
Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 11/5/16

**gan P G Horridge BSc(Hons) DipTP
FRICS MRTPI**

Arolygydd a benodir gan Weinidogion Cymru
Dyddiad: 25.05.16

Appeal Decision

Site visit made on 11/5/16

**by P G Horridge BSc(Hons) DipTP
FRICS MRTPI**

an Inspector appointed by the Welsh Ministers
Date: 25.05.16

Appeal Ref: APP/H6955/A/15/3141501

Site address: 6 Brook Street, Wrexham LL13 7LL

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- 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 Tariq Mohamed (Armani Cuisine) against the decision of Wrexham County Borough Council.
- The application Ref WRO P/2015/0524, dated 25 June 2015, was refused by notice dated 2 November 2015.
- The application sought planning permission for change of use to restaurant (retaining some Newsagents services) without complying with a condition attached to planning permission Ref WRO P/2003/0608, dated 21 July 2003.
- The condition in dispute is No 2 which states that: "The premises shall not be used for any purpose within Class A3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (or in any provision equivalent to that class in any statutory instrument revoking and re-enacting that Order with or without amendment) other than as a restaurant/cafe. For the avoidance of doubt, no hot food or drinks shall be sold for consumption off the premises."
- The reason given for the condition is: "to ensure the use does not compromise the free flow of traffic and highway safety at a busy highway junction."

Decision

1. The appeal is dismissed.

Main Issue

2. At issue is the effect of the proposal on the safety of highway users and the free flow of traffic.

Reasons

3. The appeal premises currently operates as a hot food outlet under planning permission WRO P/2003/0608. The condition in dispute restricts its use to a restaurant/café and specifies that no hot food or drinks shall be sold for consumption off the premises. The proposal is to vary the permitted use to allow the provision of a home delivery service for food produced at the premises.
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4. The appellant says that current trading hours are from 11pm on Thursday to 5am on Sunday, although it is not clear whether the premises is open continually between these times or whether (as appears more likely to be the case) it only trades during night-time hours between 11pm and 5am the following morning on each of three nights of the week.
5. The site lies on the north side of Brook Street, a main road in a secondary shopping location in the centre of Wrexham. There are double yellow line parking restrictions on both sides of the road, with a loading-only bay on the opposite side of the road. Elsewhere along Brook Street are a number of on-street parking spaces which are restricted to 30 minute waiting between 8am and 6pm, and which the council says are well used by shoppers during this time. In the opposite direction, beyond the traffic light controlled junction between Brook Street and Bridge Street, is a public car park (St Giles).
6. Relevant local planning policy is contained in the Wrexham Unitary Development Plan (UDP) (adopted 2005). Policy GDP1 sets out basic development objectives, including that development should have safe and convenient pedestrian and vehicular access (criterion (d)). The UDP is supplemented by Local Planning Guidance Note 9 (LPGN9) dealing with hot food takeaways. Although the appellant argues that LPGN9 is of limited relevance as his proposal is for home delivery, LPGN9 defines hot food takeaways as establishments whose primary business is the sale of hot food for consumption off the premises, which would apply to home delivery services as well as takeaways.
7. As LPGN9 notes, hot food takeaways attract a high proportion of car borne, short-stay customers. They frequently park as close as possible to the takeaway in order to minimise the time between collecting and eating the food, often ignoring the presence of parking restrictions. At the appeal premises, such parking on double yellow lines could obstruct traffic flows and pose a danger to pedestrians and other road users, particularly at busy times on the road. This is why the condition in question was originally imposed. The appellant argues that this would not happen as he would not be offering takeaway sales to visiting members of the public, and drivers employed for home delivery would park either in the nearby on-street parking bays or at the St Giles car park. Nevertheless, once hot food becomes available for consumption off the premises, it would be difficult to distinguish whether it was being delivered by a driver or collected by a customer. Moreover, home delivery drivers may be tempted to stop outside the premises in order to collect and deliver food more quickly than if they have to walk to and from a parking space further away, particularly if there is competition for these available parking spaces. These problems could not be dealt with by the condition suggested by the appellant, prohibiting delivery drivers from parking outside the premises, as such a condition would relate to land outside the appellant's control and would not meet the test of enforceability.
8. There is some force in the appellant's argument that, as he only trades late at night, the problems identified above would not arise as there would be limited traffic on the road and very little pressure on nearby parking spaces. He argues that this would still be the case even if he opened earlier in the evening. However, the planning permission for the restaurant contains no restriction on its hours of opening, so to relax the condition could lead to future problems if the trading hours were to change. It may be that the appellant would accept an overall restriction on opening hours in order to achieve his objective of a home delivery service, but this may be pure speculation and in any event no such proposal has been made. Given the present

unrestricted hours of opening, and the likelihood that a home delivery operation would result in vehicles waiting outside the premises to collect food at times when this would impede traffic flows and pose a danger to other road users, the proposal would be contrary to UDP Policy GDP1(d) and LPGN9.

Peter Horridge

Inspector