



Appeal Decision

Site visit made on 31 January 2023

by **E Grierson BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14 February 2023

Appeal Ref: APP/V2255/W/22/3301232
76-78 West Street, Sittingbourne ME10 1AR

- 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 Millman (Nine Food Group Limited) against the decision of Swale Borough Council.
 - The application Ref 22/501832/FULL, dated 6 April 2022, was approved on 6 June 2022 and planning permission was granted subject to conditions.
 - The development permitted is the change of use of premises from retail shop (formerly use class A1, now use class E(a)) to a hot food takeaway (sui generis use), incorporating installation of mechanical plant.
 - The condition in dispute is No 4 which states that: The premises shall not be open for business outside of the hours of 11:00-23:00 hours Monday to Sunday.
 - The reason given for the condition is: In the interest of residential amenity.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect that amending condition 4 would have on the living conditions of the occupiers of neighbouring dwellings with regard to noise and disturbance.

Reasons

3. Planning permission has been granted on the appeal site for a change of use from a retail shop to a hot food takeaway including the installation of mechanical plant. The appeal seeks to vary condition 4 of this planning permission in order to change the stipulated opening hours of the premises on Fridays and Saturdays from 11:00-23:00 hours to 11:00-00:00 hours. The opening hours on Sundays to Thursdays would remain the same.
4. The appeal site is located at the end of a terraced parade of commercial units on a traffic light controlled junction of a busy A-road, the A2. There is a residential block of flats, known as Wingate Court, on the opposite side of the road to the appeal site and residential properties at first floor level within the host parade of shops, with the closest to the appeal site located at 74 West Street.
5. Due to the presence of a number of other commercial units and the proximity to a busy road and junction, the background noise levels within the vicinity of the appeal site, during the day, are high. However, this is considerably lower between the hours of 23:00 and 00:00 when the majority of the other commercial units are closed and the amount of traffic is reduced. It is noted

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Appeal Decision APP/V2255/W/22/3301232

that the neighbouring taxi office and car park to the rear may have no planning restrictions with regard to opening hours. However, as the unit is a control room only the number of visiting members of the public would be minimal and there is no evidence to suggest that the number of vehicle movements to and from the car park between 23:00 and 00:00 is particularly high. Therefore, the background noise levels in the area surrounding the appeal site at this time would still be considered low.

6. The acoustic assessment, provided as part of the application, states that the noise generated by the mechanical plant would have a low impact between 23:00 and 00:00. However, the use itself would be likely to create noise and disturbance to the occupiers of nearby residential properties from the comings and goings of customers, people talking and additional vehicle movements. During these late night hours, when background noise levels are lower, any noise created by visitors to the shop would be more noticeable to the neighbouring occupiers. Any noise generated would also be less permissible during these hours, when occupiers are more likely to be sleeping and expect a quieter environment. It is not known how many people would be likely to visit the shop during the extended hours proposed and how much noise this would generate. Nevertheless, due to the relatively quiet surrounding environment at this time and the close proximity of the appeal site to residential properties, any additional noise from the proposed changes to condition 4 would be likely to result in significant disturbance to occupiers of the nearby residential units.
7. Aida Kebab House at 59 West Street operates as a hot food takeaway and has late night opening hours, particularly on Friday and Saturday when it is permitted to open until 02:00. Although located in a different parade of shops, it is relatively close to the appeal site. Whilst this unit does contribute to the existing background noise levels in the surrounding area, particularly after 23:00 when little else is open, the proposed extension in opening times at the appeal site would further add to these noise levels to the detriment of the living conditions of the occupier of neighbouring properties. Therefore, the opening hours at Aida Kebab House would not inherently make the proposal acceptable.
8. It is also noted that the Council's Environmental Health team did not object to the appellant's preferred opening hours within the original application. However, again, this would not make the proposal acceptable in planning terms, where different matters are under consideration.
9. I therefore conclude that amending condition 4 to extend opening hours on Fridays and Saturdays would have a harmful impact on the living conditions of the occupiers of the nearby neighbouring dwellings. It would therefore conflict with Policies DM1 and DM14 of The Swale Borough Local Plan 2017 which seek to ensure that non-retail uses in areas, defined as secondary shopping frontages, do not lead to a loss of residential amenity or cause significant harm to amenity and other sensitive uses.

Conclusion

10. For the reasons given above, I conclude that the appeal should be dismissed.

E Grierson

INSPECTOR