
Appeal Decision

Site visit made on 10 February 2014

by Jonathan Manning BSc (Hons) MA MRTPI

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

Decision date: 27 February 2014

Appeal Ref: APP/Q1445/A/13/2209971
56 London Road, Brighton, BN1 4JE

- 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 Dominos against the decision of Brighton & Hove City Council.
 - The application Ref BH2013/03117, dated 6 September 2013, was refused by notice dated 22 November 2013.
 - The application sought planning permission for variation of condition 3 of application BH2010/02854 (Change of use from retail (A1) to hot food take-away (A5) incorporating new shop front and installation of extract duct) without complying with a condition attached to planning permission Ref BH2011/02890, dated 21 November 2011.
 - The condition in dispute is No 1 which states that: The premises shall not be in use except between the hours of 08.00 and 24.00 Sunday to Thursday, between 08.00 Friday and 02.00 Saturday, and between 08.00 Saturday and 02.00 Sunday.
 - The Council's decision notice (Ref BH2011/02890) did not stipulate a reason for the disputed condition
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Decision

1. The appeal is allowed and planning permission is granted for variation of condition 3 of application BH2010/02854 (Change of use from retail (A1) to hot food take-away (A5) incorporating new shop front and installation of extract duct) at 56 London Road, Brighton, BN1 4JE, in accordance with application ref BH2013/03117, dated 6 September 2013, without compliance to condition No 1 previously imposed on planning permission BH2011/02890, dated 21 November 2011, but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect, and subject to the following new conditions:
 - 1) For 12 months from the date of this decision, the premises shall not be in use except between the hours of 08.00 and 04.00 Monday to Sunday. The premises will not be open for walk-in counter sales between the hours of 01.00 and 04.00 Monday to Sunday. After this date, the premises shall not be in use except between the hours of 08.00 and 24.00 Sunday to Thursday, between 08.00 Friday and 02.00 Saturday, and between 08.00 Saturday and 02.00 Sunday.
 - 2) Electric delivery vehicles shall be the only form of motor vehicle used for such purposes between the hours of 01.00 and 04.00 Monday to Sunday.

Background and Main Issue

2. The appellant is seeking to extend the opening hours of the premises to 08.00 to 04.00 daily, so as to broadly align with those permitted under the Premises Licence granted in March 2013 by the Council under the Licensing Act 2003.
3. The main issue is the effect of the proposed variation of condition No 1 on the living conditions of local residents, with particular reference to noise and disturbance.
4. Whilst the Council did not provide a reason for the disputed condition upon its decision notice Ref BH2011/02890, I have had regard to the reason provided upon decision notice Ref BH2010/02854 which states that the original condition was required "To safeguard the amenities of the locality and comply with policies QD27, SU9 and SU10 of the Brighton and Hove Local Plan".

Reasons

5. The appeal site is located on London Road, which is a busy high street that accommodates a range of uses including retail, business, restaurants, hot food take-aways and public houses. I observed on my site visit that there are residential properties in close proximity to the appeal site, predominantly flats above ground floor units. It was evident that London Road, by its nature and activities, is likely to experience noise and disturbance until late at night.
6. There is some disagreement over the level of importance of the Premise Licence that has been granted by the Council for the premises. Whilst I concur with the Council that there is a clear distinction between licensing considerations and those of planning, the Premise Licence does however, form a planning consideration. In any event, I have considered the proposal's effect on the living conditions of local residents on the individual merits of the case that are before me.
7. The appellant is seeking to extend the opening hours until 04.00 daily. I consider that opening to counter customers until 04.00 daily would likely cause an unacceptable level of noise and disturbance to local residents, due to the associated level of likely comings and goings that it would generate. However, the appellant has offered for counter sales to cease at 01.00 daily, with delivery sales only between the hours of 01.00 and 04.00. This would result in the premises opening to counter customers one hour later on weekdays and closing one hour earlier on weekends, from that currently undertaken. Given the nature of the area and its likely late night activities, I do not consider that the extension to opening times for one hour on weekdays is likely to result in any significant increase in noise or disturbance to local residents.
8. The appellant has also offered to restrict deliveries between 01.00 and 04.00 to be made by electric vehicles only, which by their nature are quieter than other motor vehicles. As a result, the only likely noise and disturbance that would occur during this time would be from the opening and closing of the premises and delivery vehicle doors, plant and machinery and voices. The appellant has provided evidence for other similar stores that demonstrates that deliveries between the hours of 01.00 and 04.00 are likely to be relatively modest. Whilst I acknowledge that these are remote from the appeal site, I nonetheless consider that they offer a reasonable indication. In addition, there is no evidence provided by the Council to suggest that the plant and machinery

which would be contained within the premises, would cause unacceptable noise and disturbance to local residents. I am also mindful that the Environmental Health Officer (EHO) does not raise concern in this regard. For these reasons, I consider that the proposal with these measures in place, which could be secured through planning conditions, is unlikely to result in an unacceptable level of noise or disturbance to local residents.

9. In addition to my findings above, there are a number of letters of support. The appellant has also set out that there have been no complaints made since the premises was opened. The Council's EHO also raises no objection, but requests that a temporary permission is granted in the first instance. I consider that this is both reasonable and necessary, given that the extension of hours are significant and would allow the Council to fully assess the impact of the proposal during this period.
10. Sussex Police have concerns in relation to the extended opening hours, however, I am mindful that the Premise Licence has been granted for the sought hours and Sussex Police would have been consulted during that process. I am also mindful that in the event of late night noise and disturbance local residents could seek a review of the authorisation for the Premise Licence by the Council. Given this and my findings above, I am not minded to reach any alternative conclusion.
11. The Council has set out that the existing opening hours are consistent with others in the area, however whilst this may be the case, I must consider the appeal on the individual circumstances of the case that are before me.
12. I conclude that the proposal would not result in any unacceptable noise or disturbance to local residents thereby harming their reasonable living conditions. I consider that the proposal complies with the objectives of the Brighton & Hove Local Plan (2005), particularly Policies SU10 Noise nuisance and QD27 Protection of amenity.

Conditions

13. With due regard to the advice of Circular 11/95 Use of Conditions in Planning Permission and the submissions of both the Council and the appellant, I consider it necessary in the interests of the living conditions of local residents to impose conditions for the opening times 08.00 to 04.00 Monday to Sunday, with counter sales to cease at 01.00 daily and for electric delivery vehicles to be the only form of motor vehicle used for such purposes between the hours of 01.00 and 04.00 daily. In addition, to allow the Council to fully assess the effect of the proposal on the living conditions of local residents Condition 1 requires the extended opening hours to cease after one year from the date of this decision and to revert to the current arrangement thereafter.

Conclusion

14. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should succeed. I will therefore grant a new planning permission omitting the disputed condition No 1 and imposing new conditions.

Jonathan Manning

INSPECTOR