
Appeal Decision

Site visit made on 2 September 2019

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th September 2019

Appeal Ref: APP/N4720/W/19/3231674

159 Cardigan Road, Leeds West Yorkshire LS6 1LJ

- 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 Jamie Bloomfield against the decision of Leeds City Council.
- The application Ref 19/01767/FU, dated 23 May 2019, was approved on 31 May 2019 and planning permission was granted subject to conditions.
- The development permitted is the change of use from tattoo studio (class use sui generis) to restaurant/cafe (class use A3).
- The conditions in dispute are Nos 5 and 6 which state that:

5. The opening hours of the bar shall be restricted to the hours of; Monday to Friday - 09:00 - 21:00 Saturday - 09:00 - 21:00 Sunday and Bank Holidays – Closed.

6. There shall be no takeaway deliveries operated from the premises.

- The reasons given for the conditions are:

5. In the interest of protecting residential amenity.

6. In the interests of the amenity of neighbouring residents.

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Leeds City Council against Mr Jamie Bloomfield. This application is the subject of a separate Decision.

Procedural Matters

3. As part of his appeal submission, the appellant seeks planning permission for a change of use from the approved A3 use to an A5 use. The planning application, and subsequent planning permission, which is the subject of this appeal was for an A3 use. If an appeal is made the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought¹. The Council determined the planning application on the basis of the scheme being for an A3 use, as that was what was applied for. The consideration of the proposal on the basis of an A5 use would be substantially different to what the Council considered.

¹ *Procedural Guide Planning appeals – England, August 2019, The Planning Inspectorate*

On this basis, I do not accept the appellant's request for an A5 use to be appropriate for this section 78 appeal. Accordingly, without prejudice to the appellant's position should they wish to apply to the Council for planning permission for a change of use to an A5 use, I have determined the appeal on the basis of what was considered by the Council at the time of their determination of the application, i.e. an A3 use.

4. In addition to the above, the appellant seeks to vary condition 5 to allow the opening times to be as follows: Monday to Friday - 11:00 am - 11:00 pm, Saturday 11:00 am - 11:00 pm, Sunday and Bank Holidays – Closed. He also wishes to remove condition 6.

Main Issues

5. In light of the above, the main issues are the effects of the proposed opening hours and takeaway deliveries on the living conditions of the occupants of neighbouring residential properties, with regard to noise and disturbance.

Reasons

6. The appeal property is located on the corner of Cardigan Road and Harold Grove. There are a number of non-residential uses on Cardigan Road within the vicinity of the property, including a community facility, a builder's merchants, a service station and a café/restaurant. Despite the mix of uses on Cardigan Road, there is little night time commercial activity. Harold Grove is predominantly residential, typical of the many streets within the locality, which comprise terrace rows set out in a tight grid pattern.
7. Given the proximity of the site to neighbouring dwellings, the residents of these properties would be sensitive to various sources of noise and disturbance associated with the approved use, including general conversing and loitering outside the shop, opening/closing car doors and car engines running. The approved opening times would ensure that the level of noise and disturbance would unlikely have a significantly harmful effect on the neighbouring residents as it would cease at a reasonable time. However, beyond 2100 hours until 2300 hours, such noise and disturbance would likely be more discernible as it could disturb neighbouring residents' sleep. This would be to such an extent that it would be significantly harmful to their reasonable expectation of night-time peacefulness and their living conditions.
8. The appellant refers me to other A3 and A5 uses within a quarter of a mile of the appeal site that open earlier and close later than the proposed opening hours. However, many of these uses were granted planning permission under a different development plan than the subject proposal and are located within a cluster of similar uses with similar night-time opening hours that form part of the Cardigan Road Local Centre. The appeal property is detached from this cluster and would introduce a form of night-time activity where there is currently none. Therefore, I do not consider that the opening hours of these uses justifies allowing the proposed opening hours.
9. With regard to the proposed removal of condition 6, the provision of a delivery service would likely increase the level of traffic in and around the appeal property. Furthermore, it would likely reduce the already limited on street parking provision on the neighbouring roads with delivery vehicles parking up to collect the deliveries. This could result in delivery drivers parking

inconsiderately as they may wish to park as close to the premises as possible whilst they quickly pick up a delivery, to the inconvenience of neighbouring residents and to the detriment of highway safety. Moreover, the regular comings and goings of delivery vehicles, with engines running, radios playing and car doors opening/closing would exacerbate the harm to the living conditions of neighbouring residents past 2100 hours due to noise and disturbance.

10. I acknowledge the appellant's argument that opening the business after 0900 hours would reduce traffic congestion. However, I do not consider that the existing level of congestion at 0900 hours would be significantly harmful to the living conditions of local residents or highway safety.
11. I find therefore that the proposed opening hours and takeaway delivery service would have a significantly harmful effect on the living conditions of neighbouring residents, with regard to noise and disturbance. As such, the proposal would be contrary to Policy P10 of the Leeds Core Strategy 2014 and saved Policy BD6 of the Leeds Unitary Development Plan Review 2006, which seek to protect residential amenity.

Conclusion

12. For the reasons given above, having regard to all matters raised, the appeal is dismissed.

Alexander Walker

INSPECTOR