



Appeal Decision

Site visit made on 20 February 2018

by Caroline Jones BA (Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th February 2018

Appeal Ref: APP/H0738/W/17/3190860

Units 11 and 12, Sandgate Park Shopping Centre, The Rings, Myton Way, Ingleby Barwick TS17 5AA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Al Forno against the decision of Stockton-on-Tees Borough Council.
 - The application Ref 17/1811/VARY, dated 7 July 2017, was approved on 10 October 2017 and planning permission was granted subject to conditions.
 - The development permitted is erection of 12no. commercial units consisting of retail and non-retail (use classes A1, A2, A3, and A5) uses, to include a café/bistro (A3/A4 use with associated access, car parking and landscaping).
 - The condition in dispute is No 2 which states that: The hereby approved premises shall not be open for business outside of the hours of 08:00-22:00 Monday to Saturday and 10:00 to 16:00 on Sundays and Bank Holidays unless otherwise stated below;
Units 2 and 9 – 08.00hrs to 23.00hrs Monday to Sunday
Unit 10 (convenience store) – 06.00 to 23.00hrs Monday to Sunday
Units 11 and 12 (Bistro) – 08.00 to 22.00hrs Monday to Thursday, 08.00 to 23.00hrs Friday and Saturdays and 08.00 to 20.00hrs on Sundays.
 - The reason given for the condition is: In the interests of neighbouring residential premises.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. Permission was granted in 2016¹ for the erection of 12 commercial units including retail and non-retail uses including a café/bistro. Condition 14 of that permission restricted the opening hours of the bistro to 0900 to 2200 Monday to Thursday, 0900 to 2300 Friday and Saturdays and 0900 to 2000 on Sundays. Subsequently, a s73 application to 'vary' condition 14 of the 2016 permission was approved to amend the opening hours of units 2 and 9 to 0800 to 2300 Monday to Saturday.
3. The permission which is the subject of this appeal was a further s73 application to 'vary' condition 14 of the 2016 permission to extend the opening hours of units 11 and 12 from 0800 to 2300 Sunday to Thursday and 0800 to 0000 Friday and Saturday. The Council granted permission albeit with more restrictive opening hours than that applied for. The appellant objects to these

¹ 15/3136/FUL

opening hours and seeks to amend the hours to those for which they originally sought permission.

4. Taking the above into account, the main issue is whether the condition is reasonable or necessary in the interests of the living conditions of neighbouring residents.

Reasons

5. The appeal site forms part of a modest, U-shaped shopping centre set around a central car park. The surrounding area is predominately residential with some dwellings located only a few metres from the shopping centre. The centre has a mix of uses, including A1, A5 and A3. The appeal relates to units 11 and 12 which is occupied by Al Forno restaurant which has the capacity to take approximately 100 covers. Parking is shared by all the units and is time restricted.
6. At the time of my site visit, which was mid-morning on a weekday, all the units with the exception of the hot food takeaway were open. There was a steady number of customers coming and going and a number of deliveries took place during my site visit. Despite this, ambient noise levels were relatively quiet as would be expected in a largely residential area.
7. Given the proximity of neighbouring dwellings and the capacity of the restaurant, the proposed opening hours are likely to give rise to undue levels of noise and disturbance at a time when many residents are likely to be at home and expect a certain level of peace and quiet. Noise and disturbance would primarily result from the comings and goings of patrons, people congregating in the car park, conversations, car doors slamming and engines starting up. Although the appellant states that there have been no formal complaints to the Council, objections from local residents were received relating to noise from the appeal premises and other late night uses within the centre. The proposal has the potential to be even more disruptive to local residents as an additional noise source late at night, especially those with young families.
8. The appellant contends that the restaurant would not generate noise levels over and above current noise sources, including the convenience store, hot food takeaway and café/bar which are open until 2300. However, no substantive evidence is before me, for example in relation to either the existing noise climate or predicted noise levels, in order to support this assertion. Furthermore, whilst I note that customers are entitled to park anywhere within the car park and agree that the intervening distance to the café/bar is unlikely to make a material difference, the café/bar is considerably smaller than the appeal premises which can accommodate 100 covers. Furthermore, the nature of comings and goings to the convenience store would be different to that of a restaurant which would have more potential for large numbers of people coming and going at the same time. Whilst I note that the primary function of the restaurant is to serve food, the selling of alcohol is also permitted and I do not find that this matter diminishes the potential for noise and disturbance from the noise sources I have identified above.
9. I note that the appellant has sought to minimise noise transmission from the building itself including acoustic glazing and a double door lobby. A sound meter is also installed within the building. However, my concerns relate to the creation of noise and disturbance outside of the restaurant.

10. I acknowledge that the Environmental Health Team (EHT) did not object and that a licence has been granted for extended hours at the premises. However, the licensing regime is subject to separate legislation and neither this nor the lack of objection automatically leads to the conclusion that the proposal would also be acceptable in planning terms. I note that the restaurant now operates a taxi system for staff and that some customers may walk to the restaurant. The Council did not raise any issues with respect to highway matters and I have no reason to come to a different view. However, these matters do not outweigh the harm that I have identified above.
11. I accept that there would be some benefits to the extended opening hours including increased profitability and improved employment terms for staff. In this respect, the appellant has drawn my attention to the weight given by the Government to supporting a growing economy. Nonetheless, the benefits are outweighed in this instance by the harm to the living conditions of neighbouring residents.
12. I therefore conclude that the proposed opening hours would be materially harmful to the living conditions of neighbouring residents. The condition is therefore reasonable and necessary in its current form. As such, the proposal would conflict with Policy S14 of the Local Plan which states that, amongst other things, A3 uses will be considered against any adverse impact on residential amenity.

Other Matters

13. I note the appellant's frustrations with the Council's communication and the way in which it handled the application. However, these matters do not impact on the planning merits of the proposal.

Conclusion

14. For the reasons given above and taking all matters into account, I conclude that the appeal should be dismissed.

Caroline Jones

INSPECTOR