



Appeal Decision

Site visit made on 12 October 2009

by **S R G Baird BA(Hons) MRTPI**

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

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**Decision date:
29 October 2009**

Appeal Ref: APP/W4325/A/09/2109594

Royal Taste, 29 Pasture Lane, Moreton, Wirral CH46 7TG

- 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 Ahmet Kuccuk against the decision of Wirral Metropolitan Borough Council.
- The application Ref APP/2008/6961, dated 19 December 2008, was refused by notice dated 13 March 2009.
- The application sought planning permission for a change of use to a hot food takeaway without complying with a condition attached to planning permission Ref 00/6887/D, dated 24 April 2001.
- The condition in dispute is No. 2 which states that: The premises shall not be open to the public for the retail sale of hot food except during the hours of 0800 to 2330 on any day.
- The reason given for the condition is: To safeguard the living conditions of neighbouring occupiers of properties in this locality, particularly the residential occupiers of flats above the shopping parade.

Preliminary Matter

1. The revised opening hours sought by the appellant are Sunday and Monday to Thursday 1500 hours to 2330 hours and Friday and Saturday 1500 hours to 0100 hours the following day. Given that the existing permission encompasses the proposed change sought for Sunday and Monday to Thursday the only material change would be opening to opening until 0100 hours the following day on Fridays and Saturdays.

Decision

2. I dismiss the appeal.

Main Issue

3. The implications for neighbours' living conditions with particular reference to noise and disturbance of opening until 0100 hours the following day on Fridays and Saturdays.

Reasons

4. The objective of development plan policy is to ensure that the activities of a hot food takeaway do not adversely affect the living conditions of nearby residents through, amongst other things, noise and disturbance. Royal Taste is one of several commercial units fronting Pasture lane with flats above. To the rear are several houses in Barnston Lane. A separate condition attached to the

existing planning permission provided for the attenuation of internally generated noise. I have no reason to conclude that this condition was not satisfied. Thus, I have no reason to conclude that the proposed extension of hours would result in unacceptable disturbance in the flats above from internally generated noise. Similarly, given the degree of separation to the houses on Barnston Lane, I have no reason to conclude that the extended hours on a Friday and Saturday would have any material effect on residents. My main concern is for the residents of the flats above this block of commercial units from external noise sources.

5. There are 2 other hot food takeaways in the immediate area. Whilst I have not been told what their permitted opening hours are, I would assume they are broadly similar to those at the Royal Taste. Therefore, although the adjacent Royal British Legion Club had advertised opening hours until 0030 hours the following day on Fridays and Saturdays there are no other late night attractions in the immediate area. I would expect patrons of the club to disperse very quickly after the club closes thereby limiting the level and duration of disturbance to residents. Allowing the takeaway to remain open to 0100 hours would encourage patrons of the club to remain in the area. Moreover, in my experience, hot food takeaways that stay open into the early hours of the morning tend to attract patrons from a wide area, most of who arrive in cars.
6. In these circumstances, there would be increased noise and disturbance from conversations, the opening and closing of car doors, music from car radios and the revving of engines immediately in front of Nos. 17 to 29 Pasture Lane at a time when background noise levels would, notwithstanding the main road location, be low. For these reasons and notwithstanding my conclusions regarding internally generated noise, I conclude that the proposed extension of the opening hours on Fridays and Saturdays would unacceptably affect the living conditions of residents above these units through noise and disturbance from the coming and goings of patrons. As such the proposal would conflict with the objectives of development plan policy. In coming to this conclusion, I have noted the appellant's indication that the majority of his trade is in the form of home deliveries. However, planning permission goes with the land and the nature of the operation could change without the need for a planning permission.

George Baird

INSPECTOR