



Appeal Decision

Site visit made on 13 June 2022

by M Ollerenshaw BSc(Hons) MTPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th July 2022

Appeal Ref: APP/M3645/W/21/3289057

36 Station Road West, Oxted RH8 9EU

- 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 Masood Mahmood against the decision of Tandridge District Council.
 - The application Ref TA/2021/1335, dated 20 July 2021, was refused by notice dated 28 October 2021.
 - The application sought planning permission for change of use from A1 (retail) to mixed use A3/A5 (restaurants and cafes/takeaways) and installation of extractor to rear elevation without complying with conditions attached to planning permission Ref TA/2020/565 (APP/M3645/W/20/3255818), dated 20 November 2020.
 - The condition in dispute is No. 3 which states that:
The premises shall only be open for customers between 0800 hours and 1700 hours on any day. All deliveries and collections to and from the premises shall take place within these hours.
 - The reason given for the condition is:
If unrestricted, there is potential for the operation of the proposed café/takeaway to cause noise and disturbance during unsociable hours, to the detriment of the living conditions of neighbours.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The officer report refers to the relevant policies of the Emerging Tandridge Local Plan 2033. As the policies of the emerging plan have not yet been adopted and may be subject to further change I attach little weight to these policies.

Background and main issue

3. Application TA/2020/565 sought permission for a change of use of the retail premises to a mixed use restaurant/café and takeaway and was allowed on appeal¹. Condition 3 of that permission restricts the opening hours of the premises to 0800 hours to 1700 hours on any day. The appellant seeks to extend the opening hours to 0730 hours to 2300 hours Monday to Sunday.

¹ Appeal ref APP/M3645/W/20/3255818

4. The main issue is the effect of varying the disputed condition on the living conditions of the occupiers of nearby residential properties, with particular regard to noise and disturbance.

Reasons

5. The appeal site relates to a three-storey building which includes a retail premises at ground floor level and residential accommodation above. It is situated within a parade of shops in the town centre. Station Road West is mixed in character with commercial and residential properties present. Commercial properties are generally located on the ground floor with residential accommodation above. There are also residential properties to the rear of the appeal site at Sycamore Court.
6. Given the location of the site, a certain level of noise above that found in a residential area can be expected by those residing in the vicinity. However, the majority of commercial premises in the area appear to operate during daytime hours only. The residential accommodation above the parade of shops include windows within close proximity of the appeal premises.
7. The proposed extended opening hours would likely be at a time when many residents would be at home and would have a reasonable expectation of peace and quiet in their homes. The later evening hours, whether they would be until 2200 or 2300, would be likely to cause an increase in noise and disturbance which would be audible from the flats above the shops, including from customers arriving by car and entering and leaving the premises, and increased use of the extraction system. Such increased noise and disturbance would adversely harm the living conditions of the neighbouring occupiers, particularly those occupying the flats above the shops, and also neighbouring occupiers to the rear at Sycamore Court.
8. There are other commercial premises in the area which operate in the evening, including the nearby Golden Palace Restaurant. However, due to the close relationship between the appeal property and neighbouring residential properties, I consider that the proposed later opening hours would result in a cumulative increase in noise and disturbance which would be to the detriment of neighbouring occupiers' living conditions.
9. For the above reasons, I conclude that the proposed opening hours would significantly harm the living conditions of neighbouring occupiers as a result of increased noise and disturbance. The disputed condition therefore remains reasonable and necessary. The proposal would conflict with Policy CSP18 of the Tandridge District Core Strategy (2008), and Policies DP7 and DP22 of the Tandridge Local Plan Part 2: Detailed Policies (2014). Amongst other things, these policies seek to protect the amenities of neighbouring occupiers, including from noise. The proposal would also be contrary to paragraph 130 of the Framework, where it seeks to promote health and well-being, with a high standard of amenity for existing and future users.

Other Matters

10. I have not been provided with any substantive evidence to substantiate the appellant's claim that the proposed extended opening hours would allow the business to be economically sustainable and safeguard a number of jobs. In any event, this consideration would not outweigh the harm that I have

identified to the living conditions of neighbouring occupiers. It is also put to me that the appellant is facing severe competition from other premises which benefit from extended opening hours. However, competition between the appeal business and other local businesses is not a planning matter.

Conclusion

11. For the reasons outlined above, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

M Ollerenshaw

INSPECTOR