



Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 07/07/09

Appeal Decision

Site visit made on 07/07/09

gan / by Leslie Coop BA(Hons) Dip TP MRTPI

Arolygydd a benodwyd gan y Gweinidog
dros yr Amgylchedd, Gynaliadwyedd a
Thai, un o Weinidogion Cymru

An Inspector appointed by the Minister for
Environment, Sustainability and Housing,
one of the Welsh Ministers

Dyddiad/Date 23/07/09

Appeal Ref: APP/H6955/A/09/2102562

**Site address: Zozan Kebab House and Fish and Chips, Market Square, Llay,
Wrexham LL12 0SA**

**The Minister for Environment, Sustainability and Housing has 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 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Kemal Topal against the decision of Wrexham County Borough Council.
- The application Ref. LLA P/2009/0182, dated 5 March 2009 was refused by notice dated 8 April 2009.
- The application sought planning permission for the change of use from A1 to A3 (ground floor) and C3 to B1 (upper floor) without complying with a condition attached to planning permission Ref LLA P/2006/1477, dated 13 June 2007.
- The condition in dispute is No 2 which states that *no customers shall be on the premises of the use hereby permitted outside the hours of 10:00 to 22:00.*
- The reason given for the condition is *in the interests of the living conditions of residents in the vicinity of the premises.*

Decision

1. I dismiss the appeal.

Reasons

2. The appeal premises are situated in a local parade of shops in a residential area, with dwellings close by on Fifth Avenue and Second Avenue.
3. The Council's Local Planning Guidance Note 9: *Restaurants, Public houses and Hot Food Takeaways* (LPG9) says that the hours of operation for hot food establishments in such parades should be limited to 22.00 hours. I note the Guidance allows for some flexibility and also says that 'one set of time limits would not be appropriate throughout the County Borough'. However, in this case given the closeness of nearby dwellings, I consider the time limit to be appropriate. I understand that apart from the adjoining taxi office, other shops in the parade close by 22.00 hours and I agree with the Inspector who allowed the change of use to a hot food takeaway (Ref. APP/H6955/A/07/1201022, dated 13/06/07), that the general activity of cars arriving and departing and customers

congregating outside the premises would naturally dissipate when these uses close.

4. In my opinion, if the hot food takeaway was permitted to open later into the evening, such activities could cause undue problems of noise and disturbance for nearby residents at a time when they should be able to expect peace and quiet. I consider, therefore, that the variation of condition No. 2 to extend the opening hours would be contrary to Policy GDP1 of the Wrexham Unitary Development Plan 1996-2011 and guidance set out in LPG9.
5. In reaching this conclusion, I have taken into account the later operating times of the taxi office, although there appears to be some dispute as to what these are. In my view, the nature of the taxi business is unlikely to generate as many visits to the premises as the hot food takeaway and in any event, extended hours of operation of the takeaway would add to the levels of activity taking place later at night.
6. The appellant also refers to the previous appeal decision in which the Inspector considers there to be adequate separation between the premises and newly constructed houses to the rear. It seems to me this relates to potential noise from any filtration and extraction units rather than the activities associated with customers visiting the premises. It also refers to one particular group of houses rather than all those located close by.
7. I agree that the appellant is at a disadvantage when compared to the opening hours of the other two hot food takeaways he refers to. Nor is it the role of the planning system to control competition. However, I note the different circumstances regarding the opening times of these two businesses and I have reached my conclusions on the site-specific considerations of this case.
8. Local residents have raised concerns regarding litter and anti-social behaviour. Whilst there appears to be an existing element of anti-social behaviour in the area, I am not convinced that the proposal to extend the hours would materially increase this problem. I consider that both this and any litter problems that might arise are capable of being dealt with through other legislation.
9. I do not consider that any of these matters are sufficient to outweigh my concerns about the harm the variation of the hours would cause.

Leslie Coop

Inspector