



Appeal Decision

Site visit made on 4 February 2020

by Robert Hitchcock BSc DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 March 2020

Appeal Ref: APP/W3005/W/19/3239829

Dominos Pizza, 11-13 Station Road, Sutton in Ashfield NG17 5FF

- 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 A Lamaa against the decision of Ashfield District Council.
 - The application Ref V/2019/0496, dated 1 August 2019, was refused by notice dated 26 September 2019.
 - The application sought planning permission for a new retail unit 6000sqft and A3 (hot food takeaway) unit 1000sqft with associated parking without complying with a condition attached to planning permission Ref V/2003/0974, dated 9 March 2004.
 - The condition in dispute is No 9 which states that: The use of the hereby permitted development for A3 food and drink purposes shall only take place during the following hours 0900 to 2330.
 - The reason given for the condition is: To safeguard the amenities of residents living in the vicinity of the application site.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. Planning permission reference V/2003/0974 was granted in March 2004 for a new retail unit 6000sqft and A3 (hot food takeaway) unit 1000sqft with associated parking. The hot food takeaway element was subject to a condition limiting the hours of opening to 0900-2330 on any day was imposed in order to safeguard the living conditions of nearby residents.
3. An application to vary this condition to permit opening hours of 1100 to 0000 Sundays to Thursdays and 1100 to 0100 Fridays and Saturdays was submitted. The application was refused and the appellant has lodged an appeal against that decision. Having had regard to the above, the main issue is the effect of the proposed opening hours on the living conditions of nearby residents.

Reasons

4. The site is located close to but outside of the local town centre on a main road linking the town centre with the A38, a strategic through route skirting the main settlement area. The area accommodates a mix of residential properties, retail and commercial uses, and a primary school. The appeal building lies close to the road frontage and is attached to a vacant retail unit. To the sides of the site are residential properties and a primary school; to the rear are parking and servicing areas beyond which are residential properties. On the opposite side of the road are retail stores set behind a large car park.

5. There is a gap between the takeaway unit and nearest residential property at 5 Station Road that accommodates the takeaway's car park and entrance road. The pedestrian entrance of the unit faces toward no.5.
6. This area would likely see a high proportion of the activity associated with people attending the site to order, wait for and collect takeaways from the unit. Additionally, activity associated with delivery services will inevitably focus here during the proposed extended hours of opening. Due to the proximity of the car park to no.5, activity within it and about the entrance to the unit has significant potential to cause noise of a nature and sufficient volume to break residents' slumber at times when they might expect to enjoy undisturbed sleep or rest.
7. Noise from activities such as patrons and delivery personnel starting and manoeuvring cars, vans or motorcycles, the slamming of vehicle doors and playing of car radios could reasonably be expected. Additionally, loud speaking or shouting by customers calling on their way home and under the influence of a night out are likely given the location of the site on a main radial route out of the town centre. Raised voices between groups or individuals stood by the entrance whilst waiting for their food may also arise on account of the limited internal waiting space or from those wishing to smoke.
8. Although there are no first-floor windows facing on to the parking area, windows on the projecting two-storey bay of no.5 would be susceptible to noises above a reduced background level, particularly during warmer months when windows are more likely to be open.
9. Whilst the site sits within a primarily commercial area, the majority of nearby units currently close at 2000. A 24/7 gymnasium offers later opening times, however, this and the associated access and parking are some distance from the residential properties. Furthermore, users of that facility are less likely to be found waiting within the car park area or generate the levels of activity associated with takeaways during later evening or early morning hours.
10. The focus of activity generated by the extended opening hours of the unit and use of the car park by customer and delivery vehicles would have significant potential to give rise to intermittent noise events above the background levels such that residents to the side of the site would suffer disturbance at times when undisturbed sleep would be anticipated. As such, noise interruption would be unwelcome and contrary to healthy living objectives.
11. The absence of complaints as they relate to the current opening times does not comprise a benefit in favour of the proposed development.
12. Given the above, I conclude that the extension of the opening hours later into the night time would have significant potential to adversely affect the living conditions of nearby residents through noise disturbance. The proposal would therefore conflict with saved policy ST1 of the Ashfield Local Plan Review and Paragraph 127 of the National Planning Policy Framework as they seek to secure high standards of amenity for existing residents.

Conclusion

13. For the above reasons, I conclude that the appeal should be dismissed.

R Hitchcock INSPECTOR