



Appeal Decision

Site visit made on 16 December 2019

by E Symmons BSc (Hons), MSc

an Inspector appointed by the Secretary of State

Decision date: 09 January 2020

Appeal Ref: APP/V2004/W/19/3232848
107 Newlands Avenue, Hull HU5 2ES

- 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 Faiek Tahir against the decision of Kingston-upon-Hull City Council.
 - The application Ref 19/00167/FULL, dated 12 February 2019, was refused by notice dated 24 April 2019.
 - The application sought planning permission for a change of use from retail shop (A1) to hot food takeaway (A5) without complying with a condition attached to planning permission Ref 17/00270/FULL, dated 26 April 2017.
 - The condition in dispute is No 3 which states that: No customer shall be permitted to be on the premises after 2330 and before 1000 hours, Mondays to Sundays.
 - The reasons given for the condition are in the interests of residential amenity and to comply with policies S1 and S12 of the Local Plan.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of varying the opening hours on the living conditions of neighbouring occupiers with respect to noise, disturbance, odours and vehicular movements.

Reasons

3. The appeal property is a hot food takeaway within a two storey terrace of shops with flats above. The street is designated as a Local Centre within the Hull Local Plan 2016-2032 (2017) (Local Plan). Within the block on the same side of the street as the appeal property there is another hot food takeaway. Other businesses include a jeweller; a café; a haberdashery; an optician; a clothing alteration and cleaning business; two beauty salons and a barber. The opposite side of the road has a variety of business uses including a night club and supermarket. During my site visit I observed that not all businesses displayed their opening hours and although the appellant contends that later closing is present, there is insufficient evidence regarding the various business hours to support this view or indeed this represents the lawful planning position.

4. From the evidence before me there are residential flats above the shops. However, the appellant contends that there are no residential occupants above the takeaway, or in either of the adjacent top flats. Whilst this may be the case this may change over time and residential occupation, even if currently absent, could be resumed at any point in time.
5. Furthermore, there are residential properties lining both sides of Edgecumbe Street and Melbourne Street. The rear elevations and outdoor areas of these streets sit behind the appeal property. Due to the proximity of residential dwellings, occupiers will currently be aware of noise and disturbance from the existing businesses on Newlands Avenue. This, in all probability, includes customer and vehicle movements, raised voices, car doors shutting and staff activity in rear yards.
6. The current opening hours of the premises are stated as being from 1000 until 2330 with the proposal seeking to extend this on Friday and Saturday evenings until 0200 hours. In support of the proposal, the appellant states that extended opening hours would create employment and improve the viability of the takeaway. However, although this may be the case, no substantive evidence has been submitted to show that without such extended hours the business would not continue.
7. To my mind, due to the proximity of residential properties to the appeal site, business hours until 0200 would extend noise and disturbance (including that from vehicular movements) well into the period when most people would sleep with this noise and disturbance becoming more obtrusive as the night progressed. The extended opening times would therefore have an unacceptable impact on the living conditions of the occupiers of adjacent and nearby residential properties.
8. In coming to the above view, I note that the appellant has not received complaints of anti-social behaviour in the past three years and it is claimed that there is little evidence of residents' opposition to the proposal. However, during determination of the application, a local residents' association did raise concerns. Even if no such objections were submitted, the lack of objections would be a neutral consideration within the planning balance.
9. I have also had regard to the appellants intended use of their discretion regarding the closing time on a nightly basis by considering the well-being of local residents and staff. It is also acknowledged that staff may have policies in place to refuse service to unruly customers. However, extended opening hours would be likely to attract customers to the area and management of the business could change with extended hours being lawfully implemented on every Friday and Saturday. Whilst sensible management of how the business would operate weighs in favour of the proposal, it does not outweigh the great potential for harm to the living conditions of nearby residents.
10. Finally, within the reason for refusal the Council cite increased odours affecting the living conditions of neighbouring occupiers. Although this may be the case, no evidence has been provided to support this concern (over and above the existing situation) and I can therefore only give this matter very little weight.
11. For the above reasons, the proposal would give rise to an unacceptable level of noise and disturbance to the occupiers of nearby residential properties and would therefore conflict with Policy 23 of the Local Plan which seeks that

proposals are appropriate to the local context and minimise noise and disturbance to residential properties.

Conclusion

12. Taking all matters into consideration, the appeal is dismissed.

E Symmons

INSPECTOR