



Appeal Decision

Site visit made on 18 February 2025

by **C Billings BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13 March 2025

Appeal Ref: APP/M3455/W/24/3353559

61-63 Weston Road, Meir, Stoke-on-Trent ST3 6AB

- 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 Tayyab Ali of Tiger Bite against the decision of Stoke-on-Trent City Council.
- The application Ref is 70737.
- The application sought planning permission for change of use to hot food takeaway with home delivery service (Use Class A5) including installation of rear extraction flue, air grill and two replacement air condenser units and ancillary office/staff facilities and storage to first floor, without complying with a condition attached to planning permission Ref 59910/FUL, dated 13 October 2016.
- The condition in dispute is No 4 which states that: The opening hours of the premises, hereby approved, including the home delivery service and deliveries to the premises, shall only be in accordance with the following times: Monday to Saturday 08.00hrs - 23.00hrs Sundays 10.00hrs – 22:00hrs.
- The reason given for the condition is: The premises are close to residential property and a limit on the use is needed to prevent a nuisance or annoyance to nearby residents.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Noise Impact Assessment (NIA) (dated 10th April 2024) prepared by SBM Safety Solutions was not submitted with the original planning application. However, this relates to the main issue of concern and does not change the appeal proposal. Also, as this was submitted with the appeal, the Council has had opportunity to comment on this. Therefore, the Council would not be prejudiced by accepting such, and so I have had regard to the NIA in reaching my decision.

Background and Main Issue

3. Planning permission has been granted for a hot food takeaway with delivery service subject to various conditions and, a hot food takeaway is now trading at the appeal site. The condition the subject of this appeal limits the hours of operation of the hot food takeaway and was imposed by the Council to prevent nuisance or annoyance to nearby residents. The appellant wishes to amend the opening hours from those originally imposed, to allow opening from 12pm to 3am daily.
4. The main issue is the effect that varying the opening hours would have on the living conditions of occupiers of nearby residential properties, in particular regard to noise and disturbance.

Reasons

5. The appeal site is located along a busy main road, with the busy roundabout junction of the A50 Uttoxeter Road nearby. The appeal property is within a row of commercial

premises, with other food outlets with takeaway services further along the road. While there is no residential accommodation above the appeal premises, other nearby commercial premises have residential units above and the side roads leading from Weston Road are predominately residential in character. During my site visit, I observed high levels of traffic movement along Weston Road and the A50, which included HGV traffic. In front of the appeal site there is a light controlled pedestrian crossing, with pedestrian railings and zigzag lines either side of the crossing point, to prevent pedestrians crossing further along the road and vehicles parking within the area near the crossing.

6. As I observed during my site visit and from the evidence within the NIA, the traffic and other activities within the local area generates a reasonably high level of noise and the traffic and noise therefrom is fairly constant. The NIA demonstrates from the noise monitoring undertaken that in the evening and early hours, there was a high level of background noise, attributed particularly to road traffic. This includes that at times, the noise levels were noted to be above desirable and recommended levels, as set out in the relevant British Standards and World Health Organisation guidelines. Therefore, as set out in the NIA, the high level of existing ambient noise in the local area would likely mask some of the noise associated with the proposed business operations.
7. However, the existing traffic noise is a more constant hum and a level of noise that the residents of nearby properties will likely have come accustomed to. Whereas the proposal involves different activities that would have different types of noise and disturbance comparable to the ambient noise of passing and nearby traffic. This would include noise and disturbance from customers and delivery drivers stopping, parking, and entering/exiting the premises.
8. As asserted by the appellant, it is envisaged that the proposal would involve increasing deliveries, rather than increased patrons visiting the premises. However, the enhanced number of deliveries would still increase movement to and from the appeal premises at unsociable hours, even if some of the noise from such would be masked by road traffic noise. Furthermore, if the premises are permitted to open up to 3am daily, it is not clear from the evidence how walk-in customers of the hot food takeaway would be restricted or prevented during such time. Therefore, customers could cause harmful noise and general disturbance to nearby residents during the early hours due to their movement and voices.
9. The NIA recommends that certain management practices are put in place in the early hours, to ensure noise in the surrounding area is kept to a minimum. This includes, but is not limited to, training of staff and certain practices for the delivery drivers, including designated parking in front of the premises for them, rather than parking in the predominately residential side roads. Although, as I observed during my site visit, it would not be possible to park in front of the premises, due to the pedestrian crossing and other parking restrictions along this part of the road.
10. The reliance on staff, delivery driver and certain management practices, including how the delivery drivers operate would likely be difficult to monitor and would not guarantee that there would be no additional harmful noise and disturbance generated by the comings and goings of people at the premises in the early hours.
11. Even with changes to the door alarm, adding a vestibule, windows remaining shut and posting notices for customers, this would not guarantee there would be no noise and disturbance caused to local residents by the hot food takeaway late in the evenings

and the early hours, when other commercial premises along the road are shut. It would be particularly difficult for management and staff of the business to ensure the behaviour of customers on their way to or leaving the premises, so as to prevent harmful disturbance to nearby residents, as this would be outside of their control.

12. In view of the above, the proposed variation of the opening hours would have a harmful effect on the living conditions of occupiers of nearby residential properties, in particular regard to noise and disturbance. This would be contrary to Policy CSP1 of the Newcastle-Under-Lyme and Stoke-on-Trent Core Spatial Strategy (October 2009), which amongst other matters, requires development to contribute positively to healthy lifestyles. Also, there would be conflict with the National Planning Policy Framework, which requires decisions to ensure developments create places that are safe, inclusive, and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.

Other Matters

13. Even if there have been no noise complaints raised in relation to other Tiger Bite stores that trade later in the evenings or early hours than that proposed, these are in different locations to the appeal site. Also, no substantive evidence has been provided in regard to such examples to allow direct comparison with the appeal site and proposal.
14. There may have been no complaints arising during a trial period of extended opening hours at the appeal premises. However, it does not follow that if the hours of opening were extended on a permanent basis, this would not give rise to future complaints regarding noise and disturbance.
15. While similar information may have been submitted for the purposes of the licencing application to extend the opening hours, and no Policing issues were raised in respect of such, this is separate from the planning application process and its considerations. Therefore, the premise licence and the conduct of the Council during the application process has no bearing on my findings on the merits of the case.
16. The economic benefits of the proposal through the creation of new jobs and enhanced service to customers in an increasing 24 hour economy would not likely be significant in relation to the additional hours of opening proposed at the existing premises. Also, as asserted by the appellant there has been requests from customers to expand the opening hours and a trial period resulted in enhanced turnover for the business. Although, such customer demand and benefits to the appellant, would not maintain nor enhance the living conditions of occupiers of nearby properties. Therefore, while I give the economic benefits some weight, due to the scale and nature of the hot food takeaway and proposal, such would not be significant and would not outweigh the harm I have found in this instance.

Conclusion

17. Accordingly, the appeal should not succeed.

C Billings

INSPECTOR