
Appeal Decision

Site visit made on 30 May 2024

by John Felgate BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 June 2024

Appeal Ref: APP/U4610/W/24/3338086

8 Station Avenue, Coventry CV4 9HS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Mohammed Abubakir against the decision of Coventry City Council.
 - The application Ref PL/2023/0002134/FUL, dated 5 October 2023, was approved on 19 December 2023 and planning permission was granted subject to conditions.
 - The development permitted is "*change of use from hot food takeaway/café to retail*".
 - The condition in dispute is No 2, which states that: "*The use hereby permitted shall only operate and be open to customers between 0730 hours and 2000 hours on any day and at no other time*".
 - The reason given for the condition is: "*To safeguard the amenities of nearby occupiers in accordance with Policy DE1 of the Coventry Local Plan 2016*".
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Decision

1. The appeal is allowed and the planning permission Ref PL/2023/0002134/FUL, for change of use from hot food takeaway/café to retail, at 8 Station Avenue, Coventry CV4 9HS, granted on 19 December 2023 by Coventry City Council, is varied by deleting the existing Condition 2 and substituting the following new condition:
 - 2) The use hereby permitted shall only operate and be open to customers between 07.00 and 22.00 hours on any day, and at no other time.

Procedural matters

2. The appeal is against the grant of planning permission subject to conditions, with the only matter in dispute being Condition No 2, as set out above. I have dealt with the appeal on this basis.
3. An application for costs has been made by the appellant against the Council. That application is the subject of a separate decision.

Planning background

4. The appeal property is a terraced shop unit with a history of retail use going back many years. According to the appellant, the hours of operation were originally unrestricted.
5. In September 2016, permission was granted (FUL/2016/2113) for a change of use from retail to "café/takeaway (A3 and A5)". The permission was subject to a condition limiting the hours of operation to 07.30 -18.00 on Mondays to

Fridays, 08.00 – 18.00 on Saturdays, and 10.00 – 16.00 on Sundays. It appears that the unit was then occupied as a takeaway business which continued for some years.

6. In February 2021, a variation to the hours condition was approved (Ref S73/2020/2735). The amended hours were 07.30 – 20.00 on Mondays to Saturdays, and 10.00 – 16.00 on Sundays and bank holidays. At some time after this the takeaway business ceased and the unit became vacant for a period of time.
7. In June 2023 the unit became occupied as a retail shop. In July 2023, an application was made for a further variation to the hours of the existing permission, but this application was later withdrawn. In October 2023 the present appeal application was made, for retrospective permission for the change of use to retail. As set out above, permission was granted, subject to opening hours of 07.30 – 20.00 on all days.
8. The appeal is against this condition. The new opening hours sought by the appellant are 06.00 – 23.00 on all days.
9. At the time of my visit, the unit was trading as a convenience store, under the name 'Tile Hill Mini Market', selling mainly groceries and day-to-day items.

Main issue

10. The main issue in the appeal is whether the hours imposed by the existing condition are reasonable and necessary, having regard to the nature of the use and its surroundings; and if not, what alternative hours should be substituted.

Reasons for decision

11. No 8 Station Avenue is the middle unit in a terrace of three, close to the junction with Tile Hill. To one side, No 10 Station Avenue is in residential use. Beyond this there is a pub, a pay-and-display car park, and a parade of about half a dozen retail units. In the other direction, No 6 Station Avenue is a barbers shop, and then there is a modern office building. Opposite, there is another group of shops, with a petrol station on the corner, and then some more shops fronting onto Tile Hill.
12. In the Coventry Local Plan (the CLP), adopted in December 2017, this group of retail and commercial uses is designated as the Station Avenue Local Centre. CLP Policy R3 makes clear that the Local Centres, together with the City Centre and District Centres, are the preferred locations for shopping and community uses. In all cases a balanced mix of uses is to be sought, to protect the centres' vitality and viability. A residential element will also be encouraged, where environmental conditions are suitable, so long as this does not undermine the centres' main function. Local Centres in particular should provide day-to-day convenience shopping, together with restaurants and social, community and leisure uses, to support their immediate locality.
13. This approach seems to me to be consistent with the advice in paragraph 85 of the National Planning Policy Framework (the NPPF), which advocates that planning policies and decisions should help to create the conditions in which businesses can invest, expand and adapt, giving significant weight to the need to support economic growth and productivity.

