



Appeal Decision

Site visit made on 13 June 2023

by Benjamin Clarke BA (Hons.) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 June 2023

Appeal Ref: APP/M2840/W/22/3311036

18 Cambridge Street, Wellingborough, Northamptonshire NN8 1DJ

- 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 Mr Caner Sahin against the decision of North Northamptonshire Council.
 - The application Ref: NW/22/00399/VAR, dated 7 June 2022, was refused by notice dated 16 August 2022.
 - The application sought planning permission for the change of use from retail shop to A5 (Restaurant/Take Away) to include installation of steel duct without complying with a condition attached to planning permission Ref: WP/18/00682/FUL dated 11 January 2019.
 - The condition in dispute is No. 5 which states that: the premises shall not be open outside the hours of 11:00 to 22.30 Monday to Saturday or at all on Sundays or Bank Holidays.
 - The reason given for the condition is: as requested by the applicant and to prevent harm being caused to the amenity of the area and to safeguard the amenity of nearby occupiers in accordance with policy 8 (e) (i) of the North Northamptonshire Joint Core Strategy.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposed amendment to opening times upon the living conditions on the occupiers of neighbouring properties, with particular reference to noise.

Reasons

3. The appeal site consists of an existing takeaway located in an area that contains several commercial properties. Some of these include uses that would be expected during the later part of the evening and early morning. This includes businesses such as takeaways, restaurants and public houses. The surrounding area also includes some residential accommodation. This includes some flats over the commercial properties.
4. Planning permission has previously been granted to operate a takeaway from the property, however, this was subject to a condition limiting the hours of use of the business in the interests of maintaining the living conditions of the occupiers of the neighbouring properties.

5. The proposed amendment would result in an increase in the number of hours that the proposed development could operate. This would allow for the takeaway to operate during the later night and early morning. This would mean that patrons could be potentially visiting the premises for greater periods of time. This means that additional noise is likely to be generated from sources such as people queuing to enter the premises, or potentially congregating outside, such as whilst eating food.
6. There is a likelihood of this occurring given that the users of the existing facility might be known to one another. Furthermore, the relatively small size of the takeaway means that there is limited space inside the building for patrons to consume food inside. Therefore, people congregating outside of the takeaway cannot be discounted. These activities would generate noise.
7. Given the proximity of the appeal site to dwellings, it is likely that the increased noise would be audible inside of the nearby dwellings. This has the potential to impinge upon the residents of dwellings, such as by disrupting sleep patterns. In particular, there is a likelihood that the occupiers of the nearby dwellings would not be able to keep windows open during summer periods.
8. These adverse effects would occur even if the upper floor of the appeal site were to be utilised for ancillary accommodation associated with the business.
9. It would appear that some of the surrounding dwellings are not used for family accommodation. Although this might be the case, the occupiers of the nearby dwellings would still expect notable amounts of peace and quiet during late night and early morning periods. Therefore, the increase in activity would result in more disturbance, which would erode the living conditions of the surrounding occupiers.
10. My attention has been drawn to other commercial facilities in the surrounding area. I do not have the full information regarding the planning circumstances of these. Therefore, I can only give them a limited amount of weight. Nonetheless, even if the hours that other businesses operate for are comparable to the appeal scheme, the appeal proposal would operate in tandem with the existing businesses. This is likely to lead to an increase in the overall level of noise and disturbance, which would harm living conditions. Therefore, the presence of existing businesses does not allow me to forego my previous concerns.
11. The appeal documentation includes a noise assessment. This demonstrated that, subject to amendments, the operation of the extraction equipment would not cause disruption. Although this is a matter of note, this would not overcome the increase in noise arising from the congregation of people.
12. I understand that the operator of the facility works to discourage noise. I have no reason to doubt that this occurs. However, any planning permission would run with the land, rather than a specific operator. Therefore, there is a possibility that a different operator may run the takeaway at some point in the future, which may give rise to adverse effects. Therefore, this suggestion does not overcome my previous concerns.
13. A premises licence has been granted by the Council to operate the takeaway for longer periods of time. However, the licencing and planning regulatory

regimes consider differing matters. In consequence, this does not allow me to disregard my previous findings.

14. I therefore conclude that the proposed amendment to the site's operating times would have an adverse effect upon the living conditions of the occupiers of nearby properties. The amendment, in this regard, would conflict with the requirements of Policy 8 of the North Northamptonshire Joint Core Strategy (2016). Amongst other matters, this seeks to ensure that developments protect amenity for the occupiers of neighbouring properties.

Other Matters

15. The evidence before me indicates that the proposed amendment would not give rise to an increase in anti-social behaviour. Although this is a matter of note, it is only one of all the matters that must be considered. It therefore does not overcome my previous findings.

Conclusion

16. The proposed amendment would have an adverse effect upon the living conditions of the occupiers of neighbouring properties. The scheme would therefore conflict with the development plan taken as a whole. There are no material considerations, including the Framework, which indicate the decision should be made other than in accordance with the development plan. Therefore, for the preceding reasons, I conclude that the appeal should be dismissed.

Benjamin Clarke

INSPECTOR