



Appeal Decision

Site visit made on 3 July 2025

by **K Williams MTCP (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 6 August 2025

Appeal Ref: APP/M4320/W/25/3358783

78 Hart Street, Sefton, Southport PR8 6BN

- 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 A Kanagarasa against the decision of Sefton Metropolitan Borough Council.
 - The application Ref is DC/2024/00909.
 - The application sought planning permission for the 'Removal of condition 7 (opening hours) attached to planning permission DC/2023/01792 approved 12/01/2024' without complying with a condition attached to planning permission Ref DC/2023/01792, dated 12th January 2024.
 - The condition in dispute is No 7 which states that: Customers are not permitted on the premises at any time outside the hours of 06.30 to 20.00 every day.
 - The reasons given for the condition is: To safeguard the living conditions of neighbouring occupiers.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. Planning permission was granted at the appeal building¹ for alterations to the residential unit at first floor and a single storey element which provided an enlarged storage area for the ground floor retail unit. A condition limiting the opening hours was attached for the retail element restricting the opening hours from 06:30 to 20:00, which was firstly imposed on an earlier permission² for a much larger extension to the retail unit.
3. Although the appellant applied for the removal of the condition, they have suggested, as part of the appeal, a variation to allow opening hours from 06:30 hours to 22:00 hours. I have considered the appeal on the basis of both the removal and variation and am satisfied that no parties would be prejudiced by this approach.
4. The justification for removing the condition stems from the inconsistency with the opening hours of surrounding retail premises. The appellant contends that this would introduce unequal trading, resulting in demonstrable harm to residential amenity.
5. The main issue is whether the condition permitting opening hours between 06:30 and 20:00 is reasonable and necessary having regard to the living conditions of nearby occupiers.

¹ Council Reference: DC/2023/01792

² Council Reference: DC/2022/02347

Reasons

6. The appeal site comprises a semi-detached red brick property and its grounds. It is in use as a local convenience store at ground floor. It is a single isolated commercial use within the immediate residential area. The appeal building has residential use above and is adjoined to a residential property, which is separated from the forecourt by a wall and fence. The adjacent residential property at 76 Hart Street is adjacent to a forecourt area.
7. Hart Street is a narrow road, with residential properties opposite. The appellant's Noise Impact Assessment, submitted for an earlier permission notes that the area is exceptionally quiet at night-time and therefore any new sources of noise will be more noticeable. From my observations at the time of my site visit on weekday morning, which I appreciate are only a snapshot in time, the area was relatively quiet and not heavily trafficked.
8. The long established retail unit did not have restricted opening hours. Although interested parties suggest a closing time of 18:30 in winter and 20:00 in summer, I have no evidence that this was ever formally imposed. Conversely, I have no information before me to confirm what the typical opening hours were, the activity associated with the former use or the hours granted by the premises licence for the use as it currently exists. Notwithstanding that the retail area is shown to be smaller than that larger extension approved in the earlier application, in the present case insufficient evidence to demonstrate the nature and activity of the previous operation has been provided for me to compare whether extending the opening hours would be significantly different.
9. Unlike the first larger retail extension permission, the plans associated with the appeal show the store area is only accessible by a single width doorway. The enclosed staircase which serves the first floor flat similarly appears separate from the shop floor. On face value, the size of the shop floor would not be significantly larger than its previous iteration, following the removal of an internal staircase. However, I have limited evidence on the use of the store area and the Council is concerned that the rear element could enhance or increase the retail element of the scheme, which the door could facilitate.
10. I note the Council's Environmental Health officer did not suggest opening hours for earlier applications, nonetheless the Council imposed such conditions and provided reasons for this. In any event, for the appeal application, Environmental Health stated that the proposal should be accompanied by a noise assessment. There has been no compelling evidence, in the form of any relevant noise assessment to indicate that the noise associated with later opening hours and therefore the removal of the condition or the upper limit suggested by the appellant would be acceptable. Nor has it been fully explained why such information could not have been provided to support the proposal especially as it the use is already in operation. Such information would ascertain whether the later hours and potentially increased use of the site is likely to be significant in the context of the vibrancy of the locality
11. Even if the store area would remain isolated from the shop floor, I cannot be certain that the initiated permission would not be likely to attract a more intense and possibly livelier pattern of visitor comings and goings though upgrades to the store and services offered. Although there are no highway safety matters arising,

disturbance and noise can also be caused from increased vehicles coming to the site later in the evening. The close and relatively open relationship between neighbouring homes and windows to the appeal site means that associated activity and noise would be highly visible and noticeable within the immediate area and within neighbouring homes. This could potentially cause disturbance, which would be harmful to living conditions, which some of the interested party comments explain occurs.

12. I note the appellant's suggested operational hours but given that these hours still run into evenings and on weekends and bank holidays there is no certainty that the noise or activity at these times would be within acceptable parameters. However, although the proposal would provide benefits for people who arrive home later, there are other such facilities nearby. Although most residents would not be trying to sleep during the hours of operation, I am mindful that young children or shift workers might be.
13. Altered opening hours would result in improved facilities and there are benefits to visitors and residents from increased choice and access to services in an accessible location. In this regard, I am mindful that the development has local support. It is evident from the interested parties that the appellant has operated the business in a considerate and well-regarded manner by many interested parties, and by providing support to the community. There are also economic benefits from increased trade. Any breach of planning permission or enforcement action does not factor into my assessment.
14. I have been provided with a list of retail units and their opening hours primarily within nearby residential areas, and an appeal decision. Whilst each proposal is judged on its own merits, I have considered these examples, and I note the similarities with the context in later opening hours than 20:00.
15. However, I have not been provided with the full details and I am not certain if they are also isolated instances of commercial units, within a similarly confined space and close residential environment. They may not have been subject to planning permission and may well have been determined under a different set of circumstances, planning policies and other evidence which is not before me in this appeal. Although they may have been considered under the same development plan, there is a degree of subjectivity in consideration of these matters and those put forward in support of those proposals would have required site specific judgements to be made, and potentially mitigation provided or assessments undertaken. For these reasons I attach limited weight to these.
16. Whilst the above are important considerations they do not, either individually or cumulatively, outweigh the harm that I have identified to the living conditions of the occupiers of neighbouring residential properties. I have come to this conclusion having regard to the importance that the National Planning Policy Framework places on making efficient use of land, building a strong, competitive economy and promoting healthy and safe communities.
17. For the above reasons, and in the absence of sufficient information to demonstrate to the contrary, the disputed condition is reasonable and necessary having regard to the living conditions of nearby occupiers. The development is therefore contrary to Policy HC3 of the Local Plan for Sefton, adopted 2017. Which seek to ensure that proposals demonstrate they would not have an unacceptable impact on the

living conditions of neighbouring properties. The proposal would also not fulfil the aims of the Framework, contained in section 12 where it seeks to ensure development promotes health and well-being with a high standard of amenity for existing users.

Conclusion

18. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. For the reasons given above, I conclude the appeal should be dismissed.

K Williams

INSPECTOR