

Appeal Decision

Site visit made on 5 July 2016

by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE

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

Decision date: 27 September 2016

Appeal Ref: APP/F4410/W/16/3149193

8 Main Street, Sprotbrough, Doncaster DN5 7RF

- 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 Mrs Ruth McGuire (Optum Global Ltd) against the decision of Doncaster Metropolitan Borough Council.
 - The application Ref 15/02376/FUL, which was undated, was refused by notice dated 18 December 2015.
 - The application sought planning permission for change of use from retail (A1 use) to Coffee Shop (A3 use) and Wine Bar (A4 use) including alterations to shop frontage without complying with a condition attached to planning permission Ref 13/02321/FUL, dated 10 January 2014.
 - The condition in dispute is No 6 which states that: The opening hours shall be limited to: Monday to Saturday inclusive 0900 hours to 2330 hours; Sunday and Bank Holidays 1000 hours to 2300 hours.
 - The reason given for the condition is: To ensure that the use does not harm the amenity of local residents.
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This decision is issued in accordance with section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 17 August 2016.

Decision

1. The appeal is allowed and planning permission is granted for the change of use from retail (A1 use) to Coffee Shop (A3 use) and Wine Bar (A4 use) including alterations to shop frontage at 8 Main Street, Sprotbrough, Doncaster DN5 7RF in accordance with the application Ref 15/02376/FUL, without compliance with condition No 6 previously imposed on planning permission Ref 13/02321/FUL dated 10 January 2014, subject to the conditions set out in the attached schedule.

Application for costs

2. An application for costs was made by Mrs Ruth McGuire (Optum Global Ltd) against Doncaster Metropolitan Borough Council. This application is the subject of a separate Decision.
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Main Issue

3. The main issue is whether the condition is reasonable or necessary in the interests of the living conditions of the neighbouring occupiers, with particular regard to noise and disturbance.

Reasons

4. The appeal premise is a relatively modest café bar positioned within a small parade of shops and is located adjacent to an existing restaurant. To the front of the parade is a wide paved area that the premises use as an external seating/dining area.
5. The proposal seeks to vary the existing opening hours, as prescribed in condition No 6 of the original planning permission (Ref 13/02321/FUL), to permit the premises to remain open a further hour on Fridays and Saturdays, until 0030 hours, a further half hour on Sunday's until 23.30 hours and until 0100 hours on New Years Eve. The proposal also seeks to start trading on Sundays and Bank Holidays at 0900 hours.
6. The Council's reason for refusal of the application is quite specific in defining the sources of noise and nuisance that may affect local residents. These relate to moving furniture for stacking at closing time, noise from customers sat outside and comings and goings from customers migrating from nearby establishments after their closing time. The Council has not raised any concerns relating to the earlier opening hours of premises on Sundays and Bank Holidays and their primary concern relates to the extended evening and night time opening.
7. A premises licence has already been granted for the hours that are the subject of this appeal. This licence also prevents customer access after 2300 hours on Fridays and Saturdays and limits the serving of alcohol to midnight when the premises will enter a 'drinking up' period prior to closing. I have attached significant weight to the fact that the Council has granted a premises licence which provides for the same opening and closing hours as proposed in this appeal. The objectives of the Licensing Act 2003 require consideration of the prevention of public nuisance which includes noise. Consequently, it does appear that the Council, in its capacity as Licensing Authority, has deemed the proposed opening and closing hours as acceptable.
8. The controls placed on the premises licence in preventing customer access after 2300 hours would prevent customers migrating from other drinking establishments in the area. Also the 'drinking up' period would enable a 'phased' exit of customers from the site which would be spread over a longer period. The premise and the outdoor area are also relatively small with the consequence that customer numbers are much smaller than those that may normally be associated with a public house. Consequently, given the licensing controls and the small customer capacity of the premise, I do not consider that the comings and goings of a small number of customers would be likely to give rise to any additional significant noise or disturbance.
9. The outdoor seating area is also relatively small and at the time of my site visit comprised of approximately six tables each with four chairs. I have no evidence to indicate the extent to which this area is subject to planning or licensing controls as it lies outside of the defined boundary of the planning

application and is not directly referred to in the disputed condition No 6. Nevertheless, this outdoor seating area did not appear to have any form of piped music or outdoor heating which would limit the extent of its use, particularly in the winter months. Given the relatively low customer numbers, the limitations of its use in colder evenings and the fact that the removal and stacking of a such a s small number of tables and chairs is likely to be a relatively speedy operation, I do not consider that there would be any demonstrable and significant noise or disturbance associated with outdoor seating area.

10. I have also taken into account the fact that no complaints have been received by the Council regarding the current operations on the site. In addition, neither the Council's Environmental Health Officer, subject to conditions, nor the Police have raised any objections to the proposal. The appellant also suggests that the adjacent restaurant has no restricted closing time. Therefore, notwithstanding my findings above regarding the lack of any demonstrable or significant noise or disturbance, in the unlikely event that such incidences did occur it would be difficult to establish whether or not these were associated with the appeal premises or the restaurant next door.
11. Taking the above matters into consideration, I do not consider that there is any demonstrable evidence to suggest that the extended opening hours would cause any significant harm to the living conditions of nearby residents. Consequently there would be no conflict with saved Policy PH12 of the Doncaster Unitary Development Plan (1998) or Policy CS1 of the Doncaster Core Strategy (2012). These policies, amongst other things, require that development should not cause an unacceptable loss of residential amenity with regard to noise.

