



Appeal Decision

Site visit made on 16 February 2021

by Graeme Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 April 2021

Appeal Ref: APP/Z4718/W/20/3263244

Devour at Woodlands Mill, Luke Lane, Thongsbridge, Holmfirth HD9 7TB

- 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 Paul Robinson (D & LS Developments Ltd) against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2020/70/90302/W, dated 30 January 2020, was approved on 9 September 2020 and planning permission was granted subject to conditions.
 - The development permitted is *variation of condition 2 (plans) and 15 (opening hours) on previous permission 2018/90876 for the variation of conditions 2 (plans) and 15 (opening hours) on previous permission 2017/91888 for change of use, alterations and extensions to former mill buildings to form mixed use development comprising of food manufacturing, cookery school, café, shop, restaurant, cooking demonstration / tasting areas, service yard, parking and associated landscaping works.*
 - The condition in dispute is No 7 which states that:
The hereby approved development shall operate in accordance with the following hours of use:
 - *Northern Building: 0930 to 2230 any day of the week*
 - *Southern Building: 0900 to 2000 any day of the week*
 - *Deliveries or dispatches to or from the site: 0730 to 2000 Monday to Friday, 0800 to 1800 Saturdays*
 - *No deliveries Sundays and Bank Holidays*
 - The reason given for the condition is:
So as not to detract from the amenities of nearby residents and to accord with Policies LP24 and LP52 of the Kirklees Local Plan and Policies in Chapter 15 of the National Planning Policy Framework.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have noted the slight difference between the planning application reference formats cited by the appellant and those set out on the Council's decision notices. I have adopted the more complete format set out in the latter throughout my decision and have determined the appeal accordingly.

Application for costs

3. An application for costs was made by Mr Paul Robinson against Kirklees Metropolitan Borough Council. This application is the subject of a separate Decision.

Background and Main Issue

4. The appeal site, known as 'Devour @ Woodlands Mill', is comprised of two buildings referred to throughout as the 'northern' and 'southern' buildings, along with areas of access and parking serving the buildings. The appeal site has an extensive recent planning history with a number of applications following on from an original permission to alter, extend and change the use of former mill buildings¹.
5. Since the initial grant of planning permission there has been a succession of applications to vary, or discharge the provisions of, planning conditions attached to those permissions, including Nos. 2 (plans) and 15 (opening hours) of the original permission. The application which led to the current appeal sought further amendments and variations to conditions Nos 2 and 15 of the original permission which had, in turn, been subject to subsequent amendment by virtue of a later permission². Both are referred to in the description of development set out above.
6. The application the subject of this appeal was initially submitted to seek further variation to condition Nos 2 (plans) and 15 (opening hours) of application 2018/90876. The Council approved the application and imposed an updated range of conditions, which included a new plans condition (No. 1) and plan / specification schedule. The approval also included, at condition No. 7, an opening hours condition which set out specified opening hours unchanged from previous permissions. The appellant has confirmed that this appeal is against condition No. 7 of permission 2020/70/90302/W.
7. The appellant seeks to vary the provisions of condition No. 7 so as to allow the northern building to operate between 0900-2330 Sundays to Thursdays, between 0900-0000 Fridays and Saturdays and between 0900-0000 on Christmas Eve and New Year's Eve. There would be no changes to the opening hours of the southern building, or to the delivery or despatch hours or prohibitions previously set out.
8. Having regard therefore to the background set out above, the main issue is therefore is the effect of the removal or variation of the disputed condition upon the living conditions of occupiers of nearby residential properties, with particular regard to noise and disturbance.

Reasons

9. The appeal site is located on the valley floor adjacent to the River Holme. On the opposite side of Luke Lane lies the four storey-plus-ground floor car park building of the converted Royd Mill. There are other residential properties to the east (The Waterside) and south (terrace on Luke Lane) of Royd Mill, but it is the latter which lies directly opposite the entrance to the site and the northern building.
10. Luke Lane turns a sharp 90° turn between Royds Mill and the appeal site. In the vicinity of this sharp bend, which lies at the foot of the hill leading up to the main body of Thongsbridge, is the entrance to the appeal site, the entrance to the car park at Royds Mill and the junction with Woodlands Lane which leads to residential properties in Thongsbridge. There are likely, therefore, to be a

¹ LPA Ref No: 2017/91888

² LPA Ref No: 2018/90876

number of instances of accelerative movements in and around this area as a consequence of the local road layout and unrelated to the operation of the appeal premises. The close physical relationship between Royds Mill and the southern building is such that the aural impacts of these movements will reverberate between and around the multitude of stone structures in the immediate vicinity.

