


Planning Committee

5 June, 2019

Subject:	Decisions of the Planning Inspectorate
Director:	Director – Regeneration and Growth Amy Harhoff
Contribution towards Vision 2030:	
Contact Officer(s):	<p>John Baker Service Manager - Development Planning and Building Consultancy John_baker@sandwell.gov.uk</p> <p>Alison Bishop Principal Planner Alison_bishop@sandwell.gov.uk</p>

DECISION RECOMMENDATIONS

That Planning Committee:

Notes the decisions of the Planning Inspectorate as detailed in the attached appendices.

1 PURPOSE OF THE REPORT

This report is submitted to inform the Committee of the outcomes of appeals that have been made to the Planning Inspectorate by applicants who were unhappy with the Committee's decision on their application.

2 IMPLICATIONS FOR SANDWELL'S VISION 2030

The planning process contributes to the following ambitions of the Vision 2030 –

Ambition 7 – We now have many new homes to meet a full range of housing needs in attractive neighbourhoods and close to key transport routes.

Ambition 8 - Our distinctive towns and neighbourhoods are successful centres of community life, leisure and entertainment where people increasingly choose to bring up their families.

Ambition 10 - Sandwell now has a national reputation for getting things done, where all local partners are focused on what really matters in people's lives and communities.

3 BACKGROUND AND MAIN CONSIDERATIONS

- 3.1 Applicants who disagree with the local authority's decision on their planning application may submit an appeal to the Planning Inspectorate. An appeal may also be made where the local authority has failed to determine the application within the statutory timeframe.
- 3.2 Appeals must be submitted within six months of the date of the local authority's decision notice.
- 3.3 Decisions on the following appeals are reported, with further detailed set out in the attached decision notices:-

Application Ref No.	Site Address	Inspectorate Decision
DC/18/62086	Proposed variation of condition 2 of planning permission DC/14/57714 to extend	Allowed with conditions.

4 STRATEGIC RESOURCE IMPLICATIONS

- 4.1 There are no direct implications in terms of the Council's strategic resources.
- 4.2 If the Planning Inspectorate overturns the Committee's decision and grants consent, the Council may be required to pay the costs of such an appeal, for which there is no designated budget.

5 LEGAL AND GOVERNANCE CONSIDERATIONS

- 5.1 The Planning Committee has delegated powers to determine planning applications within current Council policy.
- 5.2 Section 78 of the Town and Country Planning Act 1990 gives applicants a right to appeal when they disagree with the local authority's decision on their application, or where the local authority has failed to determine the application within the statutory timeframe.

Amy Harhoff
Director – Regeneration and Growth



Appeal Decision

Site visit made on 9 April 2019

by Stuart Willis BA Hons MSc PGCE MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 May 2019

Appeal Ref: APP/G4620/W/19/3219921

240 Queens Road, Smethwick, West Midlands B67 6PF

- 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 Khalid Hussain against the decision of Sandwell Metropolitan Borough Council.
 - The application Ref DC/18/62086, dated 30 July 2018, was refused by notice dated 24 September 2018.
 - The application sought planning permission for retention of use of garage as barber shop and shopfront without complying with a condition attached to planning permission Ref DC/14/57714, dated 21 January 2015.
 - The condition in dispute is No 2 which states that: The use hereby permitted shall only operate between the hours of 10am and 5pm on any day.
 - The reason given for the condition is: In the interest of highway safety.
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Decision

1. The appeal is allowed, and planning permission is granted for the use of a garage as barber shop and shopfront at 240 Queens Road, Smethwick, West Midlands B67 6PF in accordance with the application Ref DC/18/62086 dated 30 July 2018, and subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan 1.
 - 2) The use hereby permitted shall only operate between the hours of 1000 and 2000 on any day.
 - 3) Notwithstanding the provision of the Town and Country Planning (Use Classes) Order and the Town and Country Planning (General Permitted Development) Order 1995 (Or any Order revoking and re-enacting those orders with or without modification), the approved use shall be solely as a barber's shop and for no other purpose.
 - 4) The permission hereby granted shall enure for the benefit of the applicant, Khalid Hussain and not for the benefit of the land.

