however the hours permitted were not with noise and disturbance in mind, but for operational reasons. With nothing before me that links the hours of operation with noise levels, I do not agree with the Council that an extending the hours of use would undermine the purpose of this condition.

8. I find, therefore, that to vary condition 3 to allow the hot food vending van to be open to customers only between the hours of 1500 to 0100 Sunday to Thursday and 1500 to 0300 on Friday and Saturday would not have a harmful effect on the living conditions of the occupiers of neighbouring properties. For the reasons given the proposal would not be contrary to policy SD14 of the Joint Core Strategy² or policies FRP10, FRP11 and BE21 of the Local Plan³ which seek development that would not unreasonably affect the amenity of existing residents which, with regards to noise, means development that does not generate unacceptable levels of noise, in volume or duration. The development would also comply with the National Planning Policy Framework which, with regards to noise, seeks to avoid development that gives rise to significant adverse effects, which I have not found to be the case here.

Conditions

9. In allowing the appeal I am granting permission for the change of use of parking space for the siting of a hot food vending van, subject to a condition as described above. Planning permission 13/01227/FUL will remain intact and therefore implementable too.
10. The guidance in the Planning Practice Guidance makes it clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions for the original planning permission, unless they have already been discharged. The Council has provided a list of *without prejudice conditions*, should the appeal be allowed. As I have no information before me about the status of these conditions which repeat the conditions listed with the original planning permission, I shall impose all those conditions recommended by the Council and which I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
11. Therefore, from the list of conditions recommended by the Council, I have imposed conditions 2 and 5 as recommended. Condition 3, for the reasons given above, has been amended. As the original planning permission 13/01227/FUL has started, there is no requirement to impose condition 1, a time limit condition. Condition 4 refers to the use of a litter bin and its removal from site together with any litter no later than 2330 hours each day. Given the proposed extension to opening hours, I have amended this condition to suit. This is a logical change in the wording of the condition which would not

² Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011-2031 (adopted 11 December 2017)

³ Gloucester Local Plan, Second Stage Deposit Local Plan 2002 (adopted by the Council for Development Control purposes)

materially alter the development or inconvenience parties for further consultation on this matter to be necessary.

Conclusion

12. For the reasons given above, I conclude that the appeal should succeed. I will vary condition 3 of planning consent 13/01227/FUL, in line with the discussion above.

R Walmsley

INSPECTOR