The Planning Inspectorate

Appeal Decision

Site visit made on 22 August 2011

by Chris Hoult BA BPhil MRTPI MIQ

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 23 August 2011

Appeal Ref: APP/K2420/A/11/2151269
"Burbage Star Pizza", 11 Windsor Street, Burbage, Hinckley, Leicestershire, LE10 2EE

- 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 Cemil Yavuz against the decision of Hinckley & Bosworth Borough Council.
- The application Ref 11/00108/CONDIT, dated 14 February 2011, was refused by notice dated 11 April 2011.
- The application sought planning permission for a change of use from Class A1 (general retail) to Class A5 (hot food take-away) without complying with a condition attached to planning permission Ref 10/00565/COU, dated 29 September 2010.
- The condition in dispute is No. 2 which states that: "The premises shall not be open to the public for the use hereby approved outside the hours of 07:00 to 23:00 Monday to Friday, 08:00 to 23:00 Saturdays and 09:00 to 23:00 Sundays and Public Holidays".
- The reason given for the condition is: "To protect the amenities of adjoining residential property in accordance with Policy BE1 of the adopted Hinckley and Bosworth Local Plan".

Procedural matters

1. The application seeks an extension of the opening hours in line with those granted on a recent premises licence application for the provision of late night refreshment, to 23:30 on Thursdays and to 00:00 on Fridays and Saturdays. I deal with the appeal on this basis.

Decision

2. The appeal is dismissed.

Main issue

3. The main issue is whether the disputed condition is necessary and reasonable, having regard to the living conditions of neighbouring occupiers.

Reasons

4. Windsor Street is on the southern edge of the central core of the village, which, though absorbed into the wider built-up area of Hinckley, retains its village character. For a few hundred metres from its junction with Church Street, it is flanked by a mixture of houses and commercial properties, mainly small specialist shops and services. These include three public houses, an Indian restaurant, a Chinese take-away, a fish and chip shop and the appeal premises which open in the evenings. The premises is part of a terrace which includes a

boutique, a nail and beauty parlour and tanning salon to one side, with flats above, and houses directly fronting the street to the other side. There is a detached public house opposite with two further frontage dwellings (one with a small shop unit to the front) separated from it by a car port to one side, with the fish and chip shop to the other, across the access to its rear car park.

5. In spite of the range of commercial premises, and the comings and goings by car which they generated at the time of my visit, the locality has the feel of a quiet village high street. It is not a defined local shopping centre. The public house opposite has an emphasis on dining and its advertised opening hours are until 23:00 including weekends. The fish and chip shop is open until 22:00 except for Fridays when it opens until 23:00. The other two public houses did not advertise their opening hours externally. However, they did not appear to me to be the type of drinking establishments more associated with town centres which would typically give rise to noise and disturbance after 23:00. While the Council accepts that there is activity in the area in the evenings, which persuaded it initially to allow the change of use, the indications are that it quietens down around 23:00.

6. The premises has a simple layout of a serving counter with a waiting area to the front and opens directly on to the street. Car parking for it is on-street, close to the front rooms of houses in the terrace. Third party representations point to the premises already being open later than 23:00 and to examples of noise and disturbance to occupiers from people using it (having been drinking) shouting and slamming car doors at unsociable hours. Similar representations were made in relation to the licence application. I would expect more of this kind of activity after 23:00, as customers would be largely made up of people leaving the public houses. In the circumstances and given the locality, the associated noise would be unduly intrusive and would give rise to a correspondingly greater degree of disturbance to occupiers.

7. The appellant refers me to the hours of opening of the Chinese take-away, which are advertised as until 23:30 and 00:00 at weekends. However, the Council says in its evidence that no express consents have been granted for these hours and, in any event, they appear (contrary to the appellant's claims) to be the exception rather than the norm for take-away establishments. He refers me to the Indian restaurant which is part of a similar terrace further along the street. However, that has its own dedicated car park to the rear and, while its opening hours were not advertised externally, the appellant's claims regarding activity after 23:00 is not supported by other evidence.

8. I have taken account of the decision of the Council's Licensing Panel but I conclude that the proposed extension of the opening hours would unacceptably harm the living conditions of neighbouring occupiers, in conflict with the aims of saved Policy BE1 of the local plan. The condition limiting them to 23:00 is necessary and reasonable, for the reasons given by the Council. I have had regard to the appellant's comments in relation to the draft National Planning Policy Framework but, in the light of the evidence and given that it is at an early stage in its progress, it is a matter to which I attach little weight.

C M Hoult

INSPECTOR