
Appeal Decision

Site visit made on 3 January 2017

by David L Morgan BA MA (T&CP) MA (Bld Con IoAAS) MRTPI IHBC

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

Decision date: 25th January 2017

Appeal Ref: APP/G1250/W/16/3156039

10 Queens Road, Bournemouth BH2 6BE

- 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 Hector against the decision of Bournemouth Borough Council.
 - The application Ref 7-2016-10986-D, dated 12 May 2016, was refused by notice dated 19 July 2016.
 - The development proposed is change of use from a restaurant within Use Class A3 to a micro-pub falling within Use Class A4.
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Application for costs

1. An application for costs was made by Mr Hector against Bournemouth Borough Council. This application is the subject of a separate Decision.

Decision

2. The appeal is allowed and planning permission is granted for change of use from a restaurant within Use Class A3 to a micro-pub falling within Use Class A4 at 10 Queens Road, Bournemouth BH2 6BE in accordance with the terms of the application, Ref 7-2016-10986-D, dated 12 May 2016, subject to the conditions set out in the schedule at the end of the decision.

Main Issue

3. This is the effect of the proposed development on the living conditions of adjacent occupiers with specific regard to noise and disturbance.

Reasons

4. The appeal site comprises the ground floor element of a three floor unit forming part of a terrace or parade of commercial and residential properties along this part of Queen's Road. This terrace, incorporating a former hotel or Public House (now the Co-op), in conjunction with that opposite and the former Midland Hotel to the north, form an imposing and attractive group of buildings on this once significant approach to the resort town. The architectural interest of the parade in which the appeal property is located is justly recognised, being included on the Council's local list of buildings of such interest. Although it is not clear whether the aforementioned structures are also thus designated, together they form an imposing group.
5. The commercial ground floor frontages form an intrinsic element of the ensembles architectural interest and the bustle and interaction of exchange they bring (when occupied) also form an important element of the distinct

character of this approach to the town. Indeed, aside from a range of daytime uses the two parades also include a further restaurant, a takeaway and a supermarket with later opening hours, all extending the activity in the area of the site into the evenings. In addition to these ground floor commercial uses the two parades have residential accommodation above, and there are further blocks of residential accommodation in the wider vicinity of the site.

6. The unit has a current A3 restaurant use, though it is suggested that the business has not operated for at least three years. The proposals are for an A4 use, though this is defined in the planning statement supplied by the appellant as being a 'micro-pub'. Whilst no such sub-class formally exists within Class A4 of the Town and Country Planning (Use Classes) Order 1987 (as amended) or the Town and Country Planning (General Permitted Development) (England) Order 2015, the appellant's statement makes clear this is very deliberately a small-scale establishment focused on selling craft beers in a traditional, 'non-amplified' environment. Whilst the details of the licence for this use already granted by the Council¹ are not before me, the appellant maintains that specific conditions of the licence reflect such an operation.
7. It is right however that given the proximity of residential accommodation in the vicinity of the site, that the decision-maker carefully considers the effect of proposed development on the living conditions of those occupying such accommodation close by. However, it is also a matter of careful planning judgement to consider whether the magnitude of any such effects amount to material harm and whether any such potential harm could be successfully mitigated through any conditions attached to any planning permission.
8. In arriving at any such judgement it is also necessary to consider the broader and specific circumstances that currently exist in relation to the site and consider the actual scope of the use proposed to calibrate any following effects.
9. It is the case that the proposed use would intensify levels of activity in the vicinity of the site over and above that one would anticipate for the existing A3 restaurant use. The dynamic of visiting a pub in company is of its nature different to that of sitting down to a meal. However, the premises are modest in size, would cater for a limited clientele, and would offer little more than the opportunity to sit or stand, converse and drink during one's stay. Whilst the comings and goings associated with the proposed use may be a little above that of the existing, this of itself would not be an outcome or effect amounting to material harm.
10. Moreover, a restriction on the hours of opening would also ensure that the extent of comings and particularly goings are restricted to within reasonable times, and certainly before the closure of the takeaway facility opposite. In addition, although opening doors and windows in the property appeared limited, a further condition requiring these to remain closed beyond identified times would further mitigate and sounds of internal activity.
11. Equally the desire of customers to smoke whilst attending an A4 use rather than that of an A3 is a reasonable expectation. However, here again, the anticipated numbers would be limited and not significantly above what one might expect of those attending a restaurant, or perhaps waiting for their takeaway food order.

