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## Appeal Decision

Site visit made on 10 December 2018

**by W Johnson BA (Hons) Dip TP Dip UDR MRTPI**

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

**Decision date: 24 January 2019**

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### **Appeal Ref: APP/Q5300/W/18/3209146**

### **Penridge Suite, 470 Bowes Road, Southgate, London N11 1NL**

- 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 Desmond Michael of DM Consulting against the decision of the Council of the London Borough of Enfield.
  - The application Ref 17/05394/VAR, dated 11 December 2017, was refused by notice dated 27 February 2018.
  - The application sought planning permission for a change of use of ground floor from car sales showroom to food and drink (A3) without complying with a condition attached to planning permission Ref TP/00/0658, dated 25 July 2000.
  - The condition in dispute is No 3 which states that: The premises shall only be open for business between the hours of 0800 - 2300 Sunday to Thursday, 0800 – 0000 Fridays and Saturdays; and all activity associated with the use shall cease within 1 hour of the closing time specified above.
  - The reason given for the condition is: To safeguard the amenities of the occupiers of adjoining and nearby residential properties.
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### **Decision**

1. The appeal is allowed and planning permission is granted for the change of use of ground floor from car sales showroom to food and drink (A3) at 470 Bowes Road, Southgate, London N11 1NL in accordance with application Ref 17/05394/VAR without compliance with condition number 3 previously imposed on planning permission Ref TP/00/0658 dated 25 July 2000, but subject to the conditions set out in the schedule.

### **Procedural Matter**

2. The Revised National Planning Policy Framework (The Framework) was published in July 2018, after the appeal was lodged. I have had regard to the Revised Framework in reaching my decision.

### **Background and Main Issue**

3. The appeal site is now established as a banqueting hall, holding weddings and other such events. It is confirmed in the Officer Report that whilst planning permission was originally granted for an A3 use, it has been established that the D2 use of the appeal property operating as a banqueting hall has been deemed to be lawful. I have dealt with the appeal on this basis.
4. Permanent approval of a planning application was originally granted by the Council for the change of use of the appeal property to food and drink (A3) on 25 July 2000, which included a condition restricting the opening hours of the

business between 08:00hrs – 23:00hrs Sunday to Thursday and 08:00hrs – 00:00hrs on Fridays and Saturdays.

5. The condition restricting the opening hours that was imposed on the original planning permission, was approved under previous development plan policies which have now been superseded. The application, which is the subject of this appeal sought to vary this original condition to enable the premises to operate for an extended period between: 08:00hrs to 02:00hrs on Friday and Saturday, and 08:00hrs to 01:00hrs on Sunday. The hours of operation between Monday and Thursday would remain unaltered.
6. The main issue in this appeal is the effect that variation of the condition would have on the living conditions of local residents, with particular regard to night time noise and disturbance.

### **Reasons**

7. The appeal property is set within a Local Centre, which has a variety of commercial uses. The terrace of properties where the appeal site is located comprises of a post office, motorcycle business, off licence and food stores. The appeal property is on the ground floor only, which is known as 'The Penridge Suite'. The unit forms part of a shopping parade and is sited at the end of the row of units, which faces Bowes Road across a wide footpath. A large roundabout beyond is opposite the section of Bowes Road where the appeal site is located, which in turn, provides access to the local road network. Due to the location of No 470, its side elevation faces Haslam Court, albeit at an oblique angle. However, there are no windows present in this elevation.
8. I note the prevailing open character to the front of the appeal site, and the substantial distances between the front of No 470 and facing dwellings, primarily due to the highway network. However, I found during my visit that there are residential properties located above the shopping parade in which the appeal site is located, and at either end of it. Additionally, I observed the dwellings on Massey Close, where an objection to the proposal was received from the occupiers of 10 Massey Close, who assert that the operation of the business results in noise and disturbance, amongst other things. However, I consider that the overall distance between No 470 and the dwellings on Massey Close, to be sufficient to prevent any significant harmful effects. Additionally, these dwellings do not directly face the appeal site, and are therefore sited at an oblique angle to it, which would provide some additional mitigation.
9. I note the letters of support for the increase in operating hours from local residents and business'. Additionally, I recognise that the appellant has introduced various measures at the premises to prevent anti-social behaviour or excessive noise emanating from the appeal building or its external areas, such as the sound proofing of the function room, a noise limiter, hourly manual noise checks, all windows and doors kept closed when entertainment is in progress, SIA door supervisors and extensive CCTV coverage, amongst other things.
10. The Council's professional officers (Environmental Health (EH) and Traffic and Transport raise no objections to the proposal in regard to noise and disturbance and highway safety, and I too consider the proposal acceptable in this regard, given the nature of the area surrounding the appeal site. Although, I recognise that EH does have concerns that such an increase in operating hours could

