



Appeal Decision

Site visit made on 8 July 2025

by **Jonathan Price BA(Hons) DipTP DMS MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22 July 2025

Appeal Ref: APP/P0240/W/25/3363796

1 and 1A Vicarage Hill, Flitwick, Bedfordshire MK45 1HZ

- 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 Mr Moyb Ali against the decision of Central Bedfordshire Council.
 - The application Ref is CB/24/02794/VOC.
 - The application sought planning permission for change of use from A1 and A5 to A3 and new shop front without complying with a condition attached to planning permission Ref CB/11/02118/FULL, dated 22 August 2011.
 - The condition in dispute is No 4 which states that: The A3 premises shall only be open to customers between the hours of 5.00pm to 10.00pm Mondays to Saturdays, and not at all on Sundays and Bank Holidays without the prior written agreement of the Local Planning Authority.
 - The reason given for the condition is: To safeguard the amenities which the occupiers of the neighbouring properties might reasonably expect to enjoy.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. Nos. 1 and 1A had previously comprised two units, a restaurant and a food takeaway. Planning permission CB/11/02118/FULL, granted on 22 August 2011, was to combine these to provide one restaurant, and this remains the current situation. The take-away element had previously been allowed on appeal, with the Inspector applying a condition restricting opening hours to weekdays and Saturdays and not on Sundays and Bank Holidays, to safeguard the amenities of neighbours. Evidently, the take-away at the opposite end of the parade, at No 5, had been allowed on appeal in 1982, with the Inspector conditioning no Sunday opening.
3. The current restaurant was allowed with a similar condition to these earlier permissions and the appeal is against this, seeking to extend the 5.00pm to 10.00pm Monday to Saturday opening times to Sundays and Bank Holidays. Based on the Council's reason for refusal, the main issue in the appeal is whether the condition in dispute is reasonable and necessary to help safeguard the acceptable living conditions of neighbouring residential occupiers, with particular regard to noise and general disturbance.

Reasons

4. The proposal relates to an end unit within a small parade of three shops with residential accommodation above. The parade is within a suburb of medium density, post-war housing. The next-door unit at No 3 also accommodates a restaurant, having made the change from shop that had not required express planning permission. With the unit at No 5 used as a takeaway, all these businesses generate a degree of noise and general disturbance. This emanates from the operations themselves and the associated footfall, vehicular movements and parking of staff, customers and those making deliveries to and from the site. Unsocial behaviour is not a land use matter, whereas legitimate evening activity, and associated human conversation, no doubt forms part of this level of noise and general disturbance. Whilst not shown to cause significant highway safety concerns, the businesses at times add to a degree of on-street parking stress in the nearby roads, detracting from residential living conditions .
5. The area is predominantly residential and so differs from a more commercial location, such as a town centre, where such noise and activity might be more reasonably tolerated as part of a vibrant evening economy. In this regard, the lack of evening Sunday and Bank Holiday trading in this parade provides welcome respite from the noise and disturbance experienced by residential occupiers of the above floor flats and nearby houses at other times. Were this condition to be lifted, I agree with the Council that it would be difficult to resist further applications for changing of hours for the other two businesses within this parade, notably the takeaway, which will further compound the adverse impact on neighbouring living conditions.
6. I have no doubt that the appellant runs the restaurant in as considerate a manner as is possible, noting both the use of double glazing and silent extractor fans to limit noise emissions. However, for the reasons explained, I consider that the condition in dispute is both reasonable and necessary to secure acceptable living conditions for neighbouring residential occupiers. This is in respect of preserving the lower levels of noise and general disturbance that are both expected and valued on Sunday and Bank Holiday evenings. As such, the removal of this condition would be contrary to Policy HQ1 of the 2021 Central Bedfordshire Local Plan (LP) in respect of this seeking high quality development without unacceptable adverse impacts upon amenity. For the same reason, the proposal would conflict with the National Planning Policy Framework and the objective of paragraph 135 to create places with a high standard of amenity for existing users.

Balance and Conclusion

7. The additional trading evenings would bring modest economic benefits to the locality, adding to its vibrancy and the overall dining offer provided in Flitwick. This would be welcomed by many, I am sure. However, such benefits would not outweigh the significant harm identified to the living conditions of nearby residential occupiers, through an increase in the relatively lower levels of noise and disturbance experienced on Sunday and Bank Holiday evenings. Therefore, material considerations would not indicate this appeal be determined otherwise than in accordance with the LP, with which there would be conflict when considered as a whole. Accordingly, I conclude the appeal fails.

Jonathan Price INSPECTOR