11. The residential properties at Royds Mill have windows that face both broadly westwards (directly on to Luke Lane) and northwards across the car park and towards the appeal site's road frontage and open countryside beyond. Properties on the corner of Royds Mill closest to the appeal site also have small balconies upon which residents can sit out. Those closest to the appeal site will therefore be most directly exposed to these movements and are also therefore closest to the
12. The appellant's proposed variation to condition No. 7 would result in an additional 30 minutes at the start of the day bringing the opening time forward to 0900, with a further hour beyond the current permitted time of 2230 until 2330. On Fridays and Saturdays an additional further half-hour is sought to allow use until 0000 and, for Christmas Eve and New Year's Eve only, use until 0130. Whilst I have noted the concerns regarding the extension of operating hours at the 'start' of the working day, I am not persuaded that an earlier commencement of operating hours in the manner proposed would cause material harm to the living conditions of occupiers of nearby residential properties. I turn therefore to the proposed extension of operating hours at the other end of the day.
13. The current permitted extent of the operating hours of 2230 has, the Council state, been a consistent element of approvals at the appeal site influenced by concerns regarding later evening opening on the living conditions of occupiers of nearby residential properties. At its closest point, the Royds Mill building is less than 20 metres from the northern (appeal) building, and closer still to the southern building, the two being separated by just the width of Luke Lane. In this respect, I can understand the Council's desire to seek to control the hours of operation in the interests of the living conditions of occupiers of those residential properties sited at close quarters to the appeal site, and to do so is neither unreasonable nor unnecessary.
14. However, whilst the respective buildings are close to each other, the entrance to the appeal building from the car park is not at the street frontage adjacent to Royds Mill, but rather at the rear of the building at furthest point of the appeal building from Royds Mill. Indeed, the appeal site's street frontage, at least in relation to the northern building where the main focus of dispute in relation to the disputed condition is, is limited to a blank stone wall and the car park entrance.
15. In terms of the comings and goings of customers, I am satisfied that the main focus of activity is more likely to be towards the rear of the building, and within the car park, as customers arrive and depart rather than at the Luke Lane junction, closest to Royds Mill. The submitted plans show signage directing arriving and waiting taxis to the rear of the building and the layout of the site approach is such that it is unlikely in my judgement to be a particular focus for waiting taxis. Nor does the highway layout at the site's junction with Luke Lane particularly encourage the waiting or parking of vehicles.

16. There may of course be the occasional incidence of vehicles waiting here to collect customers from the appeal premises. The submitted 'Restaurant Noise Management Plan' (RNMP)³ would go some to manage this, but I accept that it cannot be entirely successful, nor wholly enforceable, by virtue of the range of taxi companies which may transport customers to the premises.
17. Nevertheless, the effect of the proposal to vary the disputed condition would extend the period within which vehicle and pedestrian movements associated with the appeal premises would occur. I am not persuaded that the appellant's various surveys fully and accurately demonstrate the full range of factors associated with the later operation of the premises which influence the late evening noise environment around the appeal site. Thus, the (likely) effects of pedestrian movements, those occasions when customers may wait at the entrance for taxis, and the full range of vehicle movements and the effect that those related to the appeal site's operation would have, when compared with representative ambient levels are patchy in the submissions thus far.
18. Notwithstanding existing vehicle movements unrelated to the appeal premises and the nature of the building's relationships, I concur with the Council that the appellant has not fully and robustly demonstrated that the proposal would not give rise to harmful levels of noise and activity later into the evening at times, and in a manner, that would be harmful to the living conditions of occupiers of those properties. The appeal site and Royds Mill lie in the valley floor apart from the main body of Thongsbridge. With open countryside beyond the appeal site, the area is characterised as being largely peaceful and relatively tranquil.
19. I acknowledge the support that was forthcoming with regard to the planning application but nor can I discount the objections received from other local residents and by local ward Councillors. It is clear that problems have been encountered over operations into the later evening and that the proposed variation of the operating times would extend the potential for those concerns to be expressed correspondingly later as well. As such, without the support of more robust and detailed survey findings and conclusions, I cannot conclude that the proposed variation in the hours of operation would not cause material harm to the living conditions of those resident within Royds Mill.
20. Policy LP24 of the Kirklees Local Plan (KLP) seeks to ensure that proposals promote good design. One aspect of the promotion of good design is that proposals provide a high standard of amenity for future and neighbouring occupiers. KLP policy LP52 requires proposals that have the potential to increase pollution from noise are accompanied with sufficient evidence to demonstrate that it would not reduce quality of life and the well-being of people to an unacceptable level. For the reasons I have set out, the proposal does not adequately or robustly demonstrate that the extension of hours would not cause material harm or reduce the quality of life of nearby residents. Thus, the proposal is therefore contrary to KLP policies LP24 and LP52.

Other Matters

21. I am conscious that the Council's decision was against the recommendation of their officers, with no objections from consultees in relation to highways and public health matters. However, the Council is not duty bound to follow the

³ Robert Halstead – January 2020 and Noise Management Plan drwg no: 3124 (9-) 20

advice of its professional officers and, having considered the evidence submitted, I have concluded that the proposal would be contrary to KLP policies LP24 and LP52.

22. The conduct of local councillors and the involvement of interested parties beyond the material planning matters they raise, is not a material consideration to which I give any significant weight. Such matters are for the appellant to pursue with the Council as appropriate.

Conclusion

23. For the reasons set out, and having considered all other matters raised, I conclude that the appeal should be dismissed.

Graeme Robbie

INSPECTOR