
Appeal Decision

Site visit made on 10 January 2017

by Andrew McCormack BSc (Hons) MRTPI

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

Decision date: 1 February 2017

Appeal Ref: APP/Z4310/W/16/3159783

24 Kitchen Street, Liverpool, Merseyside L1 0AN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Ioan Roberts against the decision of Liverpool City Council.
 - The application Ref 15F/1630, dated 24 June 2015, was approved on 6 June 2016 and planning permission was granted subject to conditions.
 - The development permitted is '*To convert warehouse to mixed use public event space, including A3 (Café/Restaurant), A4 (Drinking Establishment), D2 (Assembly/Leisure) and Sui Generis (Theatre, nightclub and art studio) with use of the roof as open eating/drinking area and construction of roof top perimeter enclosure and garden nursery*'.
 - The conditions in dispute are Nos 5 and 6 which state that (5) in so far as this consent relates to the use of rooftop garden, this area shall not be open for business outside the hours of 0800 and 2200 hours; and (6) in so far as this consent refers to the entertainment uses hereby approved within the building, the premises shall not be open for business outside the hours of 0800 and 0200 hours.
 - The reason given for conditions (5) and (6) is to ensure that nearby occupiers are not adversely affected by the development in accordance with Policy HD18 of the Liverpool Unitary Development Plan.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. At the appointed time of the Access Required Site Visit (ARSV), neither the appellant nor agent were in attendance. The appellant was contacted by telephone by the builders who were on site. During my telephone conversation with the appellant, Mr Ioan Roberts, verbal permission to access the property was given in order for the site visit to take place. As safe access into and around the property was possible, I was satisfied that the site visit could be carried out. As a result, I was able to gain the necessary information I required in order to determine this appeal.

Background and Main Issue

3. The appeal follows the granting of planning permission Ref 15F/1630 on 6 June 2016 and relates to the imposition of the attached Conditions 5 and 6 concerning the opening hours of the appeal property. The appellant seeks to vary the disputed conditions by extending the opening hours for the roof garden of the development from between 0800 and 2200 to between 0800 and 0000 and for the entertainment uses within the premises from between 0800
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and 0200 to between 0800 and 0400. The reason given by the Council for the opening hours stipulated in the approved conditions is to ensure that nearby occupiers are not adversely affected by the development, in accordance with Policy HD18 of the Liverpool Unitary Development Plan (UDP).

4. Therefore, the main issue is the effect of the proposed extended opening hours on the living conditions of local residents with regard to noise.

Reasons

5. The appeal property is a two-storey brick warehouse within the Baltic Triangle area of Liverpool and is situated between another industrial building and a cleared site used for temporary car parking. On the opposite side of Blundell Street is a vacant site, which is also in use as a temporary car park. On Kitchen Street, opposite the appeal property is a five-storey mixed use building known as The Artesian. There are other uses in the area, particularly along Blundell Street and towards Chaloner Street, such as the Blundell Street Supper Club and a McDonald's restaurant.
6. Policy HD18 of the UDP states, amongst other matters, that new development should result in no severe loss of amenity or privacy to adjacent residents. Furthermore, Policy EP11 of the UDP states, amongst other matters, that development which has the potential to create noise nuisance will not be permitted. In addition, the Baltic Triangle Planning Framework (BTPF), which I note is not part of the development plan, seeks to deliver a mixed use, sustainable area which incorporates commercial, retail, leisure and residential development.
7. The Council has adopted a standard approach to the opening hours of bars, clubs and restaurants within the area which sets a closing time of 2am in order to preserve the amenity of nearby occupiers and business users. This approach has been undertaken in the approval of application Ref: 15F/1630. Furthermore, this is consistent with the City Centre Strategic Investment Framework 2012 (SIF) which sets the Council's objective of creating sustainable communities that are attractive to a range of residents.
8. The appellant argues that the extended opening hours would not result in any loss of residential amenity as there are no adjacent properties in residential use. However, the appeal property is across the road from The Artesian building on Kitchen Street which has a significant amount of student accommodation within it. Furthermore, the residents of the higher storeys of The Artesian building which face the appeal property would be located above the approved roof garden and would be particularly adversely affected by noise generated from it. Although the appellant states that there would be no loud music or noise occurring on the roof garden, there would be a general level of noise created by patrons which would have a materially harmful effect on those residents of The Artesian opposite.
9. Since the appeal was made, the Council has issued a resolution to grant planning permission for residential development on the adjoining car park site to the appeal property on Blundell Street. I appreciate that this is subject to certain matters being resolved, including ensuring that satisfactory acoustic insulation is provided within that development. However, in my view, the combination of further substantial residential development adjacent to the appeal property and the effect of the extended opening hours would result in

