
Appeal Decision

Site visit made on 8 May 2017

by Alison Partington BA (Hons) MA MRTPI

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

Decision date: 18th May 2017

Appeal Ref: APP/M4320/W/17/3169351
16 Nevill Street, Southport PR9 0BX

- 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 Hasan Akdeniz against the decision of Sefton Metropolitan Borough Council.
 - The application Ref DC/2016/01746, dated 26 August 2016, was approved on 12 December 2016 and planning permission was granted subject to conditions.
 - The development permitted is the change of use of retail shop to hot food take away at ground floor only and construction of an extraction flue on the rear elevation.
 - The conditions in dispute is No 5 which states that: "The premises shall not be open for business outside the hours of Monday to Friday 11:00 – 00:00, Saturday 11:00 – 00:00 and Sundays and Bank Holidays 11:00 – 00:00."
 - The reason given for the condition is: "In the interests of residential amenity and to comply with Policy MD6 in the Sefton Unitary Development Plan."
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Decision

1. The appeal is dismissed.

Procedural Matters

2. In April 2017, and after the submission of the appeal, the Council adopted its *Local Plan for Sefton* (LP), and as a result I sought the views of both parties regarding this. The Council have confirmed that Policy MD6 referred to in the reason for refusal has been superseded by Policy EQ10 of the LP. I have determined the appeal on the basis of national and local policies as adopted at the present time.
3. The appellant raised concerns regarding the lack of opportunity to discuss the disputed condition with the Council, and I note the Council's comments in this regard. However, this is a matter that would need to be taken up with the Council in the first instance, and in determining the appeal I have only had regard to the planning merits of the case.

Background and Main Issue

4. Planning permission for the change of use of the retail unit to a hot food take away included a condition controlling opening hours of the premises from 11am to midnight every day. The reason given for this was to protect the amenity of nearby residents. The appellant seeks to vary this to allow opening until 4am each day as was originally applied for.
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5. The main issue in the appeal is whether the condition is reasonable and necessary having regard to the living conditions of nearby residents with particular reference to noise and disturbance.

Reasons

6. The appeal property is a vacant retail unit located within Southport town centre. Nevill Street runs from the main shopping street to the promenade, and contains a mixture of food and drink establishments, amusement arcades and gift shops. However, there are also a number of residential uses in the immediate vicinity both on the upper floors of the commercial units and along the various side roads.
7. Given the location on the edge of the town centre, I expect the area to be busy during the day and into the evening, especially in the summer, but the evidence regarding late night opening is inconclusive. Whilst there are a number of restaurants and bars in the area, not all displayed their opening hours. Of those that did, many were shut before midnight, although I observed that one public house advertises an event until 02:00 one day a week, and the hot food take away opposite, which I understand is also owned by the appellant is open until 03:00 during the week, 04:00 on a Friday and Saturday and 02:00 on Sunday.
8. I accept that there may be a small number of uses in the locality that may be open until the early hours of the morning. However, the Council's evidence indicates that these are all long established uses, which predate not only the current LP, but the two previous Unitary Development Plans adopted in 1995 and 2006, which gave greater weight to protecting residential amenity than had existed before. Given the increasing number of residential units above retail premises in the area, the Council have indicated that, even in the town centre, they now generally seek to restrict opening hours to 23:00. I also note that bus services along Lord Street finish around midnight. As such, I anticipate that ambient noise levels in the vicinity would be much more limited after midnight.
9. Given the location of the site, it seems likely to me that the proposed extended opening hours would particularly attract custom from the nearby bars. Some of these people may be inebriated, and any loud voices and shouting around the appeal site would be a source of disturbance for those living nearby. Those arriving by car would be likely to park on Nevill Street, as such noise and disturbance would also be likely to be generated from traffic movements, banging of car doors, and car radios playing. Activity in and around the site can continue after closing, as customers disperse and staff tidy up. Consequently, the proposed opening hours would result in the potential for noise disturbance until late at night. I note the lack of objections to the proposal from residents, or any complaints associated with other late night uses in the area. However, given the proximity of residential properties to the site, I consider the potential for noise disturbance until gone 04:00 every day of the week is unacceptable.
10. I understand that to serve food between 23:00 and 05:00 a license is required, and that as Licensing Authority, the Council have ongoing control over the activities at the site, and hours of operation. There are areas of overlap between licensing and planning, in particular in relation to the licensing objective of preventing public nuisance, and the planning system's purpose of

protecting the living conditions of residential occupiers. Nevertheless the two systems are distinct, and decisions in one do not bind decisions in the other. As a result it is not unreasonable for Environmental Health to raise objections as part of either, or both, of these processes, or for the nature of their concerns to vary slightly between the two.

11. Moreover, whilst the appellant has highlighted that his existing premises has given no grounds for complaints, and in his view it is reasonable to assume the same would be the case for this premises, planning permission runs with the land not the operator. As such, even if he does propose to operate from these premises for the foreseeable future, there is no guarantee this will always be the case.
12. Therefore, I conclude that it is necessary and reasonable to continue to impose restrictions on opening hours as set out in condition 5 of permission DC/2016/01746. To allow the hot food take away to extend these hours until 04:00 each day would result in unacceptable harm to the living conditions of nearby residents, with particular reference to noise and disturbance. Consequently, to vary the condition to allow longer opening hours would conflict with Policy EQ10 of the LP which seeks to ensure that proposals for food and drink uses in centres are located so that they do not cause significant harm to local amenity.

Other Matters

13. The appeal site lies within Lord Street Conservation Area, and as a result I have special regard to the statutory duty to pay attention to the desirability of preserving, or enhancing, the character, or appearance, of the Conservation Area. I note that in this regard the Council had no objection to the proposal subject to a condition requiring the flue to be painted black. From the evidence before me, and my own observations, I see no reason to come to a different conclusion, and I am satisfied that the proposal to extend the opening hours would preserve the character and appearance of the conservation area.

Conclusion

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

Alison Partington

INSPECTOR