The Planning Inspectorate

EST 1909

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Miss Karen Wooden
Havant Borough Council
Business Development & Support Team
Civic Centre
Havant
Hampshire
PO9 2AX

Your Ref: APP/10/00218

Our Ref: APP/X1735/A/11/2145039/NWF

Date: 17 May 2011

Dear Miss Wooden

Town and Country Planning Act 1990
Appeal by Mr M.R. Patel
Site at 9 Stone Square, Havant, PO9 2DZ

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

Amanda Baker

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HAVANT BOROUGH COUNCIL
18 MAY 2011
RECEIVED

INVESTOR IN PEOPLE
POSITIVE ABOUT DISABLED PEOPLE

The Planning Inspectorate

Appeal Decision

Site visit made 27 April 2011

by B C Scott BA(Hons) Urban & Regional Planning MRTPI

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

Decision date: 17 May 2011

Appeal Ref: APP/X1735/A/11/2145039
9 Stone Square, Havant, Hampshire, PO9 2DZ.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr M R Patel against the decision of Havant Borough Council.
- The application Ref: APP/10/00218, dated 1 June 2010, was refused by notice dated 17 September 2010.
- The development proposed is change of use to the existing ground floor retail shop (Class A1) to hot food take-away (Class A5).

Procedural Matters

1. Since its determination of the appeal application, the Council has adopted a Core Strategy Development Plan Document (CS). I deal with the appeal in accordance with the current policy position.

2. The appeal application declares the proposed hours of opening to involve an end time of 23.00hrs every day of the week. I am unable to make sense of the Appellant's statement regarding any subsequent revisions to those hours (paragraphs 1.4 and 1.5). Moreover, the Council's statement is silent on the matter. In the circumstances, I take the appeal proposal to embrace the hours declared in the appeal application.

3. I note that the Council suggests the imposition of a planning condition to restrict the hours of opening to 22.00hrs on Sundays and that the Appellant reluctantly would accept the exclusion of Sundays and bank holidays. I address the appropriateness of this matter in paragraph 12 of my decision.

4. The appeal application follows previous attempts similarly to change the use of the appeal premises.

Decision

5. I dismiss the appeal.

Main issue

6. I consider the main issue in this case to be the effect of the proposed development on the living conditions of adjoining occupiers, with particular reference to noise and disturbance.

Reasons

7. The appeal premises comprise a vacant unit in a small (four unit) commercial parade that is occupied by a food-store (two units) and an existing hot food takeaway. The parade is purely of neighbourhood significance and is not a local centre with a range of facilities. It is deeply set within suburban housing and has limited frontage parking.

8. The proposed development would add another hot food take-way use and increase the comings and goings to the parade throughout the week, particularly during Sundays and evenings. CS Policy DM10 applies to pollution through such matters as noise and requires (amongst other things) that the health and safety of nearby occupiers and residents is not put at risk.

9. Hot food takeaways may give rise to significant levels of noise at times when neighbouring residents will reasonably expect some peace and quiet. This is not a centre location where residents benefit from the convenience of facilities to hand, tempered by a somewhat robust noise tolerance. The appeal parade is situated in a fundamentally residential area and one in which dwellings are very close by – to the appeal parade and premises; to the parking area; and to the associated paths. The closest dwellings are bungalows likely to be occupied by persons of senior age.

10. The food store opens Sundays and other days to 22.00hrs. The existing hot food take-away is closed on Sundays, but opens to 23.00hrs on other days. Hampshire Constabulary comment that the vast majority of incidents reported to the police are from those commercial premises. The local Councillor reports a number of problems with the existing uses, including anti-social behaviour involving noise.

11. There is no question that, in the appeal environment, raised voices, the slamming of car doors, the revving of engines and gatherings on the central amenity grassed area (with or without music) are typical problems that may arise. In the absence of evidence to the contrary, I take the worst case scenario and find that the proposed development would add to the existing, unsatisfactory situation through a cumulative effect on the noise health of the adjoining occupiers.

12. The imposition of a planning condition to regulate the emission of noise from the appeal premises would not address disturbance that may arise outside the building as patrons come and go, often in boisterous spirits. Also, a condition restricting opening hours would negate the benefit of any permission granted, in the face of customer demand and a competing, unfettered enterprise next door. Moreover, any extended opening times there would result in a greater cumulative effect.

13. I conclude on the main issue that the proposed development would be harmful to the living conditions of the adjoining occupiers, in conflict with the requirements of Policy DM10 of the Development Plan.

14. I note the other example and the appeal decisions to which my attention is drawn, but find no reason to consider the appeal before me other than upon its individual planning merits. I have considered all other matters raised, including

the merits of re-opening the appeal premises after many years, but none alters my conclusion on the main issue, which leads me to dismiss the appeal.

B C Scott

INSPECTOR