
Appeal Decision

Site visit made on 28 February 2017

by Beverley Wilders BA (Hons) PgDip MRTPI

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

Decision date: 29 March 2017

Appeal Ref: APP/M4320/W/16/3164686
39-41 South Road, Waterloo L22 5PE

- 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 Chicago Bar & Grill Ltd against the decision of Sefton Metropolitan Borough Council.
 - The application Ref DC/2016/01454, dated 11 July 2016, was refused by notice dated 6 October 2016.
 - The development proposed is change of use of first floor of premises to licenced area, and use of existing flat roof as roof terrace area also licenced.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The Council's reason for refusal refers to policies SD2 and EQ10 of the emerging Local Plan for Sefton (ELP). As the ELP has not been adopted, in reaching my decision I have afforded limited weight to these policies.

Background

3. A variation to the existing premises licence at the appeal site was granted on 12 September 2016, prior to the application being determined by the Council. This variation extended the licence to the first floor of the building and to the proposed roof terrace and varied the opening hours to 12:00 to 00:00, with the sale of alcohol and other activities being restricted to slightly earlier times of 23:30 and 23:00, 7 days a week. The hours of use of the proposed roof terrace is restricted by the licence to 14:00 to 23:00. I have been provided with a copy of the licence and of the minutes of the Licencing Sub-Committee meeting held on 12 September 2016. I have had regard to these in reaching my decision.

Main Issue

4. The main issue is the effect of the proposal on the living conditions of the occupiers of nearby properties having regard to noise and disturbance.

Reasons

5. The appeal site comprises an existing part two storey, part single storey building located within a parade of commercial premises in the District Centre. The ground floor of the building is in use as a bar and restaurant and the first
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floor is currently vacant. There are other bars and restaurants within the parade and on the opposite side of the road. The single storey part of the building has a flat roof and extends to the rear of the appeal site where it adjoins Cross Street, a narrow single width road. The front elevation of a residential property at 1 Cross Street is located very close to the appeal site as are the rear elevations and rear yards of a number of residential properties fronting Hyde Road. At my site visit I noted the existence of a first floor rear terrace at the pub adjoining the appeal site, though this does not extend as far back towards Cross Street as the proposed roof terrace.

6. The proposal is to change the use of the first floor of the two storey part of the building to a licenced lounge area in connection with the existing ground floor use. The Council has raised no objection to this element of the proposal and I have no reason to disagree with their findings on this matter.
7. In addition part of the flat roof above the single storey part of the building is proposed to be used as a roof terrace to contain a smoking and shisha area. This area would be accessed from the first floor lounge area via a proposed patio door to replace an existing window. The submitted plans indicate that the roof terrace would be enclosed on all three sides by 1.5 metre high frosted glazed screen. The application form indicates that the hours of use of the proposed additional areas would be the same as the existing permitted hours for the bar and restaurant but the appellant has subsequently confirmed that they would be willing to accept a condition limiting the use of the roof terrace to between 14:00 and 22:00 Monday to Thursday and 14:00 and 23:00 Friday to Sunday.
8. Concerns have been raised by the Council's Environmental Health department about the impact of the proposed roof terrace on the living conditions of nearby residents. Objections were also received by the Council from local residents concerned about noise and disturbance resulting from the proposal. No noise information was submitted with either the application or appeal.
9. The proximity of the proposed roof terrace to residential properties at the rear of the appeal site means that any noise and disturbance generated by the use of the terrace is likely to have a significant adverse impact on the living conditions of occupiers of those properties. Having regard to the size and first floor position of the terrace together with the nature of its proposed use, I do not consider that the harm arising from the use of the terrace would be adequately mitigated by either the proposed 1.5 metre high glazed screens or the restricted hours of use of the terrace proposed by the appellant.
10. In reaching my decision I have had regard to the conclusions of the Licencing Committee regarding noise and disturbance and note that the committee considered that the installation of a fixed acoustic membrane together with conditions attached to the licence should limit noise to a reasonable level. The appellant has referred to the acoustic membrane being 1.8 metres high though I have not been provided with any details of it. In the absence of these and of any substantive evidence from the parties regarding noise, I do not consider that the harm that I have identified to living conditions could be adequately overcome by the imposition of suitably worded conditions. The fact that the Licencing Committee was satisfied in relation to the matter of noise does not mean that the proposal is acceptable in planning terms. I must consider the

proposal before me on its own merits, having regard to the submitted evidence.

11. Taking the above matters into consideration, I conclude that the proposal would add to late night noise and disturbance and is likely to have a significant adverse effect on the living conditions of the occupiers of nearby properties having regard to noise and disturbance. It is therefore contrary to the development plan and in particular policies CS3 and MD6 of the Sefton Unitary Development Plan and to relevant paragraphs of the National Planning Policy Framework. These policies seek, amongst other things, to ensure that development, including proposals for food and drink uses, does not cause significant harm to amenity. The proposal is also contrary to policies SD2 and EQ10 of the ELP which similarly seek to protect local amenity.

Conclusion

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

Beverley Wilders

INSPECTOR