

Penderfyniad ar yr Apêl

Appeal Decision

Ymweliad â safle a wnaed ar 27/01/14

Site visit made on 27/01/14

gan **Richard E. Jenkins BA (Hons) MSc MRTPI**

by **Richard E. Jenkins BA (Hons) MSc MRTPI**

Arolygydd a benodir gan Weinidogion Cymru

an Inspector appointed by the Welsh Ministers

Dyddiad: 26 Chwefror 2014

Date: 26 February 2014

Appeal Ref: APP/H6955/A/13/2208713

Site address: Village Shop, Llangollen Road, Acrefair, Wrexham, LL14 3RP

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 Mr Kaya against the decision of Wrexham County Borough Council.
- The application Ref CEF P/2013/0559, dated 7 August 2013, was refused by notice dated 1 October 2013.
- The application sought planning permission for the change of use from village store to hot food take away establishment without complying with a condition attached to planning permission P/2012/0490 granted on appeal on 3 January 2013 (ref APP/H6955/A/12/2183661).
- The condition in dispute is No 4 which states that "*The premises shall not be open for customers outside the following hours: 1600 – 2300 Mondays to Fridays; 1200 – 2300 Saturdays, Sundays and Bank Holidays*".
- The reasons given for the condition is to protect the living conditions of neighbouring occupiers.

Decision

1. The appeal is dismissed.

Procedural Matter

2. The Council determined the planning application on the basis of the proposed opening hours set out on the planning application form and the Design and Access Statement (DAS). These were:
 - Monday – Thursday: 1200 to 0000
 - Friday – Sunday and Bank Holidays: 1300 to 0100.
3. However, the appellant's Grounds of Appeal state that these times were subject to a typographical error and that the proposed opening hours should in fact be:
 - Monday – Thursday: 1600 to 0000
 - Friday – Sunday and Bank Holidays: 1300 to 0100.
4. The amended times would enable 1600 hrs openings on Mondays to Thursdays, which is already lawful under the terms of the planning permission granted under P/2012/0490. As such, I am satisfied that nobody would be unduly prejudiced by my consideration of the amended proposals. The Council has provided comments on the

Grounds of Appeal in its Appeal Statement. For these reasons, and for the avoidance of any doubt, I have determined the appeal on the basis of the amended proposals, as set out in the Grounds of Appeal.

Main Issue

5. These are the effect of the proposed opening hours on:
- the living conditions of neighbouring occupiers, with particular reference to noise and disturbance; and
 - the health of local children as a result of the close proximity to a local school.

Reasons

6. The appeal property is located in a mixed residential and commercial area on Llangollen Road. Planning permission was granted for the change of use of the former village shop to form a hot food take away establishment, although Condition No 4 stipulated that the premises shall not be open for customers outside specified hours. However, following the implementation of the planning permission, the appellant now contends that an amendment to the opening hours is necessary to avoid a loss of trade, particularly to other take away facilities in the area which are said to benefit from more preferential opening hours.
7. The opening hours were restricted on the original grant of planning permission in order to protect the living conditions of neighbouring occupiers. The permission was granted in January 2013 and nothing has been submitted to demonstrate a change in circumstances to suggest that the living conditions of the occupiers of neighbouring properties would no longer need protecting. Indeed, I was able to confirm at my site visit that the area still constitutes an area of mixed use, incorporating a significant number of residential properties.
8. In terms of living conditions, the principal change would be the proposed late night operating hours. In this respect, I acknowledge that the proposed hours would only constitute an extra hour between Mondays to Thursdays and two hours on Fridays, Saturdays, Sundays and on Bank Holidays. Nevertheless, evidence has been submitted in an attempt to demonstrate levels of late night noise and disturbance in the area. Indeed, a local member has submitted that numerous complaints have been received from local residents by reason of levels of general noise and disturbance, including that generated by a delivery service being operated from the appeal property.
9. I acknowledge that the premises is located on a busy road which includes a local public house. I also acknowledge that not all the noise and disturbance experienced by the occupiers of nearby dwellings is directly associated with the take away facility. Nonetheless, the proposed extension of the hours would inevitably exacerbate current problems and prolong such activity into unsociable hours, not least on days within the working week.
10. I acknowledge the presence of other take away facilities in the area, including a Chinese restaurant further up Llangollen Road. The submitted evidence advises that this premises is surrounded by residential properties and I have also been provided with estimated operating hours. However, whilst such times have not been confirmed, it would appear that the facility is closed from 2300 on each day of the week, meaning that its closing hours are entirely consistent with those conditioned at the appeal site. Notwithstanding this, each case should be considered on its own particular merits and,

in light of the evidence of late night disturbance in the area, I do not consider later operating hours to be appropriate at the appeal property.

11. Turning to the proposed opening hours, evidence has been submitted to demonstrate a need to combat obesity in children and improve community health. In this regard, and given that the premises is located within 400 metres of a local primary school, I consider the permitted opening hours of 1600hrs on Mondays to Fridays to be entirely appropriate and necessary to accord with the aims of Local Planning Guidance Note No.9: Hot Food Take Aways (LPG9) and the wider health and well being agenda.
12. I acknowledge that the proposed opening hours would be one hour later than the permitted hours on Saturdays, Sundays and Bank Holidays. However, earlier opening hours on weekdays, such as the 1300 proposed for Fridays, would increase the likelihood that children would utilise the facility on their journey home from school. I acknowledge the availability of unhealthy snacks at the nearby newsagent. However the goods sold within an established convenience store is not a matter for me to determine under this appeal and, in any event, I consider such a use to be materially different to a take away facility set up primarily for the sale of fast food.
13. I recognise the service the take away facility provides for the residents of the area. I have also fully considered the potential loss of trade by reason of the restricted opening hours. However, based on the balance of evidence before me, I do not consider that such matters outweigh the need to safeguard the living conditions of the occupiers of neighbouring properties.
14. I note that the DAS makes reference to the appellant's aspiration for a seating area within the premises. Whilst I accept that no food would be consumed on the premises, this would directly conflict with the requirements of Planning Condition No.2 of the aforementioned planning permission. Nevertheless, this is not the proposal before me and any such proposal would need to be subject to a separate planning application.
15. Finally, having considered all the matters raised by interested parties, I note the concerns relating to the breach of planning conditions at the appeal property. However this is not a matter for me to determine under an appeal lodged under section 78 of the above Act and remains out of my jurisdiction. Accordingly, such matters have not influenced my decision in determining this appeal.
16. Therefore, based on the foregoing analysis, I conclude that the opening hours prescribed under Condition 4 are entirely necessary (as required by Circular 35/95: *The Use of conditions in Planning Permissions*) to ensure compliance with Policy GDP1 of the Wrexham Unitary Development Plan which, amongst other things, aims to ensure the amenity of the public and safeguard the environment from the adverse effects of pollution and associated noise. It is also necessary to ensure compliance with the aims of adopted LPG9 – *Hot Food Takeaways*.
17. For these reasons, and having considered all matters raised, including those raised by interested parties, I conclude that the appeal should be dismissed.

Richard E. Jenkins

INSPECTOR