



Appeal Decision

Site visit made on 18 August 2020

by Janet Wilson BA (Hons) BTP MRTPI DMS

an Inspector appointed by the Secretary of State

Decision date: 16th September 2020

Appeal Ref: APP/D1265/W/20/3249627

The Health Station, 8 Station Road, Swanage, Dorset BH19 1AE

- 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 Mr Sinan Koch of KOCH (Swanage) Ltd against the decision of Dorset Council.
 - The application Ref 6/2019/0059, dated 24 January 2019, was approved on 13 December 2019 and planning permission was granted subject to conditions.
 - The development permitted is the Change of use from A1 (retail) to A3 (restaurant/cafe) & A5 (hot food takeaway) plus install replacement extraction unit and flue.
 - The conditions in dispute are Nos 1 to 5 which state that:
 - Condition 1 - The development permitted must be carried out in accordance with the following approved plans: drawing number P4 (location plan at a scale of 1:1250), drawing number P3 (block plan at a scale of 1:500), drawing number P1 (existing ground floor plan), photograph E3 (existing rear elevation), drawing number P2 (proposed ground floor plan) and photograph E2 (photomontage detailing proposed extraction equipment and flue) submitted as part of the application, plus details of the noise shield encasement for the fan detailed as component 'C' on the photomontage received on 13 August 2019.
 - Condition 2 - Within three months of the date of this planning permission, the noise shield encasement for the fan detailed as component 'C' on the photomontage received on 13 August 2019 must be installed and in such a manner as to meet the mitigation measures and noise levels detailed within the report entitled 'Noise Impact Assessment' dated 17 May 2019 (Report VA2764.190516.NIA).
 - Condition 3 - The A3 (restaurant / cafe) use and A5 (hot food takeaway) use will only operate between 07:00 and 23:00 from Monday to Saturday and between 07:00 and 22:00 on Sundays. The A3 (restaurant / cafe) use and A5 (hot food takeaway) use will not be open to the public outside of these hours.
 - Condition 4 - The extraction and ventilation systems will only operate between 07:00 and 23:00 from Monday to Saturday and between 07:00 and 22:00 on Sundays. The extraction and ventilation systems will not be in use outside of these hours.
 - Condition 5 - All of the extraction and ventilation systems must be serviced and maintained in accordance with the manufacturer's specifications.
 - The reasons given for the conditions are:
 - Condition 1: For the avoidance of doubt and in the interests of proper planning.
 - Condition 2: In the interest of amenity, specifically to ensure that there is no harmful noise nuisance for adjoining and nearby residential properties and nearby residents.
 - Conditions 3 and 4: In the interest of the amenities of adjoining and nearby residential properties and nearby residents.
 - Condition 5: To ensure that the equipment is properly maintained in order to safeguard the amenities of adjoining and nearby residential properties and nearby residents.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 1 April 2019, Purbeck District Council ceased to exist and became part of a new Unitary Authority known as Dorset Council. The development plans for the merged Local Planning Authorities will remain in place for the area within the new Unitary Authority they relate to until such time as they are revoked or replaced. I shall therefore determine the appeal having regard to the policies set out within the Purbeck Local Plan Part 1 (2012) (Local Plan) and the Swanage Local Plan (2017).
3. The description of the development changed from the original application to that contained in the decision notice however as this is an application against the conditions attached to the grant of planning permission I have used the same description as that used by the Council in its decision notice as this more accurately describes the permission granted.
4. The appeal form does not specify which conditions are at issue, in view of this and the evidence before me I have taken the appeal to relate to all five of the conditions attached to the permission as these relate to both the use and the requirement for extraction equipment.

Main Issues

5. The main issues are whether the conditions are reasonable and necessary in order to protect the living conditions of the occupants of nearby residential properties in respect of noise; late night activity; and odour from mechanical extraction equipment; and whether the encasement for the extraction fan and the restrictions on operating hours are necessary.

