



Appeal Decision

Site Visit made on 2 November 2021

by J Hunter BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 November 2021

Appeal Ref: APP/W4705/W/21/3280924

752 Little Horton Lane, Bradford BD5 9BL

- 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 Naveed Aslam against the decision of City of Bradford Metropolitan District Council.
 - The application Ref 21/00219/VOC, dated 15 January 2021, was refused by notice dated 30 June 2021.
 - The application sought planning permission for construction of single storey side extension, new shop front and shutters without complying with a condition attached to planning permission Ref 15/04936/FUL, dated 7 December 2015.
 - The condition in dispute is No 2 which states that: The use of the premises shall be restricted to the hours from 08:00 to 23:00.
 - The reason given for the condition is: In the interests of the amenities of the neighbouring residents and to accord with Policy UR3 of the Replacement Unitary Development Plan.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the condition is reasonable and necessary in the interests of the living conditions of nearby residents, with particular regard to noise and disturbance.

Reasons

3. The appeal property is a single storey detached building located in a busy suburban location where there is a mix of residential and commercial properties. To the north, there are a number of residential dwellings, to the east, there is a commercial property and immediately to the west there is an open area of land with two lightweight corrugated metal buildings on its western boundary.
4. A takeaway shop is at the appeal site, although at the time of my site visit (around midday on a weekday) the shutters were closed. The proposal seeks to extend the opening hours of the takeaway by 2 hours each night over those times approved in planning application 15/04936/FUL.
5. The variation to opening hours would result in additional noise and disturbance to occupiers of nearby residential properties. This would be caused by conversational noise of customers and staff, comings and goings and vehicular

- noise of engines revving and doors opening and closing. This would be at a time when residents could reasonably expect a degree of peace and quiet.
6. The appellant states that there are other premises nearby that operate beyond 2300 but I do not have any further information on these premises, such as whether their respective planning permissions allows for later opening. Nonetheless, I must determine this appeal on its own merits.
 7. The submitted PHA Acoustic Report outlines the environmental noise climate at the appeal site. The data includes background noise levels noting that there is only a small decrease in background noise levels between the hours of 2300 and 0100 whilst the ambient noise levels remain steady. This suggests that the external noise produced by customers arriving and leaving the premises and using the carparking would not be much more noticeable at 0100 than it is at the current closing time of 2300. I note however, that the report does not analyse any potential noise created by patrons that may remain at the premises whilst they consume their purchases which could include customers talking, car engines running etc.
 8. Notwithstanding the above, it is not unreasonable to assume that the level of noise neighbours would tolerate at 2300 would be greater than that they'd deem acceptable at 0100 because it is likely that they would expect to be able to settle to sleep before midnight and not be disturbed by patrons using the appeal premises. I accept PHA's conclusion that the noise source is in keeping with the area background noise climate, it being a relatively busy urban area nonetheless, I consider that the disturbance from even one loud conversation, car door banging, or car engine revving would be sufficient to disturb nearby residents.
 9. Consequently, I am not persuaded that the proposal to extend the opening hours to 0100 would not give rise to unacceptable levels of noise and disturbance resulting in a significant detrimental effect on the living conditions of neighbouring residents.
 10. The proposal therefore conflicts with the amenity requirements of Policies DS5 and EN8 of the Core Strategy Development Plan Document 2017. Furthermore, it would fail to accord with Section 15 of the National Planning Policy Framework (the Framework) which seeks to avoid noise giving rise to significant adverse impacts on health and wellbeing.
 11. I conclude that condition 2 is necessary and reasonable in its current form in order to protect the living conditions of neighbouring residents having regard to noise and disturbance.

Conclusion

12. Accordingly, for the reasons outlined above and taking into account all other matters raised I conclude the appeal should be dismissed and the application refused.

J. Hunter

INSPECTOR