



Appeal Decision

Site visit made on 3 December 2024

by Paul Cooper MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 December 2024

Appeal Ref: APP/N4720/W/24/3354073

Curtis House Business Centre, The Gatehouse, Berking Avenue, Richmond Hill, Leeds LS9 9LF

- 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 Choudhary against the decision of Leeds City Council.
 - The application Ref 24/00849/FU, dated 11 February 2024, was refused by notice dated 23 April 2024.
 - The application sought planning permission for change of use and alterations of offices to hot food take away with external alterations consisting of external flue without complying with a condition attached to planning permission Ref 21/00994/FU, dated 9 June 2021.
 - The condition in dispute is No 6 which states that: The opening hours of the premises shall be restricted to the hours of; Monday to Sunday (including Bank Holidays) – 11.00 – 01.00.
 - The reason given for the condition is : In the interests of safeguarding nearby residential amenity.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Since the appeal was made, the Government have published an updated version of the National Planning Policy Framework (The Framework). There are no significant alterations that would require the parties to be reconsulted.
3. The appellants Statement of Case includes a number of amendments and additions to the submission that was made at application stage. The appeal procedure is not the arena in which to modify and amend proposals. That should be done under the guise of a new application. As a result, I will base my decision on the basis of the information submitted at application stage only.

Main Issue

4. The main issue is the effect of the proposed variation of condition on the living conditions of nearby residents with particular respect to noise and disturbance.

Reasons

5. The appeal site is a two-storey building adjacent the Curtis House Business Centre, which consists of a number of small business units. There are a number of residential premises in the close vicinity.

6. The proposed variation of hours would see the hours of opening be extended from 1am by three hours to 4am daily. I also understand that the premises have already been operating in breach of the condition and have been subject to Enforcement investigation. As stated above, the appellant has forwarded a number of additional measures at the appeal stage in order to attempt to make the proposal acceptable. Regardless of this, there has been no formal noise assessment of the premises and its impact on nearby receptors, namely the residential properties.
7. It could be assumed that noise levels would be reduced in the evening / early hours. With the comings and goings of delivery drivers it is conceivable that staff would have occasion to discuss issues outside the premises as well as vehicle comings and goings and such behaviour cannot be readily mitigated through management controls. Without any counter evidence, vehicle noise and staff voices could be likely to cause irregular significant noise impacts during the night.
8. This could be compounded in the summer months by staff taking breaks outside the premises. In such circumstances the facility would cause noise disturbance through human activity near the building at unsociable times. Therefore, the combined activity associated with the use would be likely to create substantial noise and disturbance to neighbouring residents.
9. Any compliance would also require staff to keep noise and disturbance to a minimum with adherence overseen by an on-site manager. Furthermore, other measures that could seek to regulate the behaviour of staff, have staff take individual breaks and to limit areas of the site they can occupy at certain times could be considered. These measures would be reliant on the considerate conduct of staff. Many of these requirements are imprecise and attempted compliance would be unlikely. These measures would therefore be difficult for a manager, or ultimately the Council, to enforce and regulate.
10. Consequently, the proposal would result in significant adverse noise and disturbance impact to the living conditions of nearby residents, who would expect respite from such activities in the early hours of the morning.
11. As such I find conflict with saved policy GP5 of the Leeds Unitary Development Plan Review (2006), policies P3 and P10 of the Leeds Core Strategy (2019) and policy HFT3 of the Councils Hot Food Takeaway Supplementary Planning Document which expect development, amongst other matters, to avoid loss of amenity, be appropriate to its context and take into account impact on residential amenity and the character and levels of activity in the area.

Other Matters

12. I have taken into account that access to hot food in the early hours may be of benefit to customers who undertake shift work, and the possible economic benefits of employing additional staff, but these benefits would be limited and would not outweigh the harm identified to the living conditions of local residents.

Conclusion

13. The proposal would result in a significant adverse impact on the living conditions of neighbouring residential properties and would conflict with the development plan when taken as a whole. The current condition is fair,

reasonable and enforceable. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should not succeed.

Paul Cooper

INSPECTOR