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## Appeal Decision

Site visit made on 9 September 2021

**by C McDonagh BA (Hons) MA MRTPI**

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

**Decision date: 6 October 2021**

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**Appeal Ref: APP/U2370/W/21/3275141**

**178 Victoria Road West, Thornton-Cleveleys FY5 3NE**

- 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 Gokhan Akcay against the decision of Wyre Borough Council.
  - The application Ref 20/00771/FUL, dated 5 August 2020, was refused by notice dated 2 November 2020.
  - The application sought planning permission for the '*variation of condition 5 of planning consent 16/00314/FUL to Monday to Saturday opening hours 08.00 to 00.00; Sunday, Public and Bank Holidays 8.00 to 23.00 with no deliveries on any day after 23.00*' without complying with a condition attached to planning permission Ref 18/00564/FUL, dated 28 September 2018.
  - The condition in dispute is No4 which states that '*The uses hereby permitted shall not operate outside the hours of - Monday to Saturday opening hours 08.00 to 00.00, Sunday, Public and Bank Holidays 08.00 to 23.00.*'
  - The reason given for the condition is '*In the interests of the amenity of occupiers of neighbouring and nearby residential properties in accordance with Policy SP14 of the adopted Wyre Borough Local Plan (July 1999).*'
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. During the course of the appeal, the revised National Planning Policy Framework (July 2021) (the Framework) was published. Parties were provided with an opportunity to comment on the relevance of this, and I have taken any subsequent comments received into account in my determination of this appeal.

### Main Issue

3. The main issue is whether the condition is reasonable and necessary in the interests of the living conditions of nearby residents, with particular regard to noise and disturbance.

### Reasons

4. The appeal site is a ground floor commercial unit located in a terrace consisting of other business uses with residential properties above. Behind the host terrace is a residential street, Stanley Avenue, while the area in general comprises a mix of commercial and residential uses. The proposal seeks to

extend the opening hours of the takeaway by 1 hour each night over those times approved in planning application 18/00564/FUL.

5. The variation to opening hours would result in additional noise and disturbance to occupiers of nearby residential properties. This would be caused by conversational noise of customers and staff, comings and goings, extraction equipment and vehicular noise of engines revving and doors opening and closing. This would be at a time when residents could reasonably expect a degree of peace and quiet.
6. While I appreciate the result of altering the condition would not result in a long extension to opening hours and thus noise later into the night, the Council states the existing opening times align with similar establishments in the area. Although the appellant advises other takeaways operate to 2am, this appears to be contrary to their respective planning permissions. This would be a matter for the Council to address rather than in the context of this appeal.
7. A nearby pub was granted planning permission<sup>1</sup> to allow later opening hours than those proposed in this appeal. I have no further information on this, although this appears to have been granted some time ago prior to the adoption of the current development plan. In any event, from my observations on the site visit the pub does not appear to have residential properties above and as such I would not consider this approval justification to allow the harm I have identified. Each proposal is assessed on its own merits.
8. I have had regard to the submitted noise assessment (Noise Control Solutions Limited), which concludes the noise levels associated with the additional hour of operation would be acceptable. However, I note that Noise Sensitive Receptor Location 1 (NSRL1) was set up some 25m from the source of noise on the opposite side of the road. While this shows these properties would likely be unaffected by the proposal, I am uncertain as to the noise levels that would be experienced by the properties on the first floor of the host terrace which would be the closest noise sensitive receptors. There is disagreement between the parties as to whether these are inhabited, and I have no convincing evidence either way. However, I have considered the noise levels on the basis that these units are currently or could be occupied be in the future.
9. Moreover, NSRL2 was located to the rear of the takeaway close to the boundary with No.2 Stanley Avenue. However, the report identifies the ambient sound level measurement is dominated by noise from the kitchen extraction system from the appellant's business. This level is given as 55.3dB(A), which drops to 46.3dB(A) in residual sound levels when influence from the takeaway is removed from the calculation. As such, this 9dB(A) increase is considered to be significant for the additional hour that the extraction equipment would be in operation.
10. While mitigation measures are proposed to protect living conditions of nearby residents, most of these would be reliant on the considerate conduct of staff. Many of these requirements are imprecise and attempted compliance would be unlikely. Moreover, there would be no means of regulating noise from customers. These measures would therefore be difficult for the Council to enforce and regulate and I am unconvinced these would mitigate the harm to living conditions the variation to the condition would cause.

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<sup>1</sup> 13/00729/FUL

11. I therefore conclude that the control on opening hours imposed by condition 4 is necessary and reasonable to prevent unacceptable harm to the living conditions of nearby residents arising from noise and disturbance and ensure that the approved scheme complies with policies CDMP1 and CDMP3 of the Wyre Borough Local Plan (adopted February 2019). These seek, among other aims, to ensure development will be compatible with adjacent existing uses or uses proposed in this plan and it would not lead to significant adverse effects on amenity. This would also ensure compliance with the aims of the Framework in paragraph 130 which seeks to ensure a high standard of amenity for existing and future users of development.

### **Other Matters**

12. I acknowledge the appellants' concerns over the Council's handling of the application. These are however administrative matters that need to be addressed directly with the Council. I have had regard to the planning merits of the scheme in my determination of the appeal. In addition, the additional opening hours would be of benefit to the owner and their business, but this would not outweigh the harm to occupiers of nearby properties with regards to their living conditions.

### **Conclusion**

13. For the reasons given above I conclude that the conditions are reasonable and necessary. Further, they ensure the development would accord with the policies I have cited. The appeal should therefore be dismissed.

*C McDonagh*

INSPECTOR