



Appeal Decision

Site Visit made on 27 July 2021

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 August 2021

Appeal Ref: APP/J0350/W/21/3275149

230 Farnham Road, Slough SL1 4XE

- 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 Chaiwala Slough against the decision of Slough Borough Council.
 - The application Ref P/03283/019, dated 1 September 2020, was refused by notice dated 17 November 2020.
 - The application sought planning permission for change of use from A2 (Offices) to A3 (coffee shop) with ancillary A5 (take-away) service without complying with a condition attached to planning permission Ref P/03283/013, dated 13 November 2018.
 - The condition in dispute is No 3 which states that: 'the use hereby permitted shall not be open to members of the public / customers outside the hours of 23.30 hours to 08.00 hours'.
 - The reason given for the condition is: 'to protect the amenity of residents within the vicinity of the site in accordance with Policy EN26 of The Adopted Local Plan for Slough 2004'.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. In the period since the appeal was submitted, the Government published a revised National Planning Policy Framework 2021 (the Framework). The main parties were given the opportunity to comment on any implications for the appeal of this change, and I am therefore satisfied that no prejudice would be caused by my consideration of the appeal against the revised Framework.

Background and Main Issue

3. Planning permission was granted for development described as 'change of use from A2 (offices) to A3 (coffee shop) with ancillary A5 (take-away) service under application reference P/03283/013. Condition 3 of this permission restricts the opening hours to 0800 – 2330. The appeal proposes amendment to these hours to allow the premises to be open 1100 - 0100 Monday to Thursday and 1100 - 0200 Friday to Sunday, with seasonal variations during Eid and Ramadan to allow opening hours of 1100 - 0300. The opening hours sought would reflect those allowed under a premises license for the site. However, the fact that this license has been granted does not mean that the opening hours would be acceptable in planning terms when it is assessed against the development plan
4. The main issue is the effect of the proposed variation of Condition 3 on the living conditions of neighbouring occupiers with particular regard to noise and disturbance.

Reasons

5. The appeal relates to a ground-floor unit currently in use as a restaurant and takeaway which is located within the Farnham Road district shopping centre where there are a mix of commercial uses including other restaurants and takeaways. The premises directly above the appeal site are occupied by a law firm, but the majority of other units to the upper floors of buildings in the vicinity are in residential use, including those above the immediately adjacent units. In this regard, I note that the Council refers to past noise and disturbance to residents in the area, and highlights local concern over the number of people congregating which has resulted in multi-agency efforts to ensure that premises comply with planning conditions, including opening hours, as well as with COVID-19 measures.
6. The appellant suggests that gatherings outside the premises have only been observed recently and are queues of customers waiting to place an order before closing time, exacerbated by restrictions imposed through the COVID-19 pandemic. Extending the opening hours may help to spread the flow of customers over a longer period reducing queues, but would also be likely to attract additional customers to the appeal site. In either case, the proposal would extend activity at the site later through the evening and into the night than currently, to more sensitive times when even in a district centre location such as this, residents would reasonably expect a certain degree of peace and quiet and to sleep.
7. Outside of Eid and Ramadan, the proposed opening hours would be consistent with other units within the centre including at 246 and 248 Farnham Road where planning permission has been granted for similar uses to open until 0200. However, and irrespective of when they were permitted, I do not know from the limited information provided the full circumstances which led to the approvals for these hours, including any assessments undertaken of noise or disturbance at those locations. Nos 246 and 248 are also within a different parade, and while 238 Farnham Road is closer, the appellant advises that this unit is only open until 0100. Moreover, the proposed opening until 0300 during Eid and Ramadan would result in activity extending even later into the early morning than other similar uses drawn to my attention in this part of the centre.
8. The appellant advises that 'Liquor King' at 240 Farnham Road is open 24 hours a day, but as a shop it seems to me that it would be generally less likely to attract groups of customers or gatherings outside than the use at the appeal site. I also note recent changes under the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 which may allow premises to operate as restaurants or cafes without restriction on hours, but provision for takeaway at the site would also be likely to result in activity of a different nature with additional comings and goings. In any event, I must consider the appeal before me on its merits with regard to relevant policies of the development plan.
9. Nearby residents have not objected to the appeal proposal. Nevertheless, it does not necessarily follow that the development would be acceptable. From the evidence before me, the proposal would result in activity in close proximity to the closest residential neighbours to the site taking place much later than currently occurs, and the use of sound proofing and self-closing doors would do little to alleviate noise and disturbance generated by customers arriving at and

leaving the premises, or from those who may congregate outside. Allowing additional premises within the centre to open for longer hours also has the potential to increase visitors to the area as a whole, resulting in greater overall noise and disturbance in combination with existing uses.

10. For these reasons, I am concerned that introducing activity at the site at more sensitive times would be intrusive to residential occupiers at this part of the parade, as well as to occupiers in the wider area cumulatively with existing operations. Farnham Road may be relatively busy, but I have no substantive evidence to demonstrate existing background noise levels associated with either traffic or other uses near to the site, nor to consider how levels may change as a result of the proposal. Accordingly, I am unable to determine that additional noise and disturbance associated with the proposal would not be noticeable to surrounding occupiers in this location to the detriment of their quality of life.
11. In the absence of compelling evidence to the contrary, I conclude that the proposed variation of Condition 3 would cause unacceptable harm to the living conditions of neighbouring occupiers by reason of noise and disturbance. As a consequence, the proposal would conflict with Policy 8 of the Slough Local Development Framework Core Strategy 2008 (CS) and saved Policy S12 of the Local Plan for Slough 2004 (LP) which include requirements that development does not give rise to adverse environmental effects or unacceptable levels of noise. It would also be contrary to provisions within the Framework requiring a high standard of amenity for existing users and setting out that development should not be adversely affected by unacceptable levels of noise pollution.
12. The Framework is clear that economic activity should be supported, and I also note encouragement within the LP and CS for development within centres that would ensure they retain their vitality and viability. However, these objectives are balanced alongside requirements under the above noted policies and parts of the Framework to ensure that living conditions are not unacceptably harmed. I recognise that allowing extended hours may help to support the existing business and the jobs and local economic activity associated with it. I also have no reason to doubt the appellant's suggestion that the business is well received, nor that it has been used by local organisations for meetings and has made charitable contributions. However, I do not find that these factors in favour of the proposal are sufficient to outweigh the harm that would be caused contrary to the development plan.

Conclusion

13. For the reasons given above, I find that the proposal would conflict with the development plan when it is read as a whole, and material considerations do not indicate that a decision contrary to the development plan should be reached.
14. I therefore conclude that the appeal should be dismissed.

J Bowyer

INSPECTOR