



Appeal Decision

Site Visit made on 28 September 2021

by Rachel Hall BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 November 2021

Appeal Ref: APP/C3105/W/21/3277890

177 Warwick Road, Banbury OX16 1AS

- 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 Compass Food Ltd against the decision of Cherwell District Council.
 - The application Ref 21/01057/F, dated 9 April 2021, was refused by notice dated 7 June 2021.
 - The application sought planning permission for: *Change of use from A1 (shops) to A3 (food and drink) including new shop front and rear ductwork (as amended by Condition 2 of this consent) without complying with a condition attached to planning permission Ref 03/00144/F, dated 11 April 2003.*
 - The condition in dispute is No 2 which states: *That the operational use of the premises shall be restricted to:- Monday to Thursday – until 10.30pm, Friday and Saturday – until 11.00pm, Sunday – No time.*
 - The reason given for the condition was not stated.
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Decision

1. The appeal is dismissed.

Background and main issues

2. The appeal property currently operates as a hot food takeaway. Condition 2 on the permission allows the premises to open until 2230 Mondays to Thursdays, until 2300 on Fridays and Saturdays, and at no time on Sundays. The application subject of this appeal seeks to vary this condition to extend the opening hours to 1100-2400 Mondays to Saturdays and additionally to open on Sundays from 1200-2300.
3. No reason was given for the condition as originally imposed, however the Council refused permission for the proposed change to opening hours on the basis that it would not be compatible with the residential character of the area and would harm the amenity of residents in the area due to unacceptable nuisance.
4. Therefore the main issues are the effect that extending the opening hours as proposed would have on:
 - the character and appearance of the area; and
 - the living conditions of nearby residents.

Reasons

Character and appearance

5. The appeal site is one of a number of other units within a small parade of commercial units, including off licences, a tattoo studio and other hot food takeaways. These premises front on to a service road that runs parallel to Warwick Road. A run of similar units continues round the corner on to Cromwell Road. Houses adjoin the access that runs from the service road round to the service yard for the appeal site and adjacent units. Other residential properties are located to the rear of the service yard. Some residential accommodation is also located within the parade at first floor level. The character of the area is therefore defined by a discreet run of ground floor commercial units in a predominantly residential area.
6. The proposed change to its opening hours would enable the appeal premises to be open until midnight six days of the week as well as until 2300 on Sundays. This would likely require additional deliveries to the appeal site, increasing the intensity of use of the rear service yard, as well as the duration of activities there. It would also likely result in more comings and goings from customers late into the evenings and on Sundays, amounting to a discernible change to the character of the front of the appeal site.
7. The extended duration of these activities would result in the commercial character of the area becoming unduly dominant, in what is currently a largely residential area with the commercial uses forming a discreet part. I therefore conclude that the proposed increase in opening hours would harm the predominantly residential character of the area. It would consequently conflict with saved Policy C31 of the Cherwell Local Plan (November 1996) which seeks to ensure developments are compatible with existing residential areas.

Living conditions

8. Currently any noise and disturbance associated with the operation of the appeal premises is restricted by its evening closing times, with no trading permitted beyond 2300 on weekdays or at all on Sundays. In contrast, the proposed increase in opening hours would mean the potential for late night disturbance to neighbouring occupiers as a consequence, with opening hours proposed to extend later into the evenings including on Sundays. I accept that some noise and disturbance for occupants of those houses closest to the appeal site is inevitable given the nature of the use and their proximity to it. Nevertheless, given its location in an area with a predominantly residential character, local residents should reasonably be able to expect quieter times during late hours. They are consequently likely to be particularly sensitive to increased noise and disturbance during these times.
9. Such noise and disturbance is likely to arise from activities at the rear of the shop in the service yard as well as from customer activity at its frontage. Given the proximity of residential properties to the appeal site as described above, it would be likely to affect properties alongside the access to the service yard, to the rear of the site and located at first floor within the parade. Whilst formal complaints to Environmental Health may be lacking, I note an objection from a local resident that raises concerns in respect of noise and disturbance, as well as similar concerns from the Council's environmental protection team. These align with my assessment of the proposal.

10. That neither of the main parties to this appeal has submitted any formal noise report or other measurable assessment of how the existing situation would be affected by the increased opening hours, does not justify allowing the appeal in circumstances where I find that the increase in noise and disturbance late into the evenings and on Sundays is highly likely. I therefore conclude that the effect of varying the opening times as proposed would not provide sufficient control on the existing use so as to safeguard against residents suffering undue noise and disturbance. It would therefore be contrary to saved Policy ENV1 of the Cherwell Local Plan which advises that proposals that are likely to be harmful due to matters such as unacceptable noise will not normally be permitted.

Other matters

11. I accept that the proposal would have economic benefits to the appellant through expansion of their business, and the customer demand for extended opening hours is not disputed, there being no robust evidence before me to the contrary. However, the significant weight that the Framework affords to proposals that deliver economic growth, including that associated with accessible local shops and services¹, must be balanced against the need to ensure proposals are sympathetic to local character and achieve high standards of amenity for existing and future users². As the benefits of allowing trading within the premises to take place over longer periods would be limited, this is not sufficient to outweigh the harm that I have identified to the character and appearance of the area and to living conditions of nearby residents.
12. My decision is based firmly on the particular circumstances of this case and its effects on the character of the area and surrounding residential uses. As such, it has not been influenced by the potential to set a precedent that could be applied more generally to the area. Any other proposals for sites in the locality should equally be determined on their own merits and the characteristics particular to their specific setting.

Conclusion

13. For the reasons given above, I therefore conclude that the appeal should be dismissed.

Rachel Hall

INSPECTOR

¹ Paragraphs 81 and 84 of the National Planning Policy Framework (2021)

² Paragraph 130 of the National Planning Policy Framework (2021)