



Appeal Decision

Site visit made on 12 May 2025

by **Chris Couper BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 20 May 2025

Appeal Ref: APP/J0350/W/24/3358263

66 High Street, Slough SL1 1EL

- 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 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Hashmat Ullah Fayzeya (Cheat Meals) against the decision of Slough Borough Council.
 - The application Ref is P/01424/006.
 - The application sought planning permission for change of use of ground floor financial services (A2 use class) to hot food takeaway (A5 use class) and changes to shop front without complying with a condition attached to planning permission Ref P/01424/005, dated 29 July 2010.
 - The condition in dispute is No 3 which states that:
The use hereby permitted shall not be open to members of the public/customers outside the hours of 0900 hours to 2300 hours on Mondays to Fridays, 0900 hours to 2300 hours on Saturdays, and 0900 hours to 2100 hours on Sundays and Bank/Public Holidays.
 - The reason given for the condition is:
To protect the amenity of residents within the vicinity of the site in accordance with Policy EN26 of the Adopted Local Plan for Slough 2004.
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Decision

1. The appeal is dismissed.

Background and Procedural Matter

2. Having regard to the application form, and the appellant's desire to stay open beyond midnight on some days, the scheme seeks to vary condition No 3 of application Ref P/01424/005 ('the original permission') so that the use shall not be open to the public/customers outside the hours of 09:00 to 02:00 the following morning on Mondays to Fridays, 09:00 Saturday to 02:00 on Sunday mornings, and from 09:00 to midnight on Sundays and Bank/Public Holidays.
3. The Council maintains that, as the proposal would lead to a fundamental alteration of the original permission, it falls outside the scope of S73 of the Town and Country Planning Act 1990. However, S73 allows for a grant of permission for the development of land without compliance with conditions subject to which a previous permission was granted. Given that, in this case, there would be no change to the 'operative' part of the original permission, including the description of the development, an application under S73 is an entirely reasonable mechanism to use to seek the proposed variation.

4. The Council refused the application on the grounds that it would have a harmful impact on the residential amenity of neighbouring occupiers. I have framed the main issue in the appeal having regard to that decision, and to the accompanying planning application report.

Main Issue

5. The main issue is the effect that varying the opening hours as proposed would have on the living conditions of nearby residential occupiers.

Reasons

6. The site comprises a ground floor unit in a three storey parade, which is located in Slough town centre. There is a mix of commercial uses in the vicinity, including shops, hot food takeaways and restaurants, a public house, and offices. Additionally, there are some residential premises, particularly in the upper floors of the buildings. That includes the host, which has upper floor flats accessed via a door and an entry stairwell to the right-hand side of the shop front. I understand that the ground floor has been in use as a hot food takeaway since about 2010. The Council states that it is currently operating outside of its permitted hours and that this has generated nuisance complaints from nearby residents.
7. The consultation response from the Council's Resilience and Enforcement Team indicates that no fast food outlets in the area are permitted to open to 02:00, with Caprinos Pizza, Chicken Cottage and Roosters Piri Piri all closing at 01:00. It continues that although Heritage Bar and Kitchen at 80 High Street is open to 10:30 on weekdays and 02:30 at weekends, it also acts as a bar/entertainment venue, and it states that it attracts a high volume of complaints from nearby residents.
8. The appellant maintains that the proposal is for a modest extension of the operating hours, which is required to ensure that the business remains competitive in a challenging economic climate. However, in my view, a three hour extension of operating hours every day would be a significant change and, on the basis of the evidence before me, it would appear that most nearby competitors are not permitted to remain open similarly late into the night time.
9. The Crime Impact Assessment by AG Design Solutions Limited sets out security measures to ensure the safety of customers and staff, and I acknowledge that by staying open later, the proposal would contribute to passive surveillance along this stretch of High Street. The appellant also states that roughly 90% of sales after 22:00 are generated online through food delivery services, and asserts that the application incorporates operational measures to minimise noise and disruption, including controlled customer entry, monitored noise levels, and maintaining adequate separation between on-site activities and nearby residential properties.
10. However, I have few details of those measures, and no information regarding background noise, or the number of customers visiting the premises. In the absence of more detailed evidence, such as an acoustic assessment, I am unable to properly assess what additional measures may be necessary to mitigate noise and disturbance to nearby residents from the proposed extended opening hours.
11. The scheme would therefore conflict with that part of Slough Core Strategy 2006 – 2026 (December 2008) Core Policy 8 which states that development shall not give rise to unacceptable levels of noise pollution, with appropriate studies submitted to

demonstrate that proposals will not have an unacceptable impact upon adjoining uses; and it would fail to comply with the National Planning Policy Framework (2024) ('Framework') requirement at paragraph 135 to ensure a high standard of amenity for existing and future users.

12. In its favour, the proposal would make a modest contribution to the local economy, including to the vitality and viability of the town centre. However, on the basis of the available evidence, that broader benefit, and the benefit to this business, would not outweigh the significant harm that would be caused to local residents' living conditions from extending the permitted hours beyond those prevailing in the local area, thereby resulting in additional noise and disturbance at times when the residents could reasonably expect greater peace and quiet.
13. Having regard to the tests at Framework paragraph 57, condition No 3 in the original permission is necessary and continues to serve a useful purpose having regard to the current development plan and material considerations, and its variation as proposed would result in significant harm.
14. For these reasons, and having regard to all other matters raised, the appeal is dismissed.

Chris Couper

INSPECTOR