



## Appeal Decision

Site visit made on 10 February 2020

**by E Symmons BSc (Hons), MSc**

**an Inspector appointed by the Secretary of State**

**Decision date: 27 February 2020**

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### **Appeal Ref: APP/N1350/W/19/3236059**

### **303 & 303A North Road, Darlington DL1 2JR**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
  - The appeal is made by Mr Bahadin Mohammed against the decision of Darlington Borough Council.
  - The application Ref 18/01166/CU, dated 28 January 2019, was approved on 12 July 2019 and planning permission was granted subject to conditions.
  - The development permitted is a change of use (use class 3) to hot food takeaway (use class A5), erection of single storey extension and addition of external flue to the rear elevation and insertion of window to first floor flat on side gable end.
  - The condition in dispute is No 4 which states that: The hot food takeaway hereby approved shall not be open to customers outside the hours of 1200 to 2100 Monday to Saturday and 1200 to 2000 on a Sunday.
  - The reason given for the condition is: in the interests of residential amenity.
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### **Decision**

1. The appeal is dismissed.

### **Main Issue**

2. The main issue is the effect of varying the condition on the living conditions of neighbouring occupiers.

### **Reasons**

3. The appeal property is a hot food takeaway within a two storey terrace of shops with flats above. To the rear there are dwellings lining both sides of Peabody Street and China Street and their rear elevations and outdoor areas sit behind the appeal property. Due to the proximity of residential dwellings, occupiers will currently be aware of noise and disturbance from this and other businesses on North Road.
4. During my site visit I observed that along North Road there are many other businesses at street level which had dwellings above. Within the same block as the appeal property is a barber shop and funeral parlour and in the adjacent block to the north there is another barber; a pharmacy; a butcher and a convenience store. I have not been given any information regarding the business hours of the adjacent funeral business or barber but in all likelihood, these do not take place late into the evening.
5. Due to the similarity in the types of business, the change of use from café to hot food takeaway was not considered by the Council to lead to a significantly greater noise and disturbance to neighbouring occupiers. To ensure this, the

condition which is the subject of this appeal limited the closing time of the hot food takeaway to 2100 hours Monday to Saturday and 2000 hours on Sunday, reflecting those which were previously in place.

6. The Council state that they seek to limit the opening hours of hot food takeaways to 2100 hours within residential areas. Several examples of similar consented planning applications which have set this limit have been cited in support of this view. Concern has been raised by both the Council and local residents that extended opening hours would give rise to additional noise and disturbance late into the evening. It is likely that this would take the form of customer and vehicle movements; raised voices; car doors shutting and staff activity in rear areas.
7. The appellant contends that the examples provided by the Council are not comparable with the appeal property which is further away from neighbouring residential properties than the examples listed. However, each application must be considered within its own context and although this business may be well separated from the dwellings on the opposite side of North Road, there is a residential dwelling immediately above the premises. It is likely that these occupiers, in addition to others in surrounding dwellings within this block, would be affected by increased noise and disturbance present during extended opening hours.
8. The appellant has provided a list of seven other local businesses which have later closing times ranging from 2200 to 2300 hours. However, there is no evidence regarding the planning history of these businesses or whether these hours represent the lawful planning position. It is also suggested that ambient noise levels at the appeal site are greater in comparison with other sites where businesses have later opening hours. This has not been confirmed with any technical evidence however, even if this was the case, it is likely that the ambient noise level will decrease as the evening progresses as business use and traffic levels also decrease. This is likely to coincide with the period when the extended hours would come into effect.
9. To gauge the likely level of activity which would be associated with the appeal business, a survey of two nearby takeaways, Leung Kee Chinese Takeaway on a Friday night and Jazz's Fish Bar on a Saturday night, were carried out by the appellant. This recorded pedestrian and vehicle movements between 2100 and 2300. As can be seen from these figures, although numbers of visits in each fifteen minute period were low, the survey did show regular customer movements on foot, by car and of delivery vehicles throughout the two hour period. It is difficult to draw comparisons between these and appeal business as there is no assessment of the businesses' relative popularity and vitality. Further uncertainty is added due to the limited number of survey days; the size of the sample and the lack of information about weather conditions or other factors which could affect customer levels.
10. The appellant goes on to conclude from this data that the expected low levels of use during the hours of 2100 till 2300, would lead to less chance of anti-social behaviour. It would not however, be possible to ensure this, and just one or two noisy customers could cause disturbance. Additionally, and on a purely commercial basis, it would be in the interests of the business to increase levels of use within all opening hours.

11. It is reasonable for residents to expect peace and quiet, particularly as the evening progresses when more people are asleep and when noise and disturbance becomes more noticeable. Moreover, any noise and disturbance linked to the other businesses nearby which may open later, would be added to and magnified. Due to the proximity of residential properties to the appeal site, extended opening hours would increase the period within which occupiers of adjacent and nearby residential properties would be subject to noise and disturbance and this would impact and harm their living conditions. I therefore consider that the condition which restricts the opening hours of this business is justified.
12. The harm which would be caused by varying the condition and extending the opening hours of the business would conflict with Policy CS16 of Darlington Local Development Framework Core Strategy 2011. This policy seeks that development does not have a detrimental effect upon the environment, general amenity and the health and safety of the community.
13. For the reasons stated above, the appeal is dismissed.

*E Symmons*

INSPECTOR