



Appeal Decision

Site visit made on 16 April 2024

by H Senior BA (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31st May 2024

Appeal Ref: APP/W4325/W/23/3329937

68 Oxtan Road, Birkenhead CH41 2TW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Sayful Islam Ali against the decision of Wirral Metropolitan Borough Council.
 - The application Ref APP/23/00732 was approved on 29 August 2023 and planning permission was granted subject to conditions.
 - The development permitted is change of use from a convenience store (use class e) to a hot food take away (sui generis), along with the installation of a flue extraction system to the rear.
 - The condition in dispute is No 4 which states that: The hot food takeaway use hereby approved shall not be commenced until the floor between the ground and first floor has been insulated to provide sound attenuation against internally generated noise in accordance with detailed drawings to be submitted to and approved in writing by the Local Planning Authority. The insulation shall then be implemented in accordance with the approved details prior to commencement of the approved hot food takeaway use.
 - The reason given for the condition is: To safeguard the amenities of the occupiers of the adjoining residential property and to accord with Policy SH2, PO1 and PO3 of the Wirral Unitary Development Plan.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for an award of costs was made by Mr Sayful Islam Ali against Wirral Metropolitan Borough Council. This application is the subject of a separate decision.

Preliminary Matters

3. Paragraph 56 of the National Planning Policy Framework (the Framework) states that conditions should be kept to a minimum and that they should only be imposed where they are necessary, relevant to planning and the development being permitted, enforceable, precise and reasonable in all other respects. Conditions that are required to be discharged before development commences should be avoided, unless there is clear justification and require the applicant's written agreement to the terms of the pre-commencement condition.
4. Section 100ZA(8)(b) of the Town & Country Planning Act 1990 states that a 'pre-commencement condition' means a condition imposed on a grant of planning permission which must be complied with where the development

consists of a material change of use in the use of any buildings or other land, before the change of use is begun.

5. Planning permission has been granted for the change of use from a convenience store (use class e) to a hot food take away (sui generis), along with the installation of a flue extraction system to the rear.
6. Condition 4 of the planning permission required details of a sound attenuation scheme to be submitted, approved and installed prior to the commencement of the use of the building as a hot food takeaway. Condition 4 therefore meets the description of a 'pre-commencement' set out in the Act. However, the Council failed to secure the applicant's written agreement to it prior to the grant of planning permission.

Main Issue

7. In view of the above, the main issue is whether the condition is necessary and reasonable having regard to the living conditions of neighbouring occupiers with particular regard to noise.

Reasons

8. The upper floors of the host building are in use as residential accommodation. The sound insulation would be necessary to mitigate any sound of the operation of the hot food takeaway on the living conditions of the occupiers in the flat above due to the activities of the takeaway with customers being served until 23:30pm. In addition, the Environmental Health Officer considered the building regulations standards for noise insulation insufficient to protect the residents which justifies the council asking for details to be submitted and implemented prior to the commencement of the use. I consider that the condition meets the tests for conditions as described in the Framework.
9. I consider that condition 4 is necessary and reasonable to protect the living conditions of the occupants of the first floor flat and that it is necessary to be in place prior to the use as a hot food takeaway being commenced. It would ensure that the development complies with Policies SH2, PO1 and PO3 of the Wirral Unitary Development Plan which together amongst other matters seek to ensure that development does not cause harm or nuisance to neighbouring uses arising from unacceptable noise and disturbance.
10. From the evidence before me, it is clear that the appellant has discharged the condition. From my site visit it would appear that the use has commenced. It would therefore be inappropriate for me to seek his agreement to imposing it as a pre-commencement condition. This leads me to conclude that the current planning permission should remain unaltered.

Conclusion

11. For the reasons given above the appeal should be dismissed.

H Senior

INSPECTOR