

Appeal Decision

Site visit made on 5 August 2024

by R Bartlett PGDip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd August 2024

Appeal Ref: APP/G2625/W/23/3331363

321C Aylsham Road, Norwich, NR3 2AB

- 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 Muhammad Usman Naeem of Papa Johns against the decision of Norwich City Council.
 - The application Ref is 23/00642/VC.
 - The application sought planning permission for change of use from funeral directors (Class A1) to hot food takeaway (Class A5) with associated alterations including extraction and ventilation system without complying with a condition attached to planning permission Ref 17/01298/F, dated 2 November 2017.
 - The condition in dispute is No.3 which states that: No extraction equipment shall be operated on the premises outside the following hours:
 - Before 1100 hours and after 2300 hours Sundays -Thursday;
 - Before 1100 hours and after 0100 hours on Fridays – Saturdays; and
 - Before 1100 hours and after 2300 on Bank Holidays.
 - The reason given for the condition is: To safeguard the amenity of the surrounding area, in accordance with Policy DM2 and DM11 of the Development Management Policies Local Plan 2014.
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Decision

1. The appeal is allowed and planning permission is granted for change of use from funeral directors (class A1) to hot food takeaway (class A5) with associated alterations including extraction and ventilation system at 321C Aylsham Road, Norwich, NR3 2AB, in accordance with the application Ref 23/00642/VC, without compliance with condition number 3 previously imposed on planning permission Ref 17/01298/F dated 2 November 2017.

Preliminary Matters

2. The description is taken from the application form, which correctly describes the act of development.
3. Since the application was determined the Council has adopted the Greater Norwich Local Plan (the GNLP). I am advised that this replaces the former Joint Core Strategy for Broadland, Norwich and South Norfolk (the JCS), which was not referred to in the Council's reason for refusal. The National Planning Policy Framework (the Framework) has also been updated, which

has resulted in the numbering of the paragraphs referred to in the Council's decision notice being amended.

Main Issue

4. The main issue is the effect of varying or removing condition 3 on the living conditions of occupiers of nearby residential properties with regard to noise disturbance.

Reasons

5. The site comprises a pizza shop that sits within a row of commercial premises, including other hot food takeaway shops, fronting the busy A1402 Aylsham Road. I am advised that the site forms part of the Aylsham Road/Mile Cross district centre, as defined by the Local Plan. There are nearby residential properties directly opposite the site, beyond the car park to the rear of the site, and in the wider surrounding area.
6. My attention has been drawn to a Domino's Pizza shop approximately a mile to the south of the appeal site. Despite being closer to the city centre, this shop is similar to the appeal site in terms of its surroundings and proximity to residential properties, and is open from 11am to 4am, 7 days a week. The Council's statement also advises that the nearby hot food takeaway at 315 Aylsham Road is subject to no planning conditions or restrictions although it is currently only advertised as opening until 10pm.
7. The Council accept that the condition in question seeks to control the hours when the extraction equipment can be operated and not the hours when the hot food takeaway shop can open or trade. There are no planning conditions restricting the hours of opening. I have not been advised whether there are any regulations that would prevent the shop from operating without using the extraction equipment. However, for the purposes of planning control, the shop could operate 24 hours a day, 7 days a week.
8. The Council's reason for refusal relates to noise generated by the existing extraction equipment. However, there is no evidence before me of any complaints relating to noise from the extraction system in use at the premises. Furthermore, I am advised that the extraction system in place has high quality noise absorbers, and at the time of my visit, when the shop was trading, I was unable to hear any noise from any extraction systems from immediately outside of the premises.
9. Whilst I appreciate that background noise would be lower later at night and in the early hours of the morning, given that the nearest residential properties are some 30 metres away from the site, beyond the car park and main road, it is unlikely that the extraction system would be audible from inside of these premises. Had the extraction system been of a noise level that could be heard from nearby residential premises, it is unlikely that consent would have been given for it to operate until 11pm on weekdays and 1am at weekends.
10. I am also mindful of the fact that although condition 2 of the original planning permission lists the drawings and documents that the development should have been carried out in accordance with, there are no conditions that required any specific type of extraction equipment to be installed prior to the first use of the hot food takeaway, that require any specific type of

extraction system to be retained for the life of the development, or that require any replacement extraction system to be agreed by the local planning authority. As such the retention of the originally approved extraction system is not enforceable.

11. I acknowledge the concerns that have been raised regarding the potential for disturbance from customers using the shop after 11pm and increased late night traffic movements that could be generated by customers. However, the condition in question relates only to the extraction system.
12. I therefore conclude that removing the condition restricting the hours in which the extraction equipment can be used would not adversely affect the living conditions of occupiers of nearby residential properties with regard to noise. Accordingly, the condition is unnecessary and the development complies with Policy 2 of the GNLP, which seeks to avoid risks of unacceptable levels of noise pollution, Policies DM2, DM11 and DM24 of the Norwich Development Management Policies Local Plan (2014), which seek to ensure development would not result in unacceptable impacts on the living conditions of neighbouring occupants including with regard to disturbance from noise, and the provisions of the Framework.

Conditions

13. As the development has already been carried out it is not necessary to re-impose the time limit condition or the list of approved plans and supporting documents. As there is no evidence that the extraction equipment causes any disturbance to local residents, it is not necessary to control the hours that this can be used.
14. The appellant has advised that it is proposed to operate on a delivery only basis after 11pm, with the shop being closed to customers after this time and trained delivery drivers collecting orders from the car park at the rear of the shop. I have considered whether a new condition could be imposed to this effect, however, this would not be reasonable given that the owner could continue to operate under the existing planning permission, which has no opening hours restrictions.
15. Given the scale and nature of the change of use, I do not consider that the absence of cycle parking facilities would deter staff or customers from using their bicycles or other sustainable modes of transport, nor would the absence of cycle parking for this development adversely affect congestion or air quality in the area. As such the reimposition of condition 4 is also unnecessary.

Conclusion

16. For the reasons given above, the appeal is allowed.

R Bartlett

INSPECTOR