



Appeal Decision

Site visit made on 11 October 2013

by R Barrett Bsc Msc Dip UD Dip Hist Cons MRTPI IHBC

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

Decision date: 1 November 2013

Appeal Ref: APP/X1735/A/13/2202449

1 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 Kamal Ahmed against the decision of Havant Borough Council.
 - The application Ref APP/12/01272, dated 3 December 2012, was refused by notice dated 6 March 2013.
 - The application sought planning permission for change of use from retail (Class A1) to restaurant (Class A3) and hot food takeaway (Class A5) and installation of extraction flue to rear (north east) elevation without complying with condition 2 attached to planning permission Ref 05/57717/006, dated 11 July 2005.
 - The condition in dispute is No 2 which states that: No hot food for consumption on or off the premises shall be sold between the hours of 2200 and 1100 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 residential amenity of the occupiers of the flats above and other neighbouring residents and to minimise late night noise and disturbance, and having due regard to policies and proposals UB3 of the Hampshire County Structure Plan 1996-2011 (Review) and SH8 and GDD1 of the Havant Borough Local Plan 1994.
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Decision

1. The appeal is dismissed.

Main Issue

2. Whether the disputed condition is necessary and reasonable, having regard to the impact of the proposed extended opening hours on the living conditions of neighbouring occupiers with regard to disturbance from noise, odours and antisocial activity.

Reasons

3. The appeal proposal relates to a ground floor unit in a small 1960s shopping precinct. It is in use as a restaurant and take-away business and situated within a Local Centre as defined by Policy CS4 of the Havant Borough Core Strategy (2011) (CS). The proposal is to provide hot food on Sundays and recognised Public Holidays between the hours of 1600 and 2100.
4. The Council has referred to a history of resisting the sale of hot food on Sundays and recognised Public Holidays in the Precinct and I note that other hot food outlets have similar restrictions on Sundays and recognised Public

Holidays, the result being that the Precinct is relatively quiet and free of cooking odours at these times.

5. There is objection to the appeal proposal on the basis of cooking smells and noise. I observed on my site visit that there are two floors of flats above the shops in the Precinct, some with balconies. Beyond the appeal site there are houses with rear gardens. The appeal site's extractor flue runs up the rear of the appeal building. It is particularly close to the rear entrances to some of the flats, the balconies and some of their windows. The cooking smells have disturbed neighbouring residents in the past and extending the hours of use in the way proposed would be likely to exacerbate this situation.
6. It is acknowledged that the extractor flue terminates above eaves level. Furthermore, the appellant suggests that cooking smells could be controlled under Environmental Health legislation, and refers to a previous planning approval for a similar development at 341 Milton Road. However, in that case other hot food outlets did open on Sundays, a matter that differentiates it from this appeal. In addition, in respect of this appeal, the Council's Environmental Health Officer has confirmed that cooking smells are discernible when the restaurant is in use at present and that no system of odour reduction will completely eliminate the characteristic cooking smells in the vicinity.
7. The appellant has drawn my attention to a recent appeal at 327 Milton Road, Cowplain, Waterlooville (Ref APP/X1735/A/08/2062005). However, in that case there was no evidence before the Inspector to suggest that there was an existing nuisance caused by smells or cooking odours arising from the appeal premises, a matter that differentiates it from the appeal proposal.
8. The appellant suggests that under the existing permission cold food and alcohol could be sold on Sundays and recognised Public Holidays. However, if this were the case any cooking smells would be likely to be significantly less than when hot food is cooked. It is also suggested that hot food could be prepared during these times. However, as a significant amount of hot food would still need to be freshly cooked, the cooking smells are likely to be less than when the restaurant is open.
9. The Precinct is a Local Centre, which the evidence suggests is relatively quiet on Sundays as none of the hot food outlets are open. On this basis and bearing in mind the proximity of residential properties, additional noise and disturbance from comings and goings and general activity within the appeal site is likely to arise at a time when the local residents could reasonably expect quiet, even though the car parking is located to the front near to the main road. The relative quiet on Sundays and Public Holidays would be threatened if the appeal proposal were allowed, as not only would the appeal premises be able to open but it would be difficult to resist a similar application from the other hot food retailers in the Precinct.
10. Whilst the Council has confirmed that there is some antisocial activity at the Precinct, this is not associated with the appeal premises. I acknowledge the concerns of the Hampshire Police Crime Prevention Design Advisor. However, the proposal would increase people visiting the Precinct when open on a Sunday and on recognised Public Holidays. This would be likely to increase natural surveillance and thereby reduce the potential for antisocial activity. I am therefore not convinced that the proposal would have the potential to lead to antisocial activity in the area.

11. I conclude therefore that the disputed condition is necessary and reasonable and the appeal proposal would unacceptably reduce the living conditions of neighbouring occupiers with regard to noise and disturbance and from cooking odours and thereby would fail to comply with CS Policies CS4, CS16, DM5 and DM10, which together aim to protect the living conditions of neighbouring residents in Local Centres. However, it would not be likely to lead to antisocial activity and would comply with identified CS policies in this regard. The Council has referred to other policy, but I have concluded against those most relevant.
12. My decision has had regard to those of my Colleagues in considering two similar proposals at the appeal site (Ref APP/ X1735/A/08/2091456 and Ref APP/ X1735/A /05/1191560). I have generally concurred with their findings and have found no material change in circumstances to lead me to a different conclusion.

Other Matters

13. The appellant suggests that he needs the additional sales to cover increased costs and that in the absence of the proposed extended opening the restaurant business may close and the seven associated jobs lost. It is also suggested that the appeal proposal would enhance the vitality and viability of the shopping precinct and reduce the need for customers to travel further afield. These matters may be benefits of the proposal. However, they do not outweigh the issue that would arise with regard to noise and disturbance and cooking smells.
14. I have had regard to the support expressed for the proposal, but there is objection to cooking odours and noise received through the Council's Environmental Health Department in the past which outweighs this matter.

Conclusion

15. For the above reasons, and taking all other matters raised into consideration, I conclude that the appeal should be dismissed.

R Barrett

INSPECTOR