



Appeal Decision

Site visit made on 7 October 2019 by Darren Ellis MPlan

by P J Davies BSc (Hons) MA MRTPI

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

Decision date: 20 November 2019

Appeal Ref: APP/P4415/W/19/3234529

La Piza, Dale Road, Rawmarsh, Rotherham, S62 5AE

- 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 Muzaffer Ceyhan against the decision of the Rotherham Metropolitan Borough Council.
 - The application Ref RB2019/0470, dated 17 March 2019, was refused by notice dated 8 May 2019.
 - The application sought planning permission for the "Removal/variation of planning permission granted RB1989/0570. Proposed opening times: Monday to Thursday 1600 to midnight, Friday and Saturday 1600 to 0130, Sunday 1600-0030" without complying with a condition attached to planning permission Ref RB1989/0570, dated 6 June 1989.
 - The condition in dispute is No 2 which states that: *"Food shall not be served on the premises later than 23.30 hours Monday to Saturday and 23.00 hours on Sunday."*
 - The reason given for the condition is: *"To prevent nuisance by way of noise and disturbance to adjoining residential premises."*
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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.

Main Issue

3. The main issue is the effect that varying the disputed condition would have on the living conditions of the occupiers of nearby residential properties, with particular regard to noise and disturbance.

Reasons for the Recommendation

4. The appeal property is next to the junction of Dale Road with Green Lane. Notwithstanding the presence of other commercial uses in the vicinity of the site, the more immediate area is predominantly residential and there is new housing currently being constructed near to the appeal site. This is therefore a sensitive location for late opening establishments.
5. Local residents have objected to the application and state that there are regular noise and disorder issues from people outside the appeal property. I

have no evidence before me that the noise and disturbance is caused by patrons of La Piza or is otherwise linked to the premises. However, I saw at my site visit that the appeal property is close to the Horse & Jockey public house and the Star Inn, and would likely attract customers leaving these venues. These establishments have later opening hours than La Piza, however the nature of a hot food takeaway means that customers are likely to consume food in the vicinity of the premises whilst it is still hot. The extended hours would result in a greater propensity for people to stay in the area for longer into the early hours of the morning, with associated disturbance from people congregating outside, talking loudly especially if boisterous, as well as noise from car doors slamming and engines revving. The later opening hours would therefore result in a significant likelihood of increased disturbance at unsocial hours when most nearby residents would be sleeping. Therefore, whilst I have had regard to the opening hours of the nearby public houses, I do not consider that this alone justifies the introduction of later opening hours that would intensify localised problems of noise and disturbance.

6. I acknowledge that there are no objections from Environmental Health, but planning is a separate legislative regime where harm to residents' living conditions is a material consideration. Whereas there might not be a statutory nuisance under environmental health legislation, it does not follow that the impacts would be acceptable in planning terms. In addition, the Planning Acts require me to have regard to the development plan and make my decision in accordance with it, unless material considerations indicate otherwise. I have considered the amended weekend opening hours suggested by the appellant. However, having regard to the proximity of residential properties, the probability of noise and disturbance into the early hours would remain high, and this does not therefore alter my recommendation.
7. The appellant asserts that he is at a significant disadvantage from competitors with later opening hours, and that the longer opening hours are necessary to enhance the economic sustainability of the business. The appellant also states that the extended opening hours would safeguard jobs. However, it would appear that the business has been operating for some time, and there is no tangible evidence to demonstrate that any jobs would be at risk, or that there would be any material conflict with national planning policy objectives to promote a vibrant economy.
8. I therefore find that removing or varying the disputed condition would have an unacceptable impact on the living conditions of neighbouring residents as a result of increased noise and disturbance. This would conflict with the general thrust of Policy SP52 of the Rotherham Local Plan (2018) to protect, amongst other things, environmental quality and amenity.
9. For the reasons given above and having had regard to all other matters raised, I recommend that the appeal should be dismissed.

Darren Ellis

APPEAL PLANNING OFFICER

Inspector's Decision

10. I have considered all the submitted evidence and the Appeal Planning Officer's

report and on that basis the appeal is dismissed.

P J Davies

INSPECTOR