



Appeal Decision

Site visit made on 30 September 2019 by Hilary Senior BA(Hons) MCD MRTPI

by Susan Ashworth BA (Hons) BPL MRTPI

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

Decision date: 22 October 2019

Appeal Ref: APP/B4215/W/19/3233331

Miami Crispy Fried Chicken, 17 Lane End Road, Manchester, M19 1WA

- 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 Yahya Danyar, Miami Crispy Fried Chicken against the decision of Manchester City Council.
 - The application Ref 121455/JO/2018, dated 4 October 2018, was refused by notice dated 21 January 2019.
 - The application sought planning permission for change of use from a shop to a takeaway hot food shop without complying with a condition attached to planning permission Ref 050973/FU/SOUTH1/96, dated 16 January 1997.
 - The condition in dispute is No 4 which states that: The premises shall not open outside the following hours: - Sunday to Thursday, 8.00a.m to 11.30 p.m. Fridays and Saturdays, 8.00a.m. to midnight.
 - The reason given for the condition is: To safeguard the amenities of the occupiers of nearby residential accommodation.
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Decision

1. The appeal is dismissed.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Background and Main Issue

3. A hot food takeaway has been trading at the appeal site for over 20 years, the appellant advises, having been granted permission in 1997. The appellant wishes to extend the opening hours from those originally imposed to 11am to 1.00am every day of the week. The main issue is the effect that these proposed opening times would have on the living conditions of neighbouring residents.

Reasons

4. The appeal site is a mid-terraced property within a parade of shops and hot food takeaways in an area identified as a local centre in the Core Strategy. There are other shops in close proximity to the site. Above the parade of shops are there are residential flats.

5. The hot food takeaway is located on a busy road, accessed from the front where there is a parking area and bus stop. To the rear is a small public car park, which is surrounded by residential properties at close proximity.
6. The Council indicates that similar take-away businesses in the locality have a permitted closing time of between 11.30pm and midnight and I am not aware that any of the other businesses in the parade operate later than this. Allowing this appeal would therefore mean that this premises would be open later than the surrounding establishments. Given the proximity of neighbouring residents, both above the premises and to the rear, the additional opening hours would result in noise and disturbance from patrons in particular from comings and goings, including from vehicle movements and the opening and closing of car doors, at a time when residents could reasonably expect a degree of peace and quiet.
7. I acknowledge that Lane End Road is a busy road although at night it is unlikely to be heavily trafficked. Similarly, the bus stop is likely to be in use less frequently than it is in the day. Whilst residents of the flats above the businesses are likely to be used to a degree of background traffic noise, the noise of noise and disturbance from patrons of the take-away immediately in front of the properties would be of a different nature and would be discordant and intrusive.
8. Whilst I have not been made aware of any formal complaints to the Council, objections by local residents to the planning application indicate that there is already a degree of disturbance at the rear at closing time when the premises are being maintained, albeit that there is no specific evidence to substantiate this. I acknowledge that the car park is available for use by residents and the public and I am advised by the appellant that it is used by a 24 hour taxi firm. Nevertheless, if the proposal were to be allowed, any activity associated with the premises would occur even later into the night than it does at present.
9. I acknowledge that the appellant has made a considerable investment in the premises including through the installation of CCTV, lighting, the provision of waste disposal facilities and extraction systems. I also note that the appellant is one of the residents who lives in the parade. However, these matters do not negate the detrimental impact of the proposal, by way of noise and disturbance, on the other residents living in close proximity to the take-away.
10. The proposal would be of economic benefit and would provide an enhanced service to the takeaway customers. These matters weigh in favour of the proposal. However, such benefits do not outweigh the significant harm caused to neighbouring residents I have outlined above. The National Planning Policy Framework emphasises the need both to support sustainable economic development and to ensure a good standard of amenity for existing and future occupiers of buildings.
11. I accept that there is a degree of overlap between the consideration of the Licence and the consideration of the planning application. However, the planning system has a broader remit in terms of the objective of safeguarding the living conditions of residents which is not exactly the same as the objective under the Licensing Act. A major concern of the planning system is the external impact of the development, in this case the general activity around the hot food takeaway, comings and goings, and general disturbance from car doors and engines, and voices. In my opinion the granting of the Licence does

not address these concerns. It is not therefore inappropriate for any planning permission to be subject to different controls to those on the license.

12. Accordingly, I conclude that the disputed condition is reasonable and necessary in order to safeguard the living conditions of local residents and that it satisfies the other tests for conditions set out in paragraph 55 of the National Planning Policy Framework. The proposed extension to the hours the takeaway is open would be harmful to the living conditions of the neighbouring residents in terms of noise and disturbance. As such the proposal is contrary to Policies DM1 Development Management and C10 Leisure and the Evening Economy of the Core Strategy (July 2012) and Policies DC10 and DC26 of the saved Unitary Development Plan for the City of Manchester (1995) which together seek to ensure that development does not harm living conditions of residential property through an increase noise and disturbance, amongst other things.

Conclusion and Recommendation

13. For the reasons given above and having regard to all other matters raised, I recommend that the appeal is dismissed.

Hilary Senior

APPEAL PLANNING OFFICER

Inspector's Decision

14. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeal is dismissed.

Susan Ashworth

INSPECTOR