¹ Granted by the Council under the terms of the Licensing Act 2003.

12. I readily agree with the Council that, notwithstanding the limited increase in numbers anticipated in this regard, that if this were to take place to the rear of the property, in proximity to bedroom accommodation above and to properties in the vicinity, this could indeed cause material harm to the living conditions of occupiers.
13. However, I consider this matter could be effectively controlled through a condition prohibiting the use of the rear access of the premises for members of the public except for emergency access. Whilst the Council express concern over the enforceability of such a condition I consider that any breaches could be readily recorded and action taken to ensure compliance with the condition. With this measure in place this would restrict such activity to the street frontage where associated uses and ambient noise levels would be such to mitigate any degree of modest increase in such activity.
14. Again, the valid concerns of the Council in respect of noise transference (above that associated with the current use) to residential properties above and to the side at first floor could be effectively mitigated through a condition prohibiting the use of amplified music or address systems. Such a condition would also be both reasonable and enforceable in this context.
15. Similarly, noise and disturbance as a result of deliveries and refuse and recycling collection could be effectively mitigated again through the imposition of appropriate and enforceable conditions. It is not clear if the current use is subject to such control but if were not then clearly this may also be a benefit over and above the current position.
16. The provision of additional plant, including air conditioning and ducting to the rear of the facility could also, I accept, represent a source of harm to the living conditions of adjacent occupiers. Again however, this could be comprehensively controlled through the imposition of an appropriate condition.
17. For all of these reasons therefore I conclude that the proposed use, appropriately and effectively managed through reasonable and enforceable conditions, would not result in material harm to the living conditions of adjacent occupiers. It would therefore accord with policy CS38 of the Bournemouth Local Plan Core Strategy, which seeks, amongst other things, to minimise potential pollution by way of noise. I also conclude it would comply with policy CS41 of the same that also seeks a high standard of amenity from development proposals.

Conditions

18. The appeal being allowed, and in light of the reasoning set out above and the conditions suggested by the Council, I have attached such to the decision. These cover the need for the development to be carried out in accordance with the approved plans, to assure certainty; the need to limit the hours of opening, compliance with the terms of the appellant's planning statement, a prohibition of amplified music or public address system, the prohibition of any additional plant or extract ducting, chiller units or air conditioning, limitation of the hours of delivery and of refuse and recycling collection to and from the establishment and the closure of all windows and doors (save for ingress and egress) beyond agreed times, all to comprehensively safeguard the living conditions of adjacent occupiers.

Conclusion

19. For the reasons given above I conclude that the appeal should be allowed.

David Morgan

Inspector

Schedule of conditions

1. The development hereby permitted shall be carried out in accordance with the following approved plans: Proposed 1:100 floor plans (un-numbered) and supporting statement dated May 2016.
2. The use hereby permitted shall not be open to customers outside the following times: 08:00 hours and 23.00 hours.
3. With the exception of the hours of opening controlled in the above condition, the use shall be limited to that specified in the applicant's planning statement dated May 2016, which forms part of this planning permission, and the management measures within shall be employed.
4. No amplified music shall be played nor any public address system be used either inside the premises or within the curtilage of the premises.
5. No additional plant equipment including extraction ducting, chiller units or air conditioning condensers shall be installed without the further grant of planning permission by the Local Planning Authority.
6. No deliveries to the premises shall take place between the hours of 2100 -0700 hours.
7. No refuse or recycling material shall be taken out or moved around the site between the hours of 2100-0700 hours.
8. All windows and doors shall be kept closed after 2100 hours except for ingress and egress. The rear door labelled fire exit on the floor plans shall not at any time be used by customers except in the case of emergency, and there shall be no use of the external area to the rear of the site by customers at any time.