
Appeal Decision

Site visit made on 24 July 2019

by Mr M Brooker DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 August 2019

Appeal Ref: APP/V2004/W/19/3227345

Tipsy Chicken, 130 Newland Avenue, Hull, East Yorkshire HU5 2NN

- 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 Hassan Yeter against the decision of Kingston-upon-Hull City Council.
 - The application Ref 17/01468/FUL, dated 10 October 2017, was refused by notice dated 30 October 2018.
 - The application sought planning permission for "Change of opening hours; from 23:00 to 01:00 Sunday to Thursday, 23:00 to 03:00 Friday and Saturday. So our opening hours will be 11:00 am – 01:00 am Sunday to Thursday and 11:00 am – 03:00 am Friday and Saturday. Currently have an A3 Use Class but would like to add an A5 use class. So a mixed use both A3 and A5. No changes will be made in the premises apart from the tables removing. Upstairs will not be used after 23:00." without complying with a condition attached to planning permission Ref APP/V2004/W/17/3173680, dated 20 September 2017.
 - The condition in dispute is No 2 which states that: Customers shall only be permitted on the premises between the following hours: 07:00–23:00 hours Mondays to Saturdays and 09:00-19:30 hours Sundays and Bank Holidays.
 - The reason given for the condition is: In order to make the development acceptable in planning terms, and in the interests of the living conditions of local residents.
-

Decision

1. The appeal is dismissed.

Main Issue and Background

2. The premises already benefits from consent to operate as a mixed use of Class A3 and Class A5 (restaurant/café and takeaway). The effect of the proposed variation of the disputed condition is to extend the late-night opening hours of the premises from 23:00 to 03:00 Friday – Saturday (Sunday Morning) and from 19:30 to 23:00 Sundays and Bank Holidays, in line with the current Monday to Saturday opening times.
3. The main issue is the effect of varying the disputed condition on the living conditions of the occupiers of nearby residential properties, with particular regards to noise and disturbance.

Reasons

4. The appeal property is situated on a busy commercial street that hosts a range of uses including bars, restaurants and cafes. The wider area predominantly

consists of residential terraced houses. At my site visit I noted that several shops had living accommodation at the first-floor level. In this regard, the noise associated with customers comings and goings from the premises late at night could be a source of noise and disturbance to nearby residents.

5. An objection to the proposed later opening of the appeal premises has been made by Humberside Police which states that there are regular crime and disorder issues with patrons leaving the nearby 'Piper Club', and from large numbers of people congregating in the area. I saw at my site visit that the appeal premises are in close proximity to the Piper Club and would likely attract customers leaving that venue and would therefore result in people staying in the area for longer into the early morning, with a greater likelihood of disturbing local residents as a result of raised voices and anti-social behaviour in the street.
6. The Appellant details that they are an experienced operator having operated another premises in Hull, has a good relationship with customers and has not had a single police callout and I give this some weight. Furthermore, the property was recently refurbished with increased soundproofing, this would not however prevent harmful levels of noise and disturbance occurring as a result of customers gathering outside of, and entering/exiting, the premises.
7. The appellant details that his financial position is difficult as a result of debts taken on in order to grow the business, and that the longer opening hours are necessary to secure the sustainable long-term future of the business.
8. However, based on the evidence before me I find that the benefits of the proposal, including increasing customer choice late at night in an area where there is clearly demand for such food outlets, do not outweigh the harm to the living conditions of local residents that I previously identified.
9. I therefore find that the proposed opening hours would have an unacceptable impact on the living conditions of neighbouring residents resulting from increased noise and disturbance in conflict with Policies 12 and 14 of the Hull Local Plan (November 2017) which requires food and drink uses not to harm the living conditions of residents in the local area.

Conclusion

10. For the reasons given above I conclude that the appeal should be dismissed.

Mark Brooker

INSPECTOR