



Appeal Decision

Site visit made on 7 December 2023

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th December 2023

Appeal Ref: APP/G5180/W/23/3324894

Pizza Go Go, 4 Chatsworth Parade, Petts Wood, Orpington BR5 1DF

- 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 Y Saeed against the decision of the Council of the London Borough of Bromley.
- The application Ref DC/00/02726/RECON1, dated 23 November 2022, was refused by notice dated 23 June 2023.
- The application sought planning permission for change of use of ground floor from retail shop (Class A1) to hot food takeaway (Class A3) without complying with a condition attached to planning permission Ref 00/02726/FULL2, dated 27 November 2000.
- The condition in dispute is No. 4 which states that: The use hereby permitted shall not operate on any Bank Holiday, Christmas Day, or Good Friday, nor before 08.00 or after 23.00 on Mondays to Saturdays (inclusive) and not before 08.00 or after 22.00 on Sundays.
- The reason given for the condition is: In order to comply with Policy S.6 of the Unitary Development Plan and the interest of the amenities of the area.

Decision

1. The appeal is allowed and planning permission is granted for change of use of ground floor from retail shop (Class A1) to hot food takeaway (Class A3) at Pizza Go Go, 4 Chatsworth Parade, Petts Wood, Orpington BR5 1DF in accordance with the application Ref DC/00/02726/RECON1, dated 23 November 2022 without compliance with condition number 4 previously imposed on planning permission Ref 00/02726/FULL2 dated 27 November 2000, and subject to the following conditions:
 - 1) For a period of 12 months from the date of this decision, the use shall not operate between 00:00 and 08:00 Mondays to Thursdays and Bank Holidays, nor between 01:00 and 08:00 on Saturdays to Sundays, and not at all on Christmas Day; and no customers shall be admitted into the premises after 23:30 Mondays to Thursdays, after 23:59 on Fridays and Saturdays, and after 22:30 on Sundays and Bank Holidays during which times the premises shall solely provide a home delivery service.
 - 2) Prior to expansion of opening hours, the mitigation measures contained within the Noise Impact Assessment compiled by Nova Acoustics (dated 6 January 2023) shall be fully implemented and permanently maintained thereafter.

Main Issue

2. The main issue is the effect of removing or varying the condition would have on the living conditions of occupants of surrounding residential properties in relation to noise and disturbance.

Reasons

3. The appeal property is a ground floor commercial property that is currently used as a hot-food takeaway. It is located on Chatsworth Parade which is a three-storey block with commercial units on the ground floor and residential properties above. It is located in the Petts Wood District Shopping Centre.
4. Under a variation to the original planning consent, a condition permits opening hours of; 0800 to 2400 on Fridays and Saturdays, 0800 to 2330 on Mondays to Thursdays, and 0800 to 2230 on Sundays and Bank Holidays (except Christmas Day when the premises shall be closed). In addition to these opening times, the appellant seeks to allow for the operation of a home delivery service at the following times; 2400 to 0100 on Fridays and Saturdays, 2330 to 2400 on Mondays to Thursdays, and 2230 to 2400 on Sundays and Bank Holidays (except Christmas Day when the premises shall be closed).
5. At the time of my late morning site visit there was a moderate amount of pedestrian activity, and a moderate amount of vehicular movements. This resulted in fairly frequent noise that would be relatively typical of a district high street of this scale and nature. Whilst I observed several units that cater for the evening and night-time economy, and these have been referred to by the appellant, I would expect the area to be noticeably quieter during the late evening and night-time when most of the shops would be closed.
6. The appellant has submitted a Noise Impact Assessment¹ that considers the potential increase in noise levels from the installation of the extraction system and the proposed extended hours on the surrounding noise sensitive receptors. Subject to the mitigation measures as set out, the report finds that there would be a low impact in accordance with BS4142:2014 and 'No Observed Effect Level' when assessed in accordance with the NPSE and the NPPF. The findings of the assessment are not disputed by the Council.
7. I acknowledge the findings of the assessment. Nevertheless, however well the appellant tries to control their night-time operations at the extended times sought, there could be occasions when the comings and goings of delivery drivers and their vehicles may cause disturbance to those who live, and who are trying to sleep, nearby.
8. I therefore do not consider it would be appropriate to grant planning permission which entirely removes condition No. 4 as applied to the original permission. But nor do I find the evidence against any extension in the opening hours to be conclusive, and to this end I acknowledge that no objections were raised by the Council's Environmental Health Pollution Officer, subject to the imposition of conditions, and no objections were received from nearby residents.
9. Planning practice guidance on the use of planning conditions outlines that circumstances where a temporary permission may be appropriate include

¹ Nova Acoustics Noise Impact Assessment 06/01/2023

where a trial run is needed in order to assess the effect of the development on the area. I consider that in this case, it would be appropriate, reasonable and necessary to limit the extended hours to a temporary period of 12 months in order that the impact on the living conditions of occupants of surrounding residential properties may be monitored.

10. I therefore find that based on the evidence before me, allowing deliveries from the premises to operate at the extended hours for a temporary period of 12 months, would not cause harm to the living conditions of occupants of surrounding residential properties. It would comply with Policy 98 of the Bromley Local Plan (2019) which requires, amongst other things, that hot food takeaways must not cause harm or loss of amenity to nearby residents through noise, disturbance and unneighbourly opening hours.

Other Matters

11. I note the comments received from Petts Wood & District Residents' Association. I have acknowledged that allowing the appeal has the potential to cause unforeseen disturbance, and to this end I have allowed the appeal on a temporary basis in order that any such instances can be monitored.
12. The fact that the premises might have the appearance of being open, as lights would be on, does not lead me to conclude that there would be harm. It would be in the appellant's interests to deter any incidents of people trying to access the premises, and similarly, this can be monitored in the temporary period.
13. I have acknowledged other night-time uses in the area. Although the proposal would exceed the hours, I have made my decision based on the evidence before me and the specific nature of the appeal. Each application and appeal must be determined on its individual merits, and a generalised concern of setting a precedent, does not justify withholding permission in this case.

Conditions

14. In the interests of living conditions, I have also imposed a condition requiring implementation of the mitigation measures as set out in the noise report.

Conclusion

15. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal should be allowed.

A M Nilsson

INSPECTOR