The Planning Inspectorate

Appeal Decision

Site visit made on 12 October 2021

by Alison Scott BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th October 2021

Appeal Ref: APP/A4520/W/21/3280257
181B Sunderland Road, South Shields NE34 6AD

- 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 Mr Paul Fairley against the decision of South Tyneside Council.
- The application Ref ST/0975/20/VC, dated 13 November 2020, was granted subject to condition on the 12 February 2021.
- The development permitted is Variation under Section 73 of the Town and County Planning Act 1990, to allow variation of Condition 2 of planning consent Ref. ST/0448/20/PNCU to change the opening hours to 9am-11pm seven days a week.
- The condition in dispute is No 1 which states that: The premises shall only be open to the public between the hours of 09:00 and 22:00 on Monday to Wednesday, 09:00 and 23:00 on Thursday to Saturday and 09:00 and 20:00 on Sunday. It shall not be open to the public at any other time outside these hours.
- The reason given for the condition is: To safeguard the amenity of local residents in accordance with South Tyneside Local Development Framework Development Management Policy DM1.

Decision

1. The appeal is dismissed.

Background

2. The appeal property was originally granted prior approval for the change of use of the premises to an A3 café/restaurant with condition imposed to restrict the hours of opening. A variation of condition for the hours of opening was subsequently approved by the Council. The subject of this appeal relates to the most recently approved hours of opening. The appellant seeks Sunday opening until 22:00.

Main Issue

3. The main issue is the effect of the opening hours on the living conditions of local residents with regards to noise and disturbance.

Reasons

4. The appeal site is located within a short parade of shops and services serving the local community. There are flats above the row of shops, and in general, the local area is residential in nature.

5. I am aware of the objections received to the proposal from local residents. The occupants of the flats above are directly affected by the immediacy of the operations within the building and from customers coming and going from the

premises. Even if the appellant could provide taxi bookings for customers, neighbouring occupiers would be exposed to noise and disturbance arising from car doors closing, voices and car radios. The appellant's endeavours to limit numbers visiting the premises is noted. However, there are no precise details given to allow me to comment on this further.

6. The premises may be allowed to open until 22:00 on Mondays. I reason that as Sunday is the only day of the week when the premises are restricted to closing at 20:00, local residents would not be disturbed later into the night when there is a reasonable expectation of lower levels of disturbance on a Sunday evening than any other evening throughout the week.

7. I appreciate the public house close by may have extended opening hours on a Sunday compared to the proposal before me. However, this is a standalone building and its relationship with local residential dwellings is not precisely the same as that of the appeal proposal.

8. The local retail shop along the parade may close at 22:00 although this functions as a convenience store. The customer offer and consumer pattern of shopping is different to that on offer to that of the appeal site. The circumstances of the two businesses cannot reasonably be compared. The café may be open until 21:00. However, this is an earlier close than that requested by the appellant. In any event, the precise details of its circumstances are not before me to comment.

9. The Coronavirus pandemic may have affected trading at the site. However, the mandatory restrictions that the business has been subjected to is no longer in place. To add, I accept that there is concern regarding running a successful business post-pandemic although there is nothing before me to suggest that numbers of people currently employed would be at risk or that the business as a viable commodity would be compromised by not being allowed to open for business later into the evening on a Sunday.

10. To conclude on this matter, an extended opening until 22:00 on Sundays would result in detrimental harm arising to the living conditions of local residents, and on this basis the appeal is not supported as the proposal would be contrary to Policy DM1 of the South Tyneside Local Development Framework Development Management Policies 2011 in its aims to protect residential amenity.

Conclusion

11. As the proposal would result in harm arising to the living conditions of local residents, it would thus lead to conflict with the development plan taken as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should not succeed.

Alison Scott

INSPECTOR