



Appeal Decision

Site visit made on 29 March 2022

by Mark Philpott BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 April 2022

Appeal Ref: APP/J1535/W/21/3282418

Thornwood Service Station, High Road, Thornwood Common, Epping, Essex CM16 6LZ

- 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 Riqbal Sidhu against the decision of Epping Forest District Council.
 - The application Ref EPF/2879/20, dated 4 December 2020, was approved on 23 June 2021 and planning permission was granted subject to conditions.
 - The development permitted is: *Install plant/machinery as necessary for a small commercial kitchen to produce hot food for takeaway purposes within the existing footprint of the building plus the partial blocking up of an existing external exit on southern elevation.*
 - The condition in dispute is No 5 which states that: *The commercial kitchen use hereby permitted shall not be open to customers outside the hours of 08:00 to 21:00 on Monday to Saturday and 08:00 to 21:00 on Sundays and Bank Holidays.*
 - The reason given for the condition is: *In order to minimise disturbance to local residents, in accordance with the guidance contained within the National Planning Policy Framework and policies RP5A and DBE9 of the adopted Local Plan and Alterations.*
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Decision

1. The appeal is allowed and the planning permission Ref EPF/2879/20 for Install plant/machinery as necessary for a small commercial kitchen to produce hot food for takeaway purposes within the existing footprint of the building plus the partial blocking up of an existing external exit on southern elevation at Thornwood Service Station, High Road, Thornwood Common, Epping, Essex CM16 6LZ, granted on 23 June 2021 by Epping Forest District Council, is varied by deleting condition No 5 and substituting for it the following condition:
 - 5) The commercial kitchen use hereby permitted shall not be open to customers outside the hours of 07:00 to 23:00 on Monday to Saturday and 07:00 to 23:00 on Sundays and Bank Holidays.

Procedural Matters

2. The National Planning Policy Framework (Framework) was revised on 20 July 2021. It replaces the version from 2019 that the Council considered when it determined the application. The appellant and the Council have been able to comment on the current version of the Framework during the appeal process.
3. The appellant provided a noise report¹ at the start of the appeal process. The Council and interested parties have had an opportunity to consider the evidence and thus I have taken it into account in deciding the appeal.

¹ Document reference: TN01-21426-R0, dated 23 August 2021

Background and Main Issue

4. The site comprises a service station including a building, fuel pumps and a forecourt beside High Road. Planning permission was granted for a scheme that facilitates the creation of a commercial kitchen serving hot food for takeaway purposes alongside the service station's existing facilities. The appellant seeks to extend the kitchen's opening hours on all days to 07:00 until 23:00.
5. The Council has explained that the opening hours were restricted to the period specified in condition No 5 due to concerns regarding the impacts of noise and cooking odour on the living conditions of the occupiers of adjacent properties.
6. Therefore, the main issue is the effect that the proposed opening hours would have on the living conditions of the occupiers of adjacent properties, with particular regard to noise and cooking odour.

Reasons

7. The service station building is located centrally within the site. The forecourt includes parking spaces that are mostly to the sides of the site near the boundaries of adjacent dwellings named Homelea and Elmsfield. The kitchen would have a dedicated serving hatch that would be nearest to Homelea and face towards several of its windows. Close boarded fencing and part of a field to the site's rear are located between the service station building and the dwelling. The appellant reports that the serving hatch would be around 26 metres from the dwelling.
8. Condition No 6 of the permission requires the kitchen's extraction systems to be installed as per the details submitted for the application and maintained thereafter. Condition No 7 requires the approval of details associated with foul drainage from the kitchen. These were recommended by the Council's Environmental Health department. No evidence has been presented which indicates that the conditions cannot achieve their intended purposes to minimise cooking odour impacts or protect the environment and human health. As such, there is nothing compelling before me which suggests that the kitchen would give rise to excessive impacts in respect of cooking odour.
9. Furthermore, condition Nos 3 and 4 require the kitchen use to cease during any period when noise from the extraction systems exceeds the prevailing background noise level, and the systems to be switched off between 23:00 and 07:00 in any case. It has not been advanced that these conditions are flawed. Accordingly, there is nothing to suggest that noise from the extraction systems would be unacceptable.
10. Nevertheless, the Council's Environmental Health department raised concerns regarding the kitchen being open 24 hours per day as there was limited information submitted with the application as to potential noise impacts. Additionally, it raised concerns that the site might become a meeting point for workers in the night time economy, and that noise would be caused by customers and vehicles. In order to reduce the likelihood of this, it suggested that the kitchen's opening hours were limited to 07:00 until 23:00.
11. It is undisputed that the service station has a license permitting the sale of alcohol for consumption off the premises and the provision of hot food and drinks 24 hours per day, and that this has carried on for several years without

complaint. Therefore, customers can currently travel to and from and congregate in the forecourt at all hours.

12. Firm and substantive evidence has not been put forward which indicates that customers served by the kitchen would be more disruptive than those visiting the existing service station facilities, or that significant additional numbers of people would travel to and congregate on the site if the kitchen was open between 07:00 and 23:00. Additionally, during that time period it is likely that noise from vehicles travelling along High Road, which connects Epping and Harlow and to the A414 and M11, would dominate. In that context, the noise impacts of the scheme would be limited. Moreover, the noise report indicates that the impacts of the kitchen being open during that time period would be low. Comparable technical evidence to the contrary has not been provided.
13. Based on the evidence before me, varying the opening hours to 07:00 until 23:00 would not result in excessive noise or cooking odour impacts on the occupiers of Homelea. Accordingly, this would also not result in excessive impacts on the occupiers of properties further from the kitchen.
14. I therefore find that the proposed opening hours would not result in conflict with Policies DBE9 or RPA5 of the Epping Forest District Local Plan and Alterations, which seek to prevent excessive noise, smell and air impacts. Additionally, there would not be conflict with Policy DM9 of the Council's emerging Local Plan², which sets out that proposals should address issues of noise, fumes, odour and air quality. There would also be no conflict with paragraph 185 of the Framework, which identifies that development should take into account its likely effects on living conditions.

Other Matters

15. There is no evidence that extending the opening hours would result in significant levels of rubbish being generated or highway safety issues. Interested parties have also questioned the need for the commercial kitchen; however, the scheme has already been permitted and this is not directly related to the effects of varying the kitchen's opening hours. The evidence does not indicate that matters beyond those associated with the kitchen's opening hours should be revisited.

Conclusion

16. For the reasons given above I conclude that the appeal should succeed. I will vary the planning permission by deleting the disputed condition and substituting it with one that allows the kitchen to be open to customers during the time period sought by the appellant. I am satisfied that such a condition satisfies the tests for conditions set out at paragraph 56 of the Framework.

Mark Philpott

INSPECTOR

² Epping Forest District Local Plan Submission Version 2017