
Appeal Decision

Site visit made on 5 January 2015

by Nick Fagan BSc (Hons) DipTP MRTPI

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

Decision date: 12 January 2015

Appeal Ref: APP/D1780/A/14/2228297

Ground Floor, 3 Winchester Street, Southampton SO15 2EL

- 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 Sirajul Islam against the decision of Southampton City Council.
 - The application Ref 14/00392/FUL, dated 17 March 2014, was refused by notice dated 2 May 2014.
 - The development proposed is the use of the ground floor for a mixed use restaurant (Class A3) and drinking establishment (Class A4), with extended hours of opening hours on Mondays to Saturdays of 0800-0100 and Sundays and Public Holidays of 1000-0100.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The premises have been addressed by a variety of names by the applicant/appellant and the Council but it is clear that the appeal relates to the ground floor premises at the above address, which is known as the Budhha Lounge.
3. The application form states that the application was to extend the hours until 1am only on Fridays and Saturdays but the desired hours were clearly changed to those set out in the last bulleted point above, and I am considering the appeal on this basis.

Main Issue

4. The main issue is the effect that the proposal would have on the living conditions of local residents.

Reasons

5. The appeal property is the ground floor of a two storey building on the corner of Winchester Street and Vernon Walk, a pedestrian thoroughfare that partly runs under neighbouring higher buildings. It is occupied by the Budhha Lounge, a Class A4 drinking establishment, which is laid out as a central open area around a bar with low level sofas and seats around the edge of the premises. The proposal is to replace these sofas and seats with tables providing 60 restaurant covers, but also to retain the Class A4 use as well. If I were to allow the appeal, the appeal premises could therefore be used as a Class A3 or A4 use, or indeed a combination of the two together.

6. The area is a busy mixed use inner city location with a wide range of bars, restaurants, night clubs and takeaways as well as blocks of residential flats and offices and the Bedford Place public multi-storey car park.
7. The main entrance to the Budhha Lounge is off Vernon Walk but it can also be accessed from the entrance on Winchester Street, which is the main entrance to the Tiger Lilly Restaurant on the first floor, also run by the appellant. At first floor level there is an external roof terrace, accessed from both the Bar and the Restaurant. The appellant has recently acquired the adjacent building at 3-4 Vernon Walk, known as the Budhha Club, which has an internal door linking it to the appeal premises.
8. The Budhha Lounge is controlled by a planning condition that requires customers to be off the premises after midnight although another condition allows the first floor restaurant to remain open until 1am on Fridays and Saturdays¹, which the Council state was historic. The adjacent Budhha Club, also a Class A4 use, has no planning restrictions controlling its hours of operation.
9. I understand the appellant's desire to harmonise the hours of operation for both floors of his establishment and to allow sufficient flexibility to accommodate customers wishing to eat on the ground as well as the first floor. But the new layout of the ground floor, with tables instead of sofas, would not necessarily mean that more customers would want to eat or that it would attract a different clientele. The nature of the seating would not in itself change customers' requirements or desires. It may mean that the appeal premises would operate more like a pub rather than a bar and the appellant's suggestion that customers leaving the mixed use premises would be likely to be less intoxicated than at present is rather speculative.
10. I am also concerned at the objection from the Police, who consider that the continuation of DJ nights suggests that the appeal premises will continue to be used mainly for drinking, and obviously until later. They also consider that having a mixed bar and restaurant use in the manner proposed could contribute to crime and disorder, rather than lessen it as the appellant suggests.
11. His argument that harmonising the closing hours of the ground and first floor uses will prevent large groups of people spilling out onto the street is unclear and unconvincing, because if both the bar and restaurant closed at 1am there would be likely to be more people exiting the premises at this time whereas presently some exit at midnight and others at 1am on Fridays and Saturdays. His argument that the ground floor use could change to Class A3 without planning permission is irrelevant because the issue at contention is the effect of the extending the hours for the sale of alcoholic drinks. Also, the proposal would leave the authorised opening hours of the restaurant on the first floor unchanged from Sunday through to Thursday at midnight so there would remain a difference in the two uses' hours of operation.
12. His acquisition of the next door Budhha Club allows patrons to pass internally from the Budhha Lounge into those premises but this does not justify an extension of opening hours of the larger appeal premises until 1am every day

¹ Conditions 2 & 3 of planning permission ref 09/00636/FUL respectively, referred to in Breach of Condition Notice dated 10 February 2014

because many customers would still be likely to leave the Buddha Lounge at 1am given its larger area compared to the Buddha Club. Even if this wasn't the case and the majority of customers from the appeal premises managed to cram into the smaller Buddha Club premises next door, then more possibly intoxicated people would exit and disperse through surrounding residential neighbourhoods even later at night, which would exacerbate any resulting noise and disturbance to nearby residential neighbours.

