

Appeal Decision

Site visit made on 4 October 2016

by Alex Hutson MATP CMLI MArborA

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

Decision date: 6 December 2016

Appeal Ref: APP/E0345/W/16/3151763

23 Friar Street, Reading RG1 1DP

- 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 N Chakal against the decision of Reading Borough Council.
 - The application Ref 151815, dated 8 October 2015, was refused by notice dated 11 January 2016.
 - The application sought planning permission for change of use from A1 retail/off license to A3 and A5 hot food takeaway/restaurant without complying with a condition attached to planning permission Ref 131260, dated 3 December 2013.
 - The condition in dispute is No 8 which states that: The premises shall not be used for the preparation or sale of food outside the hours of 07.00 till 02.00 Monday to Saturday and 07.00 till 23.00 on Sundays and Bank Holidays.
 - The reasons given for the condition is: In the interests of neighbouring amenity, in compliance with SDPD Policy DM4 Safeguarding Amenity.
-

Decision

1. The appeal is dismissed.

Background and Main Issue

2. The condition in dispute relates to a planning permission granted for a change of use from retail/off license to a hot food takeaway/restaurant. The appellant seeks to vary condition No 8 to extend opening hours until 0500 hours on Mondays to Saturdays and on Bank Holidays.
3. The main issue is whether the condition is reasonable and necessary in the interests of the living conditions of the occupiers of neighbouring properties and the guests of a nearby hotel.

Reasons

4. The hot food takeaway/restaurant occupies the ground floor of a three storey building at 23 Friar Street and is located within the Reading Central Area as defined in the Reading Borough Sites and Detailed Policies Document 2012 (with alteration adopted 2015) (SDPD). Surrounding properties comprise a variety of uses including building societies, hotels, shops, drinking establishments and residential.
-

5. The evidence in respect of the current use of the first and second floor of No 23, which has a separate entrance, is somewhat contradictory. Whilst the appellant's planning statement and appeal statement suggests that these floors are currently used as offices, the submitted Noise Impact Assessment (NIA) suggests these floors are used for residential purposes. The Council's evidence is inconclusive on this matter. It is also unclear whether the first and second floors of the adjoining building No 24, which also have a separate entrance to the ground floor unit of No 24, are in use for residential purposes. Consequently, it would be unreasonable of me to conclude, based on the evidence, that the first and second floors of Nos 23 and 24 are not used for residential purposes.
6. The appellant claims that some uses in the vicinity of No 23, including drinking establishments, are open until 0500 hours or later. However the appellant has not provided any compelling evidence to support this claim. The Council, on the other hand, has provided a brief summary of the planning history of nearby buildings which suggests that any Class A uses within these buildings are conditional to closing hours of 0200 hours at the latest. Whilst the area has a diverse and vibrant evening economy, it is therefore likely that Friar Street, beyond 0200 hours is subject to relative peace and quiet. Indeed, the Council sets out that it is their intention to maintain a level of peace and quiet along Friar Street beyond 0200 hours.
7. The Council raises two main concerns in respect of the proposed extension of opening hours. Firstly, that the noise from the kitchen extractor unit would cause disturbance to nearby residents and hotel guests if it would exceed the existing background noise by more than 0 decibels (db), as measured from the window of the nearest noise sensitive receptor, in line with current best practice. Secondly, that an unacceptable level of noise and disturbance for the occupiers of neighbouring properties and the guests of a nearby hotel would be generated by the comings and goings of customers.
8. In order to address the first concern, the appellant has submitted a NIA. The NIA demonstrates that the noise levels of the existing extractor unit, without mitigation, would be considerably above the background noise level and would have a significant and adverse effect in respect of the nearest façade of the hotel. With mitigation, the extractor unit could achieve 4db below background noise levels at this location.
9. However, the NIA has not considered the effect of any mitigation measures in respect of the first and second floors of No 23 or No 24 which are nearer to the extractor unit than the nearest façade of the hotel. In the absence of such information, I cannot be confident that the mitigation measures would be adequate to achieve 0db above the existing background noise in respect of any flats within these properties. In addition, it would be difficult for the Council to enforce such mitigation measures in any event. Moreover, whilst I acknowledge that the NIA highlights that it is the appellant's intention to house staff above the hot food takeaway/restaurant should planning permission be granted, I have not been provided with any effective mechanism by which to secure this intention.
10. I also share the Council's concerns, primarily in respect of noise and disturbance for any occupiers of any flats within No 23 and 24, as a result of the comings and goings of customers between the hours of 0200 and 0500.

This is a sensitive time of the night when any residents should be able to sleep in relative peace and quiet. This would apply to all residents, even if they are young and do not have children. I also consider that the noise and disturbance levels generated would be unacceptable notwithstanding that alcohol is not served on the premises. Given the close proximity of No 23 to the hotel, any guests within any rooms of the hotel closest to No 23 would also be likely to experience unacceptable levels of noise and disturbance, which lends weight to my decision to dismiss the appeal.

11. I acknowledge that the appellant intends to impose a strict management plan to mitigate any noise and disturbance. However, no detailed information relating to measures that could be taken have been provided to allow my further consideration of this matter. Furthermore, whilst a management plan may go some way to mitigating internal noise and disturbance, I do not consider that noise and disturbance arising from customers arriving and leaving could be satisfactorily controlled in this way.
12. I note the comments of the Council's Senior Environmental Health Officer in respect of a previous planning application¹ relating to the hot food takeaway/restaurant. Nevertheless, I have not been provided with the full details of what was being sought under that application. As such, I have no reasonable basis on which to make an informed comparison between the proposal under that planning application and the proposal I am to consider under this appeal. In addition, it falls on me to consider the proposal on the basis of the evidence before me, which as can be seen in my above reasoning, I find to be unacceptable.
13. I therefore consider that the increase in noise and disturbance generated by the proposed extension to opening hours of the hot food takeaway would be unacceptable in an area which is likely to experience relative peace and quiet during these times. The increase in noise and disturbance would be particularly harmful for any occupiers of neighbouring properties and guests of the nearby hotel when they can reasonably expect to sleep in peace.
14. Accordingly, I conclude that the disputed condition is reasonable and necessary to protect the living conditions of the occupiers of neighbouring properties and guests of the hotel. It should therefore be retained.
15. Retention of the condition would therefore accord with Policy DM4-Safeguarding Amenity, of the SDPD, which requires, amongst other things, development not to cause a significant detrimental impact to the living conditions of existing residential properties in terms of noise and disturbance. It would also accord with the broad aims and principles of the National Planning Policy Framework that seek planning to secure a good level of amenity for all existing and future occupants of land and buildings.

Other matters

16. I acknowledge that the proposed extension of opening hours would provide some additional employment and would make a contribution, albeit a limited contribution, to local economic growth. Nevertheless, the harm I have found would significantly and demonstrably outweigh these modest benefits.

¹ Ref 141920

Conclusion

17. For the reasons set out above and having regard to all other matters, I conclude that the appeal should be dismissed.

Alex Hutson

INSPECTOR