



Appeal Decision

Site visit made on 7 May 2024

by L C Hughes BA (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 June 2024

Appeal Ref: APP/Q4245/W/23/3333905

200 Stretford Road, Urmston, Manchester, Greater Manchester, M41 9NA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Andrew Copues, The Bus Stop Cafe LTD against the decision of Trafford Metropolitan Borough Council.
 - The application Ref is 111395/VAR/23.
 - The application sought planning permission for change of use of property from shop (Use Class A1) to café/restaurant (Use Class A3). Application for determination as to whether prior approval is required under Class C Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 2015 (as amended) without complying with a condition attached to planning permission Ref 87944/PRC/16 dated 12 May 2016.
 - The condition in dispute is No 3 which states that: The premises shall not be open for trade or business outside the following hours: Mon – Fri 0700-1700, Saturday 0800-1700 and Sunday 0900-1600.
 - The reason given for the condition is: in the interests of residential amenity in accordance with Trafford Core Strategy Policy L7 and the National Planning Policy Framework.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 21 March 2024, after the appeal was submitted, the Council adopted the Places for Everyone Joint Development Plan Document as part of their Development Plan. PfE is a joint Development Plan Document produced by nine Greater Manchester districts, of which Trafford is one. The Council have referenced the updated policies of the PfE in their statement, which the appellant has had an opportunity to comment on. The relevant parts of Policies L5 and L7 of the Trafford Local Plan: Core Strategy (2012) (CS) which are referred to in the reason given for the condition and in the Council's reason for refusal remain extant.
3. Whilst the reason given for the condition relates to Policy L7 of the CS, the reason for refusal for the variation of the opening hours also references Policy L5 of the CS. Whilst this policy largely relates to climate change, L5.13 remains extant, and relates to noise pollution. As such, I consider it is relevant to the appeal.
4. Planning Practice Guidance (PPG) is clear that under s73 of the Town and Country Planning Act 1990 only the disputed condition of the subject of the

application is to be considered. The use of the café is established, and therefore the appeal can only consider the proposed increase in hours. Parking and highway safety were not put forward as a reason for refusal, the café does not have an alcohol licence and no alcohol is served on the premises. The appellant has expressed their willingness to having a condition imposed specifying that any extended opening hours would not include the café's outdoor area. I have considered the appeal on this premise.

Background and Main Issue

5. A café approved under planning application 87944/PRC/16 has been operating from the appeal site. Condition 3 of that permission restricts the opening hours of the premises to between 7am to 5pm Monday to Friday, 8am to 5pm on Saturdays and 9am to 4pm on Sundays.
6. The appellant seeks to extend the opening hours of the café to between 7am - 10pm Monday to Thursday, 7am-11pm on Fridays, 8am-11pm on Saturdays, and 9am-10pm on Sundays. I have taken these hours from those detailed on the application form.
7. The main issue is the effect that varying the opening hours of the café would have on the living conditions of neighbouring occupiers, with regard to noise and disturbance.

Reasons

8. The appeal site relates to a detached property, located on the corner of Stretford Road, a busy B Road, and Westwood Avenue, a small cul-de-sac. Whilst there are commercial premises elsewhere on Stretford Road, the surrounding area is predominantly residential.
9. The next-door residential property on Stretford Road lies approximately 10m away from the café with a domestic garage between the buildings. The appeal property shares a boundary with 2 Westwood Avenue. The proposed extension of customer opening hours would therefore introduce a late evening commercial activity within an immediate area characterised by residential properties.
10. The appellant has highlighted that unsociable hours in UK law are 11pm to 6am. Be that as it may, the proposed extended opening hours, whether they would be until 10pm or 11pm, would likely be at a time when many residents would be at home, may have children sleeping, and would have a reasonable expectation of peace and quiet in their homes. Given the proximity of neighbouring dwellings, customer comings and goings have the potential to result in noise and disturbance to neighbouring occupiers due to customers chatting as they enter and leave the premises and from vehicular movements, along with doors shutting and engines starting. Noise may arise from patrons chatting when smoking outside the premises. Furthermore, staff leaving the premises may lead to further noise after the proposed closing hours.
11. Whilst the main entrance to the property is located to the frontage with Stretford Road, due to the close physical relationship between the appeal site and the neighbouring residential properties, such noise is likely to be audible to neighbouring residential occupiers. This may be more apparent when windows and doors are open during the summer months.

