



Appeal Decision

Site visit made on 4 December 2024

by Rachel Hall BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 December 2024

Appeal Ref: APP/P1940/W/24/3345081

38 High Street, Abbots Langley, Hertfordshire WD5 0AR

- 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 Osman Dokumaci of Ossa 01 Ltd against the decision of Three Rivers District Council.
 - The application Ref is 23/1862/FUL.
 - The application sought planning permission for Part Retrospective: Single storey rear extension and change of use of premises from bank Class E(c)(i) (Financial Services) to restaurant Class E(b) without complying with a condition attached to planning permission Ref 21/2757/RSP, dated 23 February 2022.
 - The condition in dispute is No 4 which states that: The use hereby permitted shall not operate other than between the hours of 11:00 to 23:00 (inclusive) Mondays to Sundays and including National Holidays.
 - The reason given for the condition is: To safeguard the residential amenities of the occupiers of neighbouring properties in accordance with Policies CP1 and CP12 of the Core Strategy (adopted October 2011) and Policy DM9 of the Development Management Policies LDD (adopted July 2013).
-

Decision

1. The appeal is dismissed.

Background and Main Issue

2. Condition 4 currently restricts the opening hours of the restaurant to 1100 to 2300 every day of the week. The appellant is seeking to remove that condition and replace it with a condition that retains those opening hours on Sundays to Thursdays, but allows the restaurant to stay open an hour later (until midnight) on Fridays and Saturdays. The Council refused permission for variation of condition 4 due to concerns about the effect of extended opening hours on the living conditions of nearby residents, with regard to noise and disturbance.
3. Therefore the main issue is the effect of extending the opening hours as proposed on the living conditions of nearby residents, with particular regard to noise and disturbance.

Reasons

4. The Council's evidence highlights noise concerns in relation to patrons mingling outside the front of premises late at night whilst waiting for taxis or continuing to socialise there. Concerns have also been raised in respect of noise from music played in the appeal premises late in the evening. The

appellant's Noise Impact Assessment (NIA) is based on the noise consultant's attendance at the appeal site during the middle of the day (1100 to 1400). It refers to background noise comprising of traffic at that time of day. Whereas, the appeal relates to extending opening hours into the late evening time, at which time background noise from traffic would be expected to be considerably lower.

5. Whilst there is a bus stop in the vicinity, evidence indicates that this does not run late into the evening. As such it would not contribute to the noise environment at that time. Also, as many of the other units on the High Street are daytime uses, it is highly likely that after 2300 there would be noticeably less noise from visitor comings and goings to premises there. As such, the NIA does not provide a robust assessment of the noise environment at a time relevant to the appeal. Also, although the NIA measured noise within the appeal building when music was playing, no corresponding measurements were made at noise sensitive receptors. Combined with the absence of accurate background noise at a relevant time of day, the subjective assessment of noise at nearby residential properties does not provide a robust analysis of noise impacts of the proposal.
6. A condition could be imposed to require the use of a sound limiter system for DJ sets at first floor level. Nonetheless, without substantive evidence on the background and predicted noise levels in the NIA it is not clear whether such a condition would be effective. Similarly, a noise management plan could include a steward to oversee the smoking area after 2200 hours, and retention of signage to remind patrons to be quiet on leaving. However, I am not persuaded that this would be sufficient to protect nearby residents from disturbance caused by noise from patrons leaving the premises in high spirits, late into the evening, even if the restaurant stops serving food and alcohol prior to closing time.
7. The NIA refers to the beneficial effect of the smoking enclosure at the front of the appeal site, in helping to reduce noise transfer from patrons who wish to smoke. However, no substantive evidence is provided to indicate the level of noise mitigation that the screen provides. Moreover, the Council has advised that the screen is without planning permission. Consequently, it is unclear whether the screen will remain in place in the long term.
8. Another premises further along High Street is said to open until 2330 on Fridays and Saturdays. Although that appears to be a more traditional restaurant, with no indication that it provides DJ sets. As such, evidence indicates that it is less likely to attract late night mingling outside the premises to the same extent as at the appeal site. Moreover it is unclear whether that premises is as close to residential properties as is the case here. Whether or not the appeal site has extended its premises licence for the sale of alcohol and late night refreshment does not alter my consideration of the planning merits of the appeal scheme.
9. Some noise and disturbance for occupants of nearby dwellings fronting on to the High Street is inevitable given the commercial uses in the area. Nevertheless, local residents should reasonably be able to expect quieter times during late hours. In extending the opening hours of the appeal premises until midnight on Fridays and Saturdays, the proposal would extend noise

disturbance to local residents living opposite the appeal site at a time of day when they are likely to be most sensitive to noise disturbance.

10. Therefore, the effect of varying the opening times as proposed would unacceptably harm the living conditions of nearby residents, with particular regard to noise and disturbance. It would therefore be contrary to Policies CP1 and CP12 of the Core Strategy (October 2011) and Policy DM9 of the Development Management Policies LDD (July 2013). Amongst other matters, these seek to ensure developments are high quality having regard to the effect on the amenity of the local community.

Other Matters

11. The proposal would have economic benefits to the appellant and their employees through expansion of the business. In addition, some expressions of support for the proposal have been made. I also appreciate that businesses of this nature will be facing economic challenges, including in light of price rises. However, this must be balanced against the need to ensure proposals are sympathetic to local circumstances, and achieve high standards of amenity for existing and future users. Moreover, no substantive evidence is before me to indicate that the extended opening hours are necessary to ensure the future viability of the appeal business. Therefore, the benefits of extending the opening hours as proposed would not be sufficient to outweigh the harm that I have identified to the living conditions of nearby residents.

Conclusion

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

Rachel Hall

INSPECTOR