



Appeal Decision

Site visit made on 22 May 2025

by N Robinson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 June 2025

Appeal Ref: APP/G2625/W/24/3357291

Domino's Pizza, 88 Colman Road, Norwich, Norfolk NR4 7EH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by DPSK Ltd against the decision of Norwich City Council.
 - The application Ref is 24/00442/VC.
 - The application sought planning permission for change of use of retail unit (A1) to form hot food take away (including delivery) (A5) including alterations to shopfront and installation of extraction flue to rear without complying with a condition attached to planning permission Ref 08/00872/F, dated 10 Jun 2009.
 - The condition in dispute is No 5, which states that the premises shall not be open for customers or for the delivery of hot food takeaways as hereby permitted other than between the hours of 1130 and 2330.
 - The reason given for the condition is to safeguard the living conditions of nearby residents.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. Planning appeal decision APP/G2625/A/09/2097884 granted permission for the use of the appeal property as a hot food take away (including delivery). That permission included a number of conditions, one of which (condition 5) specifies the opening hours as being 1130 to 2330.
3. The appellant wishes to vary this condition and replace it with a condition which extends the opening hours to 0400. The Council's statement indicates that the condition is necessary due to the effect on the living conditions of the occupiers of nearby residential properties with particular regard to noise. This is consistent with the reasons for the condition given on the appeal decision.
4. Taking the above into account the main issue is the effect of the proposed 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 Domino's pizza, a ground floor hot food takeaway with 2 storeys of residential units above. The site is located within a parade of shops on Colman Road which comprise a Local Retail Area. There are other hot food takeaways nearby, including within the parade, however, it appears that the consented opening hours for these premises do not go beyond 2330. Colman Road forms a busy thoroughfare which forms part of the city's outer ring road, with

high levels of passing vehicle traffic. With the exception of the ground floor commercial units within the parade, the surrounding area is predominantly residential in character.

6. The proposal involves a variation in the hours of operation of the business resulting in the premises opening later into the evenings. The application is supported by a Noise Impact Assessment (NIA) which indicates that, subject to mitigation to the plant and cold store, the occupiers of the residential units above the appeal property would not be impacted by internal noise or noise from the extraction equipment during the extended opening hours. There is no evidence that the odours from the unit would not continue to be satisfactorily controlled by the existing extraction equipment during the extended opening hours or that the extended hours of operation would result in more intense and sustained odours which would lead to nuisance to the occupiers of nearby properties.
7. The premises have operated in accordance with the requested extended opening hours since 23 February 2024. These extended opening hours attract additional comings and goings into the night during quieter times in the evening, when traffic flows along Colman Road and associated traffic noise would likely be less than during the day. Noise from delivery vehicles and the comings and goings of delivery staff has the potential to be audible from inside nearby properties during quieter evening times, when residents would expect respite from such activities particularly if windows were open.
8. The appellant proposes that the premises would not be open to the public after 2300 and trade would be limited to deliveries, which, it is suggested, would tail off after 0200. The appeal is supported by a Noise Management Plan (NMP) which sets out measures to minimise noise generated by delivery activity including, amongst other things, a ban on talking outside the premises, the collection of deliveries from the rear of the store using electric vehicles and confirmation that no third-party operators would be used for deliveries. The Delivery Noise Assessment sets out that noise levels from delivery activities result in a minor impact on nearby residential receptors.
9. However, the enhanced number of deliveries would still increase movement to and from the appeal premises at unsociable hours, and the conclusion that the noise impact of the proposal would be acceptable relies largely on the behaviour of delivery drivers. Whilst acknowledging the appellant's desire to operate from the site in the manner set down in the NMP, it is conceivable that staff would have occasion to discuss issues with drivers at the rear of the store or that more than one delivery driver may be waiting for their orders at the same time. Whilst a ban on talking outside the premises is proposed, including signs reminding delivery drivers to keep their disturbance to a minimum, the effectiveness of this would be uncertain and such behaviour could not be readily mitigated through management controls. Prompt action by staff may limit the impact on surrounding residents, but by the time such measures are taken, disturbance would have already been experienced.
10. The reliance on staff, delivery driver and management practices, including how the delivery drivers operate, and the use of electric vehicles 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. Given this, even with the proposed measures set out in the NMP,

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.

11. Furthermore, different operators who may trade from the site at a future date may operate differently, including the use of third-party operators and potentially noisier vehicles. Different operators with differing modes of operation and management practices may choose to be open to walk-in customers for the duration of the extended opening hour, causing harmful noise and general disturbance to nearby residents during the early hours due to their movement and voices. Given this, I am not persuaded that the NMP would fully mitigate the effects on nearby occupiers in perpetuity.
12. Over the extended opening hours, noise associated with the operation of the premises, in particular in relation to deliveries, 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 conflicts with those aims of policies DM2, DM11, DM23 and DM24 of the Norwich Development Management Policies Local Plan (2014). Collectively, these policies seek to ensure that development does not result in an unacceptable impact on the living conditions of neighbouring occupants and set out that limiting conditions will be attached to permissions for development which is likely to give rise to sources of noise which will have some adverse impact on the health, well-being and quality of life of existing adjoining and nearby occupiers.

Other Matters

13. The appellant has suggested a temporary consent of 12 months to provide time for the effects of the extended hours of operation to be understood. However, the grant of a temporary permission for the extended hours of opening, as observed in the appeal decisions to which my attention has been drawn¹, would fail to capture the potentially harmful effects which may arise in the future from different site operators. Given this a temporary permission would fail to satisfactorily address the potentially harmful effects on the living conditions of the occupiers of neighbouring properties arising from the extended hours of operation in perpetuity. Thus, a temporary consent would serve no purpose in this respect.
14. In support of the proposal the appellant has referenced applications for extended opening hours in locations which, it is stated, are comparable to the appeal site. It would appear that, based on the limited information before me, 6 Aylsham Crescent² and 133 Colman Road³ are not comparable to the appeal proposal in terms of their consented hours of operation. It appears that 18 Haymarket⁴ is located within the City Centre. There is no suggestion that this building has residential units above and it does not appear that this site is comparable to the appeal site. My attention has also been drawn to another takeaway operator in the nearby area⁵, however, there is limited information before me regarding the relationship between this property and nearby residential units, whether this

¹ APP/N1215/W/15/3140495 and APP/Z4310/W/23/3331925

² 23/01074/VC

³ 12/00887/F

⁴ 20/00328/VC

⁵ USA Chicken and Pizza, 216 Queens Road

property has planning permission for these hours of operation and if so, the planning policy context in which this permission was granted. 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.

15. I acknowledge that the appeal site benefits from a premises license that includes the requested extended opening hours. This relates to the requirements of the Licensing Act 2003. Nonetheless, this regime, whilst considering the matter of public disturbance, is distinct from planning and has differing considerations. Although the license is a material consideration in the determination of the appeal, it does not mean that planning objections to the proposal on noise grounds cannot be raised. Having exercised my own planning judgement based on the appeal submissions and my observations on site, I consider that the opening hours of the premises should not be extended as proposed for the reasons set out above.
16. The economic benefits of the proposal and the employment resulting from it weigh in favour of the proposal. Additionally, the appellant states that the proposal provides food delivery options for those that work late nights. Nonetheless, these benefits do not outweigh the harm I have identified in relation to the main issue.

Conclusion

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

N Robinson

INSPECTOR