



Appeal Decision

Site visit made on 9 July 2024

by D Wilson BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 July 2024

Appeal Ref: APP/W2465/W/24/3339209
343 East Park Road, Leicester, LE5 5HL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Ibraheem Tayub against the decision of Leicester City Council.
 - The application Ref 20231201, dated 26 June 2023, was refused by notice dated 22 August 2023.
 - The application sought planning permission for change of use from retail to restaurant (Class E) without complying with a condition attached to planning permission Ref 20171172, dated 8 August 2017.
 - The condition in dispute is No 3 which states that: The use hereby approved shall not be carried on outside the hours of 07:00 to 23:00 daily.
 - The reason given for the condition is: In the interests of the amenities of nearby occupiers, and in accordance with policy PS10 of the City of Leicester Local Plan.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. Planning permission has been granted for the change of use from retail to a restaurant. The appellant has carried out the development without complying with condition 3 which relates to the restaurant's opening hours.
3. The main issue therefore is whether condition 3 is reasonable or necessary in order to protect the living conditions of nearby occupiers in respect of noise and disturbance.

Reasons

4. The appeal building is a single storey restaurant located near to the junction of East Park Road and Evington Road. The site is located within the Evington Road district shopping centre and there are a number of commercial uses nearby that are mostly located on the ground floors. The upper floors of many of the buildings nearby are residential and the wider area, in particular East Park Road is densely residential with predominantly terraced houses.
5. I accept that the character of the area is generally busy and there are other commercial premises that would generate noise, however, noise levels after 23:00 and into the early hours are generally going to be much lower than the daytime and evening. Therefore, the associated noise and disturbance from the

later opening would be more noticeable and unexpected to the occupiers of the nearby residential properties.

6. The appellant suggests that demand for on-site food consumption is minimal, however, the noise and disturbance from consumption immediately outside the restaurant and nearby is difficult to control and is a particular concern for the Council and some residents. In particular the comings and goings of customers, including cars parking nearby, opening doors, playing music and the potential for customers to eat their food with the car idling. All of which have the potential to be disruptive to the occupiers of neighbouring properties at times when outside noise is expected to be at a minimum.
7. I have considered the potential for a temporary consent to change the opening hours which the appellant considers would allow the potential for noise complaints to be submitted to the Council. However, I am mindful that interested parties have already complained about noise and therefore, for the reasons outlined I am not convinced that a temporary permission would not unacceptably harm the living conditions of neighbouring occupiers.
8. I therefore conclude that the proposal would unacceptably harm the living conditions of neighbouring occupiers. It would be contrary to Policies PS10 and R05 of the City of Leicester Local Plan (Incorporating the City of Leicester Minerals Local Plan) 1996-2016 Adopted January 2006, Policy CS11 of the Leicester City local development framework Core Strategy adopted July 2014 and Paragraphs 135 and 191 of the National Planning Policy Framework. Amongst other things, this seek to ensure that proposals do not prove significantly detrimental to the amenities of the occupiers of nearby residential properties and create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing users.

Other Matters

9. I am mindful of the Public Sector Equality Duty arising from section 149 of the Equality Act 2010. This requires me to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not. Amongst other things, for the purposes of the Equality Act, protected characteristics include religion. I am aware the appellant contended that the late-night opening provides a particular benefit to the Muslim community during Ramadan. However, it has not been demonstrated that there are no alternative venues nearby that could deliver a similar benefit for this community and as such, this benefit does not outweigh the harm I have identified. Any benefit it may bring in this regard has to be balanced against the resultant harm. Given this, I consider dismissal of the appeal is objectively justified as a proportionate means to achieve to achieve the legitimate aim of protecting the living conditions of nearby residents.
10. I note that there is some local support for the increased opening hours and efforts are being made by the appellant to keep the area tidy and reduce anti-social behaviour. However, while I note that some nearby occupiers are supportive, I must have regard for future occupiers of these properties and also the dense residential nature of the area which would mean that a large number of residents would be affected. I am also mindful that there would be very

limited control through conditions for noise and disturbance outside the premises during the later hours. As such, these matters only attract limited weight in support of the appeal and do not outweigh the harm I have identified.

11. The appellant has provided photographs and addresses of other food and drink establishments in the area that are open beyond 11pm. I have been provided with very limited information about these, however, in any case I am only in a position to consider the planning merits of the appeal proposal before me and as such, these examples do not lead me to a different conclusion.

Conclusion

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

D Wilson

INSPECTOR