Reasons

Noise and activity

6. The premises are centrally located in the town and form part of a row of retail and other commercial premises. Uses at first floor level appear to be predominantly residential accommodation.
7. The appellants wish to open the restaurant and takeaway between the hours of 06:00 and 02.30 Monday to Friday; 06:00 to 04:00 on Saturdays and between 06:00 and 02:30 on Sundays and Bank Holidays. The appellants justification for such wide opening hours is that the previous bakery with takeaway facility enjoyed opening hours between 06:00 and 02:30 Sunday to Thursday and 06:00 to 04:00 on Friday and Saturday. They point to those hours also being granted by the licencing authority for late night refreshment.
8. I have no substantive evidence to demonstrate that the extent of the opening hours requested were permitted by any planning permission on this site and I am also mindful that the planning permission involved a change of use from A1 retail. There is also no evidence before me to demonstrate that any other similar premises have such extensive opening hours.
9. The additional activity which would be afforded through extended opening hours, albeit on a site in the town centre would, in all probability, give rise to

significant noise disturbance from general noise and disturbance. The presence of residential accommodation on the upper floors in this locality requires sensitive consideration of the effect on the living conditions of the occupiers of those premises particularly late at night when background noise levels would be lower.

10. Noise generation through to the very early hours of the morning effectively seven days per week when general background noise levels would be at their lowest and residents would be sleeping would be particularly intrusive. This, in my judgement, would lead to unacceptable levels of noise and disturbance close to residential properties which would be harmful to the living conditions for local residents occupying space above the retail units.
11. Whilst noting the appellants argue that they have suggested, at every stage, solutions to potential problems it is material that the planning permission runs with the land and the particular methods chosen by the appellants to manage customer interactions are not such that the individual behaviours could be legitimately controlled by planning conditions. Equally extraction equipment and highly trained staff certified in dealing with problem or noisy customers would not prevent the likely disturbance to residents adjacent to the premises. The profile of clientele referred to by the appellants is not relevant to the planning considerations in this appeal. Similarly, however well managed the premises would be this would not prevent individuals from causing disturbance associated with the use of these premises into the early hours of the morning. My findings are based on the use of the premises by the general public within the additional hours requested.
12. Consequently, the alteration of the hours of operation in this location would conflict with Policy D of the Purbeck Local Plan and to the aims of the National Planning Policy Framework (the Framework). These policies amongst other things requires that developments should integrate with their surroundings and avoid or mitigate adverse effects on local amenity. As such condition 3 should remain unaltered.

Modifications to extraction equipment

13. The appellants undertook an acoustic survey and proposed modifications to the extraction equipment. The survey assessed the predicted noise impacts and concluded that with mitigation measures the scheme would mitigate the effect of extraction equipment so that it would not have a significant noise impact. The Councils Environmental Health specialist appeared satisfied that those measures would be appropriate to mitigate the ventilation and extraction equipment however this is a separate matter to the general noise and activity referred to above and I have nothing before me which would cause me to take a different view.
14. There is no substantive evidence to demonstrate that the mitigation measures for the extraction equipment are unnecessary other than a comment made by the appellants that the scheme requirements have not been judged essential on other late night venues in Swanage Town Centre of which there are many. This statement is however unsupported by any evidence such that it would lead me to conclude that conditions 4 and 5 are unnecessary or unreasonable.

15. In the absence of evidence to the contrary I consider that conditions 1, 2, 4 and 5 are reasonable and necessary in relation to the A3/A5 use permitted and the conditions should remain unchanged.
16. Consequently, the removal of conditions relating to the requirements for mitigation measures on extraction equipment would conflict with Policy D of the Purbeck Local Plan and the aims of the Framework. These policies amongst other things require that developments integrate with their surroundings and avoid or mitigate adverse effects on local amenity.

Other Matters

17. The appellants have responded to representations made by local residents in relation to public nuisance comments stating that the premises have been operating for reduced opening hours due to refurbishment and separately closed in 2020 due to the Covid pandemic and that the extraction unit had not been used between November 2019 and August 2020. They note that the residents commenting are the same individuals as were in residence when the subway franchise was in operation and hours terminated at 0400 using inferior extraction equipment. These points are noted but they do not, based on the evidence before me, lead me to a different conclusion.

Conclusion

18. For the above reasons I conclude that conditions 1 to 5 are necessary to protect the living conditions of local residents from unreasonable disturbance. The removal or alteration of these conditions would conflict with the development plan and the aims of the Framework. There are no specific benefits which have been outlined by the appellants which would outweigh the harm which I have identified.
19. Therefore, for the reasons given, and having regard to all other matters raised, the appeal is dismissed.

Janet Wilson

INSPECTOR