



Appeal Decision

Site visit made on 23 May 2024

by P Storey BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 June 2024

Appeal Ref: APP/X1355/W/24/3339581

17 Hallgarth Street, Durham DH1 3AT

- 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 ZG Holdings Ltd against the decision of Durham County Council.
 - The application Ref is DM/23/01996/VOC.
 - The application sought planning permission for 'Retention of Existing Shopfront and Two-Storey Rear Extension' without complying with a condition attached to planning permission Ref DM/16/03376/FPA, dated 11 January 2018.
 - The condition in dispute is No 4, which states that: The premises subject to this permission shall not be open for business outside of the hours of 1130 to 2300 hours Monday to Saturday and 1130 to 1500 hours Sundays.
 - The reason given for the condition is: In the interests of residential amenity in accordance with saved Policy S10 of the City of Durham Local Plan 2004.
-

Decision

1. The appeal is dismissed.

Preliminary Matter

2. Planning permission was granted in January 2018 for development subject to conditions including No 4, as set out in the banner heading above. This appeal seeks to vary condition No 4 in relation to Sunday opening hours only, as follows: *The premises subject to this permission shall not be open for business outside of the hours of 1130 to 2300 hours Monday to Saturday and 1130 to 2100 hours Sundays.*

Main Issue

3. The main issue is the effect of the proposed variation to condition No 4 on the living conditions of nearby occupiers, in respect of noise and disturbance.

Reasons

4. The appeal site is a restaurant set in a 2-storey building adjoining a residential property. It fronts Hallgarth Street and lies on the corner of Mavin Street, which is a narrow terraced residential street.
5. Both main parties refer to a previous appeal decision¹, which was dismissed in June 2020 for a proposal to vary the condition to allow opening until 2230 on a Sunday. I have taken this into account in determining the current appeal.

¹ APP/X1355/W/19/3242138

6. Policy E4 of the Durham City Neighbourhood Plan 2020 to 2035 (the DCNP) supports proposals that would promote and/or support the early evening and night-time economy activity related to food and drink, including later trading, provided that they include appropriate evidence that the development will have no significant adverse effect upon local amenity, including the amenity of local residents.
7. Policy 29 of the County Durham Plan – Adopted 2020 (the CDP) seeks to ensure developments provide high standards of amenity and privacy, and minimise the impact of development upon the occupants of existing adjacent and nearby properties. Policy 31 of the CDP advises that development which has the potential to lead to unacceptable levels of noise and vibration or other sources of pollution will not be permitted, including where any identified mitigation cannot reduce the impact to an acceptable level.
8. Although there have been changes to the development plan context since planning permission was originally granted and the previous appeal was dismissed, the current development plan policies summarised above remain applicable to condition No 4 in terms of its intended purpose.
9. Hallgarth Street is a well-used vehicular and pedestrian route. Although it is located close to Durham City Centre, its character is noticeably quieter. Other than The Victoria public house, which lies on the diagonally opposite side of Hallgarth Street, the immediate surroundings are predominantly residential.
10. The current condition allows the restaurant to open until 1500 on Sundays and the proposal seeks to allow opening until 2100, which is 90 minutes earlier than proposed under the 2020 appeal. Nevertheless, this would still result in an additional 6 hours of trading through the afternoon and evening on a Sunday.
11. Given the predominantly residential surroundings, non-residential uses have the potential to disproportionately affect the living conditions of occupiers. The appeal site presently has consent to operate from 1130 to 2300 hours 6 days a week. The present shorter consented hours on Sundays allow for a brief period of respite from late afternoon through the evening, when nearby residents have the assurance of not being subject to noise or disturbance from this neighbouring commercial use.
12. The observations made by my colleague in the 2020 appeal remain valid. Although their decision was taken during the Covid-19 pandemic, when the surroundings may have been quieter than they are now, my colleague accounted for this in the decision, and I consider the nature of the appeal site and its surroundings has not significantly changed. Based on these considerations and my own observations, I am not convinced that reducing the late evening opening by 90 minutes would materially alter my colleague's conclusions in the 2020 appeal. Extending the opening hours by 6 hours, at a time when nearby residents have reasonably come to expect a period of peace and quiet, has the potential to have a significant adverse effect on their living conditions through increased noise and disturbance.
13. The appellant points to the high student population in the area and contends that it is not a quiet residential area, but rather a bustling student area of the city which includes restaurants, public houses and Durham University Students Union.

