



Appeal Decision

Site visit made on 13 January 2026

by A Wright BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd February 2026

Appeal Ref: APP/D1590/W/25/3374767

290 Prince Avenue, Westcliff-on-Sea, Southend-on-Sea SS0 0NF

- 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 Gowsihan Nallathambi against the decision of Southend-on-Sea City Council.
 - The application Ref is 25/01164/AMDT.
 - The application sought planning permission for the change of use from sui generis (motorcycles sales shop) to class E(a) convenience store (part retrospective) without complying with a condition attached to planning permission Ref 25/00332/FUL, dated 13 June 2025.
 - The condition in dispute is No 5 which states that: The use hereby approved shall only be open for customers during the following hours: 8am to 10pm Monday to Sunday (including Bank and Public Holidays) and at no other times.
 - The reason given for the condition is: In order to protect the amenities of surrounding occupiers in accordance with Policies KP2 and CP4 of the Core Strategy (2007) and Policies DM1 and DM3 of the Development Management Document (2015).
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. Planning permission was granted in 2025 for the change of use of the premises from a motorcycles sales shop to a class E(a)¹ convenience store which has been implemented. This permission includes condition 5 as set out in the banner above which restricts the opening hours for customers to 8am to 10pm every day (including holidays). The justification given by the Council for this condition is to protect the amenities of surrounding occupiers in accordance with the policies set out in the banner heading above.
3. The appellant sought to vary the condition to allow the premises to operate from 6am to 11pm every day (including holidays). This was refused by the Council which considers that it has not been satisfactorily demonstrated that the extended hours of operation would not cause harmful noise and disturbance for neighbouring occupiers nor that such impacts could be overcome through conditions.
4. Therefore, the main issue in this appeal is the effect that varying condition 5 would have on the living conditions of neighbouring occupants, with particular regard to disturbance.

¹ Under The Town and Country Planning (Use Classes) Order 1987 (as amended)

Reasons

5. The appeal site lies in a residential area on the corner of Rochester Drive and the busy A127 Prince Avenue. There are houses attached on either side of the convenience store with a flat above. Although there are double yellow lines along Rochester Drive directly outside the shop, anyone can park outside the neighbouring house at 91 Rochester Drive during the proposed extended opening hours. It is also possible that those using the shop could stop vehicles outside the upper floor flat and adjacent dwelling fronting Prince Avenue.
6. The premises does not serve hot food so there would be no noise from cooking equipment. Nonetheless, the proposal would result in comings and goings by staff and customers for three additional hours each day.
7. During my daytime site visit, it was clear that there is background noise from passing traffic on the A127. However, there is no evidence that this would mask the intermittent noise from customer and staff vehicles stopping and starting and their car doors slamming directly outside rooms in the neighbouring residences during the proposed extended opening hours. This would include from 6am which is within night-time hours. As such, there has been a failure to demonstrate that the proposal would not cause harmful noise disturbance to occupiers of the adjacent houses and flat above the shop premises.
8. The appellant refers to the opening times of other convenience shops on busy and quieter roads in the vicinity. These do not operate the extent of the opening hours proposed in the current appeal, with some located in shopping parades where there is greater separation between the vehicle stopping areas and nearby residences than around the appeal site. Therefore, they are not comparable to the proposal before me.
9. Consequently, I conclude that it has not been demonstrated that the proposal would not harm the living conditions of neighbouring occupants, with particular regard to disturbance. This would be contrary to Policies KP2 and CP4 of the Southend-on-Sea Core Strategy 2007 and Policies DM1 and DM3 of the Council's Development Management Document 2015. Together, these require development to avoid detrimental impacts on the living conditions of neighbouring residents, having regard to noise and disturbance, amongst other things.

Other Matters

10. The proposed extended opening hours would provide more convenient shopping opportunities for essential items before and after work and school hours, including for those travelling on the A127. It would also financially assist a small, family run business. Nevertheless, these matters would not outweigh the harm that I have found above.

Conclusion

11. For the reasons given above, the proposal would conflict with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Therefore, the appeal is dismissed.

A Wright

INSPECTOR