



Appeal Decision

Site visit made on 13 September 2010

by **Malcolm Rivett BA (Hons) MSc MRTPI**

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

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Decision date:
21 September 2010

Appeal Ref: APP/H0738/A/10/2131675 5 High Street, Yarm, Stockton-on-Tees, TS15 9BW

- 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 Javed Majid against the decision of Stockton-on-Tees Borough Council.
- The application Ref 09/2958/VARY, dated 4 December 2009, was refused by notice dated 25 January 2010.
- The application sought planning permission for demolition of existing garage buildings and erection of 3 storey building comprising café/bistro on ground floor with 3 no apartments above and associated car parking without complying with a condition attached to planning permission Ref 07/1962/REV, dated 21 September 2007.
- The condition in dispute is No 12 which states that: the A3 use and its associated premises to which this permission relates shall not be open for business outside the hours of 09:00 hours and 20:00 hours, and shall be vacated by all visiting members of the public by 20:00 hours.
- The reason given for the condition is: in the interests of the amenities of the occupants of residential properties in the locality.

Preliminary matter

1. The appellant has sought to vary the disputed condition to permit opening of the café/bistro until 23:00 on Sundays to Thursdays and midnight on Fridays and Saturdays. The café/bistro has not yet been built and its site was, at the time of my visit, vacant.

Decision

2. I dismiss the appeal.

Main issue

3. The main issue of the appeal is the effect of the proposed extension in opening hours on the living conditions of nearby residents, having particular regard to noise/disturbance.

Reasons

4. High Street has a large number of pubs, bars and restaurants and is, I understand, lively until the late evening most days of the week. However, I have noted that the majority of these premises are in the central and northern parts of the street and that there are fewer such uses in its southern section. I understand that the appeal site is outside the defined Yarm Town Centre. The nearest existing pub/restaurant to the site is a good distance away to the

north, out of normal earshot. I recognise that there is routinely late evening noise in the central and northern parts of the High Street. There is conflicting evidence before me on the extent of this at the southern end of the street, although given the lack of other bars/restaurants in this area, and its more residential character, I envisage that late evening noise is significantly less here than elsewhere in the High Street.

5. The extended hours of operation of the proposed premises would, in the mid – late evening, attract diners to the vicinity who would be otherwise likely to visit and remain in the central and northern parts of the High Street. The voices of people approaching, at and departing from no 5 (some of whom could be in high spirits) would be likely to be heard by the residents of a number of properties within earshot of the premises' entrances. These include 2, 4, 6, 15, 17 and 19 High Street, which all front directly onto the road, the flats proposed on the first and second floor of the appeal premises and the approved residential development immediately opposite no 5. The arrival/departure of customers by car or taxi would also be likely to be heard by these residents. In my view such noise would, in the mid-late evening, be likely to cause significant disturbance to these residents resulting in unacceptable harm to their living conditions.
6. I appreciate that people pass by the appeal site (both on foot and in cars/taxis), in the late evening, on their way to and from the busier parts of the High Street. However, I consider that this is likely to cause less noise and disturbance to the residents of the properties referred to above, than would be the case if the appeal premises were to be open until 23:00/midnight. In accordance with policy GP1 of the adopted *Stockton-on-Tees Local Plan* I have assessed the café/bistro, in the light of the proposed opening hours, in relation to the effect on the amenities of the occupants of nearby properties and I conclude that significant harm would be likely.
7. I appreciate that the approved opening hours have restricted the level of interest in developing the café/bistro and that, if this appeal is dismissed, the scheme may not proceed; its consequent benefits to the character and appearance of the Conservation Area, and in providing a noise baffle to dwellings to its rear, thus not being secured. However, I am not persuaded that this outweighs the harm which would be likely to be caused to the living conditions of the residents of nearby properties on High Street, particularly as the cited benefits of the scheme could be secured by some other form of development on the site. I understand that the previous use of the site (a garage) did not have restricted hours of operation. However, this development has been demolished and, in any case, I am not aware that it routinely operated until the late evening. I also appreciate that other restaurant operations in Yarm have much later opening hours, although unlike no 5, they are not situated at the less commercial and more residential southern extremity of High Street.
8. The Council's decision notice refers to loss of privacy likely to arise from the extended opening hours which its appeal statement indicates can relate to visual and audible disturbance. Whilst I have found that unacceptable noise and disturbance would be likely to be caused by the proposed opening hours, I am not persuaded that visual disturbance or loss of privacy for neighbouring residents would result from the scheme. Nonetheless, for the reasons above

and having regard to all other matter raised, I conclude that the appeal should be dismissed.

Malcolm Rivett

INSPECTOR