



Appeal Decision

Site visit made on 6 December 2023

by L N Hughes BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 December 2023

Appeal Ref: APP/Z4718/W/23/3324890

717 Huddersfield Road, Ravensthorpe, Dewsbury, WF13 3LQ

- 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 Navaid Akhtar against the decision of Kirklees Metropolitan Council.
 - The application Ref 2023/70/90435/E, dated 8 February 2023, was refused by notice dated 6 April 2023.
 - The application sought planning permission for change of use of dwelling to shop (A1) without complying with a condition attached to planning permission Ref 2014/62/90257/E, dated 26 March 2014.
 - The condition in dispute is No. 3 which states that: No activities shall be carried out on the premises, including deliveries to or dispatches from the premises, outside the hours of 0800 and 1800 Monday to Friday and 0900 to 1330 Saturdays and Sundays.
 - The reason given for the condition is: In the interests of residential amenity and to comply with policies D2 and EP4 of the Kirklees Unitary Development Plan and guidance given in the National Planning Policy Framework.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of dwelling to shop (A1), without complying with a condition attached to planning permission Ref 2014/62/90257/E, dated 26 March 2014, but subject to the following conditions:
 - 1) Activities carried out on the premises, including deliveries to or dispatches from the premises, shall take place only between 0800 hours and 2000 hours on Mondays to Saturdays, and between 0800 hours and 1800 hours on Sundays.
 - 2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), the premises shall not be used for anything other than for:
 - (a) the display or retail sale of goods, other than hot food, principally to visiting members of the public, with any food or drinks sold to be consumed off the premises;
 - (b) financial services;
 - (c) professional services (other than health or medical services); or
 - (d) any other services which it is appropriate to provide in a commercial, business, or service locality.

Preliminary Matters

2. An approval of a Section 73 application effectively creates a new planning permission, with the extant approval remaining intact. I therefore have the discretion to amend any condition on the original permission, including any amendments which may be different to those sought. Although this appeal is allowed, the effect of the decision is more restrictive than that originally requested by the appellant.
3. The Use Classes Order extant at the time of the original permission allowed for a range of uses within class A1¹. Condition 4 of the permission restricted any temporary change of use which would otherwise have been possible through the operation of permitted development rights. For the avoidance of doubt, I have assessed the proposal based on those uses allowed under the original permission, and discuss this further below.
4. The unit was closed at the time of my site visit, but had signage in place advertising a dessert shop. Whether this is an authorised use is not within the remit of this appeal.

Background and Main Issue

5. Condition 3 restricts the hours for activities to be carried out on the premises. The Council's officer report is slightly inconsistent in identifying the proposed hours, but as I have not been made aware of agreement to any change, I have used those on the application form for my determination. The appellant's proposed amendment to condition 3 is:

No activities shall be carried out on the premises, including deliveries to or dispatches from the premises, outside the hours of 0800 and 2330 Monday to Friday and 0800 to 2330 Saturdays and Sundays.

6. The main issue is the effect of the extended activity times proposed within condition 3 on the living conditions of occupiers of neighbouring properties, with particular regard to noise and disturbance.

Reasons

7. The appeal site comprises the end and corner property of a terrace of 3. The ground floor premises and rear yard is the subject of this appeal, accessed on its side elevation. A residential flat occupies the first floor, and the conjoined properties are dwellings. Much of this stretch of Huddersfield Road falls within the Ravensthorpe District Centre, although the site lies just outside of its boundary. The road's broader extent comprises a ground floor unit mix of predominantly retail, food and drink establishments, and services, plus some dwellings. The upper floors appear predominantly residential.
8. The Council considers that the longer activity hours would create disturbance and noise for the occupiers of the flat above the appeal unit, and the conjoined dwellings. There is no evidence to confirm whether the longer activity hours would attract additional visitors overall, or attract existing visitors displaced from other units. However, there would clearly be some increased localised noise in any case. I find that this would be likely to be generated from activity

¹ The Town and Country Planning (Use Classes) (Amendment) (England) Order 2010

within the unit, and also from customers immediately outside of it when coming and going.

