

Appeal Decision

Site visit made on 5 September 2024

by H Miles BA (hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 September 2024

Appeal Ref: APP/L5240/W/24/3339219

77-79 Mitchley Avenue, Croydon CR2 9HN

- 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 Kenan Tezgel against the decision of the Council of the London Borough of Croydon.
 - The application Ref is 23/04559/CONR.
 - The application sought planning permission for Amalgamation and change of use from professional services (class E(c)) to mixed use cafe/restaurant (class E(b)) & takeaway (Sui Generis). Installation of new shopfronts, erection of single storey rear extension and extraction flue at rear without complying with a condition attached to planning permission Ref 22/01643/FUL, dated 6 October 2022.
 - The condition in dispute is No 6 which states that: The use hereby permitted shall not take place other than between the hours of: 12:00 until 22.30 - Monday to Sunday (including bank holidays)
 - The reason given for the condition is: To safeguard the amenity of adjacent residents and the area generally.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has indicated that an application for costs is to be submitted. However, the PPG says that costs applications must be made in writing by any party no later than the final comments stage. I have no formal application for costs before me and therefore I shall proceed on the basis that no costs application has been made.

Main Issue

3. The main issue is the effect that varying the opening hours would have on the living conditions of nearby residents with particular regard to noise and disturbance.

Reasons

4. The premises is at the end of a short parade of commercial units located on the ground floor of a three storey building, with residential properties above, which have main windows to the front and rear. It also is directly adjacent to a two storey residential property. There is an area of open space opposite but otherwise the surrounding area is predominantly residential. Within the parade the takeaway and shop are permitted to open until 21:30 and the appeal premises currently has permission to open between 12:00 – 22:30 every day. After this time the commercial units would all be closed.
5. Permission is sought to extend the opening hours on Fridays and Saturdays from 12:00 until 23:00. The hours on the other days of the week would not change.
6. A dispersal plan has been submitted which is being rolled out by the appellant, which provides procedures for staff to encourage customers to leave promptly and to remind them to be considerate to neighbours. Speakers have also been set off the ceilings in response to concerns about noise disturbance from residents. However, at the time of this appeal the Council's Environmental Health Pollution Team confirmed that noise complaints are ongoing, and representations to the planning application and appeal make it clear that, under the existing operating hours, neighbours have been affected by noise and disturbance from sources including music, customers and the extractor fan.
7. A noise management plan could include a limitation on noise from music sources and details of how complaints would be recorded and addressed. However, these matters are central to the acceptability of the proposal and would need to be established before any permission could be granted. Therefore, it would not be reasonable to secure these details by condition.
8. As such, the extension of the opening hours of this premises would increase the amount of time when unacceptable noise and disturbance occurs until later into the evening. This would be harmful to the living conditions of neighbours. This would therefore have a significant adverse impact on the quality of life of these nearby occupiers.
9. There is a parade of shops on Limpsfield Road where some premises close later. However, this is a much larger parade of commercial uses where the level of activity is higher. Nor do I have any evidence of any noise or disturbance from properties in this location. As such this is not directly comparable to the scheme before me now. There may be different requirements and controls under environmental health and licencing. However, this appeal must be considered in relation to planning matters, where amongst other things, the National Planning Policy Framework (2023) requires a high standard of amenity for existing users.
10. Therefore, varying the opening hours would have a harmful effect on the living conditions of nearby residents with particular regard to noise and disturbance. As such the proposed development would be contrary to Policies SP4, DM10, SP6 and DM23 of the Croydon Local Plan (2018) and Policy D14 of the London Plan (2021). Together these require that new development should avoid significant adverse noise impacts, minimise noise pollution,

protect the amenity of the occupiers of adjoining buildings and enhance wellbeing, amongst other things.

Other Matters

11. Retail and associated uses are important for economic development and provide services for local residents. The later opening hours would enable customers to socialise later into the evening on weekend nights when this is more common. However, I do not have evidence that the number of people leaving to go elsewhere is harmful. The proposed development would provide a longer amount of time for the commercial use to operate and additional employment would be required during this time. However, the premises is already in operation and staffed. As such, although there would be an economic benefit to the proposed development, this would be minor. Therefore, these matters would not outweigh the significant harm to living conditions.
12. The reason for refusal refers to opening hours of midnight. However, it is clear from the description of development, officers report and public consultation that the Council has considered the application on the basis of the hours sought. As such I am satisfied that the Council has accurately assessed the proposal's impact.

Conclusion

13. The proposal conflicts with the development plan and there are no other considerations, including the provisions of the Framework, to indicate that the appeal should be determined otherwise. Therefore, for the reasons given above, I conclude that this appeal should be dismissed.

H Miles

INSPECTOR