



Appeal Decision

Site visit made on 29 October 2019

by Paul Cooper MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 November 2019

Appeal Ref: APP/P4605/W/19/3233819

120 Alcester Road, Birmingham B13 8EE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for 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 Moseley Central Ltd against Birmingham City Council.
 - The application Ref 2019/02668/PA is dated 27 March 2019.
 - The application sought planning permission for Erection of two buildings comprising a ground floor commercial unit to Alcester Road (Use Classes A1- A4/B1/D1/D2), with 46 residential apartments above comprising 14 x 1 bed, 31 x 2 bed and 1 x 3 bed units with associated vehicular access and parking without complying with a condition attached to planning permission Ref 2015/08695/PA, dated 26 August 2016.
 - The condition in dispute is No19 which states that: Limits the hours of use of ground floor commercial premises to 0800-1900 Mondays-Saturdays and 1000-1600 on Sundays/Bank Holidays. The ground floor commercial premises shall only be open for customers between the hours of 0800- 1900 Mondays-Saturdays, and 1000-1600 on Sundays and Public Holidays.
 - The reason given for the condition is: : In order to define the permission and safeguard the amenities of occupiers of premises/dwellings in the vicinity in accordance with Paragraphs 3.8 and 3.10 of the Birmingham UDP 2005 and the National Planning Policy Framework.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. The appellant seeks to modify condition No19 of planning permission 2015/08695 so that instead of reading "*Limits the hours of use of ground floor commercial premises to 0800-1900 Mondays-Saturdays and 1000-1600 on Sundays/Bank Holidays. The ground floor commercial premises shall only be open for customers between the hours of 0800- 1900 Mondays-Saturdays, and 1000-1600 on Sundays and Public Holidays.*", it would read "*The ground floor commercial premises shall only be open for customers between the hours of 0800- 0100 on any day.*" The appeal is against the failure of the Council to give notice within the prescribed period of a decision on an application for planning permission.
3. In considering this appeal, based on the evidence in front of me, the main issue is the effect of the proposed extended opening hours of the proposal on the living condition of the occupiers of surrounding residential properties in respect of noise and disturbance.

Reasons

4. The appeal site is located within a busy locality, with a mix of residential and commercial properties nearby, and a public house adjacent. From my site visit, it is apparent that some of the commercial premises have residential flats above.
5. Based on the evidence before me, and my site visit observations, it appears that there is a wide range of premises with different opening hours, as would be expected in a commercial area, which I understand is a designated local centre.
6. Whilst I accept that there will be some businesses that trade later into the late evening, the location of the ground floor premises, with residential properties above the premises and close-by would mean that the comings and goings of customers into the early hours would be likely to result in significant noise disturbance. In addition, the parking arrangements nearby would also be likely to result in vehicles turning and manoeuvring, and the opening and closing of car doors in that extended time period late at night would be detrimental to the living conditions of the occupiers of nearby residential properties in respect of noise and disturbance.
7. I do not doubt that the appeal premises would not be the sole source of evening noise disturbance in the area. However, given the location of the appeal property and its close proximity to residential properties, I consider that any extension of opening hours would be likely to incrementally increase noise disturbance for nearby residents. Indeed, in this case it is necessary that the occupiers of nearby residential properties are afforded a reasonable level of peace and quiet in their properties, particularly after 2300 hours. In addition, this would be compounded by the potential opening hours to be until 0100 hours without any daily restriction during the week.
8. In this case and taking into account the existing environmental conditions in the locality, I find that an extension of opening hours until 0100 hours would be unacceptable and that an increase in pedestrian and vehicular comings and goings at this time would have a significantly detrimental impact upon the living conditions of the occupiers of residential properties. I reach this conclusion in the knowledge that there is already the potential for adverse noise and disturbance impacts until late in the evening in association with the use of other business premises within the locality.
9. For the reasons outlined above, I conclude that the use of the appeal property for a predominately A3 use open to the public for the proposed extended hours would significantly harm the living conditions of the occupiers of neighbouring residential properties. Therefore, the proposal would not accord with the amenity aims of Policy PG3 of the Birmingham Development Plan, which amongst other matters, states that proposals should reinforce a positive sense of place, respond to site conditions and local area context.

Other Matters

10. I note from the submission of the appellant that the potential user of the premises will only take the premises if the hours can be extended, and the user occupies other premises with late opening hours in other locations. However, I do not have details of any other premises, and these premises may well be

located in different areas, with different development and locational characteristics to the appeal scheme. In any event, I am required to deal with this proposal on its own merits, and the cumulative harm from a living conditions point of view has been a factor in reaching my overall conclusion on this issue.

11. I have noticed the submission of an acoustic report with the appeal scheme that was not part of the formal planning application. However, the amended proposals were not the subject of formal consultation by the Council, and in accordance with the principles established in the Wheatcroft judgement (*Bernard Wheatcroft Ltd v Secretary of State for the Environment and Harborough District Council (1980)*), I do not consider that it would be appropriate to accept the additional details. My decision is therefore based upon the proposals assessed by the Council.

Conclusion

12. For the reasons set out above, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

Paul Cooper

INSPECTOR