
Appeal Decision

Site visit made on 5 April 2022

by Benjamin Clarke BA (Hons.) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th April 2022

Appeal Ref: APP/B5480/W/21/3281606
172-174 South Street, Romford RM1 1TR

- 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 Miss Bashani against the decision of London Borough of Havering.
 - The application Ref: P1178.21, dated 16 June 2021, was refused by notice dated 13 August 2021.
 - The application sought planning permission for the re-submission of change of use to A3 with ancillary A5, to include improved extraction system design to mitigate against noise and odour with restricted trading hours without complying with a condition attached to planning permission Ref: P1532.19, dated 13 December 2019.
 - The condition in dispute is No. 3, which states that: The premises shall not be used for the purposes hereby permitted other than between the hours of 11:00 and 22:00 on Monday to Sunday, Bank or Public holidays without the prior consent in writing of the Local Planning Authority.
 - The reason given for the condition is: to enable the Local Planning Authority to retain control in the interests of amenity, and in order that the development accords with Development Control Policies Development Plan Document Policy DC61.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Subsequent to the determination of the planning application, the Council adopted the Havering Local Plan (2021) (the Local Plan). As this document now forms part of the Development Plan, it carries full weight in my considerations. I have therefore had regard to this document in considering this appeal, having first given the main parties opportunity to comment.

Main Issue

3. The main issue relevant to this appeal is the effect of the proposed amendment to opening times, with regards to noise and disturbance.

Reasons

4. The appeal site consists of an existing business, containing a takeaway located in a terrace that also contains other commercial uses. The upper floors of the terrace contains several flats. To the rear of the appeal site are several residential dwellings, including Gibson Court. The wider area contains a variety of residential accommodation and commercial uses.

5. The proposed amendment would result in an increase in the overall number of hours that the previously permitted takeaway could be used for. In result, customers are likely to be using the business for greater periods of time during the late evening and early morning periods. This poses a concern given that these are times where the occupiers of nearby dwellings are likely to expect a greater level of peace and quiet.
6. Owing to the nature of the use of a takeaway, there is a likelihood that noise would emanate from patrons queuing whilst they wait to place an order or are waiting for their order to be completed. In addition, further activity can be reasonably anticipated by reason of people congregating in the vicinity of the proposed development as people eat their food.
7. This is a concern given that the flats of the upper floor of the terrace that contains the appeal site feature windows that face South Street. Therefore, the noise associated with people congregating outside has the potential to cause disturbance to the occupiers of the existing flats.
8. In addition, the generation of noise has the potential to require changes in the behaviour of occupiers of these flats. This could possibly increase the need to keep windows shut during night-time periods, in order to mitigate the effects of increased activity. This would occur irrespective of the type of products sold by the business.
9. The operating of the business for a longer period of time will also increase the likelihood that equipment associated with the cooking of food will be operational for longer. Some of this equipment is located on the rear elevation of the building, close to Gibson Court.
10. This is likely to generate a greater amount of noise and for longer periods, which has the potential to be audible within the nearby properties. In result, the proposed variation of condition has the potential to erode the living conditions of the occupiers of Gibson Court.
11. The nature of the surrounding land uses is such that there is likelihood that relatively few of the nearby commercial properties would be operating for periods of time consistent with the hours sought within this appeal. This means that the increase in noise and disturbance would not be masked by other, existing, activities taking place within the wider area. Although there are some uses nearby, these would operate in conjunction with the increased activity arising from the appeal proposal. This would give rise to the previously described adverse effects.
12. Furthermore, owing to the proximity of the appeal site to existing dwellings, there is insufficient space for the noise generated from the proposed amendment to be diffused or mitigated by existing structures. In consequence, the perceived level of noise for occupiers of dwellings is unlikely to be diminished. This means that the effects would be particularly noteworthy and adverse.
13. The evidence before me indicates that the appellant might be willing to accept an increase in opening times over the currently permitted hours, but less than that sought through the appeal proposal.
14. Whilst this might be the case, the effects of different opening hours have not been assessed and found not to harm the living conditions of the occupiers of

the neighbouring properties. Secondly, I do not have a definitive proposal before me for such an alternative set of opening times. In consequence, a condition prescribing different times could not be reasonably imposed. In result, I therefore do not find that this suggestion overcomes my previous concerns.

15. I understand that a premises licence has been granted for longer hours. Whilst this is a matter of note, this process considers different matters to the planning process. In result, the presence of a premises licence does not allow me to disregard the preceding observations.
16. The proposed amendment to opening times would result in an increase in the overall level of economic activity, such as by an increased level of employment. Whilst this is a benefit that weighs in favour of the proposal, the scale of the business is such that such benefits would be relatively small. In result, they do not outweigh my previous concerns. The evidence before me suggest that the business represents a successful brand. However, I do not have a mechanism before me that would secure the occupier of the business. Therefore, this does not carry a significant amount of weight.
17. I therefore conclude that the proposed amendment would have an adverse effect upon the living conditions of the occupiers of neighbouring properties. The proposed amendment, in this regard, would conflict with the requirements of Policy 34 of the Local Plan. Amongst other matters, this seeks to ensure that proposals do not unduly impact upon amenity by noise.

Other Matters

18. No concerns have been raised regarding the potential for adverse effects to arise from cooking odours. Whilst this is a matter of note, it is only one of all the matters that must be considered. It therefore does not outweigh or overcome my findings in respect of the main issue.
19. The appellant has raised concerns regarding the manner in which the planning application was assessed by the Council. Whilst I have had regard to these, I have limited my assessments to the planning matters before me.

Conclusion

20. The proposed amendment would have an adverse effect upon the living conditions of the occupiers of neighbouring properties. The scheme would therefore conflict with the development plan taken as a whole. There are no material considerations, including the National Planning Policy Framework, that indicate the decision should be made other than in accordance with the development plan. Therefore, for the preceding reasons, I conclude that the appeal should be dismissed.

Benjamin Clarke

INSPECTOR