



Appeal Decision

Site visit made on 9 May 2023

by N Teasdale BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd June 2023

Appeal Ref: APP/N4720/W/23/3318733

293 Roundhay Road, Leeds LS8 4HS

- 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 Rahat Javid against the decision of Leeds City Council.
 - The application Ref 23/00002/FU, dated 2 January 2023, was refused by notice dated 23 February 2023.
 - The application sought planning permission for Change of use of bank (A2) to form restaurant/cafe and hot food takeaway (A3/A5), construction of lift to rear, external alterations without complying with a condition attached to planning permission Ref 18/00776/FU, dated 19 April 2018.
 - The condition in dispute is No. 5 which states that: the opening hours the premises shall be restricted to 10.00 to 23.00 Monday to Sunday and Bank Holidays.
 - The reason given for the condition is: In the interests of residential amenity and in accordance with saved Leeds UDP Review (2006) policy GP5 and the National Planning Policy Framework.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The Council's decision notice sets out amongst other matters, that the Noise Impact Assessment fails to correctly identify the nearest residential properties which would be subject to any adverse impact from the increased opening hours. The appellant has submitted a revised Noise Impact Assessment as part of this appeal. As the report includes for a further noise sensitive dwelling only, it is not considered prejudicial to any party and the Council have had the opportunity to comment on this report. I have therefore taken this report into account in reaching a decision.

Background

3. Planning permission was granted for a change of use of bank (A2) to form restaurant/cafe and hot food takeaway (A3/A5), construction of lift to rear, external alterations. A condition controlling the opening hours of the premises was imposed in the interests of residential amenity. Condition 5 therefore states, that the opening hours the premises shall be restricted to 10.00 to 23.00 Monday to Sunday and Bank Holidays. The proposed development seeks to vary this condition to amend the opening hours to 11-00 to 00-00 Sunday - Thursday, 11-00 to 02-00 Friday- Saturday.

Main Issue

4. The main issue is the effect that varying the condition would have on the living conditions of occupiers of surrounding properties in relation to noise and disturbance.

Reasons

5. The appeal site is located on the corner of a busy main road at the junction where Harehills Lane meets Roundhay Road. It forms part of a shopping parade which fronts onto Roundhay Road with a car park and service yard to the rear which is accessed from Harehills Lane. Although Roundhay Road is a busy commercial area, it does serve a number of residential properties including the adjacent building which contains a number of residential flats, some of which overlook the front of the appeal site and the rear courtyard/parking area. Harehills Lane has a more residential character.
6. No 137 Harehills Lane (No 137) is a residential property and positioned with its gable elevation which contains a number of windows directly facing onto the courtyard/parking area and rear elevation of the appeal property where the extract ventilation system is located.
7. The functioning of a restaurant/cafe and hot food takeaway is one where the level of noise and disturbance would be difficult to control, including the comings and goings of customers, staff and delivery drivers both on foot and by vehicle, people conversing both inside and outside, disturbances associated with car doors opening and closing, noise from engines and car music etc. I appreciate the appellants comments regarding the mitigation measures including the control of noise breakout from patrons with appropriate signage as well as controlling the music levels and not holding events etc. I also note the appellants evidence regarding the extractor equipment and the implementation of a Delivery and Service Management Plan. However, even taking such matters into account, the noise associated with the overall functioning and use of the premises would likely be audible given the close proximity of the nearby residential uses that overlook the front and rear of the property particularly in the summer months when residents may choose to open their windows. The later opening hours would result in comings and goings into the evening and early morning over and above that of the existing and at times when ambient noise levels are low enough to enable sleep.
8. I accept that given the location of the appeal site, a certain level of noise can be expected by nearby residents and that such uses are not uncommon in this location. However, background noise later into the evening and early morning would be lower due to there being less traffic and less people around. The sudden and intermittent types of noise associated with the use would be unreasonable and excessive in the early hours of the morning in such a setting where residents would expect it to be much quieter.
9. In reaching these conclusions, I observed the opening times of other commercial uses nearby and noted that many do not appear to operate beyond 17-00. There may be other takeaways in the vicinity that operate later into the night although I have no substantive evidence that any of these operate until as early as 02-00. In any event, such uses are located further from the appeal site with different characteristics and would not justify further development which would result in amenity issues.