12. Although the proposed extension to the opening hours would not see an increase in the number of people at the café at any one time, noises generated by the patrons are more likely to be audible and cause disturbance during the evening when there are generally less activities and comings and goings than during the day and when ambient noise levels will be lower.
13. I noticed during my site visit, which was during a midweek lunchtime, that there was traffic noise dominating the soundscape in the locality of the café. The M60 is close by, the café is on a bus route, and there was a fairly steady stream of traffic passing by. Whilst the noise from the M60 is likely to be audible even during the evening hours, it is probable that traffic flows along Stretford Road and the associated traffic noise would decline during the later evening. Any noise as a result of the extended opening hours is more likely to be noticeable when traffic noise subsides, and as such would be more likely to disturb neighbouring occupiers during the late evening period.
14. During my site visit I could not hear noises from within the café permeating outside the building. However, I consider that it is the noises associated with patrons coming and going and from smokers congregating outside the café, rather than from noises within the café itself that would cause disturbance.
15. Whilst local patrons may walk to the café, which would minimise the amount of noise and disturbance from vehicles, I consider it probable that a number of customers would drive. Even taking into account that some people would be car sharing, the associated noise from the number of vehicles that would be arriving and leaving the appeal site during the evening would be greater than that which would reasonably be expected in a residential area.
16. Whilst the appeal property was previously in use as a convenience store and off-licence that was open until 11pm, I consider that the nature of comings and goings to the convenience store would be different to that of a café during the evening, which would have more potential for groups of people coming and going at the same time, rather than individually, and engaging in conversation outside the premises. Likewise, I do not consider that the presence of the bus stop outside the premises would lead to a similar pattern of noise which would be likely to occur from groups of people entering and leaving the appeal property together.
17. The appellant has drawn my attention to a nearby convenience store and off licence, a Tesco Express and a public house which all operate into the evening and are close to residential properties. However, the details of these developments, specifically their status with regard to planning permission and whether they are subject to any controls regarding opening hours, activities or noise mitigation are not before me. In any case, the presence of these premises does not justify the harm to the living conditions of neighbouring occupiers that I have found from the specific proposal before me, and its specific relationship with surrounding residential properties.
18. My attention has also been drawn to an appeal decision in Nottinghamshire¹ which allowed a variation of opening hours for a café. I am mindful that consistency in the planning process is important and like cases should be decided in a like manner. Whilst it is inevitable for comparisons to be made, each will have its own site-specific circumstances, policy context and merits

¹ APP/W3005/W/2016/3166091 & 3168909

upon which it is considered, and a specific relationship with surrounding buildings. Whilst the café which is the subject of the Nottinghamshire appeal and this café are both sited in residential areas, I have no evidence before me regarding the specifics of the case, such as the size of the café and the number of likely patrons. In any event, I have determined this appeal on its own merits and its own site-specific circumstances.

19. I note that no noise complaints have been received by the Council in relation to the existing use. However, the existing opening hours are during the day when more noise and comings and goings are to be expected, and there is likely to be more background ambient noise and less likelihood of any noise from the café disturbing neighbouring residents. The lack of complaints does not lead me to the conclusion that the proposal would not cause harm to the living conditions of neighbouring occupiers.
20. For the reasons given above, I conclude that the proposed opening hours would be materially harmful to the living conditions of neighbouring occupiers with regard to noise and disturbance. The condition is therefore reasonable and necessary in its current form. As such, the proposal would conflict with relevant parts of Policies L5 and L7 of the CS which seek to control noise pollution and ensure that developments do not prejudice the amenity of the occupants of adjacent properties by reason of noise and/or disturbance. It would also conflict with Paragraph 135 of the National Planning Policy Framework which highlights the importance of developments having a high standard of amenity.

Other Matters

21. I recognise that the proposal would have economic benefits as it would increase the potential business to the site. There would be social benefits as the proposal would provide a place for the community to spend quality time. The proposal would also bring environmental benefits, as it is in a sustainable location and would help ensure the use of the building. Nonetheless, the benefits are outweighed in this instance by the harm to the living conditions of neighbouring occupiers with regard to noise and disturbance.

Conclusion

22. For the reasons given above, and taking all matters into account, the appeal should be dismissed.

L C Hughes

INSPECTOR

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