



Appeal Decision

Site visit made on 31 May 2022

by Paul Cooper MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 July 2022

Appeal Ref: APP/C2741/W/22/3291883

Ground Floor, Hallmark House, Joseph Terry Grove, York YO23 1PX

- 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 Co-op Estates against the decision of City of York Council.
 - The application Ref 20/02501/FUL, dated 10 December 2020, was approved on 7 September 2021 and planning permission was granted subject to conditions.
 - The development permitted is installation of louvres, 2no. doors and external Amazon lockers, provision of plant and machinery and changes to previously approved store opening and delivery hours.
 - The condition in dispute is No 7 which states that: The hours of operation of the retail outlet hereby approved shall be confined to between 0700 and 2200 hours.
 - The reason given for the condition is : To safeguard the amenities of adjoining occupants and to secure compliance with Policy ENV2 of the Publication Draft City of York Local Plan (2018).
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Decision

1. The appeal is allowed and the planning permission Ref 20/02501/FUL for installation of louvres, 2no. doors and external Amazon lockers, provision of plant and machinery and changes to previously approved store opening and delivery hours at Ground Floor, Hallmark House, Joseph Terry Grove, York YO23 1PX, granted on 7 September 2021 by City of York Council, is modified by substituting Condition 7 and replacing it with the following condition:

7) The hours of operation of the retail outlet hereby approved shall be confined to between 0700 hours and 2300 hours.

Background and Main Issue

2. Planning permission had previously been granted to facilitate the change from a marketing suite to a retail unit, subject to conditions. The appeal proposals seek to modify Condition 7 to allowing opening until 23:00 rather than the 22:00 allowed by the Condition. The main issue in this appeal is therefore whether Condition 7 is reasonable in the interests of the amenities of adjoining occupants.

Reasons

3. Paragraph 56 of the National Planning Policy Framework (the Framework) states that 'Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.' The Planning Practice Guidance (PPG) states that the 6 tests must all

be satisfied each time a decision to grant planning permission subject to conditions is made.

4. The appellant does not dispute five of the six tests. They dispute whether the Condition can be considered to be reasonable.
5. The appellant does not consider that Condition to be reasonable, as it relates to the opening hours for the retail unit. In support of the original approved scheme, the appellant carried out a number of Noise Impact Assessments (NIA) to meet the requirements and address the concerns of the Council's Environmental Health consultee in respect of noise and disturbance to nearby residents.
6. The outcome of those negotiations was that the noise consultee was satisfied that the NIA demonstrated that the extending the opening hours to 23:00 would not cause harm to residents in terms of noise and disturbance.
7. Irrespective of this, the Council still conditioned the planning approval with a upper limit of 22:00 due to concerns regarding the amenities of local residents, and a number of objections. The applicant, after much negotiation, accepted the 22:00 closing time in order to obtain the consent due to the time constraints for the initial opening of the unit set by the end user.
8. With regard to this appeal, no further justification has been submitted by the Council to support their position and defend the specific reason for the imposition of the Condition or why the advice of the specialist consultee was disregarded.
9. In light of the technical evidence, accepted by specialists, that the revised opening hours would not harm the amenities of local residents, and no rebuttal has been forwarded by the Council, I conclude that the Condition 7 is not reasonable in its current form and I will modify the Condition to allow opening to 23:00.

Other Matters

10. I have noted the objections from interested parties. I have taken these into consideration but find that the technical evidence demonstrates that the extended opening hours would not cause harm to the amenities of local residents.

Conclusion

11. For the reasons I have given, the planning permission shall be varied as set out in the formal decision.

Paul Cooper

INSPECTOR