potentially lead to noise issues with patrons leaving or hanging around outside during events. However, EH find that a trial period of 12 months could be supported, during which the effects of the proposal on the living conditions of nearby residents and their other concerns could be assessed in practice.

11. On the evidence before me, the premises have been in operation for a number of years, and no recorded complaints relating to the operation of the appeal property have been cited by any parties. I acknowledge the concerns raised by local residents, but I do consider that the lack of opposition to the proposal by EH to form a material consideration in the determination of this appeal, which due to the issues raised (noise and disturbance), I give significant weight. As the parties have had sight of the suggested temporary one year permission, as suggested by EH, I do not consider that either party would be prejudiced by the imposition of such a condition in this instance, which I too consider to be a sensible approach, to enable sufficient monitoring of the extended operating hours.
12. The Enfield Plan Core Strategy 2010 (CS) Policy 17 seeks, amongst other things, for Enfield's Local Centres to continue to be supported in providing core local shopping facilities and services (such as convenience store, post office, pharmacy and newsagent) for their respective local communities; largely catering for a catchment area within walking distance. CS Policy 32 seeks to ensure that noise pollution is minimised. Policy DMD68 of the Development Management Document 2014 (DMD) requires developments that generate or would be exposed to an unacceptable level of noise not to be permitted.
13. For all of these reasons, I therefore conclude that the increase in operating hours would not cause harm to the living conditions of local residents, with particular regard to night time noise and disturbance. This would accord with CS Policies 17 and 32, and DMD Policy 68. Additionally, the proposal would not conflict with relevant aspects of the Framework, in particular paragraph 127 f), which, amongst other things, requires planning decisions to always ensure that development secure a high standard of amenity for existing and future users, and paragraph 180, which requires that decisions should also ensure that new development is appropriate for its location taking into account the likely effects of pollution on health, living conditions, and avoid noise giving rise to significant adverse impacts on health and the quality of life.

### **Conclusion and Conditions**

14. For the reasons set out above I conclude that the appeal is allowed. I have granted a new permission with the disputed condition varied to allow extended opening hours for a temporary period of one year.
15. I have also reviewed the conditions imposed on the original permission to reflect the present situation. The requirement for the external refuse storage and ventilation and extraction remain relevant in the interests of the living conditions of nearby occupiers, as does the requirement for restriction on deliveries.
16. However, I have not included the permitted development restriction as the appeal site now has an accepted D2 use (Assembly and Leisure), and a change of use to an A5 use (Hot Food Takeaways) would not be a permitted change under the Town and Country Planning (Use Classes) Order 1987 (as amended), therefore requiring the submission of a separate planning application.

*W Johnson*

INSPECTOR

### **Schedule of Conditions**

- 1) This permission shall expire on the date, one year from the date of this decision and the premises shall only be open for trade or business between the following hours until that date:  
  
08:00hrs to 23:00hrs Monday to Thursday  
  
08:00hrs to 02:00hrs on Friday and Saturday  
  
08:00hrs to 01:00 on Sunday  
  
No later than the date one year from the date of this decision the operation of the premises shall revert to the hours of trade or business permitted under Condition 3 of planning permission TP/00/0658 unless a further planning permission for alternative opening hours has been granted on application to the Local Planning Authority.
- 2) The existing refuse storage facilities to the premises shall be retained at the site for the lifetime of this permission.
- 3) The existing systems for extraction and ventilation of fumes and odours operating at the premises shall be retained and maintained as such in full working order for the lifetime of this permission.
- 4) Deliveries and collections to and from the premises shall only take place between the hours of 08:00hrs – 18:00hrs Monday to Saturday. No deliveries shall take place on Sundays or Bank or Statutory Holidays.