



Appeal Decision

Site visit made on 4 April 2023

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 April 2023

Appeal Ref: APP/C2708/W/22/3307968

10 Ashville Terrace, Cross Hills, Keighley BD20 7LQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Aamir Mohammed of Craven Gelato against the decision of Craven District Council.
 - The application Ref 2021/22975/VAR, dated 27 May 2021, was refused by notice dated 1 April 2022.
 - The application sought planning permission for the change of use from A1 sandwich deli to A1 sandwich deli with ancillary A5 hot food takeaway and installation of window grilles and roller shutter to the door on the rear elevation without complying with a condition attached to planning permission Ref 32/2017/17833, dated 1 May 2018.
 - The condition in dispute is No 6 which states that: The premises shall only be open for customers and deliveries between the following hours: 0900-1700.
 - The reason given for the condition is: In the interests of the living conditions of the occupants of adjacent residential properties.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Based on the submitted evidence, the appeal property has opened for business outside of the times specified in the disputed condition. I have therefore dealt with the appeal under section 73A of the Town and Country Planning Act 1990.

Background and Main Issue

3. Planning permission was granted on appeal¹ for the change of use of the property from an A1 sandwich deli to A1 sandwich deli with ancillary A5 hot food takeaway together with the installation of window grills and a rear roller shutter. The development was permitted subject to a number of conditions including no. 6, as detailed above, which restricts the opening hours. It is this condition which is the subject of this appeal. The appellant wishes to vary the opening hours to 11:00 to 23:00.
4. The main issue is therefore the effect of varying the opening hours on the living conditions of nearby residents with regard to noise and disturbance.

¹ Appeal reference APP/C2708/W/17/3191910

Reasons

5. The appeal property comprises the ground floor of a two-storey mid-terrace property. There are dwellings on both sides of the property and what appears to be a residential use directly above. The rear elevations and outdoor areas of a number of terraced dwellings sit behind the property, separated by a relatively narrow lane.
6. Although there is a somewhat mixed pattern of development in the vicinity, most of the non-residential premises are of a type that operate during the daytime only. These include a medical centre, chemist, hair and beauty salon, orthodontist, dog grooming business and a school. I note that this characteristic of the surrounding land uses - the daytime activity and the related noise environment - was a particular factor considered by the previous Inspector in concluding that the proposed change of use would be acceptable, and which has been reflected in the condition restricting opening hours to the daytime period. I have not been provided with any evidence that there have been significant changes in site circumstances during the intervening period since permission was granted on appeal for the development, although where local and national planning policies have changed, I have had due regard to them.
7. The appellant's evidence states that a successful delivery service is operated by the business that eliminates the need for visitors to the premises. Nevertheless, I am required to consider the proposal over its lifetime and there would be no guarantee that future operators would provide the same service. Furthermore, while I acknowledge the increased use of takeaway delivery generally, customers do often still have the choice of whether to pick up their order. There is also likely to be some drop-in trade.
8. The extended opening hours would attract customers on foot and by motor vehicle to the property. The delivery operations would also continue through the extended opening hours. The ramped access to the property sits in between the dwellings at 8 and 12 Ashville Terrace. It is close to the ground floor window of no. 12 and sits directly below the residential accommodation above. The associated noise arising from voices, staff activity, operation of equipment, car radios, doors slamming, manoeuvring vehicles and suchlike, would likely take place close to the neighbouring dwellings.
9. The appellant contends that there have been no recorded incidents or complaints to the police, the Council's environmental health team or the Highway Authority. The appellant also argues that there is no evidence to suggest that the proposal has, or would lead to, anti-social behaviour.
10. However, the behaviours I have referred to above that would result in residents being disturbed by noise would, for the most part, not constitute anti-social behaviour requiring intervention by the police. In addition, I note that several local residents submitted comments at both the application and appeal stages expressing concerns about the noise and disturbance experienced from the use of the property, including during the extended opening hours. Furthermore, the consultation response from the Council's environmental health officer states that the extended opening hours could be detrimental to the amenity of the area. In any case, the factors referred to above would contribute to an increased level of noise and disturbance in the vicinity at a time when the

environment may be quieter with less activity and local residents would have a greater expectation of peace and quiet.

11. The appellant has highlighted examples of commercial premises within Cross Hills operating during a variety of hours that it is contended do not cause disturbance to residents. However, from the submitted evidence and what I saw at my site visit, these businesses have different locational characteristics to the appeal property or are long established uses. In any event, I have considered this appeal on its own planning merits.
12. The later opening time proposed by the appellant would not compensate for the later closing time which would extend the operation of the business into a more sensitive time period.
13. The appellant indicates a willingness to accept a temporary permission for a three-year period. The Planning Practice Guidance advises that circumstances where a temporary permission may be appropriate include where a trial run is needed in order to assess the effect of the development on the area. However, the business has been operating during the extended period and has generated objections from nearby residents including on the basis of noise and disturbance. Because of this, together with the reasons stated above in respect of the nature of activities and the proximity of dwellings to the property, in my view a temporary permission would not be appropriate.
14. For the above reasons, I conclude that varying the condition to enable extended opening hours would have an unacceptable effect on the living conditions of nearby residents with regard to noise and disturbance. It would not therefore comply with the residential amenity requirements of Policy ENV3 of the 2019 adopted Craven Local Plan 2012 to 2032 or the National Planning Policy Framework.

Other Matters

15. While the extended opening hours would provide a service for customers and may be required to help with the viability of the business, no substantive evidence has been submitted to show that without such extended hours the business would not continue. These benefits would not outweigh the harm I have found in respect of the effect on the living conditions of nearby residents.
16. While there may not have been an objection from the Highway Authority, an absence of objection does not in itself render the scheme acceptable. I note the comments made about the Council's handling of the application. However, in determining this appeal, I am only able to have regard to the planning merits of the case.

Conclusion

17. The proposal would conflict with the development plan taken as a whole as well as the Framework. There are no material considerations worthy of sufficient weight that would indicate a decision other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should not succeed.

F Wilkinson

INSPECTOR