Other matters

12. I have taken into account the concerns of local residents regarding the potential for anti-social behaviour, the lack of off street parking and potential noise and disturbance associated with persons accessing cars and taxis. My attention has also been drawn to noise associated with staff leaving the premises after closing time. However, these concerns were not cited by the Council in its reason for refusal of the planning application and there is no substantive evidence to indicate that such concerns would be wholly related to the appeal proposal given the presence of other such uses in the local area.

Conditions

13. The advice contained within the Planning Practice Guidance (PPG) makes it clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission. In allowing this appeal and granting planning permission I have considered the conditions imposed on the 2014 (Ref 13/02321/FUL) planning permission.
14. As I have no information before me about the status of the other conditions imposed on the original planning permission, the extent to which development is proceeding, or indeed whether any conditions are being breached. I shall impose all those that I consider remain relevant and meet the advice contained within paragraph 206 of the Framework and the guidance contained in the section on 'Use of Planning Conditions' in the PPG. In the event that some

have in fact been discharged, that is a matter which can be addressed by the parties.

15. In addition to the standard time limit condition, I have imposed a condition requiring that the development is carried out in accordance with the approved plans. This is for the avoidance of doubt and in the interests of proper planning. In the interests of protecting the living conditions of nearby residents I have imposed conditions relating to the delivery of goods, external lighting, the amended hours of opening condition and a requirement to keep the rear door closed when not in use.
16. Although the Council did not suggest that condition No 4 of the original permission be imposed, relating to the external materials of the shop frontage, I have attached this for the avoidance of any doubt and in the interests of protecting the character and appearance of the area. Similarly, the Council did not suggest that condition No 5 of the original planning permission be imposed either. However, I have no evidence to indicate whether such details as required by that condition have been submitted to the Council, or whether the owner/tenant has chosen not to prepare hot food. Consequently, for the avoidance of any doubt, and to protect the living conditions of nearby residents from cooking odours, I have re-imposed that condition.
17. The Council has also suggested three additional conditions that were not contained within the original planning permission.
18. I consider that it would be unreasonable to require doors and windows to remain closed except for access, egress and emergencies. Moreover, these could be opened by customers outside of the control of the appellant. In addition, the activities relating to the provision of live entertainment or piped music are matters that can be controlled by the Council using the licensing powers. Consequently, I consider that the imposition of this suggested condition would be unreasonable.
19. The Council indicates that a notice requiring customers to respect neighbouring properties and make the minimum amount of noise on leaving the premises should be erected in the interests of amenities of adjacent land uses. However, in my view, the existence of such notice would not achieve requirements of the reason for it as customers have the discretion to behave as they so wish on leaving the premises at any time of the day. Moreover, the appellant has no control over the actions of the customers when they have left the premises. Consequently, I do not consider that the requirements of such condition would achieve the reasons given for its suggested imposition and as such it would be unreasonable and its intentions unenforceable.
20. Given my findings that the extended opening hours would be acceptable, I find no planning reason for a condition preventing new entries to the premises after 2300 hours. In any event, the Council indicate that this matter is the subject of a restriction on the license. As such, a condition would be unnecessary.
21. Finally, I agree with the Council that a condition requiring that the outdoor area not be used after 10.45pm would not be enforceable as this activity lies outside the boundary of the planning permission.

Conclusion

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

Stephen Normington

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) No delivery vehicles may arrive, depart, be loaded or unloaded within the general site except between the hours of 0730-1800 Mondays to Fridays, and 0800-1700 Saturdays, and at no times on Sundays and Bank Holidays.
- 3) All artificial lighting for the site both temporary and permanent shall be of such a design and installed and sited/ angled in such a manner as to prevent glare or light shining directly into neighbouring dwellings.
- 4) Before the development commences, details of the proposed external materials for the shop frontage shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 5) Should the owner/tenant of the premises wish to prepare hot food in the future, details of the extraction/ventilation system to effectively control the emission of cooking smells and fumes shall be submitted to and approved in writing by the local planning authority (so as to prevent the transmission of odour); and shall be installed and fully operational before the preparing of hot food commences. This should include the undertaking of a BS4142:1997 Assessment, to consider the background noise levels and the predicted noise levels from the proposed extraction fan/ventilation system, the system shall thereafter be kept in efficient working order.
- 6) The hours of opening shall be limited to:

Mondays to Thursdays inclusive 0900 hours to 2330 hours.
Friday and Saturday inclusive 0900 hours to 0030 hours.
Sunday and Bank Holidays 0900 hours to 2330 hours.
New Year's Eve 0900 hours to 0100 hours.
- 7) The development hereby approved shall be carried out in accordance with the following approved plans and specifications:

Existing and proposed plans amended 05.12.13
Site Plan 05.11.13
Brochure 02.12.13
Supporting statement 13.12.13
Food statement 11.12.13
- 8) The rear door shall not be used for staff or members of the public to exit before or enter after having a smoke and shall be kept closed when not in use.