



Appeal Decision

Site visit made on 10 June 2013

by Simon Miles BA(Hons) MSc MRTPI

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

Decision date: 20 June 2013

Appeal Ref: APP/Q1445/A/12/2189311

Jade Chinese Restaurant, 29 Western Road, Hove, East Sussex BN3 1AF

- 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 Miss Heng Wong against the decision of Brighton & Hove City Council.
 - The application Ref BH2012/00334, dated 26 March 2012, was refused by notice dated 13 June 2012.
 - The application sought planning permission for change of use from shop (A1) to restaurant (A3) without complying with conditions 2 and 3 of planning permission Ref 3/95/0080(F), without complying with a condition attached to planning permission Ref 3/96/0200(F), dated 12 March 1997.
 - The condition in dispute is No 2.
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Decision

1. The appeal is dismissed.

Introduction and Main Issue

2. Planning permission Ref 3/96/0200(F) was granted on appeal on 12 March 1997. This substituted the following condition in place of those previously imposed on planning permission Ref 3/95/0080(F):

The use hereby permitted shall not be open to customers except between the hours of 0900 to 2400 hours on Mondays to Thursdays inclusive; between the hours of 0900 on Fridays to 0100 hours on Saturday morning and between 0900 hours on Saturdays to 0100 on Sunday mornings; and between the hours of 1100 hours and 2300 hours on Sundays and Bank Holidays.

The reason for the condition is given in the Inspector's decision, which explains that the condition is required in the interests of the amenities of local residents. This latest proposal seeks to vary this condition so that the opening hours would be 1200-0200 every day. I have noted that the premises would continue as a restaurant and not a takeaway. The main issue is the effect on the living conditions at nearby residential properties if the opening hours were extended as proposed.

Reasons

3. The appeal relates to 29 Western Road, which is located in an area including a mix of commercial and residential uses. It is obvious that Western Road, because of its commercial uses and vehicular traffic, is associated with a fair degree of activity and associated noise and disturbance. However, the roads leading off Western Road are primarily residential in character.
4. Although the premises are licensed until 0200, in 2011 Western Road was included in the Council's designated Cumulative Impact Area (CIA) in an attempt to mitigate late night noise, disturbance and anti-social behaviour. This is a material consideration in the circumstances of this appeal. The Council advises that its current licensing policy is to restrict new or extended licenses in the CIA in order to better manage the cumulative impact of licensed late night venues.
5. Although the Council's Environmental Health Officer did not oppose the application, this appears to have been based on the fact that the premises are already licensed until 0200, with few complaints, and subject to conditions in relation to public nuisance. However, in planning terms I must consider the wider effect of the proposal on the residential amenities of the area and, in particular, the living conditions of nearby residents.
6. Whilst taken in isolation this proposal might not be unacceptable, I share the Council's concern about the adverse cumulative effect of this proposal on the CIA. When considered in this context, it seems to me that the proposal to extend the opening hours until 0200 would frustrate a concerted effort on the part of the Council and other organisations, including the Police, to reduce noise, disturbance and anti-social behaviour associated with late night venues.
7. In this regard the proposal would conflict with saved Policies QD27 and SU10 of the adopted Brighton & Hove Local Plan 2005 insofar as these are concerned to protect the amenity of existing and/or adjacent users, residents, occupiers and the surrounding environment. Although the National Planning Policy Framework broadly seeks to support businesses and promote economic growth, planning policies and decisions should avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of development. To the extent that an appropriate balance must be struck, the Council's policies are not inconsistent with this approach.
8. Overall, and having considered all the matters raised, I find that the appellant's proposal to extend the opening hours to 0200 every day would not strike an appropriate balance between the needs of the business and local residents. I take this view particularly in view of the cumulative effect of this proposal and the others that would surely follow if the above concerns were set aside without good reason.
9. This leads me to conclude that there would be a significant adverse effect on the living conditions at nearby residential properties if the opening hours were extended as proposed. Given my findings, the appeal does not succeed and the above condition continues to apply.

Simon Miles

INSPECTOR