



Appeal Decision

Site visit made on 07 January 2025

by N Robinson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 January 2025

Appeal Ref: APP/W1850/W/24/3350023

The Grill Shawarma, 20 Commercial Road, Hereford, Herefordshire HR1 2BD

- 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 Samman Rassul against the decision of Herefordshire Council.
 - The application Ref is 233657.
 - The application sought planning permission for proposed change of use from Class E(a) to a Sui Generis (Hot Food Takeaway with associated seating area for consumption of food on the premises) without complying with a condition attached to planning permission Ref 231954, dated 11 October 2023.
 - The condition in dispute is No 8 which states that: The use hereby permitted shall not be open to customers outside the hours of 0800 to 2300.
 - The reason given for the condition is: In order to protect the amenity of occupiers of nearby residential properties so as to comply with Policies SS6 and SD1 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.
-

Decision

1. The appeal is dismissed.

Background and Main Issue

2. Planning application number 233657 granted permission for the use of the appeal property as a Hot Food Takeaway with associated seating area for consumption of food on the premises. That planning permission included a number of conditions, one of which (condition 8) specifies the opening hours as being 0800 to 2300.
3. The appellant wishes to vary this condition and replace it with a condition which extends the opening hours to between 11.00-01.00 Monday to Thursday, 11.00-04.00 on Friday and Saturday and 11.00-02.00 on Sunday. The Council's statement indicates that the condition is necessary due to the effect on the living conditions of local residents with particular regard to noise. This is consistent with the reasons for the condition given on the decision notice.
4. Taking the above into account the main issue is the effect of the variation of the condition on the living conditions of the occupiers of neighbouring properties with particular regard to noise.

Reasons

5. The appeal site comprises The Grill Shawarma, a hot food takeaway/ restaurant. The site is located on Commercial Road, which accommodates a variety of retail uses, restaurants, hot food takeaways and drinking establishments. Commercial

Road forms a busy thoroughfare through the centre of Hereford with high levels of passing vehicle traffic.

6. To the rear of the site is an outdoor seating area with approximately 16 seats associated with the restaurant. Residential uses are located above the restaurant and within neighbouring buildings. At my site visit I observed a number of window openings within these properties. At the rear of the building an external flue duct vents the kitchen extract system at the premises, which it is stated has been fitted with an attenuated silencer. Nonetheless, at my late morning weekday site visit sound emanating from the external flue duct, in the form of a continuous low hum, was clearly audible at the rear of the property above background noise from traffic on Commercial Road. Whilst this is a snapshot in time, there is nonetheless nothing in the evidence before me to indicate that these observations are atypical of the area.
7. The proposal involves a variation in the hours of operation of the business which would result in the premises opening later into the evenings. The proposal is not supported by a noise assessment which assesses the effects of the extended hours of opening. During quieter times in the evening, traffic flows along Commercial Road and associated traffic noise would be likely to be less than during the day. Given this and the proximity of the appeal property to window openings on nearby residential properties, noise from the extraction unit and from conversations from customers sitting in the outdoor seating area would be readily audible from inside nearby properties in the evening, particularly if windows were open. During quieter evening times, when residents would expect respite from such activities, this disturbance would be of detriment to the living conditions of these residents.
8. The appellant proposes to appoint door staff and ensure that no recorded music is played in public parts of the premises. It is also stated that the premises do not sell alcohol, that no large gatherings would be allowed after 11PM and that the appellant has installed CCTV. Whilst these measures might go some way to addressing disorderly behaviour, they would fail to mitigate against the harmful effects arising from noise from the extraction unit and customers sitting in the external seating area.
9. I note that the proposal is supported by a number of letters of support. However, I have to consider the proposal on its own planning merits in terms of the effect on the living conditions of both present and future residents.
10. It may well be the case that there are other takeaways, restaurants and drinking establishments in the surrounding area with hours of opening which extend beyond those of the appeal premises. However, I have limited information about the layout of these properties in relation to residential uses. In any case, each case must be considered on its own merits and the fact that potentially harmful situations may exist elsewhere is not a reason, on its own, to allow development which would cause harm as identified above.
11. Over the extended opening hours, noise from the premises has the potential to cause disturbance to the occupiers of neighbouring properties. Given this, the condition is necessary in order to protect the living conditions of the occupiers of neighbouring properties. Therefore, the proposal would result in harm to the living conditions of the occupiers of neighbouring properties and thus conflicts with those

aims of Policies SS6 and SD1 of the Herefordshire Core Strategy (2015) which require, amongst other matters, that development does not contribute to adverse impacts arising from noise.

Other Matters

12. The economic benefits of the proposal and the employment resulting from it weigh in favour of the proposal. Nonetheless, these benefits do not outweigh the harm I have identified in relation to the main issue. Additionally, there is no substantive evidence that the business would become uncompetitive or cease to trade if the appeal were dismissed.

Conclusion

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

N Robinson

INSPECTOR