14. In the present case, the neighbouring dwelling at No 10 Station Avenue is set quite close to the street, and shares a party wall with the appeal property. In such proximity, excessive noise would have the potential to cause disturbance, especially if this occurred at unsocial hours. To this extent, the Council is clearly right to wish to ensure that living conditions at No 10 are not compromised unacceptably. However, given the Local Centre's economic and social importance to the area, it is clearly necessary also to balance these considerations against the desirability of allowing local shops and other businesses to operate efficiently and viably.
15. The hours sought by the appellant, of 06.00 – 23.00, would mean that some potential for noise would arise during both the very early morning and the late evening. These are normally the quietest times of day, and consequently any noise at these times would be especially likely to cause annoyance. I agree with the Council that allowing the unit to open at these times would have an unacceptable impact on nearby residential occupiers, including those at No 10 Station Avenue.
16. However, it is not unusual for shops in this type of location to be open by around 07.00, and to stay open well into the evening. Indeed it appears that at least two other convenience stores close to the appeal site have permitted hours which extend until 22.00. Although at these times the area is likely to be somewhat quieter than in the main part of the day, some degree of background noise is still likely, including noise from traffic as well as other sources. In any event, neither 07.00 nor 22.00 can be regarded as particularly unsocial times.
17. With regard to the particular shop unit in this appeal, I am aware that the site has a past history of incidents involving public nuisance and disorder, which have led to action being taken through the Courts. I have no doubt that this would have caused disturbance and distress to nearby residents, including due to noise. However, planning permission runs with the land, not the individual. As far as I can tell, there is nothing about the property itself which would make a recurrence of these problems any more likely here than at any other retail premises.
18. Having regard to all the above, I conclude that the hours currently specified in the disputed Condition 2 are unnecessarily restrictive, and thus unreasonable. Equally, the full extended hours sought by the appellant would cause unacceptable harm to living conditions in the vicinity. However, a more moderate extension of the permitted hours, to 07.00 – 22.00, would avoid significant harm. As such, these hours would also avoid any conflict with CLP Policy DE1, which amongst other things requires developments to respect and enhance their surroundings. On balance therefore, the condition should be amended to these latter hours.

Other matters

19. I note the various other matters raised by local residents. However, the majority of these relate to the actions or behaviour of customers, either inside or outside the premises, rather than to any aspect of the proposed use itself. I sympathise with these concerns, but they do not justify a refusal of permission.

20. With regard to car parking, public parking is available nearby, and any illegal parking on the yellow lines is capable of being enforced by the relevant authorities.
21. Although there are other nearby shops offering a similar range of goods to those at the appeal site, this is not a planning consideration. It is therefore not necessary for the appellant to show a particular need for the use or hours now proposed.
22. I note that it is said that previous conditions have not always been complied with. However, the Council has the necessary powers to secure compliance.

Conclusion

23. For the reasons explained above, I have concluded that the hours imposed by the existing Condition 2 are unnecessary and unreasonable, having regard to the nature of the use and its surroundings. However, a condition to control opening hours is still necessary, to safeguard residential living conditions. A condition allowing opening hours of 07.00 – 22.00 would strike a fair balance.
24. In all the circumstances, the disputed condition should be varied along these lines, as set out at paragraph 1 of this decision. I note the suggestion regarding a temporary trial period for any change to the existing condition, but as I have concluded that in this case the extended hours would cause no significant harm, a trial period is not necessary.
25. On this basis, the appeal is allowed.

J Felgate

INSPECTOR