



Appeal Decision

Site visit made on 21 March 2014

by **A Harwood CMS MSC MRTPI**

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

Decision date: 23 April 2014

Appeal Ref:APP/D1780/A/13/2210207

22 Bedford Place, Southampton, Hampshire, SO15 2DB

- 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 Dabeel Waheed against the decision of Southampton City Council.
 - The application Ref 13/00440/FUL/1957, dated 29 January 2013, was refused by notice dated 11 June 2013.
 - The application sought planning permission for the change of use to restaurant on ground floor and 2 studio flats on first and second floors with the erection of a single storey rear extension and external staircase complying with a condition attached to planning permission Ref 960034/1957/E, dated 28 March 1996.
 - The condition in dispute is No 6 which states that: Unless the Local Planning Authority agrees otherwise in writing the premises to which this permission relates shall not be open for business outside the hours specified below and at no time on Sundays or recognised Public Holidays:
 - 0800 to 2300 hours Monday to Thursday;
 - 0800 to 2330 hours Friday & Saturday.
 - The reason given for the condition is: To protect the amenities of the occupiers of the flats an adjoining residential properties.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use to restaurant on ground floor and 2 studio flats on first and second floors with the erection of a single storey rear extension and external staircase complying with a condition attached to planning permission Ref 960034/1957/E, dated 28 March 1996 without compliance with condition number 6 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:
 - i) The food and drink use hereby permitted shall not be open to customers outside the following times: 0800 hours to 2330 hours on any day.

Procedural Matters

2. The appellant has requested opening times on all days of 1100 hours to 0400 hours although has referred to the ability to consider different opening hours or a trial period. The planning permission to which the condition in dispute is
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attached was approved before changes to the Town and Country Planning (Use Classes) Order 1987 (as amended) brought about new use classes. Although approved as a restaurant, it is clear from the submitted representations that the appeal premises are trading as a take-away which is now within use class A5.

3. Planning practice guidance came into force, and various previous national planning guidance documents were cancelled, on 6 March 2014. Given the nature of this proposal, these changes to the guidance framework have not affected my decision.

Main Issue

4. The main issue is the effect of the proposed extended opening times on the living conditions of neighbouring residential properties with particular reference to noise and activity.

Reasons

5. The appeal site is positioned within a mixed use part of the City. The immediate area includes a range of shops, pubs, restaurants and clubs as well as residential premises. The site is within a 'late night zone' (NTZ) to which policy CLT14 of the City of Southampton Local Plan Review adopted March 2006 (LP) relates. Within such zones, CLT14 does not allow for further night clubs and similar uses but does allow for take-away uses (amongst others) subject to compliance with LP policy REI7. REI7 seeks to prevent adverse impacts upon amenities of residential premises but does not give any specific indication of what hours should be accepted. The briefing paper entitled Night Time Economy which the Council refers to recommends operating hours. It does not appear to have been through a formal public consultation process which limits the weight I can give it. It suggests a closing time of 0000 hours.
6. The flats above this site as well as some neighbouring properties may be connected with the ground floor commercial uses. However I am not aware of any restrictions limiting occupancy of the flats to owners or workers of those premises. It is important to ensure a satisfactory degree of living conditions for those residents although there must be an expectation that this area will be subject to a degree of activity. The area immediately to the west of the site is known as the Polygon and includes a higher proportion of residential premises. Bedford Place is within walking distance of the Southampton Solent University and from information provided by members of the public, the area appears to attract students late at night. Other take-away premises are open into the early hours of the morning. Some have developed like this over time without planning permission.
7. The appellant considers that extending the hours would lead to customer visits being spread out more evenly. I can see that there could be an existing peak around the current closing time when potential customers may be leaving nearby pubs and clubs that could be evened out with an extension of trading hours. The Council has provided no measured or observed evidence of problems from existing similar premises that trade into the early hours. It is clear from public responses to the application and this appeal however that the mix of uses close to residential areas does lead to sensitivities and problems from unsocial behaviour in the early hours of the morning. Customers using a take-away early in the evening are likely to include residents and people in the

early stages of a night out. The additional customers after current opening times are more likely to be those looking for food after a night out who may have consumed alcohol and generally being in high spirits. Without the ability to buy food after leaving clubs and bars, those people are more likely to make a quicker return home, not lingering close to residential properties.

8. Additional customers at these premises are unlikely to have a significant impact upon overall numbers of people within the NTZ. Given the position of the site close to the Polygon area and other flats, even altering the hours at these individual premises could have a significant impact upon those nearest neighbours. The small capacity of the appeal premises could in my experience lead to waiting customers queuing outside making that problem even worse.
9. Other than a decision relating to 24 Carlton Place which is also within the NTZ, there have been many other decisions where extended hours into the early morning hours have been refused on appeal. Despite the lack of observed evidence provided by the Council in this case, these decisions, the representations from local residents which includes reference to press reports brings with it a large body of evidence demonstrating the degree of the general problem in this area. Allowing extended hours would contribute further to that, exacerbating the existing problems.
10. The appellant has also referred to Temporary Event Notices that have been approved by the Council for this and other premises allowing them to open early on occasions into the morning under the provisions of the Licensing Act 2003. I am not aware of the full circumstances or considerations that led to those decisions. Whilst these matters may be material considerations, the appellant is suggesting that the licensing regime would alone provide effective control. However, these other controls do not appear from the evidence to be suitably preventing harmful effects on living conditions in this area at the moment. I am not convinced that increasing the opening times at these premises should be allowed due to the overlap of controls through the licensing or the environmental protection regimes. However the evidence is not refined and I am not convinced that there is any particular justification for preventing any opening of the premises on Sundays and bank holidays. The Council in its suggested condition has not distinguished between any days of the week or bank holidays. Neither is there any indication from the evidence that distinguishing between 2300 hours and 2330 hours makes any difference to the noise and disturbance in the local area.
11. In relation to the main issue, the proposed extension of opening hours as applied for would have an unacceptable impact upon living conditions of neighbouring residential properties due to increased noise and activity. This would not comply with LP policies CLT14 and REI7. These policies are consistent with the National Planning Policy Framework (NPPF) which aims to achieve safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion. However, I consider that the extension of opening until 1130 hours on all days including Sundays and bank holidays would not have an unacceptable impact and have attached a condition to that effect. This would comply with the above LP policies and the NPPF.

Other Matters

12.I recognise that the appellant has invested in this property but the hours restrictions have been in place since the use was originally approved. The NPPF encourages the promotion of viability and vitality in towns but as is often the case in planning decisions, there needs to be a balance struck. In this case, the needs of the business do not outweigh my conclusions. I do not consider that, given the evidence available, a trial period to test even longer opening hours than I am allowing is necessary.

Overall Conclusion

13.For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

A Harwood

INSPECTOR