



Appeal Decision

Site visit made on 4 August 2020

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th September 2020

Appeal Ref: APP/W3005/W/20/3245904

21 Station Street, Kirkby in Ashfield, Nottinghamshire, NG17 7AQ

- 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/2019/0682, dated 25 October 2019, was refused by notice dated 12 December 2019.
 - The application sought planning permission for a change of use from Financial and Professional Services (A2) to Restaurant (A3) and Takeaway (A5) without complying with a condition attached to planning permission Ref V/2019/0130, dated 31 May 2019.
 - The condition in dispute is No 3 which states that:
*'The use of the hereby permitted development for a restaurant and hot food takeaway shall take place during the following hours:
09:00 to 24:00 (Midnight) Monday to Sunday (including Bank Holidays).'*
 - The reason given for the condition is:
'To safeguard the amenities of residents living in the vicinity of the application site.'
-

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect the proposed opening hours would have on the living conditions of nearby residents, with particular regard to noise disturbance.

Reasons

3. The appeal property is a Domino's pizza restaurant and takeaway, situated on Station Street, a main road within the town centre of Kirkby in Ashfield. The surrounding area has a range of commercial uses, including other restaurants and takeaways, in two and three-storey buildings, and in many ways appears typical of a high street within a reasonably small town. The upper floors of many of the nearby properties appear to be residential flats, and there are also self-contained houses close by, all of which have various rooms facing onto Station Street. The building of which the appeal property is part has permission for two residential units above and to the rear of the restaurant/takeaway, and there are also dwellings close by on Stonemasons Mews, to the rear of the appeal site.

4. The original planning permission, granted in May 2019, allows the premises to operate between 09.00 and midnight seven days a week. The appellant seeks to vary condition 3 of that permission so that the business can open between 11.00 and midnight from Sunday to Thursday, and from 11.00 to 01.00 the following morning on Friday and Saturday.
5. The Council indicates that due to the amount of residential accommodation in the town centre, in order to protect residents' living conditions in recent years it has sought to ensure that new restaurants, drinking establishments and takeaways close at midnight, although it is not clear to me how recently this approach was adopted. Of the examples close to the appeal site to which the appellant referred, the Lucky Star Chinese restaurant on the opposite side of Station Street opens to 23.00 from Sunday to Thursday and to 23.30 on Fridays and Saturdays while The Regent pub, slightly further east along Station Street, is open until midnight daily.
6. Some nearby premises currently open later than midnight. New Diamond Kebab at No 15 Station Street a short distance west of the appeal site operates until 23.45 from Sunday to Thursday, and to 00.45 the following morning on Fridays and Saturdays, although it is not clear from the information before me whether its permission pre-dates the Council's approach outlined above. Sunrise Kebab at No 13 operates until 01.00 the following morning from Sunday to Thursday, and to 01.30 the following morning on Fridays and Saturdays, although the Council's evidence indicates its planning permission does not in fact allow it to do so. Overall, the number of other late opening businesses in the immediate vicinity is small, which leads me to the view that this is a part of the town centre where the late night economy is secondary to other functions, including the residential role.
7. The extended opening hours which the appellant seeks would attract customers both on foot, many of whom would be likely to arrive from various pubs elsewhere within the town centre, and from further afield by car. The premises' delivery operations would also continue through the extended opening hours. Combined with the presence of two other takeaways very close by, notwithstanding the question mark around the opening hours of the Sunrise which lies outside the scope of this appeal, it is likely that there would be an increased number of people congregating in the street outside the appeal site, and there would therefore be likely to be more noise from loud conversations and shouting than is the case at present.
8. Vehicle movements related to the premises would also continue later into the night, including customers being picked up and dropped off outside the premises by cars and taxis. There is no dedicated car park serving the business, and therefore this increased activity, and the associated noise arising from car radios, doors slamming, manoeuvring vehicles and suchlike, would take place directly in front of the surrounding flats and houses facing onto Station Street. Noise from the business including delivery vehicles coming and going, the operation of equipment, and the clearing up of rubbish would also continue later into the night than at present.
9. All of these factors would contribute to an increased level of noise disturbance, at a time when residents could reasonably expect some degree of peace and quiet. Although Station Street is a reasonably busy road, at night it is unlikely to carry heavy traffic, and while neighbouring residents are likely to be used to

some degree of background noise from traffic and patrons of the various businesses in the town centre including the appeal property, this does not justify allowing further unacceptable disturbance.

10. I acknowledge that there is no evidence of noise or other disturbance complaints arising from the current use of the appeal premises as a restaurant and takeaway. However, the proposed hours would extend the operation of the premises into a more sensitive time when local residents are more likely to be asleep.
11. Although the appellant also seeks to alter the permitted operating hours such that the premises could not operate before 11.00 rather than 09.00 as at present, in general terms the noise and other disturbance frequently associated with takeaways tends to occur at the end of the day rather than the beginning, so this element of the proposed changes carries little weight in favour of the proposal as a whole. I acknowledge that the proposal would be of economic benefit in terms of supporting the business and its employees, and it would provide an enhanced service to its customers. These matters carry modest weight in favour of the proposal. However, such benefits do not outweigh the significant harm caused to neighbouring residents I have outlined above.
12. I consider that the disputed condition is reasonable, necessary, precise, enforceable, relevant to the development permitted and relevant to planning. I conclude that the proposed opening hours would have a significant harmful effect on the living conditions of nearby residents, with particular regard to noise disturbance. The proposal to amend the condition would not therefore comply with saved Policy ST1 of the November 2002 Ashfield Local Plan Review, nor with paragraph 127 of the National Planning Policy Framework. Together these seek, among other things, to ensure that development provides a high standard of amenity for existing and future occupiers of land and buildings.

Conclusion

13. For the reasons given above the appeal is dismissed.

M Cryan

Inspector