10. I recognise that the restaurants busiest time is early to late evening, and I have had regard to the Highways Supporting Statement that there would be a reduction in customers/trips including vehicle movements per hour in the very late/early morning. Although such users may be shift workers, taxi/delivery drivers etc, it cannot be assumed that these customers would eat inside the premises, not hang around before or after eating, leave quickly and quietly or not play loud music from their car. It can also not be assumed that customers would park to the front of the property as they may wish to use the parking to the rear of the premises or park to the side of the property which would be within very close proximity to nearby dwelling windows. All of which would cause disturbance and would be difficult to manage or control. I note that the premises does not sell or allow alcohol and that West Yorkshire Police do not have any concerns regarding anti-social behaviour. The extended opening times would still result in comings and goings at an unsociable time.
11. The licensing department has allowed an application at the site for the revised opening times. However, such applications are determined under different legislation to that of planning. The appellant claims that the premises has been operating under the revised opening hours reflective of the licensing application although I have limited information regarding this. Despite the lack of objection from neighbouring residents and the highway department in regard to this specific application or in general, the absence of any complaints/objections does not mean that there would be no harm caused and I must determine the appeal based on its merits including the evidence before me and I have identified the harm that would arise.
12. I have had regard to the appellant's Noise Impact Assessment. However, the findings do not convince me that the revised opening times would not have an adverse impact on the living conditions of existing occupiers nearby. I acknowledge that there is a bus stop located to the front of the premises and other parking in the vicinity. However, as already set out, it cannot be assumed that all users would use these locations particularly given that parking exists to the rear. The report sets out that throughout the 23-00-02-00 assessment period, all available parking spaces were taken up by vehicles that were not observed to move. This would increase the pressure of parking to the rear and side of the property where noise would be even more noticeable given the more residential character of Harehills Lane and thus a quieter environment. Even if the rear parking area was not used from a certain time, this would not be sufficient to overcome the other noise and disturbances identified and the parking of vehicles outside residential properties to the side of the premises. Additionally, despite all the mitigation taken already, the report sets out that the kitchen extract ventilation system would still result in an adverse impact.
13. A worst-case scenario of 10x patrons leaving the premises has been put forward which would result in a major noise impact. Although it is unlikely that 10 persons would leave as a single group, standing outside the nearest noise sensitive premises with each person either talking or shouting, the earlier Noise Assessment provided included the likely impact of 2 to 10 persons outside of No 137. The results show that 6 persons would still lead to a major impact and this property is not even the closest noise sensitive premises. A group of 6 people leaving at once is not so unlikely and it would be unreasonable to restrict the number of customers entering and leaving at any one time. The Council's Environmental Health team have raised concern with the overall conclusions, and I have no reason to disagree with their comments.

14. The Council has raised concern regarding other applications coming forward which would be difficult to resist creating an unwelcome precedent. I am determining the appeal based on its own merits and the evidence before me. A further application would be subject to assessment in its own right.
15. For the reasons given above, I conclude that the proposal would harm the living conditions of occupiers of surrounding properties in relation to noise and disturbance. It would therefore conflict with Policy GP5 of the Leeds Unitary Development Plan (Review 2006) which amongst other matters, requires proposals to avoid problems of the loss of amenity. For the same reasons the proposal would also conflict with Policy HFT 3 of the Hot Food Takeaways Supplementary Planning Document (2019) and the aims of chapter 12 of the National Planning Policy Framework relating to achieving well-designed places.

Other Matters

16. I understand the difficulties businesses faced during the pandemic and that the additional opening hours would generate additional income. Such matters however have not affected my findings on the main issue. There is also no compelling case to show that the business could not remain viable without the increased opening hours.
17. Measures to reduce litter would be a neutral factor in my overall findings.

Conclusion

18. For the reasons given, having had regard to all other matters raised, the proposal would not accord with the development plan and the appeal should therefore be dismissed.

N Teasdale

INSPECTOR