



Appeal Decision

Site visit made on 29 October 2015

by **P Eggleton BSc(Hons) MRTPI**

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

Decision date: 24/11/2015

Appeal Ref: APP/A4520/W/15/3132057

68a Stanhope Road, South Shields NE33 4BS

- 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 B Mohamadi of Benny's Pomodoro against the decision of South Tyneside Council.
 - The application Ref ST/0535/15/VC was refused by notice dated 30 July 2015.
 - The application sought planning permission for a change of use to café/hot and cold food takeaway without complying with a condition attached to planning permission Ref ST/2341/05/FUL dated 19 October 2005, as amended by planning permission Ref ST/1331/12/VC dated 1 November 2012.
 - The condition in dispute is No 2 of planning permission Ref ST/1331/12/VC which states that: The premises shall be open for business only between the hours of 8am and 9pm, Monday to Saturday, 8am and 9pm on Bank Holidays and 10am and 7pm on Sundays.
 - The reason given for the condition is: To ensure no loss of amenity to the occupiers of adjoining dwellings in accordance with Policy DM1 of the South Tyneside Local Development Framework.
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Decision

1. The appeal is dismissed.

Main issue

2. The main issue is the effect of the proposed additional opening hours on the living conditions of nearby residents.

Reasons

3. Planning permission for a change of use of these premises to a café/hot and cold food takeaway was permitted in 2005 by application Ref ST/2341/05/FUL. Condition 3 restricted the trading hours. In 2012 permission Ref ST/1331/12/VC allowed revised opening times of 8am to 9pm, Monday to Saturday; 8am to 9pm on Bank Holidays; and 10am to 7pm on a Sunday. This proposal would allow the premises to open from 8am to 10.30pm, Monday to Saturday and Bank Holidays; and from 8am to 8.30pm on a Sunday.
 4. The takeaway is situated on a relatively busy road. It does not lie within a designated shopping parade but there are a number of other commercial units
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- in the vicinity and a Social Club opposite. Given the mix of properties in the vicinity, it would appear likely that activity levels would be significantly greater than would be expected in a purely residential area but would not be as great as those within a shopping parade.
5. The property has an attached dwelling to the rear and the neighbouring property includes a first floor flat. Concerns have been expressed by the residents of these properties. The resident of the flat, 66 Stanhope Road, reports that noise is already experienced from the banging of the rear gate; from traffic pulling up to the front and rear; from the people that frequently gather outside the premises; from activity within the shop; and from the closing of the roller shutters at the end of each day.
 6. The resident of the house to the rear, 2 Collingwood Street, also refers to the noise when the shop is closing. Concern is also expressed with regard to the potential for customers to park directly outside and the resultant noise from the shutting of car doors. Another near neighbour reports that cars often park in Collingwood Street and music from them can be heard whilst the customers eat their food.
 7. In contrast to the above, a resident opposite supports the proposal and advises that there has never been any disruption at all from the business. The owner of the neighbouring unit similarly does not object. A petition, containing many names, supports the proposal. A number of the signatories appear, from their postcode, to live close-by.
 8. The impact of the proposal on the two neighbouring residential properties is critical. They clearly experience noise from the closing of the roller shutters. I consider it likely that this concern could be overcome although no proposal has been put forward. The noise from cars arriving, customers alighting and returning and the cars then leaving, is unavoidable. Although customers congregating outside is dissuaded, some noise from them is perhaps also inevitable. These matters are likely to have a significant impact on the residents of the adjacent flat in particular, given its very close proximity. If parking is not available on Stanhope Road, the concerns with regard to customers' cars, are likely to spread into Collingwood Street, as has been reported.
 9. Although I accept that this is not an entirely residential area and residents can expect a certain level of activity, I consider that the proposed extended hours would result in unacceptable additional disturbance to the adjoining residents. The proposal would be contrary to Development Management Policy DM1 (criterion B) of the South Tyneside Local Development Framework 2011 (LDF) as it would not be acceptable with regard to residential amenity. As the policy generally accords with the amenity requirements of the *National Planning Policy Framework*, I afford it considerable weight.
 10. The Council have made reference to previous appeal decisions. Appeal Ref APP/A4520/A/12/2188267 was dismissed on 23 March 2013. It was found that extending the opening hours on a Sunday to 9pm would result in an unacceptable reduction in the living conditions of neighbouring residents through noise and disturbance, in the evening, when it is reasonable to expect a lesser degree of noise and activity. Although that proposal sought to extend

the opening hours until 9pm rather than the currently proposed time of 8.30pm on a Sunday, I consider the previous findings to remain relevant.

11. The other appeal, Ref APP/A4520/A/09/2116163, was dismissed in 2010. It was found that extending the opening hours to 11pm, Monday to Saturday; allowing Sunday opening until 5pm; and Bank Holiday opening until 6pm, would have an adverse impact on the living conditions of nearby residents. I find that decision to be of less relevance as it pre-dates the LDF and the *Framework*. Furthermore, the Council have accepted additional opening hours since the decision was made.
12. Reference has been made to the opening of a nearby Sainsbury's. Whilst I am advised that it is able to open until 11pm, I understand that it was previously a public house. The circumstance relevant to it, are clearly different.
13. Although I have found that harm would result to residents of neighbouring properties, this must be weighed against the benefits of the proposal. This facility clearly provides a much appreciated service within the area. Allowing extended hours would help to support this service and the jobs and commercial activity associated with it. The *Framework* is clear that economic activity should be supported. There are vacant commercial properties in the vicinity that detract from the area. Support should be offered to the businesses that are contributing positively, particularly if they achieve the economic and social benefits sought by the *Framework*.
14. There are a number of matters that weigh in favour of extending the opening hours of this business. However, the harm that would result to the living conditions of the neighbouring residents prevents the proposal from being considered as sustainable development. I do not find that the benefits put forward are sufficient to outweigh my concerns.
15. The appellant has indicated that modifications to the opening times would be acceptable if the times proposed are not considered to be acceptable. However, I have found no reason to disagree with the previous inspector who found that an appropriate balance has already been struck between meeting the needs and expectations of the business and its customers and safeguarding the living conditions of the neighbouring residents.
16. Overall, I find that revising the condition as proposed would result in harm to the living conditions of the neighbouring residents. The benefits of the later opening hours would not be sufficient to outweigh this concern. The condition that currently sets out the operating restraints is both reasonable and necessary. It also satisfies the other requirements of paragraph 206 of the *Framework*. I therefore dismiss the appeal.

Peter Eggleton

INSPECTOR