



Appeal Decision

Site visit made on 18 February 2021

by G Roberts BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 June 2021.

Appeal Ref: APP/Z3635/W/20/3260608

25 Church Street, Staines upon Thames, TW18 4EN

- 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 Habib Noory against the decision of Spelthorne Borough Council.
 - The application Ref 20/00350/RVC, dated 30 March 2020, was approved on 22 May 2020 and planning permission was granted subject to a condition.
 - The development permitted is variation of condition 4 (hours of opening) of p/a 19/00042/FUL (Change of use of ground floor office (Class B1) to takeaway (Class A5) and installation of extractor fan and flue) to allow longer opening hours (as shown on plan no. HABIB/PLAN/01 and Location Plan rec'd 18.03.2020).
 - The condition in dispute is No.1 which states that; *The premises shall only be used for the purposes hereby permitted between 11.30 and 01.00 hrs Monday to Saturday and between 11.30 and 23.30 hrs on Sunday and Bank Holidays.*
 - The reason given for the condition is: *To safeguard the amenity of neighbouring occupiers.*
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Decision

1. The appeal is dismissed.

Procedural Matters

2. In section F of the Appeal Form the Appellant completed part 2 relating to a situation where the Council had 'Refused permission to vary or remove a condition'. However, the appeal should have been made under part 4 of section F relating to a situation where the Council had 'Granted planning permission for the development subject to conditions to which you object.' The Appellant's Statement also made reference to the hours of opening condition being removed. However, Question 5 of the Application Form and section E of the Appeal Form confirmed that the proposal was to vary the hours of opening condition (and not to remove the condition) imposed on the original application for a change of use to a takeaway. I have determined the appeal on the above basis.
3. My understanding is that the Appellant was seeking to vary the opening hours condition to enable the premises to be used between 11.30 and 02.00 hrs Monday to Thursday, between 11.30 and 03.00 hrs on Friday and Saturday, and between 11.30 and 23.30 hrs on Sunday and Bank Holidays. Again, I have proceeded to determine the appeal on the above basis.
4. Both parties confirmed in writing that they were happy with the above approach and for me to determine the appeal on this basis.

Main Issue

5. The main issue is whether condition No.1 is reasonable and necessary and if so the effect of the longer opening hours sought by the Appellant on the living conditions of nearby residents, with particular regard to noise and disturbance.

Reasons

6. The appeal site comprises the ground floor unit of a two-storey terraced property (with rooms in the roof) on Church Street, which operates as a hot food takeaway. The character of this part of Church Street is typical of that found in edge of centre locations, with the ground floor units comprising a mixture of retail and commercial uses, a bar and hot food takeaways. On the upper floors, the uses appear to primarily comprise storage and offices. However, there are also residential uses close by in Church Street, including a flat in Lemon House and a block of 15 flats known as Aldous House.
7. Planning permission for the takeaway use was granted in April 2020 (ref. 19/00042/FUL). This was subject to a number of conditions including hours of opening (condition 4), which were restricted to between 10.00 and 23.00 hrs on any day. The Appellant sought to extend these opening hours through the application that is now the subject of this appeal. The Council's Delegated Report confirms that, following discussions with the Appellant, it was agreed to vary the hours of opening to between 11.30 and 01.00 hrs Monday to Saturday and between 11.30 and 23.30 hrs on Sunday and Bank Holidays. Planning permission was granted on this basis (ref. 20/00350/RVC).
8. As this appeal has been made directly against a condition imposed on a planning permission, I have considered both the condition as agreed by the Council in granting planning permission, as well as the longer opening hours sought by the Appellant.
9. My site visit was conducted during the daytime and the most recent Covid 19 national lockdown. As a consequence, it was difficult to get a clear picture of the normal level of activity that would take place in Church Street. However, I noted that this part of Church Street contains five takeaways (including the appeal site), as well as a live music venue/bar. I also observed during my visit that most customers calling at the various takeaways arrived by car. The availability of on street parking, which is only restricted to a one hour stay up until 7.00 pm, means that the takeaways are easily accessible by car.
10. Other than my observations on site, there is no detailed evidence before me of the likely level of activity that would take place in this location during the late evening or early morning hours, and how that would compare to background noise levels. Even so, the likelihood is that background noise, generated by passing traffic and town centre uses, would be lower around midnight and the early morning compared to those in the daytime and early evening. Paragraph 006 of the Noise chapter to the Planning Practice Guidance (March 2014, updated July 2019) (Planning Guidance), states that it is late at night when the activities associated with takeaways are likely to be at their peak. It is, therefore, at these times when the impact of the noise and disturbance generated by such uses is likely to be at its highest.
11. The Appellant suggests that Topps Pizza (11 – 13 Church Street) opens until the early hours of the morning. The Council indicate that this business trades

