



Appeal Decision

Site visit made on 21 October 2015

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

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

Decision date: 6 November 2015

Appeal Ref: APP/H0738/W/15/3106015

373 Thornaby Road, Thornaby, Stockton-on-Tees, Cleveland TS17 8QN

- 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 PJ's Takeaway against the decision of Stockton-on-Tees Borough Council.
 - The application Ref 14/2542/VARY, dated 23 September 2014, was refused by notice dated 18 November 2014.
 - The application sought planning permission for change of use from Class A1 to Class A5 with external alterations without complying with a condition attached to planning permission Ref 11/0650/FUL which was granted on 23 April 2012 by the appeal decision Ref APP/H0738/A/12/2169176.
 - The condition in dispute is No 3 which states that: The use hereby permitted shall not be open for customers outside the hours of 0600 to 2200 on any day.
 - The reason given for the condition is set out in the appeal decision.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect on the living conditions of the residents of the surrounding properties with regard to noise and disturbance.

Reasons

3. The existing permission allows the takeaway to open until 2200 hours every night. The proposal is to extend the opening times until 2330 hours except on a Sunday when the business would close at 2300 hours.
 4. The property has some locational benefits in that there is no development immediately to the south. To the north is Laburnum Avenue and the nearest house is set beyond a hedge and well within its large plot. Although there is housing to the rear, the activity associated with this business is focused to the front. The business is however, directly opposite residential properties on the opposite side of Thornaby Road.
 5. Residents of two properties have raised concerns. It is suggested that they already experience unacceptable levels of noise and traffic pollution on an
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- evening, including the revving of engines and music from cars whilst the occupants wait for their food. It is also identified that significant noise is experienced as customers of the two nearby pubs head to the takeaways after drinking. Singing, arguing, shouting and swearing have been reported by the residents.
6. The Architectural Liaison Officer advises that there have been no incidents reported to the Police over the past 12 months linked to the premises. Whilst this is a positive feature, noise from low level anti-social activity before 2200 hours, which may disturb the residents, is unlikely to be reported to the Police.
 7. The Council's Environmental Health Officer objects to the proposal due to the proximity of residential premises and the potential for noise disturbance from both customers using the facility and vehicles servicing the premises. No evidence has been provided of any existing concerns that have been reported or any analysis of the existing levels of activity and noise at 2200 hours.
 8. I am mindful that the original application in 2011 received objections from residents of twelve properties, eight of which were on Thornaby Road. This proposal has resulted in two objections. This however does not undermine the concerns expressed, particularly given the proximity of one of the households. There can be many reasons why residents choose not to comment on an application. The lack of concern raised by residents of the wider area does not suggest support for the proposal but it also does not contradict the appellant's view that the extended hours would be acceptable.
 9. The Red Rose Chippy, is an existing takeaway on Laburnum Avenue. It is relatively close to this proposal but I anticipate that it has only a very limited impact on residents within properties on Thornaby Road. I understand that it opens until midnight. It similarly lies between the two nearby public houses. I am satisfied therefore that patrons of the public houses are likely to continue to frequent this general area regardless of the outcome of this appeal.
 10. The appellant has submitted predictions which suggests that sales would increase by about 40% as a result of the extra hours of opening. This would represent a significant level of custom during these additional hours. Those customers that are attracted to these premises are likely to create more noise and disturbance in the vicinity of the appeal property than those that would historically have continued to the Red Rose Chippy. Whilst the predictions cannot be relied on, the greater concentration of late night facilities may attract greater numbers of visitors to the area overall. In any event, vehicles and customers on foot, visiting this property after 2200 hours, would create noise at a later time than at present.
 11. I accept that this is a relatively busy road. However, the access to the parking area is directly outside the houses opposite and the layout requires that vehicles must be manoeuvred in order to enter and leave in a forward gear. The shop front, although set back from the road, is only in the region of thirty metres from the nearest bedroom window. These houses have large first floor windows with aspects directly towards the premises. Activity outside the takeaway, late at night, would be noticeable within these front facing bedrooms, particularly in summer if the windows were open.

