



Appeal Decision

Site visit made on 7 October 2019

by Tim Crouch DipUD MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: Wednesday, 13 November 2019

Appeal Ref: APP/Q3115/W/19/3232346

Delight 2 Kebab & Pizza House, 100 Broadway, Didcot OX11 8AB

- 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 Ferhat Bakabala against the decision of South Oxfordshire District Council.
 - The application Ref P18/S3345/FUL, dated 28 September 2018, was refused by notice dated 18th January 2019.
 - The application sought planning permission for "Ground floor change of use to A3 take away fast food and single storey extension to rear of property" without complying with a condition attached to planning permission Ref P03/W0079, dated 15 July 2003.
 - The condition in dispute is No 5 which states that: The premises shall not open after 11.00pm. Sunday to Thursday nor after 11.30 pm on Fridays and Saturdays.
 - The reason given for the condition is: To ensure that the development is not unneighbourly in accordance with Policy G9 of the adopted South Oxfordshire Local Plan.
-

Decision

1. The appeal is allowed and planning permission is granted for ground floor change of use to A3 take away fast food and single storey extension to rear of property at Delight 2 Kebab & Pizza House, 100 Broadway, Didcot OX11 8AB in accordance with the application Ref P18/S3345/FUL dated 28 September 2018, without compliance with condition numbers 1 and 2 previously imposed on planning permission Ref P10/W0325 dated 4 May 2010 and subject to the following condition:
 - 1) The use of the premises hereby permitted shall be restricted to the hours of
 - Monday to Wednesday - 11.00 to 00.30
 - Thursday to Saturday - 11.00 to 03.30
 - Sunday - 11.00 to 00.30

Procedural Matter

2. The application form seeks to vary the condition 5 of P03/W0079 which was the original permission in 2003. Condition 5 relates to opening hours. However, the opening hours have previously been varied under P10/W0325 in 2010. Condition 2 of P10/W0325 states:

The use of the premises hereby permitted shall be restricted to the hours of 9am and 11.30pm Monday to Wednesday, 9am to midnight Thursday to Saturday and Midday to 11.30pm on Sundays.

3. The reason given for the condition is:

To safeguard the amenity of neighbouring residents in accordance with Policies EP2 and E8 of the South Oxfordshire Local Plan 2011.

4. The Council's decision notice and the appellant's appeal form describe the proposal as variation of condition 2 (neighbour amenity) on application ref P10/W0325 to extend opening hours of hot food take-away. I have therefore considered the proposal on this basis.

Main Issue

5. The main issue is the effect of increasing the opening hours on the living conditions of neighbouring occupiers.

Background

6. The proposal has permission to operate during the hours of 9am and 11.30pm Monday to Wednesday, 9am to midnight Thursday to Saturday and Midday to 11.30pm on Sundays. The Council, under its premises licencing powers, have allowed extended opening hours and the appellant is seeking the variation of the planning permission to reflect this. The opening hours would therefore be Monday to Wednesday 11.00 to 00.30, Thursday to Saturday 11.00 to 03.30 and Sunday - 11.00 to 00.30.

Reasons

7. The proposal would result in significantly longer opening hours on Thursday to Saturday, as well as later closing on every other day. However, the site is located within a parade of commercial units and close to the town centre where there is already established night-time activity and economy, including a nearby public house with similar opening times to those proposed. Whilst this unit would open later than other takeaway units within the street, the lack of other food outlets open at that time will ensure that overall there will not be an undue effect on neighbouring residential occupiers.
8. I note that there are residential units above the parade and across the Broadway, however this is part of an established commercial area and whilst concern has been expressed by the Town Council on residential amenity and increased antisocial behaviour, there have been no direct objections from neighbouring occupiers or the Council's Environmental Health Officer and no specific evidence presented of a likelihood of antisocial behaviour. Moreover, whilst a separate regulatory function, I am also aware that the Council has already granted licencing approval for such hours and therefore hasn't identified significant harm in this case. I have not been presented with robust evidence to conclude otherwise.
9. Consequently, I find that the effect of increasing the opening hours as proposed would not harm the living conditions of neighbouring occupiers. Therefore, the proposal would not conflict with Policy EP2 of the South Oxfordshire Local Plan (2012) which, amongst other objectives, seeks to prevent development which would, by reason of noise or vibrations, have an adverse effect on existing occupiers.

Conditions

10. The Council has suggested conditions in the event that the appeal may be allowed, including conditions from the original permission. This includes details of the extraction flue and retention of the accommodation above the ground floor unit to be occupied by persons employed by the takeaway. I have considered these alongside the 6 tests within the National Planning Policy Framework. The extraction flue is already in place and it is not necessary to require details of this. Given that I have found that the proposal would not result in harm to the living conditions of neighbouring occupiers I do not consider a restriction on the occupancy of the accommodation above the ground floor necessary in this case.
11. Given that the original development has already commenced, and therefore a time limit for implementation or materials is not required, the only condition necessary is the revised opening hours subject to this appeal to ensure that the effect on the living conditions of neighbouring residential properties is acceptable.

Conclusion

12. For the reasons given above, I conclude that the appeal is allowed subject to the condition.

Tim Crouch

INSPECTOR