



Appeal Decision

Site visit made on 17 September 2019

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 11 October 2019

Appeal Ref: APP/M3455/C/19/3220907

111 Regent Road, Stoke-on-Trent ST1 3BL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Husain Karimi against an enforcement notice issued by Stoke-on-Trent Council.
 - The enforcement notice was issued on 16 January 2019.
 - The breach of planning control as alleged in the notice is: without planning permission, the material change of use of the land to retail and bakery use (use class A1).
 - The requirements of the notice are: cease the use of the property for the purposes of general retail and/or bakery (use class A1).
 - The period for compliance with the requirements is 4 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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Decision

1. The appeal is allowed, the enforcement notice is quashed, and planning permission is granted on the application deemed to have been made under s.177(5) of the 1990 Act as amended for the material change of use of the land to retail and bakery use (use class A1) subject to the following condition:
 - 1) The use hereby permitted shall only take place between the following hours:
0900 - 2000 Mondays – Sundays.

The appeal on ground (a) and the deemed planning application

Main Issue

2. The main issue is the effect of the development on the living conditions of neighbouring residents, with particular regard to noise and disturbance.

Reasons

3. The appeal site comprises a two-storey, mid-terraced property. It is located within an area that is mixed in character, with dwellings, offices, a mosque and a number of small convenience stores. The terraced row itself is predominantly residential, and the properties located on either side of the appeal site are in residential use.
4. Planning permission for the lawful use of the appeal site as a hot food takeaway was granted on 17th February 2000 (ref: SOT/37046). The appeal

site is now in use for general retail, and also specialises in the baking of naan bread.

5. Amongst the conditions that were imposed on the 2000 permission, condition 2 restricted the hours of operation of the hot food takeaway to between 11am and 8pm. The current hours of the retail/bakery business are advertised as being from 8am to 10pm, seven days a week. The Council are concerned that disturbance from the coming and going of customers and noise from the roller shutters in the evening have led to complaints being received by them from neighbouring residents. They state that the uncontrolled nature of the unauthorised use and the later hours of operation are detrimental to residential amenity through the generation of the associated noise and disturbance.
6. The Council have not produced any evidence of the complaints they have received, or the outcome of any investigations. Conversely, the appellant has not disputed that complaints have been raised. On my visit, I saw that that the adjacent houses are small, with narrow frontages. That being the case, it is likely that the habitable rooms are in very close proximity to the appeal site, and therefore any noise associated with the business is likely to be particularly noticeable to inhabitants.
7. From the evidence before me, the retail business keeps hours that are notably longer than the hours allowed under the 2000 permission. Of particular concern is the fact that the shop closes two hours later each day, at 10pm, generating noise and disturbance during evening hours when previously, the nearby occupants could have expected a more quiet background environment. Similarly, 8am is a substantially earlier opening time than neighbours would have been accustomed to.
8. However, I agree with the appellant that the hot food takeaway use was not dissimilar to the current use of the site as a shop/bakery. The development appears to be supported by the local community, provides economic benefits including employment, and seems to be acceptable in all other respects.
9. Taking all these factors in combination, I conclude that, subject to the restriction of its opening hours by condition, the development would provide adequate living conditions for neighbouring residents, in accordance with Policy CSP1 of the Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy insofar as it seeks to ensure a balanced mix of uses that work together, and the National Planning Policy Framework, which requires a high standard of amenity for existing and future users.

Conditions

10. The Council have not suggested any conditions. However, a condition restricting the opening hours of the development is necessary to protect the living conditions of nearby residents.

Conclusion

11. For the reasons given above, I conclude that the appeal on ground (a) should succeed and I direct that the enforcement notice be quashed.

Elaine Gray

INSPECTOR