12. Given that the other commercial activities in the immediate vicinity, other than the Red Rose Chippy, are closed by 2200 hours, the introduction of later opening and activity in such close proximity to the houses immediately opposite, would result in levels of noise and disturbance from cars and customers that I consider would be harmful to the living conditions of those residents, after 2200 hours. I conclude therefore that the proposal would conflict with Policy S14 of the Stockton-on-Tees Local Plan Alteration Number 1 (2006) as it would be harmful to residential amenity in terms of noise and disturbance. This element of the policy generally accords with the amenity requirements of the *National Planning Policy Framework* and can be afforded considerable weight.
13. Reference has been made to other decisions whereby late opening hours have been considered to be acceptable. Each proposal must be considered on its own merits but appellants are entitled to expect consistency in decision making. I have therefore had regard to the decisions referred to and briefly outline my findings below.
14. The premises at 413 Thornaby Road is nearby on a busy junction. One of the public houses referred to above, is diagonally opposite. The nearest house is to the rear and is screened by the building itself. It also faces away from the premises and parking area. There is a single large house opposite but this is set in relatively large grounds with a high screening hedge. I do not find that the likely existing level of late night activity or the physical characteristics of the immediate area are directly comparable with this proposal.
15. The takeaway within part of the former Mandale Hotel, Lanehouse Road has a substantial parking area that also serves the convenience store. There are other commercial properties in the vicinity and there is housing directly opposite. There are therefore similarities with this proposal. However, the parking provision and hours of operation are described as being consistent with the former public house use and as such, the late evening environment would have been very different from this proposal.
16. Three further applications relating to takeaways are referred to but these properties clearly differ as they are all set within commercial parades where existing activity levels would be expected to be higher than at the appeal site. With regard to 21 Station Road the nearest house is opposite but set well away from the boundary and with an aspect away from the premises. The 78 Lanehouse Road and 75 Oxford Road applications, relate to properties close to each other within a group of commercial buildings. These premises are very close to an existing takeaway which opens until midnight and is between these shops and the nearest residential property. The further late night uses were not considered to add to the existing situation. I do not find the decisions relevant to any of the above mentioned properties to offer support for the particular circumstances of this case.
17. Reference has also been made to takeaways with no opening restrictions, including the Red Rose Chippy. I understand that these were permitted many years ago. I am not satisfied that circumstances surrounding the applications or the detail of the development plan at that time, were similar. I also have no evidence as to their impact on their surroundings but in any event, they do not represent a good reason for accepting this proposal.

18. I acknowledge that the proposal would help to support this commercial activity and help the operators compete with nearby takeaways that are now permitted to open later or have no restrictions. These matters gain considerable support from the *Framework*.

Conclusions and other matters

19. I have considered all the matters put forward by the appellant and I find in particular, that the economic benefits of the proposal provides considerable weight in favour of the extended hours. However, on balance, I am not persuaded that these matters are sufficient to outweigh my concerns with regard to the harm that would result to the living conditions of the residents directly opposite.
20. It has been suggested that the existing condition, restricting opening hours, is unnecessary and as such, does not satisfy paragraph 206 of the *Framework*. Given my findings, I consider that the condition is necessary to protect the living conditions of the residents directly opposite. I also find that it meets the other requirements of paragraph 206.
21. The appellant has suggested that if general opening of the premises is not considered acceptable, that the use of the facilities for deliveries only, after 2200 hours, should be considered. If the comings and goings were limited to the drivers associated with the business, vehicle activity after 2200 hours would be more limited. There would be no concerns regarding noise from visiting customers. I find this approach to have some merit. However, I also have some concerns. As it would appear that the premises were in use after 2200 hours, it would attract passing visitors on foot and in cars. Their inability to then access the services could result in greater concerns with regard to noise and disturbance.
22. It may be possible to devise measures that would ensure that the operations within the building and the presence of delivery vehicles and drivers would not result in the appearance of the takeaway being open after 2200 hours. The position of the car parking area however would seem to militate against this. A condition has not been suggested to facilitate this separate, after hours use and I am not persuaded that other additional requirements would not be necessary. In the absence of proposed conditions, I am not certain that they would achieve these requirements or that they would satisfy paragraph 206 of the *Framework*, particularly with regard to their precision and enforceability.
23. On the basis of the information before me, I am not satisfied that my concerns with regard to the proposed later opening hours could be overcome by the imposition of additional conditions. I therefore dismiss the appeal.

Peter Eggleton

INSPECTOR