



Appeal Decision

Site visit made on 21 December 2009

by **Andrew S Freeman** BSc(Hons) DipTP
DipEM FRTPI FIHT MIEnvSc

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

The Planning Inspectorate
47th Eagle Wing
Temple Quay House
7 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email:enquiries@plins.gsu.gov.uk

Decision date:
23 December 2009

Appeal Ref: APP/C3430/A/09/2107644

Rosemary Spice, 3 Rosemary Road, Cheslyn Hay, Walsall, WS6 7DY

- 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 one of the conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr S I Ahmed against the decision of South Staffordshire Council.
- The application Ref 09/00216/VAR, dated 12 March 2009, was refused by notice dated 19 May 2009.
- The application sought planning permission for a hot food takeaway shop without complying with a condition attached to planning permission Ref 06/01323/COU dated 21 February 2007.
- The condition in dispute is No 2 which states, "The premises shall remain closed between 23.00 hours and 11.30 hours on Mondays to Saturdays, and shall remain closed on Sundays and Bank Holidays."
- The reason given for the condition is, "To safeguard the amenity of the area in accordance with policy BE26 of the adopted Local Plan".

Decision

1. I dismiss the appeal.

Main issue

2. The main issue is the effect on the living conditions of the occupiers of nearby residential premises in terms of smells, litter and noise.

Reasons

3. Local Plan Policy BE26 is, amongst other things, concerned with avoiding harm to the amenities of residential properties that neighbour new development. In this regard, I am aware from my own experience that hot food takeaways are commonly associated with problems such as smells, litter and noise. Whilst this may be acceptable, within limits, in an established commercial area, particular care needs to be taken where there are residential properties close at hand.
4. In the present case, "Rosemary Spice" is the centre property in a terrace of three units in this part of Rosemary Road. All three are in use as takeaways. Above, there is accommodation that, now or in the future, is or could be used for residential purposes; and there is a fairly new residential development known as Liberty Court just beyond 5 Rosemary Road.

5. The fish and chip shop at 1 Rosemary Road has, apparently, unrestricted hours and could open on Sundays and bank holidays. In addition, opposite the appeal site is The Talbot public house. This is located in the middle of a large car park.
6. In the circumstance that I have described, I consider it appropriate to avoid harm to the amenities of nearby residents. They should be given a respite, on Sundays and bank holidays, from the smells that would inevitably drift down Rosemary Road and from the litter discarded by thoughtless customers. Additional disturbance caused by customers congregating outside the premises, slamming doors or revving car engines should also to be avoided.
7. In reaching my decision to dismiss the appeal, I am aware that similar cases have twice come before the Planning Inspectorate. In 2001, and in granting planning permission for a hot food takeaway at 5 Rosemary Road,¹ the Inspector specifically imposed a condition that would prevent opening on Sundays and bank and public holidays. This was to avoid undue disturbance to residents during the generally quieter environment of these days. The imposition of this condition was upheld in a further appeal in 2005.² I concur with these decisions and with the reasoning behind them.
8. I appreciate that the fish and chip shop at 1 Rosemary Road could open on Sundays and bank holidays. However, I understand the use of these premises is long-standing and outside the scope of planning control. In any event, it would be appropriate to avoid compounding any effects that might already be experienced on Sundays and bank holidays.
9. I also appreciate that Rosemary Spice may be seen as a much needed facility; and that hot food takeaways in other areas may be able to open on Sundays and bank holidays. However, for the reasons stated, relaxation of the opening hours would not be appropriate in the circumstances of the present appeal and where there would not be accordance with Policy BE26 of the Local Plan.

Andrew S Freeman

INSPECTOR

¹ Ref: APP/C3430/A/01/1058460 dated 27 June 2001

² Ref: APP/C3430/A/05/1174273 dated 5 July 2005