



Appeal Decision

Site visit made on 10 October 2011

by E C Grace DipTP FRTPI FBEng PPIAAS

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

Decision date: 18 October 2011

Appeal Ref: APP/D1780/A/11/2154719

Varsity, 67 - 75 London Road, Southampton SO15 2AB

- 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 Barracuda Pubs and Bars Ltd against the decision of Southampton City Council.
 - The application Ref 11/00537/FUL, dated 31/3/11, was refused by notice dated 26/5/11
 - The application sought planning permission for extension of opening hours by variation of condition 10 attached to planning permission Ref 07/02056/VC, dated 17/3/08 which in turn was an approval for a variation of Condition 10 of planning permission for the conversion of basement, ground, first and second floors to food and drink Use (Class A3) Ref 99/00625/FUL dated 17/4/00.
 - The condition in dispute is No 10 which states: Unless the Local Planning Authority agree otherwise in writing the premises to which this permission relates shall not be open for business outside the hours of 10.00am – 00.00pm (Mon – Sun).
 - The reason given for the condition is: To protect the amenities of the occupiers of nearby residential properties.
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Decision

1. The appeal is allowed in part and planning permission is granted for continued use of the premises at Varsity, 67 - 75 London Road, Southampton for Class A3 Use in accordance with the application Ref 11/00537/FUL, dated 31/3/11, without compliance with condition number 10 previously imposed on planning permission Ref 07/02056/VC, dated 17/3/08 but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect and subject to the following new condition 10:

The use hereby permitted shall not be open to customers outside the following times:

09.00hrs – midnight (Mon – Sun)

Main Issue

2. The main issue is whether extending the opening hours would result in harm to the living conditions of residents in nearby dwellings.

Procedural Matter

3. It is evident that the permission granted on 17 March 2008 (Ref 07/02056/VC) is now regarded as the substantive planning permission governing the use of the premises as a public house and supersedes the original permission.

Reasons

4. The appellant seeks an extension to the currently permitted operating hours to open 1 hour earlier each day and 1 hour later on Friday and Saturday nights to correspond with the opening times in their premises licence. They point out that even if planning permission is granted for the extension sought, the Council will retain full control over the opening times under the Licensing Act 2003, which enables a licence to be revoked, suspended or amended at any time. It is thus argued that licensing is a far more flexible and responsive regulatory tool than the planning system provides.
5. They wish to compete with the many other premises in the vicinity by opening at 09.00hrs for the service of coffee and breakfasts and they maintain that the original approval for change of use allowed opening from 08.00hrs on Mondays to Saturdays. The Council has not objected to this aspect of the proposal and I too can see no reason for withholding permission for earlier opening.
6. The appeal property is located within the London Road/ Bedford Place "North of Parks Area" which has a mix of commercial uses interspersed with residential uses, either above the commercial premises or in purpose built blocks of flats. A significant number of businesses here contribute to the night time economy of the city and this is reflected by its inclusion within the designation of a *Late Night Zone* to which saved Local Plan Policy CLT14 applies. This states that A3, A4 and A5 Uses will be permitted subject to compliance with Policy REI 7 which specifies four criteria to be met. From the representations, I am content that appropriate measures are in place to mitigate the emission of sound and smells from the premises and avoidance of litter. Thus, the only relevant criterion is that appropriate planning conditions are imposed to prevent the generation of any undue noise or other forms of nuisance directly arising from the proposal.
7. The Council indicate that the growth in uses associated with the night time economy has evolved over time, whereby there are historic uses that have no opening time limitations imposed upon them. The escalation in the amount of premises combined with increased numbers of patrons leaving them and dispersing past the nearby residential properties has led to a diminution of residential amenities, arising from boisterous and anti-social behaviour and even some incidents of criminal activity. The Planning Authority maintain they have adopted a consistent approach in limiting the terminal opening time to midnight in new applications and proposals for variations to opening times in this locality. This is set out in a policy briefing paper which indicates that for London Road/ Bedford Place midnight is the time deemed as being the latest acceptable opening hour, whereas at Guildhall Square 01.00hrs is judged to be acceptable, while in the identified late night hub, centred on Leisure World/ Bargate and Below Bar, 03.00hrs is the prescribed time.
8. The Council readily concede there has been a lack of co-ordination between their Licensing and Planning arms in the past. However, they indicate that more recently the Licensing team have recognised there are areas of the city which have been harmed by the accumulation of late night uses as appears to be the case here, judging from the comments received from nearby residents. Accordingly, the Council's Licensing Department has adopted a Cumulative Impact Policy (CIP), where additional licensed premises or significant variation of operating hours are unlikely to be permitted unless the applicant can demonstrate to the Council as Licensing Authority that the intended changes will not have an adverse impact on the area.

9. The appellant has undertaken a survey of noise and activity levels outside the premises between 23.00hrs and 01.30hrs on the night of January 29 this year to represent a typical busy weekend night. It demonstrates the area was busy with traffic (including taxis and buses) and groups of people walking between the various licensed premises. The findings are in line with similar surveys conducted in 2004 and 2007 in connection with previous proposals for variations to the opening hours. It demonstrates that the ambient noise levels are attributable to traffic noise and pedestrian activity. They demonstrate there is a relatively consistent high level of noise throughout that period beyond the current closing time and up to 01.30, due to the later opening times of other premises in the locality. It is therefore asserted that the later opening time sought would not add to the character of the existing noise environment.
10. I entirely accept the premises are part of a national group and are well run, with acceptable noise levels being generated from within the building, but the problems encountered by occupants of nearby dwellings are associated with the activities and noise from pedestrians and vehicles in the neighbouring roads, over which the appellant and other licensed operators have little control. Though there is a perceived overlap between the objectives of licensing and planning controls, and it is argued that the premises license provides suitable controls, it is not a mechanism for the general control of anti-social behaviour by individuals once they are beyond the direct control of the licensee of any premises. However, it is apparent that the planning policies have a land use function and in this instance have distinguished between areas of greater and lesser sensitivities to the concentration of licensed premises, mainly due to the presence of dwellings.
11. I consider the policy is deserving of support and it is apparent there is a move by the Council to align their Planning and Licensing Departments in this regard. Therefore, notwithstanding the existence of other premises in the locality that remain open beyond midnight, I anticipate that over time, the consistency of the Planning Department will be matched by the Licensing Department with the aim of safeguarding the residential amenities in the surrounding area. I thus consider the appellant's suggestion of granting permission for a temporary period to enable the impact to be assessed would be prejudicial the Council's aspirations to safeguard residential amenities. Accordingly, I conclude that the extension of the opening hours beyond midnight would be contrary to the application of Policy CLT14 and result in harm to the living conditions of residents in nearby dwellings.
12. Nevertheless, for the reasons given above I conclude that the appeal should partly succeed. I will grant a new planning permission without the disputed condition 10, but substituting a new condition which extends the morning opening hours and retaining the relevant non-disputed conditions from the previous permission.

Edward Grace

Inspector