13. The appellant understandably wants his premises to remain competitive with other existing drinking establishments in the area, some of whom are allowed to open until 1am or later as set out in his submissions. But the Council's adopted and emerging policies rightly and in accordance with the presumption in favour of sustainable development set out in the National Planning Policy Framework (NPPF) attempt to balance the needs of such businesses with the reasonable needs of local residents to obtain a good night's sleep free of the noise, disturbance and anti-social behaviour at times associated with such late night eating and drinking establishments.
14. The appellant's contention that the proposal will improve the amenity of local residents is substantively and convincingly countered by the Council and the Police and for the reasons set out above. The Council also points out that whilst there are nearby premises legitimately open after midnight these relate to historic permissions which predate current planning policy on such uses.
15. In conclusion, the proposal would be likely to result in more people coming and going to the appeal premises later at night than currently, at a time when most people including those in nearby residential flats would be asleep or trying to get to sleep. In particular it would be likely to give rise to more people likely to have been consuming alcoholic drinks for a longer period to exit into the street from the premises and disperse into surrounding residential areas, with all the implications for noise, disturbance and anti-social behaviour that this could and more than likely would entail.
16. In both its current and emerging development plan policies the Council makes a clear distinction between 'late night hubs' (LNH) and 'evening zones' (EZ), or 'night time zones'(NTZ) as referred to in 'saved' Policy CLT 14 of the City of Southampton Local Plan Review adopted in 2006 (LPR). The appeal premises are located in the Bedford Place/London Road NTZ, or EZ as it is referred to in Policy AP 8 of the emerging Southampton City Centre Action Plan (CCAP).
17. Under adopted LPR Policy CLT 14 Class A3, A4 and A5 uses will be permitted subject to compliance with Policy REI 7, which itself states such uses will be permitted provided that appropriate planning conditions are imposed where necessary to prevent the generation of undue noise or other forms of nuisance directly arising from the proposed use. This approach was specifically endorsed by the examining Inspector into the LPR.
18. The appellant states that the site has not been the subject of any individual noise complaint. The Council does not contest that statement. However, that does not mean that people exiting the premises and dispersing into the neighbouring streets have never made any noise and disturbance affecting neighbours' residential amenity and it would be fanciful to suppose they never would, especially given the longer proposed opening hours. Whilst the current premises may be well run by the appellant any such extended opening hours would run with the land and it is necessary for me to consider the likely long

- term effects of such an extension of opening hours, cumulatively with other such premises, on the living conditions of residential neighbours.
19. The approach to Class A3, A4 and A5 uses has been continued into Policy CS1 of the adopted Core Strategy, which identifies the Council's approach to the City Centre, as well as signalling its intention to take forward its spatial strategy via a CCAP. The CCAP has recently been examined and found 'sound' subject to various recommended modifications. CCAP Policy AP 8 is not recommended for modification and it therefore carries significant weight, in accordance with NPPF paragraph 216.
 20. Policy AP 8 continues the approach of the LPR in that the Bedford Place/London Road area remains an EZ. Furthermore, it clearly states² that Class A3, A4 and A5 night time uses will be restricted to midnight in this area in order to balance the economic needs of such businesses against the social and environmental requirements of nearby residents to enjoy reasonable peace and quiet at night. The text to this policy also identifies this area as a Cumulative Impact Policy Area for Licensing Applications because it is an area already suffering due to the concentration of licensed premises and that the Council will co-ordinate its planning and licensing functions as far as possible. This does not of course mean that planning restrictions must be eased to correspond with current licensing hours because planning and licensing considerations vary.
 21. The proposal is therefore clearly contrary to current LPR Policies CLT 14 and REI 7. It is also in conflict with LPR Policies SDP 1 and SDP 16, which together specify that development will only be granted if the amenity of the city's citizens will not be unacceptably affected including in terms of noise impact. It is also contrary to emerging CCAP Policy AP 8, which states that opening times in this area will be restricted to no later than midnight in order to protect residential amenity.
 22. The appellant cites two appeal decisions in favour of the proposal³ as well as referring to the appeal submissions relating to a very recent appeal⁴. But this latter case was dismissed on 31 December 2014 including for reasons that the proposal in that case would be contrary to the same above Policies. This very recent appeal decision is highly significant because that proposal also sought an extension of hours beyond midnight at a premises situated only about 50m away from the current appeal premises.
 23. That case involved the first floor of the premises known as Triad House/Attik/Roxx at the western end of Vernon Walk on the corner of Lower Banister Street. The Inspector concluded that, given extant and emerging development plan policy and the mixed character of the area including residential flats, the extension of hours beyond midnight would be likely to harm the living conditions of such local residents. Given the proximity of those premises with the appeal premises in this case I can see no reason to come to a different decision.
 24. In his decision the Inspector gave little weight to the two above appeal decisions also cited by the appellant in that case because in case 2078978 the Inspector was unaware of the policy background and the decision in case

² CCAP Proposed Submission document, September 2013 – paragraph 4.71, Table 3

³ APP/D1780/A/08/2078978 & APP/D1780/A/00/1046651

⁴ APP/D1780/A/14/2226053

1046651 considerably predates the LPR. I agree with the Inspector's reasoning in case 2226053 that these decisions therefore carry little weight. In contrast the Council have provided a list of several more recent appeals where Inspectors have supported its policy stance and refused the extension of such hours. Consequently the Council has not been inconsistent or unreasonable in its application of policy in this case.

25. In light of the above, and having considered all other matters, the appeal is dismissed.

Nick Fagan

INSPECTOR