



Appeal Decision

Site visit made on 25 May 2025

by J Somers BSocSci (Planning) MA (HEC) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision Date: 16 June 2025

Appeal Ref: APP/W2465/W/25/3360763

207 Evington Road Leicester LE2 1QN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 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 application is made by Mr Mustafa Ismail against the decision of Leicester City Council.
- The application reference is 20241866.
- The application sought planning permission for the 'Variation of condition 2 (opening hours 0730 to 2300 daily) attached to planning permission 20082040 (Change of use from shop (Class A1 to restaurant (Class A3); conservatory to side, extraction flue at rear (amended) to extend opening hours to Monday to Thursday 0730-0000, Friday to Saturday 0730-0100 the following day, Sunday 0930 to 1100' without complying with conditions attached to planning permission Ref 200882040, dated 16 February 2009.
- The condition in dispute is No.2 which states that: 'The premises shall be closed for business daily outside the hours of 0730 to 2300.'
- The reason given for condition No.2 is: 'In the interests of residential amenity, and in accordance with policy PS10 of the City of Leicester Local Plan.'

Decision

1. The appeal is dismissed.

Procedural Matter

2. I have taken the description of the original application from the Council's Decision Notice as this accurately describes the proposed variation. It is also noted that this description is listed on the Appellant's Appeal Form. I shall make my decision on this basis.

Main Issue

3. The main issue is the effect of the proposed variations to the opening hours upon the living conditions of the greater locality, with particular attention to noise and disturbance.

Reasons

4. The appeal site lies on Evington Road which is a main road within the outer suburbs of Leicester that leads to/from the Leicester City Centre. Evington Road has a commercial/mixed use character and forms a suburban high street in this location which is designated as the Evington Road District Shopping Centre with a number of restaurants, takeaways, cafes, pharmacies and supermarkets as well as

dwelling and shop-top housing. Businesses along Evington Road do not have planning permission to open past 2300 daily; however, it was noted in the appeal documents that some businesses, including the appeal site, do contravene this and open longer than permitted. There is no vehicle parking in front of the appeal site, however further parking areas are present further along Evington Road, as well as down residential side streets. The surrounding streets that lead from Evington Road consist of large rows of two storey tightly knit terraced housing, which appears to date from the late nineteenth to early twentieth century and have no setback from the pavement. The Appeal site is a restaurant/café that lies on the corner of Evington Road and Conway Road and is attached to the long rows of terraces in this location.

5. In assessing this proposal, the City of Leicester Local Plan (LP) Saved Policy PS10 seeks that proposals need to consider the amenity of existing and proposed residents, such as factors concerning noise caused by the development. Saved LP Policy R05 seeks that development for food and drinks purposes do not prove significantly detrimental to the amenities of neighbouring residential properties. Whilst the policy predates the current Class E use class (it refers to superseded Class A use), the general thrust of the policy is to ensure food and drink premises do not cause significant detriment to neighbouring residents. Whilst the terminology in terms of the use classes in this policy is out of date, the general aims of the policy are still consistent with the National Planning Policy Framework in terms of judgements around living conditions. Additionally, the Leicester City Core Strategy (CS) Policy CS11, whilst predominantly aimed at retail hierarchy, seeks that new uses that can add diversity and vitality to retail centres, subject to considerations around amenity.
6. Noise and disturbance are subjective issues to assess, as each neighbour will have different thresholds over what might harm their living conditions. In this particular scenario, the additional noise generated would not be constant and would vary between car doors slamming, vehicle engines revving, people playing music whilst eating in their cars and, given this location, comings and goings of vehicles as well as pedestrians.
7. The Appellant's Statement of Case (SoC) details that the need for the increased opening hours is predominantly related to the local Muslim community which forms the majority of the appeal site's customer and staff base. Prayer times and religious observance are dependent upon the position of the sun, with longer daylight hours meaning the need for later night prayer, and the holy month of Ramadan where communities fast from dawn to sunset which alters consumer's behaviour of when they can eat. These particular elements of the Muslim faith mean that access to places to meet, socialise and eat are restricted to activities in the late evening, with businesses in the local area having an influx of customers as a result.
8. The Appellant's SoC mentions that they have been operating unlawfully and that there have been no official noise complaints made. I have not been presented with any technical information, such as a noise survey which supports the case that the proposed extension of use would not be detrimental because of the external influences, particularly at the weekend. However, the lack of complaint does not mean that the extended hours are acceptable to the local community, particularly seeing as a result of the advertisement of this proposal, that the application received objections to the proposal. Comments from interested parties relate to the

comings and goings of vehicles, the playing of music from vehicles, the disruption caused by litter, and the comings and goings of people along the side streets.

