



Appeal Decision

Site visit made on 27 January 2023

by L Fleming BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 February 2023

Appeal Ref: APP/A2470/W/22/3301045

39b Main Street, Rutland, LE15 7ES

- 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 Aakash Odedra against the decision of Rutland County Council.
- The application Ref 2022/0028/FUL, dated 7 January 2022, was refused by notice dated 11 March 2022.
- The application sought planning permission for change of use from Class A1 to Class A3 to allow for new coffee shop without complying with a condition attached to planning permission Ref 2018/1187/PRC, dated 7 January 2019.
- The condition in dispute is condition No 1 which states: The premises shall not be open for customers outside the following hours of 0700 – 1700 and not any time on Sundays or Public Holidays.
- The reason given for the condition is: In the interest if the residential amenity of surrounding properties.

Decision

1. The appeal is dismissed.

Background and Main Issue

2. The Council granted prior approval in 2019 for the change of use from Class A1 to Class A3 to allow for a new coffee shop subject to two conditions. Condition No 1 restricted the opening hours to between 0700 and 1700 and not any time on Sundays or public holidays. The second condition restricts hours of delivery. That proposal has been implemented and this appeal results from an application which sought to vary Condition No 1 to allow the premises to trade up until 2230 any day. The reason given for imposing Condition No 1 was in the interests of the residential amenity of the surrounding properties.
3. The main issue is therefore the effect of the proposal to extend the opening hours on the living conditions of nearby residential occupiers with particular regard to noise, disturbance, fumes and odours.

Reasons

4. The Council's single reason for refusal, in summary refers to an extraction system being required in relation to the cooking that will take place during the proposed extended opening hours. Furthermore, it says any new equipment may cause harm to the amenities of nearby residents by way of unacceptable levels of noise and odour. The Council's decision notice goes on to say, no

assessments regarding these impacts or the details of any extraction system to be used have been provided and that the Council considers that insufficient information has been provided to suitably assess the proposal. However, although the Council's decision notice focuses on new extraction equipment, no such equipment is proposed. The proposal is purely seeking to change the hours of operation. The lawful use of the appeal property would remain the same irrespective of the outcome of the appeal.

5. Even so, it is reasonable to expect that extending the opening hours as proposed would result in more people visiting the premises and more activity such as eating, drinking, socialising, food preparation, cleaning and servicing taking place in and around the premises. Inevitably, this would mean among other things more cars parking, opening and closing doors and people entering, leaving and moving around the building. It would also mean more potentially noise, fume or odour generating activity taking place over a longer time periods at the premises. All of which could take place up to 2230 at night when residents living nearby might reasonably be expected to be sleeping and not to be disturbed.
6. Although next to a commercial property, the appeal property is in a different use. It is in a predominantly residential area with dwellings directly above and surrounding it. Without detailed assessments of the anticipated number of visitors to the premises and whether or not any noise, disturbance, fumes or odours would be at levels reasonably expected in a residential area, I cannot make an informed assessment of the effect of the proposals.
7. Therefore, without substantive evidence to the contrary, I must take a precautionary approach and find the proposed extended opening hours would harm the living conditions of nearby residential occupiers with particular regard to noise, disturbance, fumes and odours.
8. Consequently, the proposal would be contrary to Policy CS19 of the Rutland Core Strategy Development Plan Document (2011) and Policy SP15 of the Rutland Site Allocations and Policies Development Plan Document (2014). It would also conflict with the aims of paragraph 130 (f) of the National Planning Policy Framework. Insofar as is relevant to this appeal these policies, taken together, seek to ensure, good design and that new development does not harm the amenities of residents living nearby.

Other Matters

9. I have noted the comments about the Council's handling of the appellant's proposals. However, I confirm I have determined the appeal on its planning merits only. I have also considered the comments in support of the scheme. However, there are also a number of objections. On balance, for the reasons given, having considered all representations, the harm I have identified above remains.

Conclusion

10. For the reasons given, the proposal would not accord with the development plan, the appeal should therefore be dismissed.

L Fleming
INSPECTOR