9. I do find that retaining the current activity hours set within condition 3 would not meet all the tests in paragraph 56 of the National Planning Policy Framework ('the Framework') (2023) and the Planning Practice Guidance (PPG). This is because the weekend restrictions to not open until 0900 and to close at 1330 are not necessary, as these are not sensitive noise periods in relation to the amount of disturbance which would occur. They are also not reasonable, for a viable business model to close during what may be regarded as standard peak hours. I find similar for closing at 1800 on weekdays. I note the support from one interested party suggesting that the proposal would provide support to the local economy.
10. The Council's Environmental Health team also provided some support for slightly longer activity hours, suggesting 0800 to 1800 on Mondays to Saturdays and 0900 to 1600 on Sundays. However, within this response there is reference to potential disturbance from a shipping container on the site, particularly later in the evenings. There was no shipping container present during my site visit, although a 2021 application for a shipping container and change to the opening hours was refused. As such, I am not convinced that the hours proposed as suitable by Environmental Health are based on the current, quieter, situation. This leads me to the conclusion that slightly longer hours than those suggested in this consultation response may be appropriate.
11. However, I have no information to weigh in favour which suggests that late evenings are a key time for the unit to be open in terms of viability. I also have no detailed acoustic evidence of the potential noise generation to be expected within the evenings. Although a 2020 sound insulation test for the flat above the premises indicates there would be no harmful internal noise transfer upwards, there is no consideration of external noise from customers, or of noise transference to the conjoined dwelling to the side.
12. The appellant identifies the approved opening times for several proximate units, which range from 2300 daily, up to midnight on Sundays to Thursdays and 0030 on Fridays and Saturdays. However, the proposal is not a hot food takeaway (HFTA) as per the majority of these examples, and so is not directly comparable. Furthermore, I am not aware of the site circumstances or policy context under which those were granted, some of which are relatively historic. Over time, there may become a cumulative effect whereby disturbance becomes a nuisance. These examples also have differing relationships for the distance to dwellings. As such, these examples do not set a firm precedent, and I give them limited weight.
13. Neighbouring residents have objected, referring to the appeal premises' current night time trading hours, and the noise and activity around it, including customers eating and playing music in cars outside. However, bearing in mind the proximate number of HFTAs and shops, I have no certainty that this nuisance from occupants within parked cars, is only from the customers of the appeal premises.
14. In conclusion therefore, the effect of the extended activity times proposed within condition 3 would be harmful to the living conditions of occupiers of neighbouring properties, with regard to noise and disturbance. This would conflict with Policies LP24 and LP52 of the Kirklees Local Plan Strategy and

Policies (2019), which seek to provide a high standard of amenity for neighbouring occupiers, and that noise pollution does not reduce the quality of life and well-being of people to an unacceptable level. It would also conflict with Paragraph 130 of the Framework regarding the need to ensure that developments function well, and to create places which have a high standard of amenity for existing and future users.

15. However, an amendment to the proposed condition 3 to allow activity times longer than allowed at present but shorter than those applied for, would satisfactorily address this harm, and would meet the tests for conditions in the Framework and the PPG. The proposal as amended would thus comply with the development plan and the Framework. In taking all of the above matters into account, I propose to allow the hours between 0800 and 2000 on Mondays to Saturdays, and between 0800 and 1800 on Sundays.

Other Matters

16. Although interested parties have identified parking problems, the Council has raised no issue in this regard. On the evidence before me I see no reason to take a different conclusion.

Conditions

17. The PPG makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. Conditions to specify the time limit and approved plans are not necessary as the change of use from a dwelling to shop has already been undertaken and commenced.
18. I have imposed the amended condition 3, now condition 1, in the terms described above.
19. The previous Condition 4 restricted any development or change of use within Class D of Part 4 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 as amended (or any Order revoking or re-enacting that Order), without the prior written consent of the Local Planning Authority. In effect, this restricted the otherwise permitted 2 year flexible change of use from the A1 shop use to Class A2 (financial and professional services), Class A3 (restaurants and cafes), and Class B1 (business). The reason was in the interests of residential amenity and highway safety.
20. These classes, along with the use class 'shop (A1)' approved by the original permission, no longer exist. The former Class A1 uses now fall within Class E 'Commercial, Business and Service', which also has a wider remit². There have also been amendments to Class D under the extant General Permitted Development Order, reflecting the wider range of uses allowed under Class E.
21. Notwithstanding this, I have regard to the intent behind this condition to restrict a potential change to other uses which may cause more noise and disturbance. In order to comply with the tests for conditions, I have reframed it to refer to the up to date legislation, and to provide more clarity on the uses to which the appeal unit would be restricted. These are based on those allowed under Class A1 at the time the permission was granted, plus those additional Class E uses which would have no greater impact on residential amenity and highway safety. The main parties have agreed to this revised condition.

² The Town and Country Planning (Use Classes) (Amendment) (England) Order 2020

Conclusion

22. For the reasons given above I conclude that the appeal is allowed. I grant a new planning permission without the disputed condition and the other conditions which are no longer applicable, but with a new condition setting the activity times, and retaining the non-disputed condition from the previous permission that appears still to be relevant, subject to slight amendment.

L N Hughes

INSPECTOR