- exacerbating any conflict between the approved use at the appeal property and creating reasonable living conditions for residents nearby. Furthermore, the proposal would have an adverse impact on a larger number of residents.
10. There are other residential areas further from the appeal property such as those on St James Street which, to a lesser extent, could be affected by the noise impact of an extension of opening hours. However, such impacts on these properties are dealt with by other conditions attached to the approved development which are not in dispute.
 11. Whilst a standard approach to opening hours for uses such as the proposed development is advocated by the Council, the BTPF indicates that a flexible approach to opening hours should be adopted relating to the context of the proposal being considered. However, this flexibility should not prejudice or jeopardise residential amenity. Notwithstanding the noise mitigation measures which are being undertaken, given the close proximity of the residential use at The Artesian, I find that extending the opening hours at the appeal property would be prejudicial to residential amenity.
 12. I acknowledge that noise can be controlled to a degree within the appeal property by employing the measures set out relating to the approved development. However, it is more difficult to control noise level outside. The public entrance to the appeal property is on Blundell Street and is a small distance away from The Artesian. Furthermore, at the time of the site visit, there was no residential use adjacent to it. Despite this, it is reasonable to consider that significant noise levels would be generated by patrons leaving the premises and dispersing around the immediate area. Whilst I have had regard to the appellant's Noise Management Strategy which sets out measures intended to address these matters, I find that such noise occurring at around 0400 hours rather than 0200 hours would have a significant adverse impact on the living conditions of nearby residents.
 13. The appellant refers to the grant of planning permission for the nearby McDonald's to operate 24 hours which, in their view, should be seen as a precedent for the approval of late hours for similar entertainment premises in the area. However, a McDonald's restaurant is quite different from the type of business which generates similar issues in terms of noise and large concentrations of people such as a nightclub. Furthermore, the McDonald's restaurant is situated adjacent to a busy dual-carriageway and is not located close to any residential development.
 14. In addition, the appellant points to the Blundell Street Supper Club which won an appeal against the limitations on opening hours. From what I have seen and read, this approval was based on the use of the Club as a restaurant and that there are no nearby residential developments. Therefore, both cases differ from the proposal before me in terms of their usage and context. Notwithstanding this, I must assess the appeal proposal on its own merits and circumstances. Therefore, I give only limited weight to these other cases.
 15. The approved scheme was granted planning permission having had its impact on its surroundings assessed. Furthermore, there is no dispute that the approved use of the appeal property is acceptable and in line with the overall development strategy for the Baltic Triangle area. However, the proposed extension to opening hours would, in my view, create an unacceptable imbalance between the different uses emerging in the area. There are likely to

be economic benefits to the business in extending the opening hours. However, these would be significantly outweighed by the unacceptable material impact on the living conditions of nearby occupiers, with regard to noise. As a result, it would not be in keeping with the relevant UDP policies and the objectives of the BTPF and SIF to which I attach significant weight as material considerations in this case.

16. Consequently, I conclude that the proposed variation of the disputed conditions would have a significant harmful effect on the living conditions of local residents with regard to noise. It would therefore be contrary to Policies HD18 and EP11 of the UDP and the guidance within the BTPF. These policies and guidance, amongst other matters, seek to ensure that development has no adverse or unacceptable impact on the living conditions of nearby residents or on the environment and that it assists in creating balanced, mixed use communities.

Conclusion

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

Andrew McCormack

INSPECTOR