



Appeal Decision

Site visit made on 3 December 2019

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 January 2020

Appeal Ref: APP/A3010/W/19/3236907

7, 7A and 7B Carlton Road, Worksop S80 1PD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Miss Foster of LA Desserts Parlour against the decision of Bassetlaw District Council.
 - The application Ref 19/00610/COU, dated 8 May 2019, was approved on 12 August 2019 and planning permission was granted subject to conditions.
 - The development permitted is Change of Use from Shop (Class A1) to Cafe (Class A3) and Hot Food Takeaway (Use Class A5) and Installation of Extractor Fan and Ducting to the Rear.
 - The condition in dispute is No 3 which states that:
"The use hereby permitted shall only take place between the following hours: 1200-2300 Mondays to Saturdays (including Bank Holidays and Public Holidays)".
 - The reason given for the condition is:
"To safeguard the amenities of dwellings located in the vicinity of the application site".
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Decision

1. The appeal is allowed and the planning permission Ref 19/00610/COU for Change of use from shop (Class A1) to café (Class A3) and hot food takeaway (Use Class A5) and installation of extractor fan and ducting to the rear at 7, 7A and 7B Carlton Road, Worksop S80 1PD granted on 12 August 2019 by Bassetlaw District Council, is varied by deleting condition 3 and substituting for it the following condition:
 - 3) The use hereby permitted shall only take place between the following hours: 1200 – 2300 Mondays – Sundays (including Bank Holidays and Public Holidays).

Procedural Matter

2. The appeal property has been operating as a dessert parlour within Use Class A3, under the provisions of Class C of Part 3 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). On the original planning application form, the development was described as 'proposed additional use as A5 takeaway and installation of extractor fan and ducting to the rear'. In order that my decision relates clearly to the development for which planning permission was granted, I have used the description from the Council's decision notice in the banner heading and my formal decision above.

Background and Main Issue

3. The appeal property is a double shop unit, currently operating as a dessert parlour within Use Class A3. Planning permission has been granted which formalises the change of use from Use Class A1 to Use Class A3, with additional use as a hot food takeaway within Use Class A5 which would enable the appellant to also sell kebabs and similar food from the premises. The permission also allows for the installation of extraction equipment and ducting at the rear of the building. The appellant seeks to vary Condition 3 attached to the permission, so that the business can operate from 1200 until 0300 the following morning.
4. I therefore consider that the main issue is whether the condition is reasonable and necessary in terms of the effect of the proposed opening times on the living conditions of the occupants of the neighbouring residential properties, with particular regard to noise and disturbance.

Reasons

5. The appeal property is situated on Carlton Road, a main road on the northern fringe of Worksop town centre, with the core of the town centre beginning a short distance to the south. The surrounding area includes a variety of commercial and residential uses. Nos 3 and 5 Carlton Road, immediately next to the appeal site, are in residential use, as are the upper floors of many other surrounding buildings including those to the rear on Gateford Road.
6. Town centres are more likely than residential areas to have uses opening late and consequently potentially creating noise disturbance. The area a little to the south of the appeal site, from Victoria Square to the core of the town centre, includes several premises offering various forms of food and drink until the early hours of the morning. However, on Carlton Road around the appeal premises and to the north, businesses are generally not open so late.
7. I recognise that kebabs and suchlike are a popular post-pub food for many people, and understand the attraction for the appellant of being able to open very late at night. The location of the appeal premises is such that it would be likely to attract relatively large numbers of customers when the nearby pubs and clubs close, and indeed at points during an evening when people were considering moving from one venue to another. This would be likely to result in a considerable additional amount of noise and disturbance in the area between the appeal premises and the town centre to the south, which would cause significant harm to the living conditions of the occupants of Nos 3 and 5 Carlton Road. It is also likely that there would be an increase in disturbance to the occupants of the flats on Gateford Road to the rear of the appeal site from the operation of the business late into the night, including that which may arise from clearing up and emptying of rubbish after the close of business.
8. The appellant has drawn my attention to other takeaways elsewhere in the town which operate late at night. I do not know the circumstances of each of them, although I saw some within the town centre where their surroundings are more commercial in character than those of the appeal property. Nonetheless, I have reached my decision based on the planning merits of this case and the information before me.

9. The significant harm to the occupants of the neighbouring residential properties arising as a result of the proposed extension of opening hours means that the disputed condition is necessary and reasonable. Removal of the condition would be contrary to the aims of Policy DM4 of the 2011 Bassetlaw Core Strategy (the BCS). Among other things, this policy seeks to ensure that new development does not have a detrimental effect on the residential amenity of nearby residents.
10. For the reasons given above I have found that significant harm would arise from the extension of opening hours until 0300 each morning. However, I find no similar harm arising from allowing opening on Sundays within the same hours as the other days of the week. I note that the Council's officer report recommended that the proposed use should be allowed to operate until 2300 daily, although it is not clear from the information before me whether the subsequent omission of Sunday in the decision notice is simply an error. As I find no harm would arise to the living conditions of the occupants of neighbouring properties from allowing opening on Sunday, it follows that I find no conflict with the objectives of Policy DM4 of the BCS in this regard. Consequently, a new condition is necessary and reasonable to allow opening on Sundays at the same times as on the other days of the week.

Other matters

11. The appeal property lies within the Worksop Conservation Area. I therefore have a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area. I am satisfied that the variation of opening hours to allow the premises to open on Sunday would not alter the Conservation Area's overall character.

Conclusion

12. For the reasons given above I conclude that the appeal should be allowed and planning permission granted, with Condition 3 varied as set out in the formal decision.

M Cryan

Inspector