14. Whilst the noted facilities are within easy walking distance of the site, other than the aforementioned public house, they are not in its immediate surroundings. Although a reasonably busy road runs through the area, my observations suggest it is a quiet, predominantly residential neighbourhood. As noted in the 2020 appeal decision, the public house has established historic opening hours and its context as a detached building is different to the appeal site. Moreover, although there may be a prevalence of student occupation in the area, it should not be assumed that students would accept a greater level of disturbance than the general population.
15. Reference is also made to the Barrio Comida restaurant, which the appellant submits was granted planning permission with no restriction on trading hours. Although this appears to be near some residential properties, it is located adjacent to a busy road junction and the Durham University Students Union. As such, I find the Barrio Comida site context to be very different to the appeal site and its associated considerations would not alter my previous conclusions.
16. The appellant has proposed alternative conditions, including ceasing weekday lunchtime trading except on bank holidays and during Durham University graduation week, which would result in a net reduction in trading hours. However, I am not convinced that weekday lunchtimes are comparable to late Sunday afternoons and evenings in terms of the impact on nearby residents. Additionally, no alternative wording has been provided to ensure a revised condition would be sufficiently precise or enforceable, particularly concerning Durham University graduation week, which may vary in timing or duration.
17. It has been suggested that a condition could secure a noise management plan, which could be applied to the current operation across all consented days. In this respect, I am mindful that no technical reports relating to noise have been provided to establish the background noise levels or the effects of the proposal, that could be secured through such a condition. Accordingly, even if such a scheme were to be implemented, I am not persuaded that it would suitably mitigate the effects on nearby occupiers. Whilst I acknowledge the appeal example provided by the appellant, I am not aware of the full context of this proposal or how it compares to the appeal site.
18. For the reasons given above, I do not find the proposed variation of condition No 4 would suitably protect nearby occupiers from additional noise and disturbance, and it would lead to harm to their living conditions. The proposal would therefore conflict with Policy E4 of the DCNP and Policies 29 and 31 of the CDP, the aims of which have previously been set out. It would also conflict with the relevant provisions of the National Planning Policy Framework (the Framework), which have similar aims.

Other Matters

19. CDP Policy 9 and DCNP Policy S1 relate to the evening economy, supporting the vitality and viability of town centres, and supporting existing businesses. The Framework also seeks to build a strong, competitive economy. I acknowledge that the appeal site has recently changed ownership and I do not doubt that the owners have made significant investment in the property, and that it contributes to economic growth and adds to the choice for consumers. I note the appellant's statement that the current restrictions on trading hours are limiting for the business, and this may place challenges on its continued operation. However, the location of the site in a highly residential area requires

a balanced approach to such uses. Although I recognise the commercial and economic benefits the extended hours would deliver, such benefits would not overcome the harm I have identified in respect of the main issue.

20. The appeal site is within the Durham City Conservation Area (the CA). Accordingly, the statutory duty under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 applies, which requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the area.
21. The significance of the CA is derived predominantly from the historic importance of the buildings and streets forming the city centre, and the areas that have grown around it. Because the proposal would involve no physical alterations, it would not harm the significance of the CA and would preserve its character and appearance. Nevertheless, the absence of harm in this regard would be a neutral factor that would not outweigh the harm previously identified.

Conclusion

22. For the reasons given above, I conclude that the appeal should be dismissed.

P Storey

INSPECTOR