



Appeal Decision

Site visit made on 19 November 2019

by R Norman BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 April 2020

Appeal Ref: APP/U4610/W/19/3236448

717 Tile Hill Lane, Coventry CV4 9HU

- 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 Raj against the decision of Coventry City Council.
 - The application Ref S73/2019/1391, dated 3 June 2019, was refused by notice dated 29 July 2019.
 - The application sought planning permission for the change of use from a newsagent to a hot food takeaway without complying with a condition attached to planning permission Ref R/2002/0193, dated 19 May 2003.
 - The condition in dispute is No 2 which states that: *The use hereby permitted shall not be open to customers outside the following times:
09.00hrs to 23.00hrs Monday to Saturday.*
 - The reason given for the condition is: *To protect the living conditions of the occupiers of nearby properties.*
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the condition is reasonable and necessary and the effect of the proposed variation of this condition on the living conditions of nearby occupiers.

Reasons

3. The appeal site is located within a small parade of commercial units which comprises the designated Station Avenue Local Centre. It is in use as a hot food takeaway at ground floor level and consists of a mid-terraced, two-storey building which has an associated yard to the rear. A lay-by is located to the front of the site and beyond this is the main road. Along this immediate stretch of Tile Hill Road are other commercial premises, and beyond this are residential properties.
4. The proposal would vary the condition imposed on the planning permission which currently restricts the opening hours of the business to between 9:00 and 23:00 hours from Mondays to Saturdays. There are currently no authorised opening hours on a Sunday and the Appellant seeks to vary the condition to allow the premises to also open between the hours of 11:00 and 22:00 on Sundays.

5. I have carefully considered the proximity of the appeal site to the nearest residential properties. Whilst the appeal premises are located within a designated Local Centre where some forms of commercial activity are expected, I have had regard to the typical conditions related to a Sunday in contrast with other days of the week.
6. I note the Appellant's view that, based on the content of Policy R3 of the Coventry Local Plan (2016) (Local Plan) in principle, the presence and proximity of residential properties to hot food takeaways is acceptable, and I acknowledge that it can be common for dwellings and flats to be close to these local centres. However, the principle of these arrangements is a starting point, and the proposal should then be considered against all relevant policies, which includes the need to consider the impacts on particular properties.
7. Notwithstanding the submitted NPPG noise hierarchy table, I have not been provided with specific noise assessments relating to background noise levels on a Sunday nor in relation to the extractor fan from either the Council or Appellant in relation to this particular site. However, taking a precautionary approach, it is reasonably likely that background noise levels on a Sunday would be reduced. Whilst I note the presence of the road and busy junction nearby, this would be likely to have reduced traffic flows on a Sunday, particularly in the evening. In addition, the presence of the road would provide a degree of background noise, but which would mainly occur to the front of the premises and nearby properties. It would be unlikely that significant levels of vehicular noise would carry to the rear gardens of neighbouring properties. However, in contrast, activity to the rear of the appeal premises would be more apparent and have the potential to disturb nearby residents and would be unlikely to be sufficiently subsumed into any background traffic noise.
8. Opening on Sundays, including into the evening, would have the potential to significantly increase noise levels and odour which would result in increased disturbance for nearby residents, particularly in relation to the use of the rear yard and the extraction system.
9. I accept that the appeal site does not physically adjoin the nearby residential properties, and that there is a degree of separation as a result of the intervening commercial properties. However, noise and odour are not wholly confined to adjacent premises and can travel beyond the immediate neighbours.
10. I note the other commercial premises in the immediate vicinity. Within the same parade of shops as the appeal site there are retail units and a small petrol station and related convenience store on the corner with the junction of Station Avenue. Beyond this, along Station Avenue there is a public house, a clinic and a further convenience store. Whilst some of these are permitted to trade on Sundays and into the evenings, none of these premises are classed as hot food takeaways. Accordingly, they are less likely to generate odour and noise from the cooking of food and use of a kitchen in proximity to residential properties. As such, I do not find these to be sufficiently comparable to the appeal site to set a precedent for the extended opening hours.
11. Furthermore, whilst I note the other examples of residential properties above hot food takeaways in the City, I have been provided with very limited details of these and as such can give them little weight in my consideration of the appeal proposal.

12. I note that, from the Officer's Report, no objections had been received from the Environmental Protection Team. However, in the absence of their full response I find that their initial lack of objection is not sufficient to overcome the concerns I have with the proposed variation of the restrictive opening hours condition.
13. I have had regard to the Appellant's view that the extended opening hours would result in additional employment and choice for customers and that there may be demand for such services on a Sunday. However, the proposed additional hours of opening would not give rise to a level of social or economic benefits that would be sufficient to significantly or demonstrably outweigh the harm arising for the above reasons.
14. Consequently, based on the evidence before me it has not been adequately demonstrated that the increase in opening hours, particularly into the evening, would not result in harm to the living conditions of nearby residents in terms of noise, odour and general disturbance. The proposal therefore fails to comply with Policy R6 of the Local Plan which seeks to ensure that proposals for hot food takeaways in defined centres will avoid significant harm to the amenity of nearby residents, amongst other things. It would also be contrary to the aims of Section 12 of the National Planning Policy Framework (2019) which requires development to achieve a high standard of amenity for existing and future users, amongst other things.
15. Policy DE1 of the Local Plan relates to the need for high quality development which meets a number of criteria. These criteria do not specifically refer to the living conditions of nearby residents therefore I find this to have limited relevance to the appeal proposal. I have also had regard to the Hot Food Takeaway Supplementary Planning Document, however, find that this supports the requirements of Policy R6 and therefore any compliance with parts of this document does not overcome the conflict with the development plan in this instance.

Other Matters

16. Local objection has been received concerning, in addition to the above matters, implications for parking and highway safety and concerns over the breach of the conditions. However, it is not necessary for me to conclude on these matters as they would not alter my findings above.
17. I note the Appellant's comments on the previous appeal decision in relation to the reasoning for the attached condition. Nevertheless, the previous Inspector did consider the condition to be necessary in the interests of protecting the living conditions of nearby occupiers and therefore it was imposed.

Conclusion

18. For the reasons given above, and having carefully considered all matters raised, I conclude that the appeal should be dismissed.

R Norman

INSPECTOR