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# Appeal Decision

Site visit made on 2 July 2012

**by Janet L Cheesley BA (Hons) DipTP MRTPI**

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

Decision date: 24 July 2012

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**Appeal Ref: APP/C4615/A/12/2171115**  
**78 Long Lane, Halesowen, West Midlands B62 9DJ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Kayum Ali against the decision of Dudley Metropolitan Borough Council.
  - The application Ref P11/1479, dated 23 November 2011, was refused by notice dated 31 January 2012.
  - The development proposed is change of use to A3.
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## Decision

1. The appeal is allowed and planning permission is granted for change of use to A3 at 78 Long Lane, Halesowen, West Midlands B62 9DJ in accordance with the terms of the application, Ref P11/1479, dated 23 November 2011 and the plans submitted with it subject to the following conditions:
  - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
  - 2) The use hereby permitted shall not be open to customers outside the following times: Sunday-Thursdays and Bank Holidays 1700-2300; and Friday-Saturday 1700-2330.
  - 3) Before the use hereby permitted begins, a scheme for the installation of equipment to control the emission of fumes and smell from the premises shall be submitted to and approved in writing by the Local Planning Authority. The scheme as approved shall be implemented. All equipment installed as part of the scheme shall thereafter be operated and maintained in accordance with the manufacturer's instructions.
  - 4) The development hereby permitted shall be carried out in accordance with the approved plans on Drawing Nos A100, A101 and A102.

## Main Issue

2. I consider the main issue to be the effect of the proposal on highway safety in the surrounding area.
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## Reasons

3. I note that there is on street parking in the area, but appreciate that there may be competition for parking spaces at times. I understand that indiscriminate parking in Long Lane causes problems in the area.
4. The proposed restaurant customers would have use of the car park to the rear. I understand this to be a shared car park with residents and the adjacent shop. The access to this car park is narrow. Nevertheless, a standard size car would be able to gain access to the car park.
5. The nature of the length of stay for customers at a restaurant is such that I consider it reasonable to assume that the customers would be prepared to negotiate the narrow access into the car park at the rear. Thus, I consider that the proposed change of use would not be to the detriment of highway safety in the surrounding area. This would be in accordance with Policy DD4 in the Dudley Borough Unitary Development Plan (2005) where this policy seeks to ensure highway safety.
6. Apart from a standard time condition, the Council has suggested five conditions. In the interest of residential amenity, I consider it reasonable and necessary to impose a condition requiring a scheme for the installation of extraction equipment, particularly as I note that the proposed height of the flue would be insufficient. The scheme can include noise restrictions where necessary.
7. The appellant proposes the opening hours to be Sunday-Thursday and Bank Holidays 1700-2300 and Friday-Saturday 1700-2330. The Council suggests imposing a condition restricting the opening hours so that the premises shall not be open to the public, before the hours of 0900 nor after 2300 Monday to Thursday, before 0900 or after 2300 on Fridays and Saturdays, nor before 0900 or after 2200 on Sundays and Public Holidays. Their reason is primarily to protect residential amenity with regard to the noise of cars leaving the car park, particularly as there is a bedroom window of a nearby dwelling overlooking the car park.
8. As the car park is a shared facility, the imposition of the Councils suggested opening hours condition would not ensure that residents would not be disturbed by other users of the car park in the evenings. Nevertheless, I do consider an opening hours condition to be reasonable and necessary to protect local residential amenity with regard to the general noise of customers and the business activity. Therefore, I consider it reasonable and necessary to impose a condition with regard to the opening hours as stated by the appellant and not those suggested by the Council.
9. Otherwise than as set out in this decision and conditions, it is necessary that a condition be imposed to ensure that the proposal shall be carried out in accordance with the approved plans for the avoidance of doubt and in the interests of proper planning.
10. In the interest of precision and enforceability, I propose to amend the suggested conditions where appropriate.

11. In reaching my conclusion, I have had regard to all other matters raised including litter and competition for existing businesses. The Council's decision was on highways safety and this, in my opinion, is the determining factor.

*Janet Cheesley*

INSPECTOR