



The Planning Inspectorate

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Miss Karen Wooden
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Business Development & Support
Team
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Havant
Hampshire
PO9 2AX

Your Ref: APP/10/00436
Our Ref: APP/X1735/A/10/2137568/NWF
Date: 1 March 2011

Dear Miss Wooden

Town and Country Planning Act 1990
Appeal by Mr Wan Ping Cheung
Site at Dragon Inn, 2 Purbrook Chase Precinct, Waterlooville, PO7 5QH

I enclose a copy of our Inspector's decision on the above appeal.

If you have queries or complaints about the decision or the way we handled the appeal, you should submit them using our "Feedback" webpage at www.planning-inspectorate.gov.uk/pins/agency_info/complaints/complaints_dealing.htm. This page also contains information on our complaints procedures and the right of challenge to the High Court, the only method by which the decision can be reconsidered.

If you do not have internet access, or would prefer hard copies of our information on the right to challenge and our complaints procedure, please contact our Quality Assurance Unit on 0117 372 8252 or in writing to the address above.

Please note the Planning Inspectorate is not the administering body for High Court challenges. If you would like more information on the strictly enforced deadlines for challenging, or a copy of the forms for lodging a challenge, please contact the Administrative Court on 0207 947 6655.

Yours sincerely

Erin Lindell

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INVESTOR IN PEOPLE





Appeal Decision

Site visit made on 31 January 2011

by Adrian I'Anson Solicitor

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 1 March 2011

Appeal Ref: APP/X1735/A/10/2137568

2 Purbrook Chase Precinct, Waterloo, Hampshire PO7 5QH.

- 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 appeal is made by Mr Wan Ping Cheung against the decision of Havant Borough Council.
 - The application Ref APP/10/00436, dated 26 July 2010, was refused by notice dated 20 September 2010.
 - The application sought planning permission for change of use from hairdressers to fish and chip take away (Class A1 to Class A3) without complying with a condition attached to planning permission Ref 94/59567, dated 30 July 1998. A subsequent planning permission Ref 05/59567/005 in December 2005 varied condition No. 1 to allow the sale of hot food until 22:00 hours Monday to Saturday.
 - The condition in dispute is No 1 which states that: No hot food for consumption off the premises shall be sold between the hours of 22.00 and 11.00 Monday to Saturday and not at all on Sundays and recognised Public Holidays.
 - The reason given for the condition is: In the interests of the area generally and nearby residential properties in particular and having regard to policy D1 (D4) of the Havant Borough District Wide Local Plan 1996 – 2011 (the Local Plan).
 - The proposal is to vary condition no. 1 to allow sale of hot food between the hours of 11.00 to 22.00 on recognised public holidays.
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Decision

1. I dismiss the appeal.

Main Issue

2. This is the effect that altering the disputed condition, in order to permit sale of hot food on recognised Bank Holidays, would have on the living conditions of occupiers of neighbouring housing, with particular regard to odour and anti-social activity.

Reasons

3. The application is to vary condition No. 1 by removing the restriction on sales on recognised Public Holidays.
4. The appeal site is situated in a ground floor unit in a building in a small 1960s shopping precinct called Purbrook Chase Precinct. The appellant operates a take away service providing hot Chinese food and fish and chips. The precinct includes an Indian food restaurant with take away food use. This is at No. 1 Purbrook Chase Precinct – adjacent to the appeal site. On the other side of the

precinct, there is a hairdresser and a Co-op food store. There are residential flats above these units and there is housing close to the appeal site – separated by only a small car park.

5. The Council has acted consistently by dismissing an application by the Indian restaurant at Unit No. 1 for relaxation of the condition on their permission in order to permit sales of hot food on and off the premises on Sundays and recognised Public Holidays. The Council's stance was supported when the subsequent appeal was dismissed¹.
6. As the circumstances are similar, I have given considerable weight to the previous appeal relating to the adjoining unit. The fact that the occupiers of Unit 1 applied for removal of the prohibition on Sundays as well as Bank Holidays does not affect the principle. In the Appeal Decision, the Inspector stated at paragraph 4 that *"the Council has consistently upheld the principle of keeping Sundays and Bank Holidays free from the sale of hot food in the Purbrook Chase Precinct, on the basis that this provides local residents with a break from cooking smells on at least one day per week"*. The Council's Environmental Health Officer has objected to the proposal on two grounds. The first ground is that although there is no statutory nuisance at present, the take away currently discharges *"odorous matter"*. Secondly, the Officer considers that granting the proposal would create a precedent for potentially all take aways within the Borough who might apply for a similar dispensation.
7. I conclude that I find no reason to depart from the line taken by the previous Inspector in respect of Unit 1. On the evidence before me, additional opening on recognised Public Holidays would exacerbate existing impacts on the living conditions of neighbouring residents to an unacceptable degree.
8. I have noted that some 400 individuals have signed a petition supporting the sale of hot food between the hours of 1100 and 2200 on recognised public holidays. That confirms that there is a local need for this service but fails to address the issue as to its effect on local residents.
9. I acknowledge the appellant's point that by buying take away meals on Bank Holidays, people can spend more time with their families by avoiding the hard work involved in preparing and cooking a large meal. However, it fails to take account of the harm to the living conditions of neighbouring residents from cooking odours. I consider that it is reasonable to maintain the respite from cooking smells on recognised Public Holidays as well as Sundays.
10. The reason for refusal refers to the potential for increased opening of the appeal site leading to a greater incidence of anti-social activity in the area. Whilst I consider that allowing the appeal could have such a consequence, I do not have sufficient evidence to justify dismissing the appeal on that ground.
11. None of the matters referred to in paragraphs 8 – 10 above are of such significance as to outweigh my concerns in relation to odour.

Conclusion

12. I conclude that condition no. 1, as drafted in full, is reasonable and justified on the basis of protecting the living conditions of the occupiers of neighbouring housing which otherwise would be harmed. Without it, the permitted use

¹ APP/X1735/A/08/2091456

would not be acceptable by reference to saved Policies D1 and PC1 of the Local Plan.

A F I'Anson

INSPECTOR