
Appeal Decision

Site visit made on 20 September 2016

by Rory Cridland LLB (Hons)

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

Decision date: 20th October 2016

Appeal Ref: APP/Z0116/W/16/3151790

99 Queens Road, Clifton, Bristol BS8 1LW

- 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 Alex Gerardi against the decision of Bristol City Council.
 - The application Ref 15/06402/X, dated 11 December 2015, was refused by notice dated 11 April 2016.
 - The application sought planning permission for the substantial demolition of the existing building and the erection of a two storey building comprising ground floor cafe (A3) 1no two bed apartment and 1no three bed apartment with retention of shop front and terrazzo forecourt without complying with a condition attached to planning permission Ref 13/05499/P, dated 26 February 2014.
 - The condition in dispute is No 24 which states that: No customers shall remain on the premises of the A3 unit (including the forecourt) hereby permitted outside the hours of 08:00 to 22:30 Monday to Saturday and on Sundays 10:00 to 20:00.
 - The reason given for the condition is: To safeguard the residential amenity of nearby occupiers.
-

Decision

1. The appeal is dismissed.

Background & Main Issue

2. Outline planning permission was granted¹ in 2014 for the substantial demolition of the existing building and the erection of a two storey building comprising ground floor café with a two apartments above. The scheme has been substantially completed. The permission was granted subject to conditions which, amongst other things, restrict the opening hours of the A3 unit to between 0800 – 2230 Monday to Saturday and 1000-2000 on Sundays. The reason given for the condition is to safeguard the amenity of nearby occupiers.
3. The appellant is seeking to extend the opening hours to 0800 to 2400 Monday to Saturday and 1000 to 2230 on Sundays. The Council is concerned that doing so it would impact negatively on the living conditions of neighbouring occupiers as a result of noise and disturbance from the site occurring later into the evening. I therefore consider the main issue to be the effect of extending the opening hours on the living conditions of occupiers of neighbouring properties with particular regard to noise and disturbance.

¹ Ref 13/05499/P

Reasons

4. The appeal site is situated on Queens Road, a busy road in the centre of Clifton, close to the local Commercial Centre and within the Clifton Conservation Area (CA). It is located in a mixed residential and commercial area with neighbouring businesses, bars, cafes and residential premises situated nearby. It currently has an open forecourt area directly in front and is identified as a building of merit within the Clifton & Hotwells Character Appraisal.
5. Policy DM10 of the Site Allocations and Development Management Policies (SADMP) seeks to ensure that individual or cumulative impacts of food and drink uses do not cause nuisance to residents living nearby. Such uses will be acceptable provided they would not, amongst other things, harm residential amenity, either individually or cumulatively. It sets out a number of criteria against which proposals will be assessed, including the impacts of noise, general disturbance and late night activity, including those impacts arising from the use of external areas.
6. The Council is concerned that the proposed increase of operating hours would result in an increase in noise, particularly from customers using the outside area and those leaving the premises. In view of the proximity of that outside area to the surrounding residential dwellings, I agree that the site has the potential to seriously affect the residential amenity of neighbouring occupiers. However, the Appellant has submitted acoustic information which indicates that background noise levels are such that the additional noise generated by the proposed increase in opening hours would be imperceptible.
7. Indeed, the appeal site is located on a busy road, near a junction and in close proximity to other food and drink establishments, some of which also have outside seating areas. As such, I am satisfied that the additional noise likely to be generated by the increased operating hours would not be significant. Noise levels within the wider area would not significantly alter and any impact on the living conditions of occupiers of most of the surrounding residential dwellings, including those adjacent at No 101 and those opposite at Queen's Court, would be minimal.
8. Nevertheless, the same cannot be said of the flats located above. The impact on the occupiers of these premises is likely to be far greater. Although these dwellings benefit from a number of sound proofing measures which help to ensure that levels of noise and disturbance emanating from inside the unit are kept to a minimum, there are number of *Velux* style windows which open onto the forecourt area and some of which serve bedrooms. Being only around 5m from the forecourt, these rooms are particularly sensitive to the noise generated from the external seating area. Extending its use until midnight would result in an increase in noise and disturbance at a time where it is reasonable to expect external noise levels to have reduced.
9. While I note the additional submissions regarding noise provided by the appellant's noise consultant, being one of the later opening establishments of its type in the area, there is every indication that it would be a popular venue. As such, I consider the levels of noise generated by customers both those using the outside seating area and those leaving the premises, could be significantly greater than that suggested. These increased levels of noise and disturbance would extend later into the evening, materially impacting on the living

conditions of those residing above. This would be harmful to their living conditions and would be contrary to Policy DM10.

10. Although the appellant has proposed restricting use of this outside area to 2230, this would only provide partial mitigation and would not address the noise generated by the comings and goings of customers or their congregation outside the premises. Similarly, limiting the operating hours of the unit to 2330 would still result in an extension of opening hours beyond those of many of the nearby commercial establishments and would result in similar levels of harm to those identified above.
11. While I note the appellant's suggestion of developing an operational management plan for the outside area, in the absence of any details, I cannot be satisfied that such a plan would be sufficiently robust to guard against the resultant harm.
12. Consequently, I find that the proposal would negatively impact on the living conditions of the occupiers of the flats above. As such, it would be contrary to Policies BCS21 & BCS23 of the Core Strategy and Policies DM35 & DM10 of the SADMP. These policies, taken together, seek to ensure that new development safeguards the amenity of existing development and does not adversely affect neighbouring amenity by reason of, amongst other things, noise.

Other Matters

13. The proposal does not include physical works and the Council raises no objection to the proposal on the basis that it would impact negatively on the CA. I see no reason to come to a contrary view. Accordingly, I conclude that the CA would be preserved. A lack of harm in this respect does not however weigh positively in favour of the proposal.
14. In reaching my conclusions I have noted the concerns of local residents. Those which relate to the impact on neighbouring residential amenity have been taken into account above. Those in respect of competition and viability are matters for the developer and do not constitute material planning considerations.

Conclusion

15. For the reasons set out above, I conclude that the appeal should be dismissed.

Rory Cridland

INSPECTOR