



Appeal Decision

Site visit made on 23 May 2023

by Elaine Moulton BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 June 2023

Appeal Ref: APP/L3245/W/22/3312879

182 Monkmoor Road, Shrewsbury, Shropshire SY2 5BH

- 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 Ozturk against the decision of Shropshire Council.
 - The application Ref 22/03019/VAR, dated 28 June 2022, was refused by notice dated 23 August 2022.
 - The application sought planning permission for alterations to existing retail unit to form a hot food premises and takeaway premises including flue and ventilation system to include change of use without complying with a condition attached to planning permission Ref 18/05121/FUL, dated 21 December 2018.
 - The condition in dispute is No 6 which states that: *The takeaway premises (Use Class A5) hereby approved shall only operate between the hours of 15:00 and 24:00 Monday to Sunday. No customers shall remain on the premises and no deliveries from the premises shall take place outside of these hours.*
 - The reason given for the condition is: *In the interests of neighbouring amenity.*
-

Decision

1. The appeal is dismissed.

Background and Main Issue

2. Planning permission was granted for the use of the appeal premises for hot food and takeaway, subject to a number of conditions including one which restricted the operation of the premises to between specified hours. The appeal seeks to vary condition 6 of that permission, Ref 18/05121/FUL, to extend the permitted hours and allow customer deliveries from midnight until 2am.
3. A further application was submitted by the appellant, Ref 22/05557/VAR, also seeking to vary condition 6 of permission Ref 18/05121/FUL to allow customer deliveries until 2am. Whilst the Council did not permit the variation as sought, it did vary the condition to allow opening between 8am and midnight. In addition, the use of the premises was specified to include restaurant in the varied condition in addition to a hot food takeaway. I have therefore assessed the appeal on the basis of the use of the appeal premises as a restaurant and hot food takeaway.
4. Having regard to the appeal submissions and background, the main issue is the effect that the proposed change in the hours that customer deliveries can take place has on the living conditions of the occupiers of residential properties in the area, by reason of noise and disturbance.

Reasons

5. The appeal property is located on a reasonably busy main road. It is one of a row of 4 commercial properties which include a small supermarket, Indian restaurant and takeaway, and Post Office and general store. There is a flat above the post office as well as residential properties to either side, opposite and to the rear of the row. Whilst there are further commercial properties and a police station nearby, the area is predominantly in resident use.
6. The diversity of services and facilities along Monkmoor Road is such that a lot of activity is generated during the day and in the evening. Residents near to the site therefore experience a degree of noise and disturbance associated with the day-to-day use of this area and from the road. It is, however, reasonable to anticipate that background noise will reduce in the late evening and at night when such activity and vehicular traffic also reduces. In this regard I noted on my site visit that the other commercial units in the row all close by 10pm.
7. Takeaway meals would not be collected by customers but delivered by car rather than motorcycles or vans with staff using a side door within an area enclosed by buildings and boundary treatments. In addition, the appellant has stated that there is no longer any intention of operating delivery services on behalf of other Shrewsbury premises from the appeal site. Such factors would reduce noise and disturbance.
8. Nonetheless, the opening and closing of car doors and the noise of running engines, associated with the delivery service, would generate sudden and intermittent types of noise which would be likely to be audible above the ambient levels. Such noise would be intrusive and would disturb the occupants of nearby dwellings, particularly in the summer months when residents may choose to keep their windows open. Moreover, the noise and disturbance arising from the appeal proposal would add to that arising from the use of the adjoining 24 hour ATM to the further detriment of the living conditions of nearby residents.
9. While a premises licence may have been granted until 2am, this relates to the requirements of the Licensing Act 2003. This regime, while considering the matter of public disturbance, is distinct from planning. In any event, I note that the operation of a delivery service with no collection by customers, as in this case, does not require a license. The controls imposed through the existing license would not, therefore, apply to the proposal. In this context the fact that a licensing application has been granted carries limited weight and I have determined the appeal on the basis of the planning merits of the proposals before me.
10. I acknowledge that the staff involved in deliveries within the proposed extended hours would be made aware of the need to keep noise to a minimum and that this could be addressed in a noise management plan which could be secured by a planning condition. Nonetheless, I am not persuaded that the imposition of such a condition would address the noise associated with the running of car engines and the opening and closing of doors. In this regard I note the comments of the Council's Environmental Protection Team about historic complaints regarding late night disturbance caused by delivery vehicles. Whilst there is no clear and compelling evidence that the complaints are due to the operation of the appeal premises, this strongly suggests that the

type of activity associated with the proposal could adversely affect the living conditions of nearby residents.

11. Early morning opening hours would provide additional income to the business during difficult economic times, but no substantive evidence has been provided that demonstrates that the business would be significantly harmed without the extension of hours as proposed. This limits the weight that I can attribute to this matter.
12. I have been presented with no compelling evidence that demonstrates that the concerns of the Council, regarding preparation of food during the proposed extended hours, would result in any external noise or additional odours that would be detrimental to the living conditions. Nevertheless, this is not determinative as I have found harm arising from the comings and goings of delivery vehicles as detailed above.
13. I therefore conclude that the proposed change in the hours that customer deliveries can take place would cause significant harm to the living conditions of surrounding residents, with regard to noise and disturbance. As a result there would be conflict with Policy CS6 of the Shropshire Council Adopted Core Strategy (2011) (CS) which seeks to ensure that all development, amongst other things, safeguards residential and local amenity. It would also be contrary to paragraph 130 of the National Planning Policy Framework which seeks development that, amongst other things, provides a high standard of amenity.
14. The Council has also referred to policy MD2 of the Shropshire Council Site Allocations and Management of Development Plan (2015) (SAMDev) in its decision notice. However, as the policy does not specifically address impacts on living conditions it does not apply in this case.

Other Matters

15. My attention has been drawn to the change of officer opinion since the decision was made on original application, Ref 18/05121/FUL, when there was officer support for the operation of the premises until 2am. The Council has, nevertheless, produced clear and specific reasons for its decision in this case, which was reached some considerable time after the original application was permitted and after the use became operational. I have shared its view that extended hours are unacceptable for the reasons set out above.
16. I note that there was some third-party support for the proposal. However, such support for reasons, which include an increase in work opportunities, and the increase in variety and convenience of food options within the area, do not outweigh the harm that I have identified.

Conclusion

17. The development conflicts with the development plan when considered as a whole and there are no other considerations, either individually or in combination, that outweighs the identified harm and associated development plan conflict.
18. I hereby dismiss this appeal.

Elaine Moulton INSPECTOR