- under a historic permission, with no restrictions, and is not, therefore, directly comparable. Instead, the Council refer to the live music venue opposite, which closes at 01.00 hrs on Friday and Saturday, and the other nearby takeaways, which it says operate under similar opening hours to those approved on the appeal site.
12. I am satisfied, on balance, that the opening hours approved by the Council under condition No.1 of planning permission 20/00350/RVC are reasonable and necessary. The evidence before me indicates that these opening hours would broadly be in line with those of the other takeaways and the live music venue in this part of the street. Whilst extending the hours of opening to 01.00 hrs on Monday to Saturday would in all likelihood lead to increased noise and disturbance, I am not convinced that this would be at such a level as to result in significant harm to the living conditions of nearby residents.
 13. The Appellant's preference is for longer opening hours, that would see the takeaway opening until 02.00 hrs Monday to Thursday and 03.00 hrs on Friday and Saturday. At these times, background noise levels are likely to be even lower than during the approved opening hours, as most of the other late night uses would by then be closed, resulting in less activity on this part of Church Street. As a consequence, noise and disturbance generated by the appeal use would, in my judgement, be more pronounced and significant, and would include noise from customers calling at the premises on foot, by motorcycle or by car.
 14. The Appellant contends that the extended hours would be acceptable as residents do not, at these times, currently enjoy a high level of amenity. There is no evidence to support this statement or indeed any noise analysis assessing the impact of the longer opening hours sought. Even so, the Planning Guidance states that in areas which already experience high noise levels even a small increase in noise can result in a significant adverse effect. As the Planning Guidance further states, people tend to be more sensitive to noise at night as they are trying to sleep, and that the adverse impact of noise can be greater simply due to the fact that background noise levels will be much lower.
 15. The additional noise and disturbance generated by the longer opening hours sought by the Appellant would take place when nearby residents would be entitled to expect a reasonable level of peace and quiet, and some respite from the noise and general activity that the appeal site and other takeaways and bars in this part of the street generate. Even the Appellant's own evidence accepts that night time trade is busy and that it is principally for this reason that longer opening hours are being sought.
 16. In relation to these findings, I note that the Council's Environmental Health Department received a complaint concerning noise from the appeal site in August 2020. I also note the representations from the Staines Town Society, who consider the opening hours that apply to other takeaways and bars in and around Church Street, which they indicate close by 01.00 hrs, should be applied consistently given the presence of nearby residents. The Society also refer to the increase in residents that will arise from the conversion to flats of the former Two Rivers Public House and the upper floors of the building on the corner of Church Street and Clarence Street.
 17. The Appellant argues that the approved opening hours would limit competition, but does not say why this would be the case. Even so, the approved opening

hours are generous, but I accept, based on the evidence before me, that they are broadly consistent with those of similar businesses in the street and would in all likelihood coincide with higher background noise levels, and for these reasons are, on balance, acceptable. The Appellant suggests that the longer hours would better serve customers' needs and reduce congestion at the appeal site and other nearby takeaways. However, no evidence has been submitted to substantiate those claims.

18. The Appellant contends that various economic and social benefits would be secured by the longer opening hours, as well as the added benefit of supporting the late night economy of the town centre and its multipurpose role. Whilst I accept that the appeal proposal may secure some of these benefits, I would only accord them limited weight and they are not sufficient, either individually or cumulatively, to outweigh my findings.
19. I appreciate that the appellant considers the longer opening hours to be acceptable, but no substantive evidence has been provided to support such a finding. In particular, there is no assessment of the noise climate of the approved opening hours and how this would compare with that during the longer opening hours sought by the Appellant.
20. In the Appellant's Final Comments, it was suggested that a temporary permission could be given to enable the impact of the longer opening hours to be assessed. However, that suggestion is completely new and does not form part of the appeal that is before me. More importantly, it is not a matter that the Council or interested parties have had an opportunity to consider or comment on. For these reasons, I have not considered this suggestion further.
21. The Appellant argues that an opening hours condition is unnecessary as it duplicates other legislation, fails to accord with the relevant tests in the National Planning Policy Framework (February 2019) (Framework) and that the condition should, therefore, be deleted. I have already addressed this issue in the 'Procedural Matters' and confirmed that this is not the proposal applied for. Even so, whilst I have had regard to the role of other legislation, the condition is, in my view, necessary and reasonable, and complies with the tests in paragraph 55 of the Framework. The condition is consistent with the policies of the Framework, including paragraph 127 f) in ensuring that all new development secures a high standard of amenity for existing and future users and paragraph 180 a) requiring the adverse impact resulting from noise generated by new development to be mitigated and reduced.
22. Given the above, I find that the opening hours approved by the Council under condition No.1 of planning permission 20/00350/RVC are reasonable and necessary. I also find that the longer opening hours, as proposed by the Appellant, would result in additional noise and disturbance leading to significant harm to the living conditions of the occupants of nearby residential properties in Church Street contrary to Policy EN11 of the Spelthorne Core Strategy & Development Plan Document, and the corresponding policies of the Framework and Planning Guidance. These seek, amongst other requirements, to ensure that new development does not prejudice or harm the living conditions of nearby occupiers and that the adverse impact of noise on existing and future occupiers is minimised.

Other Matters

23. The appeal site is situated within the Staines Conservation Area. Paragraphs 190 - 192 of the Framework require consideration to be given, therefore, to the impact of any new development on the character and appearance of the conservation area. The Council have also confirmed that the appeal building is designated a Grade II Listed Building. Section 66 of the Planning (Listed Buildings and Conservation Area) Act 1990 requires, therefore, that special regard must be had to the desirability of preserving the building. Similar advice is to be found in the Framework. In both instances, as the appeal proposal relates to an extension of opening hours, I am satisfied that there would be no material harm to the Conservation Area or to the Listed Building.

Conclusion

24. For the reasons given above and having taken all other matters into account, I conclude that the appeal should be dismissed.

G Roberts

INSPECTOR