



Appeal Decision

Site visit made on 25 March 2025

by **R Cahalane BA(Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 29th April 2025

Appeal Ref: APP/D1780/W/24/3347923

243 Portswood Road, Southampton SO17 2NG

- 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 Sheraz Ahmed (Rios Piri Piri Southampton Ltd) against the decision of Southampton City Council.
 - The application Ref is 24/00288/FUL.
 - The application sought planning permission for change of use to hot food takeaway including the installation of an extract flue to the rear elevation (amended after validation to include flue) without complying with a condition attached to planning permission Ref 21/01285/FUL, dated 26 November 2021.
 - The condition in dispute is No 4 which states that: *"The hot food takeaway use hereby permitted shall not operate (meaning that customers shall not be present on the premises, no preparation, sale or delivery of food or drink for consumption on or off the premises) outside the following hours:
Monday to Saturday - 07:30am to 11:30pm (07:30 to 23:30)
Sunday and recognised public holidays - 07:30am to 11:00pm (07:30 to 23:00)
Unless otherwise agreed in writing by the Local Planning Authority. A notice to this effect shall be displayed at all times on the premises so as to be visible from the outside."*
 - The reason given for the condition is: *"To protect the amenities of the occupiers of existing nearby residential properties."*
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Decision

1. The appeal is dismissed.

Background and Main Issues

2. Planning permission was granted for a change of use to a hot food takeaway at the appeal property in November 2021¹ and is now trading. The appellant seeks to extend the night time customer opening hours from those originally imposed (as set out in the banner heading above) to midnight Mondays to Thursdays, 2:00am Fridays to Saturdays, and midnight on Sundays. Beyond these times, it is also sought to allow deliveries only to 1:00am Mondays to Thursdays, 2:30am Fridays to Saturdays and 1:00am on Sundays.
3. Paragraph 57 of the National Planning Policy Framework states that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. With this in mind, the main issues are whether condition No. 4 is reasonable and necessary and whether the proposed revised opening hours would safeguard the living conditions of neighbouring residents, with particular regard to

¹ 21/01285/FUL

noise and odour disturbance; and the effect on the character of the local area, with particular regard to litter.

Reasons

Living conditions

4. The appeal site comprises a hot food premises forming a row of commercial properties fronting directly on to the Portswood Road footway, within Portswood District Centre. It is near to bus stop shelters and cycle parking racks. A rear driveway also provides access, running between Portswood Road and the rear boundaries of detached residential properties along Abbotts Way.
5. Other hot food premises are located nearby along Portswood Road, including those listed in the officer report as having closing hours up to midnight at the latest. Although I found that not all these premises displayed opening hours at the time of my site visit, I only saw one premises showing a closing time beyond midnight². There is however no evidence before me to indicate whether this closing time at that nearby premises benefits from or requires planning permission.
6. In any event, in the particular circumstances of the appeal site, it contains a rear elevation extract flue facing residential rear boundaries, gardens and elevations along Abbotts Way. There also appears to be windows close by along Portswood Road serving residential accommodation, including the adjoining premises No 241.
7. The appellant argues that noise from customers anywhere along Portswood Road will always be of concern, and that there is no proof that the appeal proposal would cause any change to this established environment. Conversely, the proposal is not supported by a noise and odour survey and assessment accounting for matters such as existing ambient noise levels, noise and odour outputs from the existing rear extract flue, the likely levels of noise generation from customers and deliveries, and the resultant impacts on nearby residential properties.
8. Given the lack of detailed evidence in these respects, along with the proximity to residential neighbours, I am not satisfied that the proposed later operating hours would avoid unacceptably adverse impacts on the living conditions of neighbouring residents in terms of noise and odour disturbance, during times when many residential occupiers are likely to be sleeping.
9. In these respects, I therefore conclude that condition No. 4 is reasonable and necessary and the proposed opening hours would conflict with Saved Policies SDP1(i), SDP16, and RE17 of the City of Southampton Local Plan Review (LPR) (2015). Although these policies do not refer to specific opening hours, collectively they require, amongst other things, development to avoid unacceptably adverse impacts on the health and amenity of the city and its citizens, including from noise and cooking smells.
10. It is put to me that deliveries are made by cyclists and mopeds, with a focus on deliveries to be mostly done on electric bikes. Given the nature of the proposal and the late-night hours in question, a planning condition controlling the mode of deliveries would not be enforceable. The appellant also contends that the proposal will improve security for residents walking home late at night. To my mind, the

² Burga, 170 Portswood Road.

intended late hours of operation could however lead to other security risks. A material improvement in safety in this regard would therefore be unlikely.

11. The first reason for refusal also cites conflict with Policy CS13 of the Local Development Framework Core Strategy Development Plan Document (CSDPD) (2015). This however reads to me primarily as a design policy. Although it includes reference to safe streets and designing out the risk of crime, that is not a matter of dispute between the main parties.

Character of local area

12. The appeal site is located very near to a public bin fixed to the Portswood Road footpath, adjacent one of the bus shelters. My visit was undertaken during the day time whereby I did not find any evidence of an adverse litter issue. I accept however that such an issue may arise during night time hours.
13. Indeed, the nearby planning history, as listed in the officer report, includes opening hours late in to the evening and up to midnight. This suggests that a degree of litter generation from hot food premises may already occur along Portswood Road. The Council contends that the proposal would exacerbate existing litter issues.
14. However, there is no demonstrable evidence before me to suggest that additional litter generation arising from the proposed later operating hours could not be adequately controlled by means of planning condition, had I been minded to allow the appeal. Such a condition could have required the appellant to submit details of a bin storage and collection scheme to cater for the additional litter generation arising from later operating hours, for review and agreement by the Council.
15. I therefore conclude that subject to such a condition, there would be no conflict with Saved Policy SDP1(i) of the LPR and Policy CS13 of the CSDPD.

Conclusion

16. For the reasons given above, the proposal conflicts with the development plan as a whole and the material considerations before me do not indicate that a decision should be made otherwise than in accordance with the development plan. Therefore, I conclude condition No. 4 should not be varied and the appeal is dismissed.

R Cahalane

INSPECTOR