9. I can appreciate that perceived noise during late hours is not consistent and focused upon one specific location, and that noise as a result may be difficult to measure. However, given the very dense and tightly knit terraced properties in this location, what is perceived as small changes to opening hours can have significant impacts to a large number of residents. Noise and disturbance is much more perceptible during the early hours of the morning, with the surrounding dwellings not having much ability to mitigate against persons walking right up against their dwellings talking, playing music etc. There is also the likelihood of cars utilising the side streets to park their vehicles, doors closing, and people choosing to eat and play music and socialise in vehicles also, which would cause significant harm to living conditions of residents along the side streets and residents opposite along Evington Road.
10. Given that this is not the only use that caters for the Muslim community, it has not been sufficiently demonstrated as to why this is the only location that could support this particular need, and whether there are any alternatives that are more consistent with the policies of the development plan. A balanced approach needs to be undertaken which considers the community as a whole and the impacts upon this.
11. I can also appreciate comments that the existing business has an early hours premises licence, and that it and those surrounding are breaching the current planning conditions. Licensing and planning have different legislative requirements and considerations, which means that having been granted a premises licence does not make it appropriate in planning terms. Allegations regarding other businesses as well as the appeal business opening beyond their planning consent is a matter for the enforcement team of the council, and does not justify the appropriateness of the planning proposal.
12. Whilst I can empathise with the needs and justification for the proposed use, this also needs to be balanced in the public interest, material considerations and the development plan, particularly with Saved LP Policy CS10 seeking considerations around the individual and cumulative effects of allowing an extended use. As per the Appellant's SoC, if approved this would be the only use in the local area allowed by planning consent to be open past 2300, which would not present an equitable situation as other businesses would feel that they have been unfairly treated as they are restricted to 2300. Whilst each planning application and appeal must be considered on its own merits, the approval of this proposal could be used in support of similar schemes along Evington Road. I consider that this is not a generalised fear of precedent, but a realistic and specific concern given the appeal documents speak about how well used the businesses along this street are during the evening hours. Allowing this appeal would make it more difficult to resist further planning applications for similar development, and I consider that their cumulative effect would exacerbate the already significant harm which I have described above.
13. I am also aware of the benefits of the proposal, such that it employs a local work force, and that the extended hours would also have economic benefits in that it improves employment opportunities, and increased local expenditure which has resultant benefits for the vitality and viability of the local centre. The proposal would also have benefits to the social stream of sustainable development, in that it

enables increased community cohesion and a meeting place for the local community, as well as providing suitable provision for food and drink that reflects religious observation.

14. Whilst the Appellant has not alleged that the restricted opening hours are discriminatory, as the discussion refers to the need for the proposal which reflects a religious observation, religion is a protected characteristic as defined by the Equality Act 2010 (EA10). Section 149(1) of the EA10 imposes the 'public sector equality duty' (PSED) on 'a public authority...in the exercise of its functions'. The PSED means that in the exercise of their functions a LPA needs to have due regard to three aims; namely, to eliminate discrimination, harassment, victimisation; advance equality of opportunity between persons with protected characteristics; and to foster good relations between persons who do/don't share protected characteristics. This is a material consideration to this proposal.
15. Having regard to the legitimate and well-established planning policy aims to protect the living conditions of the occupants and neighbouring dwellinghouses, in this case I consider that greater weight attaches to the public interest. To me, the act of placing Condition No.2 on the Decision Notice which limits the hours was not a deliberate act that was directed towards the Appellant or the Muslim community personally and would apply to any application where this policy is deemed relevant, which is the case along Evington Road. As such, I have had due regard to the PSED set out under the Equality Act 2010, and have found that the placement of the condition was proportionate, and no contravention of the PSED or EA10 has been demonstrated.
16. In conclusion on this matter, the proposed increase in hours would cause significant detriment to the living conditions of neighbouring occupiers for reasons of noise and disturbance. Consequently, the proposal would be contrary to LP Saved Policies PS10 and R05, as well as CS Policy CS11, all of which have been described previously.

Conclusion

17. For the reasons given above, considering the development plan as a whole together with material considerations, the appeal is dismissed.

J Somers

INSPECTOR