



## Appeal Decision

Site visit made on 17 April 2019

**by Mr M Brooker DipTP MRTPI**

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

**Decision date: 05 June 2019**

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### **Appeal Ref: APP/N1350/W/19/3220234**

#### **15 Belvedere Road, Darlington DL1 5EP**

- 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 Jesbir Singh against the decision of Darlington Borough Council.
  - The application Ref 18/00376/FUL, dated 1 May 2018, was refused by notice dated 15 October 2018.
  - The application sought planning permission for the change of use from shop to A5 hot food takeaway and rebuild of shop front and extractor duct. Reapplication with noise & odour filters and additional information without complying with a condition attached to planning permission Ref APP/N1350/A/14/2228133, dated 23 January 2015.
  - The condition in dispute is No 7 which states that: The use shall hereby permitted shall not be open to customers outside the following times: 11:30 – 21:00 Mondays to Saturdays and 12:00 – 19:00 on Sundays and Bank holidays.
  - The reason given for the condition is: the interests of safeguarding the living conditions of neighbouring occupiers.
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### **Decision**

1. The appeal is dismissed.

### **Back Ground and Main Issue**

2. The variation to the condition sought by the Appellant would allow the premises to open to customers for an additional hour, until 22:00, Friday to Saturday, all other opening times would remain the same.
3. The main issue is the effect of the proposed later opening hours on the living conditions of the occupiers of neighbouring properties with particular regards to noise and disturbance.

### **Reasons**

4. The appeal site occupies a two storey end of terrace corner property in a predominantly residential area comprising terraced housing with no off street car parking.
5. At the time of my site visit, which took place in the afternoon of a weekday, the area surrounding the appeal site was quiet with little in the way of pedestrian or vehicular activity. At the site visit, I noted a limited number of other evening or late night uses in the wider area and none in the immediate vicinity of the

appeal property. Accordingly, I would expect activity in the area to be at least as quiet into the evening.

6. The comings and goings of customers to the hot food takeaway would be likely to result in noise from car engines, in-car audio systems, car doors slamming, though I note that the appellant has identified that the premises serves local customers rather than passing trade, there would in any event be noise and disturbance from people talking and possibly congregating in groups on the footway outside. Noise would also be likely to arise from staff legitimately engaged in activities such as clearing away and locking up the premises at closing time.
7. The noise from customers and staff identified above would arise in very close proximity to neighbouring residential properties. This would be more intrusive during the late evening when background noise levels would be lower and residents would be more likely to be resting or sleeping. Due to the predominantly residential nature of the surrounding area, residents would have a reasonable expectation that their living environment would be quieter in the late evening.
8. In support of the appeal the Appellant has made reference to the opening times of other similar premises in the local area and while they may operate beyond the hours permitted at the appeal premises, I have not been provided with details of the planning history of these premises or of their relationship with neighbouring residential properties. I therefore give these matters little weight. In any event, I must determine the appeal on its own merits and have done so.
9. I conclude that a condition limiting the hours that the appeal premises can open is necessary in the interests of protecting the living conditions of neighbouring residents with particular regard to noise, disturbance and odours. I further conclude that the hours imposed on the original planning permission are reasonable and accord with the amenity protection aims of Policy CS16 of the Darlington Local Development Framework Core Strategy and paragraph 180 of the National Planning Policy Framework.

## **Conclusion**

10. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

*Mark Brooker*

INSPECTOR