Background and Main Issues

2. A barber shop is currently trading at the appeal site. The appellant wishes to extend the opening hours from those originally imposed to between 1000 and 2000 hours every day of the week. Although the appellant's appeal statement refers to 7pm (1900), the description given on both the application form and the appeal form refer to 8pm (2000). This was also the basis upon which consultation took place. I have therefore considered the proposal in the same way.
3. At the time of my site visit the barber shop was open past 1700 and I note comments from local residents regarding late opening at the premises. However, it is not clear from the application form or officer report whether the existing condition had been breached and that the scheme was considered as retrospective. As I cannot be sure that a breach occurred prior to the application being made, I have dealt with the appeal under Section 73 of the Town and Country Planning Act 1990.
4. The reason for imposing the original condition was in the interest of highway safety. However, the Council's refusal reasons also include impacts on the living conditions of occupiers of nearby residential properties.
5. Therefore, the main issues are whether the restriction of opening hours in the condition is necessary and reasonable, having regard to the effect that varying it would have on:
 - The living conditions of occupiers of nearby residential properties, with particular regard to noise and disturbance, and
 - The safety of users of the nearby highway and pedestrian walkway.

Reasons

Living Conditions

6. Neighbouring residents have referred to issues arising from both the takeaway and the barber shop. Considering the likely duration of visits to the barber shop compared to the takeaway, I consider it doubtful that barber shop customers would leave their engines running or play loud music from their cars while visiting the site. Despite the issues raised by the nearby residents, the Council indicate that there have not been any noise complaints relating to the barber shop. At my visits I did not observe any loud noise from, or associated with visits to, the barber shop.
7. While I note residents' concerns over erratic and late-night opening hours, the scheme before me is to extend the opening hours to 2000 on any day. There is no compelling evidence that allowing the barber shop to open until that time would result in loud noise late at night.
8. The later opening times would lead to additional vehicle and customer comings and goings from the site. The size of the barber shop limits the number of customers and therefore visits to the premises. Moreover, the expected duration of visits would result in a lower number of vehicle movements than other uses, such as the take away. Given the location of the site along a busy road, the effect of any additional noise or disturbance would not be significant.

9. Therefore, although extending the opening hours would be likely to result in some additional noise and disturbance, it would not cause material harm to the living conditions of the occupiers of the nearby residential properties. In the absence of any development plan policies being highlighted by the Council, I have again considered the issue with reference to the Framework. The proposal would accord with the Framework where it seeks to provide a high standard of amenity for existing and future users.

Highway Safety

10. While the appeal site is located in a primarily residential area, there is a takeaway adjacent to it and a cluster of commercial properties nearby. There is no designated parking for the appeal premises. Nonetheless, outside the site, opposite it, and in much of the surrounding streets there are no restrictions to on-street parking. Furthermore, there are parking areas at the nearby cluster of commercial properties and bus stops close to the appeal site. These factors, along with the pedestrian footways and residential properties nearby, mean customers could easily access the site by modes of transport other than car.
11. I visited the site during and after the current opening times. At these visits, which I appreciate are only a snapshot in time, there was parking taking place outside the appeal site, near the junction with Wall Close and within the cul-de-sac itself. Nonetheless, there were still spaces along the nearby streets to park and the frequent residential driveways were not obstructed.
12. At times parked vehicles did reduce visibility at the junction with Wall Close and the road was relatively busy. However, any short-term limitations did not appear to create any obvious highway safety concerns with traffic flowing freely. Moreover, the wide pavement in front of the site meant there was sufficient space for pedestrians to pass. This was the case when I visited during the current permitted opening hours and in the proposed extended opening hours when residents are more likely to be at home. There has been limited evidence presented to me to the contrary or to demonstrate how extending the opening hours as sought would make it difficult for residents to put their bins out.
13. Furthermore, there has been no substantive information presented to me that any issues associated with parking in the area are related to the barber shop. I note that comments from nearby residents refer to activities at both the barber shop and the adjacent takeaway. The dwell time for visitors to the barber shop is likely to be longer than the take away. Moreover, the scale of the use at the barber shop would limit the number of customers and as a result reduce the traffic generated and demand for parking arising from the business. From my observations there were more frequent vehicle movements associated with the takeaway than the barber shop.
14. Therefore, the extension of the opening hours would not give rise to material harm to the safety of users of the nearby highway and pedestrian walkway. As the Council have not identified any specific development plan policy that the proposal conflicts with, I have assessed the issue with reference to the requirements of the National Planning Policy Framework (Framework). The proposal would accord with the Framework, where it states development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Conclusion

15. I therefore allow the appeal, varying condition 2 to extend the opening hours of the barber shop to between 1000 and 2000 on any day. There is insufficient information before me as to whether or not the other conditions originally imposed remain relevant. The guidance in the Planning Practice Guidance makes it clear that decision notices for the grant of planning permission under section 73 should repeat the relevant conditions from the original planning permission in these circumstances. Therefore, I have re-imposed the other conditions, amending the condition in relation to compliance with the submitted plans to better reflect the relevant guidance. As the development has been started there is no need to impose a time limit condition.
16. For the reasons given above I conclude that planning permission should be granted subject to the conditions as set out in the formal decision above.

Stuart Willis

INSPECTOR